CREATING AND CONDUCTING IN-CLASS SIMULATIONS IN PUBLIC INTERNATIONAL LAW: A PRODUCER’S GUIDE

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I. INTRODUCTION

I define an in-class simulation as any classroom exercise that attempts to depict real-life events. Simulations can be extremely elaborate attempts to enact complex proceedings, or they can be as simple as having two students spontaneously represent lawyers making opposing arguments during class discussion. What follows in this piece is an attempt to describe my own experience with certain kinds of simulations and to relate from that experience some lessons on conducting simulations. For those who conceptualize their simulations in ways very different from my own, what I have to say may be of limited application. I have chosen to organize this article using the metaphor of producing a show because I believe it is evocative of the drama intrinsic to making simulations exciting motivational tools for learning.

In Part II of this article ("Defining the Creative Mission"), I will begin by identifying what my goals are in constructing simulations. In Part III ("The Script"), I discuss the institutional settings in which I have chosen to place my simulations ("Finding the Right Setting"); the essentials of creating the simulation problem ("Identifying a Good Plot"); and constructing the procedural foundation for the simulation ("Defining Plot Structure"). In Part IV ("Casting the Simulation"), I address how I involve the maximum number of students in various active roles in the simulation. In Part V ("Directing the Simulation"), I discuss my role in helping students prepare for the simulation ("The Rehearsals") and in the actual conduct of the simulation ("The "Performance"). In Part VI ("Costumes and Staging"), I suggest what students should wear during the simulation as well as how to prepare the classroom for the simulation. In Part VII ("The Reviews: Assessing the Performance"), I discuss how to give feedback to the students on their performance ("Constructive Evaluation") and how to grade the simulation ("The Grade"). Finally, in Part VIII ("Avant Garde-Looking Toward the Future"), I briefly allude to some creative possibilities for the next generation of simulations.

II. DEFINING THE CREATIVE MISSION

In-class simulations can be, and have been, usefully employed in law school courses for some time. I believe they are particularly well-suited to public international law. While there are many possible reasons
for using simulations in international law, I am particularly concerned with meeting three primary objectives: first, to encourage active, dynamic learning; second, to improve student review and integration of doctrine; and finally, to demonstrate the range and vitality of international law.

A. Active, Dynamic Learning

I find simulations a very useful device to encourage active, dynamic learning. Simulations require students to think through legal and policy issues to applied ends. By actually being responsible for comprehensively applying the law in different contexts, students are pushed to integrate material and think creatively in ways that go far beyond discrete responses to traditional Socratic questioning. Simulations help develop such legally important skills as the ability to think spontaneously, to spot issues, to organize disparate ideas, and perhaps most importantly, to take personal responsibility for a comprehensive real-life-like work product.

B. Review and Integrate Doctrine

By concluding each substantive section of the course with a simulation, I am able to meet the additional objective of getting students to periodically review and integrate the doctrine covered in the course. Compared to traditional cramming for semester-end exams, this approach has the pedagogical advantage of encouraging students to assimilate the course material in manageable components. Overall learning is enhanced as students build throughout the course on their superior knowledge and understanding of previous doctrine.

C. Demonstrate Range and Vitality of International Law

Finally, I believe that it is important for students to see that international law, despite its differences from municipal law, is useful. I, therefore, additionally employ simulations to demonstrate concretely the range of uses for public international law. In the next section I will turn to explaining how I do this through my choice of simulation settings.

III. THE SCRIPT

In scripting the simulation, the first step is to settle on an institutional setting and subject matter for the simulation. One must then formulate the plot or devise the scenario upon which the simulation will be
based and then Define the Creative Mission or establish the procedures which will give the plot form. What follows is first a summary of the settings and subject matter I use in my own simulations and then a discussion of the requirements for identifying and developing a successful plot.

A. Finding the Right Setting

I demonstrate the range and vitality of international law by placing my simulations in a number of different institutional settings where international law is used. For example, my first simulation enacts testimony before a United States House of Representatives subcommittee where international human rights law and related policy issues are relevant. The question for subcommittee consideration is whether to cut off United States foreign aid to Kenya in response to violations of human rights. My second simulation presents students with the need to use international law in the conduct of international negotiations. In this simulation students represent, respectively, either the Israeli government or the Palestine Liberation Organization in negotiations leading up to the Oslo Accord. My third simulation gives students the opportunity to use international law before an international tribunal, specifically the International Court of Justice. In this simulation students debate before the Court the legality of the 1989 United States invasion of Panama. The fourth simulation requires students to use international law to inform a United Nations Security Council debate. In this simulation students recreate the Council’s debate over whether to authorize the use of force to eject Iraq from Kuwait. Finally, the fifth simulation presents students with the opportunity to use international law before a domestic tribunal. Students are charged with arguing before the United States Supreme Court the legality of an American assertion of adjudicative jurisdiction over a fugitive who was abducted by American agents in Mexico. These simulations, taken together, present students with the opportunity to review many different substantive areas of international legal doctrine as applied in a wide range of different institutional settings.

B. Formulating a Good Plot

1. Clash of Interests

As every writer knows, good character development requires a sound plot. Student character development in the context of in-class simulations is no different. The primary imperative is that the views that students represent are well-defined and divergent. Without this, the dialectical tension that allows for legal and related issues to be fleshed out will be lacking. This divergence of views is intrinsic to certain types of simulations such as oral arguments before courts. It, however, needs to be consciously structured into other types of simulations. For example, from my repertoire, divergence of views in hearings before congressional committees or in Security Council meetings must be explicitly built into simulations.

2. Fact or Fiction

The other primary issue that must be confronted in constructing simulations is whether, or to what extent, scenarios should be based on real events. I believe that using real events offers significant advantages. Not only is it more interesting for students to deal with topical issues, but I also believe students better use their scarce study time assimilating real-life historical and social facts than details from artificial hypotheticals.

There are, however, several issues that must be confronted when using real-life situations. When using fictitious scenarios, the professor as creator has the absolute ability to define the contours of the problem and to artificially decide exactly the amount of information that all students will, on an equal basis, receive about that problem. Out of the complexity of real-life problems, different students will quite possibly identify very different facts and issues as relevant to the designated simulation. If this happens, students will, in the conduct of the simulation, very likely end up talking past each other. In the worst case, certain students will have no information about, and even difficulty understanding, the situation as the other students have defined it. Efforts to get the simulation on track will then be very difficult. This can be avoided by tailoring the topic to the requirements of the simulation and then carefully communicating to the students the contours of the topic as adapted. This, however, is somewhat of an art because over-definition will rob the students of the chance to identify and characterize the issues on their own. When doing this, I
therefore attempt to define in great detail the negative parameters of the adapted topic — in other words, what the topic is not about. I then describe in very general detail the range of possible legal issues that may be involved.

When dealing with simulations based on real events, a related issue that should be specifically discussed with students is the extent to which license can be taken with the facts of the real situation as it exists. For example, in the Israeli/PLO negotiations, to what extent are the students limited to articulating positions that the parties have or would realistically have articulated in the past? Likewise, in the Security Council debate over ejecting Iraq from Kuwait, how restricted should the students be to furthering positions like those of the countries they are representing? It is important, I believe, that great liberties are not taken. Not only does part of the interest and challenge of a simulation based on real life events lie in the students attempting to identify and articulate the position of the parties they are representing, but also the underlying structure of the simulation game is dependent on the basic clash of positions between the various parties. Having said this, I also believe that students must have some flexibility in how they interpret these interests, so that their opportunity to work creatively within the structure of the simulation is not inhibited. Students should, for example, be able to come up with inventive solutions to sticking points in negotiations. Again, the latitude that students have in this area should be discussed with them before the simulation.

When reenacting proceedings such as appellate arguments, negotiations, or meetings that have actually transpired, students must be given an answer to the companion question of exactly how closely they should follow or not follow the proceedings as they actually occurred. I make it easy for students to see what happened. When students simulate the Security Council debate over Resolution 678, authorizing the Gulf War, I include the transcript from the relevant Security Council meeting in their materials. Likewise, when the students simulate the argument before the United States Supreme Court on the legality of exercising jurisdiction over a man who was kidnapped from Mexico by agents of the United States government, I include the Supreme Court briefs from the actual Alvarez-Machain case. It goes without saying that students should not be memorizing lines but should use references to actual proceedings, as a guide to understanding the types of arguments that can be made as well as
to styles of presentation so that they might better develop their own independent approach.

Finally, negotiating between fact and fiction in real-life situations can sometimes be an issue in the structuring of the simulations themselves. For example, in the Panama simulation, I address the need to create the context for litigation by postulating that Manuel Noriega escapes from federal prison in the United States, reassumes power in Panama, and brings a suit before the World Court against the United States.² A critical component of such postulation, of course, is stating clearly what is fact and what is fantasy. Even with respect to high profile events, one should not assume that all students will necessarily make the distinction on their own.

C. Defining Plot Structure

Plot structure for purposes of this article connotes the procedural underpinnings that give definition to the simulation. A primary question that arises when addressing simulation procedures is how elaborate such procedures should be. Depending upon what one wishes to accomplish, simulations can be constructed either to approximate only a loose rendition of procedural reality or to directly mimic real life intricate protocols, conventions, and rules. Because I am trying to emphasize substantive international law and not legal, diplomatic, or bureaucratic practice, I generally keep procedure as minimal and simple as possible. No simulation, however, can proceed without some basic defined procedures. The instructor must think through in detail what those procedures are and communicate them clearly to the students. Without a clear, shared idea of procedure, the basic structure of the simulation will crumble.

The nature of the procedures, of course, depends upon the type of simulation being offered. When, for example, simulations require oral argument, the following procedural considerations need to be resolved: in what ways may team members³ divide up their argument; ⁴ whether the

² In addition to this scenario being of course, completely fanciful, this type of suit would be impossible as the United States has withdrawn its acceptance of the Court's compulsory jurisdiction.

³ I use the typical moot court formula of assigning two students to advocate as teammates for each side.

⁴ Team members can divide responsibilities between, for example, argument and rebuttal, or alternatively, each one can be responsible for particular arguments. I usually leave it
facts of the case should be repeated to the court; if there is to be a rebuttal (which I think is a good idea), how should time be allocated between argument and rebuttal; how soon after an advocate begins her argument should judges start their questioning; how should judges’ questioning be coordinated; whether judges should be required to issue opinions; if so, in what form? I strongly emphasize that, whatever the nature of the simulation, you need to identify and resolve all possible procedural issues and clearly communicate these procedures to the students in advance of their preparation for the simulation.

IV. CASTING THE SIMULATION

A. A Cast of Thousands?

Deciding who and how many students get to participate, particularly in a larger class, is a difficult issue in simulations. As I have discussed, one of the great advantages of simulations is that they provide students with an opportunity for active learning. If only a few students out of a very large class are actively involved in a simulation, this advantage is easily defeated. I deal with this problem in several ways. First, if a class becomes too large, I simply do not use simulations. If the class is small enough to make simulations viable, I attempt to give major roles in each simulation to as many students as is workable. I find that the upward limit is usually about ten. For example, a litigation simulation can involve two teams of two litigants and a bench of six members. When I have the Security Council debate the Gulf War, I find it workable to permit a few more students to participate, allowing me to reproduce the fifteen members of the Security Council plus Iraq.

B. Dealing With "Extras"

One technique I have developed, to keep the whole of the class at least somewhat actively involved in the simulation, is to assign subsidiary roles to the students who are not assigned major roles. For example, in up to the students to decide how to allocate responsibility, but they should inform the Court as to the division of responsibility at the beginning of their argument.

5. I feel that they should not. While learning how to present the facts effectively is a valuable skill in itself, given the limited class time available, I prefer that students get right to the argument.
my Security Council deliberations, I have the members of the class who are not directly involved play the role of the press from delegates’ respective countries. I give them time at the end of the class to ask delegates pointed questions about their representation of their country’s interest. I instruct these students to view the proceedings actively and critically with an eye towards their participation in the dénouement. In my Congressional testimony simulation, the class members who are not directly involved act as non-subcommittee members of Congress performing a function similar to that of the press above. Finally, to democratize student involvement, I have every student play a primary role in at least one simulation during the semester. To make sure the class gets off on the right foot, I often recruit students to do the first simulation who I think are likely to be the best performers. If they live up to my expectations, a high initial standard is set.

V. DIRECTING THE STUDENTS

A. The Rehearsals

1. The Role of the Professor

What is required of the professor will differ with the various stages of the simulation. Before students begin their preparation for the simulation, the professor should either orally and/or in writing explain the simulation and let students know what will be expected of them. In addition to topics that have already been covered (clearly defining the parameters of the simulation topic, identifying the extent to which students can or should take liberties with the topic as defined, and clarifying the simulation procedures and protocols), the professor should explain what constitutes good student performance. While performance demands will vary depending upon the general nature of the simulations being conducted and the specific roles that individual students play, there are certain basics of good performance that are constant and can be generally emphasized. Clear understanding of the facts, coherent integration of legal doctrine, rigorous application of facts to the law, and clear communication, both orally and in writing (if there is to be a written component), are the basic skills of lawyering that should, of course, always be emphasized.

In addition to giving general directions to the students as a whole about the simulations, I believe that it is very helpful to meet with the
simulation participants privately, before the simulation, to go over their preparation and planned presentation. Any doctrinal problems the student are having integrating the factual and legal issues, as well as tactical and strategic issues, can all be addressed. This helps encourage advance preparation and ensures that both the students and the professor are reading from the same page. Obviously students representing conflicting parties should be met with separately.

2. The Provision of Props

By props I mean the various research materials, which provide relevant factual and legal background that may be given to the students in advance of enacting simulations. I distribute sufficient props to the students to conduct the simulation, while allowing them, if they desire, to engage in further research on their own. I have settled on this approach as a compromise between limiting student research to a closed universe of provided materials and requiring that they engage in independent research.

Both the closed universe and independent research approach have relative advantages and disadvantages. The closed universe approach helps promote uniformity in student understanding and interpretation of events, which, as I have already explained, is important to the coherence of the simulation. In addition, it economizes on the amount of scarce study time students must spend preparing for the simulation. This, however, denies students a potentially valuable opportunity to practice research. By my compromise, I hope to provide a corpus of materials that will define the basic scope of the problem and allow students to focus their efforts on assimilation and presentation of materials. However, I do not want to deny interested students the opportunity to engage in focused research to enhance their arguments.6

3. Requiring a Written Product

Another major rehearsal or advance preparation question is the extent to which students should prepare a written product in anticipation of the in-class event. The advantages of requiring such a product are two-fold. Student preparation is probably the most important component of a successful simulation, and requiring a written product in advance of the

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6. As I have previously discussed, I independently attempt to be very clear about the overall definition of the problem.
classroom performance forces students to give thought to what they wish to accomplish in the simulation and/or how they wish to accomplish it. A writing assignment also has the potential to provide a valuable opportunity for students to practice and improve their writing skills. I require students to hand in a written product in advance of the in-class exercise, the character of which varies depending upon the nature of the simulation, and roles students are to play within it. For example, in judicial simulations I require each student making an oral argument to submit a short brief that is copied and distributed to opposing counsel and judges.7 I require each student playing the role of a judge to submit a list of strategically organized questions for potential use in oral argument.

B. The Performance

The professor’s directorial role during the in-class portion of the simulation must also be considered. I limit my direct interventions in the in-class exercise to times when student interchanges begin to disconnect to the point that effective communication has broken down. I will then intercede remedially to try to give coherence to the discussion, on the order of

Mary, can you see how Carol said X and John said Y and that your point Z had nothing to do with the conversation even though you were using the same linguistic categories. Now try to make your idea responsive to what has been said. Other people should attempt to do the same.

Mitigating against liberally intervening is the importance for students to experience the independence of being responsible for their own errors and for recovering from them without the benefit of a safety net. On the other hand, given the need to make the class a beneficial learning experience for all of the students, I find that it is best not to let the discussion stray too far afield before intervening to give it structure. I explain to the students before the simulation the role I will be playing during the in-class exercise.

7. As in the real world, this helps all sides in their preparation and aids in the creation of an intellectually coherent proceeding.
VI. COSTUMES AND STAGING

I find that it is helpful to have students dress in character (i.e., in business clothes). It encourages them to take the simulation seriously and to stay in role, and it helps set the class off as something special.

Before class on the day of simulations, I will erect a simple set in the front of the classroom. For example, for oral arguments I will construct a simple courtroom with a podium from which counsel can address the court, and tables behind which the judges and the lawyers can sit. For a Security Council session, I will arrange the chairs for Council members in a semi-circular formation in front of the class. So that the rest of the students can best view the action, I place all seats so that none of the participants have their backs to the audience.

VII. THE REVIEWS: ASSESSING THE PERFORMANCE

A. Constructive Evaluation

I believe that an important part of the learning experience is for students to receive constructive feedback. One colleague of mine who uses simulations gives feedback privately in his office, so as to avoid the prospect of students feeling embarrassed before their classmates. I give feedback before the whole class (hopefully in as non-threatening a way as possible) so that everyone can benefit from hearing my interpretation of what transpired. In addition to making comments specific to particular simulations, I emphasize the criteria I have previously laid out to the students for general effectiveness: clear understanding and integration of the facts and the legal doctrine, and effective communication.

B. The Grade

Student performance in simulations can be assessed for purposes of giving constructive feedback and/or for purposes of helping determine course grades. In the past, I have only made simulations one component of the student class-participation grade, which itself only counts marginally toward the final grade. I have not found that I have needed to use grades as an incentive to make students take simulations seriously, and I have preferred not to impose stress on students additional to the anxiety of performing in front of their classmates. In addition, given the kinds of simulations I have constructed, I would find it difficult to apply fair and uniform grading standards to students whose roles may have required
varying levels of participation. I know some professors who exclusively use simulations of the moot court variety and make student performance in them a major part of the students' final grade. They have reported success in doing so.

VIII. AVANT GARDE — LOOKING TOWARD THE FUTURE

What I have described in this paper is only one particular approach to creating simulations. While it is beyond the purpose of this paper to seriously explore alternatives I have not tried, I would like to conclude by suggesting possibilities that technology makes feasible for international law simulations of the future. I have always thought it strange that despite the alleged universality we claim for international law we, through our use of national casebooks and other materials, maintain a curiously parochial approach to teaching the subject. Applying communications technology to simulations could help us overcome this provincialism. American students could have joint simulations with students from other countries via the Internet. One of my colleagues in an advanced business class is trying something similar with students from elsewhere in the United States. Direct audio-visual contact is even a possibility. While this is now available in a rather primitive form over the Internet, existing non-Internet video conferencing technology makes high quality transmission possible. For example, my law school, which has two campuses, utilizes an interactive video system to link classrooms and other activities between our campuses. Such equipment (which uses phone lines) can be adapted for international use.⁸ Advanced communications technology will undoubtedly have a major impact on legal education. This should be particularly true in international law courses, where communication between the remotely situated peoples of the various states that make up the global village is at the heart of the endeavor.

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⁸. The national telephone lines of the participants must be capable of carrying digital communications.