

ETHICAL ISSUES IN INTERNATIONAL LAW PRACTICE

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The legal systems require application of moral values or good behaviour from individuals, community members and the groups active in the society. The required behaviour should correspond to ethical standards of the society. The absence of ethics gives rise to inconsistency and lack of clarity as the created problems fail to achieve desired behaviour.

The existing plurality of inconsistent rules in international law practice decrease our expectations and pose a question that how lawyers may behave while representing their clients in the field of international law? Because when there are no standards, the environment becomes a no man's land. For instance, the International Criminal Court (ICC) requires the application of a code of professional conduct for those who are engaged in International Law practice. But there exists an anomaly, that is, code of professional misconduct does not apply to the counsel

representing prosecution, the same though applies to the defence attorneys and the representatives of the accused.

Attorneys engaged in international law practice hail from diverse background and believe in divergent concepts of legal ethics; hence differences arise in respect of witness testimony, production of documents, conflict of interests and fact revealing obligations. These conflicts at times provide opportunities to the prosecution and defence lawyers to misrepresent facts and to manipulate evidence.

Creation of an organized environment thus becomes necessary as the international community would like that a uniform set of conduct rules be applicable both to prosecution as well as to defence lawyers. These arrangements can help to advance standard values in international law practice. A common understanding in this regard can be reached through proactive discussions among international law practitioners. And such agreed arrangements can easily establish a self policing community of international lawyers particularly in presence of

mal-practice and misconduct which can jeopardize the reputation of practicing international law lawyers.

The conduct rules practiced in the home jurisdiction of attorneys can be a good starting point for consideration of building rules of conduct for international lawyers. For example, California rules of professional conduct apply anywhere in the world to a lawyer licensed to practice only in California. But where a conflict arises, it is not certain what conduct rules will be applicable. Some national codes assert primacy, as does ICC code of conduct, but the fact remains that there may not be a correct answer to the existing dilemma. Nevertheless seeking advice in disputed cases is a good way for international lawyers.

One may ask that what disciplinary measures could be taken against misbehaving lawyers. Sanctions in this regard may include contempt proceedings, fee denials, warnings and suspensions. For example, in the case relating to former Congolese Vice-President Jean-Pierre Bemba, the lawyers who interfered with witnesses and presented false documents were

awarded punishment of imprisonment and fines.¹ The fact is that lawyers conduct can make and break the case of one's client. In this background question arise whether or not an international professional body to oversee conduct related problems of the attorneys engaged in international law practice can be constituted?

It is learnt that the defence attorneys participating in international criminal law are engaged in the establishment of associations of defence counsel. They have set up committees to hear representation on questions relating to conduct of the attorneys.

By contrast, international arbitration is considered to be a private arrangement. There is a debate regarding whether arbitral tribunals have the power to sanction or disqualify a counsel. In *HEP v. Solvenia*, the tribunal ruled that the Tribunals do have

¹ Indigenous people in Ecuador were unable to enforce a multi-billion dollar Ecuadorian judgement against Chevron in the United States after the U.S. federal court held that lead plaintiffs' lawyer Steven Donziger had committed numerous ethical violations and breached U.S. laws in the litigation against Chevron.

inherent power to discipline lawyers who practice before them.² It would be more pragmatic for the tribunal and parties to discuss and agree to the ethical standards that would apply in the proceedings before international court/tribunal.

In the International Criminal Tribunal for the former Yugoslavia,³ different cases were brought at different times, the question arose whether the new cases can be based on the facts narrated in earlier cases, however, the judges kept these cases separate in their minds in a manner that their impressions in one case did not colour what they learnt in a different case.

In international arbitration, arbitrators are subject to disclosure obligations. By comparison, government lawyers may sometime face political pressure to create legal arguments supporting immoral conduct. For example, on the legality of the Iraq War the U.S. Torture memos and the Opinion of the English Attorney General have been heavily criticized. However, it could

² Harvatska Elektroprivreda D.D v the Republic of Slovenia, ICSID case no. ARB/05/24

³ Security Council Resolution No. 827, UN SCOR, 48th Session; 3217th meeting; UN. D.C. S/RES/827(1993) ICTY Statute Resolution.

be argued that these lawyers were not acting in their capacity as lawyers, but rather as experts, and experts' ethical obligations are different. As for academics, there was a general public interest to encourage academics to participate in fact-finding missions. Nonetheless, it would be appropriate that they should at least sign some agreement to comply with certain ethical standards.

The requirement of ethical values in international law practice is increasing with passage of time and it may lead to some agreed solution. However, it does not mean that international practice in the field of professional ethics is stand still, as is evident; it is alive and moving forward.

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