

Mooties Making A Difference: Reaching Out To Build In Cambodia

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A few weeks ago, a small team of educators gathered in Phnom Penh for the second Vis East Moot Foundation[fn]Vis East Moot Foundation Ltd, registered Hong Kong charity: www.cisgmoot.org Contact director@cisgmoot.org. Louise Barrington is an arbitrator, founder and director of the Vis East Moot Foundation.[fn] Capacity Building Programme (VEMF-CBP) for Cambodian law students. What made this programme different from other occasional, one-off forays into Cambodia by dozens of NGO's and law firms is that this year's local organisers were all alumni of the 2014 CBP, with students organizing everything from classrooms to catering, registration, accounting, attendance, printing – even the end-of-course party. A couple went further, delivering a 3-hour CISG research workshop, impressing both peers and professors

It was a living example of the value of Vis Moot training in marrying law school theory with real world practicality. The CBP develops talented, enthusiastic experts to form a nucleus to promote arbitration in Cambodia and train those who follow.

The Vis Moots

Most people in the community of international arbitration know the Vis International Commercial Arbitration Moot and its sister competition, the Vis East. Anyone who has participated in a Vis Moot, either competing or judging, can testify to its enormous benefits. As the Vienna Vis heads into its 24th year and Vis East its 14th, Mooties[fn]Mooties are the participants in the Vienna and Hong Kong International Commercial Arbitration Moots, often members of the Moot Alumni Association (www.maa.net). Tens of thousands of Mooties now work in law firms, government, industry, academia and private organisations around the world. Since 1993, many have used their Moot experience as a springboard to a career in international dispute resolution. Some professionals who have judged the competition also refer to themselves as Mooties[fn] around the world remember their Vis experience as a life-changing experience; Mootie friendships last a lifetime.

Vis Moot participants put law school theory into action, arguing a problem, first for Claimant and then Respondent, on both procedural and substantive issues. The Vis complements law school education with practice in analytical reading and issue spotting, drafting, and oral advocacy. Moot participants also learn to work as a team, to assume responsibility for their role. Many law firms now look for Moot participation on CVs when sizing up new graduates as potential associates.

Devised as “an educational experience in the form of a competition”, the Moot has evolved over the decades. Law schools use the prestige of Moot awards to entice top-level law applicants. Unsurprisingly, the Moot is more competitive, with school teams spending countless hours preparing and attending practice rounds. When they arrive in Vienna or Hong Kong, most will have argued the case up to 50 times, often visiting several pre-Moots on their way. They arrive at the Moot polished and confident – indeed a formidable group.

The other 30%

Then there are the others – struggling to obtain the resources to get to Vienna or Hong Kong. Aside from the inevitable financial issues, some countries lack arbitration expertise. Countries with brand-new Model-law legislation now need arbitration-savvy lawyers, and judges who appreciate the significance of the New York Convention. Many law schools haven’t the faculty or even the most basic international law or arbitration texts they need for teaching. Even on-line research is like looking for the proverbial needle in a haystack.

In Vis competition, these schools are disadvantaged. In the real world of international commerce, their countries are disadvantaged.

The Kingdom of Cambodia as an example

A constitutional monarchy, Cambodia has a King, but Prime Minister Hun Sen has headed the government for over 25 years. With the dubious distinction of being one of the most corrupt nations in Asia,[3. Transparency International in 2014 ranked Cambodia 156th of 174 nations evaluated, and lowest in East Asia.] Cambodia is also one of the poorest nations in the region. With a GDP of just over US\$1000 per year Cambodia ranks as 160th in the world. After years of civil strife culminating in the horrors of Pol Pot’s genocide [4. Between 1975 and 1978 the Khmer Rouge exterminated over a quarter of the Cambodian population, with estimates ranging between 2 and 3 million of its people imprisoned, tortured and murdered.], over half of the people are under 25, and many adults missed out on an education. Remote countryside areas lack basic infrastructure and services. Land grabs and corruption are commonplace. This country of nearly 15 million has about 800 lawyers. Some law professors have dubious credentials. Those who are qualified are poorly paid and over-worked, working at least two jobs to make ends meet. The rule of law is a faraway concept for most people[5. Cambodia also scored dismally in the 2015 rule of law ranking by the World Justice Project, at 99th of 102 countries and the worst in southeast Asia.]. One Cambodian-American scholar described Cambodia as “a kleptocracy cum thugocracy” enabled by UN aid[6. Dr. Sophal Ear, quoted in an *Asia Times* article in 2012.]. Recent anti-corruption legislation is ineffective, especially since whistle-blowers face jail terms if their accusations are not proven.

This does not bode well for foreign commercial partners. Business operators abhor risk and do whatever is possible to avoid or minimize it. That means either not dealing with a country where legal rights are unenforceable, or charging a premium in providing goods or services to such countries. In either case, legal risk curbs economic growth, development and prosperity.

International arbitration as a catalyst for change

Yet, against this backdrop of need are rays of hope. Despite international criticism of many rather shady “foreign aid” groups in the Kingdom, many bona fide international organisations and NGO’s are tackling the ills of Cambodian society [7. See for example CLEW, Cambodian Legal Education for Women, a small Cambodian/American/Canadian group operating a unique programme to educate young women from the provinces in both Khmer and common law: www.clewcanada.ca]. Because of its *independence* from traditional legal channels and its *openness* to the international community,

arbitration can be a powerful factor in developing the rule of law, by bringing internationally recognized instruction and standards to Cambodia.

Arbitration in Cambodia is in its infancy. A member of the New York Convention since 1960, but closed to world trade, Cambodia had few international disputes and little interest in arbitration. Model Law-based arbitration legislation came into force in 2006, but there has been little opportunity to use it. Realising the potential of arbitration to improve the Kingdom's dismal reputation, in 2010 the government legislated the creation of a national Arbitration Centre, CNAC, which opened in June this year. The first judicial conference on arbitration took place in Cambodia this year, and a second is planned for January of 2016. Two Cambodian judges attended the UNCITRAL Judicial Summit held recently during Hong Kong Arbitration Week, and met with arbitration judges from around the world.

Most arbitration in Cambodia is for domestic labour disputes and there is no record of enforcement by Cambodian courts of an award under the New York Convention, although two cases are currently underway. Cambodia did successfully resist one claim from a foreign investor under a BIT. There is no international "arbitration community" in Cambodia, but a few lawyers have acted in these few cases.

Cambodian academics invited the Vis East Moot Foundation to locate its first Capacity Building Programme (CBP) in Phnom Penh – to provide the knowledge and skills necessary for students to participate in the Vis competition, and to create a sustainable framework and resource base in Cambodia for training international lawyers and executives to conduct international arbitrations on behalf of both foreigners and Cambodians.

Students joining the CBP had had no access to experts, books or internet resources. For those studying law in their native Khmer, language was an additional challenge. But students and coaches and trainers cooperated to make the initiative succeed.

A two-day Chartered Institute of Arbitrators Introduction to Arbitration, presented by ArbitralWomen **Mary Thomson** and **Louise Barrington** was also open to lawyers and others with legal training or substantial business experience. As a result the CI Arb has recently enrolled its first Cambodian members.

Vis coaches **Tijmen Kleinbronsvoort** and **Susan Wintermuth** joined Canadian lawyers **John Claydon** and **Chuck Gastle**, training students on the basics of international law: sources, legal reasoning, the CISG, and advocacy. Cambodian professors looked on and assisted with tutorials. Twenty-eight students "survived" the grueling 80-hour course, and several participated in this year's Vis East Moot.

Eight "survivors" returned to play an important and effective role organising the second CBP. Vis Moot coach **Patrick Talbot** joined this year's experts, and Mooties **Chun Lei Zhao** and **Dany Channraksmeychhoukroth** remain in Phnom Penh until mid-December to coach, organize and mentor. Volunteers from Hong Kong and Indian firms are helping with video coaching. Two Cambodian schools will attend this year's Vis East; others schools have indicated interest if the programme can be offered next year.

What next?

The next challenge, for the students and for the Foundation, is to secure funding to continue the project until there are enough Mooties in Cambodia to continue the work independently. Building on the Moot experience, many will benefit from international scholarships for legal studies abroad. Returning graduates will be perfectly placed to build the Cambodian arbitration community, to develop the rule of law, and to help Cambodia mend its international reputation and assume a

meaningful role in the international legal community.

Arbitration practitioners are invited to judge both written and oral work at the Vis East Moot. Register on-line at: www.cisgmoot.org.