Reflections of a Moot Court Participant

By:

Purity Maritim

April 23, 2020

Our team had made it to the semi-finals of the African Round. Akinyi Agutu, Emily Wakesho and myself were the team representing Strathmore University in the 15th edition of the ELSA Moot Court Competition (now the John H Jackson Moot Court Competition) on International Trade Law. It was our first time participating in a moot court competition.

Being an all-female team became a means of challenging gender stereotypes. We wanted to show that women can specialize in trade and finance just as much as they can specialize in gender and the social sciences. Wakesho, Akinyi and I sat across the Respondent's team in a pleading room at the National English Literary Museaum in the town of Grahamstown, South Africa. Black and burgundy were our colours of the day. On our left sat the panel, comprised of five members. It was about noon. The air-conditioner that I had thought too cold was now propelling a cooling breeze after the fiery submissions that my team and the opposing team had made.

Our once neatly arranged documents were now sprawled across the table. I had just finished making my team's rebuttal argument on why our government should have been allowed to maintain anti-dumping duties within a free trade agreement. I was certain that I had convinced the panel to rule in our favour. I had answered their questions, and the smiles and nods they gave as I made those arguments convinced me of this. Just as I was about to give our closing remark… "*If the panel has no further ques…*", Ms. Kholofelo Kugler asked me the one question that sent me into a frenzy; "*Does the free trade agreement not constitute a waiver as contemplated by Public International Law specifically under the ILC Article 45A*?"

I had no idea what was stated Article 45A let alone what the ILC Articles were all about. There was silence in the room which I wanted to fill but did not know the words to use. I remembered the words of our coach, "Don't show that you are flustered by questions." I therefore thanked Ms. Kugler for the question noting it was a very good question, only to buy time to formulate my response. As I did this, one of my teammates had scribbled a note to me. A quick glance at it revealed the phrase DARSIWA but I had no idea what it meant. I do not remember what attempt at a response I presented to the panel. It was only after our round that I learnt that Ms. Kugler was referring to the Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARSIWA as I now know it). In an attempt to woo the judges, Akinyi, Wakesho and I did a bit of research on it finding a way to weave into our arguments if we made it to the finals.

Article 45A of DARSIWA is just one of the concepts of International Law that I have learnt through moot court competition. It is the principle that an injured state loses its right to invoke responsibility where it had waived such claim. My participation in this moot court competition made me aware of an area of law I scarcely knew about, international trade law. When I read the question well written by Prof. Gabrielle Marceau for the first time, I thought that anti-dumping related to waste and garbage collection, and not to a trade remedy used by countries to protect their markets from a surge of imports. We had to tackle five issues: the most favoured nation principle and free trade agreements, quantitative restrictions, green goods, special and differential treatment under the Enabling Clause and anti-dumping. Most of these concepts were foreign to

me but through the course of interacting with material in this area of law, I gained knowledge not only about these concepts but how they are regulated within the multilateral trading system. These concepts such as the Most Favoured Nation principle at first appeared easy to grasp. However, further engagement with my teammates, our coach and literature proved that these issues are more complex than they seem.

While it was only a simulation, I gained significant knowledge of international law as the laws relied on are the same as those relied upon in actual cases. The moot court gave my team a chance to refine our research and writing skills. With strict guidelines on our written submissions, we had to learn how to write our arguments clearly but concisely. This was rewarded when we won the awards for the Best Respondent Memorial and the Best Overall Memorials in the African Rounds. My public speaking skills improved significantly as a result of my moot court experience.

During our initial practice rounds, Wakesho and Akinyi had to constantly remind me to speak up and slow down. From sharing research work and passing notes during pleading to reminding each other to sit up or speak up, Wakesho, Akinyi and I learnt to work as a team and to have fun while doing it. Our participation in the competition has also unlocked doors for each of us. Akinyi is currently pursuing a Masters in International Business and Economic Law at Georgetown Law in Washington DC. Wakesho had the opportunity to conduct an internship at the International Centre for Trade and Sustainable Development. I am pursuing a Masters in Development Studies at the Graduate Institute, Geneva.

While my team did not proceed to the advanced round of the Final Round at the WTO headquarters in Geneva, we had been engulfed in the world of international trade law for a period of about eight months. At the end of the competition, we were determined to pursue international economic law, and make it an area of law visible to young Africans like us.

Akinyi, Wakesho and I constantly questioned why there was such a low participation of African countries in the multilateral trading system. One of the conclusions we arrived at was that there is limited exposure to this area of law in universities. Unlike human rights law which is a compulsory course for law

students, international economic law (including trade law, investment law) is an elective course taught at the tail-end of one's law schooling. Opportunities to further explore this area of law such as moot courts thus play an integral part in increasing the number of law students who could gain interest in this field. This is particularly important for African law students because the African Continental Free Trade Area (AfCFTA), which appears to be modelled on WTO Agreements, will require lawyers to facilitate its operationalization. The AfCFTA is projected to increase intra-African trade, improve living standards of Africans, and create opportunities for business. Building a crop of lawyers who can understand the complexities around international trade only serves to benefit the continent.

We should support law students wishing to participate in moot court competitions. My team's participation in the competition was made possible by funding from the United Nations Economic Commission for Africa (UNECA). Most African students are not as fortunate and fail to participate due to lack of funding. Supporting moot court competition through funding initiatives is one way to offer support. Another way is to offer knowledge and expertise on substantive law as well as presentation skills. In an effort to give back, Akinyi, Wakesho and I have assisted in training subsequent teams from Strathmore University that have participated in the competition. It is my hope that more students will be able to participate in moot court competitions in an effort to refine the knowledge and skills of African lawyers.

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