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The skills necessary for a good lawyer dealing in transnational business transactions are multiple: language, comparative law methods training, knowledge in conflict of laws analysis, good understanding of the different mechanisms available for international commercial dispute resolution, awareness of international relations, awareness of law making processes, negotiating and drafting skills. I shall analyze briefly each of those skills which, ideally should be acquired at law school and, for some of them, could be

¹ This paper builds upon several types of experiences I was fortunate to have so far. (1) As a student in Paris in the 70s, I specialized, as soon as possible in the curriculum, in international business transactions and came to the United States for an LLM. (2) For 6 years, I was in charge of a post-graduate degree for International Business Lawyers at the University of Dijon (France). As part of the curriculum, students had to fulfill an internship of at least two months (most of time it lasted six months) in a law firm, a company, an international organization or any other similar entity. I was myself in constant contact with these entities to monitor their needs and make sure the students could fit them, and monitor the internships. (3) For four years I was Deputy Secretary General of the Hague Conference of International Law, essentially in charge of commercial matters including electronic commerce. (4) For many years, I have taught International Commercial Law, International Dispute Resolution, and European Business Law, not only in France but in many different countries (Armenia, Canada, Czech Republic, Egypt, Italy, The Netherlands, Palestine, Spain, Tunisia, and Viet-Nam). (5) Last but not least I have practiced law in Paris for 18 years dealing mostly with transnational economic deals and disputes and I am presently acting in a number of Arbitral Tribunals acting either ad hoc, or under the auspices of any one of the major arbitral institutions.

acquired prior to law school and could be made a prerequisite for some of the law school curriculum².

I – Language

Language skills are not just a matter of language, but much more an issue of culture and nuances in thinking patterns. Even though English has become the vernacular language of international business negotiations in many regions of the world, including some which were traditionally Francophile and Francophone, it is not a reason for not learning other languages. Indeed, learning languages is giving oneself access to a different culture and culture is fundamental when it comes to negotiation. Nothing is more annoying than not being able to understand what is said *mezzo voce* –for internal purposes of the other team– on the other side of the negotiation table. Yes, it is possible to hire an interpreter, to help with this. But whoever has worked through interpreters, albeit the most skillful ones, certainly knows that nothing is better than a personal understanding. Nothing is more misleading than not to understand the cultural meaning of a “yes” or a “no”. In some countries, a “yes” does not mean “I agree” but “I heard you and I reflect on what you told me”. In other countries, a “no” does not mean, “I disagree” but “I wish to continue discussions”. It is fine to learn all of this from an external point of view (for example through cross-cultural classes and workshops). It is even better to learn it through an insiders understanding of the language.

The second reason for the need to learn more than one language is the width of thinking. Particularly in international business transactions, several legal systems will have a say on how the transaction must be performed, interpreted and unfold. If a lawyer has access only to one type of legal thinking (in English, it will be mostly common law), he/she will miss out a vast variety of possible different ways to achieve same results, many nuances

² What follows could be considered as a road map for the curriculum of an ideal Transnational Law Institute for Economic Relations (TLIER) which we conceive as a two-year program open to lawyers from all over the world, ideally situated in one of the two legal capitals of the world.

in legal thinking. The “pensee unique” (uniform thinking) whether in politics, arts or law is an impoverishing way of thinking.

For law schools, it may mean encouraging students to take general cross-cultural classes, cross-cultural negotiation workshops, language (terminology) classes and even allow them to take some of that for credits towards their diploma. It means also encouraging students spending at least a semester abroad in a different law school with an equivalent credit earned during that semester. This will necessitate a good understanding of how the foreign law school curriculum is organized, some kind of letter of understanding between the two law schools³ and some minor adaptation in the curriculum of the student.

II - Comparative law methods training

This is a more difficult issue to grapple with. Indeed, for transnational business transactions, it is essential to have some knowledge about a methodology which is specific to comparative law study. This methodology is mostly about how to ask the right question. Most legal systems, even if they are not very sophisticated would contain in themselves answers to most questions arising out of a business transaction, notwithstanding its complexity and even its novelty⁴. Thus, in order to get the correct answer the question must not be framed in terms which may reflect the idiosyncrasies of a specific legal system but must allow the foreign lawyer to find the equivalents in her/his legal system. Comparative law methodology is actually the art of equivalence.

³ The University of Pantheon-Assas Paris II, for example, keeps this exchange of students fairly informal and a student is allowed to attend classes for a year or a semester with an exchange of letters between the two Deans. Reciprocity is usually asked on the same basis. We arrange the exam period for foreign students who need to go back home before the normal exam period starts for students enrolled in the regular program. We allow foreign students to take classes in any of the 4 year law-program. This means they have a very large range of choices, even though we encourage them, after an interview, to take some specific classes according to their own goals.

⁴ There is much literature about the fact that some “unsophisticated” legal systems may present a void or a gap when it comes to some new business transactions. I am of the opinion that this is a misconception of what is a legal system. Being influenced by the great legal scholar Santi Romano, I consider that each legal system contains enough general principles of law to cover all questions presented by real life transactions and courts usually have the power to adapt those principles in the absence of more specific regulation.

In that respect, the task of law schools is daunting. Not all professors are equipped to add enough comparative law analysis in their regular class materials and discussion. Proposing separate comparative law classes may not be the right answer. Indeed, a general comparative law class may be good to open students' mind to the methodology. But it may end up in an impressionist training with no real legal knowledge at the end of the semester. One of the ways could be to invite foreign professors to co-teach the most important classes in the curriculum (contracts, procedure, dispute resolution, corporations, conflicts, etc...). And by co-teaching I do not have in mind one professor starts the semester and the second follows, but both professors formulate the questions together, put the materials together in common and are present in the classroom at the same time, discussing the same issues from as many angles possible. Obviously, it is fairly expensive to organize such classes, but it may be the key to train the best international lawyers and to attract the best students to such training.

III- Knowledge in conflict of laws analysis

Transnational business transactions necessarily present contacts with more than one jurisdiction. Good transaction lawyers need to know at least the basic mechanisms by which applicable law to a transaction is to be found. They need first to understand the role played by party autonomy, how they may use that freedom in the best interest of their clients, how to draft choice of law clauses which will stand scrutiny in court, where to look for ascertaining whether public policy issues are raised by the transaction, particularly whether some mandatory norms (*lois de police*) are applicable. Once they have reviewed all of these issues, they need to know what happens if their choice of law clause is held invalid. They also need to know which law would be held applicable to the transaction in case the parties cannot come to a common agreement.

The answer to the latter questions could be fairly complex. Hence students need to be trained in ascertaining first their dispute resolution mechanism (mainly, court or

arbitration) and, depending on their choice in that respect, they then should receive some training not only in their own jurisdiction's conflict rules, but also in the rules of the major trading partners of their country⁵.

Actually, this formation in conflict law analysis should come fairly early in the curriculum and could be a prerequisite for more advance classes in international commercial law, or negotiation of international agreements.

IV - Good understanding of the different mechanisms available for international commercial dispute resolution

As mentioned earlier, the choice of a dispute resolution mechanism may have more than just a single impact on how the transaction is going to unfold. Choosing for arbitration, as the preferred mean of dispute resolution has many consequences. This choice should not be done lightly and it should be carefully crafted to the special needs of the transaction at stake and to the culture of the parties involved. Not all transactions are suited for arbitration. Not all forms of arbitration are adapted to all transactions. In addition, when it comes to applicable law, a judge will have a very different approach to the question than an arbitral panel. The latter will be more likely to use soft law mechanisms⁶ to reach what the panel considers as a proper outcome for the dispute.

It is also important that students be made aware of the importance of obtaining provisional, protective or interim measures and the difficulties involved when trying to get such an order in a transnational case.

⁵ This is true for any training in a foreign legal system. It is quite evident that law schools cannot possibly offer training in all existing legal systems in the world. Hence, law schools will have to provide training according to the largest number of transactions with foreign markets.

⁶ Soft law mechanisms could be anything from Unidroit Principles, to Resolutions of the Institut de droit international or lex mercatoria theories.

Alternative means of resolution should also be considered, such as mediation, conciliation or mini-trial.

Consequently, it is essential that law schools propose at least one class in international commercial dispute resolution incorporating all the abovementioned elements. The goal of the training is not so much to educate students in all the intricacies of arbitration but to teach them the comparative advantages and inconveniences of each of the methods: international litigation (i.e. in domestic courts); ADR and arbitration⁷, so that to enable them to make an informed choice in real life, when they will be drafting international commercial agreements.

V - Awareness of international relations

In our globalized world, more than ever before, is it not possible to conceive transnational business transactions without a fairly good awareness of international relations as a whole. Indeed, transnational transactions always include some kind of economic and political risks, which do not depend only upon the relations of the countries in which are located the parties directly involved in the transaction.

With the increased complexity of international economic relations, the numerous networks which are nowadays charged with shaping international political and economic agendas, lawyers should be trained to analyze political and economic events and to incorporate clauses in the agreements they draft to cover, as much as possible, for changes occurring in the larger framework which may have an impact on the transaction in question.

⁷ It is still controverted whether arbitration must be included in ADR mechanisms or whether it stands by itself as an alternative to courts but separate from “other” ADRs such as mediation, conciliation etc...

This could be done through a course in international polity. This is typically a class which could be offered at an undergraduate level and could be a prerequisite for attending more specialized classes at the law school level. It could be supplemented by a series of conferences organized by the law school with major players in international and cross-regional relations, somewhat along the lines adopted by the Hauser Global Law Program of NYU School of Law.

VI - Awareness of law making processes

The level of complexity in the law making processes either domestically or on the international plane calls for different training. Thirty years ago it was probably enough to concentrate teaching on positive international law. Nowadays, law professors' responsibility goes beyond positive law, particularly in commercial/business transactions.

Many international governmental organizations have been criticized for the length of time it usually takes to adopt new conventions/treaties. Thus, most of them have decided to adopt the new fashionable process of model laws, recommendations, guidelines or codes of best practices to name just a few of these new instruments. The exact legal nature and binding force of those documents are somewhat obscure or, at best, controversial. But it is not possible these days to teach international commercial law without taking into consideration these texts. Even if one agrees that they have no binding force as such, they may be very influential. First, they may be used as a source of inspiration for drafting agreements. Second, they may be used by arbitral tribunal in the process of dispute resolution. Third, they may inspire future developments in the law both at the domestic level and in international fora.

Alongside these institutions, are now formed informal networks of governmental officials, such as the International Competition Network (ICN), whose goal is to increase convergence among countries not only at the level of processes but also on the substantive aspects of the issues at stake. These networks produce lots of what could be

considered as soft law. But even if these norms may not be binding, they have a tremendous influence at national or regional level and could trigger changes in the law. Students must learn how to deal with these new forms of norm production.

In addition to these institutions charged with the creation of international legal norms, there are an increased number of non-governmental organizations which are working on proposing new ways of dealing with international legal issues. These NGOs are of different nature –think tanks or interest groups, for example- but they may be influential and their work must not be ignored. Students must be informed about them, must know how they may use them, for what purpose and should be trained in analyzing the impact of each of those work on on-going legal debates across borders.

VII – Negotiating and drafting skills

This is the most obvious skill you may request from a transnational business lawyer. It may be acquired outside the law school, but law schools should provide for at least one class allowing students to interact and draft one of the most common international business transactions (sales, distribution, joint-venture). Let me explain the method I have used with success both in France⁸ and at NYU⁹. At the beginning of the semester, students get a transnational hypothetical case dealing with either distribution or a joint venture or a series of sales which I have created out of real life transactions in which I have been involved. Students get reading materials composed of doctrinal works, real life agreements (anonym zed for confidentiality reasons), ICC model contracts, a number of international conventions, the Unidroit Principles and the European principles. After a couple of classes where the hypothetical case is discussed and clarified and general issues are discussed (sources of law, hierarchy of norms, comparative contractual cultures,

⁸ I taught a class in international business transactions at the DESS level with approximately twenty students enrolled.

⁹ At NYU, the class was bigger (60 students) and the diversity in students' origin was much greater than in the class in France. The method had to be adapted.

diversity in regulations underlying the transaction, etc...), students team up by groups of 2 or 3 (depending the number of parties in the hypothetical). Teams must be composed of students of different nationalities. Each team comes in class with drafted clauses. These clauses are the starting point of the discussion in class. One team (a different one, each time), orally explains the issues which have been covered by the clause it has drafted and the rationale behind the choices made. The rest of the students discuss the issues and the choices presented by the team. By the end of each session, students come out with a checklist of issues to be considered; and the most important legal consequences behind the choices available. The legal analysis is made from both a comparative point of view and from the stand point of international unified rules when they exist. At the end of the semester, students should have a drafted agreement (at least the essential provisions).

Conclusion

Some of the readers of this paper will think that students I have in mind are actually from outer space (*extra-terrestres*)! We are conscious that we are proposing an ambitious program. The reality will probably be somewhat more modest. However, our ambition was mostly to trigger ideas and discussion.