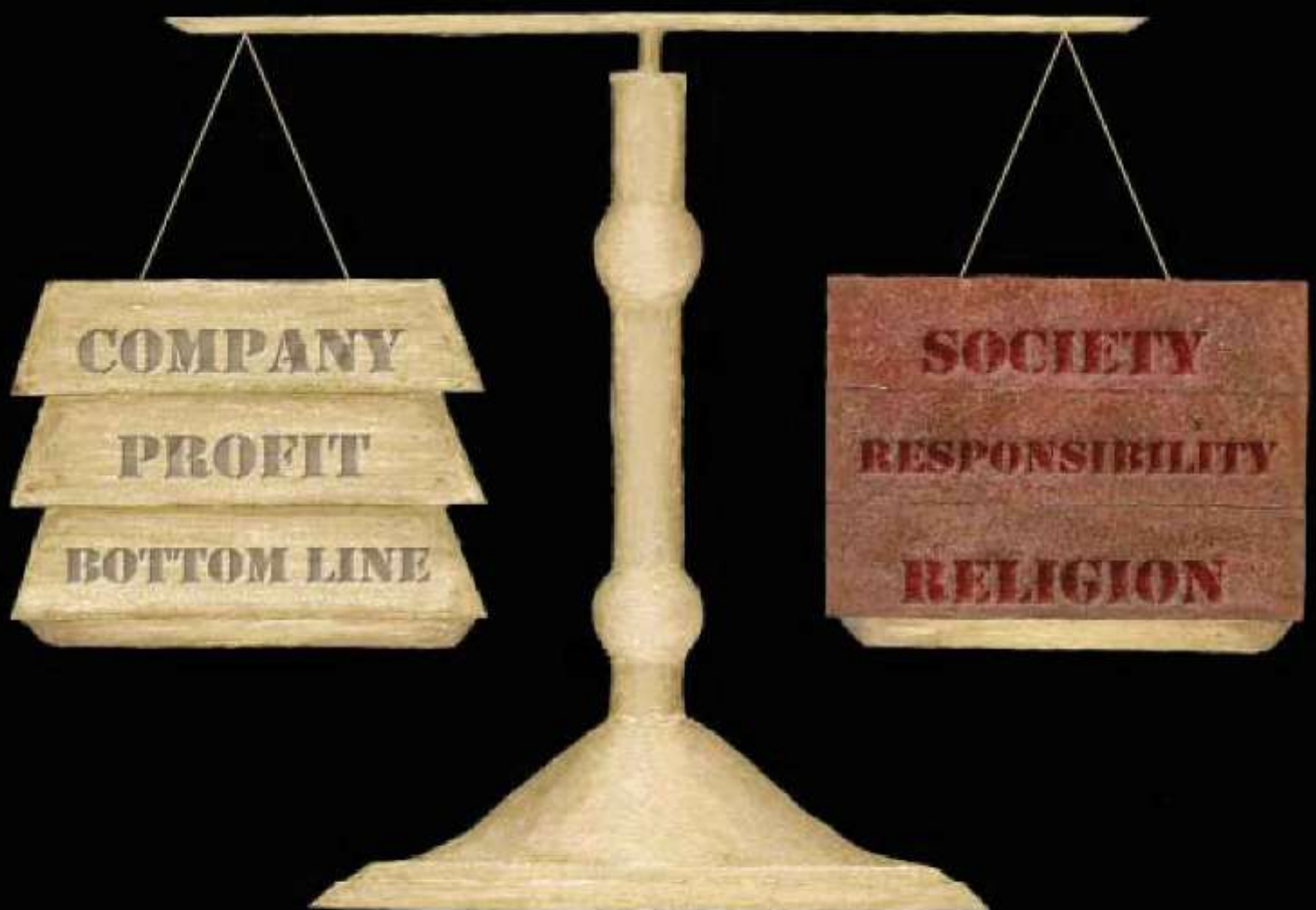


CIVIL SOCIETY
PROJECT REPORT
2007

BUSINESS ETHICS AND RELIGIOUS VALUES IN THE EUROPEAN UNION AND MALTA – FOR A MORAL LEVEL PLAYING FIELD

Edited by PETER G. XUEREB (Project Co-ordinator)



THE EUROPEAN DOCUMENTATION AND RESEARCH CENTRE
JEAN MONNET EUROPEAN CENTRE OF EXCELLENCE
UNIVERSITY OF MALTA

BUSINESS ETHICS AND RELIGIOUS VALUES IN THE EUROPEAN UNION AND MALTA - FOR A MORAL LEVEL PLAYING FIELD

Edited by
PETER G. XUEREB
(Project Co-ordinator)

**CIVIL SOCIETY PROJECT
REPORT
2007**

**THE EUROPEAN DOCUMENTATION AND RESEARCH CENTRE
JEAN MONNET EUROPEAN CENTRE OF EXCELLENCE
UNIVERSITY OF MALTA**

With the support of the European Commission
JEAN MONNET PROJECT

ISBN 978-99909-67-43-2 Paperback
ISBN 978-99909-67-44-9 Hard Cover

© European Documentation and Research Centre,
University of Malta and Peter G Xuereb, 2007.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means - electronic, mechanical, photocopying, recording or otherwise - without prior written permission from the European Documentation and Research Centre, University of Malta and the Editor.

The EDRC is an independent, non-political, academic centre for research and teaching in European Studies. The views expressed in publications of the EDRC are the personal views of the authors and do not necessarily reflect the views of the EDRC.

Acknowledgement

This project has been carried out with the support of the European Commission.

The content of this project does not necessarily reflect the position of the European Community, nor does it involve any responsibility on the part of the European Community.

*Typeset by the European Documentation and Research Centre.
Printed by Publishers Enterprises Group (PEG) Ltd.*

FOREWORD

I am pleased to introduce this Report on the theme of Business Ethics and Religious Values in the Europe Union including Malta. It is the third report produced by the Civil Society Project, a multi-disciplinary project coordinated by the European Documentation and Research Centre as a Jean Monnet European Centre of Excellence. The focus of the Project as a whole is on Malta's experience as a Member State of the Union, and the siting of the Maltese debates on major issues relating to the current and future European Union and its relations with its Member States and with its Neighbours. This includes as a main component the response and experience of civil society in this context, within the wider European and indeed universal debates.

The list of contributors indicates the names of the authors of each of the several contributions. Of course, my thanks are due in a special way to them, for making available their time and expertise, gratis and most generously. However, I emphasise that very often the work involved was the result of group work, and of meetings in which several other experts and players in the fields covered by the project participated. Also, many of the participants could only take part with the support of their organizations, public and private, and this must also be recorded.

Every effort has been made to give an accurate picture of the theoretical and practical landscape on the complex issues raised by the challenge of constructing a citizenship that goes beyond the traditional loyalty to the state to embrace concepts of loyalty to the Union and to the wider international order, and to do so as comprehensively and holistically as possible. There is however, yet another loyalty for millions, indeed hundreds of millions, of European citizens. This is the loyalty that they have to their God and their fellow men and women, expressed by the profession and the practice of religion - inspired values and ethics in their daily lives. Their religion is central to the development and fulfillment of each of these citizens; beyond religious faith and ritual, religion is the well-spring of the social ethics upon which basis they seek to interact with the world around them. This is fact. It cannot be ignored by the European Institutions. For these citizens, loyalty to the Union will necessarily be a function also of the way - positive or negative - in which the Union, its methods and its policies impact on their freedom to express and live their values. This cannot be forgotten in a secular framework, which the vast majority of these citizens accept and actively endorse. They would also claim that they have a valuable perspective to offer in the pursuit of happiness and prosperity with justice and fairness, and therefore true happiness. This too must not be ignored by the European Institutions. The 2006 Report studied the case-example of family values and the Union and its policies. The subject of Business Ethics and the role of Religion is, especially in the present day, another apposite one from which to consider yet again the wider issues of the role of religion in the European public sphere, the need for inter-cultural dialogue about values, and the promise that this dialogue holds for greater cohesion and solidarity in our societies - or better, the European Society presaged by the Constitutional Treaty. Standing as we are between the Year of Equal Opportunities 2007 (the subject of our 2005 Report) and the Year of Intercultural Dialogue 2008, this Report continues on the themes of Inclusive and Plural Citizenship and

Civil Society in the context of the evolving *Acquis Communautaire*, as set out more fully in the Introduction to the first Report.

The Project has been part-funded by the European Commission for the first three years of its five-year duration. This means that the EDRC has to raise the balance of the funds from public interest-minded public and private sources, and will be entirely dependent from this year on, so for the last two years of the Project, on these sources. We would be very grateful for any support offered.

This Report will form the backdrop to public discussion and debate in a National Conference organised by the EDRC and to be held in September of this year. The Conference is aimed at civil society in general. An international cast of speakers will address the Maltese public on trends in other Member States and in the development of the Union and its policies as they impact on the issues raised in this report - Corporate Social Responsibility, Corporate Governance, and Fair Trade, and the role and contribution of Religion - and workshops will carry forward the debate and provide an opportunity to reach conclusions and make recommendations against that background and the findings of this Report itself.

My thanks once again to the University of Malta and to the European Commission, to the expert authors of the various reports, and to all participants in the work of this Project. My thanks, and an open invitation, also to all future participants in the Civil Society Project, including the attendees at the National Conference in September - for you too will, through your participation, become part of the ongoing Project. Last but certainly not least, my thanks to the EDRC staff, and especially Ms. Doris Mangion and Ms. Joanne Muscat, whose unstinting efforts underlie all results of each EDRC project.

PETER G. XUEREB
UNIVERSITY OF MALTA
MSIDA, MALTA
March 2007

CONTENTS

Page

INTRODUCTION

- Capitalism, Business Ethics and Religion as they relate to the *Acquis Communautaire* on Institutional and Corporate Responsibility - An Introduction**
Prof. Peter G. Xuereb 3

THE RELIGIOUS SOCIAL DIMENSION

- How Free is the Free Market? A Catholic Social Teaching Perspective**
Rev. Dr. Paul A. Pace 35

- The Presence and the Role of Religion in a Consumer Culture**
Rev. Dr. Joseph Ellul 45

- My Brother's Keeper - The Genesis and Ethical Basis of Consumer Law (Notes from a Maltese Perspective)**
Dr. David Fabri 53

THE ACQUIS COMMUNAUTAIRE AND CORPORATE SOCIAL RESPONSIBILITY

- Corporate Social Responsibility in the European Union and the Responsibility of Society to Push the Limits**
Ms. Danièle Cop 71

- Corporate Social Responsibility in the EU's *Acquis*: Regulation V. Voluntary Conduct**
Dr. Ivan Sammut 85

- Whither Governance Through Public-Private Partnerships?**
Rev. Dr. Mark Sultana 103

THE MALTA SCENE IN THE BROADER CONTEXT

- Ethical Public Procurement in Malta - Indications from the Workwear Sector**
Ms. Nina Zita 119

Corporate Responsibility in Small States like Malta: A Luxury Companies Can Ill Afford? <i>Mr. Mark Harwood</i>	135
Corporate Governance and Workers' Participation <i>Mr. Saviour Rizzo</i>	149
An EU-Inspired Corporate Governance Statement for Maltese Listed Companies - Boon or Scourge? <i>Mr. Peter J. Baldacchino</i>	161
The Business Firm as a Moral Agent <i>Rev. Professor George Grima</i>	167
Corporate Social Responsibility in Environment Planning and the Construction Industry in Malta <i>Ms. Astrid Vella and Ms. Karen M. Zammit Manduca</i>	179
Social Economy vs Corporate Social Responsibility: A View From the European Anti-Poverty Network Malta <i>Mr. Godfrey Kenely, Mr. Godfrey Leone Ganado and Ms. Claudia Taylor East</i>	201
Empowering Citizens Through Education for Sustainable Development <i>Dr. Paul J. Pace</i>	209

BACK TO EUROPE, THE MEDITERRANEAN AND THE WORLD

The Social Responsibility of European Union Institutions: The Case of Television Regulation <i>Dr. Kevin Aquilina</i>	223
Globalisation: A Case for International Benchmarking and Monitoring of CSR <i>Dr. Audrey Gatt</i>	237
Fair Trade in the Mediterranean: Questioning Corporate Gloss and the Monopolies of Free Trade <i>Dr. Adrian Grima</i>	249
CSR and Coherence for Development Within the EU <i>Mr. Vince Caruana</i>	267

LIST OF PUBLICATIONS

List of Books Published by the EDRC

279

CONTRIBUTORS

Professor Peter G. Xuereb (Editor)

Professor of European & Comparative Law; Jean Monnet Chair in European Union Law and European Integration; Chairman, European Documentation and Research Centre, University of Malta. Co-ordinator of the Civil Society Project.

Rev. Dr. Paul A. Pace

Department of Moral Theology, Faculty of Theology, University of Malta.

Rev. Dr. Joseph Ellul

Lecturer, Faculty of Theology, University of Malta.

Dr. David Fabri

Senior Lecturer in Consumer Law, Department of Commercial Law, University of Malta.

Ms. Danièle Cop

Associate, Mamo TCV Advocates.

Dr. Ivan Sammut

Assistant Lecturer, Faculty of Laws, University of Malta.

Rev. Dr. Mark Sultana

Visiting Lecturer, Department of Philosophy, University of Malta.

Ms. Nina Zita

Student of Public Administration, The University of Gothenburg; Activist in a Clean Clothes Campaign/Fair Trade group in Sweden; European Voluntary Service (EVS) volunteer in Malta with Inizjamed (a cultural NGO) and Koperattiva Kummerç Ġust (Fair Trade organisation).

Mr. Mark Harwood

Assistant Lecturer, European Documentation and Research Centre, University of Malta; PhD Candidate.

Mr. Saviour Rizzo

A/Director, Centre for Labour Studies, University of Malta.

Mr. Peter J Baldacchino

Senior Lecturer, Auditing and Financial Strategy, University of Malta.

Rev. Professor George Grima

Professor of Moral Theology and Dean of the Faculty of Theology at the University of Malta.

Ms. Astrid Vella

Coordinator, Flimkien ghal Ambjent Ahjar (Together for a Better Environment).

Ms. Karen M. Zammit Manduca

Activist, Flimkien ghal Ambjent Ahjar (Together for a Better Environment).

Mr. Godfrey Leone Ganado

Counsellant, European Anti-Poverty Network Malta.

Dr. Paul J. Pace

Director, CEER (Centre for Environmental Education & Research), Department of Mathematics, Science & Technical Education, Faculty of Education, University of Malta.

Mr. Godfrey Kenely

Chairperson, European Anti-Poverty Network Malta.

Ms. Claudia Taylor East

Coordinator, EAPN Malta Structural Funds Working Group.

Dr. Kevin Aquilina

Chief Executive, Broadcasting Authority; Senior Lecturer, Department of Public Law Faculty of Law, University of Malta.

Dr. Audrey Gatt

Advocate, with a special interest in Human Rights Issues.

Dr. Adrian Grima

Lecturer, University of Malta.

Mr. Vince Caruana

Assistant Lecturer, CEER (Centre for Environmental Education and Research), University of Malta.

CAPITALISM, BUSINESS ETHICS AND RELIGION AS THEY RELATE TO THE *ACQUIS COMMUNAUTAIRE* ON INSTITUTIONAL AND CORPORATE RESPONSIBILITY - AN INTRODUCTION

PETER G. XUEREB

Part I - Introduction

It is trite to say that the *acquis communautaire* is produced within a largely common European culture although it falls then to be applied in, after where necessary being transposed into, the “thicker” culture of each Member State. Unless all aspects of the common culture, as *also* those of the latter cultures, have been taken into account at EU and national government level, problems with application and or enforcement of the *acquis*, and with loyalty to the Union itself, can result. I return to this point in my conclusion to this chapter. An intrinsic component of culture is values, societal values of whatever source, religion, tradition, custom, social ordering and so on.

It was argued in the 2006 Report¹, and is also argued by several contributors here, that underlying and inherent in these cultural factors, religion exists as a powerful force, and this for ‘Good’. Notions of the public good in any civilised society are the function of moral as well as utilitarian and other considerations. In many societies, or among large number of citizens within them, they are still the overriding consideration, and their well-spring is religion. Hence the crucial importance of inter-cultural dialogue about the application of religion-inspired values in a globalised world seeking to create a global order under the rule of law with morality and justice, as well as a global economic system. I refer to the quote from Fr. Joseph Ellul’s paper in this report, when he cites Christopher Dawson’s still resonant words thus:

“We are only just beginning to understand how intimately and profoundly the vitality of a society is bound up with its religion. It is the religious impulse which

¹ Peter G. Xuereb (ed.), *The Family, Law, Religion and Society in the European Union and Malta*, Civil Society Project Report 2006, European Documentation and Research Centre, University of Malta, 2006.

supplies the cohesive force which unifies a society and a culture. The great civilisations of the world do not produce the great religions as a kind of by-product; in a very real sense, the great religions are the foundations on which the great civilisations rest. A society that has lost its religion becomes sooner or later a society that has lost its culture.”

As was argued in the 2006 Report, by turning to dialogue about and with religion to inform the public sphere with values we do not mean seeking the one truth as relates to the metaphysical content of any one religion, for that is well beyond contemplation. Of course, religious freedom excludes any attempt even to exclude or marginalise any religion. Also, the differences in the metaphysical content of the different religions can perhaps never be bridged. Other faiths will never agree with the Catholic religion on Trinity, the divinity of Christ and other fundamental tenets of faith that distinguish Catholicism from other religions, and the same applies in reverse. But this ‘aspect’ of religion is for inter-religious scholarship and dialogue in the theological sense. Rather, it is argued that what is of vital interest to the policy-maker - and part of his or her responsibility, whether at national, European or global level - is the commonality of values that emerges not least from the social anthropology of religions, for it is this that cannot be ignored, and upon which we can and must build not only if current tensions and causes of misunderstanding are to be overcome, but also arguably if a better, more moral, and more peaceful world order is to result.

Capitalism, Business Ethics and Religion

Therefore, this Report is not directly about religion. It is about the ethics that do or should inform EU and Maltese policies, and particularly about business ethics. Each religion will have its intrinsic social ethical framework and rules. But it is the religion that supplies these and that underpins them. Various philosophical schools acknowledge this, and would give a hearing to the social teaching of the religions. Some, such as the secular humanist school, typified by A.C. Grayling², do not, arguing that religions confound the truth by propounding that “the source of values lies outside the world, embodied in the commands and requirements of a personal deity”³. Grayling argues that mankind’s quest for the good has been “the struggle between humanism, on the one hand, and religious conceptions of the world on the other”⁴. He hopes that “the intelligence and access of knowledge by future people will allow the enlightenment project to triumph at last”⁵. Arguably, however, Western philosophers such as Grayling, in rejecting the relevance (even) of religion to philosophy and to any ethical construction of what is ‘good’ and for the ‘common good’, throw out the baby with the bathwater. They miss the point perhaps by defining religion too narrowly as limited to the metaphysical, or by focusing on this aspect, the aspect of ‘divine ethics’⁶, and dismissing therefore the resulting social ethics as irrelevant, however much rooted in natural law and respect for human rights and human dignity these may be. Regarding religion as myth, they would ignore the ‘reality of religion’. While purporting to

² A.C. Grayling, *What is Good? The Search for the Best Way to Live*, Phoenix, 2003.

³ Ibid. p.xiii.

⁴ Ibid. p.x.

⁵ Ibid. p.xi.

⁶ Ibid. p.96.

deal in ‘facts’, they ignore the incontrovertible fact that millions of Europeans, and millions of their neighbours, not least in the Euro-Mediterranean area, actually believe in, and strive to apply, the ethics advocated by their respective religions in their daily lives as citizens, politicians, teachers and educators, social workers and indeed in all walks of life, including that of business and employment and as general users and consumers of goods and services. If these fail in their efforts, it is often through lack of knowledge and awareness, including those of their own power.

Over the last two hundred years or so, this fact (of religion) may have been driven underground by a secular philosophy that took its principal inspiration from industrial capitalism (or its now practically defunct opposite cousin communism), but there are many signs that it is now resurgent (see the paper in this volume by Joseph Ellul)⁷. It is resurgent possibly partly because of general disillusionment with raw capitalism and the de-humanising aspects of economism, and possibly also due to the realisation that other religious cultures such as Islam are having an impact in challenging the sometimes assumed “moral superiority” of the West. At the least, this calls on the West to re-discover and defend its moral reputation.

But capitalism is not a moral code. The moral code needs another source or sources. So, as has been said, the West’s morality cannot be declared void because it does not emerge from the tenets of capitalism as an economic system. So where is it then? The answer lies in our cultural heritage, principally in our religious inheritance. This is fact⁸. Yet this inheritance has been driven ‘underground’. Grayling would drive it out, because he cannot accept the ethics of religion as being rooted in ‘divine command’, which is what he really cannot accept. Moreover, for him, “it is easy to see that religion - and, in the present case, particularly Christianity – is the wrong resource for morality because it is irrelevant to the practical questions of contemporary life...Modern societies value personal autonomy, achievement in earning a living, providing for a family, saving against a rainy day, and being rewarded for success. Christian morality...values exactly the opposite. It tells people to take no thought for the morrow, to give their possessions to the poor, and to beware of the fact that a well-off person will find heaven unwelcoming”⁹. But that is not (at all comprehensively or, therefore, precisely) what the Catholic Church teaches¹⁰. Grayling would make other-worldly creatures of all followers of religion. Furthermore, the very conflicts that he lays at the door of religion¹¹ are examples of the misguided, even criminal, attempts by adherents to bring about a moral and just order in a manner that breaches the basic tenets of their own religion.

⁷ This resurgence is interpreted by A.C. Grayling as “*Faith’s Last Gasp*”; see www.prospect-magazine.co.uk; November 2006,128.

⁸ As Grayling, of course, acknowledges, op.cit p.66.

⁹ Ibid. p.78.

¹⁰ See *Compendium of the Social Doctrine of the Church*, (The Pontifical Council of Justice and Peace). Burns & Oates, 2005;

www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc20060526_compendio-dott-soc_en.html It is to be noted that His Holiness John Paul II made it clear that through her doctrine the Catholic Church “proclaims the truth about Christ, the Church and man, applying this truth to a concrete situation” (Encyclical Letter, *Sollicitudo Rei Socialis* 41).

¹¹ A.C. Grayling, op.cit. p.80.

Several papers in this Report counter the Grayling view of Christianity and of religion in general¹², while accepting perhaps that the Church could take more of a lead and offer clearer guidance to the faithful on ethical issues. The fact on which much of this report is premised is that millions living in Europe today accept the idea of divine command (although this is not what is strictly relevant here), seek to follow the ethics thereby proposed (which is supremely relevant here), and believe that these ethics point to what is good in and for this life (again, supremely relevant). Much of this Report contains the argument that religious ethics are a fact and intrinsic in a fundamental human right to believe. A number of the papers argue that these ethics should consciously be given space, even made to re-emerge, for the de-bunking of the idea of religion, also by millions, has led to a spiritual and ethical void that threatens to destroy us. Their authors would also accept the caveats that history has taught, and that Grayling has so much in mind, and principally the separation of Church and state, and the dangers of misapplied religion¹³. They would not accept that religious ethics rest “on a demand and a threat, not on reasons”¹⁴. Such a view, besides being offensive to hundreds of millions of thinking human beings, people who do not regard their religion as denying, while certainly guiding, their individual right to choose and their individual responsibility to make hard choices (or to participate in shaping the teaching of their Church in their time), misunderstands ‘modern’ Christian teaching. Nor would they accept that the alternative to “complete secularisation of the public sphere” is the jostling against one another in the public sphere of “mutually-blaspheming religions”¹⁵. The papers attempt to show not that the majority of people (at least in the West) are less happy today than they were in an often cruel past, or to deny the facts and celebrated achievements of scientific, economic, and even social progress, but that in our system their happiness is many times still premised on the unhappiness of others, very often in other corners of the world. There is no fundamental attack on our economic or political systems. However, there is a concern that these may not be as fully ‘justice-achieving’ as they could or should be. It is argued that ethics, and religious ethics in particular, have a key role to play in securing justice and happiness for all, for they speak about the perennial sources of conflict such as greed, exploitation, and discrimination. In Jacques Ellul’s¹⁶ words: “The hypocrisy that is so evident among the powerful - their expressed commitment to *egalitarian*¹⁷ progress that is belied by exploitative or destructive behaviour - is a sure sign that the rationalisation of virtue and virtuosity is a major force in world-cultural development. Hypocrisy indicates the vigorous presence of the moral order and its guardians. Its absence is possible only when the moral order has been entirely shunted aside”¹⁸. Here then is a primary role for religion-based business ethics, and their guardians. Herein also lies the responsibility of the policy-maker to listen to these guardians, making himself and herself such a guardian also.

¹² See also, Bishop Hilarion Alfeyev, *The Concept of the Dignity and Freedom of the Person in Christianity and Secular Humanism*, Europaica Bulletin, No.114, 16 February 2007 at www.orthodoxeurope.org This is the website of the Representation of the Russian Orthodox Church to the European Institutions.

¹³ A.C. Grayling, op.cit., pp. xi and 233, and pp.234 - 249.

¹⁴ Ibid. p.96.

¹⁵ Ibid. pp. 234, 235.

¹⁶ By coincidence we also have our own J.(Joseph) Ellul contributing a paper to this volume.

¹⁷ My italics.

¹⁸ J.Ellul, *The Betrayal of the West*, New York: Seabury 1978, cited in J. Boli, *The Rationalisation of Virtue and Virtuosity in World Society*, in Marie-Laure Djelic and Kerstin Sahlin-Andersson, *Transnational Governance: Institutional Dynamics of Regulation*, Cambridge University Press 2006, pp. 95 - 118, at p.117.

European Law and Ethics

Another point that emerges from this study as one in need of articulation is that our European ethics are religion-derived but often lie hidden in secular legal language, although David Fabri, for one, shows how ethical content and language can pervade a branch of law such as consumer law. Indeed, ethics, morality, religious precept is to be found in, even at the basis of, much of our secular law, including our constitutional and administrative law, our commercial law our consumer law, employment law, anti-discrimination law, our environmental law, just to mention some branches of national law (with the caveat that these will vary, sometimes in important ways, from one national legal system to another) that are key for the purposes of the main theme of this Report. We should not be surprised, however, that our company law - the prime juridical tool of capitalism - tends to emphasise and reinforce the economic aim, leaving 'social' aims out of its equations, to be addressed - with chequered and varying degrees of success across the Member States - by other branches of law.

It is therefore argued that in the main these ethics, these values, while there, are often implicit, and certainly the rules that apply them are often not framed in religious terms. There is a need to make this feature of our legal systems in Europe understood more widely.

There is also the need to heighten awareness among our own citizens, be they of whatever creed, of the values underlying and inspiring our legal rules. A first step is for commentators to 'tease out' the moral precepts inherent in the law's substance, in our institutions and in our processes of government and decision-making. However, one needs also to ask the uncomfortable question as to how far our 'Western' law has reflected, continued to reflect, or carried through, the moral ethical precepts of its religious traditions. Furthermore, the EU legal order poses a particular challenge in this regard. The European Union has a history of focus on the 'economic', and has in the past had no brief to do much beyond the 'economic'. While the Institutions may have sought to reflect moral values even as they pursued the essentially economic objectives of the European Economic Community Treaty and then of the European Community Treaty, yet in principle, the Community, the Union and the Institutions have always had to respect the basic position that the "thickness" of the particular social ethics (morality) of each Member State may, and does, differ. The Member States, themselves largely secular, have, from the start and through the course of Treaty revisions, been careful to retain autonomy and discretion for themselves in the 'moral' sphere beyond calling upon the EU to provide for a common minimum level of protection for various interests, as they and the Institutions focused on the essential aspects of economic integration. This 'arrangement' may be one source of confusion for (and in) non-member states which are or may be asked, in virtue of Association Agreements with the Union or otherwise, to 'follow' the *acquis* in various fields (particularly the economic: company law, financial services law, employment law, consumer law, competition law, trade law and so on) but which do not themselves have a history or tradition of 'obscuring' moral values behind or within 'secular' rules, far less of treating them as belonging to another (the 'private') sphere. Yet, as the *acquis communautaire* has gone ever deeper, it is also from within the Union that we hear calls for a greater ethical component and visibility in European level decision-making. Therefore, the question of religion and its relevance forms a theme, and even the essence of part of, this Report.

The Role of NGOs

As always in this project, part of the context is the perspective of NGOs, which play a part, operating as they do “between states and markets”, as the conscience of the market and of the state. As Boli has put it: “The non-compulsory character of voluntary associations is crucial to their moral capacity. Voluntary associations assemble individuals to achieve desired ends through un-coerced action. Crucial to this mode of operation is their freedom from the constraints of competition...they are not pushed to amorality by the concern for national security or the bottom line”¹⁹. We must be careful that our voluntary organisation laws do not push our NGOs in that direction. A set of questions being explored through this Project as a whole is: what is the view of NGOs in Malta on the EU record in such areas of law and regulation such as employment law, company law, environmental law, consumer law, and trade law? How far, in their view, has the *acquis* been able to reflect and safeguard common values by embodying the values of the societies of Member States, now including those of Maltese society? In their view, is the *acquis* ‘value-free’ in places? In their view, what do such questions, and the answers to them, teach us about our European culture and the state of its health?

Islam and Capitalism

Other studies may throw light on these same issues in Islamic states, and ask in the same way whether and how ‘Islamic’ states have striven to accommodate capitalism but yet, perhaps, to give it a particular moral content; how do or can ‘Islamic’ States that are prepared to open up to capitalism, even embrace its economic tenets, do so without compromising their values, if indeed the assumption that they in some way are called upon to do so is well-founded?²⁰

A central question therefore is: how can an evolving *acquis* best respond both to such attempts by Neighbouring countries and also to the increasingly overt attempt of European society itself to demand greater ethical commitment (Grima puts this word ‘commitment’ forward in preference to the usual ‘compliance’) from its own practitioners of capitalism? What role for the European Institutions in this dual perspective or challenge, at home and abroad? What role for national governments and other public authorities? What role for Civil Society on both sides of the Mediterranean?

It is also clear that there is a search on for a global moral order. It is argued here, and is a conclusion of this Report, that to regard religion, religious values, and the social ethics of religions, as irrelevant to policy-making is to fall into the trap again of ignoring the facts of the globalised world, the main one being that religion matters to hundreds of millions of people all over the world. Again, it is not the metaphysical doctrines that are in issue here. It is the social ethics of the various religions that the new order needs to understand and factor in. The hope is that there is every possibility of mutual evolution to positions of congruence even within the capitalist construct. It is part of the task of this ongoing Project to ask just how far the *acquis* in various areas permits European and non-European societies to practice

¹⁹ J.Boli, cit.at p. 99.

²⁰ See for example, C. Tripp, *Islam and the Moral Economy - The Challenge of Capitalism*, Cambridge University Press 2006.

and live by the values that they hold dear while partaking of the new economic world order and participating fully in it.

This will tell us something of where our economic assumptions are taking us and whether or not there is room for dialogue and collaboration between ‘West’ and East/South in elaborating an *acquis* and even a new world order that offers this equal participation to all. Christianity, Judaism and Islam and other religions would all argue that capitalism must be harnessed. They can work together against a ‘secular individualism’, tempering the otherwise free rein taken by capitalism from a religion-shy public sphere. Inter-cultural dialogue must encompass the vital questions addressed in this Report. As Boli writes, “ambitious projects to establish a universal ‘global ethic’ have emerged, especially among ecumenical religious groups, while codes of ethics and systems for monitoring companies in the name of corporate social responsibility are expanding rapidly...Ethics codes and monitoring systems translate the global moral order into rationalised mechanisms that seek to promote virtue in the operations of daily life”²¹. He continues: “The world moral order is primarily secular. Religion’s spiritual precepts must be translated into this-worldly action to garner significant moral accolades”²². That is precisely what many of the authors in this Report say. It is what the Report of 2006 showed. Instruments exist or can be put in place to direct economic activity towards what is ‘right’. It will take individual and collective commitment and political will to do that.

As was pointed out in the 2006 Civil Society Project Report, a main obstacle for Muslims appears to be the nature of the ‘secular state’ as perceived by them. Tripp has shown how experiments with the state in certain Muslim societies has led first to raised hopes that Islam could temper the ‘excesses’ of secularism, and then to disillusionment also with the concept of the State and re-emphasis on the individual ‘inner state’²³. The rejection of capitalism and that of the state have gone hand in hand. Mario Abdurrahman Farrugia-Borg stated in the Civil Society Project 2006 Report that: ‘In the main, there is no conflict as regards religion and a secular state’²⁴. This editor did not press him at the time to explain his qualification (‘In the main’), for clearly either one does or does not accept the ‘secular state’ in principle. That is the crucial starting point as far as the West is concerned.

Major shifts in ‘Islamic’ thought are called for, principally about the West itself. Equally, however, a shift is called for in Western thought. Starting with the idea that religion is only for the ‘private’ sphere. This idea is sometimes said to be rooted in the reaction of Victorian industrial development to equating religion with sexual morality, as if religion were a system of rules for the boudoir or bedroom. The Catholic Church, for one, teaches that religion is a matter for individuals in society, for the public sphere and the community of beings. The history of Europe shows that this does not, cannot, and must not mean the confessional state. The last thing that we want are confessional states facing each other

²¹ J.Boli, cit. at p. 96.

²² J.Boli, at p. 102.

²³ C.Tripp, op.cit. n.14.

²⁴ M. Abdurrahman Farrugia-Borg, *The Multicultural Society: Secularism, Christianity, Judaism and Islam - A False Confrontation of Values?* In op. cit. n.1, pp. 71 - 79, at p. 74.

down. Hence, the imperative of the secular state. But not the secular state as many of us have come to understand it, and certainly not as it has been perceived by many in parts of the Islamic world - therefore, a secular state with a concern for values, including religion-based moral values, and not the secular state that thinks of religion as bedroom ethics. Also, economic integration must proceed, and must be accompanied by a large measure of political integration. Furthermore, better global management must come, while at the same time affirming that states are a reasonable construct for organising power and authority at the smaller societal level and for protecting individual societal cultures, traditions and values.

This begs the question why Christians accepted, indeed created, modern-day capitalism, if it were truly ineluctably to lead to the impossibility of serving “both God and mammon”, forcing Christians to choose between the two. It was not like that in the beginning, perhaps, for, to take the example of Britain as an example of a prime motor of capitalism, the Protestant work ethic was not considered as militating against Christian virtue. Yet it has been argued, and even become generally accepted in Western thinking, that corporations (and even states) have no morality, ‘being amoral’. Even if instruments cannot be held morally responsible, although they can certainly be penalised for harmful conduct, but their users, their operators, can be. Clearly, the fact remains that Christians have not meekly bowed their heads to “God’s will” and accepted their (poor) lot in this vale of tears while hoping for justice in the next, a pretext on which Grayling dismisses the relevance (utility) of religion. But, does this prove Grayling right? Have they therefore ceased to be Christian? Whatever earlier discourses may have said, it is no part of the Christian religion to deny the father of a family the right to provide for his family or to create personal and societal wealth, even great wealth. All Human Rights Charters give this right and protect it. But it is true that Christianity enjoins restraint and justice in the pursuit of one’s fortune and in the use of it. This is just one more, important, example of how much closer to one another in values we of different religions are than we perhaps realise, but is a central point in this Report.

It remains true that in the West religion (and Catholicism in particular, because of its clear stance on sexual ethics) became associated largely with sexual morality, as if this was all it had to say anything about. It is also true that belief and the practice of religion declined greatly for reasons to do with loss of faith occasioned by the horror of two world wars²⁵. In so far as religion had other things to say (of which there is much), such were either adopted by society and given secular garb or came to be regarded, in the same way as sexual ethics, as an internal matter of no public consequence, and of private choice. Economics became the new religion, with economic value and values dominating Western thought for two centuries, with implications also for the concept and value of citizenship. From this perspective, the reaction to capitalism’s growing hegemony in the economic sphere of other cultures keen to see ‘progress’ and development but not so keen on Western liberal economism and the impact of this on societal cohesion, were a wake up call to the West. Had the West lost its moral values? Were these values at work still? Could they be identified and shown to be at work in practice? Could social cohesion be shown to have grown stronger? Could it be said that individuals and their families were truly ‘happy’? Could it be said that practising Christians felt part of their society, able to function in it, or

²⁵ Norman Davies, *Europe - A History*, Oxford University Press 1996, p.1078.

had they had been marginalised if not excluded by it, through downright labelling as irrelevant to the wealth production and distribution system? Taken literally and employed by the unscrupulous, Grayling's basic view of religion has all the ingredients of an emarginating tool. For him, religion renders Christians and the followers of other religions anti-progress and, at least if fundamentalist, "regressive". It is not so, except in its fundamentalist and intolerant versions²⁶, which no rational democrat would support. There is a world of difference between a model based on personal happiness that argues that the common good will follow as a by-product of the pursuit of individual happiness, and that enjoins the pursuit of happiness individually within the limit of 'not doing harm to others', and a philosophy according to which the way to sustainable progress is the pursuit of happiness by actively seeking that of others as well as of oneself in a common endeavour and in partnership with others on an equal basis and with respect for the full dignity of each partner - the social pursuit of happiness, or the 'common pursuit of happiness in common'. It is this partnership model that lies at the basis of the papers by George Grima and Saviour Rizzo, of Adrian Grima and Vincent Caruana, of Nina Zita and others. As has already been noted, several papers in this volume argue that we are witnessing a resurgence in spirituality and religion due (Ellul and many others argue) to disaffection with the excesses of individualism and materialism. Religious people not only make the choice, but also live the paradox of life, one of many paradoxes of life : namely, that to serve freely is to be truly free (see the paper by George Grima). This is no less a freedom to be protected under human rights conventions and constitutions than any other. It is indeed the core of religious freedom, that is, the freedom to serve others (as well as, or in order, to serve God), as opposed to the freedom to serve oneself alone.

The 'right and freedom to serve' is nowhere positively enshrined as a fundamental right or freedom, but that is in religious philosophy the truly fundamental right that brings true freedom. The principal threat to this right is the perceived or actual need to serve only oneself, even to the exclusion of other considerations and the consideration of others, in order to prosper or, even worse, to survive. Herein lies a core duty of the public sphere. That duty is to create the conditions where true self-fulfilment through virtue and service is made possible and rewarding, even economically and financially (rather than involving a strategy of market suicide); that is, to create the conditions that permit self-fulfilment through service to others, rather than through the exploitation of others. It must be made possible for each to develop his or her full potential, in the business world in particular, without injuring oneself as well as others. Company law, consumer law, employment law, the law of industrial relations, tax law, social security law, commercial law, environmental law, family law, child protection law, and all other branches of law must reflect and advance the application of this fundamental law to which Religion in particular opens our eyes, namely that it is the destiny of every human being - and papers in this volume argue that it is also that of the corporations that human beings form to carry out their economic activity - to pursue their own economic well-being through the service of others and of the community.

By definition, policy-makers and lawmakers (even judges) operating in a free market economy feel obliged to let the market operate, for fear of substituting themselves for its workings. It is a fundamental traditional tenet of English law that the courts "are not to be

²⁶ Grayling's arguments are indeed based on the assumption of fundamentalism. See, for example, A.C. Grayling, *op.cit.* pp. 92 and 234 et seq.

required on every Occasion to take the Management of every Playhouse and Brew-house in the Kingdom”²⁷. Indeed, it is a fundamental tenet that they actively seek to foster the free play of the market, but then one hopes they will intervene to seek to limit its adverse societal effects, albeit often only after these have become manifest (take the ‘post-Enron’ flurry of regulatory activity). There can be discussion as to where the line must be drawn, if not by the courts then by others, in each particular case of judged ‘excess’ or ‘harm’, and a dialogue with Churches and faiths, inter alia, can refine the drawing of that line. But we will look in vain for the Sacred Scriptures or the Koran to do it *ex ante* and explicitly for us in all the circumstances of the modern world. It is our common and joint responsibility to recognise, interpret and apply morality to the question of excess or harm in particular contexts. The mechanisms invented to do this in the West, as already mentioned, even include entire branches of law, such as competition law, consumer law, labour law, social security law, and many other bodies of rules of a legislative or soft law nature. David Fabri shows how ‘secular law’ has evolved on a religion-inspired ethical base by reference to consumer law. Do we believe that, with values playing their part, enlightened regulation combined with Corporate Social Responsibility (CSR) codes and guidelines, corporate governance codes and other instruments can do the job, *or be further developed at European level in such a way as to do so?*

Is it time, therefore, to reconsider the question of the brief that we give to the main actors in our secular capitalist systems, national, regional and global? Some of the papers in this study see the need to revisit the role of the European Institutions, as linked to the evaluation, indeed, of the role of the corporation itself (Aquilina). Several papers see a need to find consensus on this in a manner acceptable to us and to the global community, aiming for the highest possible moral approach, rather than the lowest common denominator. On the global level, either we are in dire competition with non-Europeans to the detriment of some of us in the short term and possibly all of us in the longer term, or we intend to operate as a global community with rules designed accordingly. While building on capitalism’s achievements and arguing that capitalism is not intrinsically immoral, indeed that the creation of wealth is moral in itself, this study argues that we need to re-invent the sphere of regulation of capitalism if this system is to generate wealth with justice on the scale that it is called upon to provide today. The system in its comprehensiveness must become morally unassailable, virtuous, operating in line with universal moral precepts. Only the sceptic will say that these do not exist. If they do not appear to do so then it is because their practice has too often been killed off or forgone, sometimes spectacularly, in the scramble for quick and soaring profits. If Christianity, Judaism and Islam, with the other religions, take this challenge seriously, it must be demonstrated also by them that there can be a way forward, that religion can contribute to the development of this New Capitalism, that there is a willingness on the part of all to collaborate in the development of the New Capitalism. The West needs to explain that it has the resources within itself to make a contribution to this process.

Some Questions for Us

So, we need to ask ourselves: Where do we in Malta stand on corporate responsibility and corporate governance? Can we articulate more clearly in policy terms the need to protect the

²⁷ *Per* Lord Eldon in *Carlen v. Drury* (1812) 1 Ves & B 154 at 158.

vulnerable in our society from the threats posed by what many regard as the negative consequences of the often apparently unrestrained exercise of the freedom to exercise economic activity, to provide services, or the other economic freedoms, advanced also by the *acquis*? Who requires (further) protection, on what basis and how? For example, what specific laws need and can be enacted at European level to offer this protection to consumers, including children? To what extent should public authorities seek to protect not only children and young people but also adult citizens from themselves by facing up to the damage that can be caused by drugs, pornography, gambling, abortion and other ‘goods’ and ‘services’? What mechanisms can be put in place beyond those now functioning (or not?) to protect what is an environment under severe threat from greed and exploitation? Are our governing bodies and the European Institutions acting as sufficient guarantors of such values as human dignity, the right to family and family life, to health and education, to the right to decent work and security of employment, and so on to the full list of human values and rights; or are they at least partly, by act or omission, ‘complicit’ in the threats to cohesion and human dignity that indubitably arise from the free play of market forces? Should the nature and extent of regulation be reconsidered in certain areas of the *acquis*, and can lessons of more general application be learned from the answer to this question in specific cases?

What is needed then is a new impetus, on all sides. If the market is the tool, the challenge is to ensure that the market operates with justice. No one wishes to be emarginated or otherwise exploited by the amoral profit seeker. It is the latter who must be tamed. The ‘moral wealth-creator’ must be rewarded, must become the new paradigm, the secular ‘hero’ of our system and our order.

Of course, all this raises many questions that cannot be fully developed in this study: the position of the multinational corporation, the exercise of political power in the globalised economy, the need of law or soft law to promote virtue in each set of circumstances, the institutional reforms needed to fulfil this vision (including participation and representation in such institutions), the structuring of a cross-cultural dialogue with a strong ethical component, the affirming of constructs and perceptions such as those of state power and authority, society, individual rights, the role of the citizen, and the role of civil society around this vision of a value-sensitive, though ultimately secular, policy-making ethos, whether at national, regional, cross-regional or global level. The papers in this volume touch on many of these questions also.

These are big questions for a limited Project with limited funds. It can only touch upon them, but the debate is probably the most vital one of our times, and the Maltese themselves need to articulate and examine these questions for themselves. The main aim of this Report is to initiate and carry forward a national debate on these questions in Malta, and to feed ideas from the wider European debate into our national debate and vice-versa.

This small study is an attempt to show that moral values do play a large part - but should play a fuller part - in Western democracy and capitalism, and that the West has invented tools that have the potential to create a better commercial and trading world. Whether it also has the will to openly regard religion as a vital part of its present culture, to acknowledge that it has a vital continuing contribution to make to Western philosophy, and to declare that

it is prepared to forge the next stage of world culture in partnership with its Neighbours and fellow human beings in other continents, remains to be seen.

There is reason to be hopeful, for openness to dialogue is much on the increase. However, dialogue is only possible if we use the same ‘language’, and the coyness of the West about using the language of moral values - and more so of religion - must be set aside if we accept that it is time that we did so for our own good as well as that doing so is likely to remedy misperceptions of the West and establish a closer dialogue and better co-operation across the globe. Of course, it is not just a question of language. As Tsinisizelis and Xenakis have put it, “Accordingly, a new ‘hermeneutics of civilisational dialogue’ emanates as a *praesumptio juris et de jure*; a dialectic of cultural self-realisation through a reciprocal exchange based on a philosophy of mutual understanding that does away with the subjectivist approach that wants the ‘West’ to act as a universal civilising force based on an almost metaphysical obligation to humanity”²⁸. The same applies in reverse. We must strive to move forward together towards the global moral economy²⁹. In his book on Islam and the ‘moral economy’, Charles Tripp concluded: “For Muslims and non-Muslims alike, part of the challenge for the future (is) to create the space, imaginative and actual, in which acceptance is not read as subordination and in which active engagement becomes part of a process of self-definition”³⁰.

We also set out in this Report to explore ways of examining also in qualitative moral terms some areas of the *acquis communautaire* against this backdrop.

Part II - The Papers in this Report

The Religious Social Dimension

Fr. Paul A. Pace sets out Catholic Social Teaching on the subject of the free market. Catholic social teaching accepts the free market, but does so conditionally. Nor does the free market ‘orthodoxy’ go unchallenged even from within the ranks of specialists in ‘the dismal science’, and Pace devotes much space to the thinking of Amartya Sen, particularly as set out in Sen’s *Development as Freedom*. Indeed, true freedom is the kernel of Pace’s paper. The basic foundation of Catholic social teaching is the centrality of the human person and of the common good, as two inter-related realities. And Catholic social teaching, although it has a different starting-point, seems to Pace to come to conclusions that are “startlingly close” to those of Sen in its nuanced endorsement of the market. For the market cannot be judged only by the level of individual profit that it generates but also by its ‘social usefulness’, which is the other fundamental criterion - one that is considered to be of a higher order. Economic freedom is only one part of human freedom. The pursuit of the common good, now perceived in its global dimension, is seen as the road to follow in today’s complex world, while the rights of the poor assume a more central place. In this context, Pace then explores the themes to be developed also in later papers as to the role of

²⁸ M.J.Tsinisizelis and D. K. Xenakis, *Unity in Heterarchy: Security Complexity and Systematic Change in the Mediterranean*, in Prausello.F. (ed.) *Sustainable Development and Adjustment in the Mediterranean Countries Following the EU Enlargement*, FrancoAngeli 2006, pp. 73 - 101 at p. 84.

²⁹ See C. Tripp, *Islam and the Moral Economy: The Challenge of Capitalism*, Cambridge University Press 2006.

³⁰ *Ibid.* p.201.

the state (especially with reference to ‘public goods’, as Sultana and George Grima also do in their papers) and of international organisations including, and going beyond, the promotion of Corporate Social Responsibility. All this is to remind us that the question turns out to be more cultural, even spiritual, than economic: the central point must not be the amount of economic freedom but the quest for economic and social structures that respect and reflect human dignity for all. The ‘true cause’ of the downfall of communism was ‘the spiritual void brought about by atheism, which deprived younger generations of a sense of direction’. Capitalism must not make the same mistake.

Fr. Joseph Ellul develops the theme. He emphasises the need for the religion-inspired dimension in policy-making, and in particular in consumer policy, by considering the question of the presence and role of religion in a ‘consumer culture’. Against the backdrop of an Enlargement whereby the European Union has in many ways re-unified Europe, he warns of a Western culture driven by unbridled and merciless market forces, and especially by consumerism, in many ways a “culture of survival” in which we have ceased to be “culturally creative”. He writes that in our consumer society, in which consumerism has become a cult, “product advertising seeks to tap this unquenchable craving. It thrives on discontent, transforming the trivial into a vital necessity”, “the real is being replaced by the virtual”, “success has been transformed from an aspiration into a cult”, and “modern culture tends to portray the human individual as one endowed with rights in counter-position to society and government”. But when religion is edited out of a culture all becomes permitted and we risk finding ourselves in the middle of a “brave new nightmare”, he warns. However, Ellul is not a prophet of doom, for “sooner or later there must be a revival of culture and a re-organisation of the spiritual life” and “the decline of a society sows the seeds of a truly spiritual rebirth”. By returning to, or daring once again to ask, the philosophical existential questions to which religion provides an answer for millions, and by living as we are in a multi-religious society that is constantly confronting and challenging the hitherto uncontested dogmas of our secularist culture, we are called upon to give religion a voice in the public domain. For, he seeks to remind us, religion’s special power lies in creating communities. It teaches us those ideals for which we should strive for the benefit of all. It teaches us how to construct and direct human relations from an attitude of utility to one of love, truth, justice and respect that serve the common good of society.

David Fabri then explores the genesis and ethical basis of consumer law, with particular insights from a Maltese perspective. Of course, consumer law regulates certain aspects of business practice and commercial conduct. Consumer protection is unavoidably founded on an ethical concern that the superior knowledge and political and economic power of Business may be used to exploit the often less knowledgeable, less prepared and less well organised consumer. His paper places the recent phenomenon of consumer law within the context of what may be described as “the civilising influence and potential of law”. He cites Ulpian’s quote from Celsus thus: “the law is the art of the good and the fair, and...we (jurists) cultivate the virtue of justice and claim awareness of what is good and fair, discriminating between fair and unfair”. He takes us on a journey through the Old and New Testaments, through to Roman Law, the Code Napoleon, our Private Law Codes, to our Consumer Affairs Act of 1994 and the later EU-inspired Maltese consumer legislation adopted mostly between 2000 and 2002. A weighty *leitmotif* running through his paper is that law is most effective when it succeeds in reflecting shared values - a common platform

of values. His chosen practical examples include rules on the charging of interest, warranty clauses and standard form contracts, among others. He points out how our consumer law, largely introduced during these last fifteen years, is replete with terms that would fit comfortably in an ethics discussion - concepts such as equity, fairness, good (and bad) faith, rules of natural justice - with the broad underlying aim of avoiding the exploitation of the weak by the 'strong', recalling the main theme of the several opening references from the Sacred Scriptures in the opening part of the paper. For Fabri, "whereas it may not be the legitimate purpose of law to impose any particular moral code, and certainly it is not the function of the law to impose a religion, moral principles can never be too distant". Maltese consumer law "has incorporated several ethical principles and has integrated much ethical language, proof also of the civilising influence and ethical potential of law". But even law itself has to undergo a process of civilisation, he stresses. As he shows, "law itself had to undergo an evolutionary process whereby it gradually became more humane and increasingly respectful of new and higher public expectations....Just as law does not develop in a historical, social or economic vacuum, consumer legislation cannot flourish in a moral vacuum...it is unreal to divorce consumer legislation from the general ethical aim of law to protect the weak and the vulnerable from exploitation and oppression". Fabri concludes that the growth, and increasing effectiveness and sophistication, of consumer law may be seen as an example of a legal reform mirroring the needs and realities of an increasingly informed, civilised and ethical community.

The Acquis Communautaire and Corporate Social Responsibility

Daniele Cop's paper sets the scene by reference to the *acquis communautaire* on CSR. CSR is seen as a contribution to competitiveness and to sustainable development in the context of the Lisbon Strategy. She explains the close link between CSR and corporate governance, while pointing out that a current understanding of the latter may limit the scope of CSR. Recent re-statements of the legal duty of directors to act in the interests of the company are examined, including the recent restatement in the new UK Companies Act of 2006, a point that emerges as key also through the papers by Saviour Rizzo and George Grima. For, as Cop argues, "certain social and environmental improvements may not be achieved through raising the minimum standards established by legislation, and may not be addressed by companies on a voluntary basis if they do not create a competitive advantage or are not in the best interests of the company viewed as the vehicle for the interests of the shareholders". Hence also the need for further efforts by the public authorities and society as a whole to propose initiatives and incentives for better sustainability practice, and this links in with the Fair Trade movement, to which the paper by Adrian Grima refers. The connection with consumer education and consumer power is clear, for, as Zita also points out in her paper, part of the problem may be with lack of consumer awareness, as a key 'external driver'. Also - on a theme echoed by other papers in this volume by Nina Zita, Mark Sultana and Kevin Aquilina - Cop argues that "public administrations need to practise CSR principles in their own management and with their own stakeholders", while at the same time influencing undertakings in the latter's CSR practices. In the case of Public-Private Partnerships (PPPs), public authorities may have the opportunity to agree on or to institutionalise CSR practices, not least because in the case of most PPPs the *acquis communautaire* on public contracts and concessions will apply. Another role that could and should be assumed by national, regional and local governments, and by the European Institutions, for the promotion of CSR

and wider principles such as Fair Trade, is that of providing incentives, whether financial or otherwise, to companies that act in a socially and environmentally responsible way. The European Union's success in promoting CSR ultimately depends on widespread ownership of the principles of CSR by businesses, social partners, civil society, including consumer associations, and public authorities, including those in third countries, which should be based on a comprehensive partnership with representatives of society at large. A win-win situation must be created. In sum, CSR is complementary to other measures and initiatives at EU and National level to achieve the overarching goals of growth and jobs in a manner fully consistent with sustainable development. Where the European institutions or the public authorities do not take action to raise the minimum level by issuing social or environmental or other legislation, one of the ways to create room for improvement is to raise the 'upper limit'; this is where the various stakeholders, both internal and external, have to take up their responsibility to influence corporate behaviour.

Ivan Sammut's paper is devoted to the Commission's Green paper of 2001 on Promoting a European Framework for CSR and the subsequent debate about the voluntary *versus* regulatory approaches to CSR. He points out that today's efforts reflect an attempt to approach CSR in a strategic way and to develop instruments for this purpose. CSR principles should "take centre stage in the formulation of new policies and initiatives" (Commission Communication of 2002). He draws attention to the call in the Commission Communication of 2006 to make Europe a 'pole of excellence' in CSR. His paper is an overview of official documents produced mainly by the Commission, with a view to acquainting the reader with the Commission's perspective on CSR. Of note are the particular references to small and medium-sized enterprises (SMEs), and some contrasts and comparisons can be made on this score with the insights of Mark Harwood as to the perceived constraints on SMEs in Malta in the context of CSR. Sammut argues that for the implementation of CSR to be most effective there is the need to balance regulation, education and voluntary conduct. Yet he singles out education (of companies in a self-enlightened sense of their own interest) as one of the most important aspects of CSR policy. The need for consumer and citizen awareness and education is highlighted in this and other papers, notably that of Paul J. Pace. Sammut also canvasses the question whether there be a moral obligation for multinational companies to 'assist' developing economies. He argues that in a scenario of heightened global competition, responsible - even altruistic - behaviour needs to be made rational, if necessary by regulation establishing a level playing field, for multinationals to act in a socially responsible manner. Even so, he highlights the importance of the objective of social cohesion, and he concludes with a set of guidelines that follow from the premise that business and ethics (conscience) can co-exist. He concludes that "by using ethical guidelines to conduct their business and raising issues of social concern with the communities in which they operate, many corporations are reshaping the corporate image that society would like to see in the 21st Century".

Fr. Mark Sultana asks: "Whither governance through Public-Private Partnerships?" After considering the case 'for' and the case 'against' the public-private partnership, he explains the 'governance perspective' of PPPs, involving the sharing of responsibilities and risks while challenging the traditional conception of the government and government autonomy by advocating the emergence of a model where state actors collaborate with private actors. He asks whether a disjuncture exists between the public sphere and the role of PPPs. He

proposes solutions especially to redressing possible shortfalls in accountability. He then offers his ‘qualified critique’ of PPPs. He argues that a number of goods within society are such as to shape society and that the realisation of such public or common goods perfects society as a whole while benefiting members of society singly. He is thinking of education and social services, the system of justice and law enforcement, environmental protection and the like. He argues that it would be wiser if such services - where the ability to respond politically to public needs, particularly when these change, is vital - were not involved at all in public-private endeavours. He also suggests that consideration be given to the conclusion of PPP contracts with non-profit organisations such as the Church or other voluntary organisations, on the assumption that such organisations would be more sensitive to the issues of the common or public good than profit-making organisations would normally be.

The Malta Scene in the Broader Context

Examining whether and how these principles are, or may be, put to work is one of the aims of *Nina Zita* in her paper on ethical public procurement in Malta, which takes public procurement practice in the workwear sector as a case-example. For instance, the concept of ‘best value’ would require that purchasing decisions be based not only on tendered price but also on their quality and ability to deliver additional benefits. Her paper details the aspects that should guide public authorities in their procurement decisions. She links this to the Maltese government’s declared policy of working towards the Millenium Development Goals, and places it in the context of European Commission and European Parliament goals, both as to Fair Trade and CSR. Her paper includes a sample of good practice in Europe and a study of awareness and practice in some Maltese firms operating in the workwear sector³¹. The findings are perhaps indicative of the prevailing reality across the business sector. Her conclusions are that the companies that place their orders in order to fulfil a public procurement contract have no real incentive to adopt a CSR policy or a code of conduct. Their aim is to make a profit, by offering and delivering what the customer wants. As long as the customer, in this case the government, appears not to care about anything other than price and quality, the companies have no other obligation to fulfil, as many of them see it. Yet, she argues, in a world with a global market one must consider how one’s purchasing affects the situation of workers on the other side of the world. Today, there are no guarantees that Maltese tax money is not contributing to violations of labour rights. Her paper concludes with some minimum recommendations.

The note of ‘realism’ sounded by Sammut in his paper in the previous section, and by Zita’s paper in this, is echoed by *Mark Harwood*, who argues that to view CSR as a permanent development in business culture may be to expect too much of corporations in Malta in the current climate. He also says that European Union initiatives on CSR, tracing these up to the present time, remain the prime example of leadership from outside the business community but that that leadership can be considered to have limited impact, especially for new and small Member States such as Malta, which have to be highly selective in allocating limited resources to EU-level cooperative initiatives. His principal question is whether CSR poses specific or unique challenges for small states such as Malta, with a view to asking whether a special response is called for from the European Union. Otherwise put: Is CSR a luxury a small state can ill afford? He uses for this purpose the model of CSR that sees CSR as an

³¹ Anonymity has been safeguarded, even though not insisted upon by the interviewees.

exercise that calculates the potential negative impact of business choices on social and environmental factors and which tries to incorporate solutions to those problems. However, Harwood presents a tough-minded analysis of the factors that militate against any facile adoption of CSR policies by small businesses in small states, principal among these being the limited human resources that can be allocated to the complex decision-making that adoption of a CSR policy involves. His conclusions point to the EU as a central actor in promoting CSR in Malta. He is not hopeful otherwise, although he sees positive signs in the efforts of the Malta Chamber of Commerce and Enterprise. He argues for greater government involvement and leadership, especially while the EU contribution remains low-key or distant. For government is the largest single employer and provider of services. Harwood adverts to the role of governments to support, encourage and instil CSR not only directly, including when ‘farming-out services’ to the private sector, or engaging in public/private partnerships, but generally by example. This echoes the plea made by Nina Zita in her paper.

Saviour Rizzo’s paper, focusing now on the concept of corporate governance, also strikes something of a note of ‘angst’, but again it does so to argue for more awareness and action, not for defeatism in the face of the repeated calls for efficiency, profitability and other corporate aims writ ‘bottom line’ in the short-term sense. He traces the history of employee board-level participation in Europe and in Malta. This idea appears to have been emarginated in recent years, not least because of certain failures when the ‘employee director’ approach was attempted. However, he advocates the revival of the employee director in the corporate governance context and in the broader context of corporate social responsibility, arguing that it should not be seen as a cause of misgiving for corporate shareholders. Greater openness, transparency, fairness and accountability are all values that can be advanced by board-level participation. Further, it is important because of its potential not only to minimise risk associated with conflict of interests between management and shareholders, but also to encourage the taking of a long-term view in decision-making within the firm. The debate has barely happened in Malta as to the relative merits of the ‘stakeholder model’ as opposed to the ‘shareholder model’ of corporate governance. Indeed, it is assumed that the ‘shareholder model’ is now incontestably the model that dominates and should dominate the European corporate scene. However, it is at least arguable that a properly understood and firmly implemented ‘stakeholder model’ can deliver both the application of values and also real value to the firm as well as to society as a whole. The Maltese trade unions need to take heed of pronouncements and developments at European level, including in the European trade union movement, and take a pro-active role in the development of corporate governance and CSR thinking rather than leaving the running to the other actors and lobby groups. It is a crucial idea that it is imperative that, in operating our market economy model in Europe, we inculcate a long-term perspective, or at least a perspective that allows for the balancing of the short-term and the long-term. ‘Short-termism’ can only lead to ever-increasing exploitation and depletion of resources, and unbearable pressure on individuals and societies everywhere. Employee representation at board level should be seen, Rizzo argues, as one of the underlying principles of CSR. And in their turn, trade unions need to become bigger players in CSR. For him, CSR can be one way in which trade unions can help to shape globalisation, in the interests of the people they represent.

Peter Baldacchino's paper also reflects what Mark Harwood and Saviour Rizzo say. It poignantly demonstrates the most commonly perceived reaction to the broad concepts of CSR and corporate governance to be met with among the business class in Malta. It also shows the influence of UK, not to say Anglo-Saxon, thinking on Maltese corporate thinking. He argues that the whole approach to corporate governance may be in need of a re-think. His starting point is the Commission proposal to require disclosure of listed companies' internal control and risk management systems. He sees this as an example of the over-reliance on information flow, as contributing to "information overload", as an added regulatory or bureaucratic burden, and above all as achieving, at some cost, less than it promises. There is no need to go beyond the "comply or explain" principle, he argues. In any case, it would be far more useful for an independent management specialist to report on such matters. He asks: "is the current emphasis on disclosure of information the best approach to ensure progress in corporate governance?" His point is that "requiring companies to disclose more and more and more will not necessarily make their operations more understandable". He argues that the focus should shift to "tightening up the present regulation of the persons involved in the process", such as by addressing the question of the possible need for a requirement as to the minimum qualifications of directors of listed companies. He concludes that in the area of corporate governance we may need not only to slow down and not over-regulate but, probably more importantly, insist with urgency on a proper licence for the corporate "drivers in charge".

Fr. George Grima seeks to inject moral hope into the debate about corporate purpose, a debate that appeared to many in the last years of the twentieth century to have been won by the Milton Friedman view that the firm can have no other purpose, and be structured in no other way than for, the pursuit of maximum profit. *George Grima* focuses on the right to decent work. The promotion of CSR raises the 'problem' concerning the real moral status of the business firm. He takes a rounded view of the European Institutions' approach as it emerges from the Lisbon Strategy, which speaks of the imperative of balancing competitiveness and social cohesion, a point also made by Sammut. He argues, in diametric refutation of the Friedman philosophy, that the promotion of CSR - not only on a European, but also on a world, level - rests on the *assumption* that business enterprises should conduct their business in the context of a set of values that incorporate but go beyond the 'purely' economic. He argues that the 'implicit' moral dimension is generally missed when we see a business enterprise as no more than a profit-making enterprise, and that even in this, evidently narrow, sense a business firm is a moral agent in so far as it involves various contractual obligations. This moral agency needs to be fully accepted, unless we are to expect moral accountability from governments and civil institutions but not from firms - for whom social responsibility would be "optional". Nor is it enough to argue for CSR-compliance by the firm only on the basis of "enlightened self-interest". He puts forward two paradigms of the firm from the perspective of the firm as a moral agent, namely the 'contractual' and the 'partnership' paradigms. He argues that a firm should understand itself in the light of both paradigms. He applies this construct to address such practical issues as the cost of housing in Malta, or the application of the intervention rate, and argues that the regulation of business by law is not enough to ensure that business retains a human face. He develops this point further when discussing the concept of CSR. He emphasises the element of *interaction* in the core definition of CSR as used by the Commission. The nub is the "kind" and "quality" of this interaction, which he insists is "human" even though an

enterprise might feature on one side; “the original frame of reference for a truly meaningful activity of any kind, including business activity, is the nature and quality of interactions and inter-relationships that are being established”. In her paper in this volume, Audrey Gatt declares that one of the aims of the discipline of ‘business ethics’ is to determine the fundamental purposes of a company. George Grima adds that for any corporation to be said to have a “human purpose” that corporation cannot be in some way limiting, if not destroying, the capability of human beings to live a decent life. As the definition of CSR implies, companies are *presumed* to be responsible for social and environmental as well as economic concerns when they are called upon to “integrate” those concerns into their operations. As a moral concept, ‘responsibility’ “involves precisely the virtue or the capability of integrating a variety of concerns which in their ensemble reflect a basic respect for the good of the person as a whole and of each and every person”. This is what gives the central concept of ‘interaction’ with all stakeholders its particular significance, for interaction implies ‘inter-dependence’. And inter-dependence requires an effective regulatory framework to prevent the stronger from taking advantage of the weaker and more vulnerable side. One form that this regulation can take is in the laying down of ‘contractual’ obligations for firms towards their stakeholders. Of course, the debate over the nature of the firm is not a new one, and in its classic form can be traced back to the USA debates in the first half of the last century³². Grima is well aware of this. He writes: “the ‘partnership’ paradigm may seem too far removed from the way in which business is actually organised in the context of the prevalent neo-liberal and neo-capitalist economies today. However, as Mark Sultana emphasises in his paper, so Grima writes: “the danger of an economic system in which rights of capital have absolute priority and capital accumulation is the primary driver is that those goods that are essential for the economy to retain a human face would be at best minimally respected and at worst completely ignored”. Indeed, his has the character of a proposal that can open the way for what the National Conference of Catholic Bishops called “partnership for the common good”. CSR “can only be exercised in a truly moral sense by firms that aim higher than profitability and have succeeded in transforming themselves into organisations in which people are not just stakeholders but partners in a

³² For the debate, past and more recent, in the USA, the UK and more widely, see the following selection of key writings:

A.A. Berle Jr. and G.C. Means, *The Modern Corporation and Private Property*, New York, 1932; E.M.Dodd Jr. *For Whom are Corporate Managers Trustees?* (1932) 45 *Harvard Law Review* 1145; *Columbia Law Review* Vol.89, No.7 of 1989 (Symposium Issue); H.N. Butler, *The Contractual Theory of the Corporation* (1989) *Geo Mason U. L. Rev* 99; M.A. Eisenberg, *Contractarianism Without Contracts: A Response to Professor McChesney* (1990) 90 *Columbia Law Review* 1321; F.S. McChesney, *Contractarianism without Contracts? Yet another Critique of Eisenberg*, (1990) 90 *Columbia Law Review* 1332; M.A. Eisenberg, *Bad Arguments in Corporate Law* (1990) 78 *Geo LJ* 1551; *University of Toronto Law Journal*, Vol.43, No. 3 (special issue); L.E Mitchell, *Groundwork of the Metaphysics of Corporate Law* (1993) 50 *Wash and Lee L Rev* 1477; A Wolfe, *The Modern Corporation: Private Agent or Public Actor?* (1993) 50 *Wash and Lee L Rev* 1673; L.E. Mitchell, *Cooperation and Constraint in the Modern Corporation: An Inquiry into the Causes of Corporate Immorality* (1995) 73 *Tex L Rev* 477; F.H. Easterbrook and D.R. Fischel, *The Economic Structure of Corporate Law*, Harvard University Press 1991; M.E. Debow and D.R. Lee, *Shareholders, Non-Shareholders and Corporate Law: Communitarianism and Resource Allocation*, (1993) 18 *Del J Corp.* 1393; J.E. Parkinson, *Corporate Power and Responsibility*, Oxford: Clarendon Press, 1993; J.Plender, *A Stake in the Future: The Stakeholder Solution*, London: Nicholas Brealey, 1997); P.Goldenberg, *IALS Company Law Lecture – Shareholders v. Stakeholders: The Bogus Argument* (1998) 19 *The Company Lawyer* 34; *Modern Company Law for a Competitive Economy* London, Department of Trade and Industry, 1998; *Modern Company Law for a Competitive Economy: The Strategic Framework*, London, Department of Trade and Industry, 1999; *Modern Company Law for a Competitive Economy: Developing the Framework*, London: Department of Trade and Industry, 2000; similarly, *Completing the Structure*, and *Final Report*, London DTI, 2000 and 2001; J. Groenewegen, *Institutions of Capitalisms: American, European and Japanese Systems Compared* (1997) 31 *J Economic Issues* 33; C. Crouch and W. Streeck (eds.), *Political Economy of Modern Capitalism* (London: Sage, 1997).

common human project”. He accepts the counsel of caution about imposing too high a moral ideal on organisations that exist essentially for a business purpose. But, he argues, look at the responsibilities that businesses *are* being asked to assume. How, he asks, can business firms assume such onerous responsibilities as long as they continue to see themselves, and seek to act, simply as wealth-generating devices? “Corporate social responsibility can only be exercised in a true moral sense by firms that aim higher than profitability and that have succeeded in transforming themselves into organisations in which people are not just stakeholders but partners in a common human project”.

I pause to point out that the academic legal debate as to the nature of the firm has been conducted in Europe using the terminology of the ‘contractual’ (or ‘contractarian’) position as ranged against the ‘institutional’ or ‘enterprise’ theory of the firm, indeed of company law itself. The contractualists take the line that the “interests of the company” (in what is an almost universal statement of legal duty for directors “to act in the best interests of the company”) coincide with those of the shareholders. The institutionalists argue for the superior interest of the ‘*Unternehmen an sich*’ (the enterprise as such), the interests of the shareholders being seen as one, albeit primary, interest, *among others* to be considered *and acted upon*. Some would stretch both concepts to argue for the inclusion of a wide range of interests, but it is mainly through the latter theory that this is considered achievable, as the ‘contractual’ approach gives superiority *ex ante* to the interests of the shareholders. The truth is that in Europe “corporate governance rules have no clear theory of Corporation”³³; the two theories exist side by side in Europe. Neither has yet truly won the debate. And in the circumstances no final choice has been made, even by the Commission, which in the initial years of company law harmonisation was inspired by the Continental approach that on the whole favoured the institutional theory, but which has had to seek to strike a middle way, or move to the contractual side, since 1973 when the UK became a member. The fact remains that there can be no full convergence in Europe on corporate governance rules (indeed on the essential elements of company laws in Europe) of such substance as the legal duties of directors in the absence of consensus about the essential nature and purpose of the company. This is not the place to argue the need or the merits or otherwise of further convergence, or how that may be achieved. The editor has himself argued such points elsewhere³⁴. It is to explain that the debate is by no means over in Europe, although the contractualists appear to have the upper hand, in line with the general trends reported in this volume.

Astrid Vella and Karen Zammit Manduca, of the Maltese environmental NGO Flimkien għal Ambjent Aħjar, examine the state of public and corporate social responsibility in environmental planning and the construction industry in Malta. *Astrid Vella* places the record of the Maltese public authorities in the context of the international and European

³³ Guido Rossi, *Do Good Governance Recommendations Change the Rules for Boards of Directors?* Chapter 21 in Hopt K.J. and Wymeersch E., *Capital Markets and Company Law*, OUP 2003, at p.499.

³⁴ Peter G. Xuereb, *The Juridification of Industrial Relations through Company Law Reform*, (1988) 51 *Modern Law Review* 156 - 172; Peter G. Xuereb, *Directors’ Duties and the Interests of the Company - A Comparative Study*, in D. Perrot and I. Pogany (eds.), *Current Issues in International Business Law*, (Avebury 1988) pp.215 - 235. Peter G. Xuereb, *An Enterprise Theory of Company Law and Judicial Control Over the Exercise of Power by the Majority in General Meeting - A Review of English, Italian and French Law*, in R.R. Drury and P.G. Xuereb *European Company Laws - A Comparative Approach* (Dartmouth, 1991); Peter G. Xuereb, *The Harmonisation of European Company Law: Comparative Comment in the Context of a ‘Wider’ Europe*, (1992) *Evropske a Mezinarodni Pravo*, pp.16 - 19.

framework. She argues that the lack of awareness of environmental justice at every level is a cause for serious concern. Echoing Paul J. Pace's observation in his paper in this volume, she opines that, while Malta's transition from a colony to a full democracy is complete on paper, it cannot be said to be fulfilled in practice. A number of factors militate against any possibility of a level playing field between the general public and the development lobby. Vella explores the experience of her Association in connection with the Rationalisation Plans, and in particular with the workings of the Malta Environment Planning Authority. Vella concludes that it is evident that environmental CSR cannot function on a unilateral basis, and that the key to progress in this field is the adoption of socially and environmentally responsible practices both by the government and by private enterprise, as the second part of the paper seeks to demonstrate. Indeed, the plight of the Maltese resident in the face of what may be an excellent illustration of short-termism and its negative effects, resulting from daily practice in the construction industry in Malta, is graphically illustrated by *Karen Zammit Manduca* in the second part of this joint paper.

Kenely, Leone Ganado and Taylor East present the position of the Anti-Poverty Network-Malta. For them, the main questions are : Is "CSR" just a marketing tool (as is, they argue, the public perception) or a reality that is fighting poverty and social exclusion? Is the "ethical company" truly an oxymoron? CSR needs to move from the 'charity model' to the 'partnership model'. Furthermore, there needs to be more focus on human rights, as Zita also argues, ensuring equal opportunities and non-discrimination, as well as non-exploitation. The area of micro-finance is singled out for particular attention. So also is the problem of social housing, and a call is made for support for the Proposed European Charter for Housing, with use of Cohesion and Structural Funds. In the absence of a real social conscience, 'corporate social responsibility' is reduced to a "buzz word". Therefore, for Kenely, Leone Ganado and Taylor East, the first priority is to re-discover and develop *social conscience* at the individual level. Only then can the concept of 'social responsibility' in 'corporate social responsibility' have real meaning. This requires a re-interpretation of 'corporate social responsibility', so that corporate activity and action dovetail with - rather than undermine - the socially-responsible action, oriented towards the common good, of governments, public authorities, civil society and international organisations, including the European Union.

Paul J. Pace focuses on the urgency of education in sustainable development for empowerment of the citizen. He emphasises the need for a re-thinking of what we mean by 'education', as centring around the changing of personal attitudes and practices on the basis of appropriate prioritising of values. Our deep-rooted educational traditions, even our concept of citizenship, have not evolved sufficiently from our colonial days. The right kind of education is fundamental. Yet the formal education sector has been the most resistant to change, despite the attempt to re-orientate education for sustainable development in the new national minimum curriculum, which he explains fully. On the other hand, some projects have had notable success. A significant role has been assumed by the Catholic Church and its various Commissions in Malta. Pace's telling analysis of the typical Maltese mind-set explains, to those unfamiliar with the Maltese psyche, much of what is reported in the other papers in this volume. His somewhat damning but, unfortunately, probably precise diagnosis is that Maltese society may not be so different from many other societies in having adapted to and embodied in its traditions a way of life that thrives on

incongruencies: a “double system of values in which what you believe in and what you actually do are not necessarily related”! Hence the main question: does the citizen actually care to be empowered? Does he care to be faced with the individual responsibility that this true citizenship entails?

The main question that all the papers in this section raise is, perhaps, this: Do we in Malta, a small island state with minimal resources, have any real grounds for arguing exemption - individually and collectively - from best practice in corporate social responsibility and corporate governance, from the dictates of our majority religion and social mores, from the imperatives that drive the quest for greater justice and equity in international trade, and from the demands of the ordinary citizen that he or she be allowed to participate fully in, and not be the victim of, the economic system as it evolves?

Back to Europe, the Mediterranean and the World

Kevin Aquilina then turns our attention to the European Institutions themselves, in the context of television broadcasting regulation. For him, private sector CSR failure can have its roots in *institutional* CSR failure. He provocatively suggests that it is no good making demands on, or raising expectations about, private sector CSR if in their policies and actions the Institutions give a conflicting message. He sees this as part of the imperative that public authorities pursue the common good, and human dignity within that. Social market theory is put forward in the context of the EU ‘social market economy’. Such imperatives lay a moral obligation on the institutions as such, he argues, and here he connects with the social teaching of the Catholic Church. The time may be ripe, he says, to extend the principles of corporate social responsibility, at least in the consumer field (as in the context of television broadcasting), to the decision-making processes of the Institutions. In this context, he argues for clearer community law (‘mandatory legal requirements’) that would oblige the Institutions to carry out a ‘social responsibility impact assessment’ of all Union proposals and measures in the same way as in regard to the business or competitiveness impact of proposed measures on European small and medium sized enterprises. He would see this as bringing the Institutions closer to the citizen. His paper then explores these ideas by reference to the Television Without Frontiers Directive, arguing that this example demonstrates how the concept and obligation of social responsibility has been lacking at EU level in the broadcasting field, by ‘de-valuing’ the interests of the viewing public in favour of commercial interests that see the television viewer principally as a consumer of goods and services. He concludes with recommendations aimed at the Institutions, among them the adoption of Codes of Conduct, the setting up of an EU Social Responsibility Committee within each Institution, the extension of the remit of the Ombudsman, the implementation of the suggested social responsibility impact assessment, and tasking a Commissioner with social responsibility oversight. Although, of course, the EC and EU Treaties themselves offer protection for various competing interests, the paper raises many interesting questions as to: whether the institutions make an effective response; as to the sort of questions that need constantly to be asked; and as to the lead to be taken by the Institutions in the matter of social responsibility at all levels. Aquilina takes a broad definition of social responsibility, broader than many in the corporate world would take. He also conflates corporate social responsibility with the social responsibility that he attaches to the European Institutions (and indeed to the Member States and public authorities at all levels within them) to pursue the

common good. This resonates with the diagnosis and conclusion of Kenely, Leone Ganado and Taylor East. His paper squarely raises the question of the role of the Institutions in safeguarding values other than just the commercial values of the market in consumer policy and its development.

The challenge of CSR is then put into its global or ‘globalised’ context by *Audrey Gatt*. Gatt declares that: “Globalisation is transforming corporate responsibility from a choice into an imperative”. She contrasts the US approach to corporate responsibility with that of the EU. She also refers to UK government initiatives in the field, initiatives which attract attention to the ‘UK model’ while at the same time distinguishing the UK model from what she terms the ‘government-led’ approach taken in other European states. This is part of a background global survey of the development of CSR from which Gatt argues the need for an international platform from which to reconcile attitudes and beliefs especially as to benchmarking and monitoring, for companies are being held increasingly accountable for their actions. Business ethics vary, however. Gatt argues that they differ as between “Anglo-Saxon” and “Continental” European companies, with implications for CSR. This reality was noted earlier in this Introduction. The traditional perspective in the UK may at last, perhaps, have begun to shift in the direction of the ‘long-term enlightened shareholder-value perspective’. However, differences in perception of CSR, and in its practice, persist as between US and EU companies in general. Yet the main debate has moved on from the question as to whether CSR should be based on ‘voluntary’ or ‘regulatory’ instruments, and the focus for the EU and the international community in general is on devising appropriate reporting tools and verification mechanisms (especially open to NGOs) as to companies’ compliance with CSR. Otherwise, a mix of regulatory and voluntary instruments can be employed. It has now become the challenge for governments around the world to adopt an efficient monitoring system but, Gatt writes, the question is whether this should be done on a national and international level. At whatever, and all, levels, she argues, any approach to monitoring and measuring CSR must be open to a multi-cultural and generally flexible application, to be understood as a ‘culture-sensitive’ application. What is essential, then, is that the search for international minimum standards for benchmarking and monitoring systems be taken to fruition, and that an international platform for this be established.

It is unclear to what extent the Barcelona Process, the Euro-Mediterranean Partnership Process, is evidence of any such adequate platform. *Adrian Grima* starts his paper on fair trade in the Mediterranean by questioning the impact on the poorest communities of the conclusion of a “free trade” area in the Euro-Med area by 2010. He juxtaposes free trade and fair trade, and argues that both civil society and institutions in the Mediterranean should look at fair trade as an ‘alternative’ to the “myths and monopolies of ‘free’ trade”. For him, the checks and balances that come with fair trade are a credible antidote to the “window-dressing” of ‘corporate social responsibility’. The World Trade Organisation is seen by Hines, quoted here, as “representing the most important element of an international corporate strategy...It has failed to establish an international framework for fair trade”. Key words in fair trade are dialogue, respect and justice - all put forward by several authors in this volume as key to sustainable development and peace. Adrian Grima chronicles the attempts by the fair trade movement, with some success, to secure action in and by the European Institutions. He notes increasing consumer awareness and interest in ethical purchasing and other hopeful signs. However, he also takes issue with the way in which the

Institutions have elided the fair trade concept into that of CSR, citing the work of Perk, Gooch and Chrobok. The latter seek to disentangle the concepts of fair trade, ethical trade, and corporate social responsibility. It is important to keep the differences clear and to give full impetus to each. The fair trade experience has much to ‘teach’ CSR. Grima’s overview of the discussions in the European Union and in the Member States sets the scene for a number of issues worthy of full discussion in Malta, including the desirability of Fair Trade legislation. Perhaps the key line is that “the concrete practices and experiences of fair trade ‘challenge’ organisations involved in CSR initiatives to show that theirs is not merely an exercise in corporate window-dressing”. The next section of Grima’s paper traces the link between religion and the fair trade movement. Tonino Perna has shown that the element of social commitment that has always existed within the Catholic Church has played a major role in spreading fair trade throughout Europe and beyond. Turning his eye inward for a while, Adrian Grima argues that we Maltese still need to learn the difference between charity, which we know, and fair trade, requiring us to change our lifestyle and preferences, which we do not. As for the Mediterranean, it is argued that the religions of the region have a major role to play in supporting fair trade, for without that support fair trade cannot spread. He cites Rana Iczl: “the Euro-Mediterranean Partnership is still too focused exclusively on security, traditional economic development, structural adjustment and free trade”. Practical examples and suggestions for the development of fair trade in the Mediterranean area follow until the real note of hope is sounded. The European Commission has also been devising a strategy on the issue, not least in the context of world trade negotiations. This can be linked in to the work of the European Multi-Stakeholder Forum for devising a ‘roadmap’ for the development of CSR in the European Union. The twinning of the agendas for CSR and for Fair Trade has important potential in the Mediterranean, and Grima points out the potential advantages and pitfalls. His is an impassioned call for the promotion of fair trade at the highest levels. This is also a challenge for civil society from the entire Euro- Mediterranean region, an opportunity to demonstrate true practical solidarity based on real dialogue and with the potential to achieve concrete results not only for prosperity but also for democracy and stability across the Euro-Mediterranean area. *Adrian Grima* therefore starts a discussion in Malta on the links between Fair Trade - the concept and the movement - and Corporate Social Responsibility. There has been little awareness in Malta of the concepts and of how they interact, and this paper fills a void in this regard. It is hoped that a fruitful debate will ensue nationwide.

Vincent Caruana examines further the question of CSR and ‘coherence for development’ within the EU, with particular reference to the Euro-Mediterranean Partnership and the European Neighbourhood Policy. He asks whether the ideals and values that the EU promotes through CSR are the same ideals and values that it acts upon in its dealings with others, and in particular whether the relationships of the EU with the southern Mediterranean countries through the Barcelona Process advance high environmental and social standards, privilege real participation, and promote sustainable development. He does this under the four headings of Peace, the Incomes Gap, Agriculture, and Participation. He then presents two case-studies in good practice, illustrating how civil society organisations within Europe are carrying CSR forward, giving it a clear global development and social justice perspective. In both cases, “the focus given to the ‘triple bottom line’, namely economic, environmental, and social results, is not the result of taking into account environmental and social performance as a result of adapting with the times or responding

to consumer demand, but rather the result of a vision of the world based on *building a society centred on the human person*". He argues that through creating its own rules and ethical guidelines with the full participation of the southern producers, Fair Trade is illustrating how the shortcomings identified in the Barcelona Process can be rectified with a fair measure of political will. It holds forth hope of great potential for poverty reduction, and this requires attention to implementation of already existing policies rather than anything 'new'. Adopting some of the examples of good CSR practice at the macro level would not only move a step forward in eliminating the incongruence between the values of CSR as promoted by the EU and the less noble practices as sometimes realised through EU agreements, but also enhance the credibility of the EU in promoting the values of CSR, while of course enhancing its own image as a socially responsible player. Also, civil society has shown that it is capable of creating a new vision of Europe, built on the richness of cultural diversity, equality, inclusion and solidarity, where poverty eradication and social justice become primary aims in its relationship with developing countries.

Part III - Conclusion

The socially aware citizen in Europe and his counterpart everywhere are crying out for a fairer and more just world trading and production system. Many, if not all, of the papers in this volume argue, explicitly or implicitly, for the creation of a *truly* fair, as well as level trading and business playing field. This, they argue, can be brought about only if morality is made somehow by all the players to play its rightful role, pointing us towards the good and the right. *A level and moral playing field must be created.* As long as those who would act morally and responsibly stand to be 'punished by the market' for doing so, there can be no real 'progress' of the kind for which the various contributors to this volume hope and argue. Can morality, social responsibility, be somehow 'induced' world-wide? By whom would this be done? Many global players, including the European Union, are making efforts - through CSR, through Corporate Governance, through Fair Trade and through support for Fair Trade Organisations to succeed on the market - to move us all in the direction of sustainable and just development. What also emerges strongly from these papers is the powerful role being played and to be played by civil society. However, efforts must be made at all levels, from the largest international organisations, to regional organisations, to national public authorities, to corporations of all sizes, to the individual citizen.

The inspiration for this level *and* moral playing field, and for this global moral order, can come from the main religions, and this volume has drawn on Catholic Social Teaching as the primary heritage of most of the writers, but it is of course to be found also in other religions and other value systems. It is clear that the religions of Europe can provide the moral guidelines for structuring and directing our economic and trading efforts. It is also clear that many of the instruments for putting best practice into action are in place. Some of the authors in this volume have even pinned at least some of their hope on legal sanction. Real change will come about when policy and law favour the moral and responsible action (or omission) by conferring advantage and incentive for it and removing the advantage conferred by the *irresponsible* action or omission that, at the moment, 'pays'. The educated consumer can, in numbers, remove that latter unfair advantage, and can reward the virtuous. Public authority can, with the support of the aware citizen, do the same. Our task - our

common task - is to “translate the global moral order into rationalised mechanisms that seek to promote virtue in the operations of daily life”³⁵.

In sum, then, what is needed above all is a level and moral playing field, constructed by dialogue among all its players.

As always, however, there is a caveat. If regional and international regulatory mechanisms and authorities are to engage in better dialogue with religions and give moral values greater weight and even seek, as necessary, to legislate accordingly, there is a fundamental issue that requires the deepest reflection. I refer the reader back to my opening paragraph. As we have seen argued in this study, European rules, as national Member State rules, implicitly or explicitly also lay down standards of fairness - of moral behaviour. Is any and every legislative achievement to be hailed as a success for the mere fact that it involves the laying down of a level playing field through regional - even global - law, or does *the level* of the level playing field really matter? Is it better to have the EU lay down minimum rules while leaving individual Member States free to aim higher (even though they and their enterprises, and populations, may suffer in competitive terms in the process), or to have the EU aim at as morally high a level of regulatory convergence as it can achieve and then lay down those rules as *maxima*? Or is neither the full answer?

There is much evidence that the European Union *will* act to create a fairer internal market and to require that its enterprises act responsibly both at home and abroad. In many policy areas, the European Community, within the broad construct of the European Union, is enjoined to pursue a “high level” of protection, for example in consumer policy. Arguably, we can make this a general brief for the Community and the Union, in line with citizens’ most honourable expectations. Indeed, taking the example of the Unfair Commercial Practices Directive³⁶, the European Institutions will pursue “high” levels of protection on ethical grounds. Using the same Directive as an example, the Institutions have shown that they can, in requiring Member States to apply common rules in the creation of a level-playing field, attempt to achieve such a high level of protection as to make it unnecessary for Member States to go beyond those rules, by going for ‘full’ or ‘maximum’ harmonisation leading to a high level of uniform protection. And here comes the caveat.

Many contributors to this Report have argued for a level and highly moral playing field and it emerges as a general conclusion to this report. They would not regard this as having been achieved satisfactorily where the *acquis* leads to the lowering of standards even as previously achieved in some Member States, through a ‘levelling-down’ exercise in pursuit of majority agreement. On this thinking, the level playing field is not an end in itself. Any achievement in this regard – that is, the levelling of the playing field - can be hailed as a success only if the level is high. So they would argue for a dynamic that always leads to the highest factor rather than the lowest denominator. Failing that, and possibly even if the level is high, or even the highest going by the best example known today, one should leave open the possibility of the level agreed upon serving as a platform for still further advances. To

³⁵ J.Boli, cit. p.96.

³⁶ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer practices in the internal market, O.J. L 149, 11/06/2005 p.22-39. Other examples exist such as on product liability, and in the company law field.

set a minimum and maximum level, a fixed level, by EC law may level the playing field, even at a high level, but at the possible cost of further evolution at the level of the individual Member State, and possibly at the level of the Community. Here, then, are some points for further study and debate. Can it be suggested: (a) that *process* is vital, in a context where majority voting can lead to the laying down of rules (and *maxima* at that) to be observed by all Member States, so that the process should ensure that the fullest account is taken throughout the law-making process of such variations as exist between Member States; (b) that the starting point and the aim should be the “highest” level of protection, with clear articulation of the moral cost of non-introduction, or the introduction of a lower standard, as well as the economic cost of the introduction or non-introduction of this standard; (c) that, in the interests of securing agreement to the highest level of protection the principle of solidarity be practised to assist those willing, but less economically able, to contemplate adopting the highest standard as proposed, to vote for it and then, because assisted, to comply with it; (d) that the system somehow remain open to raising standards (albeit known as the highest at the time of adoption) in the future; (d) that otherwise, the mechanisms that exist in the Treaty, and others to be inserted if need be, should operate to allow those Member States with the highest standards of protection (morality, as they might claim) to retain their good practices; (e) certainly, the open method of co-ordination can be one mechanism beyond approximation of law for raising standards of responsible practice, and should be utilised to the full in advancing corporate responsibility, corporate governance and fair trade? Is this enough to redress the unfair imbalance in economic terms between those Member States, and their enterprises, prepared to take a high moral position and those which, quite simply, are not?

In all this, it is important, where economic advantage is being derived by companies operating from or in certain Member States - and even by those Member States themselves - precisely *from* the ‘protective (moral) disparities’ that may exist between Member States, that we and our leaders have the moral courage to call a spade a spade and allow the EU system to address morality deficits and ‘moral imbalances’. This kind of thinking asks a hard question of the Member States at a time when a Constitutional Treaty is the subject of some indecision. How we in the Union approach this fundamental question of the ethical content of our policies and laws speaks volumes to our citizens, and to our Neighbours watching from without. Can we foster a culture that is prepared to put forward and address moral argument without having to find an ‘economic dress’ for it, and then to premise EU action and decision-making on moral grounds as well as on, even in priority over, economic interests?

While we may be convinced of the need to make regional efforts to advance the level and the moral playing field, the reality is that in a global economic order a region that seeks the moral high ground may be putting at risk its collective comparative economic advantage or position, especially, of course, if that position is itself currently predicated on a certain blurring of moral values. But this is not seen, by the authors in this book, to be a morally sufficient case for maintaining the status quo. Rather, it is a case for re-doubling global initiatives on the lines argued for, in order to establish a virtuous circle rather than a dynamic that stands to prevent or undermine those same efforts at regional and, down the line, at national level.

This study therefore raises key questions for debate and further reflection.

The Civil Society Project is about seeking to inform and mobilise public debate in Malta. However, we hope that the ideas put forward in this volume, the pleas made, the insights given, and the questions asked, will strike a chord beyond our shores. It is a small Maltese contribution to a global debate, some strands of which were thought dead, some strands of which would be seen as dead by those who would rather that they were dead. The debate - or better, the soul-searching - has yet to begin in earnest in Malta on many of the issues covered in this Report, and fostering that debate is one main objective of this project. The contributors to this Report do not pretend to have all, or even most, of the answers. This Report will be circulated widely in order to stimulate and feed into that process of soul-searching. It will serve as the basis for advancing the debate on Business and Ethics in the EU and Malta in a national conference to be held in Malta in September 2007.

References (main) and Further Reading

Boli, John., *The Rationalisation of Virtue and Virtuosity in World Society*, in Marie-Laure Djelic and Kerstin Sahli-Anderson (eds.), *Transnational Governance: Institutional Dynamics of Regulation*, Cambridge University Press 2006, pp.95 -118.

Davies, Norman; *Europe - A History*, Oxford University Press 1996, p.1078.

Djelic, Marie-Laure and Sahlin-Anderson, Kerstin (eds.), *Transnational Governance: Institutional Dynamics of Regulation*, Cambridge University Press 2006.

Fisher Colin and Lovell, Alan., *Business Ethics and Values: Individual, Corporate and International Perspectives*, FT Prentice Hall 2006 (2nd edition).

Gamal, Mahmoud A., *Islamic Finance - Law, Economics and Practice*, Cambridge University Press 2006.

Grayling, A.C., *What is Good?* Phoenix 2003.

Henry, Clement M. and Springborg, Robert., *Globalisation and the Politics of Development in the Middle East*, Cambridge University press 2001.

Hopt, K.J., Kanda, H., Roe, M.J., Wymeersch, E., Prigge, S., *Comparative Corporate Governance*, Oxford University Press 1998.

Johnson, P. and Sugden C. (eds.), *Markets, Fair trade and The Kingdom of God - Essays to Celebrate Traidcraft's 21st Birthday*, Regnum 2001.

Kuran, Timur; *Islam and Mammon - The Economic Predicaments of Islam*, Princeton University Press 2004.

Prausello Franco., (ed.) *Sustainable Development and Adjustment in the Mediterranean Countries Following the EU Enlargement*, FrancoAngeli 2006.

Rossi, Guido., *Do Good Governance Recommendations Change the Rules for Boards of Directors?*, Chapter 21 in Hopt K.J. and Wymeersch E., *Capital Markets and Company Law*, Oxford University Press 2003, at p.499.

Tripp, C., *Islam and the Moral Economy-The Challenge of Capitalism*, Cambridge University Press 2006.

Tsinisizelis, Michael J. and Xenakis, Dimitris K., *Unity in Heterarchy: Security Complexity and Systemic Change in the Mediterranean*, in Franco Prausello (ed.) *Sustainable Development and Adjustment in the Mediterranean Countries Following the EU Enlargement*, Franco Angeli 2006, pp.73 - 101, at p.84

Xuereb Peter G., (ed.), *The Family, Law, Religion and Society in the European Union and Malta*, Civil Society Project Report 2006 (European Documentation and Research Centre, University of Malta, 2006).

Xuereb, Peter G., *The Juridification of Industrial Relations Through Company Law Reform* (1988) 51 *Modern Law Review* 156 - 172.

HOW FREE IS THE FREE MARKET? A CATHOLIC SOCIAL TEACHING PERSPECTIVE

PAUL A. PACE

The current neo-liberal economic wisdom is by now familiar to us all, being incessantly rehearsed by politicians, economists and business leaders: the market is the best instrument to achieve growth in wealth, for it is the most efficient mechanism for the allocation and distribution of scarce resources and in reality has brought about an unprecedented growth in wealth. This conclusion is said to be based on a purely scientific analysis, so that the market is described as ideologically neutral. Hence, the market should be entrusted with the production and distribution of more and more goods, even of those strategic utilities hitherto in the hands of public authorities.

It is then only logical to maximise economic freedom in order to achieve maximum economic efficiency, so that government intervention in the economy should be kept to a minimum, restricted mostly to ensuring a level playing field for the economic actors.

In this scenario, the human person is understood primarily as the individual, motivated by self-interest and the wish to maximize pleasure and avoid pain. The ideal for every member of society is to be able to work for his or her own self-interest, confident in the knowledge that an invisible hand will guide society to attain its good. Individual economic freedom, usually understood as freedom of choice, is extolled as the most effective means to achieve this, and we should all work to expand the sphere of this type of freedom in our societies. Economic development is seen only in terms of economic growth, which will eventually somehow trickle down to all members of that society.

Development as Freedom

Yet this orthodoxy does not go unchallenged, even from within the ranks of specialists of the dismal science. A well known critic is Economics Nobel Prize winner Amartya Sen, who points out that this has not always been the economists' orthodoxy, for, 'There was a time - not very long ago - when every young economist "knew" in what respects the market systems had serious limitations: all the textbooks repeated the same lists of "defects". Economists then proposed other mechanisms for organising the world to counter these shortcomings.

Yet, it seems that, as Sen observes, ‘The intellectual climate has changed quite dramatically over the last few decades, and the tables are now turned. The virtues of the market mechanism are now standardly assumed to be so pervasive that qualifications seem unimportant. Any pointer to the defects of the market mechanism appears to be, in the present mood, strangely old-fashioned and contrary to contemporary culture... One set of prejudices has given way to another - opposite - set of preconceptions. Yesterday’s unexamined faith has become today’s heresy, and yesterday’s heresy is now the new superstition.’¹

Sen makes this trenchant observation in his book, *Development as Freedom*, whose theme is set out in the very first sentence: “Development can be seen... as a process of expanding the real freedoms that people enjoy”.² Throughout the book he argues that the link between these two is so strong that one can say that freedom is the principal goal and purpose of development.

He contrasts this position with what he calls narrower views of development, which identify development with only one of its dimensions, such as the growth of GNP or of personal incomes, industrialisation or technological advances. In contrast, he argues that development requires the removal of major sources of unfreedom: ‘poverty as well as tyranny, poor economic opportunities as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states.’³

This approach clearly enables us to focus on the *ends* of development, rather than on some of the *means* that usually assume such a prominent part in our understanding of the process. Sen sees this as an issue of overwhelming importance in our own times, where it seems that the majority of people are deprived of their most basic freedoms.

The link between development and freedom is a complex one, for freedom can take many forms. A poor man is not free to satisfy his hunger, or obtain remedies for simple maladies, or buy proper clothing. Moreover, what a person can possibly achieve is certainly influenced by the levels of economic opportunities, basic education, civil and political liberties, and the fostering of initiative available in the society that person inhabits. This is in turn influenced by the extent to which people can participate in the organisation of their society to make these opportunities more widely available.⁴ Thus, development-as-freedom sees political and social freedoms as *constitutive elements* of development, and not merely as elements that may be *conducive* to it. In fact, experience very clearly shows, as is maintained in great detail in all the chapters of Sen’s book, that wherever human freedoms and rights are present they prove to be very effective instruments of attaining higher levels of economic progress.

¹ *Development as Freedom*, New York: Anchor Books 1999, p. 111.

² *Development as Freedom*, New York: Anchor Books 1999, p. 3.

³ *Development as Freedom*, New York: Anchor Books 1999, p. 3.

⁴ Cf This interconnection is the basic theme of UNDP, *Human rights and human development, Human Development Report 2000*, and is developed especially in chapter 1. Available at: <http://hdr.undp.org/reports/global/2000/en/>

Orthodoxy or Superstition?

One of the structures that Sen investigates closely is the market⁵, whose importance in our current understanding has changed dramatically during the last decades: in fact, it has now acquired the status of a ‘superstition’ that no longer needs to be justified rationally.

Given this situation, where the market’s importance is matched by the blind faith placed in it universally, Sen insists there is a crying need for the current prejudices in favour of the free market to be investigated and ‘partly rejected’. We should do this, however, without ‘resurrecting yesterday’s follies that refused to see the merits of - indeed even the inescapable need for - markets’⁶.

Given this essential link between personal freedom and economic and social development, Sen holds that the basic reason for embracing the freedom of the market is freedom itself, which in turn is one of the ends of development. This is in contrast with current descriptions of the virtues of the market which tend to judge it by its results, whether in terms of the unprecedented generation of wealth or of the improved distribution of goods and services. Sen insists that the discussion must revolve around the extent to which the market respects and enhances the different kinds of human freedoms. Our criterion to judge the efficacy of the market thus becomes wider and at the same time more nuanced.

The Freedoms of the Free Market

Sen starts off by pointing out that ‘the more immediate case for the freedom of the market transaction lies in the basic importance of that freedom itself’.⁷ Since we make use all the time of the freedom of transaction, we are so used to it that we fail to appreciate its value: it was not always the case, and it is not so everywhere even in our own times. In fact, absence of the freedom of transaction is a serious failing for any society.

Sen speaks of different kinds of freedoms which must be considered. First of all he mentions the freedom of employment, one of the most important victories of capitalism, that was praised by Karl Marx himself. This does in no way mean that it is universally respected, for forms of slavery and bonded labour abound, and not only in developing countries. Besides, the current sensitivity about child labour and the difficulties women often have to face in order to work outside the home not only highlights how widespread these practices are but also enables us to appreciate the importance of other complementary, non-market freedoms, like the freedom of association and the rights of children and women.

Thus, Sen advocates a multi-dimensional approach rather than one that stresses only the need for opening up the market or of adopting a step-by-step approach. In his writings, he develops an understanding of personal freedom that is linked to the person’s ‘capabilities’: a person is free to the extent that he or she is capable, i.e. has the capability, to lead the kind of life he or she values. Being more free to do the things a person has reason to value also means that that person can attain more valuable outcomes, including economic ones. The

⁵ He does this mostly in *ibid.*, chapter 5, *Markets, State and Social Opportunity*, pp. 111-145.

⁶ *Development as Freedom*, New York: Anchor Books 1999, p. 112.

⁷ *Development as Freedom*, New York: Anchor Books 1999, p. 112.

issue of enabling people to attain more capabilities becomes a fundamental one for true development, even in a purely economic sense.

Applying this approach to the market, Sen shows that giving exclusive importance to achieving greater market freedom will never be enough. This must be complemented by a broadening of social opportunities, which would make it possible for more people to share in the openings generated by the success of the market system. These social opportunities, like greater access to educational and medical services, to some forms of social protection and security and a certain availability of resources such as land, in turn require specific public policies. 'The far-reaching powers of the market mechanism must be supplemented by the creation of basic social opportunities for social justice and equity'.⁸ In Sen's opinion, therefore, the State has an essential role to play through its policies, especially when we are dealing with public goods.

This is so because very often we are led to assume that the market is so efficient that it would be best for every commodity to be bought or sold there. Yet, applying the market logic to all kinds of goods will surely lead to certain negative repercussions on our well-being. The fact is that I cannot 'buy' my share in a healthy environment or in national security in the same way I can buy a shirt or an apple: I can enjoy my apple or shirt all by myself, but in the case of public goods, if my neighbour has no access to a healthy environment, neither can I have such. This means that we cannot apply the same market rationale to both private and public goods, another boost for a more nuanced, less superstitiously fanatic, approach to the free market.

This seems especially true in the case of the provision of education, which is often considered as a semi-public good. Experience, in both developed and developing countries, has consistently shown that those countries which have been more generous in the public provision of educational opportunities to as wide a public as possible have been the ones most able to profit from the economic and social opportunities offered by the free market. Hence, 'efficiency considerations... supplement the argument for equity in supporting public assistance in providing basic education, health facilities and other public (or semi-public) goods'.⁹

It is paradoxical that nowadays, both in the rich and in the poor world, such provision is increasingly under attack by the staunchest believers in the virtues of the free market, while increasing amounts are spent on commodities where the social benefit is far from obvious, like more sophisticated weaponry. In fact Sen considers it 'an indication of the topsy-turvy world in which we live that the school teacher or nurse feels more threatened by financial conservatism than does the army general'.¹⁰

⁸ *Development as Freedom*, New York: Anchor Books 1999, p. 143.

⁹ *Development as Freedom*, New York: Anchor Books 1999, p. 129. Here Sen draws on Adam Smith himself, who in *The Wealth of Nations* wrote that, 'For a very small expense the publick can facilitate, can encourage and even can impose upon almost the whole body of the people, the necessity of acquiring those most essential parts of education'.

¹⁰ *Development as Freedom*, New York: Anchor Books 1999, p. 145.

Catholic Social Teaching

For more than a century, since 1891, the Catholic Church has been developing a corpus of teachings on social issues, commonly referred to as Catholic Social Teaching. This teaching is contained mostly in papal documents, called encyclical letters, or simply encyclicals¹¹, besides certain other official documents of the universal Church issued by ecumenical councils and synods of bishops. During the last two or three decades the number of non papal documents in this field has increased, mostly published by national conferences of bishops¹².

Of course, the themes dealt with, and the style used, have changed considerably over this long span of years, in response to changes in the social and political scenario. At the same time, the analysis of this diversity of issues has allowed the basic principles to emerge with more clarity, in a way that makes their application easier.

There is no doubt that economic life was of prime concern to the Church, and it is no accident that the document that is acknowledged as the first social encyclical, *Rerum Novarum* of Pope Leo XIII, is subtitled , ‘The Rights and Duties of Capital and Labour’, and starts with these words: ‘That the spirit of revolutionary change... should have passed beyond the sphere of politics and made its influence felt in the cognate sphere of practical economics is not surprising’.¹³

The basic foundation of this teaching is the centrality of the human person and the common good. These two realities are in turn very closely related, for the common good can never be separated from the good of the persons who make up the community, and the person can never attain his or her good in a purely individualistic way, outside the community. For Jacques Maritain it is the shared good life of a community of free human persons.¹⁴ John XXIII, in his *Pacem in Terris*, written in 1963, a few months after the Cuban missile crisis, posits an essential link between the common good and the rights and duties of the human person, saying that, ‘It is generally accepted today that the common good is best safeguarded when personal rights and duties are guaranteed’.¹⁵

¹¹ These papal documents are available in many collections, such as *Catholic Social Thought: The Documentary Heritage*, edited by David J. O'Brien, Thomas A. Shannon, Maryknoll, New York: Orbis Books 1992. They are also available online at www.vatican.va

¹² Among the best known in the English-speaking world are the pastoral letters on peace *The Challenge of Peace* (1983) and on *Economic Justice For All* (1986) of the US bishops, and the pastoral letter, *The Common Good and the Catholic Church's Social Teaching* published by the bishops of England of Wales in 1996.

¹³ *Rerum Novarum* 1, *Catholic Social Thought: The Documentary Heritage*, edited by David J. O'Brien, Thomas A. Shannon, Maryknoll, New York: Orbis Books 1992, p. 14.

¹⁴ Cf Jacques Maritain's major works of political philosophy, especially *The Person and the Common Good* New York: Scribner 1947, and *The Rights of Man and Natural Law*, New York: Scribner 1943. Cf also David Hollenbach, *The Common Good and Christian Ethics*, Cambridge MA: Cambridge UP 2002 with very abundant bibliography, Brian Stiltner, *Religion and the Common Good* New York/London: Rowman & Littleton 1999.

¹⁵ *Pacem in Terris* 60, *Catholic Social Thought: The Documentary Heritage*, edited by David J. O'Brien, Thomas A. Shannon, Maryknoll, New York: Orbis Books 1992, p. 141.

Political and economic and social systems are judged on this criterion, while the church rejects any notion of ethical neutrality: social, economic and political issues have an ethical dimension which can never be ignored.¹⁶

Thus, although it has a different starting point, Catholic social teaching seems to me to come to startlingly close conclusions to those of Sen in its nuanced acceptance of the market. The Catholic social teaching perspective is a complex one, trying to steer a course (not necessarily a middle way) that safeguards the dignity of every person while acknowledging the importance of economic freedom and efficiency for the very good of the person and the human communities.

Catholic social teaching was from the very beginning critical of the unbridled economic liberalism of the 19th century and its effect on the human person and on the life of the family. Yet the experience of life under communist regimes, especially in Europe, made it as critical of the central control economies, especially of their lack of respect for human freedoms, and their ensuing economic inefficiencies. The downfall of communism in Central and Eastern Europe in 1989, during the pontificate of a Polish Pope with a highly developed social conscience and direct experience of communist economic systems, afforded the obvious occasion for a deeper reflection on the merits of the different systems.

This critique was published in 1991, barely two years after the fall of the Berlin Wall, in commemoration of the one hundred years since the publication of *Rerum Novarum*. The encyclical *Centesimus Annus*¹⁷ looks back on the hundred years of Catholic social teaching, but it is clearly more interested in the current unheralded situation that Europe was living. Its chapters dwell on the social and economic processes that brought about the demise of communism in Europe, but also offer a deep and mature reflection on capitalism and its flagship, the free market: for many, in their enthusiasm at the fall of the Berlin Wall, this could only mean the definitive victory of liberal capitalism.

Freedom in Catholic Thought

Freedom is certainly one of the subjects on which Catholic thought has evolved most significantly over the last three centuries. The 18th and 19th century Church seemed incapable of accepting the newly discovered freedom of the democratic revolutions. There is no doubt that the revolutionary movements in Europe, in contrast with those in North America, were anti-clerical and often anti-religious, identifying the Catholic Church and its teachings as very close allies of the regimes they sought to topple. The Church's reaction was as inevitable as it was unfortunate.¹⁸ Still, the argument went deeper than a political reaction: official church teaching seemed sceptical of the ability of the individual to manage

¹⁶ Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, Vatican City: Libreria Editrice Vaticana 2004, 188-190.

¹⁷ John Paul II, *Centesimus Annus*, *Catholic Social Thought: The Documentary Heritage*, edited by David J. O'Brien, Thomas A. Shannon, Maryknoll, New York: Orbis Books 1992, 439-488. Paragraph numbers of this encyclical will be quoted directly in the main text.

¹⁸ Cf Peter Steinfels, 'The Failed Encounter: the Catholic Church and Liberalism in the Nineteenth Century', in *Catholicism and Liberalism* edited by R. Bruce Douglass and David Hollenbach, Cambridge MA: Cambridge UP 1994, 19-44.

freedom responsibly, i.e. without ‘abusing’ it or using it to harm or even destroy oneself and society.¹⁹

Gradually this paternalistic stance gave way to a more ‘modern’ position that was formalised in the Second Vatican Council’s Declaration on Religious Freedom which solemnly acknowledged that ‘the human person has the right to religious freedom’.²⁰ A few years before, John XXIII in his encyclical *Pacem in Terris* had linked peace to human rights, and for the first time added freedom to the traditional triad of truth, justice and love, as the fourth column on which peace is built.²¹ This process went even faster with John Paul II who often called the right to religious freedom the cornerstone of all human rights.²² Yet this freedom is not a mere freedom from constraints, the freedom to be left alone, but it must flow from what the Church calls the truth about the human person: a person is free only to the extent that he or she succeeds in being true to himself or herself and to the reality he or she inhabits. Basic to this truth about the human person is the dignity of all persons which is at the same time the basis for their equality: a freedom that does not respect this human dignity is either false or at best a limited freedom. Moreover, this is attainable only within a community of free persons.

It is within this conceptual framework that *Centesimus Annus* sought to arrive at an ethical evaluation of capitalism, and consequently of the free market. The encyclical identified the negative effects that a centrally controlled market can have on human enterprise, and ultimately on human well being, at the individual and the communitarian levels. The criteria used to argue the case were not only those of economic efficiency: the basic shortcoming was that underpinning the economic and social mechanisms there was a mistaken understanding of the human person and its dignity that could only lead to the system’s downfall.

The Free Market Endorsed

Centesimus Annus contains what is certainly the most explicit endorsement of the market in Catholic social teaching: it is praised as ‘the most efficient instrument for utilising resources and to effectively respond to needs’ (34). It is an expression of human freedom in the economic field, giving central importance to the person’s desires and preferences. It is an important instrument for attaining objectives of justice, from moderating excessive demands of individual businesses, to ensuring an optimum use of scarce resources and rewarding the spirit of economic initiative. Profit, too, is acknowledged as having a ‘legitimate role... an indication that a business is functioning well’ (35).

¹⁹ Gregory XVI develops this approach at length in his 1863 encyclical *Mirari Vos, On Liberalism and Religious Indifference* (available at: <http://www.ewtn.com/library/encyc/g16mirar.htm>).

²⁰ Para 2.

²¹ *Pacem in Terris*, Cf also Paul Cremona, *The concept of peace in Pope John XXIII*, Malta: Dominican Publications 1988.

²² John Paul II, *Respect for Human Rights: the Secret of True Peace. Message for World Day of Peace 1999*, available at:

http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_14121998_xxxii-world-day-for-peace_en.html. It is not without significance that in late 2006 the new Cardinal Secretary of State, Tarcisio Bertone, said that one of the priorities of Vatican diplomacy under his watch would be religious freedom.

Yet, the caveats that follow are many, based on the document's analysis of the structural failings of the centrally controlled economy. If this analysis leads the document to acknowledge the free economy's inherent superiority (24), it makes it even more sensitive to the pitfalls of any economic arrangement that does not place itself at the service of human dignity.

The Pope's criticism of the communist system goes much deeper than its economic shortcomings: the Pope says that Communism failed because it did not respect the truth about the human person and its inalienable dignity. Its failure was not merely economic, but fundamentally cultural, so that the battle it lost was not against capitalism but against its own citizens and their cultural identity, something that can happen again with free market capitalism. The 'true cause' of the downfall of communism was 'the spiritual void brought about by atheism, which deprived younger generations of a sense of direction' (24).

'The fundamental error of socialism is anthropological in nature' (13), for it considered the human person as a mere element in the social system, and its good subordinated to the good of the whole: the person is thus deprived of his or her freedom and personal initiative, not only in the economic sphere but also in the moral and social fields. This renders the person more dependent on the system, and less capable of creating a true human community. Such a system can only implode and destroy itself.

This analysis makes it easier to understand the misgivings Catholic social teaching has in her approval of the free market mechanisms. Judging it by its economic efficiency is not enough, for the wider, more basic criterion is whether a system is at the service of the human person and community, not only by giving space to human economic initiative, but, at the deeper level, that of respecting the truth about the human person and its inherent dignity.

The Free Market and the Truth about the Human Person

One way of judging the free market is to examine its global effect: "Can we safely propose it to the (then) newly liberated European countries, to Third World countries, even?" More than fifteen years after this question was first posed, we are living in a much more globalised world, and the initial enthusiasm has given place, even in eminent quarters, to some quite radical criticism.²³

The answer here is unavoidably complex, and it is important to quote it in full:

'If by "capitalism" is meant an economic system which recognizes the fundamental and positive role of business, the market, private property and the resulting responsibility for the means of production, as well as free human creativity in the economic sector, then the answer is certainly in the affirmative, even though it would perhaps be more appropriate to speak of a "business economy", "market economy" or simply "free economy". But if by "capitalism" is meant a system in which freedom in the economic sector is not circumscribed within a strong juridical framework which places it at the service of human

²³ Joseph Siglitz *Globalization and Its Discontents* New York: WW Norton 2003.

freedom in its totality, and which sees it as a particular aspect of that freedom, the core of which is ethical and religious, then the reply is certainly negative' (42).

Freedom certainly, but human freedom in its totality, much beyond mere economic freedom, for the free market can never be considered as an end in itself: it cannot be judged apart from the ends it seeks to accomplish and the values it transmits on a societal level. For instance, while profit has a legitimate role in business, any system that humiliates and offends the dignity of the persons 'who make up the firm's most valuable asset', not only morally indefensible but will certainly lead to negative economic repercussions on the firm itself: profit can never become the only criterion of a business' success.²⁴

The Role of the State

Centesimus Annus, in real continuity with the tradition of Catholic social teaching, calls for economic freedom to be 'circumscribed within a strong juridical framework' as a guarantee that it is 'at the service of human freedom in its totality' (42).

Already in *Rerum Novarum* in 1891, the Church opposed both state control of the means of production, and an understanding of the State's function that totally excludes economic life from the realm of its interests and action. Even here, the ultimate criterion is the service of the human person and the community and not economic freedom in itself: the State should respect a certain autonomy of economic life and encourage individual economic initiative, but it should equally determine the juridical framework within which economic affairs are to be conducted. In this way it establishes the fundamentals of a free economy, and especially guarantees a level playing field. It must also ensure just and adequate wage levels for all, fair and humane working conditions, minimum health and safety rules, and mechanisms to defend the most vulnerable groups of workers.

The encyclical describes the direct and indirect action of the State in this area by referring to two of its basic principles, that of solidarity and subsidiarity: 'Indirectly and according to the *principle of subsidiarity*, by creating favourable conditions for the free exercise of economic activity, which will lead to abundant opportunities for employment and sources of wealth. Directly and according to the *principle of solidarity*, by defending the weakest, by placing certain limits on the autonomy of the parties who determine working conditions, and by ensuring in every case the necessary minimum support for the unemployed worker (15).

More than Corporate Social Responsibility

The intervening years have made this critical evaluation of economic freedom even sharper and at the same time more discerning. We now live in an increasingly globalised economy where the free market seems to reign supreme. While better communications and an increase in commercial and other links between all parts of the world have produced an unprecedented growth in trade and in wealth, and stronger links between peoples, the

²⁴ One very interesting paragraph, n 38, in fact speaks of the social ecology of work, a theme that had already been developed 10 years earlier in the same Pope's *Laborem Exercens*.

growing differences between the poor and the rich and the threat to our environmental future look even more unacceptable.²⁵

By way of conclusion we can say that important economic theorists are in basic agreement with the conclusions of Catholic social teaching that economic freedom is essential for human development. Economic freedom by itself is at best a partial solution to our ills, for human freedom means not only the ability to buy, or to make profits, but also to be capable of being what one wishes to be, to be true to oneself. Catholic social teaching insists that economic activity, like any other human activity, is never ethically neutral and must be judged according to whether its operations respect human beings and communities or not. It cannot claim the ability to discover in itself the principles for its own legitimation, but must seek them outside of itself, in terms of the ends it seeks to accomplish and the values it transmits on a societal level. The market cannot be judged only by the level of individual profit that it generates but also by its social usefulness, which is a fundamental criterion of a higher order.

Catholic social teaching seems to prefer the market, but is not keen to endorse it unreservedly: the market is an irreplaceable instrument for the achievement of certain levels of economic efficiency and even justice, but by itself it can never be entrusted with supplying all kinds of goods.

Moreover, it warns us that an unbridled economic freedom that disregards human dignity and other human needs on the individual and the communitarian levels contains the seeds of its own destruction, and can suffer the same fate as the communist economic system.

The pursuit of the common good, now understood in its global dimension, is still seen as the road to follow in today's complex world, while the rights of the poor need to assume a more central place.²⁶ This approach, together with a preferential option for the poor that is put into practice by the Christian community²⁷, is seen to be morally superior and more capable of achieving a more human and just world than the free trade and free market so often proposed as our sole saviours.

The question turns out to be more cultural, even spiritual, than economic: the central point must not be the amount of economic freedom but the quest for economic and social structures that respect and reflect human dignity for all humankind.

²⁵ James E. Hug, 'Economic Justice and Globalization, in *Globalization and Catholic Social Thought*, edited by John A. Coleman and William F. Ryan, Maryknoll, NY: Orbis Books 2005.

²⁶ 'But it will be necessary above all to abandon a mentality in which the poor - as individuals and as peoples - are considered a burden, as irksome intruders trying to consume what others have produced. The poor ask for the right to share in enjoying material goods and to make good use of their capacity for work, thus creating a world that is more just and prosperous for all. The advancement of the poor constitutes a great opportunity for the moral, cultural and even economic growth of all humanity' (*Centesimus Annus* 28).

²⁷ 'Today more than ever, the Church is aware that her social message will gain credibility more immediately from the *witness of actions* than as a result of its internal logic and consistency. This awareness is also a source of her preferential option for the poor... This option is not limited to material poverty, since it is well known that there are many other forms of poverty, especially in modern society - not only economic but cultural and spiritual poverty as well' (*Centesimus Annus* 57).

THE PRESENCE AND ROLE OF RELIGION IN A CONSUMER CULTURE

JOSEPH ELLUL

We are only just beginning to understand how intimately and profoundly the vitality of a society is bound up with its religion. It is the religious impulse which supplies the cohesive force which unifies a society and a culture. The great civilizations of the world do not produce the great religions as a kind of by-product; in a very real sense, the great religions are the foundations on which the great civilizations rest. A society that has lost its religion becomes sooner or later a society that has lost its culture.¹

Today's Western societies and European societies in particular, are characterized not only by mass immigration, which undoubtedly leaves its mark on the native culture, but also by an increasing alienation which has revealed the profound emptiness lying at its heart after decades of secularism.

It is true that the fall of the Berlin Wall in 1989 did not only lead to the re-unification of the two Germans, but also to the re-discovery of Eastern Europe together with the spiritual ideals that it has preserved in spite of decades of oppression.² But the fall of the last bastion of the absolute secular state embodied in communism, has not only led to a political and social vacuum, but also a psychological and a spiritual challenge. After decades of fostering

¹ Christopher Dawson, *The Dynamics of World History*, Mentor Omega Books, New York 1962, p. 132.

² In his encyclical *Centesimus Annus*, Pope John Paul II dwelt upon the reasons underlying the crisis within communism itself which eventually led to its downfall:

It is not possible to understand man on the basis of economics alone, nor to define him simply on the basis of class membership. Man is understood in a more complete way when he is situated within the sphere of culture through his language, history, and the position he takes towards the fundamental events of life, such as birth, love, work and death. At the heart of every culture lies the attitude man takes to the greatest mystery: the mystery of God. Different cultures are basically different ways of facing the question of the meaning of personal existence. When this question is eliminated, the culture and moral life of nations are corrupted. For this reason the struggle to defend work was spontaneously linked to the struggle for culture and for national rights.

But the true cause of the new developments was the spiritual void brought about by atheism, which deprived the younger generations of a sense of direction and in many cases led them, in the irrepressible search for personal identity and for the meaning of life, to rediscover the religious roots of their national cultures, and to rediscover the person of Christ himself as the existentially adequate response to the desire in every human heart for goodness, truth and life. This search was supported by the witness of those who, in difficult circumstances and under persecution, remained faithful to God. Marxism had promised to uproot the need for God from the human heart, but the results have shown that it is not possible to succeed in this without throwing the heart into turmoil.

Centesimus Annus, n. 24.

a mentality of survival, these societies have experienced freedom as if they had been exposed to a cultural explosion. They have found themselves totally unprotected from the developments that had taken place in Western Europe during the preceding decades. They have found themselves encountering a culture driven by unbridled and merciless market forces and especially by consumerism which are leading to another more subtle and, consequently, more dangerous form of totalitarianism. In many ways even modern western culture has become a culture of survival. Christopher Dawson was prophetic when sixty-five years ago he made the following reflection on the reasons behind the disintegration of a civilization:

A civilization which concentrates on means and neglects almost entirely to consider ends must inevitably become disintegrated and despiritualized.

Our democratic societies have done this, by devoting all their planning to the technical and industrial organization and leaving the sphere of culture to the private initiative of individuals, i.e. to unplanned activities. This was possible before the machine age, when the ruling class in society consisted of men of property in the old sense, men with a fixed economic background and a tradition of leisure, not unlike the citizen class of antiquity. But when this class had lost its economic foundation and was progressively absorbed into the machine order, it ceased to be culturally creative.³

Cultural Paranoia and Schizophrenia

Whereas Eastern Europe had been throughout most of the twentieth century a closed society subject to a paranoid rejection of “decadent”⁴ culture and a projected schizophrenic illusion of living in a terrestrial proletarian paradise, Western Europe was, at the same time undergoing radical mutations in its culture which have led towards the dismantling of human values culminating in a veritable crisis of identity. This latter element has now come to the fore by way of the recent phenomenon that has hit the European continent. The waves of immigration from North and sub-Saharan Africa as well as those from what used to be called the Indian sub-continent, have not only caught European societies unawares, but have also nurtured as a by-product a growing culture of extreme rightist groups who feed on and develop an altered form of paranoia, namely xenophobia. On the other hand, consumerism has become a cult, resulting from the inner human need for fulfillment without the bonds and accoutrements demanded by religion. Thus product advertising seeks to tap this unquenchable craving. It thrives on discontent transforming the trivial into a vital necessity, thereby creating an alternative schizophrenic society wherein humanity becomes mesmerized by an outer shell of lights, graphics, and subliminal messages, while remaining empty of moral values.

This is also reflected in the sharp decrease in quality time that the family allows itself in order to encounter and interact *as* a family. Television stations are continuously feeding the family a diet of soap operas, big-brother shows and sitcoms that reflect very little of real life situations, but delight in intrigue, betrayal, loose relationships, and a clear rejection of responsibility, accountability, commitment and fidelity. Children (and the not-so-young) are engrossed in video-games that cut them off from reality altogether, spending hours living in

³ Christopher Dawson, *The Judgment of the Nations*, Sheed & Ward, New York 1942, p. 118f.

⁴ Communism's definition of the non-communist western bloc.

a surreal world that makes them more introverted and un-communicative. It is well known that the prime reason for marital breakdown is, in fact, a total breakdown in communication. Even messages sent and received on mobile phones and e-mails are coded, detached and impersonal. In many ways the real is being replaced by the virtual.

In the employment sector, competition is paramount. Employees are being continuously badgered to fulfill the sometimes unreasonable expectations demanded by their employers with some companies even setting up quotas that could not possibly be reached. There is nothing wrong with aspiring to become successful; without success there is no progress. The problem arises when success is transformed from an aspiration into a cult. A cult of success confers no status whatsoever on the unsuccessful. We are therefore witnessing increasing marginalization that is culminating in violence, especially in the suburbs of the main cities.

Business concerns have recently begun to tap into the so-called “post-religious age”. One such case is the Christmas season. The Birmingham City Council has gone so far as to propose that Christmas be renamed “Winterval” which, according to its members, would supposedly recreate a more multicultural atmosphere in keeping with the city’s mix of ethnic groups.⁵ Both moves were heavily criticized by both the Archbishop of Canterbury and the Archbishop of Westminster. Christmas cards portraying the Holy Family are fast becoming a thing of the past. Snowmen, doves and scenes of some snow-covered countryside are taking their place; all this in the name of political correctness and the supposed fear of alienating or offending adherents of other religions.⁶

Modern culture tends to portray the human individual as one endowed with rights in counter-position to society and government which have duties to fulfill.⁷ This creates a deeper alienation and a lack of consciousness on the part of the former in the endeavour to build a more human society.

The Significance and Limits of Secular Culture

For all the criticism one might level at it, in the past religion made life somewhat more tolerable. The choice it laid before human beings regarding the afterlife brought hope to the weak, the poor, and the marginalized and demanded responsibility, accountability and generosity on the part of the powerful⁸. Furthermore, in the days when the European social order was consciously religious, it preserved a dual social organization: It was recognized that the sphere of religion and of intellectual culture transcended the state. It had its own organization or spiritual society: the Church. This dual principle of organization had a far

⁵ See http://www.news.bbc.co.uk/2/hi/uk_news/210672.stm

⁶ See <http://www.news.bbc.co.uk/2/hi/business/6120858.stm>

⁷ Jonathan Sacks explains this frame of mind in the following way:

...our moral imagination is bounded by three central themes - autonomy, equality and rights - the values that allow each of us to be whatever we choose...

We know that not all choices are wise. But we are reluctant to let that fact serve as a basis for a moral conclusion. Instead we make a distinction between acts and consequences. Acts are freely chosen; consequences are dealt with by the state. So governments are there to treat AIDS, child abuse, homelessness, and addiction, but not to disseminate a morality that might reduce them in the first place.

Jonathan Sacks, *The Persistence of Faith*, Weidenfeld and Nicolson, London 1991, p. 42.

⁸ See, for example the parable of the rich man and Lazarus in Lk. 16:19-31.

greater importance for European culture than is usually recognized. It was, no doubt, to some extent a source of conflict and tension. But it was a vital and healthy tension, which contributed in no small measure to the freedom of Western society and the richness of its culture. The first significant voices in favour of social reform, both civil and ecclesiastical, emerged from the monastery of Cluny, especially through the authoritative preaching of its second Abbot Odo (927-942). It was he, not Voltaire, who came up with the damning statement that “the banquets of the powerful are cooked in the sweat of the poor.”⁹

The gradual secularization of Western Christendom involved first the loss of Christian unity, which was itself due not to secularism but to the violence of religious passion and the conflict of rival doctrines, followed by the rise of nationalism and the nation-state in western Europe. Secondly, it involved the abdication by Christians of their responsibilities with regard to certain fields of social activity, so that we may say that the Anglo-Saxon world in the nineteenth century was still a Christian society, but a Christian society that had diverted its energies to the pursuit of wealth. And finally it involved a loss of belief, which was to a certain extent involuntary and inevitable, since the stability of faith had already been undermined by the two above-mentioned processes.

In other words, the first process destroyed the unity of Christendom by religious and national divisions, and the second one has confined the Christian way of life to the sphere of individual conduct and allowed the outer world of society and politics to go its own way; then, with the loss of faith, it was found that the average person would accept the external social order as the objective standard of reality and regard the inner world of faith and religion as subjective, unreal, and illusory.¹⁰

When religion is edited out of a culture *everything* becomes permitted. This is especially true not only of social marginalization where the unemployed, the poor and the destitute are considered as nothing more than an eyesore from which we should be shielded, but also of the road taken by scientific research in the realm of in-vitro fertilization, cloning and stem-cell research. The initial arguments all adopt the same tactic and follow the same pattern of tugging at heartstrings. In-vitro fertilization gives hope to married couples who are childless, cloning opens vast possibilities in order to feed millions of hungry people worldwide, while stem-cell research using human embryos could help cure crippling conditions such as cancer, Alzheimer’s, motor-neuron diseases, and so forth. There is never any talk about how much pharmaceutical companies stand to gain by all of this, nor of the ultimate objectives of those funding such projects. One could permit such research with legislation that clearly defined the bounds within which it was to take place. However, even stringent restrictions would be pointless. Within a few years these same restrictions would be written off as obscurantist and would be systematically dispensed with altogether. In other words if you leave the front door of your home ajar, you might as well have left it

⁹ The full text reads as follows:

You only have to study the books of antiquity to see that the most powerful are always the worst. Wordly nobility is due not to nature but to pride and ambition. If we judged by realities we should give honour not to the rich for the fine clothes they wear but to the poor who are the makers of such things, for the banquets of the powerful are cooked in the sweat of the poor.

Odo of Cluny *Collationes*, III. 26-30.

¹⁰ See Christopher Dawson, *The Historic Reality of Christian Culture*, Harper and Brothers, New York 1960, p.19.

wide open. In-vitro fertilization, cloning and stem-cell research have ultimately reduced the human being to a commodity. Consequently, our brave new world could well be transformed into a *brave new nightmare* just as Aldous Huxley had predicted. Mary Shelley's *Frankenstein* need not remain a classic gothic novel; it was also a parable. Today it could well become a reality.

During the past century, especially, the possibilities available to humanity for dominion over this world (and beyond) have increased in a manner that is truly unimaginable. But the very fact of the existence of such human power also unleashes demonic possibilities for self-destruction. At this point one might also mention the threat of terrorism, this new war without national borders and without the conventional use of national armies. The fear that terrorists may get hold of nuclear and biological weapons has induced some states to legislate in a way to be attributed up to twenty years ago solely to totalitarian regimes. The moral philosopher Sir Jonathan Sacks put this situation succinctly in the following damning statement:

We might well feel that the whole thrust of the scientific imagination when applied to human culture was not so much to elevate man to the status of a god, but to reduce him to the quintessence of dust and brand all else an illusion. If so, we would have had our first intimation that what seemed so liberating about a post-religious age might be no more than a narrowing of human possibilities.¹¹

Contemporary man is in search of salvation (not exclusively in the religious sense).¹² He is in search of his own freedom... and sometimes of freedom from himself.

Religion and Civilization

A society in decline has its own prophets of doom, but also its prophets of revival. It might create a cultural vacuum but it might also foster small dynamic cells seeking a new meaning for human existence and purpose for humanity.¹³ Sooner or later there must be a revival of culture and a reorganization of the spiritual life. If our increased control over the environment and our greater material resources are simply devoted to the quantitative multiplication of our material needs and satisfactions, our societies are doomed to end in a

¹¹ Jonathan Sacks, *op. cit.*, p. 31. Already back in 1982 Jean-Marie Lustiger, then Cardinal Archbishop of Paris had spoken the following equally prophetic words during a speech he delivered at the École Polytechnique in Paris:

While Western Civilization was achieving the goals it had determined, pretending or naively thinking that in such a manner it brought happiness to all and a reasonable way of life in justice, right, and equity, in appeared in fact that this triumphant human reason begat its very opposite. Technical progress does undoubtedly bring a better mastery of the world, but also the capacity to destroy it. Economical progress offers a better possibility to fulfill the needs of people, but at the same time it exacerbates the desire of some and increases everybody's sensitivity to the problem of injustice. Mastery over the human body increases the ability to cure or control biological mechanisms, but at the same time robs persons of any norm of behaviour toward their body or the bodies of others: the maddest dreams of the Auschwitz physicians have now become subjects of studies and banal experimentation in some medical laboratories.

Jean-Marie Cardinal Lustiger, *Dare to Believe*, St. Paul Publications, Middlegreen 1986, p. 112.

¹² Edward Schillebeeckx refers to salvation as "the conquest of all human, personal and social alienations; salvation is man's wholeness, his world and his history." Edward Schillebeeckx, *CHRIST - The Christian Experience in the Modern World*, SCM Press, London 1980, p. 814.

¹³ This concept was first introduced by Alasdair McIntyre in his seminal work *After Virtue* and adopted by Sir Jonathan Sacks in his book *The Persistence of Faith*. It later surfaces, albeit with a Christian interpretation in a European context in the works of Cardinal Joseph Ratzinger (today Pope Benedict XVI) especially in the book which he co-authored with Marcello Pera, *Without Roots*.

morass of collective self-indulgence, and that is precisely what is taking place around us. However, as Arnold Toynbee had pointed out in his judicious assessment of history; the decline of a society sows the seeds of a truly spiritual rebirth.¹⁴

Human history undergoes a systematic pattern of ascent, decline, decadence, lethargy and alienation. Most western societies are, indeed, weary societies. Many of its citizens lack the strength to continue posing the two most fundamental questions in life: “Who am I?” and “What is my purpose in life?” It is only by having a clear vision of one’s proper identity and purpose that one can begin to look forward towards building a better future.

As the then Cardinal Joseph Ratzinger has pointed out, “we are living in a period of great dangers and of great opportunities both for man and for the world, a period that also imposes a great responsibility on us all.”¹⁵ Today we also happen to live in a multi-religious society that is constantly confronting and challenging the hitherto uncontested dogmas of our secularist culture. We are just beginning to realize that economic, scientific, and technological progress are not enough to build a healthy society. When progress in these areas becomes an end in itself, human dignity is the first to suffer the dire consequences.

Religion has a right to a voice in the public domain without its being dismissed out of hand or its teachings being ridiculed as out of touch with the demands of modern society. Such an attitude could be as obscurantist as that of a theocracy. Fundamentalism need not be simply religious, it could also be secular.

Religion’s special power lies in creating communities. It teaches us those ideals for which we should strive for the benefit of all. It teaches us how to construct and direct human

¹⁴ Arnold Toynbee explains this phenomenon with expert precision in the following words:

... since the rise of the higher religions, Man’s never-ceasing spiritual quest has not been fruitless. It has borne out Aeschylus’s dictum that ‘suffering is the key to learning’. During the age of human history that the rise of the higher religions has inaugurated, recurrent mundane catastrophes have been the occasions for successive spiritual advances.

The inverse variation of Man’s secular and religious fortunes is illustrated by the history of Judaism. The age that saw the destruction of the Kingdoms of Israel and Judah was also the age of the Prophets. The deportation of the leaders of the Jewish community to Babylonia saw the creation, in exile of a Judaism, associated with a new institution, the synagogue, which has superseded the earlier form of Jewish religion that was bound up with a ritual that could be performed only in the Temple at Jerusalem. The destruction of the Temple in AD 70 gave occasion for Johanan ben Zakkai to endow Judaism with a form that it still retains today.

The same pattern of relations between the religious and the secular sides of human life is also illustrated by the history of the three missionary higher religions. Christianity and Islam both sprang from a ‘culture compost’ that had been produced by the intermingling of the debris of the disintegrated Syriac and Hellenic Civilization. The Buddha attained his enlightenment, and imparted his spiritual discovery to his disciples in an age in which his and their ancestral Indic civilization was falling into a time of troubles.

The ‘sorrowful round’ of the recurrent vicissitudes of civilization has carried the higher religions forward in a spiritual movement that has been, not cyclical, but progressive. If we ask ourselves why the descending movement in the revolution of the wheel of civilization has carried the chariot of religion forward and upward, we shall find our answer in the truth that religion is a spiritual activity; for spiritual progress is governed by the law proclaimed by Aeschylus in the words already cited, and by the author of the Epistle to the Hebrews in the verse: ‘Whom the Lord loveth he chasteneth, and scourgeth every son whom he receiveth.

Arnold Toynbee, *A Study of History*, Thames and Hudson Ltd, London 1972, p. 350.

¹⁵ Joseph Ratzinger, *Christianity and the Crisis of Cultures*, Ignatius Press, San Francisco 2006, p. 25.

relations from an attitude of utility to one of love, truth, justice and respect that serve the common good of society.¹⁶

Religion teaches its members to be good and loyal citizens in this world in order to pave the way for the next. The famous dictum, “ask not what your country can do for you; ask what you can do for your country”¹⁷ is as much a religious statement as it is a political one.

Every religion draws its strength not only from the doctrines and moral principles that it teaches, but also from the families it helps nurture, preserve, protect, and defend. Without a strong family structure we cannot hope to promote human rights and dignity, still less build a healthy society where rights are balanced by duties and freedom is tempered by responsibility. The family is the matrix of individuality. In the bonds of mutual love and fidelity that are forged within it we discover a highly differentiated sense of who we are. It is therefore not surprising that totalitarian regimes, both on the right and on the left of the political spectrum, have always sought to wrest authority over children from their parents. The family is as much a religious institution as it is a social one, perhaps even more so.

Although religion and the secular state are distinct domains, both have the duty to collaborate towards a more human and a more caring society. A rediscovery of religion would go a long way towards healing our fragmented societies. As Jonathan Sacks rightly points out:

Religions are the structures of our common life. In their symbols and ceremonies, the lonely finds communion with others who share a past and a future and a commitment to both. In their visions we discover the worth of unself-interested action, and find, in the haunting words of the Rabbi of Kotzk, that God exists wherever we let him in.¹⁸

It is true that religion today has become a battleground for diverse understandings of the human person, God, this earth, and the relation between the three. But even underneath these conflicts we are witnessing a common endeavour, which indicates a spiritual hunger that cannot be eliminated from society. We see these forces reappearing, or better resurfacing, in those countries where, for several generations, powerful counter-forces attempted to suppress them. These are indications that we are not living and can never live in a totally secularized culture; on the contrary, a new form of religious culture is evolving. Once again religion is having a renewed influence on societal issues, and this role will continue to expand.

However, in spite of our efforts and our talents we must accept the fact that the final results of our action will necessarily reveal a certain degree of failure, whether on the level of our own, personal action or, on the collective level, on the scale of civilization. Our endeavour

¹⁶ See *Gaudium et Spes*, 26.

¹⁷ As is well known, this phrase has been taken from John F. Kennedy’s inaugural address in January 1961. However it was originally coined by Gibran Khalil Gibran in his work *The New Frontier*, published in 1925, in which he wrote the following:

Are you a politician asking what your country can do for you or are you a zealous one asking what you can do for your country? If you are the first, then you are a parasite; if you are the second, then you are an oasis in the desert.

See <http://4umi.com/gibran/frontier/>

¹⁸ Jonathan Sacks, *op. cit.*, p. 93.

will always fall short of our expectations. Such failure always is a painful reminder of human frailty, all the more deeply felt by someone who looks at the supernatural dimension of reality. But this should not lead us to despair. Our hope lies beyond. Our structures and institutions will always be ambiguous and imperfect, our civilizations condemned to decline and die. But fulfillment does not lie in the accomplishment of the ordering of the secular city. On the contrary we should always keep in mind that true history, one which has meaning, is not accomplished within a space-time framework that can be empirically observed.¹⁹

Forty years ago radical theologians took perverse pleasure in proclaiming the death of God; today a serious and considered approach would bring us to the conclusion that in the human search for transcendence we have just begun to take our first steps.

¹⁹ H.I. Marrou, *Time and Timeless*, translated by Violet Nevile, Sheed & Ward, New York 1969, p. 177f. This concept had already been highlighted by St. Augustine (354-430) in his masterpiece *De civitate Dei*.

MY BROTHER'S KEEPER - THE GENESIS AND ETHICAL BASIS OF CONSUMER LAW (NOTES FROM A MALTESE PERSPECTIVE)¹

DAVID FABRI

“Justice and the interests of society are furthered when the law to some extent ranges itself upon the side of the party who for some reason or another is unable properly to safeguard his own interests.”²

Consumer Law - An Introduction and a Tentative Definition

Consumer law may be loosely described as the various laws and regulations which through private and public law mechanisms provide some safeguards to ordinary consumers in their daily transactions and relationships with traders. Consumer protection legislation seeks to prevent the abuse and exploitation of consumers, viewed as the weaker party in the business transaction. This objective necessarily implies that consumer legislation also regulates certain aspects of business practices and commercial conduct. It guards against unjustified enrichment through unacceptable and unfair trading practices. Directly or indirectly, consumer legislation establishes minimum standards of conduct which business operators have to respect in their relationship with their customers.

The White Paper, *Rights for the Consumer*³, published in August 1991 proposed this tentative description: “Consumer law is...another convenient term that embodies all those various laws and regulations that deal directly with the consumer’s legal rights and remedies.”,⁴ later adding: “The law must concentrate on the prevention of malpractices, of economic and physical harm to consumers.”⁵

¹ This paper is a very selective interpretation and does not claim to be a comprehensive study of any of the subjects under review.

² Havinghurst, *The Nature of Contract*, Evanston, 1961.

³ Government of Malta, Department of Information, 1991.

⁴ Para 12.

⁵ Para 148.

Consumers have often found their weaker bargaining power and lack of information exploited by traders who are more skilful, knowledgeable and sometimes unscrupulous. Consumer protection is therefore unavoidably founded on an ethical concern that the superior knowledge and political and economic power of business may be used to exploit consumers, usually less knowledgeable, prepared and organized. Consumer protection can make little sense in the absence of an underpinning philosophical justification which recognizes that consumers may in certain instances merit special legal safeguards because in transactions with business they have less bargaining power, knowledge and skills. Here law and ethics share the same concern to avoid exploitation and to ensure that consumers obtain fair value and are not cheated.⁶

Legal developments in the field of consumer protection may be an excellent place to explore how the proper and ethical use of law can promote the general good, ensure justice and improve the lives of ordinary people in a tangible manner.

A Bit of Interesting History - Tables, Codes and Kings

Law is a marvellous human achievement; evidence - if any was needed - that man is capable of greatness. This paper attempts to place the recent phenomenon of consumer law within the context of what may be described as the civilizing influence and potential of law.⁷ The idea of law is often taken for granted, as if it has always been there in the form now familiar to us.

Law is also an ancient phenomenon. At the Louvre Museum in Paris stands a remarkable and huge black basalt rock on which considerable Babylonian ancient text is inscribed. The Hammurabi Code was adopted in 1700 BC (making it hundreds of years older than the Ten Commandments) and was a massive legislative achievement for its time. It deserves a special mention in this paper due to King Hammurabi's magnificent exhortation to his subjects. It is worth recalling:

*".. let the oppressed, who have case at law, come to stand before this my image as king of righteousness; let him read the inscription, and understand my precious words: the inscription will explain his case to him; he will find out what is just, and his heart will be glad..."*⁸

Much later, between 451 and 450 BC, Twelve Tables were inscribed on bronze plates and placed in the Roman forum. For the first time, Roman law was taken away from the monopoly of the patrician-priest class, put in writing and displayed for all to see. In that way, law and its interpretation and application became less arbitrary.⁹ Like the Hammurabi

⁶ The Molony Report 1962 (Chapter 2, para 21) reported to the UK Parliament that " 'Consumer protection' is an amorphous conception that cannot be defined.", but then went on to say that "From another viewpoint, 'consumer protection' may be regarded as those measures which contribute.....to the consumer's assurance that he will buy goods of suitable quality appropriate to his purpose; that they will give him reasonable use, and that if he has just complaint there will be a means of redress."

⁷ History also shows that, in the wrong hands, law can become an instrument of oppression, but this paper will not delve into that aspect.

⁸ Trans L.W King, 1910, © Richard Hooker.

⁹ This raises the problem of illiteracy and the need to improve educational facilities to enable more people to read.

Code before it, the Twelve Tables did not contain any consumer protection provisions. Despite adopting a still primitive approach, particularly to matters of crime and punishment,¹⁰ and applying the *lex talionis*, both efforts constituted significant progressive legal reforms of the highest order. They are part of the history of law as we now know it. A common objective lay behind these landmark endeavours, and once again King Hammurabi's own description is very eloquent:

“to bring about the rule of righteousness in the land, to destroy the wicked and the evil-doers; so that the strong will not harm the weak...”

These words set the scene for the next part of this paper. After briefly exploring the basic principles and objectives of consumer law and placing them within a historical context, this paper can now proceed to trace business-related messages and ethical warnings in the Old and New Testaments and in selected Roman writings and legislation.¹¹

Genesis - Things Start Badly, then Get Worse

Genesis may seem an unlikely place in an investigation covering law and consumer protection. According to the biblical texts, we are the imperfect descendants of imperfect first humans. Genesis describes how left to his own devices to enjoy a paradise on earth, original man could not contain his acquisitive nature and soon tried to outsmart his trusting Master and Creator. He broke the one rule given to him. The first humans, we are told, used inside information to try to outwit their Creator. Adam and Eve did not play by the rules, but with Cain, things degenerated even more dramatically. Despite God's warning, Cain revealed a violent streak and commits the first murder. His victim was Abel, a meek person and also Cain's own younger brother. He was no stranger or intruder. Being his older brother, Cain was his keeper. If out of a fit of jealousy, Cain could murder his decent younger brother, what would he, now exposed as a resourceful and dangerous creature, not do to complete strangers?¹²

Man's guilt and consequent exile from Eden constituted a very bad advert for self-regulation and voluntary standards. It symbolized the dangerous new world where people are henceforth obliged to look over their shoulders. If people were to live together and cooperate in communities and engage in various forms of relationships and transactions, some new effective device was required to guide human conduct and to restrain excesses. Persons can only live together in some harmony as a community if they share some

¹⁰ The Code introduced by the Greek king Draco in 621 BC outdid them both by severely extending the death penalty to many minor crimes. The law was eventually revised (and tempered) by the great Solon who in 550 BC introduced many reforms in favour of the poor against the depredations of the rich. Solon's laws were placed for public viewing on boards.

¹¹ This approach is justified on the grounds that the Christian religion has traditionally represented a significant moral benchmark against which our personal conduct is tested. Consumer law is not based on a religious text or preference but clearly it tries to clarify what is to be considered as fair and honest and acceptable business practices on the one side, as against unfair, dishonest and unacceptable business practices on the other. Roman law is relevant as it has been the main source of our civil law and has for centuries served as a useful intellectual reference point in the interpretation and application of law.

¹² The performance of the serpent itself seems to anticipate the often seedy and manipulative manner in which some persons will conduct themselves in the future, especially in business and politics.

common platform of values. Accordingly, it is suggested, law is most effective when it succeeds in reflecting these shared values. In the Genesis narratives, God intervened directly to restore order, mete out a divine form of justice and punish the guilty. But this was not a practical or sustainable way forward. So an idea of law was eventually conceived and lines started being drawn between unacceptable and acceptable behaviour and activities and to preserve a minimum of public order and predictability, discouraging inclinations towards use of force, exploitation and arbitrariness. This is a function that the law was good at. But it involved a long process.

The Old Testament - Stern Warnings and a Fig-Growing Prophet

It comes as no surprise that the Bible does not lay down a comprehensive code of business conduct. Through a number of often disjointed but clear statements on the subject, the Bible seems to convey an overall negative attitude towards trade and traders. There is even evidence, in some places, of contempt for merchants who enrich themselves through ambiguous trade practices. The broad moral message is that business should be carried out honestly and that cheating is unacceptable, that excessive profit should not be sought, that the poor and weak should not be exploited. Interesting ethical statements may be traced to the Old Testament and this paper will focus on certain rules and warnings in various books including Deuteronomy, Proverbs, Leviticus and Amos. In their own way and to different degrees, these books examine certain aspects of business ethics.

In various places, the Bible condemns the imposing of interest charges on loans made to persons in difficulty,¹³ of charging exorbitant prices,¹⁴ of generally mistreating and exploiting the weakness of debtors, of exploiting the poor, widows, orphans and strangers.¹⁵ Leviticus contains a whole section dedicated to the obligation to care for the poor and for strangers, with the order *“Do not take advantage of them by charging any kind of interest or selling them food for profit...So obey me, and don’t be cruel to the poor.”*¹⁶

One of the Ten Commandments¹⁷ ordered *“Thou shalt not steal”*, which may be interpreted as prohibiting all forms of financial cheating, fraud and misappropriation, as well as charging excessive profits and interests. Indeed, in Leviticus 19, we find a more extensive re-statement of this command: *“Do not steal or tell lies or cheat others.....Do not steal anything or cheat anyone.....Use honest scales and don’t cheat when you weigh or measure anything.”* Similar concerns are found in Proverbs 20 where again God twice expresses his *“hate”* for dishonest scales and measures while adding that *“Cheating to get rich is a foolish dream and no less than suicide”* and again *“Don’t take advantage of the poor.....and what you do to them, He will do to you.”*¹⁸

In Ezekiel 45.10-12, God actually establishes standard weights and measures in some detail and orders *“So from now on, you must use honest weights and measures”*.¹⁹ In various

¹³ Proverbs 22.7 : *“The poor are ruled by the rich, and those who borrow are slaves of moneylenders.”*

¹⁴ Proverbs 11.26: *“Charge too much for grain, and you shall be cursed; sell it at a fair price.”*

¹⁵ See generally Exodus 22.21 to 23.9 and Proverbs 19 to 22.

¹⁶ Leviticus 25.35-43.

¹⁷ c. 1300 BC. See Exodus 20 and Deuteronomy 5.

¹⁸ Proverbs 22.22.

¹⁹ See also Micah 6.6 *“...I, the Lord, will punish you for cheating with weights and with measures.”*

books in the Old Testament, written in different historical periods, one finds this stern unambiguous condemnation against the use of dodgy weights and measures. This sharp practice must have been rampant in the largely agricultural society to which it was addressed, causing much distress especially to the needy.²⁰

The short but impressive Book of Amos is a fine text with which to conclude this look at the Old Testament. Amos was a reluctant part-time prophet who preferred to work as a shepherd and grow sycamore fig trees.²¹ Born around 750 BC, he was clearly a very clever and perceptive man living at a time when the divide between rich and poor had greatly widened. His warnings are direct and straightforward, particularly when he condemns the rich and powerful merchants for living in luxury while exploiting the poor and reducing them to slavery. In Amos 8.4-6, we find this endearing prophet condemning various business practices exercised by the merchants of his day. His powerful and beautifully phrased statement, effectively encapsulating all the bad things in business that the Bible condemned, deserves to be quoted in full:

*You people crush those in need
and wipe out the poor.
You say to yourselves,
"How much longer before the end
of the New Moon Festival?
When will the Sabbath be over?
Our wheat is ready,
and we want to sell it now.
We can't wait to cheat
and charge high prices
for the grain we sell.
We will use dishonest scales
and mix dust in the grain.
Those who are needy and poor
don't have any money.
We will make them our slaves
for the price
of a pair of sandals."*

The New Testament - Lynch Mobs and a Soothsaying Slave-Girl

As recorded in the New Testament, Christ always kept himself focussed on the needs and concerns of the poor, the meek and the down-trodden. The Sermon on the Mount²² is a remarkable expression of his identification with the under-privileged classes. He also

²⁰ These instruments were essential for establishing the correct price based on manual calculation of quantity, measurement and weight for the purpose of sale and bartering deals especially with regard to farming produce. Today, in an ironic twist, the authorities seem to be looking the other way and are taking no action to enforce the law. The 1910 Weights and Measures Ordinance was recently replaced by a new more sophisticated Metrology Act that had been kept in abeyance and ignored for almost five years.

²¹ Amos 7.14.

²² Matthew 5-7.

remarked how difficult it would be for rich men to match up to his ethical standards or to enter Heaven.

Although Christ has unfortunately been traditionally pictured as a rather bland ethereal person,²³ the Gospels tell of a truly remarkable incident where an outraged Christ passionately whips away the sellers of oxen, doves and the money-changers from the Jerusalem Temple entrance. These were conducting business deals and reaping exorbitant profits from pilgrims who in their thousands were visiting the Temple for the Passover.²⁴

Another revealing incident is recorded by St Luke.²⁵ He narrates how St Paul was chased by a rioting mob enraged at his sermons against the goddess Artemis whose temple adorned the great city of Ephesus. The silversmiths of that great city got together and chased St Paul away from their city under threats of physical violence. They feared his sermons would prejudice their profitable sales of silver statues of the goddess to pilgrims and tourists.²⁶

St Luke narrates another nasty incident involving a very peculiar business venture.²⁷ In Philippi, St Paul²⁸ was beaten up and whipped by the authorities and made to spend the night in prison after he had cured a slave-girl who, being possessed by an evil spirit, used to foretell the future. The owners who had been reaping profits out of their slave girl's prophecies were very upset that this meddling foreign preacher had destroyed their lucrative enterprise.

Collectively, these incidents reveal a rather negative opinion of traders; indeed again contempt is shown towards certain types of commerce and profit-making. Businessmen do not look good here, whether they are making money from a slave girl in Philippi, selling small silver statues to tourists in Ephesus or offering unattractive foreign exchange deals to weary pilgrims in Jerusalem.

The Gospels are not neutral and one cannot doubt which side they are on. Despite the teaching in other contexts that God has no favourites, the poor, the weak and the meek are the apple of his eye.²⁹

²³ A depiction which ignores his determined character, charismatic leadership and the uncompromising forcefulness of his message.

²⁴ Matthew 21: 12 – 13; John 2: 13 – 16.

²⁵ Acts 19.24-41.

²⁶ The rioting silversmiths of Ephesus are interesting for another reason. They were quite capable of organizing themselves into, in modern terminology, an effective lobby and, with the help of the local authorities, succeeded in chasing the meddling preacher from their territory, thereby safeguarding their lucrative merchandizing of religious articles. Demetrius had incited his fellow silversmiths and workers in these terms: "*Friends, you know we make a good living at this...this man Paul is upsetting a lot of people... everybody will start saying terrible things about our business.*" (Acts 19.24).

²⁷ Acts 16. 16-22.

²⁸ In this series of unfortunate events, St Paul was accompanied by Silas.

²⁹ The Gospels also show favour towards "*the sick, blind, lame and crippled*", as in John 5.4. St Paul reports what St James and St Peter told him after the Council of Jerusalem, "*They asked only one thing, that we remember the poor, which was actually what I was eager to do.*" (Gal. 2.10) Was this just another exhortation to collect charity for the poor in Jerusalem, or was it also a friendly but pointed reminder to keep his mission focussed on the poor and the under-privileged? A final parting plea, perhaps, to their adventurous colleague, to resist the temptation of adjusting Christ's radical teachings to accommodate the wealthy new converts in different exotic cities he was visiting.

The rich merchants and the powerful are instead suspect, seen as corrupt persons who exploit the poor and steal from widows and orphans.

Roman Law - The Great Cicero and a Good Warranty

Roman law was another huge legal achievement. It was built and refined over many centuries. The Roman law of sale was highly developed and many of the principles and concepts are still found in civil law jurisdictions, like Malta. Not surprisingly, the Roman jurists did not advance to the point of recognizing the figure of the consumer; but they did identify who was starting to enjoy the upper hand in the market place. Accordingly, “*Caveat emptor!*”, shoppers were warned.

Roman law did not develop sufficiently as to arrive at a conceptual distinction between private and non-private purchasers, which is an essential feature in modern consumer law. The Code Napoleon, another remarkable legislative and codifying achievement and much inspired by Roman law, also failed to make this distinction, although it is known that the issue had started being eagerly discussed by some French jurists commenting on the law of sale in the new Code.

Neither Roman law nor the Code Napoleon regulated the phenomenon of pre-formulated standard contracts. The Industrial Revolution allowed more mass produced goods to be produced for a mass market of consumers. Mass produced goods led to the standardization of contracts and to excesses in contractual and information inequalities. Standard form contracts excluded purchasers from participating in the drawing up of the contract, whose terms were unfavourably loaded against consumers.³⁰

Our Civil Code still does not provide general rules for the regulation of standard form contracts. Nor does it distinguish between private and commercial (or professional) buyers and sellers for the purposes of the law of sale, and it simply places weak and strong parties in contractual relationships on the same plane. The role of consumer law has in part been to step in to remedy these deficiencies.

What is of interest to modern consumers is that the ancient Roman law warranty against latent defects has survived to this day in our Civil Code. It all started with the *curule aediles*, who as magistrates or superintendents of the markets in Rome, were instrumental in the introduction and development of new legal safeguards in favour of buyers when goods bought proved defective.³¹ The warranty provided an automatic guarantee to purchasers against hidden defects in items they purchased. Our Civil Code, following Roman law, distinguishes between sellers in good faith and sellers in bad faith. The latter are also responsible for damages caused by the defect.³²

³⁰ This inequality of arms and abuse of the contractual process was only remedied in Maltese legislation by the recent transposition of the European Union Directive on unfair terms in consumer contracts. Council Directive 93/13/EEC of 5 April 1993 was transposed by Part VI of the Consumer Affairs Act in 2000.

³¹ Nicholas B, *An Introduction to Roman Law*, 3rd Edit, Clarendon, p 5, 181 -182.

³² Articles 1424 - 1432 of the Civil Code.

The great orator and writer Cicero was very evidently keen on this subject and in his *On Duties: Is honesty always necessary?*, he poses this question:

*“And then, if a man knows that the wine he sells is going bad, ought he to disclose the fact? Diogenes says he need not; Antipater thinks that an honest man should. The Stoics discuss problems of this kind like disputed points of law. Again, ‘when you are selling a slave ought his defects to be declared - not only those which there is a legal obligation to declare (otherwise the transaction is liable to be cancelled), but also the fact that he is a liar or gambler or thief or inebriate?’ One of the philosophers maintains that you ought to declare such facts, the other says you need not.”*³³

Cicero also discloses a case of fraudulent sale where a respected Roman gentleman, Gaius Canius, was conned by a Syracusan banker named Pythius into buying an expensive property in Syracuse following an elaborately staged piece of trickery.³⁴

These legal-ethical debates are still valid today. Maltese courts have had to determine hundreds of claims by purchasers under this warranty. While far from a perfect and comprehensive remedy, it has guaranteed a measure of protection to buyers who discover hidden defects in acquired goods. Indeed, this warranty remains probably the private law institute most popular with Maltese consumers.

What may not be so well known is that Cicero spent one year, 69 BC, as a *curule aedile*. This was an elected post and the holder held the post for one year. Cicero and other great jurists like Ulpian³⁵ were accustomed to reflect on the nature of law in words which, to our more cynical twenty-first century ears, sound almost poetic and idealistic. It would be fitting to conclude this unduly brief reference to the Romans and their achievements, by quoting some of the opening words from Justinian’s Digest.³⁶ This famous text starts with a discussion by Ulpian on the nature of law. He quotes these words from Celsus, very relevant to the topic of this paper:

*“...the law is the art of the good and the fair and ...we (jurists) cultivate the virtue of justice and claim awareness of what is good and fair, discriminating between fair and unfair...”*³⁷

Few have ever expressed it so well.

³³ Cicero - Selected Works, trans M Grant, p 192-5, Penguin Classics, 1960, p 168. This extract also serves to recall that, at this stage, slaves were treated at law as mere things, like animals. The civilizing reform which led to the abolition of slavery came much later. In Malta, slavery was only abolished following the arrival of Napoleon in 1798.

³⁴ Cicero: *Selected Works, On Duties*, p180. Cicero describes Pythius as “*ill-intentioned, faithless and dishonest.*”

³⁵ Both Ulpian and Cicero were assassinated, in different times and circumstances, mainly for things that they had said and written.

³⁶ Book 1, Justice and the Law.

³⁷ *ibid.*

The Law, Freedom of Contract and the Consumer

The Maltese legal system sets out several instances where the law intervenes to prevent the exploitation of the weak by the strong. Through company law, the law has protected the legitimate rights of investors and minority shareholders against possible abuse and oppression by company directors and majority shareholders. The Malta Financial Services Authority Act³⁸ has set up special structures and safeguards for private consumers of financial services³⁹. Employment law has shielded ordinary workers against possible abuse by their employers with their greater economic and bargaining power.

In the Civil Code, the law of obligations makes several references to good faith, and persons in bad faith are not looked upon favourably by the law; and this is how it should be. Article 993 stipulates that contracts should be executed in good faith, while article 985 invalidates contracts relating to “*things...which are contrary to morals*”. Contract law also grants protection to minors⁴⁰ and to persons whose good faith has been abused by fraud or by physical or moral violence.⁴¹

Shipping matters are hardly of consumer interest. Yet, the Merchant Shipping Act⁴² may add a useful contribution to the present discussion. Articles 342 to 345, which regulate salvage, intervene to prevent the possible illegitimate abuse by a salvor of the desperate situation of a vessel owner in distress. The law allows the court to rescind or modify a salvage agreement if it considers the terms are “*disproportionate*”, had been “*agreed upon under the influence of danger..*” and are “*not equitable*” or are “*vitiated by fraud or concealment*”.

These cases seem to adequately show that both law and morality, in their own way, require that the vulnerable members of society or the weaker party to a transaction, may merit special attention. In such instances, freedom of contract may have to give way in the best interests of justice. Similarly, consumer legislation has deemed it sound that small private consumers should be able to benefit from special rules to protect them from exorbitant prices and fraudulent and misleading trading practices and to ensure they obtain fair value and a reasonably good deal.

The real problem was not lost on the Molony Committee which commented:

*“We have not overlooked the consideration that it is the least intelligent and discerning shopper who is the one most likely to be victimized.; and that such a person may not perceive that he has given good money for bad goods. Or if he does, may not be capable of making effective complaint in any direction.”*⁴³

The law favours the weaker party in the transaction and in fact gives protection primarily to the private consumer. The non-private consumer may avail himself of the general protection

³⁸ Chapter 330 of the Laws of Malta.

³⁹ See in particular articles 4 and 20.

⁴⁰ Articles 967 to 970.

⁴¹ Articles 974 to 981.

⁴² Chapter 234 of the Laws of Malta.

⁴³ Para 15, p 6.

and rights arising under the Civil Code. The exclusion of the non-private consumer from the protection of the legislation has itself an ethical basis. Consumer laws require administrative structures for their proper implementation. As their resources and capabilities are inevitably scarce, they need to be harnessed primarily to protect the weak and less prepared consumers. The risk of spreading scarce resources too thinly by extending precious time and attention also to the needs of non-private consumers should not be underestimated. Professional persons and businessmen can reasonably be expected to be able to fend for themselves, out of their own resources. Allocating scarce public administration resources to non-private investors would not be proper as consequently less would be available to the categories of consumers who really require assistance.

Prior to 1994, the only two consumer protection laws available regulated doorstep contracts and trade descriptions. The Trade Descriptions Act 1986, though notorious for its ineffectiveness over the years, sought to protect consumers from the false and misleading description of goods and services offered in the course of trade. Traders who describe their goods and services falsely may be subject to criminal prosecution. The Act also prohibits the offering of false or misleading bargains or gift offers. The Doorstep Contracts Act of 1987 was intended to introduce some order and equity to doorstep contracts at a time when abuse of lesser educated customers had become a matter of public concern. The law protected consumers from salesmen who appeared out of nowhere to badger and harass them into buying goods which were often useless and too expensive and which the purchaser did not really need or understand and in many cases could hardly afford.

One of the first documents to deal with Maltese consumer legislation, the White Paper, *Rights for the Consumer*, contained this statement:

“The law must accommodate new principles which safeguard the consumer and which redress the imbalance existing between the individual consumer and manufacturers, suppliers and other traders. It must guarantee adequate remedy to an injured user of a defective product and punish fraudulent tradesmen; but more importantly it must increase the sense of responsibility.....of the manufacturer, the supplier and other traders who provide services to consumers, and reduce the risk of defective products, accidents, contractual injustices or basic poor value for money. The law must concentrate on the prevention of malpractices, of economic and physical harm to consumers.”⁴⁴

Since 1991, the law has been reformed beyond recognition as a result of the combined efforts of locally-made law, primarily the Consumer Affairs Act adopted in 1994,⁴⁵ and the transposition of the EU consumer protection *acquis*, mostly between 2000 and 2002.

Consumer law is also founded on the observation that traders are usually well-organized and are often well represented at all level of political discussions and lobbying, whereas consumers are weak and disorganized, demonstrated by the slow and often inconspicuous existence of our single Consumers Union. Through the structures established by the Consumer Affairs Act, the law has intervened to try to give a voice to consumers in an

⁴⁴ See no. 3, para 148.

⁴⁵ Chapter 378, Laws of Malta.

attempt to balance the superior armoury and political clout of the trading sectors. This concern is stated specifically in the 1993 White Paper, *Fair Trading: the next step forward...*,⁴⁶ when it explains the suggested role of the new Consumer Affairs Council:

*“The Council shall therefore be in a position to represent the consumer’s point of view at high national levels. As active spokesman for the consumer, it shall be expected to act as the instigator of future developments and improvements in consumer legislation.”*⁴⁷

Consumer law may also be considered an integral part of commercial law. Establishing the rules, restrictions and parameters under which traders have to operate their relationship particularly with retail customers, consumer law regulates trading practices in the same way as the Commercial Code. Regrettably, and perhaps also amazingly, two major Codes of private law to this day fail to recognise or offer a minimal reference to consumers’ rights or to traders’ obligations to consumers. This failure undermines any claim that the two Codes still adequately reflect modern day business realities.

Ethical Concepts and Terminology in the Consumer Affairs Act 1994

Ethical concepts and terminology are intrinsic to local consumer law. Our consumer law, largely introduced during these past fifteen years, is replete with terms that would fit comfortably in an ethics discussion; concepts like fairness and equity, like assuring compensation to persons injured by defective products and the broad underlying aim of avoiding the exploitation of the weak by the strong. The concept of the private consumer, the ordinary buyer, is now part of our law. Several aspects of the Consumer Affairs Act directly reflect ethical values. Nowhere is this perhaps clearer than in the novel and welcome list of consumer rights,⁴⁸ in the regulation of unfair trade practices and contract terms⁴⁹ and in the EU-inspired product liability rules.⁵⁰

Below are but a few examples of ethical terms and concepts one finds in the 1994 Act. For manageability purposes, this exercise is restricted to the original version of the Act which came into force in January 1996.

⁴⁶ Government of Malta, Department of Information, November 1993, p 10.

⁴⁷ Despite these promising words, the Council has proved a very silent and ineffective spokesman; but that is another story. Ethics do not and cannot dictate what administrative structures, if any, government should set up to safeguard consumer rights. In many countries, no administrative structures exist and consumer issues are dealt with by the ordinary private and criminal law processes. It is suggested that once it was considered necessary to establish such structures, government’s duty is to ensure they function effectively. This does not seem the case today where only half-hearted official support is given to consumer welfare and where the administrative structures foreseen in the two White Papers of 1991 and 1993 have lacked bark, bite and direction. The Ephesian silversmiths were a more effective lobby.

⁴⁸ *Declaration of principles*, Part V.

⁴⁹ *Unfair practices*, Part VI.

⁵⁰ *Liability for defective products*, Part VII.

- S. 8 (2) “*principles of fairness and objectivity*”
- S. 8 (3) “*in good faith*”
- S. 14(1) “*moral damages*”
- S. 19 “*without delay, with impartiality, and equity according to law*”
- S. 21 “*according to the substantive merits and justice of the case and in accordance with equity*”
- S. 21(2) “*moral damages*”
- S. 22(2) “*rules of natural justice*”
- S. 23 “*best suited to the ends of justice in accordance with the rules of natural justice*”
- S. 26 “*fairly and impartially according to law*”
- S. 36(1) “*bona fide*”
- S. 36(2) “*bona fide*”
 “*not undertaken recklessly or maliciously*”
 “*adheres to the principles of fairness and objectivity*”

Ethical principles of fairness and decency lie at the basis of consumer protection. Whereas it might not be the legitimate purpose of law to impose any particular moral code, and certainly it is not the function of law to impose a religion, moral principles can never be too distant.

Consumer Protection - So Is It Really Necessary?

The pioneering work by G. Borrie and A. Diamond, *The Consumer, Society and the Law*, first published in 1964 starts with this pointed fundamental question: *Is there any real need for consumer protection?*” Their conclusion is that in the modern world, “*far greater consumer protection is called for...*” and “*legal rules are required to redress the imbalance between the individual consumer and Them*” adding that “*It is no longer possible or desirable for the law to affirm its strict neutrality.*”⁵¹

Neither the Old nor the New Testament developed any concept of consumer or provided a concrete conceptual basis for consumer protection except in the very broad sense that exploiting the poor, vulnerable and the weak is wrong and sinful. Old Roman law and the 19th century legal masterpiece, the Napoleonic Code, failed to recognize the consumer and therefore did not have the conceptual platform on which to establish special safeguards to redress his weaker economic and bargaining position. In Malta it was only in the nineties

⁵¹ Penguin, 3rd edit, 1973, p 328.

that the authorities finally found the time and the political will to approach consumer protection in a structured coherent manner, and actually started doing something about it. The Consumer Affairs Act of 1994 was both a significant legal development as well as an ethical milestone. I say this for two reasons. First, the 1994 Act was a completely home-grown effort and was not adopted because of external pressures or requirements. It sought to provide tailor-made remedies to local problems and circumstances. Secondly, the Act was constructed around a new definition of who is a “*consumer*” and clearly distinguished him from other categories of persons who could safely remain protected by current private law.

As is the case with various parts of employment law, financial services law and company law and other areas of our legal system, consumer law seeks to protect the interests of persons who may have their weaker or disadvantaged position exploited by persons who enjoy a stronger bargaining position, and who may be more organized and knowledgeable. It is the function of law to intervene in situations of inequality in order to prevent illegitimate and unjustified enrichment and abuse by the strong, the ambitious and powerful at the expense of the meek, weak, the poor and the disadvantaged.

In ethics and law, there can be no real choice between: honest dealing as against dishonest dealing; correct trade descriptions as against false trade descriptions; fair value as against poor value; fair trading practices as against unfair practices; fair balanced contracts as against unfair unbalanced contracts; correct weights and measures as against false weights and measures; safe products as against unsafe products.

Maltese consumer law has incorporated several ethical principles and has integrated much ethical language. This is no accident because consumer law is a good example of law and ethics interacting in an area which concerns the fundamental issue of what is right or wrong. Consumer law establishes a series of rules that indicate which conduct is acceptable and which is not, and aimed at preventing the abuse of the good faith and potential inferiority of ordinary consumers through sharp business practices.

Ethics and Consumer Law - A Tentative Conclusion

Law represents choices and affects human conduct, establishing borderlines between the acceptable and the unacceptable on the basis of justice, fairness and decency. Similarly, biblical texts, as we have seen, condemn the “*greed is good*” and the “*business is business*” mentality and warn traders against the temptation of excluding a role for morality in the market.

Consumer protection is a very recent phenomenon and Maltese law only started giving legal recognition and rights to consumers during these past twenty years. Consumer protection is an area of law which incorporates a significant ethical content. The law has progressed considerably during these past twenty years and one may now safely say that consumer protection is an integral part of our law; proof of the civilizing influence and ethical potential of law.

In many countries, law was considered as part and parcel of religious beliefs and it was administered by a priestly class. Very often law was kept secret and was passed on orally.

This often gave rise to suspicion of abuse, eventually building up pressure to have the laws published and administered more transparently. The civilizing influence of law cannot be adequately stressed, but it must be acknowledged that even law itself has had to undergo a process of civilization. Indeed, law itself had to undergo an evolutionary process whereby it gradually became more humane and increasingly respectful of new and higher public expectations.

Law exists not only because man is capable of greatness but also because it is necessary. Just as law does not develop in a historical, social or economic vacuum, consumer legislation cannot flourish in a moral vacuum, and it appears unreal to divorce consumer legislation from the general ethical aim of law to protect the weak and the vulnerable from exploitation and oppression. The growth of consumer law, and its increasing effectiveness and sophistication, may be seen as an example of a legal reform and evolutionary process mirroring the needs and realities of an increasingly informed, civilized and ethical community.

Books and Similar

Barrow R H, *The Romans*, Pelican, 1949 (esp. Chap.XI).

Borrie G & Diamond A, *The Consumer, Society and the Law*, Pelican, 3rd edit, 1973.

Cicero, Selected Works, trans. Grant M, Penguin, 1960 (esp. Chap. 4).

Fabri D, *Consumer Protection and the Law*, unpublished thesis, Faculty of Law, University of Malta, 1979.

Hoffman M & Frederick R, *Business Ethics*, McGraw-Hill, 3rd edit, 1995.

Howells G & Weatherill S, *Consumer Protection Law*, 2nd edit, Ashgate, 2005 (esp. Chap.1).

Justinian, *The Digest of Roman Law*, (selections and commentary, trans Kolbert C F) Penguin, 1979.

Nicholas B, *An Introduction to Roman Law*, Clarendon, 3rd edit, 1969.

Scott C & Black J, *Cranston's Consumers and the Law*, 3rd edit, Butterworths, 2000 (esp. Chap.1).

Stourton E, *In the Footsteps of St Paul*, Hodder & Stoughton, 2004.

The Bible (The Old and New Testaments) - in various translations; (Reference in the preparation of this paper has, in particular, been made to Genesis, Leviticus, Proverbs, Amos, Acts and St Paul's letters.)

Valance E, *Business Ethics at Work*, Cambridge, 1995.

Official Publications

Final Report of the Committee on Consumer Protection, HMSO, Cmnd 1781, July 1962, UK (The Molony Report).

White Paper, *Fair Trading...The Next Step Forward*, November 1993, Department of Information, Malta.

White Paper, *Rights for the Consumer*, August 1991, Department of Information, Malta.

Articles and papers

Fabri D, *False Starts and Broken Promises: Some Mishaps in the Development of Maltese Consumer Law*, Law & Practice, Malta Chamber of Advocates, October 2006.

Freidman H, *Biblical Foundations of Business Ethics*, Journal of Markets and Morality, Vol. 3, No 1, Spring 2000.

Ancient Law

Code Napoleon (1804).

Justinian's Digest (533 AD).

The Code of Hammurabi (c.1700 BC).

The Magna Carta (1225 AD).

The Twelve Tables (c. 450 BC).

Local legislation

Consumer Affairs Act 1994 (Laws of Malta Chapter 378).

Doorstep Contracts Act 1987 (Laws of Malta Chapter 317).

The Civil Code (Laws of Malta Chapter 16).

The Commercial Code (Laws of Malta Chapter 13).

Trade Descriptions Act 1986 (Laws of Malta Chapter 313).

Weights and Measures Ordinance 1910 (repealed).

Internet Websites

For texts like the Bible and ancient legislation, several websites provide several useful translations, commentaries and perspectives. Numerous other websites tackle ethical issues. As in all matters, some are better than others. The following is just a selection.

www.acton.org

www.angelfire.com

www.bible-history.com

www.bibleresourcecentre.org

www.bibletools.org

www.e-classics.com

www.fordham.edu

www.geocities.com

www.history-world.com

www.ias.berkeley.edu

www.jewishmag.com

www.rc.net

Online parallel texts of the Bible

www.bible.cc

www.biblegateway.com

CORPORATE SOCIAL RESPONSIBILITY IN THE EUROPEAN UNION AND THE RESPONSIBILITY OF SOCIETY TO PUSH THE LIMITS

DANIÈLE COP

At European Union (“EU”) level, Corporate Social Responsibility (“CSR”) is seen to be one of the means to achieve sustainable growth and more and better jobs, the twin challenges of the EU. This paper is based on the understanding that CSR is concerned with a company’s voluntary behaviour in social and environmental matters that goes beyond the minimum requirements established by social and environmental law and regulation (the bottom limit), but which should not go as far as negatively affecting the company’s competitiveness or causing a conflict with the principles of good corporate governance (the upper limit). Where the European institutions or public authorities do not take action with a view to raising the minimum level by issuing social and environmental legislation, one of the ways to create room for improvement in CSR is to raise the upper limit. This is where the various stakeholders, both internal and external, have to take up their responsibility to influence companies’ behaviour and to create opportunities for companies to adopt, foster and develop CSR.

1. CSR: A Contribution to Competitiveness and Sustainable Development

In the Green Paper “Promoting a European framework for Corporate Social Responsibility”, the European Commission defined the term Corporate Social Responsibility as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.”¹ This definition embraces the three essential aspects of CSR: social and environmental concerns on the one hand and the business aspect on the other hand. It clearly emerges from the same Green Paper (and other documents issued by the European Commission on the matter) that in going beyond legal compliance a company can acquire a competitive edge; in other words, the idea is that a company’s activities in the social and environmental area can result in better performance and can generate more profits and growth.

¹ Green Paper - Promoting a European framework for Corporate Social Responsibility, COM(2001) 366.

At EU level, the debate on CSR takes place in the context of the (revised) Lisbon strategy: CSR is considered to be a means to contribute to achieving the goals of the Lisbon strategy, relaunched in 2005 as the Partnership for Growth and Jobs. Whilst Community legislation regarding social and employment matters and the environment establishes minimum requirements, compliance with the provisions of such legislation may entail expenditure and investments and may not necessarily be contributory towards increasing a company's competitiveness. In this respect, Community law aims to ensure a level playing field for companies operating in the internal market: all companies competing within a given market are subject to the same set of rules. Thus, in the context of the revised Lisbon strategy CSR is essentially a concept whereby companies go beyond the minimum requirements in order to gain a competitive advantage by improving their social and environmental records. Whilst the European institutions may be wary of adopting legislation that could adversely affect the competitiveness of European companies, CSR adopted and implemented by individual companies on a voluntary basis could generate more profits and growth in a sustainable manner.

CSR is therefore also seen to be a potential contributor towards sustainable development. The European Commission stated in its Communication concerning Corporate Social Responsibility - A business contribution to Sustainable Development, that: "In principle, adopting CSR is clearly a matter for enterprises themselves, which is dynamically shaped in interaction between them and their stakeholders. Nevertheless, as there is evidence suggesting that CSR creates value for society by contributing to a more sustainable development, there is a role for public authorities in promoting socially and environmentally responsible practices by enterprises.

The need for public action to promote CSR results also from inadequate governance at the global and national levels. In its communication "*towards a global partnership for sustainable development*" (13.2.2002), the Commission has stressed that globalisation may result in negative effects if it goes uncontrolled. CSR public policies may help shape globalisation in a positive way by promoting good company practices that complement public efforts for sustainable development."²

One of the key documents³ in relation to CSR, the OECD Guidelines for Multinational Enterprises (as revised in 2000), also gives a prominent place to sustainable development: the first guideline under "General Policies" is that "Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard, enterprises should: 1. Contribute to economic, social and environmental progress with a view to achieving sustainable development." Specifically with regard to the Environment, "Enterprises should, within the framework of laws, regulations and administrative practices in the countries in which they operate, and in consideration of relevant international agreements, principles, objectives, and standards,

² Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development, COM(2002)347 final, p. 7-8.

³ It emerges from the various Communications on CSR that actions in the field of CSR (e.g. benchmarking and the drawing up of Codes of Conduct) should build on internationally agreed principles such as those laid down in the ILO fundamental Conventions and the OECD guidelines for multinational enterprises as a common minimum standard of reference. Note that Malta is not (yet) an OECD member. The European Commission takes part in the work of the OECD.

take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development.” In the Commentary, under ‘Environment’, it is indicated that “Sound environmental management is an important part of sustainable development, and is increasingly being seen as both a business responsibility and a business *opportunity*.”

Indeed, CSR is essentially being promoted by the EU as a concept that should offer companies, both multinational enterprises (“MNEs”) and small to medium sized enterprises (“SMEs”), business opportunities by improving their social and environmental management performance, thus creating a win-win situation for business on the one hand and their stakeholders and the environment on the other hand.

2. CSR and Corporate Governance

From the company’s perspective, CSR is closely linked to the concept of “corporate governance”. The EU’s definition of and approach towards CSR is based on the premise that it is assumed by companies on a voluntary basis. Thus, it is essentially up to the company’s management to decide on the company’s CSR strategy and to ensure its implementation.

A generally accepted principle of corporate governance is that the board should act in the best interest of the company and the shareholders.⁴ It was noted in the OECD Principles of Corporate Governance (revised in 2004) that together with guiding corporate strategy, the board is chiefly responsible for monitoring managerial performance and achieving an adequate return for shareholders, while preventing conflicts of interest and balancing competing demands on the corporation.⁵ The OECD Principles of Corporate Governance also indicate that the board is not only accountable to the company and its shareholders but also has a duty to act in their best interests. In addition, boards are expected to take due regard of, and deal fairly with, other stakeholder interests including those of employees, creditors, customers, suppliers and local communities. Observance of environmental and social standards is relevant in this context.⁶ Thus, corporate governance does not exclude CSR and CSR may even be part of good governance practices, but the integration of social and environmental concerns in a company’s business operations and in its interaction with their stakeholders, beyond what is legally required, should not conflict with the interests of the company and its owners.

The principle that directors have a fiduciary duty to act in the best interests of the company is also enshrined in the national legislation of several EU Member States. For instance, article 136A(1) of the Maltese Companies Act (Chapter 386 of the Laws of Malta) explicitly states that “A director of a company shall be bound to act honestly and in good faith in the best interests of the company.” Maltese company law is modelled on that of the United Kingdom (UK). The UK’s new Companies Act, 2006 now provides the following in section 172 (Duty to promote the success of the company):

⁴ See e.g. OECD Principles of Corporate Governance, revised in 2004.

⁵ OECD Principles of Corporate Governance, revised in 2004, p. 60.

⁶ OECD Principles of Corporate Governance, revised in 2004, p. 60.

“(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to-

- (a) the likely consequences of any decision in the long term,
- (b) the interests of the company’s employees,
- (c) the need to foster the company’s business relationships with suppliers, customers and others,
- (d) the impact of the company’s operations on the community and the environment,
- (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- (f) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.”

On the subject of company law, it is worth noting that one of the general recommendations of the High Level Group of Company Law experts was that “An important focus of the EU policy in the field of company law should be to develop and implement company law mechanisms that enhance the efficiency and competitiveness of business across Europe. Where mechanisms established so far to protect shareholders and creditors appear to be inappropriate impediments, they should be replaced by ones that are at least as - and preferably more - effective, and less cumbersome.”⁷ This position was endorsed by the European Commission: besides strengthening shareholders rights and third parties protection, the EU’s objective in the elaboration and improvement of a modern company law and corporate governance framework is fostering efficiency and competitiveness of business.⁸

The current trend in the EU’s policy with regards to company law and corporate governance, and enterprises in general, is to avoid creating more legislation that would encumber business, result in more red tape and extra costs. The European Commission emphasised that “because CSR is fundamentally about voluntary business behaviour, an approach involving additional obligations and administrative requirements for business risks being counterproductive and would be contrary to the principles of better regulation”.⁹

⁷ Report of the High Level Group of Company Law Expert on a Modern Regulatory Framework for Company Law in Europe, 4 November 2002.

⁸ Communication from the Commission to the Council and the European Parliament - Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward, COM(2003)0284 final.

⁹ Green Paper - Promoting a European framework for Corporate Social Responsibility, COM(2001) 366.

In a broader context, the European Commission's new strategy for the simplification of the regulatory environment for businesses and citizens, launched in 2005, is proclaimed to be a centrepiece of the Partnership for Growth and Jobs. According to the European Commission, "better regulation, which is about ensuring the quality of the regulatory framework, offers win-win opportunities. Better regulation will help make the European Union a more attractive place not only to invest in but also for citizens to work in since it has a significant positive impact on the framework conditions for economic growth, employment and productivity by improving the quality of legislation. This creates the right incentives for business, cuts unnecessary costs and removes obstacles to adaptability and innovation. It also ensures legal certainty and by that efficient application and enforcement throughout the European Union. In addition, it allows that social and environmental objectives are attained without disproportionate administrative costs. As a complement to EU action, Member States should also pursue their own better regulation initiatives."¹⁰

CSR does not in itself conflict with principles of good corporate governance or corporate law governing the duties of bodies and persons that are responsible for the company's management. Indeed, in certain respects good corporate governance and CSR can mutually advance each other. For instance, a crucial aspect of corporate governance is disclosure and transparency, as is the case for CSR. For stakeholders, and in particular, investors, employees, consumers and NGOs to be able to influence a company's behaviour they need clear, honest and meaningful information. Pursuant to a recently adopted Directive, listed companies will be obliged to issue an annual "corporate governance statement". This statement should make clear whether the company applies any provisions on corporate governance other than those provided for in national law, regardless of whether those provisions are directly laid down in a corporate governance code to which the company is subject or in any corporate governance code which the company may have decided to apply. Furthermore, where relevant, companies may also provide an analysis of environmental and social aspects necessary for an understanding of the company's development, performance and position.¹¹

However, the premise is that firstly, the company's management must act in the best interests of company and its owners. Secondly, the EU will be focusing its actions in the area of company law and corporate governance on enhancing the efficiency and competitiveness of business. Furthermore, in view of the better regulation initiative, it appears that the EU will avoid taking action in social affairs and environmental matters which may entail extra costs and burdens for EU businesses, unless it is necessary and justified and in accordance with the principles of subsidiarity.

Thus, certain social and environmental improvements may not be achieved through raising the minimum standards established by legislation, and may not be addressed by companies on a voluntary basis if they do not create a competitive advantage or are not in the best interests of the company. A company may boast excellent environmental and social records,

¹⁰ Communication from the Commission to the Council and the European Parliament - Better Regulation for Growth and Jobs in the European Union {SEC(2005) 175}, COM(2005) 97 final, p. 3.

¹¹ Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (see recital 10 of the preamble to the Directive).

but if this would mean that it cannot compete with less responsible operators in the market, the effort would be futile: a company that runs out of business has a negative impact on society (e.g. loss of jobs, possible cascade effect on its creditors).

Some of the perceived problems for the development of CSR concern the external drivers, e.g. lack of consumer interest (consumers interested in services and/or products representing good value for money, regardless of other concerns apart from product safety) and focus of investors on quantitative short-term financial performance. Although internal drivers clearly have an influence on CSR, society has a significant role to play in encouraging CSR: investors, customers and consumers, suppliers, business partners, public authorities, NGO and trade unions can directly or indirectly incentivise certain approaches or provide disincentives for others.¹²

3. The influence of the External Stakeholders on CSR

Corporate social responsibility involves a wide range of external stakeholders (in addition to employees and shareholders, the internal stakeholders): business partners and suppliers, customers, public authorities and NGOs representing local communities, as well as the environment.¹³

Social and environmental performance can be affected as a result of the practices of business partners and suppliers throughout the whole supply chain. Admittedly, companies operate in a competitive environment. However, businesses can develop and foster relationships with business partners, which (in the long run) may translate into a competitive advantage e.g. where they result in fair prices, terms and expectations along with quality and reliable delivery. Furthermore, considerations of image and reputation play an increasingly important role in the business environment, especially where consumers and NGOs ask for more information about the conditions in which products and services are generated and the sustainability impact thereof, and where they reward socially and environmentally responsible firms.

From the demand side, consumers play an important role in providing incentives for CSR. They are expected to exercise critical choice and in expressing their preference, they should encourage “good” products and “good” companies. However, it appears that consumers, even where they are willing to buy “responsibly”, often lack clear information on the social and environmental performance of goods and services, including information on the supply chain.

The role of NGOs in the CSR debate is generally seen to be that of representing local communities, the environment, specific sectors or groups of stakeholders, and to participate in the CSR debate and fora on the matter, alongside trade unions and business and employers’ organisations. They monitor and assess the environmental and social impact of

¹² See: Final report of the European Multistakeholder Forum on CSR, 29 June 2004, Part Two, p. 9.

¹³ Green Paper - Promoting a European framework for Corporate Social Responsibility, COM(2001) 366, paragraph 46. See also Annex to the Green Paper which defines the term “Stakeholder” as “an individual, community or organisation that affects, or is affected by, the operations of a company. Stakeholders may be internal (e.g. employees) or external (e.g. customers, suppliers, shareholders, financiers, the local community).

business, campaign for improvements. As such they aim to exert pressure on the business community or a specific sector to act responsibly where, for example, working conditions, human rights and environmental aspects are concerned. NGOs can be involved in drawing up codes of conduct, social and environmental labels, the building up of partnerships and networks, research, and more.

As will be explained below, public authorities have an important responsibility in encouraging CSR: not only are they involved with the business community both as business partners and customers, but they are also in a position to create a favourable business climate by devising and implementing policies that support sustainable development, economic growth and job creation and that foster innovation and competitiveness.

The results of the consultation process on the Green Paper showed that whilst enterprises stressed the voluntary nature of CSR, trade unions and civil society organisations emphasised that voluntary initiatives are not sufficient to protect workers and citizens' rights.¹⁴ It is clear though that at EU level, CSR is regarded as a voluntary concept and that an approach involving additional obligations and administrative requirements for business is not considered opportune. Whereas Community law adopted with a view to completing and ensuring the functioning of the internal market is meant to create a level playing field, it is up to the companies operating within it to run their business in a responsible manner, in their (owners') best interests and in competition with economic operators in the same relevant market, in accordance with competition law and policy. Although CSR can only be taken up by the companies themselves, their stakeholders can have an influence in prompting them to act "responsibly". Where additional obligations and administrative requirements for business may be counterproductive, society has a decisive role to play in inducing companies to integrate (more) social and environmental concerns in their business operations.

Indeed, one of the success factors identified by the Round Table "Improving knowledge about CSR" of the European Multistakeholder Forum on CSR is the engagement with stakeholders and commitment of other parties in society: "CSR is not a matter for companies alone. It was clearly stated by some stakeholder groups, that CSR is not only about the 'business case'. Companies have to be able to rely on the commitment of other parties in society. This is referred to as societal responsibility by ETI. A company should be able to count on its stakeholders. Key business partners and customers have to contribute, as well as local and supranational authorities. The involvement of employees and their representatives is key and local stakeholder groups as well as NGOs can offer valuable advice and expertise. Examples were given concerning area planning, including mobility considerations, housing close to the work place and other amenities."¹⁵

One of the barriers mentioned in the same report relates to the difficulties of implementing a CSR strategy in a competitive environment. It appears that: "[...] a lot of managers are sceptical about CSR because they believe that it will bring extra costs leading to competitive disadvantage. [...] Moreover, some are convinced that the consumer lacks interest in CSR

¹⁴ Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development, COM(2002)347 final.

¹⁵ See: Final Report of the European Multistakeholder Forum on CSR, 29 June 2004, Round Table Report Section.

as products of this nature remain ‘niche’. Many consumers are interested in services and/or products representing good value for money, regardless of other concerns apart from product safety. [...]”¹⁶

Thus, it is clear that external stakeholders, including NGOs, consumers and investors, must play a stronger role in encouraging and rewarding responsible business conduct. This, together with enhancing the role of employees, their representatives and their trade unions in the development and implementation of CSR practices and the improvement of the consistency of public policies in support of sustainable development, economic growth and job creation, would be critical factors to improve the uptake, implementation and strategic integration of CSR by European enterprises. One of the initiatives of the European Commission to make Europe a “pole of excellence” on CSR was supporting the launch of the European Alliance for CSR, which is meant to be a political umbrella for new or existing CSR initiatives by companies and their stakeholders. However, it was recognised that “without the active support and constructive criticism of non-business stakeholders, CSR will not flourish. The Commission’s backing of the Alliance is not a substitute for further dialogue with all stakeholders. The Commission remains committed to facilitating such dialogue, including through regular review meetings of the Multistakeholder Forum.”¹⁷

The European Commission has also expressed its belief that CSR matters to each and every European, since it represents an aspect of the European social model, where it is central to the new partnership for growth and jobs as well as for implementing sustainable development objectives, and that it mirrors the core values of the EU itself.¹⁸

Finally, it appears that a one-size-fits-all approach is neither workable nor desirable when it comes to CSR. In particular in the view of businesses, attempts to regulate CSR at EU level would be counterproductive, because this would stifle creativity and innovation among enterprises which drive the successful development of CSR, and could lead to conflicting priorities for enterprises operating in different geographical areas. Admittedly, since CSR is a dynamic concept, common approaches and one-size-fits-all solutions may not be possible in all areas, although it may be possible, through a structured and partnership-based approach between businesses and their various stakeholders, to draw on practical experience, build consensus where this is possible, and promote innovation.¹⁹ Nevertheless, considering the diversity of communities and product and geographical markets within the EU, the needs and expectations of external (as well as internal) stakeholders may vary widely. In certain countries or regions, consumers and authorities may have reached a higher level of integration of social and environmental concerns in the way they purchase goods and services than in others. For instance, where it comes to purchasing environmental friendly products, consumers in countries of the EU15 may be more inclined to buy

¹⁶ See: Final report of the European Multistakeholder Forum on CSR, 29 June 2004, Round Table Report Section.

¹⁷ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - Implementing the Partnership for Growth and Jobs: making Europe a pole of excellence on Corporate Social Responsibility, COM(2006) 136 final, p. 5-6.

¹⁸ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - Implementing the Partnership for Growth and Jobs: making Europe a pole of excellence on Corporate Social Responsibility, COM(2006) 136 final, p.

¹⁹ See: Final report of the European Multistakeholder Forum on CSR, 29 June 2004, Round Table Report Section; Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development, COM(2002)347 final.

ecological products or to look for environmental friendly packaging or materials, than consumers in new Member State where there is less awareness and the implementation of Community environmental law is more recent. Companies, and in particular SMEs, in new member States or regions that are lagging behind may have to focus their efforts on aligning their business with the *acquis communautaire* developed over the past fifty years, and to keep their heads above water within an increasingly competitive environment, whereas their counterparts that have already established their position within the internal market or that operate in more prosperous areas may be in a position to pay more attention to creating added value through CSR. Nevertheless, it can be argued that especially SMEs that face up to strong competition from larger foreign businesses could gain from CSR in (re)orientating their business towards niche markets that are sensitive to social and/or environmental issues, with the support of the community of which they form part, and by enhancing their corporate image vis-à-vis of the local community. They may also be more in tune with the specific needs and demands of the stakeholders they are dealing with. An example that could particularly fit Malta would be the agricultural sector: instead of competing with producers that benefit from economies of scale and that can offer their produce at a cheaper price, local farmers could target local or foreign niche markets by growing crops in an ecological manner, thus enhancing the quality of their product.

4. CSR and the Influence of Public Authorities

The concept of CSR is not restricted to private undertakings. Public administrations should set an example and integrate CSR in their own management and with their own “stakeholders”.²⁰ In this respect it should be borne in mind that public bodies or publicly owned entities act as undertakings where they perform an economic activity, and as such they are in principle subject to the rules applying to undertakings established in and under the Treaty establishing the European Community (“the EC Treaty”).²¹ Article 86(1) of the EC Treaty proclaims that “In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89.”²²

However, public authorities can also influence undertakings and encourage them to engage in socially and environmentally responsible business conduct. This is not only the case, for instance, where they exercise their legislative or executive powers (e.g. in the case of so-called services of general economic interest (“SGEIs”), whereby public service obligations are imposed on service providers in order to ensure, for instance, accessibility, affordability

²⁰ Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development, COM(2002)347 final, p. 24.

²¹ Article 295 EC Treaty is neutral on the public or private nature of undertakings. For the purposes of the provisions on the right of establishment, “Companies or firms” means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making. (article 48 EC Treaty).

²² An exemption is laid down in article 86(2) EC Treaty, providing that “Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.”

and universal service), but also when they act as business partners and as customers in the procurement of supplies, works and services.

Public authorities are major consumers in Europe, spending some 16 % of the EU's Gross Domestic Product.²³ By using their purchasing power to opt for goods and services produced in a "responsible" manner, they can make an important contribution towards sustainable development. By integrating CSR concerns in their procurement policy, public authorities also set an example and can even influence the market-place. For instance, in the case of "green procurement", public authorities can provide industry with incentives for developing green technologies. In some product, works and service sectors the impact can be particularly significant, as public purchasers command a large share of the market (e.g., energy-efficient buildings and public transport).²⁴

In the case of public private partnerships ("PPPs"), public authorities may have the opportunity to agree on or to institutionalise CSR best practices, in the context of medium to long term co-operation with private counterparts. The term public-private partnership generally refers to forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service.²⁵ In this respect it may be useful to clarify that a distinction can be made between:²⁶

- (i) contractual PPPs, in which the partnership between the public and the private sector is based solely on contractual links (public contracts and concessions). In the case of public contracts for works, supplies or services for the implementation of a project, the contracting authority pays for the works, supplies or services concerned. Such public contracts have to be awarded in accordance with the public procurement Directives and national (implementing) legislation. A public works or services concession is a contract to carry out works or services whereby the consideration for the works or services consists either solely in the right of the private undertaking to exploit the construction or service, or in this right together with payment. In principle, public concessions have to be awarded following a

²³ Commission Staff Working Document "Buying Green! A handbook on environmental public procurement, SEC(2004)1050, p. 6.

²⁴ Commission Staff Working Document "Buying Green! A handbook on environmental public procurement, SEC(2004)1050, p. 6. An example given in this Handbook is the German model project on solar heating for swimming pools: in 1983, the European Commission and the German Ministry of Research and Technology initiated a model project to substitute conventional pool water heating with solar heating. The financial push that public procurement has given to this innovative product has helped bring the price down and has made the product more attractive to private purchasers. (p. 11).

²⁵ Green Paper on Public-Private Partnerships and Community law on public contracts and concessions (presented by the Commission), COM(2004) 327 final, paragraph 1. See also paragraph 7 of the Green Paper, which states:

"Public authorities have also set up partnership structures with the private sector to administer public services, particularly at local level. Public services concerned with waste management or water or energy distribution are thus increasingly being entrusted to businesses, which can be public, private, or a combination thereof. The Green Paper on services of general interest points out in this context that when a public authority decides to award the management of a service to a third party, it is bound to comply with the rules on public contracts and concessions, even if this service is deemed to be of general interest. The European Parliament also recognised that compliance with these rules can be "an effective instrument for preventing restrictions of competition, while at the same time permitting State authorities themselves to define and monitor the conditions regarding quality, availability and environmental requirements."

²⁶ See Green Paper on Public-Private Partnerships and Community law on public contracts and concessions (presented by the Commission), COM(2004) 327 final.

competitive public procedure (in accordance with Community law) and, for works concessions, the additional rules laid down in the procurement Directives; and

- (ii) institutionalised PPPs, involving cooperation between the public and the private sector within a distinct entity. An institutionalised PPP can be put in place either by creating an entity held jointly by the public sector and the private sector, or by the private sector taking control of an existing public undertaking. The European Commission has indicated that the law on public contracts and concessions does not of itself apply to the transaction creating a mixed-capital entity. However, when such a transaction is accompanied by the award of tasks through an act which can be designated as a public contract, or even a concession, it is important that there be compliance with the rules and principles arising from this law (the general principles of the EC Treaty or, in certain cases, the provisions of the public procurement Directives).²⁷

Thus, in most cases of PPP, the *acquis communautaire* on public contracts and concessions will apply. It should be borne in mind that any act, whether it be contractual or unilateral, whereby a public entity entrusts the provision of an economic activity to a third party must be examined in the light of the rules and principles resulting from the EC Treaty, particularly as regards the principles of freedom of establishment and freedom to provide services (Articles 43 and 49 of the EC Treaty), which encompass in particular the principles of transparency, equality of treatment, proportionality and mutual recognition.²⁸

The procurement Directives²⁹ now explicitly cater for the possibility for contracting authorities to meet the needs of the public in the environmental and/or social area, provided that such criteria are linked to the subject-matter of the contract, do not confer an unrestricted freedom of choice on the contracting authority, are expressly mentioned and comply with the fundamental principles of the EC Treaty. Furthermore, the Commission has published a Handbook on environmental public procurement³⁰ which explains how public purchasers can integrate environmental considerations into public procurement procedures and clarifies the legal possibilities created by the public procurement Directives which allow for environmental considerations in technical specifications, selection and award criteria and contract performance clauses. It takes into account the most recent jurisprudence of the Court of Justice in this field. Guidance may also be found in the Commission's Interpretative Communications on the possibilities for integrating social considerations into public procurement.³¹

²⁷ Green Paper on Public-Private Partnerships and Community law on public contracts and concessions (presented by the Commission), COM(2004) 327 final, paragraph 57.

²⁸ Green Paper on Public-Private Partnerships and Community law on public contracts and concessions (presented by the Commission), COM(2004) 327 final, paragraph 8.

²⁹ Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors; Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

³⁰ Commission Staff Working Document, Buying green! A handbook on environmental public procurement, SEC(2004) 1050.

³¹ Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement, COM(2001) 566 final; Commission

Another role that may be assumed by national, regional and local governments, as well as the European institutions, in the promotion of CSR consists in providing incentives, financially or otherwise (e.g. through backing labels or codes of conduct), to companies that manage their business in a social and environmentally responsible manner. In view of the voluntary nature of CSR, this should however be done in a way which does not distort competition or favour particular enterprises or sectors (in terms of Community law: in line with competition law and the rules on State aid). Furthermore, if requirements were to be imposed at national level that impinged on the voluntary nature for CSR, there could be a risk that companies would exercise their right to freely establish themselves in another EU country which follows a less burdensome policy on social and environmental matters, or that enterprises might migrate to other countries that are not so concerned with the well-being of employees or the environment.

5. Conclusion - CSR and “Societal Responsibility”

The values and commitments of key decision makers within the company (the values case) may be one of the internal drivers for CSR. Nevertheless, in principle, the determining factors internal to the company should be related to the business case: minimising risk and maximising opportunities. The idea is that well-managed companies, with strong corporate governance records and sensitive social and environmental performance, outperform their competitors.

As the Commission stated in its 2002 Communication concerning Corporate Social Responsibility: the EU success in promoting CSR ultimately depends on widespread “ownership” of the principles of CSR by businesses, social partners, civil society, including consumer organisations, and public authorities, including from third countries, which should be based on a comprehensive partnership with representatives of society at large. The involvement of all affected stakeholders is key to ensuring acceptance and credibility of CSR and better compliance with its principles.³²

CSR is complementary to other measures and initiatives at EU and national level to achieve the overarching long term goal of creating more growth and better jobs in a manner that is fully consistent with sustainable development. It should however not be used to shift the responsibility of public authorities or society (in the sense of the non-business community, or more precisely, the external stakeholders), onto the corporate world. The involvement of the company’s internal stakeholders is evidently crucial for the success of the CSR concept, but it is also clear that CSR will not flourish without the support of and encouragement by non-business stakeholders.

CSR implies that companies manage their business by integrating the economic, social and environmental impact in their operations. Therefore, responsible corporate behaviour should offer win-win opportunities for the company’s business on the one hand and the environment and social partners on the other hand. Efforts to create and exploit such

interpretative communication on the Community law applicable to public procurement and the possibilities for integrating environmental considerations into public procurement, COM(2001) 274 final.

³² Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development, COM(2002)347 final, p. 17.

opportunities should therefore be made by both companies and their stakeholders. Where individual stakeholders (e.g. individual employees, consumers and investors) may be the weaker party vis-à-vis corporate entities, the importance of the engagement of bodies representing their collective interests, such as trade unions, NGOs and institutional investors becomes apparent. Furthermore, it is the responsibility of public administrations to create a business environment which fosters the integration of social and environmental concerns in business operations and in a company's interaction with its stakeholders on a voluntary basis, and to provide incentives to step up efforts in the field of CSR.

CORPORATE SOCIAL RESPONSIBILITY IN THE EU'S *ACQUIS*: REGULATION V. VOLUNTARY CONDUCT

IVAN SAMMUT

Corporate Social Responsibility (CSR) is a function that transcends, but includes, making profits, creating jobs, and producing goods and services. The effectiveness with which corporations perform this function determines their contribution (or lack of contribution) to social cohesion. In his essay 'The Social Responsibility of Business Is to Increase Profits', Nobel laureate and University of Chicago professor of economics Milton Friedman (1970) said that the one and only social responsibility of a business entity such as a corporation was "to use its resources and engage in activities designed to increase profits so long as it stays within the rule of the game" (p. 5). To put clarity to this statement, he went on to say that doing so would require businesses to engage in open and free competition devoid of deception and fraud.¹ Today, many would not be comfortable with such a seemingly profit-oriented statement. At the very least, there is a growing view that business is part of the larger society and, therefore, it has responsibilities other than simply maximising profits. Economic organisations such as corporations are responsible to their shareholders, employees, and stakeholders. Companies that ignore this responsibility will not be profitable in the long run. In the case of companies owned by the public, arguments in support of social responsibility carry even greater weight as the owners are already committed to acting in the public interest.

The European Union's Internal Market is based on a free-market economy. However, looking at European history over the past two centuries and even beyond, one would notice that in several western European countries, the social element is very strong especially when compared to the other side of the Atlantic. Milton Friedman's assertion, quoted above, does not have a place in an economy in which, although it is built on the free market, considerable attention is given to social cohesion. Therefore businesses are expected to take into account the social element in their search for profits. The OECD² identified the following four factors as drivers of CSR:³

¹ See Moses O. Oketch, 2004, *Corporate Governance*, 4 (3), p. 5-19.

² Organisation for Economic Cooperation and Development, 1999.

³ Moses O. Oketch, 2006 'The Corporate Stake in Social Cohesion', *Peabody Journal of Education*, 80(4), p. 30-52.

1. New concerns and expectations from citizens, consumers, public authorities, and investors in the context of globalisation and large-scale industrial change;
2. Social criteria increasingly influencing the investment decisions of individuals and institutions both as consumers and as investors;
3. Increased concern about the damage to the environment caused by economic activity;
4. Transparency of business activities brought about by the media and modern information technologies.

With the coming into force of the Internal Market, the European Commission felt that the subject of CSR should be debated at European level rather than leaving the matter to the national or corporate level. Thus in 2001 the Commission presented a green paper promoting a European Framework for Corporate Social Responsibility.⁴ This was mainly a follow up of the Lisbon strategy drawn up a year earlier with the intention of making the European economy the most competitive and dynamic knowledge-based economy in the world by 2010. CSR has so far been mainly driven by large companies, even though socially responsible practices exist in all types of enterprises, irrespective of size or whether they come from the public or private sector. The aim of the Green Paper was to launch a wide debate on how the EU could promote CSR at European and international level. The idea is to bring greater transparency and to build partnerships between all actors that have a role to play.

The Green Paper defines CSR as ‘a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment. At a time when the EU endeavours to identify its common values by adopting a Charter of Fundamental Rights an increased number of European Companies recognise their social responsibility more and more clearly and consider it as part of their identity. This responsibility is expressed towards employees and more generally towards all the stakeholders affected by business and which in turn can influence its success’.⁵

The Green Paper explains that in the changing environment in the context of globalization and in particular the Internal Market, companies themselves are becoming increasingly aware that their CSR could be of direct economic value. Although as operators within a free market economy their main aim would remain profit, this in itself does not conflict with a responsibility to contribute towards the social and environmental objectives of the society, and therefore CSR would be a strategic investment. Thus the development of CSR is basically two-fold. There are those positive initiatives that are taken by a regulator either at state level or at European level. Then there is the auto CSR that a company would take upon itself in the implementation of its objectives.

The Green Paper, after explaining the meaning of CSR, examined its meaning from both the internal and external dimension of the company. Then the Green Paper adopts a holistic approach. While CSR can only be assumed by the companies themselves, stakeholders particularly employees, consumers and investors-can also play a very decisive role either in their own interest or on behalf of others particularly in areas such as working conditions, the environment and human rights. The Green Paper then invites the Public for consultation.

⁴ Promoting A European Framework for Corporate Social Responsibility COM (2001) 366 final.

⁵ Ibid p.4.

For the EU it proposed an overall European framework that ought to be developed in partnership with the main CSR actors aimed at promoting transparency, coherence and best practice in corporate social responsibility practice. It promoted consensus on CSR and supports the best practice approaches to evaluate and verify CSR.⁶

The Green Paper was followed by a Communication from the Commission concerning Corporate Social Responsibility in 2002.⁷ Generally speaking the Green Paper received positive feedback for the interested parties. Enterprises stressed the importance of the voluntary nature of CSR and its integration in sustainable development and that its content should be developed at a global level. On the other hand trade unions and civil society organisations emphasized that voluntary initiatives are not sufficient to protect workers and citizens rights. They advocated a regulatory framework establishing minimum standards and ensuring a level playing field. Investors stressed the need to improve disclosure and transparency of companies' practices while consumers' organisations underlined the importance of trustworthy and complete information about the ethical, social and environmental conditions in which goods and services are produced and traded to guide them in their purchase choices.⁸

In the European action framework for CSR, the Commission puts emphasis on the integration of values in the European business model. The talk is about 'sustainable business' where shareholder values cannot be achieved solely through maximizing short-term profits, but instead through market-oriented yet responsible behaviour. Businesses are aware that they can contribute to sustainable development by managing their operation in such a way as to enhance their economic growth and increase their competitiveness whilst ensuring environmental protection and promoting social responsibility, including commercial interests. In this context, the Communication states that there is a wide consensus that the main features of CSR should entail:⁹

1. Behaviour by business over and above legal requirements, voluntarily adopted because business deem it to be in their long-term interest;
2. A link to the concept of sustainable development where businesses need to integrate the economic, social and environmental impact in their operations;
3. That it is not an optional 'add-on' to business core activities - but about the way in which businesses are managed.

CSR has a long tradition in Europe. However what distinguishes today's efforts from those of the past is the attempt to manage it in a strategic way and to develop instruments for this. It could be considered as a business approach that puts stakeholders' expectations and the principle of continuous improvement and innovation at the heart of business strategies. What is required by CSR depends on the individual enterprises and on the environment in which they operate. While some of the above notions have been incorporated in various EU policies and legislation in the past, the new approach requires such CSR requirements not to

⁶ Ibid p.22.

⁷ Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development COM(2002) 347 final.

⁸ Ibid p. 4.

⁹ Ibid p. 5.

be merely background principles but to take the centre stage in the formulation of new policies and new legislation.¹⁰

Community action in the field of CSR has to be built on the core principles laid down in international agreements and in line with the principle of subsidiarity. In the Communication, the Commission gives at least two reasons for the need of Community Action in this field.¹¹ First, CSR may be in itself a useful instrument in the furtherance of Community policies. Secondly, the proliferation of different CSR instruments¹² that are difficult to compare could be confusing for businesses, consumers and other stakeholders so there is a role for Community action to facilitate convergence in the instruments used in the need to ensure the proper functioning of the Internal Market.

The Commission proposed that the principles of Community action should be based upon a strategy to promote CSR. This should be done on the principle that CSR has to be voluntary in nature. It is important to achieve credibility and transparency in CSR practices. The Commission has also proposed to focus on activities where Community involvement adds value. A balanced and an all-compassing approach are taken whereby economic, social, environmental and consumer interests are taken into account. Special attention is given to SMEs.¹³

The 2002 Communication was followed by another very important Communication in 2006.¹⁴ The latter Communication refers to the EU Multi-Stakeholder Forum on CSR and the important steps that have been made in this process. It shows how the concept of CSR has evolved in the European debate especially in the light of the revised Lisbon strategy that promotes growth and jobs in a manner that is fully consistent with sustainable development which is the long-term goal of the EU. Europe needs businesses to do best what they can do, to provide goods and services that add value for society by employing the entrepreneurial spirit and creating jobs. However Europe does not need just businesses. It needs businesses that are socially responsible and which take their share of responsibility in European affairs.

The idea in the 2006 Communication is to make Europe a pole of excellence on CSR. Therefore the Commission backs the launching of the European Alliance for CSR. The Alliance has an open nature and European enterprises of all sizes are invited to voluntarily express their support. This Alliance, which is not a legal instrument is to have a significant impact on the attitude of European enterprises to CSR. The intention is to create new opportunities and new partnerships for the stakeholders and could serve as a vehicle for mobilising resources and the capacities of the European enterprises. Participation in the Alliance is not formal and no list of participants is kept. The Commission's contribution is the promotion of CSR.¹⁵

¹⁰ Ibid p. 6.

¹¹ Ibid p. 8.

¹² These could include management standards, labelling and certificate schemes, etc.

¹³ See Commission's report in p. 8.

¹⁴ Communication From the Commission to the European Parliament, the Council and ECOSOC, Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Responsibility, COM (2006) 136 final.

¹⁵ See *ibid* p. 6.

In its 2006 Communication, the Commission emphasises awareness-raising and best practice exchanges as (a) proposed actions to promote further CSR practices. Also very important is the support of multi-stakeholders initiatives. The Commission also supports cooperation between the Member States. There is a broad consensus in Europe about the definition of CSR although its precise nature and characteristics could vary according to the national and cultural contexts. Consumer information and transparency is also very important. Consumers are expected to exercise critical choice and encourage good products and good companies.

The Commission also stresses the importance of research and education to promote corporate social responsibility. In fact, the Commission is exploring possibilities to support further research in the 7th Framework programme. In order for CSR to become a mainstream business, the right knowledge and skills are very important and need to be developed among future entrepreneurs. The collective impact of CSR as practiced by SMEs is critical if the potential of CSR to contribute to growth and jobs and sustainable development in Europe is to be fully harnessed. Finally the Commission continues to promote CSR globally with a view to maximising the contribution of enterprises to the achievement of the UN Millennium Goals.¹⁶

CSR is considered by the Commission to be a very important aspect of the European social model. While there is consensus that the European economy should be market-oriented, this should never be at the expense of the social factor. To make the European economy more dynamic and competitive, sustainable development should be the rule. For sustainable development to be achieved, it is essential that all stakeholders participate and make their contribution. At EU level, CSR can be achieved through two main avenues, legislative measures and policy guidelines. While the former may appear to be straightforward and would probably be regulatory, the latter appears to be more difficult to define. The EU could issue guidelines but then it would be up to the stakeholders involved to make the most of such guidelines for the benefit of society.

The rest of this paper examines how CSR is being seen at EU level from four different perspectives or ‘pillars’ of sustainable development. However please note that these perspectives are merely indicative as are the arguments that follow. The aim is to provide a general overview of some of the perspectives on the subject and the discussion is far from being exhaustive.

Business behaviour in the marketplace

Business behaviour in the marketplace can be revealing of business attitudes to CSR. By mere contact with the company it could be deduced whether it is a pleasure or a pain to deal with that particular company. Inside knowledge of the workings of the company is irrelevant. The way the companies operate in the market is a crucial indicator of how they integrate social, ethical and environmental concerns into their mainstream organisational structure and the decision-making process. Product manufacturing, supply chain organisation and component sourcing, marketing and advertising, pricing and selling practices all reflect the company’s commitment to responsible entrepreneurship. In the

¹⁶ See *ibid* p. 8.

marketplace, companies interact with three critical external stakeholders, a), the customers and their association/s, b), the suppliers and their business partners, c), investors and shareholders. CSR here entails good customer retention and satisfaction. Good value for money is also very important. The quality of the product or service has to be of an acceptable quality and the product itself needs to be safe for its intended use. It is very important that the manufacturer or the seller disclose all required information and that the product has adequate labelling and packaging. This has to be complemented by an efficient after-sale services and consumer education.

Business partners and suppliers are another crucial piece of the marketplace puzzle. Responsible companies need to assess their impact across the supply chain. Several issues need to be considered. For example attention needs to be given to the criteria for selecting business partners. If the company is to open a plant or a branch in a developing country, the company has to consider the working and living conditions as well as any human rights issues. Awareness has to be created among business partners and punctuality in payment and support from the local suppliers is important.

Shareholders and investors are another important stakeholder group as a company's market value is becoming more determined by intangible forces such as image or brand. More companies are considering CSR as a risk management tool to avoid loss of reputation associated with socially or environmentally unsustainable practices. Companies that opt to be transparent in their practices towards the environment have a greater chance of attracting more customers as well as more shareholders.

The above is only an indication of what could affect marketplace behaviour. New issues are emerging related to growing consumer concerns in areas such as genetically modified food ingredients, privacy and information technology or marketing to children. SMEs are particularly sensitive to marketplace issues because in most cases companies are part of an integral supply chain mechanism and supply directly to large companies that require compliance with international standards.

A typical case study of how this category of CSR works out in practice is the Gulpener Bier case from the Netherlands.¹⁷ This is an example of responsible supply chain mechanism. The company's ambition statement is 'Connected to Nature'. Sustainability and corporate social responsibility are the prime movers for the brewery. The wish to make a better world is the first reason for the brewery to manage the company this way. Secondly, there is a need for differentiation in a competitive market dominated mostly by larger companies. The sustainability ambition statement determines the complete supply chain management.

All the ingredients for the beer are ecologically grown in the region of the brewery and solar energy is used for the entire production process. The 70 farmers, who formed the cooperative 'Triligran', are not allowed to use pesticides and are rewarded by product prices that are 10 % above the world market price. The brewery tries to reduce pollution at every step of the production process. All bottles are recyclable and packaging is reduced to a minimum. The company is completely integrated in the local community. The factory is located in the middle of the city centre, which makes healthcare and safety a number one

¹⁷ See DG Enterprise, *Responsible entrepreneurship*, 2003 p. 14.

priority. The company is connected to networks of other companies and gives presentations to share their knowledge about sustainability. Gulpener uses the 'balanced score card' management system.

As a result of this policy the business benefits from a good reputation, high consumer satisfaction, as well as high job satisfaction resulting in very low labour turnover rates. The community in general enjoys a healthy environment, good product prices for suppliers, good working conditions. Above all, the consumer benefits from a responsibly-produced product.

On this subject, the EU Green Paper¹⁸ extends CSR beyond the doors of the company into the local community and the above explanation is in line with the principles enshrined in the said paper. The EU puts emphasis on the integration of the companies within their local community. Attention has to be given to the health, stability and prosperity of the consumers. By working closely with business partners, companies can reduce complexity and cost and increase the quality. Larger companies can demonstrate CSR by promoting entrepreneurial initiatives in the region of the location.

Business Practice at the Workplace

The second 'pillar' is good practice at the workplace. Workplace issues are a key to success since it is the company's employees that deliver productivity, customer service and innovative ideas. While employees depend on their employers for their livelihood, the company depends on its employees as its main assets in generating revenue. Promoting a good work/life balance through flexible working hours, caring for employees' health and well-being infrastructure at the place of work are all hallmarks of good work practice. Employees are the most important stakeholders and trade unions, the local community and public authorities also have an interest. Small SMEs are at an advantage over bigger companies as they can, if they wish, involve employees in consultation and the decision-making process relatively more easily. They can promote 'socially responsible' working conditions.

A typical case-study with regard to the participatory organisation model, workplace diversity, health and safety, training and staff development is the case of Fresh from Sweden.¹⁹ Since 1995, when Fresh was near bankruptcy, it has applied a participatory organisation model based on five self-managing teams. Each team focuses on a specific customer category, does its own production planning, recruitment and setting up of sales targets. Teams also determine their own working hours in response to customer needs and operate a 'flexible time-bank' for overtime. The team has no traditional manager but a coach who acts as an interlocutor to discuss job satisfaction, skills development and other training needs with each team member twice a year. This radical reorganisation led to the disappearance of the traditional management and worker roles. Middle management disappeared and the role of managing director is rotated every second year. An advisory council, made up of employees, assumed the role of the local trade union.

¹⁸ See footnote 4.

¹⁹ See DG Enterprise, *Responsible entrepreneurship*, 2003 p. 21.

Fresh invests EUR 1,200-1,500 annually per employee for different training courses. It has a diversity policy and 10 different nationalities are represented amongst its employees. In accordance with Swedish law, it has a plan for workplace equality and has achieved an equal balance between men and women, old and young, employees with basic and higher education. As part of the company's social responsibility it employs physically handicapped people under a scheme partly financed by the government. This frequently evolves into ordinary employment. Fresh also provides training for job seekers after a period of unemployment. Health and safety are important aspects for Fresh. In each team there is a workplace safety representative who forms part of a safety committee together with the management. A healthcare group with its own budget organises in-house massages, physical therapy and provides free fruit, vitamins and daily workout sessions. The company has its own workout gym and a resting room. Stop smoking or weight loss programmes as well as sports activities are encouraged with financial support to employees.

The business benefits from a high motivation among employees resulting in high productivity, and a reduction of middle management costs. There is also a high level of job satisfaction due to participatory decision-making. There are several training and development opportunities as well as a high level of job satisfaction.

CSR has a strong human rights dimension. Human rights are a very complex issue and companies face challenging questions as to how to identify where their areas of responsibility lie as distinct from those of governments. It is also difficult for companies to monitor whether their business partners fulfil human rights criteria. In this sense, in the Green Paper²⁰, the EU has put it upon itself to ensure the respect of labour standards, environmental protection and human rights. The EU is also confronted with the challenge to ensure that its development policy, its trade policy and its strategy for the development of the private sector in the development countries-notably through the promotion of European investments-are in line with CSR.

Business Practice Vis-À-Vis the Community

A third and well developed 'pillar' of CSR concerns the community. Many SMEs trade locally and so have a continued interest in the well-being of their town or region. 'Community investment' or 'corporate citizen' criteria show how the company provides goods and services as well as possibly employee time for the benefit of the community. The main instruments are providing cash or in-kind donations, dedicating the work time of company owner/managers or employees to social causes free of charge or fostering economic regeneration and social integration. It often means working together with local community organisations or institutions such as schools and hospitals, but also with public authorities and non-governmental organisations (NGOs), for social causes.

This demonstrates a sense of moral responsibility, often on the part of the SME owner/manager and responds to expectations from society. The EU believes that companies have a long-term interest in fostering a healthy community and better conditions for employment (enlightened self-interest). The main aspects of social community involvement are social integration (ethnic tolerance, social cohesion), healthcare, education, quality of

²⁰ See Promoting A European Framework for Corporate Social Responsibility COM (2001) 366 final p. 13.

life (sports/culture), economic regeneration and development/employment, local infrastructure and security.

The case study below about Gundlach from Germany²¹ shows that responsible entrepreneurship in the community is not only about cash and in-kind donations or corporate resources provided free of charge. One has to distinguish between ad hoc ‘giving’ - a notion close to traditional philanthropy - and community investments, which are strategic, planned and implemented in close cooperation with partner organisations. On the other hand, community involvement should not be confused with commercial sponsorships. The boundaries are, of course, not always clear-cut and sometimes an initial sponsorship activity can evolve into a genuine partnership based on employees’ involvement. What has emerged as critically important is the need to provide a win-win situation in the local sphere. While the impact on local community and tangible business benefits are often hard to measure, responsible entrepreneurship in the community can generate both positive societal benefits for the local community and new prospects for company growth.

Gundlach is a real estate company and its commitment to responsible business led to several initiatives aimed at fostering the social integration of immigrants. One example was the provision of cheap flats for refugees from the former Yugoslav republics, which were furnished in cooperation with a local citizen-action group. Integration help was also provided. Another project, reserving a substantial amount of flats in a newly built housing estate for immigrant families, brought together locals and immigrants to further the integration process. The company financed a social worker originating from Russia to help young women from families that emigrated from Russia to find their place in German society. An important goal is to help young women to escape domestic violence and to become independent.

In 1997, a company employee formed the initiative ‘Joint action against crime’ together with other members of the registered association ‘Stadtteilgespräch Roderbruch’. The initiative aims to stop violence in the neighbourhood and to encourage residents to get involved in voluntary social work or serve in an honorary capacity. Aware of the societal problems in the neighbourhood and convinced of the usefulness of the concept, the company decided to contribute to this initiative. It renewed an outdoor meeting-point frequented by immigrant youngsters together with their help. It also organised a training workshop to enable senior citizens to learn how to deal with their fears while living in a troubled neighbourhood.

The company benefited from improved customer relations, and a better image for the firm in general. It sharpened its own profile in comparison to competitors. Society benefited with a better understanding among locals in the community. A reduction in violence was subsequently recorded in the area.

Business Practice Vis-À-Vis the Environment

Finally one has to consider CSR from the environmental point of view. Recent decades have seen a marked increase in awareness and public concern about the impact of

²¹ See DG Enterprise, *Responsible entrepreneurship*, 2003 p. 29.

productive activities on the natural environment. The notion of sustainable development, to which the EU is fully committed, encapsulates the idea of balancing economic growth and social inclusion with the preservation of a healthy environment for future generations. The idea that environmental degradation should be de-coupled from economic growth was endorsed at the 2002 Earth Summit in Johannesburg and is a cornerstone of the EU's sustainable development. Environmental impacts associated with business operations include inefficient and unsustainable use of natural resources such as oil, gas and water. Also included are emissions of greenhouse gases such as CO₂ contributing to climate change and emission of pollutants contributing to air and water pollution. One also has to consider long-term effects of hazardous chemicals, the rapid loss of biodiversity and a high level of waste generation and hazardous waste.

These impacts increasingly result from goods and services rather than production processes. Instruments used by businesses to address such environmental impacts are manifold and include amongst others: environmental management systems, formal ecodesign tools, cleaner production techniques and technologies and eco-labels. A number of stakeholders influence a company's environmental policy: owners and employees on the inside and business partners, NGOs, citizens and consumers as well as public authorities on the outside. The EU manufacturing sector has significantly improved its environmental performance over the last 20 years in terms of resource use and emission of pollutants (eco-efficiency).²²

Environmental policy including extensive EU and national legislation as well as non-legislative incentives has been a major driver in these developments. Businesses have responded by developing new technologies, improving management techniques and investing more in environmental protection. Nevertheless, important challenges remain not least among SMEs which are often less aware of current and future environmental trends and regulations or the market opportunities available to them. SMEs tend to underestimate their environmental impacts, which may be small on a company-by-company basis but are considerable when looking at the SME sector as a whole. Internal barriers, such as lack of skills, awareness and (human) resources, further hamper environmental responsibility in SMEs.

A typical example of how CSR towards the environment is put into practice is the case of Pgkim in Poland.²³ The company deals with local environmental management, especially in the fields of solid waste management including selective collection of waste and the conversion of bio-waste into a fertiliser. It is also responsible for the supply of drinking water, wastewater treatment, central heating and management of municipal housing real estates.

In partnership with local government and the city council Pgkim has organised several educational campaigns for children on the need for recycling (training for teachers, door-to-door campaign, and educational pack). At the sewage treatment plant, privately owned by Pgkim since 1997, they have organised a nature park and a zoological garden. The plant is located outside the city in the forest and has become a frequently visited recreational place.

²² Ibid p. 33.

²³ Ibid p. 35.

The whole plant is open for visitors, especially schoolchildren who can organise special 'green lessons' there. In the pond near the plant one can find catfish, carp, pike, turtles and otters. Nearby there is a shelter for homeless animals, a special garden for African ostriches and an aviary run by the enterprise's employees. The main reason for the enterprise to organize such a park is to raise awareness of the benefits that the technology presents to the local community.²⁴

The company benefited from improved staff morale and gained a better reputation. More income was achieved from selling particular recycled waste. Society also benefited by having less waste for landfills and cleaner water. There is also access to biological fertiliser instead of hazardous chemicals and there are better conditions for recreation and access to nature for children. This complements environmental education.

The above is in line with the EU's Green Paper mentioned above²⁵. The EU encourages better environmental performance throughout the supply chain of the company and if it is the case, it encourages companies to consider the impact on the social and economic development of developing countries. The debate on the role of business in achieving sustainable development is gaining increasing importance on the global stage. In fact the Commission itself published a Communication 'Ten Years after Rio - Preparing for the World Summit on Sustainable Development'.²⁶ This contains further details on how business can contribute to global sustainable development. Since then, further action has been taken and new initiatives are currently being proposed.

Voluntary v Regulatory Conduct

From the above, one could deduce that CSR appears to take the form of voluntary conduct with the backing of the establishment rather than completely regulatory conduct. For CSR to be most effective there has to be a balance between regulation, education and voluntary conduct. Certain regulations such as labour laws and environmental legislation are essential and provide the common denominator. Such regulation is essential and it may not necessarily be attributed to CSR though it would aid CSR. CSR requires further action than the minimum regulation provided by the general regulatory law. The EU in its policy documents encourages businesses to take into account a social element while searching for their profits. However this by no means would transform the businesses into social players. They remain businesses as their primary function. Thus drawing a line between the profit function and the social function may not be that straight forward. It would depend mostly on the type of business and above all the community in which the business is operating. Thus education would probably be one of the most important aspects of CSR. By education is understood that companies would be aware of the benefits that can be derived by being responsible in the search for profit. The EU, as well as the Member States together, have the task to ensure that their policy is reflected through educational initiatives. Certain educational initiatives could have some sort of regulatory framework, but at the end of the day the voluntary element would continue to wield considerable influence in the

²⁴ Ibid p. 36.

²⁵ See Promoting A European Framework for Corporate Social Responsibility COM (2001) 366 final p. 15.

²⁶ COM 2001/53.

implementation of CSR itself. The educational initiatives would aid and encourage firms to increase their profits while being socially responsible.

Some companies, in particular multinational companies adopt voluntary codes of conduct either at industry-wide level or at the level of individual co-operations. These codes specify the actions to be taken by such companies in the event of a conflict between the co-operation and society. Some codes have become de rigueur for all such companies that profess to be good corporate citizens and to conduct their operations in a professional and socially responsible manner.²⁷ The adoption of codes of conduct by multinational companies can count toward their praiseworthiness. There are conditions under which the adoption of codes changes their accountability, not because they incur a contractual obligation to provide such assistance, but rather because such codes coordinate the expectations of relevant parties with regard to the provision of assistance.

Nien-he Hsieh claims that the obligations of companies, as specified in the codes of conduct, are contractual in nature. If correct, this argument provides support for the claim that they can be held more accountable with regard to performing those actions specified in a code of conduct that they have adopted, relative to a situation in which the code was not adopted.²⁸ There are, however, two reasons to doubt the plausibility of this line of argument for grounding the general significance of the voluntary adoption of codes of conduct for accountability. The first reason is that many of the commitments enumerated in codes of conduct are expressed in such a way that they would appear to have been adopted precisely because they *already* apply to such companies in general. The second reason to doubt that codes of conduct ground the commitments enumerated in them on a contractual basis is that the voluntary adoption of codes of conduct by multinationals is often predicated on their perception that outsiders believe that they are not meeting their obligations.

In contemporary philosophical debates, it is argued that citizens of developed economies have an obligation to provide assistance to members of developing economies on one of two grounds. One ground is with reference to a duty of rescue. The general idea of a duty of rescue has been articulated and discussed by a number of scholars as a plausible way to account for intuitions about a duty to provide aid to others. The second ground on which citizens of developed economies are said to have an obligation to provide assistance to those in developing economies is with reference to a duty of justice. Although there is debate over the precise amount and content of the assistance required by citizens of developed economies, what is held to be the case is that there is a duty of justice, on the part of citizens of developed economies. The companies have the capacity to provide many forms of assistance to members of developing economies to whom citizens of developed economies have an obligation to provide assistance. Many, if not most, shareholders of multinational companies are citizens of developed economies. In turn, under certain conditions, there is reason to hold that the managers are permitted and sometimes required to engage in the provision of assistance to persons to whom shareholders, in their capacity as citizens of developed economies, have an obligation to provide assistance.²⁹

²⁷ Nien-he Hsieh, 'Voluntary Codes of Conduct for Multinational Corporations: Coordinating Duties of Rescue and Justice, *Business Ethics Quarterly*, Volume 16, Issue 2, 2006 p.119-135.

²⁸ Ibid p.120.

²⁹ Op cit p. 123.

With regard to shareholders' expectations, there is reason to hold that the voluntary adoption of codes of conduct renders multinational companies more accountable. If shareholders have any claim to be informed in advance about corporate activities that managers are already understood to be permitted to perform, it seems reasonable to hold that such a claim exists with regard to those activities least related to the primary purpose of the corporation. In the case of those companies which have the making of profit as their primary purpose, the provision of assistance to members of developed economies is among those activities least related to the primary purpose of the corporation.

It could be argued that multinational companies no longer remain under an obligation to provide assistance to members of developing economies if the nature of global business competition makes the burden associated with the provision of that assistance sufficiently great. An argument advanced by Manuel Velasquez suggests that this is indeed the case.³⁰ He advanced his argument with regard to the question of whether such companies have an obligation to provide for the public common good. The structure of his argument, however, applies equally to the question of whether the companies have an obligation to provide assistance to members of developing economies. As such, in order to understand the potential role for the adoption of codes of conduct with regard to the provision of assistance on the part of multinational companies, it is important to examine and respond to Velasquez's argument that the companies do not have an obligation to provide for the public common good.

Velasquez has argued that in a competitive global business environment, in the absence of an international authority to coerce corporations to contribute to the global common good, multinational companies do not have an obligation to contribute to the global common good.³¹ In defence of his thesis, in addition to arguing that there are limits to the burdens that persons are required to bear in providing assistance, Velasquez argues that "in the absence of an international sovereign, all rational agents will choose not to comply with the tenets of ordinary morality, when doing so will put one at a serious competitive disadvantage, provided that interactions are not repeated and that agents are not able to signal their reliability to each other."³² Characterizing the global business environment as one in which the burdens of complying with ordinary morality are seriously great such that rational agents will choose not to comply with the tenets of ordinary morality with regard to the contribution to the public good, Velasquez concludes that multinational companies do not have an obligation to provide for the public common good. If one takes Velasquez's characterization of the global business environment to be plausible, then multinational companies do not have an obligation to engage in the provision of assistance to members of developing economies. There is reason to hold, however, that the adoption of codes of conduct by multinational companies goes some way to address the conditions that make it rational, and therefore permissible, for multinational companies not to provide assistance under Velasquez's characterization of the global business environment.

³⁰ Velasquez M. 'International Business, Morality, and the Common Good', *Business Ethics Quarterly*, (1992) 5, p. 27-40.

³¹ *Ibid* p. 38.

³² *Ibid* p. 36.

First, in response to Velasquez's point about the lack of an international sovereign, although voluntary codes lack the coercive force of such a sovereign, the voluntary adoption of such codes of conduct has the potential to strengthen formal and informal mechanisms that enforce the stated commitments of multinational companies as specified in codes.³³

Second, the voluntary adoption of codes of conduct has the potential to help address Velasquez's point that providing assistance when other multinational companies do not is, in fact, seriously disadvantageous to the 'well disposed' multinational companies. As discussed above, codes of conduct have the potential to increase the costs for not performing those actions as outlined in its code of conduct. In this manner, codes of conduct have the potential to reduce the disadvantage suffered by any one multinational company from following its code by reducing the relative disadvantage that it suffers. The voluntary adoption of codes of conduct has the potential to reduce further this disadvantage in one of three ways.³⁴ First, one common argument advanced to encourage the voluntary adoption of codes of conduct is that companies will improve their reputation by doing so and so they will benefit. Second, the voluntary adoption of a code of conduct allows a multinational company to differentiate itself and attract customers, shareholders, and employees who are willing to pay a premium for goods and services, for their return on investment, and for their wages, thereby lowering the overall cost to fulfil the commitments specified in its code. Thirdly, the voluntary adoption of codes goes some way to addressing one important feature that Velasquez attributes to the global business environment, which is the inability of multinational companies to signal their reliability to one another with regard to their willingness to abide by the tenets of morality. In these three ways, the voluntary adoption of codes of conduct addresses key features of Velasquez's characterization of the global business environment that make it morally permissible for multinational companies not to abide by the tenets of ordinary morality with regard to the provision of assistance. In this manner, there is reason to hold that the voluntary adoption of codes of conduct makes it such that multinational companies can be held accountable for performing actions specified in a code for which they would not be held accountable without the code.³⁵

Conclusion

Within the currently emerging global society, businesses have embraced CSR not only as a value reflective of their new role in contributing to societal goals but also as a strategy for improving their profits.³⁶ Increasingly, businesses are seeking to maintain corporate identity while upholding social and environmental standards and confronting the concerns of social exclusion and community development. But the influence of businesses on social cohesion beyond corporate governance has to be approached with balance. Company executive officers (CEOs) are not social workers, and CSR engagements should not be seen only in terms of external corporate activities that may be overriding the primary goal of profit-making. Nonetheless, an analysis of company external engagements beyond internal

³³ See Nien-he Hsieh, 'Voluntary Codes of Conduct for Multinational Corporations: Coordinating Duties of Rescue and Justice', *Business Ethics Quarterly*, Volume 16, Issue 2, 2006 p. 127.

³⁴ Ibid p. 128.

³⁵ Ibid p. 128.

³⁶ See Moses O. Oketch, 2004, 'The Corporate State in Social Cohesion', *Peabody Journal of Education* 80(4) p. 30-52.

governance remains critical for an understanding of how they might influence social cohesion.

Employees are the immediate stakeholders in companies, and corporate governance can foster social cohesion by recognizing their rights as stipulated by the law. The competitiveness and ultimate success of a corporation is the result of teamwork that includes the contribution of employees, among other resources. Corporations should recognize that the contribution of employees constitutes a valuable resource for building competitive and profitable companies. It is therefore in the long-term interest of corporations to foster behaviour that promotes non-discriminatory practices in hiring, firing, and promoting. Good corporate practice requires that the rights of employees that are protected by law be respected. Such protective laws include labour law, business law, contract law, and insolvency law.³⁷

By adhering to these laws, firms foster a sense of belonging and identity among their employees. Many employees identify with the firms that employ them in positive ways, usually using first-person references such as “my firm” when referring to their places of work. When the rules of promotion and hiring or firing are discriminatory, the trust that the employees have in the firm as stakeholders is betrayed, usually leading to a workplace with conflicts. Such conflicts may be carried over to households and even the wider community, thus disrupting the social cohesiveness of the society. But corporations that adhere to these laws, and even go further in areas where the employees’ interests are not legislated, make additional commitments that build on the corporate reputation. The recognition of such broader interests is a way in which firms contribute to social cohesion.³⁸

As regards shareholders, investors’ confidence that the capital they provide will be protected from misuse or misappropriation by corporate managers, board members, or controlling shareholders is an important factor in corporate governance and social cohesion.³⁹ Corporate boards, managers, and controlling shareholders should not engage in activities that may advance their own interests at the expense of the non-controlling shareholders. However, the optimal structure of a firm is best decided by management and boards, subject to the approval of shareholders.

Good corporate governance frameworks ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.⁴⁰ A strong disclosure regime is a pivotal feature of market-based monitoring of companies and is central to shareholders’ ability to exercise their voting rights. Disclosure also helps improve public understanding of the structure and activities of enterprises, corporate policies and performance with respect to the environment, ethical standards, and companies’ relationships with communities in which they operate. This promotes social cohesion. Also the independence of auditors and their accountability to shareholders is crucial for corporate governance that fosters social

³⁷ Organisation for Economic Co-operation and Development (1999). *OECD Principles of Corporate Governance*, Paris.

³⁸ Organisation for Economic Co-operation and Development (1999). *OECD Principles of Corporate Governance*, Paris.

³⁹ Moses O. Oketch op cites p. 34.

⁴⁰ Ibid p. 35.

cohesion. An annual audit should be conducted by an independent auditor to provide external objective assurance on the way in which financial statements have been prepared and presented. The application of high-quality audits is one means by which firms build on the reciprocal trust with the wider society.

The executive board is the nerve centre of corporate governance. Its members are the immediate eyesight of the stakeholders and shareholders in monitoring the operations of management. A well-governed corporate entity is one that ensures that the executive board is fully accountable to the shareholders and stakeholders. Management boards composed entirely of corporate executives should have a clear vision of their responsibility to their companies, shareholders, employees, and communities of stakeholders and their responsibility to foster integrity and unity.⁴¹

Governments play an important role in monitoring, without controlling, the behaviour of corporations. This is aimed at ensuring that business organisations are socially responsible. Moreover, regulations and legislation that are well intended and adhered to can create an enabling framework for firms and communities to work together in addressing their issues and problems. This type of arrangement has the potential of promoting social cohesion. Through awards and fiscal incentives, governments can spread the message of CSR, without necessarily tying increased tax breaks to corporate donations to communities. Regional development agencies, which are for the most part dominated by NGOs, can also promote CSR by promoting coherent and helpful policy information and coordination, predominantly for SMEs. Such regional organizations can also act as regional level brokers between communities and multinational companies. Their brokerage role may act as the link between the multinational companies and the SMEs.

To sum up, to address the issue whether conscience and business can co-exist, the following points have to be kept in mind:⁴²

1. *Use of moral imagination:* Corporate leaders need to develop the ability to effectively perceive the moral relationships behind competing economic relations.
2. *Identify and rank-order the moral factors of a situation:* For CEOs to incorporate moral choices into business decision-making, they need to learn how to identify and then prioritise moral impacts of a given decision. In many cases, decisions are not clear-cut, and moral choices remain in a grey area.
3. *Evaluate the moral choices:* Although difficult, moral choices often need to be made, whether operating at home or at the office. Increased transparency in moral evaluation can help CEOs effectively identify the trade-offs inherent in any situation. Clear corporate principles and processes help executives fully evaluate the moral outcomes of a decision.
4. *Build tolerance of moral disagreements and ambiguity:* In any moral choice, disagreements are bound to occur. There is usually no clear-cut “right” answer. In

⁴¹ Ibid p. 36.

⁴² Powers, C. W., & Vogel, D. (1980). *Ethics in education of business managers*. Hastings-on Hudson, NY: Hastings Center.

particular, decisions that cross international borders are bound to result in cultural criticisms.

5. *Integrate managerial competence and moral competence:* Moral issues in management are not an isolated phenomenon. Such issues permeate corporate life. Managers need to become as competent with moral judgment as they are with business administration.

6. *Instil a sense of moral obligation throughout the organization:* Integrity and moral obligation are essential to management practices. These qualities can be consistent with the free enterprise system; corporate culture needs to recognise and embrace the coexistence of morals with profit.

CSR has become a business tool aimed at achieving business results in publicly-traded corporations. Significant engagement is needed, and a great deal of success in businesses' influence on social cohesion can be realized, when all the factors that affect corporate image are combined. These include improving the quality of corporate governance, adhering to environmental standards, and opening companies to more critical scrutiny of social practices. By using ethical guidelines to conduct their business and raising issues of social concern with the communities in which they operate, many corporations are reshaping the corporate image that society would like to see in the 21st century.

WHITHER GOVERNANCE THROUGH PUBLIC-PRIVATE PARTNERSHIPS?

MARK SULTANA

Introduction

It is obvious that the model of market-managerialism is dominating our political landscape; indeed, its vocabulary has carried all before it. We speak readily of centres of excellence, advocate a multiplicity of providers and the provision of choice, and express our disdain for producer-dominated industries. Our patients and students are now ‘clients’ and ‘customers’, our procedures must be ‘transparent’ and ‘robust’, and everyone must be ‘accountable’. Such vocabulary is every-day, hard-nosed and successful. It advocates efficiency, abhors waste and provides all the answers. Indeed, one can argue that it has turned into a world-view. Problems, of course, arise when needs simply come to be met at the lowest cost, regardless of any other consideration, or even when ‘quality’ comes to be defined solely by ‘customer satisfaction’.

It is within this arena that the emergence of public-private partnerships (PPPs) heralds a new era of collaboration between public-private actors across different levels of government (local, national, international) and across different policy fields including transport, housing, and healthcare to name a few. PPPs are “a cooperative venture between the public and private sectors, built on the expertise of each partner that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards” (Canadian Council for Public-Private Partnerships 2004). They first emerged in the United States in the late 1970s and early 1980s in response to what was seen as the poor performance of the public sector, and the view that the State had reached its financial limits as far as the provision of public services were concerned (Mohr 2004, 235). PPPs were initially introduced as a more publicly acceptable alternative to privatization and, indeed, as a tentative first step towards full privatization agreements.

Of course, the implementation of PPPs is commonplace throughout the European Union. In particular, the provision of transport infrastructure through PPPs has been widely embraced as it is said to be less costly, to deliver a better quality of service and, moreover, to meet

demands for providing a greater choice of services. There has also been a notable development of PPPs in other spheres besides transport, most notably in the arenas of health and education. It is the view of the European Commissioner, Colin McCreevy, that PPPs can address the problem of a shortage of public funds by taking full advantage of alternative approaches to public procurement while encouraging projects that are vital to European competitiveness and growth (McCreevy 2005, 2-3).

The United Kingdom is the EU leader in opting to embrace the concept of public-private partnerships. Indeed, within the UK, PPPs have delivered more than 500 operational projects, including 185 new or refurbished health facilities, 230 new or refurbished schools, and 43 transport projects (HM Treasury 2006, 3). Depending on the kind of project involved, such initiatives include: (i) complete or partial privatisation; (ii) contracting out with “private finance at risk”; and (iii) selling government services in partnership with private sector companies (HM Treasury 2000, 10).

In this regard, HM Treasury claims that ‘Private Finance Initiative’ (PFI) is only one of a number of procurement options that the Government can use to invest in public services. The Government only uses PFI/PPP where it can be shown to deliver value for money and does not come at the expense of employees’ terms and conditions. PFI/PPP offers value for money for certain investments through: a long-term focus on whole life costs; risk management expertise; and greater certainty for the public sector that services will be delivered to the specified standard. Benefits are derived from PFI/PPP “where the risks associated with a project are borne by the party that can best manage them” (HM Treasury 2006, 4).

It is interesting to note that, in these documents, the only criterion for the choice between PFI/PPP and other procurement routes is to be that of the value for money which, in turn, is explained in terms of the long-term focus PFI/PPP brings on whole-life costs, the private sector’s risk management expertise incentivized by having private finance at risk, and the certainty for public services PFI/PPP provides of specified outputs being delivered at the cost contracted for (HM Treasury 2003).

The Case for PPPs

PPPs have been advanced as a ‘middle-way’ in the wake of a backlash of public opinion against wholesale privatizations which were seen as shifting control into the hands of the few while dismantling the welfare system. It was commonly noted that there are important differences between the public and private sectors which must be taken into account since the provision of a number of social services is simply not suited to companies whose basic motive is profit (Flory in Osborne and Gaebler 1992, 47). Public-private partnerships were intended as a way for the public sector to work with the private sector while distinguishing the public interest from private gain (Mohan 1998, 11).

PPPs have, indeed, redefined the boundaries between the public and private sectors. They have been hailed as the greatest change in delivery of government services since the introduction of the welfare state (Harris 2004). PPPs have been proposed in the light of the governments’ and citizens’ demand that public sectors should strive to maximize value for

the money the citizens pay into taxes (Barrett 2000, 6). They have been presented as having the potential to provide quality services: it has been argued that participants from different organizational cultures and professional backgrounds offer greater possibilities for creativity and mutual learning (Roberts, Breitenstein and Roberts 2001, 79). In the local scenario, PPPs were mooted as a way to gain efficiency and save costs and thereby to help bring down the nation's deficit (Budget Speech November 2004, 12. 15). They were also intended to facilitate the more effective deployment of government employees by seconding them for work with contractors involved in publicly-funded projects, as well as help improve the efficiency of the public service and the quality of service it offers to the public (Office of the Prime Minister 2003, 3). Hence, the three declared objectives of the Maltese PPP programme (reducing government expenditure, deploying government employees more effectively and providing a better quality public service) are rooted in a common denominator: the need for change in the public sector and the concomitant belief that change can only be induced through the involvement of an outside agent.

This overall strategy for the public sector is often accompanied by the argument that the role of the government is that of steering not rowing (Osborne and Gaebler 1992, 25). Here, the point would be that governments' roles should be limited to those of raising resources and setting societal priorities (Drucker 1982, 32). It has been argued that it is precisely when governments dabble in rowing as well as steering that the decision-making capacity within the public sector becomes paralyzed and focuses more on symptoms than causes. In particular, when offering services, governments all over the world have a reputation for inward-looking bureaucratic tendencies rather than customer-oriented, needs-centred approaches.

Here, it is interesting to note that during the first post-war decades, the public sector was modeled on the bureaucratic paradigm which rested on the hierarchy of authority and formal mechanisms and aimed more at providing security than efficiency. It delivered the basic no-frills, one-size-fits-all services people wanted and expected and provided the security from unemployment and destitution that people needed (Cutajar 2005, 12). Today's social and economic environment is very different: the focus is on the citizen as customer who demands continuous improvement to meet the needs and wants of today's society. Citizens demand flexible and adaptable institutions that deliver high quality goods and services (Osborne and Gaebler 1992, 15). In the UK, such expectations include fast delivery of services, authenticity, services being personalized to more diverse life styles, flexibility of services and choice of service, where these are all considerations that can be strongest where one can make comparisons (The Cabinet Office 2006). Citizens also demand that government itself should be run like a business with a focus on efficiency (Mohan 1998, 3). The change deemed necessary is not easy to come by. The public sector culture is considered to be so strong that it can absorb and frustrate into conformity even the most entrepreneurial and innovative people within the hierarchy; such insiders are deemed only to be able to create mechanisms that would be overlaid on the previous organization - in effect thickening the bureaucracy - without adequately challenging the old rules that made it underperform (Hammer 2002, in Cutajar 2005, 20). One would conclude that only an external agent could effectively inculcate the necessary changes. Moreover, one could well maintain that, in the light of the strong resistance to change, such an external agent's motivation for change must be sustained by the latter's assuming risks through the

investment of the latter's own capital into the venture. This transfer of risk serves as the driver for value for money as it motivates the best decisions for the most efficient and effective designs, operating regimes, human resource planning, and so forth (Parliamentary Library - Australia 2002, 6-7).

Public-private partnerships therefore may be considered as adequate change-agents since the private sector can provide a genuine element of risk-taking (Brittan 2001). The traditional public service is based on a budget which someone else has earned rather than earning its own keep (Drucker 1986, 163). This makes for stability in the provision of services - a consideration which is all-important particularly in sectors such as health and education - while proving an obstacle to entrepreneurship. The theory is that, through PPPs, governments would be able to draw on the best of both public and private sectors to deliver high-quality public services which the public increasingly expects (HM Treasury 2000, 10).

The Case against PPPs

It is interesting to note that, over the years, a vociferous case has been advanced against PPPs. In particular, it has been mooted that, whereas the main underlying principle of PPPs is that risk is transferred from the public to the private sector, where the risk transfer is intended to provide financial certainty for the public sector client, and justifies the higher cost of borrowing involved, one major problem is that governments' use of PPPs would bring with them the two systemic market failings: the inequity of profit distribution and the fall-out of business collapse. While an excessive profit stream for the contract company is effectively a gift from the public purse, the collapse of the contractor would require the public body to step-in and rescue the asset and service which the contract was established to build and operate. Whatever the terms of the contract may say, with essential public services, it is the government which remains the guarantor of last resort.

While this apprehension remains important, other concerns have been aired particularly with regard to: (1) transparency and public accountability; (2) inflexibility; (3) the attainment of effective dispute resolution systems; and (4) safety and security.

With respect to the first issue, concerns have been raised about the lack of transparency involved in private sector delivery using public funds to secure delivery of public services, when compared to public sector delivery. In the first place, the unavoidable transfer of some risk (and its concomitant responsibility) from the public to the private sector in PPP schemes continues to pose a serious challenge to transparency and the wider issue of public accountability whereby access to publicly-relevant information including processes of decision-making is often constrained by "commercial-in-confidence" clauses and highly-technical language. A second cause for concern is the complex nature of PPP contracts. In part, these often incredibly complex contracts are the symptom of two sides each trying to quantify and minimize risk acceptance for themselves. The compound result is that PFI and PPP contracts are generally cloaked by a veil of secrecy and a failure of accountability despite their using public money. Hence while, in the administrative domain, PPPs are certainly characterized by formal public accountability procedures, decision-making processes are normally conducted behind closed doors in the absence of any salient public participation.

In addition, it has often been argued that PPPs do not strengthen public accountability because the 'private' sector, by definition, is not publicly accountable. The transition from government to wider governance diffuses responsibility and consequently any recourse to public accountability. Since those holding positions in the governance structure of the partnerships are not elected, it has been maintained that such arrangements fall outside traditional forms of accountability relating to political democratic procedures. Other concerns have been aired with respect to the reduced public control over service provision. All in all, there is growing evidence that the contractual relations of public-private partnerships have led to a clear weakening of traditional notions of accountability "reflecting both a shift to new lines of accountability (private sector shareholders) and a vicious circle of monitoring and distrust between partner organisations" (Hebson et al. 2003, 481).

A further area of disquiet concerns the extended period of a good number of PPP contracts. Their long-term character both commits the Government for many years ahead, limiting the room for manoeuvre of future administrations, and weakens the capacity of the electorate and their representatives to influence policy direction. The result is a weakening in the political linkage between the provision of public goods and the public domain itself.

With respect to the eventuality of disputes and their resolution, it is clear that the consequences of a litigation process between partners could involve high legal costs, interruption of progress and development, impairment of commercial relations important to the private partners, and the deterioration of governments' and companies' public image. Indeed the multiplicity of parties in public-private partnerships creates special problems for an efficient resolution mechanism.

With respect to the issues of safety and security, PPPs present a new scenario. It appears to be clear that citizens value the improvement of security and safety of the service over efficiency and better services (Mohr 2004, 245). One key concern is that the private sector, while improving efficiency by cutting costs, may in addition seek to cut costs available for maintenance and control of important services. In this light, according to the United Nations Economic Commission for Europe, governments need to establish independent and expert bodies that can scrutinize the safety aspects of PPPs (United Nations Economic Commission for Europe 2000, 20, 27). In addition, not only must procedures be put in place that guarantee that the safety and security concerns are met in public-private partnerships but there must also be a firm commitment to their implementation.

All in all, the basic disquiet being expressed in a variety of ways is that, without clear public, democratic control of public services, there is a significant risk of policy decisions emanating from private justifications undermining democratic principles like accountability, transparency, safety, fairness and equal access. The point made here is not that the public services are to be understood along the lines of some ideal type with an unassailable 'higher purpose'. Rather, it is to remind of the vision of the public services as being democratically connected to their community and engaging with it in a rational dialogue about what they should be in the light of democratic public purposes. Indeed, it is indicative that a Treasury document acknowledges that public-private partnerships may not be the preferred financial model for every infrastructure circumstance (HM Treasury, 2000).

Moving forward?

One conceptualization of PPPs is the so-called ‘governance perspective’. That is, public-private partnerships are seen as a network of independent public and private actors who come together to form a cooperative interdependent working relationship to provide improved project management and financing solutions. This increasingly popular approach to partnerships presupposes the sharing of responsibilities and risks while challenging the traditional conception of the government and government autonomy by advocating the emergence of a model where state actors collaborate with civil society actors (corporate, stakeholders, NGOs). Here the emphasis is on the creation of heterogeneous networks and the forging of links between interdependent actors within these networks.

The governance perspective refers to new modes of governing both in the area of policy implementation and in that of decision-making. In other words, “government is not just changing its tools, it is changing its meaning” (Stoker 1998, 38). Governance perspective challenges the traditional notion of state sovereignty. State centrality is not granted; rather the state is “a *primus inter pares* actor whose capabilities are contingent on its ability to mobilize other societal actors for its purposes” (Pierre and Peters 2000, 82, in Mohr 2004, 240). Thus the governance perspective refers to a complex set of actors (local, regional, national, international, private, NGO), which coexists with the state and participates in service delivery and strategic decision-making. Although the state and its institutions remain a focal point for thinking about governance, government at the national level is only one set of agencies that provide the steering mechanisms that make governance possible.

In this light, as a new form of governance, public-private partnerships have required a redefinition of the role and domain of public services and their delivery. This has rendered a shift from a hierarchical approach to public service delivery by the state to the pursuit of a policy of negotiation and cooperation. It is claimed that public-private partnerships, by expanding their agendas through the integration of civil society actors, are an innovation in democracy. In this light, it is pertinent to consider whether a disjuncture exists between the public sphere and the role of PPPs.

Indeed, in recognizing this blurring of responsibilities between public and private actors, problems associated with achieving public accountability must certainly be taken into account. The very nature of interdependency among public and private actors raises questions of the nature of the decision-making involved and the management of any ensuing uncertainty in issues concerning such public-private partnerships.

On the one hand, it may well be argued, as above, that in view of the fact that the “private” sector is, by definition, not publicly accountable, public-private partnerships cannot strengthen public accountability. The diffusion of responsibility that necessarily accompanies the transition from government to governance is seen to lead inevitably to a diffusion of public accountability. Indeed, many hold that public services should be driven by motives of social concern rather than commercial profit (Spackman 2002, 283). The blurring of the boundary between political jurisdiction and market forces is often seen to be a cause for real concern. As Pierre (1998, 189) puts it, this governance structure easily “displaces political accountability” and “allows for market-based actors to penetrate the

domain of the political”. Thus the process of devolution from the state to ‘independent’ institutions results in a weakening of political, hierarchical steering through the transference of authority. More research, however, is needed on how actors holding formal positions of the partnerships’ governance structure conceive their role, their motivations and the prevailing notion of accountability.

On the other hand, it may be argued that privatization may enhance some aspects of public accountability. For example, the privatization of important public functions may induce development of improved formal regulations in some sectors, such as transport. Moreover, the tendency towards privatization in large infrastructure projects has lent increasing legitimacy to claims for more accountability from the private sector. Some scholars argue that public-private partnerships actually benefit the opening up of new channels for public participation and mobilization. They point at the development of the important role played by new external actors such as the media and civil society. The media has an important role to play in helping to mobilize public debate. Indeed, in relation to public accountability, the media play a dual role. First, they serve as a vehicle for information dissemination thus contributing to transparency with respect to the issues under discussion. Secondly, they contribute to the framing of the issue at hand by reporting on facts, decision-making processes and their outcomes. The concomitant challenge would be to identify and appropriate vehicles by which citizens can be mobilized. It is therefore important that governments and the private sector develop benchmarking to demonstrate their progress in improving the efficiency, equity and transparency of public-private partnerships. In addition, while certain cases demonstrate the value of open parliamentary enquiries, at the same time, powers could, and should also be extended to national audit bodies to examine specific cases of value for money and issues of public interest. Since much of the financing of public-private partnerships is of a highly technical nature, open debate at such a level could encourage a wider participation and a better understanding.

Naturally, there are still various challenges to be faced. Such challenges are presented by the ‘complex web of accountability’ characterized by a relative lack of publicly visible, accessible or comprehensible accountability mechanisms, the highly technical and legalistic nature of PPP contracts and related partnership documentation, the absence of the public from the decision-making process, the ability of the ‘private’ component of the PPP to hide behind the ‘commercial-in-confidence’ clause, and the special problems for an efficient dispute-resolution mechanism.

Arguably, a number of these shortcomings could be addressed sufficiently. The lack of transparency could be tackled through the establishment of more effective mechanisms of public scrutiny. An important mechanism could be the conduct of proper cost and benefit analyses, which include wider criteria than monetary gain, whereby facts and figures are made publicly available. The special problems for the achievement of an efficient dispute resolution mechanism could be addressed through a form of arbitration that determines disputes on the key commercial aspects of the PPP agreement and gives guidance on any aspect of the agreement when requested by one or both of the parties. Such an arbiter would be able to require parties to provide information and to carry out inspections, consult appropriate parties and do what he considers appropriate to prepare for giving directions or

guidance. An essential aspect would be that the arbiter is 'on call' continuously in order to deal with disputes and to solve them as quickly as possible.

Yet, the greatest weakness inherent in the structure of governance exemplified by PPPs has to do with the safeguarding of the 'public interest'. Indeed, a qualified critique of PPPs would have to point out that this 'weakness' goes beyond the questions of accountability, transparency and arbitration. It has more to do with the safeguarding of goods generated by and available to a community such that the community's members all share them, both as a community and singly. Indeed, such goods as knowledge, security, health, education, the environment and culture are not mere amalgams of private and individual goods, nor are they solely a good of the whole that disregards the good of its members. Unlike consumable goods, which can only be divided into parts, they are shared by their distribution as a whole and they benefit all wholly. In addition, those who pursue private concerns, do so as participants in common, public goods - such as the provision of health and safety, the diffusion of knowledge and information, and so forth. Without such public or common goods, individuals or corporations could not pursue their private goods.

With this in mind I would like to offer my qualified critique of PPPs. In the light of the 'governance perspective', these are understood as 'balancers' (through negotiation and the formulation of contracts) of the interests of multiple stakeholders. Such an arrangement would have, under its purview, the varying interests of the different members and groups within society. The aim of such a multi-fiduciary model would be to balance out the interests of the many diverse participants and constituents in society. Now, of course, such a kind of analysis is of enormous and, indeed, critical value in moving the debate towards a detailed, circumspect appreciation of the extent and variety of interests and goods that are implicit in the respective activity under consideration. It could also be of great use in highlighting the necessity of consultation with, and direct representation of, diverse views. Moreover, it could serve as an antidote to a distortion of the idea of society which would hold the latter above the individual person. The problem with such a 'governance' model as used in PPPs would be that the ideal type of such a model treats all goods within society as consumable goods. Indeed, the idea of balancing interests against one another is practically impossible unless all such interests are treated as individual, independent, and comparable. Also, within such a perspective, human persons are treated as atomistic individuals. That is, such a model supposes that stakeholders are enlightened 'interest maximizers' who pursue their interests in such a manner that also advances the interests of all the others with the end result being that the interests of all will be maximised. What results is a strategic calculus by which the managers-arbitors attempt to maximize the sum total of particular goods for each stakeholder. The good that one expects out of the PPP would be just this maximizing effort. Of course, such a utilitarian point of view, presuming that human beings are only united through external things they can exchange, is deficient; there is no real room for the genuinely common or public goods that constitute society.

To be sure, our social nature means that we develop authentically only through our participation in a number of communities ranging from the political to the familial and work communities. If the pursuit of personal and private goods is not somehow aligned to a common life, we end up in a somehow functioning, yet fragmented, civil sphere.

In this light, it is not plausible to think that a variety of performance-based, legal contracts, often running into hundreds of pages, specifying all the relevant contingencies and minutiae of work activities, could ever replace political responsibility for common or public goods. Contracts or mutually self-serving exchanges cannot take the place of a real common life. Common or public goods are such as to shape civil society. Their realization perfects civil society as a whole, while at the same time benefitting members of the society singly. My contention is that such goods cannot be provided for adequately through the mere application of the criterion of ‘value for money’; they can only be provided for through the application of ultimately political and legal standards of justice, equity and human development – themselves public goods. The reduction of ‘public goods’ to ‘consumable goods’ and the reduction of ‘persons’ to ‘customers’, whose needs must be met at the lowest cost, regardless of whether those needs adequately define the needs of the person as a member of society, does not suffice. Indeed, PPPs risk putting value for money before human needs. Schemes have to be attractive to the private-sector partners; this means that they must be profitable. Of course, the end result in the real world is that the provision of basic goods in needier areas, where it is hard, even impossible, to provide them profitably, easily comes under threat.

One must also note the influence of the configuration of power within a society in determining the design, operation and outcomes of PPPs. As has been mentioned above, most economic analyses assume that individuals are fundamentally alike; political realities point to fundamental inequalities in terms of access to power. Not only are PPPs not democratically accountable; not only are they potentially detached from the common interest and community needs; of their very nature, they tend to skew decision-making authority in favour of tiny, wealthy and technical elites.¹

Some Conclusions

In this paper I have outlined the case for and that against PPPs. Put briefly, PPPs are seen as useful in reducing government expenditure, deploying government employees more effectively and providing a better quality public service. They are heralded as much-needed agents of change, within the public sector, from an inward-looking bureaucratic tendency to a customer-oriented, needs-centred approach. The apprehensions about PPPs have to do with issues of transparency and public accountability, inflexibility engendered by the long-term character of a good number of PPP contracts, the difficulty in attaining effective dispute resolution systems, safety and security, and fairness and equal access. It has also been emphasized that public-private partnerships are to be seen within a governance perspective, that is, as a network of interdependent public and private actors who share responsibilities and risks in forming a cooperative working relationship both in the area of policy implementation and in that of decision-making.

My qualified critique to PPPs pointed out that, beyond the important issues of accountability and transparency, the tendency would be to treat all goods as consumable goods and all persons as atomistic individuals. I want to point out that a number of goods within society are such as to shape civil society and that the realization of such public or common goods perfects civil society as a whole, while at the same time benefitting members of the society

¹ I am grateful to Dr. Edward Warrington for having suggested this point to me.

singly. Such goods are public goods to which access cannot be restricted. They include basic education and social services, the system of justice and law enforcement, environment protection, together with essential services such as policing, fire protection and other emergency services. Particularly in the case of the provision of such public goods, government remains responsible and accountable for delivering services and projects in a manner that protects and furthers the public interest (Public-Private Partnership: A Guide for Local Government, British Columbia 1999, 11).

What could this mean in practice? Well, in the light of the above, it would be wiser if the services mentioned above, where the ability to respond politically to public needs, particularly when these change, is vital, were not involved at all in public-private endeavours. Indeed, if they are to be contracted out at all in the form of PPPs, the least amount of risk and responsibility possible should be transferred to the private partners. The provision of other public services where the public interest is not as time- and circumstance-dependent as the above (examples could include projects pertaining to public infrastructure and building projects such as road building and maintenance, environment and landscape maintenance, solid waste facilities, parking facilities, sports and cultural facilities and computer equipment) could well be entrusted to PPPs provided that government does not give up its ability to implement its policies or regulate the provision of services. Even in the provision of such public goods as the latter, the government must establish the ground rules and have the ability to shape the public-private partnership to reflect its own objectives, policies and regulations. Indeed, in the latter cases, it may well be argued that the government might have *more* control in that it enjoys well-defined contractual remedies in a PPP arrangement that it may not have with its own management and staff.

Another way forward could well be the consideration of PPP contracts with non-profit making organizations such as church or other voluntary organizations. The reasonable assumption being made here is that such organizations would be more sensitive to issues of common or public good than profit-making organizations would normally be.

The point being made throughout, of course, is that there is always a certain antinomic or unruly character to decisions about public or common goods in that decisions must take into account, not only the provision of public goods, but also the effects of such decisions on, say, productivity and debt-servicing. Harmonizing all these various issues and all the complex relations that make up civil society is a task that cannot be reduced to a set of rules, nor can it be solved through some consensus reached by negotiations. It rather requires a kind of wisdom, the ability to see the dynamics of society as a whole, and in the midst of a shifting reality. It requires the self-possession, particularly on the part of the politician, to act temperately, justly and courageously on one's prudent judgment. In brief, it requires persons of integrity, people of virtue.

Bibliography

Alford H. J., and Naughton M. J., *Managing as if Faith Mattered*, University of Notre Dame Press, Indiana 2001.

Barrett P. (2000), <http://www.anao.gov.au/uploads/documents/PAPER.doc>, (date accessed 1st February 2007).

Brittan S. (2001), *Public-Private Partnerships - A Temporary Landmark for the Third Way*. http://www.samuelbrittan.co.uk/spee21_p.html, (accessed 1st February 2007).

Canadian Council for Public-Private Partnerships (2004). http://www.pppcouncil.ca/aboutPPP_definition.asp, (accessed 1st February 2007).

Cutajar M., *The First Public-Private Partnership in Malta: A Study of its Practices and Performance*, unpublished MBA dissertation, University of Malta 2005

Drucker P., *The Age of Discontinuity: Guidelines to Our Changing Society*, Heinemann, London 1982.

European Commission, Directorate General Regional Policy (2003), *Guidelines for Successful Public - Private Partnerships*. http://ec.europa.eu/regional_policy/sources/docgener/guides/ppp_en.pdf, (accessed 1st February 2007).

Fenech T. (2005), *Public Private Partnerships: Getting down to business. Plans for Malta's PPP Programme*. <http://mfin.gov.mt/image.aspx?site=MFIN&ref=PPP%20Presentation%20Tonio%20Fenech> (accessed 1st February 2007).

Hammer M., *Reengineering Work: Don't Automate, Obliterate*, in De Wit and Meyer, *Strategy - Process, Content, Context*, Thomson Learning, 2002, 250-260.

Harris S., *Promoting Public-Private Partnerships*, in *The Times Business Supplement* (page 3), in *The Times*, Allied Newspapers Limited, Valletta 8th July 2004.

Hebson G., Grimshaw, D., and Marchington M., *PPPs and the changing public sector ethos: case-study evidence from the health and local authority sectors*, in *Work, Employment and Society* 17 (2003) 481-501.

http://www.cserv.gov.bc.ca/lgd/policy_research/library/public_private_partnerships.pdf, (accessed 1st February 2007).

McCreevy C. (2005), *Public-Private Partnerships - Options to Ensure Effective Competition*. <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/05/698&format=PDF&aged=1&language>, (accessed 1st February 2007).

Ministry of Finance, *Budget 2005*
http://mfin.gov.mt/image.aspx?site=MFIN&ref=2005_speech_en
(accessed 1st February 2007).

Ministry of Municipal Affairs (British Columbia 1999), *Public-Private Partnership: A Guide for Local Government*.

Mohan K., *Introducing New Approaches: Improved Public Service Delivery*, Commonwealth Secretariat, London 1998.

Mohr A. (2004), *Governance through “Public Private Partnerships”: Gaining Efficiency at the cost of Public Accountability?*
http://www.ifz.tugraz.at/index_en.php/filemanager/download/311/Mohr_SA%202004.pdf,
(accessed 1st February 2007).

Office of the Prime Minister, *A Public Service for the 21st Century - White Paper on a Public Service Act*, Valletta, Malta 2003.

Osborne D., and Gaebler T., *Reinventing Government – How the Entrepreneurial Spirit is Transforming the Public Sector*, Prentice-Hall, India 1992.

Parliamentary Library - Australia (2002), <http://www.aph.gov.au/library/pubs/rp/2002-03/03RP01.pdf>, (accessed 1st February 2007).

Pierre J., *Partnerships in Urban Governance. European and American Experiences*, Palgrave, New York 1998.

Pierre J. and Peters G., *Governance, Politics and the State*, in *Political Analysis Series*, Macmillan Press, New York 2000.

Roberts M. J., Breitenstein A. G., and Roberts C. S. (2001), *The Ethics of Public-Private Partnerships*, www.globalhealth.harvard.edu/hcpds/partnerbook/chap4.PDF, (accessed 1st February 2007).

Spackman M., *Public-Private Partnerships: Lessons from the British Approach*, in *Economic Systems* 26 (2002) 283-301.

Stoker G., *Public-Private Partnerships and Urban Governance*, in Pierre, J. (ed.), *Partnerships in Urban Governance. European and American Experiences*, Palgrave, New York 1998.

The Cabinet Office, *Public Services Policy: Deliberative Engagement* (2006), www.cabinetoffice.gov.uk/policy_review/pr_presentation.pdf, (accessed 1st February 2007).

Treasury Her Majesty's (2000), *Public-Private Partnerships - The Government's Approach*, <http://www.hm-treasury.gov.uk/mediastore/otherfiles/PPP2000.pdf>, (accessed 1st February 2007).

Treasury Her Majesty's (2003), *PFI: Meeting the Investment Challenge*, http://www.hm-treasury.gov.uk/media/648B2/PFI_604.pdf, (accessed 1st February 2007).

Treasury Her Majesty's (2006), *PFI: Strengthening Long-Term Partnerships*, http://www.hm-treasury.gov.uk/media/1E1/33/bud06_pfi_618.pdf, (accessed 1st February 2007).

Unison, *PFI: Against the Public Interest*, <http://www.unison.org.uk/pfi/B1457>, (accessed 1st February 2007).

United Nations Economic Commission for Europe (2000), *Guidelines on Public Private Partnerships for Infrastructure Development* <http://unece.org/ie/ppp/documents/pppguide.pdf>, (accessed 1st February 2007).

ETHICAL PUBLIC PROCUREMENT IN MALTA - INDICATIONS FROM THE WORKWEAR SECTOR

NINA ZITA

Introduction

In September 2000, at the United Nations Millennium Summit, world leaders agreed to a set of measurable goals and targets for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against women. These are the Millennium Development Goals¹ and have a target date of 2015. In the discussion paper on Malta's Overseas Development Policy, the Ministry of Foreign Affairs states that poverty eradication and the achievement of the Millennium Development Goals are the priority of this decade. The Ministry of Foreign Affairs also recognises trade as "an obvious important tool in the fight against poverty" and states that "Malta supports the integration of developing countries into the world economy which should be governed by just, legitimate regulations in which all countries can participate on the same terms." Furthermore, "development of the local private sector in developing economies is crucial. Malta will promote the principle of Corporate Social Responsibility (CSR) so that all stakeholders are rendered sensitive to development issues."²

In its communication *Corporate Social Responsibility: A business contribution to Sustainable Development*, when referring to public procurement policy, the European Commission states that "Community law offers numerous possibilities to public purchasers who wish to integrate social and environmental considerations into public procurement procedures, whilst at the same time ensuring respect of the principle of value for money for taxpayers and equal access for all EU suppliers." In the same document the Commission states the following: "Public administrations, including the Commission, need to practice CSR principles in their own management and with their own 'stakeholders'." It also affirms: "The Commission invites public administrations at national, regional and local level to also

¹ The Millennium Development Goals are: 1) Eradicate extreme poverty and hunger 2) Achieve universal primary education 3) Promote gender equality and empower women 4) Reduce child mortality 5) Improve maternal health 6) Combat HIV/AIDS, malaria and other diseases 7) Ensure environmental sustainability 8) Develop a global partnership for development.

² *Malta's Overseas Development Policy, discussion paper* p. 4, 6 and 8 www.mfa.gov.mt

examine their practices with a view to integrating social and environmental considerations.”³

As major consumers, governments have considerable power to influence the behaviour of companies. Public authorities have a key role to play in ensuring good labour conditions, not only by regulation of the private sector but also through regulation of their own activities. The Maltese Government has recently expressed its wish to help in the international effort to eradicate poverty in the world. It is therefore pertinent to ask ourselves if this official commitment is reflected in the Country’s public purchasing policies? Is the Maltese Government acting in a consistent manner when purchasing goods for the public service?

Responsible Public Purchasing

The Contracts Division within the Ministry of Finance is responsible for Government procurement. It is an established and accepted fact that public procurement has “great relevance in the economic relationships between individual countries and between trading blocks since it represents a considerable part of the global economic activity.”⁴ As the largest buyer in the country, the Government wields considerable financial power in its procurement of public goods and services. Over the past three years it undertook some Lm 50 million worth of contracts annually.⁵ The Contracts Division is responsible for all tenders having an estimated value over Lm 20,000. Contracts whose value does not exceed Lm 20,000 are regulated and administered by each contracting authority. If all public purchasing were taken together, the total sum would be much higher.

Authorities have the responsibility to spend money wisely and must therefore secure best value for money. The Procurement Directives of the European Union, transposed into Maltese law in 2006,⁶ have clarified some fundamental principles concerning environmental and, to a lesser degree, social criteria in public purchases. This offers an opportunity for public authorities to purchase socially and environmentally ‘responsible’ products.

European procurement regulations are built on three basic principles:

Transparency: All bids must be evaluated through objective and transparent procedures.

Equal treatment and non-discrimination: Calls for tender must be widely advertised and all interested parties must have a fair and equal chance to compete for the contract.

Best value for money: Purchasing decisions can be based on an assessment of the price of bids alone, but should also take quality criteria, such as environmental impact or community benefits, into account.

The concept of best value requires that purchasing decisions are based not only on the price of offers, but also on their quality and ability to deliver additional benefits. When including

³ *Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development* (Brussels 2.7.2002 COM 347 final), page 21-22, 24.

⁴ Public Contracts Regulations, L.N. 177 of 2005.

http://www.greennetwork.gov.mt/files/gpp_public_contracts_regulations2005.pdf

⁵ Data made available by Director (Compliance) Contracts Division, during a telephone interview on 25 January 2007.

⁶ Information made available by Forum Malta fl-Ewropa.

social and environmental criteria in a procurement process, public authorities must consider the following aspects:

1. Any 'responsible' requirements must be relevant in terms of the object of the purchase, must relate to the capability of the contracting company to deliver the contract or must enable the contracting authority to deliver or improve its services to the public.
2. Any environmental or social criteria that will be used to evaluate a bidder or a bid must be published together with the contract notice or call for tender.
3. Specifications regarding product performance or performance conditions should make reference to recognised international standards, such as eco-labels and standards of working conditions (the ILO conventions, for example), but equivalent standards must always be accepted.⁷

By February 2007 at the latest, the Maltese Government should be announcing a Green Public Action Plan, whose draft was open for consultation. The press commented favourably on the proposal: "The Government's initiative in line with EU requirements is to be welcomed. Anything that promotes the needs of the environment, and not simple the economic and cost factors, when buying products or services, must be a step in the right direction. Environmentally-friendly or 'green' public procurement could have significant benefits for us all. So much money is spent by public authorities in public procurement that it makes sense to use that money to help achieve environmental goals. (...) Moreover, in establishing a 'green' procurement policy and demonstrating the results of that action, the Government will be showing clearly that something can indeed be done to save the environment and that it leads to concrete results. By promoting 'green' procurement, the Government is providing the impetus to industry to adopt 'green' technologies."⁸

Mr Anthony Fava, Director (Compliance) at the Contracts Division, who is involved in the drafting of the Green Public Procurement Action Plan, states that the Action Plan is a way to entrench environmental clauses. "It is also a way to raise awareness and show support from the political level on how to target the problems."

Until today no social or ethical criteria have been included. "At this stage we do not intend to include such criteria," Mr Fava explained. Although the Procurement Directives of the European Union, which open up such possibilities, have been transposed into Maltese Law, there has not been a discussion within the Contracts Division about introducing social criteria into public purchasing procedures.

Public Authorities Serving Fair Trade Products

On the 6th of July 2006 the European Parliament adopted a Resolution on Fair Trade and Development. The European Parliament states that Fair Trade has proved to be an effective way of promoting sustainable development and is an important instrument to reach the Millennium Development Goals, particularly Goals 1 and 8. Although prices for many of

⁷ *Work in progress: Labour policies of workwear companies supplying public authorities in Europe* Sanne van der Wal and Bart Slob, SOMO November 2005 p 5, 10.

⁸ Greening Procurement www.doi.gov.mt/EN/commentaries/2006/10/tim13.asp

the main agricultural exports of developing countries, such as sugar, cotton, cocoa and coffee, fell by 30 to 60 percent between 1970 and 2000, forcing small farmers to sell their goods below the cost of production and reducing the revenue of many of the poorest countries in the world, Fair Trade can provide solutions.

The European Parliament recognises the criteria defined by the Fair Trade Movement as:

- a) a fair producer price, guaranteeing a fair wage, covering the costs of sustainable production and living;
- b) part payments to be made in advance if so requested by the producer;
- c) long term, stable relations with producers and producers' involvement in Fair Trade standard-setting;
- d) transparency and traceability throughout the supply chain to guarantee appropriate consumer information;
- e) conditions of production respecting the International Labour Organisation (ILO) Core Conventions;
- f) respect for the environment, protection of human rights and in particular women's and children's rights and respect for traditional production methods which promote economic and social development;
- g) capacity building and empowerment for producers, particularly small-scale and marginalised producers and workers in developing countries, their organisations as well as the respective communities, in order to ensure the sustainability of Fair Trade;
- h) support for production and market access for the producer organisations;
- i) awareness-raising activities about Fair Trade production and trading relationships, the mission and aims of Fair Trade and about the prevailing injustice of international trade rules;
- j) monitoring and verification of compliance with these criteria, in which southern organisations must play a greater role, leading to reduced costs and increased local participation in the certification process;
- k) regular impact assessments of the Fair Trade activities.⁹

Sales of Fair Trade products in Europe have grown by 20 per cent since 2000, and the European Parliament estimates that it still has a huge margin of growth potential. An increasing number of Fair Trade products such as coffee, tea, fruit and snacks are already available on the market. The European Parliament calls on public authorities in Europe to integrate Fair Trade criteria into their public tenders and purchasing policies. The European Parliament uses Fair Trade products in their internal service and encourages other European institutions to do the same. Public authorities are major consumers of such products for use in canteens, vending machines and catering at events and meetings.

The United Kingdom seems to be the fastest growing Fair Trade market in the world. British Institutions using Fair Trade products include the House of Commons, the Scottish

⁹ *Resolution on Fair Trade and Development* European Parliament A6-0207/2006 p 6-7. The ILO core conventions from the Declaration on Fundamental Principles and Rights at Work covers the following areas: Freedom of association and the right to collective bargaining; the elimination of forced and compulsory labour; the abolition of child labour and the elimination of discrimination in the workplace.

Parliament, the Welsh National Assembly, the Department of Trade and Industry, the Department of Health, the Department for International Development, and the Treasury. Many local authorities have become supportive of Fair Trade through the *Fair Trade Town* movement. There are now 140 Fair Trade towns and cities in the UK whose councils have passed resolutions supporting Fair Trade and who have committed themselves to using Fair Trade products.

The institutions in the UK are not alone. There are plenty of prominent users of Fair Trade coffee and tea, amongst whom: the Presidential Palace and several provincial governments in Austria; the Royal Palace, the administration of the City of Brussels as well as many other towns in Belgium; the Office of the President, the Parliament, the Senate, the Ministry of Foreign Affairs, as well as many local administrations in France and the Parliament, the Government offices and SIDA (the Swedish Development Agency) in Sweden.¹⁰

So far, no Maltese institutions chose to follow the good practice of serving Fair Trade products during official meetings and events, although the Malta Environment and Planning Authority (MEPA) did temporarily use Fair Trade coffee in the recent past.¹¹

‘Clean’ Workwear?

The workwear market is a large market: between 25 and 50 per cent of all European employees wear specific workwear. This clothing is often bought from local/national workwear companies due to the short delivery times and customisation. However, the market is becoming increasingly international. While some production still takes place in target-market countries, it is clear that most workwear is now manufactured in low(er) income countries. Many European workwear companies have subsidiaries in Eastern Europe, Tunisia, Algeria, Morocco and the Far East.

The outsourcing of production to subcontractors is widespread and becoming more popular. There are few studies and scant information in the media regarding the social and environmental impact of the supply chain of European workwear companies. Research on working conditions in the fashion sector in garment-producing countries is however abundant and shows that violations of labour rights, such as excessive overtime and extremely low wages, are common. Other serious problems are inadequate health and safety measures, and violations of trade union rights. In China, for example, workers are not allowed to join a free trade union. As there are many similarities between fashion and workwear production it seems very plausible that similar violations are occurring in the workwear sector as well.¹²

The Clean Clothes Campaign (CCC) is an international campaign, focused on improving working conditions in the global garment industries. The CCC is made up of coalitions of consumer organisations, trade unions, solidarity groups, researchers and other groups. The

¹⁰ *Fair Trade in Europe 2005, facts and figures on Fair Trade in 25 European counties* p 67 www.ifat.org

¹¹ If you are interested in learning more about Fair Trade procurement please visit: www.iclei-europe.org/buyfair You can find information about the Fair Trade towns initiative at www.fairtrade.org.uk

¹² *Work in progress: Labour policies of workwear companies supplying public authorities in Europe* Sanne van der Wal and Bart Slob, SOMO November 2005 p 4, 8, 13-14. For further readings on violations of workers’ rights in the garment industry, see www.cleanclothes.org

CCC informs consumers about the conditions under which their garments are produced and pressures brands and retailers to take responsibility for these conditions. It demands that companies accept and implement a good code of labour standards that includes monitoring and independent verification of code compliance. The Clean Clothes Campaign cooperates with organisations all over the world, especially self-organised groups of garment workers.

Codes of Labour Practices

The Clean Clothes Campaign has published a code which lays down the guiding principles for acceptable working conditions in the garment industry. The code sets forth minimum standards for wages, working time and working conditions. All the core standards of the International Labour Organisation are included. Companies adopting the code are expected to take positive actions in applying it and to insist on compliance with the code by any of their contractors, subcontractors, suppliers and licensees organising production that would fall under the scope of the code. Companies adopting the code will also be expected to engage an independent institution established for the purpose of monitoring compliance with the code.¹³

Fair Wear Foundation (FWF) is an initiative of business associations in the garment sector, trade unions, and NGOs to promote humane labour conditions in the garment industry. FWF works with its own code, which includes the core labour standards of ILO. Member companies that endorse this code commit themselves to auditing labour conditions in their factories and to implementing improvements where necessary. There are currently 26 FWF members, among them twelve workwear companies.

Social Accountability 8000 (SA8000) is a worldwide, multi-sector standard for monitoring and certifying labour conditions. The standard was developed by Social Accountability International (SAI). The SA8000 is based on the Universal Declaration of Human Rights and augmented with a number of important ILO conventions regarding safety and health, working hours and a living wage. There are 167 SA8000 certified apparel manufacturers to date, some of which manufacture workwear.

The European Apparel and Textile Organisation (EURATEX) and the European Trade Union Federation of Textiles, Clothing and Leather have formulated a code of conduct (based on the ILO core conventions) and are calling on their members to actively encourage the companies and workers of the European textile and clothing industry to comply with the code.¹⁴

‘Clean Clothes Communities’ and Other Initiatives for Ethical Public Procurement

Public authorities, such as the police, public cleaning, public hospitals and the army spend a significant amount of money on uniforms and other workwear. The Clean Clothes Campaign believes that all workwear worn by public workers should be produced in

¹³ *Code of labour practices for the apparel industry including sportswear* www.cleanclothes.org

¹⁴ *Work in progress: Labour policies of workwear companies supplying public authorities in Europe* Sanne van der Wal and Bart Slob, SOMO November 2005 p 12. Fair Wear Foundation: <http://en.fairwell.nl/> SA8000: www.sa-intl.org/

workplaces that respect workers' rights. It is for this reason that the CCC is campaigning on public procurement. The aim is to encourage authorities to start a process to ensure that they only purchase workwear sourced under fair labour conditions. A city or municipal authority that wants to become a *Clean Clothes Community* first adopts a resolution and then it has to formulate an ethical procurement policy and develop a plan of action so that, within a specified period of time, buying 'clean' uniforms becomes a reality. In this way public authorities can set an example of good consumption and improve working conditions in the global workwear industry.

Clean Clothes Community campaigns have taken off in a number of countries. In France there are no fewer than 250 communities which have adopted a resolution to take labour standards into account when tendering for new clothing orders. The campaign has developed a model resolution, and a guide on how to implement it. In Belgium, 60 municipalities have become Communities. In addition to this, the *Clean Clothes at Work* project has been set up, in cooperation with two unions. Here, the purpose is to get people in the workplace to look critically at the clothes that their employers make them wear, and to ask for 'clean clothes'.

In Amsterdam, following a resolution adopted by the City Council in December 2000 and subsequent research by the Dutch CCC, a 'guide' for the purchase of clean workwear was written. This guide was presented in 2004 to the thirty city employees who handle purchasing decisions. In 2004 Amsterdam won an award for this handbook from the Dutch Ministry of Housing, Spatial Planning and the Environment.

In Spain, an extensive programme on ethical procurement was initiated in the Catalonia region in September 2004, with three different local governments involved: Barcelona, Manresa and Badalona.

In the UK, the project is part of a broader campaign on public procurement, in which the CCC UK cooperates with many other organisations and the University of Cardiff. A preliminary study of the UK legal framework for public procurement was done in 2004, and a questionnaire has been sent out to all local authorities to establish their purchasing practices and policies with regard to workwear.

In Sweden, in February 2005, the Swedish CCC began campaigning on public procurement. The campaign is called 'Se Upp' which is a short form for the Swedish 'Community for Ethical Procurement' but also means 'Watch Out!' The campaign brings together the CCC with other Swedish Fair Trade groups and, as in the UK campaign, does not focus only on clothes but takes them as a useful example. Other participants include the Swedish Association of Health Professionals and the Trade Union for Community Officers. Among the first activities, there have been seminars for local authority buyers, and the release of a book about public procurement.¹⁵

The European Commission encourages awareness-raising among public purchasers, by facilitating the exchange of experiences about the possibilities to take into account social

¹⁵ www.cleanclothes.org

considerations in public procurement.¹⁶ In April 2007 a conference organised by *The Fair Procura* project will take place to share views on Fair Trade considerations in public procurement policies. The conference is targeted at European institutions, national public authorities, Fair Trade organisations and other relevant institutions. *The Fair Procura* project is co-financed by the European Commission. It is a three- year project (Oct 04 - Sep 07) which aims “to increase the contribution of public authorities and institutional buyers to sustainable development through public fair purchasing policies and practices, and to encourage public authorities to serve as an example for responsible consumption and production for their citizens.”¹⁷ The project is conducted jointly by the European Fair Trade Organisation and national Fair Trade organisations. Koperattiva Kummerċ Ġust (KKĠ), the Maltese Fair Trade organisation, has been invited to take part in the second part of project, if it is approved by the European Commission.

In December 2006, KKĠ organised a seminar called *Cotton/Caught in a dirty business*. On the behalf of the participants of the seminar KKĠ sent a declaration to the Prime Minister, the Chairman of the Public Accounts Committee and the Director-General of the Contracts Division, calling on Maltese public bodies to follow the example of many institutions in Europe that use Fair Trade products in their internal service and take ethical aspects into consideration when buying goods.¹⁸

Workwear Companies, Methodology and Questions of the Study

Which companies supply the Maltese public sector with garments? Where are the uniforms and workwear used by the public workers produced? Do the Maltese companies take responsibility for the labour conditions at the supplying factories? Is there a discussion within the companies about ethical rights and duties towards society? These are the questions that we will try to answer by the end of this paper.

A widely quoted definition of Corporate Social Responsibility (CSR) is that used by the World Business Council for Sustainable Development: “CSR is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large.”¹⁹ So it would seem pertinent to ask whether the workwear companies that supply Maltese public authorities have a CSR policy.

In the business directory of *Malta Enterprise* (under the headline Workwear, protective clothing and uniforms) and in the *Yellow pages* (under the headlines Uniforms-catering, Uniforms-military, Uniforms-office, Uniforms-schools, Clothing-hospital and Clothing-industrial) 32 companies are listed. After contacting them by phone to explain the purpose of the study and to ask some questions, it was found out that seven of the companies do not supply the public sector. From the remaining 25, two companies refused to participate and ten did not respond to our phone calls or emails, leaving a balance of thirteen companies.

¹⁶ *Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development* (Brussels 2.7.2002 COM 347 final), p 24

¹⁷ <http://www.european-fair-trade-association.org/FairProcura/index.php>

¹⁸ The website of Koperattiva Kummerċ Ġust: www.l-arka.org

¹⁹ *Doing good to your stakeholders* The Times 7th Jan 2007

Seven of these have, at one point or another, been awarded tenders exceeding Lm 20 000 by the Contracts Division.²⁰

A questionnaire²¹ was sent out to all the thirteen companies. They readily accepted to cooperate, but then it turned out that none of them filled in the questionnaire despite our many reminders. Questions about company structure, turnover, net profit and other detailed information about business relations had to be excluded. The focus of the study has been CSR and therefore a shorter telephone interview based on the following questions, was carried out. The company profiles that follow under a ‘Company number’ were sent to the companies so as to allow them to correct and make additional comments.

The questions were the following:

1. Do you have customers within the public sector? Please name the most important.
2. Do you manufacture garments in Malta?
3. Do you have suppliers from other countries? Please name the most important.
4. Do you have a CSR or code of conduct policy (ethical guidelines for the production regulating labour conditions)? If not, why not?
5. Are you familiar with codes of conduct in the workwear sector like the Clean Clothes model code, Fair Wear initiative code and SA8000? If so, would you consider implementing such a code?²²

The second part of the study targeted the level of public awareness about the selected companies concerning their CSR performance and their supply chains. Are the Maltese people aware about the labour conditions under which their workwear are produced?

By reading The Times, a daily newspaper in English in Malta, one should get an idea whether there has been a discussion about these issues. The archives between March 2001 and January 2007 were searched through, with the following keywords: ethical public procurement; garment workers; garment industry; workwear; and Corporate Social Responsibility (CSR). This aspect will be analysed in the “Media Coverage” section.

CSR of the Maltese Workwear Companies Which Supply Public Authorities

Company No. 1

According to one of the owners of this small business, Co. No. 1 has on some occasion provided local authorities with formal wear. It has no direct contact with suppliers in other countries. The company does not have a CSR policy.

²⁰ The archive of awarded contracts (Jan 03- Dec 06) The Contracts Division www.gov.mt

²¹ The questionnaire was taken from the SOMO report *Work in progress: Labour policies of workwear companies supplying public authorities in Europe* Sanne van der Wal & Bart Slob, Nov 2005

²² Selected questions from the above mentioned questionnaire.

Company No. 2

Co. No. 2 usually submits tenders to the Contracts Division and has also got contact with local authorities. The company does not manufacture in Malta; the garments are provided by suppliers from Europe and the USA. A couple of orders have also been placed with factories in China. But a director we spoke to found it difficult to communicate with the Chinese management because of the language barrier. For this reason, besides the fact that the Chinese companies are restricted by European quotas, the company does not intend to place any orders from China for the foreseeable future, even though the goods from China are cheaper (one of the main reasons many other companies trade with Chinese counterparts). In fact, the director reveals that many European workwear companies let factories in China manufacture the garments, and then they put the label on in Europe, misleading the consumers about the origin of the products. With reference to competitive secrecy, he did not want to reveal the contact details of the two factories in China with which Co. No. 2 had contracts in the past. He says he would consider working with Chinese companies again in the future. “Everybody is working with China,” he added.

Co. No. 2 does not have a CSR policy or code of conduct. “In fact, there is not even a discussion about these issues in Maltese society. Doing business is just like a rat race,” the director states. “It would be an ideal thing to be able to guarantee good conditions for the workers who produce the garments, but to imagine all the people living life in peace, as John Lennon sang, is impossible today,” according to his reasoning. “As long as the customers only care about price and quality, the company has no other obligations to fulfil,” he says. There is no discussion about CSR within Co. No. 2. Unless this is something all other companies start to adopt, the director does not think that Co. No. 2 would adopt such a policy.

Company No. 3

Co. No. 3 is a relatively big work wear company in Malta, with many customers in the public sector. Some of the products it supplies are manufactured in Malta.

Co. No. 3 has suppliers in Europe and the Far East. When ordering from the suppliers in the Far East (from about 20 factories in total) agents provide the information and contact with the factories. The company does not have a written CSR policy or a code of conduct:- “Sometimes it is better not to have a written policy, as this gives you more freedom to act case by case, according to the circumstances. We have an unwritten policy, discussed internally several times over the past ten years, where the directors of the company insist that it is morally wrong and unethical to buy goods from companies that use children in their production process. As a company we insist that we would not work with factories of this type. We also strongly believe that children should not be exploited and that, ultimately, even the quality standards would go down if children were involved.” The director makes personal inspections in the factories before the company decides to place orders there. He draws attention from personal experience to the fact that child labour exists in many countries, especially in the Far East, Africa and South America.

The director has not come across any of his usual suppliers employing children. Most of the Chinese factories that his company works with are owned by the Chinese Government, and according to him, it is not likely that they would employ under-aged employees. “We keep reminding all our agents in these countries that we would not accept work from factories that exploit children or their workers in general. We believe that the workforce involved in the production of our goods should enjoy an acceptable quality of life and this would ensure high quality standards.”

Company No. 4

40 per cent of the business of Co. No. 4 is within the workwear sector. In this case, customers of the public sector are of major importance. These garments are imported ready-made from suppliers in China. According to the manager, the main reason for this is that China offers the lowest prices.

Co. No. 4 does not have a code of conduct or a CSR policy. “No, that is taken care of by the Chinese Chamber of Commerce, which has agreements with the European Trade Department. Everything is according to European laws and the CE certificate.” On further enquiry, one sees that this certificate regulates standards for quality and shipping, no ethical guidelines for the production are included. After hearing a definition of CSR, the manager we spoke to stated: “To put it in plain English, as long as I get the products in time, it does not interest us to have a CSR policy.” He added: “I am bound by the contracts with the Government.” The manager says he is aware of general concern about labour conditions in China. Regarding the responsibility of his own company he reasons: “It is not our main area, although we take it into consideration. We are interested in getting the products in time. It is an unfortunate situation for the workers in China who have to face these problems.” He has “a vague idea” about codes of conduct in the workwear sector, and he might consider in the future implementing such a code. The main reason why he does not do it today is because of lack of time.

Company No. 5

Co. No. 5 has supplied workwear to the public sector. It has its own factory in Malta and also subcontracts to other factories in Malta. About five per cent of the manufacturing is outsourced to Europe and the Far East. The contact with the two supplying factories in the Far East (not revealed by name according to the policy of the company) is handled through Maltese agents, besides some direct telephone and email contact. When suppliers are selected for new orders Co. No. 5 tries to find out as much information as possible about the factory and the working conditions are expected to be according to the national law. The director does not deny that violations of human and union rights exist within the production of workwear. “But we would not know if there is actually something wrong going on in the factories, it is out of our control,” he asserts. Co. No. 5 tries to have a long-term relation with its suppliers. “Good working conditions are reflected in the production quality,” he says. The company does not have a written CSR policy or a code of conduct. “I suppose we are not giving it enough attention, due to lack of awareness,” he concludes.

Company No. 6

Co. No. 6 works sporadically with the Government. The company does not carry out any production in Malta. All products are bought from European companies who in their turn buy the products from China and the Far East. It does not have a CSR policy. According to the manager there is no discussion about CSR within the company, mainly because it is a small company. “At the end of the day it is up to the customer. The only thing the Government is interested in is a good price. If they included other criteria, of course we would have to consider them.”

Company No. 7

The salesman who was directed to speak to the author said that Co. No. 7 submits tenders to Government departments and local councils. It works as an agent and has a small production in Malta. But the main part of the manufacturing is done by subcontractors in Europe and the Far East (not revealed by name). According to the salesman, the company does not have a CSR policy. He is not aware what it is, and does not give the reason why the company does not have such a policy. “Of course we have to respect human rights, but there is no discussion within our company about these issues.”

Company No. 8

Only a small percentage of Co. No. 8’s business deals with garments. The company submits tenders to the Government. All the manufacturing of garments is done in Europe; but there is no factory in Malta. According to the financial controller, the management is aware of the problems that exist for workers in the global garment industry. The Company does not have a CSR policy. It does not give a reason. “We do not look into the detail of the production. The director is mainly looking at the price.”

Company No. 9

Co. No. 9 provides professional clothing for business and industry. The company works with public sector clients. It has suppliers in Europe. A limited amount of manufacturing is carried out in a factory in Malta, but most of the ready-made garments are bought from subsidiaries in the Mediterranean region. The company prefers not to give the names of the factories. It finds the questions about CSR too sensitive, and does not want to answer them. “Can we call it a day and stop here?”, so we did.

Company No. 10

Co. No. 10 is a small business, with the public sector as a main customer. A small percentage of the garments is produced in Malta. The rest of the products are imported from the Far East and Europe (East and West) and the contact is handled by agents. The director had never heard of CSR before.

Company No. 11

Co. No. 11 sells clothing bought from Maltese companies (some of which also included in this study). The company does not have a CSR policy. Its manager “would not attach any importance to these issues, since we are not directly involved in the production.”

Company No. 12

Co. No. 12 supplies Government departments and local councils. 30 per cent of the garments are produced in Malta. 70 per cent are imported from Europe, the Mediterranean and the Far East. Most of the contact with these suppliers is handled through Maltese agents. But Co. No. 12 does have some direct contact with the suppliers too. It has no CSR policy. “Usually the suppliers ask for our requirements regarding quality and price.” The director had never heard about CSR before. He is aware that violations of human and union rights do exist. In his opinion “Everybody has a responsibility, but we are a small company.” He might consider implementing a CSR policy in the future. “We have to keep up to standards,” he concludes.

Company No. 13

Co. No. 13 provides garments to the public sector. It has a factory in Malta but 60-70 % of the manufacturing is outsourced to Europe (East and West), the Far East and the Mediterranean. The director did not want to reveal which factories it buys from; he states that this is company policy. The company does not have a CSR policy or a code of conduct concerning the labour conditions in the factories. The director does not regard the workers of the supplying companies as his company’s responsibility. “They are their workers, not mine. I just place the orders.” What is important for him is to get good quality, a good price and fast deliveries. The reason why the company does not have a CSR policy is simply because “everybody is busy.” There is not a discussion within the company about these issues. According to him, the company might consider adopting a CSR policy, “If it is something we can benefit from, and as long as it doesn’t cause any hassle for our trading partners.” He continues: “And if there are directives coming from Brussels, of course we have to follow, since Malta is a member of the EU.”

Media Coverage

Media discussion about the meaning and implications of CSR and towards whom a company is responsible has been modest. Only a few articles in *The Times*’ archives concern CSR and human rights. One of these articles follows the line that CSR pays dividends, and another discusses whether CSR should be made compulsory at law or whether it should remain the prerogative of the company concerned. A few articles report about seminars concerning CSR, while others talk about CSR initiatives of some of the bigger companies established in Malta.

The information about the supply chain of companies is almost non-existent. A search for ethical public procurement gave no matches at all; neither did CSR in connection with the workwear sector. Any detailed articles about working conditions in the global garment

industry do not exist. *The Times* published two articles in connection with the seminar *Cotton/caught in a dirty business*, organised by Koperattiva Kummerè Ġust. A couple of articles dealt with the effects of the ending of the *Multi-Fibre Agreement* in January 2005.

The World Bank estimates that China will more than double its share of the total world garment exports to nearly 50 per cent by the end of the decade. The articles in *The Times* say that factories in other countries are closing down and jobs are threatened as the competition from China increases. Working conditions in the garment industry are mentioned just briefly in these articles. An article about the Chinese economy mentions the fact that China has a long way to go when it comes to fulfilment of human rights. It also quotes some statistics from *The Economist* (15th February 2003) which reported that the average wage in industry in China was 40 US\$ cents an hour - less than a third of Mexico's. However, the same article states that investment in China should not trouble the ethics of a conscientious moneyman. The richer China becomes, the greater its sense of Corporate Social Responsibility will become.²³

Conclusions of the Study

Despite repeated reminders, none of the companies were willing to fill in the questionnaire that was sent to them. Some continued to pledge they would do it, but still no answers were received. Only a few of them eventually stated why they did not want to answer: they pleaded pressure of work or that questions were too complicated and detailed. Others said they did not want to provide information that they deem confidential. Because of this lack of information it has not been possible to draw up a complete company profile, with figures of turnover, net profit and company structure.

The following conclusions are based on the findings from the telephone interviews. It must be noted that when providing the answers, some of the interviewees were more willing than others to elaborate.

Four companies have a small workshop (1-4 employees) and four other companies do not have any production at all in Malta. Five companies have comparatively big factories (30-45 employees) in Malta where some production of workwear and uniforms takes place. Four of the last category are also the ones who have been mostly awarded contracts by the Contracts Division. These companies all get ready-made garments from suppliers in low(er) income countries in the Far East, East Europe and the Mediterranean. The contact is either direct or through agents.

Some of the rest of the companies also import ready-made garments from countries in the Far East, Eastern Europe and the Mediterranean. Most of them work through agents, but some have also got direct contact with factories in these countries.

²³ Articles from *The Times* referred to in the text: *Human rights and Corporate Social Responsibility* 10th of Nov 02, *Human rights and Corporate Social Responsibility* 15th Dec 02, *Corporate Social Responsibility pays dividends, top executive says* 19th Oct 06, *Doing good to your stakeholders* 7th Jan 07, *Corporate Social Responsibility* 15th Jan 04, *Swede highlights plight of Cambodian garment workers* Dec 06, *Petition to urge use of fair trade products* 10th Dec 06, *BoV seminar on Corporate Social Responsibility* 1st Aug 04, *New recruits for CSR Day* 19th Mar 06, *Asia fears China onslaught as apparel quotas end* 27th Aug 03, *Africa hit hard as global textiles market opens* 31st Dec 04, *The Chinese economy*-29th Jan 05.

There are so many participants in the production chain in the global garment industry that it is easy to put the blame on someone else. The director of one company does not regard the labour conditions at the supplying factories as his company's responsibility: "It is their workers, not mine." "We are not responsible, we just place orders" and "We are not directly involved in the product chain" are two other comments from the managers.

None of the workwear companies selected for this study had a written CSR policy. Based on the findings of this study one can conclude that CSR is not a matter of priority for these companies. Only one company says it has a policy not to buy goods from companies that use children or exploit workers in the production process. The director says he has put forward these demands to the agents and that no child labour exists at their supplying factories. The chairman of another company found the questions about CSR and working conditions at the supplying factories too sensitive. He did not want to answer them at all.

Most of the managers had never heard about CSR before. One of them remarked that there is no discussion about these issues in Maltese society. Another said that at the end of the day it is up to the customer. As long as the customers only care about price and quality, the company has no other obligations to fulfil, commented one director. Another puts it very plainly, as long as he gets the products in time, it does not interest him to have a CSR policy. According to some of the directors, the only thing the Government is interested in is a good price. If it would put up other criteria, of course the companies have to consider them, since they are bound by the contracts with the Government. They also have to keep up to standards.

Regarding the explicit question whether the companies consider it important to respect human rights of the workers in the production line, all of them agreed that it is. "It is an unfortunate situation for the workers in China who have to face these problems." says the manager of one company. However, designing a policy to regulate those labour conditions is not his priority today and he has not even considered doing it. Two of the managers insist that good working conditions will be reflected in the quality of the products. The manager of one company says he is aware that violations exist, but he feels it is out of his control. Confessing his lack of awareness, he seems open-minded and willing to improve. In general there is a lack of knowledge among the managers: only one of them had heard about codes of conduct initiatives within the workwear sector, and he had a "vague idea". A few of them say they might in the future consider implementing such a code. "If it is something we can benefit from," as the manager of one company puts it.

All the companies refused to disclose information on their suppliers and there is scant information in the media regarding the social impact of the supply chain of Maltese workwear companies. If publicly available, this kind of research might lead to the sector becoming more transparent and more focused on CSR.

Summarising Discussion

Procurement directives from the European Union open up possibilities for public purchasers who wish to integrate social criteria into public purchasing policies. The European Commission encourages public administrators to examine their own practices. What is

needed on a national level is a political initiative to introduce ethical principles into purchasing policies.

Who is most responsible for the working conditions in the global garment industry? It is hard to say, with so many participants in the product chain. Conclusions from this study show that the companies who place the orders do not yet have an incentive to adopt a CSR policy or a code of conduct. Their aim is to make a profit, by delivering what the customer wants. As long as the customer, in this case the Government, appears not to care about anything but the price and the quality, the companies have no other obligations to fulfil. In a world with a global market one must consider how our purchasing affects the situation of workers on the other side of the world. Today, there are no guarantees that Maltese tax money is not contributing to violations of labour rights! Initiatives like *The Clean Clothes Campaign* demands companies to respect basic human rights at the workplace. The minimum recommendations are:

1. The companies declare their responsibility for the working conditions under which the workwear and uniforms they sell are produced. The responsibility extends to all workers in the supply chain.
2. The companies pledge to observe the core labour standards of the International Labour Organisation (ILO) and to ensure that workers are provided with living wages and decent working conditions.
3. The companies pledge to make observance of the code a condition of any agreements that they make with contractors and suppliers.²⁴

Authorities have the responsibility to spend money wisely and must therefore secure the best value for taxpayer money. It is possible for authorities to award contracts to bids offering best value for money rather than to the 'lowest price tender'. Many public authorities in Europe have set up ethical procurement policies. A Green Public Procurement Action Plan has been designed in Malta. The next step for the Maltese Government is to formulate an ethical procurement policy, demanding that the companies which provide the Government with products should guarantee fair conditions for the workers in the production chain.

EU Trade Commissioner Peter Mandelson has said that "Trade policy is about using trade to make poverty history."²⁵ The Maltese Government has stated that poverty eradication and the achievement of the Millennium Development Goals are the priority of this decade. It can set an example of 'good' consumption by using Fair Trade products in the internal service and providing the impetus for companies to adopt CSR policies. If a plan of action is developed, it is possible that within a specific period of time only goods produced under fair labour conditions will be purchased.

²⁴ *Code of labour practices for the apparel industry including sportswear* The Clean Clothes Campaign, Feb 1998 p 2-3
The ILO core conventions covers the following areas: Freedom of association and the right to collective bargaining; the elimination of forced and compulsory labour; the abolition of child labour and the elimination of discrimination in the workplace.

²⁵ <http://www.europeanfairtradeassociation.org/FairProcura/Doc/Brochures/The%20Fair%20Trade%20Agenda%20-%20Mandelson%20220606.pdf>

CORPORATE RESPONSIBILITY IN SMALL STATES LIKE MALTA: A LUXURY COMPANIES CAN ILL AFFORD?

MARK HARWOOD

Corporate Social Responsibility (CSR), or simply Corporate Responsibility for those who favour an even broader approach, has become yet another buzzword in an age of sound bites where ideas fall into and out of fashion rapidly. For those who view big business as a continued source of inequality and destruction in the global village, the possibility that CSR may be a temporary trend is far from welcoming. As a process which appears to be driven primarily by the direct, and less direct, profit-making potential of catering to more socially and environmentally aware customer markets, there is every possibility that CSR may be discarded in the future as more lucrative opportunities open up to those seeking profits. Viewing CSR as a permanent development in business culture may be to expect too much of corporations which, as Friedman argued, remain social constructs which do not exist without the legal and social devices of the community within which they were created or operate. Therefore, the corporation is nothing without the individuals that make up that society and it is those individuals that have responsibilities, not the corporations.¹

While polemics remain as to whether CSR should be a priority for big business or not, it can be observed that the gap between the rhetoric and practice of CSR can appear wide, often unbridgeable. Whether at the corporate level, with scandals, environmental disasters and continued economic exploitation of employees by corporations which have tried to brand themselves as CSR advocates, or at the regional and national authorities' level, where many initiatives remain diluted and non-binding, the gap between commitments and practice remains vast. The latter can be seen in terms of the EU, where Union initiatives on CSR remain the principal example of leadership from outside the business community but where that leadership can be considered to have limited impact, especially for new and small members like Malta, which has to be highly selective in allocating its limited resource to EU-level cooperative initiatives. Over five years have passed since the Lisbon European Council of 2000 made a special appeal 'to companies' corporate sense of social responsibility regarding best practices on lifelong learning, work organisation, equal

¹ Fisher and Lovell (2006): pg 312.

opportunities, social inclusion and sustainable development'². The interim has seen much activity and the launching of a regional CSR initiative, The European Alliance on CSR, but the initiative remains non-binding and participation from smaller EU members remains negligible.

This article aims to analyse some of the most salient features of CSR and the factors which can act as obstacles in its adoption, both as a business initiative as well as a national public policy priority. Of particular interest to a new member state like Malta, we will also look at the initiatives undertaken at the European level, both in terms of the EU itself as well as business-centred initiatives in regional fora such as the European Multi-Stakeholder Forum on CSR. The ultimate aim of this article is to see whether CSR poses specific or unique challenges for small states like Malta which may help to explain the limited focus given to CSR in Maltese business and Government circles and which may preclude, without adequate EU leadership, the development of wide spread CSR practices in Malta in the near future. Is Corporate Social Responsibility a luxury a small state can ill afford?

Corporate Social Responsibility: Opportunities and Obstacles

No single, widely accepted definition of CSR exists though the various permeations of what it covers appear to indicate common threads amongst the various approaches. Some of the most persistent elements, which continually recur in definitions, see CSR as indicating a responsibility on the side of corporations to take care of their stakeholders (invariably defined as all those who are influenced by, or can influence, the decisions and actions taken by a corporation) and that decisions should be influenced by the potential and actual economic, social and environmental impact of those decisions. Most definitions agree that CSR implies initiatives that exceed the established legal and contractual obligations a corporation has to comply with in a given society. In adopting this approach, the business community contributes towards the sustainable development of the community in which it operates. Many of these elements are to be found in the European Commission's definition of CSR where CSR is taken to be: 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. It is about enterprises deciding to go beyond minimum legal requirements and obligations stemming from collective agreements in order to address societal needs. Through CSR, enterprises of all sizes, in cooperation with their stakeholders, can help to reconcile economic, social and environmental ambitions.'³

While several constants can be found in various definitions, approaches to CSR can vary greatly. Amongst business communities, there is an over-whelming tendency to emphasise that CSR is a voluntary exercise, freeing corporations from any obligation while also attaching greater kudos to adopting CSR due to its voluntary nature. There is also a propensity to try and distance CSR from expectations that it can effect massive changes, from seeing it as a one-stop solution to all social and environmental problems; 'CSR is complementary to other approaches of ensuring high environmental and social performance: there are limits to CSR, and it alone cannot be expected to ensure environmental and social

² Lisbon European Council, March 2000, Presidency Conclusions, No. 39.

³ COM(2001) 366.

improvement and it should not be used to shift public responsibilities to companies'⁴. On the other side of the debate, many social and environmental groups see CSR as involving greater obligations, with action of a more binding nature, in particular through continued commitment for big business to collect information on the social and environmental impact of their practices, as well their efforts to implement CSR principles, and to make these available to third parties.⁵ Without a single encompassing definition, the gap between expectations and results is often partly explained by significant differences in what business and stakeholders understand as CSR.

One important aspect of what constitutes CSR, which does deserve particular mention, is the relationship between CSR and conventional, philanthropic work by corporations. It has long been traditional for business to engage in contributing a portion of their annual profits to charitable enterprises, whether through the endowment of scholarships, financial assistance for community projects or encouraging their employees to undertake voluntary work. The conventional wisdom was that this assistance was free of obligation and that the corporations concerned should gain no financial benefit from the association. Corporate Social Responsibility in America has tended to follow this philanthropic model of CSR with greater emphasis on corporations continuing their profit-maximising objectives throughout the year and undertaking corporate social responsibility initiatives through charitable work at defined periods of the business cycle, normally when profits are calculated and shareholders convened for annual general meetings.

This model is only partially followed in Europe. In many European countries, CSR includes components of charitable work and philanthropic initiative and these are considered as a way to consolidate investment in communities, even with an eye to reinforcing core business priorities, such as facilitating education with the potential for creating a better qualified future employee-pool. However, there is a greater tendency within Europe to view CSR as incorporating social and environmental awareness in the running of core business processes. In this situation, CSR is less about annual charity and more about reforming processes which can have negative social or environmental consequences, creating a culture of awareness which can bring about more long-term and sustainable changes in the way business may be run. The importance of this distinction rests upon the fact that, while CSR is much more 'doable' as a charity exercise, especially in small companies that may lack the resources to develop a more comprehensive programme (and it would be this form of CSR which we would expect to see in small countries where the majority of companies are of an equally small size) it would not really constitute the type of CSR which the EU is trying to encourage. While we will not preclude this idea of CSR, for the purposes of this article CSR is taken to involve a more holistic approach, an exercise which calculates the potential negative impact of business choices on social and environmental factors and which tries to incorporate solutions to those problems.

The flexibility involved in understanding CSR has important consequences for our approach to CSR in small states. First and foremost, is the simple fact that the lack of a single understanding of CSR can lead to confusion in its application. The choice by business to adopt CSR practises involves the establishment of some type of strategy based on an initial

⁴ The European Multi-Stakeholder Forum on CSR, Final Report, (2004): pg 4.

⁵ In particular, the Corporate Responsibility Coalition. <http://www.corporate-responsibility.org/>

concept of what is being pursued. The importance of the Commission's declaration on CSR stems from its ability to provide focus in an area not fully understood. For many business communities, the provision of charitable works was considered enough. Our evolving definitions of CSR allow business leaders to understand the true potential scope of CSR and not to fall into complacency by basing CSR on charity. But it can also confuse companies, especially small companies with limited human resources, into failing to see the wood for the trees and thus causing them to be overwhelmed by CSR before even starting.

The second factor relates to the fact that no single CSR approach fits all. Just as charitable work can appear more attractive to small companies with limited resources to invest in developing a CSR strategy, size has an impact on the nature and extent to which companies adopt CSR practices. In this way, the flexibility surrounding CSR definitions adds to the fact that there is no single approach and that we can expect different forms of CSR to operate in different circumstances, no less that of small states with small businesses.

Turning to the arguments put forward for CSR, there are many factors which can account for the promotion of greater social and environmental responsibility for businesses, some of which can be considered internal drivers (and which are more readily associated with the business/profit arguments behind CSR adoption) while others operate as external drivers such as investors, consumers, public authorities, NGOs, trade unions and other companies.⁶ These drivers can stimulate various initiatives such as the sudden manifestation of awareness by businesses (an attractive prospect but one increasingly less likely in a world constantly developing under the banner of globalisation, where governments and businesses use the threat of diminishing profits to extract even greater sacrifices from their citizens/workers) as well as greater political encouragement for CSR (though, as we will see, this is still limited and therefore constitutes a 'limited' factor, other than as a potential future development which propels business to get in early and develop socially and environmentally aware practices so as to pre-empt future regulations). However, the growth in CSR practices appears to be more logically explained by internal drivers, in particular greater business-related arguments in favour of CSR and where some 'reward' of sort accrues from its adoption. In this way, if CSR is often an initiative that is underpinned by a cost-benefit exercise, it is also logical to assume that the size of a business or corporation is an important factor in CSR adoption because this will affect the cost-benefit exercise and indicate the degree to which CSR is likely to be adopted and implemented.

Several of the most salient business-related arguments that feature in CSR literature and which have a direct link to the size of companies include;

Arguments Centred on Human Resources

At a time when competition for new recruits from amongst graduates (as well as with open poaching of the best-performing employees) is acute, a CSR approach is seen as an important aid to recruitment exercises and the retention rate of employees. Companies with a well developed CSR policy can appear as more attractive to more socially and environmentally aware graduates while employees often feel a greater identification and loyalty to a company with active CSR policies. Therefore, adopting

⁶ The European Multi-Stakeholder Forum on CSR, Final Report, (2004): pg 9.

a CSR approach may have important consequences for a business' human resource element, though this will depend directly on the human resource market in the country where the company is based. In countries where graduates are more numerous or worker mobility is restricted, the CSR argument will be less compelling.

CSR as an Element in Risk Management and Brand Differentiation

In addition to the human resource dimension, CSR is also believed to contribute to risk management. Corporations can invest huge resources in the development of effective reputations, which consolidate their attractiveness to their investors and consumers, but unwanted publicity (whether scandal or environmental disasters) can radically alter a corporation's fortunes in an instant, bringing unwanted publicity or attention from regulators or national authorities. Corporate social responsibility, as a means to introduce more socially or environmentally aware policies, is seen as contributing towards a diminishing of the potential for such negative developments, effectively aiding a corporation in its risk management exercises. This concern with the reputation of a company or a product is further linked to the idea of brand differentiation, where CSR is seen as a way to separate a product in the mind of consumers from other like products, to give it an additional selling point which may have no direct link to the quality of the product but is an indirect link in the mind of a more socially or environmentally aware consumer. The most cited example in this regard is the Body Shop and its effective strategy to sell itself as an ethical-based company supporting the communities from which it buys its raw materials.⁷ However, the result of this is that CSR is thus dependent on several factors, including the power and readiness of authorities to regulate as well as the state of the market to which the company provides products (whether goods or services). Depending on the availability of like products or the social and environmental awareness of the target consumer, these arguments in favour of CSR will fluctuate.

CSR as a Means to Deflect More Stringent Regulation

Related to the argument that CSR contributes towards risk management is the idea that CSR is also an effective tool for pre-empting authorities from taking more stringent steps to regulate corporations in their practices. Just as corporations can be attracted by the idea of branding themselves as more ethical than their competitors, political parties have seen a major advantage in attracting a more socially or environmentally aware population by branding themselves as more ethical than their political competitors as well. The British Labour Party's lead in promoting more environmentally or socially aware policies in the UK and beyond, especially in Africa, have been a principal aspect of PR exercises in the run-up to elections in the UK in recent years. With authorities viewing such CSR-related projects as a means to score points with the electorate, corporations can see the voluntary adoption of CSR processes as a means to pre-empt government and ensure that CSR remains a voluntary exercise as long as the corporations can convince the authorities and the general public that enough is being done. In this way, CSR as a cost-benefit exercise also becomes dependent on public awareness and the popularity of social and

⁷ Fisher and Lovell (2006): pg 464.

environment concerns, both domestically and internationally, for the local population. However, the importance of this argument for CSR adoption is conditional. Corporations which invest in cultivating a humane face to the world and which are then shown to undertake highly dubious or unethical practices, actually result in harming their image even more, with their CSR endeavours being undermined and their brand being viewed cynically, undermining the ability of the corporation to effectively send across positive messages at a later date.

The importance of the factors cited above rests upon the fact, as we will see, that CSR is not a project largely driven by external factors (authorities' input has been significant in terms of greater social legislation, workers conditions, environment regulation and eco-taxes but CSR is held to be action which goes beyond the legal requirements) but more by internal drivers and choices. As business is driven by profit, the importance of the cost-benefit arguments cited above are central. In fact, one of the central criticisms of CSR is that it has no place in organisations which, by their very definition, should be driven by profit-making potential more than by any other factor. For this reason, many believe that it is the cost-benefit argument that can best stimulate CSR and that for this reason, the size of returns will determine to what degree a potential cost is acceptable. Therefore, for slogans such as 'doing well by doing good' the potential good, as well as the success of creating potential good, depends on the degree to which it will contribute to doing well. For small countries like Malta where even the returns from multinational companies operating locally are similarly small, the potential 'success' is thus small. Thus, it is difficult to see what actual cost would be small enough to be practical, for both local companies and large ones. This is particularly salient for those areas where arguments in favour of CSR rest on actual cost savings through eco-efficiency.

In this way, for our study, it can be seen that, even in terms of the positive reasons which can be brought forward to encourage the adoption of CSR, certain factors already indicate that success depends on the benefits accruing from the endeavour and this, in turn, is conditioned by other mitigating factors such as public awareness and support for ethical issues, the cost, in a limited market, of introducing 'ethical' practices and the limited profits that these can help stimulate, as well as the sensitivities of the local job market and worker mobility. Ultimately, central factors include the internal drivers for change being sensitive to these realities/opportunities as well as external drivers, which contribute towards CSR adoption through their activities to stimulate or raise awareness of ethical issues. In this way, cost-benefit exercises are mitigated by various internal and external factors/actors. These factors would already indicate that CSR take-up could face serious problems in small countries but are further compounded by other variables, which have been cited in various studies as affecting the take-up of CSR in corporations. These include;

- Altering practices to be CSR compliant, as well as undertaking internal analysis to highlight areas of potential CSR benefit where changes could be made, are not tasks without their own cost. This often means that small companies do not have the resources to even begin adopting CSR practices. For many companies, there may be too many other priorities, which take precedence over CSR. For companies in those countries which joined the European Union in 2004, much of the domestic economy is still adapting to the single market and this appears to be the single, largest concern

of most companies in these countries. CSR may be a luxury few can afford at this point in their development and for those companies with very limited human resources undertaking a CSR exercise may not constitute the most pressing demand in an economic environment of continued adaptation to EU membership.

- CSR also involves a learning curve which many companies may be unfamiliar with and lack the resources to gain adequate information about. As already indicated, definitions differ as to what constitutes CSR and so, in a similar vein, does the information available. This is why leadership provided by important actors, most notably public authorities, the EU or business group, is central. As most corporations may actively distrust the advice given by NGOs and trade unions, the direction given by governments or business groups, such as a chamber of commerce, is central and vital. Mapping the environment within which a corporation works and the external drivers prepared to offer guidance is an over-riding factor for understanding CSR adoption in small countries and for helping to explain why CSR can fail in certain situations.
- Related to the above, because CSR deals with the potential impact of business decisions and decision-making methods on stakeholders, the diffuse range of issues concerned can make action unfocused and insubstantial. From recognising potential social and environmental consequences of business decisions, deciding an adequate response, creating a structure through which to effect change and then communicating that strategy to stakeholders (both directly to those concerned within the company and on a wider level to highlight the action taken, both for employees and the wider public), all involve a complex series of choices which can confuse and complicate the business process with the result that companies maybe overwhelmed.
- The difficulty of judging the true effectiveness of data also can account for CSR problems. From the initial stage in actually deciding on the degree to which decisions may actually have a negative social and environmental impact, to evaluating the costs of taking remedial action, to calculating the cost and effectiveness of communicating CSR initiatives to employees and the wider public/consumer, all involve calculations which may be unclear and open to question and further muddy the water in terms of trying to understand the benefits of adopting CSR.
- Finally, within the business cycle, the development of CSR may fluctuate in importance in the decision-making system, undermining its adoption as profits rise and fall or companies face emerging problems, with the result that CSR adoption over the long-term may begin with a fanfare and be overwhelmed by subsequent events.

The list of factors which can undermine the adoption of CSR show clearly that as a process, CSR poses major challenges to companies, even if they arrive at a point where their calculations of the cost-benefit of CSR indicates that it is an approach worth undertaking. While some of these factors operate irrespective of size, most indicate that CSR involves a human resource commitment which small companies may be unable to muster. In this way, to fully understand why small states may show a lack of awareness amongst authorities or

indigenous companies, one must appreciate several related factors. Amongst these is that the cost-benefit argument often constitutes the primary stimulus for adopting CSR practices but that the cost-benefit arguments may be the most difficult to find in a small state because profit margins are similarly small. Without adequate financial rewards, the need to publicise action to customers with little social or environmental awareness, to find adequate human resources when other issues, such as adapting to the single market, constitute the primary concern of small businesses, or even action to pre-empt authorities with little interest to increase their popularity through championing CSR, can all constitute reasons for a lack of interest in CSR. The latter point is also important in terms of external drivers. With little profit-making capacity of CSR in small economies, one can assume that external drivers can assume a much more conspicuous role in trying to bring about change. Beyond the national authorities, which we will speak about later, it cannot be denied that one of the principal external drivers for new states like Malta is the European Union. However, how effective an external driver is the EU in the area of CSR?

Corporate Social Responsibility - A Voluntary Commitment?

A starting point in terms of the framework within which business can develop a CSR approach can best be gathered from the initiatives that can be found at the national and regional level. First and foremost, most international initiatives in this area fall under initiatives related to Multinational Companies, such as the ILO Tripartite Declaration of Principles Concerning MNEs and Social Policy, or come from international and regional initiatives in terms of human rights or environmental priorities (such as the European Union Charter of Fundamental Rights or the EU Sustainable Development Strategy⁸).

For EU countries, these initiatives are augmented by the priority the EU has placed on CSR within the framework of the Lisbon Agenda. However, while an understanding of CSR is that of initiatives beyond the legal requirements of the state in the operation of business, the indirect CSR impact of EU membership cannot be under-estimated. EU membership, especially after the Single Market programme was started, involves the implementation of standards in almost all social and environmental areas which the state and its business community must comply with. Worker mobility, environment emissions, equality laws, the rights of minorities, all these factors have been directly affected by EU membership and constitute an important and initial stimulus towards more socially and environmentally aware member states, though falling outside the remit of CSR, as defined by the Commission.

In terms of stimulating the adoption of CSR across the Union, the principal EU initiatives centre on the work of the Commission. As stated, progress began at the Lisbon Council where the member states made an appeal to companies' sense of social responsibility in March 2000. This was soon followed by a Green Paper in 2001 and later by a Communication, in 2002. At the same time, the European Parliament made a contribution to the debate on CSR, notably through its resolutions of 2002 and 2003, which helped to keep minds focused on the importance of the issue prior to the next significant stage, the establishment of an EU Multi-Stakeholder Forum on CSR (CSR Forum). This forum brought together representatives of business, trade unions and civil society, with the

⁸ Presidency Conclusions, Göteborg European Council, June 2001 (SN 2001/01 REV 1).

Commission in a facilitating role. The CSR Forum published its final report in June 2004 with the Commission stating that the adoption of the Forum's recommendations would play a significant role in advancing CSR across Europe.

In March 2005, the member states themselves, at the European Council, reiterated their earlier commitment and underlined that "in order to encourage investment and provide an attractive setting for business and work, the European Union must complete its internal market and make its regulatory environment more business-friendly, while business must in turn develop its sense of social responsibility"⁹. Related to this, in the Integrated Guidelines for Growth and Jobs (2005-2008), the Council recommended that Member States "encourage enterprises in developing their corporate social responsibility".

In 2006, CSR moved a step further with the Commission's Communication to the EP, the Council and the Economic and Social Committee on 'Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on CSR'¹⁰. The Communication takes CSR to be: 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. It is about enterprises deciding to go beyond minimum legal requirements and obligations stemming from collective agreements in order to address societal needs. Through CSR, enterprises of all sizes, in cooperation with their stakeholders, can help to reconcile economic, social and environmental ambitions.'¹¹

To achieve these aims, the Commission declared that it wished to give CSR greater political visibility and to encourage European enterprises to do more in adopting CSR. Of consequence for all members, but especially those like Malta, which have no top-down government initiatives at the national level, it was decided that CSR, as a voluntary business initiative, should not involve additional obligations and administrative requirements for businesses as these were considered counter-productive and would be contrary to the principles of better regulation. It was therefore decided that any new initiative would be purely voluntary and it was in this vein that the Commission announced the creation of the European Alliance on CSR, an initiative drawn up on the basis of contributions from businesses active in the promotion of CSR.

The Alliance is an open alliance of European enterprises and involves no legal obligation on the side of participants. In fact, the Communication is explicit in stating that it is not a legal instrument and is not signed by anyone. Ultimately the Alliance is there as a political process to increase the uptake of CSR amongst European enterprises whether large companies, SMEs or their stakeholders. Until now, the majority of those who have expressed a wish to contribute to the Alliance remain large, multinational companies and not all EU members are represented directly under its umbrella.

In this way we can see that, beyond national guidelines, the EU's input in CSR remains purely voluntary with the result that there is little, if any, real possibility of the EU acting as an external driver in CSR adoption, other than through the voluntary association of local

⁹ European Council Presidency Conclusions, 22 and 23 March 2005, (7619/1/05, REV 1).

¹⁰ COM(2006) 136 final.

¹¹ COM(2001) 366.

companies in its activities or through the efforts to increase the profile of CSR, both amongst companies as well as amongst the general public. Whether due to monetary restrictions or other priorities, no Maltese representatives have joined the CSR Alliance.

What is also interesting in terms of emphasising the importance of CSR is that the Commission's Communication itself places emphasis on the fact that CSR alone, and its adoption by businesses, cannot solve the problems many assume CSR could help alleviate. In fact, the Commission states that CSR is not a panacea and not a substitute for public policy, shifting the onus onto authorities and away from the business community. While many countries have adopted CSR as a public policy priority (the British government created a Minister specifically for CSR in 2000) certain small countries within the EU, notably Malta and Cyprus, have little national leadership in the area, leaving the EU as the principal external driver which can be classified as having 'authoritative status'.

In this way, when looking at the adoption of CSR in a small state like Malta, what can already be highlighted is that there are various factors which would indicate that one should expect a limited take up in small countries which have a majority of very small SMEs. In addition to this, for a new EU member state, it has been seen that while the EU's initiatives have gone some way to increasing public awareness of CSR (Malta participated in the Forum through the participation of the Maltese Chamber of Commerce as a member of Eurochambres) there is no binding framework around which CSR can be encouraged at the local level. So what can we say of CSR in a small state like Malta and does EU membership offer the prospect that things could improve in the short to medium term?

Corporate Social Responsibility in Malta

On membership of the European Union in 2004, Malta had nearly 30,000 enterprises with just under half of these being concentrated in the retail sector and construction.¹² Overall employment by enterprises amounted to just under 110,000 persons with a large part of this figure being accounted for by hotel and restaurants, the retail sector and, in the area of manufacturing, in the production of food and beverages, furniture and electronic apparatus. As can be seen from the number of enterprises and the number of those employed, the average employee number per each enterprise was relatively small and it was noted that in the years leading to membership, the average size of manufacturing enterprises in Malta were classified as micro-enterprises with less than five persons employed.¹³

In this way, the initial observation that one can make is that many Maltese businesses have such relatively small profit margin, as well as operating in sectors where personnel turnover is relatively flexible and rapid (retail, hotels and catering), that it would be surprising for these companies to adopt CSR practices based on internal drivers stimulated by cost-profit exercises. This is further compounded by the fact that efforts to stimulate small businesses, such as the Kordin Incubation Centre, have created many small operators which focus primarily on export markets, meaning that there can be an even less intense argument for adopting CSR due to the lack of potential public relation benefits accruing from its adoption.

¹² National Statistics Office (Malta), Press Release No. 279/2006.

¹³ National Statistics Office (Malta), Structural Business Statistics (Industry & Services), September 2005.

However, most CSR initiatives focus on large companies, in particular multinational corporations whose business culture can affect a diverse range of economies. In this case, and based on the idea that the profit-cost argument can best be expected in large companies, one would expect any manifestation of CSR to surface in companies of a particular size. In the case of Malta, four principal types of business activity can be highlighted as potential drivers of CSR. On one side, we have the multinational companies based in Malta and which enjoy a competitive edge in this area as they are able to implement CSR policies in a more cost-effective way, benefiting from the research and methods adopted by the parent company. This makes the CSR initiative easier to implement and minimises the cost aspect of CSR, meaning that the cost-profit margin is more easily bridged in being able to borrow wholesale from an 'external source'. While this is an obvious advantage of such corporations, it can also constitute a negative impact in the adoption of CSR locally as the application of CSR in Malta may not be tailor-made for the local operation and it becomes mere lip service to try and appear pro-active when little, of substance, is actually being done.

The multinationals themselves can be differentiated into two types - the typology having an impact on CSR adoption. This differentiation is based on the fact that certain foreign companies are based in Malta for export only and while the human resource dimension may be cited as a reason for CSR adoption, there are few public relations benefits to be gained from selling the company locally as socially and environmentally conscious. In this respect, several major foreign companies based locally, but operating for an external market, focus much of their CSR work on the American approach of charity work, in particular encouraging their employees to participate in annual 'volunteer days'. Examples can be seen with De La Rue and Playmobil. Little effort is made to publicize more widespread CSR practices.

The other type of multinational based in Malta is that which caters to the domestic market and which should, in theory, also have greater cost-benefit arguments for adopting CSR practices. Key players in this regard include HSBC, McDonalds, and Vodafone and it is of little surprise that each has its own CSR approach and has undertaken efforts to ensure that this is communicated to the general public. While these CSR approaches have focused on a range of social concerns, a key to communicating CSR in Malta appears to be the environmental aspect. This can be for several reasons, including the fact that such corporations are considered primarily as having an effect on the environment (through the use of huge amounts of packaging or concerns over mobile phone signals in built-up areas) but could also be due to the fact that the Maltese are increasingly seen as primarily concerned about the environment when it comes to CSR issues, a reflection of wider concern and reference to environmental issues in public policy.¹⁴ This would appear to indicate that while CSR maybe driven by internal 'feel-good' factors, there appears a greater drive to ensure a more sustainable presence in the market by creating a positive brand, which can ensure employee and customer loyalty. In this way, these companies are expected to be, and in effect are, market leaders in this area because they enjoy a relative advantage in being able to borrow CSR programmes from their parent company, as well as more cost-effective practices, and this makes branding the company a local proponent of CSR easier and more cost effective. One important consequence of these companies is that they can

¹⁴ In no small part a consequence of the 2004 EP Elections where the Green Party won just under 10% of the vote.

have a positive and wider impact by acting as external drivers in the Maltese business environment, which can stimulate CSR adoption in other companies.

In addition to these multinationals operating locally, we can also refer to the second major type of enterprise which has the potential to adopt CSR practices, namely Maltese businesses not falling under those considered as micro-level employers. While many companies exist as export-orientated, the distinction amongst local enterprises centres primarily upon customer types. Several Maltese companies have launched CSR initiatives and have made branding their company as CSR leaders a major public relations exercise, most notably with Simonds Farsons Cisk, Gasan Mamo Insurance, Island Hotels Group and Bank of Valletta. However, the actual incorporation of CSR practices amongst such companies fluctuates. A notable exception could prove to be Bank of Valletta which recently launched a detailed CSR initiative and highlighted areas of action, in particular the incorporation of more eco-friendly products which is being validated primarily on its cost-saving advantages. The factor that unites these businesses is their target audience which can be considered to cover a broad range of the population but includes the higher end of the market or more sophisticated customers, individuals considered more socially and environmentally aware and therefore influenced by such factors.

On the other side, the second type of local business that can be considered are those which cater to a customer base which may not be so readily associated with CSR concerns. In particular, we can mention the construction industry, which employs significant numbers of people, often in socially unacceptable circumstances (the employment of illegal immigrants on exceptionally low wages and often in conditions not compliant with EU rules) and can cause extreme harm to the environment (through illegal dumping, the destruction of natural areas and protected structures). There appears to be little concern amongst the local operators to adopt CSR practices even though they have the financial resources to undertake such an initiative. In this case, a primary factor may be the lack of CSR awareness amongst potential customers as alternatives are few, awareness is low and where a key customer remains the Government which, many argue, appears to show little concern for CSR objectives.

The latter observation is a key factor in the lack of wide-spread CSR adoption in Malta. The Maltese Government has paid some lip-service to the idea of CSR, in particular incorporating a nebulous reference to CSR in the preliminary Discussion Documents pertaining to the development of Malta's First Overseas Development Policy in 2006. Several ministries have also made reference to CSR but there remains a lack of a centralised government policy on CSR with the result that local companies wishing to pursue such an approach must go elsewhere for information and assistance. In this case, the principal key actor remains the Maltese Chamber of Commerce which has participated in the EU Multi-stakeholder Forum on CSR through Eurochambres and which has actively pushed its members through information seminars and conferences.

Without this lack of centralised leadership and with the cost-profit argument applicable only to a very small group of large companies, external drivers become central and in this regard the EU becomes the principal authority which can aid the adoption of CSR in Malta through

the efforts of the European Alliance Agency and the increased profile given to CSR by the Commission and the EP.

Corporate Social Responsibility and the Luxury of Caring

In concluding, we can make several observations about CSR and its prospects for the future in Malta. From our earlier discussion it can be seen that CSR is rarely driven by external factors but more so by internal drivers which are, primarily, galvanised by the cost-benefit arguments for adopting CSR, both as short term gains by adopting cheaper eco-products and long term gains by branding the company as more socially and environmentally aware. As many enterprises in Malta remain exceptionally small by European standards, it is hard to expect that there will be a wide-spread adoption of CSR practices in the near future. It would be not only too costly to research and implement but the benefits would also be too small. CSR therefore becomes impractical.

As seen, certain large companies, both foreign and local, have become CSR leaders and their importance stems from the fact that they constitute important external drivers for future change. Along with the Malta Chamber of Commerce and Enterprise and the EU's efforts (which remain relatively distant as Malta's presence, both on the side of the Government and from its commercial sector, is exceptionally low-key in the Union's CSR forums, especially within the European Alliance on CSR) they constitute the main stimulus for CSR adoption in Malta. They do this by showing the way, indicating areas of action and priorities while also increasing public awareness in CSR, thus making it more desirable for other companies to adopt CSR in the future. Without adequate Government initiatives in this area, these actors remain the sole factor which could increase CSR adoption.

However, there are many arguments in favour of greater Government involvement in CSR. As the single largest employer on the Island, as provider of services which have huge social and environmental consequences, including the provision of educational and health services, the Government could lead by example, adopting CSR practices within its operations. While the Government cannot be considered a corporation, the increasing tendency to farm out services is a key factor which could contribute to CSR, ensuring that Government allocates contracts to more responsible companies. This could also be a key in dealing with those local companies which have little incentive to adopt CSR practices, in particular the construction industry. However, the Government can be considered like so many corporate actors operating at the local level and having to deal with adapting to EU membership. With little binding legislation from the Union, the Government has had many other priorities to deal with since membership. This can be seen in the events following membership when consultation with economic and social groups almost ground to a halt. It took nearly two years for the Government to catch up with the changes associated with membership and to 're-open' its consultation with these groups. In the initial tough years of membership, CSR was definitely not a Government priority and if any radical changes are to be effected in major areas of the local economy where businesses operate with little CSR awareness, it will take leadership from the Government to effect change, especially as the EU contribution remains 'distant'. While CSR is a luxury many small companies can ill afford, as Malta consolidates its place in the EU, it maybe a luxury which the Government can now

start to expend energy on in the knowledge that without its leadership, CSR's potential success in Malta will remain confined to a select few.

Bibliography

Fahy, M., Weiner, A. and Roche, J. (2005). *Beyond Governance: Creating Corporate Value Through Performance, Conformance and Responsibility*, John Wiley and Sons, USA.

Fisher, C. and Lovell, A. (2006). *Business Ethics and Values: Individual, Corporate and International Perspectives*, 2nd Edition, Pearson Education, UK.

Kotler, P. and Lee, N. (2005). *Corporate Social Responsibility: Doing the Most Good for Your Company and Your Cause*, John Wiley & Sons, USA.

Lerbinger, O. (2005). *Corporate Public Affairs: Interacting with Interest Groups, Media, and Governments*, Lawrence Erlbaum Associates, USA.

Lewis, D. (2001). *The Management of Non-Governmental Development Organisations*, Routledge, UK.

Vogel, D. (2005). *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility*, Brookings Institution, USA.

CORPORATE GOVERNANCE AND WORKERS' PARTICIPATION

SAVIOUR RIZZO

Good corporate governance has not only become part of modern economic and business practice but also an essential prerequisite for the integrity and credibility of the firm. Corporate governance has lately been manifesting a higher degree of concern towards openness as it is engaging in bolder attempts to ensure transparency, fairness and accountability towards shareholders and stakeholders. To achieve this goal, in Corporate Governance legislation or codes of practice provision is being made for a system of checks and balances and regulatory instruments aimed at minimising risk associated with conflicts of interests between management and shareholders.

One of the measures in this regard is the strengthening of the role of non-executive and supervisory directors. The appointment of an adequate number of non-executives on the board of directors has become a part of corporate governance practice so as to ensure the presence of a core of independent members. In this debate about the appointment of members to the board, concern has been expressed about the balance between independence and insight as it is argued that those who are independent may lack sufficient insight into the operations of the firm in contrast to those who are involved in the operation of the firm who, through hands-on experience, tend to have such insight (Christensen, 2006:7).

According to the recommendation of the EU Commission, an independent director should be “free of any business, family or other relationship, with the company, its controlling shareholder or the management that creates a conflict of interest such as to impair his judgment” (EU Commission, 2005:56). These recommendations, however, make allowance for a variety of criteria which are to be set in the code or legislation by stating that “a number of criteria for assessment of the independence of directors should be adopted at national level. The (supervisory) board may consider that although a particular director meets all the criteria laid down at national level for assessment of the independence of directors, he cannot be considered independent owing to the specific circumstances of the person or the company, and the converse also applies”(ibid.). In the profile of independent non-executive or supervisory directors (Annex II), an exception is made for employees to be on the board once he/she “does not belong to senior management and has been elected to the (supervisory) board in the context of a system of workers representation recognised by law and providing for adequate protection against abusive dismissal and other forms of unfair treatment”(ibid.,:63).

Employees' Representation

This 'exception' makes unequivocally clear the legality of employees' representatives on the board who are elected or appointed according to statutory or legal provisions of the firm. Nevertheless in the Netherlands, one of the European countries with legal provisions for employees' board level representation, workers' representation at board level is by proxy in the sense that the works council nominates the persons to represent the workers on the board. Workers cannot sit on the board. To be appointed board members, the persons nominated by the works councils have to satisfy the criteria for 'independence'. In contrast to this in Germany neither the code nor the legislation contains substantial independence requirements for supervisory board members; most of the board structure, including labour codetermination at quasi-parity in large companies is minutely laid down in the Stock Corporation Act of 1965 (Hopt et al. 2006:60).

This labour co-determination has lately been coming under sharp criticism on the pretext that it acts as a deterrent to foreign direct investment and it may thus put Germany at a disadvantage in the context of international economic competition. The playing down of these adverse consequences by politicians and trade unions is seen as a sign of "hypocrisy and sheer ignorance" (Hopt, 2006:25).

In the business sector, this type of discourse has set the tone in the ongoing debate about the new form of Corporate Governance. The business community maintains that the responsibility of directors should remain embedded exclusively in the "shareholder model". The Report of the Working Group set up by the Malta Stock Exchange (MSE) to design a suitable framework for corporate governance of Maltese listed company does acknowledge recent proposals for extending "the responsibility of corporate directors to other interests including the interest of labour, creditors, consumers and the community at large"; yet, it still clings to the traditional approach whereby the focus would be entirely on the shareholders' interest. Labour interests do not constitute corporate law matter as these interests "have always been regulated by industrial legislation and collective bargaining characterised by a strong trade union presence" (MSE,1994:5). What this group recommends is a "restatement of the classical shareholder model ..with the principal focus remaining the shareholder" (ibid.,:4).

The rationale behind this model lies in the non-contractual relationship that shareholders have with the firm, quite distinct from the relationship between workers and the firm which is offering them employment. Employees are protected by an indefinite contract and their interests are regulated by legislation and collective bargaining. The legislation governing the relationship of the shareholders with the company does not provide such a high level of protection and regulation. As such the focus of corporate governance should be on the shareholders (Habbard, 2005:10).

While the notion that shareholders bear residual risk cannot be disputed, workers tend to bear the brunt of the higher level of risk in today's labour market (Ibid.:15). The firm-specific skills acquired by the workers constitute the human capital of the firm which is so vital for its operations and viability. It is on this premise that the European trade union movement is contesting the assumption that control rights should be exclusively in the

hands of shareholders, maintaining that corporations should be accountable to the interest of the relevant stakeholders (Kluge, 2006:5).

Were it not for interventions by the European Trade Union Confederation (ETUC) and such supranational institutions as Organisation for Economic Cooperation and Development (OECD), references to the rights of employees, as major stakeholders, to have a say at board level would be very scant. In other words the stakeholder model of corporate governance seems to be giving way to the shareholder model. This is mainly due to the prevailing notion that the higher economic growth being registered by the US in relation to Europe is due to the shareholder model of corporate governance which is dominant in US. In the eyes of many economists and policy makers in Europe, the US system of corporate governance, sometimes disguised under the cloak of 'international best practice' has become the ideal (Vitols, 2005:5).

A shift of direction towards the US framework may however be problematic. The European stakeholder model has proved to be amenable to the diversity of cultures and industrial relations environments prevalent in European countries. The US model operating in a different setting may not to be equally adaptable. This difference between the scenarios of Europe and US may be explained by several factors. Shareholding in European countries tends to be more concentrated than in the US. Since in the US, shareholding tends to be more disparate, the cases of firms being dominated by block holders are much fewer than in Europe. Among the EU member states, there are twelve countries which give strong voting rights to workers' representatives, even though the legal framework, as has already been highlighted in the cases of the Netherlands and Germany, may be different (ibid.).

Thus the stakeholder model in a number of European countries is equated with some form of workers' participation. It may also imply, as in Germany and the Netherlands, employee board level representation. The presence of workers' representatives in the highest administrative organs of a company gives more legitimacy to their decisions. Indeed, the internal workings of the firm may cease to be seen by workers as a black box where short-term objectives may prevail over long-term ones. The provision of a legal framework for employee board-level representation is being perceived as the latest stage in the development process of labour law.

In its first phase, labour sought to regulate the conditions of employment and protect the workers from rampant exploitation and physical harm. This was followed by legislation aimed at protecting employment and establishing regulation governing collective relations. Labour law, through the underlying principles of transparency and openness being espoused by the advocates of the new form of corporate governance, may extend its reach. In the recent scenario of financial markets, corporations have exposed themselves to failure and insolvency due to governance failure, management greed and endemic conflicts of interest. It is in this context that the principle of information transparency vis-à-vis shareholders is being espoused. The solution being put forward by social analysts in the field of labour relations is that this principle of information transparency be extended on the same terms to the employees of the enterprise (Morin, 2005:8).

Nevertheless the process of privatisation of public utilities, as part of a recent wave of neo-liberalism, is reinforcing the argument in favour of adopting the shareholder system prevailing in the US rather than the European stakeholder model. Moreover, this policy shift is leading to the dismantling of the workers' participation schemes in practice in several firms in Europe. Paradoxically this is happening at a time when the EU, in its attempt to reinforce its beliefs in the espoused principles of Social Europe, has promulgated a number of Directives to extend the scope of workers' participation and consultation rights. Directive 2002/14 (transposed into Maltese law on 13th January 2006: Legal Notice 10 of 2006) generalising the obligation to inform and consult employees, establishes a European model of mandatory workplace representation. The scope of the directive is very wide and could include information relating to mergers and acquisitions and business reorganisations, as well as changes in terms and conditions of employment (DG Employment and Social Affairs and Equal Opportunities, 2006,:59). In Directive 2001/86/EC, supplementing the European Company (SE) with regard to involvement of employees (transposed into Maltese Law in October 2004. Legal Notice 452 of 2004), a 'Before and After' clause has been inserted to ensure the continuity of participation rights of employees in case the company in which they are employed registers as a European company through a merger or a transformation.

This does not however mean that the European Company Statute is the epitome of workers' participation. By establishing certain thresholds, it protects companies from the imposition of forms of employee board-level representation, while an emphasis on negotiation enhances the likelihood of tailor-made arrangements when companies decide to register as a European company. The Commission's vision of a European company operating on the principles of the codetermination system of Germany had to be compromised. Under the pressure of the group lobbying strongly for the classical shareholder model of corporate governance, the European Commission modified its approach to board-level representation. Thus it is very unlikely for the EU to have a harmonised system of corporate governance. It will have to contend with the presence of two systems; one based on the "classical shareholder model" and the other embracing some workers' participation rights, leans more towards the "stakeholder model".

Corporate Governance in Malta

Malta is likely to follow the shareholder model as the legacy of Britain looms large in the field of industrial relations. Employee' representation at the workplace seems to be more in line with the British rather than the European system. The main link between the trade union and the workplace is the shop steward to whom most of the trade union educational programmes are addressed and targeted. At the time of writing (February 2007) the number of employees' board level representatives is twelve. All except for three are in state-owned or state-run enterprises.¹ Over the last three years the number of employee board-level representatives has decreased. The years between 2003-2006 saw the demise of the following worker directors in the following enterprises: Air Supplies, Malta Freeport and

¹ Four of these twelve are University employees. In accordance with the 1988 Education Act (Chapter 355 of the Malta Laws, Sections 'd' and 'e'), the University Council includes two elected members from the academic staff and two elected members from the non-academic staff. The Council acts as the Board of Governors and Employer of the University.

Cargo Handling Company (following privatisation) Malta Shipyards (following the restructuring exercise that merged Malta Drydocks and Malta shipbuilding into this company; prior to which each of these former enterprises had its worker director – see below); Malta Information Technology Training Services (MITTS), Air Malta, and Tug Malta (by a decision of the minister). In each case the voice of the trade union was conspicuous by its absence.

The worker directors are expendable as there is no legal provisions for their election and/or appointment. The only worker directors backed by legislation are those at Enemalta and Maltacom (formerly Telemalta). The legislation setting up these two enterprises (then both parastatal) was revised in 1988 to regulate the election of worker directors on the boards of the two enterprises. This was done following the vociferous protests by the union when the government, contrary to the usual practice, failed to nominate a worker to the new boards of the two enterprises. Thus six of the nine employee board level representatives still exist thanks to legislation enacted in 1988.

Even the practice of having consultative bodies, representing employees at the workplace, is practically non-existent. Such is this lack of culture of consultation at workplace level, that the setting up a works council, provided for in the agreement between Air Malta and the four unions representing the various categories of employees, was hailed as a breakthrough in industrial relations. Malta has the lowest national density of workplace representation (excluding collective bargaining) in Europe (European Commission DG for Employment, Social Affairs and Equal Opportunities, 2006:70).

The Practices of Workers' Participation

This current apathetic mood to workers' participation in Malta stands in sharp contrast to the scenario prevalent in the 1970s. At that time, the newly-elected Government was seeking to obliterate the fortress economy status by rendering Malta's economy dependent on productive work rather than on the annual grants of the British government and its NATO allies, aimed at maintaining the island as a fortress in the Mediterranean. To accomplish this task of achieving self-reliance it pledged that while seeking new directions in the economic field, it would concurrently adopt a new form of industrial relations. In this new scenario worker's participation was earmarked to play a leading role in the objectives set by government to achieve self-reliance (Kester,1980:72).

The Government adopted a three-pronged approach to diffuse the principle of industrial democracy. One was the introduction of workers' participation in the management of those enterprises where the state had a controlling interest. The aim was to create a niche in the manufacturing sector run by workers. However government, in order to upgrade such enterprises' economic performance and profitability, was constrained to seek partners from abroad for joint ventures. In this process government was forced to renege on its avowed principles and bow to the dictates and constraints of the pragmatism of the market (Rizzo, 2003:178).

The second attempt was the setting up of workers' committees in all departments of the public sector. Rather than engendering mutual trust, these workers' committees ended up

giving rise to deep-seated suspicions between public sector employees and senior government officials. The trade unions, in dispute with the government, suspected that these committees were being used as a tool to circumvent potential strike action. On the other hand, government accused the unions of using these committees for their self-aggrandisement rather than to enhance participation. Once their term of office was concluded, no fresh elections for workers' committees were held.

The third attempt at workers' participation was at Malta Drydocks Corporation, then by far Malta's largest employer. The Drydocks were originally a naval dockyard base for British warships and were converted into a commercial enterprise by the British colonial government. In 1968, four years after Malta attained independence, it became the property of the Maltese government by an act of Parliament. In 1971 a newly elected government, soon after assuming office, set up a Board of Directors made up of three trade union officials representing the workers and three members appointed by Government. The chairperson was acceptable to both sides. The industrial peace ushered in by this system enabled the Drydocks Corporation to attain profitable trading positions for the first time in its history in 1973-74. The prospects of a viable economic Drydocks induced the government to translate its principle into practice by making amendments to the Drydocks Act which stated that the enterprise was to be run by a board directly elected by the workers. By this amendment the Drydocks became a self-managed firm and for some time it appeared to be a showcase of workers' participation (ibid.,:181).

However, the profitable trading positions of the mid-seventies did not maintain their momentum and in the early eighties the company plunged into chronic loss. The enterprise had to rely on heavy subsidies from the government in order to survive and avoid redundancies. These subsidies, it was continuously being argued in the press and in political debates, had become a burden on the Maltese tax payer. Two reports commissioned by government - one on the financial situation (Cassar-White, 1996) and the other on the management system of the enterprise (Baldacchino, G. 1997) - made adverse and damning comments about the way this self-management was operating. The press took the cue from these two reports to deride 'the myths of workers' participation' with one weekly newspaper commenting that "workers' participation has failed as much as communism and extreme forms of left-wing socialism" (Malta Business Weekly 13-19th February 1997). Following the publication of these two reports the participation system at the Drydocks was dismantled. In 1997 an amendment to the Drydock Act reduced the number of worker-directors by half, while in 2001 it was reduced to one. In the restructuring exercise of 2003 and the subsequent enactment of the Shipyards Act, the post of worker-director was abolished. There was hardly any protest against this move which brought to an abrupt end almost three decades of worker representation.

Thus the initial euphoria of workers' participation in the 70s failed to maintain their momentum. The high trust relationships, which it sought to establish, failed to materialise both in the public sector and at the Drydocks. The way each side, driven by the self-interest of its individuals, tried to manipulate the system to its own advantage made workers' participation look more like a convenient tool in the blatant struggle for power rather than as a means for enhancing the dignity and democratisation of work.

The system has also to be analysed in the context of the economic constraints of a small, resource-poor island state heavily dependent on foreign investment. The Drydocks was a unique case. Had this commercial enterprise, which is socially-owned, demonstrated that workers participation is conducive to higher productivity and a sounder financial position, then the case for workers' participation would have been much more robust.. This demonstration effect was not forthcoming.

In retrospect, Maltese experience of workers' participation over the last 30 years has been a string of abortions and miscarriages. The disparaging remarks of its detractors point to the short lifespan of workers' participation schemes in the public sector, and the anarchy which the self-management system at the Drydocks has often been accused of fostering. Perhaps the piecemeal and haphazard way in which it was introduced was its undoing. Far from being the result of a drawn-out and social development, (as collective bargaining has been) or the result of social turmoil, the issue of workers' participation has been presented precipitously through a string of top-down political and legal events. Trade unions are wary that such schemes can be manipulated by managers to circumvent their actions whereas employers, on the basis of past experiences, are afraid that these practices can be used to satisfy the workers' self interest to the detriment of the viability of the firm.

From the foregoing one may easily infer that in Malta the likelihood of a lobby to give a voice to workers in the highest organ of the decision-making in the firm is very unlikely to emerge. As an ideal it does not seem to form part of the espoused ideology of the Nationalist Party (NP), currently in government, nor of the Malta Labour Party (MLP), currently in opposition. Neither does it feature prominently in the agenda of the trade unions. To date the Maltese trade unions have kept a very low profile in the ongoing debate on this issue. While the matter is the subject of debate at a European level, there is hardly any discussion on this locally.

ETUC Approach and Maltese Trade Unions

The proactive approach being adopted by the European Trade Union Confederation (ETUC) over this issue may, however, ultimately urge the Unions in Malta to take a more active role in the debate. The two main Maltese trade union organisations, General Workers Union (GWU) and the Confederation of Maltese Trade Unions (CMTU) are both affiliates members of ETUC. In a resolution adopted by its executive committee in March 2006, ETUC made a very strong appeal to European companies to “endorse the emergence and evolution of a European model of corporate governance, fostering company boards' orientation towards long-term value creation, high-trust labour relations, workers' participation in companies' decision-making processes and societal responsibilities”. In this resolution, ETUC proclaimed its belief in a model of corporate governance which motivates capital and labour to agree on all key elements of a company's policy and management. This consensual ethic will not only help the company to perform better in the long run but will also ensure stability and enable orientation to long-term goals. To achieve such an ideal the role of employees must once again be at the core of the new regulatory framework (ETUC, 2006:2-4). ETUC is echoing the principles published by the Organisation for Economic, Cooperation and Development (OECD). In the context of corporate governance, performance-enhancing mechanisms for participation may benefit companies directly as

well as indirectly through the readiness of employees to invest in firm-specific skills”(OECD, 2004,: 47).

The Maltese trade unions at present do not seem to be inspired by these pronouncements. Still feeling strong at enterprise level and able to show their muscular strength in collective bargaining and through the active role of their shop stewards, they may let the actors involved in drafting the framework of corporate governance steer their own course without any meddling on their part. However this seemingly strong position of the union may be weakened by the forces of modernity. Over the last three years there have been signs of a decline, even though marginal, of trade union membership. The downsizing exercises and closures are mainly occurring in the employment domains, where trade unions have been traditionally strong, such as the manufacturing and the public sector.

Moreover the number of enterprises in the Maltese private sector which, through an effective human resource management system, are operating with a non-unionised work force, such as Baxter and Vodafone, are on the increase. The bargaining strength of the trade unions may also be diminished with Malta’s entry into the Euro zone. The loss of monetary and exchange rate policy independence by the state once Malta enters into the Euro membership means less discretionary powers to deal with economic shocks and recessions. The loss of this adjustment option by the state is not seen favourably by trade unions, as they feel that the exchange rate adjustment mechanism will have to be replaced by other mechanisms which are not attractive to their constituents. They have already become aware that the parameters affecting wage policy are being determined by forces alien to labour (Busch, 1993:133). They therefore have to take heed of the call for wage moderation being made by government and employers.

This should by no means be interpreted as meaning that trade unions are doomed to become a spent force. Throughout the previous century trade unionism was the major social movement. “For over a century it was a continuous animating presence in all areas of political life” (Touraine et al. translation Patterson, 1987:293). As the main actor on the protest stage, it managed to give a structure to power relations, raised the social issues and continues to modify, even if only by its sheer existence, the methods of state intervention (ibid.). Whatever its loss in bargaining power and the reduction in its membership, it is not likely to abandon its role as a social movement. The position of the trade unions in France can serve as an apt example. Although, in terms of membership density, the French trade union movement is the lowest in Europe, it is one of the most vociferous lobby groups for the promotion of social welfare and equity. The decrease of its constituency has acted as a spur to it to take a high profile in socio-economic issues, especially those which directly affect the workers.

Although the Maltese trade union movement is still far from being in the predicament of its French counterpart in terms of declining membership, its characteristics as a social movement are lately coming more to the fore. While the Maltese trade unions are still expressing and defending the vested interests of their members they are also presenting an image of being the swords of justice. However concerned they may be about the vested interest of their members, their actions are manifesting awareness that they are part of a larger society and in the process they are fine-tuning the dynamics of their organisations to

changes occurring in modern society. They have indeed broadened their agenda beyond issues related to the workplace by actively involving themselves in issues such as pensions, the social wage, tax deductions and social benefits. Trade unions tend to sustain their robustness by showing their ability to share in the brokerage of trade-offs between different interests (Ferner & Hyman, 1988:xviii). The issue of corporate governance will feature prominently on the agenda of Maltese trade unions once they start assuming more the role of social movement.

Their disposition towards the stakeholder model will be translated into more pronounced statements and protests, maybe taking the same stance and using the same type of discourse as ETUC. At present there is not much evidence in Malta of the struggle between the two opposing views of corporate governance, namely the shareholder against the stakeholder model. There have hardly been any contestations by the Maltese trade unions about adopting the shareholder model. But things might change, perhaps in the not too distant future.

Such an eventuality would not have an adverse effect on the economic viability of the firm. A statistical study of the 25 EU member states suggests that rights of worker board representation do not systematically negatively impact upon the profitability of firms (Vitols, 2005:25). Cumulative evidence from north-western Europe shows that well-functioning employee representation can play an important role in the modernisation of and performance in the workplace. “Social partners have picked up this evidence to make a plea for partnership (UK and Ireland), cooperative modernisation (Germany), and high quality co-determination (the Netherlands) or the developmental workplace (Nordic countries)” (European Commission: DG for Employment, Social Affairs and Equal Opportunities, 2006:77).

Corporate Social Responsibility

Employee board level representation should be seen as part or rather one of the underlying principles of Corporate Social Responsibility (CSR). In its policy statements, the EU Commission defines CSR as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis” (EU Commission, 2006:1). This perspective by the Commission is indicative of the new light in the question of employment relationship and the inherent responsibilities of the enterprise towards its main stakeholder, who are its employees. The link between trade unions and the CSR movement has not been strong, maybe because the CSR movement appears to be more concerned about environmental issues and labour abuse in developing countries. “Nevertheless stronger identification with the CSR movement could be an important way of improving the legitimacy of workers’ participation” (Vitols, 2005:38).

There is of course another view of CSR. To those who are euphoric about the triumph of capitalism, CSR smacks of tokenism and political correctness and is at best a gloss on capitalism rather than the deep systematic reform that its champions deem desirable (‘The Economist’ January 22nd - 28th 2005:11). With the fall of the Berlin Wall and with China abandoning some of its Communist practices, capitalism seems to be at its peak. In this

moment of triumph, further strengthened by the process of globalisation, a group of ‘global utopians’ has emerged who with ‘evangelical zeal’ are proclaiming “their absolute faith in the ability of an all-determining market mechanism to deliver universal prosperity and peace, in perpetuity”(Barry, 2006:13).

The flaw in this argument is its failure to contextualise the success of capitalism in its developmental process. In this process it has proved to be dynamic and innovative. But the dynamism and innovation were accompanied by an ability to adapt to social changes. The emergence of a strong labour movement on the protest stage brought a change in the relationship between capital and labour which was endorsed by the owners of capital. Labour regulation changed the employment relations from personal to procedural. The regulatory role of the state, which often consists of reaching compromises between capital and labour, gave capitalism that human face which was lacking in the early stages of industrialisation. The fact that, at least in the western world, capitalism was hardly ever threatened by a serious crisis of legitimisation may be attributed more to this human aspect and negotiated compromise rather than to its innovation. The policy paralysis, being advocated by the neo liberal ideology, may put a halt to this developmental process. On the other hand the emergence of a strong anti-globalisation lobby group is indicating that the bargaining developmental process between capital and labour has still not been translated into tangible evidence of fairness and equity.

Trade unions have so far not been as vociferous in their protests as this anti-globalisation group. As a more compact and organisationally structured movement at national and international level, the trade union movement may seek other avenues to combat the downside of globalisation. Corporate Social Responsibility can be one way in which trade unions could try to shape globalisation in the interests of the workers, whom they represent, and of society at large.

References

- Barry, L. ‘*Globalisation must be Saved from the Radical Global Utopians*’ Financial Times, May 30th 2006 p.13.
- Busch, K. (1993) ‘*Economics and Monetary Union in Europe and the Consequences for Trade Union Wage Policy*’ in Crawford, B. and Schulze, P.W. (eds.) *European Dilemmas after Maastricht*, USA: University of California; pp.131-146.
- Baldacchino, G. (1997) ‘*Is-Sistema ta’ Management fit-Tarzna: Stharrig, Analizi u Rakkomandazzjonijiet*’, Report submitted to Malta Drydocks Task Force, Malta Government Press.
- Cassar White, J. (1996) ‘*The Malta Drydocks: A Financial, Commercial and Management Overview*’, Report submitted to Malta Prime Minister.
- Christensen, J.S (2005) *Corporate Governance in Denmark* in Hopt et al. pp. 5-10.

Commission of European Communities (2006) *'Communication From The Commission To The European Parliament, The Council And The European Economic and Social Committee'* Brussels: EU Commission.

European Commission: Directorate General (DG) for Employment, Social Affairs and Equal Opportunities *'Industrial Relations in Europe (2006)'* Brussels: European Commission.

European Trade Union Confederation (ETUC) (2006) *'Corporate Governance at European Level'*, Resolution adopted by ETUC Executive Committee Brussels: 14-15 March 2006.

European Commission (2005) *'Official Journal of the European Union Commission: Recommendations of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of (supervisory) board.'* Brussels: EU Commission. pp.51-63.

Ferner, A. and Hyman, R. (eds.) (1998) *'Changing Industrial Relations in Europe.'* Oxford: Blackwell.

Habbar, P. (2005) *'The Employee Voice in Corporate Governance - A Trade Union Perspective'* Trade Union Advisory Committee (TUAC) A Discussion Paper <http://www.seeurope.network.org>

Hopt, K. Garcia, J.G. Rickford, J. Rossi, G. Christensen, J.C. Simon, J. Winter, J. (2006) *European Corporate Governance in Company Law and Codes - Report of the European Corporate Governance Conference of October 18th 2006* The Hague, The Netherlands.

Hopt, K.(2006) *Corporate Governance in Germany* in Hopt et al op.cit. pp, 23-32.

Kester, G. (1980) *'Transition to Workers' Self Management: Its Dynamics in the Decolonizing Economy of Malta'*, The Hague: The Netherlands: Institute of Social Studies.

Kluge, N. (2006) *'Europe - Space for Workers' Participation'*, Brussels: ETUI- REHS.

Malta Stock Exchange (MSE) (1994) *'Extract of the Report of the Working Group on Corporate Governance'*.

Morin, M.L (2005). *'Labour Law and New Forms of Corporate Organisation'*, in Industrial Labour Review Volume 144/1 pp.5-30.

Organisation for Economic Cooperation and Development (OECD) (2004) *'Principles of Corporate Governance'* Paris: OECD.

Rizzo, S. (2003) *'Workers' Participation at Malta Drydocks: End of a Saga'* in Baldacchino, G. Rizzo, S. and Zammit, E.L. *Evolving Industrial Relations in Malta*, Malta: Agenda. pp.172-190.

The Economist. '*The Good Company*' Number 04 January 22nd-28th 2005 p.11.

The Malta Business Weekly (1997) Malta, Standard Publications, 13-19 February.

Touraine A. Wieworke, M. Dubet, F. (1984) '*The Worker Movement*' trans Patterson I. (1987) Cambridge: Cambridge University Press.

Vitols, S. (2005) '*Prospects for Trade Unions in the Evolving European System of Corporate Governance*'. Draft Report for the Project Seeurope German Corporate Governance Network www.gcgn.net

AN EU-INSPIRED CORPORATE GOVERNANCE STATEMENT FOR MALTESE LISTED COMPANIES - BOON OR SCOURGE?

PETER J. BALDACCHINO

Introduction

The traditional definition of corporate governance is that of “the system by which companies are directed and controlled” (Cadbury Committee, 1992: p 15). Indeed, corporate governance is concerned with the interaction of a company’s management, board of directors and stakeholders in ensuring the fairness of such a system. It needs hardly be said that corporate governance systems needed reform in the past decades for the sake of protecting the various stakeholders. For example, neither the USA nor the European Union could envy each other in the light of recent major corporate scandals such as Enron and Parmalat. Crises stimulate the search for new and more rigorous methods of surveillance and control (Moran, 1986). As would therefore be expected, both legislators and regulatory bodies have been increasingly involved in the tightening up of the global legislative regulatory framework.

Perhaps the strongest evidence of this was, in the U.S.A, the Sarbanes-Oxley Act of 2002 which, according to the Act itself, was enacted “to protect investors by improving the accuracy and reliability of corporate disclosures”. In a comparable manner, in the European Union, the 8th Directive on Company Law was finally implemented in 2006 further to the Commission’s 2003 Action Plan for Modernising Company Law and Corporate Governance at EU Level (European Union Commission, 2003). Among other changes, the 8th Directive mandates audit committees for listed companies and includes fundamental changes around the relations of the board directors with the auditors.

Indeed, several other new rules, accounting and auditing standards and improvements have by now taken hold in many countries: it is good news for investors that boards of directors are becoming increasingly independent, audit committees are acting with newly found scepticism and autonomy and chief executive officers are assuming greater responsibility for financial reporting (Deloitte and Touche, 2006). After all, a much-quoted survey of investor perceptions indicates that investors are willing to pay more for a company that is

well-governed and that the quality of corporate governance standards ranks alongside financial performance and other factors when deciding whether to invest in a company. (Mckinsey, 2004).

In this vein, and even beyond legislation, most countries have developed their code of recommendations in this area - witness, for example, the many recent corporate governance codes listed by the European Corporate Governance Institute on its website (ECGI, 2006 online), including that of Malta introduced in 2001, revised in 2005 and intended to be adopted by issuers of listed securities.

Since 2001 the Malta Financial Services Authority (MFSA) listing rules have encouraged such issuers to 'endeavour to adopt' the principles of the "Code of Good Corporate Governance". The Rules require issuers to include in the Annual Report a statement, verified by the auditors, with regard to the effective measures they have taken to ensure compliance with the Code. Therefore, although the whole Code as such is not obligatory, listed companies in effect would already best adopt the "comply-or-explain" principle of explaining from which parts of the code they depart, if they do so, and their reasons.

Yet a largely ignored but important doubt lingers with the advent of the myriad of this and further corporate governance laws, rules, standards and codes: are the overall implications of such a regime, if any, being appropriately weighed? This paper debates some such implications and their significance on Maltese listed companies by considering one particular proposed corporate governance change by the European Union Commission: the statutory inclusion in its Proposed Amending Directive Com (2004) 725 of a Corporate Governance Statement in the annual report of listed companies.

The Proposed New Corporate Governance Statement

The Amending Directive proposes a Corporate Governance Statement which not only requires the application of the 'comply-or-explain' principle already referred to above to a specified code of corporate governance, but also a number of other disclosure requirements. The main such requirements are:

- the disclosure of the operation of the shareholder meeting and its key powers,
- a description of shareholder's rights and how they can be exercised; as well as the composition and operation of the board of directors and its committees, and
- the disclosure of the companies' internal control and risk management systems.

With regard to the first two disclosures requirements above regarding shareholders and board of directors, these should still create no significant changes with respect to Maltese listed companies: the descriptions will mostly involve disclosing what is already required in Maltese company law, in itself EU-compliant. However, there are major issues to consider even in Malta if the Commission were to move ahead with the third disclosure requirement of the companies' internal control and risk management systems. In this respect, even according to the Explanatory Memorandum of the proposed directive itself (Section 2c), consultation has already shown that stakeholders disagree as to the need to go further than the application of the "comply-or-explain" principle. In fact, "while business was reluctant

to go further other stakeholders favoured additional disclosure, in particular information about the risk management system applied by listed companies”.

Disclosing to Everybody in the Dark?

A main issue here is that unless benchmarks are first agreed and established as to what is expected to be disclosed, such disclosures will probably be meaningless and mostly wasteful of resources as little, if any, inter-company comparisons or even inter-period comparisons may be carried out. Both phrases “internal control” and “risk management systems” are wide-ranging and umbrella ones. Internal controls involve so many aspects of the organisation - among others, its plans, lines of reporting, delegation of authority, segregation of duties, physical security aspects, management and supervision, the internal audit, personnel policies, the overall control environment. Similarly, risk management systems also permeate almost everywhere: there are business, financial, physical, managerial, legal, foreign exchange and several other types of risks to manage.

If serious enough, sub-committees of listed company boards of directors such as audit and risk management committees need in fact to be continuously occupied with both controls and risks. Yet, one may ask what - with this increased requirement - the “other stakeholders” are really after, because the exercise may unwittingly result in another public relations showcase showing the acceptable law-abiding face of their companies. How worthwhile is it for such boards to engage further financial and legal consultants at considerable cost to venture out politically correct information? While annual reports are increasingly thick and glossy, they are also probably being read less. Additionally, given the differing tastes of the various stakeholders, there will invariably be variances as to which items to disclose and also as to the desired level of detail - too commonly virtually impossible to satisfy. Can this merely lead to expensive information overload?

Even from the management’s perspective, this may be an example of a questionable add-on to the contrasting demands which are continuously being made on them both for more accountability and for more value by stakeholders in search of an ever-bigger piece of the corporate cake. After all, over the years, in addition to many more demands on boards of directors, traditional watchdogs have been highly empowered while others freshly installed, all in the name of corporate governance: the external auditors with their tightened international auditing standards, the internal auditors with their more strategic role, the varying regulators with their pressing and expensive demands, in many instances even three or more of them such as industry, listing and company ones, government authorities at the various levels - local central and European all armed with new compulsory legislation. In allocating scarce resources in a tough, cost-cutting and dynamic environment, the “boss” or chief executive officer already finds it difficult as it is to strike a successful balance between delivering a good bottom line and coping with these elements of the regulatory framework.

In particular, stakeholders remote from the boardroom may too easily underestimate the significance of this. Requiring companies to disclose more and more on what they are doing will not necessarily make their operations more understandable. If one is not careful enough, companies may substantially be made to churn much more paperwork than before, but stakeholders given only a false sense of security.

This is not to say that the march of modern corporate governance needs to stop. The scrutiny of the governance and control being exercised at the top is a process that is to go on: new and better ways may be thus found for exercising reasonable checks and balances such as preventing anyone from having unfettered powers of discretion, distinguishing between possibly conflicting roles even beyond chairman and chief executive, and improving on the existing relationships of Boards of Directors and the different types and sizes of shareholders, and even making directors and chief executives more generally accountable. But before promulgating new rules, the regulating authorities need to undertake serious impact assessments of such regulations taking into reasonable account the major stakeholders involved. A lesson to Europe in this context was the largely unforeseen cost to many American companies of implementing the above-mentioned Sarbanes-Oxley Act in the USA. While benefits were clearly reaped, the stricter regime has also resulted in consultancy and audit shooting up dramatically, at least in the initial years. As a result, controversies still rage as to how far it is cost-beneficial both to the companies and their stakeholders.

More specifically to this corporate governance statement requirement, the demand for more information to be made public can have its benefits if the sender knows clearly what to give and the receiver what to expect. This would entail spelling out specific details of the benchmarking standards. In working these out, the regulators would need also to consider and as far as possible take into account the potential pitfalls emanating from the attitudes of the parties involved as such attitudes may effectively inhibit the transmission of meaningful information. For example, senders may be too intent on protecting their interests and may be shrewd or resourceful enough to be able to filter the information in that interest. On the other hand, the major “stakeholders” could easily include inquisitive and potentially manipulative competitors, lethargic shareholders interested only in their dividend cheques, potential short-termist investors trying to speculate on the market, financial advisors with too many hats or conflicts of interest (particularly in a small island-state) and even some journalists with their political agenda on how to interpret company communications. While definitely one cannot solve all issues resulting from such attitudes, yet their consideration would definitely influence the type of information to be asked for.

Giving Less but What is Needed

Perhaps an even better alternative is to re-examine the need for the corporate governance statement to go beyond the “comply-or-explain” principle. If one borrows the concept from auditing, the typical established statutory audit report addressed to company shareholders does not in any way venture information unless there is the need for qualification or emphasis - and the approach seems to have worked. One reason for this is that the accompanying statutory financial statements are already heavily and increasingly regulated as to what to contain or not. One may therefore either decide not to ask for more disclosure with respect to corporate governance, or if more information is to be required, reserve it to the major changes that have occurred in controls or risks during the year. However, this information could also be incorporated with the other statements or reports in the annual report, such as in the directors’ report. In any case, one perhaps needs best to avoid general descriptions of systems: what if you were made to listen to the whole story of what happens

in your car controls by your mechanic every morning before starting off? In reality, you are only interested if anything is wrong.

Furthermore, inasmuch as a car mechanic will best point out car trouble, it is not the company but an independent specialist who will probably be best equipped to make - rather than merely verify aspects - of the statement. Rather than a financial auditor, perhaps it would be best to engage a management specialist for the purpose. Thus, if independent Board of Director sub-committees are functioning in a company, the chairman of, say, the Risk Management Committee may be required to present the risk management aspect in a report to the AGM, while the chairman of the Audit Committee will present the internal control aspects.

A Question of Priorities

Perhaps, the pertinent question is even more fundamental: is the current emphasis on information disclosure the best approach to ensure progress in corporate governance? Could it be that regulatory priorities need re-shuffling? After all, irrespective of the regulatory framework in force, it is invariably dependent for its success or failure on the persons involved. Before regulating the flow of information, it could be much better to think of tightening up the present regulation of the persons involved in the process. For this, one perhaps needs to re-visit the corporate governance modus operandi taken for granted over the years. For instance, with respect to the minimum qualifications required of directors: should candidates for board directorships in non-financial listed companies continue to be considered fit and proper for the position despite their having no background in ethics, law and finance, and/or business education in general? Are shareholding interests and financial backing to remain enough in practice to secure appointment to the boards of such companies? Furthermore, on being appointed to this position, should a short introductory familiarisation course, if held at all, suffice?

In addition, with respect to the statutory term of appointment of directors: given that they are in charge of long-term strategies for their companies, is it wise to appoint them every annual general meeting? Why not have their appointment for a non-renewable but reasonable number of years such as five to seven years? In this manner one would promote the long-term vision and continuity at the top which are necessary for many corporate governance matters. Why should directors care about minimising risks if the weight of such risks will become apparent only beyond the term of office - next year or even after? Moreover, although a profit retention policy may be needed for a company's long-term financial survival, how can directors refrain from recommending that extra dividend demanded by shareholders once they are completely dependent for imminent re-election?

Conclusion

In conclusion, the proposed corporate governance statement disclosure requirement cannot be described as a scourge, but it is not a boon either. It could easily be like driving a car repeatedly around a roundabout - a fuel-consuming exercise without going anywhere. To continue on the car analogy, it is also useless to try to stop cars from overspeeding, but then fail to insist on a proper driver's licence. In the area of corporate governance, we may need

not only to slow down and not over-regulate, but, probably even more importantly, to insist with a sense of urgency on a proper licence for the corporate drivers in charge.

References

Cadbury Committee, 1992. *Report of the Committee on the Financial Aspects of Corporate Governance*. London: Gee.

Commission of the European Communities (2003) Communication from the Commission to the Council and the European Parliament - Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to move forward COM, (2003) 284 final. Brussels.

Commission of the European Communities (2004) Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC and 83/349/EEC concerning the annual accounts of certain types of companies and consolidated accounts. Com (2004) 725 final. Brussels.

Deloitte & Touche (2006) *Deloitte's Point of View - Sarbanes-Oxley Compliance - A Bridge to Excellence* (online) available at www.deloitte.com/dtt/research (accessed 10 October, 2006).

ECGI, European Corporate Governance Institute (2006) *Corporate Governance Codes in Various Countries* (online) available at www.ecgi.org/codes/all_codes (accessed on 12 December, 2006).

McKinsey (2004), *McKinsey Global Survey of Business Executives* (online) available at: www.mckinseyquarterly.com (accessed on 11th December, 2006) Moran, M (1986). *The Politics of Banking*. London, Macmillan.

THE BUSINESS FIRM AS A MORAL AGENT

GEORGE GRIMA

In the Lisbon strategy the European Union adopted a threefold goal for its economy and the economy of its member States. The priority is to make the economy the most competitive in the world by basing it on knowledge as the crucial factor of increasing economic growth. But the strategy makes it clear that in itself economic growth, however valuable as a goal, is meaningful, if it fits into two other overarching goals. A free market economy is desirable not only to the extent that it produces wealth, but only if it is generating more and better jobs and contributing toward greater social cohesion.

As a political instrument, the Lisbon strategy aims at reconciling economic freedom with legitimate social concerns. It promotes economic freedom, but not at the expense of employment prospects and social inclusion. This collective political exercise on the part of the Member States of the European Union is understandable and rather urgent in view of the increasing risk of unemployment and poverty in Europe today.

The Lisbon strategy evidently calls for action on several levels. One level, which is particularly significant in the context of this paper, is the ethical. Almost contemporaneously with the adoption of the Lisbon strategy, the European Commission for Employment and Social Affairs issued a Green Paper *Promoting a European Framework for Corporate Social Responsibility* (2001). This important document is a continuation and a further development of a line of thinking that has been going on both within an increasing number of European companies and within the European Union itself. Several European companies have been already trying to look at their business activities in more than just economic terms by taking into account the so-called externalities such as the impact on the environment and the impact on the community in which they have been operating. At the European level, one can mention several initiatives. The Lisbon European Council appealed to companies to develop best practice on lifelong learning, work organization, equal opportunities, social inclusion and sustainable development. Similarly, the Commission's European Social Agenda, the European Council in Nice and at Goeteborg endorsed the principle of corporate social responsibility.

The European Union's interest in corporate social responsibility is part of a broader picture that has been evolving at the international level in recent years. The UN launched the *Global Compact* (2000), calling on global business leaders to subscribe to nine shared

values and principles in the areas of human rights, labour standards and environmental practices. The ILO adopted the *Tripartite Declaration concerning Multinational Enterprises and Social Policy* (1977/2000) and proposed as its primary goal in the current period of global transition the securing of decent work for women and men everywhere (1999). Decent work is described as “a global demand today, confronting political and business leadership worldwide”.¹ The OECD issued a set of fairly elaborate ethical *Guidelines for Multinational Enterprises* (2002).

In view of the growing consensus concerning the crucial importance of corporate social responsibility for the development of good and right business, one understands why the European Union has continued to follow up its initial project as detailed in the Green Paper. A significant step has been the setting up of a EU Multi-Stakeholder Forum on CSR with the aim of promoting transparency and convergence of CSR practices, through: exchange of experience and good practice between actors at EU level, bringing together existing initiatives within the EU with a view to establishing a European approach and identifying and exploring areas for further action. The latest Communication from the Commission on the subject, *Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility* (2006), confirms the continuing input which the EU is placing into corporate social responsibility.

The promotion of corporate social responsibility not only on a European but also on a world level rests on the *assumption* that business enterprises should be inspired and motivated by a set of values that incorporate but go beyond purely economic ones. This assumption implies an understanding of the business firm as more than a merely economic enterprise. By an “economic enterprise” what is meant is an enterprise that is established to generate wealth (through efficient use of the factors of production and channels of market distribution) for well defined constituencies, namely, shareholders (in the form of increase in share value), employees, including management, (in the form of higher wages and salaries) and consumers (in the form of good products and services at market prices).

In describing a business firm as an organization designed to generate wealth, one is evidently giving a short-hand definition, for even if it is so defined, a business firm involves a nexus of contracts, particularly those relating to work or buying/sale transactions. Some of these contracts are more defined than others but as contracts they give rise to specific rights and obligations. I am making this point, which is rather obvious but which is not always seen and made, since the implicit moral dimension is generally missed, when describing a business firm as a profit-making enterprise. So even in this, evidently narrow, sense a business firm is a moral agent in so far as it is bound by contractual obligations in its *internal* (employees) and *external* relations (suppliers, consumers and, in virtue of tax law, society).

The promotion of corporate social responsibility raises the problem concerning the real moral status of the business firm. Why should the range of responsibility of business firms be extended to a wider circle of constituencies by making firms morally responsible for other than specifically economic issues, namely, issues relating to the more efficient use of productive resources? Even more important, however, is the moral status of the business

¹ Preface to the report of the Director-General: *Decent Work* International Labour Office, Geneva (1999).

firm: in what sense can the firm be a moral agent? These are very important questions to consider, if corporate social responsibility is not to end up being just an “option” which business firms simply may or may not take up. The fact that many business enterprises do include social responsibility as part of their mission statements does not necessarily show that they understand its fuller moral implications. They may well be driven by motivations such as the market value of a good reputation or the fear of tighter control through further legislation. Motivations of this kind can help to a certain extent in changing corporate ways of thinking and behaving but they cannot sustain any long-term commitment to the broad set of values implied in corporate social responsibility.

The *Diocesan Commission for Justice and Peace* has recently issued a reflection paper² on housing and related matters. I would like to begin with some reflections on this paper, as it provides a typical scenario for a discussion on corporate social responsibility in practical and concrete terms. As the concept of corporate social responsibility covers a wider set of issues than those covered in this case, I will then consider some of the basic features of corporate social responsibility as it is generally understood. Against this background, I will discuss two paradigms regarding the business firm as a moral agent, namely, the ‘contractual’ and ‘partnership’ paradigms. As I shall explain, the contractual paradigm has two versions: one based on the concept of the business firm as a profit-generating organization, while the other is based on the business firm as a nexus of a wider set of contracts than that implied in the concept of the firm as a purely economic enterprise. I shall be arguing that a business firm can develop and maintain a true sense of responsibility, if it understands itself in the light of both the contractual paradigm, in its two versions, and the partnership paradigm.

The Case of Housing

The Paper by the *Diocesan Commission for Justice and Peace* is written in response to the state of the housing market in Malta which does indeed give rise to serious social concern. Housing is a basic human need. As is the case with all basic human needs, the housing problem can be properly met, if it is met in a decent manner. Not any kind of accommodation would do. It should be decent accommodation. In this particular case, the problem lies in the escalating cost which young couples generally have to pay in order to find decent accommodation in which to live after marrying. Referring to the findings of *The Building Industry Consultative Council*, the Paper observes that the average contract price for flats increased by 16.6% in 2004 and by 20.34% in 2005. The average contract price of maisonettes increased by 17.49% in 2004 and by 15.32% in 2005. Allowing for differences in the interpretation of the statistical data published by the National Statistics Office, the Paper concludes that the price of flats and maisonettes has increased by a rate varying between 5% and 30%, depending on the size and quality of the property.

What relevance does corporate social responsibility have in relation to this problem? More specifically, one may ask: In what sense and in what way are business firms, particularly financial institutions and estate firms, expected to respond to a problem which is certainly

² The 5 page document “Reflection Paper on Social Issues: Housing and Related Matters”, by the Diocesan Commission for Justice and Peace was published by the Media Office, Archbishop’s Curia, Floriana, Malta on 05/01/07, hereinafter referred to as “Reflection Paper”.

weighing heavily on a sector of the population but which belongs, strictly speaking, to the social and political rather than the economic domain? One position, which is not to be branded *a priori* as anti-social, is that originally propounded by Milton Friedman.³ It may perhaps be more properly described as social in a limited sense. In fact, Friedman himself argued that business has a social responsibility which he narrowly described as the responsibility of business to increase its profits. He accepts that there are limits to profit-making but these are established by law and the workings of a free market economy. The freedom of individuals, groups and organizations to engage in economic activity, he claims, is a basic value which should not be undermined by expecting business to promote “desirable” social ends such as providing employment, eliminating discrimination and avoiding pollution. In line with this position, business firms operating in the housing market have no particular moral obligations except the moral obligation to operate within the relevant legal provisions. The underlying presupposition of this position is that the less the law intervenes the better it would be for economic freedom and efficiency. So how should one expect business firms to respond in the context of the local scenario where the housing market is evidently creating a serious social problem?

On the basis of a free-market economy, it may be argued that the market should be allowed to operate freely in the housing sector. The State would, of course, remain equally free to adapt its housing policy and update the law in the public interest, especially in the interest of those in vulnerable situations. Civil society, acting through a variety of non-government institutions, including the Church, would also be free to intervene either by giving direct help (especially to those who are unable to cope on their own) or by creating greater social awareness. Intervention on the part of the State or civil society is not in dispute, as this is an integral part of their respective responsibilities. To Friedman, however, the key point is that a corporate executive is an employee of the owners of the business, having direct responsibility to the owners. In that capacity, one’s responsibility is “to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of society both those embodied in law and those embodied in ethical custom”.⁴

The business firms operating in the local housing market, I would assume, do not feel any particular responsibility for the escalating cost of houses and the problem that such a situation is creating for individual men and women, including children, and for society as a whole. One could even say for instance, that financial institutions, in providing home loans, are giving people an opportunity that they would not otherwise have, namely to buy their own home. Indeed, this is an important public service. There is, however, another side to consider. The availability of money to a relatively broad section of the population is in itself a significant factor in the escalation of prices. Whether banks have any moral responsibility for their share, albeit an indirect one, in the housing problem is very difficult to say. But the fact that the market is creating hardship for people to meet a basic need should provoke all those taking part, including firms, to review certain aspects of their practice. For instance, a bank’s board of directors may decide to give not only its employees, as some banks are

³ Cf. M. Friedman, “The Social Responsibility of Business is to Increase Its Profits”, originally published in *The New York Times Magazine* Sept. 13, 1970. References are to the text as reproduced in Leonard J. Brooks, *Professional Ethics for Accountants*, New York, 1995, pp. 20-23.

⁴ *Ibid.*, p. 20.

already doing, but also couples with a low income the opportunity to borrow at a more favourable interest rate.

Initiatives of this kind would not by themselves solve the problem. The problem can only be solved through action on several levels. A case in point is the periodic intervention of the Central Bank to increase the interest rate. If no provision is made to ease the impact of such a measure on people who are already financially burdened with home loans, the problem would worsen. Moreover, positive action taken by a bank may be offset by negative action taken by an estate firm. The Diocesan Commission expresses its serious concern about “the current practice whereby, apart from the principal contracted estate agent, a number of other individuals/consortia also involve themselves, through the right of substitution, as middlemen in the chain of property deals”.⁵ What is this worrying practice? The practice may not be a general one. But irrespective of how widespread it may be, it is clearly a speculative practice. It is a form of misuse of the right of substitution. This right allows for the property being sold to change hands a number of times at the purchase/demolition/development stages before it is finally sold to the occupier. In the process, the price is increasing and the amount which one pays at the end of the deal-chain is higher, and sometimes substantially higher, than the original price. In other words, money is made simply on trading a right which the law gives to facilitate the transfer of property and presumably to prevent and not to promote inflation in a particularly vital sector of social life. In this particular case, one may not claim that inflation is not an issue for business.

This case is particularly relevant to show that regulating business by means of the law, however important and necessary, is not enough for business to maintain a human face. I shall be developing this point further when discussing the concept of corporate social responsibility as a ‘voluntary’ project which may not therefore be imposed on, but only proposed for, business firms. Are business firms simply invited to exercise social responsibility - an invitation which they may accept or refuse without incurring any legal sanction - or are they expected to exercise social responsibility out of a sense of justice which is at the basis of both morality and law? This is a basic question for understanding the nature of corporate social responsibility and in what sense a firm can be described as a moral agent. Let me first discuss the main features of corporate social responsibility.

Corporate Social Responsibility

As the concept of corporate social responsibility had already acquired a core meaning by the time that the European Commission through the Directorate-General for Employment and Social Affairs was preparing the Green Paper, *Promoting a European Framework for Corporate Social Responsibility* (2001), the concept was defined as it was generally understood, namely, as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”.⁶

⁵ “Reflection Paper”, p.3.

⁶ Section 2.

There are three points that I wish to consider in this definition: (i) the notion of companies as *interactive* entities, (ii) the responsibility of companies to *integrate* economic with social and environmental concerns and (iii) corporate social responsibility as a *voluntary* matter.

A key element in the definition of corporate responsibility is the idea of companies as *interactive* entities. Business activity is *interactive*. People interact with each other in all spheres of life, either on a personal or on an organizational level. The social space created through so many forms of human interaction at various levels depends on the nature and quality of the way in which people are interacting with each other. In other words, the yardstick that we need in order to determine the value of any human activity can ultimately have only one frame of reference, namely, the kind and quality of inter-relations which human interactions are establishing and maintaining. Since all human activity has a moral dimension, this yardstick holds for every type of human activity.

A characteristic feature of business activity is that the medium through which people interact with each other is money.⁷ In business, money is the universal medium of exchange. Work is exchanged for money, products and services are exchanged for money, the value of one's property, in whatever form, is calculated in monetary terms. The performance of business firms is established on the basis of the balance sheet of income and expenditure. The country itself assesses its economic strength in terms of the Gross National/Domestic Product. Money, as we know, is a source of temptation, as the desire to possess can tempt one to all sorts of wrong-doing. This is the primary reason why the law would have to intervene to protect the interests of the vulnerable side. But the law can only provide protection up to a certain extent, since it generally lays down the minimum required in the socio-historical circumstances of the time.

The law establishes the minimum wage. Indeed, one expects to be remunerated for one's work, but the meaning and value of work cannot be determined in monetary terms and certainly not by the minimum wage. Work means much more than the wage or salary one receives. Similarly, implementing adequate safety requirements involves additional production costs but doing this is a measure of the kind of respect shown for the safety of people at work. The price paid for a product or a service means more than a gain to the seller and a cost to the buyer or receiver; it reflects the respect of the seller for the dignity and respective rights of the buyer. Cost-cutting is a continuing imperative in business. When costs are cut to render the business more 'efficient', it is only reasonable to ask at whose expense the exercise is being carried out.

In saying all this, one is not trying to minimize or to under-rate in any way the value of the financial aspect of business. But the original frame of reference for a truly meaningful activity of any kind, including business, is the nature and quality of interactions and inter-relationships that are being established. Of course, business is business in that its efficiency is determined by the logic of income and expenditure. It can serve, however, a truly 'human' purpose to the extent that it is enabling human beings to live a decent life.

⁷ For a discussion on the sphere of money and commodities, see, Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality*, Oxford UK and Cambridge, USA, 1983, reprinted 1994, pp. 95-128.

The definition of corporate social responsibility presumes that firms can be in a position *to integrate* a variety of concerns into their business operations and into their interaction with stakeholders. As a moral concept, *responsibility* involves precisely the virtue or the capability (so it needs to manifest itself as part of an ongoing practice) of integrating a variety of concerns which in their *ensemble* reflect a basic respect for the good of the person as a whole and of each and every person.

The way in which corporate social responsibility is defined presupposes the way in which business is generally organized. On one side, there are the companies themselves operating in accordance with the policies set by the Board of Directors, representing the owners; on the other, there are the people working for the companies, the local communities in which the companies are operating, business partners, suppliers and consumers, and, one may say, society (even mankind) at large in so far as business operations can have an impact on the dignity and rights of human beings and the environment. The idea that there are several constituencies (people) who have *a stake* in the operations of business companies ties up with the idea of businesses as *interactive entities*. Interaction creates inter-dependence. Inter-dependence requires an effective regulatory framework to prevent the stronger from taking advantage of the weaker and more vulnerable side. The contractual paradigm of the firm, as I shall be explaining, presumes precisely that the firm has *contractual obligations*, some of a legal and others of a moral nature, toward several constituencies or stakeholders.

The nature of corporate social responsibility can be easily misunderstood if its fuller implications as a *voluntary* matter are not adequately brought out. By ‘voluntary’, what is generally meant is ‘not obligatory’. Corporate social responsibility may be promoted by political authorities on the local, regional and global levels and it may be endorsed by a variety of non-government institutions, including religious ones - as is actually the case - but the decision as to whether to adopt and implement it, or not, lies with the individual company. There can be ‘sanctions’ on those companies that decide to ignore it in their operations. These are, however, not legal sanctions but various forms of pressure from trade-unions, consumers, investors, non-governmental organizations and even to an extent from governments themselves.

Can the drive for corporate social responsibility be effective in practice, if CSR remains essentially an ‘option’ which business firms may or may not take up? Would not a better strategy be to elaborate a more comprehensive legislative framework for the various areas of business in order to make them comply with legitimate social expectations and environmental needs? A major risk with the concept of corporate responsibility is precisely that it may generate the belief that, being a purely voluntary matter, it is not so important for business companies to change their internal and external operations to satisfy social and environmental concerns. There is certainly this risk, but this is the kind of risk that accompanies every human behaviour as *moral* behaviour.

Moral behaviour is authentic to the extent that it is voluntary. This means that *commitment* rather than ‘compliance’ is the hallmark of a truly moral behaviour. Commitment involves people, whether acting on the personal or organizational level, at the deepest possible level. People can commit themselves to something, if they believe that it is conducive to their individual and collective wellbeing and if they engage in it freely. A business firm can act as

a moral agent to the extent that on the internal front it engages its employees into a project that is more than just an economic enterprise and on the external front it cooperates with different stakeholders in the interest of the common good. This is the reason why the notion of contract, however necessary, can only explain the nature of the firm as a moral agent up to a certain extent. Contracts establish rights and obligations. They specify what is “yours” and what is “mine”. But for people to promote something which they share in common, they need to look beyond their individual and group interests, even if they are legitimate, and see what it is that they share in common. The *partnership* model presupposes that human living is ultimately not merely a matter of “my rights” and “your obligations” and *vice versa*, but a matter of cooperating for the common good.

The Contractual and Partnership Model

The contract theory⁸ of the firm presupposes a foundational contract in virtue of which a firm is established as a legal entity. The parties are the shareholders who would be considered “to own” the firm. Ownership entitles the shareholders to extensive power which they exercise essentially through the board of directors. The board of directors is responsible to the shareholders, whose interest essentially lies in securing a profitable return on their capital. This evidently gives overall power to capital holders and, in a sense, priority to profit-making. It is an arrangement that places shareholders, along with their interest in profits, in a dominant position within the firm. This position has been traditionally justified on the basis of ownership rights. More recently, it has been argued that in contrast with other stakeholders, such as workers, consumers and suppliers, whose rights are more or less fixed by work, purchase or sale contracts, shareholders face residual risks, associated with liability claims and possible loss of profits. “The argument for shareholder primacy”, John R. Boatright states, “is completed by contending that only residual risk bearers have the appropriate incentives for making discretionary decisions that maximize the creation of wealth by a firm”.⁹

How is management expected to operate within the firm? What are its responsibilities? Managers are employees of the firm. Their contract entails that the firm be managed along business lines to render it as profitable as possible. The contractual paradigm of the firm implies precisely the development of firms into profit-making enterprises. The creation of wealth is a foundational good both for the shareholders and workers, including management: the share value as well as salaries and wages are secured. This is surely not the only level on which a firm operates but it is, nonetheless, a basic and a crucial level. It would distort the moral status of the firm if its responsibility, as a corporation, to function profitably, were not taken seriously.

However, does the concept of the firm as a hub of contractual relations among the shareholders and between the firm as an employer and its employees bring out sufficiently well the nature of the firm? Does it involve more than economic rights and obligations, that

⁸ On the importance of a contractual theory of the firm for business ethics and its relevance to Catholic Social Teaching on economics, see John J. Boatright and Michael J. Schuck, *The Contractual Theory of the Firm as a Normative Business Ethic and its Relationship to Roman Catholic Social Teaching on Economic Life*, at <http://www.stthomas.edu/cathstudies.cstm/Antwerp> (4/19/00).

⁹ Ibid, p. 4.

is rights and obligations that can be understood in purely monetary terms? Shares, salaries and wages constitute financial goods which are certainly valuable for their respective constituencies within the firm. But is not the firm really meaningful, if it is seen within a wider framework of contractual relations and a wider range of non-marketable rights and obligations? Besides, is not a firm morally responsible to the extent that it is operating within a set of values that incorporates but goes beyond the economic ones?

A ‘full’ contractual theory of the firm would reflect the nature of the firm as a truly human entity (and not simply a legal device for profit-making) if it recognized the importance of what I am calling “non - marketable” rights and obligations¹⁰ on which one cannot, strictly speaking, put a price, even if their exercise or fulfillment can be costly. Take the question of the responsibility of the firm towards its workers. By and large, it is management that exercises this responsibility in practice. One may say that the specific rights and obligations of workers are laid down in the employment contract and that management is bound to abide by the respective contractual requirements. Employment contracts are, however, part of a regulatory framework, established by law and stipulating the minimum requirements for decent conditions of work. Moreover, such contracts would need to be understood and interpreted within a still broader context or plan of action adopted by international organizations such as the ILO or promoted by significant actors within civil society, including churches, in support of the rights of people at work. The firm, as a moral agent, needs to acknowledge and respect its contractual obligations in this broad sense, as it would otherwise be seeking to make profit - making the exclusive driving force of its operations.

The danger of an economic system in which the rights of capital have absolute priority and capital accumulation is the primary driver of economic development is that those “goods” which are essential for the economy to retain a human face would be at best minimally respected and at worst completely ignored. Religious institutions have been particularly sensitive to this danger. In line with the warnings voiced by his predecessors about the threats of a capital-driven economy, Pope John Paul II spoke as follows about business firms:

“When a firm makes a profit, this means that productive factors have been properly employed and corresponding human needs have been duly satisfied. But profitability is not the only indicator of a firm’s condition. It is possible for the financial accounts to be in order, and yet for the people - who make up the firm’s most valuable asset - to be humiliated and their dignity offended. Besides being morally inadmissible, this will eventually have negative repercussions on the firm’s economic efficiency. In fact, the purpose of a business firm is not simply to make profits, but is to be found in its very existence as “ a community of persons” who in various ways are endeavouring to satisfy their basic needs, and who form a particular group at the service of the whole of society.”¹¹

¹⁰ The concept is taken from Michael Walzer, op cit. Walzer’s main source is Arthur Okun, *Equality and Efficiency: The Big Tradeoff* Washington D.C. 1975.

¹¹ John Paul II, *Centesimus Annus*, par. 35. For the Catholic teaching on economic life, the following Papal encyclicals are important: Leo XIII, *Rerum Novarum* (1891); Pius XI, *Quadragesimo Anno*, (1931); John XXIII, *Mater et Magistra* (1961); Vatican Council II, section of the Pastoral Constitution *Gaudium et Spes* on socio-economic life; John Paul II, *Laborem Exercens* (1981) and *Centesimus Annus* (1991). *The Compendium of the Teaching of the Church*, published by

The description of the firm as a *community of persons* takes the contractual view of the firm a step further. A contract articulates the rights and obligations of the contracting parties. It is indeed an indispensable institution for society to ensure that people can have a secure base for protecting their individual or collective interests. That the diverse interests of parties within the firm should be determined on the basis of contractual provisions is quite obvious. Collective agreements are the normal tool through which unionized workers generally try to ensure and promote their own legitimate interests. But can the firm be more than just an arena of actual or potential conflicts between the interests of one side and those of the other? How can an organization, that is exposed continually to the risk that the more powerful side can assert itself and promote its own interests, be a moral agent at all? It can be a moral agent only if it can transform itself into a community where all sides are contributing to make the enterprise profitable and at the same time sharing in its profits according to fair criteria of distribution and enabling each other to develop their personality through their participation in the whole enterprise. Relations within the firm would still be regulated by means of appropriate contracts that may vary in their type and degree of formality, as no organization, much less a business organization, can become a community of persons without the assurance that each other's legitimate interests are being adequately safeguarded. The concept that the parties forming the business firm are stakeholders implies that each party is dependent on the other: for being able to secure one's capital and hopefully increase it; for earning a living, working in a healthy and safe environment and finding satisfaction in one's work; for the sense of making a contribution to the well-being of others.

This *partnership* paradigm may seem too far removed from the way in which business is actually organized in the context of the prevalent neo-liberal and neo-capitalist economies today. Indeed, this has the character of a proposal that can open the way for what the National Conference of Catholic Bishops called, in perhaps the most original and challenging chapter of their Pastoral Letter on the U.S. Economy, "partnership for the common good".¹² Corporate social responsibility can only be exercised in a true moral sense by firms that aim higher than profitability and that have succeeded in transforming themselves into organizations in which people are not just stakeholders but partners in a common human project.

One may object against this kind of proposal that "corporations are limited, and organized for only certain purposes".¹³ This is a valid point in so far as it cautions rightly against placing too high a moral ideal on an organization which exists essentially for a business purpose. One may, however, look at the kind of responsibilities which businesses are being encouraged or pressed to assume in their operations both in relation to their employees and in relation to suppliers, customers, the local community and society at large. How can business firms assume such onerous responsibilities so long as they continue to view

the Pontifical Council for Justice and Peace, London and New York, 2004, contains an extensive introduction to Catholic teaching on work and economic life.

¹² *Economic Justice for All*, Pastoral Letter on Catholic Social Teaching and the U.S. Economy, 1986, ch. IV. On the importance of the 'common good' approach for an adequate understanding of the purpose of business, see Helen J. Alford. O.P., and Michael J. Naughton, *Managing As If Faith Mattered: Christian Social Principles in the Modern Organization*, Notre Dame, 2001, pp. 38-69.

¹³ Richard T. De George, *Business Ethics* - 4th ed. London, 1995, p.127.

themselves and act only as wealth - generating devices? Are they not too morally fragile for the high tasks they *are* being assigned?

CORPORATE SOCIAL RESPONSIBILITY IN ENVIRONMENT PLANNING AND THE CONSTRUCTION INDUSTRY IN MALTA

ASTRID VELLA
KAREN M. ZAMMIT MANDUCA
(Flimkien għal Ambjent Aħjar)

Corporate Social Responsibility (CSR) is a concept by which organisations, primarily but not only commercial businesses, undertake a more ‘caring philosophy’ in all aspects of their operations. This duty of care is seen to go beyond their statutory obligations to comply with legislation.

Closely linked to principles of Sustainable Development, the philosophy of CSR argues that enterprises should be obliged to make decisions based not only on financial/economic factors but also on both the immediate and the long-term social, environmental and other consequences of their activities, or “Development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.¹

CSR therefore extends far beyond the more traditional form of corporate philanthropy, as its heavy environmental focus also encompasses the fields of environmental justice and environmental rights. The concept of environmental justice, or the fact that everyone should have the right and be able to live in a healthy environment, is a recent development which is being incorporated into the legal system of several Western countries.

The implementation of environmental justice and environmental rights cannot be carried out unilaterally, it can only succeed with the motivated consensus of all the players in the field; In this case these are the national government as the authority issuing, implementing and monitoring policy and planning regulations, and private enterprise in its role as property developer as well as provider of construction, quarrying and waste disposal services. Although not traditionally viewed as key players in environment issues, and beyond the remit of this report, sectors of the service industry such as banks, estate agents and marketing companies, also have a significant role to play in the environmental CSR.

¹ See e.g. HSBC Corporate Social Responsibility Report 2005, p1,
http://a248.e.akamai.net/7/248/3622/de0b031c518c46/www.img.ghq.hsbc.com/public/groupsite/assets/csr/hsbc_csr_report_2005.pdf

PART I. Corporate Social Responsibility in Environment Planning

by Astrid Vella

As mentioned above, EU countries are beginning to incorporate environmental justice clauses into their legislation, and Malta has in fact followed suit with its ratification of the Aarhus Convention. As a result of EU accession, Malta has undertaken to:

“Protect, preserve and improve the state of the environment and to ensure sustainable and environmentally sound development, recognise that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself.

Recognize also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.”²

Although the transposition of the Aarhus Convention³ regulating Freedom of Access to Information on the Environment into Maltese law is a rather watered-down version of the original, it does fill some of the lacunae of the Environment Protection Act of 2001. However in spite of its being enshrined in Maltese legislation and planning regulations since 2005 the lack of awareness of environmental justice at every level is still a matter for serious concern.

Part of the reason for this may be traced back to Malta’s particular situation and three major contributing elements:

Malta’s size limitations and the density of its population result in a great pressure on property as a residential amenity. Due to the lack of resources and the lack of alternative investment opportunities, both real and perceived, in Malta property remains a popular form of investment, both speculative and long-term. This is aggravated by the fact that rental options are virtually non-existent to Maltese citizens due to outdated war-time legislation which has been perpetuated out of political expediency. Therefore property in Malta is an issue the importance of which is blown well out of proportion in comparison to its more northern neighbours, creating an artificial market which does not react to normal market forces in the same way as its European counterparts.

Malta is a relatively new state, and while its transition from a colony to a full democracy is complete on paper, culturally we have not yet bridged the gap. Government after government has found it convenient to administer a relatively passive population used to centuries of subjugation, a citizenry that is generally not aware of its environmental rights, and when it is, reluctant to press for them. Civil society infrastructure is therefore not as

² Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, 25 June 1998.

³ The Aarhus Convention was transposed into Maltese law by Legal Notice 116 of the 19th April 2005 as the Environment Protection Act, (CAP. 435). The Legal Notice was promulgated as a result of the enabling authority in the said Environment Protection Act.

well developed as in other European countries and enjoys neither the same level of encouragement nor the same level of recognition from the state.⁴

This issue is rendered more critical by the attitude of successive Governments, which have always viewed property development as the mainstay of the economy, well beyond its actual contribution to the GDP. This premise is not completely false, given that a percentage of the work involved is black-market and therefore does not appear in official statistics. Although it is thought that the introduction of the capital gains tax and value added tax as well as other recent legislative measures seem to have been effective in reducing the size of the grey and informal economy, it remains difficult to quantify this. Still, creating a sacred cow out of a single sector has been highly detrimental to Malta.

In spite of attempts to reach an agreement on the declaration of funding of political parties in the mid-nineties, Malta still lacks legislation obliging political parties to declare their sources of funding. This has aggravated an already precarious situation, leading the public to suspect that both parties are heavily financed by large developers, whose interests they are subsequently obliged to protect.⁵ While the lack of legislation, data and accountability make it impossible to prove such allegations, the Government's consistent, documented tolerance of abuse on the part of certain developers (vide concluding comments in official investigation on the *Xemxija* landslide in terms of the Enquiries Act Chaired by Arch. Joe Falzon)⁶ as well as the weighing of development regulations in favour of developers does fuel such suspicions.

Pro-Development Stance

The combination of all the above factors effectively kills off any possibility of a level playing-field between the general public and the development lobby, and all but eliminates the possibility of implementing environmental justice, a key element of Corporate Social Responsibility, which presupposes the general social good, and not the selective good of one economic sector.

This pro-development stance is not limited to direct dealings with the building sector, but extends to general public policy as reflected in the Draft National Sustainability Plan for Malta, which explored many marginal issues but made no mention at all of the most critical issue, being land use. In the course of the July 2006 debate on the Rationalisation Plans which open up parts of the countryside to development, Government policy was openly expressed: "this balance (between rendering more land in the countryside developable as opposed to calls to preserve virgin land for long-term environmental benefit) will then give

⁴ The Voluntary Organisations Act, Kate Bonello Sullivan, *The Malta Independent*, 3rd December 2006.

⁵ Evarist Bartolo, Labour MP, quoted in *Malta Today*, 27.02.2005: "Bartolo is very frank in exposing the power of those funding political parties. "The hands that feed the political parties and individual politicians expect to be rewarded and never bitten. Public funding would mean that the parties would owe their daily bread to the general taxpayers whom they are to represent in the first place. Public funding of parties means less blackmail and more policies in the interest of the public and not of powerful special interests".

⁶ *Xemxija* mudslide: Mepa held responsible; *Malta Independent*, 11th April 2006. Board of Enquiry report on *Xemxija*. Landslide; 29th March 2006. <http://www.ambjentahjar.org/library/xemxijarapport.pdf>

us the financial and economic results to permit investment in the environment”⁷. This damaging attitude is considered totally discredited by prevalent Western thought which holds that while environmental priorities may pose challenges in the short term, economic and social growth cannot be sustained in the long term without environmental protection and justice.

The bias shown in official policy is reinforced by environmental legislation, the most recent example being the changes to Environmental Impact Assessment (EIA) regulations proposed in Government Notice 104 relating to changes in the Development Planning Act and the Environment Protection Act 2001 (cap 435).⁸ This document proposes widespread relaxing of thresholds of development parameters which require the developer to commission an EIA. Thus projects which would have previously required EIAs which might effectively veto the development would no longer be required to undergo such scrutiny.

This approach poses many barriers to the development of Corporate Social Responsibility in the environment field, as the implementation of environmental policy falls squarely on the Government’s shoulders while CSR is normally used in reference to private enterprise: “CSR broadly represents the relationship between a company and the principles expected by the wider society within which it operates. It assumes that businesses recognise that for-profit entities do not exist in a vacuum and that a large part of their success comes as much from actions that are congruent with societal values as from factors internal to the company”⁹ ‘Success’ in commercial terms translates to profit, however the success of a Government is, if anything, even more closely linked to “actions that are congruent with societal values.” Therefore, while it is now considered reasonable to expect a private company to practice environmental CSR, this expectation falls far more heavily on a national government.

Dumping and Air Pollution

Malta’s accession to the EU has prompted a belated though valid effort to meet EU standards, especially as regards waste management and air quality. The rehabilitation of the *Magħtab* dumpsite has been undertaken with determination and is making good progress. Still, there have been cases where dumping of building waste at sea continued, brazenly and unchecked.¹⁰ Authorised dumping at sea is not monitored. Nothing is known about the state of the marine dump which has been in use for decades. Government’s pumping of raw, untreated sewage directly into the sea from various outflows around Malta and Gozo is also

⁷ “Pero’ tajjeb ukoll li l-għaqdiet ambjentali jifhmu li f’pajjiżna rridu nsibu l-hin kollu bilanċ - xi haġa diffiċli ħafna għal pajjiżna - li jippermetti lill-pajjiż sabiex jiżviluppa. *Dan il-bilanċ imbagħad ikun jista’ jaġġina r-riżultati finanzjarji u ekonomiċi li jippermettulna ninvestu fl-ambjent.*” Dr. Lawrence Gonzi, Prime Minister, speaking during the Parliamentary debate of the 26th July 2006, sitting 427.

⁸ Government Gazette 2nd February 2007.

⁹ Strategic Corporate Social Responsibility. Stakeholders in a Corporate Environment. William B. Werther Jr. and David Chandler, Sage Publications 2006.

¹⁰ Contractors claim permit for dumping at sea, Claudia Calleja; Times of Malta 13th January 2007. Illegal dumping at sea: Loss of bank guarantee among possible penalties. Malta Independent, 30th August 2006.

responsible for widespread contamination, both microbial as well as in terms of raised levels of heavy metals in the water¹¹.

Dumping is also taking place at inadequately-managed dumpsites which are causing health hazards to nearby residents from airborne particulate matter and fumes¹². Besides the dangers of leachate contaminating the aquifer, the disposal of construction and demolition waste at unapproved landfills or randomly chosen sites causes contamination, which may prevent future use of the land.¹³

As regards construction and demolition waste containing reinforced concrete elements it should be realised that this waste will not disappear, but will remain forever. In the case of Malta, almost 80% of the waste being deposited at the Magtab dump is construction and demolition waste.¹⁴ In spite of the fact that such Malta's supply of building stone is finite, and that such waste occupies such a high proportion of Malta's landfill space, constituting an enormous wasted resource, no attempt is being made to improve the management of demolitions including salvaging of demolition material. Such an initiative can only come from the authorities. In Germany landfills are no longer occupied by C&D waste as all elements are re-used or recycled by law "the technology is available, implementation is just a question of political will"¹⁵.

Similarly, on air pollution, Government has failed to lead by example, and in several instances is depriving citizens of their basic human right to a healthy environment. One such case is the Government's failure to replace the polluting St Luke's Hospital chimney, after 19 years of almost uninterrupted administration.

For years the Government also failed to provide a socially-responsible programme on reducing toxic fuel emissions. The situation only improved with the launching of the Transport Authorities' SMS Emissions Alert programme in August 2005 when the Government put the onus on the public to phone in and report vehicles releasing excessive exhaust fumes. On its part the administration made no noticeable progress in curbing emissions from public transport, while once again construction vehicles seem effectively exempt from any legislation.

This neglect of air quality standards has been confirmed by the 2005 State of the Environment report, which concludes:

Nitrogen oxides pollution remains high in certain urban areas. Concentrations can only be significantly reduced through shifting to more sustainable patterns of mobility and energy consumption.

¹¹ Research into impact of sewage discharge from Cumnija outfall concluded, Malta Independent, 12th February, 2007.

¹² NGOs concerned about environmental damage at Luqa, Times of Malta 1st February 2007.

Pay back time; Denis Zammit Cutajar, Malta Independent, 12th January 2007.

¹³ Recycling Concrete - an overview of Development and Challenges, paper presented by Erik K. Lauritzen, DEMEX Consulting Engineers A/S, Denmark EU IRMA research project, <http://projweb.niras.dk/irma/>

¹⁴ 'A Solid Waste Management Strategy for the Maltese Islands' Ministry for the Environment, Sept 2001, p 66.

¹⁵ 'Waste Management. Focussing on Climate Change' lecture delivered by Prof. Dr. Klaus Wiemer, Uni.Kassel-Witsenhausen, at University of Malta, 13th February 2007.

- Initial results indicate high levels of particulates in Malta and more studies are needed to identify sources.
- Transboundary air pollution in the form of ozone and sulphur dioxide is of concern given the Islands' geographical situation and weather patterns. Long-term effects of ozone on human health and especially on agriculture are also of concern.
- There have been significant decreases in the levels of sulphur dioxide and benzene in the air, due to switches to cleaner fuels.
- Air quality in heavily-trafficked and enclosed streets can be many times worse than a few streets away.

Air quality at the real-time monitoring station in Floriana is on average good to moderate, with particulates and sulphur dioxide levels of more concern.¹⁶

Although recent air quality results have shown marked improvements, Malta is still suffering from the Government's lack of encouragement of low-emission vehicles, while it continues to facilitate the commercial importation of second-hand vehicles which fall far below EU standards on emissions. The lack of promotion of alternative modes of transport and the inertia in implementing the Halcrow Report to remedy the undisciplined state of the public transport network further exacerbate this problem.

Air pollution created by vehicle and industrial emissions as well as stone dust from the quarrying/building activity are having a direct damaging effect on the health of the nation, especially affecting respiratory conditions.¹⁷ Malta has amongst the highest rate of childhood asthma in the Mediterranean and the third highest rate of allergic rhinoconjunctivitis among children in the world. Between 1994-2001 the rate of wheezing in the 5-8 year age bracket increased by 50 and compared to 1985 it had trebled¹⁸. However recommendations put forward have not been acted upon by Government.

A January 2007 study carried out by the Department of Preventive Medicine, University of Southern California Keck School of Medicine found that "traffic pollution can prevent the lungs of children who live near busy roads from developing properly, making them more likely to suffer respiratory and heart problems later in life, Children who may suffer lung deficits as a result of pollution are most likely to have less-than-healthy lungs for the rest of their lives".¹⁹ This corroborates the Maltese research findings mentioned above.²⁰

¹⁶ http://www.mepa.org.mt/environment/index.htm?air_quality/mainframe.htm&l

¹⁷ Fine dust emissions from softstone quarrying in Malta, Alfred J. Vella and Renato Camilleri *Department of Chemistry, University of Malta, Msida MSD 06, Malta.*

¹⁸ Asthma and Other Related Allergic Conditions in Childhood in the Maltese Islands (ISAAC) by S. Montefort, H. Lenicker, S Caruana & H. Agius Muscat, 1997.

¹⁹ Department of Preventive Medicine, University of Southern California Keck School of Medicine; <http://ajrcem.atsjournals.org/cgi/content/abstract/164/11/2067>

²⁰ cit. n.18

The Rationalisation Plans

What has been acted upon with great alacrity was, however, the Government's introduction of the *Rationalisation Plans and Local Plans* in July and August 2006. In a move that provoked widespread criticism, the Maltese Cabinet authorised MEPA to identify unbuilt areas and declared them developable. These areas amounted to the equivalent of at least 4% of Malta's built-up area, resulting in a further loss of what little remains of Malta's countryside. This was held to be one of the most environmentally damaging measures taken by any post-independence Government, both in terms of dimension and in terms of long-term loss of environmental heritage. Just as the concept of intra-generational environmental justice is becoming an accepted standard to safeguard the interests of future generations, this act of Parliament, along with the Local Plans which were approved soon afterwards, was seen as depriving them of the right to enjoy their urban and rural heritage²¹. The gradual acceptance of the concept of environmental justice is bringing with it recognition of the fact that people do not just need access to environmental resources to meet their physical requirements of shelter, heat, food, clean air and water but also to meet their aesthetic, mental and spiritual needs of green space, quiet, access to countryside and a built environment that allows them a relatively peaceful family life. These are the very aspects that are going to be impacted by the loss of more of our countryside to development, while the Local Plans facilitate the destruction of our traditional village cores and wholesale re-development of established residential areas.

While the Rationalisation plans were initiated by Cabinet, the implementation of the plans was left to the Malta Environment Planning Agency (MEPA) whose brief is "the promotion of proper planning and sustainable development of land and at sea, both public and private"²²

MEPA is therefore the premier authority entrusted with the protection of Malta's environment in a socially responsible manner. This is reflected in MEPA's policy publications, such as the Structure Plan, Local Plans and Subject Papers, which combine as far as is possible, protection of the environment with the foreseeable requirements of the Maltese population. Lofty aspirations which all too often remain just that, mere aspirations,, as time and again it is private-sector development aims that take precedence.

It has to be said that part of the problem stems from the fact that MEPA's regulations are loosely borrowed from the British model, with the result that they are not always coherent, suited to the local context or up to date. It is however apparent that the regulations bear the strong imprint of the architectural profession, with a consequent bias in favour of development. Regulations often lack clarity, and are rife with loopholes that the uninitiated public is ignorant of, but which architects are aware of and therefore in a position to take full advantage of. Amendments that have been inserted later further consolidate this bias, such as that which allows a developer to demolish a building while neighbours are still appealing the case. This highly anomalous situation needs to be remedied by legislation to

²¹ Vide court case instituted by environmental NGOs against Mepa and members of SEA team, 22nd January 2007.

²² Development Planning Act: Cap 356, Sec 5.1.

enable the Appeals Board to suspend a permit for the duration of processing of a Development Permit appeal.

The processing of development applications is similarly arcane, and public objectors are at a great disadvantage when attempting to navigate Byzantine procedures without guidance.

Lack of Dissemination of Environmental Information

Malta has signed the Aarhus Convention, guaranteeing the rights of access to information, public participation in decision-making, and access to justice in environmental matters. Both the Aarhus Convention and the EU Directive on Access to Environmental Information are deliberately open-ended, allowing signatories some leeway, still, the expectation is that signatory countries should respect not only the letter but the spirit of the law. However, in spite of undertaking to “promote environmental awareness among the public, especially on how to obtain access to information”²³, the Maltese practice is to provide the minimum possible in order to satisfy the Convention and Directive; far from actively promoting access to information, MEPA officials continue to withhold such information from the public.

This is done, first, by interpreting the Aarhus convention in its narrowest sense. In accordance with its track record of protecting developers’ interests, MEPA is generally fairly liberal in releasing information on the first two clauses defining the environment:

*(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*²⁴

*(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;*²⁵

On the other hand, MEPA is far more reluctant to disclose information on buildings as per:

*(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;*²⁶

As there is no effort to make the public aware of what it has a right to, few people actually know what is available, and there is no assurance that the information given will be complete and correct on the rare occasions on which information is sought by the public. Recent cases have included members of the public being told that they have no right to copies of the Case Officers’ and Heritage Advisory Committee reports, as well as being told

²³ Development Planning Act Cap 356.

²⁴ Aarhus Convention Art 3.3.

²⁵ Aarhus Convention Act Art 2.3.a.

²⁶ Aarhus Convention Act Art 2.3.c.

that registered objectors who do not have a direct interest have no right to appeal DCC decisions even if they do so within the stipulated timeframe.

Public participation is another issue that is extensively dealt with in the Åarhus Convention, but only given lip-service by MEPA. Its attitude is betrayed in its very mission statement where MEPA stops short of specifically referring to the public in its consultation policy where it undertakes to “conduct consultations with Government departments, private organisations and other persons (sic) relating to planning”²⁷.

In fact, it is public consultation, rather than public participation that takes place, as there is no real commitment to fulfil the Åarhus Convention to “ensure that in the decision due account is taken of the outcome of the public participation.”²⁸ Indeed, it is often the very opposite that happens. Still less is the public “promptly informed of ... the text of the decision along with the reasons and considerations on which the decision is based.”²⁹

Social responsibility can only be effective when communities are involved in the decision-taking process. Giving the public very little access to information (as happened in the recent Marsascala waste management debate, when the objectors’ architect was only shown the amended plans of this major project 24 hours before the public hearing) is seen as arrogance and will inevitably create opposition to what may in fact be sound projects.³⁰ On the other hand, MEPA authorities find no problem with consultation meetings about projects being held with developers behind closed doors, a fact criticised by the MEPA Auditor as possibly signalling a bias in favour of developers.³¹

Besides public consultation on localised issues, the democratisation of the planning process was meant to be extended to land use planning, through the Development Control Commission (DCC) whose composition was intended to ensure that all sections of society would be present at the different decision-taking structures. The present composition however is such that there is a large presence from the development lobby (including architects) and an insignificant presence from the environmental lobby. The most notable absence is that of an environmentally-versed representative on the DCC dealing with Out of Development Zone applications. This imbalance severely impacts the public’s right to environmental justice, as these boards whose members are all appointed by the Minister of the Environment, the MEPA Board or the Prime Minister, have recently produced some highly anomalous verdicts which have been challenged by the Auditor Officer’s reports.³² For some reason the recommendations in these reports are consistently ignored.

A final and shocking dereliction of social responsibility is that, with some notable exceptions, MEPA has been generally slow to take action on its enforcement orders, a fact

²⁷ Development Planning Act Cap. 356, Sec 5.2.d.

²⁸ Aarhus Convention Art 6.5.

²⁹ Aarhus Convention Art 5.9.

³⁰ Recycling plant development approved, Bernard Busuttill, Malta Independent, 22nd December 2007.

³¹ MEPA Auditor’s Report 2005-6, Sec 11-20.

³² MEPA Auditor’s Report on Qala School and on 75 Windsor Terrace Sliema.

which can partly be attributed to lack of resources, a fact which has been pointed out to the Authorities, but not yet remedied. Combined with its readiness to ‘sanction’ illegal building works, this lack of affirmative action has fostered a culture of ‘build now, apply for permit later’ abuse, culminating in certain developers appropriating public land with impunity as happened in the case of the Riviera Hotel, Marfa.

Demolitions are being carried out on an unprecedented scale but without up-to-date techniques or necessary safety measures, leading to a higher rate of damage to neighbours’ properties and an increased rate of workplace injuries, though these are not possible to quantify, as the statistics presently available do not distinguish between industrial and construction accidents. The Occupational Health and Safety Authority Board is responsible for monitoring building-site safety practices, however this board has not been granted the resources to do more than follow up on reports and investigate accidents when they happen. This situation is compounded by a number of factors including:

- a much higher percentage of ‘redevelopment’ projects which expose neighbours and old properties to risks, especially during the demolition phase;
- ambitious new building projects which are breaking new ground and posing new problems which both contractors and architects may not have dealt with previously;
- authorities that have been denied the resources to act pre-emptively;
- authorities who are reluctant to take responsibility;
- contractors who do not abide by safety measures;
- when found guilty of safety abuses, contractors are often fined such low penalties that it makes more sense to them to pay fines than invest in safer equipment.

To date and as far as lack of statistics permit us to know, three residents’ deaths have been caused by the collapse of neighbouring buildings, MEPA always disclaims any responsibility in cases of damage to neighbouring property or physical injury to neighbours, maintaining that the injured parties should seek recourse at law. This has resulted in more abuse on the part of some unscrupulous contractors who know that few residents would opt for this costly and time-consuming option. MEPA’s lack of positive action on this matter is felt to be a serious neglect of its Corporate Social Responsibility, given it was provided for by our strategists and legal experts when they penned clause 60.1 into the Development Act, stating:

60. (1) The Minister may, after consultation with the Authority, make regulations to regulate or otherwise provide for any matter relating to development or other activities affecting land or sea, in order to give fuller effect to the provisions of this Act, and in particular (a) regulate buildings and the construction, demolition or alteration thereof, as well as any other matter relating thereto, taking account of all relevant considerations, including safety, aesthetics, health and sanitation.

While it may be successfully argued that this clause does not oblige MEPA to intervene in the case of damage to neighbour’s property, the fact remains that due to legal lacunae, lack of resources and coordination between different state agencies, citizens’ protection is far from assured.

This reluctance to shoulder expanded responsibilities contrasts sharply with regulations and action taken in other EU countries as, for example, the case in the UK where the Health and

Safety Executive prevented cranes from Falcon Crane Hire from continuing operations due to the collapse of two of these cranes in London and Liverpool. All tower cranes provided by this firm were required to pass an independent examination by a competent authority before further use.³³ In spite of the fact that similar incidents take place regularly in Malta,³⁴ such broad testing is not the norm. A strong administrative structure to regularise the sector, register and monitor operators, issue plant and operator certificates, provide basic training and carry out regular inspections would go a long way towards remedying the present situation and reducing the dismal record of injuries and fatalities.

MEPA's instructions to violated homeowners to seek redress in court is not a just option, as the long delays and high costs involved render this line of action impossible for the most vulnerable section of the population. MEPA's stand actually serves to encourage some builders to ride roughshod over building-site neighbours, knowing full well that few will resort to a costly and long drawn out court case to defend their rights.

It is therefore evident that environmental CSR cannot function unilaterally; the key to progress in this field is the adoption of practices that are socially and environmentally beneficial by both Government and private enterprise as is examined in the following study.

Part II. Corporate Social Responsibility within the Maltese Construction Industry

by Karen M. Zammit Manduca

Jeffrey Hollender claims that, "Corporate Social Responsibility [is] ... the future of business. It's what companies have to do to survive and prosper in a world where more and more of their behaviour is under a microscope."³⁵

There are many reasons why some firms would act more responsibly in the absence of legal requirements and legislation. Many of the benefits of CSR are difficult to quantify, but eventually, CSR is only sustainable if virtue returns dividends. Consumer demand for responsibly made products, actual or threatened consumer boycotts, challenges to a firm's reputation by non-governmental organisations (NGOs), pressure from socially responsible investors and the values held by managers and other employees are some of the more important aspects of such "civil regulation".

Because CSR is voluntary, Government or industries will engage in CSR only to the extent that it proves beneficial to themselves. In most cases, CSR only makes sense if the efforts for better behaviour remain 'reasonable'.

³³ http://www.rics.org/Property/Businessassets/hse_cranes230107.html

³⁴ Three fined Lm10,500 after man crushed to death, Times of Malta, 31st January 2007.

<http://www.timesofmalta.com/core/article.php?id=250673&hilite=Crane>

Man injured as crane topples over, 28th May, 2004, <http://www.independent.com.mt/news.asp?newsitemid=5910>

³⁵ David Vogel, *The Market for Virtue - The Potential and Limits of Corporate Social Responsibility*, Revised Edition Brookings Institution Press 2006 c. 222 pp.

Many NGOs devote a significant portion of their resources to monitoring and pressuring corporations. By applying pressure directly to companies, activists and organisations seek to foster changes in business practices that national governments and international law are unlikely or unwilling to bring about.

The construction industry is strategically important for Europe, providing building and infrastructure on which all sectors of the economy depend. With millions of operatives directly employed in the sector, it is Europe's largest industrial employer. Construction is also an important sector of the economy in new Member States of the European Union of which Malta is one.³⁶

Moreover, the relationship between construction activities and the built environment on the one hand, and sustainable development on the other, is both significant and complex. In construction, more raw materials are used than in any other sector, and the creation and operation of the built environment accounts for an important consumption of natural resources. There is also a pressing need to address the regeneration of many urban areas of Europe, in particular in the newly acceded countries, and the realisation of major trans-European infrastructure works.

In a world where Corporate Social Responsibility is becoming increasingly important due to the fact that many of today's pollutants are resulting in global warming and its catastrophic effects on the earth, as well as the threat to human life, the need for this to stretch to the construction industry in Malta is very real.

In a document titled *Construction Storm Water and Pollution Prevention* written in March 2005, Croxton Collaborative Architects state that, "Construction is an intense and invasive process that inevitably disturbs the site and nearby environment wherever it occurs. Careful planning and management of construction activities can prevent major damage to both the site and surrounding neighbourhood."³⁷ The introduction of Corporate Social Responsibility to the local building and construction industry will result in numerous benefits for the Maltese, the most important of which will be those that are health related and there are many ways for a building construction firm to be more socially responsible.

Project and Development Planning

At the onset of a new project in an established area, especially residential areas, it is imperative that all due consideration and respect be given to people living in the vicinity as regards the residential conditions they may have enjoyed for many years. Homeowners may have paid a higher than average price for a property that enjoyed unencumbered views, natural daylight and airiness.

In Britain, the *Right to Light Act 1959*³⁸ protects the citizen from any new developments that will infringe on conditions a property may have enjoyed. The right to light will come

³⁶ <http://epp.eurostat.ec.europa.eu>

³⁷ *Construction Storm Water and Pollution Prevention*, Croxton Collaborative Architects PC, March 2005.

³⁸ www.communities.gov.uk

into existence if it has been enjoyed uninterrupted for 20 years or more, granted by deed, or registered under the *Right to Light Act 1959*. Planning permission does not override this legal right. So, a property owner or occupier who fears that his right to light will be interfered with can ask the court for an injunction to prevent the interference. The court has discretion to grant an injunction and can award damages *in lieu*.

Demolition and Pollution

In his paper *Pollution in the Demolition Industry*, Erik K. Lauritzen says that, “Today the demolition industry spends a lot of effort and money on environmental protection due to international standards, European directives and national laws on environmental management, for instance the ISO 14000-series, the EMAS directive, and the British Standard BS 7750 *Specification for Environmental Management Systems*.” He also states that, “A major part of any demolition contract must be concentrated on the control of the different types of pollution.”³⁹

A report issued by Croxton Collaborative Architects, suggests that, “The first layer of defence against construction pollution involves limiting the production of dust and debris in the first place. Less volatile demolition practices (disassembling components rather than using a wrecking-ball) and use of benign building materials are two examples of this.”⁴⁰

The demolition of property has to be carried out in an orderly manner and the materials collected for disposal or for reuse in designated areas, depending on the nature of the material. A contractor will probably argue that this takes longer than simply bulldozing the property, thus contributing to higher costs for the developer, which cost will eventually be passed on to the purchaser. Bulldozing the property places undue hardship on neighbours because of the dust generated. Some of the cost incurred to demolish property without using heavy plant can be recouped through the sale of good stone for reuse or recycling into by-products, as well as the sale of reusable apertures etc.

The demolition of concrete ceilings will necessarily create noise, but any generators used to power the machinery must be as silent as possible.

During the actual demolition of ceilings, all the apertures of a building should be kept closed so that as blocks of concrete fall, the dust generated is contained within the building. Until the ceilings are demolished, a temporary canopy should be erected horizontally above these ceilings for the same reason.

The demolition of property must not be carried out before all permits are also in hand for rebuilding the property, so that a cleared plot would not have to remain an environmental eyesore for longer than necessary.

³⁹ Erik K. Lauritzen, *Pollution in the Demolition Industry*, August 2001 (The author is the Managing Director of DEMEX Consulting Engineers in Copenhagen, Denmark).

⁴⁰ *Construction Storm Water and Pollution Prevention*, Croxton Collaborative Architects PC, March 2005.

Rock-Cutting and Excavation

With the use of modern equipment and engineering techniques, there is no need for the amount of noise that is currently caused when excavating a building site. Rock can be cut using explosives, which would be handled by explosives experts. Once a sizeable piece of rock has been cracked or broken, this can be lifted and carried off on an appropriate vehicle. These rocks can be used in numerous resourceful ways. Alternatively, the technique of cutting rock using high-speed water jets could be employed. Another possibility lies in the use of heavy plant that is noisy but gives results much faster - vehicles that operate massive saws to cut through large chunks of rock, thereby mitigating discomfort in the long run because of the speed with which a site could be excavated.

Dust Generation

Croxley Collaborative Architects say that, “Dust and air-borne pollution from a construction site pollute local air quality and have negative health and comfort impacts for those living and working nearby.”⁴¹ Recent research has shown that asthma and cancer are on the rise among the Maltese people⁴². Much of this is due to the air quality of the Maltese Islands and one of the main culprits contributing to this is the fine dust generated by the local globigerina limestone. “It is estimated that the 67 active open pit quarries which lie in close proximity (0.2 to 2 km) to urban centres generate, annually, about 1200 t of PM10 dust. Considering that dust emission occurs mainly during the dry summer months, the average PM10 emission rate from quarries during this period is 11 500 mg m⁻² day⁻¹, which is well above international guideline values (100 - 350 mg m⁻² day⁻¹).”⁴³

On windy or breezy days, the stone particles raised by quarrying, as well as those generated by the prolific construction activities taking place all over the Maltese islands, are carried for miles. The dust is fine, penetrates the finest cracks or openings, such as those around doors and windows or ventilation openings, and even passes through insect screen mesh. If clothes are hung outdoors to dry, these are filled with dust as well - which is then inhaled when the clothes are worn.

Rainwater and damp tend to help control the carriage of this dust somewhat, but Malta is a relatively dry country when compared to much of Europe, so the problem is a very real one.

Through the use of available tools and equipment fitted with dust-trapping devices, dust generation is avoidable when building property. Modern machinery such as chasers, sanders and drills as well as road excavation machinery that produce dust in operation can be fitted with vacuum appliances in order to collect most of the dust produced. These tools and machinery are readily available and their use by building and construction companies would be solid proof of Corporate Social Responsibility on their part. This will not completely eliminate the problem, but will definitely make a significant contribution to reducing the

⁴¹ *ibid.*

⁴² *Children Hit Hard by Air Pollution* - Cynthia Busuttill.

⁴³ *Fine dust emissions from softstone quarrying in Malta*, Alfred J. Vella and Renato Camilleri.

amount of airborne dust, subsequently saving Government millions of pounds in medical treatment and supply of medication for the treatment of illnesses caused, or exacerbated, by dust inhalation.

According to Croxley Collaborative Architects, “Air pollution is created by construction dust and soil that becomes windborne when a site is not properly protected. This has negative health effects for people as well as the area’s flora and fauna.”⁴⁴

With reference to the Laws of Malta, the Trading Licences Act, 2001 (Cap. 441), Trading Licences (Amendment) Regulations, 2006, (Legal Notice 1 of 2006)⁴⁵ already renders it illegal to produce dust, but few, if any, contractors or workers even bother to try to comply with this law. They may not even be aware of the existence of this law and many argue that this law does not apply to the contractor involved in construction works.

Regulation 13 - CONDITIONS FOR CARRYING OUT A COMMERCIAL ACTIVITY lays down that:

02. The commercial activity carried out in the premises or things stored within the premises shall not:-
 - 02.1 cause annoyance to neighbours;
 - 02.2 be likely to occasion any fire or explosion;
 - 02.3 emit exhalation, fumes, vapours, gases, dust or emit noxious or offensive odours into the atmosphere that may cause damage or are injurious to health;
 - 02.4 cause annoyance by way of noise.

They may not realise the environmental damage or the health problems they are causing to themselves, let alone to others, so education should help to a certain degree. As soon as possible, a building must be closed, if necessary with temporary apertures, because dust is blown all around the area where work is being carried out, and protective dust masks must be worn by workers at the same time.

It is also possible to clean the air with the use of dust collectors when conducting construction tasks that produce high levels of airborne dust. Cyclone collectors or bag collectors with fabric filters can be used to accomplish this. This dust extraction should be carried out at regular stages during demolition works.

Pollution

BS 7750 *Specification for Environmental Management Systems* lists pollution or environmental effects as follows:

- Emissions to atmosphere
- Discharges to groundwater
- Wastes

⁴⁴ *Construction Storm Water and Pollution Prevention*, Croxton Collaborative Architects PC, March 2005.

⁴⁵ Laws of Malta - Trading Licenses (Amendment) Regulations, 2006.

- Contamination of land
- Other emissions include noise, vibration and dust

BS 7750 has since been replaced by ISO 14000.

Noise Pollution and Working Time

“In general demolition and construction work is noisy.”⁴⁶ With respect to workers’ health and safety, the noise threshold values of 85-95 dB (A) are typically given in European countries. The possibility to reduce noise on a demolition site is rather limited. However, it is important that the demolition contractor plans his work and chooses his machinery in such a way as to comply with given noise limits - or be stopped by the relevant authorities. In the EDA publication *Health and Safety in the Demolition and Dismantling Industry*⁴⁷ a list of noise emissions at the source from typical demolition tools and machinery is given. This can form the basis for the estimated noise emission from a demolition or construction site.

In the Trading Licences Act, 2001 (Cap. 441), Trading Licences (Amendment) Regulations, 2006, (Legal Notice 1 of 2006), PART II - Specific Commercial Activities, lists various commercial activities that can be carried out without any restriction on the business hours. “Predominant Construction Services”, classified as Category IV, Type code 45 is one of them, but it should be possible to establish and enforce times when noisy work may be carried out in relation to its volume.

If, for example, noisy stone cutting is being carried out, legislation is required to ensure that this can only take place at certain hours. In this way, works may take longer, but it is imperative that residents’ needs for uninterrupted rest are given precedence, especially with long-term projects. A person may choose to leave home for the stipulated time - but can only do so if times are regular and established. Ideally, this should be relative to the volume of noise being produced. If noise is louder, then hours must be shorter, even if this may involve a certain amount of enforcement. Workmen should, at all times, carry two-way radio systems to avoid shouting to one another to communicate.

It is imperative that established working times are adhered to. It is unacceptable to have noisy works commencing at 6.30am, sometimes even as early as 5am during the summer months, and continuing all day until sunset or beyond. The harmful effects of noise pollution are well known and should be taken heed of. One must consider that certain people may work on shifts or hold night-time jobs and will need to sleep during the day, as well as others who may be elderly or ill, babies and students studying for exams. Noise-generating work should no longer be permitted over weekends because most of the Maltese population requires, and has a right to, undisturbed rest. It is frustrating and stressful to go home for the weekend from a busy office, only to have noise all through the weekend from construction sites.

⁴⁶ Erik K. Lauritzen, *Pollution in the Demolition Industry*.

⁴⁷ EDA: *Health & Safety in the Demolition and Dismantling Industry*, May 1987.

It is anomalous that the “Conditions for Carrying Out a Commercial Activity” as per Trading Licences Act, 2001 (Legal Notice 1 of 2006), includes the following clause:

08. No noise shall be generated from any Commercial Premises and be heard from outside the premises that causes annoyance and disturbance to neighbours by hammering or by the use of machinery between 1.00 p.m. and 4.00 p.m. of the same day and between 7.00 p.m. and 7.00 a.m. of the next following day, yet it is not applied to the Construction Services Industry.

Vibration

It is known that work with vibration/chopping tools with a vibration effect of more than 120 dB (hand-arm), especially handheld jack hammers, might cause “white finger” disease.⁴⁸ Therefore, vibration-damped tools should be used and the number of hours for which a worker uses them should be limited. In Denmark, the Health & Safety authorities recommend that hand-held hammers are used by individuals for no more than half an hour per day.

Inconvenience to neighbours is registered in KB-levels according to the German standard DIN 4150-2 (Structural vibration - Human exposure to vibration in buildings). In Denmark the maximum value must not exceed 75 dB (KB).

With respect to the risk of damage to neighbouring buildings and structures, the German standard DIN 4150 gives the following threshold values for vibration velocity (mm/s):

Industrial buildings: 20 mm/s

Dwellings: 10 mm/s

Sensitive buildings: 3 mm/s

These figures are used in several European countries, including Germany, the Netherlands and Denmark. A special problem, however, is the risk of damage to computers. Experience in Europe has shown that vibrations with acceleration below 2.5 m/s^2 will not normally affect computers so it is necessary to respect this limit.⁴⁹

Multiple Worksites

It is very hard on neighbouring residents to have several building sites close together in established residential areas. In many locations in Malta and Gozo construction is taking place simultaneously on two properties, with one or two residences standing between them. This means that anyone unfortunate enough to reside in that property is exposed to noise, disturbance and potential danger from each side.

⁴⁸ <http://www.wsib.on.ca/wsib/wopm.nsf/Public/160105>

⁴⁹ Erik K. Lauritzen, *Pollution in the Demolition Industry*.

It should be possible to regulate the number of active building sites within an area. Possibly a solution could be found where building or excavation works cannot be carried out within certain distances of each other. This will undoubtedly cause some problems with contractors having to wait for each other, but it could also potentially lead to contractors 'helping out' each other in order to finish works at a faster rate. Criteria will have to be established in order to regulate which of the contractors may start working first. On the other hand, a contractor should not be allowed to excavate a site and leave it that way indefinitely.

Dirt and Emissions

With regard to air pollution, SO₂, NO_x and CO₂ are usually considered in relation to the global pollution of the atmosphere. A demolition contractor can contribute to the control of air pollution by attempting to limit polluting exhaust from plant and equipment as much as possible. In many EU countries, special regulations govern the exhaust and emissions of vehicles and machinery.

During demolition work, especially interior and concrete demolition work, high concentrations of dust are expected. Unless special precautions are taken, dust can harm the respiratory tract and lead to chronic diseases, e.g. silicosis, which is caused by dust with a high content of quartz.⁵⁰ According to the DK threshold values for substances and materials the following threshold values are given:

Mineral inert dust (total):	10 mg/m ³
Mineral inert dust (respirable dust):	5 mg/m ³
Quartz dust:	0.1 mg/m ³

Considering dust emission inconvenience to neighbours, no specific threshold values are given. It is normally said that visible dust is not acceptable as a practical limit. It is necessary that the demolition contractor ensures dust emission is controlled and reduced as much as possible, for instance by water sprinkling and carrying out dusty operations when the wind direction is appropriate.

The present state that streets are reduced to when any sort of construction is going on is unacceptable. Cranes, concrete mixers, heavy plant or generators should be regularly checked (and this could be done as in the case of licensed vehicles that must undergo an annual Vehicle Roadworthiness Test) for leakage of oil. If, for any reason, it is necessary to use the vehicle before repairs are carried out, then the operator/driver should be obliged to put something beneath the truck or machinery to collect the spillage. Some trucks, heavy plant and machinery are in a very poor state of maintenance, leaving large patches of oil on the street even after a single morning's use. In the case of generators and other machinery, these should be tested on an annual (or if necessary, shorter time frame) basis for the same reason. These tests should also consider operating noise. Just as car silencers are required to be kept in good repair, so should generators and other heavy plant.

⁵⁰ <http://www.nlm.nih.gov/medlineplus/ency/article/000134.htm>

Waste

Construction materials that can either be reduced or effectively recycled are indiscriminately used, and subsequently wasted, all the time. A case in point is the Maltese Islands' dwindling stock of globigerina (softstone) and coralline (hardstone) limestone. A MEPA publication indicates that there are about 29 years' supply of softstone and about 28 years' supply of hardstone reserves available.⁵¹ No one can argue the beauty of this building material, but it is imperative that it is used only where it is important rather than for whole buildings as was done in the past. At the same time, when buildings are demolished, used limestone must not be discarded. A high percentage of it can, and should be, reused as old stone for appropriate buildings or for restoration projects, because the patina that old stone has can never equal any other type of stone in beauty in the same way that an antique piece of furniture can never be compared to a modern piece.

European Union Environment Commissioner Stavros Dimas said, "Europe's economy uses large amounts of natural resources. This is often done in a way that harms the environment, threatening the resource base on which we depend and thus future economic growth. It also contributes to growing waste mountains. We need an overarching approach that measures impacts of resource use and informs policymaking so we can take appropriate action. This can bring us a decisive step closer to sustainable development."⁵²

Commissioner Dimas' statement adequately, albeit indirectly, supports the suggestion for reuse and recycling of limestone which has been cut from local quarries, perhaps decades ago.

According to European Union waste directives, all materials generated from construction or demolition work must be considered as waste, regardless of the possibilities of reuse or recycling, while the MEPA publication, *Minerals Subject Plan for the Maltese Islands 2002 - Final report May 2003*⁵³ also advocates the recycling of construction and demolition waste. The main part of construction and demolition waste normally consists of concrete and bricks. In Europe, it is estimated that 80-90% of this waste is brick and concrete, which is recyclable and may be used as a substitute for natural stone and gravel resources.⁵⁴

According to the "the polluter pays" principle mentioned in the EC Council Directive of 18 March 1991 75/442/EEC on waste, the building owner has the overall responsibility for the correct treatment of all kinds of waste, including hazardous waste materials.⁵⁵

Transportation of Building and Waste Materials

Overloaded trucks driving at 10 miles per hour, holding up traffic, with some sort of makeshift cover flapping in the wind and dust flying off the truck as well as the all-too-

⁵¹ Minerals Subject Plan for the Maltese Islands 2002 - Final Report May 2003 - Entec UK Ltd.

⁵² <http://europa.eu/rapid/pressReleasesAction.do>

⁵³ Minerals Subject Plan for the Maltese Islands 2002 - Final Report May 2003 - Entec UK Ltd.

⁵⁴ <http://europa.eu/rapid/pressReleasesAction.do>

⁵⁵ Erik K. Lauritzen, Pollution in the Demolition Industry.

frequent cascade of stones, are a common sight on our islands. A loaded truck usually also spews clouds of black smoke as it wends its way through the streets, emitting highly carcinogenic particles of benzene. We also have too many cases of concrete mixers leaving trails of spilt concrete on roads ruining the surface, probably due to overload or faulty valves.

Primarily, a police escort to ensure that no traffic problems are caused *en route* should accompany vehicles above a certain size and weight, such as those carrying huge pre-stressed concrete roofing slabs (*planki*). Secondly, the covering of loaded trucks transporting loose material must be a much more substantial one than the commonly used green netting. If trucks used for transportation of building or waste material are fitted with a rail or track on each side of the back, and with a cover that slides along these rails, in much the same way that a roller shutter moves to cover a window or door, it will be impossible to overload the truck and then draw the cover closed. This type of truck covering is already used in parts of Europe and will serve as an effective gauge for the limit of the load.

Use of Skips

The use of skips is, for obvious reasons, thoroughly recommended. The length of time that a skip is kept in place must be regulated and enforced. All too often open, overfull skips remain on streets for much longer than required because, at present, the daily charges for keeping a skip are ridiculously low, with the result that an area appears dirty and untidy. Heftier daily charges will encourage the hirer of the skip to make use of it and have it removed as soon as possible. Evidently, frequent site-checks will have to be carried out to verify that removal has actually taken place.

Security

It is necessary to secure an incomplete building properly, at all stages of demolition and rebuilding, to guarantee security to neighbouring homes. It is common to have thefts occurring in adjacent buildings when access may easily be gained by the removal of wall slabs from an insecure building.

Thorough Cleaning of the Area around the Site Every Single Day

Any area around a building site which is not actually part of the site must be thoroughly cleaned at the end of the working day from spillage of any sort, be it dust, concrete, oil or any other building material. Any spillage resulting in damage to the road surface must be discouraged. If necessary, streets will have to be mechanically swept and thoroughly washed down as soon as the work for the day is finished, at the contractor's expense. Many contractors simply clean dirt off their own vehicles, allowing this dirt to fall off the vehicles onto the street, which is where they leave it.

Trucks, cranes and heavy plant machinery should not be parked in the nearby streets when not in use. If they cannot be parked within the building site itself, then they must be driven (or towed, as the case may be) to the contractor's storage area to ensure that, even while works are in progress, an area does not look shabbier or dirtier than necessary. Nobody

enjoys having a massive, dirty truck parked beneath a window or outside a main door at all hours of day or night.

Penalties

Unless heavy fines and penalties are imposed on parties or developers polluting a construction area or not returning an area to its original state there will not be any visible results. Although there will be resistance to the imposition of tough penalties at their introduction, these will eventually result in more Corporate Social Responsibility, although this may take years to become apparent. As an example, in May 2006, The Arizona Republic carried an article about A. R. Mays Construction being fined \$75,000 as a penalty for 25 violations at seven construction sites over two years. Bob Kard, who leads the Maricopa County Air Quality Department went on record saying, “For someone to rack up violations to this degree is inexcusable. Hopefully, this penalty will stop the repeated behaviour.”⁵⁶

Control of Pollution and Emissions

Referring to the EC report, *C&D Waste Project*,⁵⁷ many actions and recommendations related to the pollution from demolition work and the quality assurance of demolition work are given. It is recommended that European standards and codes of practice of demolition should be prepared within the frame of CEN/CENELEC.

In order to raise the reputation of European demolition contractors, it is necessary that the individual EDA member country prepare its own codes of good practice and environmental management systems. The philosophy of quality assurance according to the ISO 9000-series and environmental management according to BS 7750 is that the individual demolition

Conclusion

Environment Commissioner Stavros Dimas said: “Europe’s urban areas face a number of environmental challenges including poor air quality, high levels of traffic and congestion, urban sprawl, greenhouse gas emissions and generation of waste and waste water. These can cause environmental damage and affect human health.”

This is an appropriate and excellent summing up of the above presentation as it encompasses all that has been said, both about the control of pollution caused by the construction industry and the authorities’ role in regulating the sector and limiting the damage to residents’ health and well-being on the Maltese Islands.

⁵⁶ The Arizona Republic, 12 May 2006.

⁵⁷ The European Commission - Industry sectors: Construction: Task Group 3: Construction and Demolition Waste - <http://ec.europa.eu>

Commissioner Dimas also said, “Local authorities have a decisive role to play in implementing environmental legislation and improving the environmental performance of a city.”⁵⁸

Malta’s legislation⁵⁹ does allow for much of the recommendations made above, but often it is not enforced. Hence, enforcement is a contributing factor to the problems being faced because of the construction industry. On the other hand, more Corporate Social Responsibility on the part of contractors would lead to a lesser need for enforcement and bring about a more desirable state of affairs.

⁵⁸ <http://www.a2mediagroup.com/?c=128&a=1768>

⁵⁹ Code of Police Laws (Various sections).

SOCIAL ECONOMY VS CORPORATE SOCIAL RESPONSIBILITY: A VIEW FROM THE EUROPEAN ANTI-POVERTY NETWORK MALTA

GODFREY KENELY
GODFREY LEONE GANADO
CLAUDIA TAYLOR EAST

Before comparing the aspect of social economy and corporate social responsibility, it is important to understand the definition of corporate social responsibility, to assess the social implications of the focus being placed by commercial enterprises to satisfy their corporate social conscience and finally to answer the question: is corporate social responsibility just a marketing tool or a reality that is fighting poverty and social exclusion?

Definition

Corporate Social Responsibility (CSR) 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.

CSR can make a contribution to achieving the European strategic goal of becoming, by 2010, “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and *greater social cohesion*” - adopted by the Lisbon Summit of March 2000 as the European Strategy for Sustainable Development.

CSR is an expression used to describe what some see as a company’s obligation to be sensitive to the needs of *all* of the stakeholders in its business operations.

A company’s stakeholders are all those who are influenced by, or can influence, a company’s decisions and actions. These can include (but are not limited to) employees, customers, suppliers, community organizations, subsidiaries and affiliates, joint venture partners, local neighbourhoods, investors, and shareholders (or a sole owner).

CSR is closely linked with the principles of “Sustainable Development” in proposing that enterprises should be obliged to make decisions based not only on the financial/economic factors but also on the social and environmental consequences of their activities.

A widely quoted definition by the World Business Council for Sustainable Development states that “Corporate social responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large” (CSR: Meeting Changing Expectations, 1999).

Focus

The Employment and Social Affairs Committee of the European Union published a Compendium on national public policies on CSR in the European Union covering 19 member states.

The sub-heading *Developing CSR-supportive Policies* highlights very clearly that the main focus was on:

- Trade and export policies - 11 countries
- Sustainable development - 8 countries
- Environmental policies - 5 countries
- Social policies - 3 countries

CSR Europe, building on the experience of the European Declaration of Businesses against Social Exclusion initiated by President Jacques Delors in 1995, has issued A European Roadmap for Businesses “Towards a Sustainable and Competitive Enterprise” with the main commitment being that of achieving a sustainable and competitive European Enterprise with the goals of:

- Innovation and entrepreneurship
- Skills and competence building
- Equal opportunities and diversity
- Health and safety
- Environmental protection

While the above initiatives are crucial in moving enterprise towards a social conscience and in contributing towards a better social economy, it is doubtful whether CSR may ever change a commercial enterprise into a social enterprise.

In fact, some commentators are cynical about the true level of commitment of corporations to ideas like CSR and Sustainable Development, and their actual motivations for responsible behaviour. Corporations that create the appearance of acting responsibly just for its public relations value are said to be “greenwashing”.

Such commentators also say that the idea of an “ethical company” is an oxymoron, since the corporation is by its nature compelled to maximize its own interest, whatever the external price.

Furthermore, corporate executives and employees in turn have strong incentives to internalize the corporation’s statutory obligations to maximize profits, sometimes to the extent that they abdicate their individual moral and ethical obligations as human beings. This tendency is, of course, encouraged by the desire to keep one’s job, and by a system that judges and rewards performance strictly by bottom-line returns. The results of this tendency were clearly seen in the many corporate scandals of the late twentieth and early twenty-first centuries.

A practical example of the above is the performance-related remuneration based on what is termed as the ‘growth trap’, the continuous downsizing, nowadays given a softer tone of ‘rightsizing’, and the rigid ‘business case’ policy which sometimes turns employees into ‘merchandise’ with an expiry date. Furthermore, despite the emphasis placed on work-life balance and the working time directives, we are experiencing in our workplaces what is referred to as ‘the Japanese syndrome’ whereby employees remain ‘physically’ present at their workplace for long hours just to be seen to be giving absolute priority to their work life and thus enhancing the security of their employment and furthering the prospects of their career progression.

As regards initiatives in the social, environmental and culture field, if one browses through the Corporate Social Responsibility statements within the Annual Financial Reports of large companies, particularly listed public companies, it is evident that there is a growing trend for initiatives directed towards voluntary work by employees in underdeveloped countries, aid towards infrastructural projects related to Water Aid, provision of specialized medical and research equipment in State hospitals, literacy programmes for children and adults, secondment of personnel for a definite period with NGO’s, heritage conservation and restoration projects, culture and sports.

Marketing Tool, or a Reality that is Fighting Poverty and Social Exclusion?

The general public perception is that Corporate Social Responsibility is a marketing tool. In fact, public companies are perceived to be competing with one another on what they can do to foster a Corporate Social culture and, hardly ever does one meet situations where initiatives are being taken collectively by operators in similar market sectors. Furthermore, if one were to analyse the expenditure on CSR by companies who truly believe in CSR, their spend, in most cases, does not exceed 1% of the company’s post-tax profits.

Corporations need to move away from the ‘charity’ model. CSR is often being translated into donations and sponsorships for good causes, seeking to support the most attractive cause which can provide good marketing return, rather than addressing priority areas to reduce poverty and social exclusion. CSR needs to move to a ‘partnership’ model, working with civil society organisations including non-governmental organisations to invest in initiatives, projects and systems that truly reduce poverty in Malta and in Europe. The figure of 72 million facing poverty in the European Union (Eurostat 2006) is an unacceptable

situation in one of the strongest economic blocks! 15% of Malta's population lives below the poverty line (National Statistics Office - NSO 2004).

Furthermore, CSR needs to focus more on having employers and corporations respecting human rights, ensuring equal opportunities and ensuring non-discriminatory employment policies. This is a definite way of participating in poverty reduction, in developing social cohesion and being socially responsible.

The conclusion is, therefore, that corporations are starting to wake up to their social responsibilities, but the rule of corporate law that a corporation's directors are prohibited from any activity that would reduce profits, is an absolute constraint to turning commercial corporations in model social enterprises. The profit motive gathers even more momentum at a time when the yield on investments is crucial to sustain private pensions which have to perforce replace in whole or in part unsustainable State pensions and health costs.

Social Funding - Microfinance

The granting of the Nobel Peace Prize to Muhammad Yunus and Grameen Bank breaks new ground by explicitly linking economic development to peace development.

The announcement last year that microfinance pioneer Muhammad Yunus and the Grameen Bank received the 2006 Nobel Peace Prize carries significant implications for microfinance and socially responsible investing (SRI). Beyond shining the world spotlight on the success of microfinance, the Prize helps validate the use of financial mechanisms to promote social causes such as poverty alleviation and peace.

The main principle of microfinance is the granting of microcredit to poor people to help them develop their talents/skills. Through the promotion of microcredit, financial sector development can be conducted in an inclusive manner, that is to say embracing the poorest in society.

In this perspective, as UN Secretary General Kofi Annan put it when the *International Year of Microcredit 2005* was launched in November 2004, "poor people are precisely part of the solution to development, not part of the problem".

Microcredit and microfinance, which includes broader financial services than credit, such as savings and insurance, are not about charity. They are about extending the same rights and services to low-income households that are available to everyone else.

The aspect of microfinance is an area which the European Union and its member states need to consider seriously. This aspect should also, unless it already is, be a priority of the European Investment Bank. In fact, a suggestion that may be humbly made is that of allocating part of the unspent structural funds to the European Investment Bank or any other Institution set up for this purpose with the specific aim of using such funds in microcredit initiatives.

It may also be suggested that the beneficiaries of microcredit should also include long term unemployed persons and persons who have to retire at the age of 65 or before to help them in continuing to help themselves and in the process help the economy.

Housing

This document would not be 'all-embracing' if the problems of social housing were not alluded to.

Although one may argue that the housing aspect falls more appropriately under the European Regional Development Fund (ERDF), it would not do justice to this document if the fundamental right to housing is not discussed at the European Social Fund (ESF) level.

In this respect, reference is made to the Proposal of a European Charter for Housing by the Urban-Housing Intergroup which started its deliberations in September 2005 after a specific vote of the European Parliament in July 2005 regarding the eligibility to Structural Funds of expenditures which relate to renewal of vocational social housing.

The following are some highlights from Chapter I and Chapter II of the Proposed Charter: Housing and the European Cohesion Policy:

Article 1.1

Housing is an essential element of human dignity, an essential component of the European social pattern and of the social protection systems of the Member States.

Article 1.2

Any person living on the territory of the European Union has the right to access healthy, decent and affordable accommodation and to benefit from aid for housing in order to be guaranteed a dignified life in accordance with the constitutional tradition of the Member States, as referred to in Article 34 of the Charter of Fundamental Rights and Article 31 of the revised Social Charter of the European Council.

Article 1.3

The European Union and the Member States will support the creation and the renewal of social housing or transit housing destined for people earning the lowest incomes. The Union and the Member States should also take fitting measures in order to make more attainable the renting of average housing for people with average incomes, who meet increasing housing problems, particularly in large cities and generally to improve access to property ownership for people with average or low incomes, namely by making access to mortgage finance easier and at conditions adapted to their situation.

Article 2.2

Exclusion from housing, homelessness and unworthy conditions must be combated in line with respect for fundamental rights in the European Union and in view of the interest of the Community.

Article 2.3

Social inclusion of vulnerable people involves taking into consideration the importance of access to housing.

Article 3.2

Tenseness in the housing market holds back professional mobility and harms European Union competitiveness.

Speculative practices in the housing market must be combated in consideration of their negative impact on the capital markets' stability.

Chapter II - The Role of the European Union and the Impulse of the European Parliament

Article 6

The European Union should make sure that its policies contribute to establishing a favourable and incentive framework for the Member States' housing policies, in accordance with the Community interest and having regard for their contribution to the effective carrying out of the Lisbon Strategy and the Union's objectives, in terms of cohesion and sustainable urban development. The European Parliament should see to the implementation of this principle and assure an equitable evaluation within the frame of its Regional Development Committee.

Article 7.1

Housing should be integrated into the economic, social and territorial Cohesion policy of the European Union.

The European Investment Bank should be able to make loans available to the Member States for investments related with these matters, in synergy with these policies.

The above extracts highlight the importance of housing as an integral part of social inclusion. In fact, the Charter calls on the European Union and its Member States to support the creation and the renewal of social housing or transit housing destined for people earning the lowest incomes and to take measures to make more attainable the renting of average housing for people with average incomes, and to make it easier for people with average or low incomes to get mortgages.

The text goes on to say that access to housing represents a crucial step in combating poverty, particularly in cities, and in pursuing the objective of social inclusion of vulnerable individuals deprived of decent housing.

It may also be suggested that, as already suggested for microcredit purposes, consideration should be given to allocating part of the unspent structural funds to the European Investment Bank or any other Institution set up for this purpose with the specific aim of using such funds for housing initiatives.

Delivery and Access of Funds

It is suggested that EAPN continue to explore all possibilities for being part, not by default but by right, in the process of decision taking by Member States on the allocation of funds for social purposes and for being catalysts for the implementation of the established programmes for social inclusion.

Corporate Social Responsibility and Social Conscience

In this respect, one may state that Corporate Social Responsibility is not something to be expected only from commercial and economic enterprises but is also a 'sine qua non' for Governments, Institutional and other related structures.

The aspect of Corporate Social Responsibility which is not grounded in a social conscience is meaningless and turns CSR into nothing more than another buzz word. In fact, it may be appropriate to better define the meaning of 'social conscience' before determining a more appropriate definition of Corporate Social Responsibility.

Every human being, individually or collectively, has a social responsibility. However, not all human beings have a social conscience and, in today's globalised world, the social conscience of many has become a prisoner to relativism.

Conclusion

In our opinion, corporate social responsibility should relate more closely to the sustainability of the ethical, health, safety and environmental aspects of all stakeholders and society in general, and the social conscience should relate more to the social aspect of corporate policies orientated towards the sustainability of the dignity of the human person without any leeway for relativism.

Therefore, a first priority is to focus on the development of a social conscience at individual level. Only with *social conscience* can 'social responsibility' have any real meaning. This requires a re-interpretation of Corporate Social Responsibility to ground it in real social concerns, so that corporate activity dovetails with, rather than undermines, the socially responsible policies and actions of governments, public authorities, civil society and indeed of international organisations, including the European Union.

EMPOWERING CITIZENS THROUGH EDUCATION FOR SUSTAINABLE DEVELOPMENT

PAUL J. PACE

Preamble

Sustainable development has been defined as “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*” (WCED, 1987, p.43). This concept was first coined as a response to mounting worldwide concerns about the deteriorating quality of life on our planet. The predominant belief, at the time, was that economic development occurs at the inevitable expense of environmental and societal considerations hence justifying the abuse of human communities and natural resources in the name of progress. “Sustainable Development” openly challenges this paradigm by proposing a style of development that seeks to ensure a good quality of life by assuming

“... a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development - economic development, social development and environmental protection - at the local, national, regional and global levels.” (United Nations, 2002, p.1).

This redefinition of development is also mirrored in the EU’s development targets:

“The Union has today set itself a new strategic goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.” (Lisbon European Council, 2000, p.2)

Sustainable development has become a regular feature in the agenda of international and national meetings and has also been the subject of a host of declarations particularly after the two major events that have made it a global concern: (i) the United Nations Conference on Environment and Development (Rio de Janeiro: Brazil, 3 - 14 June 1992) that endorsed Agenda 21 as a blueprint for environmental protection and development in the 21st century; and (ii) the World Summit on Sustainable Development (Johannesburg: South Africa, 26 August - 4 September 2002) aimed at reviewing progress 10 years after Rio. However, even

a cursory analysis shows that sustainable development has only been given lip service and a general lack of political will has been identified as the principal cause for its slow implementation (United Nations, 2002).

Towards Sustainable Lifestyles

Meeting the challenges of sustainable development requires more than just well thought-out strategies and action plans, even when these are backed up by governments. Sustainable development implies a radical change in the value system that regulates the day-to-day behaviour of individual citizens. Although alluded to in the various international documents, the need for a global value system has rarely been given its due importance in sustainable development strategies possibly because of predominant individualistic ideologies and/or an over-reliance on scientific/technical solutions.

The need to “*change personal attitudes and practices*” in order to achieve sustainable society was highlighted by the milestone publication “*Caring for the Earth: a Strategy for Sustainable Living*” (IUCN/UNEP/WWF, 1991). When considering “... *those who shape policy and make decisions that affect the course of development and the condition of our environment ...*”, this document speaks of the obligations of every individual citizen and not just of governments and other policy makers, as was traditionally the trend (IUCN/UNEP/WWF, 1991).

In fact, past policies have characteristically attempted to address the challenges of sustainable development mainly through legislation. Legislation may be an important component in ensuring sustainability in that it forces people who do not want to play ball to do so. However, this top-down approach can be counterproductive as it reinforces the (wrong) concept that sustainable development issues are primarily a government’s concern. Moreover, experience has shown that although such a strategy might yield short-term successes it is heavily dependent on enforcement to ensure compliance. It also inevitably leads to an endless legal chase to track down and close loopholes in the legislation. Legalisms seem to encourage corporations who profit from unsustainable practices to discover ways of circumventing the law and continue undeterred with their plans ... as long as they can get away with it.

Even before the concept of sustainable development was coined, environmental education has always been considered as a crucial instrument in achieving sustainable development. Although promoted as education *about, through* and *for* the environment, environmental education was expected to reorient the various educational sectors towards providing citizens with the awareness, knowledge, skills and values required to empower them to adopt new lifestyles and to actively participate in decision-making fora (UNESCO-UNEP, 1978). However, as will be pointed out further on, the deep-rooted educational traditions have reduced this approach to just the imparting of knowledge, with little if any reference to the much harder task of developing attitudes and values that are fundamental for sustainable lifestyles.

Sustainable lifestyles are characterised by “*simplicity, moderation and discipline, as well as a spirit of sacrifice*”. These basic values are the antidotes for the “*collective selfishness,*

disregard for others and dishonesty” that are the root of the ecological crisis that we are currently facing (John Paul II, 1989). This value system stems from a general respect and care for the community of life (IUCN/UNEP/WWF, 1991) and, besides being at the heart of most human rights, it is also mirrored in the values upheld by the world’s main religions.

“... if development were limited to the technical-economic aspect, obscuring the moral-religious dimension, it would not be an integral human development, but a one-sided distortion which would end up by unleashing man's destructive capacities.” (Benedict XVI, 2006).

Education for Sustainable Development

Since the publishing of Recommendation 96 of the UNESCO Conference on Human Environment held in Stockholm in 5-16 June 1972, the UN’s concern with promoting an educational process that supports the sustainable development process has consistently increased. Throughout its major conferences, the UN endeavoured to highlight the central role that education has in sustainable development. The culmination of these efforts was the launch of the Decade of Education for Sustainable Development (DESD) spanning from January 2005 - December 2014.

The UN’s heightened concern with Education for Sustainable Development (ESD) has identified Key Action Themes that are reflected in other initiatives, such as Education for All, the United Nations Literacy Decade and the Millennium Development Goals (UNESCO, n.d.). These themes include:

Gender Equality	Cultural Diversity
Health Promotion	Peace & Human Security
Environment	Sustainable Urbanization
Rural Development	Sustainable Consumption

Unfortunately while the UN strives to build on past experiences with the intention of learning from past mistakes and achievements, a significant number of educationists have embraced the ESD initiative as the ‘new fad’. A closer analysis of the principles of ESD (UNESCO, 2005) reveals that although there is a broader emphasis on sustainable development issues¹ - a direct result of the impact of the publication of the Brundtland Report (WCED, 1988) and the Rio Summit (UNCED, 1992) - there is a close similarity with the principles of environmental education outlined way back in 1977 (UNESCO-UNEP, 1978) (See Annexe 1).

This is indicative that the DESD is not proposing something intrinsically new. The decade is really a renewed effort to address the real problems that have plagued the earlier attempts at implementation. Filho and Pace (2006) outline these problems:

- the lack of materials;
- the lack of funds;

¹ This broadening of emphasis was also reported by Stokes *et al* (2001) in educational systems throughout the European Union.

- the lack of official recognition; and
- the lack of training.

Consequently, just focusing on making cosmetic changes to training programmes (e.g. changing the knowledge base) will not be enough to stimulate the radical changes in the very nature of the educational process that the DESD movement is really all about. The decision to adopt sustainable lifestyles requires a readiness and a commitment to address and resolve uncomfortable questions about our priorities, our decisions and our present way of life.

An education that helps citizens in this process is not always politically desirable as it brings to the fore instances where espoused values (that we know are appropriate) do not tally with the actual values that govern our day to day actions. These realizations can lead to very awkward and embarrassing situations for decision-makers throughout the various levels of power ... from the very top rung to the very bottom one. This might explain why progress in ESD (or environmental education) has been characterised by a series of jump-starts in which it has been either ignored, or taken for granted and or even not taken seriously.

Education for Sustainable Development in Malta

Although a scatter graph would probably be the best way to depict the series of ups and downs of ESD development in Malta, one can still tease out a gradual evolutionary process unfolding within the Maltese society that is also witnessed in other countries. Three major steps can be identified; each one preparing the groundwork for the successive step (Pace, 1997; Tanti, 2000):

- a) the Awareness Phase (1960s - 1970s) was characterised by sporadic activities aimed at raising public awareness, shaping public opinion and providing a sound knowledge base about environmental issues. This phase also witnessed the birth of the major local environmental NGOs.
- b) the Fragmentary Phase (1980s - early 1990s) saw the emergence of several actors, from governmental and non-governmental agencies, each assuming responsibility for ESD independently of the other. Consequently, although exposure to ESD principles was heightened during this phase, the initiatives lacked co-ordination and generated conflicts over territoriality with little significant progress.
- c) the Co-ordinated Phase (mid 1990s onwards) mainly developed from a nation-wide realisation that progress in ESD was dependent on co-operation between the various interest groups ... that also ensured the best use of available resources. However, Tanti (2000) points out, that although the instruments to attain this goal were available (e.g. the initiating of the National Environmental Education Strategy process), Malta was not yet ready to set up the required infrastructure to take up the challenge.

The *formal education sector* has, over the years, proved to be the most resistant to the changes proposed by ESD. Traditionally entrusted with the task of faithfully reproducing

the attitudes and values of society, formal educational institutions have found it hard to fully implement ESD targets because of an inherent incompatibility between the traditional structures of the educational system and these targets (see Annexe 2).

One would have expected that, just a few years after the Rio Earth Summit, ESD would have been one of the concerns addressed by the new National Minimum Curriculum (NMC) whose main target was that of preparing citizens for the challenges of the new millennium. However, the document makes no mention of ESD, except for the following sentence: “*One ought also to promote the view that the sustainability of life on earth is contingent on our everyday choices*” (Ministry of Education, 1999, p. 27). However, on a more pleasant note, the new NMC proposed several measures that, if implemented, would iron out incongruencies and facilitate the infusion of ESD in the educational system.

The new NMC advocates a learner-centred education by promoting thematic teaching/interdisciplinarity; ensuring relevance of knowledge to the learner’s experiences; encouraging active learner participation; helping the development of critical thinking and participatory skills; presenting an assessment policy promoting a learner oriented pedagogy; and catering for a life-long education. Backing up these principles, the NMC also promoted decentralisation by encouraging interaction with the community and NGO participation in curriculum development, assigning more autonomy to schools and promoting action research and a global perspective. Compared with the predominant culture of traditional schooling, the educational targets set by the new NMC are a breath of fresh air and a golden opportunity to utilise ESD principles and methodologies as vehicles to achieve them (Bezzina & Pace, 2004). Unfortunately, very little tangible progress has been made in this regard and school systems are still at an impasse ... proving once again that official recognition of ESD is still hard to come by.

On the other hand, 2002 saw the launch of the EkoSkola programme. Managed by one of the main local environmental NGOs, EkoSkola forms part of an international programme run by the Foundation for Environmental Education (FEE) that, to date, involves approximately 5 million students from more than 17,000 schools in 37 countries. EkoSkola has been acknowledged by UNEP as one of its “preferred school-based / children and youth global model programmes for environmental education, management, sustainability and certification at the international level” (Eco-Schools International, n.d.). The programme aims at mobilizing the whole school community by empowering students to adopt an active role in environmental decision-making and action in their school and in their community. Schools that have successfully achieved this goal are awarded a Green Flag - a prestigious international eco-label testifying the school’s commitment to fostering sustainable lifestyles. In its rather brief history the number of Maltese schools participating in the programme is growing rapidly and three of these schools have already been awarded the Green Flag.

The whole-school approach adopted and the active participation of the students in the development of their school are successfully initiating changes in the school that, besides improving the quality of life, are systematically weaving the sustainability ethic into the school ethos. The EkoSkola programme is evidence of a successful ‘new’ approach to change within the formal education sector. The ‘new’ approach proposes a redefinition of the role of top management from their traditional role of *initiators of change* to that of

catalysts of change, i.e. providing support and training to those ‘at the bottom’ in order to help them become equal partners in the change process. Thus change is generated from within the community - rather than imposed on it - and stands a better chance to endure (Pace, 1996).

Probably because of its many-faceted nature, *the non-formal education sector* has been relatively very active in ESD issues particularly, as one would expect, the NGOs. But ESD has increasingly become an important concern to a number of organisations. The number of companies and establishments who feel the need to educate their workforce in sustainable practices is increasing. Similarly, the government has also initiated steps towards implementing sustainable practices in its various ministries and departments by appointing a number of employees as Green Leaders and supporting them through a training programme. Although ESD was part of their electoral manifestos, local councils are still relatively inactive in the promotion of sustainability and their commitment towards the design and implementation of a Local Agenda 21 is still not forthcoming.

A recent development in this educational sector was the role that the Church is currently playing through its various commissions; in particular the Environment Commission and the Justice and Peace Commission. Because of its traditional role of developing values in Maltese society, the Church’s renewed commitment towards the promotion of a value system that supports sustainable development is proving to be a very effective means of getting people to review their value stances ... and hence their lifestyles.

A brief overview of the initiatives in this sector shows that ESD implementation has still to contend with traditional practices that are proving to be hurdles to its implementation:

- a) most of the people engaged in ESD in this sector are not familiar with educational research findings and do not have any formal training in pedagogy. Consequently, the methodologies adopted are not always suitable for the particular audience for whom they were intended and at times even the message conveyed is not appropriate. For example, although quite commonly adopted, research has shown the futility of adopting a “prophet of doom” approach in order to scare people into adopting environmentally responsible behaviour. As a result, the impact of ESD initiatives is limited. Certain local NGOs have recognised the need to invest in training for ESD and have registered a marked improvement in their educational strategies.
- b) the crucial role of ESD in developing an informed and responsible citizenry is not fully appreciated. In Malta, community-directed ESD programmes are usually triggered off when the community is faced with an imminent environmental crisis, such as a proposed development project (Psaila, 2004; Cilia, 2005). Although this strategy might give immediate results it tends to focus attention on curing the symptoms rather than addressing the causes of the issue.
- c) providing and disseminating information and public consultation have become basic citizen rights as they are considered essential steps in fostering participation. However, closer examination of documents intended for public consumption reveals that they tend to be too long and technical for the majority of the intended readers.

Moreover, public consultation meetings are usually held in environments that are not socially sensitive to the participants.

ESD provision within *the informal educational sector* is relatively weak, probably because the lack of trained personnel in ESD is mostly felt in this sector. Although issues concerning sustainable development are featured regularly in the media the approach adopted is mainly concerned with the provision of information. There seems to be the inherent belief that sustainability values are an automatic natural consequence of an increased level of awareness about sustainable development. Moreover, there seems to be a compelling attraction of the media towards sensational and/or apocalyptic events requiring extreme interventions for their resolution. Besides prompting a general feeling of helplessness and passivity, this approach tends to further alienate the general public from the ‘normal’ day-to-day decisions and realities of their lives. Nevertheless, the situation is not completely bleak. In these last few years, probably due to the increased popularity of sustainability themes, the instances in which the development of values promoting sustainable lifestyles is addressed are increasing ... even if most of these initiatives are coming from the formal and the non-formal sectors.

Conclusion

But the main question that still remains is: Do people want to be empowered? Although it has become a fashionable cliché, “empowerment” implies not just a baggage of rights but also the responsibilities that go with them. Education (particularly ESD) as an empowering process involves helping the learner to become sensitive to particular issues and equipping her/him with the required tools to know more about them and be in a better position to act according to a set of espoused values. While desirable for some, this heightened state of citizenship may not be comfortable for others.

A very long history of colonialism (spanning from circa 800 BC) has left its mark on the administrative and educational structures of the Maltese islands. The overall effect that several years of colonialism had on the local population was a steady alienation from their responsibilities towards their surroundings. For the locals, the notion of “my environment” was systematically narrowed down from “my surroundings” to “my home” because colonial rule effectively meant that what lies outside their doors was not theirs ... it was their master’s. The welfare of the “outside” environment was the current ruler’s responsibility.

Although colonial rule and the need to centralise operations ended with Malta’s Independence in 1964, for many years government structures continued to promote and enforce a centralised, highly hierarchical management style that traded efficiency for bureaucracy, autonomy for dependency and responsibility for a “pass the buck” attitude that have trickled down and affected all the different layers of authority. In other words, instead of opting to initiate change, the choice was made to maintain the status quo and maintain the time-trialed (and ‘safe’) modus operandi ... even though it didn’t fit with the new social challenges and responsibilities. Strangely enough, trying to curtail change seemed to suit everyone since everyone was accustomed to their respective role: people in authority get centre stage in decision-making while the general public live in the background attempting to scratch a living by either adhering to or trying to skive established policies.

Maltese society adapted to and embodied in its traditions a way of life that thrives on incongruencies: a double system of values in which what you believe in and what you actually do are not necessarily related. This state of mind isolates individuals within a “fend-for-yourself” philosophy that, while attempting to increase personal opportunities hinders social cohesion. ESD is a clear attempt at reversing this trend. The issue still lies in whether we are willing to take up the challenge of being actively involved in ensuring our quality of life by adopting sustainable lifestyles and face the responsibilities that this choice implies.

References

- Benedict XVI (2006) *The Human Person, the Heart of Peace*. Message for the celebration of the World Day of Peace. 1 January 2007. Rome: Libreria Editrice Vaticana.
- Bezzina, C. & Pace, P. (2004) *Promoting School Development through Environmental Education*. Trends: Monograph Series in Education, Faculty of Education, University of Malta.
- Cilia, R. (2005) *Empowering Citizens through Environmental Education: the Fgura Case Study*. Unpublished B.Ed. (Hons.) dissertation. Faculty of Education, University of Malta.
- Eco-Schools International (n.d.) *Eco-Schools a contribution to Local Agenda 21*. Online: <http://www.eco-schools.org/partners/partners.htm> Accessed January 2007.
- Filho, W.L. & Pace, P. (2006) *The UN Decade of Education for Sustainable Development: Meeting the Challenges or Another Missed Opportunity?* Paper presented at the Naxos International Environmental Conference. 29 September - 1 October 2006. Naxos, Greece.
- IUCN/UNEP/WWF (1991) *Caring for the Earth. Strategy for Sustainable Living*. Gland, Switzerland.
- John Paul II (1989) *Peace with God the Creator, Peace with all of Creation*. Message for the celebration of the World Day of Peace. 1 January 1990. Rome: Libreria Editrice Vaticana.
- Lisbon European Council (2000) *Presidency Conclusions, 23 - 24 March 2000*. Online: http://www.bologna-berlin2003.de/pdf/PRESIDENCY_CONCLUSIONS_Lissabon.pdf Accessed January 2007.
- Ministry of Education (1999) *Creating the Future Together*. Ministry of Education, Malta.
- Pace, P. (1996) Top-down planning in school-based environmental education. In Geesteranus, C.M. (ed.) *Planning Environmental Education: a Step or a Stride Forward?* Gland, Switzerland: European Committee for Environmental Education, IUCN.
- Pace, P. (1997) Environmental education in Malta: trends and challenges. *Environmental Education Research*. Vol.3, No.1, pp. 69-82.

Pace P. (2000) Attitudes towards environmental education in the Maltese formal education system. In Leal Filho W (ed) *Communicating Sustainability*. Environmental Education, Communication and Sustainability Series No. 8. Frankfurt am Main, Peter Lang.

Psaila, A. (2004) *The Cement Factory Issue: a Grassroots Movement in Malta*. Unpublished B.Ed. (Hons.) dissertation. Faculty of Education, University of Malta.

Stokes, E., Edge, A. and West, A. (2001) *Environmental Education in the Educational Systems of the European Union*, Brussels: Environment Directorate-General of the European Commission.

Tanti, V.M. (2000) *Environmental Education in Maltese Government Schools: A Historical Review*. Unpublished B.Ed. (Hons.) dissertation. Faculty of Education, University of Malta.

UNCED (United Nations Conference on Environment and Development) (1992). *The United Nations Conference on Environment and Development: A Guide to Agenda 21*. Switzerland: UN Publications Office, Geneva.

UNESCO (n.d.) *Education for Sustainable Development*. Online: http://portal.unesco.org/education/en/ev.phpURL_ID=19648&URL_DO=DO_TOPIC&URL_SECTION=201.html Accessed January 2007.

UNESCO (2005) *Report by the Director-General on the United Nations Decade of Education for Sustainable Development: International Implementation Scheme and UNESCO'S Contribution to the Implementation of the Decade*. Paris: UNESCO.

UNESCO-UNEP (1978) *Final Report of the Intergovernmental Conference on Environmental Education, (Tbilisi, USSR)*. UNESCO, Paris.

United Nations (2002) *Report of the World Summit on Sustainable Development. Johannesburg, South Africa, 26 August - 4 September 2002*. New York: United Nations.

WCED (World Commission on Environment and Development) (1987). *Our Common Future*. Oxford: Oxford University Press.

Annexe 1: Comparison of the characteristics of Education for Sustainable Development and Environmental Education	
Education for Sustainable Development (proposed by the DESD International Implementation Scheme - UNESCO, 2005)	Environmental Education (proposed by the Tbilisi Conference - UNESCO-UNEP, 1978)
<ul style="list-style-type: none"> ○ based on the principles and values that underlie sustainable development and deals with the well being of all three realms of sustainability: environment, society and economy 	<ul style="list-style-type: none"> ○ considers the environment in its totality: natural and built, technological and social (economic, political, technological, cultural - historical, moral aesthetic) ○ presents a holistic and balanced perspective
<ul style="list-style-type: none"> ○ promotes life-long learning ○ engages formal, non-formal and informal education 	<ul style="list-style-type: none"> ○ is a lifelong process - provided for all ages, at all levels and in formal, non-formal and informal education
<ul style="list-style-type: none"> ○ is interdisciplinary 	<ul style="list-style-type: none"> ○ is interdisciplinary
<ul style="list-style-type: none"> ○ addresses content, taking into account context, global issues and local priorities 	<ul style="list-style-type: none"> ○ examines environmental issues from a local, national, regional and international perspective
<ul style="list-style-type: none"> ○ is based on local needs, perceptions and conditions, but acknowledges that fulfilling local needs often has international effects and consequences 	<ul style="list-style-type: none"> ○ promotes local, national, regional and international cooperation in the prevention and solution of environmental problems
<ul style="list-style-type: none"> ○ is locally relevant and culturally appropriate 	<ul style="list-style-type: none"> ○ focuses on current and potential environmental situations, while taking into account the historical perspective
<ul style="list-style-type: none"> ○ accommodates the evolving nature of the concept of sustainability 	<ul style="list-style-type: none"> ○ considers environmental aspects in plans for development and growth ○ fosters positive patterns of conduct towards the environment and the nations' use of their resources ○ is responsive to changes in a rapidly changing world ○ enables learner to discover the symptoms and real causes of environmental problems
<ul style="list-style-type: none"> ○ builds civil capacity for community-based decision-making, social tolerance, environmental stewardship, adaptable workforce and quality of life 	<ul style="list-style-type: none"> ○ looks outward to the community ○ encourages initiative, a sense of responsibility and commitment to build a better tomorrow

	provides learners with the opportunity for making decisions and accepting their consequences
○ uses a variety of pedagogical techniques that promote participatory learning and higher-order thinking skills.	<ul style="list-style-type: none"> ○ utilises diverse learning environments and a broad array of educational approaches to teaching/learning with due emphasis on experiential learning ○ enables learners to have a role in planning their learning experiences ○ involves the individual in critical thinking and an active problem-solving process within the context of specific realities

Annexe 2: The Maltese educational system compared with environmental education requirements (Pace, 2000)

Parameter	Features of the Maltese Educational System	Requirements of Environmental Education
Curriculum structure	<ul style="list-style-type: none"> • Fragmentary 	<ul style="list-style-type: none"> • Holistic
Flow of decisions	<ul style="list-style-type: none"> • Top-down 	<ul style="list-style-type: none"> • Top-down AND bottom-up
Consultation	<ul style="list-style-type: none"> • Rare 	<ul style="list-style-type: none"> • Common practice
Change strategy	<ul style="list-style-type: none"> • Power-coercive (change coming from outside) 	<ul style="list-style-type: none"> • Normative-re-educative (change coming from within)
Teaching emphasis	<ul style="list-style-type: none"> • To transmit knowledge 	<ul style="list-style-type: none"> • To organise learning and assist learners in their learning process
Teacher's role	<ul style="list-style-type: none"> • Fount of all knowledge 	<ul style="list-style-type: none"> • Partner (with the students) in the learning process
Methodology	<ul style="list-style-type: none"> • Teacher-centred 	<ul style="list-style-type: none"> • Learner-centred
Learners considered as	<ul style="list-style-type: none"> • Passive recipients of other people's knowledge, values and thinking 	<ul style="list-style-type: none"> • Active thinkers and generators of knowledge
Teaching/learning experiences	<ul style="list-style-type: none"> • Based on abstract theoretical problems followed by application • Classroom based • Promoting competition between learners 	<ul style="list-style-type: none"> • Based on concrete experiences of real problems and action-oriented • Out of class and community based • Fostering co-operation between learners
Learning skills encouraged	<ul style="list-style-type: none"> • Recall and reproduction 	<ul style="list-style-type: none"> • Developing critical thinking
Organisation of knowledge	<ul style="list-style-type: none"> • Monodisciplinary 	<ul style="list-style-type: none"> • Interdisciplinary

	<ul style="list-style-type: none"> • Predetermined structure aimed at facilitating assessment 	<ul style="list-style-type: none"> • Problematic (procedure determined by the problem being investigated)
Function of knowledge	<ul style="list-style-type: none"> • For future use • Individualistic (improve personal status and ensure economic well being) 	<ul style="list-style-type: none"> • For immediate use • Societal (promote an equitable and sustainable quality of life)

THE SOCIAL RESPONSIBILITY OF EUROPEAN UNION INSTITUTIONS: THE CASE OF TELEVISION REGULATION

KEVIN AQUILINA

1.0 Introduction

Corporate social responsibility (hereinafter referred to as ‘CSR’) is usually discussed within the context of enterprises but not with regard to European Union institutions (hereinafter referred to as ‘the Institutions’). This paper argues that CSR should also be extended to apply to EU institutions whereby social responsibility should be a determining factor in their decision making process. In particular, the Institutions should prioritise respect for human dignity and work for the attainment of the common good of society. They should comply with both their social obligations and social responsiveness bearing in mind the social market economy that they are called upon to foster. This paper discusses why social responsibility of the Institutions has become of the essence in the broadcasting field. It examines how these Institutions have tended to tilt more in favour of business to the detriment of consumers, that is, television viewers. This business-friendly approach of the Institutions will be traced to the origins, interpretation and development of the Television Without Frontiers Directive (hereinafter referred to as the ‘TWF Directive’). The paper concludes by suggesting how social responsibility in the television broadcasting sector can be achieved and by making recommendations for adoption by the Institutions which give effect to respect for human dignity and the attainment of the common good of society in the sphere of broadcasting.

2.0 Defining Corporate Social Responsibility

The concept of corporate social responsibility is usually applied to businesses rather than to the Institutions. This does not however imply that the Institutions are exempt from social responsibility for their actions and omissions.

Indeed, the EU Commission (hereinafter referred to as ‘the Commission’) has defined CSR as ‘a concept whereby companies integrate social and environmental concerns in their

business operations and in their interaction with their stakeholders on a voluntary basis'.¹ Furthermore, it stated that CSR is about enterprises deciding to go beyond minimum legal requirements and obligations stemming from collective agreements in order to address societal needs. Through CSR, enterprises of all sizes, in cooperation with their stakeholders, can help reconcile economic, social and environmental ambitions.²

Laurie J. Mullins opines that on 'one side of the debate are those who would share *Milton Friedman's* view that the social responsibility of business is to make as much money as possible for the shareholders, within the rules of the game (fair competition, no deception or fraud, and so on).'³ On the other hand, it has been argued that corporate social responsibility implies that a business's obligation is 'to pursue long-term goals which are good for society' but which go beyond 'that required by the law and economics'⁴. In other words, the good of society is to precede the good of the firm. This, to my mind, is nothing but an enunciation of the precept of the common good of society. This is basically what the Institutions should aim to do in so far as CSR is concerned with the sole - though instrumental - exception that CSR in the documents of the Institutions is mainly - though not exclusively - addressed to European companies rather than to the workings of the Institutions themselves.

3.0 Human Dignity and the Common Good of Society

The common good of society can equally apply to the Institutions when fulfilling their social responsibilities in so far as the Institutions' goal should be primarily the attainment of the common good of society, respect for human dignity being one of its constitutive ingredients.⁵ Indeed, it has been stated that 'the common good presupposes *respect for the person* as such.'⁶ Respect for human dignity is indissolubly linked to the common good of society: the latter cannot subsist in the absence of the former. But the common good of society also encapsulates - at least - in the Catholic tradition the *social well-being* and *development* of the group itself coupled with peace, that is, the stability and security of a just order.⁷ As Rodger Charles, S.J. and Drostan Maclaren, O.P., put it,

'Since the state, properly considered, has care of the common good, it can be argued that it has to be perpetually on the watch to make sure that private individuals, families and groups within the state are sincerely serving the commonwealth. By the same token, private

¹ COM(2001)366. Vide also *Communication from the Commission concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development*, Brussels, COM(2002) 347 final, 2 July, 2002, paragraph 3, p. 5.

² *Communication From The Commission To The European Parliament, The Council And The European Economic And Social Committee Implementing The Partnership For Growth And Jobs: Making Europe A Pole Of Excellence On Corporate Social Responsibility*, Brussels, COM (2006) 136 final, 22 March, 2006, p. 2.

³ Laurie J. Mullins, *Management and Organizational Behaviour*. Essex: Pearson Education Limited, sixth edition, 2002, p. 148.

⁴ Stephen P. Robbins and David A. Decenzo, *Fundamentals of Management: Essential Concepts And Applications*. New Jersey, Pearson Education, Inc., 2004, p. 54.

⁵ By 'human dignity' I mean that respect owed to a human being by virtue of being human.

⁶ *Catechism of the Catholic Church*. London: Geoffrey Chapman, pocket edition, April 1995, p. 418.

⁷ 'The common good embraces the sum total of all those conditions of social life which enable individuals, families, and organizations to achieve complete and efficacious fulfilment.' Pastoral Constitution of the Church in the Modern World', Vatican Council II, *Gaudium et Spes*, 7 December, 1965 at para 74 (but also vide para 26) in Austin Flannery, O.P. (ed.), *Vatican Council II The Conciliar and Post Conciliar Documents*. Collegeville: Liturgical Press, 1975.

citizens, families and groups have a duty to watch out for the needless encroachments of the state.’⁸

The European Union will have similar aims if and when its Constitution is approved by its Member States with regard to social well-being and development as stipulated in Article I-3, paragraph 3, of the Treaty establishing a Constitution. Moreover, Article I-3, paragraph 3 is quite categorical when it states that ‘The Union’s aim is to promote peace, its values and the well-being of its peoples.’ In addition, Article I-4, paragraph 4 of the EU Constitution provides that in its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as the strict observance and development of international law, including respect for the principles of the United Nations Charter.

It is thus the role of Member States and of the Institutions taken together as a whole ‘to defend and promote the common good of civil society, its citizens and intermediate bodies’.⁹ To achieve such aim, the Institutions need to discriminate between right and wrong and quintessentially this categorises the Commission as a moral agent. Whilst one understands the complex debate that this approach might pose in contemporary European society, the common goal of society can be achieved by the Institutions through placing at the centre of their philosophy the values of respect for human dignity. The former is contemplated in Article I-2 of the EU Constitution.¹⁰ The common good of society, as noted, can be inferred from the provisions of the EU Constitution quoted above.

4.0 Social Obligation, Social Responsiveness and Social Market Economy

It is not enough for a corporation to comply with its social obligations¹¹ unless it takes on board its social responsiveness.¹² The more so should this be the case for the Institutions,

⁸ Rodger Charles, S.J., and Drostan Maclaren, O.P., *The Social Teaching of Vatican II: Its Origin and Development. Catholic Social Ethics: an historical and comparative study*. San Francisco, Ignatius Press, 1982, p. 211.

⁹ *Ibid.*

¹⁰ Article I-2 of the EU Constitution reads as follows: ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’ Although the EU Constitution does not yet form part of treaty law, Malta has ratified the constitutional instrument and is thus bound by the provisions of Article 18 of the Vienna Convention on the Law of Treaties which provides that ‘A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.’ For cases where respect for human dignity is a requirement under Maltese Law *vide* Maurice N. Cauchi, Kevin Aquilina and Bridget Ellul, *Health, Bioethics and the Law*. Msida: Malta University Press, 2006, pp. 1-4.

¹¹ ‘Social obligation is the foundation of a business’s social involvement. A business has fulfilled its social obligations when it meets its economic and legal responsibilities and no more. It does the minimum that the law requires. A firm pursues social goals only to the extent that they contribute to its economic goals.’ Stephen P. Robbins and David A. Decenzo, *Op.cit.*, p. 54.

¹² ‘Social responsiveness refers to the capacity of a firm to adapt to changing societal conditions. Social responsibility requires business to determine what is right or wrong and thus seek fundamental ethical truths. Social responsiveness is guided by social norms that can provide managers with a meaningful guide for decision-making.’ Stephen P. Robbins and David A. Decenzo, *Op.cit.*, p. 54.

whose objectives are not the maximization of profit but ought to be those of respect for human dignity and the attainment of the common good of society. For an enterprise to maximise profits, it can conveniently put aside ethical principles in favour of economic ones. If morally speaking the killing of an unborn child is ethically wrong, this notwithstanding an undertaking might still opt to provide abortion services once it considers such behaviour to contribute to the firm's profitability and that it is therefore in the interest of shareholders to pursue such course of action. But in the case of the Institutions - who should never be or act as amoral agents - their principles should categorically exclude courses of action which run counter to respect for human dignity and the attainment of the common good of society not to mention, in this instant case, the protection of the rights of the child afforded in the EU Constitution itself.¹³

Furthermore, the concept of social responsibility is inherent in the concept of 'social market economy' found in Article I-3, paragraph 3, of the EU Constitution. Note that the Constitutional provision does not refer only to a 'market economy' but links that concept to that of a socially responsible market economy. A 'market economy' has been defined by Roger N. Waud *et al* as an 'economy in which the interaction of demand and supply on prices - the market mechanism - provides the information upon which firms and households make resource allocation decisions.'¹⁴ A 'social market economy' adds to this the social responsibility dimension as above stated. John Gillingham,¹⁵ quoting Wolfgang Streeck, opines that German markets are, as Streeck emphasizes, 'politically instituted and socially regulated, and regarded as creations of public policy deployed to serve public purposes.'¹⁶ Wolfgang Münchau of the *Financial Times* puts the matter somewhat less abstractly, noting that the term *Soziale Marktwirtschaft* as currently used 'does not simply denote a market economy flanked by a social system, but a social system which penetrates every aspect of the economy itself.'¹⁷ German firms, Streeck adds, are 'social institutions, not just networks of private contracts or the property of their shareholders. Their internal order is a matter of public interest and ... subject to extensive social regulation by law and industrial agreement.'¹⁸ Such practices, Münchau elaborates 'run deep in the veins of Germany's political and economic establishment.'¹⁹ The state itself, Streeck proceeds, 'is neither *laissez faire* nor *étatiste*, but best thought of as an *enabling state*, whose power to intervene is constitutionally hedged in by the powers of semi-public authorities.'²⁰

Hence, in their decisions the Institutions ought to ensure that there is no 'unjust accumulation of wealth in the hands of the few and domination by the strong'²¹ because

¹³ Article I-3, paragraph 3 and paragraph 4 of the European Union Constitution.

¹⁴ Roger N. Waud, Anthony Hocking, Philip Maxwell and Josef Bonnici, *Economics*. Artarmon, Australia: Harper Educational Publishers, 1992, p. 1005. For a discussion of the general outline of the system, vide Sir Alec Cairncross, *An Introduction to Economics*, 5th edition, London, 1978 and Sir John R. Hicks, *The Social Framework*, Oxford, Oxford University Press, 1965 as quoted in Charles and Maclaren, *op. cit.*, p. 211.

¹⁵ John Gillingham, *European Integration, 1950-2003 Superstate or New Market Economy?* Cambridge: Cambridge University Press, 2003, p. 391.

¹⁶ Wolfgang Streeck, 'German Capitalism: Does It Exist? Can It Survive?,' MPIFG Discussion Paper 95/5 (November 1995), 9.

¹⁷ Wolfgang Münchau, 'Germany Falling', *Spectator*, 20 October 2001.

¹⁸ Streeck, *op. cit.*

¹⁹ Münchau, *op. cit.*

²⁰ Streeck, *op. cit.*

²¹ Bernard Häring, *Free and Faithful in Christ: Moral Theology for Priests and Laity*, Volume 3 - *Light to the World Salt to the Earth*. Slough: St. Paul Publications, 1981, p. 288.

‘individual initiative alone and the interplay of competition will not ensure satisfactory development. We cannot proceed to increase the wealth and power of the rich while we entrench the needy in their poverty and add to the woes of the oppressed. Organized programs are necessary for “directing, stimulating, coordinating, supplying and integrating”²² the work of individuals and intermediary organizations.’²³

5.0 Social Responsibility and Mandatory Legal Requirements for the Institutions

Richard L. Daft has pointed out that corporate social responsibility implies ‘distinguishing right from wrong and doing right. It means being a good corporate citizen. The formal definition of social responsibility is management’s obligation to make choices and take actions that will contribute to the welfare and interests of society as well as the organization.’²⁴ Although corporate social responsibility is usually discussed within the context of enterprises but not with regard to the role which the Institutions play, the time may be ripe to extend the principles of corporate social responsibility, at least in the consumer law field - of which the TWF Directive is part - to the decision making process adopted by the Institutions in complying with the social responsibility expected of them by EU citizens. Naturally, these principles of social responsibility will have to be further defined in greater depth.

Moreover, in this respect, it is necessary to move on from voluntary codes, usually applicable to enterprises, to mandatory legal requirements which would oblige the Institutions to carry out a Social Responsibility Impact Assessment of all proposals and measures to be adopted by them in the same way that in the environmental law field environmental impact assessments are carried out prior to the approval of a development project,²⁵ and a strategic environmental assessment is carried out before certain plans and programmes which are likely to have significant effects on the environment are approved²⁶ or in the health sector where a health impact assessment normally precedes the adoption of a policy.²⁷ Likewise a regulatory impact assessment is carried out to ensure for instance that new regulatory policies do not stifle economic development by imposing over-bureaucratic demands on business, especially, as is the case of Malta, on small and medium enterprises.²⁸

²² Pope John XXIII, Papal Encyclical *Mater et Magistra*, paragraph 53, in *Seven Great Encyclicals*. New York: Paulist Press, 1963, p. 230.

²³ Pope Paul VI, *Populorum Progressio*, paragraph 33, at http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_26031967_populorum_en.html.

²⁴ Richard L. Daft, *Management*. Australia: Thomson South-Western, Sixth Edition, 2003, p. 146.

²⁵ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, Official Journal L 175, 05/07/1985 P. 0040 - 004.

²⁶ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, Official Journal L 197, 21/07/2001 P. 0030 - 0037.

²⁷ John Kemm, *Health Impact Assessment in All Policies*, in Timo Ståhl, Matthias Wismar, Eeva Ollila, Eero Lahtinen and Kimmo Leppo, *Health in All Policies: Prospects and Potentials*. Finland: Ministry of Social Affairs and Health, 2006, Chapter 10, pp. 190-207 and Julia Blau et al, *The use of Health Impact Assessment across Europe*, in *Ibid.*, Chapter 11, pp. 209-230.

²⁸ The European Commission’s Impact Assessment Guidelines, 15 June 2005, are available at: http://ec.europa.eu/enterprise/regulation/better_regulation/impact_assessment/docs/sec_2005_791_guidelines_annexes.pdf.

Whilst the European Commission is bound by *The European Code of Good Administrative Behaviour*,²⁹ a similar legally enforceable set of Principles of Social Responsibility Standards ought to be developed to regulate the Institutions. This proposed European Code of Social Responsibility Standards will bring the Institutions more in touch with EU citizens and assist in offsetting the scepticism and harsh criticism levelled by EU citizens against the Institutions. This will hopefully spearhead a positive effect on EU citizens who will see the Institutions in a better light and thus a collaborative and more fruitful relationship between the two will be fostered.

6.0 Social Responsibility and the Development of the TWF Directive

The remainder of this paper will discuss why social responsibility has not been considered to be of the essence in the broadcasting field. To this end, I will examine how the Institutions have tended to tilt in favour of business to the detriment of consumers - in this case, television viewers.³⁰ The EU Constitution makes it clear in Article I-19 that the Union's Institutions have to promote its values, advance its objectives, serve its interests and those of its citizens. This phenomenon will be traced to the origins of the TWF Directive,³¹ its 1997 amendments,³² the interpretation adopted by the Commission and the European Court of Justice and the amendments currently under discussion.

6.1 The 1989 TWF Directive

Council Directive 89/552/EEC³³ was the initial EU law regulating television broadcasting services. This Directive was amended in 1997 and is currently being reviewed.

As to the original directive, Ralph Negrine and Stylianos Papathanassopoulos have argued that the Directive constituted 'a victory for commercial forces and those who favoured anti-protectionist policies.'³⁴ Moreover, Richard Collins argues that although 'the Directive contains more provisions which support 'interventionist' objectives than liberal objectives, none of the interventionist provisions are of such fundamental importance as Article 2³⁵ which has the effect of abolishing the Member States' sovereignty over their national television systems.'³⁶ The same author considers the interventionist provisions of the Directive as being generally weak.³⁷ Such are the provisions on European content and independent production quotas.³⁸ Indeed, the interests of liberals and economists got the

²⁹ The European Ombudsman, *The European Code of Good Administrative Behaviour*, adopted on 6 September 2001 by the European Parliament. Luxembourg: Office For Official Publications of the European Communities, available at http://www.ombudsman.europa.eu/code/pdf/en/code2002_en.pdf.

³⁰ Once again, the European Constitution refers to consumer rights in Article II-98 where it is provided that 'Union policies shall ensure a high level of consumer protection.'

³¹ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, OJ L 298 of 17.10.1989.

³² Directive 97/36/EC, OJ L 202 of 30.07.1997.

³³ OJ L 298 of 17 October 1989, pp. 23-30.

³⁴ Ralph Negrine and Stylianos Papathanassopoulos, *The Internationalisation of Television*. London, Pinter, 1990, p. 76.

³⁵ This is the jurisdiction provision of the TWF Directive.

³⁶ Richard Collins, *Broadcasting And Audio-Visual Policy In The European Single Market*. London: John Libbey & Company Ltd., 1994, p. 69.

³⁷ *Ibid.*

³⁸ Articles 4, 5 and 6 of the TWF Directive.

upper hand in contrast to those of the interventionists and culturalists! The Directive does not apply to radio which remains unregulated at EU level; the proposed provisions which acknowledged the legitimate interest of copyright with regard to authors, composers and other artists were done away with to the benefit of cable operators; the text of the Directive contains only a few binding rules; a compromise was achieved on advertising limits which do not exceed 15% (instead of the original proposal of 20%) of the daily transmission time; and the European works and independent production quotas provisions lost their efficacy through the insertion of the flexible wording³⁹ of ‘Member States shall ensure where practicable and by appropriate means’ in Articles 4 (European works) and 5 (independent productions) of the TWF Directive.⁴⁰

6.2 The 1997 Amendments to the TWF Directive

Directive 97/36/EC⁴¹ amended the original TWF Directive. Noteworthy about this amending Directive is the provision of teleshopping. Whilst Article 18, paragraph 3, stated that ‘forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of services shall not exceed one hour per day’, the new provisions in the amending TWF Directive go well beyond the teleshopping provisions of the 1989 TWF Directive. In the 1997 version, a new article 18a was introduced, exclusively devoted to the regulation of teleshopping, whereby this genre of advertising was separated from advertisements and has achieved an independent status of its own with specific rules directly applicable thereto. Article 18a of the TWF Directive reads as follows:-

1. Windows devoted to teleshopping broadcast by a channel not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes.
2. The maximum number of windows per day shall be eight. Their overall duration shall not exceed three hours per day. They must be clearly identified as teleshopping windows by optical and acoustic means.⁴²

There is no doubt that the amount of advertising and, since 1997, teleshopping on generalist stations is on the rise. Apart from having up to 12 minutes of advertising per hour, there is also the possibility of a further three hours per day of teleshopping. Out of a maximum of 1440 minutes of broadcasting per day, 288 minutes can be allocated to advertising with a further 180 minutes for teleshopping, thus totalling 468 minutes per day or nearly 7 hours 48 minutes per day or 32.5% of the daily transmission time, that is, nearly one-third of a whole day’s programming.

³⁹ Emmanuelle Machet has referred to this wording as ‘flexible wording’. Emmanuelle Machet, *A Decade of EU Broadcasting Regulation: The Directive “Television Without Frontiers”*. Düsseldorf: The European Institute for the Media, 1999, p. 25.

⁴⁰ It was and still is up to Member States to decide what is ‘practicable’ and what is ‘appropriate’.

⁴¹ Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997, amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 202 of 30 July 1997, pp. 60-71.

⁴² This provision is supplemented by the new definition added to the TWF Directive in Article 1 which reads as follows: ‘“teleshopping” means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.’

But this was not the only measure to the overall detriment of the typical consumer's (viewer's) rights. The controversial wording in Articles 4 and 5 on European works and independent productions was retained;⁴³ the attempt to regulate audio-visual programme content on the new media services failed; no regulatory framework for sound broadcasting was adopted; and, generally, the amendments continued to opt for liberalisation rather than harmonisation at the EU level.

6.3 The Commission's Interpretative Communication: in dubio pro libertate

The *Commission Interpretative Communication on Certain Aspects of the Provisions on Televised Advertising In The "Television Without Frontiers" Directive*⁴⁴ attempts to 'clarify how the relevant provisions of the Directive apply to certain forms and techniques of commercial communication which have emerged in parallel with technological and market developments. In doing so, the Commission is seeking to increase legal certainty for economic operators, Member States and consumers. In view of the fact that some provisions are open to interpretation and given the absence of relevant case law, the approach rests on the *in dubio pro libertate* principle.'⁴⁵ Hence, the Commission has taken an important stand in its Communication wherein it sets out its canon of interpretation on the basis of liberalisation. This is in direct contrast to the proposal in this paper that the Institutions should instead adopt and implement the principles of respect for human dignity and the attainment of the common good of society in the television broadcasting field by giving effect to consumer protection measures. The Commission has thus departed from the notion of the common good of society which 'consists primarily of having the ... institutions ... on which we all depend work in a manner that benefits all people.'⁴⁶ But, as Richard L. Daft states, 'Different people have different beliefs as to which actions improve society's welfare.'⁴⁷

On the basis of this canon of construction, the Commission adopted a favourable approach to the audio-visual industry's demands by ruling that in so far as the new advertising techniques such as split screen, interactive advertising and virtual sponsorship⁴⁸ are concerned, in sum, notwithstanding the fact that such techniques were not explicitly regulated by the TWF Directive, they were still considered by the Commission to be acceptable within the framework of the TWF Directive provided that the other provisions of

⁴³ 'Member States shall ensure where practicable and by appropriate means'.

⁴⁴ Adopted on 23 April 2004, C (2004) 1450.

⁴⁵ *Ibid.*, p. 4.

⁴⁶ Vide Manuel Velasquez et al, *The Common Good*, Markkula Center for Applied Ethics, Santa Clara University, available at <http://www.scu.edu/ethics/practicing/decision/commongood.html>.

⁴⁷ Richard L. Daft, *op. cit.*, p. 146.

⁴⁸ Alexander Scheuer argues that: 'In the Interpretative Communication... the topic is dealt with under the heading "virtual sponsorship". The texts of related recitals [66 to 69 and 55 and 56] speak of "virtual advertising" and conclude that such advertising may be legitimate provided it can be considered "sponsorship" according to the meaning of the Directive. Then after the enumeration of several conditions, the recitals state that Arts 1 and 17 TVwF Directive have to be respected. It is, at the least, confusing that advertising all of a sudden becomes sponsorship. Would it be an over-interpretation if one thinks that the purpose of this "linguistic exercise" is to avoid the application of the rules on advertising (insertion and duration) on new forms of advertising? On the other hand, is there any disadvantage connected with the exclusion of virtual advertising from those rules?' Alexander Scheuer, *Implementation and Monitoring Upholding General Interest in View of Commercial Communications* in IRIS Special Audiovisual Media Services without Frontiers Implementing the Rules. Strasbourg: European Audiovisual Observatory, 2006, pp. 13-32 at p. 29.

the Directive were respected as well.⁴⁹ Hence, rather than ruling out the applicability of the TWF Directive to the new advertising techniques and proposing a new legal regime for their specific detailed regulation, the Commission adopted the *in dubio pro libertate* principle of legislative construction to accommodate these new techniques and the exigencies of the audio-visual industry without adding new consumer protection rules in the process. This once again reflects the values and priorities adopted by the Institutions within the realm of the TWF Directive, thereby stressing the lack of consumer protection emphasis of the Institutions when dealing with the audio-visual *acquis communautaire*.

6.4 Case Law of the European Court of Justice

In the RTI Judgment, the European Court of Justice⁵⁰ had occasion to interpret Article 17(1)(b) of the TWF Directive which reads as follows:-

1. Sponsored television programmes shall meet the following requirements:
 - (a) ...
 - (b) they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes.

Regarding the wording ‘clearly identified at the beginning and/or end of the programme’ the European Court of Justice held that the identification at the beginning and/or the end is just a minimum prerequisite, allowing more frequent sponsorship identification. Prior to this judgment, broadcasting regulators had interpreted these words differently in the sense that they were exhaustive, but the interpretation adopted by the European Court of Justice once again favoured the broadcasting industry rather than the common good of society, which in this case means less ‘typical consumer’ protection.

6.5 The Current Debate: The Audiovisual Media Services without Frontiers Directive

The Commission has launched a draft proposal for an Audiovisual Media Services Directive.⁵¹ This proposal - which is still under discussion at the time of writing⁵² - attempts to liberalise the regulatory regime for advertisements and teleshopping to such an extent that a number of consumer protection rules in the 1989/1997 TWF Directive are done away

⁴⁹ Interpretative Communication, *op. cit.*, pp. 11-16.

⁵⁰ Judgment of the Court of Justice in Joined Cases C-320/94, C-328/94, C-329/94, C-337/94, C-338/94 and C-339/94, *Reti Televisive Italiane SpA (RTI) and Others v Ministero delle Poste e Telecomunicazioni*.

⁵¹ Proposal for a Directive of the European Parliament and of the Council Amending Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, Brussels, 13 December, 2005. COM (2005) 646 final. 2005/0260 (COD). Available at: http://europa.eu.int/comm/av_policy/docs/reg/modernisation/proposal_2005/com2005-646-final-en-pdf.

For the rationale behind this proposed Directive, vide, Memo/06/208, *The Commission Proposal for a Modernisation of the Television without Frontiers Directive: Frequently Asked Questions*, Brussels, 18 May 2006.

⁵² 7th December 2006.

with.⁵³ Not only so, but there are no corollary restrictions introduced on advertisements and teleshopping to mitigate the adverse effects on consumer protection which the proposal will spearhead. This proposed weakening in consumer protection rules comprises the following. Flexible rules for the insertion of advertising; rules for product placement;⁵⁴ the abolition of the daily limit on television advertising; and changes of quantitative restrictions with regard to teleshopping. Concretely, it is being proposed to delete the requirement to only one break for advertisements during sports events when there is an interval in the game or event. Even the 20% daily transmission time limit for advertising is done away with and so is the 20 minutes time rule between each advertising break. Product placement which under the 1989/1997 TWF Directive was prohibited as part of surreptitious advertising will now be allowed - once viewers are clearly informed in advance - except in the case of a very limited category of television programmes, that is, news and current affairs, audiovisual media services for children and documentaries.⁵⁵ As to teleshopping, the provisions of Article 18a of the TWF Directive - which lays down a maximum number of teleshopping windows to eight daily and an overall duration of three hours daily - are being removed.

Basically these proposals further tilt the balance in favour of the audiovisual industry to the detriment of viewers. In fact, the European Consumers Organization has argued that the 'argument that the Commission puts forward for the liberalisation of advertising rules, i.e. that detailed regulation aimed at protecting viewers is no longer justified due to the greater choice of services offered to the viewer is not valid because practical experience shows that

⁵³ Viviane Reding, Member of the European Commission responsible for Information Society and Media had no qualms in stating the following: 'In these weeks and months, we negotiate my recent proposal to modernise the legal framework for audiovisual policy in Europe. This proposal includes a clear liberalization of the rules applicable to audiovisual commercial communications... Concerning the quantitative rules, the European Commission proposes to *abolish* the daily limit and to *simplify* the insertion rules. Instead of being compelled - as is now the case - to allow twenty minutes between each advertising break, broadcasters would be able to choose themselves the most appropriate moment to insert advertising during programmes. This deregulation is in line with the position expressed by W[orld] F[ederation of] A[dvertisers] during the review process...The *use of new advertising techniques* such as split screen, interactive advertising and virtual advertising is encouraged by the new proposal. The new proposal for a directive on audiovisual media services also contains a legal framework for *product placement*, in order to offer legal certainty to operators and sufficient safeguards to consumers.' Viviane Reding's address *Europe's free-to-air content and advertising: not one without the other*, to the World Federation of Advertisers (WFA) Conference, Paris, 15 May 2006.

⁵⁴ The Association of German Magazine Publishers has argued in a leaflet produced by it that: '1. The requirement to separate advertising from the programme service is one of the few fundamental requirements for mass media in democratic market economies. .. Furthermore, any attempt to remove the separation requirement by legalising the purchase of parts of editorial content for advertising purposes would also jeopardise the possibilities for independent information and entertainment in all media. This holds particularly true for the acceptance of product placement as the paid insertion of products, brand names, services, etc. into editorial programmes for advertising purposes. Since public opinion is formed to a substantial extent via the mass media, this issue concerns a quality standard which is as important for democracy as it is as a locational advantage that deserves to be defended for a modern Europe. Like with all important standards, violations are inevitable. Needless to say, however, such violations do not justify the abolition of the standard but call for sanctions instead.'

⁵⁵ Dr. Gernot Schumann considers the product placement prohibition rule in the TWF Directive as 'one of the cornerstones of European advertising regulation. It strikes a balance between the interests of the industry on the one hand and the interests of the viewers and the public, on the other hand, in the correct functioning of TV as a public opinion former in democratic societies. Critics of the legalisation of product placement believe that the strict application of the separation principle is crucial and, therefore, that this principle should remain untouched. They argue that, at the end of the day, viewers would no longer have trust in editorial TV content, that they would no longer have confidence in the reliability and the credibility of TV and other audiovisual content services. They fear that, as a result, the correct functioning of TV as a public opinion former would be damaged. In this context, they especially warn against enhanced forms of classical product placement, for example "plot placement", "branded entertainment" and other forms of so called "tie-ins".' Introductory Remarks by Dr. Gernot Schumann made during the 22nd Meeting of the European Platform of Regulatory Authorities, Budapest, 20 October, 2005.

the increase of channels and interactive services does not necessarily create either better quality or better user standards and yet comes with an increase of advertising in the same proportion.’⁵⁶ Further, the European Consumers’ Organization has criticised the lack of a proposal prohibiting the advertising of junk food during children’s watching time and argues that the extension of the country of origin jurisdictional rule when extended to non-linear services implies that consumers will be exposed to abuses and unfair practices from providers established in another Member State.⁵⁷ In addition, the European Consumers’ Organization makes the point that ‘the amount of advertising may still increase considerably due to the new advertising techniques such as split screens, ... sponsorship and product placement that are not included in the hourly time limit. It will also disrupt the advertising balance between TV and print media, the latter seeing their income decrease with all the negative consequences this may entail.’⁵⁸

Moreover, in so far as television is concerned, compliance with the principles of social responsibility standards should not only be devolved upon the Institutions and Member States by requesting them to produce regulations and ensure their compliance, but regulation should also be supplemented by co-regulatory and self-regulatory regimes.⁵⁹ Currently the Television Without Frontiers Directive is silent on the latter two points as its main thrust is on regulation although these regimes are at the moment being proposed for inclusion in the debate on the amendments which are being discussed to the TWF Directive.

7.0 A Euro-Mediterranean Perspective?

The question arises whether it is possible to extend certain recommendations made in this paper to North African and Middle Eastern States with a view to their implementation by these non-EU Member States. Although it is difficult to expect North African and Middle Eastern States to implement the TVwF Directive lock stock and barrel in the short-run, it is important for dialogue to emerge on the principles of respect for human dignity and the attainment of the common good of society in the regulation of television. It is being proposed that within the Euro-Mediterranean Partnership,⁶⁰ the European Union can - due to the transboundary nature of television broadcasts - discuss the possibility with such States of the latter adopting, where possible, similar rules to those of the TVwF Directive, at least in so far as the principles of the TWF Directive go in protecting the consumer as well as the new principles being developed in the Audiovisual Media Services Directive, such as the

⁵⁶ Letter dated 10 May 2006 by Mr. Jim Murray, Director, *Bureau Européen des Unions de Consommateurs* - The European Consumers’ Organization addressed to the Permanent Representations to the European Union at Brussels. See also *Bureau Européen des Unions de Consommateurs* - the European Consumers’ Organization, *Review of the Television Without Frontiers Directive Questions and Answers*, available at:

<http://docshare.beuc.org/docs/1/MDGMNIJBHONAMOFHLOLBBBPDDBN9DBKB39DW3571K/M/BEUC/docs/DLS/2006-00407-01-E.pdf>.

⁵⁷ *Ibid.*

⁵⁸ *Bureau Européen des Unions de Consommateurs* - The European Consumers’ Organization, *Review of the Television Without Frontiers Directive Questions & Answers*, available at:

<http://docshare.beuc.org/Common/GetFile.asp?ID=20337&mfd=off&LogonName=Guesten>.

⁵⁹ For a study on Co-Regulation vide Hans-Bredow-Institut for Media Research at the University of Hamburg, *Final Report Study on Co-Regulation Measures in the Media Sector*, Study for the European Commission, Directorate Information Society and Media Unit 1A Audiovisual and Media Policies, June 2006.

⁶⁰ Apart from the 25 EU Member States, Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority, Syria, Tunisia and Turkey are members of the Euro-Mediterranean Partnership. Libya has observer status since 1999.

protection of minors, the prohibition of incitement to racial hatred, to encourage behaviour promoting health, safety and the protection of the environment, etc.

Hopefully, the audio-visual regulatory authorities of these states, some of which such as Israel and Morocco are already members of the Mediterranean Network of Regulatory Authorities⁶¹ whilst others such as Lebanon and Jordan participate actively during the Network's meetings, might possibly either themselves or through the said Network be in a position to assist other North African and Middle Eastern states in developing similar legislation to the TWF Directive on the lines above-mentioned.

8.0 Conclusion

The requirement of social responsibility in the audiovisual sector should ensure that EU legislation, *inter alia*, complies with audiovisual social responsibility parameters. For instance, Runar Woldt has identified the following aspects for social responsibility in television programming: independence, pluralism, professionalism, protection of privacy and fairness, editorial responsibility, success with the audience, economy, overall assessment of the channel's performance.⁶² One can also add consumer protection in order to ensure that future EU legislation tilts in favour of the common good of society rather than of the individual good of a business or firm. The Institutions must nonetheless be proactive by constantly keeping in mind that the success of the European Union should not be seen as depending uniquely on the maximization of profits by European business as this runs counter to the notion of a social market economy but on promoting their social responsibility, including the interests of consumer protection. It is thus hoped that the current trend in favour of business is viewed within a broader perspective which looks at business not as an end in itself but as a means to an end, the end being respect for human dignity and the attainment of the common good of society which in the case of television broadcasting translates into adequate and proper consumer protection.

9.0 Recommendations

In view of the above, the following recommendations are being offered with a view to adoption by the Institutions:-

- A European approach to governance underlining recognition of the principle that EU Institutions should not only take various measures based on compliance with legislation but also based on high ethical standards including the respect for human dignity and the attainment of the common good for society which should be at the core of the activity of all the Institutions.⁶³

⁶¹ The web page of the Mediterranean Network of Regulatory Authorities is available in English at: <http://www.rirm.org/en/>.

⁶² Runar Woldt, 'Concept and Implementation of the Project', in *Television Requires Responsibility*, Volume 2, *International Studies*. Gütersloh: Bertelsmann Foundation Publishers, 1995, pp. 19-21.

⁶³ The European Parliament resolution on the Commission Green Paper on promoting a European framework for corporate social responsibility (COM (2001) 366 - C5-0161/2002 - 2002/2069(COS)), calls upon the Commission 'to ensure the basic principles of CSR are fully taken on board in all areas of Community competence, most notably company law, internal market, competition policy, financial market legislation, trade policy, the Common Foreign and Security Policy, and development cooperation policy', Brussels: European Parliament, 2002, P5_Ta(2002)0278, paragraph 25. Praiseworthy as this declaration is, the European Parliament further reaffirmed its call to the Commission

- The adoption of proposed obligatory Codes of Conduct by and for each and every EU institution which would ensure the implementation by the Institutions of respect for human dignity and the attainment of the common good of society, raise awareness amongst Member States and other stakeholders (such as civil society and non-governmental organizations) about these principles and encourage best practice of social responsibility amongst all of the above.
- The establishment an EU Social Responsibility Committee within each and every institution to advise each Institution as to how that Institution should ensure respect for human dignity and the attainment of the common good of society through policy formulation, implementation and monitoring.
- Raising the profile and highlighting the importance in the Institutions of their respective social responsibility, thereby making social responsibility a key integrative function in the decision making process of the Institutions thus ensuring that social responsibility standards devolve at all levels in all EU policy-making.
- Promoting good social responsibility practice throughout the European Union at all levels of Member States' governance - at the state, regional and local level.
- Extending the powers of the EU Ombudsman to audit the Commission from the point of view of compliance with the above proposed Code of Conduct for the Commission.
- Carrying out a Social Responsibility Impact Assessment of all proposals to be launched and measures to be adopted by the Institutions.
- Empowering EU citizens to institute cases before the European Court of Justice when there is an alleged breach by the Institutions of social responsibility standards both with regard to proposals and legislation made by the Institutions, including the possibility of prohibitory relief prior to the actual making of the said proposals and laws.
- Assisting in strengthening social responsibility within non-EU Institutions such as companies, non-governmental organizations, civil society, etc.
- Expanding the existing regime on CSR at EU level including the Multi-stakeholder Forum to apply to the Institutions.
- Tasking a Commissioner within the Commission with specific responsibility for overseeing the development of social responsibility within the Commission, Directorates General and other EU structures.

to set an example of CSR best practice in all of its own operations (*Ibid.*, paragraph 26) but shied away from making a similar commitment itself.

- Developing partnerships with other international, regional, sub-regional and national institutions to foster institutional social responsibility.
- Formulating and providing training courses and learning aids for key people in the Institutions and Member States to sensitise them about the need to implement social responsibility programmes of action at EU and national level.
- Requesting the Institutions to draw up and publish annual reports on how they have implemented socially responsible standards in their workings and request the Commission to compile and publish a similar report for Member States' workings implementing social responsibility standards at national level.
- Compiling and disseminating a 'Manual on Social Responsibility Impact Assessment in All Policies for EU Institutions and Member States' in order to reduce the likelihood of surprises, predict negative social responsibility impacts prior to the implementation of a proposal or a law, allow positive social responsibility standards to be maximised, and develop alternatives to proposals which are not in line with social responsibility standards.

GLOBALISATION: A CASE FOR INTERNATIONAL BENCHMARKING AND MONITORING OF CSR

AUDREY GATT

Globalisation and CSR

Globalisation has sparked one of the most highly-charged debates of the past decade, been the subject of countless books and the cause of major demonstrations in Europe and North America. Critics of globalisation have argued that the process has exploited people in developing countries, caused massive disruptions to their lives and produced few benefits in return. On the other hand supporters of globalisation have pointed out that poverty reduction has been achieved by countries which have embraced integration with the world economy such as China and Vietnam, India and Uganda.¹ Supporters see globalisation as a force that can create growth and opportunities. It has opened markets and linked economies and cultures. In empowering individuals and groups it has also led to demands for greater attention to be paid to issues such as human rights, environmental protection and labour standards. These issues are today considered to be the core of the corporate social responsibility (CSR) agenda.

CSR is premised on the notion that the responsibility of a corporation extends beyond providing financial returns to its shareholders, but should include broader objectives such as sustainable growth, equitable employment practices and long-term social and environmental well-being.² CSR is the latest manifestation of a longstanding debate over the relationship between business and society. Up to a few years ago, the dividing line between business and society appeared to be clearly drawn. Economist Milton Friedman propounded this view and held that, 'There is one and only one social responsibility of business: to use its resources and engage in activities designed to increase its profits'.³ This however is not the accepted view today. CSR advocates maintain that businesses should assume the major role

¹ N. Stern, *Globalisation, Growth, and Poverty. Building an Inclusive World Economy*, World Bank and Oxford University Press (2002).

² In this paper CSR refers to voluntary corporate initiatives aimed at improving the social and environmental impacts of a company's business activities, but excludes philanthropy which arises after profits are made.

³ M. Friedman, *The Social Responsibility of Business to Increase its Profits*, The New York Times Magazine, September 13, 1970.

in making the world a better place. According to economist David Henderson ‘CSR is a radical doctrine. It embodies a new and wider conception of the role of private business and the way it should be conducted.’⁴

The interest in CSR has been reflected in the expectation that globalisation must proceed in a manner that supports sustainable development in all regions of the world. Supporters of CSR hold that failure to respond to such an agenda satisfactorily will contribute to increased social tensions, environmental degradation and political upheavals. Therefore globalisation is transforming corporate responsibility from a choice into an imperative.

History of CSR Development: EU and US Experience

The consolidation of large corporations in the US and Europe led to changes in the regulation of businesses and the way they are conducted. The debate on the relationship between business and society focused on the demands to rein in corporate power. This led to the anti-trust movement and regulation of utilities in the late 19th century, Roosevelt’s New Deal in the US and nationalisations and regulations of the postwar Labour government in the UK in the 1930s.

The late 1960s and 1970s saw the regulation of corporate activity becoming an international issue. New independent countries voiced their fear that multinational corporations (MNCs) were the remnants of colonial times. MNCs were considered by such countries to be threatening their national sovereignty. As a response to such concerns international documents were drafted to regulate MNCs’ behaviour. A number of attempts were made within the UN to establish codes of conduct for the activity of MNCs. These codes of conduct represented an attempt to redress the balance between the growing power of MNCs and the vulnerable nation-state, particularly in the South.⁵

By the 1980s there was a significant shift away from state intervention due to increased mobility of capital. MNCs were now in a position to exploit regulatory differences between states. The host states of their subsidiaries renewed their concerns over the impact of MNCs’ global operations. Hence, by the next decade MNCs once again became the target of criticism for their global environment and labour practices.

US companies responded to bad publicity by adopting the principle of CSR within their activities. CSR practices eventually trickled into the agendas of MNCs’ business partners, subcontractors and licensees. Therefore MNCs used their global nature to spread CSR practices and bring about a positive global change.

CSR in Europe is a relatively new phenomenon compared to its US counterpart. It has however grown rapidly largely due to the pressures of globalisation. As happened in other countries, Europeans have been caught between the demands to reduce the size of government and liberalise markets, while at the same time maintaining the quality of life and more importantly social cohesion. European governments and citizens see business as a

⁴ David Henderson, *Misguided virtue: false notions of corporate social responsibility* (London: Institute of Economic Affairs, 2001), p.29.

⁵ R. Jenkins, *Globalisation, Corporate Social Responsibility and Poverty*, *International Affairs* 81, 3 (2005) 525-540.

primary beneficiary of globalisation and expect business to play a more responsible role in addressing social challenges.⁶ In just more than a decade, a wide range of CSR initiatives have emerged in Europe.

The UK is the European leader in CSR. The UK was the first country to implement the structural adjustment and downsizing of governments. This was a trend which was eventually followed globally. The draconian cuts to social services, under Thatcher's neoconservative government in the 1980s, led to an unprecedented social crisis in many of the UK's largest cities. The crisis was such that business leaders could no longer ignore social challenges. Two important initiatives, still present today, were formed during this period. The first was *Business in the Community* (BITC) which helps companies translate policy into local action as well as providing the opportunity to dialogue, to develop and share best practices and to create collaborative plans.⁷ The second initiative was the *Prince of Wales Business Leaders' Forum*⁸ which was set up as an international educational charity in 1990 and its purpose was to promote responsible business practices internationally to the benefit of business and society and to help achieve social, economic and environmentally sustainable development, particularly in new and emerging market economies.

In the last decade the UK under Tony Blair's Labour government has taken a more activist role in encouraging CSR dialogue with business leaders, as well as putting CSR on the government policy agenda. The UK has gone as far as having a Minister for Corporate Social Responsibility who continually maintains dialogue with business leaders through a variety of partnership initiatives such as the CSR Forum. The UK government has also launched a series of measures encouraging greater corporate transparency and CSR reporting. The UK has taken large steps to ensure that businesses follow CSR practices and today the UK model has attracted the attention of EU as well as American leaders with regards to its initiatives and policies.

In contrast to the UK and the US, much of the leadership of CSR in the rest of Europe has come from government-led initiatives. In the mid-90s the most significant initiatives have been multilateral in nature and largely driven by the EU.

The roots of CSR in Europe began with an environmental focus and lay in the EU Treaty of Amsterdam.⁹ After highly effective lobbying from green NGOs such as the *World Wildlife Fund* and *Greenpeace*, the Treaty added the concept of 'sustainable growth respecting the environment' to the European community agenda. This was a significant policy decision in Europe especially considering that just a year previously in 1992, the Rio Earth Summit had focused global attention on the threat to the planet from unsustainable development and called for action by governments and corporations to alter their behaviour.

Europe made another great leap when in 2000 during the Lisbon European Council an appeal was made to companies' senses of social responsibility to attain 'the most

⁶ C. Pinney, *What Canada Can Learn From Europe*, Speech Presented by Imagine's Director for EthicsCentre CA, (May 21, 2003).

⁷ Today the organization comprises 700 member companies.

⁸ Today this is better known as *The International Business Leaders Forum*.

⁹ This came into force in 1993.

competitive and dynamic knowledge-based economy in the world'. One year later, the EU strategy for sustainable development was adopted.

As time went by, the European Commission broadened its agenda on CSR. CSR was no longer just concerned with environmental issues, but appealed to companies to adopt wider responsibilities and not be mere profit-making machines. As a result, the Commission issued a Green Paper on 18 July 2001 on a *European Framework for Corporate Social Responsibility* aimed at launching a wide debate among stakeholders.¹⁰ On 2 July 2002, the Commission published a follow-up to the Green Paper in the form of a Communication entitled *Corporate Social Responsibility: A Business Contribution to Sustainable Development*. A Multi-Stakeholder Forum on CSR was launched by the Commission in 2002 and a second Communication was published in March 2006.

One of the contributions in response to the Green Paper was from the EU-India Network for CSR.¹¹ Their main contribution was to bring a cross-cultural perspective to the CSR debate. They claim that although the Green Paper acknowledges that 'The familiarity of companies with local actors, with the local environment, tradition and strengths, is an asset on which they can capitalise' there should be more emphasis on the benefits to companies that are fully aware of the local conditions including the culture and social and environmental needs, in which their business will operate. A proper dialogue and exchange of views between European and Asian stakeholders will help overcome the fears which are voiced in Asia.

This argument holds well for any other countries with which the EU has formal business relations. The Green Paper already recognises that CSR 'must extend beyond the borders of Europe' and it must go further and seek to establish the subject of CSR in these countries' official agenda. A European framework is essential to help European firms establish a good global reputation. The situation as it stands today is such that European firms that act on OECD guidelines on CSR in OECD countries feel little pressure to observe them in countries where enforcement is weak and pressure from civil society and consumers to act responsibly is as yet limited.

Other important European-based initiatives are the *World Economic Forum* and the *International Business Leaders Forum - Global Corporate Citizenship Initiative*. There are also a number of European countries that have taken up local initiatives such as the *Danish National Network of Business Executives*.

In most mainland European countries the government has taken a larger and more dominant role than it has in the UK and the US. Contrary to what has happened in the US, the collaboration between key stakeholders - including business, unions and government - is also more frequent and many large firms in mainland Europe have very strong ties both to governments and communities. In fact the dominant CSR player in Europe is 'CSR Europe' sponsored by the EU.¹²

The historical development of CSR practices is important if we are to understand the ideological background against which these practices have evolved in the US and EU

¹⁰ The consultation phase ended on 31 December 2001.

¹¹ http://ec.europa.eu/employment_social/soc-dial/csr/pdf/042-COMPNETINT_EU-India-CSR_int_011219_en.htm.

¹² This was established in 1995 by former European Commission president Jacques Delors.

regions. This creates a clear picture as to where and why initiatives have been taken and where we can expect to go in the future. It is also important in order to understand the need for an international platform on CSR. An international platform would have the important role to reconcile attitudes and beliefs of MNCs arising in both continents especially with regards to benchmarking and monitoring CSR practices. However, before returning to this discussion, a closer look at business ethics and how these influence corporate behaviour needs to be considered.

Business Ethics

Business ethics is often presented as a special case of ethics.¹³ As recently as a decade ago, many companies viewed business ethics only in terms of administrative compliance with legal standards and adherence to internal rules and regulations. The situation has changed and today there is an increased awareness that in order to succeed companies must earn the respect and confidence of their customers. This requires action from corporations to improve their business practices and to emphasize legal and ethical behavior. Companies are being held increasingly accountable for their actions, as demand grows for higher standards of corporate social responsibility.

One of the aims of business ethics is to determine the fundamental purposes of a company. If for example the company's main purpose is to maximise the returns of the company to its shareholders, then it could be seen as unethical for a company to consider the interests and rights of anyone else.

It is these underlying ethics that differ in the Anglo-Saxon and Continental companies and that consequently have a bearing on the way CSR is implemented in both regions.

The Anglo-American approach requires corporate managers to focus on shareholder value, while the European approach includes a broader class of stakeholders - employees, creditors, suppliers and communities within the ambit of managerial concern. CSR advocates have been challenged to persuade US and UK corporate and legal communities to move from the narrow approach of shareholders' immediate financial returns to a broader scope of achieving a measure of corporate well-being. CSR proponents are facing the difficult task of moving US corporations beyond their deeply-rooted concept of corporate governance.

According to John Martin Conley¹⁴ the answer to the situation may lie in attitudes already adopted in the UK. The UK is beginning to shift from the American model in pursuit of a long-term 'enlightened shareholder value' perspective. This perspective aims to incorporate the European stakeholder theory of long-term economic issues with the U.S. mainstream investment thinking. The strategy would consist in extending investors' time horizons and then make the case that a company's social and economic performance is likely to become

¹³ 'Ethics' most often refers to a domain of inquiry, a discipline, in which matters of right and wrong, good and evil, virtue and vice, are systematically examined, (Goodpaster 1992,111).

¹⁴ J.M. Conley, *Changing Corporate Behavior in a Socially Responsible Direction*, The Center for Progressive Reform 2005.

financially material.¹⁵ According to Conley the key to accomplishing this goal is to focus on risk and to put this ‘traditional and well-understood concept to a novel use’. Government regulation could hasten the pace at which these changes are brought about. However, within the US context this is highly unlikely and therefore change will largely depend on private action by institutional and other large investors. The relative strength of the British economy should today serve as an incentive to US companies and investors.

Adoption of CSR Strategies: EU and US Experience

Though general common ground can be established on the concept of CSR there exists a notable difference in the perception and implementation of the concept by American and European companies. The common larger underlying principles in both regions are that corporations should play an active role in building a better and more sustainable society, that the commitment to CSR activities should not be dictated by law but rather should be voluntary in nature beyond boundaries of legal compliance and finally, that each corporation should have concepts and codes of conduct built into its own scheme of corporate activity. The difference between the two regions lies in the interpretation given to these broad principles.

In the US efforts of state regulation of MNCs in the 1970s and the international codes of conduct designed to support these efforts emanated for the most part from the South and southern governments. By the 1990s most southern governments were still following neo-liberal policies. Therefore in the 1970s and 1990s CSR initiatives came largely from the North. This meant that issues which took centre stage such as environmental impacts, working conditions and human rights were largely determined by this Northern influence.

American corporations are characterised as favouring the promotion of CSR practices that particularly reflect corporate ethics and a commitment to compliance with a positive influence on society. American companies aim to differentiate themselves from other companies by implementing CSR action programs in the hope that their efforts will be viewed positively by stakeholders and consumer markets with interests in the specific field. By adopting different corporate and brand strategies the American company differentiates itself from its peers. The strategies adopted will normally define the priorities given by the particular company. The activities will normally tend to focus exclusively on corporate citizenship activities that contribute to the local community within which they operate. Therefore, through these CSR implementation strategies it becomes apparent that American business leaders value the company’s autonomy and respect for national and cultural diversity over and above all other considerations.

An important distinction between Europe and American CSR practices is that in the latter CSR practices were largely developed with the leverage of socially responsible stock investments by the private sector, while in Europe CSR was much more government driven and designed in line with various policy platforms. The trend in Europe is the desire to incorporate CSR elements in existing EU laws and regulations governing such issues as

¹⁵ More information about the driving forces that led to these changes in attitude may be found in J.M. Conley, *Changing Corporate Behavior in a Socially Responsible Direction*, The Center for Progressive Reform 2005.

environmental protection, public procurement and labour practices.¹⁶ Europe is not necessarily more advanced than the US in the field of CSR; however, its CSR philosophy is more likely to regulate and legislate to achieve social and environmental outcomes.

So what happens when EU and US companies operate across cultural borders. Can they justify their actions based on different CSR strategies?

Cross-Cultural CSR Strategies: Difficulties and Enforcement

Culture refers to the values, ideas, relationships and patterns of behaviour that are meant to give meaning, identity and security to a people in a given place and time. Culture gives an interpretation of the world and guidance for life according to such beliefs, values, and attitudes. It implies an intellectual and moral discipline or training.¹⁷

Cultures of people are diverse, even when dealing with similar realities. They mould a people's way of life and thinking and give distinctiveness to a community. The process of globalization tends to bring about a homogeneity of cultural behaviours throughout the world, at least in certain aspects of life such as in food, dress, leisure, music, and sports. The mass media and advertisements create wants, especially for MNC products such as fast food, jeans and rock concert music. The universalisation of the demand for these goods may give the impression of a pervasive global mono-culture. Globalisation reduces the impact of cultural differences due to a level of commonness brought about by the process. On the other hand globalisation breaks down barriers and creates the right conditions for the migration of people allowing for the encounters of several cultures. This brings about ghetto-type relationships and structures which evolve new cultural mixes that may at first seem merely hybrid, but in the longer term could bring about new patterns of relationships. Globalisation thus pushes in both directions of closing in as well as of openness to other cultures.

As recently as 1990, the interaction between business and society remained largely confined to local or national scenes. As liberalisation expanded business opportunities and generated global corporate networks, the bargaining balance in many societies has shifted in favor of the private sector, and in developing countries particularly to MNCs. This shift has in turn provoked attempts by civil society to orchestrate counter-measures to alter corporate behaviour through public exposure.

Effective use of communications technology and the willingness of the international media to carry stories about corporate misdeeds has greatly increased public focus on corporations. These groups have targeted high profile corporations such as Nike, Shell and JPM.

Late in 2004, J.P. Morgan Chase & Co. (JPM) found itself under attack. The *Rainforest Action Network* (RAN), a non-profit environmental advocacy organisation, launched a public campaign against the global financial services firm accusing it of 'making a killing'

¹⁶ L. Skruzmane, *Globalization's new face - Corporate Social Responsibility*, JFTC Essay Competition 2005, Second Grand Prize.

¹⁷ R. J. Schreiter, *The New Catholicity - Theology between the Global and the Local*, Orbis, Maryknoll, N.Y. 10545, 1998 Pp 28ff.

from loans to companies with operations that threatened the environment. The news traveled quickly. The following day, a story in *American Banker* under the headline 'JPM Downgraded and Slammed in Ads', combined a description of RAN's initiative with an account of an analyst's downgrade of JPM stock.

JPM was not alone in this attack. Citigroup and Bank of America were also under pressure from RAN to adopt policies that would prohibit financing activities that could endanger fragile ecosystems. In the first half of 2004, these two banks announced environmental policies that RAN labeled 'signs of hope'. But JPM, which had committed to announce a policy by October, missed the deadline, triggering RAN's campaign.

Similar situations often fall under CSR headlines and bring attention to the fact that CSR ultimately boils down to corporate governance and the exercise of corporate power and the need for an organisation's board to recognise and oversee how the corporation handles CSR issues.

Corporate organisation alone however is not enough. Companies require a good knowledge of the countries with which it is conducting business. Knowledge is an essential tool to handle CSR issues correctly. Norms and values accepted in one society will not necessarily coincide or be easily transferred to another society. Cultural differences can make perfectly legitimate action in one country questionable in another. There are numerous examples where this has occurred damaging the reputation of well-established companies.

A classic example is the Nestle case. In this case Nestle Infant Formula marketing, in less developed countries, made Nestle responsible for marketing a risky or unsafe product. Infants were more likely to die when they substituted breastmilk with Nestle's breastmilk-substitute since this was being prepared without clean drinking water.

In similar situations activists play a crucial role as they bring behaviour inconsistent with CSR policies to the world's attention. The result is bad publicity for the companies concerned who, more often than not, will rectify their behaviour. An example would be Nike's contribution of \$7.7 million dollars to the *International Youth Foundation* to found the *Global Alliance for Workers and Communities* to monitor labour conditions in its contract factories overseas after it had been targeted by activists over its use of child labour.

Consumers also play an important part in enforcing CSR practices worldwide. Companies today must be concerned about their global reputations since their actions can easily become known leaving an impact on its business. An international inquiry into consumer expectations concluded that 20% of consumers surveyed had avoided products and services of particular companies because of their negative ethical profile. The inquiry also concluded that a further 20% were considering doing so.¹⁸ EU-wide research, such as Eurobarometer, also shows that European consumers not only want good quality and safe products, but they also want to know that what they buy has been produced in a socially and environmentally responsible way. Therefore it can be seen that 'internet-fuelled activism and growing media

¹⁸ <http://davidkilgour.ca/secstate/corp.htm>.

attention on CSR mean that these issues are steadily moving from the activist's fringe meeting to the consumer mainstream'.¹⁹

These experiences have taught corporations that globalisation strategies, particularly global branding, have created new opportunities but also vulnerabilities. Therefore protecting image and brand names has quickly evolved into a major challenge that had to be met if globalisation strategies were to succeed. CSR has served this purpose, allowing global strategies to succeed. In spite of agreement that CSR practices promote brand image companies will not readily adopt CSR strategies and, if they do, it might be the case that more is said than is actually done. CSR becomes a mere publicity tool. Media and consumer pressure, though effective, cannot be the only tools for monitoring companies. Systematic enforcement becomes essential. However there is still disagreement as to who should be responsible for enforcing CSR practices and as well as on the question how far companies should go to adopt socially responsible behaviour.

International Platform for CSR

For a long time the debate on CSR was based on a simple dichotomy between voluntary and binding instruments. Today the EU institutions claim that the overarching challenge is that of 'devising reporting tools and verification mechanisms to ensure proper compliance with CSR commitments'. The challenge is the same on an international level.

The international community has policy tools to influence business activity within and between nations and to help ensure that globalisation proceeds in a way that benefits all. These tools include legislation and regulatory frameworks, voluntary compliance with an agreed set of standards monitored by a third party or self-regulation by businesses, often in conformance with voluntary codes of conduct.

Internationally, the United Nations has leaped on to the CSR bandwagon with the creation of the *Global Compact* in 2000. This involves business, labour, NGOs and governments. Critics have pointed to the fact that the principles remain general and abstract. The same criticism is directed to the *Organisation for Economic Co-operation and Development* (OECD) guidelines. The revised guidelines were adopted by OECD Ministers at their June 2000 meeting. They set out voluntary principles of responsible business conduct in areas such as environmental stewardship, human rights and labour standards, but do not outline how a company can best comply with broader human rights standards. Also, they are limited to companies from OECD-countries. The advantage is that they do address business directly, that they have state support, that non-OECD-member states can express their willingness to adhere, which some have done, and that with the establishment of National Contact Points they do offer a complaints mechanism.

The World Bank actively promotes CSR through its *Corporate Social Responsibility Practice* and its training arm the World Bank Institute. For example the World Bank took up the CSR banner in the late 1990s. A Corporate Social Responsibility Practice was set up within the Private Sector Development Vice Presidency. It advises developing country governments on ways to deploy and encourage corporate social responsibility. The training

¹⁹ R. Ferrigno & B. May, *European CSR Approach a Good Model for US Firms*, PRWeek U.S. September 19, 2005.

arm of the Bank, the World Bank Institute, organises periodic electronic conferences on CSR and has been involved in offering training courses in this area.

In 2004 the UN, faced with cases such as the Union Carbide incident in Bhopal, India, took a decision to draw up the *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises* with regard to Human Rights.²⁰ In this case a pesticide factory explosion killed thousands of people, contaminated the area and devastated the local community. To add insult to injury this community never received compensation for damages suffered. The UN norms do not prevent companies from investing in countries where there are human rights violations, however they do ensure that companies themselves do not violate human rights and are not accomplices. These norms clarify in operational terms what corporate social responsibility means for a company.

Voluntary initiatives are also evolving. Previously initiatives consisted of own-declarations or statements of principles. They were vague, with minimal compliance and verification. Today there is increased recognition of the need for effective monitoring and verification systems that can involve third parties such as NGOs and that significantly raise the credibility of standards. This is important as it is only by effectively addressing environmental, human rights and labour standards that companies will be able to meet new social challenges.

Some foresee a greater role for international regulation. Cross-cultural business operations can no longer merely rely on regional or local policies and regulations. A globalised world means greater opportunities for companies who are ready to operate in different countries. On the other hand globalisation creates increased competition among companies who though operate in different countries, share economic markets through their subsidiaries. These companies cannot afford to be judged by different measures and their CSR strategies may have to vary depending on the countries in which they operate. This situation therefore creates a greater and more pressing need for harmonised international regulation and monitoring to be drawn up.

However, this is met with a number of controversies. Some claim that government intervention on CSR is itself a contradiction. Daniel T. Griswold from the Cato Institute holds that 'The whole idea of globalisation is that governments relinquish control over areas of economic life. To me, globalisation is not some independent phenomenon to be controlled and managed by governments. It is the result of governments getting out of the way of the peaceful normal commercial activities that people engage in across borders'.²¹

Unfortunately statistics prove that when CSR is left to companies' private initiative it fails to meet standards set out in international norms. In fact, though international organisations and non-governmental monitoring organisations claim an increase in corporate attention around the world to sustainable development and social responsibility reporting, serious questions remain about how significant the growing number of corporate citizenship reports

²⁰ Decision 2004/16. The Norms distill in one place the human rights principles applicable to business with references to the Universal Declaration, Convention of the Rights of the Child, ILO Conventions and many other international laws and standards.

²¹ D. T. Griswold, *Globalisation, Human Rights and Democracy*, eJournal USA, February 2006.

is compared to the large number of enterprises doing business globally. One of the most frequent criticisms of companies' reports on CSR and sustainable development is that they are simply public relations tools that often do not reflect what companies really do and that they have little impact on how firms operate, especially when faced with competitive or financial challenges.

A survey carried out by KPMG on the CSR reports of 1,600 companies mirrors the criticism directed at companies. KPMG found that although 60 percent of the CSR reports they reviewed addressed social issues such as labour standards, working conditions and community involvement, 'reporting performance remains sketchy, possibly due to the lack of clear social indicators.' Public trust in CSR and sustainable development reports are also undermined by the fact that only 30 percent of the companies surveyed included formal independent 'assurance' statements, only one-third of the companies invite feedback on the reports from users, and only 8 percent report on the feedback they receive.²²

On the other hand, international monitoring of CSR practices will never be effective unless companies are willing participants in the process. Antonio Vivos of the Inter-American Development Bank (IDB) states that 'CSR, by its very nature, is development done by the private sector, and it perfectly complements the development efforts of governments and multilateral development institutions.'²³

Companies have shown willingness to participate in the CSR process by taking the initiative to develop voluntary standards or codes of practice with help from experts in NGOs and support from governments. In this way companies develop a common understanding of best practices while establishing performance benchmarks. The Foreign and Commonwealth Offices gives examples of when this approach was adopted. The AA1000 and SA8000, are two prominent externally-recognised audits of profit, environmental impact and social factors to which companies may choose to sign up. MNCs will often choose to sign up in order to enhance their brand image and protect their reputation.

Once performance benchmarks are established and companies give their commitment to CSR issues it will then be the role of monitoring agencies to make sure that companies do in fact comply with the standards established. The question remains as to where the monitoring process should occur. On a regional or international level?

Customers, governments, employees, communities, non-profit organisations, the media and wider society are all asking companies to give an open and well-substantiated account about how they operate and what their impact on society is. Unfortunately, companies today are faced by a large amount of material which consists in values statements, policies, operating manuals and management systems. This material fails however to support efficient monitoring and measuring for CSR performance. It has now become the challenge of governments around the world to adopt an efficient monitoring system. The question is whether this should be done on a national and international level.

²² KPMG International, *KPMG International Survey on Corporate Social Responsibility Reporting 2005*, (Amsterdam: KPMG Global Sustainability Services, 2005): p.4.

²³ A. Vivos, *The role of multilateral development institutions in fostering corporate social responsibility*, Development 47:3, 2004, p.46.

In a global economy, any approach to monitoring and measuring CSR must be open to a multicultural and generally flexible application. It should take into account diverse individual businesses within global groups that create issues specific to their own cultural context. For companies with global brands and brand values, global international benchmarks, irrespective of lower legislative or other requirements in any given local market, make sense to give consistency and protect brand equity world-wide. The same applies for monitoring systems. On the other hand regional adoption of benchmarks and monitoring systems should not be discouraged. The difference in requirements will only help to enhance brand value in a regional or local market offering choice to the consumers as protected under competition and anti-trust legislation.

What is essential in order for companies to operate efficiently is that international minimum standards for benchmarking and monitoring systems are set up. The differences highlighted above, between CSR practices as developed and applied in the EU and the US, make a case for an international platform on benchmarking and monitoring systems which would reconcile differences and enhance business efficiency. In a more globalised world the international platform is no longer an optional platform, but the way ahead.

FAIR TRADE IN THE MEDITERRANEAN: QUESTIONING CORPORATE GLOSS AND THE MONOPOLIES OF FREE TRADE

ADRIAN GRIMA

By 2010 a free trade area should have been established within the so-called Euromed zone that will make matters worse for poorer communities in the Mediterranean region. The renowned academic and activist Tonino Perna anticipates that some four million small farmers with less than three hectares of land and small fishermen will be swamped out of business by big companies with big money.

The establishment of this new, so-called “free”, trade area coincides in a rather uncanny way with the extraordinary success of the European fair trade movement which has not only made significant inroads in its efforts to place its products and its principles on the shelves of big supermarket chains but has successfully lobbied for and obtained a detailed report on fair trade followed by a Resolution adopted by the Parliament of the European Union. This paper argues that both civil society and institutions in the Mediterranean should look at fair trade as an alternative to the myths and monopolies of “free” trade. It also argues that checks and balances that come with fair trade are a credible antidote to the window dressing of Corporate Social Responsibility.

“Free” Trade, for the Benefit of the Powerful

The adjective “free” in free trade is a misnomer. Current trade rules are “a grubby set of global guidelines drawn up at the behest of the powerful for the benefit of the powerful.”¹ Hines explains that the so-called “liberalization” of trade has been built on the theory of comparative advantage, “the diktat of being internationally competitive and the promise of growth today, generating wealth for all tomorrow.”² Nations do best from international trade when their industries specialize, when they mass produce goods where they can make maximum use of the factors of production which are in abundance locally. This allows them to gain a price advantage over their competitors, a “comparative advantage.”³ Prosperity

¹ Colin Hines, *Localization. A Global Manifesto* (London: Earthscan, 2000).

² Hines *ibid.* p. 10.

³ Hines *ibid.* p. 10.

depends on this sort of specialization because it makes workers more productive. Adam Smith's ideal was that of a completely open global market in which goods and services pass freely over all national boundaries. The thesis of free trade is that a country's goal should not be self-sufficiency but that it "should produce what it can produce most cheaply." The "'invisible hand' of market forces would direct every member of society and every nation, using the dynamo of self-interest, to the most advantageous situation for the global economy as a whole."⁴

Even if there were a level playing field between powerful nations, who design the rules to suit their own interests, and the small fry, who are forced to dance to the tune of others, fundamental difficulties would still arise where one country can produce a number of products more cheaply than others, and has no incentive to trade, or where a country has little or no comparative advantage in anything. The other big obstacle to the perceived advantages of free trade is that the free flow of capital means that investment is now governed by absolute profitability and not by comparative advantage between countries.⁵ Adam Smith and David Ricardo, the original proponents of free trade, also overlooked the fact that in a market economy some traders enjoy the backing of huge military machines and others have access to subsidies not enjoyed by their competitors.⁶ Competitiveness is a reflection of the traders' ability to exploit those social and political forces that distort markets: state power, subsidies, cartels, externalized costs and political favours. The success of a firm rests primarily on its ability "to organize an external and internal political infrastructure that enables it to control labour, ensure access to raw materials, markets and subsidies, manage resistance, and mould a regulatory environment favourable to its expansion."⁷ Many would argue that the US and Transnational Corporations (TNCs) use the World Trade Organisation (WTO)'s international trade rules to "ensure the global economy is skewed to their advantage" and the result is that half of the world's top 100 economies are TNCs and 70% of global trade is controlled by just 500 corporations.⁸

There is ample proof that the WTO adversely affects the environment, employment, social issues, development, food security, animal welfare, culture and human rights. "It represents the most important element of an international corporate strategy to codify the rules upon which a global system of investment, production and trade depend." Despite the lack of any real evidence, many governments are convinced that sustained, market-driven growth will bring them wealth and economic stability, but they don't take account of the ecological limits and how the proceeds of growth will be distributed.⁹ The WTO has failed to establish an international framework for fair trade. Moreover, it has to be reformed to ensure full participation of developing countries and civil society actors in it, as well as to allow for full southern access to markets in industrialized countries.¹⁰

⁴ Hines *ibid.* p. 12.

⁵ Hines *ibid.* p. 12.

⁶ Hines *ibid.* p. 13.

⁷ Hines *ibid.* p. 14.

⁸ Hines *ibid.* p. 14. TNCs are Transnational Corporations; WTO refers to the World Trade Organization.

⁹ Hines *ibid.* p. 131, 134.

¹⁰ "Mediterranean NGO Declaration for Johannesburg" (World Summit on Sustainable Development), Nice, 12/01/2002. <http://www.iisd.ca/wssd/download%20files/Nice%20Declaration%20%5Bfinal%20text%5D.rtf>

Free trade agreements have created “a global environment in which TNCs and banks can move capital, technology, production sites, goods and services freely throughout the world, relatively unfettered by the regulation of nation states or democratically elected governments.” Colin Hines argues that “through these processes, TNCs have effectively secured a system of rule and domination in the new world order.” He challenges the myth that TNCs should not be scared away because they are a great source of jobs. Between 1993 and 1995, global turnover of the top 100 TNCs rose by more than 25%, but during this same period these companies cut 4% of their global workforce of 5.8 million people, more than 250,000 people. In 2000 Hines wrote that the accelerating numbers of mergers and acquisitions was increasing the labour shedding in TNCs.¹¹ This was not surprising because the current trade system has “a clear end goal,” that of “maximum trade and money flows for maximum profit,” supported by a clear set of policies and trade rules: “Tough luck for the growing number of losers.”¹²

Fair Trade, or What’s in a Name

As it grows in size and impact, fair trade has become a successful commercial model that offers a good quality product with a high ethical standard to the consumer and, more importantly, real improvement in living standards to poor and disadvantaged communities, even in the Mediterranean. There are now more than 800,000 small-scale producers working in nearly 3,000 grassroots organizations producing fair trade goods. “In 2002 sales of Fair Trade labelled products increased by 22% compared to the previous year, which has generated an estimated €50 million of additional income for producers and workers in the South.”¹³ The fair trade movement believes that the impressive growth and success of fair trade proves that a truly fair and responsible trade and business model is possible. Over the last six years, fair trade sales have grown by 20% to 30% per year throughout Europe and were expected to reach 2 billion € in 2006.¹⁴

Despite this extraordinary success, the fair trade movement acknowledges that the overall market share of fair trade is still “very small” and that there is a “huge potential” for fair trade to grow, both in the food and non-food sectors. The associations believe that the “European Institutions have a critical role to play,” alongside producers, consumers, businesses and civil society, in the future of fair trade. “A coherent Fair Trade policy and systematic support to Fair Trade Organizations in Europe could lead to a significant growth in awareness and in the demand for Fair Trade products in the EU and thus create sustainable livelihoods for millions of poor and marginalized producers and workers in developing countries.”

In December 2006, four leading international fair trade associations representing different views on and approaches to fair trade and its promotion agreed on a common definition:

¹¹ Hines op. cit. 71-2.

¹² Hines xi.

¹³ Fiona Gooch (Traidcraft) and Stefan Chrobok (European Fair Trade Association, EFTA), “Fair Trade lessons for CSR,” in *CSR Magazine. The Corporate Social Responsibility Magazine in Europe*, September 2003, http://www.csreurope.org/CSRMag0309full04_pdf_media_public.aspx.

¹⁴ FLO-I, IFAT, NEWS! and EFTA in “Fighting poverty and injustice through Fair Trade. How the EU can support the Fair Trade movement to create sustainable livelihoods and to promote responsible purchasing,” December 2006. <http://www.ifat.org/downloads/advocacy/FightingpovertyandinjusticethroughFairTradeDec06.pdf>.

“Fair Trade is a trading partnership based on dialogue, transparency and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers - especially in the South. Fair Trade organizations (backed by consumers) are actively engaged in supporting producers, awareness-raising and in campaigning for changes in the rules and practices of conventional international trade.”¹⁵

The long-term partnership between the producers and the fair trade organization that imports the fair traded product is based on dialogue, mutual respect and justice, elements that are sorely missing in the current world trading system.

Fair trade model for producers and importers

Producer Groups

in developing countries

- Marginalized but organized & able to export
- Democratic & transparent management
- Decent working conditions and a fair wage
- Workers have freedom of association
- Equal opportunities for all, particularly the most disadvantaged
- Long term co-operative relationships

Importers

in developed countries

- Put people before profits
- Pay a Fair Trade price
- Buy from disadvantaged producers (including registered producers where Fair Trade Label exists)
- Provide business and financial support (including advance payment where necessary)
- Long term co-operative and transparent trading relationships

Source: Fiona Gooch and Stefan Chrobok¹⁶

This definition was part of a document by the Fair Trade Movement that was presented to the European Commission after the European Parliament had issued its report followed by a Resolution on Fair Trade.¹⁷ The fair trade associations urged the Commission to respond to the European Parliament initiative and to previous commitments and to issue a “recommendation on Fair Trade, rather than a European legislative act which would carry the risk of over-regulation.” They also gave their backing for the demand to support fair trade as mentioned in the Cotonou Agreement and to provide “Aid for Fair Trade.”¹⁸

¹⁵ Definition of Fair Trade developed by the four international Fair Trade Associations: FLO-I, IFAT, NEWS! and EFTA in “Fighting poverty and injustice through Fair Trade.”

¹⁶ Fiona Gooch (Traidcraft) and Stefan Chrobok (European Fair Trade Association, EFTA), “Fair Trade lessons for CSR,” in *CSR Magazine. The Corporate Social Responsibility Magazine in Europe*, September 2003, http://www.csreurope.org/CSRMag0309full04_pdf_media_public.aspx. See also “The Nine Key Fair Trade Standards” established by IFAT and published on www.ifat.org.

¹⁷ In 2006 the EU Parliament approved an “European Parliament resolution on Fair Trade and development” (Thursday, 6 July 2006, Strasbourg) (2005/2245(INI)) <http://www.europarl.eu.int/oeil/FindByProcnum.do?lang=2&procnum=INI/2005/2245> which was based on an in depth “Report on Fair Trade and Development” by the Committee on Development of the European Parliament (rapporteur: Frithjof Schmidt - 6.6.2006).

¹⁸ Art. 23 g of the Cotonou Agreement.

The fair trade movement also urged the European Commission and the EU Member States to:

1. Recognize the definition and principles of Fair Trade as developed by the international Fair Trade movement;
2. Increase public awareness and information about Fair Trade;
3. Increase the number of producers in developing countries who benefit from fair trading conditions;
4. Promote Fair Procurement in the European Union;
5. Ensure co-ordination and coherence of EU policies on Fair Trade;
6. Moving towards a sustainable European trade policy;
7. Strengthening corporate accountability.

The issue of what is and what is not “fair trade” is vital because when consumers choose a fair traded product they must be certain that what they are buying is indeed fair. Many fair traders are at best uncomfortable with the idea that transnational corporations with an unenviable track record of gross bad practice, like Nestlé and Starbucks,¹⁹ can put a CSR or even “fair trade” gloss on their ethical shortcomings by marketing their own fair trade line of products.

The success of Fair Trade and Fair Trade Organizations (FTO's) is being achieved thanks to a comprehensive approach, combining fair trading conditions with producer support, awareness raising and advocacy for greater trade justice. Essential elements of the concept are a fair producer price, covering the costs of sustainable production and a premium for investment, prefinancing on request, long-term relationships, capacity building and empowerment of the producers as well as compliance with labour and environmental regulations and awareness-raising activities about the prevailing injustice of international trade rules.²⁰

Inspired by the success of fair trade and in response to the growing consumer interest in ethical purchasing, ever more companies are developing “sustainable” or “ethical” trading initiatives or product lines but in many cases their “sustainability” or “ethical” claims lack the backing of credible and verifiable standards. In order to avoid confusion among consumers between fair trade and other, sometimes dubious schemes which may give rise to a general loss of consumer confidence and harm the credibility of fair trade itself, the fair trade movement has asked the European Commission and the EU Member States

- to recognize the definition and principles of Fair Trade and Fair Trade Organizations as developed by the international Fair Trade movement;

¹⁹ About Nestlé fair traded coffee see, for example, “Nestlé and Fairtrade - PR coup or PR disaster?” Baby Milk Action Network <http://www.babymilkaction.org/action/nestlefairtrade.html>. “Nestle launches fair trade coffee,” BBC News, 07/10/2005. <http://news.bbc.co.uk/go/pr/fr/-/2/hi/business/4318882.stm>. This is a comprehensive site about Starbucks fair traded coffee: “Starbucks Campaign,” Organic Consumers Association. <http://www.organicconsumers.org/starbucks/index.cfm>

²⁰ “Fighting poverty and injustice through Fair Trade.”

- to take appropriate measures to ensure that consumers have access to all the information they need in order to make informed choices and to protect consumers from misleading ethical and “fair” claims.²¹

Many fair traders argue convincingly that having a fair traded “product” is not enough because this option can allow for aberrations such as having a Nestlé fair traded coffee, so they have established a highly respected fair trade mark for organizations rather than individual products. Once a member of the International Fair Trade Association (IFAT) has successfully met the requirements of the Standards and Monitoring system they become Registered Members, eligible to carry the Fair Trade Organization (FTO) Mark. These organizations are mission-driven organizations whose core activity is Fair Trade. This means that standards are being met regarding working conditions, wages, child labour and the environment. These standards are verified by self-assessment, mutual reviews and external verification.²²

IFAT believes that the FTO Mark makes Fair Trade stand out from the crowd because it gives Fair Trade Organizations definable recognition amongst consumers, existing and new business partners, governments and donors who would like to support Fair Trade activities. Moreover, it adds to an organization’s identity, setting it apart from other commercial businesses and shows it is part of a global network that serves as a common voice for solidarity amongst all Fair Trade Organizations in the North and South.²³ The IFAT network includes over 300 FTOs in 70 countries and membership is growing steadily. Approximately 65% of IFAT members are based in the South (Asia, the Middle East, Africa and South America) with the rest coming from North America & the Pacific Rim and Europe.²⁴

Fair Trade and CSR

On the issue of “Strengthening corporate accountability” mentioned in its document presented to the EU Commission, the fair trade movement welcomes the increase in corporate social responsibility initiatives that are responding to a growing interest of consumers in responsible business practices. Fair trade organizations are working actively with companies to improve their business and purchasing practices, particularly regarding their impact on southern suppliers and workers.

In its document, the fair trade movement urges the European Commission and EU governments

- to promote responsible purchasing practices of EU companies throughout their supply chains.

²¹ “Fighting poverty and injustice through Fair Trade.”

²² www.ifat.org

²³ www.ifat.org

²⁴ www.ifat.org/mission.shtml. As on 2 February 2007.

It also asks them

- to actively raise awareness amongst the business community to improve their performance on the UN's Universal Declaration of Human Rights, the ILO Core Labour Standards and Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Norms for Business and the OECD Guidelines for Multinational Enterprise; and
- to develop legally binding measures so that businesses are held to account for their negative social, economic and environmental impacts, both within the EU and in third countries.

The reference to EU businesses in third countries is important because free trade agreements between the EU and non-members can tempt businesses to relocate their bad practices in regions such as the Mediterranean.

The “European Parliament Resolution on Fair Trade and Development” recalls that the establishment of a free and fair multilateral trading system constitutes the best tool for achieving the effective management of globalisation, for the benefit of all. The Parliament notes that “the Fair Trade system has proven to be an important tool for poverty reduction and sustainable development and believes that, in the long term, it could facilitate the equitable participation of developing countries in the multilateral trading system, guarantee them stable and sustainable access to the European market and raise consumer awareness.”²⁵

The Resolution seems to take the contentious view that fair trade could or even should be seen in the context of a “larger” push towards initiatives favouring corporate social responsibility. It emphasizes that fair trade and other independently monitored trading initiatives contributing to raising social and environmental standards can be successful tools for making enterprises socially aware and responsible,²⁶ and “it stresses the importance of making European policy on corporate social responsibility more inclusive through the continuation and intensification of multi-stakeholder fora, including fora where Fair Trade organizations are present.”²⁷ This point raises the important issue of the relationship between fair trade and what many civil society activists would consider to be the window dressing exercise known as Corporate Social Responsibility.

Two papers by persons with experience in fair trade, one by Hans Perk and the other by Fiona Gooch and Stefan Chrobok, come to fundamentally different conclusions.

According to Hans Perk, manager of the NGO Solidarid,²⁸ the development of the fair trade movement has been characterized by three phases: the first phase was initiated by the Third

²⁵ European Parliament resolution on Fair Trade and Development, no. 5.

²⁶ European Parliament resolution on Fair Trade and Development, no. 25.

²⁷ European Parliament resolution on Fair Trade and Development, no. 26.

²⁸ Hans Perk, “From Fair Trade to CSR.” The ITC Executive Forum on National Export Strategy.

The Global Debate 2006. “Bringing the Poor into the Export Process: Linkages and Strategic Implications,” 27-30 September 2006. http://www.intracen.org/execforum/ef2006/Global-Debate/Resource-Person-papers/Perk_Paper.pdf. Solidaridad is a non-governmental organization set up in 1976 that is actively involved in the fair trade movement and co-founded Max Havelaar (the first certified fair trade product distributed via the “mainstream” retail) in 1988.

World Shops which imported “fair traded” products from disadvantaged communities in the South; the second, “innovative” phase was entered with the introduction of the fair trade label Max Havelaar, by which he probably means the presence of labelled fair traded products in supermarkets and other mainstream outlets; the third phase, he writes, “is characterized by finding ways of using the opportunities offered by Corporate Social Responsibility initiatives undertaken by existing companies and brands: companies that wish to assume responsibility in the purchasing of coffee for their brands; corporate brands of supermarkets and brands of major roasters.” Therefore, in Hans Perk’s vision, CSR initiatives are an improvement on fair trade because they change, or at least have the potential to change for the better the way “normal” trade is done. It is argued that this can be achieved if there is independent third party auditing in product supply chains to demonstrate proof of “good production practices, traceability, and appropriate sourcing and buying practices.”

The author argues that after 15 years of experience with fair trade in different commodities, Solidaridad started to question the impact of fair trade and this led them to start developing new models for Corporate Social Responsibility. “Solidaridad,” writes Hans Perk, “works with an open, pragmatic and total chain approach in which it cooperates with companies who are willing to take up their part of the responsibility for CSR.” The advantage of CSR over fair trade is that it is more “down to earth” because it operates “*within the limits of economic reality and commercial feasibility*” (my emphasis). Unless development organizations recognize their limitations, writes Perk, they will “soon be offside.” It’s all about “making things feasible,” about “changing power relations” and working in ways that create “evermore possibilities.” Perk explains that Solidaridad’s choice has been “to formulate - within a competitive market - a realistic set of improved trading conditions, permitting substantial volumes to be traded against these improved conditions. This way the formula ‘Price multiplied by Volume’ actually leads to an increase in producer income.”

Companies have to realize that the declared price of a product is not the *real* price because the market lacks “a social framework that can give expression to the social and environmental costs of production.” The market will not offer a sustainable product just by itself and so a CSR concept that defines better trading conditions without interfering with the market by adding a social framework is necessary.

On the other hand, the code of conduct followed by the producers calls on them to provide “product quality and efficiency in business, thus keeping the model closely related to the reality of the market.” Producers are in a better position to negotiate the price of their product because it has gained added value and thus higher market value through its CSR label. Perk believes that this model gives producers “access to a higher segment of the market, but it is up to them to create a stable commercial relationship on the basis of a good product.”

In “Fair Trade Lessons for CSR,” Fiona Gooch and Stefan Chrobok argue that although both fair trade and CSR promote the principle that businesses should recognize, understand and seek to improve their environmental and social impacts, there are fundamental differences between the two approaches. They identify the lack of commitment to address the real challenges in a company’s core operations and the failure to understand their social

impact as the biggest problems that feed current accusations of CSR as “corporate window-dressing.”²⁹

- Unlike fair trade, CSR doesn’t challenge the inequities and status quo of the international trading system.
- While fair trade develops standards through partnership with suppliers and involves them in monitoring the impact, CSR relies on its power within a supply chain (usually as purchasers) to force compliance with standards that have been developed without a specific focus on local consultation.
- CSR aims to help companies voluntarily comply with already-agreed and accepted norms (UN Universal Declaration of Human Rights), some of which continue to be breached. Fair trade objectives go beyond legal compliance, and fair trade advocates stronger regulatory systems to improve the social impact of mainstream business practices.
- CSR risk-based approaches are likely to backfire, however well intentioned, because they pursue the enforcement of standards that were set without first consulting with those affected by the standards and without addressing the priorities of suppliers. While fair trade aims to, and does, improve the livelihoods of small producers and their families because its standards have been developed in consultation with suppliers and address their priorities, CSR can result in the further marginalization of small businesses when it involves unreasonable demands, not based on local understanding. Suppliers may be eliminated from the supply chain either because they are perceived as representing a ‘risk’ or are not able to prove their compliance with certain set standards. This short-sighted approach can actively increase poverty.

In fair trade the issue of partnership between the producer and the importer is vital and this is one of the elements that also distinguishes it from a more consumer-oriented, not always independently verified, “ethical” trade, which lies somewhere between fair trade and CSR: while partnership, direct contact, awareness raising, fair terms, supporting disadvantaged and marginalized communities, and producer self-development are essential ingredients of producer-oriented fair trade, ethical trade focuses more on avoiding exploitation and satisfying the conscientious consumer.³⁰

Fiona Gooch and Stefan Chrobok argue that the success of fair trade in terms of profitability and economic effectiveness and promoting true development “makes it a particularly valuable model to inform mainstream businesses on how to move their CSR activities beyond rhetoric towards impact.” The success of CSR initiatives must be judged on their social and environmental outcomes and the experience of fair trade organizations that have embedded stakeholder dialogue into their management approaches; “genuine stakeholder dialogue is critical to ensure a company’s future operations are developed in recognition of its impacts and reflects the concerns of its stakeholders.” Moreover, for CSR initiatives to be taken seriously, social issues at the heart of the company’s corporate governance and

²⁹ Fiona Gooch (Traidcraft) and Stefan Chrobok (European Fair Trade Association, EFTA), “Fair Trade lessons for CSR,” *CSR Magazine. The Corporate Social Responsibility Magazine in Europe*, September 2003, http://www.csreurope.org/CSRMag0309full04_pdf_media_public.aspx.

³⁰ Stefano Magnoni, “Il commercio equo e solidale,” *Pensare e agire nell’età della globalizzazione*, ed. Stefano Agnoletto (Milano: Terrenuove, 2002) 97.

management approach also need to be considered. At Day Chocolate Company, for example, raw material producers are part owners of the company and sit on the Board.

Fair trade can also help CSR achieve its aims in the way it manages global supply chain relationships. Fair trade organizations establish “transparent and long-term trading relations with their suppliers and consider social factors that lie beyond the workplace. Through effective dialogue and partnering relationships, fair trade organizations are able to understand the local context and work with their suppliers to improve their businesses as well as bring benefits to the local community.” This stable, long-term trading relationship is not seen in isolation from the community that supports the production, even because the alleviation of poverty in the supply chain can actually contribute to reduced absenteeism and staff turnover, improved staff motivation, product quality and productivity. Gooch and Chrobok complain that many companies not involved in fair trade “still do not reveal their list of suppliers or commit to trade relationships beyond a season.” Their approach can often centre around “setting and enforcing a standard,” rather than arriving at a solution through “multistakeholder consultation.” Fair trade undertakes “dialogue on an equal footing” and both parties seek to “improve the livelihoods of developing country communities.”

The pro-active experience of fair trade “provides good practice models in stakeholder engagement, supplier relations, understanding social impact, and the balancing of social and commercial considerations in management for those companies genuinely interested in improving their social impact.” In a way, the concrete practices and experiences of fair trade “challenge” organizations involved in CSR initiatives to show that theirs is not merely an exercise in corporate window-dressing.

Religion and Fair Trade

A survey carried out in 1997 found that awareness of fair trade as a concept in the Mediterranean member states of the EU (which then had 15 members) was very low and that there was a greater awareness and experience of fair trade products in the northern and central Member States. The study claimed that “only 13% of French, Greek or Portuguese citizens had ever heard of the concept of fair trade, and only 3-4% had ever purchased any fair trade goods. In contrast, the highest figures were recorded in the Netherlands where 86% of Dutch consumers were aware of fair trade goods, and 47% had actually bought them.”³¹ This, in a way, was not surprising, because the first world shop was opened in Brekelen in the Netherlands in the Spring of 1969. One of the first campaigns of alternative trade was supported by the Dutch foundation Stichting S.O.S. Wereldhandel which was set up in 1959 in the town of Kerkrade by young people from the Dutch Catholic Party;³² in 1967 this organization became the Fair Trade Organisatie.³³ Perna notes that it is not surprising that fair trade was born in the country that was the first to “feel the fervour” of

³¹ “The Common Agricultural Policy. Attitudes of EU Consumers to Fair Trade Bananas,” European Commission Directorate-General for Agriculture (DGVI), http://ec.europa.eu/public_opinion/archives/ebs/ebs_116_en.pdf. The EUROBAROMETER survey from which this information was sourced was carried out simultaneously in all 15 EU Member States, by INRA (Europe) in early 1997. A representative stratified sample in each country was interviewed, with the results weighted to represent the entire EU population.

³² Tonino Perna, *Fair Trade. La sfida etica al mercato mondiale* (Torino: Bollati Boringhieri, 1998) 80.

³³ Veronica Pecorella, “Il Commercio Equo e Solidale un percorso di sviluppo sostenibile. Il caso dell’Oasi di Siwa (Egitto).” Tesi di laurea, 2004. <http://www.equonomia.it/tesi.asp>.

Vatican Council II. “*Il cosiddetto ‘nuovo catechismo olandese’ [...] era il frutto di un movimento di credenti portatori di grandi istanze d’impegno sociale e di libertà di espressione.*”³⁴ Within two years of the opening of the shop in Brekelen, there were 120 shops all over the Netherlands. Sales were so good that branches of SOS Wereldhandel (which eventually became autonomous national organizations) were soon opened in Germany, Austria, Switzerland and Belgium.³⁵ Today fair trade has made significant inroads in these and neighbouring countries. For example in Switzerland, more than 20% of all bananas sold come through the fair trade network.³⁶

Christoph Stückelberger sees a “prophetic” call for fair trade in Biblical texts such as the following one from the Epistle of James: “Listen! The wages of the labourers who mowed your fields, which you kept back by fraud, cry out. [...] You have condemned and murdered the righteous one.” (James 5.4-6) He believes that “Fair trade is rooted in the faith in God as the enabling creator, the liberating and limiting power and the reconciling Christ. In this point the gender perspective means that men and women are called to strengthen together their faith in this liberating God.”³⁷

Perna points out that the element of social commitment that has always existed within the Catholic Church has played a major role in spreading fair trade throughout Europe, where it was born, and beyond.³⁸ However, Michele Papagna notes that while in northern Europe fair trade spread very quickly in the 60s and 70s, it only made its mark on Italy in the 1990s.³⁹ Papagna attributes this delay to the Catholic Church in Southern Europe (Italy, Spain and France), as compared to the pragmatic approach of the Reformed Church (Protestant and Evangelical) in Northern Europe. He suggests that it is no coincidence that fair trade made its way into Italy through the northern region of Alto Adige, moved towards Veneto through Catholic and pacifist networks, and subsequently spread towards Lombardy, Emilia Romagna and so on.⁴⁰ Fair trade is stronger in the more affluent and continental north of Italy than in its more Catholic conservative and economically poorer southern regions. However, it is fair to say that Italy has now made up for lost time and with large, locally and internationally well-established fair trade organizations such as CTM altromercato and Commercio Alternativo, it is one of the leaders of fair trade in Europe. In Spain, fair trade took longer to develop but is now growing relatively fast.

In staunchly Roman Catholic Malta, the first fair trade initiatives were directly influenced by what was happening in the UK and Italy,⁴¹ and the Maltese fair trade cooperative

³⁴ Perna, *Fair Trade*, 81.

³⁵ Perna, *Fair Trade*, 82.

³⁶ Michele Papagna, “Il Commercio Equo tra senso di colpa e bisogni di relazione. L’esperienza di Transfair-Italia,” *Pensare e agire nell’età della globalizzazione*, ed. Stefano Agnoletto (Milano: Terre nuove, 2002) 70.

³⁷ Christoph Stückelberger, “When Trade Serves God’s Justice... Biblical and ethical flashlights and suggestions,” 2003. Prof. Dr. Christoph Stückelberger is General Secretary of Bread for all, Switzerland, and Professor of Ethics at the Theological Faculty of the University of Basel. This paper was written as a contribution to the *Trade for People, Not People for Trade Campaign* of the Ecumenical Advocacy Alliance and published in 2003 by the Ecumenical Advocacy Alliance.

³⁸ Tonino Perna, telephone interview, 20 November 2006.

³⁹ Papagna 69.

⁴⁰ Papagna 69.

⁴¹ Malta still has strong formal and informal ties with the UK after having been a British colony for almost two centuries. The Italian NGO CRIC in Reggio Calabria played a big role in the opening of the world shop L-Arka in

Koperattiva Kummerċ Gust was founded in 1996 by a voluntary organization, the Third World Group, with Catholic social roots. Perhaps Malta's patriarchal Catholicism, with its tradition of charity initiatives rather than movements for social justice, has not provided the ideal ground for the spread of the more rights-based approach of fair trade on the Maltese Islands. This point must be taken into consideration when exploring the potential of promoting fair trade in the Mediterranean. Another factor that must be taken into account is the fact that Malta is an island and islanders are often not particularly aware of or interested in what happens in other parts of the world. The Maltese are often willing to give to charity but they are perhaps less willing to change their lifestyles to respect the rights of workers and communities thousands of miles away. The Church can play a vital role in promoting fair trade and ethical consumption, and when individual priests do speak out their communities respond enthusiastically, but for the Maltese Catholic Church as an institution these issues are not a priority and they get none of the attention that is afforded to issues such as divorce and sexual behaviour. The same applies to the other dominant institutions in Malta, the traditional political parties and, increasingly, private media organizations, for whom issues such as fair trade and ethical consumption are non-starters.

In the Mediterranean region there are now fair trade organizations in Spain, France, Italy, Greece, Israel, Malta, and soon in Cyprus, and fair trade producers in Morocco, Tunisia, Egypt, Jordan, Lebanon, Israel, and particularly in Occupied Palestine. Big fair trade organizations on the northern shores of the Mediterranean are collaborating with producers on the southern and eastern shores and importing their products. For example Targanine in Morocco is a group of four cooperatives bringing together 450 women who produce organic argan oil. Their activity supports a socio-economic project in Agadir and has positive effects on the environment because it combats desertification.

In Palestine there are many communities and organizations involved in fair trade, like PARC, Zaytoun, and the more recently established Palestinian Fair Trade Association, and this proves that different communities within Palestine see fair trade as a real way of earning a living and supporting a community in a very difficult economic, political and social environment. PARC introduced fair trade in 1991 through the promotion of the Palestinian house economy projects which were shaped through distributing of chicken, sheep, cows, plants and trees in the most Palestinian damaged areas. These projects gave people self-sufficiency to resist the Israeli occupation. PARC initiated a project to train women how to start their own projects by giving them micro loans. Women mainly dealt with manufactured food like pickles, dairy products, jams and other kinds of food. Through these projects, the women gained additional income to support their families. Two of the fair traded products sold in Israel by the FTO Green Action based in Tel Aviv are olive oil grown by farmers from the villages of Mas'ha, Palestine, and Za'atar made by Eomen Cooperative from Gennin, Palestine. "Green Action decided to market the olive oil of farmers from Palestinian villages that "suffer from the repercussions of the separation barrier, along with land theft, and the constant harassment of nearby settlers. Green Action supports the farmers by offering counselling and by paying them according to the PFTA

Valletta, Malta in October 1997. Koperattiva Kummerċ Gust is a member of IFAT, the leading International Fair Trade Association, and CTM altromercato, one of Europe's largest fair trade organizations.

(Palestinian Fair Trade Association) regulations; Green Action is committed to continuing transparent and long-term trade connections with the farmers.”⁴²

Because the Religions of the Book play such an important role in the lives of communities throughout the Mediterranean, fair trade cannot spread in the region without their support. Tonino Perna says that within the Christian Orthodox Church there is a clear separation between religion on one hand and political and social life on the other and one effect of this separation is that these “national” or institutionalized churches in the Balkans and in the East of the Mediterranean lack the strong social commitment of other churches in the Christian tradition. In the Arab world, Perna believes that the difficulty for fair trade is greater, because although the Arabs were the inventors of trade and that great theatre that is the souk, it is not that easy to introduce an ethical element.⁴³ Charles Tripp believes that, in the main, Islam has not challenged capitalism *per se*, but there has been an effort “to prevent economic transactions from unleashing a force in human nature which the Islamic revolution was designed to keep in check, partly through ‘excavating’ the *fiqh* [jurisprudence] for rules on trade, finance, taxation, property, *riba* (interest) and all related economic transactions.”⁴⁴

However, on the specific issue of fair trade and the unjust system of world trade, at a seminar on how religions in the Mediterranean are responding to the challenge of the global market,⁴⁵ leading religious figures,⁴⁶ including the president of the Islamic Communities and Organizations in Italy, Mohamad Nour Dachan, called for respect for the environment, for a sense of restraint and an awareness of our limitations, and for a fair distribution of economic resources. The religious figures stated that religions (a) call for the debunking of the myth of “world trade” as that which should control our life, nature and social relations, and (b) support the idea of greater economic exchange within the Mediterranean based on the respect of human dignity (rather than the zero-sum game for maximum profits). This exchange starts with fair trade.⁴⁷

Muslims can respond to the issue of wealth and poverty (using wealth to help those in need), by (a) joining or setting up a Muslim group that tries to promote justice in the world (for example, by protesting against unfair trade or Third World Debt); (b) buying fair trade products (like coffee, tea, and bananas) to give Third World workers a better deal; (c) giving *zakah* to help the poor (including ill, needy travellers and debtors); and (d) giving *sadaqah*

⁴² www.greenaction.org.il

⁴³ Perna, telephone interview.

⁴⁴ Charles Tripp, *Islam and the Moral Economy. The Challenge of Capitalism* (Cambridge: UP, 2006) 104.

⁴⁵ This seminar on “Religioni del Mediterraneo di fronte alla sfida del mercato globale” was organized by C.R.I.C. (Centro Regionale d’Intervento per la Cooperazione) in collaboration with the association Millemondi - Cooperazione e Sviluppo Sostenibile, and the Facoltà di Lingue e Letterature Straniere of the University of Catania. The seminar was part of the project “Med 2000 per un Futuro sostenibile nel Mediterraneo,” which was co-financed by the EU and the Italian Ministry of Foreign Affairs. The Maltese fair trade cooperative and the Third World Group were also partners in this three year project.

⁴⁶ The other religious figures were Antonella Visintin, representative of the Conference of European Protestant Churches, the Catholic theologians Achille Rossi and Franco Barbero, and Maria Lucia Deluca, from the magazine “Buddismo e Società.”

⁴⁷ “Le religioni invitano al rispetto della natura, al senso del limite, ed alla distribuzione equa delle risorse economiche. Per questo va smontato il mito del “mercato mondiale” come unico regolatore della vita, della natura e dei rapporti sociali, e va incoraggiato uno scambio economico nel Mediterraneo, basato sul rispetto della dignità umana e non nel segno del massimo profitto, a partire dal commercio equo e solidale.” www.bur.it, 11.02.03.

(to organizations like Muslim Aid or the Red Crescent). For a Muslim, “giving serves the community and promotes justice in the world.” *Zakah*, the practice of giving 2.5% of wealth to the poor at end of Ramadan, is considered a duty and is one of the five pillars of Islam; *Zakah* purifies the person from greed.⁴⁸

Ian Bretman from The Fairtrade Foundation argues that there is an interesting affinity between the particular Jewish tradition of charity and the concept of fair trade, which is all about justice and equality. He notes that the Hebrew word for charity (*Tsedekah*) comes from the word *Tsedek*, meaning justice. “So when we talk about the Trade Justice Movement of which Fairtrade is a part, we are promoting a very Jewish sense of moral responsibility and a vision for our society.”⁴⁹ The Jewish philosopher Maimonides defined different levels of charitable giving, from “the unwilling donation that we are sometimes shamed into making when a collection box is rattled in front of us, through other forms of aid that might alleviate immediate symptoms but not address the causes of the recipient’s misfortune.” Maimonides says that the highest form of charity is “to help a poor person set up a business so that they are no longer dependant on the community but can play a full part in it and even contribute themselves to those who are less well-off.” That, says Bretman, is precisely the spirit with which fair trade helps poor farmers to “develop their own businesses so that they can achieve sustainability in the future.”

In the same way that the southern Italian NGO CRIC supported the opening of Malta’s first world shop, and CTM altromercato welcomed the Maltese cooperative as its first non-Italian partner FTO, Koperattiva Kummerċ Ġust is now active in the promotion of fair trade in the new EU member states and in the Mediterranean both through its membership of CTM altromercato and related networks and through its active participation in the setting up of the Europe branch of IFAT.⁵⁰ In 2007 activists from the north and south of Cyprus will be training with the Maltese cooperative in order to prepare for the setting up of a fair trade organization in Cyprus.

Prospects for Fairer Trade in the Mediterranean

Although the Euro-Mediterranean Partnership has three declared objectives, many observers, like Rana Izci, note that it “focuses for the most part on trade liberalization with the target of gradual establishment of a free trade area by 2010.”⁵¹ The Partnership calls for the creation of an area of shared prosperity through the progressive establishment of free trade between the EU and its Mediterranean partners and amongst the partners themselves accompanied by substantial EU financial support for economic challenges created by this transition. Officially, the Partnership also aims to:

⁴⁸ “Moral Issues. Islam.” Greenfield School Community and Arts College, Durham, UK. http://www.greenfield.durham.sch.uk/RS_Revision_for_Website/R.S.revision.Moral%20Issues.Islam.doc.

⁴⁹ Ian Bretman, “Speech at Birmingham Central Synagogue.” Thursday 9th March 2006. www.liberaljudaism.org

⁵⁰ Nathalie Grima of KKG has represented the Maltese fair trade cooperative in the working group that set up IFAT Europe as a registered organization in February 2007.

⁵¹ Rana Izci, “How to interpret sustainability in the Mediterranean,” *The European Union and the Mediterranean. The Mediterranean’s European Challenge*, ed. Peter G. Xuereb (Malta: European Documentation and Research Centre, University of Malta, 2004) 612.

1. Create an area of peace and stability based on the principles of human rights and democracy.
2. Improve mutual understanding among the peoples of the region and develop a free and flourishing civil society by means of exchange, development of human resources, and the support of civil societies and social development.⁵²

Izci points out that although the EU reinvigorated the Barcelona Process in 2000, neither the environment nor sustainable development has yet a separate chapter; and there is still no special and stronger emphasis on them especially under the third pillar of the partnership. Both areas are still dealt with within the economic and financial development chapter as one of the priorities for regional economic integration.⁵³ The Euro-Mediterranean Partnership “is so far still too focused exclusively on security, traditional economic development, structural adjustment and free trade.”⁵⁴

The 2002 Declaration by non-governmental organizations active in the Mediterranean for the Johannesburg World Summit on Sustainable Development, claimed that the region is an example of unequal trade relations that benefit the developed countries and leave developing countries behind. The NGOs supported Kofi Annan’s call for:

1. The removal of trade-distorting subsidies and improving access of products and services of developing countries to the markets of developed countries, in particular in sectors in which developing countries have competitive advantage, such as the agricultural and textile sectors.
2. Assistance to developing countries, in their efforts to fully integrate into the world trade system and participate effectively in multilateral trade negotiations.

The NGOs stated that

3. Global as well as regional trade agreements should focus on strengthening local economies (mainly Small and Medium Enterprises), (i) establishing fair trade with equity and benefit-sharing, (ii) promoting sustainable production and consumption patterns and fighting poverty.⁵⁵

“This also means that the current overwhelming influence of multinational corporations needs to be reduced: We call for the WSSD to recognize the need for a convention on Corporate Accountability in favour of sustainable development. The World Trade Organization (WTO) has failed to establish an international framework for fair trade. The WTO has to be reformed to ensure the full participation of developing countries and civil

⁵² Izci 612.

⁵³ Izci 625.

⁵⁴ “Mediterranean NGO Declaration for Johannesburg.” Nice, 12/01/2002.

⁵⁵ The Mediterranean Social Forum gave particular attention to fair trade. “In relation to catering (both inside the enclosure as on the food stands on in the outer patio) social principles of fair trade were respected. Unlike other European forums, in the FSMed the products of Coca-Cola and other multinationals were not sold and a policy of accessible prices was applied.” Esther Vivas, “Mediterranean Social Forum: a balance sheet,” 20.07.2005. http://www.forumsocialmundial.org.br/dinamic.php?pagina=bal_fsmed_vivas_ing.

society actors, as well as to allow for full southern access to markets in industrialized countries.”⁵⁶

One of the advantages of increasing fair trade within the Mediterranean area is that the impact of transportation on the environment would not be so negative because of the relatively short distances and the existing communication routes. The Mediterranean is also one of the most populated and popular regions in the world and this provides producers and service providers with a relatively big market. In 2003 the UNEP suggested that the population of the 21 Mediterranean countries could reach 524 million by the year 2025;⁵⁷ millions more visit the region as tourists. Some organizations have already taken advantage of the popularity of the Mediterranean as *the* tourist destination to promote “responsible tourism,” which, unlike mass tourism, tries to have as positive an effect on local communities and the environment as possible. But there are interesting prospects for the production and sale of fair traded agricultural products and crafts within the region that have not yet been adequately explored. In a way this idea of trading *within* the region is in line with the call by leading activists for localization as a sustainable alternative to globalization. Hines defines localization, for which he has designed A Global Manifesto, as “a set of interrelated and self-reinforcing policies that actively discriminate in favour of the local” and that “has the potential to increase community cohesion, reduce poverty and inequality, improve livelihoods, social provision and environmental protection and provide the all-important sense of security.” Hines argues that localization’s emphasis is not on “competition for the cheapest” but on “cooperation for the best.”⁵⁸

Talk about localization is not at odds with fair trade. In November 2006, fair traders in India met in order to talk about how to sell fair traded products within India itself. This has many advantages, including reducing costs and the negative impact on the environment of transportation, and facilitating communication and understanding between buyers and producers. Hines himself writes that some long-distance trade will still occur for those sectors providing goods and services to other regions of the world that can’t provide such items from within their own borders. “Such trade would need to be governed by ‘fair trade’ rules and with stable export prices adequate enough to allow local economies to flourish.”⁵⁹ Papagna concurs: “*con il commercio equo si cerca oggi di valorizzare il fattore autoconsumo locale delle produzioni del Sud del mondo, per evitare i meccanismi di dover lavorare semplicemente per l’esportazione. Si punta, anziché agli aspetti quantitativi, sugli aspetti qualitativi attraverso, per esempio, lo sviluppo dei prodotti biologici.*”⁶⁰ Luca Palagi refers to the positive effects of making organic fair traded products that benefit the environment and provide access to a growing organic market in his research on the promotion of fair trade in North Africa and the Middle East.⁶¹

⁵⁶ “Mediterranean NGO Declaration for Johannesburg.”

⁵⁷ Izci 620.

⁵⁸ Hines 256.

⁵⁹ Hines 64.

⁶⁰ Papagna 71.

⁶¹ Luca Palagi, “Strategia area Medio Oriente Nord Africa Consorzio CTM altromercato,” 10 Settembre 2005. Agricoltura Biologica e Commercio Equo nei Paesi Mediterranei, Bologna, Italia.
http://lnx.imcert.it/imcert/studio/allegati/10_09_05_palagi.pdf

CTM altromercato, of which KKG is a member, is particularly interested in the Mediterranean and it has done research about fair trade in Muslim countries in the region: *“la nostra scommessa come Consorzio, da cui è partita la ricerca sui paesi musulmani, è che il fair trade aiuta la nascita di legami profondi, sia sul piano umano che culturale, e quindi aiuta la conoscenza tra le culture che abitano le varie sponde del Mediterraneo e può migliorare le relazioni tra i popoli.”* Luca Palagi, who carried out the research on behalf of the Italian fair trade consortium,⁶² acknowledges that this may sound very utopian, but he points out that years of exchange with communities in Latin American, Asian and sub-Saharan countries have shown that fair trade does indeed create strong relationships between different people and different cultures.⁶³ The 2005 research project led to CTM altromercato importing three new fair traded products from the Mediterranean: argan oil from Morocco, almonds from Tunisia and soap from Palestine.

The promotion of fair trade within the region would also facilitate access to the wider European fair trade market, with its estimated 60% to 70% of global fair trade sales and potential for further growth.⁶⁴ Luca Palagi observes that over the centuries, trade between Europe and the Middle East has left its mark on the cultures of the Mediterranean and this exchange and trade will continue to mix, mediate and hybridize, *“soprattutto se fondato su regole di equità e paritarietà.”*⁶⁵ CTM altromercato aims to create networks based on an economy that favours solidarity (*“economia solidale”*). The network of solidarity channels products; creates and deepens relationships between democratic organizations; facilitates the exchange of commercial practices based on transparency, fairness and continuity; and creates profound and lasting interpersonal relationships. The research projects focused on 12 countries in the Middle East and North Africa: Morocco, Algeria, Tunisia, Libya, Egypt, Jordan, Israel, Palestine, Lebanon, Syria, Turkey, and Iraq, and 100 organizations were contacted. 23 organizations in 7 countries (Morocco, Tunisia, Egypt, Israel, Palestine, Lebanon, and Iraq) were found to have commercial potential. The products were foodstuffs (7), crafts (11), and cosmetics (5). When the ethical evaluation was carried out, at least 12 of the 23 organizations were found to respect the criteria of fair trade. The commercial evaluation of some of these 12 projects led to the identification of the three new products from Morocco, Tunisia and Palestine mentioned earlier.

Tonino Perna argues that fair trade must be able to offer alternatives to some of the millions of small farmers and people in the fishing industry (*“butteranno fuori la pesca artigianale”*) who will be most at risk of losing their livelihood when the free trade area is established in the Mediterranean in 2010.⁶⁶ One of the problems here is that many communities in the region produce similar products, like olive oil, honey and herbs, and therefore exportation to neighbouring countries may not be the best solution. One area worth exploring may be responsible, agri- and cultural tourism - there has also been talk of fair trade tourism.⁶⁷ Preserving local agricultural production, on the other hand, would help

⁶² Palagi, “Strategia area Medio Oriente Nord Africa.”

⁶³ Luca Palagi (CTM altromercato), personal communication by email. 29 November, 2006.

⁶⁴ The “Report on Fair Trade and Development” (2005/2245(INI))” by the Committee on Development of the European Parliament (rapporteur: Frithjof Schmidt - 6.6.2006) (no. 4).

⁶⁵ Palagi, “Strategia area Medio Oriente Nord Africa.”

⁶⁶ Perna, telephone interview.

⁶⁷ For instance TOURISMCONCERN. Fair Trade in Tourism Network, deals with fair trade and CSR in tourism. www.tourismconcern.org.uk

combat desertification, which is a serious problem in the region, and improve the natural environment of local communities. Moreover, the Mediterranean badly needs to shift from mass tourism, with its negative impact on cultures and the environment, to different forms of sustainable (or responsible) tourism. Perna also highlights the problem of small local banks, with whom producers may have built a relationship of mutual trust, being swept out of business by big international banks (albeit with a glossy CSR policy), as has happened, according to Perna, in the south of Italy. One of the important advantages of fair trade is that the importer and producer establish a long-term trade relationship and the fair trade organization makes part of the payment in advance to allow small, disadvantaged producers to buy whatever they need to make a quality product and plan for future.

Localization, or Regaining Control

We are living in a world that has become, for better and for worse, increasingly interdependent. Perna singles out two vital issues in this regard: (a) the dependence of local communities on sources of food and energy that are located far from them and on which they have no control; (b) the increase in the production of products that have a negative impact on the socio-environmental level. Localization is not about returning to some archaic style of living. Perna argues that reducing dependence on outside elements is necessary not only for ecological reasons and to guarantee essential resources, but also to defend one's health and to guarantee "a liveable future." Localization is not about closing oneself completely to contacts with the outside; it's about choosing not to be totally dependent on raw materials and technology. Communities must find the right balance between self-sufficiency in strategic and vital areas and openness towards the exchange of ideas and flows of people.⁶⁸

There has never, in the history of humankind, been such a widespread, conscious participation in the social, economic and political shaping of our world, such vast experimentation with new forms of economy and social organization; there has never been such a strong grassroots network that can mobilize civil society in different parts of the world on important issues.⁶⁹ The civil society and grassroots organizations that have sprung up all over the world, even thanks to modern telecommunications systems, have the potential to make a different world possible. Fair trade, with its holistic approach to some of the biggest problems that the world is facing today, is one of the results of this positive vibe among local communities and groups of people in the South and in the North. It is in this context that one can imagine a Mediterranean region in which people promote respect for the human being and for the environment through trade.

Special thanks to Tonino Perna, Adam Keller and Beate Zilversmith of Gush Shalom, Sarah Irving of Olive Coop, Nathalie Grima of Koperattiva Kummerc' Gust, Veronica Pecorella of the Istituto Mediterraneo di Certificazione (IMC), Luca Palagi of CTM altromercato, and Carol Wills.

⁶⁸ Tonino Perna, *Destra e Sinistra nell'Europa del XXI secolo* (Milano: Terredimezzo, 2006) 132.

⁶⁹ Perna, *Destra e Sinistra nell'Europa del XXI secolo*, 120.

CSR AND COHERENCE FOR DEVELOPMENT WITHIN THE EU

VINCE CARUANA

The EC and CSR

On the 22nd of March 2006, the European Commission published a communication on Corporate Social Responsibility (CSR) entitled “Implementing the Partnership for Growth and Jobs: Making Europe a pole of excellence on CSR”. In this communication, the Commission announced that it will be backing a European Alliance for CSR, an open alliance of European enterprises to further promote and encourage CSR in the interests of sustainable development, economic growth and job creation. In this paper the Commission calls on the European business community to publicly demonstrate its commitment to sustainable development, urges public authorities at all levels to further improve the consistency of their policies in support of sustainable development, and reiterates its commitment to continue its leadership role in promoting high environmental standards internationally and strengthen the sustainable development dimension of bilateral trade negotiations. In conclusion, the Commission stressed its belief that CSR matters to each and every European since it represents an aspect of the European social model, reiterated that CSR can contribute to sustainable development, and offered to partner with all stakeholders to make Europe a pole of excellence on CSR since CSR mirrors the core values of the EU itself. The definition of CSR as adopted by the Commission in its 2001 Green Paper “Promoting a European Framework for Corporate Social Responsibility” clearly emphasises that CSR covers social *and* environmental issues and that an important aspect of CSR is how enterprises interact with their internal and external stakeholders. Through its position papers on CSR the EC puts across the message that CSR matters not just because there is a strong business case for it, but also because it reflects the kind of society in which we wish to live. This position was repeated by commissioner Günter Verheugen in a Speech on CSR at the Joint Conference of the Finnish Presidency and DG EMPL on the 22 November 2006. Furthermore, the EU sees the concept of CSR as a relevant business contribution to poverty reduction, and in its paper “Policy Coherence for Development: Accelerating progress towards attaining the Millennium Development Goals”, emphasises that special attention will be given to better defining the development dimension of CSR, with respect to the implementation of the major international environmental and social conventions, the supply-chain in developing countries and the participation of non-EU stakeholders.

While the various commitments outlined above are lofty (albeit voluntary) it is important to look at the actual policies and processes of policy-making of the European Union, in particular in its relationships with the majority world, to analyse whether the ideals and values that the EU promotes through CSR are the same ideals and values that it acts upon in its dealings with others. In particular, this paper will look at the relationships of the European Union with the southern Mediterranean countries through the Barcelona Process and ask whether these relationships advance and encourage high environmental and social standards, privilege real participation and promote sustainable development in general.

The EU and the Mediterranean

Two major processes govern the relationships of the European Institutions with the Southern Mediterranean countries - the Barcelona Process, and the European Neighbourhood Policy (ENP).

The starting point of the Barcelona Process was the Euro-Mediterranean Conference of Ministers of Foreign Affairs held in Barcelona on 27-28 November 1995, where the foundations of a new regional relationship were laid, focusing on three main planks: a) the definition of a common area of peace and stability through the reinforcement of political and security dialogue; b) the construction of a zone of shared prosperity through an economic and financial partnership and the gradual establishment of a free trade area; and c) the rapprochement between peoples through a social, cultural and human partnership aimed at encouraging understanding between cultures and exchanges between civil societies. Through the Barcelona Process, the European Union carries out a number of activities bilaterally with each country, in particular the Euro-Mediterranean Association Agreements that the Union negotiates with the Mediterranean Partners individually.

The European Neighbourhood Policy (ENP) was developed in 2004, offering its neighbours a privileged relationship, building upon a mutual commitment to common values of democracy and human rights, rule of law, good governance, market economy principles and sustainable development. The central element of the European Neighbourhood Policy is the bilateral ENP Action Plans agreed between the EU and each partner, which build upon existing Association Agreements between the EU and the partner in question.

The Barcelona Process - What Went Wrong?

The Barcelona Process has come under huge criticism and according to most observers more than a decade later the high hopes for Mediterranean development have been replaced with disillusion and the Barcelona Process has brought about few solid results. The criticisms are plentiful and evolve around the following points:

- Without peace it is very difficult to have any progress in the region;
- The income gap between the EU and Mediterranean countries is almost the same over more than a decade;
- There has been insufficient progress in the area of agriculture;
- Opportunities for real participation of Non EU stakeholders have been minimal.

This paper will now look at each of the above criticisms in more detail, looking in particular at the role of the EU and its institutions in bringing about the current state of affairs, and how this behaviour tallies or not with the values promoted through promoting CSR.

a) Peace

Many observers agree that the Barcelona Process failed to adapt to changes in the strategic context since its foundation, in particular those associated with the Israeli-Palestinian conflict (Fernández, Haizam Amirah & Youngs, Richard 2005). Others would go a step forward and add that EU member states have contributed to the current state of affairs, in particular through the arms trade.

A 2005 Oxfam Press release states that the EU currently accounts for two fifths (39%) of global arms sales. This includes arms sold through making use of major loopholes in current arms export regulations, allowing sales to human rights abusers and countries under arms embargoes, such as through selling weapon components and subcontracting arms manufacturing overseas. According to a 2006 report by Amnesty International, Oxfam International, IANSA “Arms Without Borders: Why a globalised trade needs global controls”, one major loophole is “*You can’t sell it whole, but you can sell it in individual pieces*”. As an example the report cites the Apache helicopter, used by Israel in the recent Lebanon crisis, which is made up of over 6,000 parts manufactured worldwide, including in the UK, the Netherlands and Ireland. Under the EU Code of Conduct, these countries should refuse to export attack helicopters directly to Israel. The report further shows that while the EU’s top four arms-exporting governments - France, Germany, Italy and the UK - are refusing sensitive arms sales more often, EU countries continue to export arms to sensitive destinations where there is a risk that they will be used in contravention of EU Code criteria, with reports showing that in 2005 EU members licensed arms to China, Colombia, Ethiopia, Eritrea, Indonesia, Israel, Nepal and elsewhere. Writing on the eve of the tenth anniversary of the Barcelona Process, Wolff (2005) comments on the ambivalence of the EU faced with the human rights situation in its partner countries. A basic tenet of Corporate Social Responsibility is the inclusion of human rights commitments in corporate principles. Another one is pushing for improvement in company operation regarding the sale of offensive weapons. When the UK government continues to allow arms exports to countries with appalling internal human rights records, including Indonesia, Turkey, Saudi Arabia, Israel and China, it is applying totally different values from those inherent to CSR.

b) Income Gap

The Mediterranean basin is a region showing high degrees of inequality and also of polarization, by which I denote the extent to which population is clustered around a small number of distant poles. In such a situation it is more likely for conflict to break out, and some authors such as Esteban and Ray (1999) have provided rigorous arguments to demonstrate that the measure of polarization as found in the Mediterranean is an appropriate indicator for the intensity of potential conflict. Further writing in 2001, Esteban had this to say about the polarization in the Mediterranean:

“Just a few decades ago, Spain, Southern Italy and Greece were not that different from the most backward Mediterranean countries like Morocco or Egypt. Now the distances have grown so much so as to make the gap to look insurmountable. Israel that was twice as rich as Jordan in 1963 is now four times richer. With no stimulating target at their reach, we might be heading to a period of high political instability in the countries of the region. It is obvious that the South and South-Eastern Mediterranean countries desperately need support to foster growth and prosperity giving new horizons worth the effort. In my understanding, the very first priority for the EU should be to provide the assistance necessary for a ‘success story’”.

In spite of the promises of the Barcelona Process of creating a zone of shared prosperity, the reality is that during the stated period we have moved closer and closer to a region that Esteban (2001, *ibid*) described as “internally more homogeneous and externally more heterogeneous with each other”, therefore increasing the potential for conflict and decreasing the possibility of achieving the other stated aim of the Barcelona process of establishing a common area of stability.

c) Agriculture

A 2004 Oxfam Report considers agriculture to be a high-stakes matter in the Arab Mediterranean Region, with three quarters of the poor living in rural areas and up to 40% of the population dependent on agriculture, and therefore decisions on pace, sequencing and scope of agricultural trade liberalisation will undoubtedly have an impact on rural livelihoods in the region. The report continues to highlight that reciprocal liberalisation of agricultural trade between EU and Arab countries, particularly in the context of high EU subsidies, will jeopardise the livelihoods of poor Arab farmers and even deepen rural poverty. According to Byrne (2005), most agricultural products from the Southern Mediterranean countries with an advantage over EU products are subjected to the Community’s Common Agricultural Policy (CAP) restrictions. Trade tariffs on fruit and vegetables vary by product and season, with the highest tariffs being imposed during periods when imports compete with home-grown products. Olive oil is an example where Southern Mediterranean countries could compete against EU products were it not for the €2.3 billion that EU olive oil producers receive from the CAP every year.

This short analysis clearly shows that the macro framework through which the EU governs the way its businesses trade with the businesses in the southern Mediterranean clearly falls short of the goal of poverty reduction. There is here a clear incoherence between the values behind the promotion of CSR as a relevant business contribution to poverty reduction and the values behind the macro framework in which these businesses will *de facto* operate. Given the stark differences in development levels between the EU and Arab countries, a more socially responsible response, as suggested in the 2004 Oxfam report, would urge the EU to level the playing field by allowing Arab countries to enjoy immediate and full access to EU agricultural markets while keeping a degree of protection to safeguard their rural development needs.

d) Participation

A major criticism of the Barcelona process focuses on the predominant role that the European Union plays, giving the impression of the North dictating to the South what to do, a sentiment echoed by Wolff (op cit) who aptly said that the EU must learn to allow Mediterranean countries to contribute more to the definition of the reform agenda, which is currently determined in Brussels more than in Cairo, Damascus, or Rabat. There is here incoherence between the values behind the promotion of CSR as an inclusive, transparent and participative process of dealing with stakeholders (including the stated objective of including non-EU stakeholders) and the values behind the one sidedness of the process. A more socially responsible response would be to commit oneself to enhanced co-ownership of the process.

Examples of Good Practice

We have shown that there is a need to bring the concerns of the people in the Mediterranean region on board and to effectively reduce the gap between the stated intentions of the Barcelona process and the implemented policies. Instead of insisting on reciprocity in its trade negotiations, the EU could guarantee the Southern Mediterranean Countries the right and the possibility to protect their food security and sustainable development needs. A good indication of what a preferable future would look like can be found by examining some examples of good practice of CSR. What follows are two short case studies of transformative initiatives that illustrate how civil society organisations within Europe are carrying CSR forward, giving it a clear global development and social justice perspective. Both examples concern Fair Trade, an alternative form of trade based on voluntarily-adopted norms that respects both the social rights of producers and workers and the environment. According to Kocken, the Fair Trade movement today is a global movement, with over a million small-scale producers and workers organized in as many as 3,000 grassroots organizations and with an umbrella structures in over 50 countries in the South. While relatively well established in Africa, Asia and Latin America, Fair Trade is still in its infancy in the Mediterranean Region.

The first example shows how various fair trade organisations in Europe are contributing to the improvement of the socio-economic situation of the Palestinian Occupied Territories. The second outlines an experiment called *Just Change*, founded in India and trading with the UK, that seeks to build on the achievements of fair trade and move beyond. In both cases the focus given to the triple bottom line, namely economic, environmental and social results, is not the result of taking into account environmental and social performance in addition to financial performance as a result of adapting with the times or responding to consumer demand, but rather the result of a vision of the world based on building a *society centred on the human person*.

a) Case Study 1 - PARC

The Palestinian Agricultural Relief Committees (PARC) was founded in 1983 by a group of Palestinian agronomists responding voluntarily to the deterioration in agricultural extension programs in the Jordan Valley area of the West Bank as a result of the Israeli occupation by

offering expert advice to marginalized, poor farmers in the area. This voluntary effort gained momentum and recognition and eventually transformed into a NGO dedicated to promoting sustainable development in rural areas in Palestine. During 1991 PARC started the fair trade idea through promoting house economy projects by distributing chickens, sheep, cows, plants and trees in the most damaged areas of Palestine. These projects gave people self-sufficiency to resist the Israeli occupation.

As a result of the increasing local productive capacity and the success of PARC's Fair Trade Department, efforts were made to explore external markets to promote these products, and to develop the quality of their production in order to meet European markets criteria through adopting new means of quality control, filling and packaging designs. Today the Fair Trade Department employs an integrated strategy to reach the European and other foreign organizations through taking part in exhibitions and arranging public meetings to highlight the importance of buying the Palestinian Agricultural products. Andines (France), El Puente (Germany), Oxfam W. W. (Belgium), Zaytoon (UK), Eine Welt Handle (Austria) and CTM (Italy) are some European Fair Trade Organisations that cooperate with PARC.

Commenting in 2004 for *Mondo Nuovo* on the 15th anniversary of CTM (Italy), PARC had this to say:

“We would first like to congratulate CTM on your 15th anniversary. We hope the coming years will be as successful even more successful than the past ones. We feel that our relationship with CTM is very special because it goes beyond a merely trade relationship. We see you as our partners in development and as our voice and advocates in Italy and the world. Together we feel that we serve our people by providing them with trade opportunities that do not otherwise exist and offer them the venue to express their problems and concerns. Your efforts have helped make our people's (Palestinians and Italians/Europeans) lives better and will hopefully generate the level of awareness necessary to change the unjust realities in Palestine.”

b) Case Study 2- Just Change

According to Stan Thekaekara (2006), “Expensive fair trade products mean poor consumers have so far been priced out of helping producers, who are reeling from market forces. Now *Just Change* hopes to benefit both groups.” *Just Change* is an initiative with an objective of establishing an alternative trading mechanism that benefits poor communities by directly linking poor communities and encouraging them to trade among themselves. In India, the Just Change Trust has initiated the Just Change India Producer Company Ltd. whose current members are four large community organisations. These members trade their products amongst themselves as well to external client groups. Currently tea, rice, coconut oil and umbrellas are the products being traded. Just Change seeks to link up with producer and consumer communities, (such as community groups, cooperatives, schools, and faith groups) who share a common belief in justice and equality and a determination to create alternatives to the present market economy. Just Change is a registered company in the UK as well and at present Just Change UK trades in Tea, through a number of retail cooperatives like Unicorn (Manchester), 8th Day Coop (Manchester), Out of this World

(Newcastle), Soundbites (Derbyshire) and GreenHouse (Norwich). Writing in the Feasta Review in 2004, Thekaekara explains the context behind the idea of *Just Change*:

“Globalisation of the ‘WTO kind’ is definitely about the creation of more wealth, just as colonisation was. It is all about economic growth just as colonisation was. But globalisation is not about equity just as colonisation was not. It is not about justice just as colonisation was not. And the only hope for the future lies in the likes ... our adivasi people uniting and working together to ensure that whatever little wealth is generated in their local economies does not flow vertically upwards to line the pockets of the affluent; that as much as possible stays within their economy and what must flow out flows laterally to other communities like them. If we accept that today we live in a global economy, then let those of us who are concerned with the economics of justice form new alliances and strive to create a global economic order of our choosing.”

Taken together, these two examples illustrate how the creative forces of Civil Society Organisations can be at work to create more social justice in spite of operating in a macroeconomic framework that might not be so conducive to real change. The first example shows how the four major criticisms identified in the Barcelona process, namely peace issues, agriculture issues, income gap issues and participation issues, can be simultaneously dealt with by providing an innovative fair trading relationship. The second example, while outside the Mediterranean, can provide some guidance on the way fairer trading relationships may develop, where the poorer groups are themselves the protagonists. Both examples refer mainly to agricultural products and together they illustrate that with a dose of creativity there are alternatives to the inherent contradictions within the European Union institutions that through the Barcelona Process pronounce themselves in favour of a region of stability and prosperity, but that at the same time implement policies that endanger the food sovereignty of the very same countries. Through creating its own rules and ethical guidelines with the full participation of the southern producers, Fair trade is illustrating how the shortcomings identified in the Barcelona Process can be rectified with a fair measure of political will.

A Way Forward...

Adopting the principles of fair trade through fair rules, including for the agricultural sector, seems to hold great potential for poverty reduction. This requires attention to implementation of already existing policies rather than anything new. The “Policy Coherence for Development” statement (op cit) clearly states that the EU will enhance its support for Fair Trade as a tool for sustainable development and poverty reduction. A 2006 report by the EU Parliament Committee on Development clearly endorsed the position that Fair Trade has proved to be an effective way of promoting sustainable development, and that whereas prices for many of the main agricultural exports of developing countries fell by 30 to 60 percent between 1970 and 2000, forcing small farmers to sell their goods below the cost of production and reducing the revenue of many of the poorest countries in the world, Fair Trade can provide solutions.

Adopting some of the examples of good practice of CSR at a macro level would not only move a step forward in eliminating the incongruence between the values of CSR as

promoted by the EU and the less noble practices as sometimes realised through EU agreements and its member states, but also enhance the credibility of the EU in promoting the same values of CSR, while of course enhancing its own image as a socially responsible player.

Vision for a Responsible Europe

This brings us back to the question raised in the introduction, namely whether the ideals and values that the EU promotes through CSR are the same ideals and values that it acts upon in its dealings with others. The evidence indicates that there is a high level of incoherence on the matter. The exhortations outlined in the introduction regarding CSR promoting sustainable development, creating the type of society we would like to live in, and giving special attention to the development dimension, run in parallel with a skewed and narrow fixation on security and, within the Mediterranean region, with trade rules that endanger food sovereignty and livelihoods.

As European institutions are in the process of programming European community aid to the Mediterranean, Civil Society Organisations are calling on them to deliver on social justice, sustainable development, women's rights and the fight against poverty in the region. Speaking at a workshop co-organised by the Arab NGO Network for Development, Eurostep, LDC Watch and Social Watch, Magdy Abdelhamid, director of the Egyptian Association for Societal Development declared that "Europe has a wrong understanding of security. European security is wider than migration, the fight against terrorism and certain technical aspects of security. Security will be reached with increased stability in the Mediterranean and this can only happen through democracy and the fight against poverty." Commenting at the same workshop Ziad Abdel Samad, executive director of the Arab NGO Network for Development, said that "European aid policies should not be based on the assumption that free trade is the panacea. Aid should leave space for its recipients to make their own economic and social choices."

The Barcelona Process and the European Neighbourhood and Partnership Instrument seem unable to realise a sustained focus on eradicating poverty and protecting the environment. As Fair Trade and the ongoing experimentations to further improve on its success have shown, Civil Society is capable of creating a new vision of Europe, built on the richness of cultural diversity, equality, inclusiveness and solidarity, where poverty eradication and social justice become primary aims in its relationship with developing countries.

As leaders in the support and promotion of CSR and as leaders in making big commitments on aid and big promises on the Millennium Development Goals, European institutions need to examine themselves for any incoherencies and deliver on their agenda. Here civil society groups, based on the experiences of the progressive CSR initiatives illustrated and others, have a role to play, namely in influencing official international diplomacy and decision-making. Having successfully experimented with alternative models themselves and backed by a strong consumer base, fair trade and similar initiatives have both credibility and authority in their advocacy work for a more responsible Europe. This might well prove to be a fourth bottom line!

References

Amnesty International, IANSA, Oxfam (2006) *Arms Without Borders. Why a Globalised Trade Needs Global Controls* available at:

http://www.oxfam.org.nz/imgs/whatwedo/control%20arms/arms_without_borders.pdf

accessed on 8th January 2007.

Byrne, Kevin (2005), *Euromed: An Economic Failure?* available at:

<http://www.cafebabel.com/en/article.asp?T=A&Id=1545> accessed on 8th January 2007.

COM (2001) 366 Final, *Promoting a European Framework for Corporate Social Responsibility* available at:

http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0366en01.pdf accessed on

8th January 2007.

COM(2005) 134 final *Policy Coherence for Development; Accelerating Progress Towards Attaining the Millennium Development Goals* available at:

<http://www.eucoherence.org/renderer.do/clearState/true/menuId/227306/returnPage/22730/>

accessed on 8th January 2007.

COM(2006)136 final, *Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on CSR* available at:

http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0136en01.pdfhttp://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0136en01.pdf

accessed on 8th January 2007.

Committee on Development (FINAL A6-0207/2006) *Report on Fair Trade and Development* available at:

[http://www.europarl.europa.eu/sides/getDoc.do;jsessionid=001C49B8CF83CB3A92E3B6CDA8DB7149.node2?language=EN&pubRef=-//EP//NONSGML+REPORT+A6-2006-](http://www.europarl.europa.eu/sides/getDoc.do;jsessionid=001C49B8CF83CB3A92E3B6CDA8DB7149.node2?language=EN&pubRef=-//EP//NONSGML+REPORT+A6-2006-0207+0+DOC+PDF+V0//EN)

[0207+0+DOC+PDF+V0//EN](http://www.europarl.europa.eu/sides/getDoc.do;jsessionid=001C49B8CF83CB3A92E3B6CDA8DB7149.node2?language=EN&pubRef=-//EP//NONSGML+REPORT+A6-2006-0207+0+DOC+PDF+V0//EN) accessed on 8th January 2007.

Esteban, J. and D. Ray (1999), *Conflict and Distribution*, *Journal of Economic Theory* 87, 379-415.

Esteban, J (December 2001), *Economic Polarization in the Mediterranean Basin: An Introduction to the Notion and Measurement of Polarization*, Institut d'Anàlisi Econòmica, CSIC and Universitat Pompeu Fabra Barcelona. Available at: <http://www.iae-csic.uab.es/docs/esteban/polarmedbasin.pdf>

accessed on 29th January 2007.

Eurostep (2007) *WSF Update No. 1 European Aid to Countries in the Mediterranean, South Caucuses and Eastern Europe. Imposed development and Governance Models?*

Available at:

http://www.eurostep.org/wcm/index.php?option=com_content&task=view&id=109&Itemid

[=36](http://www.eurostep.org/wcm/index.php?option=com_content&task=view&id=109&Itemid) accessed on 5th February 2007.

Fernández Haizam, Amirah & Youngs, Richard (2005) *The Barcelona Process: An Assessment of a Decade of the Euro-Mediterranean Partnership* available at: <http://www.realinstitutoelcano.org/analisis/849/Amirah-Youngs849.pdf> accessed on 8th January 2007

Marlike Kocken, Marlike (2003) *Fifty Years of Fair Trade: A Brief History of the Fair Trade movement* available at: <http://www.european-fair-trade-association.org/Efta/Doc/History.pdf> accessed on 5th February 2007.

Oxfam (2004) *EuroMed: Seeds of a Raw Deal* available at: http://www.oxfam.org/en/files/bn040505_eumed_seeds.pdf

Oxfam (2005) *EU Announces Support for International Arms Trade Treaty* available at: http://www.oxfam.org/en/news/pressreleases2005/pr051003_controlarms accessed on 8th January 2007

PARC available at <http://www.mondo-nuovo.it/documenti/diconodinoi.pdf> accessed on 5th February 2007.

Thekaekara, Stan (2006) *Linking hands* The Guardian (March 8, 2006)

Thekaekara, Stan (2004) *Just Change: Humanising Globalisation* available at: <http://www.feasta.org/documents/review2/thekaekara2.pdf> accessed on 5th February 2007.

Verheugen, Günter(22 November 2006) *Speech on CSR Joint Conference of the Finnish Presidency and DG EMPL* available at: http://ec.europa.eu/enterprise/csr/documents/csr_2006_11_22_speech_verheugen.pdf accessed on 8th January 2007.

Wolff, Sarah (2005) *Everybody Needs Good Neighbours* <http://www.cafebabel.com/en/article.asp?T=T&Id=5321> accessed on 8th January 2007.

LIST OF PUBLICATIONS

OTHER BOOKS PUBLISHED BY THE EDRC

The following books are available from the EDRC, University of Malta, Tal-Qroqq, Msida MSD 06, Malta Tel: (356) 23402001, Fax: (356) 21337624 and e-mail: edrc@um.edu.mt

EU-MED SERIES

1. Xuereb Peter G. (ed), *"The European Union and the Mediterranean: The Mediterranean's European Challenge Volume V"*. ISBN: 99909-67-34-2 Media Centre Print 2004, paperback, 768 pages, price Lm 15.00. [Also available in CD format].
2. Xuereb Peter G. (ed), *"Euro-Med Integration and the Ring of Friends' - The Mediterranean's European Challenge Volume IV"*. ISBN: 99909-67-22-9 Media Centre Print 2003, paperback, 401 pages, price Lm 8.00. [Also available in CD format].
3. Xuereb Peter G. (ed), *"Euro-Mediterranean Integration - The Mediterranean's European Challenge Volume III"*. ISBN: 99909-67-18-0 Publishers Enterprises Group Ltd 2002, paperback, 423 pages, price Lm 8.00. [Also available in CD format].
4. Xuereb Peter G. (ed), *"The Mediterranean's European Challenge - Volume II"*. ISBN 99909-67-07-5 Publishers Enterprises Group Ltd 2000, paperback, 298 pages, price Lm 5.00.
5. Xuereb Peter G. (ed), *"The Mediterranean's European Challenge - Volume I"*. ISBN 99909-67-05-9 Media Centre Print 1998, paperback, 192 pages, price Lm 5.00.

OTHER BOOKS PUBLISHED BY THE EDRC

1. Xuereb Peter G. (ed), *"The Family, Law, Religion and Society, in the European Union and Malta"*. ISBN: 99909-67-40-7 Dormax Press 2006, paperback, 309 pages, price Lm 10.00. [Also available in CD format].
2. Xuereb Peter G. (ed), *"Anti-Discrimination, Inclusion and Equality in Malta"*. ISBN: 99909-67-37-7 Progress Press Limited 2005, paperback, 269 pages, price Lm 10.00. [Also available in CD format].
3. Xuereb Peter G. (ed), *"The Constitution for Europe: An Evaluation"*. ISBN: 99909-67-24-5 Media Centre Print 2005, paperback, 187 pages, price Lm 8.00. [Also available in CD format].
4. Xuereb Peter G. (ed), *"The Value(s) of a Constitution for Europe"*. ISBN: 99909-67-28-8 Media Centre Print 2004, paperback, 152 pages, price Lm 8.00. [Also available in CD format].
5. Xuereb Peter G. (ed), *"The Future of the European Union: Unity in Diversity"*. ISBN: 99909-67-11-3 Publishers Enterprises Group Ltd 2002, paperback, 302 pages, price Lm 8.00.
6. Xuereb Peter G. (ed), *"Malta and the EU: Together in Change?"* ISBN 99909-67-09-1 Publishers Enterprises Group Ltd 2001, paperback, 300 pages, price Lm 5.
7. Xuereb Peter G. (ed), *"Challenges of Change"*. ISBN 99909-67-08-3 Publishers Enterprises Group Ltd 2000, paperback, 245 pages, price Lm 5.00.
8. Xuereb Peter G. (ed), *"Getting Down to Gearing Up for Europe"*. ISBN 99909-67-06-7 Progress Press, Malta 1999, paperback, 270 pages, price Lm 5.00.
9. Xuereb Peter G. (ed), *"Malta, The European Union and the Mediterranean: Closer Relations in the Wider Context"*. ISBN 99909-67-04-0 Publishers Enterprises Group Ltd 1998, paperback, 382 pages, price Lm 5.00.
10. Xuereb Peter G. (ed), *"The Individual in the European Union and Malta: Some Central Issues"*. ISBN 99909-67-03-2 Publishers Enterprises Group Ltd 1997, paperback, 298 pages, price Lm 5.00.
11. Xuereb Peter G. and Pace Roderick (eds.), *"The European Union, The IGC and The Mediterranean - State of the European Union Conference 1996"*. ISBN 9909-67-02-4 Publishers Enterprises Group Ltd 1996, paperback, 318 pages, price Lm 5.00.
12. John Usher *"Malta and the EU: Three Issues"*. ISBN 99909-67-00-8, Malta University Press 1995, paperback, 45 pages, price Lm 2.50.
13. Xuereb Peter G. and Pace Roderick (eds.), *"Economic and Legal Reform in Malta - State of the European Union Conference 1995"*. ISBN 99909-67-01-6, Malta University Press 1995, paperback, 419 pages, price Lm 5.00.
14. Xuereb Peter G. and Pace Roderick (eds.), *"The State of the European Union - 1994"*. ISBN 99909-965-4-7, Progress Press, Malta 1994, paperback, 241 pages, price Lm 5.00.

[All price exclusive of VAT, Postage and Packing]