

# BRINGING DIPLOMACY INTO THE CLASSROOM: STIMULATING STUDENT ENGAGEMENT THROUGH A SIMULATED TREATY NEGOTIATION

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## I INTRODUCTION

This article critiques existing educational literature in relation to simulations, identifying some methodological flaws in the relevant empirical studies, but also pointing to a strong correlation between simulations and student engagement in studies involving a range of methodologies. The article contributes to this literature by presenting the findings of empirical research related to the conduct of a treaty simulation based on the ongoing negotiations under the recently concluded Paris climate agreement. It also provides a step-by-step guide to conducting a treaty simulation, including links to the required materials. Possibilities for student assessment of this simulation are provided and analysed, as well as proposals for adaption of the simulation to different subject areas.

The exercise presented in this article aims to increase student engagement with the complexities of the international treaty negotiation process by requiring students to actively participate in a simulated negotiation, and by testing and developing students' negotiation skills in a practical environment. The simulation exercise also aims to deepen student knowledge in relation to some key concepts of international environmental law and climate justice. Student feedback obtained via questionnaires shows that the simulation exercise is indeed successful in engaging students, as well as deepening students' substantive doctrinal knowledge.

The simulation exercise is modelled on the negotiations currently taking place to develop the modalities, rules and procedures that will govern the recently concluded Paris climate agreement under the United Nations Framework Convention on Climate Change ('UNFCCC').<sup>1</sup>

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<sup>1</sup> United Nations Framework Convention on Climate Change, *Decision 1/CP.21: Adoption of the Paris Agreement*. Paris Agreement on Climate Change, FCCC/CP/2015/10/Add.1, 12 December 2015

However, the simulation exercise is easily adaptable and suggestions are made as to how the exercise could be applied in a variety of university subjects. Thus, this article provides the parameters of an exercise that could be easily incorporated into any subjects in which an understanding of negotiation skills is relevant, including international law, international relations, environmental law and negotiation subjects at both undergraduate and post-graduate levels.

In recent decades there has been a call for a greater emphasis on the development of practical skills at law school.<sup>2</sup> This simulation exercise aims to teach negotiation skills in a dynamic and engaging manner, drawing on the pedagogical benefits offered by simulation exercises. The simulation exercise differs from other examples of simulations described in the literature in that it is only two hours in duration, mitigating trade-offs with respect to the coverage of other course content.<sup>3</sup> An assessment component is also incorporated, which enables the assessment of students' negotiation skills, something not easily assessed through traditional examination methods. The design of the simulation draws on relevant studies to maximize the pedagogical benefits.

Variants of this exercise have been used in a number of undergraduate subjects taught at the University of Tasmania Law School between 2005 and 2016, including *International Environmental Law and Policy* and *Current Issues in Environmental Law*. The exercise was also used as part of a new *Climate Law* subject offered in the law school during the winter school program in 2015. While not essential, some knowledge of international climate change policy and law and the negotiations carried out under the UNFCCC and Paris Agreement to date magnifies the benefits flowing from this simulation, although as already mentioned the simulation can be modified to suit different subjects.

Part II of this article presents the benefits of simulation exercises. This section begins with a critique of the education literature on simulations, followed by an outline of the skills and knowledge to be fostered by the simulation exercise and possible assessment options. Part III then describes in a step-by-step manner how to prepare for and conduct the simulation exercise. Finally, Part IV analyses the feedback received from students regarding the simulation exercise and offers

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<<https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>>. The exercise is based on the extensive experience of the authors: Peter Lawrence spent eight years negotiating international treaties in the United Nations system and the South Pacific while working for Australia's Department of Foreign Affairs and Trade; Rebecca Byrnes attended the 2015 Paris climate agreement negotiations as part of a delegation from the Least Developed Countries.

<sup>2</sup> William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass, 2007) 115.

<sup>3</sup> Cf Timothy LH McCormack and Gerry J Simpson, 'Simulating Multilateral Treaty Making in the Teaching of International Law' (1999) 10(1) *Legal Education Review* 61, 64; Stepan Wood and Terry Romaniuk, *International Climate Change Law, Prato 2010* (12 June 2010) IUCN Academy of Environmental Law <<http://www.iucnael.org/en/online-resources/climate-law-teaching-resources.html>>.

suggestions for improvement as well as suggestions about how the exercise might be adapted for different classes.

## II ARE TREATY SIMULATIONS WORTHWHILE?

A number of major reviews of legal education in Australia and the US have called for a greater emphasis on practical skills rather than the more traditional emphasis on imparting substantive legal knowledge.<sup>4</sup> In the US, the Carnegie Review into legal education has recommended a greater emphasis on ‘active learning in context’ and the development of practical skills.<sup>5</sup> In Australia, a recent report noted with regret that clinical pedagogy is not a high priority in the funding of legal education.<sup>6</sup> The negotiation exercise described in this article is an example of the incorporation of key practical skills and a participative and collaborative clinical-style learning environment into an undergraduate or postgraduate law degree.

A plethora of reasons are put forward in the education literature as to why simulations, and in particular treaty negotiation simulations, are an effective teaching method. Key amongst these is that simulations involve active learning, transforming ‘students from passive, detached observers into participants in the learning process’.<sup>7</sup> Students learn through using and evaluating information as opposed to merely reading and recalling it.<sup>8</sup> Students develop a greater ‘understanding and empathy for the complexity of problems faced by real-life decision-makers’.<sup>9</sup> Simulations inspire student interest in the topic area<sup>10</sup> and improve retention of the information learnt.<sup>11</sup> They also allow students to adopt a fresh persona and to therefore speak more freely and contribute more to discussion both during and after the simulation.<sup>12</sup> It

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<sup>4</sup> Toni M Fine, ‘Reflections on US Law Curricular Reform’ (2009) 10 *German Law Journal* 717, 727.

<sup>5</sup> Sullivan et al, above n 2, 115.

<sup>6</sup> Office for Learning and Teaching, *Strengthening Australian Legal Education by Integrating Clinical Experiences: Identifying and Supporting Effective Practices* (2013) <<http://www.olt.gov.au/resource-best-practices-Australian-clinical-legal-education>>.

<sup>7</sup> McCormack and Simpson, above n 3, 66.

<sup>8</sup> Merry M Merryfield and Richard C Remy, ‘Choosing Content and Methods for Teaching About International Conflict and Peace’ in Merry M Merryfield and Richard C Remy (eds), *Teaching About International Conflict and Peace* (State University of New York Press, 1995), cited in Kent J Kille, ‘Simulating the Creation of a New International Human Rights Treaty: Active Learning in the International Studies Classroom’ (2002) 3 *International Studies Perspectives* 271, 272.

<sup>9</sup> Thomas Preston and Martha Cottam, ‘Simulating US Foreign Policy Crises: Uses and Limits in Education and Training’ (1997) 5 *Journal of Contingencies and Crisis Management* 224, 224, quoted in Kille, above n 8, 273.

<sup>10</sup> Mary Pettenger, Douglas West and Niki Young, ‘Assessing the Impact of Role Play Simulations on Learning in Canadian and US Classrooms’ (2014) 15 *International Studies Perspectives* 491, 492.

<sup>11</sup> Matthew Krain and Christina J Shadle, ‘Starving for Knowledge: An Active Learning Approach to Learning About World Hunger’ (2006) 7 *International Studies Perspectives* 51, 54.

<sup>12</sup> McCormack and Simpson, above n 3, 66.

is these effects that we describe here as evidence of ‘student engagement’.

A review of the literature, however, reveals that most evidence as to the benefits of simulation exercises is anecdotal. Articles generally make some claims about the benefits of simulation exercises such as those in the preceding paragraph and then outline their particular exercise, with little in terms of systematic, empirical evidence.<sup>13</sup> To address this defect Krain and Shadle carried out an empirical study in 2006 on the effectiveness of simulation exercises in international studies education. Using Oxfam’s ‘Hunger Banquet’ model, they created a simulation relating to world hunger and measured the learning outcomes of students involved in the simulation against a control group who were taught the same content through traditional methods. The study found that students who participated in the simulation experienced a greater gain in knowledge than those who were taught the material through a traditional lecture format.<sup>14</sup> In contrast, Druckman and Ebner conducted a review of wider social sciences education literature relating to negotiation education over a span of fifty years. Their key finding was that simulations do not necessarily improve students’ learning of facts and principles when compared to traditional teaching methods.<sup>15</sup> However, they do improve student *motivation* towards the subject area and retention of the concepts learnt.<sup>16</sup>

While the findings of these two studies are difficult to reconcile, it should be noted that neither study related specifically to treaty negotiation simulations or to climate change. In a study involving the simulation of a draft resolution relating to climate change, Pettenger et al found that the simulation increased students’ conceptual knowledge and awareness of the complexity of climate change.<sup>17</sup> However, the lack of a control group means it is not possible to say whether the improvements in that study were greater than what would have occurred through a traditional lecture format. Krain and Shadle’s study in contrast *did* employ a control group and discovered superior learning outcomes. While the literature is equivocal, Krain and Shadle’s study suggests that simulations do have superior learning benefits with respect to conceptual knowledge.

Further, the variable measured in the studies by both Pettenger et al and Krain and Shadle was the level of substantive knowledge: relating to climate change in the former study and world hunger in latter study. Our simulation exercise, however, aims to increase understanding of the negotiation *process* as well as negotiation *skills*. While the facts and concepts relating to climate change or world hunger may be taught

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<sup>13</sup> Krain and Shadle, above n 11, 58.

<sup>14</sup> *Ibid* 62. Note however that there may be ethical/fairness issues related to teaching content differently to different groups in a class.

<sup>15</sup> Daniel Druckman and Noam Ebner, ‘Games, Claims and New Frames: Rethinking the Use of Simulation in Negotiation Education’ (2013) 29 *Negotiation Journal* 61, 66.

<sup>16</sup> *Ibid* 61–2.

<sup>17</sup> Pettenger, West and Young, above n 10, 499.

relatively easily in a classroom, the complexities and nuances involved in a multilateral negotiation process are more difficult to convey in a lecture or written text. Thus, there may be a greater learning benefit involved in simulations when the goal of the simulation is to teach about the *process* in which the students are involved, although we recognize that this intuition would need to be rigorously tested to ascertain whether it is valid.

We further note that the purpose of this simulation exercise is not merely to teach conceptual knowledge, but to teach negotiation *skills* as one means of addressing the recognized deficit of skills education in legal education generally. Tyler and Cukier, however, argue that participation in a simulation by itself is not enough to effectively learn negotiation skills. They argue that experience does not always correlate with skill level and that it is also important to have a theoretical grounding in negotiation skills.<sup>18</sup> They suggest that to ensure effective learning, role plays or simulations should be complemented by theoretical material both before and after the simulation and a post-simulation de-brief so that students gain a conscious understanding of the skills put to use in the negotiation simulation.<sup>19</sup> As will be seen below, our negotiation exercise adopts this model, with a theoretical lecture before the simulation, theoretical materials provided to students for the duration of the simulation, and a de-brief or reflection opportunity afterwards. This allows skill development to be maximised.

In any event, Druckman argues that while simulations may not completely live up to their reputation as *better* tools for teaching conceptual knowledge or critical thinking than other teaching methods, they can be superior when it comes to concept retention and motivation, or student engagement. There appears to be consensus in the literature that simulations do improve retention of concepts once learnt.<sup>20</sup> This is consistent with student feedback regarding our own simulation exercise (further discussed below): 'I feel like I learn better/deeper and have better recall later in environments such as this'.

It is also uncontroversial that simulations result in greater student engagement, as we comprehend it, than traditional lecture style teaching, which in turn leads to improved learning. Morgan argues that 'greater learning and development occur when students are actively engaged.'<sup>21</sup> Pettenger et al also argue that creating situations of student engagement is one of the most effective teaching methods.<sup>22</sup> According to Krain and Shadle, experiential learning through simulations is one way to generate such student engagement.<sup>23</sup> On the other hand,

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<sup>18</sup> Melissa Conley Tyler and Naomi Cukier, 'Nine Lessons for Teaching Negotiation Skills' (2005) 15 *Legal Education Review* 61, 69.

<sup>19</sup> *Ibid.*

<sup>20</sup> Krain and Shadle, above n 11, 52; Pettenger, West and Young, above n 10; Druckman and Ebner, above n 15.

<sup>21</sup> A L Morgan, 'Toward a Global Theory of Mind: The Potential Benefits of Presenting a Range of IR Theories through Active Learning' (2003) 4 *International Studies Perspectives* 351, 354, quoted in Krain and Shadle, above n 11, 53.

<sup>22</sup> Pettenger, West and Young, above n 10, 495.

<sup>23</sup> Krain and Shadle, above n 11, 52.

Druckman and Ebner warn that the effectiveness of a simulation activity can be undermined by unengaged or unmotivated students who do not want to participate,<sup>24</sup> however this is ultimately linked to the teachers' skill in managing difficult or unengaged students. Druckman and Ebner agree that simulations in general have been shown to engage students more than conventional lecture-style learning.<sup>25</sup>

Weidenfeld and Fernandez provide an empirical study of the effect of simulation exercises on student engagement. While focusing on the use of simulation exercises in teaching political theory, the findings are relevant to the use of simulations generally. The authors found through pre- and post-simulation questionnaires and a focus group discussion that a number of items which capture different dimensions of student engagement changed after students participated in the simulation.<sup>26</sup> The authors postulated that student engagement is linked to both behavioural and emotional responses. In particular, students reported changed behaviour in that they participated in class more frequently after the simulation, and more students prepared for class by discussing or working through the course material with other students. The authors also found that students became more emotionally invested in the class during the simulation exercise and that there was an increase in the level of enthusiasm for the simulation exercise.<sup>27</sup> Thus, these behavioural and emotional measures of student engagement demonstrate that simulations can improve student engagement with the course not only for the duration of the simulation, but also after it has occurred.

According to Stover, research shows that simulations 'provide a positive, enjoyable educational experience for students' and that international relations simulations in particular achieve this goal.<sup>28</sup> We would venture to argue that international law simulations, particularly ones grounded in an international relations process such as in the present case, are similarly well positioned to engage students. Responses collected in feedback questionnaires conducted after the simulation also indicate a high level of student engagement and enjoyment resulting from the activity.

One potential drawback of simulations is that they are more time-intensive than traditional teaching methods and thus create a trade-off with respect to coverage of material.<sup>29</sup> A further trade-off exists between simplicity (and hence low time expenditure) and realism.<sup>30</sup> With respect to the trade-off regarding time to cover content, this simulation addresses the issue by being no more than two hours in

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<sup>24</sup> Druckman and Ebner, above n 15, 68.

<sup>25</sup> Ibid 87.

<sup>26</sup> Matthew C Weidenfeld and Kenneth E Fernandez, 'Does *Reacting to the Past* Increase Student Engagement? An Empirical Evaluation of the Use of Historical Simulations in Teaching Political Theory' (2017) 13 *Journal of Political Science Education* 46, 54.

<sup>27</sup> Ibid.

<sup>28</sup> William James Stover, *International Conflict Simulation: Playing Statesmen's Games* (Wyndham Hall Press, 3<sup>rd</sup> ed, 1985), quoted in Kille, above n 8, 273.

<sup>29</sup> Kille, above n 8, 274.

<sup>30</sup> Pettenger, West and Young, above n 10, 493.

duration. This is much shorter than other examples of treaty simulations discussed in the education literature.<sup>31</sup> However, should there be enough time available in a course to conduct a longer simulation without detracting from the coverage of other content, this simulation could be lengthened by adding more steps in the negotiation process and/or more country positions in order to make the negotiations more complex,<sup>32</sup> or by allowing more flexibility, where students drive the negotiation without an imposed structure.<sup>33</sup>

The literature is equivocal on the point of whether a simulation is superior to other teaching methods, or whether it simply enhances student engagement. Therefore while we argue that treaty simulation can be an *effective* teaching method, we make no claim that the method is the best or most appropriate means of teaching negotiation skills or doctrine. Rather, we establish that effective pedagogical design in a simulation exercise promotes student engagement that in turn enhances student learning of skills, content, and process.

### III THE SIMULATION: PEDAGOGICAL DESIGN

#### *A Simulation as an Assessment Tool*

This simulation exercise enables the teacher to assess students' negotiating skills, which are not assessable through traditional assessment methods such as written assignments and examinations.<sup>34</sup> Simulations are viewed as a useful teaching tool but are rarely used as a form of assessment.<sup>35</sup> The opportunity to *assess* students' development of the relevant skills is missed as a result. Integrating assessment with a simulation exercise is also likely to increase its success and encourage greater student preparation for, and participation in, the activity. This is because '[a]s the students' academic success is defined by the examination program, this is at the top of their agenda ... the student assessment will prevail over the actual learning, irrespective of the curriculum objective.'<sup>36</sup>

A variety of assessment approaches have been used for this simulation when variants of the exercise have been run in the past. The most successful of these from the experience of the teacher was an

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<sup>31</sup> McCormack and Simpson, above n 3; Wood and Romaniuk, above n 3.

<sup>32</sup> McCormack and Simpson, above n 3.

<sup>33</sup> Dr Jeff McGee has run a simulation exercise in his teaching of Climate Change Law and Justice at the University of Newcastle. Students worked in groups to formulate and present a country position paper. Students then interacted in groups online to negotiate an aspect of an international climate agreement. This online negotiation took place over a one week period.

<sup>34</sup> Sullivan et al, above n 2, 174.

<sup>35</sup> Albert Ip and Roni Linser, *Evaluation of a Role-Play Simulation in Political Science* (February 2001) Technology Source <[http://technologysource.org/article/evaluation\\_of\\_a\\_roleplay\\_simulation\\_in\\_political\\_science](http://technologysource.org/article/evaluation_of_a_roleplay_simulation_in_political_science)>, cited in Pettenger, West and Young, above n 10, 494.

<sup>36</sup> Erik Driessen and Cees Van Der Vleuten, 'Matching Student Assessment to Problem-Based Learning: Lessons from Experience in a Law Faculty' (2000) 22 *Studies in Continuing Education* 235, 236.

approach designed around Biggs' constructive alignment model of teaching.<sup>37</sup> Constructive alignment is a pedagogical approach where teaching and learning activities and assessment tasks are aligned to intended learning outcomes (ILO's).<sup>38</sup> The constructive alignment model has been found to encourage a deep approach to learning, where students engage meaningfully with assessment tasks, and discourage a surface approach to learning, where students merely attempt to get tasks out of the way while appearing to meet the requisite criteria.<sup>39</sup> Table 1 demonstrates an adaption of the Biggs' constructive alignment approach to the simulation exercise.

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<sup>37</sup> John Biggs and Catherine Tang, *Teaching for Quality Learning at University: What the Student Does* (McGraw-Hill, 4<sup>th</sup> ed, 2011). For example, Harris and Shirley outline another assessment model used in the context of teaching negotiation skills in a trusts course: Wendy Harris and Melinda Shirley, 'Assuring Quality in the Assessment of Negotiation Skills: a Case Study in the Teaching of Trusts' (2002) 9(3) *Murdoch University Electronic Journal of Law* 1 <[www.murdoch.edu.au/elaw/issues/v9n3/harris93\\_text.html](http://www.murdoch.edu.au/elaw/issues/v9n3/harris93_text.html)>.

<sup>38</sup> Biggs and Tang, above n 37, 108.

<sup>39</sup> Xiaoyan Wang et al, 'An Exploration of Biggs' Constructive Alignment in Course Design and its Impact on Students' Learning Approaches' (2013) 38 *Assessment & Evaluation in Higher Education* 477, 479, 487.



Table 1

Specific Learning Outcomes Relating to:					
Assessment component*	Knowledge	Negotiation Skills	Thinking Skills	Communication + Collaboration	Self-reflection
<b>Student national statement (5%)</b>	Identify country interests and positions through research. Explain in writing country interests and positions. Apply country interests and positions to the issue of climate change.			Written communication demonstrated through concise and clear language in drafting of national statement.	
<b>Simulation participation (including de-brief) (15%)</b>	Apply country interests and positions to the issue of climate change. Apply relevant rules of international environmental law.	Follow procedural rules during negotiation. Apply negotiation skills in simulated environment.	Apply knowledge of international environmental law, country positions and interests and climate change to simulated climate change negotiation process. Solve problems and deadlocks in the negotiation process through knowledge of country positions, use of compromise and generation of options. Critique the international climate change negotiation process based on experience during simulation.	Collaborate with classmates to produce draft options text and treaty text. Advocate for country's interests in negotiation context.	Critique own performance and performance of class as a whole.

The simulation makes up 20 per cent of the subject/unit's assessment. The other 80 per cent is other assessment such as an essay, seminar participation, or an exam.

The teaching and learning activities involved in the simulation exercise, consist of:

- 1) student national statements, prepared prior to the simulation;
- 2) participation in the negotiation, which may include drafting a treaty options text, brainstorming other solutions, and drafting a final decision text if agreement is reached; and
- 3) participation in the class debrief or, as was the case in the most recent instance, preparation of a reflective journal requiring students to reflect on the simulation.

Table 1 aligns the specific activities with the learning outcomes for the simulation, and also sets out how these activities are linked to assessment. The two key pieces of assessment are the national statement drafted individually by students prior to the negotiation, which forms five per cent of students' grade for the subject, and participation in the simulation and debrief discussion, which forms 15 per cent of the total mark for the subject. Assessing performance in the simulation has been a successful way of motivating students to participate in the simulation, with marks allocated commensurate with the quality of their participation.<sup>40</sup>

Students are provided with materials prior to the negotiation so that they can fully prepare for the negotiation in advance. Materials must be selected with care, however. In previous versions of this simulation, students were provided with a pre-prepared chairperson's options text rather than required to draft their own. However, this resulted in students' participation in the negotiation process being too passive. The simulation has therefore been amended so that students are given the opportunity to brainstorm potential solutions to resolve the negotiation. A sample chairperson's options text is provided to students as an example of the approach taken by the UNFCCC to resolve deadlocks in negotiations. (Alternatively, students may be expected to draft their own options text if time allows.) This approach works particularly well as it allows students more ownership over the simulation and to exercise greater creativity, while also illustrating an approach taken in 'real life' negotiations. In particular, requiring students to think of their own solutions to resolving the negotiation allows students to better demonstrate their level of performance with respect to the ILO's of 'apply negotiation skills in a simulated environment' and 'solve problems and deadlocks in the negotiation process through knowledge

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<sup>40</sup> The distribution of marks set out in the text is slightly different from what was used when the simulation was last implemented which involved rolling together participation in the simulation and the class participation mark for the semester. Separating the mark for participation in the simulation from the overall seminar participation mark makes it clearer to students exactly how particular activities are to be assessed.

of country positions, use of compromise and generation of options' in the table above.

Assessing students' ability to critique their own performance and that of the class as a whole through the class debrief promotes self-reflection and self-assessment as important tools for sustainable learning.<sup>41</sup> For students to become and remain effective learners when they enter professional practice, '...the goal must always be that students themselves can learn to judge for themselves what constitutes good work and be given opportunities to practice this skill.'<sup>42</sup> Where time is lacking, an alternative to a class debrief is a reflective journal exercise where students are required to reflect on their participation in the activity. In the most recent iteration of the simulation, students were required to write a reflective journal relating to the entire unit, including the simulation exercise. This was an assessed piece of work, which encouraged students to think critically about their participation in the simulation and the benefits they gained.

### B *Skills and Knowledge Fostered*

This negotiation exercise aims to foster some generic skills, including oral communication and public speaking, as well as some of the more specific skills related to negotiation that are rarely taught in international law.<sup>43</sup> The exercise aims to make students aware of the challenges in reaching international agreement on a complex issue of an inherently international nature.

The exercise can provide an excellent springboard for a discussion of what makes a good negotiator as well as the ingredients for a successful negotiation. One key element in successful negotiation strategies is the focus on 'interests' rather than 'positions'. Fisher, Ury and Patton provide a useful illustration of this, which forms part of the theoretical component presented to students before the simulation. Students are asked to consider two children who both want the last orange in the house. If each child adopts a positional approach, they are likely to 'split the difference' and each end up with half an orange. A better approach may be to focus on the *interests* involved. If one child wants the orange rind to bake a cake, and the other child wants the pulp to make an orange drink, they may agree that one of them takes the rind and the other the pulp, leading to a much more satisfactory outcome.<sup>44</sup>

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<sup>41</sup> David Boud and Nancy Falchikov, 'Aligning Assessment with Long-Term Learning' (2006) 31 *Assessment & Evaluation in Higher Education* 399, 404.

<sup>42</sup> Ibid.

<sup>43</sup> McCormack and Simpson, above n 3, 80.

<sup>44</sup> Roger Fisher, William Ury and Bruce Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (Penguin Books, 3<sup>rd</sup> ed, 2011) 58-9. This orange illustration is sometimes attributed to Mary Parker Follett, but Deborah M Kolb attributes it to Robert House. See Deborah M Kolb 'The Love for Three Oranges Or: What did We Miss About Ms Follett in the Library?' (1995) 11 *Negotiation Journal* 339-48; Donald D Bowen, Roy J Lewicki and Francine S Hall, *Experiences in Management and Organizational Behavior* (1982, 2<sup>nd</sup> ed, Wiley) 130-3.

Of course, there are limitations to this approach, as outlined in the discussion of conceptual lessons learned below. Fisher, Ury and Patton's model of interest-based negotiation relies on negotiation on the basis of interests rather than positions. It also emphasises the need to generate a variety of options for mutual gain 'that advance shared interests and creatively reconcile differing interests.'<sup>45</sup> The exercise demonstrates this technique through the use of a Chairpersons Options Text. In the negotiating exercise described below, both country *positions* and *interests* are set out to facilitate agreement.

In summary, the key skills to be developed through the simulation are as follows:

#### A: Generic skills

- (1) Oral communication
- (2) Advocacy
- (3) Teamwork
- (4) Writing

#### B: Specific negotiation skills

- (1) Identifying and using interests as well as positions in the negotiation process
- (2) Generating and using helpful options
- (3) Using 'issues linkage' and 'trade-offs' to generate consensus
- (4) Working within the limitations of the multilateral treaty-making system
- (5) Using 'constructive ambiguity' in facilitating consensus

Apart from item B(4), these skills are applicable in *any* negotiation context, illustrating one aspect of the transferability of this exercise.

In addition to the generic and negotiation-related skills identified above, the treaty simulation also aims to foster substantive or doctrinal knowledge, which can be summarised as follows:

#### C: Substantive knowledge

- (1) Understanding the international negotiation process
- (2) Applying the central concepts of international environmental law to a climate change treaty negotiation
- (3) Understanding climate justice concepts including common but differentiated responsibilities and intergenerational equity

This exercise improves students' understanding of how international treaties are drafted, and increases their understanding of the difficulties in interpreting and implementing multilateral treaties. McCormack and Simpson, for example, note that there has been little emphasis on exploring the methods by which treaties emerge in the

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<sup>45</sup> Fisher, Ury and Patton, above n 44, 12.

teaching of international law.<sup>46</sup> However, they also suggest that understanding this process enables a greater comprehension of the 'political context in which international law operates and the legal forms which international law adopts and utilises'.<sup>47</sup> A good example of such a form is the frequent inclusion of 'constructive ambiguity' in treaties, where ambiguous language is included to mask conflicting positions between countries.<sup>48</sup>

While the simulation can be used to teach negotiation skills and an understanding of the multilateral negotiation process, the exercise also provides an excellent platform for the teaching of the key concepts of international environmental law (such as those included in Article 3 of the UNFCCC). Without claiming that the simulation is always a *better* tool for teaching conceptual knowledge compared to a traditional lecture format, experience has shown that this exercise is an *effective* tool. Moreover, as explained earlier, the literature establishes that the concepts learnt through a simulation exercise will be better retained by students and that students will generally be more engaged with the lesson.<sup>49</sup> Students build their knowledge through the research conducted as part of drafting their national statements, making interventions throughout the negotiation process and learning from each other through working collaboratively.<sup>50</sup> Ideally, key concepts of environmental law will be outlined earlier in the course so that students can reinforce and enhance their knowledge through applying them during the negotiation. The simulation exercise described in this article thus includes a brief lecture prior to the exercise outlining these key concepts.

Although the application of international environmental law concepts to a climate treaty negotiation (in C(2) above) refers to knowledge specifically relevant to an international environmental law subject, this exercise can still be adapted to other relevant subjects. This would require providing students with a brief outline to help them understand the basics of international environmental law but without requiring extensive research. Hart provides a useful resource for this purpose.<sup>51</sup> Alternatively, the simulation materials can be updated by

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<sup>46</sup> McCormack and Simpson, above n 3, 61.

<sup>47</sup> Ibid 61-2.

<sup>48</sup> Itay Fichhendler, 'When Ambiguity in Treaty Design Becomes Destructive: A Study of Transboundary Water' (2008) 8(1) *Global Environmental Politics* 111, 111.

<sup>49</sup> Krain and Shadle, above n 11, 52; Pettenger, West and Young, above n 10; Druckman and Ebner, above n 15.

<sup>50</sup> The key text prescribed to students in international environmental law is Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (Cambridge University Press, 3<sup>rd</sup> ed, 2012). Further resources include: Daniel Bodansky, *The Art and Craft of International Environmental Law* (Harvard University Press, 2011); Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment* (Oxford University Press, 3<sup>rd</sup> ed, 2009); Alexander Zahar, Jacqueline Peel and Lee Godden, *Australian Climate Law in Global Context* (Cambridge University Press, 2013); David G Victor, *Global Warming Gridlock: Creating More Effective Strategies for Protecting the Planet* (Cambridge University Press, 2011).

<sup>51</sup> Craig Hart, *Post-2012 Climate Change Negotiation Simulation* (11 January 2009) IUCN Academy of Environmental Law <[www.iucnael.org/en/documents/656-hart](http://www.iucnael.org/en/documents/656-hart)>

utilizing the same format but modifying the content of the negotiation. The conceptual knowledge that can be developed in this simulation exercise is outlined below in greater detail. Importantly, however, these concepts are broadly applicable to all international negotiation situations.

### 1 *Limitations of the Multilateral Treaty-making System*

The negotiation exercise demonstrates various limitations of the multilateral system. These limitations include the fact that the multilateral system generally works on the basis of *consensus* decision-making. As a result, the process is limited by the position of the most conservative delegation and risks ending up with ‘lowest common denominator’ results.<sup>52</sup> The process has been compared to a fleet of ships: ‘The old adage applies: the convoy cannot go faster than the slowest ship. And what is worse, the slowest ship may be deliberately stalled in the water or sail off course...’.<sup>53</sup>

Given the constraints of consensus-based decision-making, it seems almost miraculous that agreement is reached at all. Where consensus does occur, political scientists have used the concept of ‘epistemic communities’ to explain consensus outcomes. According to this theory, developed by Peter Haas, consensus is developed by a group of scientists/bureaucrats located in different government delegations and an international Secretariat sharing a common vision.<sup>54</sup> Through a negotiation process, this common vision is translated into a treaty consensus. This theory was originally developed in relation to the negotiation of Mediterranean environment agreements.<sup>55</sup> The theory can also be used to explain why consensus outcomes in multilateral climate change treaty negotiations have been of a rather modest nature.

### 2 *Outcome: Whose Interests and Positions?*

In this negotiation exercise, it is worthwhile for students to analyse the outcome in terms of its relationship to the interests and positions of the various countries involved. The outcome of a multilateral treaty negotiation may be closer to the position of some countries than others: no country ever attains all of its objectives, and compromises are always required.

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climate-diplomat-negotiation/file>. Further helpful environmental law texts are mentioned at note 50 above.

<sup>52</sup> John C Dernbach, *Stumbling Toward Sustainability* (Environmental Law Institute, 2002).

<sup>53</sup> Morris Miller, ‘Mega UN Conferences: Help or Hindrance?’ in Asit K Biswas and Cecilia Tortajada (eds), *Impacts of Megaconferences on the Water Sector* (Springer, 2009) 23, 30–31.

<sup>54</sup> Peter Haas, ‘Epistemic Communities’ in Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds), *Oxford Handbook of International Environmental Law* (Oxford University Press, 2008) 791, 798–802.

<sup>55</sup> *Ibid.*

Teachers can encourage students to consider the outcome, by providing examples in which a focus on the ‘interests’ rather than ‘position’ of delegations has facilitated consensus. One example is the ‘interests’ of the EU in demonstrating ‘green’ credentials in a forthcoming election. This interest can lead to a willingness to compromise rather than allowing the negotiation to fall apart.

### 3 *Success or Failure?*

A further lens for examining the outcome is whether it can be considered a success or failure against some agreed criteria.<sup>56</sup> Much will depend on the choice of criteria. If the key criterion was to reach agreement on making binding nationally determined emission commitments, the negotiation might be considered a success. However, if the criteria were more broadly couched to include agreement on a structure and process for reducing greenhouse gas emissions into the future, a different answer might be given. Students can compare the results of their negotiations with recent decisions under the Ad Hoc Working Group on the Paris Agreement (keeping in mind the issues in the decisions do not align exactly with issues in the negotiations).<sup>57</sup>

### 4 *Limitations of an Interests-Based Approach*

The exercise can be a useful basis for class discussion of the limitations of an interest-based approach. Wolski has pointed out that

interest-based negotiation assumes that ‘the pie can be expanded’ by focusing on interests and inventing alternative solutions that leave everyone satisfied. However, in real life the opportunity to ... meet the interests of all the parties might be limited, [particularly when] interest or values conflict, there is one critical issue involved and objective criteria for measuring success of the negotiation are difficult to identify.<sup>58</sup>

Of course, the negotiation exercise is a simplification. In reality, there would be close to 200 countries participating. Outcomes would be very much affected by ‘power politics’ relations between various countries, with more powerful countries exerting bilateral leverage on less powerful countries through various means, including by strategic influence as well as trade and development assistance leverage and inducements. Nonetheless, students can experience some of the challenges of an interests-based approach.

### 5 *Issues Linkage*

Another lesson from the exercise includes the use of ‘issues linkage’ to generate consensus agreement. For example, in the example

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<sup>56</sup> Fisher, Ury and Patton, above n 44, 81.

<sup>57</sup> United Nations Framework Convention on Climate Change, above n 1.

<sup>58</sup> Bobette Wolski, *Legal Skills: A Practical Guide for Students* (Lawbook, 2006) 403 (citations omitted).

chairperson's options text, the chairperson was able to take advantage of a link made by delegations between the target and fund issue. Thus contributions to the Green Climate Fund becoming mandatory for developed countries was made *conditional* on China and India taking on increased emission reductions in their nationally determined contributions (30 per cent by 2030 with a 1990 baseline).

## 6 *Generation of Options*

The 'generation of options' is also a key strategy for attaining agreement. The chairperson's options text is a good example of this in a multilateral negotiating context. As mentioned above, students were asked to brainstorm potential solutions to resolving the negotiations. A sample chairperson's options text was then provided as an example of the approach often taken by the UNFCCC to move negotiations along. Alternatively, students might be asked to draft an options text themselves, using the sample chairperson's options text as guidance. Discussion can involve considering any other options that would have been possible to facilitate consensus.

## 7 *What makes a Good Negotiator?*

A valuable discussion may be had about what makes a good negotiator. Clearly, there is no single negotiating style, and various approaches have proven successful in particular circumstances. At the same time, some common elements of successful negotiating approaches include separating the people from the problem, effective communication (including active listening), identifying your interests as well as the interests of the other participants, generating options for compromise, and not giving ground prematurely.<sup>59</sup> Instructors can stimulate student awareness of these issues by asking students to evaluate both their own performance and the performance of their fellow students. Questions such as 'what would you do differently next time?' can provoke reflection on the student's own performance based on what they perceive to be a good negotiator.

## 8 *Ethics and Justice Principles*

The most severe impacts of climate change will be felt by future generations who had no part in causing the problem.<sup>60</sup> This presents a unique ethical challenge when trying to induce present day governments to commit to climate change mitigation measures, most of the benefits of which will not be experienced by the present generation.

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<sup>59</sup> Fisher, Ury and Patton, above n 44.

<sup>60</sup> Edward A Page, *Climate Change, Justice and Future Generations* (Edward Elgar, 2006); Stephen M Gardiner, 'Ethics and Global Climate Change' (2004) 114 *Ethics* 555; Stephen M Gardiner et al (eds), *Climate Ethics: Essential Readings* (Oxford University Press, 2010) 3; Peter Lawrence, *Justice for Future Generations: Climate Change and International Law* (Edward Elgar, 2014) 1.



Various justice principles have been proposed as a basis on which emissions reduction targets could be devised. These have included the *responsibility for harm* principle<sup>61</sup> and the *capacity to pay* principle.<sup>62</sup> The *responsibility for harm* principle in particular is likely to arise in the course of this treaty negotiation simulation, whether explicitly or implicitly, as non-industrialised countries argue that they should not bear the burden of mitigating the warming caused by historic emissions predominantly from industrialised countries and that they should receive funding to support their efforts to mitigate and adapt to climate change.<sup>63</sup> A host of possible responses to this argument may also arise during the simulation, such as that industrialised countries should not be responsible for emissions that occurred at a time when there was no knowledge of the possibility of harm, or that non-industrialised countries have benefited from the emissions of industrialised countries through technological development.

According to McCormack and Simpson, reflective practice after a simulation exercise ‘includes a moral element in which the participants think about their ethical responsibilities as actors within a certain process.’<sup>64</sup> Students should discuss the extent to which the idea of intergenerational justice, as well as principles such as responsibility for harm, impacted upon their negotiation. Students should consider whether non-government organisations (NGOs) or particular country delegations played a role in advocating ethical or justice-based arguments and whether these arguments were reflected in the outcome of the simulation. This provides an interesting insight into the extent to which an interests-based approach to negotiation aligns with principles of ethics and justice. While the comments made here relate to ethics and justice in the climate change context, similar issues could be addressed in simulations relating to other areas of international concern, such as arms control or disarmament. Indeed, it is important to explain to students that many of the lessons outlined above are relevant to *any* negotiation, not just international treaty negotiations.

#### IV THE SIMULATION: IMPLEMENTATION

Shanahan and Benfer argue that in a clinical learning environment, adopting a ‘systematic approach to planning and strategic thinking’ when constructing clinical teaching methods assists with classroom situations which are unfamiliar, and where a teacher’s instincts fail as a result.<sup>65</sup> As a clinical environment that is very much student directed and has no set outcome, involving both student self-critique and teacher feedback through assessment,<sup>66</sup> this simulation will, to an extent,

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<sup>61</sup> Lawrence, above n 60, 82–3.

<sup>62</sup> Ibid 86.

<sup>63</sup> Ibid 82.

<sup>64</sup> McCormack and Simpson, above n 3, 81.

<sup>65</sup> Colleen F Shanahan and Emily A Benfer, ‘Adaptive Clinical Teaching’ (2013) 19 *Clinical Law Review* 517, 518.

<sup>66</sup> Office for Learning and Teaching, above n 6, 10.

always result in an unfamiliar situation. Thus this part of the article sets out a systematic, step-by-step guide to running the simulation exercise to give the exercise structure and define its parameters. This structure is also helpful for teachers who do not have experience in international negotiations. The design of the simulation itself benefits from the extensive experience of the authors in UN negotiations, but the simulation can easily be run by a teacher without such experience using the following structure as a guide.

### *A Preparations*

The negotiation exercise is designed as a self-contained exercise that can be used in a two-hour class with a 10 minute break in the middle. With very little adaptation, it could be used for classes of between 20 and 80 students simply by having greater numbers of students for each delegation, with students taking turns at making interventions.

Prior to the negotiation simulation, students are provided with various materials: (1) a mandate for the negotiations under the *Ad Hoc Working Group on the Paris Agreement (APA)* that describes the general parameters of the negotiation, (2) a fictitious UN resolution from which the students can derive material for their interventions, (3) a set of principles from the United Nations (UN) *Framework Convention on Climate Change* and the Paris Agreement, and (4) simplified rules of procedure.<sup>67</sup> This material is distributed to students prior to the class so that they can prepare fully before participating in the negotiation itself.

The final element of preparation is to prepare an appropriate number of copies of (1) delegations' 'confidential' negotiating positions, (2) the Chairperson's options text, and (3) secret instructions.<sup>68</sup>

Before starting the negotiation, the nameplates for each country and the instructions indicating the positions of each delegation are handed out to students, mentioning the importance of not showing these positions to other delegations. Further, a brief lecture is given setting out the key environmental law concepts to be learned through the exercise, and the UNFCCC negotiations process. The mandate is carefully explained, as well as the Article 3 principles of the UNFCCC and the fictitious UN resolution, emphasizing that in their interventions students should draw on these materials. The 'mandate' for the negotiations sets the parameters within which the negotiation process takes place. The (much simplified) Rules of Procedure are also briefly explained, pointing out that a vote is almost never called in the 'consensus approach' used in multilateral negotiating. According to this 'consensus approach', the Chairperson of the negotiations seeks to obtain agreement for a proposed text. 'Consensus' in this context means that delegations are willing to go along with a particular proposal or text

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<sup>67</sup> Readers can find a set of materials accompanying the online version of this article, on the website of the *Legal Education Review*.

<sup>68</sup> These form part of the materials available online.

without formally objecting by raising their country nameplate. Thus delegations may not necessarily agree with all aspects of a proposed treaty text, but nevertheless be willing to go along with the consensus as it represents an overall good ‘package deal’, with the positive aspects outweighing the negative in terms of a particular country's interests. Finally, it is important to mention that the usual practice is for NGOs and industry representatives to speak at the end of each agenda item.

At this stage it is also necessary to outline a few ‘rules of the game’. These include the following:

- (1) Hold up your nameplate if you wish to speak. Interventions may only be made in English as there are no translation facilities!
- (2) Keep interventions short as we telescope a two-three week long negotiation session with several years of lead-up into two hours.
- (3) Interventions should be formal, e.g. ‘my delegation submits that...’, or ‘my delegation's position is...’
- (4) If you disagree with another delegation say: ‘my delegation respectfully disagrees with the distinguished delegate of...’ No swearing or personal attacks on other delegations will be permitted.

The following ‘rules of the game’ relating to delegation instructions are also explained:

- (1) ‘Stick to your instructions.
- (2) Do not show your instructions to another delegation.
- (3) Please do not go beyond your position as set out in your instructions whatever your personal view!
- (4) If a proposal is made for which you do not have instructions, tell the meeting that you will have to consult with your capital before expressing a position. ‘Secret instructions’ in envelopes will be provided at this point.’

Finally, a few general points about negotiating strategy are mentioned. These include the importance of negotiators never revealing their bottom line. Also crucial is the strategy of initially pushing hard—beyond the negotiator’s position—and then showing a willingness to compromise within that negotiation position. It is essential for students to make an assessment as to both the interests and position of other delegations, in a context where each delegation has imperfect knowledge.

Within these instructions, the negotiation structure is also established:

- (1) Up to the break, try to come as close as possible to agreement.
- (2) After the break, reach final agreement.
- (3) Final discussion and analysis of the exercise

## B *The Negotiation*

### 1 *Phase 1: Electing the Chairperson and Proposing the Agenda*

The first step is to elect a chairperson for the Negotiating Committee. To keep the process simple, it is suggested that the teacher elects herself or himself as chairperson. If the negotiation process is going to be run over a longer period of time, it would be a valuable experience to give individual students the opportunity of chairing the committee.

To keep the negotiation manageable the chairperson should propose that the agenda comprise the following three issues:

- 1) The binding nature of Nationally Determined Contributions under the Paris Agreement.<sup>69</sup>
- 2) The establishment of a Commissioner for Future Generations.
- 3) Finance, technology development and transfer issues.

After the agenda has been accepted, the chairperson should open the floor for interventions by delegations on the issue of Nationally Determined Contributions.

### 2 *Phase 2: Interventions*

At this stage, students will be invited to make interventions drawing on their instructions, beginning with country statements. These instructions are deliberately simplified to keep the negotiation exercise manageable. There are only five differing country positions: (1) the EU, Australia, New Zealand and the UK, (2) the US, Japan and Norway, (3) China, (4) India, and (5) the Alliance of Small Island States (AOSIS).<sup>70</sup>

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<sup>69</sup> The Paris Agreement requires parties to submit 'Nationally Determined Contributions' (NDCs) which include, among other things, their greenhouse gas emissions reduction targets. Countries choose their own NDCs, which are to be reviewed and scaled up every five years. This represents a departure from the top-down approach under the Kyoto Protocol, which set top-down binding greenhouse gas emissions reduction targets for developed countries. A previous version of this simulation required students to negotiate the level of binding emissions reduction targets, however given the new bottom-up approach of the Paris Agreement where targets are not negotiated at the international level, the focus of the simulation exercise is now on whether countries' emissions reduction targets should be legally binding.

<sup>70</sup> This relatively small cross-section of the international community reflected the small student cohort with which the simulation was most recently conducted. Further positions can easily be added to ensure a wider spectrum of countries including, for example, countries from Africa, Central and South America. The country position instructions are set out in the supporting annexures available with the online version of this article, on the website of the *Legal Education Review*.

### 3 *Phase 3: Introduction of Chairperson's Text*

Once the delegations have been given an opportunity to put their positions on each of the three agenda items, there will inevitably be a deadlock in the negotiations. At this stage students are asked to brainstorm potential solutions to resolve the negotiations. The sample chairperson's options text is used as a reference to explain the approach to resolving negotiation deadlocks used in 'real life' negotiations.

In our observation, this brainstorming session often gives rise to some creative and clever ideas. The teacher may choose to either allow the class to adopt one of these ideas to carry the negotiations forward or table the chairperson's options text (or both). If the text is tabled, it is useful to call a 10 minute break to allow the delegations to consider the options proposal.

### 4 *Phase 4: Interventions – 'Secret Instructions'*

During this next phase, the delegations are to use their fallback instructions, which will require the delegations to state that they cannot accept the proposals 'without consulting with their capital'. Again, a deadlock will be reached. 'Secret instructions from capitals' (i.e. respective governments) are distributed to all of the delegations in envelopes.

### 5 *Final Phase*

If agreement has been reached, the students may draft a final decision text at this stage. However, it is not essential to actually reach a conclusion to the negotiation. Indeed, where the negotiation does not reach a final conclusion, this can provide a valuable point for discussion and analysis.

### 6 *Final Discussion — Reflection*

At the conclusion of the negotiation, to maximise the educational benefit of the exercise, it is essential to have a thorough discussion. Without an effective debrief, the learning opportunities raised by the exercise may be missed as 'experiential learning frequently occurs after, rather than during, an exercise.'<sup>71</sup> Potential questions to stimulate discussion include the following:

- 1) Did the consensus approach lead to a satisfactory result?
- 2) Was the outcome a 'lowest common denominator' outcome?
- 3) How precise is the language in the final text?

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<sup>71</sup> J S Lantis, 'Simulations and Experiential Learning in the International Relations Classroom' (1998) 3 *International Negotiation* 39, 56, quoted in Kille, above n 8, 280.

- 4) Did coalition building occur in the sense of delegations grouping together to exert greater leverage in the negotiations?
- 5) What was the Chairperson's role?
- 6) How democratic is the multilateral process?
- 7) Did each participating state have equal leverage in the process?
- 8) What trade-offs and compromises occurred?
- 9) Did any questions of ethics or justice arise during the negotiations?

While this is an important step, if time is short a reflective journal option, as described earlier, is an alternative way in which to gain the benefits of a debrief session.

## V STUDENT PERSPECTIVES

### *A Student Feedback*

This simulation exercise has been used on many occasions in substantially the same format, but adapted each time to the particular class and number of students participating. The most recent iteration has been updated to reflect the recent adoption of the Paris Agreement to ensure the simulation can be grounded in current developments in international environmental law. Following this simulation, students were asked to complete a questionnaire.<sup>72</sup>

While we have identified in the literature above some clear learning benefits from simulation exercises, the questionnaire was not designed to put these findings to the test or to compare the learning outcomes of a simulation exercise to teaching through a standard lecture format. The questionnaire was instead designed as a feedback tool to identify whether students in this simulation felt engaged in the exercise, and whether they felt they benefited from the exercise. This is a useful way to identify whether any improvements can be made to the exercise in future to ensure it lives up to the benefits espoused in the various studies outlined above. With this in mind, the questionnaire provides useful qualitative data indicating that students found the simulation exercise to be both engaging and useful in learning skills and conceptual knowledge.

Thirteen students completed the questionnaire,<sup>73</sup> and of these, eight strongly agreed, four agreed and only one disagreed with the proposition that the treaty simulation made them feel more engaged in learning the material than if the same information had been conveyed through a tutorial presentation, lecture or essay. One student commented that the simulation 'forced me to stay focused', while another commented that 'I felt that I understood the content at the end

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<sup>72</sup> Ethics approval was obtained for this from the University of Tasmania (H0015668 of 13 April 2016).

<sup>73</sup> This was out of 37 students enrolled in the unit. 15 students attended class on the day of the simulation and participated in the simulation. By assessing participation in the simulation a higher level of participation could be ensured. See note 40 above.

of the activity. Much more engaged with the topic'. This is in line with the consensus in education literature that simulations improve student engagement. Similarly, seven students strongly agreed, five students agreed and one student disagreed with the statement that the treaty simulation exercise was an enjoyable learning experience. One student commented that 'working together in groups was fun' and enabled students to 'share ideas and look at different perspectives' which suggests simulations can also enable an added level of learning as students learn from one another as well as the lecturer.

With respect to the learning of content, seven students agreed, five strongly agreed and one was neutral with respect to the statement that the treaty simulation exercise helped them understand the process whereby international environmental agreements are negotiated. More specifically, eleven students either agreed or strongly agreed with the statement that 'Through the negotiation simulation exercise, I now have a good understanding of the use of issues linkage as a mechanism to facilitate consensus.' Ten students agreed or strongly agreed that the simulation exercise deepened their understanding of principles of international environmental law and justice/ethics relevant to the global climate regime. However, three students answered 'neutral' to this question with one student stating '[t]here didn't seem to be a large focus on ethics', suggesting that perhaps it was not always obvious when ethical issues arose in the negotiation simulation, something which may require greater emphasis in the future.

Three further questions related to the learning of content, specifically: 'through the treaty simulation exercise I now have a good understanding of the distinction between negotiation positions and interests'; '... I now have a good understanding of why treaties often include 'constructive ambiguity' to facilitate agreement'; and '...I now have a good understanding of the generation of options as a mechanism to facilitate consensus.' As with all of the questions, responses to these statements were heavily weighted towards the 'strongly agree' and 'agree' end of the spectrum. However, interestingly, there were different responses amongst the students. For example, one student agreed with respect to both understanding the distinction between negotiation positions and interests, and understanding the generation of options but disagreed with respect to understanding 'constructive ambiguity', while another answered neutral to the first two statements and 'agreed' with respect to 'constructive ambiguity'. This may simply reflect the fact that some students already had a base understanding of certain concepts while others did not, or the fact that different students find different concepts easier to understand based on pre-existing knowledge and their individual learning styles.

With respect to the learning of skills, twelve students agreed or strongly agreed that '[t]hrough the negotiation simulation exercise I now have a good grasp of some basic negotiation techniques'. While this does not measure actual skill acquisition, it again shows that at the very least students *perceived* that they gained a greater grasp of negotiation techniques.

### *B Possible Improvements and Adapting the Exercise for Different Classes*

Student responses to the questionnaire provided some useful suggestions for improvements. One suggestion was to make the simulation longer to make greater progress through the negotiation process. This comes back to the time/coverage of content trade-off outlined above. This trade-off will always exist, however where there is time to make the simulation longer than the two hour exercise described in this article, students have a better opportunity for even deeper engagement in the activity, to explore more options, and to ensure the entire process is carried through to completion. The length of the simulation in any class will simply depend on the amount of time available and the amount of content needing to be covered.

A second suggestion was to provide an introduction on the conflicting interests of the various parties to assist students in developing their arguments. An alternative to this would be to provide some basic reading material (such as some of the material suggested below) to students to read before the simulation to ensure they have a basic grasp of the positions of country parties. This is not strictly necessary, however, as in this simulation exercise students are provided with a summary of the positions of the parties they are representing and these positions do not necessarily reflect accurately the positions of those parties in the actual negotiations process. This suggestion could therefore also be addressed by making clear that for the purposes of the simulation a more in-depth understanding of actual country party positions is not necessary.

Ultimately the importance of this depends whether an understanding of country positions is part of the conceptual knowledge to be imparted through the exercise. For example, if the exercise is to be run in an international relations class a greater emphasis on actual country party positions and an attempt to closely reflect current positions may be more important. Another student suggested that the lecturer could also take a position to give an example of what a party's statement should look like. This could be useful for future simulations: Tyler and Cukier argue that students can learn negotiation skills by observing experts.<sup>74</sup> An example statement or intervention by the lecturer could provide students with a model by which to measure and shape their own negotiation skills.

Previous iterations of this exercise have included a debrief session at the end and this is included as a step in the exercise above. The importance of a debrief session and post-simulation reflection has already been highlighted as essential to crystallising the learning students have done during the simulation exercise. The most recent occasion on which the exercise was run fell short of time to run a debrief or reflections session. However, a component of the assessment for the unit was a reflective journal in which students reflected on the course

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<sup>74</sup> Tyler and Cukier, above n 18, 77.



generally, as well as their personal progress in the course, including the simulation exercise. This provides an alternative way in which to ensure post-simulation reflection if timing is an issue. To reinforce the key lessons, students could be required to reflect on specific questions such as those set out above.

The content of the simulation exercise has been kept simple to focus on the teaching of negotiation skills and the key environmental law concepts aimed to be conveyed in this class. This simplicity also enables it to be easily modified for different subject matter. The format of the materials provided to students could easily be adapted, for example by retaining the structure of setting out countries' positions and interests on three key issues, a sample chairperson's options text and secret instructions on each of the three key issues, and simply choosing three different issues and modifying the content accordingly. On previous occasions when this simulation exercise was run, it was based on the Ad Hoc Working Group on the Durban Platform for Enhanced Action, which was mandated to develop a new international climate agreement. With this having been achieved in Paris in December 2015, the materials were updated to reflect these developments, with the current materials being based around negotiations under the Paris Agreement.

A final possible improvement would be to allocate a standalone participation mark for students' performance in the simulation separate from general class participation. This would enable assessment criteria to be tailored specifically to the simulation activity and possibly encourage even greater student engagement because students might be more motivated to participate actively and thoughtfully in the simulation if they know they will receive a separate grade for it.

### *C Relevant Teaching Materials*

In addition to the step-by-step guide to running this simulation outlined in this article, there are a number of other helpful resources to assist with designing and implementing simulation exercises.

Harvard's Program on Negotiation (PON) has an extensive range of resources for the teaching of negotiation skills, including a variety of books on the subject as well as a selection of role-play simulations.<sup>75</sup> PON also publishes a negotiation journal<sup>76</sup> and provides a selection of articles and case studies.<sup>77</sup> The International Union for the Conservation of Nature (IUCN) Academy of Environmental Law provides on its website the syllabi for many courses relating to climate change and material relating to the teaching of negotiation in

<sup>75</sup> See Program on Negotiation, *Welcome to the Teaching Negotiation Resource Center* <<http://www.pon.harvard.edu/store/>>. Note, however, that only one of the simulations relates to a multilateral treaty, the *Global Management of Organochlorines* simulation.

<sup>76</sup> Program on Negotiation, *Negotiation Journal* <<http://www.pon.harvard.edu/publications/negotiation-journal/>>.

<sup>77</sup> Program on Negotiation, *Case Studies & Articles* <<http://www.pon.harvard.edu/shop/category/case-studies-articles/>>.

international environmental law.<sup>78</sup> There are also numerous examples of materials used in various simulation exercises relating to climate change which could be useful in supplementing the materials provided with this article or varying the simulation outlined in this article, for example if more time is available in which to conduct a longer simulation.<sup>79</sup>

## VI CONCLUSION

This article has set out instructions for a pre-prepared, ready to use set of materials designed to teach negotiation skills and conceptual knowledge of international environmental law. As both the literature and student feedback indicate, simulation exercises improve student engagement and therefore student learning outcomes. This simulation is an excellent way to pique students' interest in the international treaty negotiation process, especially as it relates to climate change. It is a useful exercise to break up the routine of traditional lecture-style teaching while developing important practical negotiation skills. The resources, instructions and suggestions included throughout this article are designed to make it easy to implement and flexible enough to adapt to any relevant university subject.

The simulation exercise in this article seeks to answer the calls for more practical skills development in universities in a manner that is time effective and does not involve a compromise in the coverage of course content. It has further benefits with respect to teaching, and increasing student retention of, the key concepts of international environmental law. The design of this simulation exercise has the advantage of being based on one of the authors' practical experiences in negotiating treaties as well as reflecting insights from the academic literature.

Given the potential of simulations to unlock student engagement, which is central to sound pedagogy, greater research on treaty simulations could assist with more widespread incorporation of such exercises into legal education. Research could usefully focus on two areas. Firstly, it could focus on whether simulations are a superior tool

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<sup>78</sup> IUCN Academy of Environmental Law, *Climate Law Teaching Resources* <<http://www.iucnael.org/en/online-resources/climate-law-teaching-resources.html>>.

<sup>79</sup> Helpful examples include an article by Hart, containing a package of materials related to climate science and climate change negotiations which would be useful for students wishing to prepare for the negotiation (Hart, above n 51), and Wood and Romaniuk's instructions for a simulation taking place over three classes of three hours each (Wood and Romaniuk, above n 3). Valuable sources for students to further develop their climate change knowledge in preparation for the simulation exercise include United Nations Framework Convention on Climate Change, *Home* <<http://unfccc.int/2860.php>>; see especially United Nations Framework Convention on Climate Change, *Submissions from Parties* <[http://unfccc.int/documentation/submissions\\_from\\_parties/items/5900.php](http://unfccc.int/documentation/submissions_from_parties/items/5900.php)>; see also Centre for Climate and Energy Solutions, *International* <http://www.c2es.org/international>, which contains a rich source of legal policy material on the subject.

for teaching about the *process* of multilateral treaty negotiation. Secondly, future research could focus on analysis and empirical testing of the effectiveness of assessment options designed to assess both students' negotiation skills and knowledge of substantive content (including, for example, the use of a reflective journal). Bringing diplomacy into the classroom involves many challenges but also potentially rich rewards, both for students and teachers.