Module 1 Simulation 1:

Your participation in the on-line simulations and debates is optional but highly encouraged as it will help bring the course to life!  For this (and subsequent simulations), those enrolled in this course will be divided up into two groups, by first letter of your last name.  Last names beginning with the letters A through H will be in **Group A**; letters I through Z will be in **Group B**.  This will ensure that a roughly equal number of students participate on each side of an issue throughout the course.

Based on the reading materials herein, members of Group A are invited to submit a short written opening argument on behalf of the Prosecution of Nazi Minister of Justice Schlegelberger (the defendant upon which Spencer Tracy’s character was modeled) in the Alstoetter Case, which is described in the readings below. Your argument should cover the justification for prosecuting the German judges, the law that applies to their crimes, and responses to the defense argument that prosecuting them would be unfair.

Members in Group B will represent the Defense.  You are invited to submit a short written opening argument that argues that the judges on trial committed no crime, they just applied the law; and that prosecution of them before the military tribunal is unfair.

Given my last name begins with W, I am forced to take the side of this issue of the Defense on this issue, the side played by Maximillion Schell, as Heir Ralph, the Defense Council for the Nazi Judges, and won him an Academy Award. I apologize for quoting Maximillion Schell here to express this view, but he did it so well that he earned a Best Actor Oscar, and I could not improve on it.

The following is quoted from Heir Ralph, played by Maximillion Schell: The Nazi Judges were following Adolf Hitler’s orders, and if the German Judges are responsible, then we are all responsible. He said that the German people were not aware of all that was going on, and what was shown in the shocking films was unfair, since they are not stating specific facts upon those standing trial, but introducing hearsay evidence that may not be specific against these standing trial, although these atrocities did happen. Heir Ralph said that the secrecy of the operations, geographic locations of camps, the break downs of communications during the last days of the war, when the exterminations rose into the millions, were brought on by just a few extremists, and not these German Judges standing trial, and not all of the German people. Heir Ralph went on to point out that the German Judges on trial, stayed in power to prevent worse things from happening. He asked the following: Who is the braver man, the man who escapes his peril or the man who stays on his post at risk of his own personal safety? Heir Ralph presented evidence that the German Judge saved some people from execution, mitigated their sentences, and that his own personal physician was a non-Arian-race a Jewish man, who he kept in attendance much to his own peril. To show the German Judge’s personal character, special consideration from legal authorities and respected jurors will show that the German Judge was not a bad character person, and in actuality saved some people from a worse peril. Heir Ralph said that if the German Judge is found guilty, then the whole world should be found guilty, since they too knew just as well the intentions of the 3rd Reich, broadcast to the world on the radio, and published in every corner of the world. Heir Ralph pointed out other countries and people in the world who also made similar mistakes with Adolph Hitler, such as when Russia signed a pact that would allow Hitler to make war, and when the Vatican signed something in 1933 giving Hitler tremendous prestige. In 1938, Winston Churchill in his Letter to the London Times, that if England were to suffer defeat, would God send a man of the strength of Adolf Hitler to England. Heir Ralph asked if any of these people were guilty, or even the American Industrialists who profited. Heir Ralph concluded that no, the whole world was responsible for Adolf Hitler and allowing his bad character to get away with what he did. Heir Ralph said that the German Judge says he is guilty now after the fact, but Heir Ralph as his lawyer says that if he is guilty, then the whole world is guilty, and that it is easy to condemn the German people, but in reality, the whole world is guilty.

Module 1 Simulation 2:

In addition or in the alternative to submitting a closing argument in the *Alstoetter Case*, members of**Group B** are invited to submit written argument in favor of prosecuting former DOJ attorney, John Yoo, who wrote the “White House Torture Memo” under the precedent of the *Alstoetter Case.*  Members of**Group A** are invited to submit a written argument on behalf of John Yoo.

As part of Group B, my argument is in favor of prosecuting former DOJ attorney, John Yoo, who wrote the “White House Torture Memo” under the precedent of the Alstoetter Case. Part of my response comes from notes I took from the video and readings, and also, from a search online. Some countries have taken this view of the White House Torture Memos, and have issued indictments against the authors of the torture memos and have debated about them, even though Barack Obama in January 2009 upon taking office, did not want to launch into politically diversive prosecutions of Bush Administration Officials. However, many other countries did under “Universal Jurisdiction” for their indictments. The ICC can prosecute nationals of non-party states when the Security Council refers the situation of non-party state to ICC, and it has jurisdiction over war crimes, crimes against humanity and genocide, so the countries who submitted indictments, felt that it fell in one of these categories. John Yoo said that they could create crimes to gain evidence to lower level people, but other countries disagreed and issued indictments. The countries who submitted these indictments felt it was wrong to use “enhanced interrogation techniques”, such as mental and physical torment and coercion such as prolonged sleep deprivation, binding in stress positions, and waterboarding (simulated drowning, sometimes 180 times), and the White House Torture Memos said they could commit these crimes to gain evidence, and the other countries who submitted indictments disagreed, using the Alstoetter Case as precedent. John Yoo said it should be legally permissible under an expansive interpretation of presidential authority during the “War on Terror”, but many countries disagreed. John Yoo believed that federal laws against torture, assault and maiming would not apply to overseas interrogation of terror suspects, but many countries objected to that, by issuing indictments against him using Alstoetter Case as precedent. However, Barack Obama decided against prosecuting Bush Administration officials when he took office, as mentioned above, to avoid launching into politically divisive prosecutions.

Module 1 Simulation 3:

In addition or in the alternative to the above simulations, members of **Group A** are invited to submit a written argument in favor of the United States becoming a party to the International Criminal Court. **Members of Group B** are invited to submit a written argument against the United States doing so.

I am part of Group B, and will submit a written argument against the US becoming a party to the International Criminal Court. Complementarity, where the ICC can only take a case as a last resort, works in the case of low level officials, but not in the case of high level officials. Countries will prosecute their high level officials, and not their low level officials, so low level officials end up in places such as Abu Ghraib and Guantanomo Bay prisons, so high level people prosecuted in their own countries for their policies can get away with atrocities, and the lower level people cannot. The US, along with Russia and China, are concerned that their high level policies could be indicted by the ICC, which could be damaging to foreign policy. The example given on this was when in 1999, air strikes from the US were done to Serbia, since the Serbs were “ethnically cleansing” the province of Kosovo. It was not authorized by the Security Council, but NATO supported it. What happened was that they hit targets they should not have hit, such as historic sites, bridges, the Chinese Embassy, convoys, etc, and support for air strikes diminished. In the middle of an 87 day bombing campaign, two notifications were placed on Louise Arbor of Canada’s desk, the prosecutor for the Yugoslavian Tribunal, a pre-cursor to the ICC. One notification was from Osgood Hall where she had been a law professor, a legal document, that said the ICC should be indicting leaders of NATO for air strikes. David Scheffer, the Ambassdor at large for war crime issues sent Michael Newton, his deputy, to meet with Louise Arbor and present a large box of documents and interceptions, to show that Slobodan Milosevic was guilty of the atrocities to Kosovo Albanians. Louise decided not to stop the bombings and indict NATO Leaders which would have had huge political consequences, and would have been the end of NATO as an allied group forever. Instead, she indicted Slobodan Milosevic, and he could not withstand this new political pressure and clout that the allies had gained through the Yugoslavian Tribunal (pre-cursor to the ICC), and Slobodan Milosevic instead made a deal by suing for peace that lead to autonomy in Kosovo. So the point here is that indicting someone can have a huge affect on foreign policy, not even bringing them to custody, just indicting them), and this would include the foreign policy of the US, it’s allies or Russia and China as well. For this reason, a con of the ICC is that an indictment can be damaging to foreign policy. The last con against joining the ICC is that the ICC statute does not provide enough due process rights. The US has a Jury, and the ICC does not. They have a panel of 3 judges, and an appeal panel of 5 judges. Also, the US domestic court would not allow “hearsay”, or out of court statements not subject to cross examination, but the ICC can, and did, in the case of Alstoetter in Nuremberg.