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ETHICAL PROBLEMS OF THE PHARMACEUTICAL INDUSTRY

*Ondji'I Toug*³²

Introduction

What are the ethical problems related to the pharmaceutical industry? How can they be addressed? Is a balance possible between ethical and industrial, as well as commercial and economic considerations in the pharmaceutical industry sector? How can the social and economic utility of medicines be reconciled with the moral and ethical values of societies? The social, economic and ethical utility of the industry needs no further proof. It is thanks to this activity that populations have access to medicines and are able to regain their health and improve their lives. Hence, the pharmaceutical industry is at the service of the common good. However, its practices such as the commodification of humans for example, driven by the frantic and rapid search for higher economic profit, weigh down the reputation of this enterprise. There is an urgent need to mediate between the economic, social and ethical interests through the criterion of relationality, which makes justice to the human according to Arthur Rich's terms.³³

³² Richard Ondji'I Toug, Globethics.net National Contact Cameroon.

³³ Arthur Rich, *Éthique économique*, Genève, Labor et Fides, 1994, p. 91.

In the context of the COVID-19 pandemic, where therapy and prophylaxis against the disease are at the heart of debates between researchers, investors and public authorities,³⁴ dealing with the ethical problems of the pharmaceutical industry entails expressing the need to emphasise ethical issues that arise in this sector of economic and social activities framed by legal rules. According to Marc Mentre, “In scientific research, it is not the answer that matters, but the question”.³⁵ This chapter aims to balance moral or ethical concerns with economic and commercial ones, both of which are in competition within the pharmaceutical industry. This approach focuses on highlighting their positive or negative interaction. Such an interest is more generally expressed by Philippe Fouchard who thinks that

“...the relationships between law and moral, which is a recurring issue, present a certain level of specificity and of topicality in international trade, with the expansion of all sorts of international trafficking: war weapons, drugs, human organs and influence.

³⁴ Philippe Froute, « Course au vaccin contre le Covid-19 : la recherche du “bien commun” n’a jamais semblé aussi loin » Université Paris-Est Créteil Val de Marne (UPEC), March 30, 2020. Here the author highlights oppositions of economic and political interests, particularly between the governments of Angela Merkel of Germany and Donald Trump of USA. The controversy between Didier Raoul and the French scientific community surrounding Chloroquine as a treatment base for the disease and the antagonistic interventions of the Malagasy and World Health Organisation (WHO) authorities on the discovery of the drug against the virus in question can also be known here.

³⁵ Marc Mentre, « Y a-t-il une éthique propre à la recherche pour le développement ? », Theme of the first international seminary on development ethics held on May 27, 2005 at the Collège de France, by le Comité consultatif de déontologie et d'éthique (CCDE) de l'Institut de recherche pour le développement (IRD): <http://www.ast.s.asso.fr/site/art.php?id=325>, August 10, 2020, 23:26.

Faced with a positive law, whose sources are diverse (statal and transnational), only universal values can intervene.”³⁶

What universal values could actually be involved in arbitration or mediation between ethics and the pharmaceutical industry for example? How can they be implemented? Besides, what are some of the common practices in the pharmaceutical industry? What are the motivations, the effects and how could the responsibilities be shared? This work is at the crossroad of microeconomics, macroeconomics in open economy, law and economics ethics. In fact, pharmaceutical enterprises do not evolve outside profitability, which underlies firms’ actions in general. Also, most of them are multinational companies, which interact with foreign, private, and public entities in order to improve the health of populations. This work is built around two principal points, namely: an outline of the practices observed in the pharmaceutical industry; and an analysis of these practices in terms of motivations, effects and responsibilities.

Practices of the Pharmaceutical Industry

A. Good/Ethical Practices

The pharmaceutical industry is not completely closed to all ethical concerns. A minimum level of ethics is indeed taken into consideration by this industry, which seeks to ameliorate the access of populations to medicines.³⁷ Here, ethics has a dual source: the external source, that is

³⁶ Philippe Fouchard, « Droit et morale dans les relations économiques internationales », in : Ahmed El Kosheri (Dir.), *L'éthique dans les relations économiques internationales*, Paris, Pedone, 2006, p. 4ff.

³⁷ Cf. Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier, « L'éthique et l'industrie pharmaceutique : un difficile équilibre à trouver » in *L'éthique dans les relations économiques internationales*, Paris, Pedone, 2006 ; idem., pp 67-109.

the intervention of states in this sector; as well as the internal source, which is controlled by the enterprises themselves.³⁸

1. External Source of Ethics in the Pharmaceutical Industry

The external source of ethics in the pharmaceutical industry falls under multilateral commercial law following two criteria: the criterion of convergence between ethics and multilateral commercial law; and the criterion of inclusion of ethics within multilateral commercial law.

a. Convergence between Ethics and Multilateral Commercial Law

The facilitation, by the General Agreement on Tariffs and Trade (GATT) and later on by the World Trade Organisation (WTO), of free international movement of medicines as essential commodities for humans, is a determining asset in the supply of medicines to populations. Thus, the complete elimination of tariff measures on pharmaceutical products and medical equipment also leads to a decrease in the import price of medicines. Emphasis here is made on the convergence between the interests of international trade and those of public health. As a matter of fact, and according to Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier, there is a convergence in the different purposes of laws: while multilateral commercial law seeks, for economic reasons, to encourage access of products in markets through removal of custom duties, international public health law instead seeks to encourage the access of populations to medicines for public health purposes.³⁹

³⁸ In France for example, the Agence nationale de sécurité du médicament et des produits de santé (ANSM), *Guide des bonnes pratiques de fabrication*, Paris, 2019, states in his introduction (p.10), that the pharmaceutical industry of the member States of the European Union (EU) is at a high level of quality management in the development, manufacture and control of medicines.

³⁹ However, Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier paradoxically note that some countries, in particular developing countries that are not

b. Inclusion of Ethics in Multilateral Commercial Law

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the WTO dedicates, at the international level, the principle of patent protection “for every invention of product or process, in all technological fields”.⁴⁰ This Agreement thus makes the protection of new pharmaceutical products and processes obligatory, thereby enabling their manufacture through patent rights, for a minimum duration of 20 years. In reality, the WTO through the TRIPS Agreement achieves an integration of health protection within the objectives of multilateral commercial law, which plays a role in the protection of non-market values at the international level.⁴¹

2. Internal Source to Pharmaceutical Enterprises or Corporate Social Responsibility (CSR) in the Pharmaceutical Industry

The need for an enterprise to be classified as a “citizen” requires it to be able to internalise social ethics values. Actually, the expectations of public authorities, consumers, investors, and to society in general lead enterprises to adopt an ethical behaviour with rights and duties.⁴²

Among its duties, a modern enterprise must particularly assume its social responsibility. CSR is a voluntary commitment by an enterprise to promote standards that go beyond constraining legal standards, of legal and contractual origin (national and international), in the fields of the environment, human rights or health protection. This is a commitment to

signatories to the WTO agreements, which most need to promote access for their population to medicines, continue to maintain sometime very high costs.

⁴⁰ Article 27 g 1 of the TRIPS Agreement.

⁴¹ For more information, cf., Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier, *idem*. The authors specify that provisions are made in the WTO and in its Declarations on this subject, allowing states to take measures those infringe patent rights on public health grounds. However and in particular, the Doha Declaration does indeed allow States to issue compulsory licenses to third parties, that is to say, to companies which are not those that hold the patents.

⁴² Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier, *ibid*.

act in an ethical manner and to contribute to economic development, while improving the company's overall quality of life.

The pharmaceutical industry is not left out of this movement, instead, ethics, even though non-formalised,⁴³ is primarily extended in this sector in terms of access to medicines and hence, access to health care for a large population of patients all over the world. Generally, and according to Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier, ethics is understood as the involvement of less developed countries in health programmes. It takes the form of donations or partnerships, which reflect an awareness of the existence of health problems. This is the case of Aventis or Sanofi-Synthélabo who donate medicines often distributed by non-governmental organisations (NGOs) such as Médecins sans Frontières (MSF). However, these actions are limited and can sometimes be interpreted as a means of establishing a relationship of trust with consumers, with investors, and with public authorities who tend to regulate this sector. Ethics appears here as a marketing tool. One could say that such an ethics is more pragmatic than moral, far from an ethics of conviction.⁴⁴

Whether such ethics is pragmatic or moral, formalised or not within self-regulatory documents, it is understood in terms of access to medicines. It therefore appears as a growing concern of pharmaceutical enterprises.⁴⁵ However, at a time when biotechnology has profoundly

⁴³ Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier nevertheless note that most of the time, the ethical commitment of companies is formalised in an internal document that may take various forms: code of good conduct, ethical charter, code of ethics, principles of behaviour, principles of business conduct, corporate principles, guiding principles, etc.; and question the building nature of these internal company initiatives.

⁴⁴ Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier, *ibid*.

⁴⁵ See, also, Valérie Gateaux, Jean-Michel Heitz, « L'accès aux médicaments : un défi pour l'industrie pharmaceutique », *Humanisme et Entreprise* 2008/1 n° 286, pp. 13-28. Here the authors note that, through the concern and challenge for

changed the nature of medicines, the content of ethics cannot be limited to this issue.

Problematic Practices

There are practices in the pharmaceutical industry that raise ethical concerns. As part of this work, commodification and the use of human beings, as well as fraud and their influence on the medical profession will be examined.

A. Commodification and the Use of Human Beings

Commodification is the transformation into a thing which is moving, dynamic or a simple mental representation. In this concern, and because of the progressive transformation of medicines under the effects of biotechnologies, Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier think that medicines have turned into protean assets and the pharmaceutical market into a biopharmaceutical market.⁴⁶ For the authors, medicines derived from living organisms, particularly human beings have transformed the human body into raw material thus, an object at the service of the pharmaceutical industry.

B. Fraudulent Practices Aimed at Disguising Side Effects

In an article entitled “Practices of the pharmaceutical industry denounced”, Ghislain Martel takes up Gwen Olsen’s testimony

pharmaceutical companies of access to medicines, ethics and profitability are compatible, the particular interest is reconciled to the general interest, which in this case is the right to life.

⁴⁶ See Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier, *ibid*. Here the authors point out that the expression of protean seems the most appropriate ; the actual or promised metamorphoses of the drug make a part of its future almost undetectable, and with it the consequences of this “commercialisation” of humans on humans themselves. The authors condemn cloning and the use of human genome.

mentioned in his book, “*Confessions of an Ex Drug Pusher*” where the author gives his observations and criticisms of the dishonest practices of multinational medicine companies.⁴⁷ Martel reports that after a lucrative career of more than 15 years as a sales representative within great enterprises of the pharmaceutical industry such as Johnson & Johnson, Bristol-Myers Squibb and Abbott Laboratories, Gwen Olsen became an implacable voice for all victims of the abuses committed by these companies and for the hundreds of thousands of patients they have taken to their graves. She states that, when a medicine is marketed, “...less than 50% of the side effects associated with the medicine are reported, or even known”.

A twofold economic and ethical problem arises here regarding the usefulness of medicines, and the satisfaction of customers, who are consumers of pharmaceutical products.

C. Influence on the Medical Corps and other Stakeholders

Ghislain Martel argues that Western health care systems, and increasingly education systems, are being manipulated by the pharmaceutical industry, which controls and indoctrinates the medical corps through institutions, medical journals and certain charities.⁴⁸ This influence of the pharmaceutical industry on other stakeholders in the sector is corruption.

Motivations, Effects and Responsibilities Related to the Pharmaceutical Industry

Firstly, the motivations of the pharmaceutical industry and the effects of their products will be examined. Secondly, the responsibilities

⁴⁷ Ghislain Martel, « *Les pratiques de l'industrie pharmaceutiques dénoncées* », <https://advitae.net/articles-sante/2.Medecine-et-societe/Les-pratiques-de-lindustrie-pharmaceutique-denoncees>, March 2018.

⁴⁸ Ghislain Martel, *ibid*.

of different actors will be established with a view to achieving equity in the sector.

A. Motivations and Effects

First of all, it will be a question of exposing the motivations of industrialists in the pharmaceutical sector before assessing the effects of pharmaceutical products.

1. Motivations

a. Good Motivations

The pharmaceutical industry is driven by noble goals, namely: the search for health and life of humans, as well as easy access to medicines by people, particularly in the poorest countries, within the framework of international common good.⁴⁹

b. Motivation Deemed to Be Bad

The pursuit of greater economic efficiency or of higher profits is an important point that weighs down the reputation of the pharmaceutical industry. This is motivated by the spirit of the contemporary capitalist economic system which is the frantic and rapid search for maximum material profit.

2. Effects

a. Positive Effects

The positive effects of products of the pharmaceutical industry are remarkable on the lives of individuals and societies.

Actual and Expected Therapeutic and Prophylactic Benefits

There is no doubt that medicines and vaccines are important for humans. Considered as goods in international trade, they make it

⁴⁹ Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier, *ibid.*

possible to regain one's health and sometimes to stay alive.⁵⁰ Medicines are factors of actual and expected therapeutic and prophylactic benefits. In the name of a certain philosophical conception of health and ethics, the access of populations to pharmaceutical products in sufficient quality and quantity appears to be a legitimate objective.⁵¹

Actual and Expected Economic Benefits

It goes without saying that pharmaceutical industries provide several jobs and are a source of revenue for states and enterprises dealing in that sector. They cover a vast global market and mobilise huge financial resources for investment in the domain of research and development.

b. Negative Effects

Some of the negative effects include the considerable number of victims of the undesirable effects of drugs, the torture of patients by medicines, dependency on medication, depression and side effects affecting different body parts, and patients' behaviour, for instance violence, school dropout, suicide, etc.⁵² Furthermore, an increase in the number of diseases and that of patients is observable.⁵³ Also, given the fact that the pharmaceutical industry controls and indoctrinates the medical corps, the consumption of medicines increases drastically. Ghislain Martel points out that in recent years, the consumption of medicines has never been so high in the history of humankind. He notes that one person out three is taking or has taken psychotropic medication.

⁵⁰ Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier, *ibid.*

⁵¹ Agence nationale de sécurité du médicament et des produits de santé (ANSM), p. 13. Here in particular, the share of spending by pharmaceutical industries was decisive in overall global health spending between 2002 and 2005.

⁵² Ghislain Martel, *ibid.*

⁵³ Ghislain Martel, *ibid.*

Patients no longer take one medicine, but two, three or four simultaneously or sometimes even more!⁵⁴

In addition, there are the environmental effects of the pharmaceutical industry. The US Green Technology states that:

“Pharmaceuticals in some form date back to the Middle Ages, but in modern days there are hundreds of prescription and over-the-counter medications available. Not only do humans consume pharmaceuticals, but livestock consumes millions of doses, as well. The global pharmaceutical market continues to grow year by year, and with it environmental concerns pertaining to not just production, but also consumer waste and disposal”.⁵⁵

B. Responsibilities

The notion of responsibility basically refers to a three-tier relation: the person who is responsible; the domain of responsibility (duties, actions, attitudes, nature); and the body to which one is accountable (for instance a court, the people affected by a decision, personal conscience and God).⁵⁶ Given that the domain of responsibility has been widely highlighted above through practices and negative effects, this part will focus more on the people who are responsible and the object of their responsibilities.

⁵⁴ Ghislain Martel, « Le profit: une dynamique plutôt risquée pour la santé », <https://advitae.net/articles-sante/5.Sante-et-actualite/25-faits-detudes-sur-les-derives-pharmaceutiques-et-la-vaccination.177.htm>, Dec. 2014.

⁵⁵ See *The Environmental impact of the pharmaceutical industry*, in <https://usgreentechnology.com/the-environmental-impact-of-the-pharmaceutical-industry>

⁵⁶ Otfried Höffe (Sous la direction de), *Petit dictionnaire d'éthique*, Cerf, Fribourg, 1993.

1. The Responsibilities of Public and Multilateral Authorities

With a view that public authorities strengthen regulations, one of the emergencies is that international public authorities found a principle that prohibits or restricts the use of human organs as “raw material” in pharmaceutical industries.⁵⁷ Generally, normalisation and quality control of medicines should be done more rigorously by competent authorities. Moreover, in this sector public authorities should make CSR mandatory. In fact, its application is so far voluntary and implemented according to marketing purposes.

2. The Responsibilities of Pharmaceutical Companies

A part from the duty to make medicines available to as many people as possible, pharmaceutical enterprises should respect humans’ lives and dignity. They should do so by complying with the various legal and regulatory provisions relating to the manufacture, marketing of medicinal products, and the various commitments made within the framework of CSR for instance.

3. Consumers’ Responsibilities

Consumers are basically the category of people who should be the most active in the chain of regulation of the pharmaceutical industry sector. In effect, the consumer is the final recipient and the judge of the quality and efficiency of pharmaceutical products. This role of judge should be fully assumed within the framework of organised structures for the defence of consumer interest. Such structures include national consumer associations and consumer trade unions.⁵⁸

⁵⁷ Isabelle Moine-Dupuis and Clotilde Jourdain-Fortier, *ibid.*

⁵⁸ In Cameroon, for example, there is a Cameroonian Consumers Foundation.

Conclusion

The ethical problems of the pharmaceutical industry require the use of dialectics, especially Arthur Rich's criterion of liability. In fact, according to Arthur Rich, the criterion of relationality focuses on the fair use of ethical values which stem from human experiences.⁵⁹ Thus, concerning the pharmaceutical industry with its motivation for economic profitability on the one hand, and populations' easy access to appropriate medicines on the other, one could suggest the implementation of a consensus. This consensus is operated within mixed structures made up of public and private authorities and consumers for a better mediation between economic, social and ethical profits. Such relationality could be better achieved in public-private partnerships (PPP) including private consumers organised in structures to defend their interests.⁶⁰

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⁵⁹ Arthur Rich, op.cit., p. 194.

⁶⁰ Agence nationale de sécurité du médicament et des produits de santé (ANSM), op.cit., p. 12.

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