



This is an excerpt from the report of the 2003 Brandeis Institute for International Judges. For the full text, and for other excerpts of this and all BIIJ reports, see www.brandeis.edu/ethics/internationaljustice

Toward the Development of Ethics Guidelines for International Courts

Preface

This report is of a workshop organized by Brandeis University on the need for codes of ethics in the international justice system. This endeavor sprang from a discussion at the first Brandeis Institute for International Judges, held at Brandeis University in June 2002. At that time, it was felt that such codes could act firstly as a guide for judges themselves but also an assurance to the outside world that certain standards of conduct exist and are capable of being implemented. It was also felt that people should be aware that judges could be amenable to some form of disciplinary action where appropriate.

The workshop that sprang from that first institute provoked an interesting and stimulating discussion of all the difficult questions that inevitably arise in regard to the profession of international judge. Is a code of ethics a sword or a shield? Should a code contain general or specific provisions?

Who disciplines who and in what way, publicly or privately? What does accountability mean? To whom, if anyone, should international judges be accountable? How would accountability measures impact upon the independence of the judiciary at international level?

The areas of discussion and the issues that arose are very well described and presented in this report. Naturally, many questions remain to be answered. And, ultimately, individual international courts will need to draft their own codes of ethics. But the guidelines that emerge from this most worthwhile effort on the part of Brandeis University will, I have no doubt, be of inestimable assistance in that endeavor.

Judge John Hedigan
European Court of Human Rights
October 2003

I. Background

From July 20-26, 2003, the International Center for Ethics, Justice and Public Life held its second annual Brandeis Institute for International Judges (BIIJ) in Salzburg, Austria. This forum brought together 14 judges from international courts and tribunals for a week of reflection and discussion about issues and challenges facing their respective courts and the international judiciary more generally.

One of the highlights of BIIJ 2003 was a day-long workshop focusing on ethical principles for the international judiciary. This topic had emerged

during discussions that took place during the inaugural BIIJ, held on the Brandeis University campus in June 2002. Recognizing the centrality of ethical conduct to both the internal efficient functioning and the external credibility of their courts, this first group of BIIJ judges recommended that future institutes explore this topic in depth.¹

BIIJ organizers implemented this recommendation when designing the 2003 institute. They concluded that a productive discussion on ethics might be launched by using the statutes and rules of various



international courts as a point of departure. Brandeis University consequently prepared, in collaboration with the McGeorge School of Law at the University of the Pacific, a document that compared the language used by a number of international courts and bodies to address judicial conduct. These included the International Court of Justice (ICJ), the European Court of Human Rights (ECHR), the Inter-American Court of Human Rights (IACHR), the International Criminal Court (ICC), the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Tribunal for the Law of the Sea (ITLOS), the Special Court for Sierra Leone (SCSL), and the African Commission on Human and Peoples' Rights (ACHPR). The resulting document was given to BIIJ 2003 participants before the institute so that they might reflect on how these approaches either fit or did not fit the circumstances of their own courts. Judges were also asked to study the Bangalore Principles, a set of principles and applications for the ethical conduct of judges in national courts. These Principles were developed over several years by the Judicial Integrity Group, a multi-national committee of high court judges, with additional input from judges of the International Court of Justice. The Bangalore Principles were finalized in November 2002 and endorsed by the member states of the United Nations Commission on Human Rights in April 2003.²

The judicial ethics workshop took place on July 24, 2003. The format was interactive, designed to elicit from judges the areas of ethical engagement in their profession that are of particular concern. These topics then became the focus of more in-depth discussions. The workshop was led by Daniel Terris, director of the International Center for Ethics, Justice and Public Life, and Professor Gregory Weber of the McGeorge School of Law at the University of the Pacific. Among the possible topics identified by meeting planners and participants for detailed discussion were: 1) judicial oaths; 2) nationality; 3) impartiality and outside activities; 4) ex parte communication; 5) accountability and disciplinary procedures; 6) selection of judges; 7) retirement, temporary absence, and incapacity; 8) relations with

the media; 9) gender and other balancing issues on the bench; 10) recusal; 11) linguistic issues for judges from small countries; 12) judge elections and campaigning; and 13) problems associated with the push for "least-cost justice." After reviewing these suggestions, judges agreed to focus their attention on the topics of "impartiality and outside activities" and "accountability and disciplinary procedures."

The following judges took part in the workshop:

- Antônio Cançado Trindade, President of the Inter-American Court of Human Rights
- Maureen H. Clark, International Criminal Court
- Mehmet Güney, International Criminal Tribunal for the former Yugoslavia
- John Hedigan, European Court of Human Rights
- Hassan B. Jallow, Special Court for Sierra Leone
- Jainaba Johm, Vice-Chair of the African Commission for Human and Peoples' Rights
- Agnieszka Klonowiecka-Milart, Pristina District Court, United Nations Mission in Kosovo
- Erik Møse, President of the International Criminal Tribunal for Rwanda
- Navanethem Pillay, International Criminal Court and former President of the International Criminal Tribunal for Rwanda
- Fausto Pocar, Vice-President of the International Criminal Tribunal for the former Yugoslavia
- Kamel Rezag Bara, Chair of the African Commission for Human and Peoples' Rights
- Geoffrey Robertson, President of the Special Court for Sierra Leone
- Bankole Thompson, Special Court for Sierra Leone
- Budislav Vukas, Vice-President of the International Tribunal for the Law of the Sea

Also in attendance for the day were:

- Jeffrey Abramson, Professor of Legal Studies and Politics, Brandeis University
- Melissa Blanchard, Communications Specialist, International Center for Ethics, Justice and Public Life, Brandeis University
- Linda Carter, Professor of Law, McGeorge School of Law, University of the Pacific
- Hans Corell, Under-Secretary-General for Legal Affairs and Legal Counsel for the United Nations



- Thomas Franck, Professor Emeritus of the School of Law, New York University and former ad-hoc judge for the International Court of Justice
- Richard Goldstone, Justice of the Constitutional Court of South Africa and Former Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia
- Leigh Swigart, Associate Director, International Center for Ethics, Justice and Public Life, Brandeis University
- Daniel Terris, Director, International Center for Ethics, Justice and Public Life, Brandeis University
- Gregory Weber, Professor of Law, McGeorge School of Law, University of the Pacific

II. Exploring Ethics for International Courts: Opportunities and Challenges

The workshop began with an extended discussion of the opportunities and challenges associated with developing a general code of ethics for international courts. Several participants noted the timeliness of the discussion, as both the ICC and the ECHR are currently working toward some form of code for their own institutions. While the original intent of the workshop was to explore the possibility of an ethical code that would apply to all international courts and tribunals, it became clear early in the day's conversation that such an outcome was highly unlikely if not impossible. The group strongly suggested that it was more reasonable to think of the outcome instead as a set of "ethics guidelines" to which these courts and tribunals might refer.

Diversity in legal culture and practice

One theme that emerged during the discussion of "opportunities" and "challenges" was triggered by a unique feature of international courts: their judges bring with them to the bench diverse legal cultures and traditions. Participants noted that differences may be substantive, attributable to a training in civil and common law respectively. They may also exist in the realm of practice, which is inevitably influenced by the national laws and justice systems of judges' home countries. These differences may result in varying views, for example, on the proper

relationship between parties before the court and the bench, between counsel and the bench, or on ex parte communication. One specific problem that was noted arises when judges, in their personal lives, behave in accordance with the laws of their home countries but break those of the country in which their court sits. For example, in some countries, homosexual relations or polygamous unions are permissible, while in many others they are not.

It was suggested that the ambiguity produced by this confluence of legal traditions in international courts may be significant, and it cannot be dispelled by an assumed "judicial instinct." As one judge commented, "With the best will in the world, judges simply do not agree on what is appropriate behavior." Many workshop participants felt that the development of generalized ethics guidelines would help individual courts specify what constitutes proper and improper conduct on the part of their judges. Guidelines could also spell out professional obligations for members of the bench, such as the importance of attendance, punctuality, preparedness, and the equitable sharing of work. The result, many felt, would be an enhanced esprit de corps among peers.

Commonalities among international courts

Judges also commented that an exploration of judicial ethics could help identify the characteristics that are specific to international courts. In addition, it could identify any commonalities that already exist, as laid out both in courts' statutes and in the unwritten practices that may be powerful regulators of judicial behavior but have not been incorporated into documents. Furthermore, the discussion could make courts aware of any lacunae that exist in accepted approaches to practical judicial challenges so that these might be filled. It was also suggested that comparative studies of judicial ethics and practice, carried out by a law school or other academic entity, would be a helpful addition to existing knowledge about international courts and tribunals.

Enhancing the public image

Several participants urged that the most critical opportunity provided by a systematic development of ethics guidelines is enhancement of the credibility of



international courts and tribunals in the public's eye. It was noted that criticism by the U.S. of the ICC has thrown a shadow over the international justice system more generally. Some critics of the international judiciary have raised questions over the qualifications of international judges and their alleged lack of supervision. In light of these criticisms—largely believed unjustified by participants—it was suggested that international courts must be careful, perhaps more than national judiciaries, to ensure not only ethical behavior by judges but also the appearance of ethical behavior. Accordingly, it was urged, a broader public awareness that international courts are developing ethics guidelines would strengthen their public image in addition to aiding their internal operation. It was noted that a strengthened public image was especially important since many courts are still forming and thus need to establish widespread public support.

Obstacles to the development of guidelines

Despite the positive results that might emerge from international courts' review of ethical issues, workshop participants generally agreed that the development of ethics guidelines for international courts would encounter many roadblocks. Some judges asserted that ethical issues had not arisen in their courts and thus were not yet perceived as ripe for discussion. Many pointed out that international courts are so different from one another that a single set of guidelines could not apply to them universally. A few remarked that although such guidelines might liberate judges in some areas of activity, they would bind judges in others. There were many doubts about the form that such guidelines might take, and whether the resulting document would be for the internal use of courts or opened for more public use. If the latter, some worried that the guidelines might become a "sword," i.e., a tool to be used against the courts by critics, instead of a "shield," i.e., something that judges could use to protect themselves from assertions of improper behavior.

The question of legitimacy

Participants generally agreed that however such guidelines might be used, the issue of their legitimacy would be paramount. Participants questioned how such guidelines could become authoritative enough

to guide the conduct of international judges. Since there is no professional association for international judges, several judges noted, how would their viewpoints and needs be accurately represented in the development process? Discussion also considered whether other parties needed to be involved in the drafting of guidelines so that they assume legitimacy not only for judges but for others as well. These others could include prosecutors, witnesses, victims, judicial monitoring groups and NGOs, and the general public. Concern was expressed that the development of such guidelines might simply be a move toward the overcodification of practice regulations already well understood by judges, and thus unnecessary. Others wondered about the ultimate utility of such ethics guidelines. Finally, it was also noted that any such guidelines raised both implementation and enforcement issues.

Guideline considerations

At the end of these frank discussions about both the opportunities and the challenges associated with a review of ethical issues in international courts, workshop participants generally concluded that an examination of these issues would be productive and helpful. However, the following questions need to be kept in mind as the process unfolds:

- 1) What would be the purpose of any guidelines developed as a result of such examination?
- 2) What exact process is foreseen for developing any such guidelines?
- 3) How would any such guidelines achieve legitimacy once they were elaborated?
- 4) What would be the scope of any such guidelines? This last point is critical as many elements and procedures of courts are laid down by their establishing statutes and cannot be changed. The ethics guidelines in question should thus focus on the aspects of judicial conduct over which individual judges and courts have control.³

The discussion concluded with a suggestion that participants avoid thinking of the guidelines as moving toward either a uniform code for all international courts or a completely individualized code for each court. These two options, it was offered, represent the ends of a continuum. As the process unfolds, it was predicted, judges will probably



find that the end-product of such an examination will instead be guidelines that fall somewhere in the middle, i.e., a set of generally relevant ethical principles fleshed out with more specific issues that individual courts can draw upon as they develop their own codes of ethics.

III. Impartiality and Outside Activities

After consideration of a dozen or more topics for more detailed discussion, workshop participants first chose to focus on “impartiality and outside activities.” It was noted that both the Bangalore Principles and the statutes of many international courts state that judges should not engage in activities outside of their judicial work that compromise their impartiality and independence. The fourth Rule of Court for the ECHR is typical:

... the judges shall not during their term of office engage in any political or administrative activity or any professional activity which is incompatible with their independence or impartiality or with the demands of a full-time office. Each judge shall declare to the President of the Court any additional activity. In the event of a disagreement between the President and the judge concerned, any question arising shall be decided by the plenary Court.

A wide array of issues and concerns were discussed in relation to this topic, and workshop participants agreed that existing language about the kinds of outside work judges can legitimately engage in is quite vague and in need of elaboration. The following summarizes this discussion.

The case of “waiting” judges

Some workshop participants were concerned that too many restrictions on outside activities were placed on judges who are “waiting.” This refers to judges of the ICC who have been elected and sworn in but who will only be called to serve when warranted by the court’s caseload. These waiting judges do not receive a salary unless actively serving; at the same time, their ability to continue their former occupation may be severely limited. This clearly creates an economic predicament for many judges.

Definition of “office-holder”

The discussion of “waiting judges” led to questions about the definition of the judicial office. Participants queried whether one is an office-holder, and thus bound by all pertinent restrictions, from the day one is elected, or when sworn in, or when he or she takes up full-time duties. They then asked, “if being an office-holder implies full-time occupation, then are restrictions on other employment dropped if one is ‘waiting?’” It was suggested that changing appointment procedures to eliminate “waiting judges” would solve this thorny question. It was also pointed out, however, that this strategy was specifically adopted in response to criticism of the high cost of running other international tribunals, which generally includes the salaries of judges who are not always fully occupied.

Judges as professors

Part-time judges, or full-time judges whose courts have lighter caseloads, find themselves similarly challenged. Participants addressed the kinds of outside work considered appropriate for such international judges. For example, it was asked whether they should be allowed to accept fees for public lecturing or writing about their experiences. It was noted that many international judges hold law professorships in their home countries, which is not generally thought to compromise their impartiality on the bench. But even these positions, it was noted, raised potential concerns. Judges discussed whether: 1) it was appropriate to use illustrations from cases before their court as a teaching tool; 2) they could write about these cases once decisions have been rendered; or 3) whether they should wait to write about them until after they had left the service of the court. At some point, it was noted, the scholarly production of judges might also compromise diligence in their judicial function, since such work requires much time and dedication. It was also urged, however, that restricting active scholars from the bench could adversely affect its overall competence. As one participant noted, “We want judges to be thinkers.”

Judges as arbitrators

Another outside activity discussed at length was arbitration. It was noted that it is not uncommon



for international judges to participate in arbitral tribunals, which are an alternative forum for dispute settlement, particularly between states. If the matter arbitrated subsequently comes before the arbitrating judge's permanent court, he or she would then be required to recuse him or herself from the case.

Non-remunerative activities

Participants also considered the appropriateness of certain unpaid outside activities. They discussed whether it is proper for judges to sit on editorial boards of journals, on advisory boards of philanthropic organizations, or even on boards of directors of companies. Other questions that arose included: Should judges receive honorary degrees? Or should they be members of professional organizations and law societies? The general feeling was that this kind of activity does not necessarily threaten the impartiality and independence of judges — it can, in fact, make them better judges — and thus should not be restricted. However, it was noted, if any institution or organization to which a judge has connections should be brought before his or her court, recusal would be the appropriate response.

The acceptance of restrictions

Although a few participants felt that judges are held to impossibly high standards and that the restrictions imposed on their activities are onerous, many more felt that this was simply a predictable aspect of their profession. This latter group suggested that once judges are officially in office, they should expect to limit their activities so that both impartiality and the appearance of impartiality are strictly maintained. As one participant commented, “That is the price judges have to pay.” It was also pointed out that compatibility of outside activities is very much tied to availability. That is, judges should not be so overextended in their outside commitments that it compromises their ability to perform their judicial function with diligence.

The need for flexibility and increased guidance

The discussion on impartiality and outside activities for the international judiciary thus developed along two lines. First, there needs to be some flexibility so

that judges can deal properly with their functions while continuing their intellectual life and other appropriate pursuits, which will ultimately benefit the courts. Second, the language about outside activities in existing documents is too vague and could benefit from elaboration. In some courts, it was noted, there are already well-established practices, but they are often unwritten. Despite participants' generally perceived need for further formal ethical direction, they had mixed feelings about the desirability of generating an actual list of permissible and non-permissible outside activities for judges. Some felt that this would constitute a helpful guide. Others considered that such a list would have to be so general that it would ultimately be useless. And yet others felt that court presidents should decide on the compatibility of their judges' outside activities.

The form of guidelines

A “compromise solution” that was raised might be a list of questions that individual courts could refer to when formulating their own codes of ethics. Such a list would act as a starting point to help courts to become aware of each other's ethical concerns and regulations. A partial list of this kind, addressing impartiality and outside activities, and based upon the foregoing discussion, is found in the last section of this report.

IV. Accountability and Disciplinary Procedures

The second topic that workshop participants chose to focus on in detail was “accountability and disciplinary procedures.” In comparing the language found in the statutes and rules of various international courts on this topic, the workshop group found that details about what constitutes a breach of conduct and the disciplinary consequences of such a breach are often lacking. The following excerpt from Article 20:1 & 2 of the statutes of the Inter-American Court of Human Rights is an example:

1. In the performance of the duties and at all other times, the judges and staff of the Court shall conduct themselves in a manner that is in keeping with the office of those who perform



an international judicial function. They shall be answerable to the Court for their conduct, as well as for any violations, act of negligence or omission committed in the exercise of their functions.

2. The OAS [Organization of American States] General Assembly shall have disciplinary authority over the judges, but may exercise that authority only at the request of the Court itself, composed for this purpose of the remaining judges. The Court shall inform the General Assembly of the reasons for its request.

The issue of accountability plays into the discussion of disciplinary procedures since it was generally expressed that international judges should be answerable not only to their courts, but also perhaps to external entities. What these entities should be and how a judge's accountability to them should be evaluated are, the group agreed, complex questions to answer. Yet it was also widely felt that the development of recognizable mechanisms to ensure accountability, and disciplinary measures for cases where standards of conduct are not met, would go far in allaying the fears of critics who believe that international courts answer to no one.

Defining accountability

The starting point of the group's discussion was the definition of "accountability." One judge pointed out that this English term has no easy equivalent in any other language. Another participant asserted that a distinction must be drawn between the independence of the judiciary and its accountability. It was suggested that independence relates to how a judge carries out his or her work, whereas accountability relates to how this work is *perceived* – by a higher court, by writers of law reviews and editorials, or by the public at large. "International judges are operating under the eyes of the world," noted one participant. "That is their ultimate accountability."⁴

Accountable to whom?

It soon became clear that, as one participant put it, "accountability has no meaning until you ask yourself 'accountable to whom?'" On this matter, there were differing opinions. Some felt that it is

academia—professors and law review writers—that keeps judges accountable by analyzing their decisions. One participant called this forum the "marketplace of ideas," noting that the practice of publishing dissenting opinions has forced many judges into the marketplace in a way they otherwise might not be. Some participants questioned whether this practice put too much pressure on individual judges, who fear they will be subject to retaliation from states that do not like their votes. It was asked whether there might be such a thing as "too much accountability." Others felt that judges are ultimately accountable to their own consciences and that there may sometimes be a disjuncture between the dictates of this internal mechanism and either public opinion or academic analysis.

Accountability for conduct vs. judgments

Questions were also raised about the difference between judges' accountability for their conduct and accountability for their decisions. Are these different forms of accountability? If so, some wondered, was only the former amenable to self-regulation? Others asked whether judges should be answerable only to their fellow judges for issues of conduct and to society or academia for their decisions. Others focused on possible feelings of accountability to the member states of the treaty that established a judge's court, or dependence on those states for reelection. It was asked, if judges feel such accountability or dependence, does this introduce a political element that could compromise judicial independence and, ultimately, in a kind of boomerang effect, judicial accountability as a whole?

Serious vs. less serious judicial misconduct

The discussion then focused upon accountability for judicial conduct. While it was noted that most international courts have clear mechanisms for disciplining judges who commit serious breaches of conduct—e.g., suspension, pecuniary sanction, or even the "nuclear weapon" of removal—the appropriate disciplinary procedures for less serious breaches remain vague or may go unmentioned altogether. The exception is the ICC, which has clearly defined both "serious misconduct and serious



breach of duty” and “misconduct of a less serious nature.”⁵ Participants noted, however, that other international courts must deal with a “gray zone” of violations that are not heinous but still either undermine the standing of the court in the public eye or impair its internal efficiency. As one participant stated, “A judge who is rude in the courtroom or who is continually late in producing judgments does substantial damage to the administration of justice and the perception of justice among the people.” It was suggested that having normative rules regarding these and other minor violations would act as a preventive measure as well as take the pressure off the court president to monitor and sanction such violations. And, it was urged, just as there is a range of judicial misconduct, there needs to be a corresponding range of appropriate disciplinary rules and sanctions.

Accountability through external evaluation

The discussion ended with a plea by several participants for international courts to answer the assertion that they are unaccountable. It was suggested that this is “a stick for beating international justice” and needs to be answered in three ways.

- 1) Each court should have its own mechanism for disciplining judges who commit serious breaches of conduct.
- 2) Each court also needs a system for disciplining judges appropriately for less serious misconduct, such as sleeping on the bench or failing to control the courtroom. This system would ideally not depend on the court president to be the final arbiter of appropriate behavior.
- 3) Perhaps most importantly, each court should be ready to answer criticisms in their most vulnerable area—that of accountability in the judgments they make. It was urged that being accountable to academia is not enough, because academia is not humanity. Courts are also accountable, for example, to the victims who come before war crimes tribunals and to the media. One participant suggested that this kind of accountability will only come about by international courts opening themselves up to criticism and evaluation by external bodies such as the International Bar Association and the International

Commission of Jurists. It was urged that this kind of external evaluation would go far in rebutting critics of the international justice system.

It should be noted, however, that some judges disagreed with this recommended response to allegations of unaccountability. It was pointed out that many judgments by international courts and tribunals speak for themselves. Furthermore, judgments may already be the result of much internal judicial debate and compromise. Courts should thus leave academia and professional bodies to analyze decisions, a task they already carry out with much vigor. Evaluation by external organizations, it was argued, would not necessarily enhance public perceptions of the international justice system.

V. Recommended Steps in the Future

At the end of the day’s discussions, the workshop group agreed on four further steps to advance the development of ethics guidelines for international courts.

1. Production of a report on these workshop discussions that will be circulated to participants for approval and then afterwards made accessible to the interested public.
2. Subsequent production of a statement of ethical principles relevant to international courts, accompanied by a more elaborated list of specific issues that came up for discussion in this workshop and which courts could refer to as they formulate their own code of ethics.
3. Consideration of the merits of including “outsiders” in this guideline process, so that courts can benefit from their input. These outsiders might include: politicians, members of legislative bodies, or others who have the power to remove judges; NGOs and monitoring organizations; and other “consumers of justice,” such as prosecutors, victims, defendants, and witnesses.
4. Continuation of ethics guideline discussions at the 2004 Brandeis Institute for International Judges



VI. Sample Lists of Ethical Issues

Following are two sample lists of questions on various ethical issues discussed in the workshop that courts might refer to as they develop their own codes of ethics. These are partial lists that can be further elaborated through consultation with judges and other involved parties.

Impartiality and Outside Activities

1. What is the employment status of judges?
 - a. Are they part-time, full-time, or “waiting”?
 - b. Are judges guaranteed a salary even if not actively serving?

2. Should the kind of employment status determine the restrictions on outside activities? E.g., if judges are “waiting” or otherwise unoccupied during long periods of time, may they pursue gainful employment? If so, what restrictions should be imposed on the types of employment?

3. May judges collect fees for:
 - a. Lecturing?
 - b. Writing about professional experiences?
 - c. Arbitration activities?

4. May judges be allowed to write about particular cases (beyond simply referring to the case or court ruling):
 - a. While they are still on the court but the case is completed?
 - b. Only after they have left the service of the court?
 - c. Not at all?

5. May judges be active:
 - a. In publishing scholarly work while on the bench?
 - b. On editorial boards of law reviews or journals?
 - c. On advisory boards of non-profit organizations?
 - d. On boards of companies or commercial entities?

Accountability and Disciplinary Procedures

1. Do judges have a clear idea of their professional and ethical obligations as members of the court?

2. To whom are judges of the court accountable?
 - a. Peer judges?
 - b. Member states of the court?
 - c. Their own consciences?
 - d. Academia (writers of law reviews, professors of law)?
 - e. NGOs and judicial monitoring organizations?
 - f. Victims, witnesses, or other participants in the judicial process?
 - g. The media and interested public?

3. Does the court have mechanisms to respond to serious violations of judicial conduct?
 - a. Is what constitutes a serious violation laid out clearly in the statutes or rules of the court?
 - b. Are the consequences of serious violations laid out clearly in the statutes or rules the court?
 - c. Is the removal process subject to undue political influence?

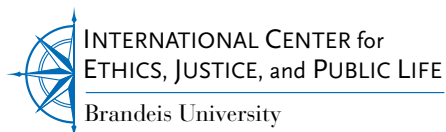
4. Does the court have mechanisms to respond to less serious violations of judicial conduct?
 - a. Is what constitutes a less serious violation laid out clearly in the statutes or rules of the court?
 - b. Are the consequences of less serious violations laid out clearly in the statutes or rules of the court?
 - c. Is there an appropriate range of disciplinary procedures to respond to less serious violations?
 - d. Is the onus placed on the president of the court to arbitrate less serious violations?

5. How are the judgments of court evaluated?
 - a. Does the court publicize how its judges vote?
 - b. Do judges prepare dissenting opinions?
 - c. Are judges safe from retaliation by member states displeased by their voting record?
 - d. Is the court open to external evaluation?



Notes

1. The BIJ 2002 report can be downloaded at http://www.brandeis.edu/ethics/publications_resources.
2. The Bangalore Principles may be found at http://www.transparency.org/building_coalitions/codes/bangalore_conduct.html.
3. The International Law Association (ILA) has highlighted a similar issue in relation to the independence of the international judiciary. In a background paper on this topic, a distinction is drawn between “the independence of individual judges and that of the collective independence of the judges of courts as a whole.” The former has to do with such matters as outside activities, nomination and election procedures, terms and conditions of service, and disciplinary procedures. The latter relates rather to institutional factors, such as the court’s relationship with states parties and political organs. See http://www.pict-pcti.org/research/ethics_indepce.html for this paper and information on the ILA Study Group, sponsored by the Project on International Courts and Tribunals.



Brandeis University
MS 086 P.O. Box 549110
Waltham, MA 02454-9110 USA
(781) 736-8577
www.brandeis.edu/ethics