

Interdisciplinary conference organised by the Basel Institute on Governance

CALL FOR PAPERS

Conflict of Interest

Introduction

The Basel Institute on Governance has the pleasure of inviting you to submit proposals for a two-day interdisciplinary and international conference on *"Conflict of Interest"*.

Selected contributions to the conference will form the basis for an edited publication, to be submitted to an internationally acknowledged academic publishing house.

The conference will be held on **7-8 May 2010** at the University of Basel, Switzerland.

Background and objectives

Conflicts of interest are an important governance problem on all levels of governance, ranging from local to global, both in the public and the corporate sphere. Such conflicts can influence decision making in the management of corporations, town councils, parliaments, national and international courts and tribunals, and in international conferences and organisations.

In accordance with the Institute's activities and academic interests, the Basel Institute on Governance seeks to explore this problem in corporate, public, and global governance, from a legal, political scientific, economic and sociological perspective, and from both a theoretical and practical angle. The conference and the resulting publication are dedicated to seeing how conflicts of interest are defined and dealt with in theory and practice. It also has the ambition of provoking the debate around a topic which can be value-laden, but on which factual evidence is, to some extent, lacking.

The objective is to develop an interdisciplinary and empirically grounded conceptual framework that links specific legal, social, political and economic tools to understand better how conflicts of interest can be defined, regulated, how they work in practice, at which level of governance they are most critical, and how they can be solved. It is aimed at being a mutual learning exercise for all participants.

Presentations will be given by panellists responding to the call for papers, and by invited keynote speakers.

Call for papers – submission of abstracts

Contributions from individual researchers, members of research institutions, think tanks, and organisations working in relevant fields, with a disciplinary background in law, political science, economics, philosophy or related disciplines, or with practical experience in dealing with conflicts of interest are welcome. Contributors are invited to send in a **one-page abstract** to the organisers by **August 30, 2009**, to:

Anne Lugon-Moulin, Executive Director, Basel Institute on Governance, email: <anne.lugon-moulin@baselgovernance.org>.

An academic and practitioners' panel representing all relevant disciplines will review the abstracts. Besides academic excellence, the salience for the proposed modules of the conferences, the diversity of disciplines, and the objective to reach a mix of theoretical contributions and case studies will guide the selection.

Selected participants are expected to submit a **full draft paper before 15 April 2010** for distribution at the conference to all participants. The papers must be original and will be subject to review for publication in the interdisciplinary monograph.

Language

The working language of the conference and of the publication will be **English**.

Themes

Papers will be structured along the following research themes. For each of them, some sub-sections and research questions are provided.

0. *Cross-cutting issues*

Fundamental questions need to be addressed which cut across all disciplines involved and each of the below-mentioned modules:

- a) What are the purposes of rules regulating conflicts of interest? Is it to improve decision-making or law-making processes? Is it to justify the outcome, the decisions? Any other reasons?
- b) Should conflicts of interest be simply banned, or should there just be a requirement of declaration, or must we accept conflicts?
- c) Conflicts of interest in decision-making processes and contracting: bi-lateral/multilateral decision-making. What is the impact on the validity of the decision/agreement; is it void or subject to complaint, how?
- d) Trade-offs between conflicting objectives in decision-making processes. Are the decision-makers expected to contribute their expertise in the field or their knowledge and network of the community? These capacities to some extent bring with them the danger of a conflict of interest. The advantages seem to require a trade-off with principles of impartiality or subsidiarity.

1. *Legal perspective*

The concept of “conflict of interest” is well known in the legal literature and in legal norms, both in public and in private law. We are seeking papers:

- which can address similarities, synergies or contradictory issues within **domestic public law**, such as statutes about the judiciary, laws on the organization of administration, rules about organs of government (parliament, the executive, and the judiciary).
- which focus on how **domestic private law** in any jurisdiction (such as civil codes, company laws, self-regulation of firms or administrations, internal management rules) addresses conflict of interest, eventually in a comparative perspective.
- which explore the **international law** on conflict of interest in global or regional governance. Relevant provisions may be found in the constitutive instruments of international organizations, in rules of procedures or in other internal regulation of international bodies, including courts and tribunals (e.g. standards for internal conduct of the International Labour Organisation, which deal with conflicts of interest).
- which analyze how **international anti-corruption conventions** (ex: UNCAC, GRECO) address conflicts of interest.
- which analyze relevant **human rights guarantees**, such as access to impartial tribunals, in the perspective of conflicts of interest.

Empirical research on how those provisions work in practice is also welcome.

2. *Self-regulation*

This module is dedicated to understand better how self-regulation initiatives on conflicts of interest are taken by public, private or intergovernmental bodies, and what effect they have in practice. Self-regulation is typically in a grey zone between law and politics. We are seeking papers that define this grey zone more precisely and advance knowledge on the effectiveness of self-regulatory provisions. Of interest are also papers looking into forms of self-regulation that are, in fact, co-regulation, with many stakeholders joining together to set up standards that are valid for their entire group. Finally, the normative effects shall also be an area of concern: do such self-regulatory provisions have a binding effect? If yes, at which level? Internally within the body itself and/or externally? How partial can this normative effect be?

3. *Economic and political scientific view*

Conflict of interest *per se* is not a common term in the economic fields. However, there are a few concepts, mostly in micro-economics, that come very close to defining in which situation conflicts of interest may arise, and in which papers are welcome:

- The principal/agent relationship model and the moral hazard theory provide useful tools in understanding such situations. Moreover, they can outline what types of outcomes, both at the individual and the aggregated level can arise out of such relationship.

- The welfare theory corpus can address the optimality problem posed by conflicts of interest for decision-making outcomes. It is clear that in a situation of conflict of interest, free competition is not ensured, and this can lead to a sub-optimal outcome. The efficiency dimension shall be carefully looked at.
- Finally, game theory, and more specifically the prisoner's dilemma, provides a very rich literature body for explaining the phenomenon of conflict of interest and its variations.

4. *Sociological/anthropological views*

This block will be dedicated to understanding how various groups or societies perceive conflicts of interest. The legal approach towards the matter is obviously rooted in a 'Western'-based culture of regulating types of social interactions. However, in other contexts and societal systems, conventional legal definitions of conflicts of interest might be considered differently. Could such conflicts even constitute a factor of trust building through networking, for example? Could they even help in creating social capital?

In probably all Western cultures, the avoidance of even a mere appearance of conflicts of interest is an important factor for a well functioning democratic society. Ultimately, a political environment where conflicts of interest prevail is likely to lead to political capture. Linking these dimensions to the political aspects of conflicts of interest could significantly add value to our overall debate on conflicts of interest.

5. *Conflict of interest in practice*

Besides the four rather theoretical modules addressing conflicts of interest in the perspective of different academic disciplines, this particular module will look at specific cases of conflicts of interest. The judiciary is obviously an institution in which, under the rule of law and for the sake of fair trial, conflicts of interest are most scrupulously avoided and sanctioned. Therefore, court practice and rules in this regard, such as the European Court for Human Rights' 2008 resolution on judicial ethics which *inter alia* deals with conflicts of interest, might be especially interesting.

We are also looking forward to receiving contributions which address the following types of conflicts of interest:

- between politicians,
- within procurement units of public bodies or very large enterprises,
- within the banking sector and pension funds,
- within other branches of the private sector.

Excellent studies on specific cases of conflicts of interest, well researched and documented, will also be considered.

Finally, to broaden the scope of cases, this conference would like to possibly also look at conflicts of interest between countries. An ideal case could be to see whether tied aid can be associated to this problem.

6. *Conflict of interest in practice: resolution mechanism*

6.1. Prevention

In this module, we want to look at various mechanisms that can help prevent and resolve conflicts of interest.

- Recusal: Up to which point are actors involved in a conflict of interest allowed to participate in a decision-making process? The scale of recusal is critical: May the interested decision maker still listen to the discussion in the respective body, may he participate actively in it, must he abstain only from voting on the concrete decision? May all this be decided for each case at hand or must it be clearly regulated in advance?
- Balancing interests: This approach acknowledges that it in certain types of collective decision-making can be even desirable to have strongly interested stakeholders, provided they represent sufficiently diverse interests to create pluralism.
- Public disclosure: Should all conflicts of interest be publicly disclosed, either in the wide public or in the group? Is mere disclosure an adequate response?
- Codes of ethics on conflicts of interest: How far can and should self-regulation go? How and under what conditions codes of ethics can be effective and legitimate?
- Third party evaluation: When is the use of impartial outside sources to confirm the veracity of transactions appropriate?
- Order of intrusiveness into the decision-making process.

6.2. Consequences of non-compliance

The consequences of non-compliance with rules governing conflicts of interest shall be analysed when looking at conflicts of interest in practice. For example, should a decision taken under disregard of the respective rules be null and void or merely voidable? Does it matter whether an existing conflict of interest has been causal for the outcome of the process and for the ensuing decision itself? In other words, should breaches of conflict of interest rules be treated as absolute or merely as a relative flaw, depending on the impact of the irregularity and its causality for the outcome?