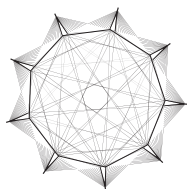


Bonds & Bridges

*Facing the Challenges of the Globalizing World
with the Use of Simulation and Gaming*



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Bonds & Bridges

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MAKING THE LEGAL EDUCATION WORK BEYOND CODES TO ISRAEL AND PALESTINE. A CASE STUDY

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ABSTRACT

Ways and methods of teaching the law vary in different countries, just like legal systems in those countries vary too. However, some statements about the condition of lawyers' education are unanimously repeated. According to some international experts, the contemporary legal education insufficiently prepares young lawyers to meet the challenges of their future professional legal practice. Teaching and learning the law has become mainly learning about the law and memorizing codes. The aim of this paper is to inspire the audience interested in extending legal education beyond memorizing codes, by showing an example of experienced-based learning and development opportunities. The inspiration comes from a case study of a simulation of negotiations run for students of law and economics: 'The INPRIS Water Negotiation Project'. It was offered to students from both the Warsaw University Law School and the Warsaw School of Economics (Poland). The simulation supported the regular educational process enabling students to implement the knowledge gained at their universities. In presenting the case study, the authors refer to Paul Maharg's approach to legal education called "transactional learning", aimed at bringing academic legal education closer to professional challenges of lawyers. The project was prepared and organized by the INPRIS – Institute for Law and Society, a legal think tank, and Pracownia Gier Szkoleniowych, a game designing company.

1. LEGAL EDUCATION – CONDITION AND DIRECTION OF CHANGE

1.1. Courtroom as stage: the metaphor

A courtroom, or a room where a lawyer would negotiate, is commonly compared to a theater. Lawyers, in this comparison, are actors playing

their respective roles. The rationale behind that comparison is that both lawyers and actors must appear convincing in presenting their lines in order to convey their message, either to the public, or to the judge and the other party during negotiations. In order to be convincing, actors learn the scenic arts and memorize particular lines. What follows, before entering the stage, are rehearsals. These two steps: learning and a mock-practice are a proven formula for a good performance.

That metaphor requires an extension, both actors and lawyers take part in something bigger than playing only their individual roles. They are parts of a complex configuration of roles played by other actors at the stage, their motivations, and interests. Being able to perceive the full picture makes both the actor and the lawyer more convincing in conveying their message, and as a result, more successful.

1.2. The condition of legal education

If a court, or negotiation room, is similar to a theater than actors-lawyers, in order to achieve goals of their profession, should undertake both steps: the learning and the rehearsal. However, that is not what is practiced in Polish law schools. According to the Report on the Legal Education in Poland, prepared for the Global Network for Public Interest Law, legal education in Poland is centered mainly on lecturing and memorizing, without a real opportunity of mock-practicing, before entering the stage of a professional career (Śliwa, 2010, p. 10).

Even though the knowledge gained by working with codes is indispensable for a lawyer, his role is not centered on a legal text, but on another human and their problems. Therefore, even though the education model based on reading the case law, memorizing codes, and preparing motions and pleadings is valuable, it is not a complete model of legal education. It is deprived of an opportunity for mock-practice of solving another person's fundamental problems.

Looking at the literature on legal education allows to say that the challenges mentioned above concern not only Polish law schools, but are represented in many corners of the world. The critical analysts of legal education tend to show a rather disappointing picture: legal education is said to be deprived of the "human factor", something extending beyond codes. Already in the 1980's researchers showed that legal education has a weak socializing effect on students, and causes psychological distress and anxiety (Benjamin et al., 1986; Sherr&Web, 1989). More recent research proved the negative effect of legal subjects on students' values and motivation: studying law has a short-term or even negative impact on the public service orientation of law students (Boon, 2005).

1.3. Ideas how to make a change in legal curriculum

The literature referring to the need of transformation of legal education highlights the role of simulation and gaming in this process. According to Paul Maharg, legal education, thanks to the application of gaming, can help to overcome the current weaknesses of legal education by bringing the academic efforts closer to a lawyers' real life challenges. Maharg calls his approach to transforming legal education the *Transactional Learning*. In his understanding, it is a specific form of problem-based learning and consists of the following guiding principles (Maharg and Owen, 2007):

- *Active learning through performance in authentic transactions* – involving students in activities within legal actions, going beyond learning *about* legal actions to learning *from* legal actions;
- *Reflection in and on learning* – the ability to rise above detail and 'helicopter' above a transaction, and to disengage oneself from potentially damaging views of the group process;
- *Collaborative learning* – students are valuable resources for each other and they can help each other enormously to understand legal concepts and procedures by discussing issues, reviewing actions in a group, and giving peer feedback on work undertaken in the group. They begin to trust each other to carry out work that is important. Paul Maharg indicates that if there are firms that are not producing good work or keeping to deadlines, it is often because they do not know how to work together effectively; this often arises from a lack of mutual trust (Barton and Westwood, 2006);
- *Holistic process learning* – students need to arrive in their traineeship not only with a sufficient knowledge of the parts of a transaction, for instance, which letter is sent to whom and what it should contain, but also with a holistic knowledge of the complete transaction. When they are given a file-in-progress in the office, for instance, they need to be able to move from part to whole, and vice versa, in order to identify what has been done and what needs to be done.
- *Professional assessment*

Maharg also underlines the role of experiencing the interdisciplinary cooperation, which is vital in professional practice because of the interdisciplinary character of the lawyer's profession. It is about collaboration, not only among the law firm's team, but also between people and institutions with different backgrounds (Maharg, 2007).

The Anglo-Saxon educational institutions have undertaken efforts to implement *transactional learning* by introducing simulations to the educational curriculum. Widely described projects at the Glasgow Graduate School of Law and University of Strathclyde can serve as examples.

Practical solutions often unwittingly answer the needs formulated in theoretical research. That was the case of the INPRIS Water Negotiation

Project which was designed and run by education practitioners not aware at that moment of the *transactional learning* principles.

However unintentionally, the project put the *transactional learning* principles into practice making them accessible for students of law and economics of two leading Polish universities.

The project was an interesting meeting of different disciplines and professions. Lawyers and sociologists, practitioners of legal education and training games designers decided to join efforts and contribute to the transformation of academic education. This bridging of two separate worlds resulted not only in the described project but in further common undertakings aimed at bringing law and legal education closer to the society and its citizens with the support of the simulation & gaming methods.¹

2. GOALS OF THE INPRIS WATER NEGOTIATION PROJECT

The project was originally designed and run to address two different goals. We combined educational purposes with the desire to venture the feasibility of a legal solution to a specific real-world conflict situation. In other words, our aim was to both create a learning and development context for the participants while, at the same time, checking whether the agreement achieved in the course of the simulated negotiation could be of any use for the real world.

2.1. Educational goals of the project

The main educational goal of the project was to allow the participants to practice the essence of their future jobs and prepare for challenges relating to real problem solving. We wanted to expose the students to situations which they will face in their professional life, and as a result, to bring the project as close to the *Transactional Learning* concept as possible.

We designed the project with the assumption that a lawyer should be equipped in a powerful mix of knowledge, competences and skills. These skills should be both the so called “hard skills” (specific, teachable abilities that can be defined and measured) as well as personality-driven “soft skills” (less tangible and harder to quantify).

The following areas we found to be the most useful to develop in the project:

¹ The project could never reach its final shape without the support of the Student Study Group for International Finance at the Warsaw School of Economics, the Center for Dispute and Conflict Resolution at the Warsaw University and the sponsor of the final negotiations, the Corporate Partners Club of the Warsaw School of Economics.

HARD SKILLS

- negotiation skills
- running and analyzing a complex legal research
- introduction to drafting complex contracts
- preparation of negotiation positions

SOFT SKILLS

- teamwork
- self-awareness
- emotional resilience
- cooperating within mixed-professions teams
- speaking in public, making the case by laying out convincing arguments
- organizational skills; managing assets in the team, as well as organizing communication with supervisors who resided in remote time-zones

KNOWLEDGE ON

- international law and politics
- water and its legal framework in the international, transboundary context
- water distribution, specifically in the Jordan River basin
- selection of the UN conventions
- cap-and-trade markets
- economics of sharing joint resources
- politics of the Middle East

Practicing skills, recognizing strengths and weaknesses, and gaining knowledge were the initial ideas of the INPRIS Water Negotiation Project. A practical education and extending beyond codes is vital for future lawyers. In the legal practice, problems tend to occur in the most unwelcoming situations and limited time with overwhelming stress become a lawyer's best companion. Students participating in the INPRIS Water Negotiation Project were asked to plunge into the stressful environment and apply the knowledge which they gained to solve a problem.

Our special concern was to give the project an interdisciplinary touch by bringing together students with backgrounds from different sciences. Enhancing cooperation between future lawyers and economists-to-be, and contributing to building a bridge of trust among them, seemed a goal worth achieving, referring to Maharg's principle of *collaborative learning*.

2.2. Stimulating factor – the practical layer

The mock nature of the simulation does not allow for introduction of a natural stimulator and stress factor which, for a lawyer, is the billable hour. Therefore, it was necessary to provide students with a problem which would be sufficiently interesting to create the motivation for hard work.

The problem which participants were negotiating was centered on the water as a scarce or an abundant resource. Participants were asked to work on a problem of distribution of water in a desert. In order to complicate the issue even further, the desert in the Project was a piece of land inhabited by Israelis and Palestinians.

In a few words, water in Palestine, as well as in other places around the world, is naturally stored in underground tanks called aquifers. Accessing an aquifer and drawing water from one place affects the whole aquifer. Aquifers spread in disobedience of human made borders. As a result, drawing water by Israelis affects water supplies of Palestinians. The same happens in a reverse situation. Aquifers served in the Project as a bridge, and constant water shortages were a common problem which both nations must inevitably solve.

That compulsory link between the two nations founded our topic for negotiations. Participants were asked to negotiate a contract for the distribution of shared water resources. The problem presented for negotiations was supported by two ideas available in the literature. The first was an explanation provided by Nobel Prize winner Elinor Ostrom, on the mechanics of commons (see: Ostrom, 1999). The second came from Professor Shimon Shetreet, who proposed to share the common water analogically to the distribution model, which some countries decided to apply for the green house gases emission rights under Kyoto Protocol (see: Shetreet, 2008).

With a real idea to examine, and students serving as proxies, another layer – above education – was introduced to the project. The Project was about to venture the possibility of closing a contract which would regulate a vital part of Israeli-Palestinian relations.

3. THE PROJECT'S ARCHITECTURE AND DESIGN

3.1. Games and real-world coaches

The simulated negotiation process between Israel and Palestine constituted the frame of the project. The complexity of the matter required students to reveal attitudes and competences which they had rarely applied before. In order to support them in their efforts, and help to tackle the problem in a most professional way, we introduced two additional elements to the project:

- a) training games sessions, thanks to which the participants could train skills and develop attitudes required in the further negotiation process
- b) coaching by real-world international experts, providing professional assessment of the students' work

a) Training games

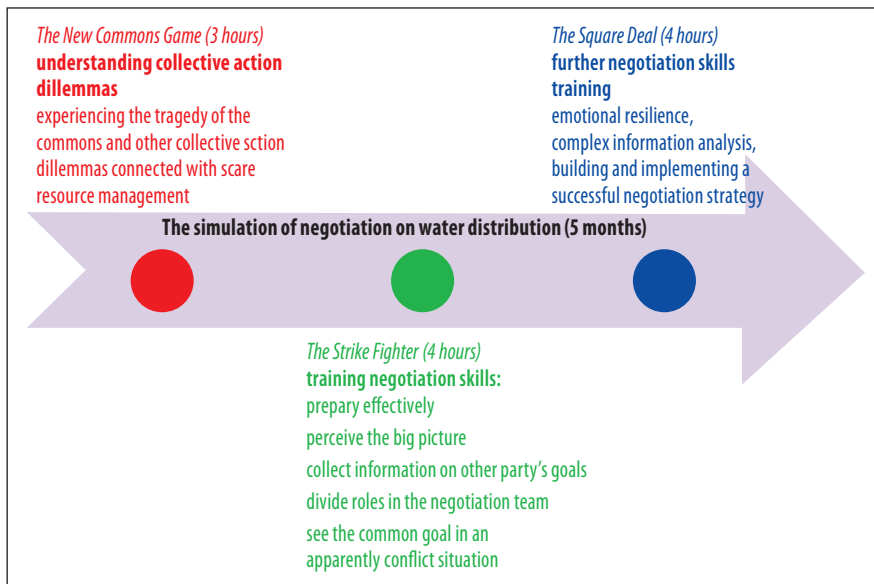


Figure 1. Structure of the project: intertwining the simulated negotiation process with training games

We combined two virtual layers: simulation and games, in one project. During almost half a year of preparation for the negotiations of the final agreement text, participants had three gaming sessions which covered different skills, unleashed participants' unknown potential, and asked them to reflect on their strengths and weaknesses. The aim of adding games to the mainframe of the simulation was to enable students to learn how to control themselves and stay emotionally resilient in a stressful environment of the simulation. This intertwining of the simulation with games was meant to be in line with Paul Maharg's principle of *reflection in and on learning*, allowing one to step aside from the process of Palestinian-Israeli negotiation and observe the situation from a different perspective. After each training game students were returning to the simulation with new insights, conclusions and action plans concerning their negotiation strategy.

b) Coaching by real-world experts

Shimon Shetreet, the author of the idea of division of Israeli-Palestinian conflict under Kyoto protocol model, became the expert-coach of students representing the Israeli party. The Palestinian party team was supported by two experts whose daily activities focus on negotiations of the water status in the occupied Palestinian territories.

Working with experts had a twofold purpose. First, it was necessary to build the pressure which would normally arrive from a client. Second,

participants were supposed to absorb some emotions and perspectives of the Israeli and Palestinians in order to pursue the second goal of the project, i.e. examination if some agreement over the water distribution problem can be reached, at least through students. Involving experts is in line with *Transactional Learning* professional assessment principle.

3.2. The course of the simulation: five months of hard work

The participants spent five months working as employees of law firms. They formed multidisciplinary teams, comprising of students of law and economics, representing interests of Israel and Palestine each. They had complete control over the management of their internal activities. In general, they were responsible for; planning meetings with the other team, organizing teleconferences with their respective experts, and dividing responsibilities within their own teams.

It should be underlined that those young enthusiasts participating in the simulation were never relieved from their regular, daily duties. Further, they had to negotiate not only their own schedules in order to arrange meetings, but adjust those to the work of their always-busy experts who reside in remote time-zones.

Participants received a firm schedule for the project. From the beginning, they knew the date of the final negotiations, the dates when the other team would expect a draft contract to be sent, and when submitting comments for the contract they received was due. Participants had complete control over the workflow within their teams. They were supposed to organize work in the team in order to meet meet deadlines of the Project. Moreover, they were asked to submit a 100-second video blog after each important event of the Project. These blogs were public, and are still available at the youtube.com. In addition to the set schedule, participants quickly realized that they needed to organize statutory meetings between the teams. They also had to seek support and remain in contact with their Israeli and Palestinian experts who were expecting an excellent performance from the teams they were coaching.

Incentive and pressure were created.

4. DID THE PROJECT'S ARCHITECTURE ALLOW FOR REACHING ESTABLISHED GOALS?

4.1. Educational goals

In order to verify the project's effects for participants, after the project was closed a survey was conducted among them. Participants were asked to finish following sentences:

- The biggest benefit I am taking from participating in this project is...
- What I missed in the project was....
- Thanks to participating in the project I learned about myself that
- One thing I will remember from this project is...
- Thanks to that project I realized that the Israeli Palestinian issue...
- I find the training games used in the project...

The aim of this survey was to evaluate the project by gaining insight into what exactly students perceived to be valuable, and why.

Submitted answers (11 questionnaires) give a following picture on the project's effects for participants:

4.2. Negotiation skills

Six out of eleven surveyed students indicated practical negotiation training as the biggest value of the project. They stated that it allowed them to broaden their knowledge on negotiation techniques and gain valuable insights into their strengths and weaknesses as negotiators. Also, gaining reflection on the nature of negotiations was mentioned as a value.

It turned out that in stressful situations I am less self-controlled than I had expected.

I am good at summarizing and framing a multi-issue discussion, and at appreciating other's arguments while still being able to buy them into my solutions.

I will never forget the final negotiation round.

I will always remember that what is obvious for one party can be totally unacceptable and unreasonable for the other. It refers as well to individuals as to societies and nations.

The experience I gained during the project is priceless. It turned out that despite knowledge and skills we were equipped in before, everyone's commitment made him/her become carried away by emotions.

I will remember that negotiation is a complex process. There's a lot of standpoints, conflicting goals and interests. The negotiations are a continuum, it doesn't finish when you sign the agreement.

4.3. Organizational skills and teamwork

Due to time pressure and group work, organizational skills needed to be trained and developed. Participants highly appreciated this aspect of the project for allowing them to assess their potential as law firm representants.

Self-discipline and organizational skills are the most valuable benefits I gained from this project.

I now realize that, before, I highly underestimated the synergy effect possible thanks to teamwork and collaboration.

I have skills to motivate the team; however, I sometimes lose track of my role. I would appreciate a leader.

Students also admit from benefiting from the interdisciplinary touch of the project.

(Statement from a law student) *Working with students of economics was a valuable challenge, teaching how to solve a problem with the help of other “powers”. It made me reflect on the contribution of different sciences into final solutions.*

4.4. Knowledge

Three people named gaining knowledge as the most valuable benefit of the project. This including knowledge regarding; Israeli-Palestinian relations, the global water issues and the emissions’ market, politics and interests in the Middle East, and on international law. They mention the contact with real-world experts was also very helpful.

Thanks to this project I could significantly broaden my knowledge about the world. That’s why I perceive participating in this project as a really valuable and unique experience.

I see that the situation is uneven. However reaching agreement should be a vital interest for both parties.

4.5. Real-world reference

The layer of the Project, devoted to the water situation in the Middle East, was expected to possibly become an inspiring example for institutions or individuals in the countries involved, namely experts taking part in the Project. The outcome of the negotiations was a declaration signed by both teams. The Declaration had a number of points were negotiators decided to insert differences in the opinions presented during the talks rather than express an accord. They did not reach an agreement on fundamental issues.

The Project also offered a chance for a meeting between the Israeli and Palestinian experts (coaches of the teams) in the presence of students. However, despite the effort which was undertaken, the meeting never happened.

Nevertheless, the water distribution problem remained unsolved on its merits. Expert in the Project, Magdalena Gołębiowska-Śmiałek, Ph.D., wrote in her comments to the Declaration signed by Participants, that “The outcome of their work is an unprecedented document in the strained Israeli – Palestinian relations”; however, the Declaration “is more a statement of intention than a legally binding document”. Still, it should not be forgotten that the “problem (...) is not only complex, but also characterized by a conflict that has lasted for decades”.

5. CONCLUSIONS AND THE FUTURE

The result of the survey, and our observations of the students' progress, ensured us that the established goals were reached. Students acquired and further trained important skills. They also gained valuable knowledge on international law, politics and interest of the Middle East. All of this was achieved in a learning environment very close to the Transactional Learning approach. Participants realized that learning and development in this project was easier, thanks to the interactive and engaging forms (simulation and training games).

The use of games was highly useful and instructive. It allowed to recognize one's weaknesses and polish relations in our team.

It was so valuable! Surely one remembers longer the things that one experiences directly. While creating and signing the contract, we often referred to the experience and conclusions taken from the training games.

That was such great fun combined with overwhelming conclusions. The idea of simulation and gaming, especially when confronted with our routine university life and boring lectures, is a sensational way of learning!

The successful completion of the project on the educational level allows us to draw a conclusion that Project has a capacity to expand, or be copied for analogous workshops. In our view the use of the simulation & gaming method is very helpful and supports the learning process in a unique way.

It would be rewarding to offer an educational exercise based on water and simulation in the actual region where the problem for negotiations developed. It could possibly raise the level of public awareness and involvement in the water dialogue.

The INPRIS Water Negotiation Project was a voluntary activity of enthusiasts of the practical application of law. However, making experience-based learning projects wider represented in legal education, and involving those into regular law schools' curricula still remains a challenge, and definitely needs further exploration.

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