I. COURSE DESCRIPTION & OBJECTIVES

A. Overview

This is a one-year service-learning course, which will provide an introduction to the theory and practice of international criminal law as a branch of public international law.

As such, the objectives of this course are twofold. First, it will provide students with a firm grounding in what is international criminal law, both substantive and procedural. As such, the course will expose students to the rapidly growing body of jurisprudence, both international and national, wherein international humanitarian and human rights law are being applied for the purposes of prosecution, trial, punishment and seeking of civil remedies with regard to individuals alleged to be responsible for the commission of war crimes, crimes against humanity, genocide and, more recently terrorism.

Second, this course will afford students the opportunity to learn how to put the theory of international criminal law into practice by working on cases involving serious international crimes in both international and national jurisdictions. The practice or service-learning component of this course will involve working on cases in collaboration with two partner organizations. The first will be defense counsel before the International Criminal Tribunal for the former Yugoslavia (“ICTY”) based in The Hague, The Netherlands. The second will be the Center for Constitutional Rights (“CCR”) in New York, NY.

With respect to international jurisdictions, focus will be on the roles played by international judges as well as defense counsel in specific, pending cases before the ICTY. With respect to national jurisdictions, focus will be on civil litigation initiated by CCR in U.S. federal court on behalf of victims of international crimes under statutes such as the Alien Tort Claims Statute. In addition, students will participate with CCR’s Guantanamo Global Justice Initiative. This may involve work on civil cases in U.S. federal court involving detainees at Guantanamo Bay, Cuba, who have filed petitions under the Detainee Treatment Act or a petition for a writ of habeas.

Students may also
In this course, emphasis will be placed on mastering the drafting skills required for preparation of a variety of legal documents while undertaking differing roles in both criminal and civil cases before differing jurisdictions. In so doing, students will practically understand how application of the substantive law to the facts as well as due process concerns in a particular case can differ depending on what hat you are wearing—that of decision-maker, defense counsel or human rights advocate. Furthermore, students will gain first-hand knowledge of how to adapt to and apply the differing rules, procedure and case law of a national jurisdiction as opposed to an international jurisdiction, which is an amalgamation of the common and civil law traditions, for prosecution of the same international crimes under international law. They will be able to compare and contrast the strengths and weaknesses of each jurisdiction as well as engage in cross-fertilization by learning how to appropriately argue or apply the case law from one system into the other.

Thus, the approach to learning in this course will be multi-dimensional. Not only will students learn the theory of international criminal law in the classical doctrinal manner with assigned readings, lectures and analysis of cases in class using the Socratic method, but they will also engage in learning by doing in a variety of fora. The doing will consist primarily of drafting exercises of various legal documents as required in the life of actual, ongoing cases involving international crimes. Through these exercises, students will pick up the following skills, among others: international legal research; drafting a variety of legal documents for different audiences; factual analysis and issue spotting; multi-tasking; producing deliverables under time constraints; and teamwork.

B. International Criminal Law and Theory

The doctrinal part of this course will address the following topics. We will begin with a brief historical overview of the evolution of international criminal law, with particular emphasis placed on the trials at Nuremburg and Tokyo post-World War II, and the proliferation of international criminal jurisdictions from 1993 to the present. Next, we will discuss the varying definitions of international criminal law, the sources of law that provide the basis for prosecution of international crimes, including customary international law and the 1949 Geneva Conventions, and the fundamental principles governing international criminal law. Thereafter, we will focus on the jurisdictional bases for enforcement of international criminal law at the international level. We will examine in particular the statutes and organization of the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda. We will also consider prosecution of international crimes in U.S. federal courts, courts martial under the Uniform Military Code of Justice and military commissions under the 2006 Military Commissions Act.
Following our study of jurisdictions, we will turn to the substantive law, looking at the requisite legal elements for establishing the *actus reus* and *mens rea* of the so-called “core-crimes” in international criminal law—war crimes, crimes against humanity, and genocide. We will also consider the crime of terrorism. From there, we will discuss the legal elements for proving individual and superior criminal responsibility for international crimes—or the “modes of liability”. We will also consider the topics of applicable defenses and immunities. Further, we will discuss the law on sentencing, including potential aggravating and mitigating circumstances. Finally, we will look at the constitutional and statutory bases for filing civil petitions in U.S. court on behalf of Guantanamo detainees alleged to have perpetrated international crimes as well as claims for civil remedies on behalf of victims who have suffered as a result of perpetration of international crimes.

**C. International Criminal Law Practice**

In preparation for assisting the partner organizations, Professor Garry will lecture on the rules for procedure and evidence for the ICTY as well as the U.S. military commissions. She will also cover methods of international legal research as well as drafting style and rules of citation for international jurisdictions. Students will be assigned mock drafting exercises on various legal documents to work on individually or in a team and will be asked to review each other’s work prior to final review by Professor Garry.

When students are working on actual cases with the partner organizations, likely later in the semester, Professor Garry will schedule meetings with the student teams on each case at the outset of each drafting assignment to discuss the parameters and timeline for the assignment. Professor Garry will also regularly meet with student teams to discuss their cases on a weekly or bi-weekly basis, depending on what is required. Prior to submission of drafts to the partnership organizations, Professor Garry will review and have the students re-draft or revise as needed.

**II. COURSE STRUCTURE & REQUIREMENTS**

For the fall semester, this class will meet on **Wednesdays from 4 p.m. – 5:40 p.m. in Room 421** beginning August 27th and ending December 3rd. We will not meet the week of November 24-28th due to Fall Break and the Thanksgiving holiday.

During each class period, there will be a lecture for the first 30-60 minutes of class followed by 40-70 minutes of discussion or group work. These times will be varied as required, depending on the topic for discussion and the needs of the class. Prior to each class period, I will post any power points for the lecture on my TWEN website.

The discussion portion of each class period will revolve around either 1) the doctrinal material assigned for the day; 2). review of mock drafting exercises when assigned; or 3) presentation from one of the student teams on the status of their case and brainstorming on any particularly problematic issues coming up in the drafting process.
**Class participation/attendance:** In order to maximize learning for all involved in this course, students are requested to study all of the assigned reading prior to class. Students are also expected to actively participate in the classroom discussion. Attendance is very important, and students are requested to miss no more than 2-3 days where it is necessary. The final grade in this course may be raised or lowered one grade-step (e.g. 92% (A-) to 93% (A), depending on classroom participation and attendance.

**Time Commitment:** It is expected that students will spend approximately 110-130 hours during the first semester (2 credit hours) and 145-185 during the second semester (3 credit hours) on this course—this includes classroom time; reading and preparation for class; completion of mock draft exercises; outside meetings with Professor Garry and/or the case team; and casework. These are only estimated hours—please understand that when assisting our partner organizations on actual cases, we may have to work more or less in a given week, depending on the demands of each case.

**The Grade:** The grade for this course will be determined as follows.

- 25% of the grade will be determined on classroom attendance, preparation and participation.

- 25% of the grade will be based upon completion of mock drafting exercises. Drafts will be evaluated for the degree to which the meet the purpose of the document being drafted; thoroughness; clarity; and conciseness. Because these are documents that are intended for submission before a court of law, they will also be evaluated for the degree to which they meet formatting requirements and are free from drafting/citation errors.

- 50% of the grade will be determined on the basis of students’ handling of the casework which will be evaluated on the basis of: 1) thorough, well-researched and timely legal drafting, such that Professor Garry has time to review legal drafts before they must be submitted to the partnership organizations; 2) professionalism in all communications with the partnership organizations; and 3) commitment to being a team-player.

Upon completion of the fall semester, a grade will be entered as "IP" (Incomplete Pass). Upon completion of the spring semester, a final grade will be given, which will be the same for both fall and spring.

III. **REQUIRED TEXTS**


**IV. OFFICE HOURS**

Feel free to stop by during my regular office hours, which are on **Thursdays from 3-5pm**. If that time is not convenient for you, please send me an email or call so we can arrange for another time and/or day. Emails with questions are always welcome.

**V. OTHER INFORMATION**

The following resources are provided to enhance your understanding of the course and work on cases—to be consulted at your discretion—but are not required for preparing for class.

**A. Supplementary Texts**


- Duffy, H. *The ‘War on Terror’ and the Framework of International Law* (Cambridge University Press 2007)


B. Leading Law Journals

Criminal Law Forum  
International Criminal Law Review  
Journal of Conflict and Security Law  
Journal of International Criminal Justice  
Leiden Journal of International Law  
The Law and Practice of International Courts and Tribunals

C. Useful Websites

American Civil Liberties Union: http://www.aclu.org/safefree/detention/johnadams.html  
(for John Adams Project on the Military Commissions)

American Society of International Law: www.asil.org

Association of Defence Counsel Practicing before the ICTY: http://www.adcicty.org/

Center for Constitutional Rights: http://ccrjustice.org/  
(see especially “Our Issues”, “Reports & Publications” and “Our Cases”)

Electronic Information System for International Law (IL research tool):  
http://www.eisil.org/index.php?sid=35408897&t=index

International Committee of the Red Cross: www.icrc.org

International Criminal Tribunal for the former Yugoslavia: www.un.org/icty/

International Criminal Tribunal for Rwanda: www.ictr.org

Nuremburg IMT: www.yale.edu/lawweb/avalon/imt/imt.htm

Nuremburg NMT: www.mazal.org/nmt-home.htm

Special Court for Sierra Leone: www.sc-sl.org