



LANGUAGE SKILLS FOR PROFESSIONAL CAREER

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Research article

International Negotiation Competition For Law Students: National Rounds Outward Glance

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Abstract. Language is an essential instrument for many professionals and lawyers are among those who occupy the first lines. The lawyers use the language to address the court, interview a client, negotiate a contract or a dispute. Communicative competence is crucial for the legal profession and participating in competitions for law students is one of the ways to foster and master it alongside taking traditional classes and courses. The article gives a brief overview of existing international competitions for law students and aims at finding ways of improving the International Negotiation Competition (INC) national rounds organization. This goal is approached by conducting a survey among former participants of INC national rounds in Russia and Norway and analyzing its results. The conclusions prompted are as follows: to conduct timely surveys among all participants, to engage former participants in national rounds organization, to work out new rules for holding online events.

Keywords: essential skills, communication, law students, negotiation, international competitions, lawyering skills.

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INTRODUCTION

Understanding what your client wants and needs in addition to their stated positions, and trying to find a workable solution, is far more important than the legal rights and wrongs of what has taken place. In situations like these lawyers spend a large proportion of their time negotiating effective settlements.

Lawyers are negotiators. Many lawyers are not aware enough of what skills they are using when they negotiate. Negotiation skills are important for all practicing lawyers. Lawyers in any situation need to explore all potential steps up the courthouse stairs for resolving disputes in their client's best interests. Lawyers need to consider and advise their clients on the principle that parties should be able to choose how to resolve their disputes and that litigation should be a last resort. Could this dispute be solved with help of conversations dialogue assistance, negotiation, mediation, arbitration (these are all alternative dispute resolution (ADR) methods), or is litigation the best way? It is an ethical obligation to consider all those steps and with the client's best interests of time, money, and emotional costs in mind. This is in addition to the lawyer's thorough knowledge of the facts of the dispute, the law, and the procedures relevant to the case.

Around the world, independent of how far the legal communities have come in developing ADR methods, most disputes are resolved by ADR methods rather than proceeding to court.

Negotiation can only happen if the parties communicate constructively, so lawyers need to develop and use essential skills. Among those skills are lawyers' use of empathy, perspective, and personal connection with the client to feel whole and satisfied. Lawyers' ability to develop emotional intelligence, use active listening, and build relationships are all-important negotiation skills for lawyers.

Where and how can lawyers-to-be gain this skill?

1. International Competitions for Law Students: Skills Training in 'Real Life'

1.1. International competitions for law students: brief overview

The competence approach to education has shifted the emphasis from knowledge acquisition to skills mastering and legal education is not an exception. Surveys of employers and newly qualified lawyers regularly conducted by different bodies and researchers show the importance of skills, either taught within a curriculum or gained through extracurricular activities, over knowledge both for career and professional success (Case, 2013, Vyushkina, 2018, Martin, 2019). More and more discussions and conferences in different countries are held to improve the ways of teaching future lawyers.

However, changing law school curricula is a rather slow and difficult process in any country. Many "practicing lawyers continue to challenge the legal academy to provide more instruction in skills and practical training, and spend less time focusing on

esoteric issues and scholarly debates” (Thompson, 2009), although some law schools do have “client interviewing, case preparation, and trial advocacy” (Levinson, 2010), lawyering and even legal negotiations in their course catalogs (Chapman n.d., Lewis n.d.). Moreover, for example, American Bar Association expects students to have “at least six credits in experiential courses as a condition of graduation” (Kruse, 2015).

There is a positive move towards teaching a variety of skills within curricula but for a rather long time, one of a few ways for students to develop lawyering skills has been participation in competitions for law students along with law clinics and internships. Not considering legal writing which has always been paid much attention in law schools, there are three types of such competitions: moot courts, negotiation, and client counseling (Teply, 2003). Moreover, recently mediation tournaments for law schools have gained popularity as well (INADR, SIMI).

When the first competitions appeared (e.g.: The Philip C. Jessup International Law Moot Court Competition in 1960 (USA), the Telders International Law Moot Court Competition in 1977 (Netherlands), teaching lawyering skills within law school curricula was not even discussed, and participating in such events was a rare opportunity for law students to gain a kind of ‘real-life’ experience. Today skill-oriented courses have become integral but not numerous parts of curricula. As for the list of competitions for law students, it has grown rather long with moot courts, no doubt, leading in number.

Wikipedia enumerates more than twenty moot courts held in different countries and covering diverse subject matters: from a broad area of public international law to aviation law or space law. Qualification of teams for participation varies: some competitions require to go through national rounds and/or pre-moots, others look at written submissions, almost all have a registration fee. Law students have a great opportunity to dive into the professional atmosphere of a trial or appellate court, to try on roles of applicants and respondents, to master written and oral communication skills which are considered to be among the ten fundamental lawyering skills (MacCrate, 1996: 645).

Turning to contests not connected with court representation the Brown Mosten International Client Consultation Competition (1985) is still a unique event aimed at mastering students’ skills of interviewing and counseling, as well as communication skills necessary for practicing law. To participate in the ICCC a team must win a National Competition which might have a slightly different name, e.g. in England and Wales it is called “The Client Interviewing Competition” (<https://www.clientinterviewing.com/>). In common law jurisdictions, such as Canada or the USA, with a rather long history of competitions for law students, teams are to go through regional selection as well.

Mediation tournaments vary in organization. The International Chamber of Commerce (ICC) Mediation week is held annually in Paris and brings together professional mediators, academics, law, and business students. Professional mediators take part either as judges or mediators facilitating the moot negotiations between students’ teams composed of a ‘lawyer’ and a ‘businessman’ (ICC n.d.). INADR organize International

Law School Mediation Tournaments at the Law School at Loyola University in Chicago, IL, in even years, and outside of the U.S. in odd years (INADR n.d.). During these tournaments in three preliminary rounds law students have an opportunity to take on the role of a mediator, a lawyer representing a client, and a client. And while the first two roles require professional knowledge and skills, the latter demands a great deal of acting.

1.2. International negotiation competition

The International Negotiation Competition (INC) is the oldest one among such kind contests followed by Intercollegiate Negotiation Competition in Japan, HSF-NLU International Negotiation Competition in India, and some others. Structured on the American Bar Association Negotiation competition model the INC is a legal negotiation simulation aimed at concluding/contracting an international transaction/employment agreement or settling a dispute.

Teams composed of two law students meet in three or four rounds of two-, three-, or four-party negotiations to do their best in representing their clients' (a business or a person) interests. Competition participants have about three weeks to get prepared after receiving general and confidential information from the INC Executive Committee. The rounds are judged by practicing lawyers (mostly from a country hosting the competition), teachers of law, negotiations or related subjects, former participants, professionals somehow involved in negotiations.

Unlike many other competitions for law students, there are no semi-final and final rounds: all teams compete in all rounds. Evaluation criteria are aimed at assessing the process of negotiations itself and a negotiation result is just one criterion among many rubrics taken into consideration by judges. Preparation beginning from identifying the client's interests and goals to choosing strategy and style, communication with a partner and teamwork along with interaction with the other party, skills of gaining and sharing or concealing information are aspects the judges evaluate, to name a few.

Another important aspect of the International Negotiation Competition is a one-day workshop and/or conference where law students, judges, organizers, and other participants have a great opportunity to listen to outstanding and experienced negotiators (e.g. Ron Shapiro in 2017, Oslo), learn about cross-cultural issues from joint presentations of professors representing diverse regions of the world (e.g. the USA, Qatar, Singapore, Denmark), discuss and solve problems together with participants from other countries within workshop sessions.

The INC gives law students a unique opportunity to gain international professional experience, to familiarize themselves with new cultures, to make new friends. There is also a language challenge: for many participants (about a half or even more) English is a second language. It can easily become much more complicated for both sides when you negotiate in a foreign language and a cross-culture environment. Students can check their communication skills with foreigners, and those who have not

considered this aspect while preparing for the competition usually have problems in rounds where they face language and cultural challenges. This is true for both native speakers of English, who might think that as English is their mother tongue they are in a preferable position, and non-native speakers of English, who might not expect struggling with some other foreign accent of a team from a non-English-speaking country.

The INC is run by the INC Executive Committee chaired by Professor of Law, Dr. Larry Teply (Creighton University, USA), and including representatives of both Americas, Asia, Europe, and Australia. Meeting face-to-face in full once a year during the international rounds members of the committee are in constant touch through e-mail or other Internet services dealing with current issues as well as responding to unexpected concerns and difficulties (as the INC-2020 postponement due to the pandemic situation in the world).

The INC is a competition for National rounds winners and representatives of about 30 countries. Winners from North and South Americas, Europe, Asia, and Australia have participated since the first competition was held in 1998. Then students from four universities from Australia, Canada, England, and the United States met. New country entrance to the competition is fixed in the INC Rules in such a way that it launches national rounds in that county the following year.

1.3. INC national rounds

In different countries, the level of INC development varies greatly, for example, in the US law students are to go through regional contests to get to national rounds, so the competition is very intense. In smaller (in terms of territory/population/number of universities) countries there might be only several Law Schools involved in national rounds but that does not mean an easy victory for teams. Other reasons for a low representation of law schools in national rounds can be as follows: the novelty of the event, insufficient level of teaching skill-oriented courses and as a consequence a problem with coaching, difficulties with judge recruiting, and a variety of others caused by country-specific peculiarities.

Today the INC has its representatives in twenty-five countries (plus four countries in a process of changing representation) most of whom are university teachers, in some European countries ELSA (European Law Students' Association) runs national competitions (INC n.d.). Sometimes a country enters the INC, participates a few times, and then ceases to take part in the competition due to different reasons: lack of academic support, shortage of financing, deficit of sponsors, etc.

So, how can a country enter the INC? If a country is not represented in the INC, any University Law School (in a broad sense) can apply to the INC Executive Committee to be registered for the competition and the committee register the team provided the University commits to organize INC national rounds in the following academic year. That was the way Russia and Norway followed.

Russia entered the INC in 2013 and Norway the year after, and are regularly represented at the international rounds of the competition but coordinating authorities for organizing national rounds differ. In Norway, ELSA is in charge of national rounds while in Russia, the National representative initiates the competition in different universities.

Russian Law School curricula are knowledge-oriented (Vyushkina, 2018: 253) and, at first, it was necessary to persuade university authorities that the INC was worth being involved in. It is necessary to note, that students responded with enthusiasm to this new extracurricular activity, shared information about the competition through social nets, and after the first four-team competition at Saratov State Law Academy in 2014 twelve teams were representing eight universities participating in INC-Russia-2020 at RUDN-University, Moscow.

To give momentum to further development of the INC in Russia it is necessary to accomplish several tasks: to promote competition publicity; to find partners and sponsors among international law firms; to expand international cooperation, in particular, to invite guest speakers for an educational day of the event. It is the latter that has made this collaborative work possible as authors together ran the INC-2019 in Moscow.

Active involvement of law firms, labor organizations, and valuable contribution of practicing lawyers, psychologists, and mediators in training teams and organizing national rounds allowed Norway to successfully host the INC in 2017 with a record 32 teams participating in the outstanding international event.

In Norway, ELSA hosts the regional round located at the three law faculties, Tromsø, Bergen, and Oslo. In each city, a local law firm organizes negotiation lectures and runs the regional competition. The regional winners meet in Oslo and in a three-day competition a national winner is designated. Because of the pandemic, the national final was held online via zoom for the first time. A great success, and among several reasons because we could be joined by skilled negotiation professional judges from all over the world. The judges came from 14 different countries and provided a cross-cultural chard never experienced in a national final before. Something we would never have the ability to sponsor if we hadn't run the competition online.

One more important thing for developing the INC at the national level is getting constant feedback from participants, judges, coaches, host institutions, and guests, to improve national rounds organization and to expand the university's involvement. This has become as relevant as ever because we need new solutions in lockdown situations banning any mass meetings and events.

2. INC and INC-national Participants Survey

There is no doubt that participation in INC national rounds and further the INC itself gives students priceless experience and motivates for career and professional growth. But for the successful promotion of this educational event at the national level, it is necessary to know what participants like about the competition. It is also necessary

to know what they want to change, to what extent they are ready to be involved in the organization of future competitions, and how to solve a new challenge connected with lockdown due to the pandemic situation in the world.

2.1. Materials and methods

A survey was conducted among law students and graduates, former participants of INC-Norway and INC-Russia so the sample can be called a convenience one (Long, 2005). A questionnaire was sent to respondents by e-mail and through social networks: each of the article authors sent the questionnaire to the participants of their country respectively. Then the authors exchanged the results and analyzed them.

The offered questionnaire consisted of two parts containing ten rubrics. The first part was intended for all respondents (six questions) and the second part for those who participated in the international rounds.

The former competition participants were asked how many times they had participated in national rounds, what they had found most difficult in their experience (a multiple choice question with several options and blanks for their answers and comments), whether they had been taught negotiation within the curriculum and if no whether they would like to have such course, how useful the judges' comments had been, and whether the experience had been useful. Those who participated in the international rounds were asked the same questions connected with the competition and whether they would like to be involved in national rounds as judges or some other capacity.

2.2. Results and discussion

Predictably, not all former participants replied to authors' letters but the provided feedback is informative and thoughtful. INC-Russia engaged sixty-four participants in seven competitions (2014–2020), twenty-seven having responded. Fifty-four law students took part in six INC-Norway national competitions (2015–2020) and eleven answered the questionnaire.

Answers to most questions do not depend on the country and some of them have been predictable. For instance, the authors had no doubts that the answer to the question about the usefulness of participation experience would be positive and the expectation came true: all respondents answered "yes". One of the comments reads: "The experience has given me a basis to develop my negotiation skills, and I am grateful I got the opportunity to start developing skills I will need to further develop in my future career when studying."

Turning to difficulties mentioned by respondents, 'preparation' was indicted by about half of them in each country sample. Some of them indicated reasons for that: "Preparing for the competition was very time consuming and was difficult to plan along with studies and part-time job", others showed their attitude to this phase of the event

as a whole: “Preparation is the most difficult part and the most interesting one at the same time”.

The INC is held in English, so are the national rounds, thus, ‘understanding the other(s) party(ies) (from a foreign language point of view)’ was one of the offered options to the question about the difficulties met. About one third ticked this option but comments varied greatly. Those who did not think about using English as a problem wrote: “I find international students these days to master the English language quite well which made it rather easy to understand each other.” Others indicated it as a complication in their performance: “Although my partner and I felt above average proficient in English, it became much more difficult to exhibit good rhetoric. Therefore, the arguments did not come as naturally, and consequently, it became more difficult to readjust the plan.” And for some participants it was a real obstacle: “Level of English skill varied and was at time a hindrance to good communication: sometimes it was hard to understand what the other party meant as they didn’t express their ideas in English explicitly.”

‘Communication with your partner’ was mentioned as a difficulty only once in a very interesting context: “Especially when negotiating via the internet”. Although respondents were not asked to indicate the year of participation some of them did and this comment was made by a law student who had got experience of negotiating online during the current year. This point will be discussed later in terms of perspectives of the INC. Another comment about teamwork showed deepness and attitude to prepare for the competition: “We were also well acquainted with each other’s strengths and weaknesses; so it was clear to us when we were supposed to speak. Therefore, it became very natural for us who should hold what role, as well as who was best suited to answer given questions.”

Another offered option of difficulties which was mentioned by about a third of respondents was ‘following the prepared plan’. Some respondents indicated their attitude to this option by putting three ticks instead of one other commented: “The participating teams always prepare well in advance, but there will always come some unexpected curveballs from the other party, whom you never can predict. I think this separates the best negotiators from the second-best; the ability to be able to adjust when “the game changes.”

Speaking about difficulties which former competition participants indicated themselves were “sometimes there is a very narrow zone of potential agreement” and “multicultural issues” (at the level of international rounds). The INC and INC national rounds are, first of all, educational events and it is determined not only by the first-day workshops but by judges’ comments even to a bigger extent. None of the respondents gave negative feedback on judges’ comments ranking them either useful or extremely useful, the latter got a slight preponderance.

The comments save explanations: “I still benefit from their comments and feedback.” “Getting feedback helps you grow and learn. And even if you don’t agree with the feedback it gives you other perspectives that can help you grow. In my opinion,

feedback is extremely useful.” “Very useful. The judges feedback was instructive. Grounds; the feedback was constructive. ... It was very “educational” to learn from people who have broader experience in negotiations than yourself.” Some comments were less enthusiastic: “It varied, but were either somehow useful or extremely useful. Getting feedback was the most educational portion of the competition.” “They were very polite, spoke constructively, pointed out our strengths and weaknesses, were objective.” “I found that the judges had different experiences, and their comments varied with their experiences and personalities. ... I however found that some of the judges believed that their feedback was “the best” and that there could be no other way of negotiation than their way.” “I found that some judges were more useful than others. I preferred the judges with precise points and advice on how specific things could be done differently.”

It is understandable why the question about judges’ feedback prompted so many comments: respondents, in the first instance, took part in the competition, worked hard preparing for it, and wanted to win. So, when it comes to the situation that “Not all judges seem to know the case sometimes” the participants are not likely to say that the judges’ feedback was ‘extremely useful’. Unfortunately, the authors’ experience of judging the INC does not allow negating the latter comment, although, the reason can be explained. As it was mentioned above one of the difficulties competition organizers meet both on the national and international level is judge recruiting. So, sometimes judges are assigned to a round at the last moment and the only thing they can do is to look through Judges’ summary and not the whole judge pack. Moreover, when practicing lawyers are involved, they sometimes do not realize the educational potential of the competition and do not know the INC rules well which also leads to diversity in evaluation. That is why the last question about participation as a judge seems to be very important as one of the ways of solving the judge recruitment problem.

Engaging former INC participants in judging national rounds helps organizers in filling judge slots and allows them to stay in touch with each other and former teachers: “It’s fun and a great way to network!” Respondents who have not participated in the competition at the international level also want to do the job: “I would not decline such honorable opportunity”, “I would love to do this if I gain more experience in the negotiation field”, “I think it would be fun to participate as a judge as I see it as a way of contributing to the community”.

As it was mentioned above most answers do not depend on the country and, although the question ‘Did you / Would you like to have a Negotiation course within your curriculum?’ also got only positive answers, the comments show how the state of things differs in Norway and Russia. All Russian respondents answered ‘yes, I would’ while Norwegians added to their ‘yes’ the following explanations: “The art of negotiations is not in focus in Norwegian law schools”, “I am still in my study, and I am planning to have a Negotiation course in my curriculum”, “I would most definitely appreciate a negotiation class in my curriculum. In my opinion it may be one of the most practical skills you can learn as a lawyer”, “Negotiations are not a compulsory

part of the study, but there are opportunities to take negotiations as an elective in the fifth year of study”.

3. Concluding Remarks

This brief survey allows making several conclusions. Some of them are externally some are not that obvious.

In terms of professional development, participating in negotiation competitions law students gain invaluable experience for their future careers, build connections with future colleagues in their home country and the world, master communication and professional skills. Later they can join competition organizers as judges or guest speakers and contribute to competition development.

In terms of organizing the competition, several aspects can be considered. Firstly, the development of a detailed questionnaire for participants, coaches, judges and distributing it right after the competition will provide organizers at the national and international levels with efficient feedback. Secondly, engagement of former participants in organizing, judging, advertising the competition can facilitate its expansion. Thirdly, the current situation of lockdown affects all kinds of mass meetings and competition organizers are to look for new forms. For example, in the USA the ABA students’ division quickly and efficiently amended competition rules for conducting the event through ZOOM. In Norway, the national final in 2020 was postponed due to the pandemic and was then conducted online via ZOOM. The participants, judges from 14 countries, observers as well as the organizers were aligned – to conduct the competition online was a huge success. No doubt, it is necessary to study and adopt such practices.

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