practice have unique insights and contributions to make to international law and transnational regulatory issues.

Having conspicuously located the lawyer at the hub of his investigations of various global regulatory issues, Vagts eventually turned his intellectual energies directly to the transnational regulation of lawyers themselves. In fact, Detlev Vagts was among the first and most insistent about the need to regulate global legal practice.

Since Professor Vagts's groundbreaking work in this area, there have been many important developments in the field of transnational or global legal ethics. To date, however, despite concerns about the role of attorneys when false evidence has been presented in ICJ proceedings and calls for related reforms at the Court, the ICJ has yet to take up these issues directly. This Roundtable discussion will hopefully contribute to our understanding of the nature of the concerns and possible solutions. That is why the topic of ethics was chosen.

With regard to the format for this Roundtable, it was designed to honor both Professor Vagts's intellectual commitment to integrated consideration of practical and theoretical concepts, and his personal commitment to promoting junior scholars. In explaining it, I indulge also in a slightly more personal perspective. Over fifteen years ago, when I first started researching on issues of global legal ethics, the first articles I found on the topic were by Detlev Vagts. They inspired me and shaped my interest and work that followed all these years. I also sent copies of my early work to Professor Vagts, and he responded with a personal and intellectual generosity that was such an ingrained part of his character.

With this background in mind, the Roundtable format was organized to honor both Professor Vagts's commitment to an integrated understanding of both the practical and intellectual aspects of regulating the globalized legal profession, and his commitment to supporting and promoting junior scholars. In light of these goals, the Roundtable was organized around a scholarly presentation by Christina Skinner, Associate in Law at Columbia Law School, and a hypothetical that was loosely structured around actual cases in which false evidence was allegedly presented to the ICJ. The issues raised in Professor Skinner's essay and the hypothetical will be central to commentary by an exceptional group of practicing attorneys and legal scholars: Catherine Amirfar, who has appeared before the ICJ as a private attorney and is currently working in the U.S. State Department; Cecily Rose, an Assistant Professor of Public International Law at Leiden University; and Stephan Schill, a Professor of International and Economic Law and Governance at the University of Amsterdam.

Ethical Dilemmas in Interstate Disputes

By Christina Parajon Skinner[*]

Although international adjudication is increasingly common, standards governing the conduct of counsel appearing before international courts and tribunals remain underdeveloped.[1] This contribution focuses in particular on the insufficiency of ethical standards to guide counsel appearing before the International Court of Justice (ICJ). Its primary goal is to pose a set of probing and exploratory questions, in order to advance a conversation among scholars and practitioners of international law about the need for (and content of) new ethical rules

[*] Assistant Professor, Brooklyn Law School. This contribution is drawn from an essay, which is forthcoming in Volume 68 of the *Alabama Law Review*.

[1] *See generally* Catherine A. Rogers, *Fit and Function in Legal Ethics: Developing a Code of Conduct for International Arbitration*, 23 MICH. J. INT'L L. 341, 346 (2012); Detlev F. Vagts, *The International Legal Profession: A Need for More Governance?*, 90 AJIL 250 (1996).

of the road. To that end, this contribution considers two conduct standards—regarding diligence and disclosure—for litigants before the ICJ, and also addresses what role ICJ judges might play in deterring unethical conduct.

Duties of Litigants: Diligence and Disclosure

There are, of course, a range of challenges to defining a set of uniform standards of ethical conduct for litigants that appear before the International Court. On a very general level, the differing legal and cultural traditions among sovereign states (and their nationally trained lawyers) quite likely makes it difficult to standardize ethical norms. Still, the existing default—to rely on national ethical rules to police attorney misconduct—may be unsatisfying. A national default, after all, assumes that national governments or national court systems will investigate (and, as appropriate, punish) misbehaving attorneys. But invariably, assessment and enforcement will vary. Indeed, one may well be concerned that some misconduct will go undiagnosed or unaddressed if the behavior advances the state's national interests.

On that view, that is, assuming that an international set of rules would be preferable to a disparate set of national standards, the balance of this contribution suggests a startingpoint to developing a new, ICJ-specific ethical code.

Diligence. One area to address involves counsel's obligations regarding his or her responsibility to investigate or ascertain the accuracy (and authenticity) of evidence submitted to the Court. To be sure, suggesting that ICJ counsel have a duty to engage in evidentiary due diligence departs from many established national systems, where counsel is not, in ordinary circumstances, ethically expected to investigate the evidence that its client provides.

Arguably, however, there is sound reason for creating a ''heightened'' duty where interstate disputes are concerned, given that it may be more difficult for opposing counsel (or the Court itself) to sniff out evidentiary anomalies, in light of language, informational, or other resource barriers. That being said, the drafters of a new diligence standard would, in all likelihood, have difficulty defining with precision the boundaries of the duty. Ultimately, it may be most prudent for the drafters to leave open to counsel's judgment and discretion the determination of what amount of diligence is sufficient in any given case or circumstance.

Disclosure. In addition, a standard of conduct regarding counsel's disclosure obligations could provide guidance on what, when, and to what extent counsel should disclose suspicions about the authenticity of evidence to the Court (in connection with its own or its adversary's case).

To illustrate the longstanding ambiguity in counsel's disclosure obligations, consider the *Corfu Channel* case, which was brought before the ICJ in 1947.[2] There, a critical naval document, called ''XCU,'' suggested that, contrary to arguments that the U.K. made to the UN Security Council and then later before the ICJ, British naval ships' passage through the Corfu Straits may not have been ''innocent'' under international law. XCU was not initially disclosed to the Court; for a time, U.K. lawyers appeared not to have been it aware it existed.

However, when the document was discovered, U.K. counsel debated (together with the naval department and political actors) whether it should be provided to the Court—the document was not disclosed.[3] One cannot know for certain whether the U.K. government lawyers were unsure of whether they were ethically obligated to disclose the document, or

[2] Corfu Channel Case (U.K. v. Alb.), 1948 ICJ Rep. 15 (Mar. 25).

[3] For a summary of these events, see W. Michael Reisman & Christina Parajon Skinner, Fraudulent Evidence Before Public International Tribunals: The Dirty Stories of International Law 55–77 (2014).

if they well understood their duties but chose a more politically expedient route. But one can infer that the international character of the dispute infused the situation with some ethical ambiguity. As Sir Hartley Shawcross remarked:

> If the case were before an English Court, there could, of course, be no possible question. How far one is entitled to adopt a different code of ethics in regard to the International Court I do not know. Does the maxim ''My country . . . right or wrong, my country'' relieve one from the professional consequence which would otherwise arise?[4]

In any event, if created today, disclosure standards for ICJ counsel could not only play a clarifying role, but also could provide a useful bulwark against pressure to withhold or selectively disclose certain evidence.

Duties of the ICJ: Investigate and Censure

Some have also questioned whether, in addition to duties for ICJ counsel, ICJ judges might also benefit from firmer guidance on to how to handle attorney misconduct. While a duty to investigate—that is, affirmatively research whether the evidence counsel has proffered is genuine—would likely be inefficient and impractical on several levels, it stands to reason there should, at a minimum, exist some additional tools for deterring and sanctioning international counsel's misconduct.

Yet the Court may not be the best institutional actor to do so, given the collateral (social and economic) consequences of punishing unethical behavior of any one individual (or group) of attorneys. Private censuring mechanisms may be a more productive solution—like, for instance, through the Global Arbitration Review,[5] which could call attention to ethical misconduct and thereby impose a form of reputational sanction on wayward attorneys. Such private censure seems promising as a deterrent to misconduct; at the same time, it avoids the potential drawbacks of ICJ censure (i.e., public censure), which could include impairment of a decision's legitimacy or the implicit questioning of the propriety of the state itself.

Conclusion

This contribution has, at a very high level, considered a possible—and pragmatic—way forward toward addressing an existing gap in ethical standards for counsel appearing before the ICJ. It thus suggested the creation of conduct standards for attorney diligence and disclosure, which could be embodied in a newly created ICJ code of ethical conduct. This contribution also raised the possibility of developing private mechanisms for censuring ethical breaches in tandem with an ICJ code.

Remarks by Catherine Amirfar*

Let me start with a disclaimer that everything I say is in my personal capacity and cannot be attributed to the State Department or the U.S. Government. I will focus on the hypothetical as a means to talk about some broader issues. The first question is: What ethical rules apply to determine whether Garam's conduct was appropriate, and what rules should apply to Sala's legal team?

[4] Minute from Hartley Shawcross, Attorney General, to William Jowitt, Lord Chancellor (Nov. 1, 1948) (on file with U.K. Nat'l Archives at LCO 2/4515).

[5] Global Arbitration Review, *at* http://globalarbitrationreview.com.

* Counselor on International Law, U.S. Department of State. Ms. Amirfar spoke in her personal capacity.