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12.00.02 – KONSTITUTSIYAVIY HUQUQ. MA'MURIY HUQUQ. MOLIYA VA BOJXONA HUQUQI

12.00.03 – FUQAROLIK HUQUQI. TADBIRKORLIK HUQUQI. OILA HUQUQI. XALQARO XUSUSIY HUQUQ

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LANGUAGE OF THE LAW AS A FOREIGN LANGUAGE: THE CHALLENGE FOR GLOBALIZED LEGAL EDUCATION AND A FEW DIDACTIC TOOLS

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Abstract. *The legal field has long been seen as essentially nationally-based and immune to globalization. In academia this view persisted and was reflected in terms of a lesser internationalization of students, composition of the faculty, design curricula and programs, or lesser international research cooperation, compared to some other academic fields. The aim of this article is to explain the reasons why this is evolving and, as a result, why foreign languages and in particular the English language gain importance in the legal field as they did times ago in other academic fields. After spelling out objective reasons why law students are well advised to improve their linguistic skills, this article briefly recalls the specific difficulty of such endeavor in the legal field. Because the specialized legal language is the outcome of a long evolution, and is rooted in the cultural and institutional setting of a jurisdiction, it is in many respects different from the general language, and its terminology is almost not harmonized across languages. This raises challenges for international higher education, for both the instructor and the students. The aim of this article is thus also to elaborate on a few aspects and didactic tools that help make international teaching more effective, taking the "international law lab" as an example.*

Keywords: *legal education; English as a foreign language; EFL; legal English; specialized legal language; international law.*

QONUN TILI CHET TILI SIFATIDA: GLOBALLASHGAN HUQUQIY TA'LIM MUAMMOLARI VA BIR NECHTA DIDAKTIK QUROLLAR

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Annotatsiya. *Uzoq vaqt davomida qonuniy asoslar umuman milliy hisoblanib, globallashuvga qarshi emas edi. Ilmiy muhitda bu nuqtayi nazar davom etdi va boshqa ilmiy sohalarga qaraganda talabalarning kamroq xalqaro miqyosda o'qitilishi, o'qituvchilar tarkibi, o'quv rejalari va o'quv dasturlarini ishlab chiqish yoki xalqaro tadqiqotlarda kamroq namoyon bo'ldi. Maqolaning maqsadi nima uchun chet tillari, xususan, ingliz tili, boshqa ilmiy sohalarda bo'lgani kabi, huquqiy sohada ham tobora muhim ahamiyat kasb etayotganini tushuntirishdir. Maqolada huquqshunoslarning lingvistik ko'nikmalarini oshirishning obyektiv sabablari tushuntirilgan hamda huquqiy sohadagi bunday harakatlarning o'ziga xos qiyinchiliklari umumlashtirilgan. Ixtisoslashtirilgan yuridik til uzoq evolyutsiyaning natijasi hamda yurisdiksiyaning madaniy va institutsional muhitidan kelib chiqqanligi sababli, u ko'p jihatdan umumiy tildan farq qiladi va terminologiyasi tillar o'rtasida deyarli mos kelmaydi. Bu o'qituvchi va talabalar, shuningdek, xalqaro oliy ta'lim uchun bir qator muammolarni tug'diradi. Shunday qilib, ushbu maqolaning maqsadi "xalqaro huquq laboratoriyasi" misolida xalqaro ta'lim samarasini yanada oshirishga yordam beradigan ba'zi jihatlar va didaktik vositalarni ishlab chiqishdir.*

Kalit so'zlar: *yuridik ta'lim; Ingliz tili chet tili sifatida; EFL; yuridik ingliz tili; ixtisoslashtirilgan yuridik til; xalqaro huquq.*

ЯЗЫК ЗАКОНА КАК ИНОСТРАННЫЙ ЯЗЫК: ВЫЗОВ ГЛОБАЛИЗИРОВАННОМУ ПРАВОВОМУ ОБРАЗОВАНИЮ И НЕСКОЛЬКО ДИДАКТИЧЕСКИХ ИНСТРУМЕНТОВ

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Аннотация. *Правовое поле долгое время в основном считалось национальным и невосприимчивым к глобализации. В академических кругах эта точка зрения сохранялась и выражалась в меньшей интернационализации студентов, составе преподавателей, разработке учебных планов и программ или меньшем международном исследовательском сотрудничестве по сравнению с некоторыми другими академическими сферами. Цель данной статьи – объяснить причины, по которым происходит развитие, и, как следствие, почему иностранные языки, в частности английский язык, приобретают все большее значение в юридической сфере также, как ранее в других академических сферах. После объяснения объективных причин, по которым студентам-юристам рекомендуется улучшить свои лингвистические навыки, в статье вкратце указано о конкретных трудностях таких мер в юридической сфере. Поскольку специализированный юридический язык является результатом долгой эволюции и уходит корнями в культурную и институциональную среду юрисдикции, он во многих отношениях отличается от общего языка, а его терминология почти не согласована между языками. Это создает проблемы для международного высшего образования как для преподавателей, так и для студентов. Таким образом, цель данной статьи состоит в том, чтобы подробно остановиться на некоторых аспектах и дидактических инструментах, которые помогают сделать международное обучение более эффективным, на примере «лаборатории международного права».*

Ключевые слова: *юридическое образование; английский как иностранный; EFL; юридический английский; специализированный юридический язык; международное право.*

Introduction

In an increasingly globalized society the issue of foreign languages becomes more acute. This is true in all fields of life and in all disciplines of academia, including the legal discipline. It is true that globalization is neither linear nor homogenous across countries or fields of life. It is equally true that because each country has its own legislation and judicial system, the legal field is partly shielded from globalization. But only partly, and decreasingly. Why? This is because in a more integrated world the legal order of a particular country is no longer the only relevant one for that country. More and more, laws applicable in neighboring countries gain relevance as well, at pace with the rising number and frequency of trans-border transactions of all sorts. Cross-border transactions increase because trade is on the rise, people are moving to other countries for professional and non-professional reasons, public and private entities are cooperating across borders, private individuals and companies purchase real estates and make other investments abroad, and capital flows are free. In the same vein the laws of geographically more remote economic or political partners as well gain importance. And of course supranational rules, norms and principles progressively reach all fields of business and society and become more relevant for all countries. The dominant foreign language varies across countries. In respect of Uzbekistan, Azizova (2014a) notes that under current national training programs

"all new specialists undergoing the higher educational system are required to know one or several foreign languages". In another article, Azizova (2014b) confirms that the country's independence "has changed the language orientation of the new government policy, both in terms of the official language, and concerning teaching and learning the foreign language too. Currently, English is dominant in its status". Also Jumaniyozova *et al*. (2019) note that "Uzbekistan as a developing country pays great attention to teaching languages as well. Obviously, English has replaced many foreign languages and it is widely used in many realms of this country". In this Review Shamsitdinova (2018) states that "[i]n Uzbekistan higher education reform in the educational sector, and a wave of globalization throughout the world have increased interest in learning the English language among students. Hence the English language is considered an essential requirement for getting a job or increased opportunity in the workplace even in the domestic labor market, apart from good professional skills", concluding that "in Uzbekistan, like other parts of the world, the number of students who want to learn English as a foreign language (EFL) is increasing day by day". In their article, Hamidova *et al*. (2019) argue along the same lines. Besides, learning foreign languages is a means of improving intercultural communication competence (Shamsitdinova, 2020). Udina (2015) opines that "Considering the skills important to law specialists [¼] skills in legal communication, legal culture, foreign languages and legal translation are closely related and interdependent".

In view of the aforementioned developments, academic curricula give more and more importance to English as a Foreign Language (EFL) – which is the preferred term compared to "as a second language", given that it does not matter whether English is the learner's second or, as in many individual instances, the third, fourth or fifth language.

Why is legal language as a foreign language an issue?

Dealing with foreign languages is a particular challenge in the field of law. This challenge is probably not unique to the legal field, but clearly a number of other disciplines do not face such challenge. In disciplines such as computer science, medicine, or management, the specialized language (or language for special purpose – LSP) is by and large harmonized worldwide as the terminology is similar cross-linguistically. More importantly the use of the English language is a straightforward option for any people skilled in the field. Not so in the legal disciplines. Why?

This is because the specialized language of the law rests on a century-old tradition. A tradition deeply nurtured by cultural idiosyncrasies. The legal language is deeply influenced by history, including the political and institutional history of a country, as well as differences between cultures in terms of values, ethical concepts, organization of the society, organization of the state and much more. This historical background predates by far the advent of the modern globalization wave. As Sagri (2009) eloquently wrote: "[¼] ciascun ordinamento giuridico ed il suo linguaggio tecnico appaiono come due sistemi interconnessi strettamente dipendenti dal contesto storico-sociale, ciascuno dotato di proprie regole che ne guidano la costruzione e ne garantiscono la coerenza". In the same international conference, Krimpas (2009) undertook to show how practice influences the terms chosen to refer to the same idea in one language and how this sometimes may be illustrated differently in another language. Husa (2012) shares the view that "law and language are so intimately intertwined that the relation between the two is not consciously conceived". As a result, and this is well known among legal and linguistic scholars, the language of the law differs widely across

languages, and every language has its own legal terminology and expressions. In other words, the language of the law has remained by and large immune to the modern wave of globalization and is still a very nationally-based one. This is why professionals of legal translation know that translating a text from one language into another more often than not requires "rewriting" the text in order to convey the same meaning while respecting the redactional conventions of the language of destination. Examples of that phenomenon are pervasive. In the European Union context, Ioriatti (2021) affirms that "[¼] finding a functional equivalent for every single legal concept and norm of this new EU legislation in each of the official national legal languages would be technically impossible. As everybody knows, transferring the legal meaning of a concept from one legal system to another often ends up in a compromise. Translating one concept into 24 national legal languages simply multiplies this complexity".

To illustrate this with some of the simplest examples, the very basic term *jurisprudence* is a case in point. In Italian, *giurisprudenza* refers to the law as a discipline, similar to the meaning of the corresponding English term. In Italian, one can graduate in *giurisprudenza* or hold a degree in *giurisprudenza*, an expression that does not exist as such in English though. In French however, *jurisprudence* has a meaning that is close to the English *case law*. In German, there is no term etymologically deriving from the same root. In order to express a meaning equivalent to the English term *jurisprudence* Germans would probably say *Rechtswissenschaft*, similar to the latin *scientia juridica* or *juridical science / science of law*. Another popular example is the quite confusing or misleading pair of terms *branch* and *subsidiary* in English vs. the French *succursale* and *filiale*, and the German *Zweigniederlassung* and *Tochtergesellshaft*. A third example is the totally divergent use and meaning of the concepts of domicile and residency (or resident) in various languages in particular when it comes to their application (or irrelevance) to juridical persons. Finally another popular example are the terms *citizen* (and *citizenship*) vs. *national* (and *nationality*), where some jurisdictions know only one of them, other know the other one, and some know both with slightly different nuances. And here again, corresponding terms in other languages are only apparently so, as shown with the terms *citoyen* (*citoyenneté*) in French and *cittadino* (*cittadinanza*) in Italian, whose meaning may differ from the meaning given to *citizen* in some common law countries that use that term. Those are the simple examples. Then there are the cases of polysemous terms (or polysemes) in various languages. There is also the issue of lexicological units, such as *criminal law*, which translates *Strafrecht* in German, i.e. literally, something like "penal right", as in French. In English, *criminal lawyer* is a standard lexical unit, while for a French-speaking person this lexicological unit would sound utterly strange especially if translated as "juriste criminel". Another illustrative lexicological unit is the *juridical person*, and its counterpart the *natural person*, which translate in French as the *personne morale*, respectively the *personne physique*. Examples involving the Uzbek and English legal languages are examined in Kurganov (2016). Moving now further East, Mannoni (2021) found in comparing legal English vs. Chinese that "despite the common origin of the concept *right* in the two legal languages, they conceptualise it in a significantly different fashion". Finally, besides single terms, there are the cases of particular expressions, ways to shape and to structure sentences or set phrasemes, that are specific to the legal language and invariably do not have an equivalent in another language. Often, a good translation requires an in-depth restructuring of a complete sentence or several sentences. Mattissen (2021) explains how legal writing and translation is challenged by the fact that

the meaning and usage of coordinators "do not behave alike cross-linguistically" and "cannot be adequately described by logical truth values [¼] as language is finer-grained and more complex than logic". In a field where preciseness, detail and nuance are critical, also this needs to be taken into account in legal education.

Globalized lawyers are doomed to face these challenges in all circumstances, whether when practicing their art, when publishing, when undertaking research or when teaching, which is the focus of this article. In the case of teaching, the issue at hand is a common one to both legal teaching and language teaching.

Such difficulty is not the panacea of contemporary days. Del Grosso (2021) explains how, in the process of "globalization" of the Napoleonic Codes in Europe, Italian lawyers had a hard time translating the French terms *banqueroute* and *faillite* because the similar Italian terms *bancarotta* and *fallimento* had a slightly different meaning. Del Grosso argues that the confusion introduced by the French codes still has consequences today on the Italian legal language and culture. To add a layer of complexity, the legal language may sometimes divide in several *sub linguae*. Richard (2018) recalls for example that "the verb 'apprehend', or the noun 'assessment' which may be interpreted in four different ways depending on the branch of the law it is used in". Similarly the "international English" used in multilateral treaties differs from, say the language used in English commercial contracts (Beveridge, 2002).

Why is legal teaching in connection with linguistic teaching an issue?

A major reason for such connection derives from the higher mobility of students. But it is not the only one. As delineated above, in the author's opinion, future lawyers need to be proficient in other languages not only in terms of general language but also in terms of specialized legal language (Mustafoeva, 2020). Here again the problem is twofold. On the one hand, it is not enough for lawyers to know foreign languages in general, they must also know the specialized legal language. On the other hand, it is not enough for professionals such as translators and interpreters or language instructors to know perfectly the specialized legal terminology, they should also have an understanding of the underlying law and jurisprudence. Otherwise, they will not be in a position to reformulate entirely a (typically very long and complex) piece of legal text whenever such reformulation is unavoidable. It is a two-way street, one where both lawyers and linguists shall meet. This fact is well known in multilingual jurisdictions such as Switzerland.

The concept of "general" language was used above and it brings another challenge, namely that in any language the general language may widely differ from the specialized legal language. To take a popular example again, it suffices to consider the term *interpretation* (Zeifert & Tobor, 2021). In the specialized legal language, *interpretation* refers to a problem-solving technique. *Interpretation* refers to a set of methods and rules that allow the lawyer to resolve a determined problem in a legal text. In the general language, however, *interpretation* simply means, according to the Oxford Dictionary, "to expound the meaning of, to explain, to render clear or explicit". Thus, if the text at stake actually contains a problem, then the outcome of *interpreting* in that general sense will simply result in concluding that the text has a problem, in the best case. In the worst case the conclusion itself will continue to embody that problem without naming it. Actually, the *interpretation* in the legal sense starts where the *interpretation* in the general sense ends: once the explanation of a text cannot be given on the basis of the ordinary meaning of the terms used (*interpretation* in the general sense) then one may resort to the interpretation methods and rules for resolving that issue (*interpretation* in the legal sense).

Where is the challenge for teaching?

As said, mobility of students becomes more and more popular and this is a welcome trend in a globalized world. The apex of this mobility is concretized by the growing number of international universities, where students (and faculty) from around the world have an opportunity to meet and exchange their knowledge and diverse experiences. Those trends will not be reversed. They imply that students will increasingly study in a linguistic environment different from their own. Or, in the case of students who are still studying in their home country, this implies that the perspective of having to adapt to another linguistic environment in the future course of their study or at the latest in the course of their career is a real one. The challenge for the teacher who teaches say in English with students who are not native English speakers is to be confident that his teaching is understood accurately. This is not an easy task, as the students participating to a lecture may have the impression that they understood their teacher but in reality did not, or did not grasp all the nuances, mainly because there is almost never a one-to-one correspondence between the legal terminology in one language and the legal terminology in another language, as explained above. If the students had a robust training in the foreign language at stake, the risk of misunderstanding is minimized, but such risk can never entirely be eliminated. It is worthwhile stating again that for law students, as well as for legal professionals, being proficient in English or whatever foreign language is helpful but not enough. In addition, they should have a good command of the specialized legal English (or foreign) language. In many instances, a legal text simply cannot be understood without a specialized education in the legal English (or foreign) language.

Therefore, the art of teaching in an international environment or in a foreign language requires a high degree of awareness of the linguistic hurdle that this represents for students. Students too should be aware of it. In a sense, the challenge for the international teacher is identical to the challenge for the international negotiator. It is necessary, even vital, to apply some techniques to make sure that the message conveyed was well understood. Students, similar to foreign negotiating partners, may be nodding and confirm that "yes, we understood", but this is not enough. The instructor needs to make an explicit check, for example by asking them to provide their understanding of what was said. The teacher (or the negotiator) should not be surprised if, even after having received a short confirmation that everything was clear, the understanding provided shows that in reality it was not. In negotiation this is true also the other way around: after I receive a message or proposal, and even if I am convinced that it is clear to me, I still should formulate my understanding of the message in order to double check whether I really got it right. When using a foreign language (English) on both sides of the negotiating table this sort of procedure is a must.

Similar procedures are equally useful in teaching. But in teaching, there is the additional learning objective of improving the students' skills. This is where a tool such as the international law lab can prove valuable. But before presenting the details of this pedagogical tool, a few words on international law (IL) teaching are warranted. Why should the lab, or other similar specific tools, focus on this field of law rather than on law in general?

The reasons are mainly practical. Firstly, with regard to exchange students, it is safe to assume that whenever a foreign exchange student visits a foreign law faculty for six or twelve months he/she might not be too much interested to elect a class on the domestic laws and procedures of the host country, especially if that country is far away from his/her own. Instead, a foreign exchange student may be willing to elect international law, a discipline that is equally relevant wherever it is taught.

In some Swiss universities, foreign exchange (short-term) students are even denied access to courses focusing on Swiss law (Ziegler, 2020, 60). Second, as to international universities, it would be odd not to include international law in a curriculum, and in fact international law is often a main subject of international universities' curricula. By contrast, taking again the example of Switzerland, some law faculties here do not offer compulsory classes in public international law as an integrated part of the public law or general teaching for the bachelor or master in law degree (Ziegler, 2020, 56). Thirdly, as to their future career, it may safely be assumed that whenever law graduates have opportunities to practice their legal skills in an English-speaking environment this would likely be in relation to international law rather than their home country law. Last but not least, there is the issue of the available material. As exposed below, students in a lab would be tasked to work on legal material. Legal material on domestic law would probably exist in the national language, not in English or in another foreign language. Admittedly, the use of a lab in teaching does not need to be confined to international law. Indeed, it can be applied to all academic disciplines. However, using the lab as an additional pedagogical tool is attractive in the context of international law precisely because in practice international law classes heavily rely on material or teaching in a foreign language (typically English), which creates a double challenge for students and the teacher. In addition, IL classes either have a sizeable number of foreign students or include students who aspire to study abroad at some point.

The contribution of the "international law lab"

The advantage of the "lab" format is that its flexibility and variety allow the teacher to combine optimally the training of legal analysis and linguistic skills. This brings an added value to the specific "legal terminology" classes that students would (and should) have attended successfully before joining a lab. Another advantage is that it combines written and oral skills. As Shamsitdinova (2021) emphasizes, it is important for law students in Uzbekistan to receive specific training in overcoming "difficulties in listening to and understanding English speech".

There is no standard definition of what a law lab consists in. However, the basis or the starting point for designing a lab session would be a particular piece of written legal material. This could consist in a piece of treaty or ruling (arbitral award) or a negotiating text. The advantage of this setting is that it delineates precisely the frame for both the substantial work to be done by the students and the linguistic expectations. Regarding the latter aspect, to be effective in terms of linguistic progress the lab session should be designed in such a way as to induce students to rephrase or reformulate the material submitted to them. In addition, students would be tasked to argue (orally or in writing) on the basis of that material using the same or equivalent terminology and formulations. The aim of the game is thus not simply for the students to demonstrate their correct understanding of the text at hand, linguistically and in substance, but to train their ability to express themselves correctly and accurately with their own words.

Though a law lab could be designed for students working individually, its main advantage is that this format is easily adaptable to group work. The verbal communication within the group could either be in English or in the school's own language. Any written output required from the group should however be in English. Any oral output such as a classroom presentation should also be in English. Another advantage of the lab concept for the faculty is that this concept allows to implement assessment tools or methods (both summative and formative) that are different from the classical "exam". In particular in the

legal training, but also in the training of, say, interpreters, having a variety of assessment methods is essential given that the activity of practitioners in those fields more often than not is based on verbal interaction with their counterparts, and their ability to express themselves not only spontaneously but at the same time clearly and understandably and in full conformity with the relevant specialized terminology.

What possible formats may be implemented in a law lab? The variety of formats is only limited by the creativity and imagination of the teacher, but a few ones are explained below:

1. The "comment". The format of the "legal comment" is a common one both in academic literature and in legislative processes. The aim is to explain a given legal provision in a factual and objective manner. For example, in the context of a legislative process the draft law would be accompanied with a comment explaining each article. More often than not, the comment amounts to little more than a mere reformulation of the provision at hand, but it is required to bring an added value in terms of understandability. In the lab, students would be required to write such comment, individually or in groups, which would demonstrate firstly that they actually correctly understood the legal material submitted to them, and, second, that they are able to formulate it with their own words. In terms of assessment, the first duty of the teacher in order to identify corrective measures is to determine whether any inaccuracies in the comment delivered are due to a lack of linguistic knowledge of the student or a lack of legal understanding.

2. The comparison. Comparing two legal texts is also very common in a lawyer's real life. In this format, two texts on the same matter are submitted to the students and they are required to find the differences and explain what the differences consist in. The first question that students should ask themselves is whether an apparent difference is only a difference in the language, without substantial implication, of whether a divergence in the text reflects an actual divergence in substance. Obviously, to pass this test the students need to be proficient both linguistically and in terms of legal understanding. Concretely, the material submitted to students could be two bilateral agreements on the same subject matter, or a multilateral agreement and its bilateral counterpart, or a "framework" international agreement and its "implementing" act, or two competing negotiating proposals. As above, in case students appear to be challenged by this exercise, the first duty of the teacher in order to identify corrective measures is to determine whether this was due to a lack of linguistic knowledge of the students or a lack of legal understanding.

3. For advanced students, an exercise consisting in interpreting a piece of legal material is quite effective for designing a lab. The main challenge for the teacher is to pick up a piece of material that best suits this format and is doable by students. The other challenge comes in the concluding phase of the lab when groups come back with diverging interpretations. Given that diverging interpretations are a fact of life for lawyers, the teacher should be able to convey to the student that some divergences are "normal" while others may be attributed to a lack of linguistic or legal understanding. The teacher should also prevent a drifting of the exercise into an interpretation of the interpretations.

4. Negotiating games. By their sheer nature international acts are the outcome of a negotiation between parties. Thus, there is a substantial interface between international law and international negotiation. In order to be able to design a realistic, workable and effective negotiating scenario the teacher should have specific knowledge and experience, and ideally should be well-versed in the organization of negotiating workshops. Poorly conceived negotiation

workshops may easily lead to an impasse, or be frustrating or completely derail and get out of control compared to the set learning objectives. The negotiation simulation is not only an alternative and effective tool to explore in depth the legal material and the linguistic aspects of it. The exercise also brings a valuable asset to students for their future career. Almost every lawyer may at some point in his legal practice be tasked by his government, administration or private company to negotiate a contract or agreement with foreign partners. A negotiating scenario would typically task two groups of students to follow different negotiating aims based on the same draft treaty text. Students will need to identify the weaknesses of the said text, to propose improvements that perfectly fit (in terms of structure and substance) the said text, and develop arguments. Arguments can be of legal or of linguistic nature – the so-called "linguistic improvements" suggested by seasoned negotiators. That being said, the advantage of this format for a law lab are obvious: they combine the assessment of the linguistic skills of the students (both understanding of English texts and expression of arguments) and the legal analytical skills.

The above are just a few examples of formats and settings to organize a law lab. As said, the only limit to it is the teacher's imagination. In respect of its implementation, due to its nature such a model of international law laboratory would be more effective if it is developed and delivered jointly by an instructor in international law and language instructors. Such collaboration would allow to reach the imparted learning objectives more efficiently.

Conclusion

Even though the law was and still is intrinsically connected to a national jurisdiction and thus partly shielded from globalization, there is an ample spectrum of arguments why the teaching of English as a foreign language gains importance in the training of law students. At the same time, in the legal field switching from one language to another is much more challenging than in fields where the specialized terminology has reached a high level of harmonization cross-linguistically. This challenge ought to be taken in consideration by law professors when imparting their teaching, especially in the presence of international students with various linguistic backgrounds. An efficient way to improve students skills in both the legal the linguistic fields is the international law lab. The flexibility of this tool makes it adaptable to a variety of teaching environments and needs.

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