

WE NEED TO INCREASE OUR PACE.....¹

by: HERMAN MULDER

The present crisis

The 2007-2009 financial crisis was a perfect "black swan" event: unexpected, a rarity, with broad and deep impacts; and, with the benefit of hindsight, it was also retrospectively rationalised by many "experts". We got it all "sensationally" wrong: bankers (like myself), policy-makers, supervisors, auditors, research analysts, economists, civil society itself. And even as the crisis was unfolding, many at least initially, did not consider its seriousness and impacts. As risk-professionals did see the dangers of bubbles and the chances of shocks, but underestimated the confluence and impact thereof: "Murphy" at his best.....

The crisis has illustrated that markets are not automatically efficient and self-correcting; that hubris is a danger, humility a virtue; that regulations may not be fit for long term and universal purpose; that supervision and enforcement are often deficient, or even only assumed; that global interdependencies and impacts are too significant not to be addressed in terms of a broader set of analytics and governance issues; that no company or bank should be "too big to fail", as privatising gains while socialising losses is unacceptable; that today's transparency is nebulous, even suspect, so that knowledge on material issues is often asymmetrical; and that in itself justified accounting rules and the notion that markets and reality are sometimes driven by un-founded perceptions amplify the depth and effects of distress.

We need to reconsider, even reinvent, across the board, our fundamental drivers: principles, rules, policies, procedures, performance targets, compensation, as well as our institutions; i.e. BAUU: Business-As-UnUsual. We should not "waste" this crisis.

The role of national governments as guardians of a respectful, just, sustainable, responsible society has become more central, but also its ability to deliver on this is more questioned: wasn't the commercial banking sector deemed to be one of the most regulated and intensely supervised sectors? Moreover, governments are now financially more stretched following the financial crisis, and are foremost focused on national priorities such as employment and social safety-nets, so international consensus-building will be a challenge, as Copenhagen recently illustrated.

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The solution to a current crisis is often laying the fertile ground for the inevitable next one. Such next one is always different in its manifestation, scope, scale, effect and remedy. And again, it will undoubtedly be rationalised after the fact; hence, the signs for a next crisis are already on the wall, but do our eyes and brains recognise them? Or are we suffering from unintentional blindness?

¹ Speech for the World Legal Forum, in the Hague, in December 2009 and published in Europe's World in February 2010

If we put our imagination to work, we might conceive the manifestation of such next crisis to be on Monday (always), 12 October (the usual month) in 2015 (with biblical logic: 7 years after the collapse of Lehman Brothers), or even earlier.....?! This crisis will not originate " top-down" in USA or Europe, like the current one, with significant impact on poor countries, but rather from the bottom-up, originating in the poor communities/countries with profound effects on the rich ones: a combination of Marx and Malthus, "wrapped" (again) by Murphy's Law.

In our emerging multi-polar world (a powershift to the South is inevitable and noticeable) with fast densification of mutual dependencies and influencing, the elites are becoming ever more vulnerable to the effects of "social discontent" (migration, civil strife, terrorism), inadequate healthcare (pandemics) in the "south". Moreover, they become economically dependent of supply-chains (minerals, metals, oil, agri-products, manufactured goods) starting with the rural/suburban poor. The latter are becoming increasingly aware (and wary) of their dire situation through the web, telephone, TV, showing how the life of the elites in the world looks and also what the market prices of their products are and their share thereof. Social dissatisfaction will grow on a worldwide basis, becoming fertile ground for populist leaders to disrupt the comfort zones of the elites in Cincinnati, Manchester, The Hague, Mumbai, etc, causing a Karl Marx-style global "class-struggle". As perceptions drive reality (like with terrorist threats, incidents), nervousness among the elite about "what might happen" will influence their lives and attitudes: and start addressing the symptoms, rather than the root-causes (and we can't have body-scans everywhere).

The plight of the rural poor will be further affected by the consequences of climate change, ecosystem degradation, biodiversity loss and natural resources' depletion, exacerbated by the failure of the international community, rich countries in particular, to effectively act thereon: Copenhagen was underwhelming in its outcome. Malthus was right: we are seriously affecting the regenerative capacity of our planet. We must recognise that the world of free, abundant public goods is over (even more with 9 billion people in 2050) and that such public goods have become relatively scarce (and global "bads", like GHG emissions, abundant) and hence become a "common good" to be equitably shared: international "justice" and "equity" are becoming key issues, both in intra-generational (North-South) and also inter-generational (future generations) contexts. Such scarcity necessitates applying the right pricing/incentive mechanisms for proper allocation of resources by governments and business sector.

Global ecological and humanitarian issues (including human rights, extreme poverty) and their effects on food and health situations, need to be addressed by inclusive, effective international approaches. Previous attempts, initiatives, international commitment have been made, but the effects thereof are very disappointing: not ratified (like "Kyoto"), not honouring commitments (like the Monterrey Process on Official Development Assistance, ODA). And, even more likely after the current crisis, at de UN General Assembly in 2015 it will be concluded that the MDG's (version 1.0) will not, even without the current crisis, have been successfully concluded, notably in sub-Saharan Africa. Moreover, economic neo-nationalism and protectionism are, following the current recession, emerging. Rich countries' governmental budget are under serious pressure (putting the Euro under serious pressure) with austerity and national self-interest prevailing, affecting the creation a much needed climate of international solidarity and justice.

We are also struggling in our highly, culturally and religiously diverse world with the important question whose norms and standards and which authoritative institutions should prevail. Global community initiatives like the Earth Charter and the Charter for Compassion may be important cross-religions' inspirations. This is also an important issue for the business sector, as there must a drive towards responsible business on an international level playing field for fair competition.

Dreaming high with our feet on the ground

Martin Luther King didn't have a nightmare: he was dreaming high, with his feet on the ground. So what can we, stakeholders of the planet and its global community, do? How can we change our objectives, behaviour, investments, actions in such way that we will make the world a better place for everyone with equal opportunity for development? It serves the enlightened, long term self-interest of the "haves" to include and share with the "have-nots": 20% of the world population controlling and depleting and degrading 80% of the earth's resources is morally acceptable nor sustainable.

We have entered the "Age of of Sustainability, Responsibility & Accountability" in a triple context, with equal importance by public and private sectors in their performance targets to economy, nature and humanity. Such Age requires i.a. adoption of:

(1) "new economics", based on eg. TEEB: "The Economics of Ecosystems and Biodiversity" (www.teebweb.org), the landmark EU-study currently underway to develop methodologies to measure the value, costs and benefits of Natural Capital in national (=redefining GDP) and corporate accounts; the outcome of this study in October 2010 should reinforce the opportunity to bring the "Global Green New Deal" into reality, with the green jobs' opportunity related hereto, particularly for the rural youth; as there is an inextricable link between poverty and the loss of ecosystems and biodiversity, this would also support the realisation of the Millennium Development Goals;

(2)"market democracy" on enhanced, rigourous (GRI-style)transparency, enabling all stakeholders to make informed decisions about employment, customer relationship, financing, partnerships; Integrated Reporting of financial and non-financial data, policies, impacts, as recommended in the King III Report (2009)on Corporate Governance in South Africa (<www.iodsa.co.za >), will become good practice in the not to distant future.

(3) structured, multi-stakeholder-cooperation for coherent, effective and efficient development and execution of national and international principles, rules and policies, recognising that entrepreneurship and markets are crucial contributors.

It also necessitates immediate updating, even upgrading of the Millennium Development Goals and make them more tailormade to the reality of today. Good local governance, enabled and enabling local institutions and transparency should be core elements. It also requires addressing the ethical issues related to Human Rights: the "Protect, Respect, Remedy-" Framework as developed by John Ruggie, Special Advisor to UNSG on "Business and Human Rights", is an important guiding document

Mandatory self-regulation and verified public reporting

It is in the interest of large, international companies as well as SME business that there is a global, G20+ level playing field on fundamental ESG/CSR issues.

Nationally, at least in US and EU, this should be addressed in CSR Law for business on the basis of "mandatory self-regulation and public reporting" (comprehensive, performance-oriented, verified; with an explicit reference to human rights, CO2 emissions). This concept goes somewhat further than the recently adopted Danish Financial Statements Amendment Act which is based on the "Apply or Explain-" concept; this law has a broad scope as it applies to approx. 1100 companies in Denmark. It should be recognised that times and learnings are dynamic and citizens' (incl. consumers, employees, investors) engagement is of crucial importance for both compliance and value creation. In the medium term Integrated Reporting (covering both financial and non-financial data, with assurance statement by an external auditor) should be accepted as preferred practice.

Internationally, the 2010 Update of the OECD Guidelines for MNE's (with its 42 adhering countries, including eg. Brasil and Egypt, its comprehensive standards and mediation-oriented grievance mechanism) is offering a unique opportunity to improve its scale (to extend to all G20+ countries), its scope (nexus, financial sector, parent company responsibility, value chain, "Ruggie-based" human rights approach, disclosure & learning), its importance (much more operating resources and "functional equivalence" across NCP's) and its effect (promotion & learning; more importance attached to mediation results or final statements if such mediation fails). Moreover, it should converge with i.a. ILO Conventions, UN Global Compact, ISO 26000.

Better banking

Apart from the public debate on business-drivers and compensation-packages, on "right-sizing and -scoping" of banks, there is an other priority: how can (systemic) banks contribute to the global agenda on public goods and "bads". Also, for involuntary state-owned banks and taxpayers, who wants to own in 2012 a "brown bank" as we are moving, inevitably and at an accelerating pace, to a "green economy", with proper recognition for cost and returns on Natural and Social Capitals. Banks must develop minimum standards and policies for Environmental, Social, Ethical, Governance (ESEG) issues in the core decision processes on lending, investing, trading, advisory (client-first!) practices, with full public disclosure on standards and performance, in accordance with Global Reporting Initiative (GRI: <www.globalreporting.org>). They may build on the Equator Principles (EP: <www.equator.principles.com>), the Principles for Responsible Investments (PRI: <www.unpri.org>) and also on the OECD Guidelines for multinational guidelines, the Ruggie-framework for Human Rights, the Principles of the Global Compact. Such standards must be included in training, management development programs and personal targets. Verification of compliance and performance must take place by an independent assurance statement. ESEG factors must be explicitly addressed in Know-Your-Client (KYC) due diligence evaluations on business clients. ESEG factors must be key consideration for Board. The composition of such Boards should reflect the importance of ESEG. A separate external multi-stakeholder Advisory Council (incl. clients, civil society organisations) may be an

important source of challenge and innovation. Creating a separate Foundation to support initiatives by employees and civil society organisations will further contribute to environmental sustainability and social justice in the sphere of risk & influence of a bank.

Making the law "work for business as a force for good"

Were companies in Rio in 1992 still seen as the problem, in 2002 in Johannesburg as part of the solution, it is even more clear today that there is no solution without active business involvement: "make markets work for.....climate, sustainability, ethical approaches".

But markets need purpose, boundaries, enforcement. The imperative of the rule of law, whether "hard" or "soft", is achieving its desired effects. This implies recognition that the law must not only be clear, consistent, proportionate and fit for purpose, but also that "not-one-size-fits-all"; "time-to-market" must be short in an era of accelerating pace; principles'-based co-creation with "whom it may concern" (business!) for maximum adherence, and with less room for regulatory arbitrage.

In an era of dynamic, transformative change, governments should foremost focus on effective, smart legislation, and maximize the use of their convening power to get the best results from collaboration with the private sector and civil society through codes of conduct and enhanced public disclosure. The role of the government should go further; it should extend its duty of "active ownership" of banks in UK, Netherlands and elsewhere, beyond compensation issues: it should require strategies (lending, advisory, investment, research) which supports the "green & just" public agenda and have, hence, positive effects on the financial markets in general. Also, as tax-payers we want value for our money invested; who wants to own "brown bank" in 2012? It takes time to embed fundamental change in large organisations.

Likewise, the business sector would be serving its own interests best by pro-actively working towards an as broad as possible level (inter-)national playing field through "principled pragmatism", recognised in national law or international agreements. The time of unbridled growth of voluntary codes of business conduct is over: we need to convene, converge and effect. In the financial sector, the Equator Principles and the Principles for Responsible Investment (PRI) must be further sharpened and scaled!

The business case for a green & ethical "first mover-"approach

Companies should redefine their own success criteria: stakeholder value creation, with a medium term strategic horizon, covering their sphere of influence/value chains (supply-, distribution-, waste-; also advanced product labeling/certification), by way of the triple-P approach (People, Planet, Profit). Sustainability and ethical business approach must be embedded in internal core processes, incl. investments), key performance indicators (KPI's).

The new "true value-"proposition must be shared with peers, competitors to create level playing field; moreover, active engagement is important with equity research, rating agencies, stock exchanges (indices, listing requirements), long term investors, insurance companies, other stakeholders; so "lead & lobby" for sustainable, ethical business. Realign the composition of the Supervisory Board of Directors to be able to give long term direction. Mobilise the

"geeks", the young professionals as tomorrow's leaders in the organisation to drive, challenge "the new business deal" for their company; stimulate corporate volunteering in the supply-chain and in challenge-sessions with cross-sectoral peers; after all they will be the ones to be responsible and accountable 10 years from now! Lastly, public disclosure, on the basis of materiality and comparability, of business principles, performance targets, dilemmas, etc is of the essence, notwithstanding it may be a cause for litigation (in US) or campaigning (in EU); such reporting must be verified by independent assurance-providers.

The reputations and brands of "tomorrow's company" will be based on how it effectively aligns itself with interests of all its stakeholders: shareholders, suppliers, customers, staff, financiers, partners, governments. "Show me the value" will be demanded by all of them. Relationships become ever more important for sustainable business performance in an uncertain, volatile world.

Concluding comment

Failure of markets, failure of governments, failure of leaders: they all contributed to today's "trust-crisis". Regaining such trust is important for everyone. The business sector should take the lead in its own commercial self-interest, with individual, sector- and/or national codes of conduct, subsequently to be embedded into baseline legislation, co-created between business and lawmakers for maximum and early effect. The business sector must be "at the table", not "on the menu". The environmental, social, ethical and governance and issues facing us are too important and urgent to leave to government, business or civil society organisations in their own isolation. We haven't even started to discover the added value of completely new alignments, unconventional partnerships, broad-based action-oriented networks!

"We should not walk alone....!"

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