SPECIAL ISSUE: THE LAW OF THE NETWORK SOCIETY
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Judicial Ethics for a Global Judiciary – How Judicial Networks Create their own Codes of Conduct

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A. Introduction

It is not a new insight that nowadays everything and everybody seems to be globalized. This is even true with respect to the different branches of the state. We know a lot about the globalization of the executive branch and administrative law (towards a global or international administrative law) for example.[1] Public agencies around the world are compelled to cooperate – e.g. to change information and work together on legal cases – because many problems can only be solved by a cross-border approach.[2] The legislative branch faces the deep influence of globalization, too. National lawmakers have to respect or transform standards and rules set by international organizations such as the WTO, NAFTA or the EU. In the EU, for example, 70-80% of national legislation in the field of economic law is based on rules set by the EU.[3] Furthermore, the question arises whether the judiciary is also remarkably influenced by globalization. Is the judicial

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[1] See for example FRANZ MAYER, DIE INTERNATIONALISIERUNG DES VERWALTUNGSRECHTS. MODI UND STRUKTUREN DER EINWIRKUNG AUF DAS NATIONALE RECHT IN ZEITEN DER EUROPÄISIERUNG UND GLOBALISIERUNG (2009, forthcoming); Claus Dieter Classen, *Die Entwicklung eines Internationalen Verwaltungsrechts als Aufgabe der Rechtswissenschaft*, 67 VERÖFFENTLICHUNGEN DER VEREINIGUNG DEUTSCHER STAATSRECHTSLEHRER (VVDStRL) 365 (2007); Giovanni Biaggini, *Die Entwicklung eines Internationalen Verwaltungsrechts als Aufgabe der Rechtswissenschaft*, 67 VERÖFFENTLICHUNGEN DER VEREINIGUNG DEUTSCHER STAATSRECHTSLEHRER (VVDStRL) 413 (2007); Benedict Kingbury/Nico Krisch/Richard B. Stewart, *The Emergence of Global Administrative Law,* 68 LAW AND CONTEMPORARY PROBLEMS 15 (2005); Daniel C. Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, 115 YALE LAW JOURNAL (YLJ) 1490 (2006); Carol Harlow, *Global Administrative Law: The Quest for Principles and Values*, 17 EUROPEAN JOURNAL OF INTERNATIONAL LAW (EJIL) 187 (2006); Nico Krisch, *The Pluralism of Global Administrative Law*, 17 EUROPEAN JOURNAL OF INTERNATIONAL LAW (EJIL) 247 (2006).

[2] Christoph Möllers, *Transnationale Behördenkooperation. Verfassungs- und völkerrechtliche Probleme transnationaler administrativer Standardsetzung*, 65 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT (ZaöRV) 351 (2005); Jörg Philipp Terhechte, *Das internationale Kartell- und Fusionskontrollverfahrensrecht zwischen Konvergenz und Kooperation* 68 EITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT (ZaöRV) 689 (2008).

[3] See Tilman Hoppe, *Die Europäisierung der Gesetzgebung – Der 80-Prozent-Mythos lebt*, 20 EUROPÄISCHE ZEITSCHRIFT FÜR WIRTSCHAFTSRECHT 168 (2009), with statistical data.

branch, or more precisely in the international context, the national and international judiciary, yet globalized? What role does the judge play in the context of globalization?

We know, of course, something about new informal networks established by judges of different countries.[4] In addition, dozens of new international courts and tribunals were established in the last decades. But the coordination of judicial networks and the variety of international courts and tribunals is only one facet of the issue.[5] Related to the proliferation of international courts is the problem of conflicting jurisdiction.[6] "Judges judging judges" is a prominent slogan in this debate.[7] Thus, it seems that the whole globalization discussion relating to the judiciary is dominated by problems of conflicts of jurisdictions and the proliferation of international courts at the moment.[8]

This paper wants to show that the globalization debate relating to the judiciary has another, genuinely global dimension besides conflicts of jurisdiction or the consideration of foreign decisions into own judgements: Global judicial networks start to create their own ethical standards separate from legal provisions of national law.[9] The approach is to

[4] ANNE-MARIE SLAUGTHER, A NEW WORLD ORDER 65 (2004).

[5] Holger Hestermeyer, *Where Unity is at Risk: When International Tribunals Proliferate*, in INTERNATIONAL LAW TODAY: NEW CHALLENGES AND THE NEED FOR REFORM 123 (Doris König/Peter-Tobias Stoll/Volker Röben/Nele Matz-Lück eds., 2008).

[6] See for example Nikolaos Lavranos, *Regulating Competing Jurisdictions Among International Courts and Tribunals*, 68 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT (ZaöRV) 575 (2008); YUVAL SHANY, REGULATING JURISDICTIONAL RELATIONS BETWEEN NATIONAL AND INTERNATIONAL COURTS (2007); HEIKO SAUER, JURISDIKTIONSKONFLIKTE IN MEHREBENENSYSTEMEN. DIE ENTWICKLUNG EINES MODELLS ZUR LÖSUNG VON KONFLIKTEN ZWISCHEN GERICHTEN UNTERSCHIEDLICHER EBENEN IN VERNETZTEN RECHTSORDNUNGEN (2008);.

[7] Slaughter, *supra* note 4, 91.

[8] See Kenneth Ira Kersch, *„The Globalized Judiciary" and the Rule of Law*, 13 THE GOOD SOCIETY 17 (3/2004); Reem Bahdi, *Globalization of Judgment: Transjudicialism and the Five Faces of International Law in Domestic Courts*, 34 GEORGE WASHINGTON INTERNATIONAL LAW REVIEW 555 (2002); Anne-Marie Slaughter, *Judicial Globalization*, 40 VIRGINIA JOURNAL OF INTERNATIONAL LAW 1103 (2000); id., *A Global Community of Courts*, 44 HARVARD INTERNATIONAL LAW JOURNAL 191 (2003); Lawrence R. Helfer & Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE LAW JOURNAL 273 (1997); Carl Baudenbacher, *Judicial Globalization: New Development or Old Wine in New Bottles*, 38 TEXAS INTERNATIONAL LAW JOURNAL 505 (2003); Cesare P. R. Romano, *The Proliferation of Internationa Judicial Bodies: The Pieces of the Puzzle*, 31 NEW YORK UNIVERSITY JOURNAL OF INTERNATIONAL LAW & POLITICS, 709 (1999); William D. Henderson, *The Globalization of the Legal Profession*, 14 INDIANA JOURNAL OF GLOBAL LEGAL STUDIES 1 (1/2007).

[9] See for more information about the concept of networks e.g. Karl-Heinz Ladeur, *Towards a Legal Theory of Supranationality – The Viability of the Network Concept*, 3 EUROPEAN LAW JOURNAL (ELJ) 33 (1997); Anne-Marie Slaughter & David Zaring, *Networking Goes International*, 2 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 211 (2006); Anne-Marie Slaugther, *Global Government Networks, Global Information Agencies, and Disaggregated Democracy*, 24 MICHIGAN JOURNAL OF INTERNATIONAL LAW 1041 (2003); ANDREAS FISCHER-LESCANO & GUNTHER TEUBNER, REGIMEKOLLISIONEN. ZUR FRAGMENTIERUNG DES GLOBALEN RECHTS 57 (2006); Christoph. Möllers, Netzwerk *als Kategorie des Organisationsrechts. Zur juristischen Beschreibung dezentraler Steuerung*, in NICHT-NORMATIVE STEUERUNG IN DEZENTRALEN SYSTEMEN 285 (Janberd Oebbecke ed., 2005); Gunther Teubner, *Das Recht hybrider*

formulate catalogues of ethical principles that should guide the judiciary all over the world. These catalogues, like the *European Charter on the Statute for Judges* (1998), the *Universal Charter of the Judge* (1999) or the *Bangalore Principles* (2002), are soft law and hence not legally binding. However, some of the principles laid down in these catalogues are part of customary international law. But even those parts which are legally not binding have initiated and contributed to a global debate about judicial ethics. The following remarks will show that legal adjudication by judges and courts is constantly determined by soft law originating in international networks of judges. Consequently, the globalization of the judiciary is, because of this phenomenon, also a judicial debate about ethics.

B. Judiciary Goes Global – Some Open Questions

In the past the globalization of the judiciary was discussed in different contexts.[10] One important aspect of this phenomenon is the proliferation of international courts and tribunals.[11] International law obviously changed its approach in many situations from solutions of power to solutions of law. In the context of the European integration the European Court of Justice was able to consolidate its power in an impressive manner.[12] But what is the relationship between international courts, the European Court of Justice and national courts?[13] Moreover one has to ask whether there exists a common standard of adjudication.[14] Another question would be which structures of accountability can be identified for the global level. To whom and for what is an international judge held accountable? And finally, which rules or codes of conduct guide the "global judiciary"?

A first assumption would be that the founding statutes of international courts and tribunals lay down the relevant provisions for judicial conduct and that national laws govern the conduct of national courts and judges. In fact the situation is very different: The founding statutes of international tribunals fail to provide rules dealing with judicial ethics. And even national legislation, for example in Germany, fails sometimes to provide a coherent framework for judicial ethics.

Netzwerke, 165 ZEITSCHRIFT FÜR DAS GESAMTE HANDELSRECHT UND WIRTSCHAFTSRECHT (ZHR) 550 (2001); Ino Augsberg, *Das Gespinst des Rechts. Zur Relevanz von Netzwerkmodellen im juristischen Diskurs*, 38 RECHTSTHEORIE 479.

[10] See *supra*, note 8.

[11] See *supra*, note 15.

[12] See GERT NICOLAYSEN, EUROPARECHT I – DIE EUROPÄISCHE INTEGRATIONSVERFASSUNG 352 (sec. ed. 2002); JÖRG PHILIPP TERHECHTE, DIE UNGESCHRIEBENEN TATBESTANDSMERKMALE DES EUROPÄISCHEN WETTBEWERBSRECHTS 88 (2004).

[13] See *supra*, note 6.

[14] CHESTER BROWN, A COMMON LAW OF INTERNATIONAL ADJUDICATION (2007).

I. The Rising of a Global Justice

The rise of a global justice is very often related with the proliferation of international courts and tribunals. For a very long time the international scenery was dominated by two players: the International Court of Justice and the European Court of Justice, but the landscape of the global judiciary changed dramatically within in the last 20 years. The "Project on International Courts and tribunals" run by the New York University identified over 125 international courts and tribunals.[15] The number of such courts and tribunals will increase within the next years. Special tribunals, such as the current Cambodia tribunal,[16] are a new approach to deal with former regimes of injustice in different countries.[17]

II. The International Judge and Codes of Conduct

Whereas the proliferation of international courts and tribunals is discussed in many papers, the actors of the "global judiciary" attracted less attention in the past.[18] But especially in the context of judicial ethics several aspects of this issue are very important. What quality standards in the selection process have to be ensured to guarantee a good performance of international judges? To what extent could the nomination process focus on integrity of the nominee and disregard political dimensions?

Most of the founding statutes of international courts and tribunals do not contain any provisions dealing with such questions. For example, the Statute of the International Court of Justice (ICJ) deals in Art. 16 (1) with incompatibilities. According to this provision no member of the ICJ may exercise any political or administrative function, or engage in any other occupation of a professional nature. In addition, Art. 17 (1) states that no member of the Court may act as agent, counsel, or advocate in any case. Concerning the question of qualification of the nominee Art. 6 provides a special pre-condition for the selection process. According to this Article each national group is

[15] See http://www.pict-pcti.org/; see also Romano, *supra* note 8.

[16] See for the Cambodia Tribunal Helen Horsington, *The Cambodian Khmer Rouge Tribunal: The Promise of a Hybrid Tribunal*, 5 MELBOURNE JOURNAL OF INTERNATIONAL LAW, 462 (2004); Jörg Menzel, *Ein Strafgericht für die Khmer Rouge. Herausforderung für Kambodscha und das Völkerstrafrecht*, 39 VERFASSUNG UND RECHT IN ÜBERSEE (VRÜ) 425 (2006); Katheryn M. Klein, *Bringing the Khmer Rouge to Justice: The Challenges and Risks Facing the Joint Tribunal in Cambodia*, 4 NORTHWESTERN JOURNAL OF INTERNATIONAL HUMAN RIGHTS 549 (2005/2006); John Hall, *In The Shadow of the Khmer Rouge Tribunal: The Domestic Trials of Nuon Paet, Chhouk Rin and Sam Bith, and the Search for Judicial Legitimacy in Cambodia*, 20 COLUMBIA JOURNAL OF ASIAN LAW 235 (2006/2007).

[17] INTERNATIONALIZED CRIMINAL COURTS SIERRA LEONE, EAST TIMOR, KOSOVO, AND CAMBODIA (Cesare P. R. Romano & André Nollkaemper & Jann K. Kleffner eds., 2004).

[18] See now DANIEL TERRIS & CESARE P. R. ROMANO & LEIGH SWIGART, THE INTERNATIONAL JUDGE: AN INQUIRY INTO THE MEN AND WOMEN WHO DECIDE THE WORLD'S CASES (2007).

recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law before making a nomination. The Statute does not provide more information about the judges at the ICJ, the qualification standards or the standards of judicial conduct.

A first look through most of the founding statutes of International courts and tribunals confirms the lack of provisions of judicial conduct. This is, for example, true for the European Court of Justice or the European Court for Human Rights. Also the Dispute Settlement Understanding within the WTO framework contains no rules dealing with judicial conduct. Thus the panel proceedings must work without them. This applies to the proceedings before the Appellate Body, too.

It follows that judicial conduct is not an issue of importance within the founding statutes of international courts and tribunals. The statutes focus on the selection process and not on the performance of the judges. In this situation codes of conduct could help to clarify the role of judicial ethics. They potentially could mark a shift from a perspective that focuses on the institutional setting towards an approach that puts the personal situation and conduct of judges into its centre.

C. Professional Ethics – A New Focus on an Academic Debate?

Problems of professional ethics were for long time less important within academic debates. The conduct of judges and lawyers,[19] but also of other professions like the health profession,[20] was mostly driven by rules that were laid down by national legislators, local bars or professional associations. But the landscape in this area changed significantly during the last years because new instruments and tools were introduced and the influence of new legal regimes like supranational European law increased significantly. Due to these developments it became clear that not all questions of professional conduct could be subject to regulation. The environment of many professions is too extensive for a full monty approach of regulation. Thus, many of professional communities started to develop their own concepts concerning their "professional ethos".[21] The outcome was very productive in some fields, as several

[19] See JEFFREY SHAMAN & STEVEB LUBBERT & JAMES ALFINI, JUDICIAL CONDUCT AND ETHICS, (3rd ed., 2000); David Wood, Judicial Ethics: A Discussion Paper (1996); A. R. B. AMERASINGHE, JUDICIAL CONDUCT ETHICS AND RESPONSIBILITIES (2002).

[20] ALBERT JONSON & MARK SIEGLER & WILLIAM WINSDALE, CLINICAL ETHICS: A PRACTICAL APPROACH TO ETHICAL DECISIONS IN CLINICAL MEDICINE (2006); KAREN JUDSON & CARLENE HARRISON, LAW AND ETHICS FOR MEDICAL CAREERS (2009); BARBARA HERLIHY & GERALD COREY, ACA ETHICAL STANDARDS CASEBOOK (2006)

[21] For the legal profession see RONALD D. ROTUNDA & JOHN S. DZIENKOWSKI, LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY (6th ed., 2008).

catalogues that include special rules for the particular profession show. A further reason for this change is that the influence of international law and the supranational law on some professions became evident. The European Court of Justice underlined for example, that rules of professional associations have to comply with European rules (e.g. in the field of sports and bar associations).[22] The question is now whether these developments captured the judiciary as well. Is there a significant influence on "judicial ethics" caused by professional communities or networks, which consist of judges?

D. Judicial Ethics on the National Level

Judicial ethics is a well known topic on the national level. Many U.S. States, for example, promulgated codes of judicial conduct a long time ago. The first code of legal ethics was elaborated and adopted by the Alabama State Bar Association in 1887. Between 1887 and 1906 many States followed, like Georgia, Virginia, Michigan, and others. The American Bar Association adopted such a canon in 1908. Today such documents can be found for nearly every State of the U.S.A. A good example for this is the *Alabama Canons of Judicial Ethics* which came into force in 1976 (last amendments May 31, 2001).[23] These canons focus on the conduct of the judges. The Alabama Canons are devided into seven parts which describe basic ethical standards (Integrity and Independence, Impropriety in Activities, Impartial and Diligent Performance of Duties, Activities to Improve Administration of Justice, Extra-Judicial Activities, Reports of Financial Interests and Political Activities). However, under U.S. laws it is difficult to find any provisions of law concerning judicial ethics. It seems that "professional self-regulation" foreclosed any efforts by the states in the U.S. This is also valid within a global comparison. While on a national level codes of conduct help to prevent official legislations, on a global level they are the only possibility to establish common global principles of judicial conduct.

A very different exposure to judicial ethics can be found in Canada. The Canadian parliament created in 1971 the *Canadian Judicial Council*.[24] This institution has to deal with complaints made by the public or the Attorney General about the conduct of federal judges. The powers of the Council are laid down in the Judges Act. The main focus of the Council lays on questions of judicial conduct. The Council adopted the *Ethical principles for Judges* which are under the first provisions of judicial ethics within the global debate which are enforceable due to the powers conferred to the Judicial

[22] See for example Case C-309/99, *Wouters*, 2002 E. C. R. I-1577; H. Lörcher, *Anwaltliches Berufsrecht und europäisches Wettbewerbsrecht*, NEUE JURISTISCHE WOCHENSCHRIFT (NJW) 1092 (2002).

[23] Available at <http://www.alalinc.net/jic/docs/cans2000.pdf>.

[24] Available at <http://www.cjc-ccm.gc.c>.

Council.[25] There exist five key principles in the Canadian system: Independence, Integrity, Diligence, Equality and Impartiality.

In contrast to the developments in most of the common law countries, Germany has no code of conduct for the judiciary that is elaborated by judges.[26] Though the conduct of judges is regulated in some laws like the *Deutsches Richtergesetz*, these rules are less detailed than the codes of conduct mentioned above. They vaguely provide for judges to preserve their independence (§ 39) and include some rules concerning incompatibilities.[27] However, apart from the *Deutsches Richtergesetz* no "official" code of conduct or anything similar exists. The German Association of Judges (*Deutscher Richterbund*) established recently a working group ("*Netzwerk Richterliche Ethik*") on judicial ethics. The aim of this working group is not yet to adopt a binding canon or code of conduct but to start a first discussion about judicial ethics.[28]

Other European countries established more recently new laws or codes of conduct regulating the conduct of judges. A good example is the development in Austria. In 2007 the Austrian judges promulgated the Declaration of Wels ("*Welser Erklärung*).[29] This declaration formulates principles on a non binding level that should help and advice judges. It is one of the first documents in the German speaking world that deals with questions of judicial integrity and other dimensions of judicial ethics.

E. Judicial Ethics from a Global Perspective – Codes of Conducts around the World?

I. First Attempts on the Global Stage

It is a new dimension of globalization that professional communities of judges (as "judicial networks") started to establish "codes of conduct" on a global level 25 years ago. The first code of conduct was the so called *IBA Minimum Standards of Judicial Independence* in 1982.[30] The IBA Minimum Standards were elaborated out of some country reports and constituted nothing more than a private piece of research and

[25] Available at <http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp>.

[26] See for judicial ethics in Germany for example Andrea Titz, *Richtereid und richterliche Ethik*, 2 DEUTSCHE RICHTERZEITUNG 32 (2009).

[27] See for more information EBERHARD SCHILKEN, GERICHTSVERFASSUNGSRECHT 283 (3rd ed., 2003).

[28] See <http://www.drb.de/cms/index.php?id=459>.

[29] Available at <http://www.richtervereinigung.at/content/view/260/40/>.

[30] Available at <www.ibanet.org/Document/Default.aspx?DocumentUid=BB019013-52B1-427C-AD25-A6409B49FE29>.

comparison.[31] The main emphasis of the IBA Minimum Standards lies on the institutional setting of the judiciary. Thus, the Minimum Standards focus on the relationship between judges and the executive (Sec. A), the relationship between judges and the legislative (Sec. B), the terms and nature of judicial appointments (Sec. C), the relationship between the press and the judiciary (Sec. E), and, finally, the independence of the judiciary (Sec. G and H). In the context of judicial ethics, Sec. F of the Minimum Standards provides detailed information about the standards of conduct of the judiciary. The first basic principle seems to be incompatibility: Judges may not serve in executive functions, hold positions in political parties, or shall not practice law and should refrain from business activities during their terms of office. The Minimum Standards also contain special rules for the conduct of judges. According to Sec. F No. 40 judges should always behave in such a manner as to preserve the dignity of their offices and the impartiality of the judiciary. It is interesting that the Minimum Standards explicitly promote the creation of judicial networks (Sec. F No. 41: Judges may be organized in associations designed for judges, for furthering their rights and interests as judges; Sec. F No. 42: Judges may take collective action to protect their judicial independence and to uphold their position). Of course, the Minimum Standards are of a legally non binding nature. Their effort was to set the first signal in a complex debate about the judiciary and judicial conduct.[32]

Another important document for the discussion of global judicial ethics is the *UN Basic Principles on the Independence of the Judiciary* of 1985,[33] which are customary international law as of their emergence.[34] The Basic Principles generally lack information about judicial ethics. However, No. 6 of the Principles provides that the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and the rights of the parties are respected. This seems to be another dimension of the institutional setting of the judiciary, but it forces judges to act in a special (namely fair) manner. The other provisions of the Basic Principles focus more like the IBA Standards again on the institutional setting of the judiciary (e.g. on the independence of judges, the process of selection and conditions of service). However, the Principles denominate another category of concern for the judiciary; namely accountability. According to No. 17 of the UN Principles shall a charge or complaint made against a judge in his/her judicial and professional capacity be processed expeditiously and fairly under an appropriate procedure. Nos. 18-20, as the last parts of the UN Principles, deal with questions of removal from office, disciplinary proceedings and

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[31] FABIAN WITTRECK, DIE VERWALTUNG DER DRITTEN GEWALT 212 (2006); see also Shimon Shetreet, *The Emerging Transnational Jurisprudence on Judicial Independence: The IBA Standards and Montreal Declaration*, in JUDICIAL INDEPENDENCE: THE CONTEMPORARY DEBATE 393 (Shimon Shetreet/J. Deschênes eds., 1985).

[32] Wittreck, *supra* note 31, 212.

[33] Available at <http://www.unhchr.ch/html/menu3/b/h_comp50.htm>.

[34] Wittreck, *supra* note 31, 214.

potential appeals. The UN Principles are particularly relevant in the context of this paper because of two reasons: on the one hand they bring together different dimensions such as questions of the institutional setting of the judiciary, judicial ethics and measures of accountability. Only three years after the IBA principles were published the range of the whole document is much more complex. On the other hand the document is in comparison to the IBA Principles very short and fails to cover all important aspects of the issue.

Another document in the context of judicial ethics on the global level is the *Universal Charter of the Judge* which was approved by the delegates attending the meeting of the Central Council of the International Association of Judges in Taipei in 1999.[35] It is the first document with a global background that focuses on the conduct of judges. The Charter contains 15 Articles. For the judicial ethics perspective Art. 6 is important according to which judges must diligently and efficiently perform his or her duties without any undue delays. According to Article 7 judges should avoid any other functions, whether public or private, that are not compatible with the duties or the status of judges.

II. The European Level

In the aftermath of the UN Principles acitivity at the European level was especially pronounced. The Council of Europe promulgated its *Recommendation on the Independence, Efficiency and Role of the Judge* in 1994, which was adopted by the Committee of Ministers on 13 October of that year.[36] The recommendation focuses, like the other documents, on the institutional setting of the judiciary. Principle V of the Recommendation deals with "judicial responsibilities". According to this principle, judges should, inter alia, have in particular the responsibility to act independently in all cases and free from any outside influence; to conduct cases in an impartial manner, to withdraw from cases if there are any conflicts of interests, and, what is very interesting, to give clear and complete reasons for their judgments, using a language which is readily understandable. In contrast to most of the documents dealing with judicial ethics the Recommendations include also a provision dealing with questions of disciplinary offences (Principle VI). The Recommendations refer explicitly to the UN Principles. This demonstrates that the different networks of the judiciary started to co-ordinate their actions intending to harmonize the relevant documents.

Only four years later the *European Charter on the statute for judges* was published.[37] The Charter was prepared by three experts from France, Poland and the United Kingdom,

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[35] Available at <http://www.hjpc.ba/dc/pdf/THE%20UNIVERSAL%20CHARTER%20OF%20THE%20 JUDGE.pdf>.

[36] See <http://www.coe.int/t/e/legal_affairs/legal_co-operation/legal_professionals /judges/instruments_and_ documents/>.

[37] <http://www.abanet.org/rol/docs/judicial_reform_eurocharter_statutes_judges_1998 _english.pdf>.

who were assigned by the Directorate of Legal Affairs of the Council of Europe. It was adopted at the second multilateral meeting of the Council in Strasbourg, on 8-10 July 1998. The participants of the meeting agreed that the value of the Charter is not a result of formal status. The first and most prominent aim of the Charter is "ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law and from every judge to whom is entrusted the protection of his or her rights". The Charter includes seven focal points: General principles, questions of recruitment and initial training of judges, about the appointment and irremovability, the career development, liability, renumeration and social welfare and, finally, the termination of office.

In contrast to the documents mentioned above, the Charter on the Statute for Judges includes a variety of ethical fundamentals for judicial conduct. According to No 1.5. of the Charter every judges must show, "in discharging their duties, availiability, respect for individuals, and vigilance in maintaining the high level of competence which the decision of cases requires on every occasion (…)." Moreover judges "must refrain from any behavior, action or expression of a kind effectively to affect confidence in their independence" (No. 4.3 of the Charter). As the Charter was prepared by two European judges associations, it has no formal status. It just serves to demonstrate the lively discussions in Europe dealing with the status of the judge and judicial ethics.[38]

III. The Magna Charta of Judicial Ethics on the Global Stage: The Bangalore Principles of Judicical Conduct

The latest and probably most important framework for judicial ethics on the global level is created by the so called *Bangalore principles of judicial conduct* which were elaborated by a global group of high-level judges (so called Judicial Integrity Group) between 2001 and 2002.[39] The "official status" of the principles has several sources: it was developed on invitation of the United Nations and the United Nations Social and Security Council. They invited Member States in its resolution 2006/23 of 27 July 2006 to take the principles into consideration.[40] The United Nations Office on Drugs and Crime published in September 2007 a commentary on the principles that offers from a comparative perspective a lot of information concerning each of the principles.[41]

The aim of the principles according to its preamble is to "provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. To achieve this aim,

[38] Wittreck, *supra* note 31, 218.

[39] <http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles. pdf>.

[40] <http://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf>.

[41] <http://www.coe.int/t/dghl/cooperation/ccje/textes/BangalorePrinciplesComment. PDF>.

the Bangalore principles identify six core principles of judicial conduct: Independence, Impartiality, Integrity, Propriety, Equality and Competence and Diligence. These principles are named and, as a new feature, examples for their observance are annexed to each principle (so called applications).

Due to Principle 1 a judge shall uphold and exemplify *judicial independence* in both its individual and institutional aspects. It is not a new insight that independence is one of the most prominent pre-conditions for an effective judiciary that is based on the rule of law. In the context of judicial ethics the emphasis on both dimensions of independence is very interesting. In the annexed application the independence of the judge is stressed out. A judge shall be independent in relation to society and in relation to the particular parties (para 1.2 and 1.3. of the Bangalore Principles).
Principle 2 focuses on the *impartiality* of a judge. This very old principle is one of the main characteristics of judiciary beside the principle of independence. Because of the principle of impartiality Justitia, the Roman Goddess of Justice, wears in many pictures a blindfold. This demonstrates her impartiality, because the blindfold demonstrates her willingness to decide cases without seeing the parties or persons involved in the case. According to this guiding principle the application prescribes that a judge shall perform his or her judicial duties without favour, bias or prejudice. He or she shall disqualify or recuse himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially.

Principle 3 states the value of *integrity*, a phrase that is obviously hard to fill with life. The Principle just says that integrity is essential to the proper discharge of the judicial office. In the applications two dimensions of integrity are mentioned: A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer (para 3.1) and the behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary – to summarize: "Justice must not merely be done but must also be seen to be done" (para 3.2.).

Principle 4, *propriety*, is the most elaborated principle of the whole Bangalore framework. Propriety shall guide all – official and private action – of a judge. Thus judges must accept personal restrictions on all levels (freedom of expression, avoid family influence, not practice law), have to think always carefully about his or her personal relations with individual members of the legal profession, shall not participate in proceedings in which members of his or her family are involved as litigants or in any other capacity, or shall refuse gifts and other appropriate benefits. The catalogue of applications of principle 4 is very detailed and the commentary to the applications is even more so. The commentary, for example, deals extensively with questions of an "exemplary life", "visits to public venues as bars", engagement in gambling or the visit of "clubs and other social facilities". This demonstrated the ambitious approach of the Bangalore principles that sought help judges in nearly every situation.

The last two principles of the Bangalore framework deal with *equality* (5) and *competence and diligence* (6). Whereas the value equality shall ensure the equal treatment to all before the courts, diligence shall control the performance of judges. Pursuant in principle No. 6 questions of the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties are written down.

In fact, the Bangalore Principles embody the *Magna Charta* of judicial ethics on the global stage. There is no other document that includes so much detailed information concerning judicial ethics as the principles. This success has different roots: The first root seems to be the acceptance of the principles within the national and international judiciary. Because it was framed by a judge's network it has no strict mandatory impetus but offers just common ideas. Another important feature of the principles is the official background of its elaboration. The United Nations started long ago to discuss questions of judicial ethics. The background secures an impartial and objective approach. Consequently, the framework had a deep influence on the architecture of judicial codes of conduct and national laws in the last years. According to *Greg Mayne* the Bangalore Principles are used to create new codes or to revise existing codes in Mauritius, the Netherlands, England and Wales, Bulgaria, Uzbekistan, Serbia and Jordan. They have been adopted in Belize and the Philippines.[42]

The principles symbolize a new approach while putting the conduct of judges into the center of the global debate. All other documents on the global and European stage focus on the institutional setting of the judiciary, the role of the constitutional background and further aspects. The Bangalore Principles identified the important role of the judge. Judges "must be active in maintaining appropriate standards of judicial conduct and performance".[43] With the Bangalore Principle, but also with the adoption of national codes of conducts or laws dealing with judicial ethics, the conduct of the judiciary is subject to rules that potentially are capable to improve standards.

IV. Common Approaches

1. Basic Roots

Besides the different priorities of the various documents, it is nevertheless possible to identify common approaches to questions of the institutional setting of the judiciary and to professional ethics. This becomes obvious as the different documents are independent on the one hand but also linked between each other on the other hand. The commentary to the Bangalore Principles for example, refers to the IBA Minimum

[42] Greg Mayne, *Judical integrity: the accountability gap and the Bangalore Principles*, in: TRANSPARENCY INTERNATIONAL GLOBAL CORRUPTION REPORT 2007, 40 (2007).

[43] Id., *supra* note 42, 43.

Standards as well as to the UN Basic Principles and the European Charter on the Statute for Judges. This is only a small selection of documents on the global that are relevant for the topic. On the national level it seems to be impossible to identify all relevant laws and codes of conduct (the commentary to the Bangalore Principles refers to 24 different codes and laws, e.g. form the United States, some African countries, Australia, Canada and India). This shows that the global debate about judicial ethics was a debate within the common law world for a long time, as most of the European countries ignored the importance of this debate. However, the situation has changed during the last years. Italy introduced very strict laws dealing with judicial ethics, in Austria the "Welser Erklärung" was published and in Germany the Judges Association started first discussions in 2008. It seems that the topic of judicial ethics took off on its triumphal course.

2. Central Issues

Judicial codes of conduct deal on both levels, national and international, with the same ethical principles. Most of the documents emphasize in a first step the importance of an independent judiciary. Common values are the integrity of judges, their impartiality, the equal treatment in proceeding and questions of professional skills. Another similarity can be identified regarding the legal nature of these codes of conduct. In most countries and even more on the international level the codes lack a legally binding nature. Of course, some parts of the Bangalore Principles have the nature of customary international law. But there exists no binding international treaty or any comparable legal instrument. Those parts of the Principles can bind especially international courts and tribunals. It would be interesting to see whether the "international judge" is willing to accept any such codes of conduct. Up to now most of the codes were elaborated by national judges and networks established by national judges or judges organizations. This leads over to another common feature of judicial ethics. Most of the relevant documents grant the right to be a member of professional organizations. Only these organization, this could be the idea, can deal with questions of judicial conduct in a proper manner. Thus, the role of professional organizations, as judicial networks, will become more important in the future.

V. The Special Relevance of Codes of Conduct in Developing Countries

The role of judicial codes of conduct in transitional or developing countries is equally important. The Bangalore Principles for example, can help to develop frameworks that can decrease the problem of corruption. In its annual report 2007 Transparency International focused on "Corruption in judicial systems". Because of corruption many legal systems around the world do not fulfil their tasks in an appropriate manner. Some of the country reports question the very core of a functioning legal system: "Nepal's

judiciary is perceived to be one of the most corruption-afflicted sectors in the country"[44], or "Corruption affects a number of Zambia's institutions and the judiciary has not been spared".[45] TPI concludes in its report that codes of judicial conduct can help to fight against corruption.[46] Thus, the global debate about judicial ethics is not only important for the western countries but is also a keystone for the reconstruction of many judicial systems around the world.

F. Conclusions

The judiciary faces many challenges in respect to the phenomenon of globalization. This paper focused on the question how global standards for a good performance of the judiciary cam be achieved.

Judicial ethics and judicial codes of conduct are an answer to this question. In the last two decades such codes entered the global level. In many cases global networks of judges, established or financed by international organizations, elaborated important documents and principles. On the global stage the Bangalore Principles influenced many countries and embody partially the status quo of customary international law. This is valid especially for some basic principles like the personal independence, impartiality and integrity. These principles can guide the adjudication of international courts and tribunals as well as the adjudication of national courts. Of course, the role of the principles is different from country to country. While the United States and other common law countries have a long-standing tradition relating to judicial ethics, many civil law countries have just started to deal with this topic. Especially in transitional or developing countries, judicial ethics can help to consolidate judicial systems and in doing so strengthen the rule of law.

It is open whether a legally binding international treaty is a realistic future option for this field. The strength of a more informal approach is that it allows all countries and judges to contribute to a global debate. It would not be easy for many countries to agree to binding principles because of political reasons. Thus, the "professional network approach" with its non binding impetus seems to be the best solution for a global debate which is just in the beginning.

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[44] Krishna Prasad Bhandar, *Opportunity knock's for Nepal's flawed judiciary*, in: TRANSPARENCY INTERNATIONAL GLOBAL CORRUPTION REPORT 2007 236 (2007).

[45] Davies Chikalenga/Goodweel Lungu/Ngoza Yezi, *Zambian judiciary struggles to modernise*, in: TRANSPARENCY INTERNATIONAL GLOBAL CORRUPTION REPORT 2007 287 (2007).

[46] TRANSPARENCY INTERNATIONAL GLOBAL CORRUPTION REPORT 2007 xxvi (2007).