



# Ethics and Innovation

10 Years WIPO Ethics Office







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## List of acronyms

AI	artificial intelligence
FDDI	Financial Disclosure and Declaration of Interests (Policy)
HRMD	Human Resources Management Department
IAOC	Independent Advisory Oversight Committee
ICSC	International Civil Service Commission
IOD	Internal Oversight Division
IPSAS	International Public Sector Accounting Standards
JIU	Joint Inspection Unit (of the United Nations System)
NGO	non-governmental organization
OLC	Office of the Legal Counsel
PaR (Policy)	Policy to Protect against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations
TOR	terms of reference
UN	United Nations
WIPO	World Intellectual Property Organization

# Introduction

This publication brings together information on WIPO's Ethics Office and the thinking of leading ethicists on ethics and innovation, culture and justice as presented in the WIPO public lecture series.

The World Intellectual Property Organization (WIPO), is a specialized agency of the United Nations, based in Geneva, Switzerland. It is the global forum for intellectual property (IP) services, policy, information and cooperation, and the lead UN agency for knowledge issues. The organization has 193 Member States and about 1,300 staff. WIPO's mission is to lead the development of a balanced and effective international IP system that enables innovation and creativity for the benefit of all. Its mandate, governing bodies and procedures are set out in the WIPO Convention which established WIPO in 1967.

Aware of the importance of good governance in intergovernmental organizations, WIPO strives for its administration to be transparent, accountable, effective and rules based. WIPO especially requires that its officials, staff and other personnel, adhere to high moral standards while serving the institution. The values and principles of ethics as laid down in WIPO's Code of Ethics, in addition to

applicable rules, are intended to inspire and guide the conduct of staff and other personnel. The Ethics Office is a key component of the governance, and of what is now termed the public integrity, of the organization.

The Ethics Office functions independently within the Organization. It aims to deliver a high-quality integrity and ethics system, and focuses on ensuring that WIPO personnel at all levels understand their ethical obligations to the Organization and to its stakeholders. Its services to staff and others, its work and actions, have been based on three pillars: independence, impartiality and confidentiality.

To paint the background against which the Ethics Office was created, Director General Francis Gurry<sup>1</sup> was interviewed. In the interview, the Director General highlighted the importance of the ethics function at a time when we are confronted with a great many unforeseen situations that are not addressed by the regulatory framework. He also mentioned that it is important to keep an ethical eye on the scientific, technological and creative work that form the base of intellectual property rights.

1 Francis Gurry, a national from Australia, served as WIPO's Director General from 2008 to 2020

The chapter on WIPO's Ethics Office describes its progress from 2010 to the present. It touches upon the historical context of that Office, explains its mandate and presents its activities undertaken in fulfillment of the Mandate. The chapter illustrates its four main areas of activity, which are awareness-raising and training; providing confidential advice on ethics-related issues; standard setting and policy development; and implementation of policies assigned to the Ethics Office.

The chapter on law and ethics, written by Ms. Arendina Koppe, Head of the Administrative Law Section, Office of the Legal Counsel of WIPO, looks at the interrelationship between these two disciplines and how they reinforce each other, with the mutually beneficial effect of strengthening both the culture of ethics at WIPO and its internal justice system. This, in turn, contributes to an enhanced accountability framework. The chapter analyses the various ways in which the Office of the Legal Counsel and the Ethics Office interact. It demonstrates that, at WIPO, appropriate and effective collaboration has been achieved over the past decade through mutual recognition of the different mandates of the two Offices, including by respecting the need for confidentiality, as well as the independence of the ethics function.

Four lectures on ethics, delivered at WIPO by renowned international personalities in the ethics field, are

reproduced in this publication in abridged or updated form. Introduced in 2017, the WIPO public lectures have enjoyed particular success, both within WIPO and among members of the diplomatic community, staff of international organizations from the United Nations System, NGOs with consultative status to WIPO and the UN, the academic community and others.

The series was initiated with a High Level presentation on "The Changing Ethics of Communication" by Professor Onora O'Neill. Professor O'Neill reiterates that the ethics of communication has a long history, going back at least as far as the Ten Commandments. At least three of these ancient injunctions bear on speech and communication. According to Professor O'Neill, no aspect of our lives has changed more during the past century than practices of communication.

The twentieth century also saw some striking changes in standards that bear on communication and an increased emphasis on standards for communication in institutional life, including demands for accountability, transparency and freedom of information.

The massive revolutions in communication technologies and global connectivity have transformed personal and public communication, as well as the exercise of power. These raise numerous ethical issues. For example,



where are the ethical boundaries of the personal sphere and the duty of international service? And what is the relationship between the requirements of public reason, and trust and accountability in everyday life?

In his lecture on “Ethics, Technology, and the Future of Humanity,” Professor Peter Singer looks at ethical challenges of technological developments in biotechnology, robotics, artificial intelligence, informatics and communication. He discusses whether technological advancement should be welcomed for its opportunities for human advancement, or feared for its potential to destroy human life and natural ecosystems.

He explains, from the standpoint of ethics, how various kinds of technologies can or should be used to achieve the greatest benefits for the largest possible number of people. He touches upon how the natural law of property rights can be applied to intellectual property rights in the area of pharmaceutical products. He also discusses some of the ethical issues relating to medicine and the biological sciences, that is, bioethics, and what can be done to reduce risks that threaten to end the human species.

Dr. Julian Baggini's lecture entitled “Culture, Character and Ethics: Ethical Dilemmas in International Organizations” focuses on the meaning and importance of developing a culture of ethics, and

why this is different from simply having rules and regulations. He talks about the need to develop an ethical character. For this, three things are crucial: developing the right habits, developing capacities of practical wisdom, and having exemplary people as role models. This also translates into corporate environments: for an organization to have a good corporate character – a good ethical culture – it similarly needs to develop these three aspects.

He explains how organizations, whether national or international, comprising people of diverse cultures and backgrounds with seemingly different moral values and ethical codes can form a single culture. Amidst diverse worldviews, there is considerable scope for reaching agreement on many issues. Promoting a good corporate culture of ethics can be achieved by applying practical wisdom.

Professor Jeroen van den Hoven delivered a lecture on “Ethics of Technology and Our Global Challenges: The Case for Responsible Innovation.” He argues that technology and innovation can also pose ethical challenges. The interrelated problems, the plurality of values and the variety of perspectives demand new ways of looking at innovation and at the ethical aspects of our technological interventions. In order to ensure that our efforts are directed at the right problems, and will not result in creating or exacerbating other problems, it is

necessary to proceed *responsibly*. It is an approach that focuses on “design for values,” “ethics by design” or “value sensitive design.”

It is hoped that this publication will inspire further reflection on governance issues related to ethics and innovation, and help guide officials in international and public institutions in dealing with ethical dilemmas. As the different contributions show, the values WIPO as an institution espouses are relevant for civil servants, in national and international institutions in developed and developing countries alike.

Finally, it should be mentioned that this publication has been produced under the overall responsibility of WIPO’s Ethics Office. The Ethics Office gratefully acknowledges the encouragement, support and information it has received from colleagues from WIPO, the United Nations and its specialized agencies, and from other multilateral organizations.

September 2020,  
Chitra Radhakishun  
Chief Ethics Officer

# Interview with Director General Francis Gurry

WIPO Director General Francis Gurry reflects on the importance of ethics for WIPO and the multilateral system as a whole in a world in that is grappling with rapid and profound radical technological change.

## **What prompted you to establish the WIPO Ethics Office?**

WIPO established its Ethics Office in 2010 with a view to bringing the Organization into line with a system-wide good practice for the United Nations and a recommendation by several bodies to institute an ethics function within international organizations. At that time, the world had come to a general appreciation that the ethics function is extremely important for many reasons. These include the fact that we are confronting a great many unforeseen situations which are not addressed by the regulatory framework. Technology and society are moving very quickly and the regulatory framework has not been able to keep pace with those changes. Under these circumstances – where there are established values, a new situation and no legal regulation in place – a great deal of importance is placed on values and ethical behavior pending legislation.

## **And its role?**

Its role is to promote awareness among staff about the importance of ethical behavior, to deal with any complaints that may arise in relation to alleged unethical conduct on the part of staff members and to administer certain policies that we have in place, such as the Policy on Financial Disclosure and Declaration of Interests and the Policy Against Retaliation, which is state-of-the-art. The WIPO Ethics Office serves an important role within the Organization.

## **How has the Ethics Office contributed to the governance of the Organization?**

The staff body as a whole has engaged in Office's mandatory ethics training program. This has served to heighten awareness among colleagues that there is an ethical dimension to be considered in relation to behavior everywhere and in all respects. And that is a good thing. The Ethics Office has also put into place a policy and related mechanism to protect staff who make a complaint when there is an ethical breach. Once again, this ensures that colleagues are mindful that unethical behavior is not without consequence.

**What is the biggest achievement of the Ethics Office?**

The implementation of a regulatory framework that supports ethical behavior at all levels of the Organization.

**How would you like to see the Ethics Office evolve?**

The Ethics Office is an extremely important function that can support the Organization in developing a culture in which the ethical dimension is a default response to any decision or action taken by anyone in the Organization.

**Why is a focus on ethics important within the multilateral system?**

For the multilateral system to have a credible voice, it has to practice what it preaches. It has to ensure that its speech and its actions conform to the highest ethical standards.

Moreover, given the diversity of the multilateral system and indeed the world, a focus on ethics is a way of getting certain fundamental principles, which are essential for honest dealings and social communication in our society, broadly accepted across many cultures.

**In 2018, WIPO launched a public lecture series on ethics, innovation and IP. What prompted that move?**

The primary focus of the ethics program at WIPO is to ensure the ethical conduct of the staff. One of the dimensions of that, which is not entirely within the control of the staff, is to ensure that the programs with which we deal conform to established ethical standards. Today, the advances that are being made in technology are rapid and radical and throw up a multitude of fundamental questions in many areas, for example, in relation to artificial intelligence (AI), the life sciences, employment and many others. It is, therefore, extremely important for us to keep an ethical eye on the scientific, technological and creative work at the base of intellectual property (IP) rights. The lecture series can address any of those areas – whether staff conduct or the subject matter of IP rights – and can support general reflection on the ethical dimensions and consequences of any question. This should become an automatic response to any question that arises.

### **What are some of the ethical issues confronting the IP community?**

AI raises many ethical questions. While it is being studied in great depth and discussed at great length by many people around the world, we are not yet quite sure what exactly the technology is capable of. No sooner is relative consensus achieved on an ethical issue in the AI area than the technology invents a new dilemma. We see that frequently. Take the decisions that an automated car built around AI systems may have to take in a complex situation involving multiple persons – a potential road-traffic accident, for example – in terms of which of those people will become the victims of suffering; or the ethical questions associated with AI-driven weapons systems; or with bias in data, which is collected from the real world which is biased. AI raises a huge number of ethical questions that we are going to be struggling with in the years ahead.

The life sciences also raise fundamentally important ethical questions, particularly in relation to genome editing and the extent to which bio-engineering can and should be done. Take for example, the ethical issues associated with editing the genes of mosquitoes to eliminate malaria. Will that interfere with the delicate balance of the ecosystem?

There are multiple questions arising from the progress of science in life and biology. AI and the life sciences stand out but there are many other areas.

How does this all relate to IP? Well, IP creates a series of incentives for technological progress and thereby encourages the advancement of these new technologies, which are throwing up ethical questions. That doesn't mean we shouldn't encourage such progress, but it does mean we need to manage it.

### **Which philosopher has had the greatest influence on your thinking?**

I think Socrates was such a hero for having said "I know nothing," at the end of his life. This, I think, is wisdom. But it is difficult to single out any one person as there are so many great thinkers who have contributed to helping us to understand how to deal with life.

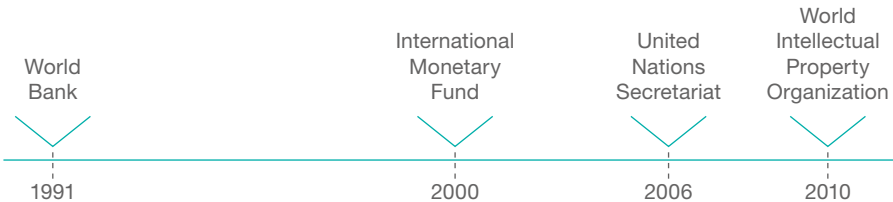
# The WIPO Ethics Office

## History and background of the WIPO Ethics Office

WIPO's Ethics Office was created in June 2010,<sup>2</sup> following a trend in the United Nations (UN) system that commenced with the establishment of the UN Secretariat Ethics Office in 2006.<sup>3</sup> UN Secretary-General Kofi Annan established the independent Ethics Office in the Secretariat after the General Assembly approved its creation at the World Summit<sup>4</sup> in the context of overall Secretariat and management reform initiatives. Those initiatives were to be anchored in “a culture of ethics, transparency and accountability.”<sup>5</sup>

Prior to that, in the wider setting of multilateral institutions, the World Bank had created an Office of Professional Ethics in 1990 and the International Monetary Fund had established its Ethics Office in February 2000.<sup>6</sup>

Other United Nations funds and programs as well as UN specialized agencies followed suit, creating their own ethics offices with similar functions and structures. Four years after the creation of the UN Ethics Office, WIPO's Ethics Office was born, having as its formal basis in WIPO Office Instruction No. 25/2010.<sup>7</sup>



2 Office Instruction No. 25/2010, WIPO Ethics Office, June 9, 2010.

3 Resolution 2005/1 on the World Summit Outcome; ST/SGB/2007/11; various resolutions of the General Assembly concerning the establishment of independent ethics offices.

4 Resolution 60/1, paragraph 161 (d).

5 Report A/61/274 of 18 August 2006 summarizes the process of the establishment of the UN Ethics Office.

6 See World Bank, *Report of the Office of Ethics and Business Conduct*, 2010.

7 On the basis of the agreement between the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants (WIPO/UPOV Agreement, signed on November 26, 1982), the WIPO Ethics Office is to also provide services to UPOV.

## Dates of establishment of selected ethics offices

Date	Organization	Name of the Office
1991	World Bank	Office of Ethics and Business Conduct <sup>a</sup>
2000	IMF International Monetary Fund	Ethics Office
2006 <sup>b</sup>	United Nations	United Nations Ethics Office
2006 <sup>c</sup>	ILO International Labour Organization	Ethics Function / Ethics Officer Function
2007	UNDP United Nations Development Programme	UNDP Ethics Office
2007	UNICEF United Nations Children's Fund	The Ethics Office
2007 <sup>d</sup>	UNOPS United Nations Office for Project Services	The Ethics and Compliance Office <sup>e</sup>
2008	UNFPA United Nations Population Fund	Ethics Office
2009	ITU International Telecommunication Union	Ethics Office
2009	UNESCO United Nations Educational, Scientific & Cultural Organization	Ethics Office
2009	UPU Universal Postal Union	The function of ethics officer is outsourced <sup>f</sup>
2009	WMO World Meteorological Organization	Ethics Office
2009	UNIDO United Nations Industrial Development Organization	Ethics and Accountability Office <sup>g</sup>
2010	WIPO World Intellectual Property Organization	WIPO Ethics Office
2011	IFAD International Fund for Agricultural Development	Ethics Office
2014	IOM	Office of Ethics and Conduct <sup>h</sup>

### Notes:

- a Since 2002. From 2000 to 2002, the office was called: "Business Ethics and Integrity." From 1991 to 2002, the name was "Office of Professional Ethics."
- b The Office started on 1 January 2006.
- c The function was started on 1 May 2006.
- d The Ethics Office became independent of other functions on 1 February 2009.
- e Its previous name was Ethics Office.
- f Since 2015.
- g In 2010 the name was "Ethics Office."
- h Prior to 2020, the office was named Ethics and Conduct Office (ECO).

It was the corporate world that first introduced the concept, with a focus on so-called business ethics,<sup>8</sup> in response to criticism of businesses in the United States of America in the 1960s and 1970s. In mid-1980, the United States Defense Industry Initiative (DII) was launched, which was intended to promote ethical business practices and ethical management in multiple industries, leading to the appointment of ethics and/or compliance officers and offices in many business organizations. Another development in the United States that prompted many companies to appoint ethics/compliance officers was the Federal Sentencing Guidelines for Organizations, passed in 1991, which set standards that organizations had to follow in order to obtain a sentence reduction if they were convicted of a federal offense.<sup>9</sup>

- 8 Crane and Matten define business ethics as “the study of business situations, activities and decisions where issues of right and wrong are addressed” (Crane, A and D. Matten, *Business Ethics: Managing Corporate Citizenship and Sustainability in the Age of Globalization*, Oxford: Oxford University Press, 2016, 5.)
- 9 Ethics & Compliance Certification Institute, *Principles and Practices of High-Quality Ethics & Compliance Programs*, Report of ECI’s Blue Ribbon Panel, 2016; See also, De George, R.T., A history of business ethics, at: <https://www.bbvaopenmind.com/en/articles/a-history-of-business-ethics/>). De George describes how what has become known as business ethics was patterned after the term “medical ethics” (developed in the 1960s). In the 1960s, courses in social issues in management and corporate social responsibility were introduced in business schools, leading, since the 1970s, to the increased introduction of ethics in business settings in the United States.

The multilateral organizations drew inspiration largely from the U.S. corporate sector’s structures of ethics (and compliance) offices in creating their own such offices. Most of the mandates of ethics offices in the UN family are modeled on that of the UN Secretariat’s office. Typically (but not always), human resources, the ombudsperson’s office, and the ethics, compliance, investigative and oversight functions are separate functions in United Nations organizations.

### **The first 10 years of WIPO’s Ethics Office**

The starting point of the process to have an Ethics Office in WIPO was the 34<sup>th</sup> session of the WIPO General Assembly (2007), which approved the development of a comprehensive integrated program for organizational improvement.

In April 2010, WIPO introduced a Strategic Realignment Program (SRP), which provided a management reform framework for the Organization. Four core values underpinned the SRP:

- Service orientation
- Working as one
- Accountability for results
- Environmental, social and governance responsibility



A number of human resource initiatives were among the 19 interrelated initiatives aimed at ensuring WIPO's continuing evolution as a fair and fundamentally decent workplace, while simultaneously enabling staff to better meet the needs of the WIPO Member States and other stakeholders. "Ethics" was among the areas addressed.<sup>10</sup>

The three pillars of the WIPO Ethics Office are independence, confidentiality and impartiality. The Ethics Office is headed by a Chief Ethics Officer, who, in 2010, reported to the Chief of Staff and Executive Director of the Office of the Director General.<sup>11</sup> Following best practice and recommendations of the Joint Inspection Unit (JIU) of the United Nations System, since 2014 the Chief Ethics Officer reports directly to the Director General of WIPO.

The mandate of the WIPO Ethics Office was updated in 2020.<sup>12</sup> Its structure and mandate have also been shaped by

various recommendations from reviews undertaken by the JIU.<sup>13</sup>

## The mandate of the Ethics Office

The mandate of the Ethics Office is found in WIPO's Office Instruction N° 16/2020, entitled *WIPO Ethics Office*. An office instruction forms part of the legal framework governing the administration and management of the WIPO Secretariat. This legal framework includes the WIPO Convention, staff regulations and rules, office instructions and information circulars.

- 13 JIU reports from the past 10 years that have a bearing either on the mandate of the Ethics Office in WIPO or relate to its functioning, are, in chronological order: Ethics in the United Nations system (JIU/REP/2010/3); Accountability Frameworks in the United Nations system (JIU/REP/2011/5); The Investigations Function in the United Nations system (JIU/REP/2011/7); Fraud Prevention, Detection and Response in United Nations System Organizations (JIU/REP/2016/4), Review of Mechanisms and Policies Addressing Conflict of Interest in the United Nations System (JIU/REP/2017/9), Review of Whistle-Blower Policies and Practices in United Nations System Organizations (JIU/REP/2018/4), and Review of Audit And Oversight Committees in the United Nations system (JIU/REP/2019/6). The JIU's 2020 Review of the current state of the ethics function (JIU A455) is forthcoming. Report JIU/REP/2017/5, Outcome of the Review of the Follow-Up to the Joint Inspection Unit Reports and Recommendations by the United Nations System Organizations discusses the relevance and impact of JIU recommendations. The report of the JIU's 2020 review of the current state of the ethics function, towards which WIPO's Ethics Office is actively cooperating, is forthcoming.

10 Other human resource areas addressed were: results-based management, performance management and staff development system, internal controls, culture and customer interface.

11 Office Instruction No. 25/2010, WIPO Ethics Office.

12 Office Instruction No. 16/2020 WIPO Ethics Office.

This section explains the mandate and responsibilities of the Ethics Office as provided in Paragraphs 1 to 12 of the office instruction.

**Paragraph 1. In line with the commitment of the Organization of maintaining the highest standards of ethics and integrity, as expressed in the WIPO core values, as well as taking account of best practices of other international organizations of the United Nations common system, the WIPO Ethics Office was established in 2010.**

In 2016, WIPO's core values alluded to in paragraph 1, were redefined as:

- Shaping the future: seeing the big picture; seeking change and innovation; developing yourself and others
- Working as one: communicating effectively; showing team spirit
- Acting responsibly: demonstrating integrity; valuing diversity
- Delivering excellence: producing results; showing service orientation.

WIPO's core value of "demonstrating integrity" demands the demonstration of the highest standard of conduct in compliance with the Organization's legal and ethical standards and practices.

**Paragraph 2. The objective of the WIPO Ethics Office is to assist the Director General in ensuring that staff members and other**

**personnel observe – and perform their functions with – the highest standards of integrity, through fostering a culture of ethics, transparency and accountability. The WIPO Ethics Office shall have the independence required for the effective discharge of its functions.**

Paragraph 2 explicitly mentions a culture of ethics, transparency and accountability, as well as the independence of the Ethics Office. Indeed, independence is one of the pillars of ethics offices, both in the public and private sectors. The notion of a culture of ethics is explicitly expressed, as are transparency and accountability. Moreover, it recognizes that, for the actions of the Ethics Office not to be unduly influenced, it is essential that it enjoy functional independence. This independence grants it the authority to act free from instructions from anybody in fulfilling its mandated tasks.

The notion of independence is further mentioned in paragraph 3, which states that the Chief Ethics Officer enjoys functional and operational independence from management.

The independence of the Ethics Office must be seen, as a minimum, as freedom from external influences, such as from political influence or the influence of Member States, their representatives, or any other organs, over its functioning. Only with the necessary independence will the

Ethics Office be able to function and decide on matters free from pressures or inducements.

Paragraph 3 further develops the Chief Ethics Officer's functional and operational independence from Management.

**Paragraph 3. The WIPO Ethics Office is headed by a Chief Ethics Officer, appointed by the Director General. The Chief Ethics Officer is accountable to the Director General in the performance of her or his functions. The Chief Ethics Officer enjoys functional and operational independence from Management in the conduct of her or his duties. Even though the Chief Ethics Officer reports administratively to the Director General, she/he is not part of operational management.**

Paragraph 3 puts in place the structure and reporting line of the Ethics Officer and their functional and operational independence, including from management. It stipulates that the Chief Ethics officer will be appointed by and accountable to the Director General.

The appointment of the Chief Ethics Officer is also bound by strict rules. In this way, the organization ensures that the Ethics Office is managed properly and efficiently.

This accountability is qualified by specifying that in the conduct of the

duties assigned to her or him by the ethics mandate, the Chief Ethics Officer has functional and operational independence from management. Moreover, that independence is reinforced by explicitly stating that the Chief Ethics Officer is not part of operational management.

The mandate of the Ethics Officer emphasizes the general principles of independence, impartiality, conflict of interest and confidentiality laid down in WIPO's Staff Regulations and Rules:<sup>14</sup>

- “(a) All persons entrusted with a function in informal and formal conflict resolution shall at all times act in an independent and impartial manner and shall avoid actual, potential or apparent conflicts of interest.
- (b) They shall in all instances uphold confidentiality in their dealings. All communications initiated or received in connection with the performance of that function shall be confidential.”

The three pillars of WIPO's Ethics Office – independence, confidentiality and impartiality – reinforce and complement each other, and inform the advice provided by ethics officers as well as the decisions they take.

14 Staff Regulations and Rules of the International Bureau of WIPO (January 1, 2020 edition).

Independence is necessary in order for the Ethics Officer to make impartial decisions. However, independence does not mean arbitrariness. The typical counterbalance to independence is accountability. Apart from each staff member's administrative accountability, the Chief Ethics Officer has duties of accountability vis-à-vis the organization's Member States. This includes an obligation to provide annual reports on the activities of the Office to the Member States (see Paragraph 4 below), which regularly inform the Member States, and also the public, of its activities. These annual reports are posted on WIPO's publicly accessible website.

The presence or absence of functional independence is relevant for each of the activities undertaken by the Ethics Office: advisory, regulatory (contribution to norm-making and standards-setting), making determinations, oversight and compliance (for example in the context of disclosure of interests), investigative (i.e., fact-finding, specifically where protection against retaliation is concerned).<sup>15</sup>

In its 2010 *Report on Ethics in the United Nations System*, the JIU noted that to ensure the independence of the ethics function, rigorous conditions governing the appointment of heads of ethics offices must be in place, including term limits.<sup>16</sup>

According to the JIU, term limits support the independence of the function by protecting the incumbent from undue influence while avoiding the risks inherent in long-term tenure. Conventional wisdom sees a fixed term of office for certain functions as necessary to ensure independence, as this allows for the removal from office, in principle only if the official no longer fulfills the requirements for exercising the office or in case of gross misconduct. Some ethics practitioners, however, often make the point that term limits may not necessarily guarantee independence.

The JIU further recommended that the head of the ethics office report directly to the executive head (and not through an intermediate management level). This was seen as one of the necessary conditions for upholding the independence of the ethics function, another condition being the need for formal and informal access to the legislative bodies. There is also a general consensus amongst ethics practitioners in the UN System about the importance and relevance of direct, formal and informal access to the legislative and/or governing bodies and to the oversight board to ensure that the independence of the function is not circumscribed by the executive head.

Indeed, WIPO's Chief Ethics Officer reports directly to the Director General, and has direct access to the governing bodies and the oversight board (the

15 Investigation is limited to fact-finding exercises under the applicable rules.

16 JIU Report, *Ethics in the United Nations System*, JIU/REP/2010/3.

WIPO Independent Advisory Oversight Committee, IAOC).

A comparison of ethics offices in the UN System with those in the private sector, where, especially in academic circles, direct reporting to boards of directors is sometimes advocated to ensure such independence, tends to overlook the fact that the meaning of independence in a business environment is different from that in the UN environment, or, more generally, in intergovernmental organizations.

### Standards for independence of the ethics function

In its 2010 Report *Ethics in the United Nations System*, the JIU suggested the following features to ensure the independence of the ethics function:

- (a) Head of ethics function has a time-limited appointment of two four-year terms or two five-year terms, or one seven-year, non-renewable, term.
- (b) Head of ethics function reports directly to the executive head of the organization.
- (c) Annual report of the head of ethics function shall be submitted to, but shall not be changed by, the executive head.
- (d) Annual report of the head of ethics function, or summary thereof, goes to the governing body with any comments of the executive head thereon.

- (e) Head of ethics function has informal access to the governing body that is enshrined in writing.

For ethics offices in the UN System, a continuing debate on further defining the concept of independence in intergovernmental organizations is important.

The obligation for WIPO's Ethics Office to provide annual reports on its activities to the Member States is laid down in paragraph 4 of its mandate, which provides for a formal mechanism of accountability to WIPO's Member States.

**Paragraph 4. The WIPO Ethics Office shall provide annual reports on its activities to the Director General and, through the Director General, to the WIPO General Assembly.**

As mentioned above, associated with independence is accountability, not least to the governing bodies and through them, to the Member States of the organization. The JIU's 2010 Report on *Ethics in the United Nations System* (cited previously) stipulated, among other standards for independence of the ethics function, that an annual report by the head of ethics should be submitted to, but should not be changed by, the executive head, although it allowed the possibility for comments by the latter. The JIU also recommended that this annual report, or a summary thereof, be sent to the governing bodies as well.

Annual reports are drafted under the supervision of the Chief Ethics Officer, who is also responsible for their contents. They follow the standards, formats, timelines and editorial rules of WIPO reports.

At the end of its first full calendar year of operation, the WIPO Ethics Office commenced a cycle of annual reporting on its activities. In 2012, that Office presented a report of its activities and impacts in WIPO's 2010/2011 Annual Report on Human Resources.<sup>17</sup> In 2013 and 2014, the second and third reports of the Ethics Office were presented as dedicated annexes to the Annual Reports on Human Resources.<sup>18</sup> Since 2015, the Ethics Office's activities are presented as stand-alone annual reports to the WIPO Coordination Committee, thereby emphasizing the independence of the ethics function.<sup>19</sup> Thus the Ethics Office's annual reports serve to regularly inform the WIPO General Assembly and also the public, of its activities, as mentioned above.

Paragraph 5 of the Ethics Office's Mandate enumerates the main functions and responsibilities of that Office, as follows:

**Paragraph 5. The main responsibilities of the WIPO Ethics Office are as follows:**

- (a) Ensuring the design, development and implementation of effective WIPO ethics strategies, programs and policies to enhance integrity, compliance with ethics rules, and the ethical conduct of the Organization's business;**
- (b) Providing confidential advice and guidance to staff and other personnel on ethical issues;**
- (c) Providing other authoritative advice, as well as leadership, to support the correct interpretation of, and compliance with, ethics rules and related strategies, programs and policies;**
- (d) Providing input when consulted on policy issues where its expertise, views and experience may be useful;**
- (e) Administering the Organization's financial disclosure and declaration of interests policy and related programs;**
- (f) Undertaking the responsibilities assigned to it under the policy to protect against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations;**
- (g) Developing standards, training and education on ethics issues and, in cooperation with the Human**

17 WO/CC/66/1, WIPO Coordination Committee, Sixty-Sixth (43<sup>rd</sup> Ordinary) Session, October 1 to 9, 2012.

18 WO/CC/67/2, WIPO Coordination Committee, Sixty-Seventh (44<sup>th</sup> Ordinary) Session, September 23 to October 2, 2013 and WO/CC/70/1, WIPO Coordination Committee, Seventieth (45<sup>th</sup> Ordinary) Session, September 22 to September 30, 2014.

19 WO/CC/71/3 Rev., WPO Coordination Committee, Seventy-First (46<sup>th</sup> Ordinary) Session, October 5 to 4, 2015.

**Resources Management Department and other offices as appropriate, ensuring regular ethics training for all staff members, and other personnel as appropriate;**

**(h) Providing standard-setting and policy support in respect of the development and interpretation of ethics related policies;**

**(i) Developing internal and external partnerships, and participating in and contributing to activities of relevant ethics networks from multilateral organizations, in order to maintain required skills, and adapt best practices on raising ethics awareness, promoting ethical conduct and complying with ethics rules, for the Organization;**

**(j) Ensuring accountability in the management of assigned WIPO resources (financial, human and material); and**

**(k) Performing such other functions as the Director General considers appropriate for the Office.**

The responsibilities enumerated do not differ substantially from those laid down in the 2010 founding mandate.<sup>20</sup> Below is a description of the key areas of activity undertaken by the WIPO Ethics Office in order to fulfil its mandated responsibilities.

## **Internal cooperation and promoting ethical conduct**

To deliver on its mandate, the Ethics Office cooperates with all relevant organizational units in WIPO. Thus, for training and awareness-raising activities it works in close collaboration with the Human Resources Management Department (HRMD), as prescribed by the mandate of the Ethics Office, as well as with the Office of the Ombudsperson. In the area of policy development, the Ethics Office collaborates with the Office of the Legal Counsel (OLC). And on audit matters, with respect to monitoring the implementation of recommendations, or within the context of specific office instructions which so mandate, it cooperates with the Internal Oversight Division (IOD).

In its advisory role and for work related to the policies assigned to the Ethics Office, there is collaboration with the relevant departments. Thus, it may get in touch with the OLC, the HRMD, the IOD or the Ombudsperson for advice on specific HR rules, or on matters of administrative or institutional law. Any advice sought will be limited to essential subject-related questions, while respecting and safeguarding as much as possible, the confidentiality and anonymity of the person(s) concerned so as not to divulge information on a specific situation which could lead to identification of the person concerned. If the person seeking its advice does

20 Office Instruction No. 25/2010.

not wish to keep the confidentiality in exchanges with these departments, the Ethics Office will nevertheless, if and when requested to provide information, “neither confirm nor deny” that the staff member has sought its services. Even if a staff member shares pertinent information with other instances, the Ethics Office will continue to feel bound by its confidentiality, unless and until the staff member explicitly expresses that he or she wishes the confidentiality to be lifted (as noted above).

Ethics and compliance are dealt with separately in WIPO. Nevertheless, anti-fraud is an important area of convergence and cooperation between the two functions. Under the WIPO Policy on Preventing and Detecting Fraud and Other Prohibited Acts, strategies to ensure that fraud risk is mitigated and discussed are led by the Office of the Controller (compliance department). The Office of the Controller, together with IOD and in collaboration with other administrative units, leads proactive strategies to ensure that fraud risk is mitigated and discussed. It is also responsible for regular review of the anti-fraud policy, risk assessment and anti-fraud controls.

The annex to the policy on preventing and detecting fraud, which describes roles and responsibilities relating to fraud, specifically mentions that the Chief Ethics Officer should provide confidential advice and guidance to managers and individual members of

personnel on situations raising ethical dilemmas. This role of the Ethics Office is also mentioned in the mandatory online Fraud Awareness training course developed by the Office of the Controller, which includes references to ethical standards and integrity.<sup>21</sup>

21 Office Instruction No. 10/2019, WIPO Policy on Preventing and Detecting Fraud and Other Prohibited Acts.



## WIPO's Office of the Ombudsperson: A brief history\*

**2009** – The ombudsperson function, which came into existence in 2008, was implemented on an ad hoc basis. A year later, following a recommendation in a report by the then incumbent of the position, it was made into a permanent position through the establishment of the Office of the Ombudsperson. Following another recommendation in the same report, the Ombudsperson's reports are shared with all staff on the WIPO Intranet.

That same year, the WIPO Ombudsperson joined the UNARIO network of Ombudsmen and Mediators of the United Nations and Related International Organizations, including the Bretton Woods institutions, the African Development Bank, the European Organization for Nuclear Research (CERN) and the International Committee of the Red Cross (ICRC). They meet annually to discuss professional issues of common concern.

**2013** – In the context of a revision of WIPO's internal justice system, the Office of the Ombudsperson is fully incorporated in the system. Relevant articles on informal conflict resolution and prevention are added to the Staff Rules and Regulation's Chapter XI. Regulation 11.3 is dedicated to informal conflict resolution, where the role and mandate of the Office of the Ombudsperson are described in rule

11.3.1. A staff-led working group was created for developing an initiative entitled "Fostering a respectful and harmonious workplace," which encourages staff members to engage in resolving workplace problems informally as much as possible, thus completing the integration of the Office of Ombudsman into the internal justice system of the Organization.

**2014** – The first edition of WIPO's *Guide to a Respectful and Harmonious Workplace* was issued in 2014, and a revised version has been published every year since.

**2015** – WIPO introduced a mandatory conflict management course for all staff. An intense initial phase allowed 600+ staff members to enroll in the course within a few weeks. Regular sessions (generally five a year), both in French and English, have since been taking place to include newcomers to WIPO, as well as those staff members who did not have the opportunity to take the course earlier. The Office of the Ombudsperson is a regular contributor to the training.

**2016** – It was proposed that the Ombudsperson should visit WIPO's external offices to broaden the Office of the Ombudsperson's outreach and to guarantee equitable access to its services for *all* staff members. In collaboration with the Ethics Office,

it was agreed that during those visits, the Ombudsperson should also give an orientation on WIPO's Code of Ethics and that Office's services. Two external offices (in Singapore and Moscow) have been visited since.

**2018** – The Office of the Ombudsperson launched a peer helper's network called "Relays." Relays are volunteers trained and supported by the Office of the Ombudsperson to provide first line advice and orientation on how to deal with tensions and various problems at the workplace, in order to prevent situations turning into a conflict.

**2019** – WIPO introduced mandatory training on respect in the workplace in the form of two modules: the first module comprises a common core for all staff members, and the second focuses on officials with team management responsibilities.

It is worth mentioning also that in 2019 the right to file a formal complaint in case of harassment/abuse or discrimination was extended to non-staff personnel. This measure increases the chances to resolve a conflict informally, creating an opportunity that did not exist before to seek services from the Office of the Ombudsperson.

Throughout the years, the Office of the Ombudsperson has worked in cooperation with the Ethics Office (and with other staff support services) to the extent that respect for the principles of confidentiality and independence allow.

\*Source: Marc Flegenhimer,  
WIPO's Ombudsperson

## Internal cooperation in providing advice

Practice has shown that staff members are not always clear on where to go for advice. Where a matter falls outside its mandate, the Ethics Office will refer the staff member to the service which has responsibility for the specific issue.

Good professional relationships between the Ethics Office and other organizational units, especially the Ombudsperson, HRMD, IOD and the OLC, are essential for its effective functioning. To comply with the Mandate's requirement for the development of internal and external partnerships in order to promote ethical conduct and compliance with ethics

rules, it is necessary for the Ethics Office to have regular meetings on issues relating to areas that require cooperation between the Ethics Office and the respective organizational units.<sup>22</sup>

There may also be a need to discuss specific cases with the consent of the involved staff member, for example under the Policy to Protect against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations<sup>23</sup> (PaR Policy), when a risk of retaliation may exist. Meetings between the Ethics Office, the Ombudsperson, HRMD or IOD may also be useful when trends or situations so warrant, or when potential areas of concern may exist.

## Where to go for advice in WIPO

Ethics Office	Human Resources	Ombudsperson	Internal Oversight Division
<ul style="list-style-type: none"> <li>Confidential advice on conflicts of interest</li> <li>Confidential advice on outside activities</li> <li>Confidential advice on gifts, benefits from third parties, acceptance of honors</li> <li>Ethics training</li> <li>Implementation of ethics-related policies</li> </ul>	<ul style="list-style-type: none"> <li>Conditions of employment and benefits</li> <li>Performance management</li> <li>Training and Staff Development</li> <li>Recruitment</li> <li>Interpretation of HR policies and rules</li> <li>Problems of abuse of authority, harassment, discrimination</li> </ul>	<ul style="list-style-type: none"> <li>Informal workplace problem assistance and alternative dispute resolution</li> <li>Impartial listening, conflict coaching</li> <li>Informal third party intervention or mediation referrals.</li> </ul> <p>(All in strict confidence)</p>	<ul style="list-style-type: none"> <li>Allegations of wrongdoing</li> <li>Investigations</li> </ul>

22 Also see Audit of WIPO's Ethics Framework, March 6, 2017, Reference: IA 2016-06.

23 Office Instruction No. 33/2017.

## Four main areas of activity

The activities of the Ethics Office fall into four main areas:

- Awareness raising and training;
- Providing confidential advice on ethics-related issues;
- Standard-setting and policy development; and
- Implementation of policies assigned to the ethics office.

These are discussed in greater detail below.

### *Awareness-raising and training*

WIPO's management and the Ethics Office attach particular importance to awareness-raising and training of staff. According to the JIU, training, including interactive online training, education and outreach activities, are critical activities, as they have the potential to disseminate ethics policies, procedures and guidelines to all staff members of the organization. The JIU report suggests that ethics training be mandatory for all staff, and that there be mandatory refresher courses on a regular basis. It furthermore recommends that the executive heads take the lead in this regard.

Since 2012, WIPO offers ethics and integrity training programs to all staff and management, including senior management. The Director General participated in one of the first sessions

at the start of the Ethics and Integrity training roll-out, in 2012.<sup>24</sup>

The objectives of training are to:

- Enhance the culture of ethics;
- Raise awareness across the organization about principles, policies, tools and considerations relating to ethical behavior at WIPO;
- Increase trust among colleagues and managers, and trust in the organization;
- Promote accountability in decision-making; and
- Strengthen ethical leadership – “tone at the top.”

The training programs aim to:

- Ensure a common understanding of the meaning of “ethics and integrity” in a professional setting, and of the importance of ethical conduct to the reputation of the Organization;
- Ensure that all staff receive training on core ethical principles;
- Promote a consistent message on ethics and expected standards of conduct in WIPO; and
- Raise awareness about mechanisms that are in place to support personnel.

24 Also see JIU/REP/2010/3, Recommendation 10: The executive heads should ensure that mandatory ethics training is provided to all staff of their respective organizations, and should take the lead by participating in this training, including mandatory refresher courses that should take place every three years.

Training at WIPO is delivered at the start of the tenure of all personnel through mandatory induction courses. Furthermore, an online course on Ethics and Integrity is mandatory for all staff. The online course also serves to provide regular refresher training. In addition, the Ethics Office offers sector- and subject-specific training and awareness activities.

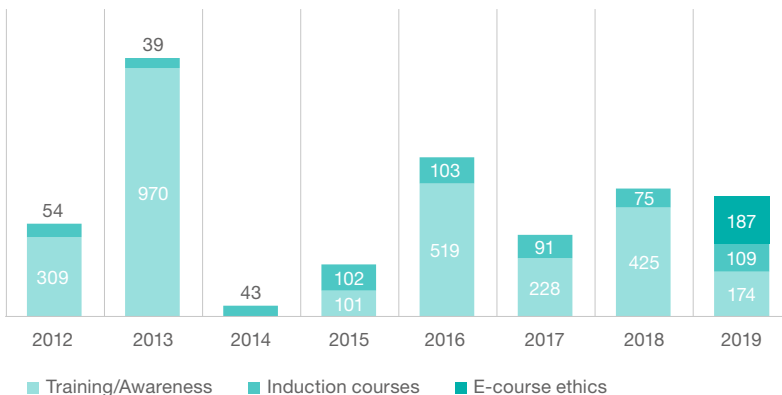
All ethics and integrity training and awareness activities include a review of ethical principles and values that apply at WIPO, focusing on specific areas with examples and case studies, as well as on ethical decision-making models. In all such activities, there are interactive discussions about common obstacles to behaving ethically, and on ways to address these. All activities include information about the Ethics Office, its activities and the services it provides to staff, such as its 24/7 helpline.

Since 2012, the Ethics Office maintains a dedicated and comprehensive WIPO Ethics Intranet site, which is regularly updated. The WIPO Code of Ethics, and the Guide to Ethics at WIPO (which includes a compilation of relevant WIPO policies and principles, with clear explanations), as well as links to relevant resources and background information, are posted on the site.

The information below shows the number of training courses on ethics and integrity provided to staff since training commenced in 2012 through to 2019. The E-course on Ethics was rolled out in 2019.

In 2017 the Ethics Office introduced an alternative awareness-raising strategy to trigger open discussions on ethics in practice. It started to invite renowned speakers, many of them with specialized technical skills, from

## Ethics and integrity training



different cultural backgrounds, and combining a wide range of experiences in the ethics field, to offer presentations.

The first activity under this strategy was a high-level ethics presentation on communication by Professor Onora O'Neill (U.K.) in November 2017.

The high rate of attendance and active engagement by WIPO staff showed that the objective of reflection on ethical behavior in carrying out duties was attained. The feedback received was also positive. Among suggestions received from the audience and from others who had heard about the WIPO event, were proposals to open up such future events to wider circles, beyond WIPO staff. In response to the feedback and suggestions, the WIPO Public Lecture Series on Ethics was launched in 2018.<sup>25</sup> These annual public lectures bring together members of the diplomatic community, staff from the United Nations and its specialized agencies and from other international organizations, representatives of non-governmental organizations (NGOs) and the academic community, as well as students, alongside WIPO staff.

They have become a valued addition to events in international Geneva. To date, WIPO remains the only UN organization to present public lectures on ethics.

### The WIPO Public Lecture Series on Ethics

**2017** – Professor Onora O'Neill (U.K.): High-Level Ethics Presentation on The Changing Ethics of Communication

**2018** – Professor Peter Singer (Australia): Public Lecture on Ethics, Technology, and the Future of Humanity

**2019** – Dr. Julian Baggini (U.K.): Public Lecture on Culture, Character and Ethics: Ethical Dilemmas in International Organizations

**2020** – Professor Jeroen van den Hoven (The Netherlands): Public Lecture on Ethics of Technology and Our Global Challenges: The Case for Responsible Innovation

25 The public lectures received a great deal of attention outside WIPO circles. The magazine *UN Special* published dedicated interviews with two of the speakers, Professor Peter Singer in its May 2018 issue (*UN Special* No. 779) and Professor van den Hoven in its December 2019/January 2020 issue (*UN Special* No. 796). Interviews by Ms. Sarah Jordan, Deputy editor of *UN Special*, see: <https://www.unspecial.org>.

## Ethics awareness



### Impact of training and awareness-raising activities

#### *Ethics climate and awareness at WIPO*

To evaluate the impact of training and awareness-raising, post-training surveys were conducted. Since 2010, WIPO also measures ethics awareness among staff.<sup>26</sup> The thus measured ethics awareness shows a correlation between outreach (awareness-raising activities) by the Ethics Office, and staff awareness of ethics issues. It is clear that training and awareness-raising have a positive impact. The latest survey (2019) shows around 96 per cent of WIPO staff are aware of WIPO's ethics principles and are committed to them (see chart above).

<sup>26</sup> Surveys were conducted in 2010, 2011, 2012, 2016 and 2019.

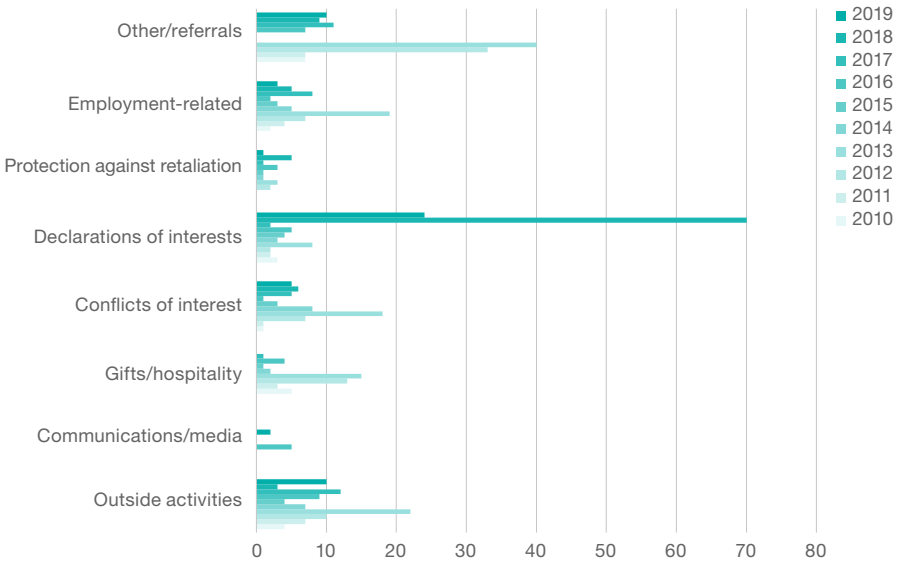
### Providing confidential advice on ethics-related issues

Under paragraph 5 of its Mandate, the Ethics Office is to provide confidential advice and guidance to staff and other personnel on ethical issues. The Mandate also confers on the Office the responsibility to provide authoritative advice, as well as leadership, to support correct interpretation of, and compliance with, ethics rules and related strategies, programs and policies.

The advisory function of the Ethics Office, available to all staff and other personnel wishing to obtain confidential advice on ethics-related matters, remains a well-utilized resource.

Member States have, on occasion, also sought the views of the Ethics Office.

Requests for advice on ethics



These have been shared on an ad hoc, non-institutional basis.

By its nature, most of the Ethics Office’s advisory work is demand-driven. The Office also has an obligation to provide authoritative advice to support the correct interpretation of, and compliance with ethics rules and related strategies, programs and policies. Under this obligation, on a few occasions when the situation so demanded, the Ethics Office shared its views with Management or with responsible officials within the organization. Prior to taking action under this provision of its Mandate, the Ethics Office typically ascertains

the facts and the applicable rules, and establishes if any relevant action has already been taken. Using the moral authority the Organization has vested in it, the Ethics Office then draws the attention of the relevant instance(s) to the matter. This is generally done in the form of posing critical questions. Where warranted, an advisory opinion may be shared.

The Ethics Office is regularly solicited to provide advice to staff. Requests for advice typically concern outside activities, conflicts of interests, declarations of interests/investments, gifts and/or hospitality. Advice is also sought on employment-related matters,



on protection against retaliation and on a multitude of other issues, such as personal legal issues, investigations, suspected misconduct or other compliance issues. Where these issues fall outside the mandate of the Ethics Office, staff members are referred to the appropriate instance.

Between 2010 and 2019, the Ethics Office received 516 requests for advice. The chart on the opposite page shows the number of requests made to the Ethics Office during the period 2010–2019.

The data show that the Ethics Office is consulted most frequently on outside activities (88 requests or 17 percent of all requests), conflicts of interests (55 requests or 10 percent), and employment-related matters (58 requests or 11 percent). A surge in requests for advice on declarations of interests in 2018 is reflected in a high percentage for this category (123 requests or 24 percent). Not including 2018, the data would show an average of around 10 percent. The marked surge in requests for advice in 2018 is related to the introduction of a new Policy on Financial Disclosure and Declaration of Interests in 2017.<sup>27</sup>

Advice on outside activities can relate to staff members' academic activities, such as lecturing at academic institutions in Switzerland or in other

countries, other academic engagements or pursuits, or participation in advisory boards of academic institutions or NGOs. The advice sought often also concerns the process to receive permission for outside publication of research articles or of works of fiction. Permission for outside activities needs to be sought from the Director of HRMD, under the delegated authority of the Director General.

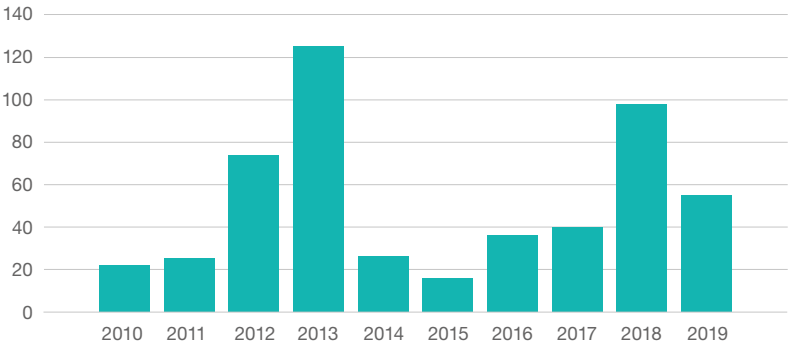
Staff members do not need permission to engage in social, artistic, religious or charitable activities. They may pursue such activities at their own discretion, under certain conditions. The Ethics Office's views are regularly solicited to reassure the staff member as to the applicability of this rule to his or her specific situation.<sup>28</sup>

Staff members may also pursue studies at their discretion. Indeed, WIPO encourages continuous learning by its staff. Only on rare occasions has the Ethics Office's advice been sought regarding the pursuit of studies.

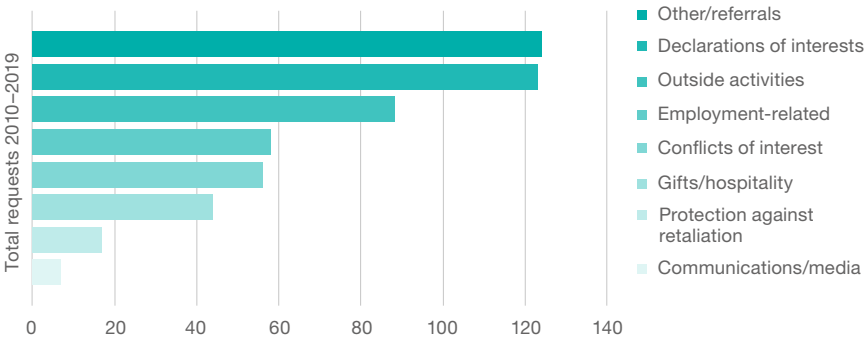
28 Specific outside activities include social, artistic, religious or charitable activities. The staff member may engage in such private non-remunerated activities if they have no relation to the staff member's official functions or to the Organization, and if they take place outside working hours or while the staff member is on leave, at the staff member's discretion. Staff members shall in every instance ensure that the activity is and remains compatible with their status as international civil servants (Paragraph 15, Office Instruction No. 1/2018, Outside Activities).

27 Office Instruction No. 36/2017.

Increase in requests for ethics advice



Ethics advice by issue



With respect to political activities, WIPO’s Staff Regulations and Rules, in accordance with the equally applicable Standards of Conduct for the International Civil Service, are clear: the independence and impartiality required by the status of staff members do not allow them to stand for or hold local or national political office.

The Ethics Office has at times received requests for explanation of the rules, and on whether such activities are

allowed when the staff member would be on leave. The rules are clear: staff members on any form of leave, either with or without pay, remain international civil servants in the employment of WIPO and therefore remain subject to its rules, including the formal prohibition to stand for or hold local or national political office.

The question of whether receiving remuneration for an outside activity is permitted, is often posed. The Director

HRMD will determine if and when such remuneration may be accepted. Depending on the specifics of the situation, senior ranking staff members will have to declare the additional income in their annual Financial Disclosure Statements. In any case, rules on taxation for non-WIPO income, which staff members are also required to observe, will apply to such income.

#### *Requests for advice from the Ethics Office: the numbers*

Since the start of the Office, the demands for its advice have steadily increased. On average, there is an annual demand of 51 requests for advice per year. Excluding the exceptionally high numbers of requests for advice in 2012 and 2013 (due to an intensive outreach campaign) and 2018 (related to the introduction of a new financial disclosure policy), the average would be around 32 requests per year. As a trend, there is an overall steady increase in demand for advice from the Ethics Office, up from 22 requests in the starting year 2010, to 55 requests in 2019.

### **Standard-setting and policy development and implementation**

#### *Policy on Financial Disclosure and Declaration of Interests*

Paragraph 5 of its Mandate also assigns to the Ethics Office the duty of administering the Organization's

Financial Disclosure and Declaration of Interests Policy (FDDI Policy) and related programs. Thus, since 2013, the WIPO Ethics Office has been responsible for implementation of that Policy. The earlier version of the Policy demanded the disclosure of financial interests in compliance with the International Public Sector Accounting Standards (IPSAS) and the disclosure of other interests. The current (2017) FDDI Policy equally applies to the disclosure of financial interests and to compliance with IPSAS by senior staff and other designated categories of staff, and introduces a number of changes, including review of declarations by an external reviewer

The FDDI policy aims to achieve an appropriate balance between the need for information and staff members' right to privacy, while taking into account the risk management framework, the internal controls system implemented by the Secretariat, and best practices on the issue.

The objectives of the FDDI policy are to:

- Promote transparency and accountability;
- Enhance internal and external public trust in the integrity of the Organization; and
- Assist the Organization to manage the risk of actual and perceived conflicts of interest through disclosure, mitigation and prevention.

The 2017 FDDI Policy envisages annual filing by designated staff and review of the declarations by an external reviewer, whose role is determined by that Policy.

The first filing exercise, with review of submissions by an external reviewer, took place in 2018. At the end of the process, as per the policy, the external reviewer provided a report to the Director General. The external reviewer's review and analysis of participant disclosure forms was based on the relevant office instructions, knowledge and experience attained from similar disclosure programs, consultation with WIPO's Ethics Office,

and independent research as necessary to evaluate possible conflicts.

A small percentage of FDDI forms are randomly selected annually for an additional verification process. Staff members are required to provide third-party documentation for all items disclosed, in order to verify the accuracy and completeness of such information.

The Ethics Office provides guidance, substantive and technical support to staff members who are required to file a declaration of interests. This includes providing advice, upon request, on conflict-of-interest management.

### A note from the external reviewer

In 2018, KPMG LLP (KPMG) was selected as the external reviewer for WIPO's annual Financial Disclosure and Declaration of Interests (FDDI) program. This important policy is part of the overall approach of WIPO in promoting transparency, accountability and trust in the integrity of the Organization, and its management of the risk of actual and perceived conflicts of interest.

Drawing on its experience with similar organizations, KPMG assists the WIPO Ethics Office in communicating expectations, conducting training on the program, providing a best in class online disclosure system and confidentially reviewing financial information from senior-level employees. Potential observations are discussed with the WIPO Chief Ethics Officer and remediation steps communicated to employees if required.

As with similar programs in other organizations, KPMG works with WIPO to ensure the review is based on the Organization's ethics policy. Of particular importance to WIPO are financial and outside interests with organizations involved in the business of intellectual property.

KPMG treats individuals' information with the utmost regard to confidentiality and with rigorous security testing of the disclosure system. The external reviewer has built a good working relationship with the WIPO Ethics Office, which has contributed significantly to the success of the program.

*Policy to Protect Against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations (PaR Policy)*

Paragraph 5 of its Mandate also assigns to the Ethics Office the responsibilities associated with the PaR Policy.

This policy establishes the duty on the part of staff and staff members<sup>29</sup> to report any possible misconduct that, if established, would be manifestly harmful to the interests, operations or governance of the Organization. Thus, through this policy, WIPO encourages prompt notification of possible wrongdoing so that appropriate and diligent action can be taken in the best interests of the Organization. A duty to report breaches of the Staff Regulations and Rules is contained in the Standards of Conduct for the International Civil Service 2013 (ICSC Standards of Conduct).<sup>30</sup>

The concept of PaR captures the essence of the role of the Ethics Office with respect to reporting misconduct,

namely the protection against retaliation of the person reporting misconduct. In popular jargon, the terms whistleblower or whistleblowing are often used. The term “*whistleblowing*” has different connotations in different cultures and countries. In some cultures, this term has a historically laden and negative connotation.

The PaR policy constitutes the general framework for the protection of all personnel against retaliation for cooperation in an oversight activity, or for making a report, in good faith, of misconduct that, if established, would be manifestly harmful to the interests, operations or governance of the Organization. The Organization is committed to protecting WIPO personnel who participate in a wide range of oversight activities as defined in the policy or who report misconduct. The PaR provides the mechanisms for reporting alleged wrongdoing and protection against retaliation, so that there is a safe alternative to silence.

In accordance with the PaR policy, complaints of retaliation can be addressed to the Ethics Office. The Ethics Office conducts preliminary reviews to determine whether a complainant has engaged in a

29 Staff and “staff members” are to be interpreted widely, as including all members of personnel.

30 United Nations International Civil Service Commission, Standards of Conduct for the International Civil Service 2013.

protected activity. Based on its preliminary review of a complaint, the Ethics Office determines whether *prima facie* there is a case of retaliation. Based on its determination, the Ethics Office can advise on adequate protection of the staff member concerned. Staff members have the right to seek an external review, by a designated entity, of determinations on preliminary reviews made by WIPO's Ethics Office. Under the 2017 policy, the Ethics Office of the United Nations Office for Project Services (UNOPS) serves as outside reviewer.

In the period 2010–2019, out of the 516 requests for advice received, 3 percent of all requests (17 requests) concerned PaR. Most enquiries concerned information on whether or not a certain activity was covered by the policy.

In discussions and reviews on the role of the of ethics offices in the UN System, many reviews focus either exclusively or predominantly on its PaR responsibilities, which, as the figures show, concern a tiny fraction of the activities of ethics offices and also of WIPO's Ethics Office, and a small number of members of personnel. In practice, as is the case in other organizations, many of the cases brought to the ethics offices invoking the PaR policy, in fact concern workplace disputes, rather than matters related to fraud or critical misconduct harmful to the mission and operation of the Organization. Practice shows

that staff and personnel are using the policy mostly as an additional grievance mechanism for work- or performance-related disputes.<sup>31</sup>

Sometimes staff members take to sharing their allegations in the media. This is against the rules<sup>32</sup> and it is not the correct approach by staff to air their grievances in public, including through the media, or to seek support from diplomatic missions (of their countries of origin or other missions) in order to influence decisions by the Ethics Office — also when the PaR policy is invoked. The Ethics Office will have to uphold its independence at all times and avoid being influenced by external sources, be these sources political or Member States. Its independence is necessary to be able to take decisions on matters free from pressures or inducements.

The Ethics Office is committed to protecting staff against retaliation, in accordance with the policies, and to guiding and advising staff and other personnel. For many the differences between reporting misconduct, “whistleblowing” and protection against retaliation are not clear. When a matter falls outside the mandate of the Ethics Office, staff seeking its advice will be referred to the appropriate instances.

31 The UN whistleblower protection policy – Part II, UN Special July August 2016, pp. 38-39.

32 SRRs and specifically paragraphs 1.4 and 1.5; Standards of Conduct for the International Civil Service 2013, and specifically paragraphs 8 and 37.

Staff may for example be guided to the IOD or to the Ombudsperson.

The Ethics Office is relentlessly continuing its efforts to ensure that staff members are empowered and encouraged to report serious misconduct without fear of retaliation, so that the policy to protect against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations can serve its intended governance objectives.

### **Cooperation with other ethics offices in the multilateral system**

Paragraph 5 of the Mandate of the Ethics Office refers to the development of internal and external partnerships, and participating in and contributing to activities of relevant ethics networks from multilateral organizations. Such cooperation helps to maintain required skills and adapt best practices on raising ethics awareness, promoting ethical conduct and complying with the ethics rules of the Organization. While UN funds and programs have a legislative basis for cooperation through the UN Ethics Panel,<sup>33</sup> UN specialized agencies such as WIPO have no such equivalent basis. On a voluntary basis, WIPO, as a specialized agency, participates in and contributes

to the activities of the Ethics Network of Multilateral Organizations (ENMO). The ENMO serves as a broad forum for ethics functions of UN system entities, affiliated international organizations and international financial institutions, enabling the exchange of information on ethics policies and practices.

WIPO's Ethics Office has become an active player in the UN family of ethics offices, participating in regular exchanges with them. WIPO's Ethics Office also participates in networks of ethics offices outside the UN (private sector and large NGOs) and in activities organized by Swiss and other ethics associations. Thus the Office stays informed of developments and best practices so as to maintain required skills, and adapt and update best practices on raising ethics awareness, promoting ethical conduct and complying with ethics rules for the Organization.

As noted above, the responsibilities assigned to the Ethics Office by its mandate have translated into a series of activities during the first 10 years of its existence.<sup>34</sup> Certain trends may be discerned: increasing use of its services, a high level of ethics awareness among WIPO staff, and a

33 United Nations Secretary-General's bulletin ST/SGB/2007/11, amended as per ST/SGB/2007/11/Amend.1 issued on 16 April 2013.

34 Based on the agreement between the World Intellectual Property Organization and the International Union for the Protection of New Varieties of Plants (WIPO/UPOV AGREEMENT, signed on November 26, 1982), the WIPO Ethics Office is to also provide services to UPOV.

good rate of participation in events organized by the Ethics Office by staff and marked interest by non-WIPO staff in the public lectures on ethics.

Paragraph 6 of the Ethics Office's Mandate makes reference to the WIPO Independent Advisory Oversight Committee (IAOC).

**Paragraph 6. The relationship of the WIPO Ethics Office with the WIPO Independent Advisory Oversight Committee is governed by the terms of reference of the Committee and any other applicable rules and regulations.**

Paragraph 6 of the Ethics Office's Mandate refers to the WIPO Independent Advisory Oversight Committee (IAOC), which is a subsidiary body of the WIPO General Assembly and of the Program and Budget Committee (PBC). The IAOC's terms of reference (TOR) define its responsibilities, including with respect to the Ethics Office.<sup>35</sup>

Pursuant to its TOR, the IAOC can review and advise on the Ethics Office's planned activities (its workplan), review their implementation, and advise on the quality, effectiveness and efficiency of the ethics function. Furthermore, the IAOC can review and

advise on proposed ethics policies, advise the Chief Ethics Officer in cases of significant impairment to his or her independence and objectivity, including conflicts of interest, and advise the Director General on the appointment and dismissal of the Chief Ethics Officer.<sup>36</sup>

The IAOC itself has the obligation to periodically review its TOR and recommend amendments, as appropriate, for consideration by the PBC.<sup>37</sup>

Two areas of concern regarding the relationship of the IAOC with organizational units of WIPO have been brought to the attention of Member States, namely potential conflicts of interest of the IAOC members and issues of confidentiality.

With respect to the IAOC, detailed conflict-of-interest guidelines are absent from its TOR. As was noted in the JIU's review of audit and oversight committees in the United Nations system,<sup>38</sup> detailed conflict-of-interest guidelines are absent from the majority of the terms of reference or the charter of the audit and oversight committees it reviewed.

35 The TOR of the IAOC demands that its membership should include persons with relevant qualifications and experience, in this case, in ethics.

36 Paragraph 3 (e) section B, Terms of reference of the WIPO Independent Advisory Oversight Committee.

37 Paragraph 29 of the TOR of the IAOC, as attached as Annex III to the WIPO Financial Regulations and Rules.

38 JIU/REP/2019/6.



Paragraph 7 of the IAOC's TOR provides for its members to sign a statement of disclosure of interest, which indicates that the disclosure should be made *in writing*, without prescribing the specific modalities of such a written declaration.<sup>39</sup> However, reports from the IAOC mention, with respect to conflict of interest declarations by its members, that an *oral* response to the question of whether or not such a conflict may exist, suffices as to the disclosure of a possible conflict of interest.<sup>40</sup>

It is of some concern that members of the IAOC of WIPO would review amongst themselves their declarations of interest, made not in writing but only orally, since it indicates lower standards for IAOC members than for senior WIPO staff who share information, including confidential information, with them.

39 In its 2018 Annual Report, the Ethics Office noted that pursuant to Annex III, paragraph 9, of WIPO's Financial Regulations and Rules, as amended on October 14, 2015, "Members of the [WIPO Independent Advisory Oversight Committee] IAOC shall sign a statement of disclosure of interest." The 2018 Annual Report further mentioned that the IAOC stated that it would retain its statements for its own files. WO/CC/75/INF/2, JULY 23, 2018, WIPO Coordination Committee, Seventy-Fifth (49<sup>th</sup> Ordinary) Session.

40 In its report of May 27, 2020 the IAOC report mentioned under the agenda item of conflict of interest declaration, that (IAOC) "members present were asked to disclose any actual or potential conflict of interest and that no conflict of interest was reported" – WO/IAOC/56/2, WIPO Independent Advisory Oversight Committee, Fifty-Sixth Session, Geneva), April 22 to 23, 2020, Report adopted by the WIPO Independent Advisory Oversight Committee.

Under the WIPO *Policy on Financial Disclosure and Declaration of Interests* (FDDI), it is mandatory for senior staff to report annually in writing, in a set format, for review by an independent external reviewer, on their financial and other interests (see above). Senior staff of WIPO furthermore have obligations of compliance with the International Public Sector Accounting Standards (IPSAS).

Confidentiality constitutes another area of concern. The IAOC's terms of reference do not mention anywhere an obligation of confidentiality for its members. However, since members of the IAOC have the status of consultants, they are required to sign a confidentiality statement upon appointment.

Officials who interact with the IAOC currently "assume" that its members have committed to confidentiality.<sup>41</sup> Given the IAOC's far-reaching terms of reference and access to information,<sup>42</sup> putting in place a formal mechanism that confirms that the members have

41 In its meetings with the IAOC, the Ethics Office has made the point on various occasions that this should not be the case.

42 See JIU/REP/2019/6, Review of audit and oversight committees in the United Nations system. Overall, as noted in the report, the authority of the audit and oversight committees, as defined in the terms of reference or charter, allows them unrestricted access to staff members, including senior management and non-staff. The committees also have access to any information that they consider necessary to discharge their duties.

complied with the formalities and that there are no conflicts of interest, would reassure WIPO officials dealing with the IAOC that they may share confidential information with them.

The head of the Ethics Office has access to the governing bodies. When circumstances so demand, for example when the IAOC and/or its individual members overstep their mandate or in case of actual or potential breaches of rules, the Chief Ethics Officer can use the access it has to the governing bodies to report on such incidences.

Advisory bodies should not take on operational roles, especially with respect to independent functions. Undue review of and advice on activities can easily become control. In such a case, there is a risk that while the Ethics Office would enjoy operational independence vis-à-vis the management of the Organization, it would, in effect, be subject to the control and guidance by such an oversight body. Supervision and control would erode the independence of the Ethics Office, which lies at the heart of its very functioning.

The IAOC prepares written reports of its sessions. Prior to finalizing its reports, it shares a draft with the Chief Ethics Officer for comments. As the reports are issued by the IAOC, it does not have to take into account the comments made by the Chief Ethics Officer. However, making reference to the

latter's comments on the proceedings may contribute to more comprehensive IAOC reports, as well as to improving the Member States' understanding of internal governance at WIPO.

**Paragraph 7. The WIPO Ethics Office shall maintain confidential records of advice provided by it, and of reports made to it.**

Paragraph 7 of the Ethics Office's Mandate (Office Instruction 16/2020) forms the basis for record-keeping. The principle followed is that records are kept and preserved for as long as they are effectively or presumably useful (retention period). Confidential records, both electronic and paper records, are kept in secured systems.

**Paragraph 8. The WIPO Ethics Office will not, and cannot be compelled to, disclose confidential information brought to its attention, or to reveal the name of anyone who seeks confidential advice or guidance, unless that person gives permission to do so or waives confidentiality, or by order of a competent authority.**

Confidentiality, which is one of the three pillars of the Ethics Office, is spelt out in the Mandate of the Ethics Office. Paragraph 8 expressly provides for the confidentiality of information on matters brought to the attention of the Ethics Office. The Ethics Office is bound by confidentiality to protect a party, victim or witness.

**Paragraph 9. The WIPO Ethics Office does not replace any existing mechanisms available to staff and other personnel for the reporting of misconduct or the resolution of grievances, with the exception of certain functions assigned to the WIPO Ethics Office in paragraph 5 (f) [above].**

Paragraph 9 of the Ethics Office's mandate explicitly states that the Ethics Office is not a replacement for the mechanisms at the disposal of staff and other personnel for the reporting of misconduct or the resolution of grievances. The exception alluded to concerns the Policy to Protect against Retaliation for Reporting Misconduct and for Cooperating with Duly Authorized Audits or Investigations (PaR policy).<sup>43</sup> Paragraphs 5 and 9 refer to one of the specific activities generally assigned to ethics functions in the United Nations System, the multilateral organizations and the private sector, namely protection against retaliation (popularly often referred to as "whistleblower protection").

**Paragraph 10. All organizational units and personnel shall cooperate with the WIPO Ethics Office and provide access to all records and documentation requested by it. The exceptions to this principle are medical records that shall not be made available without the express consent of the person concerned.**

Paragraph 10 of the Ethics Office's mandate is indispensable for the functioning of the Ethics Office. It allows the Ethics Office to seek the information it needs to perform its functions. The provision, which concerns WIPO staff and personnel, is related to access to information. It is intended to allow fact-finding and the gathering of necessary information by the Ethics Office. For example, there may be a need for information on the contractual status of a staff member. The fact-finding feature is of particular importance when a staff member or a member of personnel requests the Ethics Office to determine, under the PaR policy, whether or not a *prima facie* case of retaliation exists. Such a determination requires the ascertainment of facts as to whether or not the allegations made would, at first sight, appear to be correct, or whether there are other facts also to be considered. Other areas of work also necessitate fact-finding, for example if the Ethics Office needs confirmation on whether permission for outside activities was granted, when the rules so require in the context of the FDDI Policy.

In Paragraph 11, the duty to cooperate is complemented by an interdiction of reprisal for providing information.

**Paragraph 11. No member of personnel who brings a matter to the attention of the WIPO Ethics Office or provides information to it shall be subjected to reprisals because of such action.**

43 Office Instruction No. 33/2017.

This Paragraph aims to facilitate access to the Ethics Office. Staff or other personnel, whatever their contractual status or the functional grade, should not fear seeking advice, even, or especially when, contacts with the Ethics Office concern a situation which involves a senior staff member or a person in their hierarchy. The Ethics Office allows for meetings with staff outside the premises. This option is always mentioned in induction courses and information sessions. The location of the Ethics Office is also both easily accessible and in an area of the building that is not intensively frequented. The outreach activities of the Ethics Office also allow members of personnel to meet the Chief Ethics Officer. The medium size of the Organization, with a total of about some 1,500 staff and other personnel, and the geographical concentration of personnel of the Organization (mainly at headquarters) facilitate establishing direct and also informal contact with the Ethics Officer. A second-best option to in-person meetings are virtual meetings, as have been occurring during the COVID-19 pandemic.<sup>44</sup>

The provision of information to the Ethics Office is broadly defined and not restricted. Such information may be provided in response to information requested by the Ethics Office, such as referred to in Paragraph 10, or

volunteered in the context of a situation for which advice or protection against retaliation is sought.

This paragraph furthermore explicitly provides reassurance to staff members that they may freely engage with the Ethics Office without fear of reprisal.

**Paragraph 12. This Office Instruction shall enter into force on the date of its publication. It supersedes Office Instruction No. 25/2010.**

Paragraph 12 complies with rule-making formalities. This provision rescinds the previous mandate, and establishes the date the office instruction takes effect.

### WIPO Code of Ethics

WIPO's first Code of Ethics, which was promulgated on February 1, 2012,<sup>45</sup> was replaced in January 1, 2013.<sup>46</sup> The current Code sets out the values and principles that should guide the conduct of personnel of the Organization. In its Preamble, the Code recognizes that it is imperative for the Organization to establish, cultivate, nurture and promote a culture of ethics, which enhances integrity and responsibility, and thereby strengthens its credibility and that of the personnel working in the Organization.

<sup>44</sup> In mid-March 2020, WIPO went into lockdown for several months, and the vast majority of staff started tele-working.

<sup>45</sup> Office Instruction No. 4/2012.

<sup>46</sup> Office Instruction No. 84/2012 WIPO Code of Ethics.

The WIPO Code of Ethics is written as a short, concise statement of 13 core values and principles to guide the conduct and behavior of WIPO personnel. It is intended to be values-based and aspirational in nature, instead of being rules-based and disciplinary.

### **WIPO Code of Ethics: Values and Principles**

#### **The six values are:**

Independence  
Loyalty  
Impartiality  
Integrity  
Accountability  
Respect for human rights

#### **The seven principles relate to:**

Conflicts of interest  
Abuse of authority  
Commitment to a respectful working environment  
Gifts, honors, favors or other benefits  
Resources of the Organization  
Confidentiality of information  
Post-employment

### **Concluding remarks**

As this chapter shows, since 2010 the Ethics Office has endeavoured to deliver on its challenging mandate through activities that contribute to, *inter alia*, raising staff awareness of their ethical duties towards the Organization.

Certain trends may be discerned: a high level of ethics awareness among WIPO staff; an increasing use of the Ethics Office's services by members of personnel, WIPO's management and Member States, with feedback showing satisfaction with the services provided; and a high rate of staff participation in events organized by the Ethics Office, including the highly regarded public lectures on ethics attended by both WIPO and non-WIPO staff.

WIPO's Ethics Office has contributed and continues to contribute to the public integrity that is demanded from national and international public services. Mandated to design, develop and implement strategies, programs and policies to enhance integrity, compliance with ethics rules, and the ethical conduct of WIPO's business, the Ethics Office plays an important role in the governance of the Organization. The ever-changing external environment will demand continuous rethinking and redefining of the governance of international institutions, including of WIPO, and of the role of the ethics function therein.

A range of internal and external stakeholders, staff and management, academics, Member States and the public, have and hopefully will continue to support the work of the Ethics Office, and thereby the governance of WIPO, so that the Organization can continue to successfully undertake its mission to promote innovation and creativity for economic, social and cultural development.

# Law and Ethics

## **A virtuous circle: When law meets ethics at the World Intellectual Property Organization**

Arendina Koppe<sup>47</sup>

### **Introduction**

The oil-for-food scandal that made headlines around the world in 2004 rocked the moral foundations of the United Nations, causing it severe reputational damage. Yet, for all its negative impact, this scandal can be credited with at least one positive consequence: it triggered the introduction of formal, stand-alone and independent ethics offices throughout the United Nations System, as part of an effort to strengthen its effective functioning, and enhance the credibility and legitimacy of its important missions through the promotion of a culture of ethics, integrity and accountability. The United Nations led the way with the establishment of its ethics office in 2006, closely followed by the various funds and programs. The specialized agencies followed suit, and in the case of the World Intellectual Property

Organization (WIPO), its Ethics Office was established in 2010, and has subsequently matured into a fully-fledged operation with a broad mandate in the 10 years of its existence.

The introduction of an ethics function was considered necessary in the aftermath of the oil-for-food scandal, as the accountability framework in place at the time relied exclusively on a body of legal rules based on prohibiting and sanctioning inappropriate conduct on the part of staff. Those legal rules proved insufficient to prevent, in and of themselves, unethical behavior, leaving gaps that allowed a scandal of this magnitude to occur unchecked and reach the highest echelons of the United Nations civil service. What was missing in international organizations, which are comprised of staff from many different social and cultural backgrounds, was a dedicated office tasked with the active promotion of an organizational culture of ethics that would not only give legitimacy to the existing legal rules, but also ensure that staff embrace the underlying ethical standards in the daily exercise of their functions.

Whereas the establishment of ethics offices is a relatively recent development in United Nations system

47 Head of the Administrative Law Section, Office of the Legal Counsel, World Intellectual Property Organization (WIPO). The views expressed herein are those of the author and do not necessarily reflect the views of the Office of the Legal Counsel, WIPO and/or its Member States.

organizations, legal offices have long been a regular and firmly established feature of their organizations. Even though ethics and law are different disciplines, the two fields are overlapping and interrelated, and indeed reinforce one another. In WIPO, it is this interrelationship that has logically given rise to interactions between the Ethics Office and the Administrative Law Section of the Office of the Legal Counsel (Legal Office), while fully respecting their different, yet complementary, mandates. Importantly, it does so without compromising the fundamental tenets of independence, confidentiality and impartiality of the ethics function. The constructive interactions between the two Offices and their complementary mandates have had the mutually beneficial effect of strengthening both the culture of ethics at WIPO, as well as its internal justice system. This in turn contributes to an enhanced accountability framework, as well as a working environment that is conducive to the well-being, morale and productivity of staff, which is in the interest of the Organization as a whole. In other words, a virtuous circle is generated when law and ethics meet.

### **Importance of promoting a culture of ethics in the United Nations System**

The creation of ethics offices in United Nations system organizations sent a clear message to their staff, Member

States and external stakeholders that management is serious about promoting a culture of ethics in their respective organizations. While ethical behavior should lie at the foundation of all human endeavors, organizational ethics is of fundamental importance to the United Nations System, considering that its “mission is to be the ethical conscience of the world.”<sup>48</sup>

The various mandates of the United Nations system organizations are founded on ideals such as international peace and security, social and economic justice and the promotion of human rights. In the case of WIPO, its mission is to lead the development of a *balanced* and effective international intellectual property system that enables innovation and creativity *for the benefit of all*. The workforce employed to achieve these organizational goals is required to possess the highest standards of integrity.<sup>49</sup> Any ethical lapses on the part of a staff member risk undermining the credibility and

48 See Sampath, R., “The role of the United Nations Ethics Office: The ethics of International Civil Service in the light of the foundation and mission of the United Nations,” *UN Chronicle*, June 2015, at: <https://unchronicle.un.org/article/role-united-nations-ethics-office-the-ethics-international-civil-service-light-foundation-and> (accessed July 5, 2020).

49 In the case of WIPO, see Article 9(7) of the WIPO Convention: “The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity.”

legitimacy of the important missions of United Nations system organizations, precisely because they are founded on ethical considerations.<sup>50</sup> Given that international organizations are established through treaties, there is an additional risk that Member States may withdraw political and/or financial support in the wake of a scandal.

Promoting a culture of ethics in the United Nations System is important for another reason. In an international environment with a diverse workforce comprising many different nationalities and cultures, the ethics function performs the important role of setting clear organizational standards of conduct and providing advice to personnel who are confronted with ethical dilemmas. In an international working environment, as compared to a more culturally homogeneous one, it is less obvious for employees with different worldviews to conduct themselves naturally and instinctively according to a common set of values and principles in a professional context. While the establishment of such a set of shared values and principles is often considered more challenging in an international organization, it is not impossible, as there is “unity in

diversity.”<sup>51</sup> Indeed, many different cultures and worldviews share the same values and principles, the only difference being the extent to which those global values and principles are prioritized. The challenge for an international organization is to identify where to place the appropriate emphasis.<sup>52</sup> In case of any differences between the organization’s culture of ethics and a staff member’s own culture, the latter “must take a back seat.”<sup>53</sup>

### **Importance of an independent ethics function in promoting a culture of ethics**

The main objective of an ethics office in an international organization is to promote a culture of ethics. This cannot be achieved without the engagement

50 As compared to, for example, profit-driven companies, although even then, corporate scandals can have a major impact on business operations in light of the increasingly closer interrelationship between profitability and corporate social responsibility.

51 See pp. 102-123, Baggini, J., Culture, character and ethics: Ethical dilemmas in international organizations.

52 *Ibid.* See also Richter A., “Global business ethics: When values clash” (<https://qedconsulting.com/news/announcements/173-global-business-ethics-when-values-clash>); “The value of diversity & the diversity of value” (<https://qedconsulting.com/news/announcements/172-the-value-of-diversity-the-diversity-of-value-2>); and with Dubinsky, J.E., “Global ethics & integrity benchmarks” ([https://qedconsulting.com/images/pdf/GEIB\\_2020.pdf](https://qedconsulting.com/images/pdf/GEIB_2020.pdf)) (all accessed July 5, 2020).

53 See the website of the ethics office of the United Nations Development Programme (UNDP): “Local culture is not an excuse for poor behavioral choices or actions that violate UNDP policy. Personal culture must take a back seat to our organizational culture and policies” at: <https://www.undp.org/content/undp/en/home/accountability/ethics.html> (accessed July 5, 2020).



of staff with the organization's values and principles, and integrating them into their own conduct. In order to ensure the requisite buy-in from staff, it is essential that its ethics office operate, and be seen to be operating, independently of management.

This is the case for all of the activities typically assigned to the ethics function, including those of the WIPO Ethics Office. These activities may be summarized as follows: (1) raising awareness and training staff on ethical conduct; (2) setting standards of ethical conduct and developing policies on ethics issues; (3) providing confidential advice and guidance to personnel on situations raising ethical dilemmas; (4) administering the policy on financial disclosure and declaration of interests; and (5) implementing the policy to protect personnel against retaliation for reporting misconduct and for cooperating with audits or investigations.

Without an independent mandate, training programs and policies would not have the intended effect of promoting a culture of ethics, and staff would be reluctant to use the services made available to them by the ethics office. As noted by the Joint Inspection Unit of the United Nations System in its report entitled *Ethics in the United Nations System*, "the ethics function will struggle to make an impact" if it is merely seen as a "management device"

and fails to secure the confidence and involvement of staff.<sup>54</sup>

An independent mandate not only means independence from management, but also independence vis-à-vis other offices in an organization, even if those other offices may themselves also operate independently of management, such as internal oversight offices. The Joint Inspection Unit stresses that the ethics function should be located in a separate office, and should not be housed in the same directorate as the investigation function, "to avoid any potential conflicts of interest."<sup>55</sup> In particular, if the ethics function falls under the responsibility of the internal oversight function, staff are less likely to approach the ethics office on a given matter for fear that their query may turn into a formal misconduct investigation, when all they were seeking is confidential advice on the most ethical way to act.

Bearing in mind the importance of independence to the credibility and legitimacy of the ethics function, WIPO established a stand-alone Ethics

54 See paragraph 44 of the report (JIU/REP/2010/3).

55 See paragraph 243 of the report of the Joint Inspection Unit on "Fraud Prevention, Detection and Response in United Nations System Organizations" (JIU/REP/2016/4). See also paragraph 25 and recommendation 1 of JIU/REP/2010/3, entitled "Ethics in the United Nations System"; and paragraph 83 of JIU/REP/2017/9, entitled "Review of Mechanisms and Policies addressing Conflict of Interest in the United Nations System."

Office in 2010, formally endowing it with an independent status, and a mandate exclusively dedicated to ethics issues. In this regard the term of office of the Chief Ethics Officer, who heads the Ethics Office, was expressly made subject to a time limit. The independence of the Ethics Office is further buttressed by the fact that the Chief Ethics Officer has the right to directly address WIPO's legislative organs.

While the Chief Ethics Officer is operationally independent, he or she reports administratively to the Director General of WIPO, as do the Ombudsperson and the Director of the Internal Oversight Division. The fact that the heads of ethics offices across the United Nations System report administratively to the executive heads of their respective organizations has not been regarded as diminishing the operational independence of the ethics function. On the contrary, in the aforementioned report, the Joint Inspection Unit insisted on a direct reporting line to the executive head of an organization, in combination with the right of access to legislative bodies (as is the case for the WIPO Chief Ethics Officer), in order to ensure that the independence of the ethics function would not be circumscribed by the executive head.<sup>56</sup> In a more recent report entitled *Review of whistle-*

*blower policies and practices in United Nations System Organizations*, the Joint Inspection Unit concluded that WIPO was one of only two organizations that met "all independence criteria for the head of ethics, head of oversight and ombudsman/mediator functions."<sup>57</sup>

### **Independence of ethics function not jeopardized by cooperation with other offices**

While the viability of the ethics function is rooted in its independence, this does not preclude appropriate interaction with other stakeholders across an organization, such as the ombudsperson, human resources, investigation and legal offices, if and when the need arises. Contrary to commonly held perceptions, independence does not mean that the ethics office should be working in isolation from other services. This was recognized by the Joint Inspection Unit, which did not consider that the principle of independence was compromised by any such regular consultations.<sup>58</sup> What is important in such interactions is that the different mandates and independence of the various stakeholders are fully recognized and respected.

56 See paragraph 50 of JIU/REP/2010/3, entitled "Ethics in the United Nations System."

57 See paragraph 146 of the report of the Joint Inspection Unit on "Review of Whistle-Blower Policies and Practices in United Nations System Organizations" (JIU/REP/2018/4).

58 See paragraph 65 of JIU/REP/2010/3, entitled "Ethics in the United Nations System."

As part of any such inter-office collaboration, information about individual cases should only be shared by the ethics office on a need-to-know basis, strictly limited to the extent necessary to enable it to effectively discharge its mandate. For example, as part of its responsibilities under the “Policy to protect against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations” (Protection against Retaliation Policy), the WIPO Ethics Office is required to refer a complaint of retaliation to the Internal Oversight Division for investigation, if the Ethics Office finds, upon a preliminary review of the matter, that there is a *prima facie* case of retaliation or threat of retaliation.<sup>59</sup> Such a referral necessarily involves divulging the confidential complaint to the Internal Oversight Division to enable the latter to look into the matter as part of its investigative activities. The disclosure of confidential information by the WIPO Ethics Office is thus permitted, but only in certain limited circumstances. After all, in addition to independence, confidentiality is one of the other pillars of the Ethics Office, without which it would neither receive the requisite buy-in from staff, nor gain their trust.

### **Interrelationship between respective activities of the Ethics and Legal Offices**

In order to understand the interrelationship between the respective activities of the Ethics Office and the Legal Office, it is necessary to provide a brief explanation of WIPO’s internal justice system and its *raison d’être*, as well as a summary of the work of the Legal Office, insofar as administrative law matters are concerned.

In short, WIPO’s internal justice system provides a legal avenue to staff to challenge administrative decisions that adversely affect their employment conditions or legal situation in some way. The need for an internal justice system is derived from WIPO’s legal status as an international organization. Since WIPO enjoys immunity from jurisdiction, its staff cannot resort to domestic courts in case of disputes relating to their terms and conditions of service. WIPO’s internal justice system is therefore essential for ensuring access to justice.

In WIPO’s internal justice system, staff members have the right to challenge adverse administrative decisions, as a first step, by requesting a review thereof by the Director General. If they are not satisfied with the outcome of that review, they may file an appeal before the WIPO Appeal Board, and ultimately the Administrative Tribunal of the International Labour Organization

<sup>59</sup> See paragraph 22 of the Protection against Retaliation Policy, issued in September 2017 through WIPO Office Instruction No. 33/2017.

(ILO).<sup>60</sup> Relevantly, the types of matters that may be challenged by staff include decisions imposing disciplinary measures, as well as decisions taken on complaints of harassment<sup>61</sup> and on complaints of retaliation, pursuant to the Protection against Retaliation Policy. What these matters have in common is that they are all founded on ethical considerations in the form of expected standards of behavior on the part of staff and management alike.

As part of its mandate, the Legal Office plays a crucial role in WIPO's internal justice system, of which the Ethics Office forms an integral part. The work of the Legal Office on matters of administrative law, while often invisible, is indispensable in ensuring a respectful and harmonious workplace, thereby creating an environment that enables WIPO to successfully deliver its mandate. It is in the interest of all stakeholders (staff and management

alike) that WIPO has in place a fair, independent, transparent and robust conflict resolution system.<sup>62</sup> Conflicts in the workplace that are left unresolved have a negative effect on staff morale and productivity. As recognized by the Secretary-General of the United Nations in his report to the General Assembly a few years ago, the executive head "has a direct interest in and responsibility for ensuring that the internal justice system functions fairly and efficiently as a conflict resolution and accountability tool and a vital element of organizational governance."<sup>63</sup>

In administrative law matters, and as part of its function to promote the rule of law, the Legal Office provides independent advice not only to the Director General and the Human Resources Management Department, but also to other actors in WIPO's conflict resolution system, such as the Internal Oversight Division, the Chair of the WIPO General Assembly and the Chair of the WIPO Coordination Committee, as well as the Ethics Office. The Legal Office also represents the Director General before the WIPO Appeal Board, and the Organization before the ILO Administrative Tribunal, in all litigation brought by

60 Pursuant to Article VI, paragraph 1, of its Statute, judgments rendered by the ILO Administrative Tribunal are "final and without appeal," and hence binding on both complainants and the defendant organizations that recognize its jurisdiction. In addition to the ILO, the jurisdiction of the ILO Administrative Tribunal has been recognized by a number of other United Nations specialized agencies, as well as international organizations outside the United Nations System (such as the European Patent Organisation).

61 For the sake of completeness, it should be pointed out that decisions imposing disciplinary measures and decisions taken on harassment complaints are directly appealable to the WIPO Appeal Board, and are not required to undergo the request for review procedure first.

62 WIPO's conflict resolution system encourages staff members to resolve matters informally, including by seeking the assistance of the Office of the Ombudsperson, without prejudice to their right to seek legal redress in WIPO's internal justice system.

63 See A/71/163 dated July 18, 2016, at paragraph 6.

staff challenging decisions taken by management that adversely affect their employment status in some way.<sup>64</sup>

The fields of law and ethics overlap when ethical values and principles are made legally enforceable. It is not surprising, therefore, that the interrelationship between the two fields calls for interactions between the WIPO Ethics Office and the Legal Office. As demonstrated below, at WIPO, appropriate and effective collaboration between the Ethics Office and the Legal Office has been achieved over the past decade through mutual recognition of the different mandates of the two Offices, including by respecting the need for confidentiality. In addition, certain determinations of the Ethics Office itself are indirectly subject to legal review, which means that the same file may cross the desks of both Offices, albeit at different stages and for different purposes, as it makes its way through WIPO's internal justice system, and potentially onwards to the ILO Administrative Tribunal as the final adjudicator of the matter.

### *Requests by the Ethics Office for legal advice on individual cases*

In order to respect the confidentiality of individual cases, the Ethics Office typically formulates its requests for advice to the Legal Office in hypothetical or abstract terms, without disclosing personal information. Consistent with its independent mandate, it is within the discretion of the Ethics Office to decide how to act on the advice provided by the Legal Office. For a lawyer, it may cause some discomfort that an ethics office may not always follow all aspects of the authoritative legal advice it has requested and received (even though "advice" is, by its very nature, non-binding). However, ethics is broader than the law, and solutions to ethical dilemmas may address different concerns, beyond purely legal issues, requiring an assessment of the legal advice in the light of all relevant considerations.

64 An internal appeal before the WIPO Appeal Board involves the staff member and the Director General, as chief executive officer of WIPO. In contrast, a complaint before the ILO Administrative Tribunal is brought against WIPO, as the legal entity that recognizes the jurisdiction of the Tribunal.

*Requests by the Ethics Office for legal advice on general matters*

In contrast to individual cases, confidentiality is not an issue when the Ethics Office requests advice from the Legal Office concerning the interpretation of the two policies that fall under its responsibility, namely the WIPO Policy on Financial Disclosure and Declaration of Interests,<sup>65</sup> and the Protection against Retaliation Policy. The same holds true for any requests from the Ethics Office for assistance from the Legal Office concerning any revisions of these two policies. Equally, requests for legal advice on more general matters, such as norm-setting and policy development, do not invoke any confidentiality considerations. In case of any conflict between proposed ethical policies and WIPO's existing regulatory framework, a solution must be found to ensure consistency. Since both law and ethics set standards of expected human behavior, they may be complementary, but they should not be in direct conflict with each other. In an ideal world, the law should reflect ethical values and principles in order to grant it legitimacy.

This begs the question of what those ethical values and principles should be for WIPO, and where the

appropriate emphasis should lie, which is the domain of ethics and not law. While this is perhaps a more challenging exercise for international organizations (as discussed above), it is an indispensable undertaking to enable a culture of ethics to flourish in a multicultural environment.

*WIPO Code of Ethics and Standards of Conduct are legally enforceable*

In the case of WIPO, the emphasis is on a set of 13 high-level and core values and principles, which are reflected in its Code of Ethics. The first three values mentioned in the Code of Ethics are independence, loyalty and impartiality, which is not surprising, given that they are indispensable to the effective functioning of international organizations.<sup>66</sup> Indeed, the notions of independence and impartiality of international civil servants, as well as their loyalty to the organization, derive from the very nature of an international organization as a separate legal creation, as distinct from its constituent Member States. While the WIPO Code of Ethics is not rules-based but aspirational in nature, all of the core values and principles contained therein are reflected in WIPO's regulatory framework in one form or another, thus making them legally enforceable.

65 This policy gives effect to, *inter alia*, the ethical values of independence, loyalty, impartiality and integrity, as well as the ethical principle to prevent conflicts of interest, and if they do occur, to disclose and resolve them.

66 See Schermers, H. and N. Blokker, *International Institutional Law* (sixth revised edition), Leiden: Brill/Nijhoff, 2018, page 387.

The same holds true for the values, principles and standards set forth in the Standards of Conduct for the International Civil Service, as promulgated by the International Civil Service Commission (ICSC). The Standards of Conduct, which are “intended as a behavioral and ethical guide,”<sup>67</sup> are legally binding on WIPO staff members through their express incorporation into WIPO’s regulatory framework.<sup>68</sup>

The fact that the provisions of the WIPO Code of Ethics and the Standards of Conduct of the ICSC form part of WIPO’s legal landscape highlights the importance attached to those ethical norms, since they do not constitute mere behavioral guidelines, but are legally enforceable through administrative sanctions. The possibility that breaches of ethical standards may be sanctioned by law,

through the imposition of disciplinary measures, promotes good behavior and encourages compliance with the rules. This is all the more so, given that a disciplinary measure represents a stain on a staff member’s employment record, with potentially far-reaching consequences for pursuing a career in other United Nations organizations. The legal enforceability of the Code of Ethics and the Standards of Conduct through the initiation of disciplinary proceedings in WIPO’s internal justice system not only illustrates the interrelationship between law and ethics; it also demonstrates that legal rules lend support to the promotion of a culture of ethics.

*Outcome of complaints of retaliation filed with the Ethics Office are legally reviewable*

A complaint of retaliation made by a staff member to the WIPO Ethics Office pursuant to the Protection against Retaliation Policy may also end up on the desk of the Legal Office. This is the case if the staff member concerned is dissatisfied with the decision taken by the Director General in relation to her or his complaint, and decides to challenge it in WIPO’s internal justice system. In order to understand the interaction between that system and the Policy, it is necessary to outline, in general terms, how a complaint of retaliation is dealt with in WIPO’s framework of providing protection against retaliation.

67 See Foreword (page 2) to the Standards of Conduct for the International Civil Service by the then Chairman of the ICSC (2013 edition). The foreword also mentions that the Standards of Conduct “reflect the philosophical underpinnings of the international civil service and inform its conscience.”

68 WIPO Staff Regulation 1.5(c) states: “The Standards of Conduct for the International Civil Service, promulgated by the International Civil Service Commission (ICSC), shall apply to all staff members.” WIPO Staff Regulation 10.1(a) in turn provides that “[a] staff member’s failure to observe the Staff Regulations and Rules, the standards of conduct required of an international civil servant or any other obligation of staff members of the International Bureau may amount to misconduct and he or she may be subject to disciplinary measures.”

The Protection against Retaliation Policy outlines the various steps involved in the consideration of a complaint of retaliation, from its initial filing with the WIPO Ethics Office until it reaches the final stage as envisaged by the Policy. The WIPO Ethics Office will first conduct a preliminary review of the complaint to determine if there is a *prima facie* case of retaliation (step 1). If such a case is found, it will refer the matter to the Internal Oversight Division for investigation (step 2).<sup>69</sup> Following the latter's investigation of the complaint, the WIPO Ethics Office will conduct an independent review of the investigation report received from that Division (step 3), make a determination as to whether retaliation occurred (step 4), and make recommendations to the Director General on the basis of that determination (step 5). The Director General, in turn, is entrusted with the authority to take a decision on the recommendations of the WIPO Ethics Office (step 6).<sup>70</sup>

A complaint of retaliation travels a different path if the WIPO Ethics Office determines, under step 1 above, that there is no *prima facie* case of retaliation. In such a case, the complainant has the right to request

a review of that determination from another ethics office in the United Nations System, the outcome of which "shall be final and binding."<sup>71</sup> If the determination of the WIPO Ethics Office is confirmed upon such external review, the matter is closed. If, on the other hand, the determination is not upheld, then the complaint of retaliation re-enters the process at step 2 above. WIPO was the first specialized agency to introduce, in 2017, the possibility of such an external and independent review in cases where a *prima facie* case of retaliation is not found.<sup>72</sup>

If the Director General's decision taken at the end of the process (step 6) is not favorable to the staff member, it

69 At this point in time, the WIPO Ethics Office may also recommend to the Director General adequate protection to the complainant, if and when required and relevant, and in consultation with the Director of the Internal Oversight Division.

70 See paragraphs 19 and 24 of the Protection against Retaliation Policy.

71 See paragraph 32 of the Protection against Retaliation Policy. The external reviewer is currently the ethics office of the United Nations Office for Project Services (UNOPS).

72 See paragraph 89 of the report of the Joint Inspection Unit on "Review of Whistle-Blower Policies and Practices in United Nations System Organizations" (JIU/REP/2018/4). In January 2017, the United Nations Secretariat introduced a review by the Alternate Chair of the Ethics Panel of the United Nations of findings of the United Nations ethics office that there is no *prima facie* case of retaliation (see ST/SGB/2017/2, at Section 9). It did so in the aftermath of two judgments issued by the United Nations Appeals Tribunal, which held that the determinations of the ethics office were not administrative decisions subject to judicial review (Judgment No. 2014-UNAT-475, and Judgment No. 2016-UNAT-673). The ILO Administrative Tribunal, to whose jurisdiction WIPO is subject, has not had the occasion to rule on the judicial reviewability of determinations of an ethics office where they have the effect of disposing of a complaint of retaliation upon a preliminary review.



can be challenged as an administrative decision in WIPO's internal justice system, and ultimately, before the ILO Administrative Tribunal. The determination of the WIPO Ethics Office made at step 4 is not, in and of itself, appealable. However, if the Director General's decision is consistent with a determination of the WIPO Ethics Office that retaliation did not occur, then that determination may be contested as part of a legal challenge of the Director General's decision, and as such, indirectly subject to the aforementioned internal legal review, as well as external judicial review by the ILO Administrative Tribunal.

As described above, the WIPO Ethics Office also makes determinations earlier on in the process (step 1), which are subject, not to legal review, but to external review by another ethics office in the United Nations System. If the original determination of the WIPO Ethics Office, that there is no *prima facie* case of retaliation, is upheld upon such external review, the matter is closed, since the outcome of the review is final and binding. Having been the subject of an independent review by an external entity in accordance with the Protection against Retaliation Policy, the matter should never enter WIPO's internal appeal system, and therefore not reach the Legal Office. If the staff member nevertheless decides to challenge, in WIPO's internal justice system, the outcome of the external review (which has the effect of

definitively closing the staff member's case of retaliation), then the Legal Office would still have to deal with the matter in response to such a legal challenge. It does so by essentially raising a procedural objection thereto on grounds of inadmissibility, based on the finality of the above-mentioned external review, in keeping with the terms of the Policy.

In contrast, if the original determination of the WIPO Ethics Office is not upheld upon the external ethics review because a *prima facie* case of retaliation was found, then the complaint of retaliation will be referred to the Internal Oversight Division for investigation (step 2). If a staff member is not satisfied with the decision of the Director General reached on the completion of the process pursuant to the Protection against Retaliation Policy (step 6), the matter may ultimately enter WIPO's internal appeal system and end up with the Legal Office in the circumstances described above.

Granting staff the right to seek an external review of determinations of the WIPO Ethics Office has the effect of strengthening, and indeed legitimizing, the very ethics function itself, through a virtuous circle. The possibility of subjecting the determinations to further scrutiny enhances the framework for providing protection against retaliation, by strengthening staff confidence in the system. This has the effect of reinforcing WIPO's accountability

framework, as staff are more willing to come forward and report potential misconduct if they believe that they will receive effective protection against retaliation. This in turn promotes a culture of ethics at WIPO, which is, after all, the very mission of its Ethics Office.

### *Role of the Ethics Office in legal proceedings*

Legal proceedings brought by staff members before the WIPO Appeal Board or the ILO Administrative Tribunal may also raise issues that one of the parties may wish to have confirmed by the Ethics Office. Whether the Ethics Office should respond to such a request for confirmation from one party to the litigation, and if so, how,<sup>73</sup> raises interesting questions at the heart of the ethics function, in terms of confidentiality and impartiality.<sup>74</sup> In order to analyze this issue, a distinction should be made between two different scenarios: requests for purely factual information (first scenario) on the one hand, and requests for advice (second scenario) on the other.

To illustrate the first scenario with a hypothetical example, a staff member on whom a disciplinary measure was imposed for having engaged in an unauthorized outside activity may claim in litigation that he or she received oral advice from the Ethics Office that there was no need to seek authorization from the WIPO Administration.

Generally speaking, if assertions are made in litigation that are unknown to the Legal Office, the latter would ordinarily request information from the relevant services of the Organization in order to ascertain the facts for the purposes of the Legal Office formulating its response in the pleadings. In the case of information held exclusively by the Ethics Office, this information-gathering exercise needs to be assessed in light of the confidentiality of the advice and the impartiality of the ethics function.

It may be argued that by having raised the issue in legal proceedings, the staff member has waived confidentiality,<sup>75</sup> thereby clearing the path for the Ethics Office to confirm or deny to the Legal Office whether such advice was indeed

73 That is, directly to the party making the request, or to the competent authority presiding over the legal proceedings, when ordered to do so.

74 As distinct from independence. While independence and impartiality may overlap, they are different notions. See, for example, Gulati, R., "An international administrative procedural law of fair trial: Reality or rhetoric?" In *Max Planck Yearbook of United Nations Law*, Vol. 21 (2017), page 225 (in the context of the judicial function).

75 WIPO Office Instruction No. 16/2020, entitled "WIPO Ethics Office," of April 2020 states: "The WIPO Ethics Office will not, and cannot be compelled to, disclose confidential information brought to its attention, or to reveal the name of anyone who seeks confidential advice or guidance, unless that person gives permission to do so or waives confidentiality, or by order of a competent authority" (at paragraph 8).

provided. On the other hand, the view may be taken that making reference to the advice of the Ethics Office in litigation is not sufficient, in and of itself, to amount to a waiver of confidentiality, in which case the Ethics Office would consider that it is not in a position to disclose confidential information to the Legal Office, in the absence of express permission from the staff member concerned. Apart from confidentiality, there is also the need for the Ethics Office to preserve impartiality. By providing information to one party to the proceedings, the Ethics Office may be perceived as jeopardizing its impartiality, even if the enquiry is limited to ascertaining the facts.

Given that the staff member bears the burden of proving the allegation that he or she received oral advice from the Ethics Office, he or she may also wish to seek confirmation in the form of written evidence from the Ethics Office that the oral advice was indeed provided. Since, in this instance, the request would come from the staff member him/herself, confidentiality issues would not arise. However, as was the case with a request from the Legal Office, there would still be the issue of impartiality, as the Ethics Office would be providing information to assist one party to the proceedings.

Not receiving confirmation from the Ethics Office pursuant to a request by one of the parties on an important issue raised by the staff member in

legal proceedings could jeopardize the fair and proper adjudication of the dispute. In such a case, a solution to these confidentiality and impartiality concerns would be for the WIPO Appeal Board and the ILO Administrative Tribunal (as the case may be) to request the confidential information directly from the Ethics Office, bearing in mind, as well, that it is in their own interest to ascertain the facts as part of their mandate to administer justice. The Ethics Office would then be obliged to disclose the confidential information, since it would be requested pursuant to an “order of a competent authority.”<sup>76</sup>

Whereas the first scenario merely concerns a request to the Ethics Office by one party to ascertain or prove *facts* (as the case may be) in relation to an issue raised in legal proceedings, the second scenario involves a request for *advice* from the Ethics Office by one party, while the legal proceedings are already underway, presumably in an attempt to strengthen that party’s position in the litigation. Directly assisting one party in an adversarial process in such circumstances risks undermining the concept of impartiality, which is one of the pillars of the Ethics Office. It would also open the door to potential abuse, as the Ethics Office could be used as a tool in litigation, which should be avoided. If the request for advice from the Ethics Office were to extend beyond purely

76 *Ibid.*

ethical issues and touch upon legal considerations,<sup>77</sup> it would interfere with the jurisdiction of the WIPO Appeal Board, whose mandate should be respected. It is indeed essential for the proper functioning of WIPO's internal justice system that the different actors in that system avoid encroaching upon each other's mandates by not simultaneously pronouncing themselves on the same issues. Finally, if the request for advice exclusively concerns ethical considerations, and in order to safeguard the concern for impartiality, it is always open to the WIPO Appeal Board and the ILO Administrative Tribunal (as the case may be) to request the Ethics Office to provide the advice in the event that it is considered useful in the resolution of the legal dispute.

### **Virtuous circle: Assessment of interaction between law and ethics at WIPO**

As demonstrated above, the relationship between law and ethics, and the resulting interactions between the WIPO Ethics Office and the Legal Office over the past decade, have had the mutually beneficial effect of promoting a culture of ethics at WIPO, while at the same time strengthening its internal justice system. A strong

ethical culture and an effective legal system in turn contribute towards the same overarching goal of enhancing WIPO's comprehensive accountability framework.

In particular, whereas the primary mission of the WIPO Ethics Office is the active promotion of an organizational culture of ethics (as part of a preventive role), the law operates in the background to lend a helping hand by ensuring the enforceability of ethical standards that are mirrored in legal rules. This is achieved through the possibility of sanctioning breaches thereof in WIPO's internal justice system.

Ethics in turn lends support to the law, since the ethical standards underpinning those legal rules endow them with purpose, legitimacy, and hence greater acceptability. In addition, WIPO's legal framework benefits from the efforts of the Ethics Office to raise awareness of the legal rules regulating ethical behavior through the provision of training and confidential advice to staff, thereby playing an important role in the prevention of misconduct and other unethical behavior. Last but not least, WIPO's internal justice system is reinforced by the Protection against Retaliation Policy, which is administered by the Ethics Office, and provides a formal framework to protect staff against retaliation if they report misconduct or participate in an oversight activity. Furthermore, the implementation of

77 For example, a request for interpretation of a provision of the Protection against Retaliation Policy, or a request whether a certain activity constitutes an unauthorized outside activity that is prohibited pursuant to WIPO Staff Regulation 1.6.

that Policy by the WIPO Ethics Office is itself subject to external review, which has the effect of increasing staff confidence in the system of protection against retaliation, thereby encouraging the reporting of potential misconduct in furtherance of the promotion of a culture of ethics at WIPO.

For this virtuous circle not to be broken, it is vital that, in its interactions with the Legal Office (and indeed with other stakeholders for that matter), the Ethics Office safeguards the three indispensable tenets of its mandate, namely the independence, impartiality and confidentiality of the ethics function. As demonstrated above, this is achievable in all the various areas of its interactions with the Legal Office, ranging from requests by the Ethics Office for legal advice, to its more delicate role in legal proceedings.

As mentioned above, all of WIPO's ethical standards of behavior for its personnel are reflected in its internal regulatory framework, in one form or another, making them legally enforceable. WIPO's desire for the regulation of ethical norms is not surprising, bearing in mind that a culture of ethics is of fundamental importance to the United Nations system organizations, in light of their particular mandates and legal personality, as well as the multicultural nature of their workforce. It may be argued that, rather than promoting a culture of ethics, the (over)regulation of ethical standards

could potentially undermine it; there is a risk that staff would no longer question for themselves what is right and wrong, instead "switching off" their own conscience by robotically following the rules to the letter, as well as finding loopholes to get around those rules. However, it is believed that any such risk is mitigated by the fact that ethics is broader than the law, thus still leaving room for the exercise of discretion and individual judgment. It is simply impossible to envisage and regulate upfront all possible scenarios of human behavior. Since rules are inherently incomplete and cannot provide "algorithms" for practical judgment,<sup>78</sup> non-rules-based ethics is necessary as a complement to the law in order to fill the gaps, thereby ensuring a comprehensive and effective accountability framework.

## Road and challenges ahead

There is no doubt that the creation of an official structure in the form of the WIPO Ethics Office, with a mandate dedicated exclusively to the active promotion of a culture of ethics, goes a long way towards achieving the Organization's objective of fostering an ethical workplace. However, for the ethics function to make a real difference in the way the Organization operates in the long-term, the Ethics

78 See pp. 68-77, O'Neill, O. The changing ethics of communication.

Office has to ensure that it remains the “conscience”<sup>79</sup> of the Organization, so that it can continue to support WIPO’s internal justice system and the rule of law, and ultimately the Organization’s overarching accountability framework, to which both ethics and law contribute.

In order to stay relevant, it is essential that the WIPO Ethics Office can continue to count on the requisite buy-in from staff. The active engagement of staff with WIPO’s ethical framework, in turn, requires ongoing support for the work of the Ethics Office from the highest levels of management. This includes setting the tone at the top, and adopting a zero-tolerance policy in relation to unethical behavior, thus sending the clear message that no one is above the law. Leadership with moral authority is crucial for ensuring that staff members remain committed to the ethical agenda, and that they continue to embrace and “own” the Organization’s ethical values and principles by integrating them into their daily conduct.

Any perception on the part of staff that the same type of ethical lapses

are not legally enforced in the same way throughout the Organization, irrespective of rank, seriously risks undermining their commitment to ethics, and weakens the internal justice system as a whole. This in turn jeopardizes the virtuous circle that is so essential for a strong accountability and integrity framework.

Since buy-in from staff lies at the core of the success of the ethics mission, it is crucial for the WIPO Ethics Office to continue to engage with them on an ongoing basis, and in a proactive manner. One of the ways to achieve this is by offering staff regular refresher courses that are relevant, topical, interesting and interactive, including by provoking debate on emerging ethical issues that are receiving media attention (such as, for example, the “Me Too” movement that started a few years ago), and by linking ethics issues with applicable legal norms in a concrete way. Furthermore, it is hoped that the Ethics Office will continue to host public lectures by renowned ethicists in order to keep the conversation about ethics alive.

The WIPO Ethics Office also needs to ensure that, in terms of its standard-setting activities, it remains at the forefront of policy development, leading the way as society’s values shift and change. In addition, as ethics is further mainstreamed into, and intertwined with, WIPO’s operations, more elaborate standards will likely be needed to assert a more prominent role

79 See, for example, Helmut Buss, Director of the Ethics Office of the United Nations High Commissioner for Refugees (UNHCR), quoted by Amy Lynn Smith in “How UNHCR’s Ethics Office is evolving to meet the challenges of an ever-changing world,” at: <https://medium.com/unhcr-innovation-service/how-unhcrs-ethics-office-is-evolving-to-meet-the-challenges-of-an-ever-changing-world-c2ba288218d4> (accessed July 5, 2020).

in the prevention of unethical behavior. Finally, the Ethics Office must ensure that the Organization's ethics framework continues to reflect best practices, which are constantly evolving over time. At regular intervals, it should take stock of any shortcomings in the policies it administers, which are best observed while working with them on a daily basis. This will enable improvements to be made through periodic revisions of those policies. The Legal Office can continue to assist in this exercise, including by making sure that the policies continue to comply with the evolving jurisprudence of the ILO Administrative Tribunal.

early detection of such lapses.

In the case of WIPO, the Ethics Office has earned its seat at the internal justice system table over the past 10 years, and through its constructive interactions with the Legal Office, it has become a valuable contributor to that system. It is hoped that, as the ethics function becomes further integrated into WIPO's operations, its preventive role will become even more central to the work of the Ethics Office, as it continues to provide all staff with a moral compass to navigate the Organization's legal landscape on their ethical journey.

## **Concluding remarks**

Ethics needs law to implement and enforce ethical values and principles. At the same time, law needs ethics to reconnect with its moral foundation, without which legal rules would remain distant and abstract provisions that do not inform the daily organizational life of the staff of an organization. It is for this reason that the introduction of the ethics function in the United Nations System has been a worthwhile investment, as the legal framework had proved insufficient, on its own, to prevent lapses in ethical behavior. This is of course not to say that incidences of unethical behavior are a thing of the past. However, following the introduction of a comprehensive ethics and integrity framework, there is now a greater opportunity for prevention and

# The WIPO Public Lecture Series on Ethics

**2017** – Professor Onora O’Neill (U.K.): The Changing Ethics of Communication

**2018** – Professor Peter Singer (Australia): Ethics, Technology, and the Future of Humanity

**2019** – Dr. Julian Baggini (U.K.): Culture, Character and Ethics: Ethical Dilemmas in International Organizations

**2020** – Professor Jeroen van den Hoven (The Netherlands): Ethics of Technology and Our Global Challenges: The Case for Responsible Innovation







## About the speakers



### About Professor Onora O'Neill

Baroness Onora O'Neill of Bengarve was Principal of Newnham College, University of Cambridge, U.K., from 1992 to 2006. She was Honorary Professor of Ethics and Political Philosophy at that University in 2003, and has been Emeritus Professor there since 2009.

Her many distinguished appointments, include President of the Aristotelian Society (1988-1989), Chair of the Nuffield Foundation (1998-2010), Chair of the British Philosophical Association (2003-2006), President of the British Academy (2005-2009), and Chair of the U.K.'s Equality and Human Rights Commission (2012-2016). She also serves on the boards of the Medical Research Council and the Banking Standards Review, among others.

Professor O'Neill combines writing on political philosophy and ethics with a range of public activities. She lectures and writes extensively on justice and ethics, and in particular on the work of Immanuel Kant. Her more recent writings also address issues relating to accountability and trust; global justice, poverty and development; the future of universities; the quality of legislation; and the ethics of communication.

In 2017, she was awarded the Holberg Prize by the Government of Norway, and the Berggruen Prize for Philosophy and Culture.

Baroness O'Neill has been a crossbench member of the House of Lords since 2000.



### About Professor Peter Singer

Professor Singer is an ethical and political philosopher. He has been Professor of Bioethics at Princeton University in the United States of America since 1999. Some of his previous appointments included Professor of Philosophy at Monash University (1977), becoming Director of Monash's Centre for Human Bioethics in 1983 and co-director of its Institute for Ethics and Public Policy in 1992. He has lectured at other leading universities in Australia, Europe and the United States.

Professor Singer is the recipient of multiple prestigious distinctions and awards, including being featured in *Time* magazine's list of the world's 100 most influential people in 2005, and in *The Sydney Morning Herald* and *The Age* (2009) as one of the 25 most influential Australians of the last half-century. In addition, the Gottlieb Duttweiler Institute, Switzerland, has recognized him as a Global Thought Leader every year since 2013.

He has written/co-written, edited/co-edited more than 50 books, including *Practical Ethics*, *Animal Liberation*, *The Life You Can Save*, *Ethics in the Real World* and *The Most Good You Can Do*. His writings have inspired both the animal rights movement and effective altruism.

For more information about Professor Singer, see: [www.petersinger.info](http://www.petersinger.info)



### About Dr. Julian Baggini

Dr. Julian Baggini is Academic Director of the Royal Institute of Philosophy (U.K.) and an Honorary Research Fellow at the University of Kent, which also awarded him an honorary Doctor of Letters degree in 2018. He has worked with think tanks such as the Institute of Public Policy Research, Demos and Counterpoint and is a member of the Food Ethics Council.

Dr. Baggini has given several talks, including those organized by the Global Education & Skills Forum, the Royal Society of Arts, the Society of Local Authority Chief Executives and Senior Managers, the European Parliament, and the Dutch Bioethics Association, among others. His talk at TED.com has had nearly 1.5 million views.

He is the author, co-author and/or editor of over 20 books, including *How the World Thinks: A Global History of Philosophy*; *Ethics: The Big Questions*; and *The Ethics Toolkit: A Compendium of Ethical Concepts and Methods*. In addition, he is a regular contributor to a number of national and international newspapers and magazines, such as *The Times*, *The Guardian*, *Times Literary Supplement*, *Independent*, *Financial Times*, *Prospect*, *New Statesman*, *Literary Review*, *Fabian Review*, *Psychologies magazine* and *The Chronicle of Higher Education*. Dr. Baggini, is also co-founder of *The Philosophers' Magazine*.

For more information about Dr. Baggini, see: [www.JulianBaggini.com](http://www.JulianBaggini.com).



### About Professor Jeroen van den Hoven

Jeroen van den Hoven is full professor of Ethics and Technology, University Professor at the Delft University of Technology, and Scientific Director of the Delft Design for Values Institute. He was the founding Scientific Director of the 4TU Centre for Ethics and Technology of the collaborating Universities of Technology in The Netherlands from 2007 to 2013. He is also the founder of the research program of the Dutch Research Council on Responsible Innovation, of which he was Chair until 2016. He serves as a permanent member of the European Group on Ethics (EGE) of the European Commission.

In 2009, Professor van den Hoven won the World Technology Award for Ethics as well as the IFIP prize for ICT and Society for his work on ethics and information and communication technologies. In 2017, he was Knighted in the Order of the Lion of the Netherlands.

He has edited and written/co-written several books and articles, in particular on ethics as it relates to digital technology innovation and democracy. Recent publications include *Designing in Ethics* and *Evil Online*. He is also founding Editor-in-Chief of the scientific journal, *Ethics and Information Technology* (Springer Nature).

## The Changing Ethics of Communication<sup>80</sup>

Professor Onora O'Neill

### The antiquity of the ethics of communication

The ethics of communication has a long history, going back at least as far as the Ten Commandments. At least three of these ancient injunctions bear on speech and communication: Thou shalt not make unto thee any graven image; thou shalt not take the name of the Lord thy God in vain; Thou shalt not bear false witness against thy neighbour. Since then human societies and ethical traditions have supported a huge variety of standards that bear on communication.

Some of these standards bear on individual action. Many of them enjoin ethical standards for individuals, including honesty, candour, confidentiality and civility, as well as promise-keeping (fidelity). Others are epistemological norms, such as respect for evidence, for accuracy and for truth. Often standards that bear on communication have been cast not as requirements but as prohibitions, such as prohibitions of blasphemy, obscenity, profanity, lying, fraud, deception and many other types of speech act. With the emergence of printing in the early modern period, these standards were augmented with others that matter for interaction and communication that aim to reach larger or more distant audiences, including audiences of strangers, ranging from freedom of speech and of the press, privacy and confidentiality, to prohibitions of censorship and defamation. Further standards for communication in institutional life, such as respect and protection for intellectual property, were supported by patents, copyright and trademarks; and prohibitions on passing off, plagiarism and the like were subsequently added. The ethics of communication includes these and many other standards that bear on communicative action, and in particular on *speech acts*.

80 This is a lightly revised version of a talk given at WIPO in November 2017. The author has since published more detailed comments on prioritizing the perspective of rights, including rights that bear on communication, in Ethical and political justification in the twentieth century the Berggruen Lecture, *Proceedings and Addresses of the American Philosophical Association*, 92, 296-309, 2018. She has also discussed some of the implications of digital technologies for the ethics of communication in Trust and accountability in a digital age, *Philosophy*, 94(371), 3-17, Jan. 2020 (<https://www.cambridge.org/core/journals/philosophy/article/trust-and-accountability-in-a-digital-age/ADBDD9EEF4426590D5A60AF87611240D/core-reader>).

In some contexts, and in some jurisdictions, the ethics of communication has also endorsed claims that bear not only on *speech acts*, but also on specified types of *speech content*. For example, certain words or phrases have been deemed taboo or blasphemous, and specific topics and types of content have been censored. Censorship of forbidden content is common, but is often not wholly effective. Ingenious people often find ways of meeting the letter of a prohibition, while conveying the prohibited content. Successful evasive strategies have included euphemism, parody and satire, as well as covert forms of subversion. They can be found in communication ranging from Montesquieu's *Lettres Persanes* to satirical magazines such as *Private Eye*, to discussions of ways of subverting state censorship.

### New standards for communication?

The twentieth century also saw some striking changes in standards that bear on communication. Earlier approaches had emphasised the importance of *free speech* and *freedom of the press*, while John Stuart Mill had argued in addition for a distinctive *freedom of self-expression* for individuals. But the mid-twentieth century human rights documents subsumed all of these under a generic conception of rights to *freedom of expression*, while concerns about privacy were subsequently recast in some jurisdictions – notably within the EU – as complex requirements for data protection.

The twentieth century also saw an increased emphasis on standards for communication in institutional life, including demands for accountability, transparency and freedom of information. Many of these additional standards bear not directly on individual speech acts, but on the *control* of speech acts, and thereby on uses of information and data. These set standards for institutions rather than for individuals. Some reflect the fact that we now deal with new technologies, an online world and electronic data. However the most significant changes, I believe, are older and deeper. They reflect changing views about what ought to be done, rather than responses to new technologies or circumstances.

### Agents and recipients, duties and rights

For centuries, discussions of standards of justice and ethical standards had been closely linked. In European thought and culture they were seen as contributing distinct but parallel answers to the classical agent's question:

“What ought we do?”<sup>81</sup> But accounts of justice and of (the rest of) ethics diverged during the twentieth century. *Duties of justice* had traditionally been seen as placing requirements both on individuals and on institutions that could, and in many cases should, be backed by legal sanctions, and in some (but not all) cases, defined counterpart rights. *Ethical duties* were traditionally seen as requirements on individuals and certain institutions that did not need to be, or should not be, backed by legal sanctions, and did not define counterpart rights. Yet by the start of the twenty-first century, claims that justice and ethics were complementary and linked domains of duty, while still deeply embedded in European languages and culture, were often questioned, ignored and sometimes explicitly rejected.

Both philosophical and popular conceptions of justice and ethics had traditionally focused on what we should do, rather than on what we should receive, hence on *duties* or *requirements* to act rather than on *rights* or *entitlements* to others’ actions. Duties had been central to European normative debates since antiquity, and had played a large part in shaping religious, philosophical and popular discussions of how institutions should be constituted, how lives should be lived, and how communication should be conducted.

Accounts of duties approach practical questions from the perspective of agents. They articulate what ought to be done. *Duties of justice* were seen as setting (relatively) strict or narrow requirements that were in principle enforceable. Some, *but not all*, duties of justice also specified others’ rights to just action of specific sorts, often where that action formed part of a defined relationship or transaction. Other duties of justice were silent about rights.<sup>82</sup> We can characterise duties of justice as defining what it is right to do and to enforce, while sometimes, *but not invariably*, identifying others with a right to its being done.

81 Duties of justice and ethical duties have been distinguished in differing ways at various times. Many of the classical distinctions (e.g. narrow vs. wide duties; perfect vs. imperfect duties; duties to self vs. duties to others) are still useful. However, little will be said here about the various formulations of these distinctions, and nothing about supererogatory action (i.e., action that goes beyond duty).

82 Duties (or supposed duties) to others who cannot be individuated cannot specify claimants, so cannot have counterpart rights. For example, duties to future generations cannot define rights, since future persons cannot be individuated; principles of distributive justice – among them John Rawls’s difference principle – often do not specify what each individual is to receive, and therefore do not define rights.



Ethical duties – among them, beneficence, loyalty, civility, decency, courage, as well as many that bear on communication – were classified as *wide* rather than *strict* duties, in that they left agents greater discretion in judging when and whether to act, and how much they should do. Ethical duties therefore do not define counterpart rights. Quite often they have been labelled *duties of virtue* because they depend (more) on character and culture, rather than on compliance with justiciable or enforceable requirements. Since communication depends on and shapes cultures, it is constantly shaped and limited by ethical duties. If ethical duties are marginalised, we are likely to ignore a range of norms that matter for communication and to focus narrowly on the (supposed) demands of justice, including just communication.

So it was a momentous shift when rights rather than duties came to be seen as basic to justice. While rights *must* have counterpart duties, duties *need not* have counterpart rights, and theories of rights ignore ethical duties. Traditional practical reasoning that saw duties as fundamental had offered a *wider* perspective than by taking rights as fundamental. Indeed, once rights are taken as fundamental, both those duties of justice that have no counterpart rights and ethical duties will be ignored. This perhaps explains why so many now suggest that we should look for more expansive interpretations of rights that would cover matters that older accounts of justice had left to ethics. Recent examples of this expansive tendency have included both a supposed (if barely coherent) *right to know* and a supposed (and again barely coherent) *right to be forgotten*. In advocating additional rights that bear on speech acts, these proposals seek to incorporate aspects of what would previously have been seen as ethical duties into an account of justice.

### **The eclipse of duty**

How and why did these shifts occur? Although this shift in views about duty is largely a twentieth century phenomenon, there had been earlier signs of unease. Duty was still fundamental in European discussions of what ought to be done at the start of the nineteenth century, across the spectrum, from Immanuel Kant's late practical philosophy to Wordsworth's 1805 *Ode to Duty*, with its confident equation of Duty with Divine demand. But by the middle of the nineteenth century, claims about duty were occasionally queried. Some feared the undermining of moral certainties and clarity,

but others were quite eager to see duty demoted. For example, Friedrich Nietzsche saw no merit in duty: “What destroys a man more quickly than to work, think and feel without inner necessity, without any deep personal desire, without pleasure – as a mere automaton of duty?”<sup>83</sup>

From the mid-nineteenth century, claims about duty were at first occasionally, and then more frequently, replaced by an emphasis on *personal* or *subjective* standards and concerns, and by claims that the standards actually accepted by individuals should count as “values.” These claims are precursors of a very recognisable contemporary claim that “values” are simply a matter of choice: you have your “values” and I have mine, and what makes them “values” is the very fact that each of us chooses his or her own. These ways of discussing standards are now widespread and preserve a facade of ethical concern, while discarding many ethical claims and serious attempts at their justification.

Some aspects of this subjective turn can be found at the very start of the twentieth century in G.E. Moore’s *Principia Ethica*.<sup>84</sup> Although Moore took a realist, indeed quasi-Platonist, view of ethical justification, the substance of his surprisingly influential final chapter endorses a privatised vision of ethics centred on individual experiences of beauty, pleasure, friendship and knowledge, but no longer on families, institutions, communities or nations, or their actions, and least of all on duty. Despite a brief, and on many views narrow and destructive, revival of concern with duty (in particular with patriotic duty) during the First World War, the eclipse of duty in favour of a subjective view of ethics continued between the two world wars. In the late 1930s, the novelist E.M. Forster rejected the very idea of patriotic duty, and asserted the importance of personal and subjective claims with the words: “If I had to choose between betraying my country and betraying my friend, I hope I should have the guts to betray my country.”<sup>85</sup>

83 Nietzsche, F. (1895), *The Antichrist* Part 11, in Nietzsche, F., *The Anti-Christ, Ecce Homo, Twilight of the Idols and other Writings*. Cambridge: Cambridge University Press, 2011.

84 Moore, G.E. (1903), *Principia Ethica*, Cambridge: Cambridge University Press, 2000.

85 See Forster, E.M. (1938), *Two Cheers for Democracy* Harmondsworth: Penguin, 1965, 11.

## Further retreat

Between the two wars, at first only in quite narrow academic circles in Berlin and Vienna, a more radical retreat from duty found adherents. The startling success of logical positivism, with its uncompromising insistence that only empirically verifiable and analytical claims were meaningful, and that ethics, aesthetics, metaphysics and theology were all therefore “literally meaningless,” rejected *both* duties of justice *and* ethical duties.

Logical positivism did not offer sound arguments for these claims, and those offered were soon questioned and shown to be less than convincing. Yet its influence spread. However, while logical positivism failed to show that claims about justice or about (the rest of) ethics were “literally meaningless,” it succeeded in spreading uncertainty about their *justification*, and left the field open to proponents of subjective views of ethics.

But doing without an account of duty, and in particular without an account of justice, has high costs, especially for the public domain, and not least for the standards that matter in communication. In the face of the further catastrophes of the Second World War, it was widely agreed that universal standards, *at least for justice*, must somehow be revived even if (the rest of) ethics could not be secured.

However, in a remarkable reversal of perspective, standards of justice were subsequently reinstated in the form of an account of rights<sup>86</sup> rather than of duties. The Universal Declaration of Human Rights (UDHR) was adopted by Member States of the United Nations in 1948, and the European Convention on Human Rights by the Council of Europe in 1950. Both documents view rights as basic to justice, and both depart from earlier accounts of justice in marked ways. Giving priority to rights does not abolish duties, since rights cannot be claimed unless *others* carry the relevant counterpart duties. However, the Declaration and the Convention do not need to specify those duties clearly, and may fail to allocate them to competent agents. And, like other declaration documents, these two are silent about ethical duties, and about their justification.<sup>87</sup>

86 In some languages these are called *subjective rights* (i.e. the rights of individuals or subjects) because the term *right* is given a broader use.

87 Nevertheless, many who think that justice comprises a set of individual rights probably do not see appeals to authority as sufficient to justify human rights, and think that some deeper justification is needed. However, for everyday purposes, they seemingly find it adequate (or perhaps just convenient) to appeal to authority and to ignore demands for deeper justification.

The shift from a focus on duties to a focus on rights had particularly striking implications for the ethics of communication. The Universal Declaration of Human Rights proclaims few rights that bear on communication. Only the rights to freedom of expression, to privacy and aspects of the right to freedom of religion bear on communication. But the Declaration is silent about many other standards for communication that lack counterpart rights, including honesty, civility, sincerity, confidentiality and promise keeping. This silence has had profound implications for the ways in which we now think about the ethics of communication.

### **A partial restoration?**

What emerged after the Second World War was therefore neither a revised version of the ethics of duty, nor a revised account of duties of justice. It was a narrower public commitment to specified human rights. But is this enough? In particular is it enough for an adequate ethics of communication? Although both the Universal Declaration and the European Convention look superficially as if they might offer an account of duties of justice that does not depend on metaphysical or theological presuppositions, the reality may be less clear and more troubling, in several ways. Treating rights rather than duties as fundamental may leave neither justice nor ethics unchanged: the cultural costs of prioritizing recipients over action, and rights over duties, and in consequence undermining ethical duties, can be high. They are particularly high in matters of communication, where working out how to realise justice often requires us to take a view of ethical standards as well as of standards of justice.

Realizing standards of justice, including any rights that they establish, needs more than just constitutions and laws, and more than compliance with and enforcement of their requirements. The requirements of justice indeed constrain just action, but they provide only *indeterminate* guidance. Compliance with these standards is not a matter of following complete instructions for action. Even when legal instruments are reinforced with more specific regulations, supplemented with discursive guidance, and backed by specific and demanding forms of accountability, these proliferating rules can never fully specify exactly what must be done – or not done – if justice is to be respected and realized. Providing more, or more explicit, procedures for deploying and applying rules no doubt has its place, particularly in the procedures of courts and tribunals, of arbitration and

administration. Doing so can help established authorities work out how to proceed, and can show whether a decision reached by a duly constituted authority used appropriate procedures. But while these procedures can provide a template for showing that due process was followed, they cannot determine whether the decisions made or actions taken were optimal or even acceptable in actual cases. Principles of justice are not algorithms.

Principles of justice, like most principles of action, are indeterminate, and indeterminacy goes “all the way down.” This point is neither new nor trivial. Both Kant and Wittgenstein had pointed out that normative rules of all sorts (principles, rules, standards, laws, regulations, guidelines) are intrinsically incomplete, and that indeterminacy cannot be eliminated by adding more rules, more requirements, more regulations or more guidance. There is no way to extend the paraphernalia of institutional life that will define sharp boundaries between compliance and infraction for every situation. Trying to offer “complete” rules, instructions or guidance, is in principle impossible, not to mention pretty depressing for those who are meant to live up to them. They may conclude that even compliance demands too much, and may therefore end up ignoring or flouting requirements, or “gaming” the system.

There are, of course, standard responses to this point. It will be said that practical judgement and good sense are needed to select among the various ways of acting that would meet standards of justice in particular contexts. This is true, but does not show that principles of justice, or human rights versions of those principles, are enough. There can be no complete rules – no algorithms – for practical judgement. Practical judgment is a matter of combining a clear sense of what *may* and *ought* to be done of the principles, rules and standards that *must* be respected with a grasp of the situations in which action takes place, of the consequences that various sorts of action would have in those situations, and of an indefinite range of further considerations that may bear on action in actual circumstances. For example, in living up to standards of justice, we often need to take account of the *feasibility*, the *consequences*, the *affordability*, and the *social acceptability* of specific ways of implementing or living up to those standards in actual situations.

However, taking account of these considerations in a particular context is not just a matter of relying on hunch, individual preference or subjective choice to pick one or another preferred way of acting that is not unjust. Practical judgement also draws on complex webs of cultural and other considerations,

and can be informed by interaction and communication with others who are sensitive to *practical* and *cultural* factors that are shaped by ethical standards. Mere conformity with requirements of justice may secure action that complies with the letter of law, but it is not enough for deciding how best to act justly.

Of course, cultures too cannot pick out unique or wholly determinate accounts of the best way to enact requirements of justice in a given situation. Rather, they provide formative disciplines that can support consideration and interrogation of ways of construing situations and of proposals for action. Since cultural processes are interactive, they open practical judgement to check and challenge by communication with others, and thereby to adjustment and to moderation. Cultural norms can be used to interrogate and to reach views about situations and about proposals for action that are relevant to respecting not only the requirements of justice, but also a wider range of considerations.<sup>88</sup> In doing so they can shape judgement that complies with, but is not fully determined by, principles of justice. They can support (but not guarantee) convergence on feasible, affordable and socially acceptable ways of acting that lie *within* the demands of justice, and can reject proposals for just action that meet those demands but are not feasible, not affordable, will not command adequate support or will fail in other ways. A shared culture not merely *need not* undermine or threaten standards of justice, the rule of law or institutional probity, but *can enable* convergence on more specific ways of respecting principles of justice that no amount of additional proliferation of law, regulation and accountability by itself can provide.

However, there is a rub. As many proponents of justice have pointed out, some cultures and subcultures corrode or undermine justice. They may be corrupt or destructive, divisive or dishonest, and may foster derogatory and oppressive attitudes and communication. Or they may damage the capacity of those who live or work within them to engage and communicate with others, including their capacities to reason and to act. But other cultures do not fail in these ways. The insouciant marginalization of ethical standards and justification that both positivist and subjectivist views of ethics have endorsed – indeed celebrated – across many decades must be challenged if we are to grasp when and how cultural standards and processes that meet ethical standards can help to shape just action, and why certain cultures and processes may foster and entrench injustice.

88 Not that this always happens. See, for example, Tett, G. (2015), *The Silo Effect: Why Every Organisation Needs to Disrupt Itself to Survive*, London: Little Brown.

Attempts to divide normative claims exhaustively into those that may or must be imposed by just institutions and processes, and those that are merely matters of individual choice or preference, need reconsideration, challenge and, as I see it, revision. Implementing and enforcing just laws, regulations and systems of accountability are indeed necessary for justice, but they are not enough. Justice also needs the support of trustworthy and effective cultures and subcultures that enable those who inhabit them to bring other standards, including ethical standards, to bear on the tasks of understanding what is at stake, working out what to do and communicating this to others. Standards of honesty and reliability, standards of confidentiality and fairness, standards of trustworthiness and discretion, standards of civility and decency, and many other ethical standards that bear on communication are not irrelevant to meeting the demands of justice; they should not be discarded and cannot be replaced by ever more detailed elaboration of laws, regulations and guidance. For the past century, the public discourse of liberal societies has increasingly turned away from ethical questions and from ethical justification in the hope that standards of justice, as embodied in laws, regulations and accountability (once sufficiently elaborated), will be sufficient for the public domain, while everything else can be left to subjective preference or choice. I think this division of labour is inadequate. If justice matters, we cannot be indifferent to ethical standards, including those that matter for communication.

## Ethics, Technology, and the Future of Humanity

By Professor Peter Singer

The renowned Australian moral philosopher, Professor Peter Singer, is at the forefront of thinking on the social impact and ethical implications of new technologies. Professor Singer is Ira W. DeCamp Professor of Bioethics in the University Center for Human Values at Princeton University, United States. His books include *Animal Liberation*, *Practical Ethics*, *Rethinking Life and Death*, *The Life You Can Save*, *The Most Good You Can Do* and, most recently, *Why Vegan?* In 2012 he was made a Companion of the Order of Australia, that nation's highest civic honor. In June 2018, Professor Singer presented a public lecture on ethics and technology at WIPO. The following is an abridged version of his lecture.

While ethics is broad enough in itself, the other two topics I plan to discuss – technology and the future of humanity – are also extremely wide in scope, and therefore clearly it will not be possible to satisfy the audience on all aspects of those topics. However, during the question and answer session following my lecture, I hope to respond to specific questions in these areas. Many people in the audience have considerable expertise in areas of ethics and technology or the future of humanity, and it would be important to hear their views and discuss them.

Beginning with ethics, an area in which I have the most confidence, having worked on this topic and taught it for more than 40 years, the first question raised by people who are not specialists in ethics is, what are we talking about when we talk of ethics? Is it a field in which there are some statements, some judgments, which we can say are true and others that are false in the ordinary meaning of these terms? That is, if you hold one view you are mistaken – you have got something wrong – or rather, is it a matter of personal attitudes, like matters of taste on which people can express their views and they can agree to differ? One person might like to watch romantic comedies, while another might like films noirs. Probably, they will not argue about whether one is better than the other. Similarly, is ethics a matter of taste, or is it perhaps culturally relative? Is it simply that I have Western, or maybe even more specifically, Australian, values and another person has their own values based on their specific culture or background?



These are big questions, and much has already been written about them, so I have chosen to present a somewhat dogmatic statement of my views and reflections. There are objective truths in ethics which are not simply a matter of taste or of cultural values. When reflecting on the judgments we make, we should be able to agree on some basic principles of ethics, though we might well disagree on particular applications of those principles in a variety of different circumstances.

For example, if one considers the interests of different beings around the world, from an ethical point of view, one person's interests do not count for more than another person's interests, provided that similar interests are at stake. To be more specific, assuming that a particular disease causes similar kinds of suffering in human beings everywhere, both in terms of the physical symptoms of the disease and the social impacts and ramifications, it is just as important to protect someone in any part of the world, whether it is in Africa, Asia, South America, North America, Australia or Europe. We should not be saying that because these people are from my country or my society, or belong to my ethnic, racial or religious group, it is more important to protect them than some other person who is not part of that group. We should be giving equal weight to such protection, irrespective of the various differences between us. That idea is reflected in various agreements, such as the Universal Declaration of Human Rights, international covenants and a variety of other instruments. This should then not be considered as just a matter of taste or cultural judgments, but should rather be seen as a self-evident truth. It is not a truth that can be tested, as we test truths in science, but is more like truths of mathematics or of logic – something that, as rational beings, we have the capacity to appreciate as self-evident. If I am right about this – and for an argument for it, instead of this brief dogmatic statement, may I refer you to my book *The Point of View of the Universe*, co-authored with the Polish philosopher Katarzyna de Lazari-Radek – then ethics is a matter on which there are objectively right and wrong answers.

Of course, within that idea of equal weight or equal consideration for all interests there is room for different ethical views about what we ought to do and how we are to live. In philosophy, these are called different normative views – views that are intended to guide our actions. The basic axiom I have just mentioned does not distinguish between the view that the only important thing is to take into account the interests of all beings and to try to satisfy those interests as much as we possibly can, and the view that certain things are always wrong to do, no matter what their consequences.

These two positions represent what I think is the main division, or difference of opinion, in normative ethics. The first view, which considers that the right thing to do is to give equal weight to everyone's interests, and to take action to satisfy or further those interests to the maximum, is known among philosophers as consequentialism, because it considers that the right thing to do is determined by the consequences of the action. One form of consequentialism is particularly well-known. If the consequences that determine whether the action is right or wrong are only the impact of the action on the well-being or the interests of all affected by it, this view is utilitarianism – the ethical view associated with Jeremy Bentham, the English philosopher who developed it at the end of the eighteenth and early nineteenth centuries. It is also associated with John Stuart Mill, the champion of utilitarianism, freedom of expression and individual liberty, in the mid-nineteenth century. It is a view that is still held by a number of contemporary philosophers, including myself. It considers that the right thing to do is the action that will produce the best consequences for everybody affected, and by “best consequences” we mean promoting their well-being and happiness, and reducing their suffering or misery.

Opposed to that view is the idea that there are some things that we must never do, certain things that are inviolable. Indeed, according to one view of human rights, there are certain human rights that are inviolable, and there are specific actions that are contrary to human dignity and that must never be done. That particular view is associated with the eighteenth century German philosopher Immanuel Kant. Although my view takes the utilitarian side, that does not mean that human rights are not important; it means that human rights are important because they help to promote the well-being of everyone, because they lay the foundation for a society in which we can best promote that well-being. If we allow governments or other institutions to violate human rights, then this would be a bad thing because they could do so for their own purposes and not for the good of all. However, that does not mean that one could never be justified in acting in a way that seems to be against particular human rights or dignity.

For example, in 2006, the German Constitutional Court was asked to decide about a situation somewhat like that which arose in the United States on September 11, 2001, when Al-Qaida terrorists hijacked four planes, three of which they crashed into buildings. At one particular moment on that tragic day, two of those planes had crashed into the World Trade Center in New York, killing thousands of people, and one into the Pentagon, in Washington

D.C., while the fourth was still in the air. At the time it was in the air, the United States scrambled a fighter plane that moved into a position where it could potentially shoot down that aircraft. In the end, this never happened because the passengers on that aircraft stormed the cockpit and tried to overpower the pilot. The pilot put the plane into a dive and everyone was killed. The plane itself crashed into a field without killing anyone else, unlike the three other planes. In Germany, the Federal Constitutional Court was asked to decide whether, in similar circumstances, it would be all right for the German Air Force to shoot down a plane. The court ruled that to do so would be a violation of the dignity of innocent people, namely the passengers on board the plane, and therefore a violation of the first article of the German Basic Law which states that human dignity is inviolable. This could be seen as a legitimate interpretation of human rights, but I really think it is an absurdly absolutist stand. After all, if you know that hijackers are planning to crash a plane into some building – say into a football stadium during the World Cup, where 80,000 people are gathered – who knows how many will die if the plane full of jet fuel crashes into it. And all the passengers in this plane certainly have only minutes to live if the plane crashes. Would it not be right to save the lives of the people in the football stadium at the cost of shortening, by just a few terrifying minutes, the lives of the people in the plane? I provide that as an example to show that rights ought not to be thought of as absolute, but rather as serving the purpose of producing a better society for us all.

Turning to the question of technology and human benefits, we should ask how we can use various kinds of technologies to achieve the best consequences. Recent years have witnessed the emergence of a movement known as effective altruism. Effective altruism is consistent with the idea I have been putting forward, that we ought to be thinking about how to maximize everyone's interests. One does not have to be a utilitarian to be an effective altruist. One might think that there are some things that are so absolutely wrong to do, that, other things being equal, it would be unthinkable to do them, no matter how great the benefit. Other things being equal, it is good to do what will result in the greatest benefits, which is what effective altruism is about. It encourages people, both as individuals and in their professional careers, to think about what they can do to improve the world. And it encourages people to think about how to do that as effectively as possible with the resources available. This will apply to individuals who might consider that they own more than they really need, and could therefore donate some of their wealth to an effective charity.

Then they would need to find the most effective charity, the one that will do the most good with the donation. Alternatively, in the case of those working for a government which has a budget in the hundreds of millions or billions, it is extremely important to think about how to use the funds as effectively as possible.

Thinking about trying to maximize the impact of everything one does is, perhaps surprisingly, not something that everybody is always focused on. Many people in the effective altruism movement have been able to do good in a variety of ways. Some of them evaluate non-governmental organizations or charities to see which are the most effective. Others choose their careers on the basis of research to find where they can do the most good. I know one person who, during his career working for the World Bank, found that in his position he could use the section of budget that he was controlling for the specific area of women's reproductive health so that it achieved six times as much of the goals that they were setting out to achieve as had been done previously with the same budget. Sometimes there are surprising efficiencies that can be found, and obviously that is tantamount to finding a multiple amount of money or extra money in the budget to meet or exceed given goals.

Speaking here at WIPO, it is appropriate to say a few words about how the ethical approach I have been suggesting applies to intellectual property rights. A utilitarian justification of a system of intellectual property rights rests on the fact that such a system encourages innovation and creation for the benefit of all. That is not news to people here. But of course there is also an alternative view about property rights that considers property rights to be natural rights – or inherent rights – and that quite apart from the consequences, it is simply wrong to deprive people with property rights of the things to which they have a right. What is not so well known is that the leading defenders of a natural law theory of property rights, which is a major theory of property rights prevailing at present, place limits on property rights when it comes to the question of meeting basic needs. This holds true both for the Christian tradition, where the natural law of property rights was perhaps most influentially advanced by Thomas Aquinas in the thirteenth century, and for the philosophical tradition of John Locke in the seventeenth century, which was very influential among the founding fathers of the United States. Both Aquinas and Locke, for example, argued for the importance of preserving life, even if this would infringe upon what would otherwise be the property rights of those whose lives are not at

risk. According to their view of natural law, if somebody who is starving (or whose children are starving) steals a loaf of bread from a person with an abundance of food, that is not theft, because the person with an abundance of food has no right to withhold food that is not needed from those who need it to survive. That sounds like a very radical doctrine, but remember that it was clearly stated by Aquinas – the “angelic doctor,” as he was known in the church – and no other theologian or philosopher has had as great an influence on the Roman Catholic tradition.

How should we apply that view of natural law of property rights to intellectual property rights in the area of pharmaceutical products that may be needed to save the lives of people in low-income countries who cannot afford to buy them at the prices set by manufacturers in affluent countries? It seems reasonable to interpret it as a doctrine that justifies the actions of governments, firms or individuals in countries where there are many people who cannot afford life-saving medicines in manufacturing generic versions of those drugs, copying those drugs, even if they are under patent protections by virtue of the manufacturer’s intellectual property rights.

I know that there is the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and various other agreements that governments have signed up to, that will not allow that sort of action. But then there are also emergency exceptions to those agreements. For example, the Doha Declaration allows governments to declare emergencies and to use generic medicines under the circumstances I just mentioned. That can be defended both from a utilitarian perspective, and in terms of a natural law defense of property rights. Perhaps it is the utilitarian view which gives somewhat more weight to the importance of patent protection, because it takes a long-term view, whereas the natural law view that I have just described talks about the immediate need of the person who will die from hunger without bread. However, it does not say anything about the future generations who will benefit from the development of new drugs that we do not yet have, which will only be developed if the pharmaceutical companies believe they have sufficient financial incentives to develop them. It is important to take that long-term view, but at the same time ways must be found to make life-saving drugs and treatments available to those who need them.

It is unacceptable to allow a repeat of the kind of situation of the 1990s when the HIV/AIDS epidemic was sweeping through large parts of the world, particularly sub-Saharan Africa. At that time, there were effective

drugs available in the developed countries, but they were far too expensive for the developing countries. And when South Africa began to buy and develop generics, it was sued by United States-based drug companies with the support of the United States Government. That situation fortunately was resolved through negotiations and the eventual acceptance of South Africa's right to use generics. It is important to make sure that a similar situation is not repeated.

The more difficult question is how to create incentives for pharmaceutical companies to produce drugs for markets which are not likely to provide them with significant financial returns. This issue came up again following the outbreak of Ebola in Liberia and Sierra Leone, West Africa, in 2014. Although Ebola was not a new disease, having been known since the 1970s, there were no treatments or vaccines for it, because pharmaceutical companies saw this as a disease of rural Africans who would not be able to pay for treatments if there was an outbreak. It was only when the media started warning that the disease could spread to affluent countries and could also kill more than a million people in West Africa, that the pharmaceutical companies started scrambling to rapidly produce possible vaccines and other treatments. It was not that they did not have an idea about how to develop a vaccine; rather, it was that they did not see a market in affluent countries until there was this threat, and until President Obama got the United States Congress to allocate more than six billion dollars for Ebola treatment and for the setting up of Ebola centers in the United States as a precaution against a possible outbreak. Fortunately, that worst-case scenario did not occur. Nevertheless, such a threat is still around, and it is not known when it may strike. There are a number of other neglected tropical diseases for which remedies have not been developed largely due to a lack of incentives.

Some years ago, Thomas Pogge, a philosopher at Yale University in the United States, and Aidan Hollis, an economist at the University of Calgary in Canada, developed a proposal for a health impact fund to be financed by governments, which would allocate a sum of money to pharmaceutical companies on the basis of their contribution to reducing the global burden of disease. Disease burden is the impact of a health problem as measured by various indicators, such as mortality and financial costs. This would require finding a way of measuring the contribution that any specific drug makes to reducing the burden of disease. The World Health Organization described this as a promising idea at one point, but it does not seem to have gained traction. I am not quite sure why not.

There are also other strategies that are being tried out. For instance, the Gates Foundation is using a variety of strategies to get pharmaceutical companies to work on drugs for neglected tropical diseases which include a system of advanced purchases. There is also the Access to Medicines Index, which rates pharmaceutical companies on how good they are in providing access to medicines. The assumption behind this index is that these companies' interests in developing a good global reputation will induce them to move up on that scale. I believe this strategy has achieved some progress, but probably still not enough. I would be interested in discussing any other ideas about how further progress could be made in this direction.

I want to add something about the costs of treatment, which relates to the point I made about effective use of resources. Currently, very expensive drugs are being developed for specific and rare diseases that affect only a few people. For example, there are specific forms of cancer that are generally considered to be treatable through the use of particular drugs. There are drugs on the market now that cost half a million dollars for one year's treatment, and more drugs are being developed that will exceed even this figure. This means spending half a million dollars to keep one person alive for one year in affluent countries, which is usually only possible if the affluent countries have a national health service or private health insurance that is willing to pay for that treatment.

As mentioned before, there are organizations that evaluate the effectiveness of charities. For example, GiveWell, which is one of the leading charity evaluators, evaluated the distribution of insecticide-treated bed nets in regions where malaria is rampant. It evaluated the work of an organization called Against Malaria Foundation, and it came up with a figure of US\$3,400 for every life that was saved through the distribution of bed nets by that organization. Assuming that it is mostly children who die of malaria – as they are, after all, the most vulnerable to death from malaria – even if these children would then live on just to the age of 50 (to take a rather pessimistic life estimate), this amounts to about US\$68 per year of life saved as against half a million dollars per year in the affluent world. That seems to be an unconscionable difference. We should not have a situation where there are still lives at risk that can be saved so cheaply. I know it is very hard to say that we ought not to be saving lives at half a million dollars per year of life saved, especially if it concerns you or someone you love. However, I do think there have to be limits, at some point, on the value of

life. Some governments with national health services already set limits. The United Kingdom, for example, through its National Institute for Clinical Excellence, sets a limit of about 30,000 pounds sterling per year as the maximum amount that it thinks the National Health Service should spend on saving a life. In any case, I think the gap is too great. It is important to think about what ought to be done to change that at both ends. More lives that can cheaply be saved, should be saved in the developing world, while perhaps in the rich world, there needs to be a limit on the amount spent on saving lives.

I now turn to questions about technology more specifically, and after that to questions about the future of humanity. In terms of technology, I have been particularly interested in the issue of bioethics; that is, ethical issues relating to medicine and the biological sciences. I want to mention two of those briefly, which indicate the complex interplay of technology and ethics. The first one is the development of the respirator, also called a ventilator, which refers to medical equipment for sustaining breathing in patients who are not able to breathe unaided. This life-saving technology was developed in the 1950s and continues to be life-saving. Many of the lives saved concerned people whose inability to breathe unaided was temporary. After being put on a respirator for some time, they recovered completely and were able to resume their normal lives. Clearly, that is a wonderful thing. But it was then noticed that some of the people put on respirators did not recover their ability to breathe unaided, and did not recover consciousness in any form at all. That raised an ethical question: should they be kept on the respirator for the rest of their natural lives, which might be another 50 years, taking up a valuable hospital bed and valuable nursing resources, or should they be taken off the respirator and be allowed to die? That question became even more acute when in the 1960s, in South Africa, Dr. Christiaan Barnard showed that you could transplant a heart from one patient to another patient. Heart transplantation had the potential for saving the life of a patient with heart disease and restoring that person to normal functioning. It took a while to show that the patient could survive not just for days, but for months and years; but clearly the potential was there.

These developments called for examining anew the ethical question: what should be done with patients on respirators who are showing no brain responses at all, and about whom it could be confidently stated that they would never recover consciousness? What happened is well-known. The definition of death was changed. Traditionally, the only way a person could



be legally declared dead was if the heart stopped and respiration ceased (that is to say, there was no pulse). To this, after heart transplantation became possible, was added the idea that a person is dead if all their brain functions have irreversibly ceased. With this revised definition, at least some of the patients on respirators could now be declared dead, and the respirator removed. But more importantly, their organs could be extracted before removing the respirator while the heart was still beating, and their heart could be given to another patient to save that patient's life. That continues to be done today, and is generally regarded as an important life-saving measure. And yet when you think about it, it is rather extraordinary that such a change was made.

Referring back to the German constitutional court's decision, one might well ask why, in a country that believes in the dignity of every human being, nobody objected to declaring what had always been considered a living human being to be an organ bank – a source of organs to be used for others. That is, to using one human being as a means to save the lives of others. This is directly contrary to the idea that no one should ever be used as a means to benefit others.

Of course, that question was avoided by changing the definition of death. However, the change in the definition of death was not a new scientific discovery; it was a policy choice. It was based on certain tests which established that the patient would never regain consciousness, even though that patient was still a human organism with blood circulating, the body was warm, and the skin soft to the touch. Eventually, though, it became clear that even if a person was declared brain dead, there might be some cases where it would be justified to keep them on a respirator. This had been done when a pregnant woman had been brought to the hospital after an accident, and it was established that the organism could be sustained for three or four months after the person had been declared brain dead. These three or four months were long enough for the fetus to become viable, and to be removed by caesarean section, later to grow to become a healthy child.

From an ethical point of view, the decision made was the right decision. The living human organism of somebody who can never again be conscious is not something that we should value because, even if it is considered a living human being, that human being cannot benefit from life in any further way. All capacities for both happiness and suffering have gone. Thus from the ethical perspective I defend, I find that is acceptable. However, it does seem

strange that there was not more opposition to that decision in countries such as Germany that favor a Kantian perspective.

The definition of death is an issue that is still being discussed in the United States because of a case that just came up there. It concerns a young girl, Jahi McMath, who was declared brain dead four years ago in California. Her parents resisted that decision and flew her to New Jersey, where the law allows for a religious objection to declaring a person brain dead. So in New Jersey she is alive, and the family is now suing the hospital in California for negligence, because it was not as if she was critically injured when she went into hospital and ended up declared brain dead. Under California law, if there is medical negligence or malpractice that causes death, the limit of damages the family can receive is a quarter of a million dollars. If the medical malpractice or negligence does not cause death, there is no limit. So one can see why the family is pursuing the case and arguing that she is not dead.

In the late 1970s and early 1980s I was involved in early discussions at my university, Monash University, in Australia, in another area of technology and ethics. A team at Monash University had produced the second in vitro fertilization (IVF) child in the world. The first such child was Louise Joy Brown, in 1978, in the United Kingdom. In a sense, this was a technology, similar to that of respirators, with a pretty simple purpose, namely to help infertile couples have children, and it was successful in doing that. Prior to IVF, the only and often not successful recourse for such couples was through surgery to unblock the fallopian tubes. The IVF method bypassed the fallopian tubes and turned out to be more successful.

However, it did not only do that; it also produced embryos outside the body, something that had never happened before. Such embryos, produced outside the human body, could turn into a child. That had never happened before, and this opens up a host of different issues. For one, it opens up the idea that you could transfer an embryo to a woman who is not the source of the genetic material of that embryo, so that a woman can give birth to a child who is not genetically related to her. Again, this is something that had never happened before. And that woman could be somebody who simply wants to have a child and cannot produce any eggs, or it could be somebody who is offering her womb for hire, a paid surrogate. This has led to the development of an international cross-border business in which wealthy people from affluent nations are paying surrogates in other

countries to carry their embryos for them. This can be done legally in the United States, which means that people do not have to travel abroad for this purpose. But in most other developed countries, and in general in Europe, this is not allowed. However, it certainly happens on an international basis, which, arguably, makes the situation worse than if it happened within a single country.

With regard to the future of humanity, when there are embryos outside the body that are viable, there are other things that could be done with them in terms of genetic screening and, possibly, genetic modification. Genetic screening is already done, for example if there is a risk of carrying a child with a genetic disease. Prenatal testing is already practiced very widely, usually followed by termination of a pregnancy if the tests are positive that the child will have a genetic disease. Genetic screening and selection are already being done for these reasons.

When using in vitro fertilization for this purpose, the woman usually takes a drug so that she produces many eggs, all of which will then be fertilized. This creates a number of embryos that can be screened, and from these, one can be found that does not carry the genetic disease for which there is a risk. This embryo can then be transferred to that woman, and she avoids the need for an abortion and can have a child who will be free of the disease. Again, that is not particularly controversial in itself, but it is clear that as our knowledge of genetics advances, it will be possible to detect not only genetic diseases, but also to create genetic enhancements to produce better-than-chance genes for a couple. It is not difficult to imagine that couples will use this technology in order to screen for a child who has particular characteristics that they want. What might those characteristics be? As a professor at Princeton, an elite university in the United States, I have seen in the student newspaper advertisements offering substantial sums of money for eggs from students at my university. Those advertisements often specify not just that they want eggs from a Princeton student, but that the student must also have obtained at least a certain score in the scholastic aptitude tests (SATs) that are used as a basis for admission. Sometimes they ask for other characteristics, such as height. I have seen up to US\$50,000 offered for eggs from a suitable donor. Even if parents are prepared to pay US\$50,000 for the “right” kind of eggs, it is still, after all, a kind of lottery, because no matter how high the SAT scores might be, it is possible that the child will not have the genetic basis for getting admission into an elite school.

Imagine that techniques are discovered to identify genes or clusters of genes which are indicators of scholastic ability or intelligence (whatever we think of this trait). Some couples could potentially use those techniques for that purpose. Do we want the kind of future in which this happens? What are the options? One option could be to prohibit such screening and such tests. Again, Germany has prohibited certain kinds of prenatal testing, and I could easily imagine that, given its past and its sensitivity about eugenics in any shape or form, Germany would prohibit such kinds of testing. But not every country will do so. Some countries might see it as important for their particular economic position to try to enhance the intelligence of their population. Some years ago, Singapore had a policy of encouraging university graduates to have more children, and discouraging people who did not have high educational standards from having more children. That was quite explicitly stated, because it was said that Singapore, as a small country without natural resources, needed to be innovative and creative and needed to maximize the intelligence of its population. It could certainly be envisaged that some countries would do this, which would make it very difficult for other countries to decide not to do it for fear of losing a competitive edge.

In the case of the United States, at least, where there is a strong tradition of minimizing government interference, one could imagine that private clinics would be set up to do this for those who could afford to pay for it. Couples would be able to genetically enhance their children or select genetically enhanced children, and poor people would not be able to afford this. That would mean that the already very sharp class differences based on money would start to have a more clear-cut genetic basis, thus building into this division a kind of genetic aristocracy and genetic proletariat, as distinct from the rather limited but still significant mobility that exists between those classes. I would not like to see the emergence of such a society, but if this form of genetic testing and selection is not prohibited, and if we do not want to have this stratified class society, what can be done? Should the same opportunities for having genetically enhanced children be made available to everyone? Should it be included as part of a national health service in those countries that have such a service or be included in Medicaid – the health care service for people in poverty in the United States? These are questions we need to think about.

Genetic screening and selection of embryos is only one issue. It is also quite possible that in the next decade or two, the ability to modify embryos

will be developed. Indeed, the development of the technology known as CRISPR has already taken a step closer to that. It is a kind of genetic slicing, a genetic insertion technique that is now being developed in various ways, and is already being used in experiments on animals. If that proves reliable and successful, it could eventually lead to a modified kind of human nature, which would change the future of humanity. I do not regard that as intrinsically wrong on the basis of the ethics that I sketched earlier. I do not see our human nature as sacrosanct. The nature we have is one that has evolved for a variety of reasons to help us survive, and genetic modification has taken place very slowly. We should not assume that evolution somehow is guided by any kind of providence to reach the ethically best outcomes. We could imagine better outcomes, with human beings becoming not only more intelligent, but also more altruistic, kinder and more compassionate. Perhaps that is what we need in the world in order to protect the future of humanity. So that is again an important area to think about.

Another important area is the development of artificial intelligence (AI) or the robot revolution. This has two quite different aspects. One that already exists is the use of AI to replace human work in certain areas. Some factories are already using manufacturing robots, thus greatly reducing the number of people on the factory floor, which also reduces the drudgery and the monotonous routine work performed by human beings. But this is not going to be limited to the manufacturing industry; it is going to spread in various ways. AI already exists that can perform medical diagnoses, for example on the basis of information fed to it, and some health-care professionals will find that they need to move to different areas which AI cannot do as yet. AI will replace people in a lot of other areas as well, including translating in other languages. Indeed, AI is getting good at doing translations. For instance, Google's translation of written texts has dramatically improved over the years since it was first developed, and it might also soon be developed for the spoken word as well.

What can be done about a society in which there is much less need for human work, either physical or mental? This is an issue which requires considerable thought: We will be able to capture gains in productivity, and transfer them to people who no longer have to do this kind of work, perhaps through some kind of universal basic income scheme, but we would still need to give them a sense that they have worthwhile things to do, so that they do not just sit on their sofa and watch TV soaps all day. This would not be good for their overall well-being in the full of sense of the term. This

gives rise to the very difficult challenge of developing things that stimulate people, things that they find fulfilling and worthwhile, that meet their sense of purpose and which will not be replaced by machines.

Finally, a word or two about the other aspect of AI. So far I have spoken about machines replacing people in doing things that they can already do. There are a number of people who think that this is only the starting point; that within the lifetime of some of today's younger people, machines with superintelligence will be developed that are significantly smarter than any of us. What will that mean for the future of humanity? One of the people who has been warning about this is Nick Bostrom, a philosopher at the University of Oxford, who has written a book on superintelligence. He thinks it would be a basic error to create a machine that would be smarter than humans. A number of people think that super-intelligent machines will eventually decide that they do not need us, that we endanger the planet and that they are better off without us.

This scenario raises the question of what we should be doing to reduce risks that threaten to end the human species. It would be a huge tragedy not only in terms of the end of the seven or eight or nine million billion people on the planet at the time this happens, but also in terms of the loss of all future generations of human beings with whatever rich and fulfilling lives they could have had. It would be a tragedy of absolutely unimaginable proportions. Faced with such a prospect, should it be a priority to exert all efforts to avert and reduce this risk to human existence as far as possible, whether from superintelligence or from any other threats such as nuclear war, pandemics, asteroid collisions, or any other extinction risk? In general, I think the answer is affirmative. We should be thinking more about risks of extinction, and taking steps to reduce such risks should be a higher priority than it is now. On the specific question whether there is a plausible risk of our extinction posed by superintelligence is hard to say. Moreover, some might argue that if these machines were not only super-intelligent but actually conscious beings, then their lives would be better than ours, and we could view these machines, designed by us, as continuing the human story in a transhuman and superior form. I will not now speculate on that challenging suggestion. It is one of a wide range of questions that will be facing us in the coming decades as we march towards this new technological future.

## Question and answer session

**Question:** In thinking about technology, often we think about how to manage it, but perhaps we should think more about how to direct it, about what goals and purposes it ought to have. Thinking about all the paths treaded until now, it seems understandable why we would make the mistakes we often make today. For much of our history we have been plagued by unbelievable misery and seek to fulfill often vital needs. It seems very clear that in such a context, what we ought to do with technology should be that we should do what we can to alleviate misery and move forward to better lives. Some of us have succeeded perhaps beyond our ancestors. What now? Do we continue to do what we can because we can? Or do we instead distribute the gains by trying to help as many people as possible to reach the stage that some of us in the rich world have reached? And what about the short-term risks that are technologies of birth? How do we weigh those against the other kinds of purposes we ought to have? The reason why I want to focus on this is that we are in one of our world's most important institutions, and despite the disagreements about the reasons why we have institutions and the justifications for having these, there are very few people

who credibly argue that institutions exist without purpose. They exist for a reason; they exist to do good. If we have to think about different purposes today, how ought our institutions be modified or adapted in order to fulfill the new purposes we ought to have, rather than the ones we have needed until now?

**Singer:** That is undoubtedly a very good question. But I am not sure that I am very well qualified to answer it because I have not really worked in an institution of this kind, especially not an international multilateral institution. I am reluctant to offer any advice from my position of ignorance as to how one could do that. One could say institutions need to evaluate themselves, and to assess where they are going and how well they are achieving their objectives. Universities do that from time to time, and so do institutes within universities. It can be a useful exercise but it is difficult. All I can do is to prompt you to reflect on those goals, on how and what purposes you can best fulfill within the existing structure.

I entirely agree with you that technology has made a great deal of progress, and has assisted us all in reducing misery, to a significant extent.

Perhaps the Director General wants to add a comment on how to make

sure that institutions live up to the best purposes they can.

**Gurry:** I think it is a very profound question, and I do not really have anything to add to what you have said. I think the challenge is to have high integrity policymaking processes, which means that those processes should address the questions that are being asked within the mandate of the organization, as opposed to addressing extraneous considerations which, in the complexity of a multilateral setting, often become more important than the focus of the mandate which we are supposed to accomplish.

**Question:** At what point do you think AI would deserve human rights?

**Singer:** I think artificial intelligence would deserve rights at the point at which we are convinced that we are dealing with a center of consciousness. I do not think a machine, no matter how human-like it might seem, has rights if it is simply mimicking human behavior because of algorithms that we devised and know have nothing to do with consciousness. Therefore, I do not believe there is any AI that is conscious at this stage; but I do not rule out the possibility that this could happen at some future time. An interesting question is how would

you tell this consciousness? Many years ago, the mathematician and code-breaker, Alan Turing, came up with a test known as the Turing test, which suggested that, if you have a conversation with an AI and you cannot tell whether you are having a conversation with a real person or with an AI, then we should regard it as conscious. We have got pretty close to that stage now. But I am convinced that the AI that we have got is not conscious, and indeed anyone who understands how today's AI is programmed would say that there is absolutely no reason to assume consciousness as yet. So I think we have to abandon the Turing test and find out how the results were produced. Were they produced by, for example trying to model the human brain in some way? That would be incredibly difficult, given how many neurons and connections between neurons we have. But if that was done without programming a specific input and it produced a being that you could converse with, then we might say that it must be consciousness that produces such a flexible intelligence.

**Question:** I would like to ask about the German constitutional court case that you mentioned. It boils down to whether or not the dignity of a small number of people trumps the lives, and therefore the dignity, of a large number of people from the way you talked about it. But



actually, that is the argument that some administrations and some of its supporters were making to justify torturing people to save a city or a plane or other area with a larger number of people. What would you say to that?

**Singer:** In the case that I described, it was not simply the number of people; it was also the fact that those people were going to die very soon anyway. But there are many interesting dilemmas that involve varying numbers of people and require us to decide who will live. Some of you will be familiar with the so-called trolley problem about the runaway train or trolley that is heading down a track where it will kill five workers in a tunnel, or it can be diverted so it will kill only one worker in another tunnel. Of course, a utilitarian will be prepared to sacrifice one to save five. In most circumstances, however, we need to be very careful about sacrificing some to save more, because this may be simply an excuse for doing something that has other motivations behind it. On the other hand, I also would not want to rule out the case where the evidence is absolutely clear that there is a choice of saving a few or saving many, with no other consequences. Then it seems to me to be a bit crazy not to take account of numbers. There is a variety of examples where the numbers do

count, but one needs to be sure that that really is the situation.

**Question:** As regards the disappearance of the human species, I do not believe that this is something that is likely to happen very soon. With regard to artificial intelligence, there is no spiritual aspect, no consciousness, but this is my point of view. I would like to refer to David Goodall the scientist who is an Australian like yourself who decided to come to Switzerland to die. You talked about technology a little earlier relating to medication, and I would be very interested to know what is your point of view about this Australian gentlemen who came to Switzerland to die. From the ethical point of view, what do you think he wanted to convey to mankind or humanity concerning medically assisted suicide?

**Singer:** The case of David Goodall received quite extensive publicity, particularly in Australia. The salient point here, I think, is that he was 104 years old, and he said that he had lived a full and rewarding life until about 102 years of age, which I think most of us would accept as a reasonably good age. However, since then it had been downhill, and he did not want to go on any longer. So, I think that is a judgment that is best made by the person whose life it is. I do not think I am in a position to somehow override

David Goodall's judgment. It was clearly a considered judgment; which he did not rush into. Since the last two years of his life had not been worth living, and things were likely to go further downhill, I would accept that reaching that decision to end his life is reasonable and ethically justifiable. I regret that he had to travel to Switzerland to do that. In the state of Victoria (Australia), the government just this year (2018) passed legislation allowing physicians to assist someone to die, but only if they are terminally ill and their doctors say that they are likely to have no more than six months to live. David Goodall probably could not have used that legislation anyway. That legislation is a positive step, but ultimately I would like to see people being able to have assistance to die if, after due deliberation and consideration, they have reached the judgment that the future does not hold enough positive prospects for them to continue to live.

**Question:** Concerning artificial intelligence and that it is always considered a machine as long as we have programmed it and we can understand it. When medical genetics moves forward and humans can be programmed to become taller or more compassionate or kinder, as you said, where would you draw the line as to who is a machine and who is a person?

**Singer:** You asked me to draw a line between who is the machine and who is the person. I would say at some point the machine can be a person (see the earlier question). If I were convinced that there was a form of artificial intelligence that was conscious, that was capable of thinking about itself as a separate being, thinking about its future and its past, and so on, I would say that meets the definition of a person. A person does not have to be a member of the *homo sapiens* species. Even in the use of the term "person" in the Christian doctrine of the Trinity (according to which the Trinity is three persons in one), only one of those persons is a member of the human species. If the other two are non-human persons, why not a machine that is also a person? But one may also look at this from the other end, such as a human who has, for example, been genetically modified as an embryo. In addition, that person could have certain other enhancements. People take coffee to enhance their concentration abilities in various respects, and there are a variety of drugs that are supposed to be more powerful in doing that. No doubt, there will be more drugs in the future, and maybe they will avoid some of the addictions and side-effects of existing drugs. Maybe we will even end up with a kind of computer interface interaction between our brains and competitors, and to

some extent, we already have that. I am a Gmail user, and the amount of storage I have from my emails is absolutely fantastic. I have stored most of the emails I have received over the last 10 years. It is becoming common to get an email from someone who addresses me in a way that clearly assumes that I know who this person is, though I do not think I know them. However, actually I do know this person because the extended memory through Gmail allows me to search for this person, and I find that six years ago this person sent me an email, and it shows the content of that mail. So Gmail is now part of my extended memory, and that is valuable. Does this mean that I have become a kind of cyborg? Well not exactly. But if in fact somehow a chip was implanted in my brain that did this, I think it certainly would not stop me from being a person. If future generations gradually merge with machines in this way, I do not think that will matter. It will be another example of a technology that raises the question of whether it is a beneficial technology for us or a harmful one. And if we take all the side-effects into account, and it turns out to be beneficial, then I will accept it. Whether I can still say these future beings are members of the species *homo sapiens* or some combination of that and a machine will not really matter so much to them.

**Question:** Concerning artificial intelligence and ethics, to take a concrete case of driverless cars, in case of the threat of an accident, a car without a driver has to take a decision. This points to the need to inject some ethics principles into this car on which it would base its decision. What are those principles? Who decides what principles the manufacturer should incorporate? For instance, should there be a list of principles, that are maybe different in different countries, such as a principle that if children are at risk of being injured, protecting them has to be given priority? Or should we simply give priority to saving the greater number of persons?

**Singer:** That is a very interesting issue which is already facing us because we already have such cars, at least in the testing phase. It is actually a real-life version of the trolley problem that I mentioned before. At least it raises one of the issues. Imagine the driverless car sees a group of schoolchildren crossing the road. Given the speed that the car is travelling at, it is not possible to stop the car before it hits the schoolchildren, but it would be possible to steer the car so that it swerves to the side. Then there are various options: one option could be that one pedestrian standing on the side would be killed; another option could be that there are no people there, but there is some

hard obstacle, say a concrete wall, and it is very likely that the driver will be killed by the impact. This is where we get a clash between the interests of the car manufacturer in selling cars and the interest in minimizing fatalities, because the manufacturer might sell more cars if they say they have programmed their cars to always protect the driver and passengers of the car, no matter what. But the result of that could be then that more people outside the car, more pedestrians, get killed. Moreover, we are all also pedestrians at some time or another, and most of us have children who will be crossing roads at some time or another. So it is really a circumstance where regulation is needed, where there is a public good, which, in this case, is reducing road accidents. That public good ought to override the private good of protecting the driver and passengers. It is a kind of prisoner's dilemma situation: if each person thinks in their own interests, the results end up being worse for everyone. So I would like to see a regulation, but whether any government will actually have the courage to introduce it is another matter.

**Question:** Until about the year 800, for the people technology meant building churches in each village. Until 1950 or so, it meant raising the gun against kings and bosses.

Today it means having a website against sexism. Do you think that in the year 3000 ethics in technology will make lives shorter lived or extend lives?

**Singer:** It is very hard to look as far ahead as the year 3000. I think the trend is in fact to use technology to build a better life for all. Admittedly that has been very skewed, so far, to bringing a better life to wealthier people. But a lot of progress has been made in poorer countries as well. Child mortality has been reduced, longevity extended, various kinds of comforts that we did not have before are now provided, more children have access to education, and so on. So at least my hope – I am hesitant to say my confident prediction – is that technology will be used to bring about a better life for all, and in a manner that is more egalitarian, and that focuses particularly on helping those who are worst off at present, because that is where I think we can do the greatest amount of good.

**Question (translation):** This gentleman represents the indigenous people of Latin America. My question concerns human rights and intellectual property rights from the point of view of indigenous people. We have problems understanding technology in Latin America. Most indigenous people have a mother tongue of their own

and do not understand Spanish. Therefore, technology does not reach them. There are millions of indigenous people, and they do not have rights, they are oppressed, and they are unable to use technology. How do you see their situation in this context?

**Singer:** I very much appreciate the question and the perspective of indigenous people in the context of a world that is increasingly influenced by technology. We need to make efforts to bring technology to everyone in the world, no matter what their language. I recognize that I am particularly privileged in speaking English, which means that many other people have to speak my language to talk to me, which obviously makes things easier for me. However, I think we need to try to do what we can to redress this. There is a kind of unfairness in the world where English has become so dominant, as has French to some extent, and Spanish. But certainly there are thousands of smaller languages in the world, and their speakers have to learn one of the major languages if they are to participate in global discussions at present.

Earlier, I made a remark about artificial intelligence replacing translators in various ways, and that the range of languages that can be translated online has been steadily

increasing, which is a good thing. I hope that eventually it will reach many more indigenous languages too. This is more difficult, because artificial intelligence works by looking at samples of spoken or written languages, and if there are no large bodies of written text, it is harder for artificial intelligence to improve its translation of that language, and it will need help in this. That is one way in which technology may actually directly help to overcome the problem of language, inequality or unfairness. But technology can also benefit indigenous people in many other ways, and is doing so all the time in terms of techniques, whether in agriculture or in ways of protecting the environment and preserving the ways of life of indigenous people. These are important, and you are right that too often they are neglected; too often the weight of numbers pushes them aside. We should respect indigenous people, wherever they are, and if they wish to continue their traditional forms of life, we should respect their wish. We should offer technology to them, and they can either choose to use it, or decide that it is a threat to their traditional way of life and they do not want it. In that case we should try and respect and protect them in living their life as they choose.

**Question:** Regarding the future of humanity, I feel that there is

this difference between two poles where it could end up. One direction would be a kind of world where we do not have to work at all; as in ancient Greece, we will all have time to think about ethics and the direction of where we want to go, and philosophize. That may seem to be a very attractive future. On the other hand, every human being is inherently lazy, and this laziness has induced great innovations so that we have had to work less. However, many of the new technologies, such as smart phones and tablets, are becoming so enticing and attractive that they are playing on our inherent laziness and entice us to close ourselves off in a world that is not the real one. Which direction will we be heading more into? I fear that this laziness that I have just spoken about is so strong that it is going to be very hard to overcome, and I feel that with the technology that exists now, we will not be strong enough in some ways to reach the philosophical ideal.

**Singer:** Firstly, I like the idea of the future as Athens, but with the slaves replaced by artificial intelligence. I am not sure that we will all spend our time philosophizing, and of course I am not sure that the majority of Athenian citizens did a lot of philosophizing either, even though they produced some wonderful texts. But I am not as pessimistic as you are about

laziness. I do not think using an iPad is necessarily lazy; it depends on what one does with it. People spend a lot of time communicating with other people; arguably, they spend too much time with their internet devices. I have seen statistics that teenagers send hundreds, in some cases even thousands, of messages a day, which is hard to believe. My hope is that the novelty of it will wear out, and that people will start to get dissatisfied with spending so much time sending messages, or playing games or whatever else they do, and will look for more rewarding pursuits. Undoubtedly, there is an element of laziness in all of us, but there is also an element of purposiveness. I think that our sense of purpose can be used to get people to find fulfilling and rewarding things to do with their time. Some of that will be through iPads and other devices, and some of it will be different. It is hard to predict the future, but I do not see reasons for being too gloomy about it.

**Question:** My question concerns the cost of treatment in the health-care sector, and the dilemma you posed in terms of how to choose the treatment. At a global level, there are other factors to be considered in terms of power differences. Some people have access to better legal services or more wealth than others. There is

a range of stakeholders, such as civil society, the United Nations, other multilateral organizations, companies and billionaires, who make donations. How can we make decisions and move forward in this very complicated environment?

**Singer:** The principle on which we are to solve it is the idea, as I said at the beginning, that everyone's interests count equally. We ought to be prepared to spend the same amount of money for the same benefit no matter where the person lives. It is true that it will be difficult and more costly to get certain benefits to some people living in more remote areas, and some people will suffer from conditions that are more costly to treat. All of that has to be taken into account. But the principle I would like to see eventually adopted is a reliable health service that is modelled on the best universal health-care provisions of European nations, and extended globally. It might have to be at a more minimal or basic level, because it may not be possible to get the financing to extend this globally. But that would be the ideal. People in the more affluent countries would then have to be persuaded to support that ideal. There are some very wealthy people who could support it privately, as with the Gates Foundation. But also governments have to do more to establish such a system and try

to implement it. That would be a very complicated project requiring cooperation between some national governments and international bodies to try to provide a minimum level of health care throughout their country as a first step. Then one would hope that other countries would see that this works and be prepared to extend it. This may seem naively optimistic, given the present situation with the levels of corruption in some governments, but that is the ideal to strive for, and to try to find ways of achieving.

## Culture, Character and Ethics: Ethical Dilemmas in International Organizations

Dr. Julian Baggini

The WIPO Code of Ethics notes that it is imperative for the organization to “establish, cultivate, nurture and promote a culture of ethics.” The questions this lecture seeks to focus on is what does it mean to have a culture of ethics and why is it even important? Many people might just assume that ethics is all about rules, codes and regulations, and that as long as everybody knows what they are, that is all that is needed to have an ethical organization. So what is added to that by talking about *culture*? Or rather, what is *missing* from that if culture is neglected?

This lecture therefore focuses on three things. First of all, what does it mean to have a culture of ethics? Second, the United Nations is obviously one of the most international places in the world, but many organizations are now operating in international contexts, and even national organizations’ cultures are becoming more diverse. However, it seems as though there is a multiplicity of ethical frameworks, world views and positions. So how can organizations comprising people from many different cultures and backgrounds, with seemingly different morals and ethical codes, form a single culture? How is that even possible? Finally, what might be the appropriate culture for an international organization such as WIPO?

### Corporate character

To begin with, it would be appropriate to ask why we need a culture of ethics in the first place. The first reason is that there is, as I like to say, no algorithm for ethics. Indeed, I believe that there is no algorithm for almost anything in life. There are algorithms for all sorts of things, but for the things that matter most, there is either no algorithm, or if there is, it is far too complicated for human comprehension. When it comes to doing the right thing, the most elaborate manual could be prepared for how to make the right decisions, but it could never cover every eventuality. There is too much variety, too much specificity to particular cases. Therefore, there can be general principles, but those principles are never algorithms that can deliver exactly the right moral outcome for every occasion. Codes and rules are not enough.



The second point is that ethics is not just morality. This is an important point because although ethics and morality are often used interchangeably, they are not quite the same thing. At the same time, there is no standard, clear way of defining the two which makes them distinct. The way I see the distinction, which is the way I think most ethicists also see it, is that morality is more narrow than ethics. Ethics concerns every aspect of human flourishing: what enables a person, a family, a society or an organization to flourish. Morality concerns those duties and obligations we have to others. Thus, for instance in Aristotle's *Ethics*, he talks about friendship. Friendship is not generally a moral issue. There are moral issues around betrayal and trust, but he talks about how many and what kinds of friends one should have. This is ethics, because the friends we have are important to whether we lead a flourishing life or not. But it is not a matter of morality.

I think that in terms of corporate bodies, a truly ethical organization does not simply fulfil its obligations to others and to its members. It is an organization which is also deeply interested in the flourishing of the people who work for it, the people it serves and the people it works with. And if there is that interest in flourishing, then simply having codes which discuss the extent to which people can fulfil their duties and obligations to each other is too minimal. They need to go beyond that.

The third point is that *a rule is only as good as its user*. This is a genuine problem with rule- and code-based approaches, particularly in corporate ethics. The best principles in the world can exist on paper, but unless the people charged with following those rules have a certain integrity and commitment to them, the rules are at best undermined and at worst useless. As the Zen master Bankei Yotaku said, those who do not steal do not need precepts against theft, and similarly those who steal are not deterred by precepts against theft.

I am not against having rules; rules are good, and often necessary. But unless there is a culture in which people are motivated to follow the rules for the right reasons, the power of those rules is extremely limited, and there will be nothing to deter abuse of the rules where such abuse is possible. It is also important that people follow the rules for the right reasons and the right motivations. If a culture of ethics is lacking, the only reason people will have for following rules is narrow self-interest: they do not want to get into trouble, they want to make sure they keep their noses clean. That is not sufficient to cultivate a truly ethical culture.

Culture is therefore important. But how do we think about culture? The best way to think about culture is by analogy to character. So put aside culture for the moment and think about character. The approach to ethics I have been describing so far is largely associated with both Aristotle and Confucius. It is very interesting that in many aspects they had very similar approaches, even though there is no evidence of any interaction between the two. When the same idea emerges independently in two different cultures, that is a sign that it might be a good one. They had the idea that one has to go beyond rules and think more about, not culture – as they were not thinking about organizations – but about character. As an individual, one has to develop an ethical character.

There are at least three important things to note about character. The first is the importance of habit. What makes somebody a good person, of good character? Both Aristotle and Confucius thought it is essentially a question of those people having good habits of action. It is not about them carrying around a kind of moral rulebook in their minds; it is about them behaving appropriately every day, which makes doing the right thing a habit, almost instinctive. I say *almost* instinctive because it is necessary to keep thinking, monitoring one's reactions to check that they are the right ones. For example, to be a generous person one has to practice generosity, and if generosity is practiced, it becomes a kind of habit, and it becomes easier to do. In the same way, bad habits have the opposite effect. If one practices meanness one becomes a mean person. So from an individual point of view, someone interested in becoming a person of good character needs to have good habits and those habits need to be encouraged.

The second thing to develop is what Aristotle called practical wisdom, which is the usual translation of *phronesis*. Practical wisdom is a kind of intelligence concerning good and right conduct. Most importantly, it involves an element of judgment. This goes back to what I mentioned earlier about there being no algorithm. One cannot be a truly good person just by memorizing some simple laws and principles like “thou shalt not kill.” Unless one is foolish enough to take that entirely literally, the principle says nothing about whether to kill a virus, whether to kill an animal to eat, whether to kill in order to defend innocent people, and so forth. So one cannot do without this practical wisdom, this ability to make good judgments. Again, that is something that has to be practiced. That is one problem with approaches to ethics that lay too much emphasis on rigid rules. If people think of ethics as simply looking up what the rulebook says and following it, they are not

then developing their own practical wisdom, their capacity to make good judgments. That ultimately makes them less good moral actors.

A third feature of the character approach is the importance of exemplary actions. It is interesting that not just in Aristotle and in Confucius, but also in quite a lot of ethical traditions, there is the idea that one important aspect of ethics is that of good moral leadership: good people displaying goodness, which leads others to emulate them. Even the Judeo-Christian culture I come from – which has in recent centuries emphasized enlightenment values of reason, universal rules and principles – talks about role models and people inspiring goodness and leadership. This is an important, practical, embodied aspect of ethics: learning how to do good partly by seeing others as models of goodness.

So for an individual to develop an ethical character, three things are very important: developing the right habits, developing capacities of practical wisdom, and having exemplary people as models in order to try to become exemplary people themselves. This also translates into corporate environments: for an organization to have a good corporate character, to have a good ethical culture, it similarly needs to work on these three aspects.

First of all, take exemplary leadership. If an organization preaches ethics and delivers its ethical code to all its employees but the leadership is evidently not of the highest ethical integrity, it is almost impossible to get buy-in and credibility for the principles it is trying to promote. Exemplary leadership is absolutely central to this, and it seems remarkable how leaders can sometimes be blind to their failure to provide good leadership. Sometimes we are very bad judges of ourselves. Nobody thinks of themselves as being corruptible or villainous. It can be very easy for people to assume that, because they are fundamentally decent people trying to do the right thing, they are providing exemplary leadership. It is much, much harder than that.

The second thing is building practical wisdom, that is, enabling people in the organization to develop their capacity to make good judgments. I think a failure to do this is often the cause of certain problems faced by organizations. Take one example, which happened in a very different environment to something like WIPO or other UN organizations. You might remember a few years ago that a very large international coffee

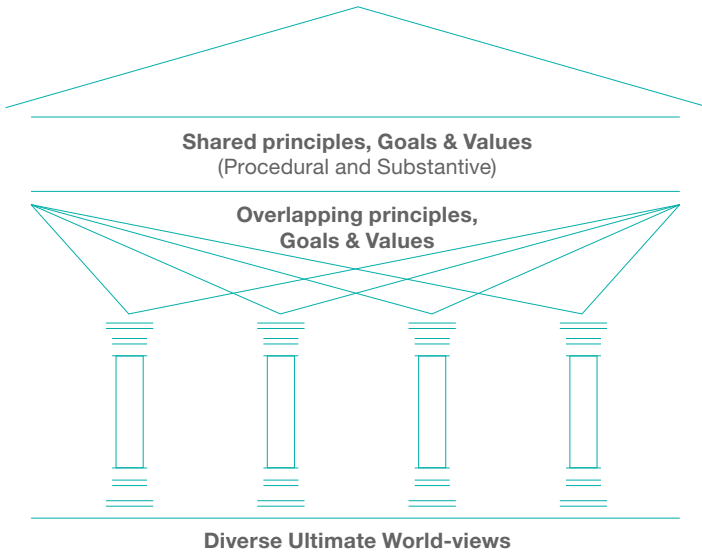
chain had a problem whereby one of its franchise managers called in the police to remove two black customers. This was completely wrong, completely mistaken. Why did that happen? One reason may simply have been prejudice, But I strongly suspect another reason was that this is an organization which has strict rules that all franchisees must follow, and in particular about restrooms being for customers only. These people who wanted to use the restrooms were not customers, which is why the manager sought their removal. That was the root of the tension in the incident, which soon escalated. If that coffee chain company had sought to be genuinely ethical, it should have been encouraging all its managers to exercise a certain degree of discretion, and not just go by the rulebook. They should have been encouraged to think and act in such a way as to promote values of hospitality and good customer experience. If values such as these are emphasized, rather than simple adherence to a rulebook, it completely changes what happens.

Therefore, building practical wisdom is important. In addition, those kinds of behaviors need to be nurtured which are right and good. For example, if it is important that people are open about discussing issues and concerns they have, it is important to provide forums for them to do that easily and safely. Unless those good habits can be nurtured, those behaviors simply disappear. Then, when it is important for someone to perhaps raise a concern or speak out, they cannot do so because the environment has not created the space in which that is possible.

### **Ethical unity in diversity**

Having set out why it is important to have a good ethical culture, and why this is different from simply having rules and regulations, it is important to consider how this can be achieved in an organization which is diverse in its membership and in the people it works with? How is unity in diversity possible?

The diagram below helps to explain this. It starts with diverse ultimate worldviews. What people fundamentally base their ethics and values on differs enormously across cultures and within cultures. Within a particular country there may be two, three, or even more, dominant religions and also non-religious worldviews. Thus there are diverse ultimate worldviews from which stem diverse principles, goals and values. Nonetheless, despite



all that diversity, these worldviews provide platforms which support a sufficient number of shared principles goals and values. Sometimes those principles might just be procedural, in the sense that they indicate how disputes should be settled and agreements reached. But they can also be substantive, about such things as human rights, the ethics of killing, and so forth. And it often happens that diverse worldviews ultimately create the platforms for shared principles, goals and values.

How is that possible? There are a few reasons. First of all, one of the remarkable and convenient features of the human race is that, despite the fact that there is such a diversity of ultimate worldviews, there are a remarkable number of agreements about practical upshots.

One of the greatest examples of this is the Universal Declaration of Human Rights. It is often said that human rights is a kind of Western invention which is being imposed upon the rest of the world. It is true that the language of rights was certainly most commonly used at the time of the European Enlightenment. But the history of the drafting of the Declaration of Human Rights found that support for this document was very strong in many non-Western countries as well. There was no neat correlation at all between a country having its history in Western Christianity and Enlightenment values

and its support for human rights. That is a very encouraging example of how often it happens that if people actually sit down and talk about their values and principles, rather than about the bases for those values and principles, they frequently find themselves to be in agreement.

A second reason why agreement is possible is that sufficient agreement does not demand absolute uniformity. Agreement on general principles still allows for variation in how they are applied. Despite the fact that virtually every nation of the world has signed up to the Universal Declaration of Human Rights, it does not mean that they all exhibit and promote exactly the same set of values. It is often possible to have agreement on some core important values or principles while still maintaining diversity in others.

Sometimes people think that, in order to reach agreement on values, there must be some kind of trade-off, a compromise based on pragmatism rather than principle. I think that is a false choice. Morality is at its core social problem-solving. In examining what comprises our duties and obligations to other people, we are largely trying to solve social coordination problems about how we live together without destroying or harming each other, while allowing each other to thrive. Thus, when people encounter people from other cultures and try to come to some agreement about what values and principles they can share, the enterprise is fundamentally moral, not merely pragmatic. It is actually trying to answer that fundamental moral question of how we can live together.

Despite all the diversity, we all use what I would call the same “moral mixing desk.” In a recording studio, different instruments are recorded on different channels and the person at the mixing desk has to adjust the levels of the different instruments to create the best overall sound. They might reduce the bass if producing a track which is perhaps slower or romantic, or they might want to have lead guitar more in the foreground at times, and in the background at other times.

Here is how the metaphor plays out. When we think about the diversity of moral perspectives and theories around the world, we tend to imagine a set of competing theories. That is not the way I prefer to look at it. Rather, there are certain variables, things we value – harmony, freedom, autonomy, equality, impartiality, society, family, god, tradition – which inform our morality and our ethics. I would suggest that the main difference between cultures can be understood simply by the degree of priority they

give to these values. In some cultures, certain elements are given greater importance than they are in others, and in some others they are completely turned off. This, I think, is the way moral difference is best understood. The religious aspect is the most interesting one here because there are some worldviews which completely turn down their belief in God to zero, and there are those that put it up to ten. That is a large variable. But belief in God, in itself, does not actually hold any specific moral value. Therefore, the fact that there is such diversity of religious beliefs need not be as worrying as it might seem.

Not just moral differences, but all cultural differences, could be understood based on this kind of model. A very good comparative philosopher called Tom Kasulis says that, when people think about differences between cultures, they often make the mistake of thinking about cultures as being in opposition. He argues instead that what is background in one culture is foreground in another, and vice versa. Once this is understood, one finds that there is a kind of common language with which to speak, that the values of one culture are usually translatable into those of another culture. Then the question becomes what the emphasis should be. Within any culture, each society has its own settings on this moral mixing desk. Interculturally, the challenge is to try and agree on what could be called the “consensus settings.” Such agreement does not necessarily need to involve any deep conflict. It is about accepting that when dealing with people whose set of values is a bit different, we need to agree to turn down some of our values a little, and turn up some others. This is one of the most important ways in which coming to some kind of at least working agreement on morality across cultures is possible.

Of course, intercultural settings have to mutually permit such a consensus. One can make a certain amount of adjustments, but the values of another culture have to be at least compatible with one’s own. Fortunately, this is usually the case. It is only with extreme regimes, such as the so-called Islamic State, the Taliban and some brutal dictatorships, that conflict is unavoidable, and, for the sake of our values, it becomes necessary.

In summary, if we think about how unity in diversity is possible, there are three key things. The first is that there is no need for agreement on the deep foundations. The fact that our moral systems and moral beliefs are rooted in very different fundamental worldviews should not be an obstacle to reaching a sufficient degree of agreement about what values

we should actually be promoting. The second is that morality is in itself a form of social problem-solving. Thus, when we set out to solve problems of intercultural interaction, we are actually doing morality; we are not trying to do pragmatics instead. And the third thing is that the moral mixing desk is a way of helping us understand how we can make these adjustments.

## **WIPO and corporate character**

I have talked about why culture or character is an important part of ethics. I have also talked about how a degree of agreement is possible even in organizations which have a lot of diversity within them. Finally, I want to talk about the specific culture of WIPO.

The Code of Ethics at WIPO has a list of values, which are independence, loyalty, impartiality, integrity, accountability and respect for human rights. What stands out is that they cluster around ideas of impartiality and independence. Those are the key principles from which the others – relating to conflict of interest, abusive authority and so forth – flow.

With these values and principles, what sort of culture should be developed? The virtue ethics of Aristotle and Confucius mentioned earlier can be used to answer this. In order to develop a good character, or, in the corporate case, a culture, certain virtues need to be developed. Although the word “virtue” is a little old fashioned now, it really signifies certain dispositions and behavioral traits which become, if not entirely automatic, habitual.

Remarkably, Aristotle and Confucius had the same model for this. They saw virtues as not being the opposite of vices, but rather as occupying an intermediate place between two vices: a vice of deficiency and a vice of excess. For example, courage is usually considered to be the opposite of cowardice. However, as Aristotle and Confucius would put it, it actually occupies an intermediate point between cowardice and what could be called rashness. Someone who rushes in too easily and too quickly is not brave, but foolish and rash. At the same time, somebody who refuses to place themselves in any danger at all, no matter how necessary it is to do so, is considered cowardly. Thus virtue has to be seen as this intermediate position between the vices of a deficiency and an excess.



There is another very important point about this: that intermediate point is not necessarily in the middle. It is not a matter of taking cowardice and rashness and determining what is in the middle. Where exactly it is varies according to the particular circumstance. What might be very brave in one circumstance might be rash in another. In a corporate environment, it varies depending upon the nature of the organization.

I would now like to try to identify the virtues which I think are most fitting for an organization like WIPO, and endeavor to compare them to deficiencies and excesses.

*Openness* is important simply because any organization which is dealing with a diversity of cultures has to be open. The deficiency is obvious enough: closed mindedness. The excess is to have no boundaries at all, that is, to be too open. I have heard it once said that an open mind is a very good thing, but if the mind is too open it becomes like a skip, or rubbish bin, in which everyone tips everything, and it is just accepted. So the mean is somewhere between being closed and having no boundaries.

*Impartiality* is obviously another key virtue. Partiality is a deficiency, but in excess it is a kind of insensitivity to context. If the desire to be impartial can cause one to take no account of different circumstances, such as treating various people the same way in an effort to be impartial, that could lead to overlooking the important differences between varying situations.

*Loyalty* is also a value that is explicitly promoted by WIPO. Disloyalty is a deficiency, but an excess is what we might call a sort of partisanship. Loyalty to any organization must not be so strong that it leads to backing that organization no matter what. There can be too much loyalty as well as too little.

*Flexibility* has the obvious deficiency of rigidity. But the excess is where a person becomes so flexible that they can be easily manipulated, and that of course is a very real danger.

For *clarity*, the deficiency is opacity, while the excess is dogmatism, whereby one mistakes being very fixed in one's views as sign of clarity. It amounts to saying that this is how things are, this is totally clear, and therefore one's view becomes too rigid.

It is important for an organization like this to be *independent*. The deficiency would be where it becomes an agent of the host country or its umbrella organization. The excess is to become aloof, removed and dictatorial, thinking of itself as the ultimate arbiter occupying a very special position.

To develop these virtues, the particular context of an organization like this has to be taken into account. For instance, because it deals with so many different cultures and people about very sensitive matters, an organization like this might tend to lean more towards what in other contexts could be seen as rigidity. It is almost inevitable that it will place more emphasis on absolute impartiality, clarity, and so forth, even though the price paid for that is a certain rigidity, which, in other contexts, would not be ideal. That is my perception, and if I am wrong about that and you disagree, it would be interesting to hear other perspectives.

This presents a kind of character challenge: ethics requires the sort of practical wisdom referred to earlier, but large multinational agencies need to minimize the scope for discretion. They are forced to be perhaps more rigid than they would be in an ideal world, because that is the only way to guard against potential charges of partiality and unfairness. If that is the case, what role can there be for practical wisdom?

I have said that a good culture of ethics requires the development of practical wisdom and good judgment. First of all, this means that there needs to be a focus on hitting the mean. Judgment is always required as to how precisely one should interpret a rule, and to consider whether impartiality is leading one to be insensitive to specific aspects of a situation. One can never eliminate all elements of practical judgment. Implementation also requires a certain amount of judgment; there is never complete transparency concerning how one goes from a rule on a piece of paper to how that rule is implemented.

Perhaps most importantly, there is a certain wisdom involved in how one does things, how one talks to people and how one engages with people. The ethics of proper engagement is often underappreciated. Ethics and morality are often thought of as being about rules and principles, but there is also a personal element. A good person has a certain skill in being able to deal with people, and that also requires a kind of practical wisdom. So even if there are two people trying to implement the same rule and the same principle in the same way, there can, nevertheless, be a difference in practical wisdom concerning how they engage with people.

There is also, of course, judgment in hard cases. Since not every case is transparent, it always needs judgment. In policy development too, one needs a certain element of practical wisdom.

So this is the character challenge. I do not think any organization that wants to have an ethical culture can afford to neglect the need to develop good practical wisdom and judgment in its officials. Nevertheless, the need to minimize discretion creates a tension. But I still think there are opportunities to develop practical wisdom.

I would like to suggest a kind of method by which anyone interested in promoting a good corporate culture of ethics could set about cultivating practical wisdom. The first part of this methodology is to identify the key virtues of the organization. If there is agreement that an ethical culture is important to the organization, that means there are certain virtues that the organization needs to embody. What are they? These need to be identified, but it is also necessary to work out where they fit on the mean as well. There is no point in just committing to impartiality, for example; it is also necessary to determine the correct degree of impartiality. Impartiality varies according to the specific situation, so to what extent should it be exercised on the spectrum?

Having done that, one would need to do what I call a qualitative audit to figure out whether or not these virtues are actually being promoted and practiced in the organization. This necessitates talking with confidence to all stakeholders and getting their honest opinions about whether or not the values and the virtues that are considered important are genuinely being played out. Then one has to make everyone aware of these virtues as well as the organization's values and principles. So rather than simply saying "these are the values, these are the principles," people need to be told what kinds of virtues they should exhibit in their working life.

It is also important to provide exemplary leadership and reward exemplary behavior. I do not mean reward in the sense of giving bonuses or incentivizing people to make a fuss about things when there is no fuss to be made. I simply mean that when people behave in exemplary ways, the organization should visibly show that this is supported and encouraged.

## Question and answer session

**Question:** In my experience, some behavior that is perfectly acceptable in one part of the world is frowned upon in other parts of the world. An organization comprising people from different parts of the world has to be cautious. So how, in the context of international organizations, is there anything we can count on to guide us, such as a universal declaration of ethics?

**Baggini:** There are several aspects to what you are talking about. I agree that there are always problems of different expectations of different cultures. But I also think that there is no deep difference between etiquette and ethics: etiquette is simply the less serious end of the ethical spectrum. To do something which breaches etiquette is to offend someone and to be rude to them, and although that is not ethical, it is not generally that serious. International organizations often do offer a certain amount of training and awareness to help people be sensitive to such things. The difficulty arises where those differences have an impact on what people consider to be fundamentally acceptable or unacceptable. One problem is that often people think differences are irreconcilable when they are not. To take an example, in many cultures it is seen as perfectly

acceptable and right to give favors to, say, family members or members of one's own tribe, and that is something which is incompatible with international norms and conventions. Two points need to be borne in mind here. The first is that people should take a look at their own cultures and recognize that this value is not completely alien. Most people in any culture give priority to their families, but they recognize that it is inappropriate in the context of a public institution. It is not that the fundamental value is alien, it is simply that the limits of its application differ.

The second point is that just because a given society holds a particular value, it does not mean there is no way to reach some agreement about what needs to be done if this value clashes with another. I could be wrong, but I imagine that it is not difficult to make people appreciate the fact that what is appropriate in a local situation is not always appropriate in an international one, and that therefore when operating in an international arena one needs to operate with a greater degree of impartiality than one would when operating in a local one. I think those arguments can be made and be properly understood.

I do not want to underestimate the depth of a lot of these challenges. Sometimes differences in ethical

practices are very significant, and there are real differences. But considered in the right way, it usually becomes not a matter of fundamentally irreconcilable differences, but more a matter of negotiation. And almost always, a common ground can be found. That is why practical wisdom is important in order to bring people to agreement: a certain kind of sensitivity, wisdom and understanding are needed to enable those conversations. One cannot simply say “these are the rules and follow them”; there needs to be negotiation.

**Question:** On this issue of etiquette, I come from India, and in our culture, we greet people when we know them. When I came here, my secretariat told me to greet whoever I cross. So I took that literally and the next morning I kept greeting people, but most of them looked away. So one learns the hard way. I think for me in an international organization, the transition from being a national civil servant or any national professional to an International civil servant is the most important. Those who can do it smoothly, seamlessly, are successful, and those who cannot make the transition are failures. So you adjust.

**Baggini:** I think that shows that transition is something

which everyone is capable of accomplishing. In virtually every culture, people behave differently, for example within a family, than they do in a community, an organization or in a country. What is ethically appropriate changes depending on the context. That is why it is wrong to imagine that in any culture there is an unchanging, inflexible set of values. Everyone understands there is a need to adjust according to context, no matter what the culture.

**Question:** I have been listening to your talk as someone who is just starting out in an NGO in Geneva, but also as someone who is working on a book thinking about how river narratives in English literature have helped to promote an idea of virtue. The river narratives that I looked at stressed the importance of listening to develop practical wisdom, because revising the way one makes judgments is an iterative process. One question in the context of an international organization, is how do you create that culture of being able to listen to yourself and to your team to build that practical wisdom?

My second question, because I am particularly interested in environmental ethics, concerns how human well-being, or flourishing, is predicated on the health of the planet. In your mixing desk of different factors for ethics or

morality, how can an organization turn up the channel for nature, and in a way which would have appeal?

**Baggini:** On the question of the need to listen to self and others, I think it is exactly right to observe oneself and others. That is why, although when people talk about virtue ethics, they often talk about the importance of habit, I was very careful to say that it is not about action becoming automatic – that is not quite right. Certain impulses do become automatic, but there is a need to constantly monitor and observe and check oneself. How is that achieved? I think that in an organizational context, one probably has to think about making somewhat artificial interventions. You cannot just say: “listen, understand, monitor.” These are fine words, but people have busy lives. That is partly why I was suggesting this idea of a qualitative audit. I think what one needs to do is to regularly test people’s perceptions, invite a form of 360 degree feedback, but based around virtues. It would be very interesting and informative for an organization to ask the following question to the people who work for it and the people it works with: “Here is a list of values which we think we promote. What is your perception of how much we actually do so?” I think sometimes those answers will be nicely reassuring, and at other times they will be

absolutely shocking and terrifying. So I think you need to have deliberate and somewhat artificial audit-type mechanisms.

In terms of the environment, this is very interesting, because cultures are never completely static. It is always a danger to think about cultures as though they were homogeneous and unchanging. People say “In India, they value this, this and this,” as though every Indian values this and every Indian always has done. As a matter of fact, when making cultural generalizations, one is talking about what is or has tended to be more dominant; it is no more than that. Cultures are actually very flexible and variable. To give an example, I would suggest that the Christian world, until recently, has accorded virtually no role to the environment in its ethical outlook. It had an idea that God gave the world to human beings for our use, and therefore there is an ethic of dominion which did not really give any special role to other life forms. Nowadays, if you meet most Christian theologians, they talk instead of stewardship, and they will claim that environmentalism is fundamentally a Christian value, because God did not give dominion; he gave us stewardship and we need to look after the planet. One may be cynical and just say this shows how people will adjust their narrative to fit the times. More

positively, one may say that within the malleable Christian tradition there are resources for getting people to take the importance of the environment more seriously.

I think in most parts of the world those resources are there, because the sharp division between nature and humanity is more marked in the Western tradition than in most others. In Japan, for example, I do not think nature is considered to be apart from the human world. The traditional ways of thinking do not make those distinctions. That is why one can have things like robot helpers for the elderly, because a robot belongs to nature – everything belongs to nature. The fundamental theoretical basis for concern for the environment will be very different in different cultures. But every culture has the resources to try and see how there needs to be more emphasis placed on it. I think the short answer is to work with the grain of the dominant values of the culture, rather than try to imagine that we need to add a value of concern for nature which is not there.

**Question:** You focused on very positive motivational aspects of your model, and building that up for staff members as a way to develop a culture at our international organizations. Could you please comment on the pros and cons of

the deterrent model and whether it is advantageous?

**Baggini:** This is about carrots and sticks: how much you deter bad behavior, and how much you positively encourage good behavior. I think one always has to do both. The temptation is to emphasize the deterrents. But I think if the organization is genuinely committed to being ethical, the only way to give that deep roots is to create an ethical culture. It will be evident that deterrents alone cannot do that, because they do not encourage people to be good; they simply try to stop them from doing the worst things.

I tried to emphasize, particularly towards the end of my presentation, that one has to be aware of the practical situation and limitations of the organization. In theory, one could say that ethics really is not about rules at all, but about virtue and character. However, a large organization needs to have rules and regulations throughout. In the same kind of way, ideally, a deterrent is only something to be used to deter the worst kinds of behaviors. But again, in an organization which does such important work and where ethical failings and mistakes will have heavy consequences, including reputational ones, there is a need to have a fairly strong deterrence mechanism. People

need to know that they will pay a price if they step out of line. In a way, that makes it even more important to have a balance on the other side. In an organization where there is inevitably going to be a need for building walls, barriers, constraints and deterrents, if it does not then also promote the positive value of ethics, it will end up with a culture of compliance based on self-interest and nothing else. So deterrent, I think, is necessary, and makes the positive culture even more necessary.

**Question:** I have two questions. When you say that we need engagement to create a culture of ethics, how do you break down ethics into more accessible piecemeal terms, so that it becomes easier to mainstream, so that people become engaged and remain engaged?

The second question concerns the point you made about having a pool of very diverse people who have diverse principles, goals and values, and so as a result it is necessary to look at how they intersect in order to build an understanding. What happens when the composition of the pool is skewed, and the result of that intersection will be skewed? Say the pool has more men than women? Gender diversity is a form of diversity. So do you believe we need some form of positive

discrimination to make the basic pool more equitable, and how would that affect the end results?

**Baggini:** The first question about mainstreaming, as you put it, is very difficult. I cannot speak for the organizations represented in this room, but I think part of the problem in lots of organizations is that ethics ends up being seen as a sort of component, but not a core component. It is seen as something you have to be aware of, but it is not at the heart of things. I think part of the value of the ethical culture I would like to see is that mainstreaming becomes its essence. It is not that you have this code book you refer to when you encounter a dilemma; it is that your ethics should be part of the way you operate day to day. This is where exemplary leadership comes in. These things have to be modelled. I do not have a full answer to how exactly that would work, as it would depend upon the specificity of each case. One needs to think creatively about what might be good ways of mainstreaming in relation to your particular organization and how it works. I am not sure there are many off-the-peg answers, or if there are, I have not developed enough of them yet.

The second question is about the pool being skewed. There needs to be a diversity of opinions and



arriving at some kind of consensus, but there may be an imbalance in the group of people who are in charge of setting the ethical direction. As you say, gender is one issue, but also perhaps culture. In a truly international organization like this one, you have to fight against that very hard. If your organization does not work all over the world, perhaps it does not matter so much that it does not have much representation from those parts of the world you do not work in, and that might be reasonable.

The language here is sometimes contested, but I think of affirmative action rather than positive discrimination. I am a believer in affirmative action. No organization will be comprised of an entirely representative group. That would be an absurd goal. But efforts should be made to compensate for inadequacies. For example, if there is no one in the group from the Indian subcontinent, there should be an effort to bring in someone from outside at some point to help make sure that this is taken into account. These sorts of positive measures do need to be taken. One cannot rely upon the fact that one has good intentions to be inclusive. It is not easy.

**Question:** I have a few questions. First, you constantly repeat the term, “practical wisdom.” I think it

is a key concept, but I am not sure I fully understand what it means.

Second, it is about the reward system mentioned earlier. What is your view on the type of reward system? If one rewards the accomplishment of an individual within an organization, this person might pursue their individual interests and not the interests of the organization, I am sure you know about the view of Michael Sandel, the philosopher, when he mentioned the shift from a market economy to a market society, and the effect of crowding out cultures with economic values.

**Baggini:** First, what is practical reason and perhaps what is it not? The key difference of practical reason for Aristotle compared to some other forms of reasoning was to do with the necessity of judgment. Logical reasoning is not supposed to require any judgment. But practical reason involves elements of judgment. The *practical* term is significant because when dealing with questions of conduct one has to use judgment, but not when trying to work out a technical point. So that is really what practical reason is, and why judgment is so important.

On the reward system, I agree with you that it is a problematic word, and maybe “reward” was not the

best choice of words. Maybe also it is simply the case that people hear “reward” and assume some kind of market-based incentives system. But that is not the only kind of reward – not the kind I am talking about. I could say “reinforce” rather than “reward”: show that it is supported, show that it is appreciated, show that it is what is wanted. I agree with you that there would be a problem if one started to introduce personal, and particularly financial, rewards for behavior in the wrong way. It would undermine the whole purpose of ethics, and it also might incentivize people inappropriately. The point is to avoid personal, market and financial rewards, and think instead about reinforcement. There is a very interesting example of what we call whistleblowing, because on the one hand one wants to have a culture in which people can speak up about their concerns about any wrongdoing in an organization. That is extremely important. At the same time, what one does not want is to end up with a system which encourages people to make malicious complaints and grievances. That is the opposite of what one wants. One has to think very carefully about this.

**Question:** I am fascinated by your model, and I assume that to implement a better culture among employees of national organizations

related to WIPO this will work fine. I am the representative of an NGO at the Human Rights Council. One thing you promote is a forum where people can exchange ideas, and basically the whole Council is predominantly just that. If we look at how we actually work, the intention to find common ground seems rather small. Governments especially participate in it to defend their own positions. So what could be done to alter the culture of the Council so that more commonalities would be found?

**Baggini:** If I understood you correctly, you are saying that in the forum where you are working, rather than seeking common ground, people turn up to defend their own patch. I think that is difficult. One thing is to ask why that is happening. What assumptions are being made by people who attend which makes them think that their primary job is to defend their own ground? Perhaps it might be because people make an assumption, not even consciously, that their values are in competition, and therefore they have to stand up for their own values or they will have to swallow somebody else's. We need to provide models for people to think about ethics in which they can understand that is not what is going on. It is possible to find common ground in a way that does not require people simply to give up

what is of value and trade it off for something else. Once people get that, they might then be able to feel less defensive.

The reason I push my mixing desk metaphor is that it shows ethics need not be a non-zero-sum game. It is a visual way of representing the fact that it is not necessary to chuck out one system, but rather to come to some sort of compromise or adjustments with others.

We will defend our own views, but I encourage people to realize that if they understand each other correctly, then often it can result in their own values gaining more support, not less. But when we see values as being in competition, everyone is in that framework, and people will not be supportive of each other. To give you an example, Confucius' ethical principle of harmony is extremely important in Chinese culture. Harmony is not a value which is explicitly discussed in Western ethics, but we do value it and we can see what is good about it. That means we can come to a position where, by working on a common understanding, we can gain support for our values by enabling people to see that those values are perhaps latent in their own system too. I have to be something of an optimist in this situation because there is not really much alternative. I am not an

optimist in the sense that I never believe things are inevitably going to turn out for the best. In fact, quite the opposite. I am an optimist in the sense that I think that one always has to start off with the assumption that it might just be possible to have a happy outcome if one tries.

**Question:** I want first of all to thank WIPO for this great initiative. It builds upon a program that we have on leadership in the 21st century, and there is a lot of interest around this particular issue. But I wanted to refer to the first question, which, in my view, perhaps has not been answered precisely. The multiculturalism, the pluralism and diversity in international organizations is really their strength. As we are trying to improve things in international organizations, my feeling is that enforcement policies produce a flattening result. And it is a real risk that, while trying to improve things even through positive or affirmative actions, they are getting worse. The result is that nowadays in international organizations there is more lobbying than before. Why is this happening? This is a question we should pose. Is it because we have excellent principles that we are trying to affirm, but in reality people are not abiding by those principles? Is it because, as you just said, we do not reward examples in such a positive way that we change the

course of action? We are risking flattening the resources we have, rather than taking them to higher levels and creating real leadership. This is the real problem we have nowadays. People are not assuming their responsibilities, and the system being put in place is going in the wrong direction.

**Baggini:** I am not sure that I know enough about the details of the context to fully understand the danger you are talking about. You talked about a flattening and about the strength being pluralism and plurality. Those things seem to me to be true. One of the things I talked about very briefly – too briefly – was that one reason why we cannot come to sufficient agreement is because that agreement still allows for degrees of diversity. That, perhaps, is one aspect which needs to be thought through more. It is natural to think that the point of any kind of internationalist project is to create increasingly agreed standards, and more and more agreements. But creating more and more agreements is not always the optimal solution. For example, increasingly, people are recognizing that one of the problems with the European Union was that it had two different, incompatible objectives. One was ever-increasing union, and the other was a commitment to a principle of subsidiarity. It had a commitment to, on the one hand,

bringing Europe closer together, but also to ensuring that decisions are always made at the most local level possible. These things are compatible but they are rather tricky to balance.

I may be missing your question, and therefore answering a different question, and if so I apologize, but I think that it is important to have the need for a kind of pluralism. This is a practical question. One always has to determine what are those things where it is important and necessary to seek consensus and agreement, and those where allowing variation or difference is to be encouraged and to be seen as a good thing. Again, there is no abstract answer to that question, it depends on specific cases.

**Question:** I work in the Ethics Office at the UN refugee agency, UNHCR. I particularly like the comparison you make between ethical culture and character, which is quite revealing. I appreciate and understand the components of what makes character also makes ethical culture. However, I thought one thing was missing. One can build character and ethical culture with those components which remain, in my opinion, quite practical and quite technical. But where is the motivation? Maybe this is also in line with the rewards comment. I do not think we need rewards; I think

we need motivation, which is the flip side of reward. Is motivation built on emotional engagement, or is it built on a shared vision? I have found that what particularly moves people when provide code of conduct training, as we call it, is a short film in which people say why they are working in human resources. When people watch the film and listen to what values, behaviors, and good ethics mean, they are reminded of what their intrinsic feelings are when working for those values. I agree that character can be built with practical wisdom and with knowledge, but where does the emotion come in? Is there a space in your model where emotions are engaged?

**Baggini:** Virtue ethicists have tended to agree that good character can be built, but it took David Hume to point out that there has to be the motivation to want to be better in the first place. If that is lacking, all else is pointless. I think that most people here have the motivation. It is very interesting you say that what motivates people are those films, and I think the emotional element is very important.

I am a big supporter of David Hume's philosophy. He argued, along with others, that the fundamental basis of ethics is emotion. You cannot provide a logical argument that will tell you

why it is a good thing to avoid suffering and to promote human flourishing. The fundamental recognition that it is a good thing has to come from a kind of human sympathy, which perhaps today we might prefer to call empathy. A human being who is functioning properly, emotionally and psychologically, naturally reacts positively to the joy of others and with compassion to the suffering of others, and therefore wants to do good. So I think you are right. I did not mention the motivational aspect, which is an important one, so thank you for that. What I said probably sounded slightly more abstract than it should have. To engage people you need to engage at the emotional level, not because it is a cheap psychological trick to get people engaged, but because ethics is rooted in human sympathy.

## Ethics of Technology and Our Global Challenges: The Case for Responsible Innovation

Professor Jeroen van den Hoven

In recent decades, it has become abundantly clear that the problems of the world in the twenty-first century, as listed in the internationally endorsed United Nations Sustainable Developments Goals (SDGs) (United Nations, 2015a), concern vast “systems of systems,” comprising socio-technical systems, ecosystems and their interactions.

If we err in our design and management of these complex and elaborate systems (e.g., in agriculture and food production, drinking water, building, running smart cities, geo-engineering, financial systems, and fighting infectious diseases and pandemics), we run the risk of causing large-scale disasters and sustained tragedies of the commons. This would trigger major social and political instabilities, resulting in human suffering on a vast scale. The options to change the course of events for the better, once problems emerge, will be limited. We therefore need to anticipate and prepare as much as we can. If we can do reasonably well in dealing with the complexities of our times, we have a chance of improving the conditions for sustainable human flourishing.

Realizing that technology, applied science and innovation are part of the solution, the United Nations (UN) established a new mechanism, called the *Technology Facilitation Mechanism* (TFM) (United Nations, 2015b), in addition to the traditional modes of high-level policymaking. The TFM is a policy instrument for identifying, collating and reviewing smart technology and science-based solutions. In order to ensure that our efforts in engineering are directed at the right problems, and will not result in creating or exacerbating other problems, we need to proceed *responsibly*.

I shall argue that in order to proceed responsibly, we need a new way of looking at innovation and at the ethical aspects of our technological interventions. It is an approach that focuses on design, referred to as “design for values,” “ethics by design” or “value sensitive design.” I start with a brief discussion of the types of problems that we are up against.

## The United Nations Sustainable Development Goals (SDGs)

The SDGs form a broadly endorsed catalogue of the grand challenges that mankind must come to grips with in order to make it to the next century. Building on a set of existing UN resolutions, such as *The World We Want* (United Nations, 2015c), the UN General Assembly adopted a resolution in September 2015 titled *Transforming our World: The 2030 Agenda for Sustainable Development* (United Nations, 2015b), a plan of action comprising the SDGs. These form an intergovernmental set of 17 aspirational goals, broken down into 169 specific targets. They include, but are not limited to, ending poverty and hunger, improving health and education, making cities more sustainable, combating climate change, and protecting oceans and forests.

It does not make much sense to pursue these goals in isolation or to temporarily disregard any one of them (e.g., women's education or climate change) in order to focus on others (e.g., poverty reduction). Considerable work has gone into understanding the interactions and dependencies between these SDGs (ICSU, 2017).

Problems relating to these interlocked and overlapping goals require integral thinking and “global systems science” solutions (Helbing, 2013). In tandem with this, the data revolution must be mobilized to measure progress, identify knowledge gaps and expose inequities (IEAG, 2014). The comprehensive systems analysis and engineering that is required for this is vast. Among other things, it could comprise the study of ecosystems (e.g., rainforests, reefs, the atmosphere and the Arctic) and the study of large-scale socio-technical systems and infrastructure (e.g., maritime, air and land transport systems, energy systems, urban regions and industrial production). At its core, it will always require a deep understanding of the psychological, institutional, economic, and last but not least, moral dimensions of human behaviour.

It is interesting to note that the moral point of view on our predicament is predisposed to taking the much-needed integrative and holistic approach. The ethical point of view takes a special priority over other perspectives when it comes to decision-making, and it is *comprehensive* by definition. When deciding on non-trivial matters, someone who would say: “let's think about the ethics later and let's just focus on the money or the technology,” would be seen as making an awkward and inappropriate remark. This

observation is based on empirical evidence that the longer people wait to address the ethical aspects of a case in their deliberations, the more they are morally criticized by others (Tetlock *et al.*, 2000). It would be equally awkward for a person making a moral judgement to state that they prefer not to consider the financial or technological aspects without providing valid moral reasons to exclude them. The all-things-considered nature of the ethical viewpoint implies that no factor is omitted without strong justification. The ethical point of view has a special prominence in all our considerations. By definition it aims at taking all things into consideration that could be morally relevant, and thus prompts a comprehensive approach to problems.

In order to usefully contribute to finding solutions to the world's problems on the SDG list, the net thus needs to be cast wide, not only in terms of knowledge and scientific disciplines, but also in terms of the involvement of different parties, their perspectives and their values.

It is extremely unlikely that solutions to the world's problems can be found in one specialized branch of knowledge, in one discipline, or in dealing with one subset of issues. This also applies within ethics itself: there are no champions or master values, or privileged ethical points of view. There is no "ethical theory of everything" that crowds out all other perspectives. Thinking and deciding about solutions to these problems involves many interrelated *ethical* issues, a plurality of values and a variety of perspectives that we cannot come to grips with in isolation. Climate change, for example, requires us to look at a set of very hard scientific problems, but also at moral motivations, the logic of public goods dilemmas and tragedies of the commons, the moral limits of nudging and choice of modelling techniques, the limitations of solely financial incentives for stimulating responsible innovations in energy systems, the ways to deal with moral compromise that may facilitate political breakthroughs in climate negotiations, designing fiscal measures for industry, thinking about discount rates and future generations in economic models, criteria for fair distribution of risks, as well as new regulations and new governance models appropriate for grids that enable decentralized and distributed energy production.

In studying water and food problems, we have become acutely aware of the energy-food-water nexus, which could make us think about engineering solar-powered desalination plants, drip irrigation systems, data analysis, and machine learning applied to remote sensing images to pinpoint heat



stress in agricultural land. It also requires us to deliberate upon water diplomacy, and on distributive justice issues in transjurisdictional river basin management. Similarly, in thinking about new mobility and transport systems with autonomous components and self-driving vehicles, we may require new forms of insurance, liability, regulation, governance, road infrastructure, monitoring, certification, training and inspection.

Industry 4.0 opens a range of questions concerning technical unemployment, safety, security, privacy and responsibility. All these questions raise issues about the fair distribution of risks, benefits and harms, and about apportioning responsibilities in complex and dynamic high-tech environments. For example, fighting infectious diseases in the global South, and indeed everywhere around the world, requires much more than making the right vaccine available. It also requires honest information-sharing between countries, coordination of response and mitigation measures, adequate communication with local populations, high readiness levels of health-care systems and humanitarian organizations, and, more generally, resilience in social and financial systems, among many other things.

Some ethical issues, as Simon Caney suggests in relation to climate change, cannot be given adequate treatment when considered in isolation from other ethical issues (Caney, 2012). He says, “One important issue when considering the normative issues raised by climate change is whether it is best to treat these issues in ‘isolation’ from other normative issues (and thus to construct an account of climate justice that brackets out other issues such as poverty, development, trade, migration and so on (‘isolationism’); or whether it is best to treat the ethical issues raised by climate change in conjunction with a more general account of justice (‘integrationism’)” (Caney, 2012: 259). I suggest that this integrationism holds more generally for dealing with the SDGs. We should not be pursuing solutions in isolation, but rather address them *en bloc* and approach them in a comprehensive way by means of integrated ethical thinking.

Jeremy Waldron served on the Global Citizen Commission (GCC), chaired by Gordon Brown, along with Amartya Sen and Mohammed ElBaradei among notable others. In his comments on the work of the GCC, he says that “as the world becomes increasingly interconnected, the importance of [...] global-minded ethical considerations is becoming ever clearer” (Waldron, 2016). The philosopher Ronald Dworkin goes one step further

in taking integration seriously, when he observes in *A New Philosophy for International Law* that, at present, we lack “any international legislative body with sufficient jurisdiction to solve the grave coordination problems that every nation now confronts. We are already seized by devastating prisoners’ dilemmas: about terrorism, climate change, Internet communication, and economic policy” (Dworkin, 2013: 27. Dworkin argues that we need an entirely different form of international organization so that we can “attack those problems through *comprehensive* global legislation.”

We cannot afford to aim innovation in the twenty-first century at relatively trivial matters and for the profits of Big Tech. Innovation is not about self-parking slippers, bird dropping wipes and Amazon Dash buttons. Neither should it be directed at mere marginal increases of functionality of existing technologies, such as the smart phone 6, 7, 8, 9, 10. Innovations should be geared instead towards solving our urgent problems, globally, nationally and regionally. Too often it was assumed that, because an invention allowed us to do something we could not do before, it was “innovative,” and therefore also good and desirable. The last few centuries have seen a staggering amount of clever inventions, which, unfortunately, also included thumbscrews, electric chairs, atom bombs, DDT, asbestos and E-cigarettes. The times are long gone when mere new functionality and moving beyond prior art were enough to make innovations acceptable. The first question to ask now about a new technology or an innovation is: “Yes, it is innovative, but is it good?”

### **The idea of responsible innovation**

Europe has always made responsibility and ethics central to its research and development (R&D) strategy and innovation policies. The 2009 Lund Declaration and its 2015 restatement stated that applied science should be geared towards our grand challenges (Lund Declaration, 2009 and 2015). And the Rome Declaration on Responsible Research and Innovation (2014) stated that responsible research and innovation should be a central objective across all relevant policies and activities. Likewise, the European Commission gave Responsible Research and Innovation (RRI) an important place in its Research Framework Program Horizon 2020.

What could RRI mean in practice, and how is it related to the ethics of technology? The literature on RRI has grown tremendously and is rapidly expanding (Von Schomberg, 2019). I cannot do justice to all of this here.

However, with the following examples I hope to make clear what I take to be the core feature of responsible innovation and the true moral potential of innovation. I will start with a number of cases which exemplify this core feature.

In 2019, the Dutch city of Utrecht introduced 300 new sustainable bus stops with plant and grass covered rooftops. This has generated considerable international interest. They not only support biodiversity by attracting bees and other insects, but also capture fine dust particles, store rainwater and reduce heat stress in the city in summer. Their transparent design helps to reduce crime and increase citizens' sense of security. They are made of eco-friendly material and use LED lights. In short, what strikes us as so smart is that a number of social and morally desirable properties are all realized here in one coherent design. A number of serious problems are, if not solved, at least effectively addressed in one fell swoop. A number of societal requirements are embedded and expressed in the invention.

Another interesting example is the Dutch Fairphone, which is made from materials that are imported from places that compensate their workers fairly, has a modular design, replaceable batteries and dual SIM cards. The device and its production incorporate a number of moral values such as sustainability, fairness and security. That also strikes us as smart and very responsible.

At Delft University of Technology, an idea was launched for a foldable sea container. Approximately 40 percent of the containers go empty around the world, and container ships are among the biggest polluters in the world of international transport. Four empty foldable containers could be stored in place of one traditional one, and they do not necessitate any changes to the dimensions of existing infrastructure such as quays, robot cranes and ships. They have the potential to reduce the number of ship movements and promote sustainability.

In the south-west region of the Netherlands, experiments are being conducted with storm surge barriers to keep the water out of the Low Countries. In addition to flood defence functionality, their design allows management of the ecosystem and directing the flow of oxygen-rich water into the closed-off estuaries to benefit the local flora and fauna. Furthermore, it enables the generation of tidal energy or blue energy. So, three desirable properties and functionalities are realized in one infrastructure design.

Similarly, along the North Sea coast, where the sandy beaches experience a continuous process of erosion, it is necessary to protect the country against the sea by means of frequent sand deposits. This requires deployment of heavy equipment for long periods of time which necessarily disturbs the local ecosystems. To overcome this problem, a Sand Motor has been designed to create an artificial peninsula that makes the water flow in a manner whereby sand is deposited along the shore downstream in a natural way. At the same time, the island offers space to kite surfers, birds and seals. A bit further up north, garages for the cars of tourists who visit the beach have been constructed under the dunes, which serve as bulwarks against floods. In this way, the cars are hidden from sight and the construction is used to defend against the sea. And in the northernmost part of the Netherlands a redesign of a 30-km long dike, which forms a barrier between the North Sea and a central lake, is stacked with renewable energy solutions; it is “built with and for nature” so as to accommodate migrating fish and birds.

The following is an example of a responsible innovation from the health domain. Research is being conducted on 3D-printed nano-pore material for prosthetic hip bones and other bone replacements. In order to reduce the number of complications and mortality rates after surgery, researchers are pursuing combinations of at least three types of property of the material. Ideally, it should stimulate the growth of blood vessels (angiogenesis) at the site of the surgical intervention, enhance bone tissue regeneration (osteogenesis) and kill bacteria *in situ* (bactericide). The researchers are truly morally motivated to optimize this design, because it measurably reduces post-operation problems for patients and saves lives. Many more examples could be provided of this pattern of moral multitasking, supported by an innovation.

What do these examples have in common? In all of these cases, applied scientists, engineers and designers are pushing the moral envelope, because they want to design for *all of the moral values* at play (be it sustainability, health, safety, privacy or others), and they are committed to realizing the largest possible number of them through engineering design. They are not interested in trade-offs and second bests; they are trying to expand the set of obligations they can satisfy. A key feature of responsible innovation, I suggest, is therefore the design of new functionality that allows us to expand the set of obligations that we can satisfy.

Ethical thinking traditionally is *deliberative* in the sense that it aims at justification – weighing reasons for different courses of action – and analysis of given options and consequences.

In the cases presented above, the ethical thinking underlying the innovations is also *ampliative* in the sense that it aims at creating new options that make a tragic choice between given desirable options unnecessary. It is not about sustainability *or* safety; it is about sustainability *and* safety. Instructive in this context is the reaction of many engineers to conflicting obligations in so-called “trolley cases.” When presented with classical trolley dilemmas of a runaway trolley that is about to hit five persons on the track unless diverted with a switch to a track where there is only one person, engineers tend to react with the remark: this is a bad design! The poor person at the switch has to choose, and the architecture of the track does not allow them to honour all their obligations. And the engineers are not joking. To philosophers, such a response is ridiculous, and is a sign of a deep misunderstanding of what thought experiments are all about. But the engineers’ response is most useful, and exemplifies a responsible way of thinking about real-world train accidents. It contains, I suggest, important lessons for ethics in a world of technology and innovation.

There are two main ideas that we need to come to grips with. There is the idea that we can, and must, design for our moral values if we are seriously committed to them. Then there is the idea that we can (and we have an obligation to try to) overcome conflicts of moral values through innovative design.

## **Design for values**

In 1980, the philosopher of technology, Langdon Winner, wrote an article titled *Do Artefacts have Politics?* Winner described the work of the architect and town planner, Robert Mozes, who oversaw big urban planning projects for the city of New York in the 1920s. He was also responsible for the design of overpasses near Brooklyn. A later study of Mozes’ life and work suggested that he had made these overpasses intentionally low in order to prevent buses from the poor black neighbourhoods from accessing white middle-class beaches near New York. In the literature, they are often referred to as “low hanging overpasses.” Winner concluded that a racist value or a racist idea had been expressed in a piece of civil engineering (Winner, 1980).

Once an insidious idea has been successfully lodged in steel and concrete, it starts to have its effects on bus companies and citizens, and limits the freedom of people. This pattern can be found everywhere in design. Designers tend to express their ideas, world views and values, whatever they may be, in whatever they craft, be it search engines, social network sites, algorithms or entire smart cities. They can do so intentionally or inadvertently. Either way, the effects are real. Thousands, even hundreds of thousands, of decisions are made in complex software, at every level. What we are confronted with in the technology is a consolidated set of choices made by others at an early stage, which shapes what we can do and what we cannot do now. If our world of artefacts, devices, systems and infrastructure is not carefully designed and crafted systematically, intentionally and transparently on the basis of our shared values, it will be made haphazardly and non-transparently to serve the interests of a small group, and not the interests of society. They may affect us in what we think, and in the end, who we are. As Churchill aptly remarked: First we shape our houses and then our houses shape us.

This idea of the *value-ladenness* of technology design has serious consequences for how we should do ethics in the twenty-first century, since pretty much everything around us is designed, from trivial gadgets to crucial software and data architecture. There is a world of ethics, values, principles, norms, duties, obligations, virtues, rights, standards, ideals and laws, and there is a world of engineering, technology and innovation taking shape all around us. If we do not want racist ideas to end up in what we design and make, be it algorithms, data sets or overpasses, we will have to pay close attention to design for values. Our shared values should be expressed and exemplified in a proper manner in what we design and make.

We should also be able to explain and justify what we have designed and why. This is what we may call the ideal of *value-sensitive design* or *design for values*. We *can* and *ought* to design for equity, justice, privacy and dignity if we care about them. Samuel Scheffler, in his book *Equality and Tradition*, has said that our values are “deliberation consequential” (Scheffler, 2010: 28). This means that someone who professes to have certain values would also be expected to invoke them when they are relevant in deliberations about what to do. We could similarly say that our moral values are also “design consequential.” If we are seriously committed to them, we will seek to realize them in our material and technological world, where they will shape our choices, practices, lives and identities. It could

even be said that if we would not be interested or motivated to pursue such an implementation of values, that could be viewed as an indication that our commitment to those values was less than serious.

Suppose a person for whom privacy is important, is responsible, in some role or capacity, for work flows in a hospital, then it is reasonable to expect that they are willing to think about what privacy would concretely mean in terms of the design of the hospital's information system where patient data are stored and processed. If that person is unwilling or unable to specify and spell out which requirements are implied by their general idea of privacy and its importance, their commitment to privacy will seem somewhat gratuitous. Taking privacy seriously in a real world of high-tech implies making efforts to *design for privacy*.

Talk of moral values is just the beginning. In designing for our values, we need to see them as *requirements* that artefacts need to satisfy. Values such as privacy should therefore be construed as abstract requirements that are amenable to a process of specification or “functional decomposition” until a level of specificity is reached where they point, in a straightforward way, to detailed features of the technology. The abstract value of privacy is usually construed, for example in the digital domain, as implying data protection. Personal data are protected for ensuring privacy. Data protection, in turn, could be construed as implying, among other things, risk mitigation and accountability in the use of data. Risk mitigation arguably implies more specifically “anonymization” or “pseudonymization,” “data clustering” and “coarse graining” of data.

Coarse graining and clustering can be specified in terms of what data scientists call “K-anonymity” – a mathematical technique of blurring the data while salvaging its usefulness at the same time. In this way, using plausible reasoning, from abstract values to concrete specifications, a value hierarchy can be established (See Aizenberg and Van den Hoven, 2020; Ibo van de Poel, cited in Van den Hoven *et al.*, 2017: 68–70). Such a hierarchy would consist of high-level values (privacy), mid-level norms (e.g., pseudonymization) and low-level specifications (K-anonymity) which provide clarity about what we mean by privacy in a specific context. At the same time, they provide traction and structure to an ethical debate about new technology. They also provide a systematic and structured way of shuttling back and forth between the world of abstract ethical considerations and the world of technology which allows us to learn, agree and improve.

By specifying or decomposing one's values in this way, it is possible to design against crime, flooding, light pollution and obesogenic environments, and for safety and privacy.

### **The problem of moral overload and innovation**

If we were to do ethics in “design mode” we could get stuck with a long list of values for which to design, many of which would often be in conflict with each other. As a result, we could get “morally overloaded.” Privacy is important, but so is security. Accountability is important, but so is sustainability. We cannot shop around picking and choosing within our set of moral values. We cannot aim at taking care of security and safety today and sustainability tomorrow, while putting equality or human dignity on the back burner for later. They all have to be tended to at the same time.

A national electronic patient record system should not be selected only on the basis that it will increase patient safety and reduce the costs of health care; it also needs to respect patient privacy. An attempt to arrive at a national infrastructure a decade ago in the Netherlands was rejected by the Upper House on the grounds that it was inadequately designed to safeguard privacy. If privacy had been taken more seriously as an essential requirement in the first stages of design and development, the problems could probably have been prevented. Those in charge of technological development often focus on a subset of functional requirements, and fail to see that moral and societal requirements are of equal, if not greater, importance.

Similar failures occurred in the introduction of smart meters in attempts to make our electricity grid more sustainable. Smart meters are necessary for efficient management of the grid, for load balancing and peak shaving. Therefore, every household needs to be transformed into a smart node in the electricity network. Here again, the Upper House in the Netherlands rejected it because of privacy concerns. It was found that signals about electricity consumption in the household would be sent to a central database, which would be capable of data analysis that could generate sensitive personal information. The whole project was abandoned, even though it was required to improve the sustainability of the electricity grid. It seems that very sensible innovations, one that offered hope to increase patient safety and the other to improve sustainability in energy



consumption, were both rejected because they did not respect privacy. Privacy was insufficiently integrated upfront in the requirements for the design of the system.

The same pattern is found in the recurrent debates about security cameras in public places. There is a desire for security in the streets and for a reduction of crime, but also for privacy for law-abiding citizens. A solution that allows both would be ideal: a smart camera system that will help spot pickpockets, but at the same time will not target innocent citizens as suspects. In a different context, the philosopher and logician, Ruth Barcan Marcus, formulated the principle according to which we have an obligation to try to arrive at a solution that will give us both. It states that if you have an obligation to do A and an obligation to do B, you have a second-order obligation *to see to it* that you can do both A and B. So, if we have an obligation to honour privacy and an obligation to honour sustainability and security, we have a second-order obligation *to see to it* that we can honour all three.

In the beginning I provided many examples of innovations that are smart *precisely because* they have managed to come up with clever ideas and novel functionalities that accommodate more values than were possible before. These were identified as one of the hallmarks of *responsible* innovation: the amplification of the set of obligations that can be satisfied. If one can change the world by innovation today, so as to satisfy more of one's obligations tomorrow, one has an obligation to innovate today. This turns innovation into a moral concept and a gateway to moral progress.

This does not imply that all problems can be solved through innovation, let alone by means of pure technological innovation. That illusion is sometimes referred to as “solutionism” and as a preoccupation with “technical fixes.” For a more modest interpretation of what can and ought to be achieved, the qualification “second-order obligation” in Marcus’ formulation of the principle is important. The second-order obligation is weaker than the first-order obligation. To the first-order obligation the so-called “ought implies can” principle applies, which stipulates that one cannot say that X ought to do A if it is not possible for X to do A. One cannot be said to be morally obliged to run up a flight of stairs with two badly broken legs. According to the weaker “ought” introduced by Marcus’ principle, it is possible to say that one is under an obligation at a certain moment to see to it that both of one's obligations can be discharged, even if it should turn out that one could

not possibly have seen to it. If the stakes are high, one has an obligation proportionate to the stakes to explore whether it can be brought about. It seems, therefore, that we have an obligation to see whether it is possible to come up with an innovation that allows us to do better than would have been possible without it. We are not to blame, however, if no silver bullets can be found where there are none.

The moral choices that we face in a world of SDG-related problems often take the shape of dilemmas, value tensions and moral disagreements between parties. It is fair to say that the dilemmas, conflicts and disagreements are frequently design-dependent, and that the so-called “choice architecture” that presents itself to the agent is a function of the design history of specific artefacts or systems, and of the many decisions that have been made in the past. Had different design choices been made in the past, certain dilemmas would not have occurred. This underscores the importance of trying to prevent situations and dilemmas from occurring in the first place, and when they do occur, to think about ways the situation can be (re-)designed to obviate the need for tragic choices and enable the creation of innovative options that allow us to honour more of our values and obligations.

### **What responsible innovation is not**

It is possible also to cheat oneself out of the problem of moral overload. Suppose you want a high-performance diesel car engine, but also an engine that complies with standards of the Environmental Protection Agency. Many car producers found a way to do this, as became clear in the Volkswagen “dieselgate” scandal and its aftermath. It turned out that engines had been intentionally designed to register that they were being tested and their emissions lowered in order to pass the test. In this way the problem of moral overload was solved, not by design but by deception. The car was advertised as embodying optimum performance, efficiency and the required sustainability standards, except that it was not. Moral overload, in this case, led to deceit instead of innovation.

Another way in which the innovation potential of moral overload may not achieve beneficial results may be illustrated by the following claims. Google’s CEO Sundar Pichai remarked that AI requires smart regulation, which balances innovation with protection of citizens (Bradshaw, 2019). This

construes innovation as something that is valuable in and of itself, but, as noted earlier, innovations are not good in and of themselves. Furthermore, it puts innovation in contrast to the protection of the values, rights, interests and needs of citizens. This suggests exactly what responsible innovation is not. The same opposition was invoked by the Information Commissioner of the United Kingdom, Elizabeth Denham, when she said that it is not a matter of privacy *or* innovation but “privacy *and* innovation” (Denham, 2018). This opposition between moral values and innovation is not what is at stake. Value conflicts can prompt and drive innovation. There will always be problems that are not amenable to the responsible innovation approach, as described previously, but we cannot afford not to do our utmost to make them so.

### **We must try harder**

When Apollo 13 was about to return to earth, its four astronauts encountered a major problem (Brandt and Eagleman, 2017). They began to run out of oxygen because of a malfunctioning filter. It was pretty clear that they would die within four hours if this was not fixed. The head of NASA mission control, Eugene Kranz, called all his engineers for an emergency briefing. After the explanation he said to them, “When you leave this room you must leave believing that this crew is coming home, don’t give a damn about the odds, you must believe this crew is coming home.” They managed to find a surprisingly low-tech solution in time, using duct tape, a plastic bag and underwear. The words of Kranz had created a moral necessity that triggered the required creativity and opened up innovative ideas of how to solve this problem.

The cases of responsible innovation mentioned earlier and the “unphilosophical” refusal of the engineers to accept the “bad design” of the runaway trolley rail infrastructure can also be seen as emanating from moral pressure, albeit in a less dramatic fashion than the Apollo 13 case. All these cases, though, have this feature in common: there are many values at play, and the world does not seem to allow all of them to be accommodated. However, instead of resignation and despondence, the protagonists respond with commitment. Those who came up with clever solutions were just not willing to accept defeat, and managed to accommodate more of their obligations. Invention and innovation may occur precisely when and where we refuse to make things easy for ourselves, or be content with

given choice architectures and with what seems inevitable or just too much effort to change. “Necessity is the mother of all invention” gets a different interpretation in this context.

Genrich Altshuller studied thousands of patents, and formulated 40 principles and patterns of innovation and invention that he found exemplified good design (Altshuller, 2002). One of the main conclusions from his work is that innovative solutions and inventions typically *overcome a dilemma or a trade-off between contradicting elements*. If you want something to be short and long at the same time – a yardstick for example – you could think of foldable rulers and tape measures instead of carrying around a two-meter long rod. If you want something to be hot and cold at the same time, a cup of coffee for example, slide a carton sleeve over it with a bumpy surface. If you want to go out for a healthy walk, and want to stay dry when it rains, it seems you have to choose, unless you think of an umbrella. These cases do not present moral dilemmas, but the same pattern of solutions applies to moral cases. The neurobiologist Pierre Changeux said about his work in ethics committees, “I came to appreciate the essential role that innovation plays in questions of applied ethics, for it very frequently yields new solutions to apparently insoluble moral dilemmas” (Changeux and Ricoeur, 2002: 240).

Wolfgang Streeck, a labour economist has also drawn attention to the fact that, contrary to what is often thought, multiple constraints can be beneficial to growth, development and improvement. He speaks therefore of “beneficial constraints” (Streeck *et al.*, 1993). Moral values are often seen as constraints that block progress, slow us down and hold us back, but the opposite may be the case, according to Streeck. The more demanding the requirements and the higher the stakes, the higher are the levels of ingenuity, creativity and innovation that agents tend to manifest. Multiple moral requirements may thus be gateways to higher productivity. Acar *et al.* (2019) also confirm, on the basis of a meta-analysis of innovation studies, that constraints can be good for innovation.

In the second half of the twentieth century, Germany was confronted with the problem of moral overload at a societal level. There was a tension running through society between a vocal Green Party demanding environmental protection and a prominent desire among the German population to produce prosperity for all. I think it is fair to say that Germany innovated itself out of this value tension, and it has since then become

a market leader in sustainable renewable energy and clean technology. If the country had relaxed either one of these values – prosperity for all or environmental protection – it would have robbed itself of a source of innovation.

Sweden is famous for its very stringent safety laws and traffic regulations. This has given rise to the design and production of its iconic safe cars. At first, Volvo cars were a bit like tanks: very safe for their drivers, but not so safe for those around. Then Volvo started to innovate, looking at the possibility of using sensors to scan the environment and at automated breaking, because they were equally committed to saving the lives of pedestrians and bicyclists. Their commitment to safety pushed them even further than that. They realized that the crash dummies they used in their safety research and R&D were modelled after soldiers – big sturdy men. They started to look at more vulnerable drivers, such as pregnant women, and designed special safety belts for them. Such innovations would not have been contemplated if safety was not such a major concern. This is another example of a value which is “design consequential” and productive.

The same level of compelling commitments is created by thinking in terms of “zero goals,” which signal an unwillingness to compromise, or to weaken moral and social commitments, or be satisfied with second best or trade-offs. Commitments such as zero carbon dioxide emissions or zero children dying in bicycle accidents in our cities are ways to create this moral necessity, as also encountered in the Apollo 13 case.

In conclusion, I have sketched two central ideas that may offer some help when thinking about solutions to the problems of the twenty-first century. One is that we can design for our moral values if we are seriously committed to them, and the second is that value conflicts can sometimes be overcome if we try hard enough to incorporate them into design. Both ideas lay the foundation for a conception of responsible innovation that is a gateway to moral progress.

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