

Understanding conflicts of interest to safeguard democratic & evidence-based health and nutrition governance

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Annotated presentation for IBFAN-members
and others citizens who care about infant and young children's health and wellbeing



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I am very pleased to have been asked to pull together some key points on conflict of interest theory for IBFAN-members and like-minded persons who are interested in exploring how the lenses of conflicts of interest might help in their efforts to protect and promote breastfeeding and adequate infant feeding.

Some IBFAN-members may know me from publications such as:

- *Conflicts of interest and policy implementation: reflections from the fields of health and infant feeding*. Geneva, IBFAN-GIFA, (2005)
- Richter, J. (2004). *Public-private partnerships and international health policy making: How can public interests be safeguarded?* Helsinki, Ministry for Foreign Affairs of Finland, Development Policy Information Unit (or the 8 page briefing paper summarizing key concerns and recommendations).

They were first attempts to sketch out what I am further developing here, integrating new developments in this area.

As in all my publications, I have done my best in this presentation to include a selection of references which show where my thinking comes from and allow interested persons to find out more about the issues raised.



Aim of this annotated presentation



To enable concerned citizens to *better **identify conflicts of interest** and more successfully **argue for effective conflict of interest (Col) safeguards***

- in particular with respect to **protecting regulatory processes** from undue corporate influence;
- in other words, to help ensure **democratic, genuinely evidence-based, health and nutrition governance**

By concerned citizens I understand all the persons who work in the field of nutrition, health, or business & human rights - whether as health and nutrition professionals and -workers, civil servants, participants in a public interest advocacy groups and networks, labour/trade unions and social movements, or academics - who wish to protect the capacity of public interest actors to hold infant food corporations accountable via implementation and enforcement of the 1981 *International Code of Marketing Practices of Breastmilk substitutes* & subsequent relevant World Health Assembly Resolutions.

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Those who do not know IBFAN and its work well may want to look at the 7 minute video [All about IBFAN](http://ibfan.org/all-about-ibfan)

<http://ibfan.org/all-about-ibfan> or www.youtube.com/watch?v=YpuK1w-ZRjc
(english, spanish or french version)

Why bother with understanding conflicts of interest?

People who work on corporate accountability issues,
people who work on health and nutrition issues
often have a good 'gut feeling'
about what constitutes a conflict of interest

They may also know that in the infant feeding arena much was done
to identify and address them e.g. via:

The *International Code of Marketing of Breastmilk substitutes* (1981)
& subsequent relevant **World Health Assembly (WHA) Resolutions**
on conflicts of interest

And the *WHO/UNICEF Global Strategy on Young Child and Infant Feeding* (2002)



The **World Health Assembly Resolution 58.32 of 2005**, for example, urges Member States to ensure that «**financial and other incentives for programmes and health professionals do not create conflicts of interest**»

For more discussion, see e.g. Code Essentials No 1, p. 22; and No 3, pp.22-27, IBFAN ICDC (International Code Documentation Center), Penang, Malaysia

For more guidance on how to address risks created by infant food donations, see point 6 «Minimise the Risks of Artificial Feeding», Infant Feeding in Emergencies: Operational Guidance for Relief Staff and Programme Managers, IFE Core Group (2007), p. 13 ff



Many may have thought that problems of undue corporate influence were solved



when the **WHO/UNICEF Global Strategy for Infant and Young Child Feeding (GSIYCF 2002)**

stressed the need to respect

«accepted principles for avoiding conflicts of interest»

& moreover

delineated the role of manufacturers...

of industrially manufactured foods for infants and young children

by restricting their role to:

- a) meeting specific quality, safety and labelling standards (Codex Alimentarius);
- b) conforming to the International Code & WHA Resolutions

The Global Strategy stated in the introductory paragraph about **Obligations and Responsibilities** of the various actors:

“Governments, international organizations and other concerned parties share responsibility for ensuring the fulfilment of the right of children to the highest attainable standard of health and the right of women to full and unbiased information, and adequate healthcare and nutrition. Each partner should acknowledge and embrace its responsibilities for improving the feeding of infants and young children and for mobilizing required resources. All partners should work together to achieve fully this strategy’s aim and objectives, including by forming **fully transparent** innovative alliances and partnerships **consistent with accepted principles for avoiding conflict of interest.**” (para 35, emphasis mine)

Para 44, which defined the role of “commercial enterprises” reads: “Manufacturers and distributors of industrially processed foods intended for infants and young children also have a constructive role to play in achieving the aim of this strategy. They should ensure that processed food products for infants and children, when sold, meet applicable Codex Alimentarius standards and the Codex Code of Hygienic Practice for Foods for Infants and Children. In addition, all manufacturers and distributors of products within the scope of the International Code of Marketing of Breast-milk Substitutes, including feeding bottles and teats, are responsible for monitoring their marketing practices according to the principles and aim of the Code. They should ensure that their conduct at every level conforms to the Code, subsequent relevant Health Assembly resolutions, and national measures that have been adopted to give effect to both”.

See www.who.int/maternal_child_adolescent/documents/9241562218/en/, pp. 19 & 22-23

However, the trend towards 'partnership' and 'stakeholder' relationships with industry has led to new challenges & confusing discussions

- What are Conflict of interest? - *Actual? Perceived/Apparent?*
- Even more confusing: '*Conflicts of interest*' versus '*conflicting*' and '*diverging*' interests?
- And what are '*interests*' altogether?



Remark: One major challenge today consists in ensuring that concerns over the predicted increase of CoIs caused by 'partnership' and 'stakeholder' - relationships with corporations and influential funders - and lack of measures to address this situation - are not being sidelined by statements such as **«but we all have conflicts of interest»**.

Maybe one way to ensure a meaningful debate would be the following: ask those who bring forward this, or similar sweeping, statements if they believe that there is no difference between e.g. a village football club seeking sponsorship from a local baker, a patient group that accepts funding from pharmaceutical companies, a public health institution or academic institute that takes funding from a soft drink company, and an UN agency/or major public interest NGO actively seeking financial resources from major transnational corporations.

Another obstacle to meaningful debate consists in the widespread misunderstanding that effective CoI measures would preclude public interest actors from interacting with corporations. This is not the case. Conflict of interest rules in public procurement, for example, do not rule out that a public institution can procure needed goods. But they are part of the system of checks and balances meant to ensure that public interests are safeguarded when public institutions spend taxpayers' money.

I hope that the material contained in this power-point presentation clears up such misunderstandings and provides some food for a much needed constructive debate.



Confused? –Naturally!😊

Conflict of Interest “An Elusive Concept”

Professor Anne Peters

Conflict of Interest in Global, Public and Corporate Governance
(2012)

No one universally accepted definition

Statement and some discussion of this point, see Anne Peters & Lucas Handschin, editors (2012). Conflicts of interest in global, public and corporate governance. Cambridge & New York, Cambridge University Press, pp. 4-6

PS: Interested readers (with a legal background) who would like more information about why law Professor Anne Peters calls conflicts of interest an «elusive» concept and how to define the conflict of interest concept in a way that it helps law and policy makers to better deal with associated problems can find this information in her overview chapters, «*Conflict of interest as a cross-cutting problem of governance*» & «*Managing conflicts of interest: lessons from multiple disciplines and settings*» in Peters & Handschin, op. cit.



Col = relatively new legal concept But spirit of Col known to everybody



'Spirit' of Cols

= idea behind Col concept & some ideas how to adequately address them are **enshrined in popular sayings**, religious parables and stories, fairy tales and popular myths, as well as slogans found in the press.

- *The hand that gives is always higher than the hand that takes (Congo)*
- *He who pays the piper calls the tune; what are the 'strings attached'?*
- *You do not bite the hand that feeds you*
- *Are you not worried to be seen as being 'in bed with industry'?*
- *You cannot serve two masters; wearing two (possibly conflicting) hats*
- *You do not invite the fox to build the chicken coop (in French: you do not invite the wolf to guard the sheep enclosure)*

One could say that such sayings may be behind peoples' 'gut feelings' about what constitutes a conflicts of interest. Dictionaries define «gut feelings» as «intuitive feelings» - feelings which often give an indication that something is wrong. A better understanding of Col theory may help to better check, and explain, whether the gut feelings are about conflicts of interest or whether another way of describing the situation (e.g. use of the term «clash of interests») would better reflect the problem.

Before continuing to read the presentation **try to find equivalent sayings in your respective languages.**

PS: you will see later how such sayings and illustrating images can be used when raising attention to Col issues from a «reasonable person» perspective

OUTLINE

I. Col IN A NUTSHELL: Explains the *spirit behind Col regulation* & introduces some Col definitions

II. Col IN GLOBAL NUTRITION GOVERNANCE: Raises attention to the *lack of adequate Col regulation* in the international nutrition arena & the problem that the *Col concept is being muddled and redefined* (example: SUN)

III. WHAT CAN BE DONE? Sketches some ideas how concerned citizens could advocate for Col policies in order to *protect the capacity of public interest actors to hold TNCs accountable*

I. Conflicts of interest in a nutshell

Its spirit = conceptualisation by lawyers

- Col relate e.g. to professionals who are, or can be conceptualised, in a ***fiduciary (trust) relationship***:
judges; public officials & civil servants;
more recently: physicians etc.
- Fides (latin) means trust, faith, confidence...

Source: This conceptualisation is recommended e.g. by Marc A. Rodwin & Anne Peters, both law professors specialised in conflict of interest issues

See Rodwin, M. A. (1993). Medicine, money and morals: Physicians' conflicts of interest. New York and Oxford, Oxford University Press,
e.g. *What are conflicts of interest?*, pp. 8-11, and Chapter 7: *Fiduciary law and the professions: Regulation of civil servants, business professionals, and lawyers*, pp. 179 -211 & endnotes

& Rodwin, M. A. (2011). Conflicts of interest and the future of medicine: The United States, France and Japan. New York, Oxford University Press,
for further explanations of his of Col conceptualisation (see also later in this PPT slide show)

This book also contains a section about the roots of the Col concept in Roman fiduciary law, pp. 251-253

Fiduciary (trust) relationship

Fiduciaries (the trust-takers) decide and/or act
on our (the trust-givers) behalf

- their decisions are **important** for us
- but we cannot check well on their decisions
- **The 'trust givers' must be able to trust in the 'trust-takers' decisions**

PS: Prof. Rodwin proposes to call the trust-givers «fiducies»

What is a conflict of interest?

Some definitions

Professor Ann Peters proposes as *a first general definition*:

«A situation in which some interest of a person has a tendency to interfere with the proper exercise of his [or her] judgement in another's behalf»

Michael Davis, 1998

Davis, M. (1998). Conflict of interest. Encyclopedia of Applied Ethics. In R. Chadwick. San Diego/London/Boston/New York/Sydney/Tokyo/Toronto, Academic Press. 1: pp. 589-596.



For a **legally meaningful definition of Col**
Peters stresses the need to avoid
confusing «conflicts of interest»
with what others often call «conflicting interest»



«The conflict we are dealing with is an ***intrapersonal conflict***
arising within a human or an institution
which is entrusted with such [fiduciary] decision making.
It is **not** a clash **between** different actors.»

Remember the **key difference: WITHIN versus BETWEEN**

Peters adds: “If all situations where a public... or professional decision-maker takes conflicting interests into account were qualified as a ‘conflict of interest’, then every assessment of costs and benefits, and every balancing decision would involve a conflict of interest.” p. 5

For additional explanations, see Peters & Handschin (2012), op. cit., pp. 4-6 (quote on p. 5)

See also p. 363 “Crucially, the concept of conflict of interest relates to intrapersonal conflicts. The ‘conflictedness’ is a state of mind of a person who is empowered to take decisions on behalf of others.... It can hardly be verified from the outside whether a decision-maker has in fact been conflicted, whether that conflict had a decisive impact on the decision-making process...”

PS: Prof. Rodwin draws attention to “conflicting interests” within a person: “conflicts of interest are not the same as conflicting interests. **Multiple interests may pull people in different directions. But unless such interests compromise known obligations, no conflict of interest exists.**” Rodwin, 1993, op. cit. p. 9

PPS: Seen the differing meanings of conflicting interests and also because for most people it would still sound like conflicts of interest, I would encourage more reflection on how to best call, a classify all kind of other situations which are not Col in the strict legal sense. Talking about conflicting interest, clashes between interests, divergences of interests etc. may be useful in first attempts to draw attention to problematic situations that they perceive as conflicts of interest. However, action groups and other public interest actors may try to look which word would describe a specific situation most accurately in the more precise but simple terms.

‘Conflict-WITHIN’ a person or institution

Example of a widely used definition

«A **‘conflict of interest’** involves a **conflict between the public duty and private interest of a public official**, in which the public official has private-capacity interests which could improperly influence the performances of their official duties and responsibilities»

***OECD Guidelines
for Managing **Conflict of Interest** in the **Public Service** (2003)***

The developers of this definition chose “a definitional approach that is deliberately simple and practical to assist effective identification and management of conflict of interest situations.” – often also referred to as a ‘hands-on definition’.

For more information, see e.g. Section “Defining a conflict of interest”, p. 24, in OECD, Ed. (2003). Managing conflict of interest in the public service: OECD Guidelines and country experiences. Paris, Organisation for Economic Cooperation and Development, <http://www.oecd.org/gov/ethics/48994419.pdf>

What is a conflict of interest?

Some other definitions

1. Most widespread practical “hands-on-definitions” in **medicine:**
Institute of Medicine (IoM) 2009 definitions of (I) **‘individual’** and (II) **‘institutional’ conflicts of interest** in medical research, education and practice, & development of clinical practice guidelines
2. **A more complex definition** by law professor Marc Rodwin
Focus: fiduciary relationship & duty of loyalty; analysis also taking structural causes & systemic effects into account

This sounds all very complicated. But each of these sources, and definitions they propose, help us understand some other aspects of conflict of interest regulation

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Institute of Medicine IoM Definitions (2009)

An **individual conflict of interest**

«is a *set of circumstances*
that creates a risk
that professional **judgements**
or actions
regarding a *primary interest*
will be **unduly influenced**
by a *secondary interest*»

Based on def. by Prof Dennis F. Thompson 1993



Lo, B. and M. Field, editors. Institute of Medicine (US) Committee on Conflict of Interest in Medical Research, Education and Practice, Eds. (2009). Conflict of interest in medical research, education and practice. Washington DC, National Academics Press. Definition on pp. 6 & 46

For those who want to know more about how to use this concept,
see summary (pp. 1-22)
& chapter 2: [Principles for identifying and assessing conflicts of interest](#) (pp. 44-61).

The book is open-source <http://www.ncbi.nlm.nih.gov/books/NBK22942/>

Individual Cols

key notions of IoM/Thompon's concept

- A conflict of interest is a «**set of circumstances**» that creates a **risk**;
- Personal **primary «interests»** are e.g. key ethical & legal obligations of professionals (for physicians e.g. with respect to patient care, research, medical education, and advisory functions on public guidelines and policies);
- **Secondary interests** are often subdivided into
(1) «**financial**» and other (2) «**personal**» **interests**
(= *Col categorisation by major causes: No 1 & 2*)

Financial Col of physicians include: financial ties with health industries (such as gifts and sponsorships); gain from the sales of health products; problematic incentives; shares in health care companies

Personal interests: include desire for prestige or power; preference for family and friends

«**Secondary interests** are not [necessarily] illegitimate in themselves»

...but the **aim of conflict of interest regulation** is «to ***prevent these secondary factors from dominating or appearing to dominate...*** in the making of professional decisions» (Dennis F. Thompson 1993)

In the case of conflict between
the primary and a secondary interest
the primary interest must always prevail!



In other words: The primary 'interest' must take precedence = prime CoI principle in this conceptualisation

Thompson, D. F. (1993). "Understanding Financial Conflicts of Interest." N Engl J Med 329(8): 573-576, reprinted in

Thompson, D. F. (2005). Restoring responsibility: ethics in government, business and healthcare. Cambridge, UK, Cambridge University Press, p. 291 ff.

Divided loyalty Col

Duty to act with undivided loyalty

highlighted by law professor Marc Rodwin

In public functions, the “idea was that the public official or civil servant, [or expert in an advisory roles], needs to **act exclusively** in the **public interest.**”

They were meant to be **“loyal”** to those they are meant to serve,
“to be scrupulously honest with them and to act solely for their benefit”
(1993)

Conflicts of interest caused by divided loyalties «occur when [e.g] physicians **perform roles** that **interfere with** their **acting in** their patients’ **interest** or when their **loyalty is split between patients and a third party**» (2011)

Rodwin, 1993, op.cit, p. 183 & Rodwin, 2011, op.cit, p. 16



Divided loyalty Col - examples



- when physicians perform, at the same time, the role of a healer and researcher;
 - when they provide a service for a pharmaceutical or food company (= third party which has a for-profit interest); or when academics sit on the boards of health related companies.
-
- when civil servants are asked, at the same time, to work on corporate regulation (or for Corporate Social Responsibility CSR) and to engage into a sponsorship-, 'partnership'/multi-'stakeholder'- relationship with the companies to be regulated;
 - or when public officials/civil servants sit on boards of corporations or envision to join a TNC after the end of their public function (also known as post-employment Col/'revolving door' issue)

PS: «Conflicts of interest arising from financial incentives and those that arise from divided loyalty and dual roles often overlap», Rodwin, 2011, op.cit, p. 16

A Col definition taking divided loyalty Cols specifically into account

Persons in a position of trust
(fiduciaries) have a Col
«when their **interests** or
commitments
compromise their **independent**
judgement or their **loyalty**»
to the trust-givers (fiducies).



Based on definition by Professor Marc Rodwin, 1993



I have drawn this general definition from the definition of physicians' Col by law professor Marc Rodwin which takes loyalty Col specifically into account:

He says, «Physicians have a conflict of interest when their interests or their commitments compromise their independent judgement or their loyalty to their patients».

Rodwin, 1993, op. cit., p. 9

This generic definition could be used for all kind of professions by specifying the fiduciary/trust taker and fiducie/trust giver: E.g. Civil servants and public officials have a conflict of interest when their interests or commitments compromise their independent judgement or their loyalty to the public etc.

I hope that more attention to this conceptualisation may be given in theoretical and policy debates about the most useful definition on conflicts of interest.

For more details on Rodwin's conceptualisation of Col, see in particular:

Rodwin 1993, op. cit., pp. 8-10

Rodwin 2011, op. cit., pp. 15-17 (and on financial ties to third parties, pp. 20-21)



**Conflict of interest policies
are meant to be, above all,
preventive policies**



Because
it is difficult for outsiders to ascertain
whether or not financial interests
have biased the judgement of e.g.
a health professional or civil servant
& because

«conflicts of interest have the capacity to cause harm»

Marc Rodwin, 1993

Quote by Marc Rodwin (1993), op. cit., p. 9

Even if all **individual conflicts of interest** were
adequately regulated,
this might not be enough

This is why the IoM Report
also included a chapter on
institutional conflicts of interest



This was brought to light by cases e.g. where a medical researcher acted with full integrity but her research institution was too close to pharmaceutical companies to support her when she published a result of a clinical trial that the commissioning pharmaceutical company did not like.

Institute of Medicine IoM Definition (2009)

Institutional Conflicts of Interest

"Institutional conflicts of interest arise when an **institution's own [secondary] financial interest or those of its senior officials** pose risks to the integrity of the **institution's primary interests and missions.**"



Source: For more information on the IoM concept of institutional Col in medicine & for examples where the addressing individual Col is not enough to ensure the integrity of an institution, see summary, pp. 14-15 & **chapter 8 *Institutional Conflicts of Interest***, IoM Report, Lo and Field Eds. (2009)

There may be need for debate whether a senior official's interest should be classified as an institutional Col



IoM advised to take **institutional Col very seriously**

"If they are not properly identified and managed, institutional conflicts can undermine the work and reputation of an entire institution, including employees or members who are themselves strictly avoiding individual conflicts of interest."

IoM Report, 2009, p. 14

Note: Others may analyse what the IOM might classify as cases of institutional Col as cases of institutional corruption/corrosion.

More research may be needed about the relationship and differences between these two concepts.

For one short introduction to the institutional corruption concept, see **Lessig, L. (2013). "Foreword: 'Institutional Corruption' Defined." JLME Special Issue**, pp. 553-555.

For an analysis of **PPPs from an institutional corruption perspective**, see Marks, J. H. (2014). "Toward a Systemic Ethics of Public–Private Partnerships Related to Food and Health." Kennedy Institute of Ethics Journal 24(3)

If not accessible, see his earlier open source article Marks, J. H. (2013). "What's the big deal?: The ethics of public-private partnerships related to food and health."

Edmon J. Safra Working Papers, No. 11,

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2268079

Core purposes of conflict of interest regulation

The protection of

1. the integrity of **decision-making processes** (on **other persons' behalf**)
2. the financial **independence**
3. the **trustworthiness** of, and **public trust**, in persons and institutions that are meant to act in the public interest

This «**triad**» of **core purposes** (core concerns/aims etc) is stressed e.g. in the work of Jonathan Marks, Marc Rodwin & IBFAN's & my contributions to the debate on *WHO's draft Framework on Engagement with non-State actors (FENSA)*

Col policies & regulation

Key purpose No 1

Protection of

integrity of decision-making processes

e.g. of policy-making; decisions on health norms; and standards; regulation of harmful corporate practices; public procurement etc.

as well as the

integrity of institutions



To assess whether the integrity of a person or institution may have been affected by a Col, you can look e.g. whether there is a

- difference between mandate/missions and practices/policies/work plans (for institutions)
- difference between words and deeds (for persons); or whether there are significant
- contradictions between statements (for persons and institutions)

(e.g. by checking whether statements made to public interest advocacy groups differ from those made to big business or wealthy private foundations)

For more discussion about integrity and its protection, see Marks, J. H. (2014). "Toward a Systemic Ethics of Public–Private Partnerships Related to Food and Health." Kennedy Institute of Ethics Journal 24(3), September

Col policies & regulation

Key purpose No 2

Protection of **independence**

Discussions need to take place about issues such as:

- **Appropriateness** of accepting funding **from certain sources**
- **'Appropriate' levels** of funding/sponsorship contributions *
- **Systemic effects** of overreliance/dependency on sponsorship/'charitable' contributions e.g. on the global health and nutrition architecture; democracy; academic freedom

These are not the only issues to be considered. Evaluations of sponsorship arrangements must also include the acceptability of **conditionalities** that may come with a sponsorship offer (the «strings attached»)

* **'Capping'** (limiting private sector sponsorship to fixed amounts or percentages of public interest actor/institution financing) is often proposed as a solution to problems that sponsorship-relationship may cause. While capping may be useful in some circumstances, it is a questionable solution for many circumstances (assessments would need to take full consideration of research on the possible ill-effects of sponsorship in conflict of interest and institutional corruption/corrosion literature)

It is known that even small gifts by pharmaceutical companies have been shown to have a significant impacts e.g. in terms of distorting prescribing patterns of physicians. We also know that pharmaceutical companies have long used funding to patient groups to make them lobby/help market on their behalf (a practice which corporate public relations calls 'third-party' or 'two-step' communication).

Recent research has confirmed long-voiced concerns about problematic effects private sector/venture philanthropy funding of UN agencies in terms of shifting of public policies & agendas, undermining public regulation, shifting mandates of public agencies & ultimately undermining democratic decision-making processes the world over.

See e.g. Adams, B. & J. Martens (2015). Fit for whose purpose? Private funding and corporate influence in the United Nations. GPF, Bonn/New York.

Martens, J. & K. Seitz. (2015). *Philanthropic Power and Development: Who shapes the agenda?* Aachen/Berlin/Bonn/New York, Brot für die Welt/Global Policy Forum(GPF)/MISEREOR.

Col policies & regulation

Key purpose No 3

Ensuring **trustworthiness (credibility) & public trust**
- not just «reputation»

(which can be manufactured by skilled public-relations professionals)

Trust taken very seriously

= **basis of legitimacy** = *reason of being*
of a profession or a public institution!
= «social contract» for public officials



Would you trust a doctor, nutritionist, health worker, public health advocate, academic, civil servant, public official – or public institution - if you thought they let themselves be influenced by financial ties with health-related industries?

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Note: IBFAN refers to the institutional Col concept and the **triad of core purposes** of conflict of interest regulation in the attempts to better explain why WHO's integrity and independence - and ultimately trustworthiness & public trust - is being severely threatened by the way WHO (and global health & nutrition efforts in general) are funded: For years, there has been a funding freeze of governments' assessed contributions (core funding that governments are asked to pay and over which the Director-General and the World Health Assembly have control). Around 80 percent of WHO's operations are now funded by so-called «voluntary» contributions from Member States as well as private sources such as the Bill & Melinda Gates Foundation. The great majority of these contributions are destined for specific purposes («ear-marked» contributions). The so-called WHO reform which started in 2010 exacerbates this problem by asking WHO to rely, in addition, on corporate sponsorship (in cash and kind).

Concerns over the direction the WHO 'reform' and debate over FENSA has taken has prompted civil society groups to (once again) ask **to revoke the freeze of Member State contributions to WHO and (other UN agencies)**. Adequate core funding for WHO can be seen as the most effective way to resolve WHO's serious institutional Col. It would liberate our world's highest health authority from the pressure and temptation to go for problematic funding sources. The price is not high: less than a third of the Atlanta-based Center for Disease Control.

For more information, see e.g. Gupta, A & L. Lhotska (2015). "A fox building a chicken coop? - World Health Organization reform: Health for All, or more corporate influence?" APPS (Asia & Pacific Policy Society) Policy Forum.net. <http://www.policyforum.net/a-fox-building-a-chicken-coop/>

& e.g. Baby Milk Action UK website on the WHO 'reform' debate

'Perceived' conflicts of interest

*Taken very seriously in Col policies
–e.g. in the «reasonable person test»*

«The aim [of Col regulation] is to **minimize conditions that would cause reasonable persons** (patients, colleagues and citizens) **to believe that professional judgement has been improperly influenced, whether or not it has been»**

Dennis F. Thompson, 2005

1. Persons and institutions in a position of trust must do all they can to explain whether, or not, what outsiders (or concerned insiders) see as a conflict of interest is an **actual Col**;
2. Even if the issue turns out to be 'only' a **perceived Col**, there **is still a need for public clarification to dispell concerns** - and **possibly to change, or terminate, a practice or relationship** that caused the concern

The «**reasonable person test**» is used e.g. in Col trainings & 'toolkits' for civil servants.

It **asks** them to reflect **whether or not a «reasonable person», after having been given all the necessary information, may perceive a relationship or situation as a problematic Col.**

NB: Perceived Cols are sometimes also called 'apparent' Cols. It would take more time to disentangle how these concepts relate and differ.

I suggest for public interest actors to use the term 'perceived' Col since it best captures the notion that this should be, above all, about taking care of what concerned outside (and inside) persons may see as a Col. It may better prevent that decisions about how to address such perceptions are left to inside actors who may try to side-line or silence those who voice the concerns.

Quote Thompson, D. F. (2005). Restoring responsibility: ethics in government, business and healthcare. Cambridge, UK, Cambridge University Press, p. 293

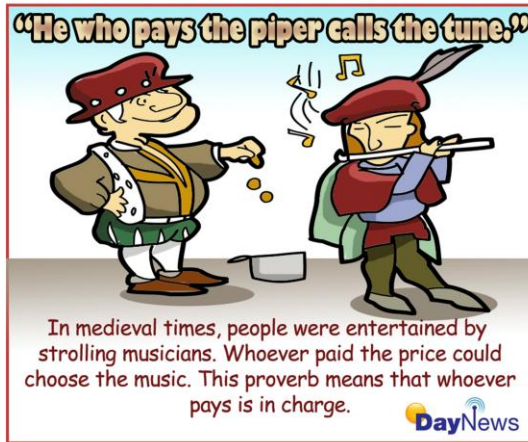
For some information on appearance of Col, see also Peters & Handschin, op-cit, p. 366

Assessing the seriousness of Cols - and what to do about them...

- Opinions often diverge (partially because some of the actors in the discussion may already be affected by unresolved Cols)
- **No details on assessing Col** in this presentation - **just some reflections on «sponsorship relationships» with health related industries** who have an interest in expanding their markets and influencing policies (which deal e.g. with the regulation of problematic corporate practices)

A problem today is that many sponsorship-relationships are bearing other names today, of «partnership» is the most problematic since it implies a symmetry that does not exist.

Peoples' perceptions concerning financial Col



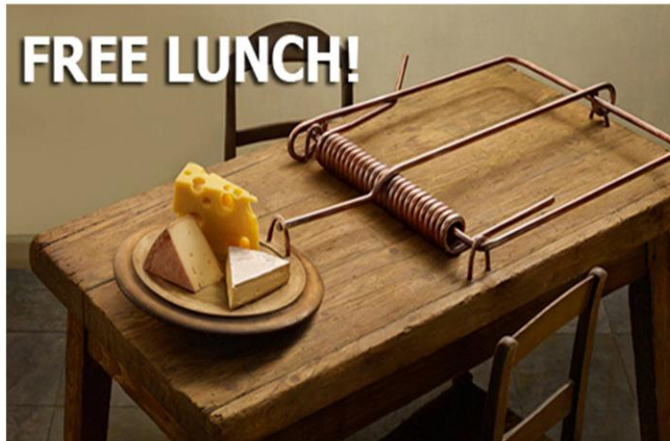
Source image: www.daynews.com/cartoon-of-the-day/2013/03/pay-the-piper-15282, accessed 03.03.2016

NB: If you want to use examples from your culture, use e.g. google «images» & put relevant saying in your language



Source image: <https://cynicalbabblings.wordpress.com/2012/03/27/the-no-free-lunch-principle/>, accessed 14.01.2016

«Only in a mousetrap can you find cheese for free»



....as the Russians would say

Source image: <http://villagechurchvinings.org/wp-content/uploads/2015/08/Image-1.png>, accessed 16.01.2016

To take or not to take? 😊...that is the question



Source image: <http://www.echinacities.com/userfiles/2012-Year/6-Month/29-Day/image001-%282%29.jpg>, accessed 16.01.2016



Example 1:



Is corporate funding for medical education acceptable?

There continues to be much debate about benefits versus risks of **corporate sponsorship** from health related industries for e.g. medical continued education and conferences :

- Many medical associations say they can ensure that this will not bias their judgement (and thus argue e.g. for limiting the amount of funding received - so-called «capping» - of the contributions; possibly combined with funding guidelines)

Is corporate funding for education acceptable? (ctd)

- Research has shown a) that **persons with conflicts of interest tend to underestimate the extent to which CoIs bias their judgement in favour of the sponsor***; and b) that **even small gifts create reciprocity-relationships**. The receiver often feels obligated to give something in return.
- Some health professionals take this research seriously when they argue that **limiting amounts will not solve the problems that certain sponsorship-relationships create**. E.g. physicians of the **International Society for Social Pediatrics and Child Health (ISSOP)** asserted:

“Sponsorship from the industry of paediatric education and conferences inevitably compromises the duty of paediatricians and other child health professionals to promote breast feeding.”



* The underestimation of how CoI may influence one's judgement is called **«the bias-blind spot»**

- as mentioned earlier, research has shown that even small gifts, such as pencils, from pharmaceutical companies can influence the prescribing behaviour of physicians.

As a German saying goes **«small presents maintain the friendship»**

It is not necessarily the value of the financial contribution that influences us, but these «gifts» may create a feeling of gratitude and reciprocity.

We have been socialised to give something in return for gifts – and our unconscious mind may not make a difference between gifts made out of genuine friendship and those that are made in order to gain a marketing or political advantage.

For some sources: see e.g. IoM Report, 2009, p. 170 ff.

See also: ISSOP (2014). "Paediatricians call on baby feeding industry to stop sponsoring medical education: Conflict of interest is damaging to support of breastfeeding." Press release, 15 May

“No Free lunch”-type of pledges have been taken up by physicians in various countries, see e.g.

<http://www.nofreelunch.org/>;

<http://www.mezis.de/>;

<http://www.prescrire.org/Fr/12/38/0/0/About.aspx>;

<http://www.prescrire.org/Docu/Archive/docus/charteNonMerci.pdf>

Is corporate funding for education acceptable? (ctd.)

Others still point out that the **funding for health professional «education» comes from *marketing* budgets**

Debates about Cols and risk management
with respect to corporate sponsorship
may divert attention from the fact that
corporate sponsorship is meant to buy influence!

*«Drug companies are not providers of education, and they cannot be.
No laws, regulations or guidelines
should be based on the idea that they are»*



Marcia Angell
former editor-in-chief of the *New England Medical Journal of Medicine* (2004)



Angell (2004) The truth about drug companies: how they deceive us and what to do about it. New York, Random House

Of course, the same can be said about Big (Infant) Food and Big Soda

See also Marion Nestle (2015), Chapter «Softball» Marketing Techniques: recruiting allies, co-opting critics, Soda Politics: Taking on big soda (and winning), Oxford University Press, Oxford New York, pp. 231-267 & p. 191 on deflecting criticism, eliciting loyalty

Example 2:

How to assess sponsorships from companies whose practices should be regulated?

Major question by those who want to address **commerciogenic roots** of worldwide obesity 'epidemic'

Why not look at the **WHO Tobacco Convention Article 5.3.** & *associated guidelines?*

"[In] **setting and implementing their public health policies** with respect to tobacco control, **Parties shall act to protect these policies** from commercial and other vested interests of the tobacco industry in accordance with national law"



See **Guidelines for Implementation of article 5.3.** for underlying argumentation and suggestions of action: e.g.

Para 4, point 22: "Payments, gifts and services, monetary or in-kind, and research funding offered by the tobacco industry to government institutions, officials or employees can create conflicts of interest. Conflicting interests are created even if a promise of favourable consideration is not given in exchange, as the potential exists for personal interest to influence official responsibilities as recognized in the International Code of Conduct for Public Officials adopted by the United Nations General Assembly and by several governmental and regional economic integration organizations"

NB: the quote is somewhat confusing since the "conflicting interest" in this quote actually refers to conflicts of interest.

http://www.who.int/fctc/guidelines/article_5_3.pdf

See also **Guidelines for Implementation of Article 13 of the WHO Framework Convention on Tobacco Control** which includes guidance on **sponsorship**

apps.who.int/iris/bitstream/10665/80510/1/9789241505185_eng.pdf, pp. 93-114

See also material from the infant food arena, such as **Sponsorship and Conflict of Interest, Position Statement of IBFAN**

<http://ibfan.org/upload/files/Sponsorship-and-conflicts-of-interest.pdf>

How to assess sponsorships from companies whose practices should be regulated? ctd.

Frequent argument: «**But food is not like tobacco!**»

???

BIG Food and BIG Soda are like infant food, pharmaceutical and tobacco TNCs when it comes to their combatting legally-binding regulation of marketing harmful practices

The issue is not just whether a product is harmful

A Col exists when a corporation has a «financial interest in the outcome» of a public-private interaction

Marc Rodwin, 2015



Source: Marc Rodwin, What are conflicts of interest? - How Can Conflicts of Interest be Managed? Presentation at Capacity Building Workshop, *Conflicts of interest and the infant and young child feeding arena: An assessment from a corporate accountability perspective*. IBFAN Asia/BPNI India, IBFAN-GIFA, and Baby Milk Action-IBFAN, London, UK, December 7-9, 2015 (Professor Rodwin's slide referred to public-private 'ventures', in UN circles usually called public-private 'partnerships' – and which I transformed in this slide into 'interaction' in order to avoid the value-laden term 'partnership')

The argument that food is not like tobacco is frequently brought forward when health activists question the idea that WHO and other public interest actors should engage into multi-'stakeholder' alliances and/or raise funds from TNCs that produce what is commonly referred to as junk food and drinks.

The idea to not just look at products but also at concrete corporate practices – including strategies to undermine regulatory efforts – is also highlighted e.g. in: Richter, J. (2004). Public-private partnerships and international health policy making: How can public interests be safeguarded?

Op.cit, pp. 49-50;

http://www.webcitation.org/query.php?url=http://global.finland.fi/julkaisut/pdf/public_private2004.pdf&refdoi=10.1186/1744-8603-1-6

Gomes, F. S. (2015). "Conflicts of interest in food and nutrition –

Perspectives/Conflitos de interesse em alimentação e nutrição, Cadernos de Saúde Pública, vol.31 no.10 Rio de Janeiro Oct. 2015, <http://dx.doi.org/10.1590/0102-311XPE011015>



II. Conflicts of interest in global food & nutrition *governance*

Cols no problem?

What about **'stakeholder governance'**
in the upcoming
United Nations Decade of Action on Nutrition
(2016-2025)

UN Decade of Action on Nutrition (2016-2015)

was proclaimed by UN General Assembly
in April 2016
after «almost 2 years of intense negotiations»
following the
the **Second International Conference on Nutrition (ICN2)**
held in Rome in 2014



Quote on intense negotiations: FAO Press Release *UN General Assembly proclaims Decade of Action on Nutrition*

<http://www.fao.org/news/story/en/item/408970/icode/>, accessed 11.04.2016



UN Decade of Action on Nutrition



WHO and FAO see UN Resolution as a
“leap forward in galvanising action on nutrition”

«Today's resolution recognises the need **to eradicate hunger and prevent all forms of malnutrition worldwide**. The Decade of Action on Nutrition will provide an **umbrella for a wide group of actors to work together** to address these and other pressing nutrition issues.”

General Assembly proclaims the Decade of Action on Nutrition, WHO press release, http://www.who.int/nutrition/GA_decade_action/en/

UN General Assembly proclaims Decade of Action on Nutrition, FAO Press Release, <http://www.fao.org/news/story/en/item/408970/icode/>,

both accessed 11.04.2016

Quote nb 1 in WHO and FAO press releases; quote nb 2 in FAO release



UN Decade of Action for Nutrition Proposed global governance structure



“The UN resolution **calls upon FAO and WHO to lead the implementation** of the Decade of Action on Nutrition **in collaboration** with the World Food Programme (WFP), the International Fund for Agricultural Development (IFAD) and the United Nations Children's Fund (UNICEF), and involving coordination mechanisms such as the United Nations System Standing Committee on Nutrition (UNSCN) and **multi-stakeholder platforms** such as the Committee on World Food Security (CFS).....”

Part of para 3 of the UN Resolution, as summarised in before-cited press-release of WHO, www.who.int/nutrition/GA_decade_action/en/, accessed 11.04.2016

For the more detailed description of the envisioned global governance mechanism, see original paragraph 3 of the **United Nations Decade of Action on Nutrition (2016-2025)** document, A/70/L.42, www.un.org/ga/search/view_doc.asp?symbol=A/70/L.42, accessed 11.04.2016.

1. The question is: will the participation of transnational corporations as «stakeholders» (moreover coupled with to the idea to rely on their voluntary contributions to fund this important process) not impede what this Decade is meant to achieve: «eradicate hunger and all forms of malnutrition» (my emphasis)
2. The Resolution on the United Nations Decade on Nutrition does not reflect the voices from within the Civil Society Mechanism (CSM) of the CFS which have clarified that the CFS is not what is commonly understood under a multi-‘stakeholder’ mechanism. It seems, however, to have taken some note of critical voices that SUN should not be made into THE coordinating body of nutrition efforts by not mentioning it by name.

For a summary of concerns over the ‘stakeholderisation’ of the CFS and the global food & nutrition arena, see Valente, F. (2016)

"Nutrition and food - how government for and by the people became government for and by the TNCs." TNI, Transnational Institute, <https://www.tni.org/en/article/nutrition-and-food-how-government-for-and-of-the-people-became-government-for-and-by-the>



Governance structure ctd.



The UN General Assembly Resolution furthermore

“invites Governments and **other relevant stakeholders**, including international and regional organizations, civil society, **the private sector** and academia, to actively support the implementation of the United Nations Decade of Action on Nutrition, including through **voluntary contributions**, as appropriate” (para 4)

**Corporate ‘stakeholder’ support
and finances welcome -
without mention of Cols in the Resolution?**

Or could the word “appropriate” be interpreted to also include taking into account Col thinking and what would this mean?



UN Decade of Action on Nutrition will build on the



ICN2 Framework of Action (ICN2 FFA)

The FFA list under its actions of how create an
«**enabling environment for effective action**»
the recommendation to
«...**strengthen and establish, as appropriate...**
multi-stakeholder mechanisms for food security and nutrition
to *oversee implementation* of policies, strategies, programmes
and other investments in nutrition»

See ICN2 Framework for Action (ICN2FFA), p. 2, Recommendation 3,
<http://www.fao.org/about/meetings/icn2/en/>

Para 3 of the Resolution on the Decade of Nutrition specifies the link, by calling
upon FAO and WHO to «[t]o identify and develop a work programme based on
the Rome Declaration and Framework of Action, along with its means of
implementation for 2016-2025»

Not explored in my discussion is the links which are also made with the 2030
Agenda for Sustainable Development (in particular SDG 2, 3 & 17) and the *Action
Agenda of the Third International Conference on Financing for Development*. These
would also warrant further exploration from the angle of how to strengthen
safeguards for public interests and prevent erosion of democratic governance.

The ICN2 FFA Recommendation No 3 specifies:

«Such [multi-stakeholder] **platforms** may be needed at various levels, **with robust safeguards against** abuse and **conflicts of interest**» (para 44)

Impression of readers:

Robust Col safeguards must exist



See ICN2 Framework for Action (ICN2FFA), p. 2. Full quote says under heading:

Recommended actions to create an enabling environment for effective action

....

“Recommendation 3: Strengthen and establish, as appropriate, national cross-government, inter-sector, multi-stakeholder mechanisms for food security and nutrition to oversee implementation of policies, strategies, programmes and other investments in nutrition. Such platforms may be needed at various levels, with robust safeguards against abuse and conflicts of interest.”

<http://www.fao.org/3/a-mm215e.pdf>, accessed 13.04.2016

WRONG! Findings of a review on Cols in global public governance

Public-private partnerships

[& multi-stakeholder initiatives/alliances]

“increase the likelihood of new forms of conflicts of interest”

They **“erode the public-private distinction”**

Yet, in 2012, Col regulation for the UN system was
still in its **“infancy”**

& “attempts to harmonise it... only beginning”

Professor Ann Peters 2012



Source quotes: Peters & Handschin (2012), op.cit., pp. 409-410; 407

See also discussion in the book section: ***A main challenge: the blurriness of public and private*** which uses the «ongoing privatization» of WHO as example of the problems, briefly touches on PPPs and shows that much more theoretical work is needed, pp. 409-411

There is
no coherent, effective, Col regulation
with respect to UN-business relationships
& global public-private 'partnerships' (PPPs) & multi-
'stakeholder' initiatives (MSIs)

The Col Reference Note developed by SUN
is not addressing this gap.

For example, in 2013 WHO admitted at the informal consultation with Member States, NGOs and private sector, which IBFAN and I attended, that much of whatever Col guidance existed on paper in WHO was not implemented in practice.

At the time of writing of this presentation, there are still huge questions about WHO's conceptualisation of Col (WHO's draft *Framework for Engagement with non-State actors*, for example, is still being debated by concerned Member States for its weaknesses).

See e.g.

Richter, J. (2015). "Time to debate WHO's understanding of conflicts of interest." *BMJ RR* (22 October) <http://www.bmj.com/content/348/bmj.g3351/rr>

Gupta, A & L. Lhotska (2015). "A fox building a chicken coop? - World Health Organization reform: Health for All, or more corporate influence?" *APPS (Asia & Pacific Policy Society) Policy Forum.net*.
<http://www.policyforum.net/a-fox-building-a-chicken-coop/>

For updates on the situation see IBFAN/Baby Milk Action, which has links to open letters, articles and other relevant websites (e.g. Third World Network)

Preventing and Managing Conflicts of Interest SUN Reference Note (2014/15)

Is it providing «robust» Col regulation in MSIs?
or legitimizing multi-‘stakeholder’ approaches and sidelining critics?

Analysis of SUN Col Reference Note

A basic discourse analysis:

What is said, and how?

& what is left out? (significant omissions)



See <http://scalingupnutrition.org/resources-archive/preventing-and-managing-conflicts-of-interest>

MSI = Multi-‘stakeholder’ initiative - an overall term for multi-‘stakeholder’ dialogue, alliance or forum as well as (coordinating) multi-‘stakeholder’ umbrella/»big tent« etc.)

NB: It would be better to use a more neutral word such as **multi-actor alliance (MAA)**, which does not carry the connotations associated with the definition of stakeholder in the current dominant discourse.

For discussion on how **the meaning of the term stakeholder was changed in a Novartis-sponsored book so that TNCs could become legitimate ‘stakeholders’ in discussions on public affairs**, see Richter, J. (2002). Dialogue or engineering of consent? Opportunities and risks of talking to industry. Geneva, International Baby Food Action Network/Geneva Infant Feeding Association (IBFAN-GIFA), pp. 18-21.

The Global Social Observatory (GSO) Consultation Process on Conflict of Interest in the Scaling Up Nutrition Movement Synthesis Report, January 2015

on SUN’s website affirms: «The GSO-SUN Reference Note and Toolkit on Preventing and Managing Conflict of Interest represent a

significant advance for framing the issues around conflict of interest for the SUN Movement and provide a **valuable resource** for SUN Country Focal Points and other stakeholders” (under Going Forward, p. 5), <http://scalingupnutrition.org/wp-content/uploads/2014/05/20150204-Synthesis-Report-FINAL1.pdf>, accessed 03.03.2015

Preventing and Managing Conflicts of Interest - SUN Reference Note (2015)

How are Cols defined?

- “An organizational or **institutional conflict of interest** arises when pursuit of an organization’s interests, whether ‘private’ or secondary, has the effect of compromising, interfering with, or taking precedence over the objectives of the **joint endeavour.**” (para 24)
- “[t]he private or **secondary interests** of any participating individual should not supersede the **primary purpose** of **establishing synergy** between organizations for the common goal of promoting improved nutrition “ (para 19 - all quoted paras refer to the 2015 version)

Note: The paras refer to the SUN Reference Note on Col, version of January 2015
- they differ from that of the March 2014 version which were quoted in previous critiques



Remember the IOM definition?

SUN Reference Note: **Wrong** primary mandate

The overarching 'primary interest' of a public-interest organisation or alliance
is/should be the

public mandate of an organisation or alliance

Reading SUN's Col Reference Note,
the overarching purpose of Col regulation appears to be the protection of
synergy creation

around the allegedly «**common goal of promoting improved nutrition**»
in **joint endeavours** between public-interest and private-sector actors

Can TNCs be expected to fully support
the «common goal of improved nutrition»?

And where is clear reference to the public mandate
- the 'primary interest' -

to protect, respect and fulfil

peoples' human rights

*to adequate food and nutrition,
and freedom from hunger?*



For interesting reading about the differences between a holistic, human-rights based approach to adequate food and nutrition and currently promoted reductionist approaches and the avoidance of human rights language, see Valente, F. (2014). "Towards the full realization of the human right to adequate food and nutrition." SID 57(2): 155-170.

**SUN's Reference Note on conflicts of interest
does not:**

examine whether the inclusion of corporations
in SUN's Lead Group constitutes a severe,
unacceptable Col

nor does it question
the **notion of turning every actor into a «stakeholder»**
in the food and nutrition arena*



* in particular as soon as a country is declared to be a «SUN country» and public interest actors are encouraged to feel part of the SUN «Movement»

SUN's Col guidance dismisses concerns of critics by portraying them as follows

*«Some stakeholders argue that the potential for conflicts among certain groups of stakeholders is so great that those stakeholders should be automatically be excluded from engaging in the the SUN movement» **

«This Reference Note, in contrast, assumes that

good governance is inclusive»

(para 11, January 2015)



*This is how SUN 's Col Reference Note refers to concerns of IBFAN & other public interest actors over the inclusion of TNCs as 'partners' and 'stakeholders' in SUN's Lead Group and in national nutrition decision-making and programme implementation (quotes of this slide, Col Reference Note, para 9 of version of March 2014 and para 11 of the January 2015 version, scalingupnutrition.org/wp-content/uploads/2014/05/Reference-Note-and-Toolkit-English.pdf, accessed 13.04.2016)

In conjunction with the Gates-funded SUN Evaluation Report, SUN's Col Learning Exercise moreover disparages and sidelines critics, see e.g. Richter, J. (2015). "Conflicts of interest and global health and nutrition governance - The illusion of robust principles." BMJ RR, 12 February

For concerns about institutional Col after the launch of SUN as a **"principle-based public-private partnership"** (PP PPP),

see e.g. Lhotska, L., A. C. Bellows & V. Scherbaum (2012). Conflicts of interest and human rights-based policy making: the case of maternal, infant, and young children's health and nutrition, . Right to Food And Nutrition Watch: Who Decides about Global Food and Nutrition – Strategies to regain control. Heidelberg 2012 FIAN, pp. 31-37, http://www.fian.org/fileadmin/media/publications/R_t_F_a_N_Watch_2012_eng.pdf, accessed 03.03.2016

- And «with this assumption and an emphasis on **building trust** to permit such **inclusiveness** [this Note] describes ways for governments to manage potential and actual conflicts of interest of stakeholders who may be participating in the Movement.»
- «Prohibiting any individual entity – or **group of stakeholders** – from engaging in the SUN Movement at the country or global level should be a **last resort**» (para 11)

Actually, promoting «**vigilance**» and maintaining/restauring «**arms-length distance**» would be the most important emphasis in training for appropriate interactions with big corporate actors. These emphases are often dismissed by portraying them as an unreasonable distrust of TNCs based on an alleged view of TNCs as «enemies». Such emphases, however, do not mean that there should be no interactions between private sector and public sector actors – but they mean that they must be appropriate, in particular when it comes to interactions with powerful economic actors and personalities.

For a call to revalue a healthy distrust by «more diligently and more deliberately institutionalize distrust», see the chapter *Restoring Distrust* by Professor

Thompson, D. F. in his book (2005). Restoring responsibility: ethics in government, business and healthcare. Cambridge, UK, Cambridge University Press, pp. 245-266

Is good governance automatically “inclusive” of TNCs?

Concern of IBFAN:
Soon there may be no more rule-setting (governance)
spaces in public health & nutrition outside
‘stake-holderised’ arenas
i.e. which include TNCs as the indispensable,
in fact privileged, ‘stakeholders’ in public health matters

Rise of public-private partnership/multi-stakeholder paradigm

- decreases spaces for regulation (legal & social)
- erodes distinctions – also in our minds

TNCs = ‘stakeholders’ in public affairs?

This notion will be further legitimized if WHO Member States adopt the Framework of Engagement with non-State Actors (FENSA) without specifying that an **‘engagement principle’** of **‘inclusiveness’** cannot apply to all non-State actors
The principle of inclusiveness was meant to grant citizens their legitimate right to participation.

However, it has since been promoted as applying also to powerful business actors and philanthropic foundations.

During the WHO **Technical consultation: “addressing and managing conflicts of interest in the planning and delivery of nutrition programmes at country level”**, in October 2015, Col experts pointed out that the principle of “inclusiveness” is not an appropriate principle for Col regulation.

Recusal or exclusion of a conflicted person, for example, is one of the ways to address individual ColS.

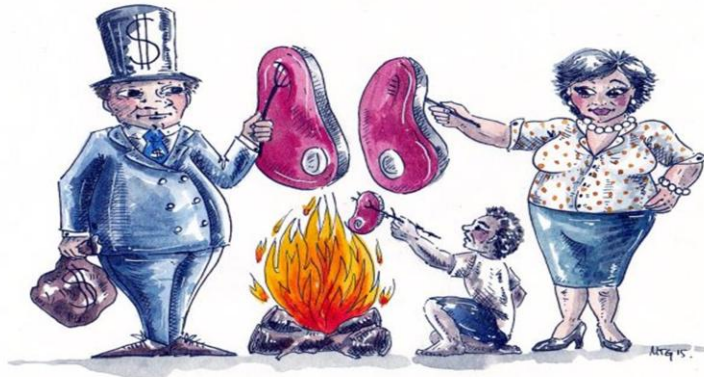
See draft report

http://www.who.int/nutrition/events/2015_conflictsofinterest_nut_programmes/en/, 20.01.2016

PS: The final report should be available soon for the May 2016 World Health Assembly

Subsuming public-interest
with business-interest actors
under the name 'stake-holder'
blurs important distinctions

Distinction No 1.



*Some have bigger **STEAKS** 😊 to fry.....*

What about differences in **money & power**?

Many thanks for the cartoon by Jacqueline de Montaigne (based on idea of Lida Lhotska)



Distinction No 2.



Fundamental divergences between actors' 'primary interests'

“The commercial **interests** of multinational food companies inevitably **diverge** in fundamental ways from those of public sector agencies responsible for public health. We can recognize these divergent interests without demonizing industry, and we should do so. When public health officials **downplay the divergence, they imperil their public health mission, and the integrity of their institution.**”

Jonathan Marks, 2014

What about **differences of fiduciary mandates?**

In my experience, action groups often refer to downplaying of this difference as neglect of seeing what they call an «*inherent* conflict of interest» and attempts to clothe the «wolf in a sheep skin»

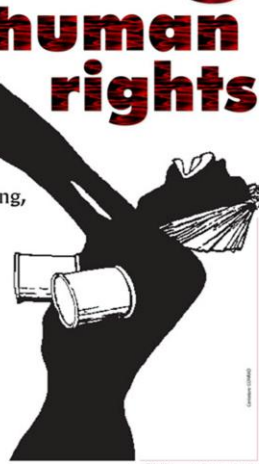
Marks, J. H. (2014). "Nutrition and Global Health Policy: A Critical Moment." BMJ, Rapid response, 8 October, emphasis added
<http://www.bmj.com/content/349/bmj.g5457/rr/777767>

TNCs that do not follow the Code are

Violating human rights

“Those who make claims about infant formula that intentionally undermine women’s confidence in breastfeeding, are not to be regarded as clever entrepreneurs just doing their job, **but as human rights violators of the worst kind.**”

Stephen Lewis
Deputy Executive Director, UNICEF
April 1999



Lewis, S. (1999). *Malnutrition as a human rights violation: Implications for United Nations-supported programmes*. Keynote speech at the Administrative Committee on Coordination/Subcommittee on Nutrition (ACC/SCN) Symposium on "The substance and politics of a human rights: Approach to food and nutrition policies and programmes". Geneva, 12-13 April

In fact: What is «governance»?

Big word – why not use simple analogies?

- Governance comes from Greek **Kybernan** = ‘steer a ship’ (French: “governail”)
- International relations theorist James A. Rosenau 1998: “the process “whereby an organisation or society steers itself”
- Commission on Global Governance, 1995:

*“governance is the sum of the many ways
in which individuals and institutions, public and private,
manage their common affairs...”*

In short: **Rule setting, formal and informal**

For more details, see Judith Richter, Chapter 2 *Democratic global governance: Regulation of the Corporate Sector*, 2001, op. cit, pp. 28 ff.

Commission on *Global Governance* 1995:

Global governance mechanisms must be
“**more inclusive** and **more participatory**
– that is, **more democratic** than in the past.”
They must subject powerful economic actors
to the “**rule of law** within global society.”



Democracy is above all about working for the people and with the people.

If the policy discussions on infant food (and obesity-related) issues continue to include TNCs as ‘stakeholders’ in the name of the promoted principle of ‘inclusiveness’, regulation of harmful corporate practices will be weakened or not forthcoming. The course is then set by and for TNCs - in direction of market expansion.

The stakeholder and partnership discourse and ill-regulated relationships will also erode another essential part of the system of ‘checks and balances’ in democratic societies: public interest actors’ arms’-length distance to corporations.

Key questions on «good» governance

Who steers the boat, who sets the rules?

And into which direction?

*Are we going towards corporate-led &
venture philanthropy-led governance?*

What will be the result?



e.g. “Nestlé sails supermarket on the Amazon” June 2010



The nature (and fiduciary mandate of shareholder owned) Big SNACK & infant food TNC's is to expand their markets

.....

This, and the following 2, pictures were taken from Nestlé's website.

The first paragraph on this page proudly states «The first Nestlé floating supermarket will set sail on the Brazilian Amazon to extend its reach to over 800,000 customers...»

See www.nestle.com/Media/NewsAndFeatures/Nestle-sails-supermarket-on-the-Amazon

& press release www.nestle.com/asset-library/documents/media/press-release/2010-february/nestle%20brazil%20press%20release%20-%20a%20bordo.pdf, both accessed 08.03.2016

With thanks to Tim Lobstein, Director of Policy World Obesity Federation for raising attention to these pictures in his presentation Food Corporations : What do food corporations say and what do they do? Oslo, Norway, 2015

For comment by public health attorney Michèle Simon, see

www.alternet.org/story/147446/nestle_stoops_to_new_low,_launches_barge_to_peddle_junk_food_on_the_amazon_river_to_brazil's_poor

And what did customers find on this boat...?





III. What can be done to protect public interest actors' capacity to hold TNCs accountable?

1. Call for policy measures to «*identify, assess, and adequately address Col* in the global food and nutrition arena»

by e.g. reminding public agencies & UN Member States of the

*OECD Guidelines for on Managing Conflict of
Interest in the Public Service (2003)*



You can argue that **Policy measures to «*identify, assess, and adequately address Col* are an essential part of «good democratic and evidence-based governance».**

.....
Above formulation of the key demand is a shorter expression of what the OECD Guidelines define as the duty to **set up effective procedures for the «identification, disclosure, management and promotion of the appropriate resolution of conflict-of-interest situations»** OECD 2003, Developing a Framework, p.15

The OECD has now 34 member countries which are held to build up systems that abide by the OECD Col Guidelines and its' principles.

One could argue that these countries should, at the very least, not obstruct attempts to build effective and adequate Col policies within UN agencies. Nor should they promote policies that increase conflict of interest situations <http://www.oecd.org/about/membersandpartners/>

NB: The OECD Col Guidelines have many useful provisions. However, if you use them, be aware that referring to them also carries some **risks** which will need to be addressed. For example, the OECD Col Guidelines advise to involve the business sector in a «partnership for integrity» which would also include their involvement in «the elaboration and implementation of the conflict-or-interest-policy for public officials» so that the result would be «mutually acceptable solutions», OECD, 2003, op.cit, p. 36

Public interest advocates can argue that
Conflict of interest policies and regulation
- are **neglected task** in the building of the
international rule of law

Col policies are acknowledged part of
public and administrative law (OECD countries)

They are part of the system
of **‘checks and balances’** in democracies



In other words, they could argue that “good governance”, rule-setting, needs to include Col & other safeguards to protect the **integrity, independence, and trustworthiness** of, and public trust in, our public institutions, health and nutrition professionals and others who work in the public interest

Note: Col are only one part of needed public interest safeguards in the health and nutrition arena. For ways to safeguard When former WHO Director-General promoted the partnership model, she promised to develop other elements, see box 1, p. 4 in Richter, J. (2004). "Public-private partnerships and Health for All: How can WHO safeguard public interests?" GASPP Policy Brief(5): 8.

Core principles which public officials should observe when dealing with Col matters

- «**Serving the public interest**
- Promoting individual responsibility and personal example;
- Engendering an **organisational culture which is intolerant of conflicts of interest**
- Supporting **transparency and public scrutiny» !!!**

OECD Guidelines (2003), Executive summary, p. 16, order inverted

Note: **Transparency**, is indeed an indispensable precondition for detecting and assessing Col.

Conflict of interest experts warn, however, that transparency measures may be used to prevent the building up of a full, effective system for addressing Col. In other words: focus on transparency may be used to build up an ill-conceived policy which may actually increase, rather than prevent or appropriately resolve, conflicts of interest and risks of undue influences.

Duty of the leadership of a public organisation

- To ensure that «decision-making procedures at all stages can be audited for integrity...»;
- To ensure that **conflict of interest policies are being set up, monitored, and enforced**; and
- To «create an organisational culture where dealing with conflict-of-interest matters can be freely raised and discussed»

Source: OECD Summary & Guidelines, p. 18 & 27 & 37; 35

The last point, of course, includes the duty to build up adequate **whistleblower protection** mechanisms within public institutions

Building up a system of public conflicts of interest policies also includes states ensuring that also **corporations** have adequate whistleblower protection mechanisms



2. How to raise attention to conflicts of interest issues?



Civil society actors
need **not** be experts on Col

Use the «**reasonable person**» position
& argument

Citizens can

1. Use **popular sayings & slogans** to raise attention to what most 'reasonable persons' may perceive as a conflict of interest;
2. Insist that **public institutions have the duty to give enough information & explanations** for the public to decide whether what they see as a Col is a real conflict of interest or just a perceived one;
3. point out, if there is an attempt to sideline their concerns, **that perceived conflicts of interest need to be taken as seriously as real Col**. A perception of a Col may indicate that there are other **serious ethical, legal or political problems** that may need to be addressed – such as the building of undemocratic, corporate-led, global governance structures

Participants at the 2015 IBFAN Capacity Building Workshop on Col suggested to use the label «screaming» conflict of interest for drawing public attention to serious Col's which are being neglected (such as the presence of corporate representatives on the governmental delegations at the Codex Alimentarius). For concern about participation of TNCs in global policy debates on obesity-related diseases, see also *Conflicts of Interest Statement of Concern* <http://coicoalition.blogspot.cz/>, accessed 22.04.2016

There is a debate within the right to health and adequate food and nutrition movement whether to spend energy on working on Col – and how much, seen the limited resources. It is certainly important to keep in mind the bigger picture. It may be very useful to debate whether, e.g. the call for measures to detect and address institutional Col could not be better linked to debates on how our institutions are being eroded from within and outside (something I would call «institutional corrosion», but which the literature currently calls «institutional corruption»).

I hope that this presentation, which tries to give a clearer picture of the essence of conflict of interest policies, can also help to prompt more debate and academic work on the question above.

How to persuade public-interest actors to *join hands* to work for effective Col policies

for all public actors in the health and nutrition arena
- *including their own organisation* -
where needed?

Sponsorship relationships,
public-private 'partnerships' & multi-'stakeholder' initiatives,
and long-term corporate divide-and-rule strategies
have driven a wedge between public interest actors.



For the start of concerted strategies of TNCs to divide critics who work for international legally binding regulation see:

J. Richter, *Engineering of Consent: Uncovering Corporate PR*. Briefing paper. Dorset, The CornerHouse (1998)

(which draws on *Public relations, politics and public pressure: Recovering the history of corporate propaganda*, my MA in Development Studies)

These strategies are still employed today and it may thus be worthwhile to look at them (and the material of others who have continued observing) to avoid being used in corporate strategies to undermine regulation

Maybe by pointing out that the

**Lack of Col regulation in the infant nutrition arena
is co-responsible for ill-health and death
from 'commerciogenic malnutrition'**

- Those who work in the infant food area know that about 800,000 children's lives could be saved every year if all children between 0 to 2 years were optimally breastfed
- At the same time, children all over the world are now at risk from obesity-related diseases



...



As WHO stressed in its *Fact Sheet on Obesity and Overweight*:

«Once considered a high-income country problem, overweight and obesity are now on the rise in low- and middle-income countries... Overweight and obesity are linked to more deaths worldwide than underweight.»

Source: WHO Fact Sheet No 311, Updated January 2015

<http://www.who.int/mediacentre/factsheets/fs311/en/>, accessed 08.03.2016

In addition, public-interest actors concerned about Col could also call for independent assessment of the economic impacts of undealt with Col's in food and nutrition (e.g. by linking it to the cost of undernutrition- and obesity-related diseases, nationally and globally)

Building Col regulatory systems Whose duty is it?

- Concerns of corporate accountability- and other civil society actors should be taken seriously
- The building of public Col regulatory systems, however, is not their task
- Such work needs the collaboration of many knowledgeable and committed public-interest actors, including academia
- Ultimately, it is the role of our governments and the UN to strengthen - not erode - the Rule of Law

**The building of coherent and effective Col regulation
and other public interest safeguards is an urgent task**

if the **DECADE OF ACTION ON NUTRITION** is to succeed!



In addition, health professional organisations, public interest NGOs, and academic institutions would need to check the adequacy of their own organisational Col policies and other public interest safeguards. Building effective safeguards may not be enough. Marc Rodwin responded long ago to concerns that Col regulation in the medico-industrial complex may become overly costly and burdensome as follows:

The most effective solution would be to change the practices of the institutions that give rise to conflicts of interest, rather than to place the onus on physicians [civil servants etc.] to change their conduct."

Rodwin, M. A. (1993). *Medicine, money and morals: Physicians' conflicts of interest*. New York and Oxford, Oxford University Press, p. 240, my insertion

.....

When the UN and WHO leadership started urging our governments to take the path towards «partnership» approaches with industry and rich foundations some guidance was given, but neglected in much of the consecutive practice. The following quote may help reclarify current thinking:

"The overriding purpose of cooperation between the United Nations and non-state actors should be to enable the Organization to serve Member States and their peoples more effectively, while remaining true to the principles of the Charter. Cooperation should be regularly assessed against those objectives. As such, cooperation should be viewed as a means of achieving United Nations goals and enhancing performance, not as an end in itself."

Cooperation between the United Nations and all relevant partners, in particular the private sector. Report of the Secretary-General to the General Assembly, UN 2001



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