

University of Fribourg
Faculty of Law

Moot court

14th ICC International Commercial Mediation Competition

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I. How the competition works

The ICC International Commercial Mediation Competition is, as its name suggests, a competition where the participants take part in a mediation session in order to negotiate an agreement. During this session, the participants employ their skills and knowledge to reach a settlement that fits both parties but is the most favorable for them at the same time.

The teams at the competition come from different parts of the world, composed by participants who represent their university against others. The teams consist of a single coach or two coaches, that train and support the students during the year but do not take part in the competition itself. The students will then compete against other students in the mediation session.

The cases always concern a commercial dispute between two or more parties. Usually, the parties have agreed in their contracts, in case of any possible dispute, that they will take part at a mediation session under ICC rules. Should there be no such an agreement, one of the parties often suggests the ICC Mediation in order to find a solution. In the competition cases, there are involved two figures, the requesting and the responding party.

In November, each team obtains the information about the cases necessary to prepare them. Both parties receive general information of the cases, but each party obtains also confidential information, unknown by the other party. A kind of flexibility is absolutely necessary for the competition, to be able to face a situation which will be unexpected due to the confidential information of the other party.

The mediation takes place at a table with the two parties, represented by their directors (or CEO), with their legal counsel that can be in-house counsel or external counsel, with the mediator and the two judges. Each university is represented by only two students in the mediation session. Spectators are also allowed in the room. The director (or CEO) leads the dispute and is there to negotiate the economic aspects of it. The lawyer's task is to advice his client in all the legal matters. The mediator's aim is to help the parties understand each other and end the dispute. The two judges rate the performances without taking part at the mediation itself. In the end, they will give their feedback to the participants.

Each mediation lasts 90 minutes, including different breaks that may be requested by the parties. During this session, the parties clarify the situation that lead to the dispute and try to settle an agreement. To be qualified for the second round, each team prepares four cases and has to win most of them. If the team gets qualified, the competition continues in the form of a single-elimination tournament.

II. The preparation for the competition

Our team was composed by four participants and two coaches. The team started its preparation in the month of September. Every week, we met to train and improve our mediation skills.

In the first two meetings, our two coaches taught us about the mediation fundamentals and the different techniques of mediation. They also explained the procedure of a mediation. This phase was particularly important to us because it was our first contact with the world of mediation and we then obtain the basic knowledge which is necessary to perform a mediation.

During the following weeks, we had the opportunity to play different simulations of mediation sessions with real ICC cases. The sessions were always played between us four students, split into two different couples. This allowed us to train ourselves but also to understand the different compatibilities between the members of the team.

In the final stage of preparation, the coaches gave us feedback after each session, which helped us improve our skills and understand our strength and weaknesses. Once we divided the team into two couples and distributed the qualification cases, we trained on the real cases for Paris. During this time, we focused on the key points of the cases and planned our mediation strategy.

III. The week in Paris

The first day served us to familiarized ourselves with the city. We started by handling bureaucratic procedures to then got into the event general ambience – also to create affinity within the group.

The study sessions started the very next day and we reviewed both the mediation plan and the strategies to use according to how the mediation would have turned and we had practiced our opening speech.

We also have been arguing with the other members of our team to see if they had suggestions about the possible strategic way to use and the important aspects to emphasize during the mediation.

We participated in the mediations whether personally as the mediators or as the support to our team members. In the gap between one mediation and the other we had intensive study sessions. These days have been demanding and stressing since we had to partake into five mediation sessions in three days, included an unexpected one. Since we were notified about this extra mediation one day before, we had little time to study between sessions.

The experience at the ICC has been characterized by several formal meetings such as the Welcome Cocktail, the Middle Cocktail, and the Final Cocktail. These events served as an occasion to meet and discuss with other students and professors – who were representatives of other universities – and with professionals such as lawyers and mediators.

We learnt we did not pass the preliminary rounds after the Middle Cocktail. Therefore, we had time to visit the city and to participate in the mediation sessions lead by the other participants.

The event closed with the Award Ceremony and the Final Cocktail in which we had the last chance to exchange impressions and ideas with the other participants in the competitions and the professionals, who were deeply proactive.

IV. What the project has brought to us

Having the opportunity to participate to this project has brought to all of us a lot.

The first big quality we have had the possibility to increase is adaptation. During the semester's preparation we have treated various cases, where every time there were a different situation. We have found out that it is not important how bad it is the situation for the party, because thanks negotiation, the power of speaking and try to understand the people in front of us, it is always possible to find a solution. The important thing is to adapt ourselves to the situation and to the people we have in front of us.

Adaptation implies almost the time also improvisation: we have never been sure of what the other party could say and turns of events can very often happen during a mediation session. So, it was not always possible to follow the strategy we have prepared before the cases and consequently, we have had to improvised in order to achieve the best solution which could satisfy both parties.

Then, thanks to this project, we have had the opportunity to increase our English skills. It has not been always easy to try to express ourselves in a language which is not our mother tongue, but during the six months of the project we have improved this skill.

The biggest thing this project has brought to us is definitely “knowledge”. It has been a golden opportunity to have the possibility to meet so many people of different culture. We have spoken with students, professors and professionals from all over the world and we have learned really a lot. We have exchanged opinions and information about our studies, works and backgrounds; we have had the opportunity to speak with people who have different points of view from ours, who live in countries with systems different from ours and thanks to all of that we have expanded our thinking.

V. Possible improvements for the preparation

This experience of the field allowed us to exchange with a lot of participants and coaches as well as with professionals who gave us useful tips and information about their own preparation and experiences in order to improve ourselves.

During the preparation for Paris we missed a strong training on the mediation itself and its principles. Some of us had a class about alternative dispute resolution during their master but it wasn't the case of everyone. Since the ICC Mediation Competition is a mediation competition it would have been useful to have some theory given either by a professor, a professional or someone that is mastering the subject in order for the team members to all begin equally and with a common background. This would have also allowed the team to focus on specific topics such as body language and ways of expressing thoughts and arguments in a non-offensive but persuasive way.

During what we'll call the “learning-by-doing” phase, since we missed information on how a mediation session in the reality works, the sessions were not as productive as they could have been and a proper guidance during these sessions would have been useful at least during the primary ones.

The ICC Mediation Competition is a demanding and exhaustive one and the team competing needs to be well prepared and to know the mediation theory very well in order for it to be able to play by and with the rules. Indeed, the teams it will be facing are very well trained.

Therefore, a preparation with some professionals or professors that sometimes guide and observe the team during the practicing sessions giving some advices and tricks is important if not necessary and would have been really useful to our team.

Also, it is important to stress that the competition is fully in English. Therefore, in order to be able to respond to the opponent team and to master the case the team has to play a minimum level of English is required to be able to improvise instead of learning its speeches and strategy by heart.

We noticed and the professionals also confirmed that one of the keys to run a successful mediation session is not to learn anything by heart such as an opening speech or a strategy. Actually, it is rather to know and master its case like it was your own story and to be impregnated by it in order to be able to respond to any situation during the mediation session and contend with the strategy of the opponent team, strategy that you maybe haven't thought about. This will avoid the team to be taken by surprise and destabilized but this is only possible if the members of the team have a level of English that doesn't need to be fluent but that allows them to be autonomous.

By learning its speech and strategy by heart we have learned that the chance of getting stuck in a position is high.

The ICC Mediation Competition is a chance and opportunity for Switzerland and its universities to shine on an international level by promoting its university education. This should and could be presented as such to the deans and professors of the Switzerland universities as well as the professionals of the field in Switzerland so that a national preliminary round could for example be organized. We could also think of introducing it to the federal government responsible for the education or the ministry of foreign affairs in order for us to collaborate with them.

VI. What will be the benefit of the moot court

This moot court is a unique opportunity to build connections with professionals and students from all around the world and can be a chance for you to expend your career opportunities. This is also the chance to build real and lifelong friendships with people you wouldn't have had the chance to meet if you hadn't participated to this moot court.

This moot court is also the chance for you to have an insight of the mediation field by witnessing how the mediators handle the mediation and by talking with some of the most renowned professionals of the field that will be glad to share their experience and thoughts with you. During this journey you will learn a lot about mediation but also about yourself and how you react when put in some situations you maybe haven not anticipated, such as stress or when the strategy of your opponent is an offensive one.

This will be a real opportunity for you to witness your strength and weakness in order to improve them and improve your communication skills. In other words, we can only encourage you to take part in this amazing adventure because it will enhance you and you won't be the same person after this journey.

VII. Conclusion

To conclude, we would like to thank the associations which have supported us, the University of Fribourg and our great coaches Damiano and Quentin. We are all very glad to have had the possibility to participate to this project and we can really say we have learned a lot.

We really recommend to all the students, who can have the possibility, to participate to this project, because it does not only give an important background from a professional point of view, but it also permits to broad the mind from a cultural point of view.