

A BRIEF SWOT-ANALYSIS OF THE WILLEM C. VIS MOOT

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1 INTRODUCTION

When I was invited by Elisabeth Opie, new General Editor of this Journal, to write a short contribution “as immediate past President” of the Moot Alumni Association, my first ideas focused on sharing some of my visions for the wonderful Association, which I was delighted to lead for the past five years. But on second thoughts this plan had two draw-backs. First, I am now a “has-been” in the MAA; others must shape its future and a great team has already embarked on this journey along many promising paths. Secondly, the MAA is a child of the Willem C. Vis International Commercial Arbitration Moot. An indestructible chord runs between the organisation and the competition. By now, I believe it to be fair to say, both rely heavily on the existence and support of the other. Since the future of the MAA is thus so much dependent on the future of the Moot, it seemed a far better idea to analyse the latter and see whether some consequences for the former may be derived from this. The following shall thus be a brief examination of the Moot itself. A SWOT-Analysis, which looks at the strengths, weaknesses, opportunities and threats of a given undertaking, generally follows a particular format in the business world. This will not be adhered to *in strictu sensu*, but the analysis will focus on the features of the Moot in a more liberal way.

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2 *STRENGTHS*

Even to the most sceptical observer the strengths of the Willem C. Vis Moot must become rather obvious following an entire schedule of one such annual event lasting from October to April. The most apparent strength is the educating effect. The Moot teaches the basic legal framework of international arbitration and the application of the uniform sales law to all participating students during the elaboration of their memoranda. Many participants will be exposed to this type of conflict resolution and use of internationally harmonised law for the first time. At the stage of rehearsing for the Oral Hearings and most intensely during the Orals themselves the students are no longer taught the framework, but are trained in the practical use of arbitration and the CISG. The Moot in a unique way allows the students and also young practitioners to gain experience through a number of mock arbitrations which are usually chaired by a senior professional. As with so many things: you can talk long about it, but it is only when you take a good idea out of the classroom and onto the test ground, that you thoroughly appreciate its workings.

Alongside this teaching and training effect one discovers the huge strength of the Willem C. Vis Moot, which makes it superior even to its long-standing role model the “Jessup”-competition: its internationalising and harmonising effect on the thinking of all students. For a good number of them, the participation in the Moot is the first contact with non-domestic law and legal thinking. 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 must be seen as the most important contribution of the Moot. So few lawyers so rarely receive so little a chance to look beyond their own national legal framework, which is an experience which will leave each one who has done so changed in attitude towards “his law” – provided it was an educated, open-minded and enthusiastic look!

Another strength of the Willem C. Vis Moot is the socialising effect. Both within each university team and amongst the students from different teams, the Moot encourages the development of social competence. Over four months students must work in a team to elaborate the memoranda, share responsibility, deliberate, criticise, compromise, discover individual strengths and weaknesses and re-order the shares of work accordingly. Once they come to the Oral Arguments, they

meet over 500 students from 31 countries (this was the case in April 2001 and numbers keep rising year on year!). There are few opportunities in any professional's life to encounter so many like-minded people in a – despite the competition still – largely relaxed and familiar atmosphere. No international conference or gathering can give students and young professionals ever the feeling that their presence is the *raison d'être* of the event itself.

3 *WEAKNESSES*

A look at the weaknesses of the Moot is much more frustrating than a look at its strengths. Weaknesses are so difficult to find! Undoubtedly, the sceptics and *miesepeeters* will find enough to criticise. But almost all aspects to which they would point would be on a “technical level”: the question of the scoring during the Orals, the fact, that the teams do not know the constitution of their arbitral tribunal in advance, etc. But this short contribution is hardly the right place to elaborate on these and defend them as an adequate compromise between operability and perfection. However, one weakness may be examined more closely here, which is less apparent, but nevertheless a “structural” rather than a “technical” one: the size of the Moot and its future growth.

Not that the organisation of the event, especially during the Orals in Vienna, reaches its limits. It is rather that size seems to be inversely proportional to the level of benefits which the students derive. In other words: the educating, internationalising and socialising effects were felt more intensely by the average student, when fewer teams took part. Since 1996 the numbers of teams has more than doubled from 46 to 94 in 2001. For many teams any of the awards seem so far out of reach, that “making the cut”, i.e. being amongst the best 16 teams which go through to the Elimination Rounds, becomes a somewhat alternative award. 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 is sinking. Less effort is devoted to understanding arbitration and the uniform sales law. This reduces the educating effect.

Those teams which 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 locked away in their hotel room,

rehearsing, analysing and improving their presentations – determined to “make the cut” and in the vague hope for the Award for the Best Team Orals. This determination may be self-inflicted, but is often enough the result of over-eager coaches that fail to see the benefit of the socialising effects.

The lack of presence of many teams at the social outings during the Orals may also be explained in recent years by more and more teams using the trip to Vienna as a chance to see other cities in Europe leaving the competition as soon as it has become clear that they have not made it to Elimination Rounds. While they did not interact with fellow participants before due to their determination to do well, they let the chance to do so after the end of their involvement in the Moot pass by and prefer instead to travel Europe. While such measures might be understandable from a financial perspective, they highlight the fact, that the increase in competition leaves some teams with little expectation from the start and planning for alternative – “more efficient” – use of their time of the trip to Europe. All of this demonstrates the lesser involvement in the Moot by some teams in recent years and thus the little exposure to its strengths. It seems doubtful that members of such teams will have caught onto the spirit of the Moot and the irreversible internationalisation process. It is more likely that they will go home and have forgotten about the Moot few months later.

4 OPPORTUNITIES AND THREATS

This rather negative note also follows through to the opportunities and threats that the Moot faces. An aspect such as growth can be both an opportunity and a threat to the competition – its true nature largely depending on whether growth can be coupled with positive measures to tilt it towards the opportunity side.

Unhindered growth of the Moot in future years will – with little doubt – intensify the described structural weakness. In the end, it might well lead to reduced numbers of participating teams as the size of the Moot begins to naturally oscillate around its carrying capacity. However, in the prospect of growth also lies a tremendous opportunity. If it can be achieved that coaches are encouraged to highlight the educating as well as the internationalising and the socialising effect to their students, much would be won. The Moot itself might add sparkle to the enlarged event by having General Rounds in groups, thus leading to group

winners and second places, the latter not moving on to Elimination Rounds, but still enthused by their result. 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. Assuming that the involvement is fostered by the coaches and facilitated by the organisational adaptations, it is easy to imagine some 200 teams attending by 2010. It would mean that the Moot over a period of 20 years since its beginning would have educated more than 10,000 students. By far not all, but a fair number of them will indulge in international business, whether as advisor, litigator, in-house counsel or manager. Their student-time experience during the Moot and beyond will reduce the hurdle to applying arbitration and the CISG in transnational cases. Another 10 years further and the CISG might well have turned into the rule instead of the exception when choosing the law of an international sales contract. Although the contribution of the Moot itself cannot be measured precisely, it will be apparent that without it, such development would have been delayed for a long time if not eternally.

The increase in participating teams also has another, yet indirect effect on the opportunities and threats to the Moot. It gives rise to the question of competition – 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. Although the capacity of the Willem C. Vis Moot has not been reached yet – mainly thanks to the tremendous efforts by the organisers to constantly increase the maximum number of possible teams – the question of alternative events is more hotly debated than ever. Once the critical mass needed to surpass the barriers of market entry has been reached, the Willem C. Vis Moot could very well find itself with a competing event. This need not be a full scale copy, but it could be held in a different location or with a different geographical reach. It has been raised whether a similar event in format should be organised in Asia to give teams from that continent and Australia easier access and to foster the use of arbitration and the spread of the CISG in Asia. It is also imaginable, that an event for the countries of the European Union could be set up which will focus on European contract law, which has just started on the exciting challenge of unification.

Such scenarios are not a threat in themselves, but bear such potential. If the alternative moot is badly managed or positions itself in direct competition, the Willem C. Vis Moot itself could suffer. The reputation of moots generally could be damaged; in the alternative, the interest in the Willem C. Vis Moot could be reduced to a level which endangers its very existence.

To avoid any of these apocalyptic thoughts the best way forward seems to be to “franchise” the Moot. After all demand and supply in this market do not react over the price, which could easily be determined, but the quality of the competition itself. But to assure quality, it is necessary for the Willem C. Vis Moot – including the vast know how which has been developed around it – to be duplicated and multiplied. Why not have a second Willem C. Vis with Orals in Hong Kong, ensuring that international exposure in both events is guaranteed by a maximum quota of participating teams from Europe (for the event in Vienna) and Asia (for the event in Hong Kong)? Why not have the organisers of the Willem C. Vis Moot serve as counsel to the organising committee of a European contract law moot and subject both organisers to a process of mutual consultation on matters of common interest, such as schedule, venue, marketing to teams and arbitrators? The ideas behind the Willem C. Vis are grand enough to accommodate such developments. The Moot itself is an instrument to achieving the educating, internationalising and socialising effects which have been briefly touched on as the strengths of the Moot at the outset of this analysis.

5 CONCLUSION

It is a duly daunting task to take these ideas, that brought the Moot into existence 8 years ago into the second and third decade, whether this is through the Willem C. Vis Moot alone or further events set up in a similar way and on a co-operative basis. It might well be that this task will rest at least in part upon the Moot Alumni Association which may be able to provide the necessary institutional framework for the Willem C. Vis Moot in the future. This is a grand opportunity to the Association itself. Beside its efforts to offer its members and outsiders more and more professional services, its view never ought to be distracted from the core of its work, which is to foster the development of the Willem C. Vis Moot and the effects behind it. Thus, the MAA should stride at the forefront of the development of further moots, uniting the alumni of all these events under its own roof. The task is so challenging that its dimensions are far from clear today.

But when the ideas behind the Moot call upon their beneficiaries, it is for them to assemble and throw all their ability behind the development of the future of these ideas.