

MAKING MISTAKES ABROAD: HOW THE GLOBAL DELIVERY OF LEGAL SERVICES CREATED A NEED FOR A UNIFORM ETHICS CODE

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INTRODUCTION

The legal practice has become an increasingly global occupation in the past two decades.¹ Advances in communications, computers, and other mobile technologies have made the world an ever-smaller place. For instance, the delivery of information was limited to the speed of air and rail transport; today information can be transferred almost instantaneously via e-mail. Additionally, most lawyers today do not limit their practice to one state or jurisdiction. Legal practice has become a national and indeed international occupation. Transnational law practice includes firms with offices in multiple countries that provide counsel on foreign law and cross-border litigation matters.² While these national and international practice have done great things for the profession, it is not without its problems and areas of concern for both academics and practitioners alike. Of the many problems inherent with international practice, this Note focuses on one central problem: the ethical dilemmas arising from conflicting, ambiguous, or non-existing codes of conduct between multiple countries. While there has been much literature published on the problems of double deontology,³ the literature has not suggested any plausible solutions or mechanisms to resolve the conflicts.

For example, Randall, a lawyer, bar licensed and practicing in Washington, D.C., walks into his firm's office one morning and is told that he is needed for contract negotiations in London, England. Randall is told that he will be representing an American company that would like to expand into the London market. This trip should not take more than one or two weeks, after which, Randall will return to his home office in Washington D.C.

Alternatively, Randall walks into the office and is told that he is being transferred to work in the firm's Paris, France office. The length of stay is not concrete and could be as short as a few months or as long as a few years. Randall is experienced and bar licensed in the United States, but has never travelled or practiced internationally. While abroad, Randall encounters an ethical problem. What ethical code governs Randall's misconduct? Will he be subject to both European and American ethical punishments? Is being subject to two codes of conduct fair? Lastly, with the constant increase in globalization of multiple disciplines, will conflicting codes of conduct impede global legal practice expansion? The crux of this

1. Stephen M. Worth, *The Transnational Practice of Law: Staggering Growth in Spite of Economic and Regulatory Barriers to Entry*, 7 GONZ. J. INT'L L. 1, 1 (2004).

2. *Id.*

3. See generally Matthew T. Nagel, *Double Deontology and the CCBE: Harmonizing the Double Trouble in Europe*, 6 WASH. U. GLOB. STUD. L. REV. 455 (2007) [hereinafter Nagel].

note is to determine what nation's ethical code of conduct applies and why it makes the most sense to apply it in this manner.

In 1993, Professor Laurel S. Terry promulgated the idea that a time may come when the United States is asked to join the world's attorneys and share a universal ethics code.⁴ This Note proposes two solutions to the double deontology⁵ problem: the United States or a state within the United States should become an observer member state to the European Community and when American lawyers go abroad they should be subject to the Council of the Bars and Law Societies of Europe (CCBE) Code of Conduct⁶; or in the alternative, the General Agreement on Trade in Services (GATS)⁷ should adopt the CCBE Code of Conduct to apply to legal service providers that are signatories to GATS and operating as Foreign Legal Consultants (FLC) abroad.

Part I of this Note introduces the development of the ethical rules of conduct found in the United States. Part I also discusses the recent ABA agreements with the Brussels Bar Association allowing for foreign practice. Part II outlines the development of the CCBE and specifically discusses the creation and adoption of the Code of Conduct throughout the European Community. Part III briefly looks at the development of GATS and how a Foreign Legal Consultant works. Part IV examines the methods and abilities of American lawyers to practice abroad in the European community, specifically addressing European Directives and how they fail to include the large number of international (non-EC) practitioners. Lastly, Part V considers possible solutions to the ethical conflicts and attempts to provide guidance for the implementation of the plausible alternatives for a global ethics code.

I. AMERICAN REGULATION OF THE LEGAL PROFESSION

As more goods are imported and exported around the world, the increased need for services, including legal services will become more prevalent. The increasing presence of American law firms in the international market is one example of the necessary change for a compatible code of ethics for international practitioners.

4. Laurel S. Terry, *An Introduction to the European Community's Legal Ethics Code Part I: An Analysis of the CCBE Code of Conduct*, 7 *GEO. J. LEGAL ETHICS* 1, 59 (1993) [hereinafter *CCBE: Part I*].

5. *Id.*

6. See discussion *infra* Part II.B.1.

7. See *Id.* at Part III.

A. Development of Transnational Legal Practice

Commercial firms make up the majority of international legal services providers.⁸ According to Financial Times, Cleary Gottlieb Steen & Hamilton LLP, founded in New York and Washington D.C. has been practicing in Europe since 1949, and now has almost fifty percent, or 420 lawyers, practicing throughout Europe.⁹ White & Case LLP, founded in New York in 1901, now has over seven hundred lawyers throughout Europe and has been practicing there for over eighty years.¹⁰ As the small sampling of the Financial Times article suggests there are numerous American based law firms with over one hundred lawyers practicing throughout Europe and many of these firms came into the market in the early 2000's.¹¹ Professor Terry states that between the periods of 1904 to 1973, thirty-four U.S. law firms opened seventy-seven foreign offices, a majority of those offices opening after World War II.¹² Between 1974 and 1997, sixty-nine U.S. law firms opened up 356 foreign offices.¹³ For purposes of illustration of the goods and services being provided by these newly operational foreign offices between 1973 and 1998, U.S. exports to other countries rose from \$91.2 billion to \$933.5 billion, as imports went from \$89.3 billion to over \$1.096 trillion.¹⁴ This data shows that globalization will continue to increase, and as a product of that increasing globalization, there is a greater need for a uniform ethics code.

B. American Bar Association—From the Canons to the Model Rules

“The primary source of professional legal ethics for a lawyer in the United States is the code of conduct adopted by the licensing authority in the jurisdiction where the lawyer is admitted to practice. In each of the fifty states, the licensing authority is the judicial branch of the state’s

8. Worth, *supra* note 1, at 2.

9. *US Law Firms in Europe*, FIN. TIMES (2012), <http://media.ft.com/cms/f521fbae-2adb-11dc-85f9-000b5df10621.pdf>; Cleary Gottlieb Steen & Hamilton LLP, *About the Firm—Firm History Timeline* (2012) [hereinafter Cleary Gottlieb], <http://www.cgsh.com/about/firmtimeline/>.

10. Cleary Gottlieb, *supra* note 8.

11. *Id.*

12. Laurel S. Terry, *U.S. Legal Ethics: The Coming of Age of Global and Comparative Perspectives*, 4 WASH. U. GLOB. STUD. L. REV. 463, 472 (2005) [hereinafter *U.S. Legal Ethics: The Coming of Age*].

13. *Id.*

14. *Id.* at 485 (citing Bureau of Economic Analysis, *Balance of Payments—International Transactions, U.S. International Transactions, 1960—present*, U.S. DEPT. OF COM., available at http://www.bea.gov/bea/international/bp_web/simple.cfm?anon=71&table_id=3&area_id=3).

government.”¹⁵ The American Bar Association (ABA) is a private organization that has no authority over a lawyer’s conduct; it is up to an individual’s state court to adopt, modify or enhance the Model Rules promulgated by the ABA. Once adopted, lawyers become subject to the rules of that jurisdiction.¹⁶ The ABA, however, is influential in the education and training of lawyers throughout the United States.¹⁷ The ABA also serves as the accrediting body for law schools.¹⁸ One of the conditions of accreditation through the ABA is a requirement for law schools to offer and mandate a course in professional responsibility or legal ethics.¹⁹ Nearly every state requires bar applicants to have graduated from an ABA-accredited school in order to sit for the bar. Additionally, forty-seven states require an additional test called the Multistate Professional Responsibility Examination (the “MPRE”).²⁰ The MPRE’s purpose is to, “measure the examinee’s knowledge and understanding of established standards related to lawyer’s professional conduct.”²¹ The established standards are the Model Rules of Professional Conduct.

Many states have adopted verbatim the Model Rules of Professional Conduct, while others have adopted the rules with modifications.²² The ABA has been involved in the creation and development of legal ethics since the early 1900s, promulgating the Canons of Professional Ethics (Canons) in 1908.²³ The Canons were comprised of thirty-two rules, but had no binding or legal effect and were not enforceable in a court of law.²⁴ In 1969, the ABA released its Model Code of Professional Responsibility (Model Code) consisted of disciplinary rules to be used by the court in disciplining lawyer misconduct.²⁵ The Model Code was adopted, at least in

15. *Professional Legal Ethics: A Comparative Perspective, Central European & Eurasian Initiative*, A.B.A. 6 (Maya G. Bolocan ed., 2002) [hereinafter *Professional Legal Ethics*], available at <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDYQFjAA&url=http%3A%2F%2Fsiteresources.worldbank.org%2FINTLAWJUSTINST%2FResources%2Fprofessionallegalethics2.pdf&ei=CveyUO-HM6SU2QWJt4DYAQ&usg=AFQjCNEC6VhaGUizNLFX4CxDP5dU57JyJw&sig2=MHXBCIhyLVMCxjsw6ickjQ>.

16. See Weiss, *infra* note 22, at 4-5.

17. Natalie E. Norfus, Note, *Assessing the Recent Revisions to Model Rule 8.5: How Do the Changes Affect U.S. Attorneys Practicing Abroad, Specifically Those Practicing in Japan?*, 36 GEO. WASH. INT’L L. REV. 623, 627 (2004).

18. *Id.*

19. *Id.*

20. *Id.* at 628.

21. *Id.*; See also NCBE, MPRE 2003 Informational Booklet 30 (2002), available at http://www.ncbex.org/test/Test%20Booklets/MPRE_IB2003.pdf.

22. *Professional Legal Ethics*, *supra* note 14, at 7.

23. Jonathan M. Weiss, *Legal Article: The Need for Federal Solutions to Interstate and International Ethics Conflicts: A Case Study in Confidentiality*, 11 J. INT’L BUS. & L. 1, 6 (2012).

24. *Id.*

25. *Id.*

portions by state and federal jurisdictions.²⁶ Even though there was widespread adoption, critics immediately complained that the Model Code failed to address key problems from the Canons, were too conservative, and favored elite practitioners.²⁷ Finally in 1983, the ABA created the Model Rules of Professional Conduct (Model Rules), which are still in existence and in use today.²⁸ After the creation of the Model Rules, states were reluctant to adopt the Model Rules since most had only recently adopted the Model Code.²⁹ At present, forty-three states have adopted the model rules in some form. Some typical changes include modification of the rules on confidentiality, conflict of interests, and advertising.³⁰ While there has been widespread adoption with modifications of the Model Rules, there are still areas where the Model Rules are lacking, especially in the Choice-of-Law Provisions found in Rule 8.5.³¹

1. Original Rule 8.5 and the 1993 Revision

The original Model Rule 8.5 was short and simple, stating, “[A] lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.”³² Critics of original Model Rule 8.5 pointed out two key problems: 1) the Model Rule was silent about a jurisdiction’s ability to punish a lawyer not licensed in that jurisdiction who practiced in that jurisdiction; and 2) the Model Rules offered no guidance to lawyers faced with conflicting standards and choice of law conflicts.³³ Due to these problems, the ABA responded by revising the rule in 1993 in an attempt to provide guidance to the courts encountering lawyers who practiced in multiple jurisdictions.³⁴

The revision to Model Rule 8.5 in 1993 dramatically expanded the rule by providing additional information.³⁵ The amendment to Model Rule 8.5

26. *Id.*

27. Carol R. Andrews, *Standards of Conduct for Lawyers: An 800-Year Evolution*, 57 SMU L. REV. 1385, 1445 (2004).

28. Weiss, *supra* note 22, at 4-5.

29. *Id.*

30. *Id.*; see also *Professional Legal Ethics*, *supra* note 14, at 7.

31. Weiss, *supra* note 22, at 4-5.

32. *Id.*; A.B.A., A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT, 1982-2005, 824 (2006).

33. Weiss, *supra* note 22, at 24.

34. *Id.*; Norfus, *supra* note 17, at 630.

35. MODEL RULES OF PROF’L CONDUCT R. 8.5 (1993) (superseded by 2002 amendment). The full language of the amended Model Rule reads:

Rule 8.5 Disciplinary Authority; Choice of Law

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer’s conduct occurs. A lawyer may be subject to the disciplinary authority of both this jurisdiction and

appeared to answer the criticism of the previous rule; however, in a comment to the 1993 amended Model Rule, the ABA specified that this choice of law provision does not apply to international practice.³⁶

2. Current Rule 8.5—Post 2002 Revision

Once again, the amended Model Rule 8.5 came under criticism.³⁷ Scholars hailed the rule as being a step in the right direction, but ultimately stated that the rule did not address some of the legal issues and conflicts that arise in multijurisdictional practice.³⁸ The ABA created a Commission on Multijurisdictional Practice, which adopted a new version of Model Rule 8.5 in 2002.³⁹ However, again, this version was more expansive and provided extensive guidance to lawyers and the courts on how to discipline lawyers for misconduct.⁴⁰ The 2002 amendment also changed the comments

another jurisdiction where the lawyer is admitted for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a proceeding in a court before which a lawyer has been admitted to practice (either generally or for purposes of that proceeding), the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) for any other conduct,

(i) if the lawyer is licensed to practice only in this jurisdiction, the rules to be applied shall be the rules of this jurisdiction, and

(ii) if the lawyer is licensed to practice in this and another jurisdiction, the rules to be applied shall be the rules of the admitting jurisdiction in which the lawyer principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the lawyer is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

Id.

36. Norfus, *supra* note 17, at 631; *see also* MODEL RULES OF PROF'L CONDUCT R. 8.5 cmt. 6 (1993) ("The choice of law provision is not intended to apply to transnational practice.").

37. Norfus, *supra* note 17, at 633.

38. *Id.*

39. *Id.*

40. *Id.* *See also* MODEL RULES OF PROF'L CONDUCT R. 8.5 cmt. 1 (2002) The full text of the amended rule reads:

Rule 8.5 Disciplinary Authority; Choice of Law

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to

to the Model Rule with the new comment number seven, replacing the earlier comment number six, indicating that the rule applies to international practice, absent treaties that remove the rules obligation.⁴¹ The Commission of Multijurisdictional Practice recognized in its report that “state regulatory authorities acknowledge the increasing prevalence of cross-border practice and respond accordingly.”⁴² Following this comment to Rule 8.5, the Model Rules now apply to international practice and lawyers practicing abroad are subject to both the Model Rules and the professional rules of their host state.⁴³ When a lawyer chooses to follow the rules of their home state, there is an inherent risk of violating the rules of the country where they are practicing.⁴⁴ In addition to fear of violating the U.S. Model Rules, Rule 8.5(b)(2) does not provide protection when a lawyer’s conduct violates another countries’ ethical rules.⁴⁵ Therefore, the lawyer is left in quite the predicament: conform to the ABA rules, but also conform to the host jurisdictions rules.⁴⁶ Consider Randall’s plight for instance: he would be subject to the ethical rules adopted in Washington D.C. and the ethical rules of the Paris Bar.

provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and (2) for any other conduct, the rules of the jurisdiction in which the lawyer’s conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer’s conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer’s conduct will occur.

Id.

41. Norfus, *supra* note 17, at 634.

42. *Id.*; A.B.A., REPORT OF THE COMMISSION ON MULTIJURISDICTIONAL PRACTICE (Aug. 2002) [hereinafter MJP REPORT], available at <http://www.abanet.org/cpr/mjp-home.html>.

43. Norfus, *supra* note 17, at 640.

44. *Id.* at 639.

45. *Id.* at 641; see MJP REPORT, *supra* note 41, at 31 (“Sanctions must be available both against lawyers who do unauthorized work outside their home states and against those who violate the rules of professional conduct when they engage in otherwise permissible multijurisdictional practice.”).

46. Norfus, *supra* note 17, at 641.

C. The ABA—Brussels Bar Agreement

One example where the ABA and the two Regulatory Bar Associations in Brussels have agreed upon which jurisdiction's ethical rules of conduct to apply in is the ABA-Brussels Bar compromise.⁴⁷ On August 6, 1994, the American Bar Association and the French Language Order of the Brussels Bar and the Dutch Language Order of the Brussels Bar agreed that U.S. lawyers practicing in Brussels would be subject to the ethical rules applied in Brussels.⁴⁸ In draft proposals sent between the ABA and the Brussels Bar there were many discussions about which code of ethics would apply.⁴⁹ Eventually, it was agreed that Joint list lawyers would comply with the CCBE Code of Conduct, and B list lawyers would comply with the rules of the Brussels Council subject to the CCBE Code intervening for inconsistencies.⁵⁰ Under this approach, the U.S. lawyer is disciplined under the Brussels Rules, but the ABA may participate and advocate on behalf of the accused lawyer.⁵¹ This approach is criticized because it only helps a lawyer at the disciplinary stage and does not remove the double deontology entirely.⁵²

II. EUROPEAN COMMUNITIES REGULATION OF LEGAL PROFESSION

The European legal profession, which has historically operated as a civil code system, has produced numerous types of lawyers all in discrete and separate categories.⁵³ There are many "lawyers" in the civil law system, each practicing different forms of law.⁵⁴ Unlike U.S. lawyers, European lawyers have been subject to more regulation by the State.⁵⁵ Also, unlike the U.S., where there is a single code of ethics to govern conduct regardless of the lawyer's function, Europe's civil law systems are each regulated by their own codes of professional conduct.⁵⁶ In European civil law countries, the local bar association is responsible for investigating and prosecuting a lawyer's misconduct.⁵⁷ In contrast, the U.S. appoints cases to the state

47. Laurel S. Terry, *A Case Study of the Hybrid Model for Facilitating Cross-Border Legal Practice: The Agreement Between the American Bar Association and the Brussels Bars*, 21 *FORDHAM INT'L L.J.* 1382, 1436 (1998) [hereinafter *Cross-Border Legal Practice*].

48. *Id.* at 1400, 1436.

49. *Cross-Border Legal Practice*, *supra* note 45, at 1436 n. 203.

50. *Id.*

51. Nagel, *supra* note 3, at 474.

52. *Id.* at 475.

53. *Professional Legal Ethics*, *supra* note 14, at 4 ("for example, notaries, magistrates, judges, advocates, civil servants, [and] prosecutors.").

54. *Id.*

55. *Id.* at 7-8.

56. *Id.* at 8.

57. *Id.* at 11.

lawyer disciplinary agencies, either the Supreme Court or an independent agency responsible to the Supreme Court of that State.⁵⁸

A. Establishing the European Community

In 1957, the Treaty of Rome established the European Economic Community (EEC or EC).⁵⁹ To allow for the free movement of legal services, the European Community enacted Council Directive 77/249 also known as the Lawyer Services Directive.⁶⁰ This directive permitted lawyers to provide their services throughout the EC.⁶¹ In many instances this brought on a double deontology problem with the Lawyer Services Directive because it required the lawyer to apply both their home and host state's ethical codes.⁶² In essence, a lawyer is required to understand their home and host states' ethical rules and comply with both simultaneously.⁶³

In 1988, the EC passed another directive, which became known as the Diplomas' Directive requiring all EC member states to recognize diplomas of higher education and professional licenses.⁶⁴ This directive included recognition for lawyers; however, there was a desire by the European Commission that applied specifically to lawyers.⁶⁵ After much debate, the Lawyer's Establishment Directive was enacted in 1998, permitting a lawyer from one EC country to permanently establish practice in another EC country after registration with that "host" country.⁶⁶

B. The Council of Bars and Law Societies in Europe

1. Development of the CCBE Code of Conduct

In 1960, the Council of the Bars and Law Societies of the European Community (CCBE) formed.⁶⁷ The CCBE attempted to identify and address the core ethical and professional principles governing the entire legal profession in Europe, regardless of function.⁶⁸ Thus, in 1988 the CCBE

58. *Id.*

59. *CCBE: Part 1*, *supra* note 4, at 5.

60. Nagel, *supra* note 3, at 365.

61. *Id.*; see Council Directive 77/249, O.J. (EC), available at http://eur-lex.europa.eu/Result.do?aaaa=1977&mm=03&jj=26&type=L&nnn=078&pppp=0017&RechType=RECH_reference_pub&Submit=Search.

62. Nagel, *supra* note 3, at 365.

63. *Id.*

64. *U.S. Legal Ethics: The Coming of Age*, *supra* note 11, at 485-86; see Council Directive 89/48 O.J. (L 19) 16 (EC).

65. *U.S. Legal Ethics: The Coming of Age*, *supra* note 11, at 486; see also Council Directive 98/5 O.J. (L 77) 36 (EC).

66. *U.S. Legal Ethics: The Coming of Age*, *supra* note 11, at 485-86.

67. *CCBE: Part 1*, *supra* note 4, at 5.

68. *Professional Legal Ethics*, *supra* note 14, at 8.

produced a Code of Conduct (CCBE Code), which was subsequently amended in 1998.⁶⁹ The CCBE is joined by individual European Communities, known as member states; individual lawyers may not join the CCBE.⁷⁰ This stands in stark contrast to the ABA, which may be joined by any individual bar licensed attorney in the U.S.⁷¹

The production of a common code of ethics was one of the primary purposes of the CCBE: a code of ethics that could be used by lawyers across borders within Europe.⁷² Initially, the CCBE faced problems stemming from its lack of decision-making authority for the EC, as the CCBE Code was not automatically binding on EC member states.⁷³ Realistically, however, the CCBE Code is now binding as the Code that has been adopted by most, if not all, the regulatory bodies in each member state.⁷⁴ Presently, the CCBE has thirty-one full members, two associate members, and nine observer states.⁷⁵ The format of the CCBE Code is similar to the ABA Model Rules, as it states black-letter rules, and violating the rules can result in lawyer discipline.⁷⁶ While the CCBE Code is a system of black-letter rules, the Code is not as detailed or as specific as the ABA Model Rules.⁷⁷ The CCBE Code can be defined as both a “legal ethics” code and a “conflicts of law” code.⁷⁸ In some instances there are clear rules about specific conduct for lawyers (i.e. fees), in other instances lawyers are merely directed upon, which ethics code to apply.⁷⁹

There are seven “General Principles” or rules within the CCBE Code that address the lawyers obligation to: (1) independence; (2) trust and personal integrity; (3) confidentiality; (4) respect for the rules of other Bars and Law Societies; (5) incompatible occupations; (6) personal publicity; and (7) predominance of the client’s interests.⁸⁰ While these rules seem to mirror or at least closely resemble the ABA Model Rules counterparts, there are concerns that the ABA and CCBE Code conceptualize the role of lawyers differently.⁸¹ The largest difference comes from the confidentiality, fees, and conflict provisions of the ABA and CCBE.⁸² However, many academics

69. *Id.*

70. *Id.* at 98.

71. *Id.*

72. *CCBE: Part I, supra* note 4, at 7.

73. *Id.* at 12.

74. *Id.* at 13.

75. Weiss, *supra* note 22, at 43; *Members by Countries*, CCBE, <http://www.ccbe.eu/index.php?id=22&L=0> (last visited Apr. 14, 2012).

76. *CCBE: Part I, supra* note 4, at 15.

77. *Id.* at 15-16.

78. *Id.* at 18-19.

79. *Id.*

80. *Id.* at 23.

81. *Id.* at 45.

82. *CCBE: Part I, supra* note 4, at 51-58.

believe that the difference between the ABA and CCBE can be reconciled as the ethical beliefs stem from the same roots and are based on the same principles of competence, confidentiality, and conflicts protection.⁸³ The CCBE's first vice-president John Toulmin stated, "[i]t is in the same spirit that the CCBE seeks others to develop a uniform code of conduct that could adopted worldwide...The CCBE Code tries to reconcile the European and U.S. systems."⁸⁴

2. *Disciplinary Enforcement of the CCBE Code of Ethics*

The CCBE Code does not contain explicit provisions regarding enforcement or disciplinary procedures.⁸⁵ Individual countries adopt the CCBE Code.⁸⁶ Those countries must then apply the CCBE Code in the same manner local bar associations enforce the ethics rules for a domestic lawyers misconduct.⁸⁷ Furthermore, since the CCBE is a voluntary organization, some member states may refuse to submit to the CCBE Code's jurisdiction or may refuse to acknowledge any real authority.⁸⁸ This is similar to the problems faced by the ABA because the governing authority has no disciplinary powers, which creates a lack of enforcement ability.⁸⁹ No nation is required to adopt or comply with any sanctions from the CCBE.⁹⁰ The CCBE Council for Advice and Arbitration (CCBE Council) was established to provide advice on professional conduct for member's states and to arbitrate disputes.⁹¹ The Directive on Establishment, passed in 1998, permits the lawyer to be disciplined by the "Host State" as long as the "Home State" is notified of the charges and is given the opportunity to comment.⁹² Compliance of the CCBE Code may become a requirement, in light of two decisions in Bordeaux, France, which struck down local bar rules that were in violation of Rules 2.2 and 2.7 of the CCBE Code.⁹³ The French cases appear to be the only published cases that cite directly to the CCBE Code, but this may be the start of a long line of cases finding judicial enforcement

83. Bolocan, *supra* note 14, at 101.

84. John Toulmin, *A Worldwide Common Code Of Professional Ethics?*, 15 *FORDHAM INT'L L. J.* 673, 676, 680 (1992).

85. Laurel S. Terry, *An Introduction To The European Community's Legal Ethics Code Part II: Applying The CCBE Code Of Conduct*, 7 *GEO. J. LEGAL ETHICS* 345, 374 (1993) [hereinafter *CCBE: Part II*].

86. *Id.* at 375

87. *Id.*

88. Nagel, *supra* note 3, at 479.

89. *Id.*

90. *Id.*

91. *CCBE: Part II, supra* note 85, at 375-76. Terry suggest that the CCBE Counsel is "virtually unused" in the near thirty years of its existence. *Id.*

92. *Id.* at 376-77; *see also* discussion *supra* section I.A.

93. *CCBE: Part II, supra* note 85, at 378 (citing HAMISH ADAMSON, *FREE MOVEMENT OF LAWYERS* (1992)).

of the CCBE Code once adopted by a member state.⁹⁴ This has significant bearing upon the weight and authority of the CCBE Code, if courts continue to enforce the CCBE Code following adoption, local bar council will have no choice but to amend their rules to match or substantially comport with the CCBE Code.

III. GATS: THE GENERAL AGREEMENT ON TRADE IN SERVICES

A. Implementation

It would be an incomplete analysis of the global legal practice to omit a discussion about the World Trade Organization (WTO) and the annexed agreement known as the General Agreement on Trade in Services (GATS).⁹⁵ In 1994, during the Uruguay Round of negotiations, the Agreement Establishing the World Trade Organization was signed. Included in this negotiation were other agreements such as the General Agreement on Tariffs and Trade (“GATT”) and GATS.⁹⁶ The GATT compromise applies to goods, whereas GATS specifically applies to services, including legal services.⁹⁷ By entering into GATS, WTO countries must comply with the following obligations for all service sectors: (1) most-favored Nation treatment under GATS Article II; (2) transparency under GATS Article III; (3) requirements for notice and publication of relevant domestic laws; (4) judicial review of domestic regulation under GATS Article VI; and recognition agreements under GATS Article VII.⁹⁸ The United States included legal services in their schedule of GATS commitments and thereby agreed to the following additional obligations: market access under GATS Article XVI; National Treatment under GATS Article XVII; and additional commitments from GATS Article XVIII, such as licensing and qualifications.⁹⁹

One of the significant obligations the U.S. agreed to was listing Legal Services under GATS was the National Treatment clause.¹⁰⁰ This clause obligates member states that have included legal services in their

94. *Id.* at 379.

95. Laurel S. Terry, *Lawyers, GATS, and the WTO Accountancy Disciplines: The History of the WTO's Consultation, the IBA GATS Forum and the September 2003 IBA Resolutions*, 22 PENN. ST. INT'L L. REV. 695, 697 (2005) [hereinafter *Lawyers & GATS*].

96. Laurel S. Terry, *GATS' Applicability to Transnational Lawyering and its Potential Impact on U.S. State Regulation of Lawyers*, 34 VAND. J. OF TRANSNAT'L L. 989, 998 (2001) [hereinafter *GATS' Applicability*].

97. *Id.*

98. MARGARET M. LEE, CRS, *LEGAL SERVICES IN THE WORLD TRADE ORGANIZATION (WTO) AND U.S. EFFECT 2* (2008).

99. *Id.*

100. Orlando Flores, *Prospects for Liberalizing the Regulation of Foreign Lawyers Under GATS and NAFTA*, 5 MINN. J. GLOBAL TRADE 159, 178 (1996).

commitments to treat foreign lawyers, “no less favorable than that it accords to its own like services and service suppliers.”¹⁰¹ The purpose of this clause is to eliminate discriminatory procedures that require nationality, residence, waiting periods or temporary stays. This clause generally prevents a member state from creating new discriminating restrictions on foreign lawyers entering the country.¹⁰² Essentially, this clause acts as an equal protection clause for foreigners as compared to domestic suppliers.¹⁰³

The GATS Most Favored Nation (MFN) clause generally requires each country to afford a WTO member country the same treatment that another WTO member country would receive.¹⁰⁴ Furthermore, member states’ legal services concessions must be available equally to all GATS members; members were allowed to exempt themselves from MFN, but no country chose to do so.¹⁰⁵ In essence, after the U.S. listed MFN in its list of schedules for GATS, the U.S. agreed not to increase or implement any regulations that further restricts access to the legal market by foreign lawyers.¹⁰⁶

The U.S. listing MFN in its list of schedules has created a problem related to international reciprocity agreements; prior to GATS several U.S. jurisdictions had reciprocity agreements requiring a foreign nation to accept U.S. lawyers before the foreign lawyers were accepted in the U.S.¹⁰⁷ During GATS debates, particularly between the U.S. and Japan, the ABA offered to include in its schedule of commitments the rules for Foreign Legal Consultants effective in seventeen American jurisdictions. Ultimately the concession was thrown out to help implement an agreement on negotiations with GATT.¹⁰⁸ The status of the Foreign Legal Consultants and the MFN agreements are in flux.¹⁰⁹ Many nations are unhappy with the restrictive and difficult requirements that the U.S. has placed upon Foreign Legal Consultants being granted, and the U.S. was displeased with its negotiations and now has little incentive to liberalize its foreign lawyer regulatory scheme.¹¹⁰

101. *Id.*

102. *Id.*

103. *GATS’ Applicability*, *supra* note 96, at 1005-1006.

104. *Id.* at 1000.

105. Flores, *supra* note 100, at 179.

106. *GATS’ Applicability*, *supra* note 96, at 1075.

107. Flores, *supra* note 100, at 179 n.157.

108. *Id.* at 180-81. These seventeen jurisdictions may no longer have reciprocity agreements.

109. *GATS’ Applicability*, *supra* note 96, at 1073-75.

110. Flores, *supra* note 100, at 181.

B. Ethical Implications

WTO countries typically require foreign legal consultants to follow the local code of ethics in the country they are practicing as a prerequisite to licensing in the host country.¹¹¹ The WTO has presented evidence that there are common principles shared by the national ethics codes of all of the member countries.¹¹² Specifically, the WTO Secretariat acknowledged that the EU has created a common legal ethics code for EU countries, and a comparison of the U.S. and Japanese codes found no significant differences.¹¹³ There is hope that ethical problems that have arisen in the international practice will be addressed during the negotiations in the Doha Round, perhaps these negotiations will consider implementation of one common ethics code.¹¹⁴

IV. AMERICAN LAWYERS AND LEGAL PRACTICE ABROAD

A. Restrictions on International Legal Practice

American lawyers may be expected to travel internationally for their firms or for their clients' needs. Just as there are restrictions in the U.S. for the practice of law, foreign countries have their own governance of lawyers and who may be admitted to practice law in that country.¹¹⁵ There are numerous countries that have responded to the U.S. attorney's attempts to work in their jurisdiction with protectionist defenses to ensure domestic lawyers have stable employment.¹¹⁶ Some of these protectionist defenses include citizenship requirements (some countries require natural birth), apprenticeships, and language competence barriers.¹¹⁷ Others have suggested that beyond protecting the economic well being of the country, protection mechanisms may have more to do with continuing national heritage, culture, and language.¹¹⁸

B. Admission to Local Bar by U.S. Lawyer

International lawyers are generally subjected to two regulatory schemes: foreign legal consultants and full admission to the local bar as a local

111. LEE, *supra* note 98, at 5.

112. *Id.*

113. *Id.*

114. *Id.*

115. Worth, *supra* note 1, at 11.

116. *Id.* at 13-14. Some countries include France, Luxembourg, Singapore, and Japan.
Id.

117. *Id.* at 14.

118. *Id.* at 16.

lawyer.¹¹⁹ In the context of the CCBE, the EC or European Union (the “EU”) grants member states access to other member states based on affiliation and qualifications.¹²⁰ The EU in general is losing the importance of individual sovereignty by liberalizing licensing requirements and allowing member states to roam more freely throughout the EU.¹²¹ This unity, liberalization, and free roaming does little to help American lawyers practicing in the EU, as they are not qualified as Community Nationals and are excluded from admission to the EU state bars.¹²² These restrictions may be loosening, if not disappearing in certain countries, such as England, Wales, Ireland, and France, which allow foreign lawyers to take an examination to gain admittance to local practice.¹²³ In 1997, the ABA and Paris Order of Avocats made an agreement to cooperate on ethical and legal matters; primarily agreeing that the Paris Bar examination is unduly burdensome because it is a two-day exam administered only in French.¹²⁴ One of the major problems for gaining admission to the European Bars stems from the United States’ of lack reciprocal agreements.¹²⁵ Thus, until the ABA and state jurisdictions amend their foreign admission standards, gaining admission to an EU bar will be a difficult task, with the exception of certain liberal countries, like England, Ireland, and Belgium.¹²⁶ It appears that certain states, like New York, liberalized its ethical constraints to allow for easier access for foreign licensed lawyers to work in the U.S.¹²⁷ In 1974, the New York Court of Appeals, adopted a rule that permits a foreign lawyer to be licensed without an examination to practice in New York as a legal consultant.¹²⁸ The court rule allows for this process “if the applicant has been in good standing as a member of the bar in his or her home country for at least three of the five previous years, possesses good moral character, is over 26, and intends to practice as a legal consultant in the State of New York.”¹²⁹ In 1995, there were 209 foreign lawyers registered as foreign consultants, primarily practicing in New York City.¹³⁰ In 1993, the ABA, approved a Model Rule to further liberalization of the Foreign Legal Consultant rules to further states to facilitate the practice of foreign legal

119. *Id.*

120. *Id.* at 17.

121. Worth, *supra* note 1, at 18.

122. *Id.* at 18.

123. *Id.* at 19-20.

124. *Id.* at 20; see Donald H. Rivkin, *Transnational Legal Practice*, 33 INT’L LAW 825, 826 (1999).

125. Worth, *supra* note 1, at 21.

126. *Id.*

127. *Id.* at 26.

128. *Id.*

129. *Id.* (quoting N.Y. CT. APP. R. § 521.1).

130. *Id.* (footnote omitted).

council in the U.S.¹³¹ The ABA created the Forum on Transnational Practice for the Legal Profession to work with foreign bar associations to liberalize their bar rules regarding licensing and practice in front of courts.¹³² The U.S. and the EU are putting effort into “harmonizing” ethical regulations internationally.¹³³

C. Foreign Legal Consultant Status

Although foreign bar admission may be a difficult or indeed impossible task, there is always the option to apply for Foreign Legal Consultant (“FLC”) status.¹³⁴ As discussed above in 1994, America became a signatory to the WTO GATS treaty, which entitles them to apply for FLC status.¹³⁵ This allows U.S. lawyers to practice U.S. law under their home state’s authority internationally.¹³⁶ The FLC status can be obtained by any lawyer admitted to the bar in a WTO member state, if they wish to consult on matters related to lawyer’s home country’s law in any other WTO member state.¹³⁷ The EU places more restrictions than applying for an FLC clearance; the CCBE advised that the FLC applicant come from a home country with a code of conduct, “in line with the CCBE,” has comparable education or experience, and is licensed in whatever manner required by the FLC’s home country.¹³⁸

One of the problems with the “in line with the CCBE” requirement is that there are now 157 countries that are members of the WTO agreements and many of these countries may have substantially different ethical codes, which precludes the attorneys from practice in the EU as a FLC.¹³⁹ Another limitation concerning FLC status is that it prevents a foreign lawyer from appearing in court in the host state and only allows the FLC lawyer to advise clients on his home countries rules of law.¹⁴⁰ Only those lawyers spending limited time in court or not appearing in front of a court could be

131. *Id.*; see MODEL RULE OF PROF’L CONDUCT R. 8.5 (2002) (explaining that California is an example of another state that has “liberalized” its rules of professional conduct).

132. Worth, *supra* note 1, at 32.

133. *Id.* at 33.

134. *Id.* at 21.

135. See discussion *supra* Part III.A.

136. Worth, *supra* note 1, at 21-22.

137. *Id.* at 22.

138. See Council of the Bars and Law Societies of the EU [CCBE], *Inbound Position Of The CCBE Vis-À-Vis Requests for Liberalisation from Third Countries (Outside the EU)*, CCBE (Mar. 21, 2001), http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/lamy_010301_enpdf1_1183718564.pdf.

139. *Understanding the WTO: The Organization: Members and Observers*, WTO (Aug. 24, 2012), http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

140. Worth, *supra* note 1, at 27.

well served by the FLC license.¹⁴¹ Lastly, the WTO mandate, that lawyers follow the ethical rules and obligations of the host state, creates a potential double deontology problem for American lawyers still subject to Model Rule 8.5 from their home jurisdiction.¹⁴²

V. CHANGE IN INTERNATIONAL LEGAL ETHICS

There are two factors contributing to the need for a worldwide common ethics code for international practicing lawyers. First, the practice of law has gone global.¹⁴³ Law firms are opening and operating firms across the world and the number of these international firms is increasing every year.¹⁴⁴ Second, lawyers practicing abroad are often subject to two or more differing or even conflicting ethical codes and obligations.¹⁴⁵ Even the most careful and ethical lawyer can find himself or herself in a bind between conflicting standards.¹⁴⁶ This leaves the lawyer the option to choose to comply with one code over the other or to withdraw from the representation of the business that subjects the lawyer to the ethical conundrum.¹⁴⁷ This forces the lawyer to lose clients and potentially, future business.¹⁴⁸ There has been significant scholarship on the double deontology problem. Some scholars have hinted or suggested the need to fix the ethical dilemmas experienced by international practitioners.¹⁴⁹ However, none of these articles previously written have suggested a viable solution. This Note proposes two solutions. I discuss the implementation, strengths, and weaknesses of each proposed solution. It is the purpose of this Note to suggest options that may be explored, expanded or curtailed in order to draft a working solution to help those international practitioners faced with double deontology every day in their workplace.

A. Allow the U.S. or individual U.S. states to become Observer Members to the CCBE Code of Conduct

Currently the CCBE Code of Conduct applies only to members of the European Union (formerly the European Community), which consists of thirty-one member states, two associate states, and nine observer states.¹⁵⁰ The U.S. is not a signatory to the Treaty of Rome, and is not a member of

141. *Id.* at 24.

142. *See* MODEL RULES OF PROF'L CONDUCT R. 8.5 (2002).

143. *See* discussion *supra* Part I.A.

144. *See* discussion *supra* Part I.A.

145. *See* discussion *supra* Parts IV.A-C.

146. *See* discussion *supra* Parts IV. A-C.

147. *See* discussion *supra* Part IV.A-C.

148. *See* discussion *supra* Part IV. A-C.

149. *See* discussion *supra* Introduction; Toulmin, *supra* note 84.

150. *See* discussion *supra* Part II.B.1.

the European Union. Thus, in practice the CCBE Code of Conduct was designed to specifically regulate the cross-border transactions of only member countries, and excludes guidance to non-European Union members.¹⁵¹ In theory, however, the Code of Conduct was designed to mitigate and reduce the double deontology and other problems inherent with cross-border legal practice.¹⁵² There have been numerous suggestions by academics that the CCBE Code of Conduct could one day become the world code.¹⁵³

1. Implementation

To bind the U.S., or more appropriately, a state within the U.S. to the CCBE Code of Conduct would remove the barriers to cross-border legal practice between the U.S. and the European Union. Individual states regulate lawyers that practice in their state, similar to the individual countries that become signatories to the Code of Conduct. In assessing the application of the Code of Conduct between Germany and France, it is paramount to understand that the CCBE Code only applies when one lawyer crosses the border and conducts services in the other country. Similarly, the CCBE Code of Conduct would only apply to the individual U.S. state when a lawyer crossed the border and entered into a European Union Country.

Looking beyond the fact that the U.S. is obviously not a member of the European Union; an increasing amount of international practice from the U.S. takes places in the European Union.¹⁵⁴ The U.S. is a major contributor to services, legal and otherwise, to the European market, and this presence is only increasing as more law firms create offices abroad.¹⁵⁵ Adoption and implementation of the CCBE Code after approval from the European Union would not create any type of undue burden on the individual state. A U.S. state, such as New York, which has been extremely liberal with its FLC licensing, and has agreements with the Paris Bar Associations for foreign practice, would simply need to modify their choice of law rules when dealing with international practice.¹⁵⁶ For example, states that have adopted the Model Rules verbatim would simply need to modify their Rule 8.5 comment 7. This new revision would reflect that the choice of law provision is applicable to international law. The change to the comment would state that when a conflict does occur the international practicing attorney should follow the local rules of the country they are practicing in and/or the CCBE

151. See discussion *supra* Part II.B.1.

152. See discussion *supra* Part II.B.1.

153. See discussion *supra* Part II.B.1; Toulmin, *supra* note 84, at 673.

154. See discussion *supra* Part I.A.

155. See discussion *supra* Part I.A.

156. See discussion *supra* Part IV.B.

Code of Conduct as applicable to the situation or conflict.¹⁵⁷ This would relieve the stress of ensuring compliance with two ethical obligations. Returning back to our example of Randall, when he is told that he is going overseas, whether for the short duration trip or the permanent move to Paris, Randall understands that while overseas he will be subject to only the CCBE Code of Conduct.

2. *Problems and Weaknesses*

The greatest weakness to this proposal is the U.S. becoming an observer member to the European Union. This is because the U.S. wants to be involved in the international trade market and many occupations are looking to expand throughout the European Union.¹⁵⁸ The U.S. is well positioned to fit in as an observer state because of its continuous and systematic contacts and involvement with the Europe. However, the U.S. would not want to be bound by the CCBE statutes and agreements within the European Union because this arrangement would simply resolve an ethical dilemma that has been discussed for twenty years. More discussion and research needs to be conducted about a way or a mechanism that would allow the U.S. to adopt the CCBE Code of Conduct as either an observer member or some other type of classification through the European Union and European Economic Community.

Another potential problem is when individual U.S. states resist in relinquishing their autonomy and disciplinary authority over their state's lawyers. Yet, to be sure, states are better served by allowing international disciplinary proceedings to occur where they take place, and lawyers are better served by being subject to one round of discipline. Typically, a lawyer could be disciplined where the misconduct took place and then disciplined again by his or her bar licensing state for any violations.¹⁵⁹ This Note proposes that a state may accept the slight limitation on state sovereignty in exchange for regulation of foreign practice because: (1) individual states would still have control over who gains bar admittance; (2) states would save money by not having to conduct separate disciplinary procedures for international misconduct, and (3) not every state would need to implement this regulatory scheme. Therefore, states that are in favor of international practitioners could change their Model Rules. Lawyers expecting to conduct international practice and wishing to be subject to those rules could obtain bar licensing through that particular state.¹⁶⁰

157. See discussion *supra* Part I.B.2.

158. See discussion *supra* Part I.A.

159. See discussion *supra* Part I.B.

160. See discussion *supra* Part IV.B (indicating that states such as California and New York are more liberal in their lawyer regulation schemes).

B. WTO Adopts the CCBE Code of Conduct as the official Ethical Code for GATS Member States

The second proposed solution focuses on the WTO GATS Foreign Legal Consultant status and the lack of a common legal ethics code between the signatories to GATS.¹⁶¹ Under this proposal, the countries that listed Legal services in the schedule of services should be subject to one ethical code. This Note proposes that the common ethics code should be the CCBE Code of Conduct due to the black letter design of the Code, the adoption and acceptance of the Code by the diverse and unique cultures of the European Union, and because many scholars believe that the Code could function as a global ethics code.¹⁶²

1. Implementation

Currently, the WTO requires the visiting FLC to follow the legal ethics code for the country in which they are practicing.¹⁶³ However, the WTO Secretariat has already discussed that an evaluation of the U.S. Model Rules, the CCBE Code of Conduct, and the Japanese Codes exist without significant differences.¹⁶⁴ Furthermore, one of the discussions during the Doha Round meetings focused on the potential of adopting one common ethical code for GATS lawyers.¹⁶⁵ Due to the constraints placed upon foreign lawyers both entering and exiting the U.S., most apply for and obtain the FLC license to practice their home countries' laws in a host country, instead of seeking bar admission in the foreign country.¹⁶⁶ Therefore, the WTO implementation of a single legal ethics code could reach more lawyers and therefore help address the double deontology problem on a larger scale. This is because that there are now 157 members of the WTO worldwide, with many of these members listing legal services and joining the GATS resolution.¹⁶⁷

A short illustration is illuminating. Consider Randall's situation.¹⁶⁸ Randall is scheduled to go overseas and assist with contract negotiations for a client in France. Randall expects to be overseas for less than two weeks. There is no need to become bar licensed in France. Randall has made these trips abroad before for clients and is already a registered FLC in France, thanks to the GATS agreement. While abroad, a problem with a client

161. See discussion *supra* Part III. B.

162. See discussion *supra* Part II.B.1; see also Toulmin, *supra* note 84, at 685.

163. See discussion *supra* Part III.B.

164. See discussion *supra* Part III.B.

165. See discussion *supra* Part III.B.

166. See discussion *supra* Part III.B; see discussion *supra* Part IV.B-C.

167. See discussion *supra* Part III.A.

168. See discussion *supra* Introduction.

occurs during negotiations and Randall is unsure about what to do concerning disclosure to his client. According to GATS and the requirements of the FLC license, he follows the rules of the country that he is practicing in, thus the CCBE Code of Conduct would apply. Randall later learns that his disclosure, allowed under the CCBE Code, was forbidden by the Washington D.C. Model Rules which subjects him to a disciplinary proceeding for misconduct. As this example illustrates, Randall is best served by a singular code, rather than two competing codes of conduct.

2. *Problems and Weaknesses*

The solution to implement the CCBE Code through GATS is much more feasible than the previous scenario where the U.S. becomes an observer member to the EU and CCBE. This is because the U.S. is already a member of the WTO and signed the GATS resolution, listing legal services as one of its covered entities.¹⁶⁹ Therefore, from a procedural standpoint, the U.S. is already organized and positioned to implement a common code of ethics for all of GATS.

The problem in adopting this common code of ethics would likely arise when the U.S. or any other member state giving up their autonomy and sovereignty, as the GATS agreement requires. For example, when a FLC practicing in America commits misconduct, the state the FLC is practicing in, can simply look to their model rules and discipline the misconduct under their rules. This works if the misconduct occurs in the U.S., in Germany or in Japan. With a single ethics code, governments will have to familiarize themselves with the CCBE Code of Conduct and ensure that there was in fact a violation. This learning curve should be slight to almost none existent because the CCBE Code and the Model Rules do not vary to significant degree and are overall founded upon the same set of moral principals.¹⁷⁰

Additionally, the U.S. Model Rules and the CCBE Code of Conduct stem from a Western ancestry with similar, albeit not the same morals and beliefs.¹⁷¹ America's roots, generally speaking, are tied back to the European Continent. The WTO represents 157 countries.¹⁷² Many of those countries may have no ethical code or not one that is substantially similar to the CCBE Code of Conduct and U.S. Model Rules. How does the validity of the CCBE Code of Conduct stand up against a challenge from another WTO member who prefers a different ethics code? Like the democratic process that started the WTO and GATS, this implementation would most likely be decided on a vote between countries. The fact that the CCBE Code

169. See discussion *supra* Part III.A.

170. See discussion *supra* Part I.B.1.

171. See discussion *supra* Part I.B.1.

172. See discussion *supra* Part IV.C.

of Conduct directs the ethical considerations of the entire European Union, which is comprised of over forty independent nations, all substantially different in culture and background, presents a strong argument that it could become the world's ethical code. In any event, the WTO has recognized the problem and is keen on addressing the implementation of a common code of ethics in the GATS resolution.¹⁷³

CONCLUSION

The time has come for the world to consider the adoption of a universal code of ethics for the international practice of law. Competing and conflicting ethical obligations from differing countries have created the need for uniformity. The fear of a double deontology situation has serious disciplinary ramifications for practicing attorneys. Choosing to follow one country's ethical obligations over another country's could constitute misconduct in one jurisdiction, but not in another jurisdiction. This presents a difficult conundrum for an attorney who must choose between competing ethical codes. Conflicts of law provisions are simply inadequate to address the growing concerns of the international practitioner. The American lawyer, now more than ever before, has an increasing presence in the global legal market, making these ethical dilemmas not only relevant, but also problematic.

This Note outlined the increasing globalization of the legal profession in order to express the urgency that the ethical dilemmas are placing on American attorneys practicing abroad. The GATS resolution has complicated matters further as the U.S. is a signatory and has listed legal services under its charter. With the ever-increasing global focus of many U.S. law firms and the now more than 150 countries that are participating in the WTO, uniformity in the application of the ethical guidelines and regulations is needed immediately. This Note proposed that the CCBE Code of Conduct could serve as a reasonable code of ethics, either for a uniform code of ethics or as the code subscribed to through the WTO.

While this Note has not proposed any easy or steadfast solutions, the main purpose was to highlight a problem in the international practice of law and call for more research and attention to be paid, regarding how the world should police its internationally focused attorneys. The need for uniformity is real. There must be a common code that fills this void. While there are pros and cons to the solutions this Note proposes, these solutions are preferable to the status quo. Ultimately, after research and practicality is considered the CCBE Code of Conduct may not provide the best option. As Professor Toulmin has stated, the international code agreed upon needs to

173. See discussion *infra* Part III.B.

incorporate general principals that jurisdictions would agree to subscribe.¹⁷⁴ The CCBE Code is the type of code that could be applied globally, as its black letter rules have already been successfully adopted across the European Union.

174. See Toulmin, *supra* note 84, at 685.