

Preface

International conferences are not organized overnight—especially not when high ranking personalities from politics, business and academia should be offered an adequate platform for addressing and discussing highly relevant contemporary issues. The conference on “*The Role of Law and Ethics in the Globalized Economy*,” which took place on May 22 and 23, 2008 in the Bavarian Academy of Sciences and Humanities in Munich, was no exception. When the first preparations started at the end of 2006, neither the subprime crises nor the general crises of the global financial system, whose shock waves have rocked the financial businesses in subsequent months, were known; nor were they predictable or even imaginable. Based on our monitoring of the globalization process and its apparent impact—not only on the economic and technological environment, but also on the social environment—it was appropriate for the conference to begin by serving as a platform for analysing the *status quo* of the process of globalization, as relevant to politics, business and academia, and for exploring how the interest groups in those domains cope with the challenges of globalization. In the end, however, the purpose of the conference was to produce proposals for conditions for “upwards” global competition, meaning that minimum conditions should be worked out to enable people to live and labour humanely. Such conditions would be those which should help avoid otherwise inevitable frictions in society, both nationally and internationally.

From the very beginning it has been apparent that such conditions cannot be achieved internationally without some minimal norm setting, no matter how difficult the achievement of the necessary international consensus might be. From the developments in the 1990s, when the World Trade Organization (WTO) was established and international treaties such as the General Agreement on Tariffs and Trade (GATT 1994), the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the General Agreement on Trade in Services (GATS) or the Agreement on Trade Related Investment Measures (TRIMS), were adopted, we have learned that even major conflicts of interests between states can be mastered and obstacles, which had long prevented the necessary consensus, overcome. Why then could not rules complementing those which already form the legal network and basis for the globalized economy also be adopted in areas such as corporate finance, banking, labour or environmental law, where they are either inexistent or entirely inefficient. Apparent conflicts of interests may explain the difficulties but they cannot be accepted as a permanent justification. Developments that preceded the establishment of WTO were also heavily loaded with conflicting interests, but the concomitant problems were eventually mastered.

Preparatory discussions have revealed, however, that even if the international legislator may sooner or later succeed in setting minimal mandatory legal rules and standards in the areas of interest, that accomplishment would not entirely suffice. Laws, be they national, regional or truly international, can regulate human behaviour only to a certain extent. Rules that are too far reaching or too bureaucratic are counterproductive; but the idea that one could regulate optimally is also not a real-

istic one. Fair and responsible business behaviour is and should also be an issue of ethics and morals. How difficult it was to include the role of ethics as an aspect of the topics of the conference became clear when a very renowned economist, who was invited to join the steering and planning group for the conference, simply replied that he did not feel competent when it came to ethics. It could well be that too many economists might have felt that way in the past, i.e., being incompetent in this area. In feeling that way they have all overlooked or ignored Franklin Delano Roosevelt, who once observed: “We have always known that heedless self-interest was bad morals; We now know that it is bad economics.”¹ So we stuck to the idea that the conference should also address the issue of ethics as an inseparable part of the general theme. However, because of the sub-prime crisis, a part of the program was later on redirected to a more specific analysis of the causes, the consequences and possible solutions of this threatening phenomenon.

Since May of 2008, nearly overnight, many things have happened. The impact of most of them on the world economy was, unfortunately, bad; and it put not only the globalization process and the phenomena surrounding it under extreme pressure, but at least for some, the entire system, i.e., the capitalism itself, in question. What in May seemed unthinkable, without warning, at least for those who had ignored Paul Krugman’s Blogs, suddenly became hard reality. In the real world, the United States Government focussed on buying tainted assets from banks and the Europeans started to inject capital into their banking systems. The venerable periodical, *The Economist*, urged policy makers to act together “to cushion the economic fall out,” while commodity prices plunged and inflation risks dramatically receded across the rich world.² Furthermore, John Maynard Keynes and his *The General Theory of Employment, Interest and Money* inspired Ed Crooks to title an article in *The Financial Times* “A Prophet Reborn – Keynes’ ideas for saving capitalism from itself look increasingly relevant,” in which one can *inter alia* read the puzzling sentence: “When George W. Bush said his administration’s plan to take equity in banks was ‘not intended to take over the free market, but preserve it,’ he could have been quoting Keynes directly.”³ Similarly, Clive Crooks titled one of his contributions as “Back in Business – The Return of Big Government: Could private-sector failings and middle-class anxiety lead to a redrawing of America’s social contract? Obstacles both fiscal and cultural stand in the way.”⁴ Whether the present crisis will bring about fundamental changes of capitalism remains to be seen, but is unlikely and hopefully not necessary.

It may well be, however, that the failures of the present crisis of the financial system, which has already swung over to the real economy, like those which Keynes had observed for the big depression of the 1930s, have narrow, maybe even surprisingly narrow, technical causes, comparable to what Keynes in the 1930s called the

¹ Quoted from Paul Krugman’s Blog in the *New York Times* of January 25, 2008.

² Saving the system – at last a glimmer of hope, but more boldness is needed to avert a global economic catastrophe, *The Economist* of October 11, 2008, p. 13 (at 14).

³ Of October 18, 2008, p. 9.

⁴ Financial Times of October 16, 2008, p. 9.

famous “magnet (alternator) trouble.” Krugman in his introduction to a new edition of the “General Theory” observed as follows: “And because Keynes saw the causes of mass unemployment as narrow and technical, he argued that the problem’s solution could also be narrow and technical. The system needed a new alternator but there was no need to replace the whole car.”⁵ Since 1930s the means for repair, also thanks modern information and communication technologies, have developed tremendously and have made international concerted actions easier, though not easy. We have already witnessed a number of them. Let us hope that we see the present “alternator” fitted before the output in rich economies seriously shrinks, let alone collapses.

This will not work without a more tightly, not only nationally but also internationally, regulated system. However, a significant part of that system will also have to pay attention, either implicitly or explicitly, to ethics and morals, which the collapsed system has ignored, and it will also have to do so in legal terms: There is definitively something wrong in the system, in legal as well as ethical and moral terms, if it allows, or even worse, offers incentives, for one to earn enormous, one could even say obscene, amounts of money⁶ without taking any personal financial risk. Loosing the money of others has had no negative consequences for the culprits or, put differently, there have even been even obscene “positive” consequences, namely receiving additional millions as golden hand shakes.⁷ The question should be allowed: Does the system suffer a lack of, or at least a shortage of, true capitalists – liable for losses in case of miscalculating risks. Is it by chance that “truly” privately owned banks, such as Sal. Oppenheim, where personal liability exists, have not or have been much less, affected by the present financial crisis and have, by all means, not been a cause for the crisis.⁸ Maybe such “pedestrian” thoughts on making managers true and liable capitalists, and not only speculative owners of shares acquired through bonuses, could be a helpful first step in the right direction, although not really an inventive one. For writing such risky words, one is encouraged by the recently oft reproduced quote from Keynes, that: “Words ought to be a little wild, for they are the assaults of thoughts on the unthinking.”⁹

In the light of these most current and alarming developments, the results of the May Conference may appear overly modest and prudent. However, being modest

⁵ Accessible under <http://www.pkarchive.org/economy/GeneralTheoryKeynesIntro.html> (last visited on October 22, 2008).

⁶ According to Krugman the best paid Hedge-Fund manager of the USA had earned in one year as much as all teachers of the State of New York in three years. (Cf. F. Schirmacher, Was uns arm gemacht hat, FAZ.NET of October 13, 2008).

⁷ Cf. Micheal Steen, Anger at Fortis € 4m pay-off, Financial Times of October 23, 2008, p. 15, reporting on bonus payment to Gilbert Mittler, the sacked chief financial officer, which the Belgium Prime Minister Yves Leterme called “frankly scandalous”. Leterme also added: “I’m making another appeal to the sense of morality of people in the financial and banking sector, this must stop.”

⁸ According to information received from a Department Director of Sal.Oppenheim. Cf. also Annual Report for 2007.

⁹ Quoted from Ed Crooks, A Prophet Reborn, Financial Times of October 18, 2008 p. 9.

and prudent in times of storms must not be a handicap, since the overall credo of all prominent speakers and panellists clearly was that more well thought through and internationally effective regulation is needed in practically all areas addressed and which present global challenges—be it global warming, environment in general, human rights and migration, be it international finance, corporate business, or more specific areas of law. Here the international or at least regional communities of states should demonstrate determination for more aggressive forward oriented actions and should be alert not to act too late. Speakers from European politics also made it clear that they see no acceptable alternative to a “social market economy” as an economic regulatory system which activates the strengths of the market and competition, which provides incentives for achievement and personal initiative, and which triggers enormous dynamics in the economy—but which is also a system that calls for solidarity with citizens. No less clear was the confession of the importance of ethical standards for the behaviour of corporate players in the international arena. International codes of conduct, corporate citizenship guidelines for sensitive areas and management procedures, as well as guidelines on differential pricing, on soft licensing and on knowledge sharing and access to information, were identified as badly needed and also in the very best interest of the corporate players involved. Thanks to the most profound knowledge of all speakers in their respective areas, the conference has generated valuable information in a number of areas concerning the challenges, as well as possible solutions, for politics, businesses and academia. In view of the developments which followed May 2008, the results of the conference have gained in weight and importance. At least for the area of international finance, it has become common sense to call for binding international rules and standards.

The conference was structured into six sessions. Apart from the first session, devoted to the response of politics to the challenge to globalization, in which two keynote speeches by active prominent politicians were delivered, in each session a keynote speech was followed by a panel discussion and statements from the panellists. This structure is retained in this book, i.e., each respective speech is followed by two statements from the panel.

I would like to express my sincere thanks to all those who have contributed to the success of this conference. I should start with the Members of the Steering Group for the Conference, Dr. Francis Gurry, Director General of the World Intellectual Property Organization, Dr. Jürgen Hofmann, Ministerialdirigent, Bavarian State Ministry of Economic Affairs, Professors Kenneth Dam, Prabhu Gupta, Klaus Leisinger and Alain Pompidou. Without their profound knowledge and engagement it would not have been possible to bring together such an eminent group of speakers and panellists and also not to identify some of the many burning issues of the contemporary globalization process.

Special thanks go to the Bavarian Ministry of Economic Affairs, Infrastructure, Transport and Technology, and Minister Ms. Emilia Müller, for having accepted the role of a co-organizer of the conference. Thanks to the Ministry, many things became possible, including a wonderful reception in the Munich Residence, hosted by Minister Christa Stewens, Vice Minister President of the Bavarian Government. Thanks go also to Professor Felix Unger, President of the European Academy of

Sciences and Arts, the third co-organizer of the conference, for continuous encouragement and support.

This conference could not have been organized in such a perfect way without my collaborators and assistants Nina Klunker, Simon Klopschinski, Wolrad Prinz zu Waldeck und Pyrmont, and Clara Sattler de Sousa e Brito, who have devoted many hours of their time in this endeavour. Georg Rauh was helpful in preparing the manuscript for the print, and Professor Kelvin W. Willoughby for English language check. I should also not forget my secretariat with Daniela Pfeuffer and Monika Fröschke, on whom I could always rely and who merit special thanks for their continuous help and devotion. Last but not least, I have to thank the Max Planck Gesellschaft, without whose financial support the conference could not have been realized.

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