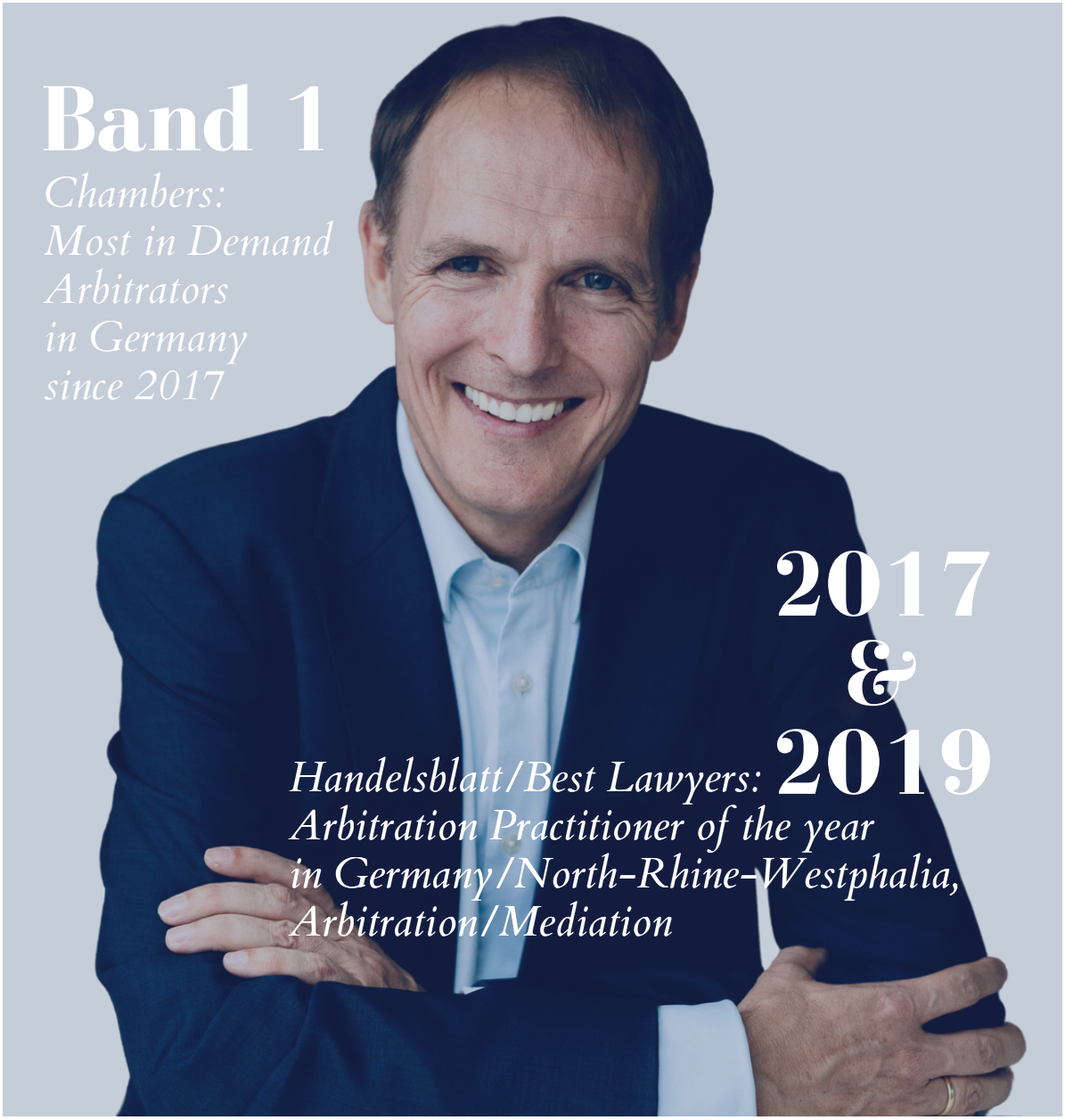
# LAW'S FINEST

Issue III November 2023




## PROF. DR. STEFAN KRÖLL

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# LAW'S FINEST

Law's Finest is an initiative developed by Maldives Moot Court Society (MMCS) that features exclusive interviews with the most prominent and accomplished legal professionals in the industry.

We aim to create a space for legal professionals to share their experiences, and insights to foster a well-informed and engaged legal community while inspiring and empowering.

Join us as we explore the diverse and fascinating world of law, one interview at a time. Let's hear from the Law's Finest and discover what it takes to become one.

*Suma Ilyas, Founder & President*

# BIOGRAPHY

## PROF. DR. STEFAN KRÖLL

### Education

- 1997 - Dissertation at Cologne University with Prof. Dr. Karl-Heinz Böckstiegel with the topic: Ergänzung und Anpassung von Verträgen durch Schiedsgerichte (Gap filling and Contract Adaptation by Arbitral Tribunals) (Summa cum laude).
- 1994-1996 - Clerkship in Cologne.
- 1992-1993 - Master of Laws (London, LSE).
- 1986-1991 - Studies of Law at the Universities in Marburg, Geneva, Cologne

### Professional Experience

- Since 2022 - Chairman of the German Arbitration Institute (DIS).
- Director of the Karl-Heinz-Böckstiegel Foundation.
- Since 2019 - Professor for International Dispute Resolution at the Bucerius Law School.
- Since 2017 - Director of the Center for International Dispute Resolution at the Bucerius Law School.
- 2014-2015 - Visiting fellow Lauterpacht Centre, University of Cambridge.
- 2012-2019 - Honorary professor at Bucerius Law School, Hamburg.
- Since 2012 - Co-Director of the Willem C. Vis Arbitration Moot in Vienna.
- Since 2005 - National Correspondent for Germany to UNCITRAL.
- Since 1999 - Rechtsanwalt (Lawyer) in Cologne with specialization in arbitration and international transactions.
- Since 1997 - Extensive publication, teaching and lecturing activities in the fields of international business law and arbitration.
- 1997-2005 - Senior Research Fellow at RIZ (Law Centre for European and International Cooperation) at Cologne University.

### Experience as an Arbitrator

- Sole Arbitrator in 10 proceedings (ICC, DISErGes, DIA, ad hoc).
- Chairman of the Tribunal in 24 proceedings (ICC, DIS, VIAC, ad hoc).
- Co-Arbitrator in 66 proceedings (DIS, ICC, SCC, Swiss Rules, KCAB, WIPO, ad hoc).
- Emergency Arbitrator: 1 proceeding (SCC).

### Fields of Specialization

- Arbitration.
- International contract law (trade, construction industry, energy industry, financial sector).
- Post-M&A disputes.

### Publications - Selection

- Ergänzung und Anpassung von Verträgen durch Schiedsgerichte, Heymanns (Gap filling and Contract Adaptation by Arbitral Tribunals), 1998.
- Comparative International Commercial Arbitration, Kluwer Law International 2003 (Co-Author with Lew/Mistelis).
- Arbitrating Foreign Investment Disputes, Kluwer Law International 2004 (Co-Editor, with Horn).
- Arbitration in Germany – The Model Law in Practice, Kluwer Law International, 2nd ed. 2015 (Co-Editor, with Böckstiegel/Nacimiento).
- Conflict of Laws in International Arbitration, Juris 2nd ed. 2019 (Co-Editor, with Ferrari).
- UN Convention on Contracts for the International Sales of Goods (CISG) – Commentary, Beck/Hart/Nomos 2nd ed. 2018 (Co-Editor, with Mistelis/Perales Viscasillas).
- International Commercial Arbitration – A Transnational Perspective, American Case Book Series – West Law, 7. ed. 2019 (Co-Author mit Várady/Barceló).

- Cambridge Compendium on International Commercial and Investment Arbitration, Cambridge University Press 2023 (Co-Editor with Ferrari and Björklund)

- Since 2004 - annual summaries of the German jurisprudence on arbitral matters in the SchiedsVZ (German Arbitration Law Review).

- More than 80 articles and book contributions on arbitration, international procedural law, international contract law, bank law, international private law; more than 60 case reviews in German and English.

**Memberships**

- Chairman of the Board of Directors of the German Institution of Arbitration (DIS).

- International Board of Finland Arbitration Institute.

- Director of the Karl-Heinz Böckstiegel Foundation.

- Advisory Board of the August Maria Berges Stiftung für Arbitrales Recht.

- Board of Editors/Academic Advisory Board of several national and international reviews on arbitration and international business law.

**Rankings**

- 2006 - One of the 45 worldwide leading arbitration experts under 45 (Global Arbitration Review).

- Since 2006 - Regular listings as one of the leading German arbitration practitioners in the JUVE handbook, Who-is-Who Legal (Arbitration and Germany), Chambers.

- 2017/2019 - Handelsblatt/Best Lawyers: Arbitration Practitioner of the year in Germany/North-Rhine-Westphalia, Arbitration/Mediation.

- Since 2017 - Chambers Most in Demand Arbitrators-Germany: Band 1.

**Languages**

- German.

- English.

- French.

# INTERVIEW

**What sparked your interest in international dispute resolution and international contract law, leading you to pursue a career in these diverse fields?**

When I started my studies in Germany, there was just one possibility to study abroad for a year with credits counting for one's German studies and that was Geneva. The university also offered classes and exams in German law. When I went to Geneva, I took classes in conflict of laws with Pierre Lalive and that was my first contact with international dispute resolution. After coming back, I started to work as a student assistant with Prof. Dr. Karl-Heinz Böckstiegel, who was at the time one of the leading arbitrators in Germany and President of the Iran-United States Claims Tribunal. I found that so interesting that I got hooked to international dispute resolution and international contract law and I always enjoyed the interchange with people from different cultures. I come from a university family. My father has been at the university, and we regularly had guests from different countries at home. It was always interesting and enjoyable when they came to our place for dinner. Whenever the dinners were not formal we as children were allowed to participate and could listen to them when they talked about their country.

Dispute resolution was a fascinating topic and is one of the topics where you can really combine a little bit of your academic interests and practice if you work as an arbitrator.

**As the Chairman of the German Arbitration Institute (DIS) and Director of the Karl-Heinz Böckstiegel Foundation, how do you engage with students and aspiring legal professionals to foster their interest in dispute resolution and encourage their growth in this field?**

Karl-Heinz Böckstiegel Foundation, is devoted to supporting young academics and students in their interests in dispute resolution. We have supported students or young academics going to the ICCA Congresses. We have supported PhD seminars and we have also supported other events involving young colleagues. One of the main objectives is to give them the opportunity to meet practitioners and to see the problems which occur in real life disputes and spark their interest in international dispute resolution.

*"Personally, I find the area very fascinating, in particular because we now have reached a level in dispute resolution which is transcending the boundaries of law. You now have to look additionally much more into the areas of negotiation theory, mediation, psychology, neuroscience and other things which make it a fascinating topic."*

With the German Arbitration Institute (DIS), we naturally also have a serious interest in the next generation of users of our rules and have taken a considerable interest in students. We have a PhD price, where the best PhD students of the last two or three years are recognized. Every session around 20 people submit their PhDs in the area of dispute resolution. The DIS supports the Vis Moot as the sponsor of the main event. At the same time we are also the main sponsor of Belgrade Pre-Moot, which is one of the biggest pre-moots for the Vis. In the first few years of its existence it had been supported by the GIZ, the Organisation for International Cooperation of the German Government and then the DIS took over, because we think it's a wonderful event where students meet. We also encourage students who have participated in the moot to join the DIS below 40.

Some of these initiatives for the next generation organized by the DIS or my Center for International Dispute Resolution at Bucerius Law School (CIDR) are supported by the Böckstiegel Foundation. At the CIDR we organize annually a seminar for PhD students. We have the German speaking PhD Students from Germany, Switzerland or Austria coming together and reporting about their various works and discussing between themselves and also with practitioners.

*"As an institution, we have a genuine interest in the next generation of arbitration or dispute resolution practitioners, which are presently our students."*

**With extensive experience as an independent arbitrator in various international forums, could you tell us about a particularly complex arbitration case you've encountered, and how you managed to navigate through it successfully?**

There were two where I'm really proud of the way we managed that. One was a big offshore wind park project, which failed. I got a phone call from two former Supreme Court judges in Germany who were looking for a chairman. Both of them are leading figures in construction law. One had been head of the construction law senate of the Supreme Court for more than 10 years. The other one had also been in that senate for several years and, when you look at the German commentaries, you have the impression that 50% are written by them. They were looking for someone to chair the tribunal and manage the proceedings.

When I got the statement of claim and the answer to that, I knew what they meant with their remark that they were looking for someone who was not shy of work. The statement of claim had 1,500 pages alone and 38 folders of exhibits and the statement of defense plus counterclaim had nearly exactly the same amount of pages. We had 3,000 pages of submission alone and when we had the first meeting, the parties told us that they wanted a further round of submissions. We told them that we would definitely not want another round before we had digested the case and could spilt it up to pieces. In the end, the arbitration ran for three years, and we took it bit by bit. With that approach, we managed to finally settle that nearly 700 million claim

between the parties. Just indicating from time-to-time certain things we had decided and managed to have the next submissions focus on the next issue. Once we had decided some of the general issues, we didn't have to go into the more than 80 separate independent wind producing units, where defects were alleged, which was quite helpful.

The other one is exactly the opposite, a very small ICC clear-cut case, where you could see that a German company, though working internationally, came with a German mindset.

There was a problem involving the delivery of a machinery created by the breakdown of the anticipated financing through the German export financing agency. The German party which had already started working on the machine after having received an advance payment thought that the other party would never bring a claim for repayment of the advance payment because there was a civil war in that jurisdiction. Furthermore, they thought that they were entitled to maintain the upfront payment received because they had already started working on the machine. I managed to show the German party that in principle they had made a misevaluation at a certain point in time, when there was an obligation to negotiate in good faith and they thought they would negotiate the deal as if nothing had happened. But, by the time, certain risks had realized and they didn't figure that into their negotiation strategy. In the end, I would have decided against them. But the moment I would have decided against them under German law, they would have been required to file for insolvency because they kept the money for quite some time, thinking about German interest rates, which were at the time 1-2%. But in the other country, the interest rates due to the civil war were close to 30%. By the time of the arbitration, the amount due had more than doubled due to the interests due plus the revenues the other party could generate from the goods they were supposed to receive, which were machinery for a factory. We had both parties at the oral hearing. Thus, I was able to show them the alternatives, i.e. that I could decide for the claimant from the foreign country with the consequence that the German respondent would have to file for bankruptcy or that they reach a settlement ensuring a repayment of a certain amount over a period of time but avoiding bankruptcy. In the end, they managed to settle the case and I had the impression that I created some value in dispute resolution. It was an easy case, but it shows the value in using mediation techniques in certain arbitration cases. Furthermore, it shows the value of also talking to the parties, who in the end are businesspeople. They understand that it's often not about being right or wrong.

*"It's about getting the issue solved and getting it solved in a manner that you're better off commercially."*

**In your opinion, how does technology shape the future of dispute resolution, and how can practitioners leverage technological advancements to streamline proceedings effectively?**

Technology has its good, but it also has its bad sides. The 1,500 pages submitted in

the arbitration mentioned above would not have been possible if it was written on a typewriter. I think technology will definitely influence arbitration and also other types of dispute resolution and help in streamlining it. I'm pretty sure that we already have a number of parties that use technology to make a first assessment of their chance of success with the case. Technology also helps you organize and search through the enormous amount of documents now presented in arbitration. It may also be that a number of the small cases will be decided subsequently by machines. That, however, may require a change in the attitude towards dispute resolution. In small cross-border disputes it is not rare that claimants cannot really pursue their claims because they don't have any money to bring the case and it would be too costly if you have someone involved as an arbitrator. If a machine decides the dispute you will no longer have a decision based on a legal evaluation of the specific case, but one that is more on a statistical evaluation of the probable outcome of the case taking into account earlier decisions. The question is a philosophical question, we have to ask ourselves: do we prefer such a statistical evaluation to having no chance of bringing a claim altogether? But that, I think will shape or limit our discussions in some jurisdictions where they have prohibited predictive artificial intelligence to be used in cases.

I think, however, or at least I hope that until the end of my career, you still need arbitrators in the more complicated international cases where there is less data with which you could compare and evaluate probabilities of an outcome.

**What motivated you to share your knowledge through teaching and writing, and how has this dual role influenced your career?**

I originally pursued the traditional university career to become a full-time professor in Germany. In the end, I realized that was not my career path. I enjoyed the practice side too much to focus solely on academia. At the same time, I really enjoy teaching, having the time to read about new topics without being driven by someone else, a client for which you have to present a certain view in a case. I would most likely not have done too well in the big law firms, because in the end, I would have probably spent too much time on things that I'm interested in but for which a client would not have paid.

Furthermore, I would have found it difficult to support positions for a client in which I do not really believe or where I would have even preferred to represent the opposite side. On the other hand, merely working at the university, teaching, and doing research without practicing law would also not really be an option in the end.

*"At present, at least for me, I combine the best of both worlds, teaching just the topics I want to teach at a leading university with top students and at the same time having the opportunity to be immersed in practice."*

I can tell you that my practice benefits from my academic work. There are a number of topics I have thought through more diligently than a lawyer might do and without a particular prescribed outcome in mind. On the other hand, my lectures benefit strongly from my practical experiences. A lot of the examples I use in my lectures are from my practice. If I had invented them, everyone would have told me you are from an ivory tower of academia, that doesn't happen in practice. But, practice is so colorful that there's hardly anything that does not occur in practice.

**You have been listed as one of the leading arbitration experts in Germany and highly sought-after arbitrators. How do you manage your time effectively to balance your commitments as an arbitrator, academic, and legal professional?**

It's good that my family is not around here, because they would say I'm not really balancing it. First of all, I really enjoy my work. That is one of the benefits of the mandatory military service I had to do when I was young. During that time, I realized how long eight boring hours can be and it's much more stressful than working 12 to 14 hours on really interesting stuff. How do I balance it? It's fairly difficult in one way as it's usually the academic work which suffers a little bit. Not the teaching, but at least the publications. As some deadlines are a little less pressing than others, I'm overdue with a number of publications, which should have been out. For everything else, in particular the arbitration cases, you have a fixed deadline, and the parties have a right to receive their award within a certain time. I also try to plan my arbitrations ahead to have some time available whenever a new submission is due. Furthermore, from the beginning, I have rejected a lot of offers for appointment. These rejections may have also helped to create a reputation that wasn't warranted at the beginning. When I was a young assistant professor and was still writing my habilitation, I decided that I would never take more than three cases at a time. Thus I rejected cases, though I had only a few cases.

*"In the end, I realized that rejecting offers was probably a very good marketing tool. People must have thought that if he is rejecting cases, he must have had a lot. Thus, I was already listed as one of the leading arbitrators in Germany before I had finished my tenth case, something that cannot stem solely from my numerous publications on the topic."*

**What advice would you give aspiring legal professionals interested in pursuing a career in international dispute resolution to excel in this dynamic and competitive field?**

I think you can only excel if you enjoy the work. I would also advice younger colleagues to take their time to build a solid foundation on certain things, and

then make themselves known. It's a people's business. You appoint an arbitrator because you have seen that she is a very pleasant person, is very good with people, and you have seen things she has written or you have met someone at a conference, and very often it's the name that you then remember when you have to nominate an arbitrator shortly thereafter.

*"There is a famous book by Daniel Kahneman, Thinking, Fast and Slow. In that book, he reports about the number of experiments made to find out what is influencing the fast-thinking part of your brain and it's just hearing the name several times, irrespective of the context."*

For me, arbitration and other means of ADR are still to some extent means of amicable dispute resolution. I think knowing other people, knowing the opposite side is helping quite a lot to improve the atmosphere. Therefore, I say go to events like the Vis Moot when you are young and get engaged in the young arbitration organizations of the various institutions and just take your time.

Prof. Dr. Karl-Heinz Böckstiegel once told me that when he was asked about how to become a successful arbitrator he answered: you just have to survive the first 25 years. Once you're there, it comes. I think when I started, I had my first appointment as an arbitrator at the age of 31. That was exceptional. But, now I see a lot of younger colleagues who have worked as an associate, and that's completely normal that at the age of 30, they had their first small set of cases. That's also what we try to do at the various institutions, but definitively at the German Arbitration Institute, to enlarge the pool of arbitrators with younger colleagues, give them smaller cases, perhaps in conjunction with one of the mentoring programs that most institutions now have, because you are largely our future as an institution.

**As the drafter of the Moot Problem of the Willem C. Vis Moot, could you walk us through the process of crafting the complex case?**

Over the year, I collect ideas for potential problems. You read a lot, you see a case that is interesting, you have come across the problems in your lectures or in your own cases and make a note that it is an excellent potential problem. With a number of issues in mind, I approach the institutions of the rules that we use and ask, whether there is anything particular in their rules that they want the students to look at? Any specific provision where they think they deviate from the other institutions or which might be a unique selling point. Furthermore, I ask them whether there is any product which they think is peculiar to their home jurisdiction or in which they have a certain interest? Normally they come up with some ideas and out of that I then start writing the case.

Usually, you have the arbitration side and you have the CISG side, but you also have

an economic side and that's something I also always try to put in, to make it as realistic as possible. That means once I've settled on the industry, I just start looking around, call friends who may have a contact into the industry and call people from the industry to see whether there are any topical issues in the respective industry or whether there is anything peculiar which might be interesting for a broader student audience. A good recent example is the discussion about palm oil, where you had completely different views in the producing countries on the one hand and in some of the customers countries on the other hand, where Palm oil had a very bad reputation. I tried to pick up some of the ideas from both sides and include them into the case to foster discussion. Not everyone here thinks Palm oil is bad and everyone in the producing country thinks that they just want to prevent them from developing it, but the people see downsides and upsides of both sides and get into discussion. From there the case develops.

With that information I then start writing the case, I read a little bit around the issues and after a first draft put a sentence, change bold parts here and there or include words and capital letters. I generally try to find a problem which also has the potential to foster discussion going beyond the mere Vis issues or at least require a broader understanding of the industry involved, because the students are dealing with that Vis problem for seven months and the majority of them are very intelligent people dealing with the issues.

I have spent usually a month and a half overall on writing and answering the request for clarification. Probably in doing so I have overlooked a lot of problems.

*"I try at least to find something which keeps the students occupied for the time and has this background that helps the students understand the field a little bit."*

As I said, also for me, the economic side plays an important role. You have to explain to the arbitrator why you have pursued a certain approach.

The Vis case is now also used every year for a mediation competition, the CDRD in Vienna, organized by the International Bar Association and the Vienna International Arbitration Centre. I'm a big believer also in mediation. I always think for dispute resolution, they are horses for courses. For mediation, it's naturally even much more important to look at the economic sides to find a solution which enlarges the cake, and which is also in the end feasible. It doesn't really help you if you agree on something but in the end, if you have ruined your company because you agreed to contracts which you can never fulfill economically. That is the process.

When the problem is supposed to be published, my assistants already know that they shouldn't take any other commitments the week before because I'm always delivering at the last moment. Normally the case is only finalized before midnight of the day preceeding publication. The first “final” draft is, however, already send out to a number of

other people who are reading through it, proofreading it, giving some inputs. I always have a number of experienced coaches from teams or other colleagues whom I ask to read that first draft and tell me whether they see any imbalance. I'm not telling them what I think and ask, do you think it's balanced? And then you get some of them saying, no, it's too strong for claimant and the other says too strong for respondent which is normally a good sign that it is fairly balanced. There are usually two or three issues where I know that there are questions coming where deliberately the information is not provided. These are the two or three things which help me to subsequently rebalance the case if needed. Because I'm writing it with a German mindset and I have people from Maldives, China, Ukraine, America looking at it with a completely different mindset. I may have overlooked something, and it may turn out that the case is imbalanced and then you know where it might be imbalanced, where you can then add in additional information which may weaken the position of one of the parties and give additional arguments to the other party.

**What advice would you give to the participants of the Willem C. Vis Moot as they prepare to tackle the Moot Problem? Are there any specific skills or strategies you recommend they focus on to excel in the competition?**

I think it's always helpful if you have heard at least a basic class in arbitration and CISG and there are a number of preparatory academies now where they give you a short overview within half a week. So, you're not starting from scratch.

*"I would always make sure that I'm not just focusing on the very narrow problem but try to get a broader understanding."*

What is the background of the provision discussed? How does it play out in practice? What did the drafters have in mind when they drafted it and how does it compare to my own jurisdiction? Also ask yourself what may be the economic background. Sometimes you have to draft the case in a way that there is really no economic background. You want to discuss a certain legal problem and in practice you will see some people behaving completely irrational while in dispute resolution. As such, you do not always assume that there is an economic explanation for a behavior of a party. But, at least try to understand it to make a proper story. Then I would say try to find the right match between having a coherent story and use the strongest arguments for each individual issue. Sometimes we deliberately put in facts which creates some problem in devising a story which works for all four issues. If you are strong on the one side of procedure, then you have a problem in the substantive side. There you have to really decide strategically, what arguments am I running on the one side to not destroy my case on the other side? There have been cases in the past where you have to not plead certain things too strongly on the procedural side because that would have killed your case on the merits. In the end, it's the merits which counts. It doesn't really help you if the tribunal assumes

jurisdiction but rejects your case. The most important advice, however, to all students is to enjoy it. It's probably the one time in your student life where you get the chance to work with interesting colleagues in the same way you might subsequently work in practice and where you meet people from all over the place. I would advice students to take as much benefit out of the Vis Moot as they can. Engage in the online pre-moots, and try to build a solid basis from there and stay close to the Vis community thereafter.

*"Have a good experience yourself, make sure that others have it as well, and support the next year's students. "*

You will learn definitely quite a lot even from being a coach of a team. Not only legal skills, but also interpersonal skills. Having a group of four people with different views and interest working together under pressure is a huge challenge to everyone involved. I've been coaching the Cologne team for seven years, and I can tell you, it was always a mixture between legal education and interpersonal dispute resolution.

**Lastly, how do you think small countries like Maldives can effectively develop a mooting culture and keep the momentum?**

I think what you do presently by being engaged in the moot, is already keeping the momentum. I think if you have students who talk in the end very positively about the moot and realize, even if they have not pleaded, even if they had not gone to Hong Kong or Vienna that they learnt quite a lot for their studies probably more than they would have learnt if they just kept their ordinary studies.

It's very difficult to start. But, once you have the momentum and people like you who are enthusiastic about the Moot, it develops.

When you see the moot community in various jurisdictions it started slowly but when you look, for example, now into the arbitration departments of the larger law firms, most of them are former mooties. It very often also needs enthusiastic role models, preferably on the faculty if someone who's teaching at the faculty gets engaged and also former mooties.

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