CODES OF CONDUCT
AND
WHISTLEBLOWER PROTECTION

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Codes of Conduct: history

- XIX: Codes within professions (medicine, law)
- Hippocratic Oath
- 1948 Physician’s Oath: World Medical Association
- Nuremberg Code (post WWII)
- Helsinki Declaration 1964
- IRBs in various countries
...[U]nless some principles of conduct are established for the men and women who manipulate the materials of nature, anarchy will develop, and with anarchy, disaster.”

- New Scientist, editorial “Wanted – Code of Conduct” (1968)
BW-related Codes, pre-2000

ASM 1985: ‘discourage any use of microbiology contrary to the welfare of humankind’

CRG 1989: pledge for scientists not to participate knowingly ‘in research and teaching that will further the development of chemical and biological agents’.

Student Pugwash 1990: promote ethical reflection. It included the promise that individuals ‘will consider the ethical implications’ of their work.

Pugwash: Joseph Rotblat furthered a call for a type of Hippocratic Oath for scientists.
Codes, pre-2000

International Network of Engineers and Scientists for Global Responsibility (INES)

BMA 1999: Professional scientists and physicians have an ethical responsibility to reinforce the central norm that biological and genetic weapons are unacceptable.

Scientists' and Engineers' Pledge to Renounce Weapons of Mass Destruction. (Los Alamos Study Group, the Natural Resources Defense Council, Tri-Valley CAREs, and Western States Legal Foundation)
In November 2001, partially in response to the US rejection of the Verification Protocol and following an earlier Fact Sheet by the Bureau of Arms Control, President Bush made a number of proposals to strengthen the BTWC, including that State Parties consider how to ‘Devise a solid framework for bioscientists in the form of a code of ethical conduct that would have universal recognition.’ That same month Pax Christi called for biotech industries to adopt a code in respect of BW concerns. During 24–25 November 2001, the 16th Workshop of the Pugwash Study Group on the Implementation of the Chemical and Biological Weapons Conventions debated the merits of codes among other topics.
Codes, 2002

- Chemical and Biological Arms Control Institute (CBACI) and the International Institute for Strategic Studies (IISS):
  “The Future of the Life Sciences: Reaping the Rewards and Managing the Risks”

- UK Foreign Office: Green Paper about the BTWC concurred with the US call

- ASM: further publication and discussion

- World Medical Association called for bioresearchers to ‘consider the implications and possible applications of their work and to weigh carefully in the balance the pursuit of scientific knowledge with their ethical responsibilities to society.’

- British Royal Society: universal set of standards for research that can be incorporated into internationally-supported treaties; another is a concerted effort to increase awareness of international treaties
“The responsibility to prevent hostile uses of biotechnology lies with each State.

But it extends beyond governments to all persons, especially to military, scientific and medical professionals and those in the biotechnology and pharmaceutical industries”.

ICRC: Biotechnology, weapons and humanity: an informal meeting of government and independent experts, Montreux, Switzerland, 23-24 September 2002.)
2002, continued

UN General Assembly and Security Council endorsed recommendation that codes of conduct be established across those areas of research relevant to weapons of mass destruction.

Joint Code of Conduct statement for Biodefense Programs and the Council for Responsible Genetics ‘Call for a Ban on the Genetic Alteration of Pathogens for Destructive Purposes’.

Tibor Toth/BWTC series of “Meetings of Experts” In 2005, the topic for the meeting will be ‘The content, promulgation, and adoption of codes of conduct for scientists’.

The 18th Workshop of the Pugwash Study Group on the Implementation of the Chemical and Biological Weapons Conventions
Policy Working Group on the United Nations and Terrorism, a UN Inter-Agency Consultative Meeting

British Society for General Microbiology issued a Policy on Scientific Publication, Security and Censorship.

Wellcome Trust stated a code could play an important role the self-governance of the international scientific community by making it ‘aware of potential risks and concerns relating to terrorist misuse of research, and of the regulatory and ethical responsibilities that they hold.’

The UK House of Commons Science and Technology Committee urged British learned societies and funding councils to ‘consider introducing an overt ethical code of conduct’ linked to professional membership analogous to the Hippocratic Oath.
Codes, 2003

Statement on Health Security, members of the Asia-Pacific Economic Cooperation agreed to 'establish an effective code of domestic ethical and operational conduct for bio-scientists or promote such codes where they already exist'.

the UNESCO's World Commission on the Ethics of Scientific Knowledge and Technology (COMEST)

National Research Council report Biotechnology Research in an Age of Terrorism
US National Science Advisory Board for Biosecurity (NSABB) include developing 'Professional codes of conduct for scientists and laboratory workers that can be adopted by professional organizations

International Physicians for the Prevention of Nuclear War lent its support to establishing 'a code of ethics ... guided by the Precautionary Principle.'

The United Nations Security Council adopted Resolution 1540 in April that called for states to develop 'appropriate ways to work with and inform industry and the public regarding their obligations under' international WMD-related laws.
Interacademy Panel (IP)

- awareness
- safety and security
- education and information
- accountability
- oversight
2004

Royal Society “Do no harm”

Tucker (Monterey Institute of International Studies): all researchers funded in the biodefense program be required to sign a code of ‘required to sign a code of conduct, similar to the Hippocratic oath, that precludes them from deliberately developing agents with enhanced pathogenicity or other harmful properties and requires them to report any deviations from this norm’.

ICRC, Pax and Sunshine Project
New Defence Agenda's Bioterrorism Reporting Group encouraged 'ethical codes of conduct for scientists working in sensitive bio-technologies sectors'.

Atlas and Somerville’s paper in Science

"International Forum on Biosecurity", a member of the International Council for Science called for the implementation of existing and new codes of practice.
Codes, 2005

In April, the International Institute for Strategic Studies (IISS) and the Chemical and Biological Arms Control Institute launched the charter-based International Council for the Life Sciences.

In May, the UK Council for Science and Technology launched a consultation on its Rigour, Respect, and Responsibility: A Universal Code of Conduct for Scientists, which though not specifically covering biological weapons may play an important role for British government scientists.

June 2005 BTWC Meeting of Experts
Codes, 2005

International Union of Microbiological Societies

June 30-July 1, the US National Science Advisory Board for Biosecurity

September 2005 the UK Biotechnology and Biological Sciences Research Council, the UK Medical Research Council and the Wellcome Trust published a joint policy statement on managing risks of misuse associated with grant funding activities

University of Virginia Tech Biosecurity Summit held in May.

November issue of Nature, a leading scientist in the field of synthetic biology called for a code of ethics for bioengineering

IAP-BWTC meeting of experts
# A Codes Typology

<table>
<thead>
<tr>
<th>Type</th>
<th>Name</th>
<th>Main Aims</th>
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<tbody>
<tr>
<td>Aspirational codes</td>
<td>‘Code of ethics’</td>
<td>Alert; Set realistic or idealistic standards</td>
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<tr>
<td>Educational/Advisory codes</td>
<td>‘Code of conduct’</td>
<td>Provide guidelines, raise awareness &amp; debate; foster moral agents</td>
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<tr>
<td>Enforceable codes</td>
<td>‘Code of practice’</td>
<td>Prescribing or proscribing certain acts</td>
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Rappert: Strengthening the BWC, series II, No 13: Towards a life sciences code: countering the threat from biological weapons.
From the US document submitted at the June 2005 Meeting of Experts
DoD’s Code

A DoD Code of Conduct?

- DoD is committed to the legal, ethical, and appropriate operation of its biological defense research and development activities
- DoD believes that it has important elements of a code already in place through regulations
- DoD will continue to examine ways to improve its biosafety and biosecurity programs – possibly with improvement to training modules related to ethical practices in biological research and development
- DoD takes its commitment to the BWC seriously and constantly examines its programs and activities to ensure optimal compliance

Seattle workshop, May 17–18, 2005

DHS’s Codes

Codes of Conduct

DHS takes its BWC obligations seriously and will ensure that its programs fully comply with the BWC and related statutes.
- Programs are vetted in a rigorous Department-level compliance review and are consistent with U.S. laws and policies pertaining to biological research. U.S. laws, regulations, guidelines, and DHS agency procedures contain ethical guidelines for our day-to-day activities.
- DHS is developing a training module for researchers that focuses on ethical imperatives.

DHS continually examines ways to improve its biological research, safety, and security training, and welcomes the opportunity to participate in discussions on codes of conduct.

Article VI.1 of the BWTC

Any State Party to this Convention which finds that any other State Party is acting in breach of obligations deriving from the provisions of the Convention may lodge a complaint with the Security Council of the United Nations. Such a complaint should include all possible evidence confirming its validity, as well as a request for its consideration by the Security Council.
Press: summary of Dec 2005 BWTC meeting

The text approved at the annual treaty meeting in Geneva was a scaled-back version of a proposal that would have encouraged governments to participate in developing, adopting and promulgating codes of conduct. The final version instead promotes codes “voluntarily adopted” by scientists in fields relevant to the treaty.

“While the primary responsibility for implementing the convention rests with states parties,” the report says, voluntary codes of conduct “can support the object and purpose of the convention by making a significant and effective contribution, in conjunction with other measures.”

Monday, December 12, 2005: BWC States Encourage Voluntary Codes of Conduct (David Ruppe, Global Security Newswire)
Whistleblowing and disclosure: protection of the concerned citizen-scientist
Whistleblower: “a person who tells someone in authority about something illegal that is happening, especially in a government department or a company.”

Cambridge International Dictionary of English

Whistleblower: An employee who refuses to engage in and/or reports illegal or wrongful activities of his employer or fellow employees.

Black’s Law Dictionary
National whistleblower protection legislation

UK:
The Public Interest Disclosure Act of 1998

Australia:
1996: five acts in different states, inconsistent approaches

US:
The False Claims Act (qui tam)
Sarbanes Oxley Act

Nigeria: Independent and Corrupt Practices Commission

Hong Kong: Political and Economic Risk Consultancy
Qui tam: a provision of the False Claims act

"qui tam pro domino rege quam pro sic ipso in hoc parte sequitur" meaning "who as well for the king as for himself sues in this matter."

Black's Law Dictionary defines a qui tam action as "an action brought by an informer, under a statute which establishes a penalty for the commission or omission of a certain act, and provides that the same shall be recoverable in a civil action, part of the penalty to go to any person who will bring such action and the remainder to the state or some other institution."
Transparency International

TI is an international coalition concerned with combating corruption as part of the larger struggle against misconduct and misappropriation.

In a report published in March 2005,

• whistleblower protection needs substantial improvement: Argentina, Australia, Canada, Czech Republic, Denmark, Germany, Italy, Mexico, the Netherlands, Norway, Poland, Spain, Sweden and Switzerland.

• whistleblower protection may need to be strengthened: Belgium, Finland, France, Greece, Japan, Korea, New Zealand, Slovak Republic and the UK.
The National Whistleblower Center (Center) is a nonprofit, tax exempt, educational and advocacy organization dedicated to helping whistleblowers. Since 1988, the Center has used whistleblowers’ disclosures to improve environmental protection, nuclear safety, and government and corporate accountability.
Other Protection Agencies

- EU Ombudsman
- International Agency Corruption conference
- Office of Research Integrity
- False Claims Act Resource Center
- Public Concern at Work (UK Public Interest Disclosure Act)
- Mainstreaming ethics in the African Public Service (Addis Ababa, UNECA, 2005)
Public Perception-1994

“Ninety per cent of respondents supported the concept of legal protection for making disclosures and 75% stated that they would not make a disclosure without it. However, 71% did not know or did not believe that their employers had the capacity to provide protection. 70% did not know or did not believe that their employers were serious about providing protection. In total 85% were unsure about either the willingness or desire of their employers to protect them. Meanwhile 25% did not believe that the Act had the power to provide protection, while 50% would refuse to make a disclosure for fear of reprisal.”

Study on PDA 1994 (NSW) “Why people don’t report corruption: Barriers to the success of the NSW Protected Disclosures Act”: Lisa Zipparo, 12th Annual Conference for the Australian and New Zealand Society of Criminology, 8th-11th July 1997, Griffith University, Queensland.
“Boards are recognizing the importance of establishing policies and procedures to facilitate whistle-blowers stepping forward without fear of repercussion. Indeed, the treatment of whistleblowers, both statutory and otherwise, is receiving attention globally. Many jurisdictions are creating a direct reporting line between whistleblowers and the audit committee of the board. A recent study by KPMG found external auditors find [only] 3-5% of public company frauds. In fact, they maintain that frauds are far more likely to be exposed by whistleblowers and ‘angry spouses’.”

Canada: United Nations Economic Commission for Europe; Corporate Governance Roundtable; February 9, 2005; Geneva
Susan Wolburgh Jenah, Vice-Chair, Ontario Securities Commission
ICRC:
“Voicing concern”
Those working in life sciences who voice concern and take responsible action require and deserve political and professional support and protection.

Action points:
• Encourage people who work in the life sciences to voice concern about issues relating to poisoning and the deliberate spread of infectious disease.
• Ensure that adequate mechanisms exist for voicing such concerns without fear of retribution.
United Nations anti-corruption programs
(in transition)

UN Office of Internal Oversight Services

UN Office of Resources Management

UN Ethics Office (2005)
(yet to be established; mandated at World Summit)
First, what are the possible events or situations that might lead a responsible individual to make the decision to report an activity?

1. lack of biosafety compliance
2. lack of security compliance
3. experimental procedures that lead or might lead to the generation of dangerous strains or toxins ("the seven experiments of concern")
   - How to make vaccine ineffective
   - Alter host range of pathogen
   - Enhance virulence of pathogen
   - Confer resistance to useful antibiotics & antivirals
4. use of science in ways that might contravene BWTC
Reporting pathways

Institution

Laboratory

Govt

BWTC ombudsman committee
EU Ombudsman: Nikiforos Diamandouros elected April 2003
The European Ombudsman

COMPLAINT ABOUT MALADMINISTRATION
[Please continue on a separate sheet if necessary, and enclose all the information necessary to support your complaint]

1. From (name):
   On behalf of:
   Full postal address (including postcode and country):
   Tel:
   Fax:
   Email:

2. Against which European Union institution or body do you wish to complain?
   □ The European Commission
   □ The Council of the European Union
   □ The European Parliament
   □ The European Court of Auditors
   □ The Court of Justice of the European Communities
   □ The Committee of the Regions
   □ The European Central Bank
   □ The European Investment Bank
   □ The European Personnel Selection Office
   □ The European Anti-Fraud Office
   □ Europol
   □ Other Union body (please specify)

3. What is the decision or matter about which you complain? When did it come to your attention?

4. What results do you hope to achieve with your complaint? What are your claims?

5. Have you already contacted the Union institution or body concerned in order to obtain redress?
   □ Yes [please specify]  □ No

6. If the complaint concerns work relationships with the Union institutions and bodies, have you used all the possibilities for internal administrative remedies and redress provided for in the Staff regulations? If so, have the time limits for replies by the institutions already expired?
   □ Yes [please specify]  □ No

7. Has the object of your complaint already been settled by a court or is it pending before a court?
   □ Yes  □ No

Complaints to the European Ombudsman and any annexes to documents are normally dealt with publicly.

“Dealing publicly” with a complaint means that any member of the public may have access to the complaint and its annexes. If the Ombudsman exercise his right to have the complaint dealt with confidentially, the complaint and its annexes are normally not accessible to the public. If the Ombudsman exercise his right to have the complaint dealt with confidentially, the complaint and its annexes are normally not accessible to the public. If the Ombudsman exercise his right to have the complaint dealt with confidentially, the complaint and its annexes are normally not accessible to the public.

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8. Please select one of the following two options:
   □ Please treat my complaint publicly
   □ I require that my complaint be treated confidentially

9. Do you agree that your complaint may be passed on to another authority (European or national), if the European Ombudsman decides that he is not entitled to deal with it?
   □ Yes  □ No

Data and signature:  

[Signature]
Establish a mechanism for whistleblower protection in the context of the BWTC

Oversight Committee:

a. anonymous reporting (as opposed to confidentiality)
b. legal advice: lack of consistency among States Parties
c. avenues of protection for disclosure

Ombudsman: ombudsman is an official charged investigating and addressing complaints reported by individual citizens.