I. INTRODUCTION

International law is the system of rules and principles that govern relations among sovereign states, international organizations, and other subjects of international law. International law covers almost every facet of inter-state activity, including the security of nations, diplomatic relations, and the use of the sea. Although states were traditionally considered to be the principal actors in the international legal process, modern international law also seeks to regulate the conduct of individuals (for example, through international criminal law) and the conduct of states towards individual citizens (through the growing body of human rights treaties).

The majority of the rules of international law are obeyed most of the time and the day-to-day observance of these rules is frequently taken for granted. However, disputes arise regularly regarding the interpretation of international law and alleged violations. According to the Charter of the United Nations, “All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.” (U.N. Charter, Art. 2(3).) Members of the U.N. are also obligated to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” (U.N. Charter, Art. 2(4).) Yet in practice, international law is more difficult to enforce than domestic law, largely because it seeks to regulate the conduct of legal equals (states), which may or may not consent to participate in international enforcement proceedings. It is thus essential that the obligation to peacefully settle international disputes be supported by effective dispute resolution processes and institutions. Thus, one of our goals in this course is to introduce students to the institutions for international dispute resolution. You will also study the sources of international law, the development of international norms, the incorporation of international law into domestic legal systems (especially the United States system), the concepts of jurisdiction, extradition, foreign sovereign immunity, and the Act of State doctrine. You will gain a basic understanding of the principles of international human rights law and the law of the sea.

I hold a joint position in the Law School and the Matsunaga Institute for Peace and Conflict Resolution. My office is in the Saunders Building, Room 523, and my office telephone number is 956-6940. If I am not in the office it is best to contact me by email
(carolep@hawaii.edu) as I check my emails several times each day. My fall term office hours will be 2:00 p.m. - 5:00 p.m. on Wednesday or by appointment. Please do not hesitate to contact me if you need an appointment or have any difficulties or questions regarding the course.

II. TEXTBOOKS AND TEACHING METHODS

The required case book for this course is: Jordan J. Paust, Jon M. Van Dyke, and Linda A. Malone, *International Law and Litigation in the U.S.* (West, 3rd ed. 2009). You should also have the 2008 *Documents Supplement* to the casebook. Note: make sure you bring both books to class every day and that you have at least reviewed any documents that are referred to in the assigned reading in the casebook.

Although I will give some “mini-lectures” to introduce certain topics, most topics will be taught primarily through class discussion of the assigned readings. As we only meet once per week, you should expect to be assigned a substantial amount of reading for each class. I will advise you in advance if I plan to focus on particular “Notes and Questions” in the assigned reading. However, you should always be prepared to discuss the facts and holdings of any cases in the reading assigned for that day.

I strongly encourage you to form study groups and to work through the “Notes and Questions” together as you prepare for class. I also encourage you to bring your laptops to class as I occasionally direct students to websites (e.g. websites of U.N. treaty-monitoring bodies) and recent materials, which are not yet in the *Documents Supplement*. However, I expect you to be professional in your use of laptops; please do not engage in any activities that could distract you or your colleagues from class discussion.

III. COURSE OBJECTIVES

After completing this course, students should be able to:

1. Identify and explain the sources and principle rules of international law.

2. Explain the extent to which international law is incorporated into domestic legal systems, especially the United States system.

3. Identify the chief regional and international bodies that create, interpret, and enforce international law.

4. Articulate competing approaches to the interpretation of international law.

5. Recognize and analyze issues in international law when presented in hypothetical fact patterns.
6. Identify and apply relevant rules and principles of international law to resolve hypothetical questions in selected substantive areas.

7. Articulate, both orally and in writing, appropriate legal arguments on both sides of important controversies in international law.

IV. ASSESSMENT

(1) One third of the grade is determined by your performance on a take-home mid-term examination. The mid-term exam is entirely open book with a maximum word limit for the answers.

(2) Two-thirds of the final grade is determined by your performance on the final examination. The final examination is largely closed book but you may bring in one sheet of paper with your own review notes on one or both sides; the notes may be handwritten or typed and any size font is fine with me. You may also bring your 2008 Documents Supplement to the final exam; annotations are permitted but you may not attach any extra pages.

(3) Class participation and regular attendance are important, especially because we only meet once per week. Students with consistent attendance and strong class participation will have their final grades lifted by one-third (e.g. A- to A). However, I also reserve the right to lower the final grade by one-third if a student is consistently unprepared for class or has more than two unexcused absences. Effort counts for a great deal with me; the material is sometimes difficult and I do not expect you to be “right” every time I call on you in class. But I do expect you to read the material carefully, to work hard to understand it, and to participate actively in class.

IV. PROVISIONAL SCHEDULE AND READING ASSIGNMENTS

All reading assignments should be completed before the scheduled class.

Week 1 (Tues. Aug. 24) Introduction to the actors and sources of international law

Reading Assignment: Course syllabus and casebook, pp. 1-37. Please also review the Charter of the United Nations, especially Articles 1-2, 7, 33, 39, 51 and 92-96, and the Statute of the International Court of Justice (Docs 2 and 3 in the Documents Supplement).
Note: after you have completed the assigned reading, go back to the introductory problem (at page 1-2) and consider whether you agree or disagree with the six propositions (a)-(f) argued by the Defendant Actor. In class, you should be prepared to discuss your views on each of these six propositions and to offer support for your positions. You should read all of the Notes and Questions in the reading and give special attention to Qs 1-3 on p. 5 and Q 1 on page 30. You should also be prepared to discuss the validity of the various definitions of international law articulated in this section (e.g. by Restatement and by Judges Edwards and Bork). After completing today’s reading, how would you define international law and how would you determine its scope of application? Is it appropriate to refer to international law as “universal law”?

**Week 2 (Tues. Aug. 31) Actors and sources continued; nature of treaties**

*Reading Assignment:* Casebook, pp. 37-93. Please also read Docs 10-14 in the 2008 Documents Supplement. I also recommend that you visit the websites of the U.N. Human Rights Committee and the U.N. Committee on Economic, Social and Cultural Rights (the treaty-monitoring bodies for these treaties) before this class and be prepared to explain the basic functions and powers of these tow committees.

In addition to the notes and questions in the casebook, you should be prepared to explain the extent to which the United States, the United Kingdom, and the People’s Republic of China are bound by Docs 10-14 in the 2008 Documents Supplement. (This will require a little on-line research on your part and you can work together with your colleagues if you wish.)

**Week 3 (Tues. Sept. 7) International customary law and introduction to the domestic incorporation of international law**

*Reading Assignment:* Casebook, pp. 93-120 and Carole J. Petersen, *Embracing Universal Standards? The Role of International Human Rights Treaties in Hong Kong’s Constitutional Jurisprudence*, in Fu Hualing, Lison Harris, and Simon N. M. Young, eds., *Interpreting Hong Kong’s Basic Law: The Struggle for Coherence* (2007) (distributed via Laulima). (This chapter should provide a useful comparison to the U.S. approach to incorporation of international law, which will be our main focus in Weeks 4-8.)

Also review the Convention Against Torture (CAT) (Doc 50 in the 2008 Documents Supplement) and visit the website of the United Nations Committee Against Torture (the treaty-monitoring body for CAT).
Week 4 (Tues. Sept. 14) U.S. incorporation of international Law

*Reading Assignment*: Casebook, pp. 120-165 (also skim pp. 399-405 for the facts of this case). Also review extracts from U.S. Constitution (Doc. 1 in the 2008 Documents Supplement).

Week 5 (Tues. Sept. 21) No class  [make-up class will be held on Friday, Sept. 24]

*Friday, Sept. 24: 2:30 - 5:00 p.m. Make-up class on the Guantanamo Bay Litigation, with special presentation by Lt Col Michael (Dan) Mori

*Reading Assignment*: Casebook, pp. 165-250  [Room to be confirmed.]

Week 6 (Tues. Sept. 28) Treaties & self-executing treaties; U.S. courts and international jurisprudence

*Reading Assignment*: Casebook, pp. 125-6 (review); 259-271; 273-336; 581-88 (from note 9 at bottom of page to middle of p. 588).

Week 7 (Tues. Oct. 5) Executive agreements and separation of powers; application of the U.S. Constitution overseas

*Reading Assignment*: Casebook, pp. 363-87; 391-top of 399; 405-11; 336-355; 670-77.

Week 8 (Tues. Oct. 12) Litigating human rights claims in the U.S.


Week 9 (Tues. Oct. 19) Human rights litigation continued

*Reading Assignment*: Casebook, pp. 463-532. (We will probably only have time to discuss the first case in the section on the Marcos litigation. But I recommend that you review the remaining materials on your own.)

Week 10 (Tues. Oct. 26) Conflicts with federal statutes; supremacy and federalism

*Reading Assignment*: Casebook, pp. 532-590.
Take-home mid-term examination distributed Wednesday, October 27 and due Wednesday, November 3 at 10:00 a.m.

Week 11 (Tues. Nov. 2) No class: Public Holiday: Election Day [make-up class will be held on Friday, Nov. 19.]

Week 12 (Tues. Nov. 9) Jurisdiction: general proscriptive competence; universal jurisdiction; enforcement jurisdiction

Reading Assignment: Casebook, pp. 591-607; 611-636; 642-58; 669-91

Week 13 (Tues. Nov. 16) Extradition

Reading Assignment: Casebook, pp. 691-762

Week 13a (Fri. Nov. 19) [Make-up class; 1:30-4:00 p.m.,] Foreign Sovereign Immunity

Reading Assignment: Casebook, pp. 763-765; 777-779; 781-827; 832-834; 840-861

Week 14 (Tues. Nov. 23) Former heads of state; diplomatic and consular immunity; Act of State doctrine

Reading Assignment: Casebook, pp. 861-911; 920-930

Week 15 (Tues. Nov. 30) Introduction to the Law of the Sea and dispute resolution under the Law of the Sea Convention

Reading Assignment: Casebook, pp. 961-1025

Fri. Dec. 3: Optional review session (we can discuss a convenient time)

Please feel free to email me at carolep@hawaii.edu if you have questions or concerns regarding the provisional syllabus.

Professor Carole Petersen (August 2010)