LEGAL EDUCATION — TRAINING FOR LAW MOOT COMPETITIONS

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MOOT COURT COMPETITIONS AND THEIR ROLE IN PRACTICE ORIENTED TRAINING OF LAW STUDENTS

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Abstract

The paper explores the issues that are rarely dealt with by Russian Universities and their Faculties in the context of the methodology and general theory of legal education, whereas the issue of mooting (legal competitions) is rather well covered under the common law system. The primary goal of any moot competition is to facilitate both the study of the subject matter (e.g. international commercial law as in the annual Vis moot competition) and the existing dispute resolution processes (e.g. arbitration as the dispute resolution process of choice for international business disputes). Thereby, mooting trains future law leaders in dispute resolution. The most common approach is that a perfect team of mooters needs an equal combination of both outstanding legal arguments (both in

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oral and written forms) and effective presentation skills. Based on our coaching experience and the discussions we have conducted with our colleagues and students involved in mooting we show that there are numerous different views among moot competitions participants, judges, coaches, and the most experienced "real" professional advocates as to the most effective advocacy tools. Mooting and clinical work represent the key skills-oriented approaches to training lawyers. However, mooting prevails in the context of globalisation of legal education and the development of cross-cultural competences.

Keywords

Moot, legal skills, legal research, advocacy, analytical thinking, legal reasoning, legal writing

CONTENTS

1. INTRODUCTION

At many law schools, a moot court is one of the key extracurricular activities[3] (along with clinical activity, interactive law clubs, law societies, *etc.*). It consists of simulated court or arbitration proceedings that usually involve drafting memoranda and participating in oral rounds based on the annual problem issued to mooters that has been drafted by outstanding law scholars and practicing lawyers. A moot provides the setting of a court, where students act in the role of counsels, based on the problem (and the legal scenario it creates) that they are given in advance. The mooters need to be familiar with two aspects of law: the law governing the substance of the case, and the law governing procedure used to determine the dispute. In addition, such pragmatic things as court etiquette, dressing appropriately, and voice control are as important in a moot as it would be in a real life court.

Participation in moot courts provides a variety of unique opportunities for students, their faculty and educational institutions as a whole. In this paper, we would like to share our ideas and to take the opportunity to summarise, to some extent at least, our own experience as coaches in the belief that this will be helpful and valuable to other coaches and students participating in the moot competitions. While our own professional experience relates most directly to working with students within the context of law schools teaching the Russian mixed model, we have also spent significant time interacting with other coaches and teams representing the common-law system. We hope that our own ideas and experiences, as further developed and described in this article, may be useful to coaches and teams representing different countries with different law systems.

The impact of mooting is two-fold: on the one hand, mooting is used in law schools to equip students with knowledge and skills necessary to succeed in their future careers in courts. On the other hand, the impact

[3] In law schools representing the common-law legal system, mooting is a compulsory part of the course for those who wish to go on to take the Legal Practice Course (LPC) or Bar Professional Training Course (BVC). As rightly noted by Prof. Charles A. Goddard, "[s]ome universities (Mannheim, for example) allow their students credits on the Masters Programmes for studying for the Jessup or Vis. That is, they are allowed up to half of their university study timetable against their studies — which they can do 'instead of'."

of mooting can be indirectly reflected in the legal and judicial systems as law students chose to practice law implementing the mechanisms and techniques they acquire while participating in moot competitions.[4] Thus, implementation of mooting into academic curriculum requires a thorough examination of the content of the course.

Kutafin Moscow State Law University (MSAL) joined the mooting process almost twenty years ago, encouraging the students and faculties to take part in moot competitions extracurricularly. The first attempt to systematise and use mooting as a pedagogical tool was undertaken when the Department for International Legal Competitions — (our Moot Court Department) — was founded in 2016. In 2018 this was expanded to implement disciplines necessary for moot court competition preparation into the University curricula. Since then the faculty of the department have developed 9 syllabi used to train students.

In order to join any of the Moot Courts Department courses students have to undergo selection process to prove their level of awareness of legal concepts and language skills. Syllabi in language skills are aimed at training the skills necessary for students regardless of the moot competition they are going to take part in[5] and the courses on foundations of different branches of law are developed to increase awareness regarding legal concepts and skills necessary for the particular moot court competition.[6] Students joining the Moot courts Department

[4] Shreya Atrey, I object, Your Honour! The Moot Court Paradigm is Mootable, 6 National University of Judicial Studies Law Review 301 (2013).

[5] Such courses include "Foundations of Modelling Moot Competitions".

[6] E.g. Fundamentals of modelling the dispute resolution process in the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation; Fundamentals of Simulated Dispute Resolution process in the International Commercial Arbitration Courts (in English); English for specific purposes: Simulated Moot Competitions; Fundamentals of Simulated Dispute Resolution process in the UN International Court of Justice (in English); Fundamentals of Simulated Dispute Resolution Process in the Courts of the European Union (English); Fundamentals of Simulated Dispute Resolution at the Arbitration Center under the Russian Union of Industrialists and Entrepreneurs; Fundamentals of modelling the process of consideration of disputes arising from international corporate relations (in English); Fundamentals of modelling the process of consideration of criminal and criminal procedural matters in courts of general jurisdiction of the Russian Federation; Fundamentals of modelling the process of consideration of commercial disputes resolution in the state courts of the Russian Federation.

are exposed to different types of conflict resolution procedures and they learn how to use internationally harmonised law. At the stage of rehearsing for the oral hearings and during the orals themselves, the students are no longer taught the framework, but are trained in the practical use of dispute resolution procedures and the uniform law.

The Moot Courts Department was founded by the order of the Rector on August 29, 2018, as the successor to the International Moot Competitions Center. The department currently employs 4 associate professors, 2 senior lecturers, and 3 assistants. In addition, the Department employs Prof. Charles A. Goddard and A. V. Zamaziy to conduct lectures and give instructions in English. Courses are also run to prepare students who might be thinking about taking part in a moot competition — with a range of legal and practical legal English topics.

Every year, starting in September, the Department trains students who are going to participate in international and all-Russian moot court competitions. In total, 66 students were trained during the 2018/2019 academic year. This academic year the outcomes of the work of the Department have been as follows:

At the international level, the Jessup team of Kutafin University won the all Russian rounds and went to America for international rounds.

The team of Kutafin University participated in the 26th Annual Willem C. Vis International Commercial Arbitration Moot. Orals were held in various locations including the University of Vienna Faculty of Law (Vienna, Austria), and previously in a number of so-called "Pre-Moot Competitions". Some of these were formally arranged (for example the Moscow Pre-Moot competition). Others were informal, conducted by skype with foreign universities, and in the offices of Moscow law firms playing against teams from other Moscow universities.

At the Main Competition held just before Easter in Vienna, 372 teams were competing from all around the world. Our University team secured great success, winning a place in the list of the top 32 teams.[7] Two of

[7] The significance of this is that in this competition, teams who secure a place in the list of the top 64 are considered so successful that their competitors are not allowed to participate as competitors in subsequent year, thereby freeing places in the respective teams for fresh students.

our students — Anna Ryazanova and Alexandra Tereshchenko — were also awarded "Honourable Mention" certificates for their outstanding skills and performance. The Vis competitions are extremely tough, and in the 26 years of the existence of the competition, the team of Kutafin University became only the fifth Russian team ever to succeed to such a high level, as well as receiving high recognition for the team performance. Coaches of the team were Evgenia N. Puzyreva (Cand. Sci.), Olesya F. Zasemkova (Cand. Sci.) and Tatiana Yu. Chupakhina.

Outstanding results have also been achieved in national competitions. Thus, in November, 2018, Kutafin University students participated in All-Russian Student Judicial Debates on Criminal Cases held in the Tauride Academy of Vernadskiy Crimean Federal University. Two teams representing the Kutafin University took part in the Debates, namely our "Kutafintsy" team (consisting of Arina Kasatkina, Zoya Dzheiranova and Evgenia Tsybulenko) and our "MGYuA" team (consisting of Alina Cheladina, Dmitry Maryenko, Ksenia Aparina). All participants are the students of the Institute of the Prosecutor's Office. The teams are coached by Tatiana Sushina (Cand. Sci., Senior Lecturer of the Moot Courts Department). The overall supervision was exercised by Yana O. Alimova (Cand. Sci.), Head of the Moot Courts Department. During the competition, the "Kutafintsy" team succeded in taking the honourable second place, and the team "MGYuA" was nominated as "Best Accusation".

In November 2018, our Kutafin University team participated in "The Ural Student Competition on Settlement of Commercial Disputes" that was held at Ural State Law University in Yekaterinburg, Russia), where the team succeeded Honourable 1st place. The team also won the prize for "Best Memorandum for Respondent", and our student Nelly Zhuravleva was named the "Best Oralist" and was invited to take up an apprenticeship at *Enforce* law firm in Moscow. All participants were students of the International Law Institute of our University.

In March 2019, Kutafin University students participated in the sixth Mikhail G. Rosenberg student competition on international commercial arbitration devoted to International Purchase and Sale Law. The competition was organised by the All-Russian Academy of

Foreign Trade of the Ministry of Economic Development of Russia. The co-organiser of the competition was the Chamber of Commerce and Industry of the Russian Federation. The team of our University won the final rounds held between Kutafin University team and the Law Faculty of the Belarusian State University. Moreover, the team was invited to undergo apprenticeship in *Kulkov, Kolotilov* & *Partners*, and Nelly Zhuravleva received an invitation for internship at *Rybalkin, Gortsunyan & Partners*.

Every year the Moot Courts Department organizes an International Commercial Arbitration Competition. This year the team of our University won the Final against students of the Higher School of Economics. Team members were Nikita Ayrapetov (Institute of Private Law), Maria Btikeeva, Svetlana Apsalikova, Margarita Makhrina (International Law Institute). In addition, Nikita Hayrapetov won the silver medal position for oral presentation. Sergey E. Bibikov, assistant lecturer of the Moot Courts Department, trains the team.

However, participation in moot courts is not the only extra-curriculum activity carried out by the Department that students can join to improve their professional skills.

In February 2019, the team of the Moot Courts Department took part in the full-time national rounds of the international competition "International Negotiation Competition for Law Students" held at the Russian Peoples' Friendship University (RUDN University). The International Negotiating Competition for Law Students evaluates the skills necessary for students to participate in civil contracts negotiations. Following the results of the competition, the team took the 4th place.

In February and April, 2019, students of the Moot Courts Department took part in the International Law Faculty Cup held by MGIMO University (Moscow State University of International Relations). The team successfully passed the qualifying rounds of a particularly tough field, and were ultimately rewarded with the Bronze Medal position

In May 2019, Kutafin University team took part in the European rounds of the Manfred Lachs International Space Law Competition in Paris, France. The competition has been held since 1992 and is the most prestigious international competition on space law. The competition

simulates the process of dispute resolution in the UN International Court of Justice and addresses topical issues of space law, as well as related issues of environmental law, maritime law, air law, law of international responsibility, intellectual property rights. Kutafin University team was selected to participate in oral rounds where it competed with the teams from Great Britain, Belgium, Finland and the team of Samara University. Our team won three out of four rounds and lost only a few points in the semifinals.

In March 2019, Kutafin University team participated in the eighth All-Russian tournament on criminalistics and criminal procedure "KRIMTSESS" held in Tomsk, Russia. Our team took the 1st place in the nomination "Homework" (written documentation) and secured 6th place overall.

The Moot Courts Department is constantly taking different steps to develop English language skills and trial advocacy skills. Thus, we organised for our students a number of meetings with foreign professors.

This year the Moot Courts Department has organized a meeting with Jeffrey Burt, an expert in international arbitration and international commercial transactions law and a practicing lawyer. During the meeting, students discussed the problems associated with the process of choosing future professional career, advantages and disadvantages of an academic career and career of a practicing lawyer. A lively discussion was caused by the question concerning the qualities a lawyer needs for successful self-representation in the legal services market.

In May 20, 2019, our students met with Stephen P. Friot — a federal judge of the District Court of the Western District of Oklahoma (USA) who lectured on "Human Trafficking". The topic of crimes related to human trafficking aroused keen interest among students. The judge conducted a test for the listeners who attended the lecture. Yana Vasilyeva, the Moot Courts Department student who participates in several moot competitions, showed the best result. In recognition of her high level of training and personal accomplishments, Yana was awarded with an access to the legal writing course at the Pericles Centre for International Legal Education.

In the summer, the Department also organises work in summer schools and holds open seminars for the teams participating in moot courts.

However, the Department faces numerous challenges in its work. It has to facilitate the selection process looking for the best students to be engaged in moot courts competitions. For the English language moot competitions, one challenge is to develop a student's level of English to the point where they feel confident enough to start working in English- researching, debating, and writing with a professional level of ability. The level of English of the majority of students leaves much to be desired. In addition, the best way out is to provide students with the opportunity to be instructed in English within the framework of a course of lectures and practical seminars based on selected topics in the law of the UK, and relevant international law topics. Prof. Charles A. Goddard gives this course of lectures.

To conclude, we can reveal that in order to ensure permanent and consistent success for the students and University administration, we have found that a systematic approach is needed to secure multi-faceted consideration of best practices and their implementation into the work of the Department.

However, in this paper, we do not focus exclusively on participation in a particular moot,[8] and we do not focus primarily on certain unique features of particular moots.[9] Moreover, we submit that participation in any moot court gives rise to unique opportunities for team members, coaches, educators and law school administrators. Mooting maximises the overall pedagogical benefit that is to be derived as the result of educational institution participation in mooting as a pedagogical and teaching phenomenon.

[8] See as examples the following international moot courts: Willem C. Vis International Commercial Arbitration Moot, Willem C. Vis International Commercial Arbitration Moot (East), Philip C. Jessup International Law Moot Court Competition, International Maritime Moot, The Telders International Law Moot Court Competition, Jean Pictet Competition, ELSA Moot Court Competition EMC2, etc.

[9] For more details see Jack M. Graves, Stephanie A. Vaughan, The Willem C. Vis International Commercial Arbitration Moot: Making the Most of an Extraordinary Educational Opportunity, 10 VJ 173–206 (2006).

Mooting is a many-faceted experience that requires thorough examination with regard to its pedagogical, educational, unifying, internationalising and socialising potentials. By investing months of research in the preparation of memoranda and oral pleadings, the participants of the moots are learning the law (as the subject matter) and acquiring the skills needed to distinguish them in their professional careers. By participating in the moot they are gaining knowledge, skills and experience that are not easy to come by through academic studies alone. They are gaining confidence in the art of advocacy as a key instrument to harmonising and internationalising legal norms. Thus, human rights, for example, would be "a hollow concept" without being "advocated" in courts and tribunals at national and international levels. Moot competitions participants are constantly gaining understanding that there are skills that lawyers possess as an art and because of which people require the services of lawyers.[10]

In this regard, we would like to mention that the progress of the moot courts movement has coincided with the rapid development of technologies and their penetration into the Realm of Law, which could not but result in fundamental changes in the legal profession and legal doctrines. However, it has already become obvious that Law will preserve its primarily human rather than technological domain. The participants of the Plenary Session "The Art of Law" of the 9th St. Petersburg International Legal Forum stated that technology would never replace lawyers because "[T]he legal profession is so much more than an array of skills and algorithms; it is not a job — it is an art!"[11] It is, therefore, not surprising that each year mooting attracts an ever-increasing number of students and stakeholders.

Moots are international events, and educational institutions participating in moots face a number of problems discouraging participation. Thus, law schools located far from the moot competition location may find the travel costs higher than those typically associated with domestic moots. As such, it may be important to the institutions that the moot they decide to take part in provides a substantially

[10] Ibid.

[11] Available at: https://spblegalforum.ru/en/programme/1540757756526.

greater educational benefit than other moots and greater costs of participation commensurate with advantages of participation and possible accomplishments.

2. MOOTING, RHETORIC AND ADVOCACY SKILLS

Oral pleadings that are the mandatory element of almost all moot courts represent a sophisticated exercise that primarily hones the skill of advocacy.[12] Black's Law Dictionary defines advocacy as *"the act of pleading for, supporting or recommending active espousal."*[13] Thus, advocacy is a "noble and necessary skill" that "gives life to legal norms in national and international relations."[14]

As we have mentioned above, the concept of human rights would not have developed and consolidated at both national and international levels but for being "advocated" in many contexts. With particular respect to international trade and the topics dealt with in the Willem C. Vis International Arbitration Moot, advocacy is *"indispensable in upholding the rule of law among merchants, in promoting contract discipline and making sure that honest work and investment are honoured as agreed in the business deal."*[15] Thus, moot competitions participants, striving to uphold the rule of law in different relations, are in a very real way promoting the well-being of different entities, stability of relations and predictability of outcomes. In that sense, nationally and internationally professional well-versed advocacy plays a vital role. However, academic curricula do not provide for much practice in this area. Thus, mooting gives a good opportunity to practice advocacy that involves more than just skill and professional knowledge, but courage, confidence, a sense of justice, compassion, understanding of and respect for other cultures, *etc.*

[12] Jernej Sekolec, Opening Address of the Fourteenth Willem C. Vis International Commercial Arbitration Moot Vienna, 30 March 2007, 11 Vindobona Journal of International Commercial Law & Arbitration 131 (2007).

[13] Black's Law Dictionary. Henry Cambell Black. 6th ed, at 55.

[14] Jernej Sekolec Ib. (2007).

[15] Jernej Sekolec Ib. (2007).

With regard to moots, almost every judge or arbitrator in their feedback comments concerning the teams' performance in some way or other underlines a key benefit — namely that mooting regardless of the competition outcome provides an excellent opportunity for the pursuit of personal happiness.[16] Thus, having a wider picture of perspectives substantiates the progress mooters can make after they move on with their careers.

3. FUNCTIONAL APPROACH TO MOOTING

In general, the most natural way for the moot court to be founded is following specific events (conferences or symposiums) organised by relevant centers or educational institutions to commemorate significant events or as an embodiment of the fact substantiating the fast growing and rapidly developing area of a national or international law.

Thus the adoption of the Convention of the Settlement of Investment Dispute (ICSID) served as the inspiration for the moot court that focused on investment treaty arbitration — The Frankfurt Investment Arbitration Moot). The key concept of any moot competition is to focus exclusively on a certain area of legal regulation (e.g. investment protection and investment arbitration, responsibility of States, State immunity, *etc.*) to encourage law students to develop an interest in the subject matter.

However, for the educational institution such an approach would mean disintegration rather than integration of the educational and pedagogical outcomes of the process of preparation into the syllabus, when only very few moot competition team members gain access to the most up-to-date legal knowledge and skills. The competence approach applied within the framework of Russian higher education requires a thorough analysis of functions served by mooting in order to understand short-term and long-term outcomes of the activity in question. Such a functional approach allows coaches, educators and administrators to organise moot competitions preparation in such a way that would

[16] Jernej Sekolec. Opening Address of the Fourteenth Willem C. Vis International Commercial Arbitration Moot Vienna, 11 Vindobona Journal of International Commercial Law & Arbitration 131 (2007).

provide the greatest advantages not only for the students involved in preparation but also for all law school students and faculty. Members of the teams participating in higher rounds meet the top of professional standard of advocacy.

Usually the issues that involve the key concepts of moot competitions belong to the most fascinating and intellectually challenging areas of international law and are of immense practical relevance. However, it may happen that the issues of primary concern for moot competitions are rarely, if at all, addressed in the curricula of law schools in Russia. Thus, thorough analysis of mooters' needs with regard to both subject matter knowledge and presentation skills can lead to improvements in curricula and syllabi that will have positive effect on training future lawyers.

3.1. Teaching and Training Function

This function is the most obvious one and it is clear that practice-oriented teaching and training gives the students the feeling of the profession and understanding of what is expected. Close collaboration between those who teach and those who are taught turns students into coaches and the most successful teams are coached, at least to some extent, by former mooters. In context of moot preparation conventional "lecturing" to large classes cannot be implemented. Thus, moot preparation provides for the platform where more interactive and dialogic approaches to training lawyers can be implemented, namely, case analysis, problem-solving, hypothetical cases analysis, Socratic teaching,[17] *etc*.

3.2. Internationalising and Harmonising Function

The Willem C. Vis Commercial Arbitration Moot has been annually held in Vienna since 1994. 376 teams from 87 countries worldwide attending in 2019 would mean that the moot over the period of 20 years

[17] Dianne Otto, Handmaidens, Hierarchies and Crossing the Public-Private Divide in the Teaching of international Law, 1 Melbourne Journal of International Law 35 (2000).

since its beginning would have educated more than 15,000 students.[18] A fair number of these are now employed in international business, whether as advisors, litigators or in-house counsels. Their student-time experience that they had gained during the moot and beyond will encourage application of arbitration and the CISG in transnational cases, which will lead to the situation when the CISG might well turn into the rule instead of the exception when choosing the law of an international sales contract. Thus, the Vis Moot contribution in unification and internalisation of legal norms is obvious.

Mooting has an internationalising and harmonising effect on the thinking of all students involved in the process of international moot competition preparation. For the majority of Russian participants mooting is the first contact with non-domestic law and legal thinking. The most important contribution of the moot is to appreciate that foreign-trained lawyers look at exactly the same material before them in a different way and advocate their solutions in an unfamiliar fashion. Few lawyers rarely receive a chance to look beyond their own national legal framework, which is an experience important for those who want to be educated, open-minded and enthusiastic.

3.3. Socialising Function

Both within each university team and among the students from different teams, moots encourage the development of social and cross-cultural competences. Over a rather long period of time students must work in a team to elaborate the memoranda, share responsibility, deliberate, criticise, compromise, discover individual strengths and weaknesses and re-arrange shares of work accordingly. Once they come to Oral Arguments, they meet dozens of students from dozens of countries — and numbers keep rising year after year. There are few opportunities in any professional's life to encounter so many like-minded people in a largely relaxed and motivating environment.

[18] Available at Vis Moot Court official site: https://vismoot.pace.edu/site/previous-moots/26th-vis-moot (date of access: 23 July 2019).

3.4. Competing Function

One might consider that any moot represents a competition between teams of students from individual law schools,[19] as well as a competition between individual law students,[20] and that this competitive purpose predominates. However, Prof. Jeffrey Waincymer who claims that pedagogy predominates over competition has explored this issue thoroughly.[21] For the students participating in the moot, such an approach might seem quite reasonable, however, for educators (coaches and members of the faculty) this is the way to nowhere, and what educators are interested in is the development of such a training program that would provide for persistent and, to some extent, logical success that would substantiate and commensurate with the efforts and passion devoted to the moot as a systematic training rather than sporadic experience that depends on individual personalities and their specific contribution each year.

To this end, it is necessary to consider mooting as an important curricular or extra-curricular activity that can be systematised and institutionalised as an educating and pedagogical tool. Recently, skills training has become an increasingly important part of legal education, and mooting generally would seem to encompass many of the fundamental skills necessary for prospective lawyers.

Before addressing the problem of predominance of learning over competition or competition over learning, we would like to mention that the problem is twofold. On the one hand, according to the rules, such "gatherings" as the Philip C. Jessup or Willem C. Vis Moot Courts are competitions of schools representing the law schools around the world, and the rules themselves do not explicitly provide for any other purpose

[19] The Pieter Sanders and Werner Melis Awards are made to the teams writing the best memoranda in support of Claimant and Respondent, respectively, and the Frédéric Eisemann Award is made to the team prevailing in oral arguments in Vienna. The names of the recipients of these awards are posted on the Moot website.

[20] The Martin Domke Award is made to the individual students receiving the highest average scores for their oral presentations in the general rounds.

[21] See generally, Jeffrey Waincymer, International and Comparative Legal Education Through the Willem C. Vis Moot Program: A Personal Reflection, 5 The Vindobona Journal of International Commercial Law and Arbitration 251 (2001).

but competition.[22] Thus, winning at the competition becomes the issue of primary concern for almost everyone involved in the procedure. For the law school administration, winning in a prestigious competition promotes the educational institution and improves law school ratings. For coaches, its importance is that the result achieved by the team is the only criterion they can provide to have their contribution evaluated For students, who invest a lot of time and effort — they need a score as a manifestation of the result they have achieved, *etc.*

On the other hand, it is incontroversial that the primary reason for being a university student is to learn. Thus, students might consider all law school activities as opportunities to learn, and mooting is just a way different from the traditional teaching paradigms. Thus, moot courts programs represent one form of pedagogical experience that in part uses simulations of real legal practice as an aid to learning. Thus, learning should dominate over any competitive disposition that is just one of the features of the moot competition. The latter approach seems to us more promising with regard to long-term improvement in the quality and globalisation of legal education.

4. MOOTING FROM A STAKE-HOLDERS PERSPECTIVES

The multi-faceted nature of mooting does not allow us to determine which function predominates, however it is possible to consolidate expectations and accomplishments of different stakeholders involved in mooting in order to determine theoretical and practical prospects for this activity.

4.1. Students' Perspective

For students mooting is an excellent way to improve their knowledge in different subject matters, and to develop their advocacy and presentation skills while putting the theory of their lectures and law study into practice. In order to perform well and represent themselves,

[22] The Rules of the Annual Willem C. Vis International Arbitration Competition available at: https://vismoot.pace.edu/media/site/previous-moots/26th-vis-moot/rules.pdf.

their law school, and the law system team — members need to undergo intensive training and it is a joint decision of all parties involved into the preparation procedure how much training is needed. Moreover, students have to work in a team that they did not choose and which quite possibly do not even like. However, such an experience is one of the most important for the future working career.

For many students mooting is the first instance of communicating with decision makers (judges) who assess the arguments put forward by mooters and give feedback concerning their persuasiveness. In order to effectively answer a judge's question, students need to be able to think on their feet and to know and understand their arguments and authorities inside out. Students and coaches have to be in constant search for elegant ways of dealing with questions that are irrelevant and/or off limits instead of simply naming such questions as irrelevant, inadmissible, plain or stupid straightforwardly.

Through participating in moot competitions, students show potential employers a range of employability skills: the ability to organise themselves and others, mentoring, leadership and communication skills. In many aspects, mooting is voluntary, therefore counting as an extra-curricular activity. It shows the student's commitment to studies and the ability to use legal knowledge and refine research and advocacy skills in a particular situation. The prospect of international travel is also one of the advantages of participating in international moot competitions.

4.2. Coaches' Perspective

In this paper, we are focusing on the necessity to provide mooters with guidance concerning areas where a coach's support is likely to be most valuable. Coaches are in charge of both fulfilling certain obligations and providing opportunities. In fact, the key role the coaches play is to guide the moot competition team members through the process of developing, presenting and defending a convincing argument in an international mooting competition. First and foremost, coaches are experts in the moot court subject matter and they are in front line of the in-depth understanding of the hypothetical case. They are expected to possess and to be able "to distribute" among team members a thorough

understanding of the competition philosophy, competition rules, rules of building a persuasive argument and properly structured memoranda or memorials. The coaches are in the front line of determining the purpose and audience, choosing the style of oral arguments and written memoranda and creating a persuasive case. They teach students how to present information (story telling), how to structure written and oral submissions (road mapping), and, finally, they proofread and edit memoranda and memorials before submission. They explain the importance of preparing alternative arguments, understanding and addressing weaknesses in the case, communicating with adversaries and judges, handling questions and dealing with mistakes.

As well as training and educating, from the very beginning of the preparation period coaches have to resolve issues associated with timing and commitment, setting deadlines and determining the role of everyone in the team, communicating with moot competition organisers, and the law school administration and even the ways to pay entrance fees, costs of flights, and accommodation. They have to find out ways of not only how to teach effectively, but also how to create and maintain positive attitude, identify strengths and weaknesses of everyone in the team, deal with the crisis of confidence, maintain trust overcoming unavoidable periods of tension and frustration within the team.

It should be mentioned that coaches' involvement is twofold: being a unique form of legal training, mooting provides an opportunity for coaches to learn more about the teaching profession and the diverse needs of students, particularly in view of the fact that coaches work very closely and over a long period of time with a relatively small group of students. Therefore, coaches come to see more clearly how students learn the subject matter, how they might differ in regard of their legal research and writing skills and oral advocacy aptitudes and how their learning experience might be enhanced through individualisation of the learning process.[23]

Being an international event, the international moot court competition provides coaches with a unique opportunity for comparative

[23] Boyle R and Dunn R, Teaching law students through individual learning styles, 62 Albany Law Rev 213 (1998).

reflection and inspiration as to teaching ideas and methods. Training procedure preconditions considerations concerning pedagogical styles and methods, different pedagogical philosophies and their efficiency in the context of mooting and different legal families, comparative analysis of pros and cons of different aspects in legal education, comparative analysis of different moot programs and their utility. For coaches who are practicing counsels and who are merely contemplating an academic career, the process affords a chance to test their interest and aptitude as law school professors, although mooting is, of course, quite distinct from conventional university teaching.

Coaching moot court teams allows coaches to never stop learning the law and keep abreast of the law in ways that would not be possible if they were to focus exclusively on their practice or academic work. They develop a broad and deep knowledge that turns out to be invaluable at odd times in their own working practice or academic experience. Moreover, training students, coaches are reminded of the importance of certain skills and the impact of bad habits. That helps coaches keep their own skills sharpened and refine skills through lessons they learn from interactions with students, moot court organisers and judges.

Coaching provides networking and community and facilitates the feeling of greater job satisfaction regardless of whether coaches teach full time or practice law.

4.3. Judges' Perspective

One of the most notorious and provocative issues to be discussed within the framework of international moot competitions is the participation of decision makers (arbitrators or judges) and the impact their decisions have on the outcome of the moot competition. There is substantial research proving that there are no any certain criteria to determine what persuades decision-makers in the legal discourse.

In "Justice is Less Blind, and Less Legalistic"[24] H. Spamann and L. Klöhn provide us with a representative example describing statistically reliable results of an experiment in which actual judges

[24] Holder Spamann, Lars Kloehn, Justice is Less Blind, and Less Legalistic, 45 (2) The Journal of Legal Studies 255 (2016), DOI: 10.1086/688861.

upheld the conviction of the unsympathetic defendant at a rate more than twice as high as that of the sympathetic defendant (87–41 %). B. Spencer and A. Feldman have examined how and to what extent brief's overall readability influences the possibility of prevailing on summary judgment. The authors conclude that there is "a statistically significant relationship between brief readability and the outcome of summary judgments motions."[25]

John Campbell has examined "whether there is a measurable relationship between writing style and winning."[26] Having examined briefs from three appellate courts, he draws conclusions that stylistic choices affect the chances of winning on appeal. The study carried out by Ken Chestek was devoted to the examination of whether negativity bias[27] affected judges' perception of a hypothetical case. The results were not straightforward and inconclusive: "In some situations, negative themes seem to be important in priming a reader to disfavor the opposing party."[28] In "What Rhetorical Techniques Actually Persuade Judges", Edward R. Becker insists that there is "a gap between what we think and what we actually do know about whether and [...] how and why rhetoric influences judicial decisions." Thus, both for coaches and students there are no reliable grounds to claim that certain techniques of dealing with judges would be more advantageous than others.

Moreover, different judges adopt different approaches to oral arguments. Some ask few questions, while others are highly intervening not allowing the oralist to make any systematic argument at all. They can give the impression of not understanding the issues, spend too much time asking rather superficial and even aggressive questions that students are not able to handle or evaluate, since they are given very

[25] See Shaun B. Spencer, Adam Feldman, and Words Count: The Empirical Relationship Between Brief Writing and Summary Judgment Success, 22 Leg. Writing J. 61, 63 (2018).

[26] See John Cambell, Writing That Winns: An Empirical Study of Appellate Briefs, 46 (3) Colo. Law 85 (2017).

[27] In Chestek's perspective negativity, bias refers to "the brain's natural inclination to attend to and process negative stimuli."

[28] See Kenneth D. Chestek, Fear and Loathing in Persuasive Writing: An Empirical Study of the Effects of the negativity Bias, 14 Leg. Comm. & Rhetoric: JALWD 1, 2 (2017).

little time, insist on having citations for every proposition made during oral rounds instead of leaving this time-consuming approach to the written memoranda, seek authority for every proposition put forward, look for advocacy skills and demonstration of a student's ability to think on his or her feet.

One of the solutions to the problem is implemented by the moot competitions organisers who try to compose the panels from representatives of both common and civil law systems, practicing lawyers and academics and find it worthwhile reminding decision-makers that questions are intended to help the argument rather than test or challenge the student. However, the uncertainty concerning the strategy decision-makers can adopt provokes coaches and oralists to be prepared both to present a coherent reasoned argument and to be prepared to being occupied by questions and interruptions in such a way that would not detriment the argument put forward.

However, such an analysis of approaches that judges can adopt proves that the successful oralist is one who is able to "zealously advocate his or her position, while maintaining a professional and amicable tone and appearance, particularly under pressure." The team members need to be trained to respond to questions in such a way that motivates the judge to decide in favour of the oralist and the argument of the answering team.

There is one more very important function that the judges have. At the end of hearings, the decision makers give oral feedback to the students, this being another critically important teaching and learning tool if both students and coaches make an effort to treat it as such. Reasonable and justified comments can serve as a good guidance for the team's progress and success.

5. KEY MOOTING STAGES AND STRATEGIES

5.1. Selection Process

The process of selecting moot oralists and researchers (research assistants) is difficult from both psychological and tactical points of view.

In terms of tactics, it is important to pre-define the number of potential oralists and researchers needed, divide their efforts appropriately at the memorandum preparation stage between procedural and substantive issues and determine students capable and willing to perform the tasks depending on their individual capabilities, motivation, perspective. The paradox is that the team can find itself quite successful because of the availability of the bright oralist, while sometimes the endeavors to train the oralist are huge, however, students with average oralist capabilities do not let the team climb far enough. From a psychological perspective, consideration needs to be made on the incorporation of the oralists' and researchers' roles into the overall "division of labour" within the team, as well as avoiding internal conflicts that could arise on the basis of the selection of particular individuals as oralists.

Provision for the best oralist awards to the oralists who scored high pleading at least once on each side in the moot competition rules seems to advocate the no-more-than-four-pleaders mode, which contradicts the educating and pedagogical objectives of the mooting preparation process. The strategy is implemented by some universities who enter the Willem Vis competition (which has now divided itself into two competitions, one in Hong Kong and one in Vienna) by preparing two teams of four participants, one for each competition.

From an educational perspective, mooting is an educational event, which basically means that every participant has to derive the maximum educational benefit possible. The main reason why not every member of the team cannot speak during the oral rounds is simple: all people have different strengths. Some are born to be convincing public speakers, others are gifted with easy flowing and comprehensible writing.

On the one hand, one could take the approach of intensive and persistent training of students to improve weaknesses. On the other hand, drawing on natural strengths, particularly taking into consideration the fact that competition matters, seems to be more reasonable. There is another side to the problem. People feel somewhat insecure with themselves in an environment they are not comfortable with, or doing things that are unfamiliar to them. This insecurity coupled with the natural astonishment of the competition itself might lower speakers self-esteem and result in the speaker's evaluations being lower than

initially expected. Some students — despite the fact that their speaking abilities are nearly perfect — may not be interested in training for the moot. Thus, as the moot competition implies, a healthy combination of oral advocacy and substantive knowledge is required — relying solely on oral advocacy talent would not be able to meet the image of the successful moot speaker.[29]

5.2. Determining the Number of Participants

When deliberating over the number of oralists, coaches have to keep in mind two things. The individual educational effect of the moot is arguably better achieved when every team member argues in oral rounds. The competitive effect, however, increases with the increase in the number of those who argue. Fostering of the educational effect depends on the number of members of the team. In a team of twenty, the "everybody-argues" scenario could hardly be implemented. Usually half of the team members are the pleaders, while the others are research assistants to them. What is typical is a team of four or five students, where each is given a chance to plead at least once. The four or five student team seems to be quite manageable in terms of the division (and completion) of labour, taking for granted that all the team members are about equally devoting time to their tasks. Moreover, it provides a good pre-moot oral advocacy training playground, as it is quite easy divisible into two pairs, one of which presents Claimant and the other one Respondent.

The pleaders gain more experience and, as some scholars refer to it, "maturity" with their own progress of participation in the oral rounds of arguments, which involves several interconnected things. First, the more you plead, the less you fear to plead again; the more you have spent in preparations, the less you are concerned with the environment surrounding you during oral rounds of arguments. Second, if you have pleaded different view points (representing both Claimant and Respondent), you are much more flexible with "tossing and turning"

[29] Leonila Guglya, Oral Advocacy Training: a Beginner's Look at the Willem C. Vis International Commercial Arbitration Moot from a Coaching Perspective, 12 Vindobona Journal of International Commercial Law & Arbitration 125 (2008).

facts and laws. Thus, provided the selection process is successful and the number of those willing to moot exceeds the number of team members, the number of participants is preconditioned by both the competition rules and individual aptitudes of the team members.

5.3. Task Division

(Substance v. Procedure) It is necessary to take into account particular mooting strategy. First, the issue of division between the pleaders is somewhat conventional for the moot, thus it is better to keep the same division for the preparations and presentations themselves. Second, in case the team is bigger than just two people, the teamwork strategy will necessitate some of the issue divisions. Namely, it hardly seems efficient to work on all the issues and it is rather practical that such issues are divided by the team members in between themselves. Thus, the prospective oralist in fact fully covers only one out of several issues. This becomes fairly obvious at the initial stage of oral advocacy trainings, when much more attention is devoted to the issue a person spent more time on during a practice moot. However, even with this "minus," the issue assignment has proven to be helpful enough due to some personal association thereto that arises in the course of preparation.

5.4. Selection of Oralists

It is hard to overestimate the driving force of motivation and its influence on the success of the mooting. Thus, only students that are highly motivated to participate in the moot should be admitted to the team and be selected to plead orally. Owing to the fact that the moots are carried out abroad, Russian students are almost always motivated enough to participate. Another motivation challenge is the immense workload (due to the substantial coursework) which law students are often experiencing at the time of their moot competition preparation. In this case, most of the students will concentrate on studies much more than on the moot preparation. The next motivation challenge is concerned with a so-called authority competition. Student motivation as experience shows is directly proportionate to the number of credits given

for the moot participation, if any. Namely, it really makes a difference if none, one or several credits are assigned for the participation, as it gives students some additional flexibility in curriculum self-modeling to allow more time to the moot preparation. Regular work assessment could in some cases remedy the motivational defects, if such do occur. The main problem one might still experience here, however, is an authority problem. This could totally undermine the assessment efforts. Thus, a strategic step a coach has to make in preparation for the Moot is the selection of oralists who, besides having the public speaking abilities discussed above, possesses a high enough degree of initial motivation. Furthermore, methods of enhancing their motivation need to be determined (such as through regular assessment and feedback performed either inside the team or by the coach).

One more challenge the coaches face with is of a psychological nature if at the moment of enrolment the oralists are selected separately from the other members of the team. It might be one of the worst moot-related shocks for a student to be told at the later stage that he or she would not be selected to be an oralist. There are several ways out of this situation practically addressed by the participating schools.

(1) The most frequently applied way provides for the initial division of team-members into researchers, research assistants and oralists at the team-formation stage. Thus, those participants who accept the researches' roles have to do it on a "take it or leave it" basis, which to some extent prevents further in-team tensions. Those admitted from the very beginning as researchers and research assistants are not going to undertake the oralists roles. Moreover, they will not go to international rounds (like in Vis Moot Competition), but as a main incentive, they can be given *carte blanche* for the full participation in the next year. On the one hand, this approach substantiates the non-oralists position by the actual lack of seniority. On the other hand, it limits the non-oralists in rights as compared to oralists. Moreover, this approach works better to the teams having several generations of students.

(2) The second way requires the selection of a particular number of oralists (from two to four) at the point when memoranda are ready and oral advocacy training starts. In this case the positive effect is achieved by the increased competitive advantage in the course of the writing

as students are trying to do their best in competing for the oralist's position. However, the in-team cooperation might get psychologically uneasy and the in-team hostilities in such a case, should they be present, may achieve substantial gravity to the detriment of the oral preparation process. In the best case, however, the team members would take the reasoned selection decision without objections. Additionally, from an objective point of view, it might be hard for the coach to properly evaluate a student's oralist potential at the very beginning of the oral advocacy training, when the team members are not yet comfortable with the positions they plead.

(3) Some teams and coaches currently resort to the selection of oralists on the later stage of preparation process. This approach allows for some "warm-up" period and encourages enthusiastic participation of all team members in early internal oral rehearsals. Furthermore, it helps in the justification of the particular oralist selection decisions, as the performance of individual team members in oral pleadings is visible not only for the coach, but also for the team. The complications with the implementation of this strategy involve the necessity for more intensive rehearsals to let all the team members try them out.

(4) The "all oralists team" approach means that only students having advanced enough in oral advocacy skills are offered to join the team. Selection in such cases includes the oral argument try-outs.[30]

(5) The method mentioned in the literature however rarely applied is based on the oralist pre-selection made by the coaches at the team formation stage, but not disclosed to the team members (including the prospective oralists) until the beginning of the oral advocacy phase. This method promotes the feeling of initial equality between participants, which might be quite helpful at the memoranda preparation stage. Moreover, coaches may change their mind in case their initial assessment of a prospective oralist abilities.

Whichever way may be chosen by the coach, attention has to be devoted to several team-spirit restoration factors. Coaches are expected to provide due and comprehensive reasoning in the selection decisions

[30] The oral pre-selection arguments are mentioned as a part of the mooters selection process applied at Pace Law School. For more details see http://appserv.pace.edu/execute/page.cfm?doc_id=23596.

made of the team members and give repeated explanation of how the contribution of each team member, oralist or not, to the research done is helpful for the team as well as for the mooters' professional wellbeing. To mitigate possible in-team tensions, coaches have to give clear explanation of the openness of all the other moot-related benefits disregarding mooters' personal participation in orals both at the time of the actual competition and thereafter: prospective involvement in the activities of the Moot Alumni Associations; participation in a moot as an arbitrator or team coach upon graduation; the availability of extra-curricula training opportunities in international tribunals and institutions, etc. The students have to realise that their participation in the moot competition is an equally unforgettable and useful experience, independent of their participation in oral rounds as oralists.

5.5. The Oral Advocacy Practicing Phase. Internal and External Rehearsals

5.5.1. Internal Rehearsals

One of the pre-moot practices that can help coaches both to train the oral advocacy and presentation skills and make and justify oralist selection decision is referred to as internal rehearsals. The oral advocacy-practicing phase is often favoured by students more than the memoranda preparation phase. However, it is the coach who is in charge of providing internal rehearsals, which are highly influenced by the number of the team members.

The internal moot would ideally need four students, two pleading for Claimant and another two for Respondent,[31] thus four team members altogether. If the teams have more than four members in the first internal rehearsals, they can allocate the pleading time and issues in between all the members of the team: three or four students can plead for Claimant and another three or four for Respondent. This technique helps to keep all of the students involved and stimulates deeper research on the issues entrusted to each student. The other tip for getting everybody involved is to use the so-called rotation of pleaders. The rotation could

[31] Such an approach was successfully applied in MGIMO Moot Cup.

be random if no oralists are selected in advance, quasi-random when the oralists are selected, but the other team members are chosen to plead with them randomly from the pool of researchers, or pre-scheduled when a schedule of pleadings involving the team members is made.

Any method could be used in team preparation. It is crucial, on the other hand, to encourage the presence of all the team members on each internal rehearsal organised, independent of actual participation as an oralist. This way, the awareness of all the team members with all the newly discovered nuances of the problem would not suffer, and the interest in exploring further can be enhanced. The technique that could be used to attract presence in such cases is called alternative arbitrator position technique, which means that the members who do not participate might be called to sit on the panel, questioning pleading colleagues and delivering comments at the end. This way the students are getting a chance to check the effectiveness of their arguments from "outside the box", thus often being the most objective judges of their colleagues' performance.

Moreover, at the stage of internal rehearsals teams have an excellent opportunity to engage "knowledgeable outsiders" to decide on the persuasiveness of arguments and give the third-party review, but we need to keep in mind that the problem under consideration is explored quite well and academicians and practitioners invited to judge the internal rehearsals have to know the subject matter regarding the problem, have to have examined the memoranda and should know the rules of the moot competition. At this point the problem arises that it is the coach of the team with whom the oralists are rehearsing on a regular basis and who provides much of unexpected challenges to team members' performance. This might quite easily result in participants' adapting coach's presentation and rebuttal manner and skills.

However, during the whole period of preparation students and coaches have to keep in mind that more knowledge should not mean that more time is allowed for the presentation of arguments: if students fail to be discerning and merely cite all they know on a particular area, this will cause detriment to the team as a whole. For the moot court competition, the issue of primary concern involves an adherence to the time frame and ability to either reduce or extend the arguments

depending on the smoothness of the presentation process, and internal rehearsals serve those objectives best.

5.5.2 External Rehearsals (Pre-moots)

One more experience-gaining process available to the teams (provided they are not precluded due to financial restrains or lack of the neutral arbitrators) is the aforementioned external rehearsals (pre-moots). Although such an opportunity is allowed by the rules of only a few moot competitions, pre-mooting could secure a due forum for the oralists' performance enhancement and presentation polishing. Pre-moots provide the team members with a chance to improve public speaking and persuasion abilities, compare their achievements with the achievements of the other teams, experience-presenting arguments before different panels of judges and arbitrators.

The idea of trying out the arguments during the phase of the preparation of the memoranda has been presented by Jack Graves[32] to enhance the training process of the Vis Moot Competition. Pre-moots were advocated by coaches and students as they allowed the teams to pre-argue the arguments for checking their effectiveness. The idea of external rehearsals might deserve the attention of the law schools offering more or less institutionalised moot preparation, as the try-outs might take additional group sessions.[33] It has to be admitted though that pre-moots take a less formal form of discussion between the team members, however, the group evaluation of the arguments can be put down in the memorandum.

However, some adverse circumstances exist that can preclude the team from pre-moots. Once the pre-moot is planned the following issues need to be considered: how much preparation the pre-moot requires; what the balance between the pre-moot and the moot preparation should be; who should participate in the pre-moot as oralists, *etc*. Moreover,

[32] Graves, J. M. and Vaughan, S. A. The Willem C. Vis International Commercial Arbitration Moot: Making the Most of an Extraordinary Educational Opportunity, 10 Vindobona Journal of International Commercial Law and Arbitration (2006). URL: http://www.cisg.law.pace.edu/cisg/biblio/Graves-Vaughan.pdf.

[33] Ibid.

pre-moot participants might feel somewhat suspicious with the sharing of their legal evaluation of the facts presented both in the memoranda and in the oral presentations with the participants from other teams. Thus, the Vis Moot Rules exclude such competition as the pre-moots have to be notified in order to avoid the meeting of teams that have experience in pleading with each other at the actual competition. However, the risk of an indirect competition is enhanced due to the strengthening of the team's oral position as a result of interaction with the other teams.

The timing chosen for the pre-moots, to a substantial extent, frames the expectations going forward and the actual outcome achieved. The pre-moots taking place shortly after the submission of the memorandum would be valuable as a means of forming the team's perceptions of the sense of oral competition, emphasising the exchange of the substantive findings rather than skills.

On the other hand, Pre-moots held at the later stage would deal mostly with the "competition of the presentations" rather than the exchange of the ideas on the merits when the teams are expected to have developed substantial familiarity with the moot problem. Thus, external rehearsals (pre-moots) during the preparation should be scheduled in such a way that would provide teams with advantages of training during both earlier and later stages. If the coach considers pursuing pre-moot participation, the team inevitably meets the issue of the time allocation between the pre-moot preparation and the preparation for the *main* moot. Each pre-moot in a sense is a separate competition that requires specific preparation. The strategies adopted for the pre-moot, depending on the objectives set, might range. Teams may opt for the mere presentation of the position chosen by the team, leaving the response to the issues raised by the opposing team (or teams) to the *ad hoc* reactions. In this case, the pre-moot preparation might be limited to skimming through the opposing teams' memoranda. On the other hand, some teams may opt for a thorough analysis of the positions taken by the opposing teams researching the authorities put forward by the opposing teams and drafting specific speeches in response. A pre-moot rehearsal session may include internal rehearsals when one part of the team would be presenting opponents' arguments and the other team

members (usually oralists selected for the particular pre-moot round) would be in charge of rebutting them on the basis of a newly developed responsive position.

Obviously, regardless of the models chosen for participation in pre-moots, substantially more preparation time would be needed. Thus, the choice will be dependent on the availability of extra time for the internal teamwork prior to the pre-moot. In terms of participation, pre-mooting could be seen in several different manners. It could be approached as a means of getting more team members to plead, and thereby enhancing the interest of participation in the team. The same can be seen as a means of double-checking and conforming the oralist selection decisions made by the coach and, at the later stage of the preparation, as an additional chance to train the chosen oralists before the moot. Whatever approach is chosen, pre-moots definitely work for the benefit of the team as a whole. They give the team members a chance to experience the "close to real" mooting environment and evaluate their individual performance or the performance of the team against that of their adversaries.

6. A WORD OF CRITICISM

The advantages of mooting as a practice-oriented activity supplementing the lecture method and facilitating the process of training lawyers is obvious, however, there is always something to criticise.[34] In "A Brief SWOT-Analysis of the Willem C. Vis Moot" Friedrich Blasé suggests that moot competitions be analysed in the context of their strengths, weaknesses, opportunities and threats (SWOT) following a particular format approved in the business world.[35]

The majority of criticism and critical comments concern technical (the scoring procedures, the fact that the teams do not know the constitution of their tribunal in advance, *etc.*) or structural levels (the number of the participating teams and their growth in number) of the moot competitions. The main weakness of the Vis Moot is associated with evaluation of educating, internationalising and socialising effects

[34] Shreya Atrey, Ib. 303 (2013).

[35] Friedrich Blasé. A Brief SWOT-Analysis of the Willem C. Vis. Moot. 4 Vindobona Journal of International Commercial law & Arbitration 117–123 (2001).

that are felt more intensely by the average student when fewer teams take part.

For many teams participating in the Vis Moot Competition any of the awards seem so far out of reach that "making the cut", i.e. being amongst the best 64 teams which go through to the elimination rounds, becomes the alternative and most realistic prize. As the competition increases, but the rewards remain the same, the motivation to work harder on the case during the memoranda phase and while rehearsing for the orals diminishes. Those teams that are not deterred by the increase in competition will show a different negative consequence that is clearly attributable to the growth of the moot. Many of these teams will not interact with others on a casual, social basis. Instead, they spend their week in Vienna rehearsing, analysing and improving their presentations determined to make the cut and in the vague hope for the Award for the Best Team Orals.

The situation can be quite opposite with the moots providing for national rounds. Thus, the number of teams participating in Russian National Rounds of the Jessup Moot Court Competition decreases year after year due to the fact that national rounds demonstrate rotation among ten teams that compete between each other and for any new team it is very difficult to join this group of the best.

Thus, the solution suggested by Friedrich Blasé says that there should be General Rounds in groups leading to group winners and second places, the latter not moving on to Eliminating Rounds, but still enthused by their results. Alternatively, the General Rounds could be broken down into two or four leagues, each sending the same number of teams to the elimination rounds. Both measures would facilitate teams to individualise themselves from the rest adding to the motivation for the event.

Moreover, the increase in the number of practicing teams can give rise to the question of competition to the moot itself. Following the economic principles, if demand outstrips supply capacity of a non-protected monopolist, the market turns into an oligopoly, new

suppliers enter the scene.[36] Although we cannot say that the moots under consideration have reached their capacity, the question of alternative events is more hotly debated than ever. The moots could very well find themselves with a "franchised" moot. This need not be a full scale copy, but it could be held in different location or with a different geographical reach. Thus, mooting in itself due to its spreading and internal capabilities and conflicts needs further development in order not to exhaust itself

7. CONCLUSION

Mooting represents an extraordinary gathering of law students, law school faculty members, and practitioners from around the globe. Pedagogical and competitive elements within mooting preparation are entirely consistent and mutually supportive. As an extracurricular activity mooting offers many rewarding insights to the participating teams and greatly benefits students.

Participation in moot improves not only legal, linguistic and interpersonal skills, but also offers a platform from which to establish professional network and contacts with international practitioners, judges, arbitrators and institutions from the fields. Participants train in important techniques of dispute resolution and skills that they will need in their professional futures. These tools are put to the test in the pleading session before tribunals composed of internationally recognized experts. The more independent and representative is the composition of moot courts' panels the more they contribute to the professional atmosphere and match the high quality of the participants' performances.[37]

Since during the last two decades mooting has become an important part in training lawyers, participation in moot courts has become an important element in the extra curriculum work of a number of Russian law schools. Mooting as an interactive and practice-orientated activity

[36] Friedrich Blasé. A Brief SWOT-Analysis of the Willem C. Vis. Moot. 4 Vindobona Journal of International Commercial law & Arbitration 117–123 (2001).

[37] Eric E. Bergsten, Ten Years of the Willem C. Vis International Commercial Arbitration Moot, 6 International Arbitration Law Review 37 (2003).

provokes a complexity of adverse questions that need to be dealt with in an interdisciplinary manner: they cannot be resolved based on just thorough examination of the subject matter that underlines the problem of a particular moot competition.

In order to become an effective device in the development of a lawyer, mooting needs an institutional framework that can be developed by means of engaging accomplishments in jurisprudence, methodology, pedagogy, art of persuasion, psychology, linguistics, *etc*., in order not to become a very narrow-minded, however, very significant instrument exploited for the promotion of a particular law school. It is necessary to provide the institutional framework for the moots in the future by means of creating specific organisations (*e.g*. the Moot Alumni Association), moot courts departments or moot courts centers integrating moot court preparation into the curriculum for the purpose of fostering the development of the moot as both an educational, social and cross-cultural experience. Legal writing and oral advocacy training as processes underlying mooting encompass a much broader scope of considerations, strategies and challenges than the ones we have dwelled on in our article.

Moreover, mooting is extremely vulnerable to the multiplicity of factors and their combinations:

1) the specialties of team members' personalities and abilities;

2) the curriculum of the law school or faculty;

3) the funding for the training available;

4) the existence of psychological interaction between (and within) the members of the team, including coaches;

5) appropriateness of the coaching approach chosen, *etc*.

Mooting is a learning process for all participants involved: students, coaches, decision makers (arbitrators, *etc*.) and the related outsiders witnessing the devotion of those directly involved. Multidisciplinary nature of mooting rejects the "one-approach-fits-all" approach to coaching in general and to advocacy training in particular. Thus, further discussion is needed of the approaches that worked as well as those that did not perceive the substance and objectives of mooting in order to provide better training for mooters in particular and law students in general.

REFERENCES

1. Blasé F. A Brief SWOT-Analysis of the Willem C. Vis. Moot. 4 *Vindobona Journal of International Commercial Law* & *Arbitration* 117–123 (2001).

2. Graves J. M. and Vaughan S. A. The Willem C. Vis International Commercial Arbitration Moot: Making the Most of an Extraordinary Educational Opportunity. *10 Vindobona Journal of International Commercial Law and Arbitration* (2006), p. 194 (available online at: http://www.cisg.law.pace.edu/cisg/biblio/Graves-Vaughan.pdf).

3. Waincymer J. International and comparative legal education through the Willem C. Vis Moot program: a personal reflection. 5 (2001) *Vindobona Journal of International Commercial Law and Arbitration* 251, p. 271. URL: http://www.maa.net/vindobonajournal/vj_documents/vj_article_waincymer_jeff_0111.pdf.

4. Waincymer J. International and Comparative Legal Education through the Willem C. Vis Moot Program: A Personal Reflection. 5 *the Vindobona Journal of International Commercial Law and Arbitration* 251, 258 (2001).

5. Bergsten E. E. Ten Years of the Willem C. Vis International Commercial Arbitration Moot. 6 *International Arbitration Law Review* 37 (2003).

6. Otto D. Handmaidens, Hierarchies and Crossing the Public-Private Divide in the Teaching of international Law. 1 *Melbourne Journal of International Law* 35 (2000).

7. Atrey Sh. I object, Your Honour! The Moot Court Paradigm is Mootable. 6 *National University of Judicial Studies Law Review* 301 (2013).