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21 August 2018

Corporation Counsel Joseph K. Kamelamela
Office of the Corporation Counsel
Hilo Lagoon Centre
101 Aupuni Street, Unit 325
Hilo, HI 96720

Re: Inquiry Regarding Allegations of War Crimes and Criminal Liability

Dear Corporation Counsel Joseph K. Kamelamela:

My name is Stephen Laudig. I have been retained by Hawai‘i County Council member Jennifer Ruggles as her counsel in order to address her concerns of possibly incurring criminal liability under international humanitarian law as defined, inter alia, the 1907 Hague Convention, IV, *Respecting the Laws and Customs of War on Land* (36 Stat. 2199) (“Hague Regulations”), and the 1949 Geneva Convention, IV, *Relative to the Protection of Civilian Persons in Time of War* (6 U.S.T. 3516), (“Geneva Convention”).

Violations of certain provisions of these two Conventions have been codified under 18 U.S.C. §2441—War Crimes.

Council member Ruggles has become aware of the history of the United States’ illegal occupation of the Hawaiian Kingdom through, among other things, the research and publications of Dr. Keanu Sai; the *Larsen v. Hawaiian Kingdom* proceedings held under the auspices of the Permanent Court of Arbitration, The Hague, Netherlands; a memorandum, dated 15 February 2018 authored by United Nations Independent Expert, Office of the High Commissioner for Human Rights, Dr. Alfred deZayas’ which had been sent to and received by certain members of the State of Hawai‘i judiciary; and, a recent Petition for Writ of Mandamus, *David Keanu Sai, as Chairman of the Council of Regency v. Donald Trump, as President of the United States,* lodged with the United States District Court for the District of Columbia on 15 June 2018. That petition addresses the failure of the United States to administer the laws of the Hawaiian Kingdom under Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Geneva Convention.

The Hague Regulations and the Geneva Convention are international treaties that have been ratified by the United States Senate, and, consequently, are part of the supreme law of the United States. Council member Ruggles is aware of her oath to support and defend the Constitution and laws of the United States and that this oath includes treaties and conventions and customary international laws. See *The Paquete Habana* 175 U.S. 677, 700 (1900).

Officials of the State of Hawai‘i often claim that the Hawaiian Kingdom does not exist as a sovereign and independent State. It is undisputed that the Hawaiian Kingdom was recognized by the United States as a sovereign and independent State by President John Tyler. The Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566, 581 (2001), acknowledged that "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."

In his message to the U.S. Congress on 18 December 1893, then-President Cleveland concluded that by "an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress the Government of a feeble but friendly and confiding people has been overthrown" on 17 January 1893. See attached *President Cleveland's Message to Congress*. What was illegally overthrown was the Hawaiian Kingdom government, not the Hawaiian State. Since the mid-nineteenth century, international law has made a clear distinction between a State, being the subject of international law, and its organ called a government.

According to customary international law at the time, these acts of war committed by the United States within Hawaiian territory transformed the relationship between the Hawaiian State and the United States State from a state of peace to a state of war. The rules of *jus in bello* immediately applied. I am providing you with a brief by Dr. David Keanu Sai, *The Larsen v. Hawaiian Kingdom Case at the Permanent Court of Arbitration and Why There Is An Ongoing Illegal State of War with the United States of America Since 16 January 1893* (16 October 2017). Dr. Sai is an acknowledged expert in the area of the continuity of the Hawaiian Kingdom as an independent State and international laws. He has been admitted to give expert testimony on this subject in court proceedings before courts of the State of Hawai‘i. See *Fukumitsu v. Fukumitsu*, case no. 08-1-0843 RAT; *Onewest Bank v. Tamanaha*, case no. 3RC10-1-1306; *State of Hawai‘i v. English*, case no. CR 14-1-0819(3); *State of Hawai‘i v. Kinimaka*, case no. 5DCW-16-0000233; *State of Hawai‘i v. Larsen*, case no. 3DTA08-03139; *State of Hawai‘i v. Larsen*, case no. 3DTC08-023156; *State of Hawai‘i v. Maluhia-Fuller*, case no. 1 DTC-15-028868. Three of these cases were held in courts of the Third Circuit.

The laws of war and occupation were customary international law in 1893, and subsequently codified under the 1899 Hague Convention, III. The 1899 Hague Convention was superseded by the Hague Regulations and the Geneva Convention. According to Article 154 of the Geneva Convention, its provisions supplement the Hague Regulations. The Hawaiian Kingdom has been under a prolonged military occupation since 17 January 1893.

Under international law, there is only one method by which the United States could have acquired the sovereignty and independence of the Hawaiian Kingdom. That method is by a treaty of peace. There is no such treaty. During the Spanish-American War in 1898, the United States Congress enacted a joint resolution purporting to annex the Hawaiian Islands to the United States on 7 July 1898 (30 Stat. 750). Congressional legislation has no extraterritorial effect. See, *The Apollon*, 22 U.S. 362, 370 (1824) and *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

Congressional statutes are not a source of international law that would affect foreign States. According to Article 38(1) of the Statute of the International Court of Justice, sources of international law include:

> (a) international conventions, whether general or particular, establishing rules expressly recognized by States;
> (b) international custom, as evidence of a general practice accepted as law;
> (c) the general principles of law recognized by civilized nations; and judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Given that congressional legislation is limited in scope and application to United States territory, the Department of Justice in 1988 opined:

> Notwithstanding these constitutional objections [of the territorial limitation of legislation], Congress approved the joint resolution and President McKinley signed the measure in 1898. Nevertheless, whether this action demonstrates the constitutional power of Congress to acquire territory is certainly questionable. … It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea. See Douglas W. Kmiec, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, 12 Opinions of the Office of Legal Counsel 238, 252 (1988).

If it was "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution" in 1898, it would be equally unclear as to how the Congress could enact a statute establishing the Territory of Hawai‘i in 1900 (31 Stat. 141), and the State of Hawai‘i in 1959 (73 Stat. 4) within the territory of a foreign State. Under Article 43 of the Hague Regulations and

Article 64 of the Geneva Convention, the United States, as an occupying State, is obligated to administer the laws of the Hawaiian Kingdom, the occupied State.

The unlawful imposition of United States laws within the territory of the Hawaiian Kingdom since 1898 constitutes a violation of international law. This imposition became the subject of an international dispute between Lance Paul Larsen and the Hawaiian Kingdom government that was restored in 1995. The dispute was accepted by the Permanent Court of Arbitration (PCA), The Hague, Netherlands, on 8 November 1999 as *Lance Paul Larsen v. Hawaiian Kingdom* and assigned as PCA Case no. 1999-01. The Secretariat of the PCA acknowledged the continuity of the Hawaiian Kingdom as a State under international law, and the restored Hawaiian Kingdom government, by its Council of Regency, as its organ. See attached PCA Case Repository, *Larsen v. Hawaiian Kingdom*.

Prior to the PCA's establishment of the *ad hoc* tribunal in 2000, the Hawaiian Council of Regency entered into an executive agreement, via an exchange of *notes verbales*, with the United States Department of State that was brokered by the Deputy Secretary General of the PCA. By this agreement, the United States, by these acts of negotiation and agreement, acknowledged the continuity of the Hawaiian Kingdom as a State and recognized, *de facto*, the Council of Regency. I am providing another brief by Dr. David Keanu Sai, *Memorandum of the De Facto Recognition by the United States of America of the Restored Hawaiian Kingdom Government by Exchange of Notes Verbales* (21 March 2018).

This executive agreement between the Department of State and the Hawaiian Council of Regency precludes any intervention or question by the States of the federal union.

> [I]n the case of all international compacts and agreements [deriving] from the very fact that complete power over international affairs is in the national government, and is not and cannot be subject to any curtailment or interference on the part of the several states. […] In respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear." See *United States v. Belmont*, 301 U.S. 324, 331 (1937); see also *United States v. Pink*, 315 U.S. 203, 230 (1942) ("But state law must yield when it is inconsistent with or impairs the policy or provisions of, a treaty or of an international compact or agreement"), and *American Ins. Assn. v. Garamendi*, 539 U.S. 396, 419 (2003) ("state law may not be allowed to 'interfer[e] with the conduct of our foreign relations by the Executive.")

Under this rule, State of Hawai'i courts are also precluded from interfering with political decisions made by the Department of State regarding foreign States, which, in this case, is the Hawaiian

Kingdom. The "judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory." See *Baker v. Carr*, 369 U.S. 186, 212 (1962). Political questions for the Congress to determine, and not the Executive, include the status of Indian tribes and whether a government within United States territory is republican in form. See *id.*, at 215-18. The law with regard to which branch of government recognizes foreign States or governments is clearly stated by the Senate Foreign Relations Committee in 1897.

> The executive branch is the sole mouthpiece of the nation in communication with foreign sovereignties. Foreign nations communicate only through their respective executive departments. Resolutions of their legislative departments upon diplomatic matters have no status in international law. In the department of international law, therefore, properly speaking, a congressional recognition of belligerency or independence would be a nullity. See Sen. Doc. 56, 54th Cong. 2d Sess. (1897), p. 20-22.

Contemporary views of the Hawaiian Kingdom's political status have deferred to the Congress and not the State Department, because it was assumed that the State of Hawai'i replaced the Hawaiian Kingdom. Since the *Larsen* case, however, this mistaken view is no longer tenable.

Council member Ruggles is in receipt of a response to a complaint made by Mrs. Routh Bolomet with the United Nations Human Rights Council, whereby the United Nations Independent Expert, Dr. Alfred M. deZayas, sent a memorandum dated 25 February 2018, from Geneva, Switzerland, to State of Hawai'i Judges Gary W.B. Chang and Jeanette H. Castagnetti, and the Members of the Judiciary of the State of Hawai'i. In his memorandum, the Independent Expert stated:

> I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).
>
> [Furthermore] adjudication of land transactions in the Hawaiian Islands would likewise be a matter of Hawaiian Kingdom law and international law, not domestic U.S. law. See *UN Independent Expert, Dr. Alfred M.*

deZayas' memorandum to State of Hawai'i Members of the Judiciary (25 February 2018).

The Independent Expert was making specific reference to Article 43 of the Hague Regulations and Article 64 of the Geneva Convention. Violations of these provisions would constitute war crimes as defined under customary international law. U.S. Army Field Manual 27-10, sections 499 and 500 provides guidance on the meaning of these terms:

> The term 'war crime' is the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime," and "Conspiracy…as well as complicity in the commission of…war crimes are punishable.

What the UN Independent Expert also made clear, and public, was that title to land throughout the Hawaiian Islands, whether fee-simple, life estates or leases, are invalid as it was conveyed under United States domestic law and not under and by virtue of the laws of the Hawaiian Kingdom. From a real estate standpoint, all land titles in Hawai'i, that were 'transferred' under occupation are defective and, therefore, all mortgages would be void. Economic relief for lenders would be through a lender title insurance policy, which the borrower purchased for the protection of the lender at escrow, which covers the debt. See attached specimen, *Loan Policy of Title Insurance* issued by Fidelity National Title Insurance Company. Relief for owners is through an owner's title insurance policy if purchased at escrow. See attached specimen of *Owner's Policy of Title Insurance* issued by Fidelity National Title Insurance Company.

According to the American Land Title Association, the following are covered risks for an insurance claim of a defect in title, which include:

> (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
> (ii) failure of any person or Entity to have authorized a transfer or conveyance;
> (iii) a document affecting title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
> (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
> (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
> (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(vii) a defective judicial or administrative proceeding.

In a foreclosure proceeding before Judge Glenn Hara in the Third Circuit, *Wells Fargo Bank, N.A., v. Kawasaki*, case no. 11-1-106, on 15 June 2012, Mr. Dexter Kaiama, an attorney, appeared specially for the purpose of contesting jurisdiction, and argued that the Hawaiian Kingdom continues to exist as a State under international law. I am providing Defendant Kawasaki's Motion to Dismiss. Mr. Kaiama relied on *State of Hawai'i v. Lorenzo*, 77 Haw. 219, 221 (1994), where the Intermediate Court of Appeals (ICA) held,

> it was incumbent on Defendant to present evidence [of a] factual or legal basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature."

The ICA went on to state that the "illegal overthrow leaves open the question whether the present governance system should be recognized." at 221, n. 2.

In its motion to dismiss filed with the court under Rule 12(b)(1), Hawai'i Rules of Civil Procedure, the defense stated that the:

> PLAINTIFF cannot claim relief from the Circuit Court of the Third Circuit because the appropriate court with subject matter jurisdiction in the Hawaiian Islands is an Article II Court established and by virtue of Article II of the U.S. Constitution in compliance with Article 43, 1907 Hague Convention IV (36 (U.S. Stat. 2277), and pursuant to two sole-executive agreements entered into between President Cleveland and Queen Lili'uokalani.

During the oral hearing Mr. Kaiama argued:

> I have been arguing, Your Honor, this motion before judges of the courts of the circuit court and district courts throughout the State of Hawaii, and nearly—and probably over 20 times, and in not one instance has the plaintiff in the cases challenged the merits of the executive agreements to show that either it's not an executive agreement or that the executive agreements have been terminated.

See attached *Wells Fargo Bank, N.A., v. Kawasaki* transcripts, 15 June 2012, p. 9, lines 17-24.

Judge Hara responded,

> in my mind, what you're asking the court to do is commit suicide, because once I adopt your argument, I have no jurisdiction over anything. Not only these kinds of cases where you may claim either being part of—being…a citizen of the kingdom, but jurisdiction of the courts evaporate. All of the courts across the state, from the supreme court down, and we have no judiciary. I can't do that. See *id*., p. 13, lines 9-17.

According to the International Criminal Court two elements must be present for a person to incur criminal liability for war crimes. First: the conduct took place in the context of and was associated with an international armed conflict; and, second, the perpetrator was aware of factual circumstances that established the existence of an armed conflict. See attached *Elements of Crimes*, International Criminal Court, Article 8—War crimes, at 13. "The term 'international armed conflict' includes military occupation." See *id*., n. 34. With respect to these two elements of war crimes:

> (a) There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international;
> (b) In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non-international;
> (c) There is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms "took place in the context of and was associate with." See *id*., at 13.

Judge Hara's statement, made in open court, appears to have been made with an "awareness of the factual circumstances that established the existence of an armed conflict,", which would come from his reading of the motion to dismiss, between the Hawaiian Kingdom and the United States. The defendant in this case, Mrs. Elaine Kawasaki, was subsequently evicted from her home in Hilo through extrajudicial proceedings. The United Nations Independent Expert concluded in his memorandum, "the courts of the State of Hawaii must not enable or collude in the wrongful taking of private lands." See *UN Independent Expert Memorandum*, p. 2.

On 17 September 2014, Professor Williamson Chang of the University of Hawai'i William S. Richardson School of Law reported allegations of war crimes committed by officials of the State of Hawai'i to the United States Attorney General Eric Holder. Professor Chang made the report in accordance with 18 U.S.C. §4—Misprision of felony, because under federal statute war crimes

include felonies. The report was acknowledged by the Department of Justice and assigned ID number 2909292. I am providing a copy of the letter from Professor Williamson Chang to U.S. Attorney General Eric Holder, Jr., dated 17 September 2014.

I and Council member Ruggles are unaware of whether an investigation has been launched.

It was brought to the attention of Council member Ruggles by Dr. Sai that in light of the flagrant violations of the Hague Regulations and Geneva Conventions by the State of Hawai‘i, he met with Mike McCartney, then and now, Chief of Staff for Hawai‘i Governor David Ige, at the Executive Chambers, State Capital, on three separate occasions. Council member Ruggles was informed that each of those meetings lasted more than an hour and a half. Dr. Sai informed her that he also provided Mr. McCartney with memorandum, dated 2 July 2015, relating what they discussed and a proposed resolution to the problem which would enable the State of Hawai‘i to comport its behavior with international humanitarian law. I am providing a copy of Dr. Keanu Sai’s *Report on Military Government* (2 July 2015). Council member Ruggles was not aware that the Governor’s office was also made aware of the allegations of war crimes committed by State of Hawai‘i officials.

Dr. Sai also informed Council member Ruggles that he had held meetings on the same topic with former Council member Danny Paleka and Stan Sitko, Hawai‘i County Real Property Tax Administrator. I am providing a copy of the email from Dr. Sai to Council member Paleka (8 April 2016). It has been provided by Dr. Sai to Council member Ruggles. Dr. Sai also shared with Council member Ruggles that he also recalls Mr. Sitko telling him that he will need to leave the meeting with Council member Paleka because he needs to “pillage homes.” Dr. Sai took that to be a reference to County of Hawai‘i foreclosure proceedings for delinquent property taxes because that was one of the alleged war crimes being discussed. Council member Ruggles was also told by Dr. Sai that he met with Council members Maile David and Karen Eoff, Mayor Harry Kim, and with Hawai‘i State Senators Kaiali‘i Kahele and Brickwood Galuteria. Council member Ruggles was not aware that other Council members and State legislators were also made aware of the allegations of war crimes committed by State of Hawai‘i officials.

On 18 July 2018, Council member Ruggles received by email a press release from the Hawaiian Council of Regency that a *Petition for Emergency Writ of Mandamus* had been filed in U.S. District Court for the District of Columbia in Washington, D.C., under case no. 1:18-cv-01500, against President Donald Trump and others. Included as a Respondent is State of Hawai‘i Governor David Ige. See attached press release email from the Council of Regency dated 18 July 2018 that was provided to Council member Ruggles.

In his capacity as Chairman of the Council of Regency, Dr. Sai, as the petitioner, is seeking an order from the U.S. District Court to mandate the President of the United States to comply with

Article 43 of the Hague Regulations and Article 64 of the Geneva Convention and begin administering Hawaiian Kingdom laws as a result of the injuries to protected persons as defined under the Geneva Convention, which include Hawaiian subjects. Specific alleged violations of the Hague Regulations and the Geneva Convention appear in paragraphs 169-205. See attached file-marked copy of the *Petition for Emergency Writ of Mandamus*, case no. 1:18-cv-01500.

In light of the above, Council member Ruggles formally requests that you, in your capacity as the Office of Corporation Counsel to assure her that she is not incurring criminal liability under international humanitarian law and United States Federal law as a Council member for:

1. Participating in legislation of the Hawai‘i County Council that would appear to be in violation of Article 43 of the Hague Regulations and Article 64 of the Geneva Convention which require that the laws of the Hawaiian Kingdom be administered instead of the laws of the United States;
2. Being complicit in the collection of taxes, or fines, from protected persons that stem from legislation enacted by the Hawai‘i County Council, appear to be in violation of Articles 28 and 47 of the Hague Regulations and Article 33 of the Geneva Convention which prohibit pillaging;
3. Being complicit in the foreclosures of properties of protected persons for delinquent property taxes that stem from legislation enacted by the Hawai‘i County Council, which would appear to violate Articles 28 and 47 of the Hague Regulations and Article 33 of the Geneva Convention which prohibit pillaging, as well as in violation of Article 46 of the Hague Regulations and Articles 50 and 53 of the Geneva Convention where private property is not to be confiscated; and
4. Being complicit in the prosecution of protected persons for committing misdemeanors, or felonies, that stem from legislation enacted by the Hawai‘i County Council, which would appear to violate Article 147 of the Geneva Convention where protected persons cannot be unlawfully confined, or denied a fair and regular trial by a tribunal with competent jurisdiction.

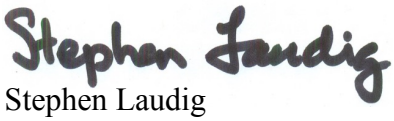
Until Corporation Counsel is able to assure, under applicable laws, that Council member Ruggles is not incurring criminal liability under international humanitarian law, she refrain from participating in proposing, drafting, or legislation by the Hawai‘i County Council. She will continue to serve her constituents as a Council member on all other matters that do not conflict with the subjects of her request to the Corporation Counsel. As soon as Corporation Counsel can assure her that no criminal liability is being incurred, she will return to her legislative duties.

This action taken by Council member Ruggles is her attempt to comply with the terms of her oath of office in which she swore to support, and defend, the Constitution of the United States.

She would like to be clear that this action, on her part is not, and should not be construed as, a publicity stunt, but is rather are conscientious acts taken upon the advice of counsel given her awareness that she has regarding alleged war crimes, and her awareness that other State of Hawai‘i officials appear to have chosen silence.

If you contend that I have made any misstatements of law or misrepresentations of fact, please do not hesitate to contact me.

Sincerely,



Stephen Laudig
HBN #8038

cc: State of Hawai‘i Attorney General
United States Attorney General
Office of the Prosecutor, International Criminal Court
United Nations Independent Expert on the Promotion of a Democratic and Equitable International Order

Enclosures as stated:

President Cleveland's Message to Congress
(18 December 1893)

53D CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { Ex. Doc. 1, Part 1.

APPENDIX II

FOREIGN RELATIONS

OF THE

UNITED STATES

1894

AFFAIRS IN HAWAII

WASHINGTON
GOVERNMENT PRINTING OFFICE
1895

MESSAGE.

To the Senate and House of Representatives:

In my recent annual message to the Congress I briefly referred to our relations with Hawaii and expressed the intention of transmitting further information on the subject when additional advices permitted.

Though I am not able now to report a definite change in the actual situation, I am convinced that the difficulties lately created both here and in Hawaii and now standing in the way of a solution through Executive action of the problem presented, render it proper, and expedient, that the matter should be referred to the broader authority and discretion of Congress, with a full explanation of the endeavor thus far made to deal with the emergency and a statement of the considerations which have governed my action.

I suppose that right and justice should determine the path to be followed in treating this subject. If national honesty is to be disregarded and a desire for territorial extension, or dissatisfaction with a form of government not our own, ought to regulate our conduct, I have entirely misapprehended the mission and character of our Government and the behavior which the conscience of our people demands of their public servants.

When the present Administration entered upon its duties the Senate had under consideration a treaty providing for the annexation of the Hawaiian Islands to the territory of the United States. Surely under our Constitution and laws the enlargement of our limits is a manifestation of the highest attribute of sovereignty, and if entered upon as an Executive act, all things relating to the transaction should be clear and free from suspicion. Additional importance attached to this particular treaty of annexation, because it contemplated a departure from unbroken American tradition in providing for the addition to our territory of islands of the sea more than two thousand miles removed from our nearest coast.

These considerations might not of themselves call for interference with the completion of a treaty entered upon by a previous Administration. But it appeared from the documents accompanying the

treaty when submitted to the Senate, that the ownership of Hawaii was tendered to us by a provisional government set up to succeed the constitutional ruler of the islands, who had been dethroned, and it did not appear that such provisional government had the sanction of either popular revolution or suffrage. Two other remarkable features of the transaction naturally attracted attention. One was the extraordinary haste—not to say precipitancy—characterizing all the transactions connected with the treaty. It appeared that a so-called Committee of Safety, ostensibly the source of the revolt against the constitutional Government of Hawaii, was organized on Saturday, the 14th day of January; that on Monday, the 16th, the United States forces were landed at Honolulu from a naval vessel lying in its harbor; that on the 17th the scheme of a provisional government was perfected, and a proclamation naming its officers was on the same day prepared and read at the Government building; that immediately thereupon the United States Minister recognized the provisional government thus created; that two days afterwards, on the 19th day of January, commissioners representing such government sailed for this country in a steamer especially chartered for the occasion, arriving in San Francisco on the 28th day of January, and in Washington on the 3d day of February; that on the next day they had their first interview with the Secretary of State, and another on the 11th, when the treaty of annexation was practically agreed upon, and that on the 14th it was formally concluded and on the 15th transmitted to the Senate. Thus between the initiation of the scheme for a provisional government in Hawaii on the 14th day of January and the submission to the Senate of the treaty of annexation concluded with such government, the entire interval was thirty-two days, fifteen of which were spent by the Hawaiian Commissioners in their journey to Washington.

In the next place, upon the face of the papers submitted with the treaty, it clearly appeared that there was open and undetermined an issue of fact of the most vital importance. The message of the President accompanying the treaty declared that "the overthrow of the monarchy was not in any way promoted by this Government," and in a letter to the President from the Secretary of State, also submitted to the Senate with the treaty, the following passage occurs: "At the time the provisional government took possession of the Government buildings no troops or officers of the United States were present or took any part whatever in the proceedings. No public recognition was accorded to the provisional government by the United States Minister until after the Queen's abdication and when they were in effective possession of the Government buildings,

the archives, the treasury, the barracks, the police station, and all the potential machinery of the Government." But a protest also accompanied said treaty, signed by the Queen and her ministers at the time she made way for the provisional government, which explicitly stated that she yielded to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support such provisional government.

The truth or falsity of this protest was surely of the first importance. If true, nothing but the concealment of its truth could induce our Government to negotiate with the semblance of a government thus created, nor could a treaty resulting from the acts stated in the protest have been knowingly deemed worthy of consideration by the Senate. Yet the truth or falsity of the protest had not been investigated.

I conceived it to be my duty therefore to withdraw the treaty from the Senate for examination, and meanwhile to cause an accurate, full, and impartial investigation to be made of the facts attending the subversion of the constitutional Government of Hawaii, and the installment in its place of the provisional government. I selected for the work of investigation the Hon. James H. Blount, of Georgia, whose service of eighteen years as a member of the House of Representatives, and whose experience as chairman of the Committee of Foreign Affairs in that body, and his consequent familiarity with international topics, joined with his high character and honorable reputation, seemed to render him peculiarly fitted for the duties entrusted to him. His report detailing his action under the instructions given to him and the conclusions derived from his investigation accompany this message.

These conclusions do not rest for their acceptance entirely upon Mr. Blount's honesty and ability as a man, nor upon his acumen and impartiality as an investigator. They are accompanied by the evidence upon which they are based, which evidence is also herewith transmitted, and from which it seems to me no other deductions could possibly be reached than those arrived at by the Commissioner.

The report with its accompanying proofs, and such other evidence as is now before the Congress or is herewith submitted, justifies in my opinion the statement that when the President was led to submit the treaty to the Senate with the declaration that "the overthrow of the monarchy was not in any way promoted by this Government", and when the Senate was induced to receive and discuss it on that basis, both President and Senate were misled.

The attempt will not be made in this communication to touch

upon all the facts which throw light upon the progress and consummation of this scheme of annexation. A very brief and imperfect reference to the facts and evidence at hand will exhibit its character and the incidents in which it had its birth.

It is unnecessary to set forth the reasons which in January, 1893, led a considerable proportion of American and other foreign merchants and traders residing at Honolulu to favor the annexation of Hawaii to the United States. It is sufficient to note the fact and to observe that the project was one which was zealously promoted by the Minister representing the United States in that country. He evidently had an ardent desire that it should become a fact accomplished by his agency and during his ministry, and was not inconveniently scrupulous as to the means employed to that end. On the 19th day of November, 1892, nearly two months before the first overt act tending towards the subversion of the Hawaiian Government and the attempted transfer of Hawaiian territory to the United States, he addressed a long letter to the Secretary of State in which the case for annexation was elaborately argued, on moral, political, and economical grounds. He refers to the loss to the Hawaiian sugar interests from the operation of the McKinley bill, and the tendency to still further depreciation of sugar property unless some positive measure of relief is granted. He strongly inveighs against the existing Hawaiian Government and emphatically declares for annexation. He says: "In truth the monarchy here is an absurd anachronism. It has nothing on which it logically or legitimately stands. The feudal basis on which it once stood no longer existing, the monarchy now is only an impediment to good government—an obstruction to the prosperity and progress of the islands."

He further says: "As a crown colony of Great Britain or a Territory of the United States the government modifications could be made readily and good administration of the law secured. Destiny and the vast future interests of the United States in the Pacific clearly indicate who at no distant day must be responsible for the government of these islands. Under a territorial government they could be as easily governed as any of the existing Territories of the United States." * * * "Hawaii has reached the parting of the ways. She must now take the road which leads to Asia, or the other which outlets her in America, gives her an American civilization, and binds her to the care of American destiny." He also declares: "One of two courses seems to me absolutely necessary to be followed, either bold and vigorous measures for annexation or a 'customs union,' an ocean cable from the Californian coast to Honolulu, Pearl Harbor perpetually ceded to the United States, with an implied but not ex-

pressly stipulated American protectorate over the islands. I believe the former to be the better, that which will prove much the more advantageous to the islands, and the cheapest and least embarrassing in the end to the United States. If it was wise for the United States through Secretary Marcy thirty-eight years ago to offer to expend $100,000 to secure a treaty of annexation, it certainly can not be chimerical or unwise to expend $100,000 to secure annexation in the near future. To-day the United States has five times the wealth she possessed in 1854, and the reasons now existing for annexation are much stronger than they were then. I can not refrain from expressing the opinion with emphasis that the golden hour is near at hand."

These declarations certainly show a disposition and condition of mind, which may be usefully recalled when interpreting the significance of the Minister's conceded acts or when considering the probabilities of such conduct on his part as may not be admitted.

In this view it seems proper to also quote from a letter written by the Minister to the Secretary of State on the 8th day of March, 1892, nearly a year prior to the first step taken toward annexation. After stating the possibility that the existing Government of Hawaii might be overturned by an orderly and peaceful revolution, Minister Stevens writes as follows: "Ordinarily in like circumstances, the rule seems to be to limit the landing and movement of United States forces in foreign waters and dominion exclusively to the protection of the United States legation and of the lives and property of American citizens. But as the relations of the United States to Hawaii are exceptional, and in former years the United States officials here took somewhat exceptional action in circumstances of disorder, I desire to know how far the present Minister and naval commander may deviate from established international rules and precedents in the contingencies indicated in the first part of this dispatch."

To a minister of this temper full of zeal for annexation there seemed to arise in January, 1893, the precise opportunity for which he was watchfully waiting—an opportunity which by timely "deviation from established international rules and precedents" might be improved to successfully accomplish the great object in view; and we are quite prepared for the exultant enthusiasm with which in a letter to the State Department dated February 1, 1893, he declares: "The Hawaiian pear is now fully ripe and this is the golden hour for the United States to pluck it."

As a further illustration of the activity of this diplomatic representative, attention is called to the fact that on the day the above letter was written, apparently unable longer to restrain his ardor, he issued a proclamation whereby "in the name of the United

States" he assumed the protection of the Hawaiian Islands and declared that said action was "taken pending and subject to negotiations at Washington." Of course this assumption of a protectorate was promptly disavowed by our Government, but the American flag remained over the Government building at Honolulu and the forces remained on guard until April, and after Mr. Blount's arrival on the scene, when both were removed.

A brief statement of the occurrences that led to the subversion of the constitutional Government of Hawaii in the interests of annexation to the United States will exhibit the true complexion of that transaction.

On Saturday, January 14, 1893, the Queen of Hawaii, who had been contemplating the proclamation of a new constitution, had, in deference to the wishes and remonstrances of her cabinet, renounced the project for the present at least. Taking this relinquished purpose as a basis of action, citizens of Honolulu numbering from fifty to one hundred, mostly resident aliens, met in a private office and selected a so-called Committee of Safety, composed of thirteen persons, seven of whom were foreign subjects, and consisted of five Americans, one Englishman, and one German. This committee, though its designs were not revealed, had in view nothing less than annexation to the United States, and between Saturday, the 14th, and the following Monday, the 16th of January—though exactly what action was taken may not be clearly disclosed—they were certainly in communication with the United States Minister. On Monday morning the Queen and her cabinet made public proclamation, with a notice which was specially served upon the representatives of all foreign governments, that any changes in the constitution would be sought only in the methods provided by that instrument. Nevertheless, at the call and under the auspices of the Committee of Safety, a mass meeting of citizens was held on that day to protest against the Queen's alleged illegal and unlawful proceedings and purposes. Even at this meeting the Committee of Safety continued to disguise their real purpose and contented themselves with procuring the passage of a resolution denouncing the Queen and empowering the committee to devise ways and means "to secure the permanent maintenance of law and order and the protection of life, liberty, and property in Hawaii." This meeting adjourned between three and four o'clock in the afternoon. On the same day, and immediately after such adjournment, the committee, unwilling to take further steps without the coöperation of the United States Minister, addressed him a note representing that the public safety was menaced and that lives and property were in danger, and concluded as follows:

"We are unable to protect ourselves without aid, and therefore pray for the protection of the United States forces." Whatever may be thought of the other contents of this note, the absolute truth of this latter statement is incontestable. When the note was written and delivered, the committee, so far as it appears, had neither a man nor a gun at their command, and after its delivery they became so panic-stricken at their position that they sent some of their number to interview the Minister and request him not to land the United States forces till the next morning. But he replied that the troops had been ordered, and whether the committee were ready or not the landing should take place. And so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer *Boston*, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawaii or for the *bona fide* purpose of protecting the imperilled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the *de facto* and the *de jure* government. In point of fact the existing government instead of requesting the presence of an armed force protested against it. There is as little basis for the pretense that such forces were landed for the security of American life and property. If so, they would have been stationed in the vicinity of such property and so as to protect it, instead of at a distance and so as to command the Hawaiian Government building and palace. Admiral Skerrett, the officer in command of our naval force on the Pacific station, has frankly stated that in his opinion the location of the troops was inadvisable if they were landed for the protection of American citizens whose residences and places of business, as well as the legation and consulate, were in a distant part of the city, but the location selected was a wise one if the forces were landed for the purpose of supporting the provisional government. If any peril to life and property calling for any such martial array had existed, Great Britain and other foreign powers interested would not have been behind the United States in activity to protect their citizens. But they made no sign in that direction. When these armed men were landed, the city of Honolulu was in its customary orderly and peaceful condition. There was no

symptom of riot or disturbance in any quarter. Men, women, and children were about the streets as usual, and nothing varied the ordinary routine or disturbed the ordinary tranquillity, except the landing of the *Boston's* marines and their march through the town to the quarters assigned them. Indeed, the fact that after having called for the landing of the United States forces on the plea of danger to life and property the Committee of Safety themselves requested the Minister to postpone action, exposed the untruthfulness of their representations of present peril to life and property. The peril they saw was an anticipation growing out of guilty intentions on their part and something which, though not then existing, they knew would certainly follow their attempt to overthrow the Government of the Queen without the aid of the United States forces.

Thus it appears that Hawaii was taken possession of by the United States forces without the consent or wish of the government of the islands, or of anybody else so far as shown, except the United States Minister.

Therefore the military occupation of Honolulu by the United States on the day mentioned was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property. It must be accounted for in some other way and on some other ground, and its real motive and purpose are neither obscure nor far to seek.

The United States forces being now on the scene and favorably stationed, the committee proceeded to carry out their original scheme. They met the next morning, Tuesday, the 17th, perfected the plan of temporary government, and fixed upon its principal officers, ten of whom were drawn from the thirteen members of the Committee of Safety. Between one and two o'clock, by squads and by different routes to avoid notice, and having first taken the precaution of ascertaining whether there was any one there to oppose them, they proceeded to the Government building to proclaim the new government. No sign of opposition was manifest, and thereupon an American citizen began to read the proclamation from the steps of the Government building almost entirely without auditors. It is said that before the reading was finished quite a concourse of persons, variously estimated at from 50 to 100, some armed and some unarmed, gathered about the committee to give them aid and confidence. This statement is not important, since the one controlling factor in the whole affair was unquestionably the United States marines, who, drawn up under arms and with artillery in readiness only seventy-six yards distant, dominated the situation.

The provisional government thus proclaimed was by the terms of

the proclamation "to exist until terms of union with the United States had been negotiated and agreed upon". The United States Minister, pursuant to prior agreement, recognized this government within an hour after the reading of the proclamation, and before five o'clock, in answer to an inquiry on behalf of the Queen and her cabinet, announced that he had done so.

When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister's recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge. Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal, while the Committee of Safety, by actual search, had discovered that there were but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice. Accordingly, some hours after the recognition of the provisional government by the United States Minister, the palace, the barracks, and the police station, with all the military resources of the country, were delivered up by the Queen upon the representation made to her that her cause would thereafter be reviewed at Washington, and while protesting that she surrendered to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support the provisional government, and that she

yielded her authority to prevent collision of armed forces and loss of life and only until such time as the United States, upon the facts being presented to it, should undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands.

This protest was delivered to the chief of the provisional government, who endorsed thereon his acknowledgment of its receipt. The terms of the protest were read without dissent by those assuming to constitute the provisional government, who were certainly charged with the knowledge that the Queen instead of finally abandoning her power had appealed to the justice of the United States for reinstatement in her authority; and yet the provisional government with this unanswered protest in its hand hastened to negotiate with the United States for the permanent banishment of the Queen from power and for a sale of her kingdom.

Our country was in danger of occupying the position of having actually set up a temporary government on foreign soil for the purpose of acquiring through that agency territory which we had wrongfully put in its possession. The control of both sides of a bargain acquired in such a manner is called by a familiar and unpleasant name when found in private transactions. We are not without a precedent showing how scrupulously we avoided such accusations in former days. After the people of Texas had declared their independence of Mexico they resolved that on the acknowledgment of their independence by the United States they would seek admission into the Union. Several months after the battle of San Jacinto, by which Texan independence was practically assured and established, President Jackson declined to recognize it, alleging as one of his reasons that in the circumstances it became us "to beware of a too early movement, as it might subject us, however unjustly, to the imputation of seeking to establish the claim of our neighbors to a territory with a view to its subsequent acquisition by ourselves". This is in marked contrast with the hasty recognition of a government openly and concededly set up for the purpose of tendering to us territorial annexation.

I believe that a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States. Fair-minded people with the evidence before them will hardly claim that the Hawaiian Government was overthrown by the people of the islands or that the provisional government had ever existed with their consent. I do not understand that any member of this government claims that the

people would uphold it by their suffrages if they were allowed to vote on the question.

While naturally sympathizing with every effort to establish a republican form of government, it has been the settled policy of the United States to concede to people of foreign countries the same freedom and independence in the management of their domestic affairs that we have always claimed for ourselves; and it has been our practice to recognize revolutionary governments as soon as it became apparent that they were supported by the people. For illustration of this rule I need only to refer to the revolution in Brazil in 1889, when our Minister was instructed to recognize the Republic "so soon as a majority of the people of Brazil should have signified their assent to its establishment and maintenance"; to the revolution in Chile in 1891, when our Minister was directed to recognize the new government "if it was accepted by the people"; and to the revolution in Venezuela in 1892, when our recognition was accorded on condition that the new government was "fully established, in possession of the power of the nation, and accepted by the people."

As I apprehend the situation, we are brought face to face with the following conditions:

The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.

But for the notorious predilections of the United States Minister for annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed.

But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.

But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the provisional government from the steps of the Government building.

And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Stevens's recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the

sole purpose of submitting her case to the enlightened justice of the United States.

Believing, therefore, that the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods, I shall not again submit the treaty of annexation to the Senate for its consideration, and in the instructions to Minister Willis, a copy of which accompanies this message, I have directed him to so inform the provisional government.

But in the present instance our duty does not, in my opinion, end with refusing to consummate this questionable transaction. It has been the boast of our Government that it seeks to do justice in all things without regard to the strength or weakness of those with whom it deals. I mistake the American people if they favor the odious doctrine that there is no such thing as international morality, that there is one law for a strong nation and another for a weak one, and that even by indirection a strong power may with impunity despoil a weak one of its territory.

By an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair. The provisional government has not assumed a republican or other constitutional form, but has remained a mere executive council or oligarchy, set up without the assent of the people. It has not sought to find a permanent basis of popular support and has given no evidence of an intention to do so. Indeed, the representatives of that government assert that the people of Hawaii are unfit for popular government and frankly avow that they can be best ruled by arbitrary or despotic power.

The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond a breach of which subjects him to

legal liabilities; and the United States in aiming to maintain itself as one of the most enlightened of nations would do its citizens gross injustice if it applied to its international relations any other than a high standard of honor and morality. On that ground the United States can not properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.

These principles apply to the present case with irresistible force when the special conditions of the Queen's surrender of her sovereignty are recalled. She surrendered not to the provisional government, but to the United States. She surrendered not absolutely and permanently, but temporarily and conditionally until such time as the facts could be considered by the United States. Furthermore, the provisional government acquiesced in her surrender in that manner and on those terms, not only by tacit consent, but through the positive acts of some members of that government who urged her peaceable submission, not merely to avoid bloodshed, but because she could place implicit reliance upon the justice of the United States, and that the whole subject would be finally considered at Washington.

I have not, however, overlooked an incident of this unfortunate affair which remains to be mentioned. The members of the provisional government and their supporters, though not entitled to extreme sympathy, have been led to their present predicament of revolt against the Government of the Queen by the indefensible encouragement and assistance of our diplomatic representative. This fact may entitle them to claim that in our effort to rectify the wrong committed some regard should be had for their safety. This sentiment is strongly seconded by my anxiety to do nothing which would invite either harsh retaliation on the part of the Queen or violence and bloodshed in any quarter. In the belief that the Queen, as well as her enemies, would be willing to adopt such a course as would meet these conditions, and in view of the fact that both the Queen and the provisional government had at one time apparently acquiesced in a reference of the entire case to the United States Government, and considering the further fact that in any event the provisional

government by its own declared limitation was only "to exist until terms of union with the United States of America have been negotiated and agreed upon," I hoped that after the assurance to the members of that government that such union could not be consummated I might compass a peaceful adjustment of the difficulty.

Actuated by these desires and purposes, and not unmindful of the inherent perplexities of the situation nor of the limitations upon my power, I instructed Minister Willis to advise the Queen and her supporters of my desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned. The conditions suggested, as the instructions show, contemplate a general amnesty to those concerned in setting up the provisional government and a recognition of all its *bona fide* acts and obligations. In short, they require that the past should be buried, and that the restored Government should reassume its authority as if its continuity had not been interrupted. These conditions have not proved acceptable to the Queen, and though she has been informed that they will be insisted upon, and that, unless acceded to, the efforts of the President to aid in the restoration of her Government will cease, I have not thus far learned that she is willing to yield them her acquiescence. The check which my plans have thus encountered has prevented their presentation to the members of the provisional government, while unfortunate public misrepresentations of the situation and exaggerated statements of the sentiments of our people have obviously injured the prospects of successful Executive mediation.

I therefore submit this communication with its accompanying exhibits, embracing Mr. Blount's report, the evidence and statements taken by him at Honolulu, the instructions given to both Mr. Blount and Minister Willis, and correspondence connected with the affair in hand.

In commending this subject to the extended powers and wide discretion of the Congress, I desire to add the assurance that I shall be much gratified to coöperate in any legislative plan which may be devised for the solution of the problem before us which is consistent with American honor, integrity, and morality.

GROVER CLEVELAND.

EXECUTIVE MANSION,
Washington, December 18, 1893.

Dr. David Keanu Sai, *The Larsen v. Hawaiian Kingdom Case at the Permanent Court of Arbitration and Why There Is An Ongoing Illegal State of War with the United States of America Since 16 January 1893*
(16 October 2017)

OFFICE OF THE
HAWAIIAN AMBASSADOR-AT-LARGE

The *Larsen v. Hawaiian Kingdom* Case at the Permanent Court of Arbitration and Why There Is An Ongoing Illegal State of War with the United States of America Since 16 January 1893

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PREPARED FOR THE PUBLIC

Abstract

When the *South China Sea* Tribunal cited in its award on jurisdiction the *Larsen v. Hawaiian Kingdom* case held at the Permanent Court of Arbitration, it should have garnered international attention, especially after the Court acknowledged the Hawaiian Kingdom as a state and Larsen a private entity. The *Larsen* case was a dispute between a Hawaiian national and his government, who he alleged was negligent for allowing the unlawful imposition of American laws over Hawaiian territory that led to the alleged war crimes of unfair trial, unlawful confinement and pillaging. Larsen sought to have the Tribunal adjudge that the United States of America violated his rights, after which he sought the Tribunal to adjudge that the Hawaiian government was liable for those violations. Although the United States was formally invited it chose not to join in the arbitration thus raising the indispensable third party rule for Larsen to overcome. What is almost completely unknown today is Hawai‘i’s international status as an independent and sovereign state, called the Hawaiian Kingdom, that has been in an illegal state of war with the United States of America since 16 January 1893. The purpose of this article will be to make manifest, in the light of international law, the current illegal state of war that has gone on for well over a century and its profound impact on the international community today.

Contents

Introduction—The emergence of the case of the United States illegal occupation of Hawai‘i in the Permanent Court of Arbitration

The first allegations of war crimes committed in Hawai‘i, being unfair trial, unlawful confinement and pillaging,[1] were made the subject of an arbitral dispute in *Lance Larsen vs. Hawaiian Kingdom* at the Permanent Court of Arbitration (hereafter "PCA").[2] Oral hearings were held at the PCA on 7, 8 and 11 December 2000. As an intergovernmental organization, the PCA must possess institutional jurisdiction before it can form *ad hoc* tribunals. The jurisdiction of the PCA is distinguished from the subject-matter jurisdiction of the *ad hoc* tribunal over the dispute between the parties. Disputes capable of being accepted under the PCA's institutional jurisdiction include disputes between: any two or more states; a state and an international organization (i.e. an intergovernmental organization); two or more international organizations; a state and a private party; and an international organization and a private entity.[3] The PCA accepted the case as a dispute between a state and a private party, and acknowledged the Hawaiian Kingdom as a non-Contracting Power under Article 47 of the 1907 Hague Convention, I (hereafter "1907 HC I").[4] As stated on the PCA's website:

> "Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of

[1] Memorial of Lance Paul Larsen (May 22, 2000), *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, at para. 62-64, "Despite Mr. Larsen's efforts to assert his nationality and to protest the prolonged occupation of his nation, [on] 4 October 1999, Mr. Larsen was illegally imprisoned for his refusal to abide by the laws of the State of Hawaii by State of Hawaii. At this point, Mr. Larsen became a political prisoner, imprisoned for standing up for his rights as a Hawaiian subject against the United States of America, the occupying power in the prolonged occupation of the Hawaiian islands.… While in prison, Mr. Larsen did continue to assert his nationality as a Hawaiian subject, and to protest the unlawful imposition of American laws over his person by filing a Writ of Habeus [sic] Corpus with the Circuit Court of the Third Circuit, Hilo Division, State of Hawaii.… Upon release from incarceration, Mr. Larsen was forced to pay additional fines to the State of Hawaii in order to avoid further imprisonment for asserting his rights as a Hawaiian subject," available at http://www.alohaquest.com/arbitration/memorial_larsen.htm. Article 33, 1949 Geneva Convention, IV, "Pillage is prohibited. Reprisals against protected persons and their property are prohibited;" Article 147, 1949 Geneva Convention, IV, "Grave breaches […] shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: …unlawful confinement of a protected person,… wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention;" see also International Criminal Court, *Elements of War Crimes* (2011), at 16 (Article 8 (2) (a) (vi)—War crime of denying a fair trial), 17 (Article 8 (2) (a) (vii)-2—War Crime of unlawful confinement), and 26 (Article 8 (2) (b) (xvi)—War Crime of pillaging).

[2] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, available at https://pca-cpa.org/en/cases/35/.

[3] United Nations, *United Nations Conference on Trade and Development: Dispute Settlement* (United Nations New York and Geneva, 2003), at 15.

[4] PCA Annual Report, Annex 2 (2011), at 51, n. 2.

> American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom."[5]

The Government of the Hawaiian Kingdom, as it stood on 17 January 1893, was restored in 1995, *in situ* and not *in exile*.[6] An *acting* Council of Regency comprised of four Ministers—Interior, Foreign Affairs, Finance and the Attorney General—was established in accordance with the Hawaiian constitution and the doctrine of necessity to serve in the absence of the executive monarch. By virtue of this process a provisional government, (hereafter "Hawaiian government"), comprised of officers *de facto,* was established.[7] According to U.S. constitutional scholar Thomas Cooley,

> "A provisional government is supposed to be a government de facto for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity."[8]

Like other governments formed in exile during foreign occupations, the Hawaiian government did not receive its mandate from the Hawaiian citizenry, but rather by virtue of Hawaiian constitutional law, and therefore represents the Hawaiian state.[9] As in 2001, Bederman and Hilbert reported in the *American Journal of International Law*,

> "[a]t the center of the PCA proceedings was … that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' "unlawful imposition [over him] of [its] municipal laws" through its political subdivision, the State of Hawaii. As a result of this

[5] *Larsen v. Hawaiian Kingdom*, Cases, Permanent Court of Arbitration, available at https://pca-cpa.org/en/cases/35/ (last visited 16 October 2017).
[6] David Keanu Sai, *Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*, 25-51 (4 August 2013), *available at* http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf (last visited 16 October 2017).
[7] *Id*., at 40-48. On 3 April 2014, the Directorate of International Law, Swiss Federal Department of Foreign Affairs, in Bern, accepted the *acting* Government's letter of credence for its Envoy whose mission was to initiate negotiations with the Swiss Confederation to serve as a Protecting Power in accordance with the 1949 Geneva Convention, IV. The negotiations are ongoing.
[8] Thomas M. Cooley, "Grave Obstacles to Hawaiian Annexation," *The Forum* (1893), 389, at 390.
[9] The policy of the Hawaiian government is threefold: first, exposure of the prolonged occupation; second, ensure that the United States complies with international humanitarian law; and, third, prepare for an effective transition to a de jure government when the occupation ends. The Strategic Plan of the Hawaiian government is available at http://hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf (last visited 16 October 2017).

> responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him."[10]

The Tribunal concluded that it did not possess subject matter jurisdiction in the case because of the indispensible third party rule. The Tribunal explained:

> "[i]t follows that the Tribunal cannot determine whether the respondent [the Hawaiian Kingdom] has failed to discharge its obligations towards the claimant [Larsen] without ruling on the legality of the acts of the United States of America. Yet that is precisely what the *Monetary Gold* principle precludes the Tribunal from doing. As the International Court of Justice explained in the *East Timor* case, "the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case.'"[11]

The Tribunal, however, acknowledged that the parties to the arbitration could pursue fact-finding. The Tribunal stated, "[a]t one stage of the proceedings the question was raised whether some of the issues which the parties wished to present might not be dealt with by way of a fact-finding process. In addition to its role as a facilitator of international arbitration and conciliation, the Permanent Court of Arbitration has various procedures for fact-finding, both as between States and otherwise."[12] The Tribunal noted "that the interstate fact-finding commissions so far held under the auspices of the Permanent Court of Arbitration have not confined themselves to pure questions of fact but have gone on, expressly or by clear implication, to deal with issues of responsibility for those facts."[13] The Tribunal pointed out that "Part III of each of the Hague Conventions of 1899 and 1907 provide for International Commissions of Inquiry. The PCA has also adopted Optional Rules for Fact-finding Commissions of Inquiry."[14]

To date, there have only been five international commissions of inquiry held under the auspices of the PCA—the first in 1905, *The Dogger Bank Case* (Great Britain – Russia), and the last in 1962, *"Red Crusader" Incident* (Great Britain – Denmark). These commissions of inquiry have been employed in cases "in which 'honor' and 'essential interests' were unquestionably involved, for the determination of legal as well as factual issues, and by tribunals whose composition and proceedings more closely resembled courts than commission of inquiry as originally conceived [under the 1907 HC I]."[15]

[10] David Bederman & Kurt Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensible third parties—legal status of Hawaii," 95 *American Journal of International Law* (2001) 927, at 928.
[11] Larsen v. Hawaiian Kingdom, 119 *International Law Reports* (2001) 566, at 596 (hereafter "Larsen case").
[12] *Id.*, at 597.
[13] *Id*.
[14] *Id.*, at n. 28.
[15] J.G. Merrills, *International Dispute Settlement* (4th ed., 2005), at 59.

On 19 January 2017, the Hawaiian government and Lance Larsen entered into a Special Agreement to form an international commission of inquiry. As proposed by the Tribunal, both Parties agreed to the rules provided under Part III—*International Commissions of Inquiry* (Articles 9-36), 1907 HC I. After the Commission is formed they will select a Secretary General to serve as a registry and the location for its sitting.[16] According to Article III of the Special Agreement:

> "[t]he Commission is requested to determine: *First*, what is the function and role of the Government of the Hawaiian Kingdom in accordance with the basic norms and framework of international humanitarian law; *Second*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Lance Paul Larsen, and, by extension, toward all Hawaiian subjects domiciled in Hawaiian territory and abroad in accordance with the basic norms and framework of international humanitarian law; and, *Third*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Protected Persons who are domiciled in Hawaiian territory and those Protected Persons who are transient in accordance with the basic norms and framework of international humanitarian law."[17]

Since humanitarian law is a set of rules that seek to limit the effects of war on persons who are not participating in the armed conflict, such as civilians of an occupied state, the *Larsen* case and the fact-finding proceedings must stem from an actual state of war—a war not in theory but a war in fact. More importantly, the application of the principle of *intertemporal law* is critical to understanding the arbitral dispute between Larsen and the Hawaiian Kingdom. The dispute stemmed from the illegal state of war with the United States that began in 1893. Judge Huber famously stated that "a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled."[18]

The Hawaiian Kingdom as a Subject of International Law

To quote the *dictum* of the *Larsen v. Hawaiian Kingdom* Tribunal, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[19] As an independent state, the Hawaiian Kingdom entered into extensive treaty relations with a variety of states establishing diplomatic

[16] Amendment to Special Agreement (26 March 2017), available at http://hawaiiankingdom.org/pdf/Amend_Agmt_3_26_17.pdf (last visited 16 October 2017).
[17] Special Agreement (January 19, 2017), available at http://hawaiiankingdom.org/pdf/ICI_Agmt_1_19_17(amended).pdf (last visited 16 October 2017).
[18] *Island of Palmas* arbitration case (Netherlands and the United States of America), R.I.A.A., vol. II, 829 (1949).
[19] Larsen case, *supra* note 11, at 581.

relations and trade agreements.[20] According to Westlake in 1894, the *Family of Nations* comprised, "First, all European States.… Secondly, all American States.… Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State."[21]

To preserve its political independence should there be war, the Hawaiian Kingdom sought to ensure that its neutrality would be recognized beforehand. Provisions recognizing Hawaiian neutrality were incorporated in the treaties with Sweden-Norway, Spain and Germany. "A nation that wishes to secure her own peace," says Vattel, "cannot more successfully attain that object than by concluding treaties [of] neutrality."[22]

Under customary international law in force in the nineteenth century, the territory of a neutral State could not be violated. This principle was codified by Article 1 of the 1907 Hague Convention, V, stating that the "territory of neutral Powers is inviolable." According to Politis, "[t]he law of neutrality, fashioned as it had been by custom and a closely woven network of contractual agreements, was to a great extent codified by the beginning of the [20th] century."[23] As such, the Hawaiian Kingdom's territory could not be trespassed or dishonored, and its neutrality "constituted a guaranty of independence and peaceful existence."[24]

From a State of Peace to an Unjust State of War

"Traditional international law was based upon a rigid distinction between the state of peace and the state of war," says Judge Greenwood.[25] "Countries were either in a state of peace or a state of

[20] The Hawaiian Kingdom entered into treaties with Austria-Hungary (now separate states), 18 June 1875; Belgium, 4 October 1862; Bremen (succeeded by Germany), 27 March 1854; Denmark, 19 October 1846; France, 8 September 1858; French Tahiti, 24 November 1853; Germany, 25 March 1879; New South Wales (now Australia), 10 March 1874; Hamburg (succeeded by Germany), 8 January 1848); Italy, 22 July 1863; Japan, 19 August 1871, 28 January 1886; Netherlands & Luxembourg, 16 October 1862 (William III was also Grand Duke of Luxembourg); Portugal, 5 May 1882; Russia, 19 June 1869; Samoa, 20 March 1887; Spain, 9 October 1863; Sweden-Norway (now separate states), 5 April 1855; and Switzerland, 20 July 1864; the United Kingdom of Great Britain and Northern Ireland) 26 March 1846; and the United States of America, 20 December 1849, 13 January 1875, 11 September 1883, and 6 December 1884.

[21] John Westlake, *Chapters on the Principles of International Law* (1894), at 81. In 1893, there were 44 other independent and sovereign states in the *Family of Nations*: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chili, Colombia, Costa Rica, Denmark, Ecuador, France, Germany, Great Britain, Greece, Guatemala, Hawaiian Kingdom, Haiti, Honduras, Italy, Liberia, Liechtenstein, Luxembourg, Netherlands, Mexico, Monaco, Montenegro, Nicaragua, Orange Free State that was later annexed by Great Britain in 1900, Paraguay, Peru, Portugal, Romania, Russia, San Domingo, San Salvador, Serbia, Spain, Sweden-Norway, Switzerland, Turkey, United States of America, Uruguay, and Venezuela. In 1945, there were 45, and today there are 193.

[22] Emerich De Vattel, *The Law of Nations* (6th ed., 1844), at 333.

[23] Nicolas Politis, *Neutrality and Peace* (1935), at 27.

[24] *Id.*, at 31.

[25] Christopher Greenwood, "Scope of Application of Humanitarian Law," in Dieter Fleck (ed.), *The Handbook of the International Law of Military Operations* (2nd ed., 2008), at 45.

war; there was no intermediate state."[26] This is also reflected by the fact that the renowned jurist of international law, Lassa Oppenheim, separated his treatise on *International Law* into two volumes, Vol. I—*Peace,* and Vol. II—*War and Neutrality*. In the nineteenth century, war was recognized as lawful, but it had to be justified under *jus ad bellum*. War could only be waged to redress a State's injury. As Vattel stated, "[w]hatever strikes at [a sovereign state's] rights is an injury, and a just cause of war."[27]

The Hawaiian Kingdom enjoyed a state of peace with all states. This state of affairs, however, was violently interrupted by the United States when the state of peace was transformed to a state of war that began on 16 January 1893 when United States troops invaded the kingdom. The following day, Queen Lili'uokalani, as the executive monarch of a constitutional government, made the following protest and a conditional surrender of her authority to the United States in response to military action taken against the Hawaiian government. The Queen's protest stated:

> "I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom. That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government. Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands."[28]

Under international law, the landing of United States troops without the consent of the Hawaiian government was an act of war. But in order for an act of war not to transform the state of affairs to a state of war, the act must be justified or lawful under international law, e.g. the necessity of landing troops to secure the protection of the lives and property of United States citizens in the Hawaiian Kingdom. According to Wright, "[a]n act of war is an invasion of territory … and so normally illegal. Such an act if not followed by war gives grounds for a claim which can be legally avoided only by proof of some special treaty or necessity justifying the act."[29] The quintessential question is whether or not the United States troops were landed to protect American lives or were they landed to wage war against the Hawaiian Kingdom.

[26] *Id*.
[27] Vattel, *supra* note 22, at 301.
[28] Larsen case, Annexure 2, *supra* note 10, at 612.
[29] Quincy Wright, "Changes in the Concept of War," 18 *American Journal of International Law* (1924) 755, at 756.

According to Brownlie, "[t]he right of war, as an aspect of sovereignty, which existed in the period before 1914, subject to the doctrine that war was a means of last resort in the enforcement of legal rights, was very rarely asserted either by statesmen or works of authority without some stereotyped plea to a right of self-preservation, and of self-defence, or to necessity or protection of vital interests, or merely alleged injury to rights or national honour and dignity."[30] The United States had no dispute with the Hawaiian Kingdom that would have warranted an invasion and overthrow of the Hawaiian government of a neutral and independent state.

In 1993, the United States Congress enacted a joint resolution offering an apology for the overthrow.[31] Of significance in the resolution was a particular preamble clause, which stated: "[w]hereas, in a message to Congress on December 18, 1893, President Grover Cleveland reportedly fully and accurately on the illegal acts of the conspirators, described such acts as an 'act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress,' and acknowledged that by such acts the government of a peaceful and friendly people was overthrown."[32] At first read, however, it would appear that the "conspirators" were the subjects that committed the "act of war," but this is misleading. First, under international law, only a state can commit an "act of war," whether through its military and/or its diplomat; and, second, conspirators within a country could only commit the high crime of treason, not "acts of war." These two concepts are reflected in the terms coup *de main* and *coup d'état*. The former is a successful invasion by a foreign state's military force, while the latter is a successful internal revolt, which was also referred to in the nineteenth century as a revolution.

In a petition to President Cleveland from the Hawaiian Patriotic League, its leadership, comprised of Hawaiian statesmen and lawyers, clearly articulated the difference between a "*coup de main"* and a "revolution." The petition read:

> "[l]ast January [1893], a political crime was committed, not only against the legitimate Sovereign of the Hawaiian Kingdom, but also against the whole of the Hawaiian nation, a nation who, for the past sixty years, had enjoyed free and happy constitutional self-government. This was done by a *coup de main* of U.S. Minister Stevens, in collusion with a cabal of conspirators, mainly faithless sons of missionaries and local politicians angered by continuous political defeat, who, as revenge for being a hopeless minority in the country, resolved to "rule or ruin" through foreign help. The facts of this "revolution," as it is improperly called, are now a matter of history."[33]

[30] Ian Brownlie, *International Law and the Use of Force by States* (1963), at 41.
[31] Larsen case, Annexure 2, *supra* note 11, at 611-15.
[32] *Id.,* at 612.
[33] United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95, (Government Printing Office 1895), 1295, (hereafter "Executive Documents"), available at http://hawaiiankingdom.org/pdf/HPL_Petition_12_27_1893.pdf (last visited 16 October 2017).

Whether by chance or design, the 1993 Congressional apology resolution did not accurately reflect what President Cleveland stated in his message to the Congress in 1893. When Cleveland stated the "military demonstration upon the soil of Honolulu was of itself an act of war," he was referring to United States armed forces and not to any of the conspirators.[34] Cleveland noted "that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies."[35] This *act of war* was the initial stage of a *coup de main*.

As part of the plan, the U.S. diplomat, John Stevens, would prematurely recognize the small group of insurgents on January 17th as if they were successful revolutionaries thereby giving it a veil of *de facto* status. In a private note to Sanford Dole, head of the insurgency, and written under the letterhead of the United States legation on 17 January 1893, Stevens wrote: "Judge Dole: I would advise not to make known of my recognition of the de facto Provisional Government until said Government is in possession of the police station."[36] A government created through intervention is a puppet regime of the intervening State, and, as such, has no lawful authority. "Puppet governments," according to Marek, "are organs of the occupant and, as such form part of his legal order. The agreements concluded by them with the occupant are not genuine international agreements [because] such agreements are merely decrees of the occupant disguised as agreements which the occupant in fact concludes with himself. Their measures and laws are those of the occupant."[37]

Customary international law recognizes a successful revolution when insurgents secure complete control of all governmental machinery and have the acquiescence of the population. U.S. Secretary of State Foster acknowledged this rule in a dispatch to Stevens on 28 January 1893: "[y]our course in recognizing an unopposed *de facto* government appears to have been discreet and in accordance with the facts. The rule of this government has uniformly been to recognize and enter into relation with any actual government in full possession of effective power with the assent of the people."[38] According to Lauterpacht, "[s]o long as the revolution has not been successful, and so long as the lawful government … remains within national territory and asserts its authority, it is presumed to represent the State as a whole."[39] With full knowledge of what constituted a successful revolution, Cleveland provided a blistering indictment in his message to the Congress:

[34] Larsen case, Annexure 1, *supra* note 11, at 604.
[35] *Id*.
[36] Letter from United States Minister, John L. Stevens, to Sanford B. Dole, 17 January 1893, W. O. Smith Collection, HEA Archives, HMCS, Honolulu, available at http://hmha.missionhouses.org/items/show/889.
[37] Krystyna Marek, *Identity and Continuity of States in Public International Law* (2nd ed., 1968), at 114.
[38] Executive Documents, *supra* note 33, at 1179.
[39] E. Lauterpacht, *Recognition in International Law* (1947), at 93.

> "[w]hen our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety … declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister's recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge."[40]

"Premature recognition is a tortious act against the lawful government," explains Lauterpacht, which "is a breach of international law."[41] And according to Stowell, a "foreign state which intervenes in support of [insurgents] commits an act of war against the state to which it belongs, and steps outside the law of nations in time of peace."[42] Furthermore, Stapleton concludes, "[o]f all the principles in the code of international law, the most important—the one which the independent existence of all weaker States must depend—is this: no State has a right FORCIBLY to interfere in the internal concerns of another State."[43]

Cleveland then explained to the Congress the egregious effects of war that led to the Queen's conditional surrender to the United States:

> "[n]evertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal.… In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice."[44]

The President's finding that the United States embarked upon a war with the Hawaiian Kingdom in violation of the law unequivocally acknowledged a state of war in fact existed since 16

[40] Larsen case, Annexure 1, *supra* note 11, at 605.
[41] E. Lauterpacht, *supra* note 39, at 95.
[42] Ellery C. Stowell, *Intervention in International Law* (1921) at 349, n. 75.
[43] Augustus Granville Stapleton, *Intervention and Non-Intervention* (1866), at 6. It appears that Stapleton uses all capitals in his use of the word 'forcibly' to draw attention to the reader.
[44] Larsen case, Annexure 1, *supra* note 11, at 606.

January 1893. According to Lauterpact, an illegal war is "a war of aggression undertaken by one belligerent side in violation of a basic international obligation prohibiting recourse to war as an instrument of national policy."[45] However, despite the President's admittance that the acts of war were not in compliance with *jus ad bellum*—justifying war—the United States was still obligated to comply with *jus in bello*—the rules of war—when it occupied Hawaiian territory. In the *Hostages Trial* (the case of *Wilhelm List and Others*), the Tribunal rejected the prosecutor's view that, since the German occupation arose out of an unlawful use of force, Germany could not invoke the rules of belligerent occupation. The Tribunal explained:

> "[t]he Prosecution advances the contention that since Germany's war against Yugoslavia and Greece were aggressive wars, the German occupant troops were there unlawfully and gained no rights whatever as an occupant.… [W]e accept the statement as true that the wars against Yugoslavia and Greece were in direct violation of the Kellogg-Briand Pact and were therefore criminal in character. But it does not follow that every act by the German occupation forces against person or property is a crime.… At the outset, we desire to point out that international law makes no distinction between a lawful and unlawful occupant in dealing with the respective duties of occupant and population in the occupied territory."[46]

As such, the United States remained obligated to comply with the laws of occupation despite it being an illegal war. As the Tribunal further stated, "whatever may be the cause of a war that has broken out, and whether or not the cause be a so-called just cause, the same rules of international law are valid as to what must not be done, [and what] may be done."[47] According to Wright, "[w]ar begins when any state of the world manifests its intention to make war by some overt act, which may take the form of an act of war."[48] In his review of customary international law in the nineteenth century, Brownlie found "that in so far a 'state of war' had any generally accepted meaning it was a situation regarded by one or both parties to a conflict as constituting a 'state of war'".[49] Cleveland's determination that by an "act of war … the Government of a feeble but friendly and confiding people has been overthrown," the action was not justified.[50]

What is of particular significance is that Cleveland referred to the Hawaiian people as "friendly and confiding," not "hostile." This is a classical case of where the United States President admits an unjust war not justified by *jus ad bellum*, but a state of war nevertheless for international law purposes. According to United States constitutional law, the President is the sole representative of the United States in foreign relations. In the words of U.S. Justice Marshall, "[t]he President is

[45] H. Lauterpacht, "The Limits of the Operation of the Law of War," 30 *British Yearbook of International Law* (1953) 206.
[46] *USA v. William List et al.* (Case No. 7), Trials of War Criminals before the Nuremburg Military Tribunals (hereafter 'Hostages Trial'), Vol. XI (1950), 1247.
[47] *Id*.
[48] Quincy Wright, "Changes in the Concept of War," 18 *American Journal of International Law* (1924) 755, at 758.
[49] Brownlie, *supra* note 30, at 38.
[50] Larsen case, Annexure 1, *supra* note 11, at 608.

the sole organ of the nation in its external relations, and its sole representative with foreign nations."[51] Therefore, the President's political determination that by an act of war the government of a friendly and confiding people was unlawfully overthrown would not have only produced resonance with the members of the Congress, but to the international community as well, and the duty of third states to invoke neutrality.

Furthermore, in a state of war, the principle of effectiveness that you would otherwise have during a state of peace is reversed because of the existence of two legal orders in one and the same territory. Marek explains, "[i]n the first place: of these two legal orders, that of the occupied State is regular and 'normal,' while that of the occupying power is exceptional and limited. At the same time, the legal order of the occupant is, as has been strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness."[52] Therefore, "[b]elligerent occupation is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned."[53]

Cleveland told the Congress that he initiated negotiations with the Queen "to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned."[54] What Cleveland did not know at the time of his message to the Congress was that the Queen, on the very same day in Honolulu, accepted the conditions for settlement in an attempt to return the state of affairs to a state of peace. The executive mediation began on 13 November 1893 between the Queen and U.S. diplomat Albert Willis and an agreement was reached on 18 December.[55] The President was not aware of the agreement until after he delivered his message.[56] Despite being unaware, President Cleveland's political determination in his message to the Congress was nonetheless conclusive that the United States was in a state of war with the Hawaiian Kingdom and was directly responsible for the unlawful overthrow of its government. Oppenheim defines war as "a contention between States for the purpose of overpowering each other."[57]

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[51] 10 Annals of Cong. 613 (1800).
[52] Marek, *supra* note 37, at 102.
[53] *Id*.
[54] Larsen case, Annexure 1, *supra* note 11, at 610.
[55] David Keanu Sai, "A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and Its Use and Practice Today," 10 *Journal of Law & Social Challenges* (2008) 68, at 119-127.
[56] Executive Documents, *supra* note 33, at 1283. In this dispatch to U.S. Diplomat Albert Willis from Secretary of State Gresham on January 12, 1894, he stated, "Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President's decision. The matter now being in the hands of the Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you." The state of war ensued.
[57] L. Oppenheim, *International Law*, vol. II—War and Neutrality (3rd ed., 1921), at 74.

Once a state of war ensued between the Hawaiian Kingdom and the United States, "the law of peace ceased to apply between them and their relations with one another became subject to the laws of war, while their relations with other states not party to the conflict became governed by the law of neutrality."[58] This outbreak of a state of war between the Hawaiian Kingdom and the United States would "lead to many rules of the ordinary law of peace being superseded…by rules of humanitarian law," e.g. acquisitive prescription.[59] A state of war "automatically brings about the full operation of all the rules of war and neutrality."[60] And, according to Venturini, "[i]f an armed conflict occurs, the law of armed conflict must be applied from the beginning until the end, when the law of peace resumes in full effect."[61] "For the laws of war … continue to apply in the occupied territory even after the achievement of military victory, until either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant."[62] In the *Tadić* case, the ICTY indicated that the laws of war—international humanitarian law—applies from "the initiation of … armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached."[63] Only by an agreement between the Hawaiian Kingdom and the United States could a state of peace be restored, without which a state of war ensues.[64] An attempt to transform the state of war to a state of peace was made by executive agreement on 18 December 1893. Cleveland, however, was unable to carry out his duties and obligations under the agreement to restore the situation that existed before the unlawful landing of American troops due to political wrangling in the Congress.[65] Hence, the state of war continued.

International law distinguishes between a "declaration of war" and a "state of war." According to McNair and Watts, "the absence of a declaration … will not of itself render the ensuing conflict

[58] Greenwood, *supra* note 25, at 45.
[59] *Id.*, at 46. As opposed to belligerent occupation during a state of war, peaceful occupation during a state of peace over territory of another state could rise to a title of sovereignty under acquisitive prescription if there was a continuous and peaceful display of territorial sovereignty by the encroaching state without any objection by the encroached state. In this regard, effectiveness in the display of sovereign authority over territory of another state must be peaceful and not belligerent. *Jus in bello* proscribes acquisitive prescription.
[60] Myers S. McDougal and Florentino P. Feliciano, "The Initiation of Coercion: A Multi-temporal Analysis," 52 *American Journal of International Law* (1958) 241, at 247.
[61] Gabriella Venturini, "The Temporal Scope of Application of the Conventions," in Andrew Clapham, Paola Gaeta, and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (2015), at 52.
[62] Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (1996), at 224.
[63] ICTY, *Prosecutor v. Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), 2 October 1995, at §70.
[64] Under United States municipal laws, there are two procedures by which an international agreement can bind the United States. The first is by a treaty whose entry into force can only take place after two-thirds of the United States Senate has given its advice and consent under Article II, section 2, Clause 2 of the U.S. Constitution. The second is by way of an executive agreement entered into by the President that does not require ratification by the Senate. *See United States v. Belmont*, 301 U.S. 324, 326 (1937); *United States v. Pink,* 315 U.S. 203, 223 (1942); *American Insurance Association v. Garamendi*, 539 U.S. 396, 415 (2003).
[65] Sai, Slippery Path, *supra* note 55, at 125-127.

any less a war."[66] In other words, since a state of war is based upon concrete facts of military action, there is no requirement for a formal declaration of war to be made other than providing formal notice of a State's "intention either in relation to existing hostilities or as a warning of imminent hostilities."[67] In 1946, a United States Court had to determine whether a naval captain's life insurance policy, which excluded coverage if death came about as a result of war, covered his demise during the Japanese attack of Pearl Harbor on 7 December 1941. It was argued that the United States was not at war at the time of his death because the Congress did not formally declare war against Japan until the following day.

The Court denied this argument and explained that "the formal declaration by the Congress on December 8th was not an essential prerequisite to a political determination of the existence of a state of war commencing with the attack on Pearl Harbor."[68] Therefore, the conclusion reached by President Cleveland that by "an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown,"[69] was a "political determination of the existence of a state of war," and that a formal declaration of war by the Congress was not essential. The "political determination" by President Cleveland, regarding the actions taken by the military forces of the United States since 16 January 1893, was the same as the "political determination" by President Roosevelt regarding actions taken by the military forces of Japan on 7 December 1945. Both political determinations of acts of war by these Presidents created a state of war for the United States under international law.

Foremost, the overthrow of the Hawaiian government did not affect, in the least, the continuity of the Hawaiian state, being the subject of international law. Wright asserts that "international law distinguishes between a government and the state it governs."[70] Cohen also posits that "[t]he state must be distinguished from the government. The state, not the government, is the major player, the legal person, in international law."[71] As Judge Crawford explains, "[t]here is a presumption that the State continues to exist, with its rights and obligations … despite a period in which there is … no effective, government."[72] He further concludes that "[b]elligerent

[66] Lord McNair and A.D. Watts, *The Legal Effects of War* (1966), at 7.
[67] Brownlie, *supra* note 30, at 40.
[68] *New York Life Ins. Co. v. Bennion*, 158 F.2d 260 (C.C.A. 10th, 1946), 41(3) *American Journal of International Law* (1947) 680, at 682.
[69] Larsen case, Annexure 1, *supra* note 11, at 608.
[70] Quincy Wright, "The Status of Germany and the Peace Proclamation," 46(2) *American Journal of International Law* (Apr. 1952) 299, at 307.
[71] Sheldon M. Cohen, *Arms and Judgment: Law, Morality, and the Conduct of War in the Twentieth Century* (1989), at 17.
[72] James Crawford, *The Creation of States in International Law* (2nd ed., 2006), at 34. If one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains.

occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[73] Commenting on the occupation of the Hawaiian Kingdom, Dumberry states,

> "the 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied."[74]

The Beginning of the Prolonged Occupation

What was the Hawaiian Kingdom's status after the unlawful overthrow of its government for international law purposes? In the absence of an agreement that would have transformed the state of affairs back to a state of peace, the state of war prevails over what *jus in bello* would call belligerent occupation. Article 41 of the 1880 Institute of International Law's *Manual on the Laws of War on Land* declared that a "territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there." This definition was later codified under Article 42 of the 1899 Hague Convention, II, and then superseded by Article 42 of the 1907 Hague Convention, IV (hereafter "HC IV"), which provides that "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." Effectiveness is at the core of belligerent occupation.

The hostile army, in this case, included not only United States armed forces, but also its puppet regime that was disguising itself as a "provisional government." As an entity created through intervention it existed as an armed militia that worked in tandem with the United States armed forces under the direction of the U.S. diplomat John Stevens. Under the rules of *jus in bello*, the occupant does not possess the sovereignty of the occupied state and therefore cannot compel allegiance.[75] To do so would imply that the occupied state, as the subject of international law and

[73] *Ibid*. Crawford also stated, the "occupation of Iraq in 2003 illustrated the difference between 'government' and 'State'; when Members of the Security Council, after adopting SC res 1511, 16 October 2003, called for the rapid 'restoration of Iraq's sovereignty', they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restore." *Ibid*, n. 157.

[74] Patrick Dumberry, "*The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law*," 2(1) Chinese Journal of International Law (2002) 655, at 682.

[75] Article 45, 1899 Hague Convention, II, "Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited;" see also Article 45, 1907 Hague Convention, IV, "It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power." On 24 January 1895, the puppet regime calling itself the Republic of Hawai'i coerced Queen Lili'uokalani to abdicate the throne and to sign her allegiance to the regime in order to "save many Royalists from being shot" (William Adam Russ, Jr., *The Hawaiian Republic*

whom allegiance is owed, was cancelled and its territory unilaterally annexed into the territory of the occupying state. International law would allow this under the doctrine of *debellatio*. *Debellatio*, however, could not apply to the Hawaiian situation as a result of the President's determination that the overthrow of the Hawaiian government was unlawful and, therefore, did not meet the test of *jus ad bellum*. As an unjust war, the doctrine of *debellatio* was precluded from arising. That is to say, *debellatio* is conditioned on a legal war. According to Schwarzenberger, "[i]f, as a result of legal, as distinct from illegal, war, the international personality of one of the belligerents is totally destroyed, victorious Powers may … annex the territory of the defeated State or hand over portions of it to other States."[76]

After United States troops were removed from Hawaiian territory on 1 April 1893, by order of President Cleveland's special investigator, James Blount, he was not aware that the provisional government was a puppet regime. As such, they remained in full power where, according to the Hawaiian Patriotic League, the "public funds have been outrageously squandered for the maintenance of an unnecessary large army, fed in luxury, and composed *entirely* of aliens, mainly recruited from the most disreputable classes of San Francisco."[77] After the President determined the illegality of the situation and entered into an agreement to reinstate the executive monarch, the puppet regime refused to give up its power. Despite the President's failure to carry out the agreement of reinstatement and to ultimately transform the state of affairs to a state of peace, the situation remained a state of war and the rules of *jus in bello* continued to apply to the Hawaiian situation.

When the provisional government was formed through intervention, it merely replaced the executive monarch and her cabinet with insurgents calling themselves an executive and advisory councils. All Hawaiian government officials remained in place and were coerced into signing oaths of allegiance to the new regime with the oversight of United States troops.[78] This continued when the American puppet changed its name to the so-called republic of Hawai'i on 4 July 1894 with alien mercenaries replacing American troops.

Under the guise of a Congressional joint resolution of annexation, United States armed forces physically reoccupied the Hawaiian Kingdom on 12 August 1898, during the Spanish-American

(1894-98) And Its Struggle to Win Annexation (1992), at 71). As the rule of *jus in bello* prohibits inhabitants of occupied territory to swear allegiance to the hostile Power, the Queen's oath of allegiance is therefore unlawful and void.

[76] Georg Schwarzenberger, *International Law as applied by International Courts and Tribunals*. Vol. II: The Law of Armed Conflict (1968), at 167.

[77] Executive Documents, *supra* note 33, at 1296.

[78] *Ibid*, at 211, "All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named person: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office. All Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils."

War. According to the United States Supreme Court, "[t]hough the [annexation] resolution was passed July 7, [1898] the formal transfer was not made until August 12, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States."[79] Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and "they protested annexation occurring without the consent of the governed."[80] Marek asserts that, "a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State."[81] Even the U.S. Department of Justice in 1988, opined, it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution."[82]

In 1900, the Congress renamed the republic of Hawai'i to the Territory of Hawai'i under *An Act To provide a government for the Territory of Hawai'i*,[83] commonly known as the "Organic Act." Shortly thereafter, the Territory of Hawai'i intentionally sought to "Americanize" the school children throughout the Hawaiian Islands. To accomplish this, they instituted a policy of denationalization in 1906, titled "Programme for Patriotic Exercises in the Public Schools," where the national language of Hawaiian was banned and replaced with the American language of English.[84] One of the leading newspapers for the insurgents, who were now officials in the territorial regime, printed a story on the plan of denationalization. The Hawaiian Gazette reported:

> "[a]s a means of *inculcating* patriotism in the schools, the Board of Education [of the territorial government] has agreed upon a plan of patriotic observance to be followed in the celebration of notable days in American history, this plan being a composite drawn from the several submitted by teachers in the department for the consideration of the Board. It will be remembered that at the time of the celebration of the birthday of Benjamin Franklin, an agitation was begun looking to a better observance of these notable national days in the schools, as tending to inculcate patriotism in a school

[79] *Territory of Hawai'i v. Mankichi*, 190 U.S. 197, 212 (1903).
[80] Tom Coffman, *Nation Within: The History of the American Occupation of Hawai'i* (2016), at 322. Coffman initially published this book in 1998 titled *Nation Within: The Story of the American Annexation of the Nation of Hawai'i*. Coffman explained, "In the book's subtitle, the word *Annexation* has been replaced by the word *Occupation*, referring to America's occupation of Hawai'i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word *occupation*," at xvi.
[81] Marek, *supra* note 37, at 110.
[82] Douglas Kmiec, Department of Justice, "Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea," 12 *Opinions of the Office of Legal Counsel* (1988) 238, at 262.
[83] 31 U.S. Stat. 141.
[84] Programme for Patriotic Exercises in the Public Schools, Territory of Hawai'i, adopted by the Department of Public (1906), available at http://hawaiiankingdom.org/pdf/1906_Patriotic_Exercises.pdf (last visited 16 October 2017).

> population that needed that kind of teaching, perhaps, more than the mainland children do [emphasis added].”[85]

It is important here to draw attention to the use of the word “inculcate.” As a verb, the term imports force such as to convince, implant, and indoctrinate. Brainwashing is its colloquial term. When a reporter from the American news magazine, *Harper’s Weekly,* visited the Ka‘iulani Public School in Honolulu, he reported:

> “[a]t the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building.… Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet above their heads.… ‘Attention!’ Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. ‘Salute!’ was the principal’s next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: ‘We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!’”[86]

Further usurping Hawaiian sovereignty, the Congress, in 1959, renamed the Territory of Hawai‘i to the State of Hawai‘i under *An Act To provide for the admission of the State of Hawai‘i into the Union*.[87] These Congressional laws, which have no extraterritorial effect, did not, in the least, transform the puppet regime into a military government recognizable under the rules of *jus in bello*. The maintenance of the puppet also stands in direct violation of the customary international law in 1893, the 1907 HC IV, and the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV (hereafter “1949 GC IV”). It is important to note for the purposes of *jus in bello* that the United States never made an international claim to the Hawaiian Islands through *debellatio*. Instead, the United States in 1959 reported to the United Nations Secretary General that “Hawaii has been administered by the United States since 1898. As early as 1900, Congress passed an Organic Act, establishing Hawaii as an incorporated territory in which the Constitution and laws of the United States, which were not locally inapplicable, would have full force and effect.”[88] This extraterritorial application of American

[85] Patriotic Program for School Observance, *Hawaiian Gazette* (3 Apr. 1906), at 5, available at http://hawaiiankingdom.org/pdf/Patriotic_Program_Article.pdf (last visited 16 October 2017).
[86] William Inglis, *Hawai‘i’s Lesson to Headstrong California: How the Island Territory has solved the problem of dealing with its four thousand Japanese Public School children*, Harper’s Weekly (16 Feb. 1907), at 227.
[87] 73 U.S. Stat. 4.
[88] United Nations, “Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America” (24 September 1959), Document no. A/4226, Annex 1, at 2.

laws are not only in violation of *The Lotus* case principle,[89] but is prohibited by the rules of *jus in bello*.

As an occupying state, the United States was obligated to establish a military government, whose purpose would be to provisionally administer the laws of the occupied state—the Hawaiian Kingdom—until a treaty of peace or agreement to terminate the occupation has been done. "Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory."[90] The administration of occupied territory is set forth in the Hague Regulations, being Section III of the 1907 HC IV. According to Schwarzenberger, "Section III of the Hague Regulations … was declaratory of international customary law."[91] Also, consistent with what was generally considered the international law of occupation in force at the time of the Spanish-American War, the "military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials."[92] Many other authorities also viewed the Hague Regulations as mere codification of customary international law, which was applicable at the time of the overthrow of the Hawaiian government and subsequent occupation.[93]

Since 1893, there was no military government established by the United States under the rules of *jus in bello* to administer the laws of the Hawaiian Kingdom as it stood prior to the overthrow. Instead, what occurred was the unlawful seizure of the apparatus of Hawaiian governance, its infrastructure, and its properties—both real and personal. It was a theft of an independent state's self-government.

The Duty of Neutrality by Third States

When the state of peace was transformed to a state of war, all other states were under a duty of neutrality. "Since neutrality is an attitude of impartiality, it excludes such assistance and succour to one of the belligerents as is detrimental to the other, and, further such injuries to the one as benefit the other."[94] The duty of a neutral state, not a party to the conflict, "obliges him, in the first instance, to prevent with the means at his disposal the belligerent concerned from

[89] *Lotus*, 1927 PCIJ Series A, No. 10, at 18.
[90] United States Army Field Manual 27-10 (1956), at sec. 362.
[91] Georg Schwarzenberger, "The Law of Belligerent Occupation: Basic Issues," 30 *Nordisk Tidsskrift Int'l Ret* (1960), 11.
[92] Munroe Smith, "Record of Political Events," 13(4) *Political Science Quarterly* (1898), 745, at 748.
[93] Gerhard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (1957), 95; David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (2002), 57; Ludwig von Kohler, *The Administration of the Occupied Territories*, vol. I, (1942) 2; United States Judge Advocate General's School Tex No. 11, Law of Belligerent Occupation (1944), 2 (stating that "Section III of the Hague Regulations is in substance a codification of customary law and its principles are binding signatories and non-signatories alike").
[94] Oppenheim, *supra* note 57, at 401.

committing such a violation," e.g. to deny recognition of a puppet regime unlawfully created by an act of war.[95]

Twenty states violated their obligation of impartiality by recognizing the so-called republic of Hawai'i and consequently became parties to the conflict.[96] These states include: Austria-Hungary (1 January 1895);[97] Belgium (17 October 1894);[98] Brazil (29 September 1894);[99] Chile (26 September 1894);[100] China (22 October 1894);[101] France (31 August 1894);[102] Germany (4 October 1894);[103] Guatemala (30 September 1894);[104] Italy (23 September 1894);[105] Japan (6 April 1897);[106] Mexico (8 August 1894);[107] Netherlands (2 November 1894);[108] Norway-Sweden (17 December 1894);[109] Peru (10 September 1894);[110] Portugal (17 December

[95] *Id.*, at 496.
[96] Greenwood, *supra* note 25, at 45.
[97] Austria-Hungary's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-austro-hungary/ (last visited 16 October 2017).
[98] Belgium's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-belgium/ (last visited 16 October 2017).
[99] Brazil's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-brazil/ (last visited 16 October 2017).
[100] Chile's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-chile/ (last visited 16 October 2017).
[101] China's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-china/ (last visited 16 October 2017).
[102] France's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-france/ (last visited 16 October 2017).
[103] Germany's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-germanyprussia/ (last visited 16 October 2017).
[104] Guatemala's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-guatemala/ (last visited 16 October 2017).
[105] Italy's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-italy/ (last visited 16 October 2017).
[106] Japan's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/05/27/recognition-of-the-republic-of-hawaii-japan/ (last visited 16 October 2017).
[107] Mexico's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-mexico/ (last visited 16 October 2017).
[108] The Netherlands' recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-netherlands/ (last visited 16 October 2017).
[109] Norway-Sweden's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-swedennorway/ (last visited 16 October 2017).

1894);[111] Russia (26 August 1894);[112] Spain (26 November 1894);[113] Switzerland (18 September 1894);[114] and the United Kingdom (19 September 1894).[115]

"If a neutral neglects this obligation," states Oppenheim, "he himself thereby commits a violation of neutrality, for which he may be made responsible by a belligerent who has suffered through the violation of neutrality committed by the other belligerent and acquiesced in by him."[116] The recognition of the so-called republic of Hawai'i did not create any legality or lawfulness of the puppet regime, but rather is the indisputable evidence that these states' violated their obligation to be neutral. Diplomatic recognition of governments occurs during a state of peace and not during a state of war, unless providing recognition of belligerent status. These recognitions were not recognizing the republic as a belligerent in a civil war with the Hawaiian Kingdom, but rather under the false pretense that the republic succeeded in a so-called revolution and therefore was the new government of Hawai'i during a state of peace.

The State of Hawai'i: Not a Government but a Private Armed Force

When the United States assumed control of its installed puppet regime under the new heading of Territory of Hawai'i in 1900, and later the State of Hawai'i in 1959, it surpassed "its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts."[117] The legislation of every state, including the United States of America and its Congress, are not sources of international law. In *The Lotus* case, the Permanent Court of International Justice stated that "[n]ow the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to

[110] Peru's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-peru/ (last visited 16 October 2017).
[111] Portugal's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-portugal/ (last visited 16 October 2017).
[112] Russia's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-russia/ (last visited 16 October 2017).
[113] Spain's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-spain/ (last visited 16 October 2017).
[114] Switzerland's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-switzerland/ (last visited 16 October 2017).
[115] The United Kingdom's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-britain/ (last visited 16 October 2017).
[116] Oppenheim, *supra* note 57, at 497.
[117] Eyal Benvenisti, *The International Law of Occupation* (1993), at 19.

the contrary—it may not exercise its power in any form in the territory of another State."[118] According to Judge Crawford, derogation of this principle will not be presumed.[119]

Since Congressional legislation has no extraterritorial effect, it cannot unilaterally establish governments in the territory of a foreign state. According to the U.S. Supreme Court, "[n]either the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law."[120] The Court also concluded that "[t]he laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."[121] Therefore, the State of Hawai'i cannot claim to be a government as its only claim to authority derives from Congressional legislation that has no extraterritorial effect. As such, *jus in bello* defines it as an organized armed group.[122]

"[O]rganized armed groups … are under a command responsible to that party for the conduct of its subordinates."[123] According to Henckaerts and Doswald-Beck, "this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,"[124] and that this "definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status."[125] Article 1 of the 1907 HC IV, provides that

> "[t]he laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: (1) To be commanded by a person responsible for his subordinates; (2) To have a fixed distinctive emblem recognizable at a distance; (3) To carry arms openly; and (4) To conduct their operations in accordance with the laws and customs of war."

Since the *Larsen* case, defendants that have come before courts of this armed group have begun to deny the courts' jurisdiction based on the narrative in this article. In a contemptible attempt to quash this defense, the Supreme Court of the State of Hawai'i in 2013 responded to a defendant who "contends that the courts of the State of Hawai'i lacked subject matter jurisdiction over his

[118] *Lotus, supra* note 89.
[119] Crawford, *supra* note 72, at 41.
[120] United States v. Curtiss Wright Export Corp., 299 U.S. 304, 318 (1936).
[121] The Apollon, 22 U.S. 362, 370 (1824).
[122] Article 1, 1899 Hague Convention, II, and Article 1, 1907 Hague Convention, IV.
[123] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I (2009), at 14.
[124] *Id.*, at 15.
[125] *Id*.

criminal prosecution because the defense proved the existence of the Hawaiian Kingdom and the illegitimacy of the State of Hawai'i government,[126] with "*whatever may be said regarding the lawfulness" of its origins, "the State of Hawai'i … is now, a lawful government* [emphasis added]."[127] Unable to rebut the factual evidence being presented by defendants, the highest so-called court of the State of Hawai'i could only resort to power and not legal reason, whose decision has been used to allow prosecutors and plaintiffs to dispense with these legal arguments. On this note, Marek explains that an occupier without title or sovereignty "must rely heavily, if not exclusively, on full and complete effectiveness."[128]

The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier's military and/or an occupier's armed force such as the State of Hawai'i, and that the "occupation extends only to the territory where such authority has been established and can be exercised."[129] According to Ferraro, "occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts."[130]

Commission of War Crimes in the Hawaiian Kingdom

The Rome Statute of the International Criminal Court defines war crimes as "serious violations of the laws and customs applicable in international armed conflict."[131] The United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in armed conflicts that involve United States troops, to be "the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime."[132] In the *Larsen* case, the alleged war crimes included deliberate acts as well as omissions. The latter include the failure to administer the laws of the occupied state (Article 43, 1907 HC IV), while the former were actions denying a fair and regular trial, unlawful confinement (Article 147, 1949 GC IV), and pillaging (Article 47, 1907 HC IV, and Article 33, 1907 GC IV).

International case law indicates that there must be a mental element of intent for the prosecution of war crimes, whereby war crimes must be committed willfully, either intentionally—*dolus directus*, or recklessly—*dolus eventualis*. According to Article 30(1) of the Rome Statute, an alleged war criminal is "criminally responsible and liable for punishment … only if the material elements [of the war crime] are committed with intent and knowledge." Therefore, in order for prosecution of the responsible person(s) to be possible there must be a mental element that

[126] *State of Hawai'i v. Dennis Kaulia*, 128 Hawai'i 479, 486 (2013).
[127] *Id.*, at 487.
[128] Marek, *supra* note 37, at 102.
[129] 1907 Hague Convention, IV, Article 42.
[130] Tristan Ferraro, "Determining the beginning and end of an occupation under international humanitarian law," 94 (885) *International Review of the Red Cross* (Spring 2012) 133, at 134.
[131] International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).
[132] U.S. Army Field Manual 27-10, sec. 499 (July 1956).

includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that "a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events." Furthermore, the International Criminal Court's *Elements of a War Crime*, states that "[t]here is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict."[133]

Is there a particular time or event that could serve as a definitive point of knowledge for purposes of prosecution? In other words, where can there be "awareness that a circumstance exists or a consequence will occur in the ordinary course of events" stemming from the illegality of the overthrow of the Hawaiian government on 17 January 1893? For the United States and other foreign governments in existence in 1893, that definitive point would be 18 December 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian government.

For the private sector and foreign governments that were not in existence in 1893, however, the United States' 1993 apology for the illegal overthrow of the Hawaiian government should be considered as serving as that definitive point of knowledge. In the form of a Congressional joint resolution enacted into United States law, the law specifically states that the Congress "on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai'i on January 17, 1893 acknowledges the historical significance of this event."[134] Additionally, the Congress urged "the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai'i."[135]

Despite the mistake of facts and law riddled throughout the apology resolution, it nevertheless serves as a specific point of knowledge and the ramifications that stem from that knowledge. Evidence that the United States knew of such ramifications was clearly displayed in the apology law's disclaimer, "[n]othing in this Joint Resolution is intended to serve as a settlement of any claims against the United States."[136] It is a presumption that everyone knows the law, which stems from the legal maxim *ignorantia legis neminem excusat*—ignorance of the law excuses no one. Unlike the United States government, being a public body, the State of Hawai'i cannot claim to be a government at all, and therefore is merely a private organization. Therefore, awareness and knowledge for members of the State of Hawai'i would have begun with the enactment of the apology resolution in 1993.

[133] ICC Elements of a War Crime, Article 8.
[134] Larsen case, Annexure 2, *supra* note 11, at 614.
[135] *Id.*, at 615
[136] *Id*.

International law today criminalizes an unjust war as a "crime of aggression." Under Article 8 *bis* of the Rome Statute, a war is criminal if a state aggressively utilizes its military force "against the sovereignty, territorial integrity or political independence of another State."[137] There can be no doubt that the American invasion and overthrow of the government of a "friendly and confiding people" was an aggressive war waged with malicious intent that violated the Hawaiian Kingdom's right of self-determination—duty of non-intervention, its territorial integrity and political independence.

The installation of the puppet regime also violated the rights of the Hawaiian people. The installed puppet in 1893, together with their organs, according to the Hawaiian Patriotic League, "have repeatedly threatened murder, violence, and deportation against all those not in sympathy with the present state of things, and the police being in their control, intimidation is a common weapon, under various forms, even that of nocturnal searches in the residences of peaceful citizens."[138] These criminal acts would not have occurred if the United States complied with the law of occupation. Customary international law at the time mandated an occupying state to provisionally administer the laws of the occupied state. Article 43 of the 1907 HC IV provides that "[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." The "text of Article 43," according to Benvenisti, "was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law."[139] Graber also states, that "nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code."[140]

In similar fashion to the Hawaiian situation, Germany, when it occupied Croatia during the Second World War, established a puppet regime in violation of international law to serve as its surrogate. On this matter, the Nuremberg Tribunal, in the *Hostages Trial*, pronounced:

> "[o]ther than the rights of occupation conferred by international law, no lawful authority could be exercised by the Germans. Hence, they had no legal right to create an independent sovereign state during the progress of the war. They could set up such a provisional [military] government as was necessary to accomplish the purposes of the occupation but further than that they could not legally go. We are of the view that Croatia was at all times here involved an occupied country and that all acts performed by it were those for which [Germany] the occupying power was responsible."[141]

[137] Rome Statute, art. 8 *bis* (2).
[138] Executive Documents, *supra* note 33, at 1297.
[139] Benvenisti, *supra* note 117, at 8.
[140] Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914* (1949), at 143.
[141] Hostages Trial, *supra* note 46, at 1302.

The United States failure to form a military government throughout the duration of the prolonged occupation since 17 January 1893 has rendered all acts by the puppet regimes—provisional government (1893 – 94), republic of Hawai'i (1894 – 1900), Territory of Hawai'i (1900 – 1959), and the State of Hawai'i (1959 – present)—which would have otherwise emanated from a *bona fide* military government, unlawful and void. As the occupying power, the United States is responsible for the acts of the State of Hawai'i just as the Germans were responsible for the acts of the so-called State of Croatia during the Second World War, which, in these proceedings of an international commission of inquiry, includes the alleged war crimes committed against Lance Larsen.[142]

Conclusion

Fundamental to deciphering the Hawaiian situation is to discern between a state of peace and a state of war. This parting of the seas provides the proper context by which the application of certain rules of international law would or would not apply. The laws of war—*jus in bello*, otherwise known today as international humanitarian law, are not applicable in a state of peace. Inherent in the rules of *jus in bello* is the co-existence of two legal orders, being that of the occupying state and that of the occupied state. As an occupied state, the continuity of the Hawaiian Kingdom has been maintained for the past 124 years by the positive rules of international law, notwithstanding the absence of effectiveness that would otherwise be required during a state of peace.[143]

The failure of the United States to comply with international humanitarian law for over a century has created a humanitarian crisis of unimaginable proportions where war crimes has since risen to a level of *jus cogens*—compelling law. At the same time, the obligations, in point, have *erga omnes* characteristics—flowing to all states. The international community's failure to intercede, as a matter of *obligatio erga omnes,* can only be explained by the United States deceptive portrayal of Hawai'i as an incorporated territory. As an international wrongful act, states have an obligation to not "recognize as lawful a situation created by a serious breach … nor render aid or assistance in maintaining that situation,"[144] and states "shall cooperate to bring to an end through lawful means any serious breach [by a state of an obligation arising under a peremptory norm of general international law]."[145]

The gravity of the Hawaiian situation has been heightened by North Korea's announcement that "all of its strategic rocket and long range artillery units 'are assigned to strike bases of the U.S. imperialist aggressor troops in the U.S. mainland and on Hawaii," which is an existential

[142] Memorial of Lance Paul Larsen, *supra* note 1.
[143] Crawford, *supra* note 72, at 34; Marek, *supra* note 37, at 102.
[144] Responsibility of States for International Wrongful Acts (2001), Article 41(2).
[145] *Id.*, Article 41(1).

threat.[146] The United States crime of aggression since 1893 is in fact *a priori,* and underscores Judge Greenwood's statement, "[c]ountries were either in a state of peace or a state of war; there was no intermediate state."[147] The Hawaiian Kingdom, a neutral and independent state, has been in an illegal war with the United States for the past 124 years without a peace treaty, and must begin to comply with the rules of *jus in bello*.

[146] Choe Sang-Hun, North Korea Calls Hawaii and U.S. Mainland Targets, New York Times (26 March 2013), available at http://www.nytimes.com/2013/03/27/world/asia/north-korea-calls-hawaii-and-us-mainland-targets.html (last visited 16 October 2017). Legally speaking, the armistice agreement of 27 July 1953 did not bring the state of war to an end between North Korea and South Korea because a peace treaty is still pending. The significance of North Korea's declaration of war of March 30, 2013, however, has specifically drawn the Hawaiian Islands into the region of war because it has been targeted as a result of the United States prolonged occupation.

[147] Greenwood, *supra* note 25.

Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01

Larsen v. Hawaiian Kingdom

Case name	Larsen v. Hawaiian Kingdom
Case description	Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom. In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings. The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States' actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.
Name(s) of claimant(s)	Lance Paul Larsen (Private entity)
Name(s) of respondent(s)	The Hawaiian Kingdom (State)
Names of parties	
Case number	1999-01
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Other proceedings
Subject matter or economic sector	Treaty interpretation
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	Other The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America
Language of proceeding	English
Seat of arbitration (by country)	Netherlands
Arbitrator(s)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
Representatives of the claimant(s)	Ms. Ninia Parks, Counsel and Agent
Representatives of the respondent(s)	Mr. David Keanu Sai, Agent

	Mr. Peter Umialiloa Sai, First deputy agent Mr. Gary Victor Dubin, Second deputy agent and counsel
Representatives of the parties	
Number of arbitrators in case	3
Date of commencement of proceeding [dd-mm-yyyy]	08-11-1999
Date of issue of final award [dd-mm-yyyy]	05-02-2001
Length of proceedings	1-2 years
Additional notes	

Attachments

Award or other decision

> Arbitral Award 15-05-2014 English

Other

> Annex 1 - President Cleveland's Message to the Senate and the House of Representatives	18-12-1893	English
> Joint Resolution - To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.	23-11-1993	English

Dr. David Keanu Sai, *Memorandum of the De Facto Recognition by the United States of America of the Restored Hawaiian Kingdom Government by Exchange of Notes Verbales*
(21 March 2018)

OFFICE OF THE
HAWAIIAN AMBASSADOR-AT-LARGE

Memorandum of the *De Facto* Recognition by the United States of America of the Restored Hawaiian Kingdom Government by Exchange of *Notes Verbales*

David Keanu Sai, Ph.D.
Ambassador-at-Large

21 March 2018

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Prepared for the Public

Memorandum of the *De Facto* Recognition by the United States of America of the Restored Hawaiian Kingdom Government by Exchange of *Notes Verbales*

In a manifesto, President Grover Cleveland, on 18 December 1893, told the United States Congress, that by "an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of feeble but friendly and confiding people has been overthrown [on 17 January 1893]. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair."[1] Cleveland, however, was unable to carry out his duties and obligations under an executive agreement, by exchange of *notes*, with Queen Lili'uokalani of the Hawaiian Kingdom to restore the situation that existed before the unlawful landing of American troops.[2] The Hawaiian Kingdom has been under an illegal and prolonged occupation ever since.

The Government of the Hawaiian Kingdom, as it stood on 17 January 1893, was restored in 1995, *in situ* and not *in exile*.[3] An *acting* Council of Regency comprised of four Ministers—Interior, Foreign Affairs, Finance and the Attorney General—was established in accordance with the Hawaiian constitution and the doctrine of necessity to serve in the absence of the Executive Monarch. By virtue of this process, a provisional government, (hereafter "Hawaiian government"), comprised of officers *de facto,* was established.[4] According to United States constitutional scholar Thomas Cooley:

> "A provisional government is supposed to be a government de facto for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity."[5]

Like other governments, formed under the principle of necessity in exile during foreign occupations in the Second World War, the Hawaiian government did not receive its mandate from the Hawaiian citizenry. The Hawaiian government received its mandate by virtue of the principle of necessity and Hawaiian constitutional law. Marek explains that, "while the requirement of

[1] Larsen v. Hawaiian Kingdom*,* 119 *International Law Reports* (2001) 566, Annexure 1, 608. "A manifesto…is a public announcement of a State to its subjects, to neutral States, or *urbi et orbi*, that it considers itself at war with another State." See L. Oppenheim, *International Law*, vol. II, War and Neutrality (1906), 104.
[2] David Keanu Sai, "A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and Its Use and Practice Today," 10 *Journal of Law & Social Challenges* (2008) 68, at 125-127.
[3] David Keanu Sai, *Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*, 25-51 (4 August 2013), *available at* http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf.
[4] *Id*., at 40-48.
[5] Thomas M. Cooley, "Grave Obstacles to Hawaiian Annexation," *The Forum* (1893), 389, at 390.

internal legality must in principle be fulfilled for an exiled government to possess the character of a State organ, minor flaws in such legality are easily cured by the overriding principle of [the occupied State's] actual uninterrupted continuity."[6] Therefore, the Hawaiian government provisionally represents the Hawaiian State.[7]

The continuity of the Hawaiian State, under international law, is confirmed so the Hawaiian government, established in accordance with Hawaiian constitutional law, is competent to represent the Hawaiian State internationally. Marek emphasizes that:

> "[I]t is always the legal order of the [occupied] State which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the delegation of the [occupying] State nor any rule of international law other than the one safeguarding the continuity of an occupied State. The relation between the legal order of the [occupying] State and that of the occupied State…is not one of delegation, but of co-existence."[8]

> "[T]he legal order of the occupied State continues to exist notwithstanding the absence of effectiveness. It can produce legal effects outside the occupied territory and may even develop and expand, not by reason of its effectiveness, but solely on the basis of the positive international rule safeguarding its continuity."[9]

The actual exercise of that competence, however, will depend upon other States agreeing to enter into diplomatic relations with such a government. This was, in the past, conditioned upon recognition, but many States in recent years have moved away from the practice of recognizing governments, preferring all such recognition be inferred from their acts. The normal conditions for recognition requires the government concerned be either legitimately constituted under the laws of that State or be in effective control of the territory. Ideally, it should possess both attributes. Ineffective, but lawful, governments maintain their status as recognized entities during military occupations.

In 1999, a dispute arose between Lance Larsen, a Hawaiian subject, and the Hawaiian government. On its website, the Permanent Court of Arbitration (hereafter "PCA") reported:

> Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b)

[6] Krystyna Marek, *Identity and Continuity of States in Public International Law* (2nd ed., 1968), at 98.
[7] *See* Sai Brief, at para. 8.1 – 8.17.
[8] *See* Marek, at 91.
[9] *Id*., at 102.

> the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.[10]

The "unlawful imposition of American municipal laws" led to Mr. Larsen's unfair trial in the American State of Hawai'i's Third Circuit Court, Puna Division,[11] and his subsequent incarceration on 4 October 1999. After both parties entered into an arbitration agreement, Mr. Larsen filed a notice of arbitration on 8 November 1999 with the PCA, The Hague, Netherlands. *Lance Larsen v. Hawaiian Kingdom* was entered into the docket as case no. 1999-01. (Enclosure "1"). In 2001, Bederman and Hilbert reported in the *American Journal of International Law*:

> "At the center of the PCA proceedings was … that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' "unlawful imposition [over him] of [its] municipal laws" through its political subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him."[12]

The United States government, through its Department of State, explicitly recognized the Hawaiian government by exchange of *notes verbales* in March of 2000, which stemmed from these international arbitration proceedings.[13] *Notes verbales*, the singular of which is a *note verbale*, are official communications between governments of States and international organizations.

Before the *Larsen* ad hoc tribunal was formed in 9 June 2000, Mr. Tjaco T. van den Hout, Secretary General of the PCA, spoke with the author over the telephone and recommended that the Hawaiian government provide an invitation to the United States to join in the arbitration. The Hawaiian government consented, which resulted in a conference call meeting on 3 March 2000 in Washington, D.C., between the author, Larsen's counsel, Mrs. Ninia Parks, and Mr. John Crook from the United States Department of State (hereafter "State Department"). The meeting was reduced to a formal note and mailed to Mr. Crook in his capacity as legal adviser to the State Department, a copy of which was submitted by the Hawaiian government to the PCA Registry for record that the United States was invited to join in the arbitral proceedings (Enclosure "2"). The

[10] Larsen v. Hawaiian Kingdom, Permanent Court of Arbitration website, available at: https://pca-cpa.org/en/cases/35/.
[11] State of Hawai'i v. Lance Larsen, case no. 1655984MH (1999).
[12] David Bederman & Kurt Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensible third parties—legal status of Hawaii," 95 *American Journal of International Law* (2001) 927, at 928.
[13] *Larsen v. Hawaiian Kingdom*, 119 Int'l L. Reports 566, 581 (2001). The *notes verbales* are part of the arbitral records at the Registry of the Permanent Court of Arbitration.

letter was signed off by the author as "Acting Minister of Interior and Agent for the Hawaiian Kingdom."

Under international law, this letter served as an offering instrument that contained the text of the proposal, to wit:

> "[T]he reason for our visit was the offer by the…Hawaiian Kingdom, by consent of the Claimant [Mr. Larsen], by his attorney, Ms. Ninia Parks, for the United States Government to join in the arbitral proceedings presently instituted under the auspices of the Permanent Court of Arbitration at The Hague, Netherlands. … [T]he State Department should review the package in detail and can get back to the Acting Council of Regency by phone for continued dialogue. I gave you our office's phone number…, of which you acknowledged. I assured you that we did not need an immediate answer, but out of international courtesy the offer is still open, notwithstanding arbitral proceedings already in motion. I also advised you that Secretary-General van den Hout of the Permanent Court of Arbitration was aware of our travel to Washington, D.C. and the offer to join in the arbitration. As I stated in our conversation he requested that the dialogue be reduced to writing and filed with the International Bureau of the Permanent Court of Arbitration for the record, and you acknowledged."

Thereafter, the PCA's Deputy Secretary General, Mrs. Phyllis Hamilton, informed the author, as agent for the Hawaiian government, by telephone, that the United States, through its embassy in The Hague, notified the PCA, by *note verbale*, that the United States would not accept the invitation to join the arbitral proceedings but instead requested permission from the Hawaiian government to have access to the pleadings and records of the case. The Hawaiian government consented to the request. The PCA, represented by Deputy Secretary General Hamilton, served as an intermediary to secure an agreement between the Hawaiian Kingdom and the United States.

"Legally there is no difference between a formal note, a *note verbale* and a memorandum. They are all communications which become legally operative upon the arrival at the addressee. The legal effects depend on the substance of the note, which may relate to any field of international relations."[14] "As a rule," according to Wilmanns, "the recipient of a note answers in the same form. However, an acknowledgment of receipt or provisional answer can always be given in the shape of a *note verbale*, even if the initial note was of a formal nature."[15]

The offer by the Secretary General to have the Hawaiian government provide the United States an invitation to join in the arbitral proceedings, and the Hawaiian government's acceptance of this offer constitutes an international agreement by exchange of *notes verbales* between the PCA and the Hawaiian Kingdom. "[T]he growth of international organizations and the recognition of their

[14] Johst Wilmanns, "Note," in 9 *Encyclopedia of Public International Law* 287 (1986).
[15] *Id*.

legal personality has resulted in agreements being concluded by an exchange of notes between such organizations and states."[16] The United States' request to have access of the arbitral records, in lieu of declining the invitation to join in the arbitration, and the Hawaiian government's consent to that request to access arbitral records, constitutes an international agreement by exchange of *notes verbales*. According to Corten & Klein, "the exchange of two *notes verbales* constituting an agreement satisfies the definition of the term 'treaty' as provided by Article 2(1)(a) of the Vienna Convention."[17] Altogether, the exchange of *notes verbales* on this subject matter, between the Hawaiian Kingdom, the PCA, and the United States of America, constitutes a multilateral treaty of the *de facto* recognition of the restored Hawaiian government.

Moreover, the United States has entered into other treaties by exchange of *notes verbales*. In 1946, the United States and Italy entered into a treaty by exchange of *notes verbales* at Rome regarding an *Agreement relating to internment of American military personnel in Italy*.[18] In 1949 the United States and Italy entered into another treaty by exchange of *notes verbales* at Rome regarding an *Agreement between the United States of America and Italy, interpreting the agreement of August 14, 1947, respecting financial and economic relations*.[19] Both of these bi-lateral treaties remain in force as of 1 January 2017.[20]

Since the United States' *de facto* recognition, the following States and an international organization also provided *de facto* recognition of the Hawaiian government. On 12 December 2000, Rwanda recognized the Hawaiian government in a meeting called by His Excellency Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium, in Brussels with the author, together with the Minister of Foreign Affairs, His Excellency Mr. Peter Umialiloa Sai, and the Minister of Finance, Her Excellency Mrs. Kauʻi Sai-Dudoit.[21]

On 5 July 2001, China, as President of the United Nations Security Council, recognized the Hawaiian government when it accepted its complaint submitted by the author, as agent for the Hawaiian Kingdom, in accordance with Article 35(2) of the United Nations Charter. Article 35(2) provides that a "State which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purpose of the dispute, the obligations of pacific settlement provided in the present Charter."[22]

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[16] J.L. Weinstein, Exchange of Notes, 20 Brit. Y.B. Int'l L. 205, 207 (1952).
[17] *The Vienna Conventions on the Law of Treaties, A Commentary*, Vol. I, Corten & Klein, eds. (2011), p. 261.
[18] 61 Stat. 3750; TIAS 1713; 9 Bevans 194; 148 UNTS 323.
[19] 63 Stat. 2415; TIAS 1919; 9 Bevans 342; 80 UNTS 319.
[20] United States Department of State, *Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 2017*, 218.
[21] *See* Sai, "A Slippery Path," at 130-131.
[22] David Keanu Sai, "American Occupation of the Hawaiian State: A Century Unchecked," 1 *Hawaiian Journal of Law and Politics* (2004) 46, at 74.

By exchange of *notes*, through email, Cuba recognized the Hawaiian government when the Cuban government received the author at its embassy in The Hague, Netherlands, on 10 November 2017 (Enclosure "3"). Also, by exchange of *notes*, through email, the Universal Postal Union in Bern, Switzerland, recognized the Hawaiian government (Enclosure "4"). The Postal Union is a specialized agency of the United Nations and the Hawaiian Kingdom has been a member State of the Postal Union since January 1, 1882.

Since March of 2000, the United States has acknowledged the continuity of the Hawaiian Kingdom as an independent and sovereign State and provided *de facto* recognition of the restored Hawaiian government, as its organ, by an exchange of *notes verbales*.

Enclosure #1

Larsen v. Hawaiian Kingdom

Case name	Larsen v. Hawaiian Kingdom
Case description	Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom. In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings. The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States' actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.
Name(s) of claimant(s)	Lance Paul Larsen (Private entity)
Name(s) of respondent(s)	The Hawaiian Kingdom (State)
Names of parties	
Case number	1999-01
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Other proceedings
Subject matter or economic sector	Treaty interpretation
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	Other The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America
Language of proceeding	English
Seat of arbitration (by country)	Netherlands
Arbitrator(s)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
Representatives of the claimant(s)	Ms. Ninia Parks, Counsel and Agent
Representatives of the respondent(s)	Mr. David Keanu Sai, Agent

	Mr. Peter Umialiloa Sai, First deputy agent Mr. Gary Victor Dubin, Second deputy agent and counsel
Representatives of the parties	
Number of arbitrators in case	3
Date of commencement of proceeding [dd-mm-yyyy]	08-11-1999
Date of issue of final award [dd-mm-yyyy]	05-02-2001
Length of proceedings	1-2 years
Additional notes	

Attachments

Award or other decision

>	Arbitral Award	15-05-2014	English

Other

>	Annex 1 - President Cleveland's Message to the Senate and the House of Representatives	18-12-1893	English
>	Joint Resolution - To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.	23-11-1993	English

Enclosure #2

March 3, 2000

Mr. John Crook
Assistant Legal Adviser for United Nations Affairs
Office of the Legal Adviser
United States Department of State
2201 C Street, N.W.
Room 3422 NS
Washington, D.C. 20520

RE: Letter confirming telephone conversation of March 3, 2000 relating to arbitral proceedings at the Permanent Court of Arbitration, Lance Paul Larsen vs. The Hawaiian Kingdom

Sir,

This letter is to confirm our telephone conversation today at Washington, D.C. The day before our conversation Ms. Ninia Parks, esquire, Attorney for the Claimant, Mr. Lance Larsen, and myself, Agent for the Respondent, Hawaiian Kingdom, met with Sonia Lattimore, Office Assistant, L/EX, at 10:30 a.m. on the ground floor of the Department of State. I presented her with two (2) binders, the first comprised of an Arbitration Log Sheet, Lance Paul Larsen vs. The Hawaiian Kingdom, with accompanying documents on record before the Permanent Court of Arbitration at The Hague, Netherlands. The second binder comprised of divers documents of the Acting Council of Regency as well as diplomatic correspondence with treaty partners of the Hawaiian Kingdom.

I stated to Ms. Lattimore that the purpose of our visit was to provide these documents to the Legal Department of the U.S. Department of State in order for the U.S. Government to be apprised of the arbitral proceedings already in train and that the Hawaiian Kingdom, by consent of the Claimant, extends an opportunity for the United States to join in the arbitration as a party. She assured me that the package will be given to Mr. Bob McKenna for review and assignment to someone within the Legal Department. I told her that we will be in Washington, D.C., until close of business on Friday, and she assured me that she will give me a call on my cellular phone at (808) 383-6100 by the close of business that day with a status report.

At 4:45 p.m., Ms. Lattimore contacted myself by phone and stated that the package had been sent to yourself as the Assistant Legal Adviser for United Nations Affairs. She stated that you will be contacting myself on Friday (March 3, 2000), but I could give you a call in the morning if I desired.

Today, at 11:00 a.m., I telephoned you and inquired about the receipt of the package. You had stated that you did not have ample time to critically review the package, but will get to it. I stated that the reason for our visit was the offer by the Respondent Hawaiian Kingdom, by consent of the Claimant, by his attorney, Ms. Ninia Parks, for the United States Government to join in the arbitral proceedings presently instituted under the auspices of the Permanent Court of Arbitration

at The Hague, Netherlands. You stated that litigation in the court system is handled by the Justice Department and not the State Department, and that you felt they (Justice Dept.) would be very reluctant to join in the present arbitral proceedings.

I responded by assuring that the State Department should review the package in detail and can get back to the Acting Council of Regency by phone for continued dialogue. I gave you our office's phone number at (808) 239-5347, of which you acknowledged. I assured you that we did not need an immediate answer, but out of international courtesy the offer is still open, notwithstanding arbitral proceedings already in motion. I also advised you that Secretary-General van den Hout of the Permanent Court of Arbitration was aware of our travel to Washington, D.C. and the offer to join in the arbitration. As I stated in our conversation he requested that the dialogue be reduced to writing and filed with the International Bureau of the Permanent Court of Arbitration for the record, and you acknowledged. The conversation then came to a close.

I have taken the liberty of enclosing Hawaiian diplomatic protests lodged by my former countrymen and women in the U.S. Department of State in the summer of 1897, on record at your National Archives, in order for you to understand the gravity of the situation. I have also enclosed two (2) recent protests by myself as an officer of the Hawaiian Government against the State of Hawai`i for instituting unwarranted criminal proceedings against myself and other Hawaiian subjects and a resident of the Hawaiian Islands under the guise of American municipal laws within the territorial dominion of the Hawaiian Kingdom.

If after a thorough investigation into the facts presented to your office, and following zealous deliberations as to the considerations herein offered, the Government of the United States shall resolve to decline our offer to enter the arbitration as a Party, the present arbitral proceedings shall continue without affect pursuant to the Hague Conventions IV and V, 1907, and the UNCITRAL Rules of arbitration.

With Sentiments of the Highest Regard,

[signed] David Keanu Sai,
Acting Minister of Interior and
Agent for the Hawaiian Kingdom

cc: Secretary General van den Hout, Permanent Court of Arbitration
Ms. Ninia Parks, Esquire, attorney for Lance Paul Larsen
Mr. Keoni Agard, Esquire, appointing authority
Ms. Noelani Kalipi, Esquire, Hawai‘i Senator Akaka’s Legislative Assistant

Enclosure #3

Gmail

Keanu Sai <keanu.sai@gmail.com>

Hawaiian Kingdom - Lance Larsen Int. Commission of Inquiry at the PCA

Keanu Sai, Ph.D. <keanu.sai@gmail.com> Thu, Nov 2, 2017 at 3:20 PM
To: embacuba@xs4all.nl

To the kind attention of Her Excellency

Ms. Soraya Elena Alvarez Nuñez, Ambassador

Embassy of Cuba

The Hague, Netherlands

Excellency,

Please find attached a letter of correspondence requesting an urgent meeting for next week in The Hague with legal representatives of the Hawaiian Kingdom regarding the Hawaiian Kingdom - Lance Larsen International Commission of Inquiry proceedings that stem from the *Larsen v. Hawaiian Kingdom* arbitration held under the auspices of the Permanent Court of Arbitration from 1999-2001.

Sincerely,

David Keanu Sai, Ph.D.

Agent and Ambassador-at-large for the Hawaiian Kingdom

--
****
David Keanu Sai, Ph.D.
P.O. Box 4146
Hilo, HI 96720
Website http://www2.hawaii.edu/~anu/
****

HK to Cuban Ambassador (11-1-17).pdf
6234K

Gmail Keanu Sai <keanu.sai@gmail.com>

Hawaiian Kingdom - Lance Larsen Int. Commission of Inquiry at the PCA

Secretaria Embacuba Países Bajos <embacuba@xs4all.nl> Tue, Nov 7, 2017 at 3:25 AM
To: "Keanu Sai, Ph.D." <keanu.sai@gmail.com>

Dear Mr. Keanu,

Thank you very much for your message. It is my pleasure to announce you that our Third Secretary Katia Aruca Chaple will meet you on November 10 at 10:00 am.

Kind regards,

Deyanira Rodríguez Hernández

Secretary to the Ambassador

Embassy of the Republic of Cuba to the

Kingdom of the Netherlands

Scheveningseweg 9, 2517KS The Hague

T: 070 360 6061

http://misiones.minrex.gob.cu/en/netherlands

De: Keanu Sai, Ph.D. [mailto:keanu.sai@gmail.com]
Enviado el: viernes, 03 de noviembre de 2017 2:20
Para: embacuba@xs4all.nl
Asunto: Hawaiian Kingdom - Lance Larsen Int. Commission of Inquiry at the PCA

[Quoted text hidden]

Gmail

Keanu Sai <keanu.sai@gmail.com>

From Katia

Oficina de Cultura Embacuba Países Bajos <cultcu@xs4all.nl> Fri, Nov 10, 2017 at 11:34 AM
To: interior@hawaiiankingdom.org
Cc: bbissen@gmail.com

Your excellency Davis Keanu Sai,

Thank you so much for your visit and for all the information that you provide us. I really appreciated if you can keep our meeting in a bilateral level, which mean not to mention it in other stage or meetings regarding with your request and situation. I also kindly request to keep it by your own records, as well, the pictures that you took of our courtesy meeting, which means that it will not be published or distributed.

Thank you so much again.

Best regards,

Katia

Ms. Katia Aruca Chaple

Third Secretary

Embassy of Cuba

Kingdom of the Netherlands

Scheveningseweg 9, 2517 KS

The Hague

Telephone: 070 360 60 61

http://misiones.minrex.gob.cu/es/paisesbajos

Gmail Keanu Sai <keanu.sai@gmail.com>

From Katia

Council of Regency <interior@hawaiiankingdom.org> Fri, Nov 10, 2017 at 1:24 AM
To: Oficina de Cultura Embacuba Países Bajos <cultcu@xs4all.nl>
Cc: Blaise Bissen <bbissen@gmail.com>

Dear Ms. Chaple,

On behalf of the Provisional Government of the Hawaiian Kingdom, I acknowledge and concur with your recommendations. Rest assured these matters remain bi-lateral and the pictures will be kept in confidence. We look forward to your government's thoughts on these matters regarding our request to [redacted] and our second request to [redacted].

Sincerely,

David Keanu Sai, Ph.D.
Hawaiian Ambassador-at-large

[Quoted text hidden]

--
****
David Keanu Sai, Ph.D.
P.O. Box 2194
Honolulu, HI 96805-2194
Website: http://hawaiiankingdom.org/
****

Enclosure #4

Gmail

Keanu Sai <keanu.sai@gmail.com>

Letter to UPU Deputy Director General

Hawaiian Ambassador-at-large <interior@hawaiiankingdom.org> Wed, Feb 28, 2018 at 12:44 PM
To: RAKOTONDRAJAO brigitte <brigitte.RAKOTONDRAJAO@upu.int>
Cc: "Dr. Max Schweizer" <mail@drmaxschweizer.ch>, Niklaus Schweizer <niklaus@hawaii.edu>, Blaise Bissen <bbissen@gmail.com>

Dear Madam.

Please find attached a letter to the honorable Deputy Director General regarding our meeting with you on the ground floor of the UPU headquarters on 23 February 2018.

Furthermore, any further communication with you will be through my attaché, Mr. Blaise Bissen, whose email is bbissen@gmail.com.

Thank you so much and I sincerely hope that you enjoyed the Hawaiian chocolates.

Also my very best regards to Mr. Clivaz, Deputy Director General, and that he had a speedy recovery.

D.K.S.

--
****
David Keanu Sai, Ph.D.
Hawaiian Ambassador-at-large
P.O. Box 2194
Honolulu, HI 96805-2194
Website http://hawaiiankingdom.org/
****

HK to UPU Deputy Director (28-2-18).pdf
1753K

Gmail **Keanu Sai <keanu.sai@gmail.com>**

Fwd: URGENT

Drmaxschweizer <mail@drmaxschweizer.ch> Thu, Feb 22, 2018 at 5:35 PM
To: "Keanu Sai Ph.D." <keanu.sai@gmail.com>

Von meinem iPhone gesendet

Anfang der weitergeleiteten E-Mail:

Von: RAKOTONDRAJAO brigitte <brigitte.RAKOTONDRAJAO@upu.int>
Datum: 21. Februar 2018 um 09:29:12 MEZ
An: "'Dr. Max Schweizer'" <mail@drmaxschweizer.ch>
Betreff: URGENT

Dear Dr Schweizer,

Please be informed that Mr Clivaz is sick, he will be staying at home, and will not be able to receive you and the Hawai delegation at 2 pm today.

We are very sorry for this last minute inconvenience that goes beyond our control.

Please contact me in order to fix another appointment, if it's still possible for the Hawai delegation.

With apologies and best regards,

Brigitte Rakotondrajao

Secrétariat du Vice-Directeur général

UPU UNION POSTALE UNIVERSELLE

Bureau international

Weltpoststrasse 4

Case postale

3000 BERNE 15

SUISSE

T +41 31 350 33 01

F +41 31 350 35 55

www.upu.int

De : RAKOTONDRAJAO brigitte
Envoyé : vendredi, 2 février 2018 09:37
À : 'Dr. Max Schweizer' <mail@drmaxschweizer.ch>
Objet : RE: Hawai'i: Delegation - the forthcoming visit

Dear Dr Schweizer

Thank you very much for the list of visitors for 21 February.

With my best regards,

Brigitte Rakotondrajao

Secrétariat du Vice-Directeur général

UPU UNION POSTALE UNIVERSELLE

Bureau international

Weltpoststrasse 4

Case postale

3000 BERNE 15

SUISSE

T +41 31 350 33 01

F +41 31 350 35 55

www.upu.int

De : Dr. Max Schweizer [mailto:mail@drmaxschweizer.ch]
Envoyé : jeudi, 1 février 2018 08:11
À : RAKOTONDRAJAO brigitte <brigitte.RAKOTONDRAJAO@upu.int>
Cc : Niklaus Schweizer <niklaus@hawaii.edu>
Objet : Hawai'i: Delegation - the forthcoming visit

Dear Madam

Please find below the discussed delegation for the meeting with the honorable Deputy Director General:

Dr. David Keanu Sai, Ambassador-at-large, Provisional Government of the Hawaiian Kingdom

Mr. Blaise Bissen, Attache to the Ambassador

Professor. Niklaus R. Schweizer, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council

Furthermore:

Dr., Dr. h. c. Max Schweizer, former Diplomat, President of SwissDiplomats - ZuerichNetwork

Any further information will be directly sent to you via Prof. Niklaus Schweizer: we both have the same name and we both are from Zuerich, but we are not from the same family...! (...)

Thank you very much! - With my very best regards, also to Mr. Clivaz, Deputy Director General.

Max Schweizer

DR. MAX SCHWEIZER

FOREIGN & ECONOMIC AFFAIRS
Advisory - Lectures - Research

www.maxundmax.ch

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CH-8044 ZÜRICH
Mobile +41 79 248 59 32

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www.drmaxschweizer.ch

*****

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*****

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UN Independent Expert, Dr. Alfred M. deZayas' memorandum
to State of Hawai'i Members of the Judiciary
(25 February 2018)

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

MEMORANDUM

Date: 25 February 2018

From: Dr. Alfred M. deZayas
United Nations Independent Expert
Office of the High Commissioner for Human Rights

To: Honorable Gary W. B. Chang, and
Honorable Jeannette H. Castagnetti, and
Members of the Judiciary for the State of Hawaii

Re: The case of Mme Routh Bolomet

As a professor of international law, the former Secretary of the UN Human Rights Committee, co-author of book, *The United Nations Human Rights Committee Case Law 1977-2008,* and currently serving as the UN Independent Expert on the promotion of a democratic and equitable international order, I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).

Based on that understanding, in paragraph 69(n) of my 2013 report (A/68/284) to the United Nations General Assembly I recommended that the people of the Hawaiian Islands — and other peoples and nations in similar situations — be provided access to UN procedures and mechanisms in order to exercise their rights protected under international law. The adjudication of land transactions in the Hawaiian Islands would likewise be a matter of Hawaiian Kingdom law and international law, not domestic U.S. law.

I have reviewed the complaint submitted in 2017 by Mme Routh Bolomet to the United Nations Office of the High Commissioner for Human Rights, pointing out historical and ongoing plundering of the Hawaiians' lands, particularly of those heirs and descendants with land titles that originate from the distributions of lands under the authority of the Hawaiian Kingdom. Pursuant to the U.S. Supreme Court judgment in the Paquete Habana Case (1900),

U.S. courts have to take international law and customary international law into account in property disputes. The state of Hawaii courts should not lend themselves to a flagrant violation of the rights of the land title holders and in consequence of pertinent international norms. Therefore, the courts of the State of Hawaii must not enable or collude in the wrongful taking of private lands, bearing in mind that the right to property is recognized not only in U.S. law but also in Article 17 of the Universal Declaration of Human Rights, adopted under the leadership of Eleanor Roosevelt.

Respectfully,

Dr. Alfred M. deZayas
United Nations Independent Expert on the promotion of a democratic and equitable international order
Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

Specimen of *Loan Policy of Title Insurance,*
Fidelity National Title Insurance Company

Fidelity National Title Insurance Company

POLICY NO.:

LOAN POLICY OF TITLE INSURANCE
Issued by
Fidelity National Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. *Title being vested other than as stated in Schedule A.*
2. *Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from*
   - *(a) A defect in the Title caused by*
     - *(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;*
     - *(ii) failure of any person or Entity to have authorized a transfer or conveyance;*
     - *(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;*
     - *(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;*
     - *(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;*
     - *(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or*
     - *(vii) a defective judicial or administrative proceeding.*
   - *(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.*
   - *(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.*
3. *Unmarketable Title.*
4. *No right of access to and from the Land.*

5. *The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to*

   (a) the occupancy, use, or enjoyment of the Land;

   (b) the character, dimensions, or location of any improvement erected on the Land;

   (c) the subdivision of land; or

   (d) environmental protection

   if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. *An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.*

7. *The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.*

8. *Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.*

9. *The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage*

   (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

   (b) failure of any person or Entity to have authorized a transfer or conveyance;

   (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;

   (d) failure to perform those acts necessary to create a document by electronic means authorized by law;

   (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;

   (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

   (g) a defective judicial or administrative proceeding.

10. *The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.*

11. *The lack of priority of the lien of the Insured Mortgage upon the Title*

    (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either

       (i) contracted for or commenced on or before Date of Policy; or

       (ii) contracted for, commenced or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and

    (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

12. *The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.*

13. *The invalidity, unenforceabilty, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title*

    (a) *resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or*

    (b) *because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records*

        (i) *to be timely, or*

        (ii) *to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.*

14. *Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.*

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, FIDELITY NATIONAL TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Fidelity National Title Insurance Company

BY _____ President

ATTEST _____ Secretary

_____
Countersigned

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
   (a) a fraudulent conveyance or fraudulent transfer, or
   (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of

(i) the amount of the principal disbursed as of Date of Policy;

(ii) the amount of the principal disbursed subsequent to Date of Policy;

(iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;

(iv) interest on the loan;

(v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;

(vi) the expenses of foreclosure and any other costs of enforcement;

(vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;

(viii) the amounts to pay taxes and insurance; and

(ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;

(B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;

(C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(D) successors to an

Insured by its conversion to another kind of Entity;

(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured, or

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;

(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

(ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

(f) "Insured Claimant": An Insured claiming loss or damage.

(g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.

(h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(l) "Title": The estate or interest described in Schedule A.

(m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent

jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,

(ii) the Indebtedness,

(iii)the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or

(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the

Company shall continue as set forth in Section 8(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company's Right to Recover

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Insured's Rights and Limitations

(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(c) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against noninsured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons.

Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly

incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Fidelity National Title Insurance Company, Attn: Claims Department, Post Office Box 45023, Jacksonville, Florida 32232-5023.

Specimen of *Owner's Policy of Title Insurance,*
Fidelity National Title Insurance Company

Fidelity National Title Insurance Company

POLICY NO.:

OWNER'S POLICY OF TITLE INSURANCE
Issued by
Fidelity National Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, FIDELITY NATIONAL TITLE INSURANCE COMPANY, a California corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. *Title being vested other than as stated in Schedule A.*
2. *Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from*
   - *(a) A defect in the Title caused by*
     - *(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;*
     - *(ii) failure of any person or Entity to have authorized a transfer or conveyance;*
     - *(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;*
     - *(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;*
     - *(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;*
     - *(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or*
     - *(vii) a defective judicial or administrative proceeding.*
   - *(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.*
   - *(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.*
3. *Unmarketable Title.*
4. *No right of access to and from the Land.*

5. *The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to*

   (a) the occupancy, use, or enjoyment of the Land;

   (b) the character, dimensions, or location of any improvement erected on the Land;

   (c) the subdivision of land; or

   (d) environmental protection

   if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. *An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.*

7. *The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.*

8. *Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.*

9. *Title being vested other than as stated Schedule A or being defective*

   (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

   (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

      (i) to be timely, or

      (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. *Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.*

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, FIDELITY NATIONAL TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Fidelity National Title Insurance Company

BY _____ President

ATTEST _____ Secretary

_____
Countersigned

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer; or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured,

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or

(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath,

produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Fidelity National Title Insurance Company, Attn: Claims Department, Post Office Box 45023, Jacksonville, Florida 32232-5023.

Defendant Elaine Kawasaki's Motion to Dismiss,
without Exhibits
Wells Fargo Bank, N.A., v. Kawasaki

ELAINE E. KAWASAKI
P.O. Box 129
Kurtistown, HI 96760
Phone no. (808) 937-8181

DEFENDANT
Pro se

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

WELLS FARGO BANK, N.A. A NATIONAL ASSOCIATION, AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST 2007-FXD2 ASSET-BACKED CERTIFICATES, SERIES 2007-FXC2, Plaintiff, vs. ELAINE E. KAWASAKI; AND JOHN AND MARY DOES 1-10, Defendants. _____	CIVIL NO. 11-1-0106 (GSH) (Foreclosure-Ejectment) (Hilo) DEFENDANT ELAINE E. KAWASAKI'S MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 12(b)(1); MEMORANDUM IN SUPPORT OF MOTION TO DISMISS; DECLARATION OF DEFENDANT; EXHIBITS "1-4"; NOTICE OF HEARING; CERTIFICATE OF SERVICE HEARING: DATE: _____ TIME: _____ JUDGE: _____

DEFENDANT'S MOTION TO DISMISS COMPLAINT PURSUANT TO HRCP 12(b)(1)

COMES NOW the Defendant ELAINE E. KAWASAKI, hereinafter DEFENDANT, in pro se, makes the following Motion to Dismiss Complaint for lack of subject matter jurisdiction, which can be raised at any time throughout the proceedings pursuant to *Tamashiro v. State of Hawai`i*, 112 Haw. 388, 398; 146 P.3d 103, 113 (2006), and a request for judicial notice of the enclosed exhibits attached to Defendant's Declaration.

DEFENDANT moves pursuant to Rule 12(b)(1) of the Hawaii Rules of Civil Procedure to dismiss Complaint for want of subject matter jurisdiction in that the suit would manifestly require the Court to act outside the constitutional limitations of its judicial power**,** and unlawfully intrude upon, and in effect seize political control over two executive agreements entered into between President Grover Cleveland of the United States and Queen Lili`uokalani of the Hawaiian Kingdom. The first agreement is the *Lili`uokalani assignment* (January 17th 1893) that mandates the President to administer Hawaiian

Kingdom law and the second is the *Agreement of restoration* (December 18th 1893) that mandates the President to restore the Hawaiian Kingdom government and the Queen thereafter to grant amnesty to the insurgents. As is more fully shown in Defendant's Brief in support of this dismissal motion, the Complaint attempts to have the Court act outside the confines of the judicial power and fails to give rise to any claim or issue over which the Court could constitutionally exercise subject matter jurisdiction without violating the *Supremacy clause*, in particular, the 1893 Executive Agreement and the precedence set in U.S. v. Belmont, 301 U.S. 324 (1937), U.S. v. Pink, 315 U.S. 203 (1942), and American Insurance Association v. Garamendi, 539 U.S. 396 (2003) regarding executive agreements that do not require Senate ratification to have the force and effect of a treaty.

WHEREFORE, DEFENDANT respectfully prays that the foregoing motion to dismiss be inquired into and sustained, that the Complaint, to the extent that it is sought to be maintained against the DEFENDANT, be dismissed for the reasons stated in this motion as well as in the more fully detailed statement of the facts, set forth with pertinent legal background and authority, in the simultaneously filed Brief of the DEFENDANT in support of the motion to dismiss.

DATED: Kurtistown, Hawai'i, May 18, 2012.

_____
ELAINE E. KAWASAKI
Defendant, pro se

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

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Plaintiff,	)	MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
vs.	)	
ELAINE E. KAWASAKI; AND JOHN AND MARY DOES 1-10,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION

Defendant, ELAINE E. KAWASAKI, in pro se, (hereafter "DEFENDANT"), herein submits this Memorandum in support of their Motion to Dismiss Complaint.

I. INTRODUCTION

WELLS FARGO BANK, N.A. A NATIONAL ASSOCIATION, AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST 2007-FXD2 ASSET-BACKED CERTIFICATES, SERIES 2007-FXC2 (hereafter "PLAINTIFF") filed a complaint in the Circuit Court of the Third Circuit against DEFENDANT for foreclosure and ejectment. PLAINTIFF claims this court has jurisdiction over the complaint.

The PLAINTIFF cannot claim relief from the Circuit Court of the Third Circuit because the appropriate court with subject matter jurisdiction in the Hawaiian Islands is an Article II Court established under and by virtue of Article II of the U.S. Constitution in compliance with Article 43, 1907 Hague Convention IV (36 U.S. Stat. 2277), and pursuant to two sole-executive agreements entered into between President Cleveland and Queen Lili'uokalani as are more fully explained hereafter. Article II Courts are Military Courts established by authority of the

President,[1] being Federal Courts, which were established as "the product of military occupation." See Bederman, Article II Courts, 44 Mercer Law Review 825-879, 826 (1992-1993).

Military Courts "are generally based upon the occupant's customary and conventional duty to govern occupied territory and to maintain law and order." See United States Law and Practice Concerning Trials of War Criminals by Military Commissions, Military Government Courts and Military Tribunals, 3 United Nations War Crimes Commission, Law Reports of Trials of War Criminals 103, 114 (1948); see also Jecker v. Montgomery, 54 U.S. 498 (1851); Leitensdorfer v. Webb, 61 U.S. 176 (1857); Cross v. Harrison, 57 U.S. 164 (1853); Mechanics' & Traders' Bank v. Union Bank, 89 U.S. 276 (1874); United States v. Reiter, 27 Federal Case 768 (1865); Burke v. Miltenberger, 86 U.S. 519 (1873); New Orleans v. Steamship Co., 87 U.S. 387 (1874); In re Vidal, 179 U.S. 126 (1900); Santiago v. Nogueras, 214 U.S. 260 (1909); Madsen v. Kinsella, 343 U.S. 341 (1952); Williamson v. Alldridge, 320 F. Supp. 840 (1970); Jacobs v. Froehlke, 334 F. Supp. 1107 (1971).

II. BURDEN ESTABLISHING SUBJECT MATTER JURISDICTION RESTS WITH THE PLAINTIFF

In State of Hawai`i v. Lorenzo, 77 Haw. 219 (1994), the Defendant claimed to be a citizen of the Hawaiian Kingdom and that the State of Hawai`i courts did not have jurisdiction over him. In 1994, the case came before the Intermediate Court of Appeals (ICA) and Judge Heen delivered the decision. Judge Heen affirmed the lower court's decision denying Lorenzo's motion to dismiss, but explained that "Lorenzo [had] presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature." *Id*., 221. In other words, the reason Lorenzo's argument failed was because he "did not meet his burden of proving his defense of lack of jurisdiction." *Id*. In Nishitani v. Baker, 82 Haw. 281, 289 (1996), however, the Court shifted that burden of proof not upon the Defendant, but upon the Plaintiff, whereby "proving jurisdiction thus clearly rests with the prosecution." The Court explained, "although the prosecution had the burden of proving beyond a reasonable fact establishing jurisdiction, the defendant has the burden of proving facts in support of any defense…which would have precluded the court from exercising jurisdiction over the defendant (emphasis added)." *Id*. "'Substantial evidence' …is credible evidence which is of sufficient quality and probative value to enable a person of reasonable caution to support a conclusion." In re Doe, 84 Hawai'i 41, 46 (Haw. S.Ct. 1996).

[1] These types of courts were established during the Mexican-American War, Civil War, Spanish-American War, and the Second World War, while U.S. troops occupied foreign countries and administered the laws of these States.

PLAINTIFF will be unable to meet such a burden of proving subject matter jurisdiction "beyond a reasonable fact" because of two executive agreements entered into between President Cleveland of the United States and Queen Lili`uokalani of the Hawaiian Kingdom, called the *Lili`uokalani assignment* (Exhibit "A" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "4" Declaration of DEFENDANT) of executive power and the *Agreement of restoration* (Exhibit "B" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "4" Declaration of DEFENDANT). Congress was apprised of the *Lili'uokalani assignment* by Presidential Message, December 18, 1893, *See* United States House of Representatives, 53d Cong., Executive Documents on Affairs in Hawaii: 1894-95, 443-465 (1895). Presidential Message, January 13, 1894, apprised Congress of the *Agreement of restoration*. See Id., 1241-1284.

III. STANDARD OF REVIEW

> Rule 12(b)(1) of the HRCP reads as follows:
> **(b) How presented**. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter.

Jurisdictional issues, whether personal or subject matter, can be raised at any time and that subject matter jurisdiction may not be waived. Wong v. Takushi, 83 Hawai`i 94, 98 (1996), see also State of Hawai`i v. Moniz, 69 Hawai`i 370, 372 (1987). In Tamashiro v. State of Hawai`i, 112 Haw. 388, 398; 146 P.3d 103, 113 (2006), the Hawai`i Supreme Court stated, "The lack of jurisdiction over the subject matter cannot be waived by the parties. If the parties do not raise the issue, a court *sua sponte* will, for unless jurisdiction of the court over the subject matter exists, any judgment rendered is invalid." "[I]t is well-established . . . that lack of subject matter jurisdiction can never be waived by any party at any time." Chun v. Employees' Ret. Sys. of Hawai'i, 73 Haw. 9, 14, 828 P.2d 260, 263 (1992). See also Amantiad v. Odum, 90 Haw. 152, 159, 977 P.2d 160, 167 (1999) ("A judgment rendered by a circuit court without subject matter jurisdiction is void").

The U.S. Constitution provides that treaties, like acts of Congress, are considered the "supreme law" of the land; see U.S. Constitution Article VI (2), and Maiorano v. Baltimore & Ohio R.R. Co., 213 U.S. 268, 272-73 (1909). Also, Executive Agreements entered into by the President under his sole constitutional authority with foreign States are treaties that do not require ratification by the Senate or approval of Congress. *See* United States v. Belmont, 301 U.S. 324,

326 (1937). Given that valid executive agreements are binding treaties, this Court should grant Defendant's Motion to Dismiss in order to accomplish justice.

IV. SUMMARY OF ARGUMENT

DEFENDANT asserts that this Court lacks subject matter jurisdiction because of two executive agreements, the *Lili`uokalani assignment* (January 17, 1893) and the *Agreement of restoration* (December 18, 1893). These executive agreements provide the legal and factual evidence that the federal government currently recognizes the Hawaiian Kingdom. (In United States v. Lorenzo, 995 F.2d 1448, 1456 (1993), the 9th Circuit concluded that "[t]he appellants have presented no evidence that the Sovereign Kingdom of Hawaii is currently recognized by the federal government.") These executive agreements also provide the "basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature" pursuant to the evidentiary standard set by Lorenzo, at 221. The Circuit Court of the Third Circuit claim to jurisdiction is in conflict with the 1893 Executive Agreements and the precedence in Belmont, U.S. v. Pink, 315 U.S. 203 (1942), and American Insurance Association v. Garamendi, 539 U.S. 396, (2003), where sole executive agreements preempt State law.

Rebuttable presumptions of law have been created by means of judicial notice. In Belmont, 301 U.S. 324, 330 (1937) the U.S. Supreme Court stated, "We take judicial notice of the…assignment set forth in the complaint." The Court was making reference to an assignment that "was effected by an exchange of diplomatic correspondence between the Soviet Government and the United States," Id., at 326. The appellant argued that the laws of New York could not be invoked as to deprive the faithful execution of a sole executive agreement, being an international compact. The Court applied the supremacy rule of treaties over state laws to the assignment being an international compact or sole-executive agreement. The Court stated, "And when judicial authority is invoked in aid of such consummation, state constitutions, state laws, and state policies are irrelevant to the inquiry and decision. It is inconceivable that any of them can be interposed as an obstacle to the effective operation of a federal constitutional power (citation omitted)." Id., at 332. The taking of judicial notice of the legal phenomenon that executive agreements preempt State law gives rise to the presumption.

Reinforcing the rule established in Belmont, the U.S. Supreme Court in Pink, at 223, "added that '**all international compacts and agreements' are to be treated with similar dignity**, for the reason that 'complete power over international affairs is in the national government, and is not and cannot be subject to any curtailment or interference on the part of the several states (emphasis added).'" In Garamendi, at 416, the U.S. Supreme Court ruled, "valid

executive agreements are fit to preempt state law, just as treaties are." See also Belmont, at 327, 331; Pink, at 223, 230-231. This rule is a mandatory precedent by the U.S. Supreme Court that binds all the courts of states to follow. State courts, however, are not bound to follow persuasive precedents, but they may choose to unless there is a contradictory mandatory precedent. The preemption rule of valid executive agreements is a mandatory precedent, not a persuasive precedent.

"[A] rule based upon the Constitution of the United States which, under the Supremacy Clause, is binding upon state courts as well as upon federal courts." Henry et al. v. City of Rock Hill, 376 U.S. 776, 777; 84 S. Ct. 1042, 1043 (1964); "Art. VI of the Constitution makes it of binding effect on the States 'any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.' Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3, 'to support this Constitution.'" Cooper v. Aaron, 358 U.S. 1, 18; 78 S. Ct. 1401, 1410 (1958).

The U.S. Supreme Court has final authority on questions of the U.S. Constitution. When the U.S. Supreme Court held that valid executive agreements preempt "state constitutions, state laws, and state policies," then that precedent in its interpretation of sole executive agreements binds every court as it applies to jurisdictional claims by States. Until the U.S. Supreme Court changes the ruling, the binding precedent is authoritative on the meaning of sole executive agreements. The Court has no discretion to apply the rule, but must carry out the rule even if the Court disagrees.

V. ARGUMENT: CIRCUIT COURT OF THE THRID CIRCUIT LACKS SUBJECT MATTER JURISDICTION

In State of Hawai`i v. Lee, 90 Haw. 130, 142; 976 P.2d 444, 456 (1999), the Hawai'i Supreme Court, in referencing Lorenzo, stated, "**it is an open legal question whether the 'Kingdom of Hawai'i' still exists**." This open legal question has since not been conclusively answered pursuant to the ICA's instructive exposition because defendants have not provided evidence that the Hawaiian Kingdom continues to exist as a state. See State of Hawai'i v. Rodenhurst, 2010 Haw. App. LEXIS 588, (Haw. Ct. App. Oct. 29, 2010); State of Hawai'i v. Makekau, 2009 Haw. App. LEXIS 633 (Haw. Ct. App. Sept. 29, 2009); State v. Ampong, 2009 Haw. App. LEXIS 72 (Haw. Ct. App. Feb. 27, 2009); State of Hawai'i v. Ball, 2007 Haw. App. LEXIS 267 (Haw. Ct. App. Apr. 19, 2007); State of Hawai'i v. Spinney, 2005 Haw. App. LEXIS 43 (Haw. Ct. App. Feb. 4, 2005); State of Hawai'i v. Fergerstrom, 106 Haw. 43, 101 P.3d 652, 2004 Haw. App. LEXIS 349 (Haw. Ct. App. 2004); State of Hawai'i v. Keliikoa, 2004 Haw.

App. LEXIS 227 (Haw. Ct. App. July 21, 2004); Betsill Bros. Constr., Inc. v. Akahi, 2004 Haw. App. LEXIS 205 (Haw. Ct. App. June 28, 2004); State of Hawai'i v. Araujo, 2004 Haw. App. LEXIS 3 (Haw. Ct. App. Jan. 14, 2004); Makapono Partners, LLC v. Simeona, 2003 Haw. App. LEXIS 108, p. 17 (Haw. Ct. App. Apr. 14, 2003); State of Hawai'i v. Lindsey, 2002 Haw. App. LEXIS 32, p. 8 (Haw. Ct. App. Mar. 8, 2002); State of Hawai'i v. Sherman, 2000 Haw. App. LEXIS 218, p. 4 (Haw. Ct. App. Dec. 11, 2000); Chalon Int'l of Haw., Inc. v. Makuaole, 2000 Haw. App. LEXIS 192, p. 7 (Haw. Ct. App. Oct. 24, 2000); and Baker.

Cases before the United States District Court for the District of Hawai'i also cited Lorenzo for denying motions to dismiss on the same grounds that defendants failed to provide evidence of Hawaiian Kingdom state continuity. See Epperson v. Hawaii, 2009 U.S. Dist. LEXIS 100045, p. 3 (D. Haw. Oct. 27, 2009); Simeona v. United States, 2009 U.S. Dist. LEXIS 59107, p. 3 (D. Haw. July 10, 2009); Kupihea v. United States, 2009 U.S. Dist. LEXIS 59023, p. 4 (D. Haw. July 10, 2009); United States v. Goo, 2002 U.S. Dist. LEXIS 2919, p. 3, 93 A.F.T.R.2d (RIA) 2097 (D. Haw. 2002); First Interstate Mortgage Co. v. Lindsey, 1995 U.S. Dist. LEXIS 18172, p. 16 (D. Haw. Nov. 15, 1995).

In Lorenzo, the ICA cited qualities of a state to be "an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities." Lorenzo, at 221. The ICA restated Klinghoffer v. S.N.C. Achille Lauro, 937 F.2d 44, 47 (2d Cir. 1991), which drew from §201, Restatement (Third) Foreign Relations Law of the United States. The Restatement (Third) drew its definition of a state from Article I, Montevideo Convention, 49 U.S. Stat. 3097, 3100 (1933), which provided, "The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states." In 2001, the Permanent Court of Arbitration in The Hague acknowledged that the Hawaiian Kingdom "existed as an independent State recognized as such by the United States of America, the United Kingdom, and various other States." Larsen v. Hawaiian Kingdom, 119 International Law Reports 566, 581 (2001).

The ICA also cited "essential attributes of sovereign statehood: [is] the power to declare and wage war; to conclude peace; to maintain diplomatic ties with other sovereigns; to acquire territory by discovery and occupation; and to make international agreements and treaties." Lorenzo, at 222. Therefore, pursuant to Lorenzo, the continuity of the Hawaiian Kingdom as a state is dependent on whether or not the defendant can provide "factual or legal" evidence that "essential attributes of sovereign statehood" are maintained and continue to exist to date.

A. Essential Attributes of Hawaiian Kingdom Statehood

1. Power to Declare and Wage War & to Conclude Peace

The power to declare war and to conclude peace is constitutionally vested in the office of the Monarch pursuant to Art. 26, Haw. Const., "The [Queen] is the Commander-in-Chief of the Army and Navy, and for all other Military Forces of the Kingdom, by sea and land; and has full power by [Her]self, or by any officer or officers [She] may judge best for the defence and safety of the Kingdom. But [she] shall never proclaim war without the consent of the Legislative Assembly." (Exhibit "1" of Declaration of DEFENDANT, at 91).

2. To Maintain Diplomatic Ties with Other Sovereigns

Maintaining diplomatic ties with other States is vested in the office of Monarch pursuant to Art. 30, Haw. Const., "It is the [Queen's] Prerogative to receive and acknowledge Public Ministers…" (Exhibit "1" of Declaration of DEFENDANT, at 91). The officer responsible for maintaining diplomatic ties with other States is Minister of Foreign Affairs whose duty is "to conduct the correspondence of [the Hawaiian] Government, with the diplomatic and consular agents of all foreign nations, accredited to this Government, and with the public ministers, consuls, and other agents of the Hawaiian Islands, in foreign countries, in conformity with the law of nations, and as the [Queen] shall from time to time, order and instruct." Haw. Civ. Code, §437. (Exhibit "3" of Declaration of DEFENDANT, at 108). The Minister of Foreign Affairs shall also "have the custody of all public treaties concluded and ratified by the Government; and it shall be his duty to promulgate the same by publication in the government newspaper. When so promulgated, all officers of this government shall be presumed to have knowledge of the same." Haw. Civ. Code, §441. (Exhibit "3" of Declaration of DEFENDANT, at 109).

3. To Acquire Territory by Discovery or Occupation

Between 1822 and 1886, the Hawaiian Kingdom exercised the power of discovery and occupation that added five additional islands to the Hawaiian Domain. By direction of Ka'ahumanu in 1822, Captain William Sumner took possession of the Island of Nihoa. On May 1, 1857; Laysan Island was taken possession by Captain John Paty for the Hawaiian Kingdom; on May 10, 1857 Captain Paty also took possession of Lysiansky Island; Palmyra Island was taken possession of by Captain Zenas Bent on April 15, 1862; and Ocean Island was acquired September 20, 1886, by proclamation of Colonel J.H. Boyd.

4. To Make International Agreements and Treaties

Pursuant to Art. 29, Haw. Const., "The [Queen] has the power to make Treaties. Treaties involving changes in the Tariff or in any law of the Kingdom shall be referred for approval to the Legislative Assembly." (Exhibit "1" of Declaration of DEFENDANT, at 91). As a result of the

United States' recognition of Hawaiian independence, the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation, Dec. 20th 1849 (9 U.S. Stat. 977); Treaty of Commercial Reciprocity, Jan. 13th 1875 (19 U.S. Stat. 625); Postal Convention Concerning Money Orders, Sep. 11th 1883 (23 U.S. Stat. 736); and a Supplementary Convention to the 1875 Treaty of Commercial Reciprocity, Dec. 6th 1884 (25 U.S. Stat. 1399).

The Hawaiian Kingdom also entered into treaties with Austria-Hungary, June 18th 1875; Belgium, Oct. 4th 1862; Bremen, March 27th 1854; Denmark, Oct. 19th 1846; France, July 17th 1839, March 26th 1846, Sep. 8th 1858; French Tahiti, Nov. 24th 1853; Germany, March 25th 1879; Great Britain, Nov. 13th 1836 and March 26th 1846; Great Britain's New South Wales, March 10th 1874; Hamburg, Jan. 8th 1848); Italy, July 22nd 1863; Japan, Aug. 19th 1871, Jan. 28th 1886; Netherlands, Oct. 16th 1862; Portugal, May 5th 1882; Russia, June 19th 1869; Samoa, March 20th 1887; Spain, Oct. 9th 1863; Sweden-Norway, April 5th 1855; and Switzerland, July 20th 1864.

B. The *Lili'uokalani Assignment* of Executive Power & the *Agreement of Restoration* of the Hawaiian Kingdom Government

"Governmental authority is the basis for normal inter-State relations; what is an act of a State is defined primarily by reference to its organs of government, legislative, executive or judicial." Crawford, at 56. Since 1864, the Hawaiian Constitution fully adopted the separation of powers doctrine:

> Article 20. The Supreme Power of the Kingdom in its exercise, is divided into the Executive, Legislative, and Judicial; these shall always be preserved distinct."
>
> Article 31. **To the King [Queen] belongs the executive power** (emphasis added).
>
> Article 45. The Legislative power of the Three Estates of this Kingdom is vested in the King, and the Legislative Assembly; which Assembly shall consist of the Nobles appointed by the King, and of the Representatives of the People, sitting together.
>
> Article 66. The Judicial Power shall be divided among the Supreme Court and the several Inferior Courts of the Kingdom, in such manner as the Legislature may, from time to time, prescribe, and the tenure of office in the Inferior Courts of the Kingdom shall be such as may be defined by the law creating them. (Exhibit "1" Declaration of DEFENDANT).

On January 17, 1893, Queen Lili'uokalani, who was constitutionally vested with the "executive power" under Article 31 of the Hawaiian Constitution, was unable to apprehend certain insurgents calling themselves the provisional government without armed conflict between

U.S. troops and the Hawaiian police force headed by Marshal Charles Wilson. She was forced to temporarily assign her executive power to the President of the United States:

> I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom.
>
> **That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government.**
>
> **Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the [executive] authority which I claim as the constitutional sovereign of the Hawaiian Islands** (emphasis added)**.** (Exhibit "A" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "4" Declaration of DEFENDANT, at 461).

In a dispatch to the new U.S. Diplomat, Albert Willis, assigned to the Hawaiian Kingdom, on October 18, 1893, U.S. Secretary of State Gresham apprised him of the findings of the Presidential investigation:

> The Provisional Government was not established by the Hawaiian people, or with their consent or acquiescence, nor has it since existed with their consent. The Queen refused to surrender her powers to the Provisional Government until convinced that the minister of the United States had recognized it as the *de facto* authority, and would support and defend it with the military force of the United States, and that resistance would precipitate a bloody conflict with that force. She was advised and assured by her ministers and by leaders of the movement for the overthrow of her government, that if she surrendered under protest her case would afterwards be fairly considered by the President of the United States. The Queen finally wisely yielded to the armed forces of the United States then quartered in Honolulu, relying upon the good faith and honor of the President, when informed of what had occurred, to undo the action of the minister and reinstate her and the authority which she claimed as the constitutional sovereign of the Hawaiian Islands.
>
> After a patient examination of Mr. Blount's reports the President is satisfied that the movement against the Queen, if not instigated, was encouraged and supported by the representative of this Government at Honolulu; that he promised in advance to

> aid her enemies in an effort to overthrow the Hawaiian Government and set up by force a new government in its place; and that he kept this promise by causing a detachment of troops to be landed from the *Boston* on the 16th of January, and by recognizing the Provisional Government the next day when it was too feeble to defend itself and the constitutional government was able to successfully maintain its authority against any threatening force other than that of the United States already landed.
>
> The President has therefore determined that he will not send back to the Senate for its action thereon the treaty which he withdrew from that body for further consideration on the 9th day of March last. On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination, making known to her the President's sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.
>
> **You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution.** All obligations created by the Provisional Government in due course of administration should be assumed. (emphasis added). (Exhibit "A" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "4" Declaration of DEFENDANT, at 463-464).

In the initial meeting with U.S. Minister Willis on November 13, 1893, at the U.S. Legation in Honolulu, the Queen refused to grant amnesty and cited Chapter VI—Treason, Hawaiian Penal Code (Exhibit "3" Declaration of DEFENDANT):

> 1. **Treason is hereby defined to be any plotting or attempt to dethrone or destroy the King, or the levying of war against the King's government, or the adhering to the enemies thereof giving them aid and comfort, the same being done by a person owing allegiance to this kingdom** (emphasis added).
>
> 9. **Whoever shall commit the crime of treason, shall suffer the punishment of death; and all his property shall be confiscated to the government** (emphasis added).

But after one month of continued negotiation with U.S. Minister Willis, Queen Lili'uokalani, on December 18, 1893, signed the following declaration agreeing to grant amnesty after the government is restored.

> I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, **if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government**. I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained. I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown. (emphasis added). (Exhibit "B" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "4" of Declaration of DEFENDANT, at 1269).

On December 20, 1893, Willis dispatched the Queen's acceptance of the condition of restoration to Gresham in Washington, D.C. In a dispatch to Willis on January 13, 1893, Gresham acknowledged receipt of the Queen's declaration.

> On the 18th ultimo the President sent a special message to Congress communicating copies of the Mr. Blount's reports and the instructions given to him and you. On the same day, answering a resolution of the House of Representatives, he sent copies of all correspondence since March 4, 1889, on the political affairs and relations of Hawaii, withholding, for sufficient reasons, only Mr. Stevens' No. 70 of October 8, 1892, and your No. 3 of November 16, 1893. The President therein announced that the conditions of restoration suggested by him to the Queen had not proved acceptable to her, and that since the instructions sent to you to insist upon those conditions he had not learned that the Queen was willing to assent to them. The

> President thereupon submitted the subject to the more extended powers and wider discretion of Congress, adding the assurance that he would be gratified to cooperate in any legitimate plan which might be devised for a solution of the problem consistent with American honor, integrity, and morality.
>
> **Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President's decision.**
>
> The matter now being in the hands of Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you, including your No. 3, heretofore withheld, and all instructions sent to you. In the meantime, while keeping the Department fully informed of the course of events, you will, until further notice, consider your special instructions upon this subject have been fully complied with. (emphasis added). (Exhibit "B" of Expert Memorandum of Dr. David Keanu Sai, Exhibit "4" Declaration of DEFENDANT, at 1283-1284).

The purpose of President Cleveland submitting the matter to Congress was to seek the authorization of force to be employed against the insurgents. It was not to seek authority for the agreements with Queen Lili'uokalani. "In foreign policymaking, the President, not Congress, has the 'lead role.' (Citations omitted). Specifically, the President has authority to make 'executive agreements' with other countries, requiring no ratification by the Senate or approval by Congress. (Citation omitted)." Garamendi, at 397; "We held that although [an executive agreement] might not be a treaty requiring ratification by the Senate, it was a compact negotiated and proclaimed under the authority of the President, and as such was a 'treaty…'" Belmont, at 331.

After President Cleveland notified Congress by Presidential message on January 13, 1894 of the *Agreement of restoration* made with Queen Lili'uokalani, newspapers reported the settlement and the defiance of the insurgency to step down. See *New York Tribune*, January 14, 1894; *St. Paul Sunday Globe newspaper*, January 14, 1894; *The Los Angeles Herald*, January 14, 1894; *The Princeton Union newspaper*, January 18, 1894; and *Hawai'i Holomua newspaper*, January 24, 1894. (Library of Congress, Chronicling America: Historic American Newspapers, http://chroniclingamerica.loc.gov/).

Under and by virtue of the *Lili'uokalani assignment*, executive power of the Hawaiian Kingdom remains vested in the President of the United States to faithfully administer Hawaiian Kingdom law, until the Hawaiian Kingdom government is restored pursuant to the *Agreement of restoration*, whereby the executive power is reassigned and thereafter the Monarch to grant amnesty. The failure of Congress to authorize the President to use force did not diminish the validity of the executive agreements, being the *Lili'uokalani assignment* and the *Agreement of*

restoration. Despite over a century of non-compliance, these executive agreements remain binding upon the office of President of the United States to date. According to Wright, the President binds "himself and his successors in office by executive agreements." See Quincy Wright, The Control of American Foreign Relations, (1922), 235.

C. The Sole Executive Agreements

In Belmont and Garamendi, the U.S. Supreme Court affirmed that executive agreements entered into between the President and a sovereign nation does not require ratification from the U.S. Senate to have the force and effect of a treaty; and executive agreements bind successor Presidents for their faithful execution. According to Justice Douglas, in Pink, at 241, executive agreements "must be read not as self-contained technical documents, like a marine insurance contract or a bill of lading, but as characteristically delicate and elusive expressions of diplomacy." "An exchange of diplomatic notes has often sufficed, without any further formality of ratification or exchange of ratifications, or even of proclamation, to effect purposes more usually accomplished by the more complex machinery of treaties…" See Report of Mr. Foster, Sec. of State, to the President, Dec. 7, 1892, S. Ex. Doc. 9, 52 Cong. 2 sess.; H. Doc. 471, 56 Cong. 1 sess. 16-17.

The ability for the U.S. to enter into agreements with foreign States is not limited to treaties, but includes executive agreements, whether jointly with Congress or under the President's sole constitutional authority. While treaties require ratification from the U.S. Senate, sole-executive agreements do not, and U.S. "Presidents have made some 1600 treaties with the consent of the Senate [and] they have made many thousands of other international agreements without seeking Senate consent." See Henkin, Foreign Affairs and the United States Constitution, 2nd ed. (1996), at 215.

> Presidents from Washington to Clinton have made many thousands of agreements, differing in formality and importance, on matters running the gamut of U.S. foreign relations. In 1817, the Rush-Bagot Agreement disarmed the Great Lakes. Root-Takahira (1908) and Lansing-Ishii (1917) defined U.S. policy in the Far East. A Gentlemen's Agreement with Japan (1907) limited Japanese immigration into the United States. Theodore Roosevelt put the bankrupt customs houses of Santo Domingo under U.S. control to prevent European creditors from seizing them. McKinley agreed to contribute troops to protect Western legations during the Boxer Rebellion and later accepted the Boxer Indemnity Protocol for the United States. Franklin Roosevelt exchanged over-age destroyers for British bases early during the Second World War. Potsdam and Yalta shaped the political face of the world after the Second World War. Since the

> Second World War there have been numerous sole agreements for the establishment of U.S. military bases in foreign countries. Id., at 219.

The "executive branch claims four sources of constitutional authority under which the President may enter into [sole] executive agreements: (1) the president's duty as chief executive to represent the nation in foreign affairs; (2) the president's authority to receive ambassadors and other public ministers; (3) the president's authority as commander in chief; and (4) the president's duty to 'take care that the laws be faithfully executed.'" See 11 Foreign Affairs Manual 721.2(b)(3), October 25, 1974. The agreement with the Queen evidently stemmed from the President's role as "chief executive," "commander in chief," and his duty to "take care that the laws be faithfully executed." In Belmont, Justice Sullivan stated there are different kinds of treaties that do not require Senate approval. The case involved a Russian corporation that deposited some of its funds in a New York bank prior to the Russian revolution of 1917. After the revolution, the Soviet Union nationalized the corporation and sought to seize its assets in the New York bank with the assistance of the United States. The assistance was "effected by an exchange of diplomatic correspondence between the Soviet government and the United States [in which the] purpose was to bring about a final settlement of the claims and counterclaims between the Soviet government and the United States." Id, at 326. Justice Sutherland explained:

> That the negotiations, acceptance of the assignment and agreements and understandings in respect thereof were within the competence of the President may not be doubted. Governmental power over internal affairs is distributed between the national government and the several states. Governmental power over external affairs is not distributed, but is vested exclusively in the national government. And in respect of what was done here, the Executive had authority to speak as the sole organ of that government. The assignment and the agreements in connection therewith did not, as in the case of treaties, as that term is used in the treaty making clause of the Constitution (article 2, 2), require the advice and consent of the Senate. Id., at 330.

D. Violations of the *Lili'uokalani assignment* and the *Agreement of Restoration*

After the President, by Presidential Message on January 13, 1894, apprised the Congress of the *Restoration agreement* with Queen Lili'uokalani, both the House of Representatives[2] and

[2] House Resolution on the Hawaiian Islands, February 7, 1894:

"*Resolved*, First. That it is the sense of this House that the action of the United States minister in employing United States naval forces and illegally aiding in overthrowing the constitutional Government of

Senate[3] took deliberate steps "warning the President against the employment of forces to restore the monarchy of Hawaii." See Corwin, The President's Control of Foreign Relations, 45 (1917). Senator Kyle's resolution introduced on May 23, 1894 specifically addresses the *Agreement of restoration*. The resolution was later revised by Senator Turpie and passed by the Senate on May 31, 1894. Senator Kyle's resolution stated:

> *Resolved*, That it be the sense of the Senate that the Government of the United States shall not use force for the purpose of restoring to the throne the deposed Queen of the Sandwich Islands or for the purpose of destroying the existing Government: that, the Provisional having been duly recognized, the highest international interests require that it shall pursue its own line of polity, and that intervention in the political affairs of these islands by other governments will be regarded as an act unfriendly to the Government of the United States. (U.S. Senate Resolution on Hawai'i, 53 Cong., 2nd Sess., 5127 (1894))

Not only do these resolutions acknowledge the executive agreements between Queen Lili'uokalani and President Cleveland, but also these resolutions violate the separation of powers doctrine whereby the President is the sole representative of the United States in foreign relations. "[C]ongressional resolutions on concrete incidents are encroachments upon the power of the Executive Department and are of no legal effect." See Wright, The Control of American Foreign Relations 281 (1922).

By virtue of the temporary and conditional grant of Hawaiian executive power, the U.S. was obligated to restore the Hawaiian Kingdom government, but instead illegally occupied the Hawaiian Kingdom for military purposes on August 12, 1898 during the Spanish-American War, and has remained in the Hawaiian Islands ever since. See Sai, A Slippery Path Towards Hawaiian Indigeneity, 10 Journal of Law and Social Challenges 68-133 (Fall 2008).

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the Hawaiian Islands in January, 1893, and in setting up in its place a Provisional Government not republican in form and in opposition to the will of a majority of the people, was contrary to the traditions of our Republic and the spirit of our Constitution, and should be condemned. Second. That we heartily approve the principle announced by the President of the United States that interference with the domestic affairs of an independent nation is contrary to the spirit of American institutions. And it is further the sense of this House that the annexation of the Hawaiian Islands to our country, or the assumption of a protectorate over them by our Government is uncalled for and inexpedient; that the people of that country should have their own line of policy, and that foreign intervention in the political affairs of the islands will not be regarded with indifference by the Government of the United States." (U.S. Senate Resolution on Hawai'i, 53 Cong., 2nd Sess., 2000 (1894)).

[3] Senate Resolution on the Hawaiian Islands, May 31, 1894:

"*Resolved*, That of right it belongs wholly to the people of the Hawaiian Islands to establish and maintain their own form of government and domestic polity; that the United States ought in nowise to interfere therewith, and that any intervention in the political affairs of these islands by any other government will be regarded as an act unfriendly to the United States." (U.S. House Resolution on Hawai'i, 53 Cong., 2nd Sess., 5499 (1894)).

According to Professor Marek, "the legal order of the occupant is…strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness [e.g. no government]. …[Occupation] is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned." See Marek, Identity and Continuity of States in Public International Law (1968), 102. Referring to the United States' occupation of the Hawaiian Kingdom in his law journal article, Dumberry states:

> [T]he 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied. See Dumberry, The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law, 2(1) Chinese Journal of International Law 655-684 (2002).

The *Lili`uokalani assignment* mandates the President to administer Hawaiian Kingdom law until the Hawaiian Kingdom government can be restored pursuant to the *Agreement of restoration* under the exclusive authority of the President by virtue of Article II of the U.S. Constitution. Therefore, these executive agreements divest this Court from exercising subject matter jurisdiction because the appropriate court with subject matter jurisdiction would be an Article II Court.

Additional evidence of the Hawaiian Kingdom's continuity as a state in accordance with recognized attributes of a state's sovereign nature was the international arbitration case, Larsen v. Hawaiian Kingdom, 119 International Law Reports 566 (2001), at the Permanent Court of Arbitration, The Hague, Netherlands, whereby **only states** have access to international proceedings at the Permanent Court of Arbitration. In other words, the international arbitration would not have taken place if the Hawaiian Kingdom were not a state. See Bederman & Hilbert, Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai'i, 95 American Journal of International Law 927-933 (2001); Dumberry, The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law, 2(1) Chinese Journal of International Law 655-684 (2002); Sai, American Occupation of the Hawaiian State: A Century Gone Unchecked, 1 Hawaiian Journal of Law and Politics 46-81 (Summer 2004); and Sai, A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its Use and Practice in Hawai`i today, 10 Journal of

Law and Social Challenges 68-133 (Fall 2008).

In the Twenty-sixth Legislature of the State of Hawai'i (2011), Representative Mele Carroll introduced House Concurrent Resolution 107 "Establishing a Joint Legislative Investigating Committee to Investigate the Status of Two Executive Agreements entered into in 1893 between the United States President Grover Cleveland and Queen Lili'uokalani of the Hawaiian Kingdom, called the *Lili'uokalani Assignment* and the *Agreement of Restoration*." Representative Carroll stated that the purpose of House Concurrent Resolution 107 is to:

> ensure that we, as Legislators, who took an oath to support and defend not only the Constitution of the State of Hawai'i, but also the Constitution of the United States, must be mindful of our fiduciary duty and obligation to conform to the *Supremacy Clause* of the United States Constitution. As Majority Whip for the House of Representatives of the State of Hawai'i, it is my duty to bring the executive agreements to the attention of the Hawai'i State Legislature and that the joint investigating committee have the powers necessary to receive all information for its final report to the Legislature. (See News Release—Office of Rep. Mele Carroll, March 14, 2011, http://MeleCarrol.wordpress.com)

VI. REQUEST FOR JUDICIAL NOTICE

On a motion to dismiss, a court may take judicial notice of matters of public record in accordance with Federal Rules of Evidence 201 without converting the motion to dismiss to a motion for summary judgment. Lee v. City of Los Angeles, 250 F.3d 668, 688-689 (9th Cir. 2001) (citing Mack v. South Bay Beer Distributors, Inc., 798 F.2d 1279, 1282 (9th Cir. 1986)). Courts may take judicial notice of documents outside of the complaint that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed.R.Evid. 201(d); Wietschner v. Monterey Pasta Co., 294 F. Supp. 2d 1102, 1109 (N.D. Cal. 2003). Courts can take judicial notice of such matters when considering a motion to dismiss. Wietschner, 294 F. Supp. 2d at 1109; MGIC Indem. Corp. v. Weisman, 803 F. 2d 500, 504 (9th Cir. 1986). Further, Courts "may take judicial notice of facts of 'common knowledge' in ruling on a motion to dismiss." Newcomb v. Brennan, 558 F.2d 825, 829 (7th Cir. 1977). Hawai'i Rules of Evidence have adopted the same provisions as the Federal Rules of Evidence.

Judicial notice is the act by which a court recognizes the existence and truth of certain facts that have a bearing on the case. "All courts are bound to take judicial notice of the territorial extent of the jurisdiction exercised by the government, and that extent and boundaries of the territory under which they can exercise jurisdiction." See 29 Am.Jur.2d Evidence, §83 (2008). "State and federal courts must judicially notice all treaties [executive agreements] of the United

States." Id., §123. "When considering a treaty [executive agreement], courts must take judicial notice of all facts connected therewith which may be necessary for its interpretation or enforcement, such as the historical data leading up to the making of the treaty [executive agreement]." Id., §126. Rule 201(d) of the Hawai'i Rules of Evidence states that the Court is **mandated** to "take judicial notice if requested by a party and supplied with the necessary information," provided the Defendant supplies the Court with data consistent with the requirement of Rule 201(b). See Rule 201 Commentary, Hawai'i Rules of Evidence, at 401.

All courts, including state courts, take judicial notice of United States treaties, which includes sole executive agreements. State v. Marley, 54 Haw. 450, 509 P.2d 1095 (1973). The contents and interpretation of treaties and sole executive agreements that are part of United States law and that are invoked as applicable law in case are not matters for evidentiary proof. Id.

Exhibits "1", "2", and "3" are laws of the Hawaiian Kingdom published by authority of the Hawaiian government. Exhibits "A," "B," "C," and "D" of Expert Memorandum of Dr. David Keanu Sai attached as Exhibit "4" to Declaration of DEFENDANT herein, are copies of official government publications. Exhibits "A" and "B" are copies made under the seal of the United States Department of State's government printing office, 1895; and exhibits "C" and "D" are copies from the United States Congress government printing office, 1898. Rule 902(5) of the Hawai'i Rules of Evidence provides that "A book, pamphlet, or other publication purporting to be issued by a public authority" requires "no extrinsic evidence of authenticity in order to be admitted." According to 3 Wigmore (Evidence) §1684 (1904):

> In general, then, where an official printer is appointed, his printed copies of official documents are admissible. It is not necessary that the printer should be an officer in the strictest sense, nor that he should be exclusively concerned with official work; it is enough that he is appointed by the Executive to print official documents. **As for authentication of his copies, it is enough that the copy offered purports to be printed by authority of the government; its genuineness is assumed without further evidence**.

DEFENDANT hereby formally requests this Court to take judicial notice pursuant to Rules 201(d) and 902(5), Hawai'i Rules of Evidence, of the following:

Exhibit	Description
1	• Hawaiian Kingdom Constitution.
2	• Chapter VI—Treason, Penal Code of the Hawaiian Kingdom
3	• Chapter VIII—Department of Foreign Affairs, Compiled Laws of the Hawaiian Kingdom.
4	• (Exhibit "A" of Expert Memorandum of Dr. David Keanu Sai) *Lili'uokalani*

	assignment, January 17, 1893, comprising of an exchange of diplomatic notes acknowledging the assignment of executive power and conclusions of a Presidential investigation (United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 443-464, 1895); • (Exhibit "B" of Expert Memorandum of Dr. David Keanu Sai) *Agreement of restoration*, December 18, 1893, comprising an exchange of diplomatic notes that acknowledged negotiations and settlement of the illegal overthrow of the Hawaiian Kingdom government and its restoration (United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 1269-1270; 1283-1284, 1895); • (Exhibit "C" of Expert Memorandum of Dr. David Keanu Sai) Statements made on the floor of the House of Representatives by Representative Thomas Ball are copies from the 55th Cong. 2nd Sess., 5975-5976 (1898); • (Exhibit "D" of Expert Memorandum of Dr. David Keanu Sai) Statements made on the floor of the Senate by Senator Augustus Bacon are copies from the 55th Cong., 2nd Sess., 6148-6150 (1898).
	• Treaty of Friendship, Commerce and Navigation, Dec. 20th 1849 (9 U.S. Stat. 977).
	• Treaty of Commercial Reciprocity, Jan. 13th 1875 (19 U.S. Stat. 625).
	• Postal Convention Concerning Money Orders, Sep. 11th 1883 (23 U.S. Stat. 736).
	• Supplementary Convention to the 1875 Treaty of Commercial Reciprocity, Dec. 6th 1884 (25 U.S. Stat. 1399).
	• Larsen v. Hawaiian Kingdom, 119 International Law Reports 566 (2001).
	• United States v. Belmont, 301 U.S. 324 (1937).
	• United States v. Pink, 315 U.S. 203 (1942).
	• American Insurance Association v. Garamendi, 539 U.S. 396, (2003).
	• State of Hawai'i v. Lorenzo, 77 Haw. 219 (1994).

VII. CONCLUSION

Pursuant to Lorenzo, at 222, the "essential attributes of sovereign statehood: the power to declare and wage war; to conclude peace; to maintain diplomatic ties with other sovereigns; to acquire territory by discovery or occupation; and to make international agreements and treaties," are inherent in the executive power of the Queen under the Constitution and laws of the Hawaiian

Kingdom, which are temporarily and conditionally vested in the Office of the President of the United States by the *Lili'uokalani assignment*.

Therefore, DEFENDANT has provided the factual and legal basis "for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature," State of Hawai'i v. Lorenzo, 221. As treaties, these executive agreements continue to remain binding upon the office of the President, and present irrefutable evidence that "the Sovereign Kingdom of Hawaii is currently recognized by the federal government." United States v. Lorenzo, 995 F.2d 1448, 1456 (9th Cir. 1993).

In event the Court grants or denies the instant Motion, DEFENDANT requests the Court to direct the prevailing party to draft proposed findings of fact and conclusions of law for the granting or denial of the DEFENDANT'S motion to dismiss complaint under 12(b)(1), Hawaii Rules of Civil Procedure. Pursuant to Rule 52, Hawaii Rules of Civil Procedure, the Court is requested to direct the prevailing party to (a) submit proposed findings of fact and conclusions of laws and (b) a draft decision.

Prior to rendering its final order, the Court is requested to ask the prevailing party to draft findings of fact, conclusions of law and a draft decision. This will provide a clear record in the event an appeal is filed.

Dated: Kurtistown, Hawai'i, May 18, 2012.

_____
ELAINE E. KAWASAKI
Defendant, pro se

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

WELLS FARGO BANK, N.A. A NATIONAL ASSOCIATION, AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST 2007-FXD2 ASSET-BACKED CERTIFICATES, SERIES 2007-FXC2,	)	CIVIL NO. 11-1-0106 (GSH) (Foreclosure-Ejectment) (Hilo)
Plaintiff,	)	DECLARATION OF ELAINE E. KAWASAKI; EXHIBITS "1-4"
vs.	)	
ELAINE E. KAWASAKI; AND JOHN AND MARY DOES 1-10,	)	
Defendants.	)	

DECLARATION OF ELAINE E. KAWASAKI

I, ELAINE E. KAWASAKI do hereby declare as follows:

1. Attached to this Declaration as Exhibit "1" is a true and correct copy of the Hawaiian Kingdom Constitution.
2. Attached as Exhibit "2" is a true and correct copy of Chapter VI—Treason, Penal Code of the Hawaiian Kingdom, published by authority of the Hawaiian government.
3. Attached as Exhibit "3" is a true and correct copy of Chapter VIII—Department of Foreign Affairs, Compiled Laws of the Hawaiian Kingdom, published by authority of the Hawaiian government.
4. Attached as Exhibit "4" is a true and correct copy of the Declaration of Dr. Keanu Sai and exhibits attached thereto.

I, ELAINE E. KAWASAKI, DO DECLARE UNDER PENALTY OF LAW THAT THE FOREGOING IS TRUE AND CORRECT.

Dated: Kurtistown, Hawai‘i, May 18, 2012.

_____
ELAINE E. KAWASAKI
Defendant, pro se

Wells Fargo Bank, N.A., v. Kawasaki transcripts
(15 June 2012)

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

WELLS FARGO BANK, N.A.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL NO. 11-1-106
	)	
ELAINE E. KAWASAKI, et al.,	)	
	)	
Defendant.	)	
	)	

TRANSCRIPT OF PROCEEDINGS

before the HONORABLE, GLENN S. HARA, Judge presiding, Second Division, on Friday, June 15, 2012.

HEARING ON MOTION TO DISMISS COMPLAINT

APPEARANCES:

For the plaintiff: SOFIA M. HIROSANE, ESQ.
RCO HAWAII LLLC
900 Fort Street Mall
Suite 800
Honolulu, Hawaii 96813

For Defendant ELAINE E. KAWASAKI (Special Appearance):
DEXTER K. KAIAMA, ESQ.
AGARD & KAIAMA
500 Ala Moana Boulevard
Suite 400
Honolulu, Hawaii 96813

Reported by: JENNIFER WHETSTONE, CSR 421, RMR
Official Court Reporter
Third Circuit Court, State of Hawaii

Friday, June 15, 2012 9:13 A.M.

--oOo--

THE CLERK: Civil number 11-1-106, Wells Fargo Bank versus Elaine Kawasaki. Defendant Elaine E. Kawasaki's motion to dismiss complaint pursuant to HRCP 12(b)(1).

MS. HIROSANE: Good morning, Your Honor; Sofia Hirosane on behalf of the plaintiff.

MR. KAIAMA: Good morning, Your Honor; Dexter Kaiama making a special appearance on behalf of Ms. Kawasaki. Ms. Kawasaki is present in the courtroom.

THE COURT: Okay, what's the scope of your special appearance?

MR. KAIAMA: The scope of my special appearance, Your Honor, is to make argument and presentation with respect to Ms. Kawasaki's 12(b)(1) motion to dismiss challenging the subject matter jurisdiction of this court, Your Honor.

THE COURT: And how far does that extend?

MR. KAIAMA: If I understand your question correctly, Your Honor, I'm making argument today, um, and after I make argument I -- my appearance would -- that -- that terminates my appearance at the end of argument. So if the court were, for example, to deny the motion to dismiss an order from Ms. Hirosane to go directly to Ms. Kawasaki for her review, or if Ms. Hirosane were to submit it

pursuant to rule 23, correspondence would go directly to Ms. Kawasaki.

THE COURT: Okay, so it's just for today, and then your -- your engagement ends.

MR. KAIAMA: That is correct, Your Honor.

THE COURT: And Mister -- I just want, Mr. Kaiama, I just wanna make that clear, because it may, as you indicated, I mean there are other things that's going to fall out of this hearing that may require, you know, counsel to act on it, if you were still counsel. And I wanna make sure that it's clear, after today, after you leave the courtroom today, you're not counsel of record.

MR. KAIAMA: That is correct, Your Honor. Now, if Ms. Kawasaki wishes to engage me for additional services then she would engage me at that time. But my term, my -- my appearance and my representation as counsel ends as I walk out of the courtroom.

THE COURT: Okay. Well, that kind of representation makes it very difficult for the court sometimes to --

MR. KAIAMA: I can only speak to my representation today, I cannot speculate as to what might happen tomorrow or the next day as to whether she wishes to engage my services or not, Your Honor.

THE COURT: Yeah. But that kind of unbundling,

if you will, makes it very difficult for the court to determine, sometimes, whether an attorney is still responsible for receiving material for noticing purposes. So I'm gonna make it clear that, after today, unless you put in a appearance of counsel, that your -- your status as counsel in this case terminates.

MR. KAIAMA: Thank you, Your Honor. That is fine.

THE COURT: All right.

MR. KAIAMA: Okay.

THE COURT: Okay.

MR. KAIAMA: Shall I begin, Your Honor?

THE COURT: Hold on. Let me -- so the court does have Ms. Kawasaki's motion to dismiss pursuant to civil rules 12(b)(1). I have plaintiff's memorandum in opposition, and Ms. Kawasaki's reply that was filed on June 12th. Do you have the reply?

MS. HIROSANE: Yes, I do, Your Honor.

THE COURT: So was there anything else that was submitted in the meantime?

MR. KAIAMA: My only understanding, I think the court is aware, but with respect to this motion, no, she did file an ex parte motion for a stay of the enforcement of the writ pending the outcome of the motion.

THE COURT: Okay. I think I granted the

ex parte motion, at least until today's hearing.

MR. KAIAMA: That is my understanding, Your Honor.

THE COURT: Okay.

MS. HIROSANE: That's my understanding. And, Your Honor, just for the record, we were only served with a copy of, uh, Ms. Kawasaki's ex parte motion yesterday.

THE COURT: Okay. I think the court instructed the staff to call your firm to let 'em know that I did sign the ex parte motion, 'cause it didn't look like you had been provided a copy.

MS. HIROSANE: That's correct, Your Honor. We -- we did appreciate that.

THE COURT: Okay. So here's the court's inclination, Mr. Kaiama. And in answer to the plaintiff's comment that maybe the motion may be delayed, it looks like the motion is one that challenges the subject matter jurisdiction. At least on its face. But -- and any time there is a jurisdictional challenge, it can be made at any time. That's my understanding. Because if the court has no jurisdiction then whatever the court does is void. Um, so I'm treating this as a motion to dismiss for the court's lack of subject matter jurisdiction for the reasons stated. And that is that the argument is that the Kingdom of Hawaii still exists, and therefore, in essence, this court has no

jurisdiction, it's the courts of the Kingdom of Hawaii. That's how I'm taking the motion. Mr. Kaiama?

MR. KAIAMA: And that is essentially Ms. Kawasaki's motion and our argument.

THE COURT: Okay. So the court would -- is inclined to deny the motion. I think the Hawaii case law is pretty clear that, um, the jury is still out as to whether or not the Kingdom of Hawaii still exists. That's number one.

Number two, even if it existed, there has been no definitive ruling that says that the existence of the kingdom itself would divest the court's of this state of jurisdiction.

And it is also clear -- I don't think that Ms. Kawasaki claims to be a citizen of the Kingdom of Hawaii? I didn't see that alleged in her, um, memorandum. And there have been at least three or four cases, either at the supreme court or the intermediate court of appeals, that have held that even if you claim to be a king -- subject of the Kingdom of Hawaii, if you violate laws within the territorial jurisdiction of the State of Hawaii, the criminal laws would still apply to you.

I would assume that that same principle would apply even if you don't claim to be a subject of the Kingdom of Hawaii. And if the kingdom did exist, um, that the civil

laws, as well, within the jurisdiction of the state court would also be still applicable.

And I think the most recent ICA summary disposition order touching on this was Burgo, B-U-R-G-O, versus State of Hawaii. The court of appeals number was CAAP-10-33. And it was decided May 3, 2012. And basically it cited the cases that I think are fairly familiar by now, State versus Fergerstrom, 106 Hawaii 43; State versus Lorenzo, 77 Hawaii, 219; State versus Jim, 80 Hawaii, 168, all for the proposition that being a -- or claiming to be a citizen of the Kingdom of Hawaii would not remove you from being subject to the laws of the State of Hawaii, including the statutes providing for the jurisdiction of the circuit courts.

Okay. So, Mr. Kaiama, given that inclination, I'll let you argue further.

MR. KAIAMA: Thank you, Your Honor. What continues to be controlling with the courts, Your Honor, is State of Hawaii versus Lorenzo. Even the most recent case that Your Honor cited stands, uh, follows the State of Hawaii versus Lorenzo.

Now, in State of Hawaii versus Lorenzo, the ruling of the court was, essentially, that the defendant in that case, Lorenzo, lost its claim that the State of Hawaii did not have jurisdiction, subject matter jurisdiction over

him, because Mr. Lorenzo failed to provide the court with a factual legal basis that the Kingdom of Hawaii continues to exist with the state's -- in accordance with the state's sovereign nature.

What we're doing here, Your Honor, and recently, and really for the first time, is we are presenting the court with that evidence. And those evidence are the executive agreements. That is the Liliuokulani Assignment, which mandates the President of the United States, or the office of the President of the United States to administer Hawaiian Kingdom law. And the agreement of the res -- and the agreement of restoration, which is an executive agreement which mandates the President of the United States and the office of the President to restore the Kingdom of Hawaii. That is attached as Ms. Kawasaki's -- I believe it's exhibit 4A and 4B, which is attached to the expert memorandum of Dr. Keanu Sai.

Your Honor, in the -- essentially the argument or -- or the court's inclination is undeniably intertwined with the presumption that -- that if the Kingdom of Hawaii continues to exist, this state court does not have jurisdiction, or no state court has jurisdiction. And there is a presumption that allows the court and the -- and the plaintiff to argue that there is state statute which confers jurisdiction upon this court.

Now, it's a rebuttable presumption which requires us, the defendant, to provide the court with the evidence. Once that evidence is provided, that requires the court to acknowledge the nonexistence of that presumption. The court must weigh the evidence provided and make a determination solely based on that evidence and not with any presumption involved.

Again, Your Honor, those are the executive agreements. Ms., um, Kawasaki's memorandum on the motion to dismiss, as well as the memorandum on her reply brief, provides the court with the authorities to confirm that these exchange of notes are, in fact, executive agreements.

Furthermore, Your Honor, there has been no dispute or no opposition that -- that disputes the argument that we made that these are executive agreements. Because they cannot, we believe, respectfully.

I have now been arguing, Your Honor, this motion before judges of the courts of the circuit court and district court throughout the State of Hawaii, and nearly -- and probably over 20 times, and in not one instance has the plaintiff in the cases challenged the merits of the executive agreements to show that either it's not an executive agreement or that the executive agreements have been terminated. Because we believe, respectfully, again, Your Honor, they cannot.

Page four of Ms. Kawasaki's reply memorandum speaks to the Restatement, Third, Foreign Relation Laws of the United States. Essentially, Your Honor, what those foreign relation laws of the United States says is that an international agreement, which an executive agreement is, is an agreement between two or more states. And we're talking states in terms of their international relations. The executive agreements could not have occurred between President Grover Cleveland and Queen Liliuokulani unless they were states. Those agreements --

THE COURT: Mr. Kaiama, let me just interrupt for a minute. Which of the decisions is the one that I think, um, was an ICA decision? I'm trying to think of the judge who wrote it.

MR. KAIAMA: Judge Walter Heen?

THE COURT: Judge Heen's decision.

MR. KAIAMA: In State of Hawaii versus Lorenzo.

THE COURT: Lorenzo.

MR. KAIAMA: Yes.

THE COURT: And he makes the comment basically that, um, you know, what -- the -- in essence, I mean, it kinda left the door open by saying something to the effect that, you know, there may be other facts or laws out there in the future that might change this.

Now, I take his comments to mean -- and all a

these things were in existence at that time -- that what he's saying is, going forward, if there are any changes, if there are any new laws, if there are any, you know, uh, acts of congress, if there are any other kinds of acts of judicial bodies that the court needs to -- and -- and the other political entities need to respect and follow as law, um, then at that point we'll revisit what the effects are of being a citizen of the Kingdom of Hawaii is. So I'm taking all of what's happening right now and what you're arguing is kind of like res judicata. It's already been looked at. It's already been decided. And, based on that, they're saying that was not enough.

MR. KAIAMA: Your Honor, if I may respectfully disagree.

THE COURT: Yeah, go ahead.

MR. KAIAMA: And I respectfully disagree in this sense: That the executive agreements that we are bringing before the courts at this time was not available to Judge Heen at the time that motion was decided. These executive documents, while -- while official documents of the United States, were in -- little known to the public and not known to the courts at the time, so they were never presented as evidence to the court. And that's why Judge Heen says until a factual or legal basis is provided, that the Kingdom of Hawaii continues to exist. And he says until that happens

then people claiming, whether citizenship or otherwise, would be subject to the laws of the State of Hawaii.

Now, we are now meeting the requirements under Lorenzo and presenting essentially, for the first time, to the courts, the evidence that was asked for in Lorenzo. And that evidence are the executive agreements.

Now, I think the court is well aware -- and that's part of our argument -- executive agreements are the supreme law of the United States. By Article 6 of the U.S. Constitution, the supremacy clause. And part of our argument as well is that any state statute which runs contrary to the executive agreements are preempted.

So along the -- along the line of your -- our arguments, Your Honor, not only are we addressing what the court is requiring in State of Hawaii versus Lorenzo and presenting the evidence, the evidence we present, Your Honor, is irrefutably -- it's irrefutable that these are executive agreements and preempts state law, which is the state constitu -- I mean, excuse me, which is the state statute that plaintiff relies on in their complaint seeking to confer jurisdiction upon that court.

That state statute, Your Honor, runs contrary to the executive agreement, which calls for the administering of Hawaiian Kingdom law until the President of the United States can re -- restores the Kingdom of Hawaii, places the

queen back into its position, and the queen grants amnesty. Those are in the papers.

Now, Your Honor, what we're asking the court to do is not make a determination in its ruling that the Kingdom of Hawaii is to be restored, but what we're asking is what Lorenzo says, is that once we have met our burden, the court cannot have no other, we believe, no other recourse but to dismiss the complaint.

THE COURT: No, but, Mr. Kaiama, I think you failed -- in my mind, what you're asking the court to do is commit suicide, because once I adopt your argument, I have no jurisdiction over anything. Not only these kinds of cases where you may claim either being part of -- being the Hawaii, um, a citizen of the kingdom, but jurisdiction of the courts evaporate. All of the courts across the state, from the supreme court down, and we have no judiciary. I can't do that.

MR. KAIAMA: Your Honor --

THE COURT: I can't make that kind of a finding that basically it's, you know, like the atomic bomb for the judiciary.

MR. KAIAMA: I understand the contemplation of the consequences of the court's ruling. However, the contemplation of the consequences of the court's ruling is beyond the authority of the courts. What is in -- within

the authority of the courts is to make a determination that jurisdiction does not exist. That is within the court's authority.

Now, the actual restoration of the Kingdom of Hawaii belongs to the -- to the President of the United States and the office of the president, not to the courts. What I'm asking the court to do and what we believe is entirely correct is that the court acknowledge, which the president did in 1898, acknowledge that these are executive agreements, which binds him and his office to faithfully administer Hawaiian Kingdom law until the President of the United States is able to restore the Kingdom of Hawaii. So what we're asking the court to do is, essentially it is the, in the time being, it is the military courts, under article two, that would administer Hawaiian Kingdom law until the kingdom is restored.

THE COURT: Okay.

MR. KAIAMA: So -- so, Your Honor, um, I know Your Honor also made an inclination concerning my client's not asserting a citizenship position.

THE COURT: No, I'm saying I didn't perceive one.

MR. KAIAMA: Right, you didn't perceive -- and actually one was not made. The reason one is not made is Ms. Kawasaki does not claim to be a citizen of the Kingdom

of Hawaii. At least not now. But what's occurring here is that the plaintiff is seeking to get writ of possession or to get an order concerning land which is part of the Kingdom of Hawaii. And judgments concerning land, including evictions and writ of possessions, belongs to the courts of the Kingdom of Hawaii, respectfully, not the circuit courts of the State of Hawaii, because of the arguments we've set forth.

Also, in the reply memorandum, Your Honor, we -- Miss Kawasaki has provided the courts and sought to evoke estoppel with respect to the defendant's arguments. Because the court -- because the pres -- excuse me, it is a little bit difficult to talk about. Because the United States have already acknowledged -- already acknowledged, through the President of the United States, that being Grover Cleveland, that the Kingdom of Hawaii is, in fact, the de jure and de facto government, and that the provisional government was never de jure or never de facto, plaintiffs at this point are estopped from making any argument, which runs contrary to the acknowledgment of the United States. And therefore they're estopped from making the argument -- the arguments that they've made that this court can confer juris -- that this court has jurisdiction pursuant to state statute.

Essentially, Your Honor, Ms. Kawasaki is asking the court to strike defendant's arguments in its entire --

excuse me, plaintiff's arguments in its entirety, because of the principles of judicial -- principles estoppel. Ms. Kawasaki has provided, again, the authorities concerning estoppel, including, um, authority of estoppel recognized under international law.

Your Honor, what we're presenting to the courts is the evidence. What we're presenting to the courts are legal arguments that have not been refuted or cannot be refuted, we respectfully submit. Miss Kawasaki, in her motion to dismiss, asked the court to take judicial notice of documents. And it's set forth in, and just for the court's convenience --

THE COURT: Okay, let me address that right now.

MR. KAIAMA: Yes.

THE COURT: As for the request for judicial notice, I think I can go ahead and do that with respect to the, um, exhibit one, the Hawaii Kingdom Constitution. The only question I have is, was the original in English or Hawaiian, and is this a translation?

MR. KAIAMA: You know, I'm -- I'm sorry, Your Honor, I'm not able to answer this question at this time, but if the court wishes, I can clearly provide that pursuant to a declaration.

THE COURT: Well, in --

MR. KAIAMA: A supplemental --

THE COURT: -- any event, I'm -- I think we have a copy of this in our library, so I'm taking judicial notice of it and, um, also chapter four of the penal code of the kingdom. Was there a -- a date on that?

MR. KAIAMA: Okay, hold on one second, Your Honor.

THE COURT: I'm just -- reason I'm saying that is I'm looking at the list that's in the memorandum, not at the exhibit itself.

MR. KAIAMA: I'm trying to see if I can help find that for you, Your Honor.

THE COURT: Part of the problem, it wasn't tabbed.

MR. KAIAMA: Um, yeah, Penal Code of the Kingdom of Hawaii from the Penal Code of 1850. It was printed at the Government Press, Honolulu, Oahu, 1869.

THE COURT: Okay, I have it now. So we'll take judicial notice of that, also chapter seven, the portion of the Compiled Laws of Hawaii Kingdom relating to the department of foreign affairs.

MR. KAIAMA: Thank you. Chapter eight, Your Honor.

THE COURT: All right.

MR. KAIAMA: Okay.

THE COURT: So the court will take judicial

notice of that. With respect to Dr. David Sai's expert memorandum, the court's not gonna take judicial notice of that. However, I'm just gonna treat that as a treatise the that the court can consider for information with respect to reaching its decision, much like a law review article. Same as the memorandum of Doctor -- there are several, but all of the Dr. Sai memorandums, that's how I'm treating it.

MR. KAIAMA: Thank you, Your Honor.

THE COURT: The other matters are treaties and if they're treaties and if they're -- and they appear to be published in the authorized publications of the United States, court would also take judicial notice of the four treaties and conventions. And all of the other matters are -- appear to be reported cases, so I don't think I need to take judicial notice of that. I mean, courts are allowed to refer to other court's opinions. Okay, so I think I've addressed all of those.

MR. KAIAMA: Yes, Your Honor. If I may -- yes, Your Honor. Thank you very much. Again, and I don't know if it makes a difference to the court, of course State of Hawaii versus Lorenzo is a ICA Hawaii court decision, United States versus Belmont, versus Pink and American Association -- Insurance Association versus Garamendi, Your Honor, is a U.S. Supreme Court case, and I'm not sure if that makes a difference into whether the court will take judicial notice

of that or -- again, um, or not.

Um, my question, Your Honor, is with respect to the expert memorandum of Dr. Keanu Sai. He does, within his expert memorandum, provide four exhibits, exhibits A, B, C, and D. Again, 4A is the, uh, what we refer to as the Liliuokulani Assignment. 4B is the Grover Cleveland Agreement of Restoration. Essentially, Your Honor, those are the executive agreements. Um, exhibits C and D, Your Honor, are statements made on the floor of congress by representative Thomas Ball and Senator Agustus Bacon in 1898. Your Honor, and just for --

THE COURT: Mr. Kaiama, to the extent of the materials that represent analysis or opinions by Dr. Sai, again, I'm taking that as a treatise or a -- like a law review article. As to those matters that are apparently reported as part of the, uh, federal compendium of documents, and so forth, I'll take judicial notice of it, 'cause they're readily available, I think, not only through these exhibits but also through other sources.

MR. KAIAMA: Yes, Your Honor. They are official government publications.

THE COURT: All right.

MR. KAIAMA: Thank you, Your Honor.

THE COURT: Just because, well, my concern was, you know, just because Dr. Sai's memorandum may have a

government printing office number doesn't make it official federal document. It's -- all it means it's cataloged.

MR. KAIAMA: Okay.

THE COURT: All right?

MR. KAIAMA: And just so that I understand, Your Honor, and forgive me for asking, my understanding was that the court would take judicial notice of that 4A, B, C, and D.

THE COURT: If it -- those are exhibits of other -- of matters, which they appear to be, that are reported, for example, in a congressional record or some other kind of, um --

MR. KAIAMA: And they are, Your Honor.

THE COURT: -- yeah, source that's easily -- it's easily retrievable and to determine them, yeah, I'm taking judicial notice of it.

MR. KAIAMA: Thank you, Your Honor.

THE COURT: Okay?

MR. KAIAMA: And I am happy to answer any additional inclinations of the court, but I believe that provides us -- provide -- outlines our argument, Your Honor.

Again, U.S. versus Pink, Garamendi -- American Association versus Garamendi, and U.S. versus Belmont support the arguments that I made earlier, Your Honor, that executive agreements are treaties under the United States

Constitution and under article six of the supreme law of the land. And those cases, Your Honor, supreme court cases, stand for the proposition that any state law which is contrary to the executive agreements are preempted.

Also in the, um, Foreign Relations Restatement of Third that I presented to the court, Your Honor, again, as international agreements, these international agreements are binding on the United States to faithful execution. And, again, any municipal or state law to the contrary would be preempted as well.

THE COURT: Okay, thank you. Ms. Hirosane, any arguments?

MS. HIROSANE: Your Honor, just -- just really briefly. Just to add to what we've already briefed, uh, Ms. Kawasaki admittedly is not claiming that she's a citizen of this -- of the Kingdom of Hawaii, if it does exist. And as you stated from the outset of this hearing, we're still in -- it's an evolving issue within the court system. But our position remains if Ms. Kawasaki is admittedly not a citizen then how can she raise these arguments to defeat this court's subject matter jurisdiction in these proceedings?

THE COURT: I think what he's saying is that if -- the argument is that if, in fact, I buy into his arguments then this court has no jurisdiction over any

matter, because it's illegal. That's his analysis, I think.

MS. HIROSANE: And that's -- that's my understanding of it too, Your Honor.

THE COURT: Okay. So the court will deny the motion to dismiss the complaint pursuant to Hawaii Rules of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.

Having reviewed the matters and the prior court decisions, the court is of the opinion and decides that the court does have subject jurisdiction over the matter of the ejectment case and that the arguments raised by Mr. Kaiama, in essence, have been resolved by the prior appellate court decisions, and the raising of the executive agreements, in my mind, is not persuasive. Those matters were in existence at the time of the prior court decisions, they were available to the court, they were available to attorneys, and I'm not convinced that it's now something new or provides new law or new facts that would cause the prior appellate decisions to be overturned. Okay? So --

MR. KAIAMA: Your Honor, thank you. I know she's to prepare the order. Your Honor, respectfully, I would just preserve Ms. Kawasaki's right to take exception to the court's decision today.

THE COURT: Yeah, that's not necessary.

MR. KAIAMA: And reserve her rights to file an

appeal. Your Honor, I have been asked by Ms. Kawasaki, 'cause this is an issue concerning the stay matter, she does intend to file an appeal from the court's decision concerning the motion to dismiss as soon as the order is filed, and I know that's gonna take a short period a time. I've been asked by Ms. Kawasaki to make a request to continue the stay while she files -- while she appeals the matter to the appellate courts.

THE COURT: Mr. Kaiama, I'm going to deny the request. I think once, you know, the whole thing about what's the final order and what you appeal from, um, it's such an art now. And I -- I hate to even venture a guess. Um, it seems to me that the -- you might have two appealable orders here. I'm not sure if this decision may be a separate appealable order as a collateral matter, because it attacks jurisdiction after the other judgment. But I'm just stating that because it may be, uh, things that counsel need to talk to Ms. Kawasaki about in terms of preserving her rights to appeal, in terms of filing notices for appeal. Uh, but, again, it's pretty clear, if you don't file your written notice of appeal timely then you're out.

MR. KAIAMA: (Nodding head.)

THE COURT: So I guess, Ms. Hirosane, you're sending the proposed order directly to Ms. Kawasaki, is that correct?

MR. KAIAMA: That is correct, Your Honor.

MS. HIROSANE: Your Honor, may I clarify this? Am I to include language with regard to Mr. Kaiama's oral motion to stay pending appeal?

THE COURT: I'm sorry? No, I don't --

MS. HIROSANE: Am I to include --

THE COURT: Yeah, there is an order, motion for staying the appeal, but this is the nature of I -- I -- of a writ of possession, right?

MS. HIROSANE: That's correct, Your Honor.

THE COURT: Okay, so is this like an injunction. I mean, they have separate provisions with respect to the stays on injunctive kind of relief, so is that the provision that applies with respect to a stay? Or is it now, what? She has to post a supersedeas bond for a stay?

MS. HIROSANE: That would be our position, Your Honor.

THE COURT: And what's the amount of the bond?

MS. HIROSANE: Well, we have been --

THE COURT: There's no judgment other that the judgment for the writ.

MR. KAIAMA: And, Your Honor, my understanding is that she is still -- she still has the option to provide the court with a written motion for stay. I am aware of case law which says that the issuance of a supersedeas bond

is really discretionary upon the court, and the court can decide the amount of the bond if it decides to require a supersedeas bond.

THE COURT: Okay, but that's why I'm saying I don't want to rule on the stay now.

MR. KAIAMA: Okay.

THE COURT: I think the judgment should issue, you file your notice of appeal and a motion for a stay, I think. And that way the, hopefully, the issues will be clearer as to what the requirements are for a stay, if any, and, you know, what the court needs to decide with respect to any issues concerning the stay. Okay?

MR. KAIAMA: Thank you, Your Honor.

THE COURT: So the oral motion for a stay is denied.

MR. KAIAMA: Thank you, Your Honor.

MS. HIROSANE: Thank you, Your Honor.

THE DEFENDANT, MS. KAWASAKI: Excuse me, Your Honor. Could I have a transcript of today's --

MR. KAIAMA: Oh, you go down there and apply.

MS. KAWASAKI: Oh, okay. Thank you.

THE COURT: Okay. Thank you. Next case.

MS. KAWASAKI: Thank you.

(Whereupon the proceedings were concluded.)

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C E R T I F I C A T E

STATE OF HAWAII)
)
COUNTY OF HAWAII)
)

I, JENNIFER WHETSTONE, a Certified Shorthand Reporter in the State of Hawaii, do hereby certify that the foregoing pages, 1 through 25, inclusive, comprise a full, true, and correct transcript of the proceedings had on June 15, 2012, at 9:13 a.m., in connection with the above-entitled cause.

Dated: June 20, 2012.

OFFICIAL COURT REPORTER

JENNIFER WHETSTONE

Elements of Crimes*, International Criminal Court,* Article 8—War crimes

Elements of Crimes*,**

* Explanatory note: The structure of the elements of the crimes of genocide, crimes against humanity and war crimes follows the structure of the corresponding provisions of articles 6, 7 and 8 of the Rome Statute. Some paragraphs of those articles of the Rome Statute list multiple crimes. In those instances, the elements of crimes appear in separate paragraphs which correspond to each of those crimes to facilitate the identification of the respective elements.

** The Elements of Crimes are reproduced from the *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.B. The Elements of Crimes adopted at the 2010 Review Conference are replicated from the *Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010* (International Criminal Court publication, RC/11) .

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Article 8
War crimes

Introduction

The elements for war crimes under article 8, paragraph 2 (c) and (e), are subject to the limitations addressed in article 8, paragraph 2 (d) and (f), which are not elements of crimes.

The elements for war crimes under article 8, paragraph 2, of the Statute shall be interpreted within the established framework of the international law of armed conflict including, as appropriate, the international law of armed conflict applicable to armed conflict at sea.

With respect to the last two elements listed for each crime:

(a) There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international;

(b) In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non-international;

(c) There is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms "took place in the context of and was associated with".

Article 8 (2) (a)

Article 8 (2) (a) (i)
War crime of wilful killing

Elements

1. The perpetrator killed one or more persons.[31]

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The perpetrator was aware of the factual circumstances that established that protected status.[32, 33]

4. The conduct took place in the context of and was associated with an international armed conflict.[34]

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31 The term "killed" is interchangeable with the term "caused death". This footnote applies to all elements which use either of these concepts.

32 This mental element recognizes the interplay between articles 30 and 32. This footnote also applies to the corresponding element in each crime under article 8 (2) (a), and to the element in other crimes in article 8 (2) concerning the awareness of factual circumstances that establish the status of persons or property protected under the relevant international law of armed conflict.

33 With respect to nationality, it is understood that the perpetrator needs only to know that the victim belonged to an adverse party to the conflict. This footnote also applies to the corresponding element in each crime under article 8 (2) (a).

34 The term "international armed conflict" includes military occupation. This footnote also applies to the corresponding element in each crime under article 8 (2) (a).

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (ii)-1
War crime of torture

Elements[35]

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.
3. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
4. The perpetrator was aware of the factual circumstances that established that protected status.
5. The conduct took place in the context of and was associated with an international armed conflict.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (ii)-2
War crime of inhuman treatment

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

35 As element 3 requires that all victims must be "protected persons" under one or more of the Geneva Conventions of 1949, these elements do not include the custody or control requirement found in the elements of article 7 (1) (e).

Article 8 (2) (a) (ii)-3
War crime of biological experiments

Elements

1. The perpetrator subjected one or more persons to a particular biological experiment.
2. The experiment seriously endangered the physical or mental health or integrity of such person or persons.
3. The intent of the experiment was non-therapeutic and it was neither justified by medical reasons nor carried out in such person's or persons' interest.
4. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (iii)
War crime of wilfully causing great suffering

Elements

1. The perpetrator caused great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (iv)
War crime of destruction and appropriation of property

Elements

1. The perpetrator destroyed or appropriated certain property.
2. The destruction or appropriation was not justified by military necessity.
3. The destruction or appropriation was extensive and carried out wantonly.
4. Such property was protected under one or more of the Geneva Conventions of 1949.

5. The perpetrator was aware of the factual circumstances that established that protected status.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (v)
War crime of compelling service in hostile forces

Elements

1. The perpetrator coerced one or more persons, by act or threat, to take part in military operations against that person's own country or forces or otherwise serve in the forces of a hostile power.

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The perpetrator was aware of the factual circumstances that established that protected status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (vi)
War crime of denying a fair trial

Elements

1. The perpetrator deprived one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and the fourth Geneva Conventions of 1949.

2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.

3. The perpetrator was aware of the factual circumstances that established that protected status.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (vii)-1
War crime of unlawful deportation and transfer

Elements

1. The perpetrator deported or transferred one or more persons to another State or to another location.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (vii)-2
War crime of unlawful confinement

Elements

1. The perpetrator confined or continued to confine one or more persons to a certain location.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (a) (viii)
War crime of taking hostages

Elements

1. The perpetrator seized, detained or otherwise held hostage one or more persons.
2. The perpetrator threatened to kill, injure or continue to detain such person or persons.
3. The perpetrator intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.
4. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b)

Article 8 (2) (b) (i)
War crime of attacking civilians

Elements

1. The perpetrator directed an attack.

2. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.

3. The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (ii)
War crime of attacking civilian objects

Elements

1. The perpetrator directed an attack.

2. The object of the attack was civilian objects, that is, objects which are not military objectives.

3. The perpetrator intended such civilian objects to be the object of the attack.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (iii)
War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

Elements

1. The perpetrator directed an attack.

2. The object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.

3. The perpetrator intended such personnel, installations, material, units or vehicles so involved to be the object of the attack.

4. Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict.

5. The perpetrator was aware of the factual circumstances that established that protection.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (iv)
War crime of excessive incidental death, injury, or damage

Elements

1. The perpetrator launched an attack.

2. The attack was such that it would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.[36]

3. The perpetrator knew that the attack would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of suchan extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.[37]

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

36 The expression "concrete and direct overall military advantage" refers to a military advantage that is foreseeable by the perpetrator at the relevant time. Such advantage may or may not be temporally or geographically related to the object of the attack. The fact that this crime admits the possibility of lawful incidental injury and collateral damage does not in any way justify any violation of the law applicable in armed conflict. It does not address justifications for war or other rules related to *jus ad bellum*. It reflects the proportionality requirement inherent in determining the legality of any military activity undertaken in the context of an armed conflict.

37 As opposed to the general rule set forth in paragraph 4 of the General Introduction, this knowledge element requires that the perpetrator make the value judgement as described therein. An evaluation of that value judgement must be based on the requisite information available to the perpetrator at the time.

Article 8 (2) (b) (v)
War crime of attacking undefended places[38]

Elements

1. The perpetrator attacked one or more towns, villages, dwellings or buildings.
2. Such towns, villages, dwellings or buildings were open for unresisted occupation.
3. Such towns, villages, dwellings or buildings did not constitute military objectives.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vi)
War crime of killing or wounding a person *hors de combat*

Elements

1. The perpetrator killed or injured one or more persons.
2. Such person or persons were *hors de combat*.
3. The perpetrator was aware of the factual circumstances that established this status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vii)-1
War crime of improper use of a flag of truce

Elements

1. The perpetrator used a flag of truce.
2. The perpetrator made such use in order to feign an intention to negotiate when there was no such intention on the part of the perpetrator.
3. The perpetrator knew or should have known of the prohibited nature of such use.[39]
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.

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38 The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

39 This mental element recognizes the interplay between article 30 and article 32. The term "prohibited nature" denotes illegality.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vii)-2
War crime of improper use of a flag, insignia or uniform of the hostile party

Elements

1. The perpetrator used a flag, insignia or uniform of the hostile party.
2. The perpetrator made such use in a manner prohibited under the international law of armed conflict while engaged in an attack.
3. The perpetrator knew or should have known of the prohibited nature of such use.[40]
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vii)-3
War crime of improper use of a flag, insignia or uniform of the United Nations

Elements

1. The perpetrator used a flag, insignia or uniform of the United Nations.
2. The perpetrator made such use in a manner prohibited under the international law of armed conflict.
3. The perpetrator knew of the prohibited nature of such use.[41]
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (vii)-4
War crime of improper use of the distinctive emblems of the

40 This mental element recognizes the interplay between article 30 and article 32. The term "prohibited nature" denotes illegality.

41 This mental element recognizes the interplay between article 30 and article 32. The "should have known" test required in the other offences found in article 8 (2) (b) (vii) is not applicable here because of the variable and regulatory nature of the relevant prohibitions.

Geneva Conventions

Elements

1. The perpetrator used the distinctive emblems of the Geneva Conventions.
2. The perpetrator made such use for combatant purposes[42] in a manner prohibited under the international law of armed conflict.
3. The perpetrator knew or should have known of the prohibited nature of such use.[43]
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (viii)
The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

Elements

1. The perpetrator:

   (a) Transferred,[44] directly or indirectly, parts of its own population into the territory it occupies; or

   (b) Deported or transferred all or parts of the population of the occupied territory within or outside this territory.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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42 "Combatant purposes" in these circumstances means purposes directly related to hostilities and not including medical, religious or similar activities.

43 This mental element recognizes the interplay between article 30 and article 32. The term "prohibited nature" denotes illegality.

44 The term "transfer" needs to be interpreted in accordance with the relevant provisions of international humanitarian law.

Article 8 (2) (b) (ix)
War crime of attacking protected objects[45]

Elements

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (x)-1
War crime of mutilation

Elements

1. The perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
2. The conduct caused death or seriously endangered the physical or mental health of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.[46]
4. Such person or persons were in the power of an adverse party.
5. The conduct took place in the context of and was associated with an international armed conflict.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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45 The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

46 Consent is not a defence to this crime. The crime prohibits any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the party conducting the procedure and who are in no way deprived of liberty. This footnote also applies to the same element for article 8 (2) (b) (x)-2.

Article 8 (2) (b) (x)-2
War crime of medical or scientific experiments

Elements

1. The perpetrator subjected one or more persons to a medical or scientific experiment.
2. The experiment caused death or seriously endangered the physical or mental health or integrity of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.
4. Such person or persons were in the power of an adverse party.
5. The conduct took place in the context of and was associated with an international armed conflict.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xi)
War crime of treacherously killing or wounding

Elements

1. The perpetrator invited the confidence or belief of one or more persons that they were entitled to, or were obliged to accord, protection under rules of international law applicable in armed conflict.
2. The perpetrator intended to betray that confidence or belief.
3. The perpetrator killed or injured such person or persons.
4. The perpetrator made use of that confidence or belief in killing or injuring such person or persons.
5. Such person or persons belonged to an adverse party.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xii)
War crime of denying quarter

Elements

1. The perpetrator declared or ordered that there shall be no survivors.
2. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.
3. The perpetrator was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xiii)
War crime of destroying or seizing the enemy's property

Elements

1. The perpetrator destroyed or seized certain property.

2. Such property was property of a hostile party.

3. Such property was protected from that destruction or seizure under the international law of armed conflict.

4. The perpetrator was aware of the factual circumstances that established the status of the property.

5. The destruction or seizure was not justified by military necessity.

6. The conduct took place in the context of and was associated with an international armed conflict.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xiv)
War crime of depriving the nationals of the hostile power of rights or actions

Elements

1. The perpetrator effected the abolition, suspension or termination of admissibility in a court of law of certain rights or actions.

2. The abolition, suspension or termination was directed at the nationals of a hostile party.

3. The perpetrator intended the abolition, suspension or termination to be directed at the nationals of a hostile party.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xv)
War crime of compelling participation in military operations

Elements

1. The perpetrator coerced one or more persons by act or threat to take part in military operations against that person's own country or forces.

2. Such person or persons were nationals of a hostile party.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xvi)
War crime of pillaging

Elements

1. The perpetrator appropriated certain property.

2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.[47]

3. The appropriation was without the consent of the owner.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xvii)
War crime of employing poison or poisoned weapons

Elements

1. The perpetrator employed a substance or a weapon that releases a substance as a result of its employment.

2. The substance was such that it causes death or serious damage to health in the ordinary course of events, through its toxic properties.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xviii)
War crime of employing prohibited gases, liquids, materials or devices

Elements

1. The perpetrator employed a gas or other analogous substance or device.

2. The gas, substance or device was such that it causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties.[48]

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47 As indicated by the use of the term "private or personal use", appropriations justified by military necessity cannot constitute the crime of pillaging.

48 Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to the development, production, stockpiling and use of chemical weapons.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xix)
War crime of employing prohibited bullets

Elements

1. The perpetrator employed certain bullets.

2. The bullets were such that their use violates the international law of armed conflict because they expand or flatten easily in the human body.

3. The perpetrator was aware that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xx)
War crime of employing weapons, projectiles or materials or methods of warfare listed in the Annex to the Statute

Elements

[Elements will have to be drafted once weapons, projectiles or material or methods of warfare have been included in an annex to the Statute.]

Article 8 (2) (b) (xxi)
War crime of outrages upon personal dignity

Elements

1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons.[49]

2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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49 For this crime, "persons" can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim.

Article 8 (2) (b) (xxii)-1
War crime of rape

Elements

1. The perpetrator invaded[50] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.[51]

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxii)-2
War crime of sexual slavery[52]

Elements

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.[53]

2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

3. The conduct took place in the context of and was associated with an international armed conflict.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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50 The concept of "invasion" is intended to be broad enough to be gender-neutral.

51 It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements of article 8 (2) (b) (xxii)-3, 5 and 6.

52 Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose.

53 It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

Article 8 (2) (b) (xxii)-3
War crime of enforced prostitution

Elements

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxii)-4
War crime of forced pregnancy

Elements

1. The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxii)-5
War crime of enforced sterilization

Elements

1. The perpetrator deprived one or more persons of biological reproductive capacity.[54]
2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.[55]
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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54 The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice.

55 It is understood that "genuine consent" does not include consent obtained through deception.

Article 8 (2) (b) (xxii)-6
War crime of sexual violence

Elements

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The conduct was of a gravity comparable to that of a grave breach of the Geneva Conventions.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxiii)
War crime of using protected persons as shields

Elements

1. The perpetrator moved or otherwise took advantage of the location of one or more civilians or other persons protected under the international law of armed conflict.
2. The perpetrator intended to shield a military objective from attack or shield, favour or impede military operations.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxiv)
War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions

Elements

1. The perpetrator attacked one or more persons, buildings, medical units or transports or other objects using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions.
2. The perpetrator intended such persons, buildings, units or transports or other objects so using such identification to be the object of the attack.
3. The conduct took place in the context of and was associated with an international armed conflict.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxv)
War crime of starvation as a method of warfare

Elements

1. The perpetrator deprived civilians of objects indispensable to their survival.
2. The perpetrator intended to starve civilians as a method of warfare.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (b) (xxvi)
War crime of using, conscripting or enlisting children

Elements

1. The perpetrator conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c)

Article 8 (2) (c) (i)-1
War crime of murder

Elements

1. The perpetrator killed one or more persons.
2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel[56] taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

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56 The term "religious personnel" includes those non-confessional non-combatant military personnel carrying out a similar function.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (i)-2
War crime of mutilation

Elements

1. The perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
2. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interests.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
4. The perpetrator was aware of the factual circumstances that established this status.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (i)-3
War crime of cruel treatment

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (i)-4
War crime of torture

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

4. The perpetrator was aware of the factual circumstances that established this status.

5. The conduct took place in the context of and was associated with an armed conflict not of an international character.

6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (ii)
War crime of outrages upon personal dignity

Elements

1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons.[57]

2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.

3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

4. The perpetrator was aware of the factual circumstances that established this status.

5. The conduct took place in the context of and was associated with an armed conflict not of an international character.

6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (c) (iii)
War crime of taking hostages

Elements

1. The perpetrator seized, detained or otherwise held hostage one or more persons.

2. The perpetrator threatened to kill, injure or continue to detain such person or persons.

3. The perpetrator intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.

4. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.

5. The perpetrator was aware of the factual circumstances that established this status.

6. The conduct took place in the context of and was associated with an armed conflict not of an international character.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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57 For this crime, "persons" can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim.

Article 8 (2) (c) (iv)
War crime of sentencing or execution without due process

Elements

1. The perpetrator passed sentence or executed one or more persons.[58]
2. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.
4. There was no previous judgement pronounced by a court, or the court that rendered judgement was not "regularly constituted", that is, it did not afford the essential guarantees of independence and impartiality, or the court that rendered judgement did not afford all other judicial guarantees generally recognized as indispensable under international law.[59]
5. The perpetrator was aware of the absence of a previous judgement or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e)[60]

Article 8 (2) (e) (i)
War crime of attacking civilians

Elements

1. The perpetrator directed an attack.
2. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.
3. The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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58 The elements laid down in these documents do not address the different forms of individual criminal responsibility, as enunciated in articles 25 and 28 of the Statute.

59 With respect to elements 4 and 5, the Court should consider whether, in the light of all relevant circumstances, the cumulative effect of factors with respect to guarantees deprived the person or persons of a fair trial.

60 As amended by resolution RC/Res.5.

Article 8 (2) (e) (ii)
War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions

Elements

1. The perpetrator attacked one or more persons, buildings, medical units or transports or other objects using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions.
2. The perpetrator intended such persons, buildings, units or transports or other objects so using such identification to be the object of the attack.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (iii)
War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission

Elements

1. The perpetrator directed an attack.
2. The object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.
3. The perpetrator intended such personnel, installations, material, units or vehicles so involved to be the object of the attack.
4. Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict.
5. The perpetrator was aware of the factual circumstances that established that protection.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (iv)
War crime of attacking protected objects[61]

Elements

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (v)
War crime of pillaging

Elements

1. The perpetrator appropriated certain property.
2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.[62]
3. The appropriation was without the consent of the owner.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-1
War crime of rape

Elements

1. The perpetrator invaded[63] the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

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61 The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

62 As indicated by the use of the term "private or personal use", appropriations justified by military necessity cannot constitute the crime of pillaging.

63 The concept of "invasion" is intended to be broad enough to be gender-neutral.

2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.[64]

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-2
War crime of sexual slavery[65]

Elements

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.[66]

2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-3
War crime of enforced prostitution

Elements

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.

2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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64 It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements in article 8 (2) (e) (vi)-3, 5 and 6.

65 Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose.

66 It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

Article 8 (2) (e) (vi)-4
War crime of forced pregnancy

Elements

1. The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.
2. The conduct took place in the context of and was associated with an armed conflict not of an international character.
3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-5
War crime of enforced sterilization

Elements

1. The perpetrator deprived one or more persons of biological reproductive capacity.[67]
2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.[68]
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (vi)-6
War crime of sexual violence

Elements

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The conduct was of a gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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67 The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice.

68 It is understood that "genuine consent" does not include consent obtained through deception.

Article 8 (2) (e) (vii)
War crime of using, conscripting and enlisting children

Elements

1. The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (viii)
War crime of displacing civilians

Elements

1. The perpetrator ordered a displacement of a civilian population.
2. Such order was not justified by the security of the civilians involved or by military necessity.
3. The perpetrator was in a position to effect such displacement by giving such order.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (ix)
War crime of treacherously killing or wounding

Elements

1. The perpetrator invited the confidence or belief of one or more combatant adversaries that they were entitled to, or were obliged to accord, protection under rules of international law applicable in armed conflict.
2. The perpetrator intended to betray that confidence or belief.
3. The perpetrator killed or injured such person or persons.
4. The perpetrator made use of that confidence or belief in killing or injuring such person or persons.
5. Such person or persons belonged to an adverse party.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (x)
War crime of denying quarter

Elements

1. The perpetrator declared or ordered that there shall be no survivors.
2. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.
3. The perpetrator was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (xi)-1
War crime of mutilation

Elements

1. The perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
2. The conduct caused death or seriously endangered the physical or mental health of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.[69]
4. Such person or persons were in the power of another party to the conflict.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

69 Consent is not a defence to this crime. The crime prohibits any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the party conducting the procedure and who are in no way deprived of liberty. This footnote also applies to the similar element in article 8 (2) (e) (xi)-2.

Article 8 (2) (e) (xi)-2
War crime of medical or scientific experiments

Elements

1. The perpetrator subjected one or more persons to a medical or scientific experiment.
2. The experiment caused the death or seriously endangered the physical or mental health or integrity of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.
4. Such person or persons were in the power of another party to the conflict.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (xii)
War crime of destroying or seizing the enemy's property

Elements

1. The perpetrator destroyed or seized certain property.
2. Such property was property of an adversary.
3. Such property was protected from that destruction or seizure under the international law of armed conflict.
4. The perpetrator was aware of the factual circumstances that established the status of the property.
5. The destruction or seizure was not required by military necessity.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (xiii)[70]
War crime of employing poison or poisoned weapons

Elements

1. The perpetrator employed a substance or a weapon that releases a substance as a result of its employment.
2. The substance was such that it causes death or serious damage to health in the ordinary course of events, through its toxic properties.

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70 As amended by resolution RC/Res.5; see *Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010* (International Criminal Court publication, RC/11), part II.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (xiv)[71]
War crime of employing prohibited gases, liquids, materials or devices

Elements

1. The perpetrator employed a gas or other analogous substance or device.

2. The gas, substance or device was such that it causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties.[72]

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Article 8 (2) (e) (xv)[73]
War crime of employing prohibited bullets

Elements

1. The perpetrator employed certain bullets.

2. The bullets were such that their use violates the international law of armed conflict because they expand or flatten easily in the human body.

3. The perpetrator was aware that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.

4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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71 Ibid.

72 Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to the development, production, stockpiling and use of chemical weapons.

73 As amended by resolution RC/Res.5; see *Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010* (International Criminal Court publication, RC/11), part II.

Letter from Professor Williamson Chang to
U.S. Attorney General Eric Holder, Jr.
(17 September 2014)

Williamson B.C. Chang
Professor of Law
William S. Richardson School of Law
University of Hawai‘i, Mānoa
2515 Dole Street
Honolulu, Hawai‘i 96822

September 17, 2014

Eric Holder, Jr., U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

FedEx Tracking Number 8061 7191 0836

Re: Reporting Felonies in accordance with 18 U.S.C. §4

Dear Attorney General Holder,

Pursuant to 18 U.S.C. §4—*Misprision of felony*, I am legally obligated to report to you the knowledge I have about multiple felonies that *prima facie* have been and continue to be committed here in the Hawaiian Islands. I have been made aware of these felonies through the memorandum by political scientist David Keanu Sai, Ph.D., who was contracted by the State of Hawai‘i Office of Hawaiian Affairs, entitled *Memorandum for Ka Pouhana, CEO of the Office of Hawaiian Affairs regarding Hawai‘i as an Independent State and the Impacts it has on the Office of Hawaiian Affairs* (*Memo*), which is enclosed herein.

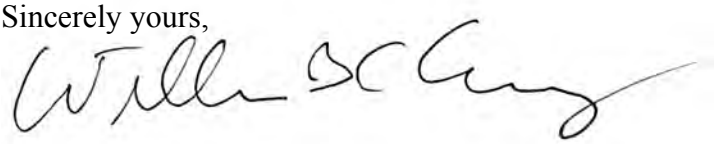
Although I am not at the present an expert in war crimes or federal criminal law, I have been on the law faculty for thirty-eight (38) years and I am competent in statutory analysis and procedure. The *Memo* evidences war crimes that have and continue to be committed, which are felonies codified under 18 U.S.C. §2441. According to §2441(a) the offense of a war crime is a felony, and §2441(c)(1) defines a war crime "as a grave breach in any of the international conventions signed at Geneva 12 August 1949." Article 33 of the 1949 Geneva Convention, IV, signed and ratified by the United States, prohibits "pillaging," which is synonymous with the term plunder. The International Criminal Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Kordic & Cerkez*, Case No. IT-95-14/2-T, ¶ 352 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 26, 2001) defined the offense of plunder as "all forms of unlawful appropriation of property in [military occupation] for which individual criminal responsibility attaches under international law, including those acts traditionally described as 'pillage.'" The ICTY also concluded in *Prosecutor v. Jelisic*, Case No. IT-95-10-T, ¶ 48 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 14, 1999), that plunder/pillage is defined as "the fraudulent appropriation of public or private funds belonging to…the opposing party,"

which the *Memo* states it belongs to the Hawaiian Kingdom as an occupied State and not the United States. *Memo*, p. 30.

Hence, after reading the contents of the *Memo* I have not only gained "knowledge of the actual commission of a felony cognizable by a court of the United States," but that I must "as soon as possible make known the same to some judge or other person in civil or military authority under the United States," or I will "be fined…or imprisoned not more than three years, or both." 18 U.S.C. §4. Further, as a State of Hawai'i employee, I and other State officials and employees receive State monies that have been implicated as being gained through the commission of felonies, namely the war crime of pillaging (*Memo*, p. 30), and we could also face prosecution under 18 U.S.C. §3—*Accessory after the fact*. In *Skelly v. United States*, 76 F.2d 483 (10th Cir. 1935), certiorari denied, 295 U.S. 757, 55 S. Ct. 914, 79 L. Ed. 1699 (1935) the Court defined an accessory after the fact as "one who knowing a felony to have been committed by another, receives, relieves, comforts, or assists the felon in order to hinder the felon's apprehension, trial or punishment." Therefore in light of the aforementioned, I am deeply concerned about this matter that affects all State of Hawai'i officials and employees, including myself personally.

Your kind consideration and response within two (2) weeks of your receipt of this communication will be appreciated. If your office's response in two weeks is able to refute the evidence provided for in the *Memo*, then assuredly the felonies—*war crimes*—have not been committed. But if your office is not able to refute the evidence, then this is a matter for the U.S. Pacific Command, being the occupying power, and all State of Hawai'i officials and employees, as well as I, are compelled to comply with Hawaiian Kingdom law and the law of occupation.

Sincerely yours,



Williamson B.C. Chang
Professor of Law

Enclosure

cc: Admiral Samuel J. Locklear III, USN
HQ US Pacific Command
Attn JOO
Box 64028
Camp H.M Smith, HI 96861-4031

Mrs. Fatou Bensouda
Prosecutor, International Criminal Court
P.O. Box 19519
2500 CM The Hague, The Netherlands

We, the undersigned, being government officials and employees of the State of Hawai‘i, hereby countersigns Professor Williamson Chang’s reporting of the commission of felonies in accordance with §4—*Misprision of felony*, Title 18 United States Code, that provides:

> “Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years or both.”

Renwick “Uncle Joe” Tassil
Commissioner, Department of Hawaiian Home Lands
State of Hawai‘i

Colin Malani
Sergeant, Sheriff Division, Department of Public Safety
State of Hawai‘i

Peter Kalawai‘a Moore, Ph.D.
Faculty, Windward Community College
State of Hawai‘i

Kimo Cashman, Ph.D.
Faculty, University of Hawai‘i at Manoa
State of Hawai‘i

Donovan Preza, Ph.D. student
Faculty, University of Hawai‘i at Manoa
State of Hawai‘i

Roth K. Puahala
Legislative Staff, State Capitol
State of Hawai'i

Kaipo Sarkissian
Adult Corrections Officer III, Corrections Division, Department of Public Safety
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S. Kaleikoa Ka'eo, Associate Professor
Faculty, University of Hawai'i Maui College
State of Hawai'i

Kahele Dukelow, Assistant Professor
Faculty, University of Hawai'i Maui College
State of Hawai'i

Mark Patterson
Administrator, Hawai'i Youth Correctional Facility, Office of Youth Service
Department of Human Services
State of Hawai'i

Gordon Leslie
Lieutenant, Corrections Division, Department of Public Safety
State of Hawai'i

Chester E.H. Kau
Deputy Sheriff II, Sheriff Division, Department of Public Safety
State of Hawai'i

Brandy K. Lee
Rescue Captain, Maui Fire Department
State of Hawai'i

Kyle Farm
Firefighter III, Maui Fire Department
State of Hawai'i

Elvin Kamoku
Firefighter III, Maui Fire Department
State of Hawai'i

Dr. Keanu Sai to Mike McCartney,
Report on Military Government
(2 July 2015)

Dr. Keanu Sai
Political Scientist
P.O. Box 2194• Honolulu, HI 96805-2194• Phone: 808-383-6100• E-Mail: keanu.sai@gmail.com

July 2, 2015

Mike McCartney
Chief of Staff, Governor
Executive Chambers
State Capitol
Honolulu, Hawaii 96813

Re: Report on Military Government

Dear Mike:

Enclosed please find a report I authored, titled *Military Government: Transformation of the State of Hawai'i*, for your consideration. As you know after we met on three previous occasions, this is a serious matter with profound political and economic consequences. After our last meeting I scoured through the laws and customs of war and international humanitarian law, and I discovered that the State of Hawai'i is fully authorized to declare itself as a Military Government in accordance with provisions in the State Constitution and the laws and customs of war during occupation.

The process will be reminiscent of Governor Poindexter's declaration of a Military Government under martial law in 1941, but a civilian rather than a military officer will be the Military Governor. It will also be shorn of the military dictatorship that plagued the Military Government then, and, as you will see in the report, it will be pretty much business as usual with some alterations necessary because of international law. The State of Hawai'i is currently playing in a negative-sum game and it needs to take the necessary steps to gain positive-sums. The State of Hawai'i does not have the luxury of time on its side.

I spoke with my client who is the Swiss citizen and he has agreed not to pursue the re-filing of the complaint to Swiss authorities, but only on condition that the State of Hawai'i begins to comply with the laws and customs of war during occupation by establishing a Military Government. My other client, Mr. Gumapac has also agreed to the same terms regarding the State of Hawai'i judge that presided over his unfair trial and the officers from the Sheriff's Department who pillaged his home, so long as there is restitution so he can return to his home and property. He will, however, maintain his criminal complaint against Deutsche Bank and Joseph Ackermann with the Swiss Authorities.

I will also be presenting this report as a paper at an academic conference at the University of Cambridge, England, in September, titled *Sovereignty and Imperialism: Non European*

Powers in the Age of Empire. I am enclosing a copy of my letter of invitation. Oxford Press will also publish papers presented at the conference.

It is crucial that we maintain a line of communication on this very delicate topic, and I look forward to another meeting with you after you've gone over the report. I am also enclosing a flash-drive that has Appendix I-VI of the report.

Sincerely,

Keanu Sai, Ph.D.

enclosures

UNIVERSITY OF CAMBRIDGE

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Dr. Keanu Sai
P.O. Box 2194
Honolulu, HI 96805-2194

USA

Cambridge, 20 March 2015

Letter of Invitation

Dear Dr. Sai,

We hereby have the honour to invite you to the conference *Sovereignty and Imperialism: Non-European Powers in the Age of Empire* to be held at the University of Cambridge, from 10 to 12 September 2015.

The conference will explore how the few formally independent non-European states, most notably Abyssinia, China, Japan, the Ottoman Empire, Persia and Siam, managed to keep European imperialism at bay, while others, such as Hawaii, Korea, Madagascar and Morocco, struggled but then succumbed to imperial powers.

We would be delighted if you would be interested in contributing a paper on relations between Europe, America and Hawaii. We also plan to publish the papers in a volume with Oxford University Press.

We will be able to provide accommodation at Cambridge and cover up to $ 150 of your travel costs.

Yours sincerely,

David Motadel

Military Government: Transformation of the State of Hawai‘i

Dr. Keanu Sai
Political Scientist

July 2, 2015

P.O. Box 2194
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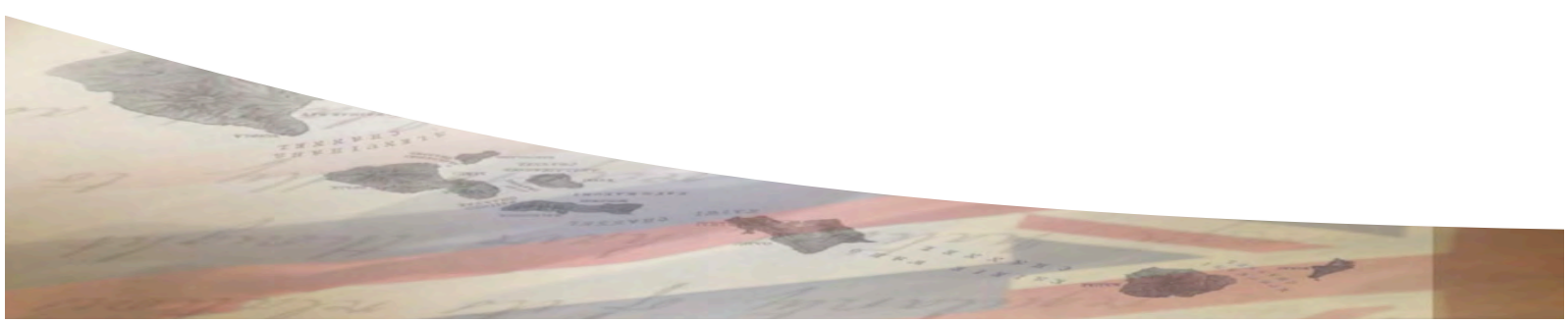

SUMMARY

The author's doctoral research[1] in political science, published law reviewed articles,[2] and books[3] are focused on Hawai'i's legal status as an occupied state that has gone unchecked for over a century. Not only were the international rights of a neutral country violated, but also the violation of human rights took place on a grand scale that was hidden under a cloak of deception and lies. These abuses are now coming to the forefront as documents are surfacing that has changed Hawai'i before the whole world.

Critical to the author's research was finding a remedial prescription to right the wrong, given the magnitude and complexity of Hawai'i's situation. The author's conclusion in his doctoral dissertation was, "Establishing a military government will shore up these blatant abuses of protected persons under one central authority, that has not only the duty, by the obligation, of suppressing conduct contrary to the Hague and Geneva conventions taking place in an occupied State."[4]

This report provides a comprehensive analysis and legal reasoning for the State of Hawai'i to transform itself from an Armed Force to a Military Government, in light of the growing knowledge and awareness of Hawai'i's legal status as an occupied state. The transformation must take place in conformity with the laws and customs of war during occupation and international humanitarian law. This revelation has profound ramifications not for only the State of Hawai'i and the United States, but also for the international community at large and their citizenry. Failure to do so will be catastrophic.

[1] David Keanu Sai, The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State (December 2008) (unpublished Ph.D. dissertation, University of Hawai'i at Manoa) (on file with the University of Hawai'i Hamilton Library), *available at* http://www2.hawaii.edu/~anu/pdf/Dissertation(Sai).pdf.

[2] DAVID KEANU SAI, *American Occupation of the Hawaiian State: A Century Unchecked*, 1 HAW. J. L. & POL. 46 (2004), *available at* http://www2.hawaii.edu/~hslp/journal/vol1/Sai_Article_(HJLP).pdf; DAVID KEANU SAI, *A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai'i today*, 10 J. L. & SOC. CHALLENGES 69 (Fall 2008), *available at* http://www2.hawaii.edu/~anu/pdf/Indigeneity.pdf.

[3] DAVID KEANU SAI, LARSEN CASE (LANCE LARSEN VS. HAWAIIAN KINGDOM), PERMANENT COURT OF ARBITRATION (2003); DAVID KEANU SAI, UA MAU KE EA: SOVEREIGNTY ENDURES (2011).

[4] *See* Sai Dissertation, at 239

CONTENTS

[5] Appendix I, *available at* http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf.
[6] Appendix II, *available at* http://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf.
[7] Appendix III, *available at* http://hawaiiankingdom.org/pdf/Transcript_Molokai_hearing.pdf.
[8] Appendix IV, *available at* http://ia600604.us.archive.org/17/items/programmeforpatr00hawa/programmeforpatr00hawa.pdf.
[9] Appendix V (German), *available at* http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_(redacted).pdf.
[10] Appendix V (English), *available at* http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_(redacted).pdf.

INTRODUCTION

Customary international law, in particular the laws and customs of war on land, provides for the establishment of a Military Government during belligerent occupation of an independent and sovereign state. The failure of the United States to establish a Military Government since the prolonged occupation of the Hawaiian Kingdom began during the Spanish-American War has led to unimaginable violations of international law and human rights, called international humanitarian law, that has profound ramifications not only for Hawai'i, but for the world at large.

The prolonged occupation of a friendly and neutral state, during war for military interest, is unparalleled and unprecedented. Military interest and necessity would apply solely to belligerent states and not to neutral states, whose neutrality was critical to the balance of power amongst the members of the family of nations. Hawai'i ensured its place as a neutral state throughout the nineteenth century. The closest parallel to Hawai'i's situation would not take place until sixteen years later when the Germans occupied the neutral state of Luxemburg prior to the breakout of World War I in 1914. Germany justified this occupation as a matter of military necessity, claiming that France had made overtures of occupying Luxembourg in order to launch attacks against Germany. Although Germany's claims were unfounded, it did not seek to unilaterally seize Luxembourg's sovereignty, but allowed Luxembourg's government to continue until the occupation ended in 1918. In World War II, however, Germany did attempt to unilaterally seize the neutral state of Luxemburg after Germany had occupied it, and the perpetrators were prosecuted for war crimes after the war.

FIRST ARMED CONFLICT: UNITED STATES INTERVENTION

In 2001, the Permanent Court of Arbitration acknowledged that, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[12] As an independent state, the Hawaiian Kingdom was a subject of international law, which prohibited intervention in its domestic affairs by other states. According to Brownlie,

> "The principal corollaries of the sovereignty and equality of states are: (1) a jurisdiction, prima facie exclusive, over a territory and the permanent population living there; (2) a duty of non-intervention in the area of exclusive jurisdiction of other states; and (3) the dependence of obligations arising from customary law and treaties on the consent of the obligor."[13]

[11] Appendix VI, *available at* http://www.loc.gov/rr/frd/Military_Law/pdf/FM-27-5-1947.pdf.
[12] *Larsen v. Hawaiian Kingdom,* 119 INT'L L. REP. 566, 581 (2001).
[13] IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 287 (4th ed. 1990).

Should a state seek to merge into another state, international law only allows it through cession. "Cession of State territory is the transfer of sovereignty over State territory by the owner-State to another State,"[14] says Oppenheim. "The only form in which a cession can be effected is an agreement embodied in a treaty between the ceding and the acquiring State. Such treaty may be the outcome of peaceable negotiations or of war."[15] Through peaceful negotiations, the United States acquired by treaty, the former territories of the French in Louisiana in 1803,[16] the Spanish in Florida in 1819,[17] the British in Oregon in 1846,[18] the Russian in Alaska in 1867,[19] and the Danish in the Virgin Islands in 1916.[20] The United States acquired, through treaties of conquest, the former territories of the British in the Americas in 1783,[21] the Mexicans in territory north of the Rio Grande in 1848, which includes Texas,[22] and the Spanish in the Philippines, Guam and Puerto Rico in 1898.[23] Hawai'i is the only territory the United States claims without a treaty.

International law also distinguishes between the state and its government, where the latter is the physical manifestation that exercises the sovereignty of the former. Hoffman emphasizes that a government "is not a State any more than man's words are the man himself," but "is simply an expression of the State, an agent for putting into execution the will of the State."[24] Wright also concluded, "international law distinguishes between a government and the state it governs."[25] Therefore, a sovereign State would continue to exist despite its government being overthrown by military force. "There is a presumption that the State continues to exist, with its rights and obligations…despite a period in which there is no, or no effective, government," explains Crawford. "Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[26] Crawford states,

> "The occupation of Iraq in 2003 illustrated the difference between 'government' and 'State'; when Members of the Security Council, after adopting SC res. 1511, 16 October 2003, called for the rapid 'restoration of Iraq's sovereignty,' they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restored."[27]

The Hawaiian Kingdom Civil Code provides, "The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while

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[14] L. OPPENHEIM, INTERNATIONAL LAW, vol. 1, 499 (7th ed. 1948).
[15] *Id*., at 500.
[16] 8 U.S. Stat. 200; Treaty Series 86.
[17] 8 U.S. Stat. 252; Treaty Series 327.
[18] 9 U.S. Stat. 869; Treaty Series 120.
[19] 15 U.S. Stat. 539; Treaty Series 301.
[20] 39 U.S. Stat. 1706; Treaty Series 629.
[21] 8 U.S. Stat. 80; Treaty Series 104.
[22] 9 U.S. Stat. 922; Treaty Series 207.
[23] 30 U.S. Stat. 1754; Treaty Series 343.
[24] FRANK SARGENT HOFFMAN, THE SPHERE OF THE STATE OR THE PEOPLE AS A BODY-POLITIC 19 (1894).
[25] QUINCY WRIGHT, *The Status of Germany and the Peace Proclamation*, 46(2) AM. J. INT'L L. 299, 307 (Apr. 1952).
[26] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 34 (2d ed. 2006).
[27] *Id*.

within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws."[28] The Hawaiian Kingdom Penal Code defines treason "to be any plotting or attempt to dethrone or destroy the King, or the adhering to the enemies thereof, giving them aid and comfort, the same being done by a person owing allegiance to this kingdom."[29] For any person committing the crime of treason "shall suffer the punishment of death; and all his property shall be confiscated to the government."[30]

On January 16, 1893, the United States intervened in the internal affairs of the kingdom when its diplomat—Minister John Stevens, ordered the landing of U.S. troops to actively participate in the treasonous take over of the Hawaiian government. The following day, U.S. troops forcibly removed the executive Monarch—Queen Lili'uokalani, and her Cabinet of four ministers, and replaced them with insurgents led by Hawai'i Supreme Court Judge Sanford Dole. The insurgents' proclamation of January 17, 1893 stated:

> "All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named person: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office. All Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils."[31]

Once the regime change was effected, all government officers and employees were forced to sign oaths of allegiance or face termination or arrest.[32] This being done under the oversight of U.S. troops after Minister Stevens declared Hawai'i to be an American Protectorate on February 1, 1893. The purpose of the regime change was for the provisional government to cede, by treaty, Hawai'i's sovereignty and territory to the United States.

One month after the treaty of annexation was signed in Washington, D.C., on February 14, 1893, under President Benjamin Harrison and submitted to the Senate for ratification, President Grover Cleveland, Harrison's successor, withdrew the treaty and initiated an investigation into the overthrow of the Hawaiian Government. President Cleveland concluded that the provisional government was neither *de facto* nor *de jure*, but self-declared,[33] and the U.S. "military demonstration upon the soil of Honolulu was itself an

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[28] Hawaiian Kingdom Civil Code, §6 (Compiled Laws 1884).
[29] Hawaiian Kingdom Penal Code, Chapter VI, sec. 1 (1869).
[30] *Id*., at Sec. 9.
[31] ROBERT C. LYDECKER, ROSTER LEGISLATURES OF HAWAII 188 (1918).
[32] Oath of Allegiance to Provisional Government, *available at* http://hawaiiankingdom.org/blog/wp-content/uploads/2014/01/Oath_Provisional_Gov.jpg.
[33] United States House of Representatives, 53d Cong.,, Executive Documents on Affairs in Hawai'i: 1894-95, 453 (Government Printing Office 1895).

act of war."[34] The President then notified the Congress that he began executive mediation with the Queen to reinstate her and her Cabinet of ministers on condition she would grant amnesty to the insurgents. The first of several meetings were held at the U.S. Legation in Honolulu on November 13, 1893.[35] An agreement was reached on December 18, 1893,[36] but President Cleveland was unable to get Congressional authorization for the use of force in order to redeploy the troops to Hawai'i. The agreement was not carried out. This executive agreement is recognized under international law as a treaty.[37]

On July 4, 1894, the insurgency declared the Provisional Government to be the Republic of Hawai'i and continued to have government officers and employees sign oaths of allegiance under threat by American mercenaries who were employed by the insurgency.[38] The proclamation of the insurgents stated,

> "it is hereby declared, enacted and proclaimed by the Executive and Advisory Councils of the Provisional Government and by the elected Delegates, constituting said Constitutional Convention, that on and after the Fourth day of July, A.D. 1894, the said Constitution shall be the Constitution of the Republic of Hawaii and the Supreme Law of the Hawaiian Islands."[39]

On June 17, 1897, the day after a second treaty of annexation was signed in Washington, D.C., under President William McKinley, Cleveland's successor; Queen Lili'uokalani submitted a formal protest to the U.S. State Department. Her protest stated,

> "I declare such a treaty to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me."[40]

President McKinley ignored the protest and submitted the treaty to the Senate for ratification. Additional protests were filed with the Senate from the people, which included a 21,269 signature-petition of members and supporters of the Hawaiian Patriotic

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[34] *Id*., at 451.
[35] *Id*., at 1241-43.
[36] *Id*., at 1269-73.
[37] See Dames & Moore v. Regan, 453 U. S. 654, 679, 682-683 (1981); United States v. Pink, 315 U. S. 203, 223, 230 (1942); United States v. Belmont, 301 U. S. 324, 330-331 (1937); *see* also L. HENKIN, FOREIGN AFFAIRS AND THE UNITED STATES CONSTITUTION 219, 496, n. 163 (2d ed. 1996) ("Presidents from Washington to Clinton have made many thousands of agreements ... on matters running the gamut of U. S. foreign relations").
[38] Oath of Allegiance to Republic of Hawai'i, *available at* http://hawaiiankingdom.org/blog/wp-content/uploads/2014/01/Oath_Republic.jpg. In a 1993 joint resolution apologizing for the illegal overthrow of the government of the Hawaiian Kingdom, the U.S. Congress acknowledged that the Republic of Hawai'i was self-declared. 107 U.S. Stat. 1510, 1512 (1993).
[39] *See* LYDECKER, at 225.
[40] Queen Lili'uokalani's Protest against Treaty of Annexation, June 17, 1897, *available at* http://libweb.hawaii.edu/digicoll/annexation/protest/liliu5.html.

League protesting the annexation of Hawai'i. By March of 1898, the treaty is dead after the Senate was unable to garner enough votes for ratification.

SECOND ARMED CONFLICT: UNITED STATES OCCUPATION

On May 4, 1898, Congressman Francis Newlands submitted a joint resolution for the annexing of the Hawaiian Islands to the U.S. House Committee on Foreign Affairs after Commodore Dewey defeated the Spanish fleet at Manila Bay, Philippines, on May 1. On May 17, the joint resolution was reported out of the committee without amendment and headed to the floor of the House of Representatives. The joint resolution's accompanying Report justified the congressional action to seize the Hawaiian Islands as a matter of military interest. The Report stated,

> "The leading nations—England, France, Germany, Japan, Spain, and the United States—have each a Pacific Squadron. Every one of these squadrons is stronger than ours save that of Spain, which is the weakest. Had the war in which we are now engaged been with any of the other powers they might have worsted our fleet and seized the Hawaiian Islands, which are not now defended by any fortification or cannon, thus exactly reversing our recent good fortune at Manila. They would then have had a convenient base for supplies, coal, and repairs, from which to actively harry and devastate our coast. But were we in complete possession of the Hawaiian Islands and they properly prepared for defense (which eminent officers of the Army and Navy stated to the committee could be done at a cost of $500,000), our fleet, even if pressed by a greatly superior sea power, would have an impregnable refuge at Pearl Harbor, backed by a friendly population and militia, with all the resources of the large city of Honolulu and a small but fruitful country. Holding this all important strategic point, the enemy could not remain in that part of the Pacific, thousands of miles from any base, without running out of coal sufficient to get back to their own possessions. The islands would secure both our fleet and our coast."[41]

Despite objections by Senators and Representatives that foreign territory can only be acquired by treaty and not through a congressional statute, President McKinley signs the joint resolution into law on July 7, 1898, and the occupation of the Hawaiian Islands began on August 12. The war with Spain did not come to an end until April 11, 1899, after documents of ratifications of the Treaty of Paris were exchanged. Customary international law mandated the United States, as the occupying state, to establish a Military Government in order to provisionally administer the laws of the occupied state, being the laws of the Hawaiian Kingdom that stood prior to the regime change on January 17, 1893. Instead of establishing a Military Government, the U.S. authorities allowed the insurgents to maintain control until the Congress could reorganize the so-called Republic of Hawai'i.

[41] House Committee on Foreign Affairs Report to accompany H. Res. 259, May 17, 1898, 2 (House Report no. 1355, 55th Congress, 2d session).

By statute, the U.S. Congress changed the name of the Republic of Hawai'i to the Territory of Hawai'i on April 30, 1900. The Territorial Act stated,

> "The constitution and statute laws of the Republic of Hawaii then in force, set forth in a compilation made by Sidney M. Ballou under the authority of the legislature, and published in two volumes entitled 'Civil Laws' and 'Penal Laws,' respectively, and in the Session Laws of the Legislature for the session of eighteen hundred and ninety-eight, are referred to in this Act as 'Civil Laws,' 'Penal Laws,' and 'Session Laws.'"[42]

On March 18, 1959, the U.S. Congress again by statute changed the name of the Territory of Hawai'i to the State of Hawai'i. The Statehood Act stated,

> "All Territorial laws in force in the Territory of Hawaii at the time of its admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii."[43]

When the United States created the Territory of Hawai'i in 1900 it surpassed "its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts.[44] The purpose of this extraterritorial prescription was to conceal the occupation of the Hawaiian Kingdom and bypass the duty of administering the laws of the occupied state in accordance with the 1899 Hague Convention, II, which the United States had ratified. Article 43, provides:

> "The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

The 1899 Hague Convention, II, was superseded by the 1907 Hague Convention, IV, and the text of Article 43 was slightly altered to read,

> "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

The United States creation of the State of Hawai'i in 1959, as the successor of the Territory of Hawai'i, not only stood in direct violation of Article 43, but also the duty of non-intervention in the internal affairs of another state.

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[42] 31 U.S. Stat. 141.
[43] 73 U.S. Stat. 4.
[44] EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 19 (1993).

LIMITS OF U.S. CONGRESSIONAL LEGISLATION

Sources of international law are, in rank of precedence: international conventions, international custom, general principles of law recognized by civilized nations, and judicial decisions and the teachings of the most highly qualified publicists of the various nations.[45] The legislation of every state, to include the United States of America and its Congress, is not a source of international law, but rather a source of municipal law of the state whose legislature enacted it. In *The Lotus,* the International Court stated, "Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State."[46] According to Crawford, derogation of this principle will not be presumed, which he refers to as the *Lotus* presumption.[47]

Since Congressional legislation, whether by a statute or a joint resolution, has no extraterritorial effect, it is not a source of international law, which "governs relations between independent States."[48] The U.S. Supreme Court has always adhered to this principle. The U.S. Supreme Court stated,

> "Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law."[49]

The Supreme Court also concluded, "The laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."[50] Adhering to this principle, the U.S. Attorney General's Office of Legal Counsel was befuddled by Congress's annexation of the Hawaiian Islands by a joint resolution. In a 1988 legal opinion, the Office of Legal Counsel addressed the annexation of the Hawaiian Islands by joint resolution. Douglas Kmiec, Acting Assistant Attorney General, authored the memorandum for Abraham D. Sofaer, legal advisor to the U.S. State Department. After covering the limitation of Congressional authority and the objections made by members of the Congress, Kmiec concluded,

> "Notwithstanding these constitutional objections, Congress approved the joint resolution and President McKinley signed the measure in 1898. Nevertheless, whether this action demonstrates the constitutional power of Congress to acquire territory is certainly questionable. … It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an

[45] Statute of the International Court of Justice, Article 38.
[46] *Lotus*, PCIJ, ser. A no. 10, 18 (1927).
[47] *See* CRAWFORD, at 41-42.
[48] *See Lotus*, at 18.
[49] United States v. Curtiss Wright Export Corp., 299 U.S. 304, 318 (1936).
[50] The Apollon, 22 U.S. 362, 370 (1824).

> appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea."[51]

This 1988 opinion clearly undermines the claim of sovereignty over the Hawaiian Islands by the United States. If the Attorney General's Office of Legal Counsel is "unclear" as to the authority of Congress to annex the Hawaiian Islands, it surely cannot be considered as a valid demonstration of legal title by the United States as the successor to the Hawaiian Kingdom under international law. If the United States is not the successor, then the presumption of the Hawaiian Kingdom's existence as an independent state is maintained.

CONTINUANCE OF INTERNATIONAL TREATIES

The first friendship treaty the Hawaiian Kingdom entered into as a sovereign state was with Denmark on October 19, 1846. Other friendship treaties followed with Hamburg, succeeded by Germany, (January 8, 1848), the United States of America (December 20, 1849), the United Kingdom (July 10, 1851), Bremen, succeeded by Germany, (March 27, 1854), Sweden-Norway, now separate states, (April 5, 1855), France (September 8, 1858), Belgium (October 4, 1862), Netherlands (October 16, 1862), Luxembourg (October 16, 1862), Italy (July 22, 1863), Spain (October 9, 1863), Switzerland (July 20, 1864), Russia (June 19, 1869), Japan (August 19, 1871), Austria-Hungary, now separate states (June 18, 1875), Germany (March 25, 1879), and Portugal (May 5, 1882). Neither the Hawaiian Kingdom nor any of these states expressed any intention to terminate any of the treaties according to the provisions provided in each of the treaties, and therefore remain in full force and effect.

These treaties have the "most favored nation" clause, and secure the equal application of commercial trade in the Hawaiian Islands to all treaty partners. These treaties have all been violated by the United States through the unlawful imposition of the *Merchant Marine Act* (1920)—also known as the *Jones Act*—that has secured commercial control over the seas to United States citizens, which has consequently placed the citizens of these foreign states at a commercial disadvantage.[52] The clause is designed

> "to establish the principle of equality of international treatment. The test of whether the principle is violated by the concession of advantages to a particular nation is not the form in which such concession is made, but the condition on which it is granted; whether it is given for a price, or whether this price is in the nature of a substantial equivalent, and not a mere evasion."[53]

Treaties "are legally binding, because there exists a customary rule of International Law that treaties are binding. The binding effect of that rule rests in the last resort on the fundamental assumption, which is neither consensual nor necessarily legal, of the

[51] DOUGLAS W. KMIEC, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, 12 OPINIONS OF THE OFFICE OF LEGAL COUNSEL 238, 252 (1988).
[52] 46 U.S.C. §883-1.
[53] BLACK'S LAW DICTIONARY 1013 (6th ed. 1990).

objectively binding force of International Law,"[54] states Oppenheim. "No distinction should be made between more or less important parts of a treaty as regards its execution. Whatever may be the importance or the insignificance of a part of a treaty, it must be executed in good faith, for the binding force of a treaty covers all its parts and stipulations equally."[55]

STATE OF HAWAI'I UNDER INTERNATIONAL LAW

While the State of Hawai'i cannot claim to be a government *de jure* or *de facto,* customary international law defines the organization as an Armed Force for the occupying state. Military manuals define Armed Forces as "organized armed groups which are under a command responsible to that party for the conduct of its subordinates."[56] According to Henckaerts and Doswald-Beck, "this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,"[57] and that this "definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status."[58] Article 1 of the 1907 Hague Convention, IV, provides that

> "The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: (1) To be commanded by a person responsible for his subordinates; (2) To have a fixed distinctive emblem recognizable at a distance; (3) To carry arms openly; and (4) To conduct their operations in accordance with the laws and customs of war."

The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier's military or an occupier's Armed Force, such as the State of Hawai'i, and that the "occupation extends only to the territory where such authority has been established and can be exercised." [59] According to Ferraro, "occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts."[60] Although unlawful, it is a fact that the United States created the State of Hawai'i through congressional action and signed into law by its President, Dwight D. Eisenhower, in 1959. It is also a fact that the United States approved the constitution of the State of Hawai'i that provides for its organizational structure.

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[54] *See* OPPENHEIM, *at* 794.
[55] *Id*., 829.
[56] JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, vol. I, 14 (2009).
[57] *Id*., at 15.
[58] *Id*.
[59] 1907 Hague Convention, IV, Article 42.
[60] TRISTAN FERRARO, *Determining the beginning and end of an occupation under international humanitarian law*, 94 (no. 885) INT'L REV RED CROSS 133, 134 (Spring 2012).

As an Armed Force, the State of Hawai'i established its authority over 137 islands,[61] "together with their appurtenant reefs and territorial and archipelagic waters."[62] These islands include the major islands of Hawai'i, Maui, O'ahu, Kaua'i, Molokai, Lana'i, Ni'ihau, and Kaho'olawe. It is the effectiveness of the control exercised by the State of Hawai'i over this territory, as an Armed Force for the United States, which triggers the application of occupation law.

Allegiance to the United States

The State of Hawai'i, as an Armed Force, bears its allegiance to the United States where its public officers, to include its Governor, take the following oath of office: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as […] to best of my ability."[63]

Commanded by a Person Responsible for His Subordinates

A Governor who is elected by U.S. citizens in Hawai'i is head of the State of Hawai'i. The Governor is responsible for the execution of its laws from its legislature and to carry out the decisions by its courts. The Governor is also the "commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion."[64] The Governor's subordinates include all "executive and administrative offices, departments and instrumentalities of the state government."[65]

Fixed Distinctive Emblem Recognizable at a Distance

According to its constitution, "The Hawaiian flag shall be the flag of the State."[66]

Carry Arms Openly

Law enforcement officers of the State of Hawai'i, to include the Sheriff's Division, Department of Land and Natural Resources, and the police of the State's four Counties, all openly carry arms. Also included are the State of Hawai'i's Army National Guard and Air National Guard who openly carry arms while in tactical training.

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[61] "Hawai'i Facts and Figures" (December 2014), State of Hawai'i Department of Business, Economic Development & Tourism.
[62] State of Hawai'i Constitution, Article XV, section 1, *available at* http://lrbhawaii.org/con/.
[63] *Id*., Article XVI, sec. 4.
[64] *Id*., Article V, sec. 5.
[65] *Id*., sec. 6.
[66] *Id*., Article XV, sec. 3.

Conduct Operations in Accordance with the Laws and Customs of War

As the Governor is the commander in chief of the State's Armed Forces, and is responsible for the suppression or prevention of insurrection or lawless violence, as well as repelling an invasion, the State of Hawai'i is capable of conducting operations in accordance with the laws and customs of war during occupation.

ACTING GOVERNMENT OF THE HAWAIIAN KINGDOM

In 1996, remedial steps were taken under the doctrine of necessity to reinstate the Hawaiian Kingdom government as it was under our late Queen Lili'uokalani on January 17, 1893.[67] An *acting* Council of Regency was established in accordance with the Hawaiian Constitution and the doctrine of necessity to serve in the absence of the executive monarch. By virtue of this process an *acting* Government comprised of *de facto* officers was established and has since received diplomatic recognition.[68]

From 1999-2001, the *acting* Government represented the Hawaiian Kingdom in international arbitration proceedings, *Larsen vs. Hawaiian Kingdom*, at the Permanent Court of Arbitration (PCA), The Hague, Netherlands.[69] In its commentary on international decisions in the *American Journal of International Law*, Bederman and Hilbert state,

> "At the center of the PCA proceeding was the argument that Hawaiians never directly relinquished to the United States their claim of inherent sovereignty either as a people or over their national lands, and accordingly that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' 'unlawful imposition [over him] of [its] municipal laws' through its political subdivision, the State of Hawaii. As a result of this responsibility,

[67] David Keanu Sai, *Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*, 25-51 (August 4, 2013), *available at* http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf. Appendix I.

[68] *Id.*, at 40-48. On April 3, 2014, the Directorate of International Law, Swiss Federal Department of Foreign Affairs, in Bern, accepted the *acting* Government's letter of credence for its Envoy whose mission was to initiate negotiations with the Swiss Confederation to serve as a Protecting Power in accordance with the 1949 Geneva Convention, IV. The negotiations are ongoing.

[69] The author served as lead agent for the *acting* Government in these arbitral proceedings. For law-reviewed articles on the Hawaiian arbitration, see BEDERMAN & HILBERT, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai'i*, 95 AM. J. INT'L L. 927, 928 (2001); see also DAVID KEANU SAI, *American Occupation of the Hawaiian State: A Century Unchecked*, 1 HAW. J. L. & POL. 46 (Summer 2004); and PATRICK DUMBERRY, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law*, 2(1) CHINESE J. INT'L L. 655, 682 (2002).

> Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States committed against him."[70]

After oral hearings were held at the Permanent Court of Arbitration on December 7, 8 and 11, the *acting* Government was called to a meeting in Brussels, Belgium, by His Excellency Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium. Ambassador Bihozagara was at the International Court of Justice where he was made aware of the Hawaiian Kingdom arbitration. At this meeting in Brussels on December 12, Ambassador Bihozagara conveyed to the *acting* Government that his government was prepared to bring to the attention of the United Nations General Assembly the prolonged occupation of the Hawaiian Kingdom.

> "Recalling his country's experience of genocide and the length of time it took for the international community to finally intervene as a matter of international law, Ambassador Bihozagara conveyed to the author that the illegal and prolonged occupation of Hawai'i was unacceptable and should not be allowed to continue. Despite the excitement of the offer, apprehension soon took hold and the acting government could not, in good conscience, accept the offer and put Rwanda in a position of reintroducing Hawai'i's State continuity before the United Nations, when Hawai'i's community, itself, remained ignorant of Hawai'i's profound legal position. The author thanked Ambassador Bihozagara for his government's offer, but the timing was premature. The author conveyed to the ambassador that the gracious offer could not be accepted without placing Rwanda in a vulnerable position of possible political retaliation by the United States, but that the acting government should instead focus its attention on continued exposure of the occupation both at the national and international levels."[71]

What faced the *acting* Government was the prolonged nature of the occupation, together with the United States violation of the laws and customs of war during occupation, its devastating effect on Hawai'i's political economy, and the violation of international humanitarian law. The exigency of the situation is what prompted the *acting* Government to exercise its legislative authority as a matter of necessity. On October 10, 2014, the *acting* Council of Regency decreed, by Proclamation, provisional laws for the Kingdom, subject to ratification by the Legislative Assembly when called into session, in order to provide for the proper legal foundation for the administration of Hawaiian Kingdom laws in compliance with the law and customs of war during occupation. The Proclamation decreed,

> "that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international

[70] *See* BEDERMAN & HILBERT, at 928.
[71] *See* SAI, *Slippery Path*, at 131.

> humanitarian law, and if it be the case they shall be regarded as invalid and void."[72]

The Proclamation also called upon

> "all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, to obey promptly and fully, in letter and in spirit, such proclamations, rules, regulations and orders, as the military government may issue during the present military occupation of the Hawaiian Kingdom so long as these proclamations, rules, regulations and orders are in compliance with the laws and provisional laws of the Hawaiian Kingdom, the international laws of occupation and international humanitarian law."[73]

Although, Hawaiian law prohibits the enactment of retrospective laws,[74] the doctrine of necessity would allow for it in extraordinary circumstances. Necessity is where the "power of a Head of State under a written Constitution extends by implication to executive acts, and also legislative acts taken temporarily (that is, until confirmed, varied or disallowed by the lawful Legislature) to preserve or restore the Constitution, even though the Constitution itself contains no express warrant for them."[75] Deviations from a State's constitutional order "can be justified on grounds of necessity,"[76] states de Smith. "State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution."[77] Lord Pearce also states that there are certain limitations to the principle of necessity,

> "namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful…Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign."[78]

According to Sassòli, "The expression 'laws in force in the country' in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders, provided that the 'norms' in question are general and abstract."[79] The Proclamation is a part of the "laws in force in the country"

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[72] Proclamation (October 10, 2014), *available at* http://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf. Appendix II.
[73] *Id*.
[74] Hawaiian Kingdom Constitution (1864), Article 16—"No Retrospective Laws shall ever be enacted;" see also Hawaiian Kingdom Civil Code, §5—"No law shall have any retrospective operation."
[75] F.M. BROOKEFIELD, The Fiji Revolutions of 1987, NEW ZEALAND L. J. 250, 251 (July 1988).
[76] STANLEY A. DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW 80 (1986).
[77] *Id*.
[78] Madzimbamuto v. Lardner-Burke, 1 A.C. 645, 732 (1969).
[79] Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, 6 (Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law, Cambridge, June 25-27, 2004).

as a "decree" of the *acting* Government that must be administered in accordance with Article 43.

At an evidentiary hearing held on March 5, 2015, where the Court received the author as an expert in international law, the Court took judicial notice of the brief titled, "*The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*."[80] According to the State of Hawai'i Rules of Evidence, Rule 201(b)(2), a "judicially noticed fact must be one not subject to reasonable dispute in that it is…capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." When the trial court took judicial notice of the brief it not only recognized the continuity of the Hawaiian Kingdom to be true, but it also recognized the establishment of the *acting* government to be true. The State of Hawai'i cannot claim otherwise, unless it can show that the evidentiary hearing was unfair and did not allow the Prosecutor to object to the judicial notice, which was not the case.

DENATIONALIZATION THROUGH AMERICANIZATION

In 1906 began the intentional and methodical plan of *Americanization* intended to not only conceal the violation of Hawai'i's sovereignty and the international law of occupation, but to obliterate the national consciousness of the Hawaiian Kingdom in the minds of the children who were attending the public and private schools throughout the islands. This program was developed by the Territory of Hawai'i's Department of Public Instruction and called "Programme for Patriotic Exercises in the Public Schools." The purpose of the program was to inculcate American patriotism in the minds of the children and forced them to speak English and not Hawaiian.

According to the Programme, "The teacher will call one of the pupils to come forward and stand at one side of the desk while the teacher stands at the other. The pupil shall hold an American flag in military style. At second signal all children shall rise, stand erect and salute the flag, concluding with the salutation, 'We give our heads and our hearts to God and our Country! One Country! One Language! One flag!'"[81] In 1907, Harper's Weekly magazine covered the *Americanization* taking place at Ka'ahumanu and Ka'iulani Public Schools.[82] Below is a photo taken by the reporter of Harper's Weekly at Ka'iulani Public School.

[80] Transcript of Proceedings, State of Hawai'i vs. Kaiula Kalawe English, criminal no. 14-1-0819, State of Hawai'i vs. Robin Wainuhea Dudoit, criminal no. 14-1-0820, Circuit Court of the Second Circuit, State of Hawai'i (Mar. 5, 2015), *available at* http://hawaiiankingdom.org/pdf/Transcript_Molokai_hearing.pdf. Appendix III.
[81] Territory of Hawai'i, Programme for Patriotic Exercises (1906), 4, *available at* http://ia600604.us.archive.org/17/items/programmeforpatr00hawa/programmeforpatr00hawa.pdf. Appendix IV.
[82] William Inglis, *Hawaii's Lesson to Headstrong California*, HARPER'S WEEKLY, Feb. 16, 1907, at 228.

"We give our heads and our hearts to God and our country! One country, one language, one flag!"
THIS SCENE SHOWS THE SALUTE TO THE AMERICAN FLAG WHICH FLIES IN THE GROUNDS OF THE KAIUALANI PUBLIC SCHOOL WHICH HAS MANY JAPANESE PUPILS. THE DRILL IS CONSTANTLY HELD AS A MEANS OF INCULCATING PATRIOTISM IN THE HEARTS OF THE CHILDREN

Under customary international law, *Americanization* is a war crime of attempting to denationalize the inhabitants of an occupied territory. Germans and Italians were prosecuted for the same war crime after World War II for implementing a systematic plan of *Germanization* and *Italianization* in occupied territories. According to the Nuremburg Indictment of Nazis,

> "In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported de jury annexation and enforced conscription into the German Armed Forces. This was carried out in most of the occupied countries including: Norway, France, Luxembourg, the Soviet Union, Denmark, Belgium, and Holland."[83]

Since the Programme began, *Americanization* had become so pervasive and institutionalized throughout Hawai'i, that the national consciousness of the Hawaiian Kingdom was nearly obliterated, but for the institutional recovery of the Hawaiian language and the resurrection of diligent historical research that has begun to uncover the true status of the Hawaiian Kingdom as an independent state under an illegal and prolonged occupation. This revelation is reconnecting Hawai'i to the international community and its treaty partners regarding the violations of rights and war crimes committed against the citizens and subjects of foreign states who have visited, resided or have done business in the Hawaiian Islands.

[83] Nuremberg Trial Proceedings, Indictment, Count 3, Article VIII (J), available at http://avalon.law.yale.edu/imt/count3.asp.

WAR CRIMES COMMITTED WITH IMPUNITY

Since the 1949 Geneva Conventions, the expression "armed conflict" substituted the term "war" in order for the Conventions to apply "to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance (Common Article 2)." According to the International Committee of the Red Cross (ICRC) Commentary of Geneva Convention, IV, this wording of Article 2 "was based on the experience of the Second World War, which saw territories occupied without hostilities, the Government of the occupied country considering that armed resistance was useless. In such cases the interests of protected persons are, of course, just as deserving of protection as when the occupation is carried out by force."[84]

Casey-Maslen, editor of the War Report, states an international armed conflict exists "whenever one state uses any form of armed force against another, irrespective of whether the latter state fights back," which "includes the situation in which one state invades another and occupies it, even if there is no armed resistance."[85] The ICRC Commentary further clarifies that "Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to the human person as such is not measured by the number of victims."[86]

The International Criminal Court defines war crimes as "serious violations of the laws and customs applicable in international armed conflict."[87] United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in armed conflicts that involve United States troops, to be "the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime."[88] War crimes include deliberate acts as well as omissions, which the latter includes the failure to administer the laws of the occupied state (Article 43, 1907 Hague Convention, IV) and failure to provide a fair and regular trial (Article 147, Geneva Convention, IV).

International case law indicates that there must be a mental element of intent for the prosecution of war crimes, whereby war crimes must be committed willfully, either intentionally—*dolus directus*, or recklessly—*dolus eventualis*. According to Article 30(1) of the Rome Statute, the defendant is "criminally responsible and liable for punishment…only if the material elements [of the war crime] are committed with intent and knowledge." Therefore, in order to prosecute there must be a mental element that includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that "a person has intent where: (a) In relation to conduct,

[84] JEAN S. PICTET, COMMENTARY ON THE IV GENEVA CONVENTION, RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 21 (1958).
[85] STUART CASEY-MASLEN, WAR REPORT 2012 7 (2013).
[86] *See* PICTET, at 20.
[87] International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).
[88] U.S. Army Field Manual 27-10, sec. 499 (July 1956).

that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events." Furthermore, the International Criminal Court's *Elements of a War Crime*, states that there is no requirement for a legal evaluation to be done by the perpetrator.[89]

Is there a particular time or event that could serve as a definitive point of knowledge for purposes of prosecution? In other words, where can there be "awareness that a circumstance exists or a consequence will occur in the ordinary course of events" stemming from the illegality of the overthrow of the Hawaiian Kingdom government on January 17, 1893? For the United States government that definitive point would be December 18, 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian Kingdom government and called the landing of U.S. troops an act of war. For the private sector, however, it is the opinion of the author of this report, that the United States' 1993 apology for the illegal overthrow of the Hawaiian Kingdom government, would serve as that definitive point of knowledge for those who are not in the service of government. In the form of a Congressional joint resolution enacted into United States law, the law specifically states that the Congress "on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai'i on January 17, 1893 acknowledges the historical significance of this event."[90] Additionally, the Congress also urged "the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai'i."[91]

Despite the mistake of facts and law riddled throughout the apology resolution, it nevertheless serves as a specific point of knowledge and the ramifications that stem from that knowledge. Evidence that the United States knew of the ramifications was clearly displayed in the apology law's disclaimer, "Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States."[92] It is a presumption that everyone knows the law, which stems from the legal maxim *ignorantia legis neminem excusat* (ignorance of the law excuses no one). Unlike the United States government, being a public body, the State of Hawai'i government cannot claim to be a government at all, and therefore is merely a private organization. Therefore, awareness and knowledge for members of the State of Hawai'i would have begun with the enactment of the Apology resolution in 1993.

In *State of Hawai'i v. Lorenzo* (1994),[93] the State of Hawai'i Intermediate Court of Appeals considered an appeal by a defendant that argued the courts in the State of Hawai'i have no jurisdiction as a direct result of the illegal overthrow of the government of the Hawaiian Kingdom. The basis of the appeal stemmed from the lower court's ruling, "Although the Court respects Defendant's freedom of thought and expression to believe that jurisdiction over the Defendant for the criminal offenses in the instant case should be

[89] *See* ICC Elements of a War Crime, Article 8.
[90] *See* Apology Resolution, at 1513.
[91] *Id.*
[92] *Id.*, at 1514.
[93] State of Hawai'i v. Lorenzo, 77 Haw. 219 (1994).

with a sovereign, Native Hawaiian entity, like the Kingdom of Hawaii, such an entity does not preempt nor preclude jurisdiction of this court over the above-entitled matter."[94] After acknowledging that the "United States Government recently recognized the illegality of the overthrow of the Kingdom and the role of the United States in that event,"[95] the appellate court denied the appeal.

The appellate court reasoned, the "essence of the lower court's decision is that even if, as Lorenzo contends, the 1893 overthrow of the Kingdom was illegal, that would not affect the court's jurisdiction in this case."[96] The Court, however, admitted its "rationale is open to question in light of international law."[97] The Court also admitted, "The illegal overthrow leaves open the question whether the present governance should be recognized."[98] Although the courts of the State of Hawai'i are not properly constituted, because it is an Armed Force and not a government, this clearly confirms awareness by the State of Hawai'i.

In light of both the lower and appellate courts' ignorance of international law and the presumption of continuity of an established state despite the illegal overthrow of its government, it clearly presents a case of applying the wrong law. According to the International Criminal Court's elements of crimes, there "is no requirement for a legal evaluation by the perpetrator," but "only a requirement of awareness."[99] The *Lorenzo case* has become the seminal case used to quash all claims by defendants that the courts in the State of Hawai'i are not properly constituted. There can be no doubt that the decisions made by each of the judges confronted with this defense has ruled against the defendants with full awareness since the Apology resolution in 1993 and the *Lorenzo case* in 1994.

War crimes that have and continue to be committed in the Hawaiian Islands include, but are not limited to: *pillaging* (Article 47, Hague Convention, IV, and Article 33, Geneva Convention, IV); *destroying public property belonging to the occupied State* (Article 55, Hague Convention, IV, and Article 147 Geneva Convention, IV); *denationalization in the public schools* (Article 56, Hague Convention, IV); *extensive appropriation of property, not justified by military necessity and carried out unlawfully and wantonly* (Article 147, Geneva Convention, IV); *depriving individuals of a fair and regular trial* (Article 147, Geneva Convention, IV); and *unlawful deportation or transfer or unlawful confinement* (Article 147, Geneva Convention, IV).

This is a human rights crisis of unimaginable proportions. Here follows some of the most serious war crimes that will have a paralyzing effect on the State of Hawai'i as an Armed Force.

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[94] *Id*., at 220.
[95] *Id*., at 221.
[96] *Id*., at 220
[97] *Id*., at 220-221.
[98] *Id*., at 221, n. 2.
[99] *See* ICC Elements of Crimes, Article 8 – Introduction.

War Crime—Pillaging through Taxation

Articles 46-54 of Hague Convention, IV, contain the rules governing the treatment of both personal and real property belonging to inhabitants of the occupied territory. Under Article 47, "pillage is formally forbidden." In light of the "absolute character of the rule and of its obvious purpose to prevent plundering by any individual, the rule of the article would seem to extend to plundering by any national of the occupant, and generally any person subject to its local jurisdiction, including inhabitants as well as civilian officials of the occupant."[100] The State of Hawai'i's officials and members, being the occupant state's Armed Force and not a Military Government, must not plunder for the private use and purpose of maintaining the organization.

The State of Hawai'i is an Armed Force comprised of private individuals under the guise of being a *de jure* government. Consequently, the compulsory collection of what it calls taxes, is in fact not taxes at all, but rather revenues derived through pillaging. Pillage or plunder is "the forcible taking of private property," [101] which, according to the Elements of Crimes of the International Criminal Court, must be seized "for private or personal use."[102] As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.[103]

Currently the State of Hawai'i, to include the Counties, derives their revenues through the collection of 14 taxes by the State of Hawai'i (income tax, estate and transfer tax, general excise tax, transient accommodation tax, use tax, public service company tax, banks and other financial corporations franchise tax, fuel tax, liquor tax, cigarette and tobacco tax, conveyance tax, rental motor vehicle and tour vehicle surcharge tax, unemployment insurance tax, and insurance premiums tax), and 3 taxes by the Counties (real property tax, motor vehicle weight tax, and public utility franchise tax). The State of Hawai'i's primary revenue is the general excise tax, followed by the individual income tax. In 2014, the State of Hawai'i and the Counties collected $6.58 billion in taxes. Of all the war crimes, pillaging through taxation has not only affected the inhabitants of the islands, but also the international community that have traveled through the islands or have been engaged in commercial activities in the islands.

The authority to levy taxes is a fiscal and property right of an independent and sovereign state. Taxes constitute a portion of the property of the State and consist of obligatory contributions, which the States is authorized to levy upon individuals and corporations in order to provide necessary services of the State. The state's government freely exercises this right as long as it is in conformity with its public law. The public law of the Hawaiian Kingdom provides a list of obligatory contributions, which along with taxes,[104]

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[100] ERNST H. FEILCHENFELD, THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION 30 (1958).
[101] *See* BLACK'S LAW, at 1148.
[102] Elements of Crimes, International Criminal Court, Pillage as a war crime (ICC Statute, Article 8(2)(b)(xvi) and (e)(v)).
[103] *See* HENCKAERTS AND DOSWALD-BECK, at 185.
[104] *See* Hawaiian Civil Code, at 117-136.

includes customs and duties on foreign trade,[105] health insurance for visiting tourists,[106] land sales,[107] and bonds.[108] Since January 17, 1893, there has been no government, but rather Armed Forces established by the United States—the Provisional Government (1893-1894), Republic of Hawai'i (1894-1900), Territory of Hawai'i (1900-1959) and currently the State of Hawai'i (1959-present). As these entities were neither governments *de facto* nor *de jure*, their collection of tax revenues were not for the benefit of a *bona fide* government in the exercise of its police power.

Unlike the State of Hawai'i, which is an Armed Force, the United States is a *de jure* government, but its exercising of authority in the Hawaiian Islands in violation of international laws is unlawful. Therefore, the United States cannot be construed to have committed the act of pillaging since it is a legitimate government, but has appropriated private property through unlawful contributions, *e.g.* federal taxation, which is regulated by Article 48, 1907 Hague Convention, IV. The subsequent Article (49) provides, "If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question." The United States collection of federal taxes from the residents of the Hawaiian Islands is an unlawful contribution that is exacted for the sole purpose of supporting the United States federal government and not for "the needs of the army or of the administration of the territory."

War Crime—Omission of Administering Hawaiian Laws

The willful omission to administer Hawaiian law as mandated under Article 43, Hague Convention, IV, has placed Hawai'i's political economy into peril. In particular, all commercial entities registered to do business in the Hawaiian Islands, since January 17, 1893, which includes sole proprietorships, general partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, corporations, s corporations, and limited liability companies, are illegal. Their legal basis stems from pretended governments, and not the Hawaiian Kingdom. Foreign commercial entities doing business in Hawai'i are also illegal because "Every corporation or incorporated company formed or organized under the laws of any foreign State, which may be desirous of carrying on business in this Kingdom and to take, hold and convey real estate therein, shall [register with] the office of the Minister of the Interior."[109]

Furthermore, all real estate transactions, *e.g.* deeds, leases or mortgages, since January 17, 1893 were not capable of being conveyed because the notaries public and the registrars of conveyances were self-declared and therefore unlawful. Hawaiian law requires that all conveyances be registered in the Bureau of Conveyances. "To entitle any conveyance, or other instrument to be recorded, it shall be acknowledged by the party or parties

[105] *Id.*, at 137-150.
[106] *Id.*, at 666.
[107] *Id.*, at 10.
[108] *Id.*, at 523, 565, 582, 599, 609, 627, 681.
[109] An Act Relating to Corporations and Incorporated Companies Organized under the Laws of Foreign Countries and Carrying on Business in this Kingdom (1880).

executing the same, before the Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public of this Kingdom, or before some minister, commissioner or consul of the Hawaiian Islands, or some notary public or judge of a court of record in any foreign country."[110] This has not only rendered all conveyances of real estate defective, but has also voided all mortgages, which serve as security instruments for loans.

A deed not properly notarized and recorded in the government registry is a covered risk in title insurance policies. Title insurance is a "policy issued by a title company after searching the title, representing the state of that title and insuring the accuracy of the title search against claims of title defects."[111] There are two policies of title insurance; a lender's policies that cover the lender's debt due to the invalidity of the mortgage loan, and an owner's policies that cover the value of the owner's property at the time the policies were purchased. Title insurance polices are predominantly sold in the United States.

As mortgage loans have been unsecured since 1893, this has a dramatic and devastating effect today on the investment rating and net value of mortgaged-backed securities that comprise mortgage loans from Hawai'i. Mortgage-backed securities are pools of mortgage loans purchased from mortgage lenders by U.S. Government sponsored enterprises, such as Fannie Mae or Freddie Mac, or private institutions, who then sells claims to the monthly payments to investors in the form of securities called *tranches* (slices). The investor banks can also reshape these *tranches* into other securities called collateralized-debt-obligations. Mortgage-backed securities issued by Fannie Mae and Freddie Mac are given the highest investment rating of AAA and are the most actively traded commodity in the U.S. bond market.

Coupled with the fact that mortgage lenders are illegally doing business in Hawai'i and borrowers have title insurance to pay off their debt, this revelation not only has the capacity of throwing the title insurance industry spiraling into bankruptcy, but will void stocks owned by shareholders of Hawai'i mortgage lenders listed on the stock markets of NASDAQ, NYSE, and AMEX, such as Bank of Hawai'i. This is not limited to Hawai'i mortgage lenders listed on the stock markets, but all Hawai'i businesses listed, such as Hawaiian Electric Industries. Business entities created under State of Hawai'i law would simply vanish. Furthermore, title insurance companies could target the State of Hawai'i for reimbursement under subrogation. This has the capacity of bringing the United States economy, which would include Hawai'i, to the brink of financial disaster.

War Crime—Unfair Trials and Pillaging

All judicial and administrative courts in the Hawaiian Islands are not properly constituted under the laws of the Hawaiian Kingdom, nor are they properly constituted as courts of a Military Government. As such, these courts cannot provide a fair trial and therefore

[110] *See* Hawaiian Civil Code, at §1255.
[111] *See* BLACK'S LAW, at 806.

decisions and judgments are extra-judicial. Since 2011, defendants in over 100 civil cases, whose homes were being foreclosed in Circuit Courts of the State of Hawai'i or being evicted as a result of non-judicial foreclosures in the district courts of the State of Hawai'i, were challenging the subject matter jurisdiction of these courts based upon evidence that the Hawaiian Kingdom, as an independent and sovereign state, continues to exist. As such, the controlling law for jurisdictions of any and all courts, whether judicial or administrative, within the territory of the Hawaiian Kingdom is Hawaiian law and not United States law.

As an occupied State, Hawaiian Kingdom law is the controlling law. In every case, the judges systematically and summarily denied the motions to dismiss without providing any rebuttable evidence that the courts are properly constituted, and homes were pillaged. The war crimes of unfair trial and pillaging also occurred in light of the fact that the mortgage lenders were provided evidence by those being foreclosed of defects in their titles and the invalidity of the mortgage instruments, but the mortgage lenders refused to file title insurance claims. What is more abhorrent and criminal is that borrowers were required to purchase lender's policies of title insurance for the protection of the mortgage lenders as a condition of the mortgage loan should the mortgage become void as a result of a defect in title.

Common Article 3 of the 1949 Geneva Conventions prohibits "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Article 43 of the Hague Convention, IV, mandates the occupying State "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." According to United States Justice Kennedy, in *Hamdan v. Rumsfeld*, there was no need to determine whether or not defendants received a fair trial by the military commissions in Guantanamo Bay because they were not properly constituted in the first place. Justice Kennedy reasoned that the fairness of a trial is a moot point since the Court already found that "the military commissions…fail to be regularly constituted under Common Article 3."[112]

As an Armed Force of the United States, the State of Hawai'i is a pretended government. All decisions and judgments made by State of Hawai'i judicial and administrative courts are extrajudicial done "outside the course of regular judicial proceedings."[113] And where individuals have been sentenced to prison, they have the status of prisoners of war and protection afforded under the 1949 Geneva Convention, III. Summary judgments stem from "willfully depriving a prisoner of war of the rights of fair and regular trial." which is a war crime under Article 130.

[112] Hamdan v. Rumsfeld, 548 U.S. 557, 655 (2006).
[113] *See* BLACK'S LAW, at 586.

RISK OF DELAY

It is impossible for the State of Hawai'i to maintain its existence in light of the ascending knowledge of Hawai'i's legal status as an independent state under an illegal and prolonged occupation. The foundation of the existence of the State of Hawai'i is directly traced to the provisional government, which was illegally established through intervention by the U.S. diplomat with the assistance of U.S. troops in 1893. In similar fashion through intervention, the U.S. Congress illegally established the State of Hawai'i in 1959 in direct violation of its mandate to administer the laws of the Hawaiian Kingdom. This omission by the United States is not only a war crime, but has consequently placed every official and employee of the State of Hawai'i into a position of criminal liability as war crimes have and continue to be committed on a colossal scale.
In the latest edition of the War Report, 2013, Hawai'i's occupation is noted under the category of international armed conflicts. Casey-Maslen states, "Other belligerent occupations that have been alleged include the occupation by the UK of the Falkland Islands/Malvinas (Argentina claims this as sovereign territory), of Tibet by China, and of the state of Hawaii by the USA."[114] Hawai'i would not be noted here unless there is an evidential basis.

On April 28, 2015, a judgment by the Swiss Federal Criminal Court's Objections Chamber specifically named the former CEO of Deutsche Bank, Josef Ackermann, former State of Hawai'i Governor, Neil Abercrombie, current Lieutenant Governor, Shan Tsutsui, former Director of Taxation, Frederik Pablo, and former Deputy Director of Taxation, Joshua Wisch, as alleged war criminals.[115] The Swiss Federal Criminal Court is addressing war crime complaints filed with the Swiss Attorney General by a Hawaiian national who is alleging that Deutsche Bank pillaged his home as a direct result of an unfair trial in a State of Hawai'i court;[116] and by a Swiss citizen alleging that the State of Hawai'i pillaged his private property through taxation.[117]

Switzerland is a civil-law state, as opposed to a common-law state like the United States and the United Kingdom. Under the Swiss criminal procedure, judges have the capacity to conduct criminal investigations as an investigative magistrate, along with the prosecutor and the police. The Objections Chamber of the Federal Criminal Court oversees investigative magistrates, prosecutors and police if a person objects to their

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[114] *See* CASEY-MASLEN, at 28.
[115] Kale Kepekaio Gumapac, et al. v. Office of Federal Attorney General, BB 2015.36+37 (April 28, 2015), original in German *available at* http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_(redacted).pdf, translation into English *available at* http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_(redacted).pdf. Appendix V.
[116] War Crimes Report, Dec. 7, 2014, *available at* http://hawaiiankingdom.org/pdf/Swiss_AG_War_Crimes_Report.pdf. See also Gumapac's Amended War Crimes Complaint, Jan. 22, 2015, *available at* http://hawaiiankingdom.org/pdf/Gumapac_Amended_Complaint_1_22_15.pdf.
[117] Unnamed Swiss citizen's War Crime Complaint, Jan. 21, 2015, *available at* http://hawaiiankingdom.org/pdf/Swiss_Complaint_(redacted).pdf.

decisions in a criminal investigation. The Federal Criminal Court's April 28 judgment addressed an objection by a Hawaiian and a Swiss national who were both objecting to the Attorney General's decision to terminate the criminal investigation. The Prosecutor decided not to pursue an indictment because it took the position that Hawai'i was annexed by a congressional joint resolution.[118] In its decision, however, the Court appears to not have been convinced that Hawai'i was annexed by a domestic law of the United States, and began to state the relevant facts and allegations of the case that read like an indictment. Instead of concluding with charges, the Court stated it was prevented from moving forward because the filing of the objection did not meet the time line of ten days.[119]

In the civil-law tradition, a Prosecutor will need to present written charges—an indictment, to a court for confirmation. According to O'Connor, "the indictment will describe the acts committed by the suspect, and outline the applicable law and the evidence upon which the accusation rests."[120] This is similar to the contents of an indictment you would find in the common-law system. In a common-law indictment, "the prosecutor must present sufficient evidence to establish the identity of the accused, and probable cause to arrest him or her. However, the 'requirement of sufficient evidence to establish [these two facts] is considerably less exacting than a requirement of sufficient evidence to warrant a guilty finding.'"[121] It is clear that the Swiss Court, in its statement, named the accused and provided probable cause. Probable cause is defined as an "apparent state of facts found to exist upon reasonable intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime."[122]

What the judgment does not reference is that on April 9, a day after the Court received the objection by FedEx, a directive from the President of the Objections Chamber was sent to the Prosecutor. The directive stated, "In the matter mentioned above, a complaint against your decision not to engage of February 15, 2015 has been received at the Federal Criminal Court. You are requested to furnish the Federal Criminal Court right away with the records established in the abovementioned matter (including documents of receipt) with an index of the records."[123] The Court's recital of facts came from the record of the Prosecutor's investigation and not from the victims, which the Court clearly noted after citing the facts of the case by stating in parenthesis (case files, box section 3+act. 1.1). In

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[118] Swiss Prosecutor's Report on War Crimes in Hawai'i, dated February 3, 2015 (English translation), *available at* http://hawaiiankingdom.org/pdf/Prosec_Rep_2_3_15_Eng_redacted.pdf.

[119] The objection was sent off from Honolulu by FedEx on April 1, one day prior to the close of the ten-day period, but it did not reach the Objections Chamber until April 8. Under Swiss procedure, the Courts can only accept deliveries of private couriers, *i.e.* FedEx, on the date it was delivered and not the date sent as it would if it was sent via the Swiss postal service or a diplomatic representative in a foreign country. The Swiss Federal Criminal Court Objections Chamber, in its decision, cited A & B., Ltd. vs. Office of the Federal Attorney General, reference no. BB.2012.155-156 (October 31, 2012), as the basis for its rationale.

[120] DR. VIVIENNE O'CONNOR, *Practitioner's Guide: Common Law and Civil Law Traditions*, INPROL 26 (March 2012), *available at* http://www2.fjc.gov/sites/default/files/2015/Common%20and%20Civil%20Law%20Traditions.pdf.

[121] Commonwealth v. Caracciola, 409 Mass. 648, 650 (1991).

[122] *See* BLACK'S LAW, at 1201.

[123] Directive from President of Objections Chamber to Prosecutor, April 9, 2015, *available at* http://hawaiiankingdom.org/pdf/FCC_Ltr_4_9_15_redacted.pdf.

other words, the Prosecutor was prepared to pursue written charges, but decided not to because the United States claimed it annexed Hawai'i by legislation.

The purpose of criminal investigations is to collect facts that aim to identify and locate the guilty parties and to provide evidence of their guilt.[124] It is important to keep in mind that the time line is a procedural matter and that it did not diminish the facts of the case. A simple remedy would be to re-file a second complaint with the Attorney General and cite the evidence that is already in the possession of the Prosecutor. Here follows the English translation from German of the Court's decision.

> "The Objections Chamber states:
>
> -that on December 22, 2014 the former [diplomat], introduced a report by David Keanu Sai (henceforth "Sai") of December 7, 2014 to the Office of the Federal Attorney General, which stated that war crimes had been committed in Hawaii;
>
> -that according to this report, Sai suspects the US-American authorities of committing war crimes and pillaging by way of the unlawful levying of taxes, since all locally established authorities are said to be unconstitutional according to Hawaiian Kingdom law;
>
> -that by way of a letter dated January 21, 2015, [Unnamed Swiss citizen] (henceforth "[the Swiss citizen]") and his representative Sai made a criminal complaint with the Office of the Federal Attorney General, stating that [the Swiss] was a victim of a war crime according to Art. 115 StPO, because during the years 2006-2007 and 2011-2013, he had paid taxes to US-American authorities in Hawaii without justification, and that [the Swiss citizen], in addition, is the victim of fraud, committed by the State of Hawaii, because together with his wife he wanted to acquire a real estate property, which however on the basis of the lacking legitimacy of the official authorities of Hawaii to transfer the property title, was not possible, for which reason the governor of the State of Hawaii Neil Abercrombie (henceforth "Abercrombie"), Lieutenant Shan Tsutsui (henceforth "Tsutsui"), the director of the Department of Taxation Frederik Pablo (henceforth "Pablo") and his deputy Joshua Wisch (henceforth "Wisch") are to be held criminally accountable for the pillaging of [the Swiss citizens's] private property and for fraud;
>
> -that, in addition, by way of a letter dated January 22, 2015, Sai, in the name of Kale Kepekaio Gumapac (henceforth "Gumapac") contacted the office of the Federal Attorney General and requested that criminal proceedings against Josef Ackermann (henceforth "Ackermann"), the former CEO of Deutsche Bank National Trust Company (henceforth "Deutsche Bank") be opened and in this connection invoked rights deriving from Art. 1 of the friendship treaty between the Swiss Confederation and the then Hawaiian Kingdom of July 20, 1864, which has not been cancelled; that this complaint arose from a civil dispute between Gumapac and Deutsche Bank; that Gumapac was the owner of a property on Hawaii and a mortgagee of Deutsche Bank; that however the title of property, due to the illegal annexation of the Kingdom of Hawaii, was null and void, since

[124] CHARLES E. O'HARA, FUNDAMENTALS OF CRIMINAL INVESTIGATION 5 (2nd ed. 1970).

> the local US-American notaries were not empowered to transfer title; that Deutsche Bank did not recognize this fact and that it had foreclosed on Gumapac's house to cover the mortgage debt, instead of claiming its rights stemming from a "title insurance;" that the bank therefore pillaged Gumapac's house according to the international laws of war (case files, box section 3 and 5);
>
> -that the office of the Federal Attorney General on February 3, 2015 decreed a decision of non-acceptance of the criminal complaints and civil suits against Ackermann, Abercrombie, Tsutsui, Pablo and Wisch on account of war crimes allegedly committed in Hawaii between 2006 and 2013 (case files, box section 3 + act. 1.1);
>
> -that Gumapac and [the Swiss citizen] introduced, in opposition to this, an objection on March 31, 2015 to the Objections Chamber of the Federal Criminal Court and accordingly requested the cancellation of the decision of non-acceptance, and the carrying out of the criminal proceedings against the defendants indicated by them (act. 1)."[125]

The recital of these facts and the naming of State of Hawai'i officials, as alleged war criminals, should be alarming to the State of Hawai'i. If Hawai'i were a part of the United States there would be no grounds for the allegation of war crimes; and the naming of State of Hawai'i officials, being government officials of the United States, would be a direct act of intervention in the internal affairs of the United States on the part of Switzerland, and consequently a violation of the 1850 U.S.-Swiss treaty[126] and international law. Additionally, the naming of the CEO of Deutsche Bank should also be alarming to other lending institutions, *e.g.* First Hawaiian Bank, who have also committed war crimes of pillaging through unlawful foreclosures.

Furthermore, the Swiss Court also acknowledged that the 1864 treaty between the Hawaiian Kingdom and Switzerland was not cancelled. This is a significant concession because since a treaty is the highest source of international law, it is also an agreement between two or more sovereign states. This is another indication that the Court does not recognize Hawai'i as part of the United States, because if it were annexed under international law, the Swiss treaty would have become void. All "treaties concluded between two States become void through the extinction of one of the contracting parties."[127] According to Hyde, "When a state relinquishes its life as such through incorporation into, or absorption by, another state, the treaties of the former are believed to be automatically terminated."[128] Therefore, by acknowledging that the Hawaiian-Swiss treaty was not canceled is tantamount to acknowledging the continuity of the Hawaiian Kingdom as a state and treaty partner.

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[125] *See* Gumapac, et al. v. Office of Federal Attorney General, English translation.
[126] 11 U.S. Stat. 587; Treaty Series 353.
[127] *See* OPPENHEIM, at 851.
[128] Charles Cheney Hyde, *The Termination of the Treaties of a State in Consequence of its Absorption by Another—The Position of the United States*, 26 AM. J. INT'L L. 133 (1932).

Along with the Swiss proceedings, a war crime complaint has also been filed with the Canadian authorities alleging destruction of property on Mauna Kea by the construction of telescopes.[129] Additional complaints are planned to be filed with the authorities of other countries, all of which have similar war crime statutes as the Swiss. Prior to the Swiss proceedings, complaints against State of Hawai'i judges and mortgage lenders were also filed with the Prosecutor of the International Criminal Court in The Hague, Netherlands.[130] Countries that have similar war crime statutes as Switzerland are also state parties to the Rome Statute of the International Criminal Court, which provides that primary responsibilities for the prosecution for war crimes are with the member states, while the International Criminal Court has complimentary jurisdiction.[131] The International Criminal Court will prosecute if states are unwilling or unable to prosecute themselves.

Compliance with the law of occupation and the administration of Hawaiian Kingdom law will remedy the blatant violations of international law and the large-scale commission of war crimes that would appear to be part of a systematic plan or policy, whether by chance or design. As the State of Hawai'i is the product of an unlawful act, it cannot claim any powers or rights as a government—*ex injuria jus non oritur* (illegal acts cannot create law). It is an Armed Force, whose actions are limited by the laws and customs of war on land. The fact that the State of Hawai'i has acted as if it were a government is why it is in the dire situation it is in now. The remedy for the State of Hawai'i is to be a legitimate government, and the only legitimate government during occupations is a Military Government.

REMEDIAL PRESCRIPTION

In decision theory, a negative-sum game is where everyone loses. Any decision from a loss can only have the effect of a loss—a lose-lose situation. The State of Hawai'i is presently operating from a position of no lawful authority, and everything that it has done or that it will do is unlawful. There can be no fruit from a poisonous tree. The rapidly growing knowledge and awareness of the prolonged occupation of Hawai'i has the effect of causing the State of Hawai'i to speedily descend and crash. The State of Hawai'i has found itself in a mammoth negative-sum game. In order to stave off the inevitable, the *acting* Government and the State of Hawai'i must cooperate so that positive-sums are realized. The laws and customs of war during occupation provide the legal basis for the State of Hawai'i to realize positive-sums, which the *acting* Government has been adhering to since its inception in 1996.

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[129] KITV News, *TMT protesters in Canada file formal war crime*, available at http://www.kitv.com/news/tmt-protesters-in-canada-file-formal-war-crimes/33066402.

[130] Hawaiian Kingdom Blog, International Criminal Court to Consider Alleged War Crimes Committed by State of Hawai'i Officials, Judges, Banks and Attorneys, available at http://hawaiiankingdom.org/blog/international-criminal-court-to-consider-alleged-war-crimes-committed-by-state-of-hawaii-officials-judges-banks-and-attorneys/.

[131] Rome Statute, International Criminal Court, preamble, "the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions."

Critical to the administration of Hawaiian law is the establishment of Military Government, which is "defined as the supreme authority exercised by an armed occupying force over the lands, properties, and inhabitants of an enemy, allied, or domestic territory."[132] The establishment of a Military Government is not limited to the U.S. military, but to any Armed Force that is in effective control of occupied territory. U.S. Army Field Manual FM 27-5 provides that an "armed force in territory other than that of [of the occupied state] has the duty of establishing CA/MG [civil affairs/military government] when the government of such territory is absent or unable to function properly."[133] What distinguishes the U.S. military stationed in the Hawaiian Islands from the State of Hawai'i in light of the laws and customs of war during occupation, is that the State of Hawai'i, as an Armed Force, is in effective control of the majority of Hawaiian territory. U.S. military sites number 118 that span 230,929 acres of the Hawaiian Islands, which is 20% of the total acreage of Hawaiian territory.[134]

As an Armed Force whose allegiance is to the occupier, the State of Hawai'i has no choice but to establish itself as a Military Government, which is allowable under the laws and customs of war during occupation. To do so, would prevent the collapse of the State of Hawai'i that would no doubt lead to an economic catastrophe with devastating effect on the U.S. market and the global economy. Military Government is empowered under the laws and customs of war during occupation to provisionally serve as the administrator of the "laws in force in the country," which includes the "decree" of the *acting* Government in accordance with Article 43. Without the decree of the *acting* Government all commercial entities created by the State of Hawai'i, *e.g.* corporations and partnerships, and all conveyances of real estate would simply evaporate. Therefore, it is crucial for the Military Government to work in tandem with the *acting* Government to ensure the lawfulness of its actions for not only the present, but also for the future maintenance of Hawai'i's economy.

The proclamation for the establishment of a Military Government would be done in like fashion to the declaration of martial law for the Hawaiian Islands from December 7, 1941 to April 4, 1943. Governor Joseph Poindexter and Lieutenant General Walter Short relied on section 67 of the 1900 Territorial Act (48 U.S.C. §532) as the basis to declare martial law under a Military Government headed by General Short as the Military Governor, being appointed by Poindexter.[135] The Proclamation, however, required the prior approval

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[132] United States Army and Navy Manual of Civil Affairs Military Government, Army Field Manual FM 27-5, Navy Manual OPNAV P22-1115, 2-3 (October 1947), *available at* http://www.loc.gov/rr/frd/Military_Law/pdf/FM-27-5-1947.pdf. Appendix VI.

[133] *Id.*, at 4.

[134] *See* U.S. Department of Defense's Base Structure Report (2012), *available at* http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf.

[135] §67. Enforcement of law—That the governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, or summon the posse comitatus, or call out the militia of the Territory to prevent or suppress lawless violence, invasion, insurrection, or rebellion in said Territory, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory, or any part thereof, under martial law until communication can be had with the President and his decision thereon made known.

of President Franklin D. Roosevelt, since the Governor of the Territory of Hawai'i was a Presidential appointment. When the Armed Force was transformed from Territory to the State of Hawai'i in 1959, section 67 was superseded by Article V, section 5 of the State of Hawai'i Constitution, which gives the Governor full and complete authorization to declare martial law without the prior approval of the President. Section 5 provides, "The governor shall be commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion."

The fundamental difference between Martial Law and Military Government is that the former is instituted within domestic territory when the military supersedes the civil authority on the grounds of self-preservation during a foreign invasion, while the latter is instituted in foreign territory when the occupied state's government ceases to operate as a result of an armed conflict. Military Government "derives its authority from the customs of war, and not the municipal law."[136] Its functions, however, are the same except for the venue.

> "Military government is exercised when an armed force has occupied such territory, whether by force or agreement, and has substituted its authority for that of the sovereign or previous government. The right of control passes to the occupying force limited only by the rules of international law and established customs of war."[137]

There is no question as to the authority of the Governor to declare the establishment of a Military Government, but there will be questions as to the authority of the individual himself if he is an alleged war criminal. Unlike former Governor Abercrombie, Governor David Ige is not currently under criminal investigation for war crimes. The filing of the second complaint with the Swiss authorities is pending, which does explicitly name Governor Ige, the new Director of Taxation, Maria E. Zielinski, and Deputy Director, Joseph K. Kim. Another complaint for pillaging is also pending to be filed by a New Zealand citizen with the New Zealand Ministry of Justice in Wellington, which has a similar war crime statute as Switzerland. Before establishing a Military Government, Governor Ige has to ensure that he is not the subject of a criminal investigation, which would violate the clean hands doctrine. He cannot be perceived as acting in bad faith. In order to do just he must be just.

In order to transform the State of Hawai'i into a Military Government, the Governor will need to decree, by Proclamation, the establishment of Military Government in accordance with section 28 of FM 27-5. Central to the proclamation is the administration of Hawaiian Kingdom law in accordance with Article 43 to include the decree of the *acting* Government of October 10, 2014. Additionally, the proclamation will also decree that all State of Hawai'i judicial and executive officers and employees remain in operation with the exception of the legislative bodies to include the Legislature and County Councils. This reasoning is because "since supreme legislative power is vested in the military

[136] WILLIAM E. BIRKHIMER, MILITARY GOVERNMENT AND MARTIAL LAW 53 (3rd ed. 1914).
[137] *See* FM 27-5, at 3.

governor, existing legislative bodies will usually be suspended."[138] The Military Government will have to conform to the laws and customs of war during occupation, international humanitarian law, and FM 27-5—*United States Army and Navy Manual of Civil Affairs Military Government*.

The Proclamation, however, would not have the effect of absolving criminal responsibility by State of Hawai'i officials for war crimes, but it will mitigate them. The commission of war crimes prior to the Proclamation can be dealt with through restitution and reparations made to the victims. After the Proclamation, however, the Military Government has the duty to prevent and to prosecute war crimes under the laws and customs of war during occupation.

CONCLUSION

The root cause for putting the State of Hawai'i into this dire situation is the deliberate and intentional failure of the United States to establish a Military Government to administer the laws of the Hawaiian Kingdom in accordance with Article 43. The United States' creation and maintenance of Armed Forces since 1893, which included the Provisional Government (1893-1894), Republic of Hawai'i (1894-1900), Territory of Hawai'i (1900-1959), and presently the State of Hawai'i, has worsened the situation today and placed Hawai'i, and its residents, in a position of catastrophic proportions. Thus, this is a race against time. If the second war crimes complaint is filed with the Swiss authorities to reinitiate the prosecution of war crimes committed by members of the State of Hawai'i then the world-at-large will naturally conclude what is already been stated in this report.

In this report, the author has laid out the overarching themes that warrant and compel the State of Hawai'i to transform itself into a Military Government, not only its own survival, but for the survival of Hawai'i. The first Armed Force created by the United States in 1893 was comprised of insurgents who set a course to commit the high crime of treason for self-gain and greed. The current Armed Force, the State of Hawai'i, however, is not comprised of insurgents, but rather people of Hawai'i who were led to believe, through *Americanization,* that they are an incorporated territory of the United States and that the State of Hawai'i is a *bona fide* government.

We are at a stage where no one can deny the true history of this country. People are becoming aware of their rights and the right to hold people accountable for the violation of these rights. These human rights cannot be dismissed without incurring criminal liability. The Governor of the State of Hawai'i has no choice but to establish a Military Government and begin to comply with the laws and customs of war during occupation. It is not only his duty, but it is his moral obligation to the people of Hawai'i.

[138] *See* FM 27-5, at 11.

Dr. Keanu Sai email to Council member Danny Paleka
(8 April 2016)

Swiss Criminal Proceedings

Keanu Sai, Ph.D. <keanu.sai@gmail.com> Fri, Apr 8, 2016 at 11:44 AM
To: Danny Paleka <Daniel.Paleka@hawaiicounty.gov>

Aloha Danny.

Since 2011, Switzerland passed a statute authorizing the Swiss AG the authority to prosecute war crimes committed abroad. Under Swiss law, all criminal complaints are required to be investigated, and should it be the opinion of the investigator that there are no crimes being committed he is required to draft a report that explains why, which is subject to review by the Swiss Federal Criminal Court Objections Chamber. This review is initiated when the complainant objects to the report and a formal objection can be filed with the Court within 10 days—Art. 396(1), Swiss Criminal Procedure Code (SCPC). If the Court upholds the Objection, "it may issue instructions to the public prosecutor…on the continuation of the proceedings"—Art. 397(3), SCPC.

This criminal investigation process is very different from U.S. criminal investigations, where the prosecutor has full and complete discretion to investigate a crime or not to investigate, and the decision not to investigate is not subject to review by a higher authority.

As I shared with you yesterday, I have a very reliable source from Swiss law firm in Zurich, that a former Prosecutor of the Attorney General's War Crime Unit (Center of Competence for International Crimes) told this person that after they received the war crime complaint in December 2015 and two follow-up complaints in January 2016, the War Crime Unit could not refute the evidence of war crimes, and that he used the words "it was as if a bomb went off." He also expressed that the War Crimes Unit had trepidation of going against the US. This person also admitted that when the case came before the Swiss Federal Criminal Court Objections Chamber for review on April 8, 2015, the Swiss Attorney General's (AG) Office used a procedural technicality to prevent the Court from hearing the case of war crimes committed in Hawai'i.

In his Report dated February 3, 2015, the Prosecutor took the position that war crimes are not being committed because Hawai'i was annexed in 1898 by a Congressional joint

resolution and in 1959 Congress created the State of Hawai‘i as the 50th State. Because of this, according to the Prosecutor, Hawai‘i is not occupied and therefore war crimes have not been committed. The problem with this reasoning, which the Prosecutor knows is wrong, is that he is relying on US laws passed by Congress, which has no force and effect beyond US borders. According to this logic, Congress could pass a law annexing Switzerland and then call Switzerland its 50th State of the Union. From a legal standpoint, US laws are “national laws” not “international laws,” which are treaties or agreements “between” nations and not domestic laws “within” nations.

I filed an Objection with the Federal Criminal Court, via FedEx, on April 1, 2015, but it did not reach the Court until April 8, 2015. In the Objection, it clearly explained why the Prosecutor is in error because one State cannot annex another State by enacting a law. On the following day, the Court issued an Order to the Prosecutor to turn over all evidence of his investigation for consideration by the Court.

On April 28, 2015, the court issued a Judgment. After naming the former CEO of Deutsche Bank Joseph Ackermann, State of Hawai‘i Governor Neal Abercrombie, Lt. Governor Shan Tsutsui, Director of Taxation Frederik Pablo, and Deputy Director Joshua Wisch as alleged war criminals of pillaging, and stating that the 1864 Hawaiian-Swiss Treaty was not cancelled, the Court concluded that it was unable to accept the Objection because it was not filed timely within the required 10-day period.

Although the Objection was sent off by FedEx from Hawai‘i on April 1, a day before the 10-day expiration, it did not arrive at the Court until April 8. In order to prevent the Court from accepting the Objection, the AG relied on a Swiss case that determined if you use FedEx, being a private courier, the Court can only accept the filings on the day received and not sent. This was the procedural technicality that the former prosecutor spoke of, which is what they used in an attempt to slow down the process. This past summer is when I was told about what the former prosecutor said, which prompted me to re-file the complaint with the AG’s office. The actions taken by the AG’s office in order to attempt to slow down this investigation, clearly shows how serious they are taking it.

Before re-filing the complaint, I had three meetings with Governor Ige's Chief of Staff Mike McCartney in June of 2015. In these meetings, I conveyed to Mike that my clients are willing to forgo re-filing the complaint with the Swiss AG's office if the Governor's office would take corrective measures to address this matter. I also explained how to remedy the situation, which stems from my doctoral research in political science. On July 2, 2015, I provided Mike a Report that covered what was discussed in the three meetings and a proposed remedy in line with international law and rules of the State of Hawai‘i.

After numerous failed attempts to reach Mike, he left me no alternative but to prepare the re-filing of the complaint, which would includes Lt. Governor Shan Tsutsui who is a carry over from the previous administration under Governor Abercrombie, being the subject of the previous complaint.

On August 18, 2015, I re-filed the War Crimes Report and Complaint as the attorney for the two war crime victims alleging that war crimes have been committed against them by U.S. and State of Hawai'i officials as well as by Deutsche Bank. I redacted the name of one of the complainants in these documents for safety concerns.

On January 28, 2016, the Swiss AG issued a Report denying war crimes are being committed by again relying on the 1898 joint resolution of annexation and the 1959 Statehood Act, which the Prosecutor knows is wrong. The ten-day window started February 13, which is when I received the Report, to February 23. So I promptly sent the Objection on February 20, through the Swiss Postal Service in Geneva, and the Court received it on February 22. According to Art. 91(2), SCPC, filings "must be delivered on the day of expiry of the time limit at the latest…handed for delivery to SwissPost, a Swiss diplomatic or consular representations." In other words, delivery by the Swiss Postal Service or to a diplomatic or consular post is recognized by its post date and not by its date received.

On that same day the Court received the Objection on February 22, 2016, it issued an Order to the Prosecutor to turn over all evidence gathered in its investigation of war crimes to the Court. I was cc'd on the Order.

The following month, I received a Letter from the Court dated March 2, 2016, whereby the Court notified me that the case has been accepted for review and that I will need to provide a security for court costs in the amount of 2,000 Swiss Francs to be deposited in the Court's bank account by March 14, 2016. Additionally, I was also directed by the Court to resubmit the Objection with my original signature. My original Objection pleading that was sent on February 20 had my scanned signature and not an original.

On March 9, 2016, I traveled to San Francisco to have the Swiss Consulate receive my letter and package addressed to the Court through diplomatic courier, and the Consulate acknowledged its receipt on the same day. Swiss law recognizes the "post-date" if sent through the Swiss Consulate, which means the package would be recognized by the Court as being filed on March 9, well before the March 14 deadline.

Here follows a list of individuals who have been under a criminal investigation for war crimes since August 2015, which is now under review by the Swiss Court.

1. **Greg K. Nakamura**—Judge, Circuit Court of the Third Circuit, State of Hawai'i, whose address is Hale Kaulike, 777 Kilauea Avenue, Hilo, HI 96720-4212, Alleged War crime—*Principal perpetrator of denial of a fair and regular trial*;

2. **Josef Ackermann**, former Chief Executive Officer, Deutsch Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Gottfried Keller-Strasse 7, 8001 Zurich, Switzerland, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

3. **Jürgen Fitschen**, Co-Chief Executive Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

4. **Anshu Jain**, Co-Chief Executive Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

5. **Stefan Krause**, Chief Financial Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

6. **Stephan Leithner**, Chief Executive Officer Europe (except Germany and UK), Human Resources, Legal & Compliance, Government and Regulatory Affairs, Deutsche Bank Management Board, parent company of Deutsche Bank National

Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

7. **Stuart Lewis**, Chief Risk Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

8. **Rainer Neske**, Head of Private and Business Clients, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

9. **Henry Ritchotte**, Chief Operating Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

10. **Charles R. Prather**, attorney for Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, belonging to the law firm RCO Hawaii, LLLC, whose address is 900 Fort Street Mall, Suite 800, Honolulu, HI 96813, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

11. **Sofia M. Hirosone**, attorney for Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, belonging to the law firm RCO Hawaii, LLLC, whose address is 900 Fort Street Mall, Suite 800, Honolulu, HI 96813, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

12. **Michael G.K. Wong**, attorney for Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, belonging to the law firm RCO Hawaii, LLLC, whose address is 900 Fort Street Mall, Suite 800, Honolulu, HI 96813, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;* and

13. **Glenn Swanson**, realtor belonging to the real estate firm Savio Realty, whose address is 15-2911 Pahoa Village Rd, Pahoa, HI 96778, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice unlawful arrest and detention;* and

14. **Sandra Hegerfeldt**, realtor belonging to the real estate firm Savio Realty, whose address is 15-2911 Pahoa Village Rd, Pahoa, HI 96778, Alleged War Crimes—*Accomplice to pillaging and unlawful arrest and detention;* and

15. **Jessica Hall**, realtor belonging to the real estate firm Savio Realty, whose address is 15-2911 Pahoa Village Rd, Pahoa, HI 96778, Alleged War Crimes—*Accomplice to pillaging and unlawful arrest and detention;* and

16. **Dana Kenny**, realtor belonging to the real estate firm Savio Realty, whose address is 15-2911 Pahoa Village Rd, Pahoa, HI 96778, Alleged War Crimes—*Accomplice to pillaging and unlawful arrest and detention;* and

17. **Shawn H. Tsuha**, at the time of the pillaging, unfair trial and unlawful arrest, Sheriff, State of Hawai‘i Department of Public Safety Sheriff’s Department, whose address is 919 Ala Moana Boulevard, 4th Floor, Honolulu, HI 96814, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;* and

18. **Patrick Kawai**, Lieutenant, State of Hawai‘i Department of Public Safety Sheriff’s Department, whose address is Hale Kaulike, 777 Kilauea Avenue, Hilo, HI 96720-4212, Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention.*

19. **Samuel Jelsma**, Captain, County of Hawai‘i Police Department, State of Hawai‘i, whose address is 15-2615 Kea‘au-Pahoa Road, Hilo, HI 96778, Alleged War Crimes —*Principal perpetrator of unlawful arrest and detention*;

20. **Reed Mahuna**, Lieutenant, County of Hawai‘i Police Department, State of Hawai‘i, whose address is 15-2615 Kea‘au-Pahoa Road, Hilo, HI 96778, Alleged War Crimes —*Principal perpetrator of unlawful arrest and detention*;

21. **Brian Hunt**, Patrolman, County of Hawai‘i Police Department, State of Hawai‘i, whose address is 15-2615 Kea‘au-Pahoa Road, Hilo, HI 96778, Alleged War Crimes —*Principal perpetrator of unlawful arrest and detention*;

22. **Glenn Hara**, Judge, Circuit Court of the Third Circuit, State of Hawai‘i, whose address is Hale Kaulike, 777 Kilauea Avenue, Hilo, HI 96720-4212, Alleged War Crimes—*Principal perpetrator of denial of a fair and regular trial*; and

23. **Mitch Roth**, Prosecuting Attorney, County of Hawai‘i, whose address is Aupuni Center, 655 Kilauea Avenue, Hilo, HI 96820, Alleged War Crimes—*Principal perpetrator of unlawful arrest and accomplice to denial of a fair and regular trial.*

24. **Barack Obama**, President of the United States, whose address is 1600 Pennsylvania Avenue NW, Washington, DC 20500, Alleged War Crime—*Principal perpetrator of unlawful appropriation of property;*

25. **Jack Lew**, Secretary, United States Treasury, since February 28, 2013, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220, Alleged War Crime—*Principal perpetrator of unlawful appropriation of property;*

26. **Neal Wolin**, former Secretary, United States Treasury, from January 25, 2013 to February 28, 2013, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220, Alleged War Crime—*Principal perpetrator of unlawful appropriation of property;*

27. **Timothy F. Geithner**, former Secretary, United States Treasury, from January 26, 2009 to January 25, 2013, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220, Alleged War Crime—*Principal perpetrator of unlawful appropriation of property;*

28. **Stuart A. Levey**, former Secretary, United States Treasury, from January 20, 2009 to January 26, 2009, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220, Alleged War Crime—*Principal perpetrator of unlawful appropriation of property;*

29. **Henry M. Paulson**, former Secretary, United States Treasury, from July 10, 2006 to January 20, 2009, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220, Alleged War Crime—*Principal perpetrator of unlawful appropriation of property;*

30. **Robert M. Kimmit**, former Secretary, United States Treasury, from June 30, 2006 to July 10, 2006, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220, Alleged War Crime—*Principal perpetrator of unlawful appropriation of property;*

31. **John W. Snow**, former Secretary, United States Treasury, from February 3, 2003 to June 30, 2006, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220, Alleged War Crime—*Principal perpetrator of unlawful appropriation of property;*

32. **Neal Abercrombie**, former Governor, State of Hawai‘i, from December 6, 2010 to December 1, 2014, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

33. **Linda Lingle**, former Governor, State of Hawai‘i, from December 2, 2002 to December 6, 2010, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

34. **Ben Cayetano**, former Governor, State of Hawai‘i, from December 2, 1994 to December 2, 2002, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

35. **Shan Tsutsui**, Lieutenant Governor, State of Hawai‘i, since December 27, 2012, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

36. **Brian Schatz**, former Lieutenant Governor, State of Hawai‘i, from December 6, 2010 to December 26, 2012, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

37. **Duke Aiona**, former Lieutenant Governor, State of Hawai‘i, from December 4, 2002 to December 6, 2010, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

38. **Mazie Hirono**, former Lieutenant Governor, State of Hawai‘i, from December 2, 1994 to December 2, 2002, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

39. **Frederik Pablo**, former Director of Taxation, State of Hawai‘i, from 2010 to 2014, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

40. **Stanley Shiraki**, former Director of Taxation, State of Hawai‘i, from 2009 to 2010, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

41. **Kurt Kawafuchi**, former Director of Taxation, State of Hawai‘i, from 2006 to 2009, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

42. **Joshua Wisch**, former Deputy Director of Taxation, State of Hawai‘i, from 2012 to 2013, and currently serving as Spokesman for the Attorney General’s Office of the State of Hawai‘i, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

43. **Randolf L.M. Baldemor**, former Deputy Director of Taxation, State of Hawai‘i, from 2010 to 2012, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

44. **Ronald B. Randall**, former Deputy Director of Taxation, State of Hawai‘i, from 2009 to 2010, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

45. **Sandra Yahiro**, former Deputy Director of Taxation, State of Hawai‘i, from 2006 to 2009, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813, Alleged War Crime—*Principal perpetrator of pillaging;*

46. **Bernard Carvalho**, Mayor for Kaua‘i County, State of Hawai‘i, since December 1, 2008, whose address is 4444 Rice St., Suite 235, Lihue, HI 96766, Alleged War Crime—*Principal perpetrator of pillaging;*

47. **Kaipo Asing**, former Mayor for Kaua‘i County, State of Hawai‘i, from July 17, 2008 to December 1, 2008, whose address is 4444 Rice St., Suite 235, Lihue, HI 96766, Alleged War Crime—*Principal perpetrator of pillaging;* and

48. **Bryan Baptiste**, former Mayor for Kaua‘i County, State of Hawai‘i, from 2002 to July 17, 2008, 2008, who is deceased, Alleged War Crime—*Principal perpetrator of pillaging;*

These individuals are named as alleged war criminals for pillaging, unlawful appropriation of property, unfair trial and unlawful confinement, which are all war crimes under the Fourth Geneva Convention (1949) and international humanitarian law.

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Press Release*, Hawaiian Kingdom Files Lawsuit Against President Trump in Washington, D.C.*
(18 July 2018)

Gmail

Hawaiian Kingdom Files Lawsuit Against President Trump in Washington, D.C.

Council of Regency <interior@hawaiiankingdom.org> Wed, Jul 18, 2018 at 11:56 AM
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repbelatti@capitol.hawaii.gov, repbrower@capitol.hawaii.gov,
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PRESS RELEASE
For immediate release – 17 July 2018
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Petition for an Emergency Writ of Mandamus filed with U.S. Federal District Court in Washington, D.C., against President Trump regarding the prolonged American occupation of the Hawaiian Islands

[David Keanu Sai vs. Donald John Trump et. al, Case: 1:18-cv-01500]

HONOLULU, 17 July 2018 — On Monday morning, 25 June 2018, the Chairman of the *acting* Council of Regency for the Hawaiian Kingdom, H.E. David Keanu Sai, Ph.D., filed with the United States District Court for the District of Columbia a *Petition for an Emergency Writ of Mandamus* against President Donald John Trump. This Petition concerns the illegal and prolonged occupation of the Hawaiian Islands and the failure of the United States to administer the laws of the Hawaiian Kingdom as mandated under Article 43 of the 1907 Hague Convention, IV, *Respecting the Laws and Customs of War on Land* (36 Stat. 2199) and under Article 64 of the 1949 Geneva Convention, IV, *Relative to the Protection of Civilian Persons in Time of War* (6 U.S.T. 3516). The United States has ratified both treaties. The case has been assigned to Judge Tanya S. Chutkan under civil case no. 1:18-cv-01500.

Under American rules of civil procedure, a petition for writ of mandamus is an administrative remedy that seeks to compel an officer or employee of the United States or any of its agencies to fulfill their official duties. It is not a complaint alleging certain facts to be true. The Hague and Geneva Conventions obligates the United States, as an occupying State, to administer the laws of the occupied State. There is no discretion on this duty to administer Hawaiian Kingdom law. This duty is mandated under international humanitarian law.

Furthermore, according to the U.S. Constitution, treaties, such as the Hague and Geneva Conventions, are the supreme law of the land, and the United States is bound by them just as they are bound by the U.S. Constitution or any of the laws enacted by the Congress. Consequently, the failure of the United States to administer Hawaiian Kingdom laws has created a humanitarian crisis of unimaginable proportions where war crimes have and continue to be committed with impunity. War crimes have no statutes of limitation.

The Petition mentions Iraq's violation of international humanitarian law when it invaded Kuwait on 2 August 1990, and, like the United States, did not administer Kuwaiti law as mandated by the Hague and Geneva Conventions. This led to the formation of the United Nations Compensation Commission (UNCC) by the United Nations Security Council under resolution 687 (1991). The mandate of the UNCC was to process claims and pay compensation for losses or damages incurred as a direct result of Iraq's unlawful invasion and occupation of Kuwait. In total, the UNCC awarded $52.4 billion dollars for an unlawful occupation that lasted seven months. If this formula is applied to the unlawful invasion and occupation of the Hawaiian Kingdom since 16 January 1893 that compensation amount would be staggering.

This law suit comes on the heels of a memorandum, dated 25 February 2018, by the United Nations Independent Expert, Office of the High Commissioner for Human Rights, to the members of the judiciary of the State of Hawai'i. The memo's author, Dr. Alfred deZayas, who served as the Independent Expert until he retired on 30 April 2018, stated:

> "As a professor of international law, the former Secretary of the UN Human Rights Committee, co-author of book, *The United Nations Human Rights Committee Case Law 1977-2008*, and currently serving as the UN Independent Expert on the promotion of a democratic and equitable international order, I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States)."

In the Petition, the Hawaiian Kingdom begins with a preliminary statement concerning international proceedings held at the Permanent Court of Arbitration, The Hague, Netherlands.

> "When the *South China Sea* Tribunal cited in its award on jurisdiction the *Larsen v. Hawaiian Kingdom* case held at the Permanent Court of Arbitration ("PCA"), that should have garnered international attention, especially after the PCA acknowledged the Hawaiian Kingdom as an independent state and not the fiftieth State of the United States of America. The *Larsen* case was a dispute between a Hawaiian national and his government, who he claimed was negligent for allowing the unlawful imposition of American laws over Hawaiian territory that led to the alleged war crimes of unfair trial, unlawful confinement and pillaging."

Chairman Sai served as Agent for the Hawaiian government in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01. Before forming the *ad hoc* tribunal, the PCA acknowledged the Hawaiian Kingdom's continued existence as an independent State and that the Hawaiian Kingdom would access the jurisdiction of the PCA as a non-Contracting Power pursuant to Article 47 of the 1907 Hague Convention for the *Pacific Settlement of International Disputes*.

Chairman Sai stated, "the United States, as an occupier, is mandated to administer Hawaiian Kingdom law over Hawaiian territory and not its own, until they withdraw. This is not a mere descriptive assumption by the occupying State, but rather it is the law of occupation. And this was precisely what the *Larsen v. Hawaiian Kingdom* arbitration was founded on—the unlawful imposition of American laws." In 2001, Bederman and Hilbert reported in the *American Journal of International Law*:

> "At the center of the PCA proceedings was…that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from

> the United States' 'unlawful imposition [over him] of [its] municipal laws' through its political subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him."[1]

The Tribunal was comprised of three renowned international jurists, namely, Judge James Crawford, SC, current member of the International Court of Justice, Judge Christopher Greenwood, QC, former member of the International Court of Justice, and Dr. Gavan Griffith, former Australian Solicitor General.

Larsen sought to have the Tribunal adjudge that the United States had violated his rights. He then sought the Tribunal to adjudge that the Hawaiian government was liable for those violations. Although the United States was formally invited, by the Hawaiian government, to join in the arbitration on 3 March 2000, it chose not to. The United States absence thus raised the indispensable third-party rule for Larsen to overcome. In its award (para. 7.4), however, the Tribunal acknowledged the Hawaiian Kingdom's lawful political status since the nineteenth century.

> "[I]n the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."

After returning from oral hearings held at The Hague in December of 2000, the Council of Regency adopted a policy of education and exposure of the Hawaiian Kingdom's lawful political status as an independent State. The Council made this decision to address the American policy of denationalization—*Americanization* that was implemented throughout the schools in the islands since 1906. Denationalization is a war crime. Within three generations, *Americanization* had effectively obliterated the national consciousness of the Hawaiian Kingdom in the minds of Hawai'i's people. This denationalization has resulted in a common misunderstanding that since President Barrack Obama was born in Hawai'i, he was born within the United States. He was not. He was born in the Hawaiian Kingdom to an American mother and a Kenyan father. As such, he was born an American citizen by parentage—*jus sanguinis*, but not as a natural born citizen—*jus soli*.

It would take 18 years of education and exposure to prompt the Hawaiian government to file the *Petition for Emergency Writ of Mandamus*. The Petition was filed with the Federal Court in accordance with 28 U.S.C. §1331 (federal question jurisdiction), 28 U.S.C. §1651(a) (writ of mandamus), and 5 U.S.C. §702 (waiver of sovereign immunity). The Petition also names as nominal respondents twenty-eight countries that had diplomatic relations with the Hawaiian Kingdom to include treaties, and five international agencies. All of the respondents received a copy of the filed Petition, through the United States Postal Service, with a cover letter noting that a summons would be forthcoming.

They include the United States, the Indo-Pacific Command, the State of Hawai'i, Australia, Austria, the Bahamas, Belgium, Belize, Brazil, Canada, Chile, China, Cuba, France, Germany, Guatemala, Hungary, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Peru, Portugal, Russia, Spain, Sweden, Switzerland, and the United Kingdom. Also included was the United Nations Secretary General, the President of the United Nations General Assembly, the President of the United Nations Security Council, the President of the United Nations Human Rights Committee, and the Chairman of the Permanent Court of Arbitration's Administrative Council.

In his letter to the United Nations Secretary General, Chairman Sai invoked the law of State responsibility. Chairman Sai stated:

> "As an internationally wrongful act, all States shall not 'recognize as lawful a situation created by a serious breach within the meaning of Article 40, nor render aid or assistance in

> maintaining that situation (*Responsibility of States for Internationally Wrongful Acts*, 2001),' Article 40 provides that a 'breach of such an obligation is serious if it involves a gross or systemic failure by the responsible State to fulfill the obligation.' By letter to United States President Donald John Trump dated 5 July 2018, the Hawaiian Kingdom gave notice of claim and invoked responsibility of the United States, in accordance with Article 43, for a serious breach of an obligation to comply with international humanitarian law."

Chairman Sai then made the following request to the Secretary General:

> "As a State not a member of the United Nations, but a member of the Universal Postal Union since 1882, being a specialized agency of the United Nations, I should be grateful if you would have this letter and the full text of its enclosures circulated as an official document of the General Assembly and of the Security Council."

The United States has been in an illegal state of war against the Hawaiian Kingdom since 1893

On 9 March 1893, President Grover Cleveland, at the request of Queen Lili'uokalani, conducted an investigation into the overthrow of the Hawaiian Kingdom government that occurred on 17 January 1893. Her Majesty notified the President that the overthrow of her government was committed by the United States diplomat assigned to the Hawaiian Kingdom, John Stevens, and by the unauthorized landing of United States armed forces.

President Cleveland appointed James Blount, former Chairman of the House Committee on Foreign Affairs, as Special Commissioner. Commissioner Blount arrived in Honolulu on 31 March 1893 and initiated his investigation the following day. After sending periodical reports to Secretary of State Walter Gresham in Washington, D.C., Blount completed his final report on 17 July 1893. On 18 October 1893, Gresham submitted his report to the President. Gresham concluded:

> "The Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign… Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice."

The following month, on 18 December 1893, President Grover Cleveland notified the Congress of the findings and conclusions of his investigation. President Cleveland stated:

> "And so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer *Boston*, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an *act of war*, unless made either with the consent of the Government of Hawaii or for the bona fide purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at the time was undisputed and was both the *de facto* and the *de jure* government. In point of fact the existing government instead of requesting the presence of an armed force protested against it."

The President concluded:

> "By an *act of war*, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and

> confiding people has thus been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair."

When President Cleveland concluded that by an *act of war* committed against the Hawaiian Kingdom on 16 January 1893, which led to the unlawful overthrow of the Hawaiian government the following day, he acknowledged the situation under international law transformed from a state of peace to a state of war. Only by way of a treaty of peace could a state of war be transformed back to a state of peace. To explain this transformation, Chairman Sai, as Hawaiian Ambassador-at-large, authored a memorandum titled *The Larsen v. Hawaiian Kingdom Case at the Permanent Court of Arbitration and Why There Is An Ongoing Illegal State of War with the United States of America Since 16 January 1893* (16 October 2017). This memorandum has been translated into Farsi, French, German, Italian, Japanese, Russian and Spanish.

On the very same day the President notified the Congress of the illegal overthrow of the Hawaiian government, an agreement of restoration and peace was negotiated between the new U.S. diplomat assigned to the Hawaiian Kingdom, Albert Willis, and the Queen. Negotiations began on 13 November and lasted until 18 December 1893. However, due to political wrangling going on in the Congress, the President was unable to fulfill the United States' obligation under the agreement of peace with the Queen. Five years later in 1898, the United States fraudulently annexed the Hawaiian Islands during the Spanish-American war and fortified it as a military outpost. Hawai'i currently serves as headquarters for the U.S. Indo-Pacific Command.

In 2013, the *New York Times* reported North Korea's announcement that "all of its strategic rocket and long range artillery units 'are assigned to strike bases of the U.S. imperialist aggressor troops in the U.S. mainland and on Hawaii." The Hawaiian Kingdom's existential threat has been heightened today by the rhetoric of U.S. President Donald Trump and North Korea's Kim Jong-un.

Instead of establishing a system to administer Hawaiian Kingdom law in 1893, the United States maintained their installed insurgency, calling itself the Provisional government, who, under the protection of U.S. troops, unlawfully seized control of the Hawaiian government apparatus. In 1894, these insurgents renamed themselves as the Republic of Hawai'i. Six years later, the U.S. Congress changed that name to the Territory of Hawai'i. And in 1959, Congress changed that name to the State of Hawai'i. The U.S. Congress could no more establish a government in the Hawaiian Kingdom by enacting domestic statutes, than it could establish a government in Germany or in the United Kingdom.

Since the United States' admitted unlawful overthrow of the Hawaiian Kingdom government in 1893, there has been no lawful government in the Hawaiian Islands until the Hawaiian Council of Regency was established in 1995. The unlawful overthrow of the Hawaiian government 125 years ago, however, did not affect the continuity of the Hawaiian Kingdom as an independent State under international law. The Hawaiian Kingdom continued to remain in existence just as Iraq continued to exist despite its government being overthrown in 2003 by United States armed forces.

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[1] David Bederman & Kurt Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensible third parties—legal status of Hawaii," 95 *American Journal of International Law* (2001) 927, at 928.

2 attachments

Dr_deZayas_Memo_2_25_2018.pdf
95K

Larsen v. Hawaiian Kingdom PCA.pdf
440K

Petition for Emergency Writ of Mandamus,
case no. 1:18-cv-01500
(15 June 2018)

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UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

DAVID KEANU SAI, Ph.D., *pro se*
Chairman of the *acting* Council of Regency
of the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194

Petitioner,

vs.

DONALD JOHN TRUMP,
President of the United States of America
The White House
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001;

PHILIP S. DAVIDSON,
Admiral, U.S. Navy
Commander, U.S. Indo Pacific Command
HQ USINDOPACOM
Attn JOO
Box 64028
Camp H.M. Smith, HI 96861-4031;

DAVID IGE,
Governor of the State of Hawai'i
Executive Chambers
415 Beretania Street
Honolulu, HI 96813;

Respondents,

MALCOLM TURNBULL,
Prime Minister of Australia

Case: 1:18-cv-01500 (F Deck)
Assigned To : Chutkan, Tanya S.
Assign. Date : 6/25/2018
Description: Pro Se Gen. Civil

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VOJISLAV ŠUC President of the United Nations Human Rights Council OHCHR in New York UN Headquarters New York, N.Y. 10017; and	)
STEF BLOK Netherlands Minister of Foreign Affairs Chairman of the Administrative Council of the Permanent Court of Arbitration Embassy of the Netherlands 4200 Linnean Drive, NW Washington, D.C. 20008	)
Nominal Respondents.	)
_____	)

EMERGENCY PETITION FOR A WRIT OF MANDAMUS UNDER THE ALL WRITS ACT AND THE ADMINISTRATIVE PROCEDURE ACT

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I. PRELIMINARY STATEMENT

1. When the *South China Sea* Tribunal cited in its award on jurisdiction the *Larsen v. Hawaiian Kingdom* case held at the Permanent Court of Arbitration ("PCA"),[1] that should have garnered international attention, especially after the PCA acknowledged the Hawaiian Kingdom as an independent state and not the fiftieth State of the United States of America.[2] The *Larsen* case was a dispute between a Hawaiian national and his government, who he claimed was negligent for allowing the unlawful imposition of American laws over Hawaiian territory that led to the alleged war crimes of unfair trial, unlawful confinement and pillaging.

2. Larsen sought to have the Tribunal adjudge that the United States had violated his rights, after which he sought the Tribunal to adjudge that the Hawaiian government was liable for those violations. Although the United States was formally invited by the Hawaiian government to join in the arbitration, it chose not to thus raising the indispensable third-party rule for Larsen to overcome. A common misunderstanding was that the Tribunal was formed to determine the existence of the Hawaiian Kingdom. It was not. The Tribunal was formed to settle a dispute between a Hawaiian national and his government, who, he alleged, did not protect him from the United States.

3. Since the Hawaiian government returned from oral hearings held at the PCA in The Hague on 7, 8 and 11 December 2000, it has focused attention on education and exposure of the Hawaiian Kingdom's prolonged occupation and its legal status as an independent and sovereign state. This education has since been institutionalized at the University of Hawai'i

[1] *South China Sea* case (Philippines v. China), PCA Case No. 2013-19, Award on Jurisdiction and Admissibility (29 Oct. 2015), p. 71, para. 181, available at: https://pcacases.com/web/sendAttach/1506 (last visited 16 May 2018).
[2] *Larsen v. Hawaiian Kingdom*, PCA Case No. 1999-01, available at: https://pca-cpa.org/en/cases/35/ (last visited 16 May 2018).

and at High Schools throughout Hawai‘i, and has been the subject of academic research and publications in both law and peer review journals.[3]

4. The culmination of this exposure and education prompted the largest labor union of public school teachers and administrators throughout the United States, the National Education

[3] See, e.g., David J. Bederman & Kurt R. Hilbert, Arbitration—UNCITRAL Rules—justiciability and indispensable third parties-legal status of Hawaii, 95 Am. J. Int'l. L. 927-933 (2001); Patrick Dumberry, The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continuity as an Independent State under International Law, 1 Chinese J. Int'l L. 655-684 (2002); Anne Keala Kelly, A kingdom inside: the future of Hawaiian political identity, 35 Futures 999-1009 (2003); Matthew Craven, Hawai‘i, History and International Law, 1 Haw. J.L. & Pol. 6-22 (2004); Kanalu Young, An Interdisciplinary Study of the Term "Hawaiian," 1 Haw. J.L. & Pol. 23-45 (2004); David Keanu Sai, American Occupation of the Hawaiian State: A Century Unchecked, 1 Haw. J.L. & Pol. 46-81 (2004); Jonathan Kamakawiwo‘ole Osorio, Ku‘e and Ku‘oko‘a (Resistance and Independence): History, Law, and Other Faiths, 1 Haw. J.L. & Pol. 92-113 (2004); Kanalu Young, Kuleana: Toward a Historiography of Hawaiian National Consciousness, 1780-2001, 2 Haw. J.L. & Pol. 1-33 (2006); Kamanamaikalani Beamer and T. Ka‘eo Duarte, Mapping the Hawaiian Kingdom: A Colonial Venture?, 2 Haw. J.L. & Pol. 34-52 (2006); Umi Perkins, Teaching Land and Sovereignty—A Revised View, 2 Haw. J.L. & Pol. 97-111 (2006); Brenton Kamanamaikalani Beamer, Na Wai Ka Mana?: ‘Oiwi Agency and European Imperialism in the Hawaiian Kingdom (2008) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); David Keanu Sai, "A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai‘i today," 10 J. L. & Soc. Challenges 68-133 (2008); David Keanu Sai, The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State (2008) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Sydney Iaukea, E Pa‘a ‘Oukou: Holding and Remembering Hawaiian Understandings of Place and Politics (2008) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Peter Kalawai‘a Moore, He Hawai‘i Kakou: Conflicts and Continuities of History, Culture and Identity in Hawai‘i (2010) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Donovan C. Preza, The Emperical Writes Back: Re-examining Hawaiian Dispossession Resulting from the Mahele of 1848 (2010) (unpublished M.A. thesis, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i at Manoa Library); David Keanu Sai, Ua Mau Ke Ea—Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands (2011); Sydney Iaukea, The Queen and I: A Story of Dispossessions and Reconnections in Hawai‘i (2011); Lorenz Gonschor, "Ka Hoku o Osiania: Promoting the Hawaiian Kingdom as a Model for Political Transformation in Nineteenth-Century Oceania," Agents of Transculturation: Border-Crossers, Mediators, Go-Betweens (Jobs and Mackenthun, eds.) 157-186 (2013); Kalani Makekau-Whittaker, Lahui Na‘auao: Contemporary Implications of Kanaka Maoli Agency and Educational Advocacy During the Kingdom Period (2013) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Ronald C. Williams Jr., Claiming Christianity: The Struggle Over God and Nation in Hawai‘i, 1880-1900 (2013) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Kamanamaikalani Beamer, No Makou Ka Mana: Liberating the Nation (2014); Noelani Goodyear-Ka‘opua, Hawai‘i: An Occupied Country, Harvard Int'l Rev. 58-62 (2014); Willy Daniel Kaipo Kauai, The Color of Nationality: Continuities and Discontinuities of Citizenship in Hawai‘i (Dec. 2014) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Lorenz Rudolf Gonschor, "A Power in the World": The Hawaiian Kingdom as a Model of Hybrid Statecraft in Oceania and a Progenitor of Pan-Oceanism (2016) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Dennis Riches, This is not America: The Acting Government of the Hawaiian Kingdom Goes Global with Legal Challenges to End Occupation, Center for Glocal Studies—Seijo University (2016); Alessandro Pulvirenti, The Overthrow of the Hawaiian Kingdom: Did International Law Permit the Threat of the Use of Force in 1893, 26(4) Swiss. Rev. Int'l & Eur. L. 581 (2016).

Association ("NEA"), to pass a resolution on 4 July 2017 at its Annual Meeting and Representative Assembly in Boston, Massachusetts. The resolution titled New Business Item 37 stated,

> The NEA will publish an article that documents the illegal overthrow of the Hawaiian Monarchy in 1893, the prolonged occupation of the United States in the Hawaiian Kingdom and the harmful effects that this occupation has had on the Hawaiian people and resources of the land.[4]

5. The following year on 25 February 2018, the United Nations Independent Expert on the promotion of a democratic and equitable international order, Dr. Alfred M. deZayas, Office of the High Commissioner for Human Rights, sent a communication to United States President Donald Trump,[5] former Secretary of State Rex Tillerson,[6] former State of Hawai'i Attorney General Douglas Chin,[7] State of Hawai'i Judge Gary W.B. Chang of the Land Court,[8] and State of Hawai'i Judge Jeanette H. Castagnette of the First Circuit,[9] that the United States is in violation of international humanitarian law. The Independent Expert called upon the United States to comply with international law.

6. Dr. deZayas' communications were in response to a complaint, filed with the United Nations Office of the High Commissioner for Human Rights in 2017, by Mrs. Routh Bolomet, a Hawaiian-Swiss citizen residing on the Island of O'ahu, regarding extra-judicial

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[4] See "American National Teachers Union Recognizes the Illegal Occupation of the Hawaiian Kingdom," available at: http://hawaiiankingdom.org/blog/american-national-teachers-union-recognizes-the-illegal-occupation-of-the-hawaiian-kingdom/ (last visited 16 May 2018).
[5] Available at: http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(US_Pres_Trump).pdf (last visited 16 May 2018).
[6] Available at: http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(US_Sec_State_Tillerson).pdf (last visited 16 May 2018).
[7] Available at: http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(SOH_AG_Chin).pdf (last visited 16 May 2018).
[8] Available at: http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(SOH_Judge_Chang).pdf (last visited 16 May 2018).
[9] Available at: http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(SOH_Judge_Castagnetti).pdf (last visited 16 May 2018).

proceedings by two separate State of Hawai‘i courts involving real property. In his communication to State of Hawai‘i judges Gary W.B. Chang and to Jeanette H. Castagnetti. Dr. deZayas stated:

> As a professor of international law, the former Secretary of the UN Human Rights Committee, co-author of book, *The United Nations Human Rights Committee Case Law 1977-2008*, and currently serving as the UN Independent Expert on the promotion of a democratic and equitable international order, I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).
>
> Based on that understanding, in paragraph 69(n) of my 2013 report (A/68/284) to the United Nations General Assembly I recommended that the people of the Hawaiian Islands—and other peoples and nations in similar situations—be provided access to UN procedures and mechanisms in order to exercise their rights protected under international law. The adjudication of land transactions in the Hawaiian Islands would likewise be a matter of Hawaiian Kingdom law and international law, not domestic U.S. law.
>
> I have reviewed the complaint submitted in 2017 by Mme Routh Bolomet to the United Nations Office of the High Commissioner for Human Rights, pointing out historical and ongoing plundering of the Hawaiians' lands, particularly of those heirs and descendants with land titles that originate from the distributions of land under the authority of the Hawaiian Kingdom. Pursuant to the U.S. Supreme Court judgment in the Paquete Habana Case (1900), U.S. courts have to take international law and customary international law into account in property disputes. The state of Hawaii courts should not lend themselves to a flagrant violation of the rights of the land title holders and in consequence of pertinent international norms. Therefore, the courts of the State of Hawaii must not enable or collude in the wrongful taking of private lands, bearing in mind that the right to

property is recognized not only in U.S. law but also in Article 17 of the Universal Declaration of Human Rights, adopted under the leadership of Eleanor Roosevelt.[10]

7. Dr. deZayas acknowledges that extrajudicial proceedings by United States and State of Hawai‘i courts, situated within Hawaiian territory, are not in compliance with international humanitarian law, and, therefore, constitutes a "pattern of gross violations."[11]

8. The failure of the United States to administer Hawaiian Kingdom law is in violation of the 1907 Hague Convention, IV, *Respecting the Laws and Customs of War on Land* (36 Stat. 2199) ("HC IV") and the 1949 Geneva Convention, IV, *Relative to the Protection of Civilian Persons in Time of War* (6 U.S.T. 3516) ("GC IV") and constitutes breaches of international humanitarian law,[12] which has been codified under 18 U.S.C. § 2441—War Crimes. As a norm of customary international law, there are no statutes of limitations for war crimes.[13]

9. This case concerns 125 years of an illegal and prolonged occupation of the Hawaiian Kingdom by the United States, and for violations of international human rights law and international humanitarian law. For over a century, the United States has unlawfully imposed United States domestic laws within the territory of the Hawaiian Kingdom, being an independent state, without the consent of the Hawaiian Kingdom government or under any permissive rule of customary international law.

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[10] *Communication by the Independent Expert on the promotion of a democratic and equitable international order* (25 Feb. 2018), available at: http://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf (last visited 16 May 2018).
[11] ECOSOC, Official Records, 11th Sess., (1950), Summary Record of the Hundred and Sixtieth Meeting of the Social Committee: UN doc. E/AC.7/SR.637.
[12] *Id*., E/AC.7/SR.638.
[13] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Rule 160* (2005), *available at*: http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule160 (last visited 16 May 2018).

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Treaties, international agreements and customary international law are principle sources of international law utilized by United States courts.[14]

11. Petitioner requests that this Court invoke its jurisdiction, under the All Writs Act, 28 U.S.C. § 1651(a), to grant immediate mandamus relief enjoining a federal officer, from acting in derogation of the HC IV and the GC IV, for failing to administer the laws of the Hawaiian Kingdom. The All Writs Act permits this Court to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a).

12. Judicial review of this action is authorized under the Administrative Procedure Act, 5 U.S.C. § 702 whereby an "action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party."

13. 5 U.S.C. § 702 allows suit to be brought against the United States or any of its agencies or officers. The sovereign immunity defense has been withdrawn with respect to actions seeking relief other than money damages, such as a writ of mandamus. *Bowen v. Massachusetts*, 487 U.S. 879 (1988).

[14] Restatement Third of Foreign Relations Law of the United States § 102 (1987). See also Statute of the International Court of Justice, 26 June 1945, art. 38(1) (59 Stat. 1055, T.I.A.S. No. 993); *The Paquete Habana*, 175 U.S. 677, 700 (1900).

14. Nominal Respondents are parties to this action not "because any specific relief is demanded as against [them], but because [their] connection with the subject-matter is such that the [petitioner's] action would be defective…if [they] were not joined."[15]

15. The United States District Court for the District of Columbia is a proper venue for this action under 28 U.S.C. § 1391(b) because the majority of the Respondents' offices are in the District of Columbia.

III. THE PARTIES

Petitioner David Keanu Sai, Ph.D.

16. The Petitioner is Chairman of the *acting* Council of Regency and represents the Hawaiian Kingdom as a sovereign and body politic whose principal office is at P.O. Box 2194, Honolulu, HI 96805-2194. On 20 December 1849, the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom. The Hawaiian Kingdom is also a Contracting Power to the 1893 Executive Agreement, by *exchange of notes*; the GC IV; Additional Protocol (I) to the 1949 Geneva Conventions (11 December 2013); and the Statute of the International Criminal Court (12 December 2013).

Respondent Donald John Trump

17. Respondent Donald John Trump ("Respondent Trump") is President and represents the United States as a sovereign and body politic whose office is at 1600 Pennsylvania Avenue, NW, Washington, D.C. 20500. On 20 December 1849, the United States entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (9 Stat. 977). The United States is also a Contracting Power to the 1893 Executive Agreement, by

[15] Black's Law Dictionary 1049 (6th ed.,1990).

exchange of notes; the 1899 Hague Convention, II, with *Respect to the Laws and Customs of War on Land* (32 Stat. 1779); the HC IV; the GC IV; Additional Protocol (I) to the 1949 Geneva Conventions (12 December 1977); and the Additional Protocol (II) to the 1949 Geneva Conventions (12 December 1977). The United States is also a Contracting Power to the 1907 Hague Convention, I, *for the Pacific Settlement of International Disputes*, and a member of the Permanent Court of Arbitration (36 Stat. 2199) ("HC I").

18. In 1893, the United States maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency John L. Stevens, Envoy Extraordinary and Minister Plenipotentiary. The United States also maintained Consulates in Honolulu—H.W. Severance, Consul-General, and W. Porter Boyd, Deputy Consul-General; Hilo—C. Furneaux, Consular Agent; Kahului—A.F. Hopke, Consular Agent; and Mahukona—C.L. Wight, Consular Agent. The Hawaiian Kingdom maintained a diplomatic representative accredited to the United States in Washington, D.C.—His Excellency J. Mott Smith, Extraordinary and Minister Plenipotentiary. The Hawaiian Kingdom also maintained Consulates in New York—E.H. Allen, Consul General; San Francisco—F.S. Pratt, Consul General; Philadelphia—Robert H. Davis, Consul; San Diego—Jas. W. Girvin, Consul; Boston—Lawrence Bond, Consul; Portland—J. McCraken, Consul; Port Townsend—James G. Swan, Consul; and Seattle—G.R. Carter, Consul.

Respondent Philip S. Davidson

19. Respondent Philip S. Davidson is an Admiral in the United States Navy and Commander of United States Indo-Pacific Command, an armed force, whose office is at Box 64031, Camp H.M. Smith, Hawai‘i 96861-4031.

Respondent David Ige

20. Respondent David Ige is Governor of the State of Hawai‘i, a private armed force, whose office is at Executive Chambers, State Capital, Honolulu, Hawai‘i 96813.

Nominal Respondent Malcolm Turnbull

21. Nominal Respondent Malcolm Turnbull is Prime Minister and represents Australia as a sovereign and body politic with its principal place of business in the United States at 1601 Massachusetts Avenue, NW, Washington, D.C. 20036. Australia is a member State of the Commonwealth Realm with the British Crown, as its Head of State, who appoints its Prime Minister. The British Crown entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). Australia is a Contracting Power to the GC IV (14 October 1958); Additional Protocol (I) to the 1949 Geneva Conventions (21 June 1991); Additional Protocol (II) to the 1949 Geneva Conventions (21 June 1991); and Statute of the International Criminal Court (1 July 2002). Australia is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (21 February 1997).

22. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate in Honolulu—T.R. Walker, Vice-Consul. The Hawaiian Kingdom maintained Consulates in Sydney, New South Wales—E.O. Smith, Consul-General; Melbourne, Victoria—G.N. Oakley, Consul; Brisbane, Queensland—Alex B. Webster, Consul; Hobart, Tasmania—Captain Hon. Audley Coote, Consul; Launceston, Tasmania—Geo. Collins, Vice-Consul; Newcastle, and New South Wales—W.H. Moulton, Consul.

Nominal Respondent Christian Kern

23. Nominal Respondent Christian Kern is Chancellor and represents Austria as a sovereign and body politic with its principal place of business in the United States at 3524 International Court, NW, Washington, D.C. 20008. Austria is a successor State of the former Austro-Hungarian Empire, which entered into a Treaty of Friendship with the Hawaiian Kingdom (18 June 1875). The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of Hungary, until Austria denounces the treaty with the Hawaiian Kingdom.[16] Additionally, Austria is a Contracting Power to the HC IV (27 November 1909); GC IV (27 August 1953); Additional Protocol (I) to the 1949 Geneva Conventions (13 August 1982); Additional Protocol (II) to the 1949 Geneva Conventions (13 August 1982); and Statute of the International Criminal Court (28 December 2000). Austria is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (12 November 1918).

24. In 1893, Austria, formerly known as the Austro-Hungarian Empire, maintained a Consulate in Honolulu—H.F. Glade, Consul. The Hawaiian Kingdom maintained a Consulate in Vienna—V. von Schonberger, Consul.

Nominal Respondent Hubert Minnis

25. Nominal Respondent Hubert Minnis is Prime Minister and represents the Bahamas as a sovereign and body politic with its principal place of business in the United States at 2220

[16] "Huber...declares that it is necessary to admit succession as the principle, or the cases in which succession does not take place cannot be explained, yet…he admits (i.) that only the contracting powers can decide which of the treaties are *jura personalia*, whence it follows that, if A asserts and B denies that a treaty is of this class, it goes to the ground, unless B is prepared and able to force A to maintain it; (ii.) that the clause implicit in every treaty, *rebus sic stantibus*, holds in the case of even those treaties which are not *jura personalia*, so that evidently the other party can always denounce a treaty on that ground; (iii.) that if treaties which *jura personalia* do pass over, whether tacitly or by express arrangement, this is a case of a new treaty." Arthur Berriedale Keith, *The Theory of State Succession* 20 (1907).

Massachusetts Avenue, NW, Washington, D.C. 20008. The Bahamas is a member State of the Commonwealth Realm with the British Crown, as its Head of State, who appoints its Prime Minister. The British Crown entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). The Bahamas is a Contracting Power to the GC IV (11 July 1975); Additional Protocol (I) to the 1949 Geneva Conventions (10 April 1980); Additional Protocol (II) to the 1949 Geneva Conventions (10 April 1980); and Statute of the International Criminal Court (29 December 2000). The Bahamas is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (13 June 2016).

26. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate in Honolulu—T.R. Walker, Vice-Consul.

Nominal Respondent Charles Michel

27. Nominal Respondent Charles Michel is Prime Minister and represents Belgium as a sovereign and body politic with its principal place of business in the United States at 3330 Garfield Street, NW, Washington, D.C. 20008. Belgium entered into a Treaty of Amity, Commerce and Navigation with the Hawaiian Kingdom (4 October 1862). Additionally, Belgium is a Contracting Power to the HC IV (8 August 1910); GC IV (3 September 1952); Additional Protocol (I) to the 1949 Geneva Conventions (20 May 1986); Additional Protocol (II) to the 1949 Geneva Conventions (20 May 1986); and Statute of the International Criminal Court (28 June 2000). Belgium is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (7 October 1910).

28. In 1893, Belgium maintained a Consulate in Honolulu—J.F. Hackfeld, Consul. The Hawaiian Kingdom maintained Consulates in Antwerp—Victor Forge, Consul-General; Ghent—E. Coppieters, Consul; Liege—Jules Blanpain, Consul; and Bruges—Emile Van den Brande, Consul;

Nominal Respondent Dean Barrow

29. Nominal Respondent Dean Barrow is Prime Minister and represents Belize as a sovereign and body politic with its principal place of business in the United States at 2535 Massachusetts Avenue, NW, Washington, D.C. 20008. Belize is a member State of the Commonwealth Realm with the British Crown, as its Head of State, who appoints its Prime Minister. The British Crown entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). Belize is a Contracting Power to the GC IV (29 June 1984); Additional Protocol (I) to the 1949 Geneva Conventions (29 June 1984); Additional Protocol (II) to the 1949 Geneva Conventions (29 June 1984); and Statute of the International Criminal Court (5 April 2000). Belize is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (21 January 2003).

30. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate in Honolulu—T.R. Walker, Vice-Consul.

Nominal Respondent Dilma Vana Rousseff

31. Nominal Respondent Dilma Vana Rousseff is President and represents Brazil as a sovereign and body politic with its principal place of business in the United States at 3006 Massachusetts Avenue, NW, Washington, D.C. 20008. Brazil is also a Contracting Power to the HC IV (5 January 1914); GC IV (29 June 1957); Additional Protocol (I) to the 1949

Geneva Conventions (5 May 1992); Additional Protocol (II) to the 1949 Geneva Conventions (5 May 1992); and Statute of the International Criminal Court (7 May 2002). Brazil is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (6 March 1914).

Nominal Respondent Justin Trudeau

32. Nominal Respondent Justin Trudeau is Prime Minister and represents Canada as a sovereign and body politic with its principal place of business in the United States at 501 Pennsylvania Avenue, NW, Washington, D.C. 20001. Canada is a member State of the Commonwealth Realm with the British Crown, as its Head of State, who appoints its Prime Minister. The British Crown entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). Canada is a Contracting Power to the GC IV (14 May 1965); Additional Protocol (I) to the 1949 Geneva Conventions (20 November 1990); Additional Protocol (II) to the 1949 Geneva Conventions (20 November 1990); and Statute of the International Criminal Court (7 July 2000). Canada is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (9 July 1994).

33. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate—T.R. Walker, Vice-Consul. The Hawaiian Kingdom maintained Consulates in Toronto, Ontario—J.E. Thompson, Consul-General, Geo. A. Shaw, Vice-Consul; Belleville, Ontario—Alex Robertson, Vice-Consul; Kingston, Ontario—Geo. Richardson, Vice-Consul; Montreal, Quebec—Dickson Anderson, Consul; Rimouski, Quebec—J.N. Pouliot, QC, Vice-Consul; St. John’s, New Brunswick—Allan

Crookshank, Consul; Varmouth, Nova Scotia—Ed. F. Clements, Vice-Consul; and Victoria, British Columbia—G.A. Fraser, Consul.

Nominal Respondent Miguel Díaz-Canel

34. Nominal Respondent Miguel Díaz-Canel is President and represents Cuba as a sovereign and body politic with its principal place of business in the United States at 2630 16th Street NW, Washington, D.C. 20009. Cuba gained its independence from Spain in 1898 and, therefore, is a successor State to the Treaty of Amity, Commerce and Navigation (29 October 1863) entered into with the Hawaiian Kingdom. The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of Spain, until Cuba denounces the treaty with the Hawaiian Kingdom.[17] Additionally, Cuba is a Contracting Power to the GC IV (15 April 1954); Additional Protocol (I) to the 1949 Geneva Conventions (25 November 1982); Additional Protocol (II) to the 1949 Geneva Conventions (23 June 1999). Cuba is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (22 April 1912).

Nominal Respondent Michelle Bachelet

35. Nominal Respondent Michelle Bachelet is President and represents Chile as a sovereign and body politic with its principal place of business in the United States at 1736 Massachusetts Avenue, NW, Washington, D.C. 20008. Chile is a Contracting Power to the GC IV (12 October 1950); Additional Protocol (I) to the 1949 Geneva Conventions (24 April 1991); Additional Protocol (II) to the 1949 Geneva Conventions (24 April 1991); and Statute of the International Criminal Court (29 June 2009). Chile is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (18 January 1998).

[17] Keith, *supra* note 16.

36. In 1893, Chile maintained a Consulate in Honolulu—F.A. Schaefer, Consul. The Hawaiian Kingdom maintained a Consulate in Valparaiso—D. Thomas, Chargé d'affaires and Consul-General.

Nominal Respondent Xi Jinping

37. Nominal Respondent Xi Jinping is President and represents China as a sovereign and body politic with its principal place of business in the United States at 3505 International Place, NW, Washington, D.C. 20008. China is also a Contracting Power to the HC IV (10 May 1917); GC IV (28 December 1956); Additional Protocol (I) to the 1949 Geneva Conventions (14 September 1983); and Additional Protocol (II) to the 1949 Geneva Conventions (14 September 1983). China is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

38. In 1893, China maintained Commercial Agents in Honolulu—Goo Kim, Commercial Agent, and Wong Kwai, Assistant Commercial Agent. The Hawaiian Kingdom maintained Consulates in Hong Kong and Shanghai—J. Johnstone Keswick, Acting Consul-General.

Nominal Respondent Emmanuel Macron

39. Nominal Respondent Emmanuel Macron is President and represents France as a sovereign and body politic with its principal place of business in the United States at 4101 Reservoir Road, N.W., Washington, D.C. 20007. France entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (29 October 1857). Additionally, France is a Contracting Power to the HC IV (7 October 1910); GC IV (28 June 1951); Additional Protocol (I) to the 1949 Geneva Conventions (11 April 2001); Additional Protocol (II) to the 1949 Geneva Conventions (11 April 2001); and Statute of the

International Criminal Court (9 June 2000). France is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (6 December 1910).

40. In 1893, France maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—Mons. G.M.G. Bosseront d’Anglade, Commissioner and Consul General. The Hawaiian Kingdom maintained a diplomatic representative accredited to the French Court in Paris—Alfred Houle, Chargé d'affaires and Consul-General, and A.N.H. Teyssier, Vice-Consul. The Hawaiian Kingdom also maintained Consulates in Marseilles—G. du Cayla, Consul; Bordeaux—Ernest de Boissac, Consul; Dijon—Vielhounne, Consul; Libourne—Charles Schoessier, Consul; and Papeete, Tahiti—A.F. Bonet, Consul.

Nominal Respondent Angela Merkel

41. Nominal Respondent Angela Merkel is Chancellor and represents Germany as a sovereign and body politic with its principal place of business in the United States at 4645 Reservoir Road, N.W., Washington, D.C. 20007. Germany entered into a Treaty of Friendship, Commerce and Navigation and a Consular Convention with the Hawaiian Kingdom (25 March 1879). Additionally, Germany is a Contracting Power to the HC IV (27 November 1909); GC IV (3 September 1954); Additional Protocol (I) to the 1949 Geneva Conventions (14 February 1991); Additional Protocol (II) to the 1949 Geneva Conventions (14 February 1991); and Statute of the International Criminal Court (11 December 2000). Germany is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

42. In 1893, Germany maintained a Consulate in Honolulu—H.F. Glade. The Hawaiian Kingdom maintained Consulates in Bremen—John F. Muller, Consul; Hamburg—Edward

F. Weber, Consul; Frankfort-on-Maine—Joseph Kopp, Consul; Dresden—Augustus P. Russ, Consul; and Karlsruhe—H. Muller, Consul.

Nominal Respondent Jimmy Morales

43. Nominal Respondent Jimmy Morales is President and represents Guatemala as a sovereign and body politic with its principal place of business in the United States at 2220 R Street, NW, Washington, D.C. 20008. Guatemala is a Contracting Power to the HC IV (15 March 1911); GC IV (14 May 1952); Additional Protocol (I) to the 1949 Geneva Conventions (19 October 1987); Additional Protocol (II) to the 1949 Geneva Conventions (19 October 1987); and Statute of the International Criminal Court (2 April 2012). Guatemala is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (14 May 1952).

44. In 1893, the Hawaiian Kingdom maintained a Consulate in Guatemala—Henry Tolke, Consul.

Nominal Respondent Viktor Orbán

45. Nominal Respondent Viktor Orbán is Prime Minister and represents Hungary as a sovereign and body politic with its principal place of business in the United States at 3910 Shoemaker Street, NW, Washington, D.C. 20008. Hungary is a successor State of the former Austro-Hungarian Empire, which entered into a Treaty of Friendship with the Hawaiian Kingdom (18 June 1875). The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of Austria, until Hungary denounces the treaty with the Hawaiian Kingdom.[18] Additionally, Hungary is a Contracting Power to the HC IV (27 November 1909); GC IV (27 August 1953); Additional Protocol (I) to the

[18] Keith, *supra* note 16.

1949 Geneva Conventions (13 August 1982); Additional Protocol (II) to the 1949 Geneva Conventions (13 August 1982); and Statute of the International Criminal Court (28 December 2000). Hungary is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (16 November 1918).

46. In 1893, Hungary, formerly known as the Austro-Hungarian Empire, maintained a Consulate in Honolulu—H.F. Glade, Consul.

Nominal Respondent Giuseppe Conte

47. Nominal Respondent Giuseppe Conte is Prime Minister and represents Italy as a sovereign and body politic with its principal place of business in the United States at 3000 Whitehaven Street, N.W., Washington, D.C. 20008. Italy entered into a Treaty of Amity, Commerce and Navigation with the Hawaiian Kingdom (22 July 1863). Additionally, Italy is a Contracting Power to the 1899 Hague Convention, II, with Respect to the Laws and Customs of War on Land, (4 September 1900); GC IV (17 December 1951); Additional Protocol (I) to the 1949 Geneva Conventions (27 February 1986); Additional Protocol (II) to the 1949 Geneva Conventions (27 February 1986); and Statute of the International Criminal Court (26 July 1999). Italy is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (4 September 1900).

48. In 1893, Italy maintained a Consulate in Honolulu—F.A. Schaefer. The Hawaiian Kingdom maintained Consulates in Rome—James Clinton Hooker, Consul-General; Genoa—Raphael de Luchi, Consul; and Palermo—Angelo Tagliavia, Consul.

Nominal Respondent Shinzō Abe

49. Nominal Respondent Shinzō Abe is Prime Minister and represents Japan as a sovereign and body politic with its principal place of business in the United States at 2520

Massachusetts Avenue, N.W., Washington, D.C. 20008. Japan entered into a Treaty of Amity and Commerce with the Hawaiian Kingdom (19 August 1871). Additionally, Japan is a Contracting Power to the HC IV (13 December 1911); GC IV (28 June 1951); Additional Protocol (I) to the 1949 Geneva Conventions (11 April 2001); Additional Protocol (II) to the 1949 Geneva Conventions (11 April 2001); and Statute of the International Criminal Court (9 June 2000). Japan is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (11 February 1912).

50. In 1893, Japan maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—Mons. Taizo Masaki, Diplomatic Agent and Consul General. The Hawaiian Kingdom maintained a diplomatic representative accredited to the Japanese Court in Tokyo—His Excellency R. Walker Irwin, Minister Resident. The Hawaiian Kingdom also maintained Consulates in Hyōgo and Osaka—Samuel Endicott, Consul.

Nominal Respondent Xavier Bettel

51. Nominal Respondent Xavier Bettel is Prime Minister and represents Luxembourg as a sovereign and body politic with its principal place of business in the United States at 2200 Massachusetts Avenue, N.W., Washington, D.C. 20008. Luxembourg, formerly in personal union with the Netherlands, entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (16 October 1862). The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of the Netherlands, until Luxembourg denounces the treaty with the Hawaiian Kingdom.[19] Additionally, Luxembourg is a Contracting Power to the HC IV (5 September 1912); GC IV (1 July 1953); Additional Protocol (I) to the 1949 Geneva Conventions (29 August

[19] Keith, *supra* note 16.

1989); Additional Protocol (II) to the 1949 Geneva Conventions (29 August 1989); and Statute of the International Criminal Court (8 September 2000). Luxembourg is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (4 November 1912).

52. In 1893, Luxembourg, formerly in personal union with the Netherlands, maintained a Consulate in Honolulu—J.H. Paty, Consul.

Nominal Respondent Enrique Peña Nieto

53. Nominal Respondent Enrique Peña Nieto is President and represents Mexico as a sovereign and body politic with its principal place of business in the United States at 1911 Pennsylvania Avenue, NW, Washington, D.C. 20006. Mexico is a Contracting Power to the HC IV (27 November 1909); GC IV (29 October 1952); Additional Protocol (I) to the 1949 Geneva Conventions (10 September 1983); and Statute of the International Criminal Court (28 October 2005). Mexico is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

54. In 1893, Mexico maintained a Consulate in Honolulu—H. Renjes, Consul. The Hawaiian Kingdom maintained Consulates in Mexico City—Col. W.J. De Gress, Consul, and R.H. Baker, Vice-Consul; and Manzanillo—Robert James Barney, Consul.

Nominal Respondent Mark Rutte

55. Nominal Respondent Mark Rutte is Prime Minister and represents the Netherlands as a sovereign and body politic with its principal place of business in the United States at 4200 Linnean Drive, N.W., Washington, D.C. 20008. The Netherlands, formerly in personal union with Luxembourg, entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (16 October 1862). Additionally, the Netherlands is a

Contracting Power to the HC IV (27 November 1909); GC IV (3 August 1954); Additional Protocol (I) to the 1949 Geneva Conventions (26 June 1987); Additional Protocol (II) to the 1949 Geneva Conventions (26 June 1987); and Statute of the International Criminal Court (17 July 2001). The Netherlands is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

56. In 1893, the Netherlands, formerly in personal union with Luxembourg, maintained a Consulate in Honolulu—J.H. Paty, Consul. The Hawaiian Kingdom maintained Consultes in Amsterdam—D.H. Schmull, Consul-General; and Dordrecht—P.J. Bowman, Consul.

Nominal Respondent Jacinda Ardern

57. Nominal Respondent Jacinda Ardern is Prime Minister and represents New Zealand as a sovereign and body politic with its principal place of business in the United States at 37 Observatory Circle, NW, Washington, D.C. 20008. New Zealand is a member State of the Commonwealth Realm with the British Crown, as its Head of State, who appoints its Prime Minister. The British Crown entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). New Zealand is a Contracting Power to the GC IV (2 May 1959); Additional Protocol (I) to the 1949 Geneva Conventions (8 February 1988); Additional Protocol (II) to the 1949 Geneva Conventions (8 February 1988); and Statute of the International Criminal Court (7 September 2000). New Zealand is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (12 June 2010).

58. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate in Honolulu—T.R. Walker, Vice-Consul. The

Hawaiian Kingdom maintained Consulates in Auckland—D.B. Cruikshank, Consul; and Dunedin—Henry Driver, Consul.

Nominal Respondent Erna Solberg

59. Nominal Respondent Erna Solberg is Prime Minister and represents Norway as a sovereign and body politic with its principal place of business at 2720 34th Street, NW, Washington, D.C. 20008. Norway is a successor State of the formerly known United Kingdoms of Sweden and Norway, which entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (1 July 1852). The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of Sweden, until Norway denounces the treaty with the Hawaiian Kingdom.[20] Additionally, Norway is a Contracting Power to the HC IV (19 September 1910); GC IV (3 August 1951); Additional Protocol (I) to the 1949 Geneva Conventions (14 December 1981); Additional Protocol (II) to the 1949 Geneva Conventions (14 December 1981); and Statute of the International Criminal Court (16 February 2000). Norway is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (18 November 1910).

60. In 1893, Norway, formerly known as the United Kingdoms of Sweden and Norway, maintained a Consulate in Honolulu—H.W. Schmidt, Consul. The Hawaiian Kingdom maintained a Consulate in Oslo (formerly Christiania)—L. Samson, Consul.

Nominal Respondent Martín Vizcarra

61. Nominal Respondent Martín Vizcarra is President and represents Peru as a sovereign and body politic with its principal place of business in the United States at 1700 Massachusetts Avenue, NW, Washington, D.C. 20036. Peru is a Contracting Power to the GC IV (15

[20] Keith, *supra* note 16.

February 1956); Additional Protocol (I) to the 1949 Geneva Conventions (14 July 1989); Additional Protocol (II) to the 1949 Geneva Conventions (14 July 1989); and Statute of the International Criminal Court (10 November 2001). Peru is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (12 September 2010).

62. In 1893, Peru maintained a Consulate in Honolulu—Bruce Cartwright, Consul. The Hawaiian Kingdom maintained a diplomatic representative accredited to the Court of Peru and a Consulate in Lima—R.H. Beddy, Chargé d'affaires and Consul-General.

Nominal Respondent António Costa

63. Nominal Respondent António Costa is Prime Minister and represents Portugal as a sovereign and body politic with its principal place of business at 2012 Massachusetts Avenue, NW, Washington, D.C. 20036. Portugal entered into a Convention with the Hawaiian Kingdom (5 May 1882). Additionally, Portugal is a Contracting Power to the HC IV (13 April 1911); GC IV (14 March 1961); Additional Protocol (I) to the 1949 Geneva Conventions (27 May 1992); Additional Protocol (II) to the 1949 Geneva Conventions (27 May 1992); and Statute of the International Criminal Court (5 February 2002). Portugal is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (12 June 1911).

64. In 1893, Portugal maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—A. de Souza Canavarro, Chargé d’affaires and Consul General. The Hawaiian Kingdom also maintained Consulates in Lisbon—A. Ferreira de Serpa, Consul-General; Oporto—Narcisco T.M. Ferro, Consul; Madeira—F. Rodrigues, Consul; and São Miguel—A. de S. Moreira, Consul.

Nominal Respondent Vladimir Putin

65. Nominal Respondent Vladimir Putin is President and represents Russia as a sovereign and body politic with its principal place of business at 2650 Wisconsin Avenue, NW, Washington, D.C. 20007. Russia, formerly the Russian Empire, entered into a Convention of Commerce and Navigation with the Hawaiian Kingdom (19 June 1869). Additionally, Russia is a Contracting Power to the HC IV (27 November 1909); GC IV (10 May 1954); Additional Protocol (I) to the 1949 Geneva Conventions (29 September 1989); Additional Protocol (II) to the 1949 Geneva Conventions (29 September 1989); and Statute of the International Criminal Court (13 September 2000). Russia is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

66. In 1893, Russia, formerly the Russian Empire, maintained a Consulate in Honolulu—J.F. Hackfeld, Acting Vice-Consul.

Nominal Respondent Pedro Sanchez

67. Nominal Respondent Pedro Sanchez is President and represents Spain as a sovereign and body politic with its principal place of business at 2375 Pennsylvania Avenue, NW, Washington, D.C. 20037. Spain entered into a Treaty of Amity, Commerce and Navigation with the Hawaiian Kingdom (29 October 1863). Additionally, Spain is a Contracting Power to the 1899 Hague Convention, II, with Respect to the Laws and Customs of War on Land (4 September 1900); GC IV (4 August 1952); Additional Protocol (I) to the 1949 Geneva Conventions (21 April 1989); Additional Protocol (II) to the 1949 Geneva Conventions (21 April 1989); and Statute of the International Criminal Court (24 October 2000). Spain is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (17 May 1913).

68. In 1893, Spain maintained a Consulate in Honolulu—H. Renjes, Vice-Consul. The Hawaiian Kingdom also maintained Consulates in Barcelona—Enrique Minguez, Consul-General; Cadiz—James Shaw, Consul; Valencia—Vincent Chust, Consul; Malaga—F. T. De Navarra, Consul, F. Gimenez y Navarra, Vice-Consul; Cartegna—J. Paris, Consul; Las Palmas, Gran Canaria—Luis Falcony Quevedo, Consul, and J. Bravo de Laguna, Vice-Consul; and Arecife, Lanzarotte—E. Morales y Rodriguez, Vice-Consul.

Nominal Respondent Stefan Löfven

69. Nominal Respondent Stefan Löfven is Prime Minister and represents Sweden as a sovereign and body politic with its principal place of business at 2900 K Street, NW, Washington, D.C. 20007. Sweden is a successor State of the formerly known United Kingdoms of Sweden and Norway, which entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (1 July 1852). The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of Norway, until Sweden denounces the treaty with the Hawaiian Kingdom.[21] Additionally, Sweden is a Contracting Power to the HC IV (27 November 1909); GC IV (28 December 1953); Additional Protocol (I) to the 1949 Geneva Conventions (31 August 1979); Additional Protocol (II) to the 1949 Geneva Conventions (31 August 1979); and Statute of the International Criminal Court (28 June 2001). Sweden is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

70. In 1893, Sweden, formerly known as the United Kingdoms of Sweden and Norway, maintained a Consulate in Honolulu—H.W. Schmidt, Consul. The Hawaiian Kingdom

[21] Keith, *supra* note 16.

maintained Consulates in Stockholm—C.A. Engalls, Acting Consul-General; Lyskil—H. Bergstrom, Vice-Consul; and Gothemburg—Gustav Kraak, Vice-Consul.

Nominal Respondent Alain Berset

71. Nominal Respondent Alain Berset is President and represents Switzerland as a sovereign and body politic with its principal place of business at 2900 Cathedral Avenue, NW, Washington, D.C. 20008. Switzerland entered into a Treaty of Friendship, Establishment and Commerce with the Hawaiian Kingdom (20 July 1864). Additionally, Switzerland is a Contracting Power to the HC IV (12 May 1910); GC IV (31 March 1950); Additional Protocol (I) to the 1949 Geneva Conventions (17 February 1982); Additional Protocol (II) to the 1949 Geneva Conventions (17 February 1982); and Statute of the International Criminal Court (12 October 2001). Switzerland is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (11 July 1910).

Nominal Respondent Theresa May

72. Nominal Respondent Theresa May is Prime Minister and represents the United Kingdom as a sovereign and body politic with its principal place of business in the United States at 3100 Massachusetts Avenue, NW, Washington, D.C. 20008. The United Kingdom entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). Additionally, the United Kingdom is a Contracting Power to the HC IV (27 November 1909); GC IV (23 September 1957); Additional Protocol (I) to the 1949 Geneva Conventions (28 January 1998); Additional Protocol (II) to the 1949 Geneva Conventions (28 January 1998); and Statute of the International Criminal Court (4 October 2001). The United Kingdom is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (12 October 1970).

73. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate in Honolulu—T.R. Walker, Vice-Consul. The Hawaiian Kingdom maintained a diplomatic representative accredited to the British Court in London—A. Hoffnung, Chargé d'affaires. The Hawaiian Kingdom also maintained Consulates in London—Manley Hopkins, Consul; Liverpool—Harold Janion, Consul; Bristol—Mark Whitwell, Consul; Hull—W. Moran, Consul; Newcastle on Tyne—E. Biesterfeld, Consul; Falmouth—C.R. Broad, Consul; Dover and the Cinque Ports—Francis William Prescot, Consul; Cardiff and Swansea—H. Goldberg, Consul; Edinburgh and Leith—E.G. Buchanan, Consul; Glasgow—Jas. Dunn, Consul; Dundee—J.G. Zoller, Consul; Dublin—R. Jas. Murphy—Vice Consul; Queenstown—Geo. B. Dawson, Consul; Belfast—W.A. Ross, Consul; Cebu—George E.A. Cadell, Consul.

Nominal Respondent António Guterres

74. Nominal Respondent António Guterres is Secretary-General of the United Nations that is an intergovernmental organization with its principal place of business in the United States at United Nations Secretariat Building, 405 East 42nd Street, New York, N.Y. 10017.

Nominal Respondent Miroslav Lajčák

75. Nominal Respondent Miroslav Lajčák is President of the General Assembly that is an inter-governmental body within the United Nations system with its principle place of business in the United States at UN Headquarters, New York, N.Y. 10017.

Nominal Respondent Nebenzia Vassily Alekseevich

76. Nominal Respondent Nebenzia Vassily Alekseevich is President of the Security Council that is an international body within the United Nations system with its principle place of business in the United States at UN Headquarters, New York, N.Y. 10017.

Nominal Respondent Vojislav Šuc

77. Nominal Respondent Vojislav Šuc is President of the United Nations Human Rights Council that is an inter-governmental body with the United Nations system with its place of business in the United States at OHCHR in New York, UN Headquarters, New York, N.Y. 10017.

Nominal Respondent Stef Blok

78. Nominal Respondent Stef Blok is the Netherlands Minister of Foreign Affairs and Chairman of the Administrative Council of the Permanent Court of Arbitration that is an inter-governmental organization with its place of business in the United States at the Embassy of the Netherlands, 4200 Linnean Drive, NW, Washington, D.C. 20008.

IV. FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED

79. Fundamental to deciphering the Hawaiian situation is to discern between a state of peace and a state of war. This bifurcation provides the proper context by which certain rules of international law would or would not apply. The laws of war—*jus in bello*, otherwise known today as international humanitarian law, are not applicable in a state of peace. Inherent in the rules of *jus in bello* is the co-existence of two legal orders, being that of the occupying state and that of the occupied state. As an occupied state, the continuity of the Hawaiian Kingdom has been maintained for the past 125 years by the positive rules of

international law, notwithstanding the absence of effectiveness, which is required during a state of peace.[22]

80. The failure of the United States to comply with international humanitarian law, for over a century, has created a humanitarian crisis of unimaginable proportions where war crimes have since risen to a level of *jus cogens*—compelling law. At the same time, the obligations have *erga omnes* characteristics—flowing to all states. The international community's failure to intercede, as a matter of *obligatio erga omnes,* is explained by the United States deceptive portrayal of Hawai'i as an incorporated territory. As an international wrongful act, states have an obligation to not "recognize as lawful a situation created by a serious breach … nor render aid or assistance in maintaining that situation,"[23] and states "shall cooperate to bring to an end through lawful means any serious breach [by a state of an obligation arising under a peremptory norm of general international law]."[24]

81. The gravity of the Hawaiian situation has been heightened by North Korea's announcement that "all of its strategic rocket and long range artillery units 'are assigned to strike bases of the U.S. imperialist aggressor troops in the U.S. mainland and on Hawaii," which is an existential threat.[25] The United States crime of aggression since 1893 is in fact *a priori,* and underscores Judge Greenwood's statement, "[c]ountries were either in a state of peace

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[22] James Crawford, *The Creation of States in International Law* 34 (2nd ed., 2007); Krystyna Marek, *Identity and Continuity of States in Public International Law* 102 (2nd ed., 1968).
[23] *Articles of Responsibility of States for Internationally Wrongful Acts, Yearbook of the International Law Commission, 2001,* vol. II, Article 41(2) (Part Two). Text reproduced as it appears in the annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4.
[24] *Id.*, Article 41(1).
[25] Choe Sang-Hun, *North Korea Calls Hawaii and U.S. Mainland Targets*, New York Times (26 March 2013), available at http://www.nytimes.com/2013/03/27/world/asia/north-korea-calls-hawaii-and-us-mainland-targets.html (last visited 16 October 2017). Legally speaking, the armistice agreement of 27 July 1953 did not bring the state of war to an end between North Korea and South Korea because a peace treaty is still pending. The significance of North Korea's declaration of war of March 30, 2013, however, has specifically drawn the Hawaiian Islands into the region of war because it has been targeted as a result of the United States prolonged occupation.

or a state of war; there was no intermediate state."[26] The Hawaiian Kingdom, a neutral and independent state, has been subject to an illegal war with the United States for the past 125 years without a peace treaty, and thus, the United States must begin to comply with the rules of *jus in bello*.

82. The first allegations of war crimes, committed in Hawai'i, being unfair trial, unlawful confinement and pillaging,[27] were made the subject of an arbitral dispute in *Lance Larsen vs. Hawaiian Kingdom* at the Permanent Court of Arbitration ("PCA").[28] Oral hearings were held at the PCA on 7, 8 and 11 December 2000. As an intergovernmental organization, the PCA must possess institutional jurisdiction, before it can form *ad hoc* tribunals, in order to ensure that the dispute is international. The jurisdiction of the PCA is distinguished from the subject-matter jurisdiction of the *ad hoc* tribunal presiding over the dispute between the parties. International disputes, capable of being accepted under the PCA's institutional jurisdiction, include disputes between: any two or more states; a state and an international organization (i.e. an intergovernmental organization); two or more

[26] Christopher Greenwood, "Scope of Application of Humanitarian Law," in Dieter Fleck (ed.), *The Handbook of the International Law of Military Operations* 45 (2nd ed., 2008).
[27] Memorial of Lance Paul Larsen (22 May 2000), *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, at para. 62-64, "Despite Mr. Larsen's efforts to assert his nationality and to protest the prolonged occupation of his nation, [on] 4 October 1999, Mr. Larsen was illegally imprisoned for his refusal to abide by the laws of the State of Hawaii by State of Hawaii. At this point, Mr. Larsen became a political prisoner, imprisoned for standing up for his rights as a Hawaiian subject against the United States of America, the occupying power in the prolonged occupation of the Hawaiian islands.… While in prison, Mr. Larsen did continue to assert his nationality as a Hawaiian subject, and to protest the unlawful imposition of American laws over his person by filing a Writ of Habeus [sic] Corpus with the Circuit Court of the Third Circuit, Hilo Division, State of Hawaii.… Upon release from incarceration, Mr. Larsen was forced to pay additional fines to the State of Hawaii in order to avoid further imprisonment for asserting his rights as a Hawaiian subject," available at http://www.alohaquest.com/arbitration/memorial_larsen.htm. Article 33, 1949 Geneva Convention, IV, "Pillage is prohibited. Reprisals against protected persons and their property are prohibited;" Article 147, 1949 Geneva Convention, IV, "Grave breaches […] shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: …unlawful confinement of a protected person,… wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention;" see also International Criminal Court, *Elements of War Crimes* (2011), at 16 (Article 8 (2) (a) (vi)—War crime of denying a fair trial), 17 (Article 8 (2) (a) (vii)-2—War Crime of unlawful confinement), and 26 (Article 8 (2) (b) (xvi)—War Crime of pillaging).
[28] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, available at https://pca-cpa.org/en/cases/35/ (last visited 16 May 2018).

international organizations; a state and a private party; and an international organization and a private entity.[29] The PCA accepted the case as a dispute between a state and a private party, and acknowledged the Hawaiian Kingdom to be a non-Contracting Power under Article 47 of the HC I.[30] As stated on the PCA's website:

> Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.[31]

A. From a State of Peace to a State of War

83. To quote the *dictum* of the *Larsen v. Hawaiian Kingdom* Tribunal, "in the nineteenth century the Hawaiian Kingdom existed as an independent [s]tate recognized as such by the United States of America, the United Kingdom and various other [s]tates, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[32] As an independent state, the Hawaiian Kingdom entered into extensive treaty relations with a variety of states establishing diplomatic relations and trade agreements.[33] According to

[29] United Nations, *United Nations Conference on Trade and Development: Dispute Settlement* 15 (United Nations, 2003).
[30] PCA Annual Report, Annex 2, 51, n. 2. (2011).
[31] *Larsen v. Hawaiian Kingdom*, Cases, Permanent Court of Arbitration, available at https://pca-cpa.org/en/cases/35/ (last visited 16 May 2018).
[32] *Larsen v. Hawaiian Kingdom,* 119 Int'l L. Reports 566, 581 (2001) (hereafter "Larsen case").
[33] The Hawaiian Kingdom entered into treaties with Austria-Hungary (now separate states), 18 June 1875; Belgium, 4 October 1862; Bremen (succeeded by Germany), 27 March 1854; Denmark, 19 October 1846; France, 8 September 1858; French Tahiti, 24 November 1853; Germany, 25 March 1879; New South Wales (now Australia), 10 March 1874; Hamburg (succeeded by Germany), 8 January 1848); Italy, 22 July 1863; Japan, 19 August 1871, 28 January 1886; Netherlands & Luxembourg, 16 October 1862 (William III was also Grand Duke of Luxembourg); Portugal, 5 May 1882; Russia, 19 June 1869; Samoa, 20 March 1887; Spain, 9 October 1863; Sweden-Norway (now separate states), 5 April 1855; and Switzerland, 20 July 1864; the United Kingdom of Great Britain and Northern

Westlake, in 1894, the *Family of Nations* comprised, "First, all European [s]tates.… Secondly, all American [s]tates.… Thirdly, a few Christian [s]tates in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free [s]tate."[34]

84. To preserve its political independence, should war break out in the Pacific Ocean, the Hawaiian Kingdom sought to ensure that its neutrality would be recognized beforehand. Hence, provisions recognizing Hawaiian neutrality were incorporated in its treaties with Sweden-Norway (1852),[35] Spain (1863)[36] and Germany (1879).[37] "A nation that wishes to secure her own peace," says Vattel, "cannot more successfully attain that object than by concluding treaties [of] neutrality."[38]

85. Under customary international law, in force in the nineteenth century, the territory of a neutral state could not be violated. This principle was codified by Article 1 of the 1907 Hague Convention, V (36 Stat. 2310), stating that the "territory of neutral Powers is

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Ireland) 26 March 1846; and the United States of America, 20 December 1849, 13 January 1875, 11 September 1883, and 6 December 1884.

[34] John Westlake, *Chapters on the Principles of International Law*, 81 (1894). In 1893, there were 44 other independent and sovereign states in the *Family of Nations*: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chili, Colombia, Costa Rica, Denmark, Ecuador, France, Germany, Great Britain, Greece, Guatemala, Hawaiian Kingdom, Haiti, Honduras, Italy, Liberia, Liechtenstein, Luxembourg, Netherlands, Mexico, Monaco, Montenegro, Nicaragua, Orange Free State that was later annexed by Great Britain in 1900, Paraguay, Peru, Portugal, Romania, Russia, San Domingo, San Salvador, Serbia, Spain, Sweden-Norway, Switzerland, Turkey, United States of America, Uruguay, and Venezuela. In 1945, there were 45, and today there are 193.

[35] Article XV states, "All vessels bearing the flag of Sweden and Norway in time of war shall receive every possible protection, short of actual hostility, within the ports and waters of His Majesty the King of the Hawaiian Islands; and His Majesty the King of Sweden and Norway engages to respect in time of war the neutral rights of the Hawaiian Kingdom, and to use his good offices with all other powers, having treaties with His Majesty the King of the Hawaiian Islands, to induce them to adopt the same policy towards the Hawaiian Kingdom." *Available at*: http://hawaiiankingdom.org/pdf/Sweden_Norway_Treaty.pdf (last visited 16 May 2018).

[36] Article XXVI states, "All vessels bearing the flag of Spain shall, in time of war, receive every possible protection, short of active hostility, within the ports and waters of the Hawaiian Islands, and Her Majesty the Queen of Spain engages to respect, in time of war the neutrality of the Hawaiian Islands, and to use her good offices with all the other powers having treaties with the same, to induce them to adopt the same policy toward the said Islands." *Available at*: http://hawaiiankingdom.org/pdf/Spanish_Treaty.pdf (last visited 16 May 2018).

[37] Article VIII states, "All vessels bearing the flag of Germany or Hawaii shall in times of war receive every possible protection, short of actual hostility, within the ports and waters of the two countries, and each of the High Contracting Parties engages to respect under all circumstances the neutral rights of the flag and the dominions of the other." *Available at*: http://hawaiiankingdom.org/pdf/German_Treaty.pdf (last visited 16 May 2018).

[38] Emerich De Vattel, *The Law of Nations* 333 (6th ed., 1844).

inviolable." According to Politis, "[t]he law of neutrality, fashioned as it had been by custom and a closely woven network of contractual agreements, was to a great extent codified by the beginning of the [20th] century."[39] As such, the Hawaiian Kingdom's territory could not be trespassed or dishonored, and its neutrality "constituted a guaranty of independence and peaceful existence."[40]

86. "Traditional international law was based upon a rigid distinction between the state of peace and the state of war," says Judge Greenwood.[41] "Countries were either in a state of peace or a state of war; there was no intermediate state."[42] This distinction is also reflected by the renowned jurist of international law, Lassa Oppenheim, who separated his treatise on *International Law* into two volumes, Vol. I—*Peace* and Vol. II—*War and Neutrality*. In the nineteenth century, war was recognized as lawful if justified under *jus ad bellum*. War could only be waged to redress a state's injury. As Vattel stated, "[w]hatever strikes at [a sovereign state's] rights is an injury, and a just cause of war."[43]

87. The Hawaiian Kingdom enjoyed a state of peace with all states. This state of peace, however, was violently interrupted 16 January 1893 when United States troops invaded the Hawaiian Kingdom. This invasion transformed the state of peace into a state of war. The following day, Queen Lili'uokalani, as the executive monarch of a constitutional government, in response to military action taken against the Hawaiian government, made the following protest and a conditional surrender of her authority to the United States. The Queen's protest stated:

[39] Nicolas Politis, *Neutrality and Peace* 27 (1935).
[40] *Id.*, at 31.
[41] Greenwood, *supra* note 26, at 45.
[42] *Id*.
[43] Vattel, *supra* note 38, at 301.

> I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom.
>
> That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government.
>
> Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.[44]

88. Under international law, the landing of United States troops, without the consent of the Hawaiian government, was an act of war. For an act of war, not to transform the state of affairs to a state of war, that act must be justified or lawful under international law, e.g. the necessity of landing troops to secure the protection of the lives and property of United States citizens in the Hawaiian Kingdom. According to Wright, "[a]n act of war is an invasion of territory … and so normally illegal. Such an act if not followed by war gives grounds for a claim which can be legally avoided only by proof of some special treaty or necessity justifying the act."[45] The quintessential question then is whether or not the United States troops were landed to protect American lives or were they landed to wage war against the Hawaiian Kingdom?

[44] United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95, 586 (1895) (hereafter "Executive Documents").
[45] Quincy Wright, "Changes in the Concept of War," 18 Am. J. Int'l. L. 755, 756 (1924).

89. According to Brownlie, "[t]he right of war, as an aspect of sovereignty, which existed in the period before 1914, subject to the doctrine that war was a means of last resort in the enforcement of legal rights, was very rarely asserted either by statesmen or works of authority without some stereotyped plea to a right of self-preservation, and of self-defense, or to necessity or protection of vital interests, or merely alleged injury to rights or national honour and dignity."[46] The United States had no dispute with the Hawaiian Kingdom, a neutral and independent state, that would have warranted an invasion and overthrow of the Hawaiian government.

90. In 1993, the United States Congress enacted a joint resolution offering an apology for the overthrow.[47] Of significance in the resolution was a particular preamble clause, which stated: "[w]hereas, in a message to Congress on December 18, 1893, President Grover Cleveland reportedly fully and accurately on the illegal acts of the conspirators, described such acts as an 'act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress,' and acknowledged that by such acts the government of a peaceful and friendly people was overthrown."[48] At first read of this preamble, it would appear that the "conspirators" were the subjects that committed the "act of war," but that is misleading because, first, under international law, only a state can commit an "act of war," whether through its military and/or its diplomat; and, second, conspirators within a country can only commit the high crime of treason, not "acts of war." These two concepts are reflected in the terms *coup de main* and *coup d'état*. The former is

[46] Ian Brownlie, *International Law and the Use of Force by States* 41 (1963).
[47] 107 Stat. 1510 (1993).
[48] *Id.,* at 1511.

a surprise invasion by a foreign state's military force, while the latter is a successful internal revolt, which was also referred to in the nineteenth century as a revolution.

91. In a petition to President Cleveland from the Hawaiian Patriotic League dated 27 December 1893, its leadership, comprised of Hawaiian statesmen and lawyers, clearly articulated the difference between a "*coup de main"* and a "revolution." The petition read:

> Last January [1893], a political crime was committed, not only against the legitimate Sovereign of the Hawaiian Kingdom, but also against the whole of the Hawaiian nation, a nation who, for the past sixty years, had enjoyed free and happy constitutional self-government. This was done by a *coup de main* of U.S. Minister Stevens, in collusion with a cabal of conspirators, mainly faithless sons of missionaries and local politicians angered by continuous political defeat, who, as revenge for being a hopeless minority in the country, resolved to "rule or ruin" through foreign help. The facts of this "revolution," as it is improperly called, are now a matter of history.[49]

92. Whether by chance or design, the 1993 Congressional apology resolution did not accurately reflect what President Cleveland stated in his message to the Congress in 1893. This is actually what Cleveland stated to the Congress:

> And so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an *act of war* (emphasis added).[50]

93. As part of this plan, the U.S. diplomat, John Stevens, would prematurely recognize the small group of insurgents on 17 January 1893 as if the insurgents were successful

[49] Executive Documents, *supra* note 44, at 1295. Petition of the Hawaiian Patriotic League also available at http://hawaiiankingdom.org/pdf/HPL_Petition_12_27_1893.pdf (last visited 16 May 2018).
[50] *Id*., at 451. Cleveland's Message available at: http://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf (last visited 16 May 2018).

revolutionaries thereby giving them a veil of *de facto* status. In a private note to Sanford Dole, head of the insurgency, and written under the letterhead of the United States legation on 17 January 1893, Stevens penned, "Judge Dole: I would advise not to make known of my recognition of the de facto Provisional Government until said Government is in possession of the police station."[51] A government created through intervention is a puppet regime of the intervening state, and, as such, has no lawful authority. "Puppet governments," according to Marek, "are organs of the occupant and, as such form part of his legal order. The agreements concluded by them with the occupant are not genuine international agreements [because] such agreements are merely decrees of the occupant disguised as agreements which the occupant in fact concludes with himself. Their measures and laws are those of the occupant."[52]

94. Customary international law recognizes a successful revolution when insurgents secure complete control of all governmental machinery and have the acquiescence of the population. U.S. Secretary of State Foster acknowledged this rule in a dispatch to Stevens on 28 January 1893: "Your course in recognizing an unopposed *de facto* government appears to have been discreet and in accordance with the facts. The rule of this government has uniformly been to recognize and enter into relation with any actual government in full possession of effective power with the assent of the people."[53] According to Lauterpacht, "[s]o long as the revolution has not been successful, and so long as the lawful government … remains within national territory and asserts its authority, it is presumed to represent the

[51] Letter from United States Minister, John L. Stevens, to Sanford B. Dole, 17 January 1893, W. O. Smith Collection, HEA Archives, HMCS, Honolulu, available at http://hmha.missionhouses.org/items/show/889 (last visited 16 May 2018).
[52] Marek, *supra* note 22, at 114.
[53] Executive Documents, *supra* note 44, at 1179.

[s]tate as a whole."[54] With full knowledge of what constituted a successful revolution, Cleveland provided a blistering indictment in his message to the Congress:

> When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety … declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister's recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge.[55]

95. "Premature recognition is a tortious act against the lawful government," explains Lauterpacht, which "is a breach of international law."[56] And according to Stowell, a "foreign state which intervenes in support of [insurgents] commits an act of war against the state to which it belongs, and steps outside the law of nations in time of peace."[57] Furthermore, Stapleton concludes, "[o]f all the principles in the code of international law, the most important—the one which the independent existence of all weaker [s]tates must depend—is this: no [s]tate has a right FORCIBLY to interfere in the internal concerns of another [s]tate."[58]

96. Cleveland then explained to the Congress the egregious effects of war that led to the Queen's conditional surrender to the United States:

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[54] E. Lauterpacht, Recognition in International Law 93 (1947).
[55] Executive Documents, *supra* note 44, at 453.
[56] E. Lauterpacht, *supra* note 54, at 95.
[57] Ellery C. Stowell, *Intervention in International Law* 349, n. 75 (1921).
[58] Augustus Granville Stapleton, *Intervention and Non-Intervention* 6 (1866). It appears that Stapleton uses all capitals in his use of the word 'forcibly' to draw attention to the reader.

> Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal.… In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice.[59]

97. The President's finding that the United States embarked upon a war with the Hawaiian Kingdom, in violation of international law, unequivocally acknowledged that a state of war in fact exists since 16 January 1893. According to Lauterpact, an illegal war is "a war of aggression undertaken by one belligerent side in violation of a basic international obligation prohibiting recourse to war as an instrument of national policy."[60] However, despite the President's admittance that the acts of war were not in compliance with *jus ad bellum*—justifying war—the United States was still obligated to comply with *jus in bello*—the rules of war—when it occupied Hawaiian territory.

98. In the *Hostages Trial* (the case of *Wilhelm List and Others*), the Tribunal rejected the prosecutor's view that, since the German occupation arose out of an unlawful use of force, Germany could not invoke the rules of belligerent occupation. The Tribunal explained:

> The Prosecution advances the contention that since Germany's war against Yugoslavia and Greece were aggressive wars, the German occupant troops were there unlawfully and gained no rights whatever as an occupant.… [W]e accept the statement as true that the wars against Yugoslavia and Greece were in direct violation of the Kellogg-Briand Pact and were therefore criminal in character. But it does not follow that every act by the

[59] Executive Documents, *supra* note 44, at 453.
[60] H. Lauterpacht, "The Limits of the Operation of the Law of War," 30 Brit. Y.B. Int'l L. 206 (1953).

> German occupation forces against person or property is a crime.… At the outset, we desire to point out that international law makes no distinction between a lawful and unlawful occupant in dealing with the respective duties of occupant and population in the occupied territory.[61]

99. As such, the United States remained obligated to comply with the laws of occupation despite it being an illegal war. As the Tribunal further stated, "whatever may be the cause of a war that has broken out, and whether or not the cause be a so-called just cause, the same rules of international law are valid as to what must not be done, [and what] may be done."[62] According to Wright, "[w]ar begins when any state of the world manifests its intention to make war by some overt act, which may take the form of an act of war."[63] In his review of customary international law in the nineteenth century, Brownlie found "that in so far a 'state of war' had any generally accepted meaning it was a situation regarded by one or both parties to a conflict as constituting a 'state of war.'"[64] Thus, Cleveland's determination that by an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown,"[65] means the action was not justified, but a state of war nevertheless ensued.

100. What is significant is that Cleveland referred to the Hawaiian people as "friendly and confiding," not "hostile." This is a clear case of where the United States President admits to an illegal war. According to United States constitutional law, the President is the sole representative of the United States in foreign relations—not the Congress or the courts. In

[61] *USA v. William List et al.* (Case No. 7), Trials of War Criminals before the Nuremburg Military Tribunals (hereafter "Hostages Trial"), Vol. XI, p. 1247 (1950).
[62] *Id*.
[63] Wright, *supra* note 45, at 758.
[64] Brownlie, *supra* note 46, at 38.
[65] Executive Documents, *supra* note 44, at 456.

the words of U.S. Justice Marshall, "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign nations."[66] Therefore, the President's political determination, that by an act of war the government of a friendly and confiding people was unlawfully overthrown, would not have only produced resonance with the members of the Congress, but to the international community as well, and thus the duty of third states to invoke neutrality.

101. Furthermore, in a state of war, the principle of effectiveness, that you would otherwise have during a state of peace, is reversed because of the existence of two legal orders in one and the same territory. Marek explains, "[i]n the first place: of these two legal orders, that of the occupied [s]tate is regular and 'normal,' while that of the occupying power is exceptional and limited. At the same time, the legal order of the occupant is, as has been strictly subject to the principle of effectiveness, while the legal order of the occupied [s]tate continues to exist notwithstanding the absence of effectiveness."[67] Therefore, "[b]elligerent occupation is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned."[68]

102. Cleveland told the Congress that he initiated negotiations with the Queen "to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned."[69] What Cleveland did not know at the time of his message to the Congress was that the Queen, on the very same day in Honolulu, had accepted the conditions for settlement in order to return the state of

[66] 10 Annals of Cong. 613 (1800).
[67] Marek, *supra* note 22, at 102.
[68] *Id*.
[69] Executive Documents, *supra* note 44, at 458.

affairs to a state of peace. The executive mediation began on 13 November 1893 between the Queen and U.S. diplomat Albert Willis and an agreement was reached on 18 December 1893.[70] The President was not aware of this agreement until after he delivered his message.[71] Despite being unaware, President Cleveland's political determination in his message to the Congress was nonetheless conclusive that the United States was in a state of war with the Hawaiian Kingdom and was directly responsible for the unlawful overthrow of the Hawaiian Kingdom government.

103. Once a state of war ensued between the Hawaiian Kingdom and the United States, "the law of peace ceased to apply between them and their relations with one another became subject to the laws of war, while their relations with other states not party to the conflict became governed by the law of neutrality."[72] This outbreak of a state of war between the Hawaiian Kingdom and the United States would "lead to many rules of the ordinary law of peace being superseded…by rules of humanitarian law."[73] A state of war "automatically brings about the full operation of all the rules of war and neutrality."[74] And, according to Venturini, "[i]f an armed conflict occurs, the law of armed conflict must be applied from the beginning until the end, when the law of peace resumes in full effect."[75] "For the laws of war," according to Koman, "continue to apply in the occupied territory even after the

[70] Sai, A Slippery Path, *supra* note 3, at 119-127.
[71] Executive Documents, *supra* note 44, at 1283. In this dispatch to U.S. Diplomat Albert Willis from Secretary of State Gresham on 12 January 1894, he stated, "Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President's decision. The matter now being in the hands of the Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you." The state of war ensued.
[72] Greenwood, *supra* note 26, at 45.
[73] *Id.*, at 46.
[74] Myers S. McDougal and Florentino P. Feliciano, "The Initiation of Coercion: A Multi-temporal Analysis," 52 Am. J. Int'l. L. 241, 247 (1958).
[75] Gabriella Venturini, "The Temporal Scope of Application of the Conventions," in Andrew Clapham, Paola Gaeta, and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* 52 (2015).

achievement of military victory, until either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant."[76]

104. In the *Tadić* case, the International Criminal Tribunal for the former Yugoslavia indicated that the laws of war—international humanitarian law—applies from "the initiation of … armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached."[77] Only by an agreement between the Hawaiian Kingdom and the United States could a state of peace be restored, without which a state of war ensues.[78] An attempt to transform the state of war to a state of peace was made by executive agreement on 18 December 1893. President Cleveland, however, was unable to carry out his duties and obligations under this agreement to restore the situation, that existed before the unlawful landing of American troops, due to political wrangling in the Congress.[79] Hence, the state of war continued.

105. International law distinguishes between a "declaration of war" and a "state of war." According to McNair and Watts, "the absence of a declaration … will not of itself render the ensuing conflict any less a war."[80] In other words, since a state of war is based upon concrete facts of military action, there is no requirement for a formal declaration of war to be made other than providing formal notice of a state's "intention either in relation to

[76] Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* 224 (1996).
[77] ICTY, *Prosecutor v. Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), § 70 (2 October 1995).
[78] Under United States municipal laws, there are two procedures by which an international agreement can bind the United States. The first is by a treaty whose entry into force can only take place after two-thirds of the United States Senate has given its advice and consent under Article II, section 2, Clause 2 of the U.S. Constitution. The second is by way of an executive agreement entered into by the President that does not require ratification by the Senate. *See United States v. Belmont*, 301 U.S. 324, 326 (1937); *United States v. Pink,* 315 U.S. 203, 223 (1942); *American Insurance Association v. Garamendi*, 539 U.S. 396, 415 (2003).
[79] Sai, A Slippery Path, *supra* note 3, at 125-127.
[80] Lord McNair and A.D. Watts, *The Legal Effects of War* 7 (1966).

existing hostilities or as a warning of imminent hostilities."[81] In 1946, a United States Court had to determine whether a naval captain's life insurance policy, which excluded coverage if death came about as a result of war, covered his demise during the Japanese attack of Pearl Harbor on 7 December 1941. It was argued that the United States was not at war at the time of his death because the Congress did not formally declare war against Japan until the following day.

106. The Court denied this argument and explained that "the formal declaration by the Congress on December 8th was not an essential prerequisite to a political determination of the existence of a state of war commencing with the attack on Pearl Harbor."[82] Therefore, the conclusion reached by President Cleveland that by "an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown,"[83] was a "political determination of the existence of a state of war," and that a formal declaration of war by the Congress was not essential. The "political determination" by President Cleveland, regarding the actions taken by the military forces of the United States since 16 January 1893, was the same as the "political determination" by President Roosevelt regarding actions taken by the military forces of Japan on 7 December 1941. Both political determinations of acts of war by these Presidents created a state of war for the United States under international law.

107. Foremost, the overthrow of the Hawaiian government did not affect, in the least, the continuity of the Hawaiian state, being the subject of international law. Wright asserts that

[81] Brownlie, *supra* note 46, at 40.
[82] *New York Life Ins. Co. v. Bennion*, 158 F.2d 260 (C.C.A. 10th, 1946), 41(3) Am. J. Int'l L. 680, 682 (1947).
[83] Executive Documents, *supra* note 44, at 456.

"international law distinguishes between a government and the state it governs."[84] Cohen also posits that "[t]he state must be distinguished from the government. The state, not the government, is the major player, the legal person, in international law."[85] As Judge Crawford explains, "[t]here is a presumption that the [s]tate continues to exist, with its rights and obligations … despite a period in which there is … no effective, government."[86] Crawford further concludes that "[b]elligerent occupation does not affect the continuity of the [s]tate, even where there exists no government claiming to represent the occupied [s]tate."[87]

B. *The Duty of Neutrality by Third States*

108. When the state of peace was transformed to a state of war, all other states were under a duty of neutrality. "Since neutrality is an attitude of impartiality, it excludes such assistance and succour to one of the belligerents as is detrimental to the other, and, further such injuries to the one as benefit the other."[88] The duty of a neutral state, not a party to the conflict, "obliges him, in the first instance, to prevent with the means at his disposal the belligerent concerned from committing such a violation," e.g. to deny recognition of a puppet regime unlawfully created by an act of war.[89]

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[84] Quincy Wright, "The Status of Germany and the Peace Proclamation," 46(2) Am. J. Int'l L. 299, 307 (Apr. 1952).
[85] Sheldon M. Cohen, *Arms and Judgment: Law, Morality, and the Conduct of War in the Twentieth Century* 17 (1989).
[86] Crawford, *supra* note 22, at 34. If one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains.
[87] *Id*. Crawford also stated, the "occupation of Iraq in 2003 illustrated the difference between 'government' and 'State'; when Members of the Security Council, after adopting SC res 1511, 16 October 2003, called for the rapid 'restoration of Iraq's sovereignty', they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restore." *Id*, n. 157.
[88] L. Oppenheim, *International Law*, vol. II—War and Neutrality 401 (3rd ed., 1921).
[89] *Id.*, at 496.

109. Twenty states violated their obligation of neutrality by recognizing the so-called Republic of Hawai‘i and consequently became parties to the war on the side of the United States.[90] These states include: Austria-Hungary (1 January 1895);[91] Belgium (17 October 1894);[92] Brazil (29 September 1894);[93] Chile (26 September 1894);[94] China (22 October 1894);[95] France (31 August 1894);[96] Germany (4 October 1894);[97] Guatemala (30 September 1894);[98] Italy (23 September 1894);[99] Japan (6 April 1897);[100] Mexico (8 August 1894);[101]

[90] Greenwood, *supra* note 26, at 45.
[91] Austria-Hungary's recognition of the Republic of Hawai‘i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-austro-hungary/ (last visited 16 May 2018).
[92] Belgium's recognition of the Republic of Hawai‘i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-belgium/ (last visited 16 May 2018).
[93] Brazil's recognition of the Republic of Hawai‘i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-brazil/ (last visited 16 May 2018).
[94] Chile's recognition of the Republic of Hawai‘i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-chile/ (last visited 16 May 2018).
[95] China's recognition of the Republic of Hawai‘i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-china/ (last visited 16 May 2018).
[96] France's recognition of the Republic of Hawai‘i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-france/ (last visited 16 May 2018).
[97] Germany's recognition of the Republic of Hawai‘i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-germanyprussia/ (last visited May 2018).
[98] Guatemala's recognition of the Republic of Hawai‘i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-guatemala/ (last visited 16 May 2018).
[99] Italy's recognition of the Republic of Hawai‘i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-italy/ (last visited 16 May 2018).
[100] Japan's recognition of the Republic of Hawai‘i, available at https://historymystery.kenconklin.org/2008/05/27/recognition-of-the-republic-of-hawaii-japan/ (last visited 16 May 2018).
[101] Mexico's recognition of the Republic of Hawai‘i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-mexico/ (last visited 16 May 2018).

Netherlands (2 November 1894);[102] Norway-Sweden (17 December 1894);[103] Peru (10 September 1894);[104] Portugal (17 December 1894);[105] Russia (26 August 1894);[106] Spain (26 November 1894);[107] Switzerland (18 September 1894);[108] and the United Kingdom (19 September 1894).[109]

110. "If a neutral [state] neglects this obligation," states Oppenheim, "he himself thereby commits a violation of neutrality, for which he may be made responsible by a belligerent who has suffered through the violation of neutrality committed by the other belligerent and acquiesced in by him."[110] The recognition of the so-called Republic of Hawai'i did not create any legality or lawfulness of the puppet regime, but rather serves as the indisputable evidence that these states' violated their obligation to be neutral during a state of war. Diplomatic recognition of governments occurs during a state of peace and not during a state of war, unless for providing recognition of belligerent status. These recognitions

[102] The Netherlands' recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-netherlands/ (last visited 16 May 2018).
[103] Norway-Sweden's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-swedennorway/ (last visited 16 May 2018).
[104] Peru's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-peru/ (last visited 16 May 2018).
[105] Portugal's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-portugal/ (last visited 16 May 2018).
[106] Russia's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-russia/ (last visited 16 May 2018).
[107] Spain's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-spain/ (last visited 16 May 2018).
[108] Switzerland's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-switzerland/ (last visited 16 May 2018).
[109] The United Kingdom's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-britain/ (last visited 16 May 2018).
[110] Oppenheim, *supra* note 88, at 497.

were not recognizing the Republic as a belligerent in a civil war with the Hawaiian Kingdom, but rather under the false pretense that the republic succeeded in a so-called revolution and therefore was the new government of Hawai‘i during a state of peace.

C. Obligation of the United States to Administer Hawaiian Kingdom laws

111. In the absence of an agreement that would have transformed the state of affairs back to a state of peace, the state of war prevails over what *jus in bello* calls belligerent occupation. Article 41 of the 1880 Institute of International Law's *Manual on the Laws of War on Land* declared that a "territory is regarded as occupied when, as the consequence of invasion by hostile forces, the [s]tate to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading [s]tate is alone in a position to maintain order there." This definition was later codified under Article 42 of the 1899 Hague Convention, II, and then superseded by Article 42 of the HC IV, which provides that "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." Thus, effectiveness is at the core of belligerent occupation.

112. Article 43 of the 1907 HC IV provides that "[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." The "text of Article 43," according to Benvenisti, "was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary

international law."[111] Graber also states, that "nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code."[112] The United States government also recognizes that this principle is customary international law that predates the Hague Conventions.

> The Hague Convention clearly enunciated the principle that the laws applicable in an occupied territory remain in effect during the occupation, subject to change by the military authorities within the limits of the Convention. Article 43: … This declaration of the Hague Convention amounts only to a reaffirmation of the recognized international law prior to that time.[113]

113. The administration of occupied territory is set forth in the Hague Regulations, being Section III of the HC IV. According to Schwarzenberger, "Section III of the Hague Regulations … was declaratory of international customary law."[114] Also, consistent with what was generally considered the international law of occupation, in force at the time of the Spanish-American War, the "military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials."[115] Many other authorities also viewed the Hague Regulations (HC IV) as mere codification of customary international law, which was applicable at the time of the overthrow of the

[111] Eyal Benvenisti, *The International Law of Occupation* 8 (1993).
[112] Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914* 143 (1949).
[113] Opinion on the Legality of the Issuance of AMG (Allied Military Government) Currency in Sicily, Sept. 23, 1943, reprinted in Occupation Currency Transactions: Hearings Before the Committees on Appropriations Armed Services and Banking and Currency, U.S. Senate, 80th Congress, First Session, 73, 75 (Jun. 17-18, 1947).
[114] Georg Schwarzenberger, "The Law of Belligerent Occupation: Basic Issues," 30 Nordisk Tidsskrift Int'l Ret 11 (1960).
[115] Munroe Smith, "Record of Political Events," 13(4) Pol. Sci. Q. 745, 748 (1898).

Hawaiian government and subsequent occupation.[116] Commenting on the occupation of the Hawaiian Kingdom, Dumberry states,

> [T]he 1907 Hague Convention protects the international personality of the occupied [s]tate, even in the absence of effectiveness. Furthermore, the legal order of the occupied [s]tate remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.[117]

114. The hostile army, in this case, included not only United States armed forces, but also its puppet regime that was disguising itself as a "provisional government." As an entity created through intervention, this puppet regime existed as an armed militia that worked in tandem with the United States armed forces under the direction of the U.S. diplomat John Stevens. Furthermore, under the rules of *jus in bello*, the occupant does not possess the sovereignty of the occupied state and therefore cannot compel allegiance.[118] To do so would imply that the occupied state, as the subject of international law and whom allegiance is owed, was cancelled and its territory unilaterally annexed into the territory of the occupying state. International law would allow this under the doctrine of *debellatio*.

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[116] Gerhard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* 95 (1957); David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* 57 (2002); Ludwig von Kohler, *The Administration of the Occupied Territories*, vol. I, 2 (1942); United States Judge Advocate General's School Tex No. 11, *Law of Belligerent Occupation* 2 (1944), (stating that "Section III of the Hague Regulations is in substance a codification of customary law and its principles are binding signatories and non-signatories alike").

[117] Dumberry, *supra* note 3, at 682.

[118] Article 45, 1899 Hague Convention, II, "Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited;" see also Article 45, 1907 Hague Convention, IV, "It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power." On 24 January 1895, the puppet regime calling itself the Republic of Hawai'i coerced Queen Lili'uokalani to abdicate the throne and to sign her allegiance to the regime in order to "save many Royalists from being shot" (William Adam Russ, Jr., *The Hawaiian Republic (1894-98) And Its Struggle to Win Annexation* 71 (1992)). As the rule of *jus in bello* prohibits inhabitants of occupied territory to swear allegiance to the hostile Power, the Queen's oath of allegiance is therefore unlawful and void.

115. *Debellatio* does not apply to the Hawaiian situation because President Cleveland determined that the overthrow of the Hawaiian government was unlawful and, therefore, this determination does not meet the test of *jus ad bellum*. As an illegal war, the doctrine of *debellatio* was precluded from arising. That is to say, *debellatio* is conditioned on a legal war. According to Schwarzenberger, "[i]f, as a result of legal, as distinct from illegal, war, the international personality of one of the belligerents is totally destroyed, victorious Powers may … annex the territory of the defeated [s]tate or hand over portions of it to other [s]tates."[119]

116. After United States troops were removed from Hawaiian territory on 1 April 1893, by order of President Cleveland's special investigator, James Blount, he was not aware that the provisional government was a puppet regime. As such, they remained in full power where, according to the Hawaiian Patriotic League, the "public funds have been outrageously squandered for the maintenance of an unnecessary large army, fed in luxury, and composed *entirely* of aliens, mainly recruited from the most disreputable classes of San Francisco."[120]

117. After the President determined the illegality of the situation and entered into an agreement with Queen Lili'uokalani to reinstate the executive monarch, the puppet regime refused to give up its power. Despite the President's failure to carry out the agreement of reinstatement and to ultimately transform the state of affairs to a state of peace, the Hawaiian situation remained a state of war and the rules of *jus in bello* continued to apply.

118. When the provisional government was formed, through intervention, it only replaced the executive monarch and her cabinet with insurgents calling themselves an executive and

[119] Georg Schwarzenberger, *International Law as applied by International Courts and Tribunals*. Vol. II: The Law of Armed Conflict 167 (1968).
[120] Executive Documents, *supra* note 44, at 1296.

advisory councils. With the oversight of United States troops, all Hawaiian government officials remained in place and were coerced into signing oaths of allegiance to the new regime.[121] This continued when the American puppet changed its name to the so-called Republic of Hawai'i on 4 July 1894 with alien mercenaries replacing American troops.

119. During the Spanish-American War, under the guise of a Congressional joint resolution of annexation, United States armed forces physically reoccupied the Hawaiian Kingdom on 12 August 1898. According to the United States Supreme Court, "[t]hough the [annexation] resolution was passed July 7, [1898] the formal transfer was not made until August 12, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States."[122] Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and "they protested annexation occurring without the consent of the governed."[123]

120. Marek asserts that, "a disguised annexation aimed at destroying the independence of the occupied [s]tate, represents a clear violation of the rule preserving the continuity of the occupied [s]tate."[124] Even the U.S. Department of Justice in 1988, opined, it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint

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[121] *Id.*, at 211, "All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named person: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office. All Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils."

[122] *Territory of Hawai'i v. Mankichi*, 190 U.S. 197, 212 (1903).

[123] Tom Coffman, *Nation Within: The History of the American Occupation of Hawai'i* 322 (2016). Coffman initially published this book in 1998 titled Nation Within: The Story of the American Annexation of the Nation of Hawai'i. Coffman explained, "In the book's subtitle, the word Annexation has been replaced by the word Occupation, referring to America's occupation of Hawai'i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word occupation," at xvi.

[124] Marek, *supra* note 22, at 110.

resolution."[125] Then in 1900, the Congress renamed the Republic of Hawai'i to the Territory of Hawai'i under *An Act To provide a government for the Territory of Hawai'i*."[126]

D. Denationalization through Americanization

121. In 1906, the Territory of Hawai'i intentionally sought to "Americanize" the school children throughout the Hawaiian Islands. To accomplish this, they instituted a policy of denationalization. Under the policy titled "Programme for Patriotic Exercises in the Public Schools," the national language of Hawaiian was banned and replaced with the American language of English.[127] Young students who spoke Hawaiian in school were beaten. One of the leading newspapers for the insurgents, who were now officials in the territorial regime, printed a story on the plan of denationalization. The Hawaiian Gazette reported:

> As a means of *inculcating* patriotism in the schools, the Board of Education [of the territorial government] has agreed upon a plan of patriotic observance to be followed in the celebration of notable days in American history, this plan being a composite drawn from the several submitted by teachers in the department for the consideration of the Board. It will be remembered that at the time of the celebration of the birthday of Benjamin Franklin, an agitation was begun looking to a better observance of these notable national days in the schools, as tending to inculcate patriotism in a school population that needed that kind of teaching, perhaps, more than the mainland children do [emphasis added].[128]

122. It is important here to draw attention to the word "inculcate." As a verb, the term imports force such as to convince, implant, and indoctrinate. Brainwashing is its colloquial term.

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[125] Douglas Kmiec, "Department of Justice, Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea," 12 Op. O.L.C. 238, 262 (1988).
[126] 31 Stat. 141 (1900).
[127] *Programme for Patriotic Exercises in the Public Schools*, Territory of Hawai'i, adopted by the Department of Public (1906), available at http://hawaiiankingdom.org/pdf/1906_Patriotic_Exercises.pdf (last visited 16 May 2018).
[128] *Patriotic Program for School Observance*, Hawaiian Gazette 5 (3 Apr. 1906), available at http://hawaiiankingdom.org/pdf/Patriotic_Program_Article.pdf (last visited 16 May 2018).

When a reporter from the American news magazine, *Harper's Weekly,* visited the Ka'iulani Public School in Honolulu in 1907, he reported:

> At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building.… Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet above their heads.… "Attention!" Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. "Salute!" was the principal's next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: "We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!"[129]

123. Further usurping Hawaiian sovereignty, the Congress, in 1959, renamed the Territory of Hawai'i to the State of Hawai'i under *An Act To provide for the admission of the State of Hawai'i into the Union*.[130] These Congressional laws, which have no extraterritorial effect, did not transform the puppet regime into a military government recognizable under the rules of *jus in bello*. The maintenance of the puppet also stands in direct violation of customary international law in 1893, the 1907 HC IV, and the GC IV. It is also important to note, for the purposes of *jus in bello,* that the United States never made an international claim to the Hawaiian Islands through *debellatio*. Instead, the United States, in 1959, falsely reported to the United Nations Secretary General that "Hawaii has been administered by the United States since 1898. As early as 1900, Congress passed an Organic Act, establishing Hawaii as an incorporated territory in which the Constitution and

[129] William Inglis, *Hawai'i's Lesson to Headstrong California: How the Island Territory has solved the problem of dealing with its four thousand Japanese Public School children*, Harper's Weekly 227 (16 Feb. 1907).
[130] 73 Stat. 4 (1959).

laws of the United States, which were not locally inapplicable, would have full force and effect."[131] This extraterritorial application of American laws is not only in violation of *The Lotus* case principle,[132] but is also prohibited by the rules of *jus in bello*.

124. As an occupying state, the United States was obligated to establish a military government, whose purpose would be to provisionally administer the laws of the occupied state—the Hawaiian Kingdom—until a treaty of peace, or an agreement to terminate the occupation, has been done. "Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory."[133] "By military government," according to Winthrop, "is meant that dominion exercised in war by a belligerent power over territory of the enemy invaded and occupied by him and over the inhabitants thereof." In his dissenting opinion in Ex parte Miligan, U.S. Supreme Court Chief Justice Chase explained:

> There are under the Constitution three kinds of military jurisdiction: one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states or districts occupied by rebels treated as belligerents; and a third to be exercised in time of invasion or insurrection within the limits of the United States, or during a rebellion within the limits of states maintaining adhesion to the National Government, when the public danger requires its exercise. … the second may be distinguished as MILITARY GOVERNMENT, superseding, as far as may be deemed expedient, the local law, and exercised by the military commander under the direction of the President.[134]

125. Hence since 1893, there has been no military government, established by the United States under the rules of *jus in bello,* to administer the laws of the Hawaiian Kingdom as it stood

[131] United Nations, *Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America*, Document no. A/4226, Annex 1, p. 2 (24 September 1959).
[132] *Lotus*, 1927 PCIJ Series A, No. 10, p. 18.
[133] United States Army Field Manual 27-10, sec. 362 (1956).
[134] *Ex parte Miligan*, 71 U.S. 2, 141-142 (1866).

prior to the overthrow. Instead, what occurred was the unlawful seizure of the apparatus of Hawaiian governance, its infrastructure, and its properties—both real and personal. This was a theft of an independent state's self-government.

E. The State of Hawai'i is a Private Armed Force

126. When the United States assumed control of its installed regime, under the new heading of Territory of Hawai'i in 1900, and later the State of Hawai'i in 1959, it surpassed "its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts."[135] The legislation of every state, including the United States by its Congress, are not sources of international law. In *The Lotus* case*,* the Permanent Court of International Justice stated that "[n]ow the first and foremost restriction imposed by international law upon a [s]tate is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another [s]tate."[136] According to Judge Crawford, derogation of this principle will not be presumed.[137]

127. Since Congressional legislation has no extraterritorial effect, it cannot unilaterally establish governments in the territory of a foreign state. According to the U.S. Supreme Court, "[n]either the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law."[138] The Court also concluded that "[t]he laws of no nation can justly

[135] Benvenisti, *supra* note 111, at 19.
[136] *Lotus, supra* note 132.
[137] Crawford, *supra* note 22, at 41.
[138] *United States v. Curtiss Wright Export Corp.,* 299 U.S. 304, 318 (1936).

extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."[139] Therefore, the State of Hawai'i cannot claim to be a government because its only claim to authority derives from Congressional legislation that has no extraterritorial effect. As such, *jus in bello* defines the State of Hawai'i as an organized armed group acting for and on behalf of the United States.[140]

128. "[O]rganized armed groups … are under a command responsible to that party for the conduct of its subordinates."[141] According to Henckaerts and Doswald-Beck, "this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,"[142] and that this "definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status."[143] Article 1 of the 1907 HC IV, provides

> The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: (1) To be commanded by a person responsible for his subordinates; (2) To have a fixed distinctive emblem recognizable at a distance; (3) To carry arms openly; and (4) To conduct their operations in accordance with the laws and customs of war.

129. Since the *Larsen* case and based on the narrative in this petition, defendants, that have appeared before the courts of this armed group, have begun to deny the courts' jurisdiction. In a contemptible attempt to quash this defense, the Supreme Court of the State of Hawai'i

[139] *The Apollon*, 22 U.S. 362, 370 (1824).
[140] Article 1, 1899 Hague Convention, II, and Article 1, 1907 Hague Convention, IV.
[141] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I, 14 (2009).
[142] *Id.*, at 5.
[143] *Id*.

in 2013 responded to a defendant, who "contends that the courts of the State of Hawai'i lacked subject matter jurisdiction over his criminal prosecution because the defense proved the existence of the Hawaiian Kingdom and the illegitimacy of the State of Hawai'i government,[144] with "*whatever may be said regarding the lawfulness" of its origins, "the State of Hawai'i ... is now, a lawful government* [emphasis added]."[145] Unable to rebut the factual evidence being presented by defendants, the highest so-called court of the State of Hawai'i could only resort to power and not legal reason.

130. This opinion of the so-called highest court of the State of Hawai'i has since been continuously invoked by prosecutors (criminal) and plaintiffs (civil) to avoid the undisputed and insurmountable factual and legal conclusions as to the continued existence of the Hawaiian Kingdom, as a subject of international law, and the illegitimacy of the State of Hawai'i government. On this note, Marek explains that an occupier without title or sovereignty "must rely heavily, if not exclusively, on full and complete effectiveness."[146]

131. The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier's military and/or an occupier's armed force, such as the State of Hawai'i, and that the "occupation extends only to the territory where such authority has been established and can be exercised."[147] According to Ferraro, "occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts."[148]

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[144] *State of Hawai'i v. Dennis Kaulia*, 128 Hawai'i 479, 486 (2013).
[145] *Id.*, at 487.
[146] Marek, *supra* note 22, at 102.
[147] 1907 Hague Convention, IV, Article 42.
[148] Tristan Ferraro, "Determining the beginning and end of an occupation under international humanitarian law," 94 (885) Int'l Rev. Red Cross 133, 134 (Spring 2012).

F. The Restoration of the Hawaiian Kingdom Government

132. On 10 December 1995, the Petitioner and Donald A. Lewis, both being Hawaiian subjects, formed a general partnership in compliance with an *Act to Provide for the Registration of Co-partnership Firms* (1880).[149] This partnership was named the Perfect Title Company ("PTC") and functioned as a land title abstracting company.[150] According to Hawaiian law, co-partnerships were required to register their articles of agreement with the Interior Department's Bureau of Conveyances, and for the Minister of the Interior, it was his duty to ensure that co-partnerships maintain their compliance with the statute. However, due to the failure of the United States to administer Hawaiian Kingdom law, there was no government, whether established by the United States President or a restored Hawaiian Kingdom government *de jure*, to ensure the company's compliance to the co-partnership statute.

133. The partners of PTC intended to establish a legitimate co-partnership in accordance with Hawaiian Kingdom law and in order for the title company to exist as a legal co-partnership firm, the Hawaiian Kingdom government had to be reestablished in an acting capacity. An acting official is "not an appointed incumbent, but merely a *locum tenens*, who is performing the duties of an office to which he himself does not claim title."[151] Hawaiian law did not assume that the entire Hawaiian government would be made vacant, and, consequently, the law did not formalize provisions for the reactivation of the government in extraordinary circumstances. Therefore, notwithstanding the prolonged occupation of

[149] A true and correct copy of the act can be accessed online at: http://hawaiiankingdom.org/pdf/1880_Co-Partnership_Act.pdf (last visited 16 May 2018).
[150] A true and correct copy of the PTC's articles of agreement can be accessed online at: http://hawaiiankingdom.org/pdf/PTC_(12.10.1995).pdf (last visited 16 May 2018).
[151] Black's Law Dictionary 26 (1990).

the Hawaiian Kingdom since 17 January 1893, a deliberate course of action was taken to re-activate the Hawaiian government by and through its executive branch, as officers *de facto,* under the common law doctrine of necessity.

134. The Hawaiian Kingdom's 1880 Co-partnership Act requires members of co-partnerships to register their articles of agreement in the Bureau of Conveyances, which is within the Ministry of the Interior. This same Bureau of Conveyances is now under the State of Hawai'i's Department of Land and Natural Resources, which was formerly the Interior Department of the Hawaiian Kingdom. The Minister of the Interior holds a seat of government as a member of the Cabinet Council, together with the other Cabinet Ministers. Article 43 of the 1864 Hawaiian constitution, as amended, provides that, "Each member of the King's Cabinet shall keep an office at the seat of Government, and shall be accountable for the conduct of his deputies and clerks." Necessity dictated that in the absence of any "deputies or clerks" of the Interior department, the partners of a registered co-partnership could assume the duty of the same because of the current state of affairs. Therefore, it was reasonable for the partners of this registered co-partnership to assume the office of the Registrar of the Bureau of Conveyances in the absence of the same; then assume the office of the Minister of Interior in the absence of the same; then assume the office of the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and, finally assume the office constitutionally vested in the Cabinet as a Regency, in accordance with Article 33 of the 1864 Hawaiian constitution, as amended.[152]

[152] A true and correct copy of the 1864 constitution, as amended, can be accessed online at: http://hawaiiankingdom.org/pdf/1864_Constitution.pdf (last visited 16 May 2018).

A regency is a person or body of persons "intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the [monarch]."[153]

135. On 15 December 1995, with the specific intent of assuming the "seat of Government," the partners of PTC formed a second partnership called the Hawaiian Kingdom Trust Company ("HKTC").[154] The partners intended that this registered partnership would serve as a provisional surrogate for the Council of Regency. Therefore, and in light of the ascension process explained in paragraph 134, HKTC would serve, by necessity, as officers *de facto,* in an acting capacity, for the Registrar of the Bureau of Conveyances, the Minister of Interior, the Cabinet Council, and ultimately for the Council of Regency.

136. The purpose of the HKTC was twofold; first, to ensure PTC complies with the co-partnership statute, and, second, to provisionally serve as an acting government of the Hawaiian Kingdom. What became apparent was the impression of a conflict of interest, whereby the duty to comply and the duty to ensure compliance was vested in the same two partners of those two companies. Therefore, in order to avoid this apparent conflict of interest, the partners of both PTC and HKTC, reasoned that an *acting* Regent, having no interests in either company, should be appointed to serve as a *de facto* officer of the Hawaiian government. Since HKTC assumed to represent the interests of the Hawaiian government in an acting capacity, the trustees would make the appointment.

137. The assumption by Hawaiian subjects, through the offices of constitutional authority in government, to the office of Regent, as enumerated under Article 33 of the Hawaiian Constitution, was a *de facto* process born out of necessity. Cooley defines an officer *de*

[153] Black's Law, *supra* note 151, at 1282.
[154] A true and correct copy of the HKTC articles of agreement can be accessed online at: http://hawaiiankingdom.org/pdf/HKTC_(12.15.1995).pdf (last visited 16 May 2018).

facto "to be one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law," but rather "comes in by claim and color of right."[155] In *Carpenter v. Clark*, the Michigan Court stated the "doctrine of a *de facto* officer is said to have originated as a rule of public necessity to prevent public mischief and protect the rights of innocent third parties who may be interested in the acts of an assumed officer apparently clothed with authority and the courts have sometimes gone far with delicate reasoning to sustain the rule where threatened rights of third parties were concerned."[156]

138. In a meeting of the HKTC, it was agreed that the Petitioner would be appointed to serve as *acting* Regent but could not retain an interest in either of the two companies prior to the appointment because of a conflict of interest. In that meeting, it was also decided, and agreed upon, that Nai'a-Ulumaimalu, a Hawaiian subject, would replace the Petitioner as trustee of HKTC and partner of PTC. This plan was to maintain the standing of the two partnerships under the 1880 Co-partnership Act, and not have either partnership lapse into sole-proprietorships. To accomplish this, Petitioner would relinquish, by a deed of conveyance in both companies, his entire one-half (50%) interest to Lewis, after which, Lewis would convey a redistribution of interest to Nai'a-Ulumaimalu, then the former would hold a ninety-nine percent (99%) interest in the two companies and the latter a one percent (1%) interest in the same. In order to have these two transactions take place simultaneously, without affecting the standing of the two partnerships, both deeds of conveyance took place on the same day but did not take effect until the following day, on 28 February 1996.[157]

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[155] Thomas Cooley, *A Treatise on the Law of Taxation* 185 (1876).
[156] *Carpenter v. Clark*, 217 Michigan 63, 71 (1921).
[157] A true and correct copy of Petitioner's deed can be accessed online at: http://hawaiiankingdom.org/pdf/Sai_to_Lewis_Deed.pdf, and a true and correct copy of Nai'a-Ulumaimalu's deed

139. On 1 March 1996, the Trustees of HKTC appointed the Petitioner as *acting* Regent.[158] On the same day, the Petitioner, as *acting* Regent, proclaimed himself, as the successor of the HKTC to the aforementioned covenant of agreement, for carrying out the quieting of all land titles in the Hawaiian Islands.[159] As a *de facto* officer, representing the original warrantor of all lands in fee-simple—the Hawaiian Kingdom government, the *acting* Regent was empowered, to remedy rejected claims to title that have been properly investigated by PTC, in accordance with the aforementioned covenant of agreement.

140. On 15 May 1996, the Trustees conveyed by deed, all of its right, title and interest acquired by thirty-eight deeds of trust, to the Petitioner, then as *acting* Regent, and stipulated that the company would be dissolved in accordance with the provisions of its deed of general partnership on or about 30 June 1996.[160]

141. On 28 February 1997, a Proclamation by the Petitioner, then as *acting* Regent, announcing the restoration of the provisional Hawaiian government, was printed in the Honolulu Sunday Advertiser on 9 March 1997.[161] The international law of occupation allows for an occupied state's government and the military government of an occupying state to co-exist within the same territory. According to Marek, "it is always the legal order of the [s]tate which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the

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can be accessed online at: http://hawaiiankingdom.org/pdf/Nai%E2%80%98a_to_Lewis_Deed.pdf (last visited 16 May 2018).

[158] A true and correct copy of the appointment can be accessed online at: http://hawaiiankingdom.org/pdf/HKTC_Appt_Regent.pdf (last visited 16 May 2018).

[159] A true and correct copy of the proclamation can be accessed online at: http://hawaiiankingdom.org/pdf/Proc_(3.1.1996).pdf (last visited 16 May 2018).

[160] A true and correct copy of the deed can be accessed online at: http://hawaiiankingdom.org/pdf/HKTC_Deed_to_Regent.pdf (last visited 16 May 2018).

[161] A true and correct copy of the proclamation can be accessed online at: http://hawaiiankingdom.org/pdf/Proc_(2.28.1997).pdf (last visited 16 May 2018).

delegation of the [occupying] [s]tate nor any rule of international law other than the one safeguarding the continuity of an occupied [s]tate. The relation between the legal order of the [occupying] [s]tate and that of the occupied [s]tate…is not one of delegation, but of co-existence."[162]

142. Notwithstanding the prolonged occupation of the Hawaiian Kingdom since 17 January 1893, the establishment of an *acting* Regent—an officer *de facto*, was a political act of self-preservation, not revolution, and was grounded upon the legal doctrine of limited necessity. Under British common law, deviations from a [s]tate's constitutional order "can be justified on grounds of necessity."[163] De Smith also states, that "[s]tate necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution."[164] According to Oppenheimer, "a temporary deviation from the wording of the constitution is justifiable if this is necessary to conserve the sovereignty and independence of the country."[165] In *Madzimbamuto v. Lardner-Burke*, Lord Pearce stated that there are certain limitations to the principle of necessity, "namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the [s]tate, and (b) so far as they do not impair the rights of citizens under the lawful…Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign."[166]

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[162] Marek, *supra* note 22, at 91.
[163] Stanley A. de Smith, *Constitutional and Administrative Law* 80 (1986).
[164] *Id*.
[165] F.W. Oppenheimer, "Governments and Authorities in Exile," 36 Am. J. Int'l. L. 568, 581 (1942).
[166] See *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969). See also M*itchell v. Director of Public Prosecution*s, L.R.C. (Const) 35, 88–89 (1986); and *Chandrika Persaud v. Republic of Fiji* (Nov. 16, 2000); and *Mokotso v. HM King Moshoeshoe II*, LRC (Const) 24, 132 (1989).

143. On 7 September 1999, the Petitioner, then as *acting* Regent, commissioned Mr. Peter Umialiloa Sai, a Hawaiian subject, as *acting* Minister of the Interior, and Mrs. Kauʻi P. Goodhue, later to be known as Mrs. Kauʻi P. Sai-Dudoit, a Hawaiian subject, as *acting* Minister of Finance.[167] On 9 September 1999, the Petitioner, then as *acting* Regent, commissione Mr. Gary Victor Dubin, Esquire, a Hawaiian denizen, as *acting* Attorney General.[168]

144. On September 1999, the Petitioner, then as *acting* Regent, the *acting* Minister of Foreign Affairs, the *acting* Minister of Finance, and the *acting* Attorney General, in Privy Council, passed a resolution establishing an *acting* Council of Regency, whereby the *acting* Regent would resume the office of *acting* Minister of the Interior.[169]

145. The *acting* Council of Regency ("Hawaiian government"), serving as the provisional government of the Hawaiian Kingdom, was established *in situ* and not *in exile*. The Hawaiian government was established in accordance with the Hawaiian constitution and the doctrine of necessity to serve in the absence of the executive monarch. By virtue of this process the Hawaiian government is comprised of officers *de facto*. According to U.S. constitutional scholar Thomas Cooley,

> A provisional government is supposed to be a government de facto for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of

[167] A true and correct copy of the Minister of Foreign Affairs' commission can be accessed online at: http://hawaiiankingdom.org/pdf/Umi_Sai_Min_Foreign_Affairs.pdf, and a true and correct copy of the Minister of Finance's commission can be accessed online at: http://hawaiiankingdom.org/pdf/Kaui_Min_of_Finance.pdf (last visited 16 May 2018).
[168] A true and correct copy of the Attorney General's commission can be accessed online at: http://hawaiiankingdom.org/pdf/Dubin_Att_General.pdf (last visited 16 May 2018).
[169] A true and correct copy of the resolution can be accessed online at: http://hawaiiankingdom.org/pdf/Council_of_Regency_Resolution.pdf (last visited 16 May 2018).

> a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity.[170]

146. During the Second World War, like other governments formed during foreign occupations of their territory, the Hawaiian government did not receive its mandate from the Hawaiian citizenry, but rather by virtue of Hawaiian constitutional law, and therefore, it represents the Hawaiian state.[171] As in 2001, Bederman and Hilbert reported in the *American Journal of International Law*,

> At the center of the PCA proceedings was … that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' "unlawful imposition [over him] of [its] municipal laws" through its political subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him.[172]

147. The Tribunal concluded that it did not possess subject matter jurisdiction in the case because of the indispensable third party rule. The Tribunal explained:

> It follows that the Tribunal cannot determine whether the respondent [the Hawaiian Kingdom] has failed to discharge its obligations towards the claimant [Larsen] without ruling on the legality of the acts of the United States of America. Yet that is precisely what the *Monetary Gold* principle precludes the Tribunal from doing. As the International Court of Justice explained in the *East Timor* case, "the Court could not rule on the lawfulness of the conduct of a [s]tate when its judgment would imply an

[170] Thomas M. Cooley, "Grave Obstacles to Hawaiian Annexation," The Forum, 389, 390 (1893).
[171] The policy of the Hawaiian government is threefold: first, exposure of the prolonged occupation; second, ensure that the United States complies with international humanitarian law; and, third, prepare for an effective transition to a de jure government when the occupation ends. The Strategic Plan of the Hawaiian government is available at http://hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf (last visited 16 May 2018).
[172] Bederman & Hibert, *supra* note 3, at 928.

> evaluation of the lawfulness of the conduct of another [s]tate which is not a party to the case."[173]

148. The Tribunal, however, acknowledged that the parties to the arbitration could pursue fact-finding. The Tribunal stated, "[a]t one stage of the proceedings the question was raised whether some of the issues which the parties wished to present might not be dealt with by way of a fact-finding process. In addition to its role as a facilitator of international arbitration and conciliation, the Permanent Court of Arbitration has various procedures for fact-finding, both as between [s]tates and otherwise."[174] The Tribunal noted "that the interstate fact-finding commissions so far held under the auspices of the Permanent Court of Arbitration have not confined themselves to pure questions of fact but have gone on, expressly or by clear implication, to deal with issues of responsibility for those facts."[175] The Tribunal pointed out that "Part III of each of the Hague Conventions of 1899 and 1907 provide for International Commissions of Inquiry. The PCA has also adopted Optional Rules for Fact-finding Commissions of Inquiry."[176]

149. On 19 January 2017, the Hawaiian government and Lance Larsen entered into a Special Agreement to form an international commission of inquiry. As proposed by the Tribunal, both Parties agreed to the rules provided under Part III—*International Commissions of Inquiry* (Articles 9-36), 1907 HC I. According to Article III of the Special Agreement:

> The Commission is requested to determine: *First*, what is the function and role of the Government of the Hawaiian Kingdom in accordance with the basic norms and framework of international humanitarian law; *Second*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Lance Paul Larsen, and, by extension, toward all Hawaiian subjects domiciled in Hawaiian territory and abroad in

[173] Larsen case, *supra* note 32, at 596.
[174] *Id.*, at 597.
[175] *Id*.
[176] *Id.*, at n. 28.

> accordance with the basic norms and framework of international humanitarian law; and, *Third*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Protected Persons who are domiciled in Hawaiian territory and those Protected Persons who are transient in accordance with the basic norms and framework of international humanitarian law.[177]

150. In what appears to be obstruction by the PCA's Secretary General, at the behest of the United States to sabotage the fact-finding proceedings, on 10 November 2017, a complaint was filed by the Hawaiian government with one of the member states of the PCA's Administrative Council at its embassy in The Hague, Netherlands.[178] The name of the state is being kept confidential at its request.

151. Since humanitarian law is a set of rules that seek to limit the effects of war on persons, who are not participating in the armed conflict, such as civilians of an occupied state, the *Larsen* case and the fact-finding proceedings must stem from an actual state of war—a war not in theory but a war in fact. More importantly, the application of the principle of *intertemporal law* is critical to understanding the arbitral dispute between Larsen and the Hawaiian Kingdom. That dispute stemmed from an illegal state of war with the United States that began in 1893. Judge Huber famously stated that "a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled."[179]

[177] Special Agreement (January 19, 2017), available at http://hawaiiankingdom.org/pdf/ICI_Agmt_1_19_17(amended).pdf (last visited 16 May 2018).
[178] A true and correct copy of the complaint can be accessed online at: http://hawaiiankingdom.org/pdf/Hawaiian_Complaint_PCA_Admin_Council.pdf (last visited 16 May 2018).
[179] *Island of Palmas* arbitration case (Netherlands and the United States of America), R.I.A.A., vol. II, 829 (1949).

G. Recognition De Facto of the Restored Hawaiian Government

152. In March of 2000, the United States government, through its Department of State ("State Department"), explicitly recognized the Hawaiian government by exchange of *notes verbales*. This recognition stemmed from *Larsen v. Hawaiian Kingdom* international arbitration proceedings.[180] *Notes verbales* are official communications between governments of states and international organizations.

153. Before the *Larsen* ad hoc tribunal was formed in 9 June 2000, Mr. Tjaco T. van den Hout, Secretary General of the PCA, spoke with the Petitioner over the telephone and recommended that the Hawaiian government provide an invitation to the United States to join in the arbitration. The Hawaiian government consented, which resulted in a conference call meeting on 3 March 2000 in Washington, D.C., between the Petitioner, Larsen's counsel, Mrs. Ninia Parks, and Mr. John Crook from the State Department. The meeting was reduced to a formal note and mailed to Mr. Crook in his capacity as legal adviser to the State Department, and a copy of the note was submitted by the Hawaiian government to the PCA Registry for record that the United States was invited to join in the arbitral proceedings.[181] The note was signed off by the Petitioner as "Acting Minister of Interior and Agent for the Hawaiian Kingdom."

154. Under international law, this note served as an offering instrument that contained the text of the proposal, to wit:

> "[T]he reason for our visit was the offer by the…Hawaiian Kingdom, by consent of the Claimant [Mr. Larsen], by his attorney, Ms. Ninia Parks, for the United States Government to join in the arbitral proceedings presently instituted under the auspices of the Permanent Court of Arbitration at The

[180] Larsen case, *supra* note 173, at 581. The *notes verbales* are part of the arbitral records at the Registry of the Permanent Court of Arbitration.
[181] A true and correct copy of the note can be accessed online at: http://hawaiiankingdom.org/pdf/State_Dpt_Ltr_(3.3.2000).pdf (last visited 16 May 2018).

> Hague, Netherlands. … [T]he State Department should review the package in detail and can get back to the Acting Council of Regency by phone for continued dialogue. I gave you our office's phone number…, of which you acknowledged. I assured you that we did not need an immediate answer, but out of international courtesy the offer is still open, notwithstanding arbitral proceedings already in motion. I also advised you that Secretary-General van den Hout of the Permanent Court of Arbitration was aware of our travel to Washington, D.C. and the offer to join in the arbitration. As I stated in our conversation he requested that the dialogue be reduced to writing and filed with the International Bureau of the Permanent Court of Arbitration for the record, and you acknowledged."

155. Thereafter, the PCA's Deputy Secretary General, Mrs. Phyllis Hamilton, informed the Petitioner, as agent for the Hawaiian government, by telephone, that the United States, through its embassy in The Hague, notified the PCA, by *note verbale*, that the United States would not accept the invitation to join the arbitral proceedings. Instead, the United States, through its embassy in The Hague, requested permission from the Hawaiian government to have access to the pleadings and records of the case. The Hawaiian government consented to this request. Thus, the PCA, represented by Deputy Secretary General Hamilton, served as an intermediary to secure an agreement between the Hawaiian Kingdom and the United States.

> Legally there is no difference between a formal note, a *note verbale* and a memorandum. They are all communications which become legally operative upon the arrival at the addressee. The legal effects depend on the substance of the note, which may relate to any field of international relations.[182]
>
> As a rule, the recipient of a note answers in the same form. However, an acknowledgment of receipt or provisional answer can always be given in the shape of a *note verbale*, even if the initial note was of a formal nature.[183]

[182] Johst Wilmanns, "Note," in 9 *Encyclopedia of Public International Law* 287 (1986).
[183] *Id*.

156. The offer by the Secretary General to have the Hawaiian government provide the United States an invitation to join in the arbitral proceedings, and the Hawaiian government's acceptance of this offer, constitutes an international agreement by exchange of *notes verbales* between the PCA and the Hawaiian Kingdom. "[T]he growth of international organizations and the recognition of their legal personality has resulted in agreements being concluded by an exchange of notes between such organizations and states."[184] The United States' request to have access of the arbitral records, in lieu of declining the invitation to join in the arbitration, and the Hawaiian government's consent to that request constitutes an international agreement by exchange of *notes verbales*. According to Corten & Klein, "the exchange of two *notes verbales* constituting an agreement satisfies the definition of the term 'treaty' as provided by Article 2(1)(a) of the Vienna Convention."[185] Altogether, the exchange of *notes verbales* on this subject matter, between the Hawaiian Kingdom, the PCA, and the United States of America, constitutes a multilateral treaty of the *de facto* recognition of the restored Hawaiian government.

157. Moreover, the United States has entered into other treaties by exchange of *notes verbales*. In 1946, the United States and Italy entered into a treaty by exchange of *notes verbales* at Rome regarding an *Agreement relating to internment of American military personnel in Italy*.[186] In 1949, the United States and Italy entered into another treaty by exchange of *notes verbales* at Rome regarding an *Agreement between the United States of America and*

[184] J.L. Weinstein, "Exchange of Notes," 20 Brit. Y.B. Int'l L. 205, 207 (1952).
[185] *The Vienna Conventions on the Law of Treaties, A Commentary*, Vol. I, Corten & Klein, eds. (2011), p. 261.
[186] 61 Stat. 3750.

Italy, interpreting the agreement of August 14, 1947, respecting financial and economic relations.[187] Both of these bi-lateral treaties remain in force as of 1 January 2017.[188]

158. Since the United States' *de facto* recognition, the following states and an international organization have also provided *de facto* recognition of the Hawaiian government. On 12 December 2000, Rwanda recognized the Hawaiian government. This recognition occurred in a meeting in Brussels, called by His Excellency Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium, with the Petitioner, the Minister of Foreign Affairs, His Excellency Mr. Peter Umialiloa Sai, and the Minister of Finance, Her Excellency Mrs. Kauʻi Sai-Dudoit.[189]

159. On 5 July 2001, China, as President of the United Nations Security Council, recognized the Hawaiian government when China accepted the Hawaiian government's complaint submitted by the Petitioner, as agent for the Hawaiian Kingdom, in accordance with Article 35(2) of the United Nations Charter. Article 35(2) provides that a "[s]tate which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purpose of the dispute, the obligations of pacific settlement provided in the present Charter."[190]

160. By exchange of *notes*, through email, Cuba also recognized the Hawaiian government when on 10 November 2017, the Cuban government received the Petitioner at the Cuban embassy in The Hague, Netherlands.[191] Also, by exchange of *notes*, through email, the

[187] 63 Stat. 2415.
[188] United States Department of State, *Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 2017*, 218.
[189] Sai, A Slippery Path, *supra* note 3, at 130-131.
[190] Sai, American Occupation of the Hawaiian State, *supra* note 3, at 74.
[191] A true and correct copy of the notes can be accessed online at: http://hawaiiankingdom.org/pdf/Cuban_Embassy_Corresp.pdf (last visited 16 May 2018).

Universal Postal Union in Bern, Switzerland, recognized the Hawaiian government.[192] The Universal Postal Union is a specialized agency of the United Nations. The Hawaiian Kingdom has been a member state of the Universal Postal Union since January 1, 1882.

V. COMMISSION OF ALLEGED WAR CRIMES IN THE HAWAIIAN KINGDOM

161. The Rome Statute of the International Criminal Court defines war crimes as "serious violations of the laws and customs applicable in international armed conflict."[193] The United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in armed conflicts that involve United States troops, to be "the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime."[194] In the *Larsen* case, the alleged war crimes included deliberate acts as well as omissions. The latter include the failure to administer the laws of the occupied state (Article 43, 1907 HC IV), while the former were actions denying a fair and regular trial, unlawful confinement (Article 147, 1949 GC IV), and pillaging (Article 47, 1907 HC IV, and Article 33, 1907 GC IV).

162. International case law indicates that there must be a mental element of intent for the prosecution of war crimes, whereby a war crime must be committed willfully, either intentionally—*dolus directus*, or recklessly—*dolus eventualis*. According to Article 30(1) of the Rome Statute, an alleged war criminal is "criminally responsible and liable for punishment … only if the material elements [of the war crime] are committed with intent and knowledge." Therefore, prosecution of the responsible person(s) must contain a mental

[192] A true and correct copy of the notes can be accessed online at: http://hawaiiankingdom.org/pdf/UPU_Communication.pdf (last visited 16 May 2018).
[193] International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).
[194] U.S. Army Field Manual 27-10, sec. 499 (July 1956).

element that includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that "a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events." Furthermore, the International Criminal Court's *Elements of a War Crime*, states that "[t]here is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict."[195]

163. Is there a particular time or event that would serve as the definitive point of knowledge for purposes of prosecution? In other words, where can there be "awareness that a circumstance exists or a consequence will occur in the ordinary course of events" stemming from the illegality of the overthrow of the Hawaiian government on 17 January 1893? For the United States and other foreign governments in existence in 1893, that definitive point is 18 December 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian government.

164. For the private sector and for foreign governments that were not in existence in 1893, the United States' 1993 apology for the illegal overthrow of the Hawaiian government is that definitive point of knowledge. The Congressional joint resolution, enacted into United States law, specifically states that the Congress "on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai'i on 17 January 1893 acknowledges the historical significance of this event."[196] Additionally, the Congress urged "the President of

[195] ICC Elements of War Crimes, *supra* note 193, at Article 8.
[196] 107 Stat. 1513.

the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai‘i."[197]

165. Despite the mistake of facts and law riddled throughout the apology resolution, it still serves as a specific point of knowledge. Evidence that the United States knew of the ramifications of this knowledge was clearly displayed in the apology law's disclaimer, "[n]othing in this Joint Resolution is intended to serve as a settlement of any claims against the United States."[198] It is presumed that everyone knows the law. This stems from the legal maxim *ignorantia legis neminem excusat*—ignorance of the law excuses no one. Unlike the United States government, being a public body, the State of Hawai‘i cannot claim to be a government at all, and is therefore a private organization. Therefore, awareness and knowledge for members of the State of Hawai‘i would have began with the enactment of the apology resolution in 1993.

166. Moreover, international law today criminalizes an unjust war as a "crime of aggression." Under Article 8 *bis* of the Rome Statute, a war is criminal if a state aggressively utilizes its military force "against the sovereignty, territorial integrity or political independence of another [s]tate."[199] There is no doubt that the American invasion and overthrow of the government of a "friendly and confiding people" was an aggressive war waged with malicious intent that violated the Hawaiian Kingdom's right of self-determination—duty of non-intervention, its territorial integrity and its political independence.

167. The installation of the puppet regime also violated the rights of the Hawaiian people. According to the Hawaiian Patriotic League, the installed puppet in 1893, together with

[197] *Id.*
[198] *Id*., at 1514.
[199] Rome Statute, art. 8 *bis* (2).

their organs, "have repeatedly threatened murder, violence, and deportation against all those not in sympathy with the present state of things, and the police being in their control, intimidation is a common weapon, under various forms, even that of nocturnal searches in the residences of peaceful citizens."[200] These criminal acts would not have occurred if the United States complied with the law of occupation.

168. In a similar fashion to the Hawaiian situation, Germany violated international law when it occupied Croatia during the Second World War and established a puppet regime to serve as its surrogate. On this matter, the Nuremberg Tribunal, in the *Hostages Trial*, pronounced:

> Other than the rights of occupation conferred by international law, no lawful authority could be exercised by the Germans. Hence, they had no legal right to create an independent sovereign state during the progress of the war. They could set up such a provisional [military] government as was necessary to accomplish the purposes of the occupation but further than that they could not legally go. We are of the view that Croatia was at all times here involved an occupied country and that all acts performed by it were those for which [Germany] the occupying power was responsible.[201]

A. War Crimes: 1907 Hague Convention, IV

Article 43—The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

169. The United States failed in its duty to administer the laws of the Hawaiian Kingdom as it stood prior to the unlawful overthrow of the Hawaiian Kingdom government on 17 January 1893. Instead, through its puppet regime, the United States unlawfully maintained the

[200] Executive Documents, *supra* note 44, at 1297.
[201] Hostages Trial, *supra* note 61, at 1302.

continued presence and administration of law it established through intervention. The puppet regime was originally called the provisional government, which was later changed in name only to the Republic of Hawai‘i on 4 July 1894. The provisional government was neither a government *de facto* nor *de jure*, but self-proclaimed as concluded by President Cleveland in his message to the Congress on 18 December 1893, and the Republic of Hawai‘i was acknowledged as *self-declared* by the Congress in a joint resolution apologizing on the one hundredth anniversary of the illegal overthrow of the Hawaiian Kingdom government on 23 November 1993.

170. Since 30 April 1900, the United States had imposed its national laws over the territory of the Hawaiian Kingdom in violation of international law and the laws of occupation. By virtue of congressional legislation, the so-called Republic of Hawai‘i was subsumed. Through *An Act to provide a government for the Territory of Hawai‘i*, "the phrase 'laws of Hawaii,' as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii in force on the twelfth day of August, eighteen hundred and ninety-eight."[202] When the Territory of Hawai‘i was succeeded by the State of Hawai‘i on 18 March 1959 through United States legislation, the Congressional Act provided that all "laws in force in the Territory of Hawaii at the time of admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii."[203] Furthermore:

> [T]he term "Territorial law" includes (in addition to laws enacted by the Territorial Legislature of Hawaii) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the

[202] 31 Stat. 141.
[203] 73 Stat. 11.

> Congress to provide for the government of Hawaii prior to its admission into the Union, and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Hawaii at the time of its admission into the Union, (2) are not "Territorial laws" as defined in this paragraph, and (3) are not in conflict with any other provision of this Act.[204]

171. In addition, Article 43 does not transfer sovereignty to the occupying power.[205] Section 358, United States Army Field Manual 27-10, declares, "[b]eing an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty." Sassòli further elaborates, "The occupant may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation."[206]

172. Hence, the United States' failure to comply with the 1893 executive agreements to reinstate the Queen and her cabinet, and its failure to comply with the law of occupation to administer Hawaiian Kingdom law, as it stood prior to the unlawful overthrow of the Hawaiian government on 17 January 1893, rendered all administrative and legislative acts of the provisional government, the Republic of Hawai'i, the Territory of Hawai'i and currently the State of Hawai'i illegal and void because these acts stem from governments that are neither *de facto* nor *de jure*, but self-declared. As the United States is a government that is both *de facto* and *de jure*, its legislation has no extraterritorial effect except under

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[204] *Id*.
[205] Benvenisti, *supra* note 111, at 8; von Glahn, *supra* note 116, at 95; Michael Bothe, "Occupation, Belligerent," in Rudolf Bernhardt (dir.), *Encyclopedia of Public International Law,* vol. 3, 765 (1997).
[206] Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, International Humanitarian Law Research Initiative 5 (2004), available at: http://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf (last visited 16 May 2018).

the principles of active and passive personality jurisdiction. In particular, this fact has rendered all conveyances of real property and mortgages to be defective since 17 January 1893, because of the absence of a competent notary public under Hawaiian Kingdom law. Since 17 January 1893, all notaries public stemmed from unlawful entities.

Article 45—It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the [Occupying] Power.

173. When the provisional government was established through the support and protection of U.S. troops on 17 January 1893, it proclaimed that it would provisionally "exist until terms of union with the United States of America have been negotiated and agreed upon."[207] The provisional government was not a new government, but rather a small group of insurgents installed through intervention. With the backing of U.S. troops these insurgents further proclaimed, "[a]ll officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named persons: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office."[208] All government officials were coerced and forced to sign oaths of allegiance,

> I ____, aged ___, a native of _____, residing at _____, in said district, do solemnly swear, in the presence of Almighty God, that I will support and bear true allegiance to the Provisional Government of the Hawaiian Islands, and faithfully perform the duties appertaining to the office or employment of ____.[209]

[207] Executive Documents, *supra* note 44, at 210.
[208] *Id*., at 211.
[209] *Id.,* at 1076.

174. The compelling of inhabitants, serving in the Hawaiian Kingdom government, to swear allegiance to the occupying power, through its puppet regime, began on 17 January 1893, with oversight by United States troops, until 1 April 1893, when the troops were ordered to depart Hawaiian territory by U.S. Special Commissioner, James Blount, who had begun the presidential investigation into the overthrow. When Special Commissioner Blount arrived in the Hawaiian Kingdom on 29 March 1893, he reported to U.S. Secretary of State Walter Gresham, "[t]he troops from the *Boston* were doing military duty for the Provisional Government. The American flag was floating over the government building. Within it the Provisional Government conducted its business under an American protectorate, to be continued, according to the avowed purpose of the American minister, during negotiations with the United States for annexation."[210]

175. As a result of the deliberate failure of the United States to carry out the 1893 *executive agreements* to reinstate the Queen and her cabinet of officers, and with the employment of American mercenaries, the insurgents were allowed to maintain their unlawful control of the government. The provisional government was renamed the Republic of Hawai‘i on 4 July 1894. In 1900, the Republic was renamed the Territory of Hawai‘i. The United States then directly compelled the inhabitants of the Hawaiian Kingdom to swear allegiance to the United States when serving in the so-called Territory of Hawai‘i and, beginning in 1959, allegiance to the State of Hawai‘i. All this was in direct violation of Article 45 of the HC IV.

176. Section 19 of the Territorial Act provides, "every member of the legislature, and all officers of the government of the Territory of Hawaii, shall take the following oath: I do solemnly

[210] *Id*., at 568.

swear (or affirm), in the presence of Almighty God, that I will faithfully support the Constitution and laws of the United States, and conscientiously and impartially discharge my duties as a member of the legislature, or as an officer of the government of the Territory of Hawaii."[211] Section 4, Article XVI of the State of Hawai'i constitution provides, "All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: 'I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as … to best of my ability.'"

Article 46—Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.

177. Beginning on 20 July 1899, President McKinley began to set aside portions of lands by executive orders for "installation of shore batteries and the construction of forts and barracks."[212] The first executive order set aside 15,000 acres for two Army military posts on the Island of O'ahu called Schofield Barracks and Fort Shafter. This soon followed the securing of lands for Pearl Harbor naval base in 1901 when the U.S. Congress appropriated funds for condemnation of seven hundred nineteen (719) acres of private lands surrounding Pearl River, which later came to be known as Pearl Harbor.[213] By 2012, the U.S. military

[211] 31 Stat. 145.
[212] Robert H. Horwitz, Judith B. Finn, Louis A. Vargha, and James W. Ceaser, *Public Land Policy in Hawai'i: An Historical Analysis*, 20 (State of Hawai'i Legislative Reference Bureau Report No. 5, 1969).
[213] John D. VanBrackle, Pearl Harbor from the First Mention of 'Pearl Lochs' to Its Present Day Usage, 21-26 (undated manuscript on file in Hawaiian-Pacific Collection, Hamilton Library, University of Hawai'i at Manoa).

has one hundred eighteen (118) military sites that span 230,929 acres of the Hawaiian Islands. [214]

Article 47—Pillage is formally forbidden.

178. Since 17 January 1893, there has been no lawful government exercising its authority in the Hawaiian Islands, *e.g.* provisional government (1893-1894), Republic of Hawai‘i (1894-1900), Territory of Hawai‘i (1900-1959) and the State of Hawai‘i (1959-present). As these entities were neither governments *de facto* nor *de jure*, but self-proclaimed, and their collection of tax revenues and non-tax revenues, *e.g.* rent and purchases derived from real estate, were not for the benefit of a *bona fide* government in the exercise of its police power, these collections can only be considered as benefitting private individuals who are employed by the State of Hawai‘i.

179. Pillage or plunder is "the forcible taking of private property by an invading or conquering army," [215] which, according to the Elements of Crimes of the International Criminal Court, must be seized "for private or personal use."[216] As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.[217] The residents of the Hawaiians Islands have been the subject of pillaging and plundering since the establishment of the provisional government by the United States on 17 January 1893 and continues to date by its successor, the State of Hawai‘i.

[214] U.S. Department of Defense's Base Structure Report (2012), available at: http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf (last visited 16 May 2018).
[215] Black's Law, *supra* note 151, at 1148.
[216] ICC Elements of War Crimes, *supra* note 193, at Article 8(2)(b)(xvi) and (e)(v)).
[217] Henckaerts & Doswald-Beck, *supra* note 141, at 185.

Article 48—If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

180. Unlike the State of Hawai‘i that claims to be a public entity, but in reality is private, the United States government is a public entity, but its exercising of authority in the Hawaiian Islands, in violation of international laws, is unlawful. Therefore, the United States cannot be construed to have committed the act of pillaging since it is a public entity, but it has appropriated private property through unlawful contributions, *e.g.* federal taxation, which is regulated by Article 48. And Article 49 provides, "If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question." Thus, the United States collection of federal taxes from the residents of the Hawaiian Islands is an unlawful contribution that is exacted for the sole purpose of supporting the United States federal government and not for "the needs of the army or of the administration of the territory."

Article 55—The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

181. With the backing of United States troops, the provisional government unlawfully seized control of all government property, both real and personal. In 1894, the provisional government's successor, the so-called Republic of Hawai‘i, seized the private property of Her Majesty Queen Lili‘uokalani, which was called Crown lands, and they called it public

lands. According to Hawaiian Kingdom law, the Crown lands were distinct from the public lands of the Hawaiian government since 1848. Crown lands comprised roughly 1 million acres, and the government lands comprised roughly 1.5 million acres. The total acreage of the Hawaiian Islands comprised 4 million acres.

182. In a case before the Hawaiian Kingdom Supreme Court in 1864 that centered on Crown lands, the Court stated:

> In our opinion, while it was clearly the intention of Kamehameha III to protect the lands which he reserved to himself out of the domain which had been acquired by his family through the prowess and skill of his father, the conqueror, from the danger of being treated as public domain or Government property, it was also his intention to provide that those lands should descend to his heirs and successors, the future wearers of the crown which the conqueror had won; and we understand the act of 7th June, 1848, as having secured both those objects. Under that act the lands descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property, in like manner as was done by Kamehameha III.[218]

183. In 1898, the United States seized control of all these lands and other property of the Hawaiian Kingdom government as evidenced by the joint resolution of annexation. The resolution stated, that the United States has acquired "the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining."[219]

[218] *Estate of His Majesty Kamehameha IV*, 3 Haw. 715, 725 (1864).
[219] 30 Stat. 750.

Article 56—The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

184. In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i*,[220] and shortly thereafter, intentionally sought to "Americanize" the inhabitants of the Hawaiian Kingdom politically, culturally, socially, and economically. To accomplish this, a plan was instituted in 1906 by the Territorial government, titled "Programme for Patriotic Exercises in the Public Schools, Adopted by the Department of Public Instruction."

185. The policy of this program was to denationalize the children of the Hawaiian Islands on a massive scale, which included forbidding the children from speaking the Hawaiian national language, and allowing only English to be spoken. Its intent was to obliterate any memory of the national character of the Hawaiian Kingdom that the children may have had and replace this, through inculcation, with American patriotism. "Usurpation of sovereignty during military occupation" and "attempts to denationalize the inhabitants of occupied territory" was recognized as international crimes since 1919.[221]

186. At the close of the Second World War, the United Nations War Commission's Committee III was asked to provide a report on war crime charges against four Italians accused of denationalization in the occupied state of Yugoslavia. The charge stated that, "the Italians started a policy, on a vast scale, of denationalization. As a part of such policy, they started a system of 're-education' of Yugoslav children. This re-education consisted of forbidding

[220] 31 Stat. 141.
[221] Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, "Report Presented to the Preliminary Peace Conference," March 29, 1919, 14 Am. J. Int'l L. 95 (1920).

children to use the Serbo-Croat language, to sing Yugoslav songs and forcing them to salute in a fascist way."[222] The question before Committee III was whether or not "denationalization" constituted a war crime that called for prosecution or merely a violation of international law. In concluding that denationalization is a war crime, the Committee reported:

> It is the duty of belligerent occupants to respect, unless absolutely prevented, the laws in force in the country (Art. 43 of the Hague Regulations). Inter alia, family honour and rights and individual life must be respected (Art. 46). The right of a child to be educated in his own native language falls certainly within the rights protected by Article 46 ('individual life'). Under Art. 56, the property of institutions dedicated to education is privileged. If the Hague Regulations afford particular protection to school buildings, it is certainly not too much to say that they thereby also imply protection for what is going to be done within those protected buildings. It would certainly be a mistaken interpretation of the Hague Regulations to suppose that while the use of Yugoslav school buildings for Yugoslav children is safe-guarded, it should be left to the unfettered discretion of the occupant to replace Yugoslav education by Italian education.[223]

187. Denationalization through Germanization also took place during the Second World War. According to Nicholas,

> Within weeks of the fall of France, Alsace-Lorraine was annexed and thousands of citizens deemed too loyal to France, not to mention all its "alien-race" Jews and North African residents, were unceremoniously deported to Vichy France, the southeastern section of the country still under French control. This was done in the now all too familiar manner: the deportees were given half an hour to pack and were deprived of most of their assets. By the end of July 1940, Alsace and Lorraine had become Reich provinces. The French administration was replaced and the French language totally prohibited in the schools. By 1941, the wearing of berets had been

[222] E. Schwelb, Note on the Criminality of "Attempts to Denationalize the Inhabitants of Occupied Territory" (Appendix to Doc, C, 1. No. XII) – Question Referred to Committee III by Committee I, United Nations War Crime Commission, Doc. III/15, 1 (September 10, 1945), available at: http://hawaiiankingdom.org/pdf/Committee_III_Report_on_Denationalization.pdf. (last visited 16 May 2018).
[223] *Id*., at 6.

> forbidden, children had to sing "Deutschland über Alles" instead of "La Marseillaise" at school, and racial screening was in full swing.[224]

188. Under the heading "Germanization of Occupied Territories," Count III (j) of the Nuremburg Indictment, it provides:

> In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported *de jure* annexation and enforced conscription into the German Armed Forces. This was carried out in most of the occupied countries including: Norway, France […] Luxembourg, the Soviet Union, Denmark, Belgium, and Holland.[225]

B. War Crimes: 1949 Geneva Convention, IV

Article 64—The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention

189. The failure of the United States to administer the laws of the Hawaiian Kingdom has caused extrajudicial proceedings that have led to unlawful confinements, sentencing and executions.

[224] Lynn H. Nicholas, *Cruel World: The Children of Europe in the Nazi Web* 277 (2005).
[225] Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, p. 27, 63 (Nuremberg, Germany, 1947).

Article 147—Extensive […] appropriation of property, not justified by military necessity and carried out unlawfully and wantonly

190. In 2013, the United States Internal Revenue Service ("IRS") illegally appropriated $7.1 million dollars from the residents of the Hawaiian Islands.[226] During this same year, the State of Hawai'i additionally appropriated $6.5 billion dollars illegally.[227] The IRS is an agency of the United States and cannot appropriate money from the inhabitants of an occupied state without violating international law. The State of Hawai'i is a political subdivision of the United States, established by an Act of Congress in 1959, and being an entity without any extraterritorial effect, so it is precluded from appropriating money from the inhabitants of an occupied state without violating the international laws of occupation.

191. According to the laws of the Hawaiian Kingdom, taxes upon the inhabitants of the Hawaiian Islands include: an annual poll tax of $1 dollar to be paid by every male inhabitant between the ages of seventeen and sixty years; an annual tax of $2 dollars for the support of public schools to be paid by every male inhabitant between the ages of twenty and sixty years; an annual tax of $1 dollar for every dog owned; an annual road tax of $2 dollars to be paid by every male inhabitant between the ages of seventeen and fifty; and an annual tax of ¾ of 1% upon the value of both real and personal property.[228]

192. The *Merchant Marine Act* of 5 June 1920,[229] hereinafter referred to as the *Jones Act,* is a restraint of trade and commerce and is also a violation of international law and treaties

[226] IRS, *Gross Collections, by Type of Tax and State and Fiscal Year, 1998-2012*, available at: http://www.irs.gov/uac/SOI-Tax-Stats-Gross-Collections,-by-Type-of-Tax-and-State,-Fiscal-Year-IRS-Data-Book-Table-5 (last visited 16 May 2018).
[227] State of Hawai'i Department of Taxation Annual Reports (2013), available at: http://files.hawaii.gov/tax/stats/stats/annual/13annrpt.pdf (last visited 16 May 2018).
[228] Civil Code of the Hawaiian Islands, *To Consolidate and Amend the Law Relating to Internal Taxes* (Act of 1882), 117-120, available at: http://www.hawaiiankingdom.org/civilcode/pdf/CL_Title_2.pdf (last visited 16 May 2018).
[229] 41 Stat. 988.

between the Hawaiian Kingdom and other foreign states. According to the *Jones Act*, all goods, which includes tourists on cruise ships, whether originating from Hawai‘i or being shipped to Hawai‘i, must be shipped on vessels built in the United States that are wholly owned and crewed by United States citizens. Should a foreign flag ship attempt to unload foreign goods and merchandise in the Hawaiian Islands, the person transporting the merchandise would have to forfeit its cargo to the U.S. Government, or forfeit an amount equal to the value of the merchandise, or the cost of transportation.

193. As a result of the *Jones Act,* there is no free trade in the Hawaiian Islands. Ninety percent of Hawai‘i’s food is imported from the United States, which has created a dependency on outside food. The three major American ship carriers for the Hawaiian Islands are Matson, Horizon Lines, and Pasha Hawai‘i Transport Services, as well as several low cost barge alternatives. Under the *Jones Act*, these American carriers travel 2,400 miles to ports on the west coast of the United States in order to reload goods and merchandise, delivered from Pacific countries on foreign carriers, which would have otherwise come directly to Hawai‘i ports. The cost of fuel and the lack of competition drive up the cost of shipping and contributes to Hawai‘i’s high cost of living, and according to the USDA Food Cost, Hawai‘i residents in January 2012 paid an extra $417 per month for food on a thrifty plan than families who are on a thrifty plan in the United States.[230] Therefore, appropriating monies directly through taxation and appropriating monies indirectly as a result of the *Jones Act* to benefit American ship carriers and businesses are war crimes.

[230] United States Department of Agriculture Center for Nutrition Policy and Promotion, *Cost of Food at Home*, available at: http://www.cnpp.usda.gov/USDAFoodCost-Home.htm#AK%20and%20HI (last visited 16 May 2018).

Article 147—Compelling a […] protected person to serve in the forces of an [Occupying] Power

194. The United States Selective Service System is an agency of the United States government that maintains information on those potentially subject to military conscription. Under the *Military Selective Service Act*, "it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder."[231] Conscription of the inhabitants of the Hawaiian Kingdom, unlawfully inducted into the United States Armed Forces through the Selective Service System, occurred during World War I (September 1917-November 1918), World War II (November 1940-October 1946), Korean War (June 1950-June 1953), and the Vietnam War (August 1964-February 1973).

195. Although induction into the United States Armed Forces has not taken place since February 1973, the requirements to have residents of the Hawaiian Island, who reach the age of 18, to register with the Selective Service System for possible induction, is a war crime.

Article 147—Willfully depriving a […] protected person of the rights of fair and regular trial

196. Since 17 January 1893, there have been no lawfully constituted courts in the Hawaiian Islands whether it be Hawaiian Kingdom courts or military commissions established by order of the Commander of the United States Indo-Pacific Command in conformity with the HC IV, GC IV, and the international laws of occupation. All Federal and State of

[231] 50 U.S.C. App. 453.

Hawai‘i Courts in the Hawaiian Islands derive their authority from the United States Constitution and the laws enacted in pursuance thereof. As such these Courts cannot claim to have authority in the territory of a foreign state and therefore are not properly constituted to give defendant(s) a fair and regular trial.

Article 147—Unlawful deportation or transfer or unlawful confinement

197. According to the United States Department of Justice, the prison population in the Hawaiian Islands in 2009 was at 5,891.[232] Of this population there were 286 aliens.[233] Thus, two paramount issues arise—first, prisoners were sentenced by courts that were not properly constituted under Hawaiian Kingdom law and/or the international laws of occupation and therefore were unlawfully confined, which is a war crime under this court's jurisdiction; second, the alien prisoners were not advised of their rights in an occupied state by their state of nationality in accordance with the 1963 *Vienna Convention on Consular Relations*.[234] Compounding the violation of alien prisoners rights under the *Vienna Convention*, Consulates located in the Hawaiian Islands were wrongly granted exequaturs by the government of the United States by virtue of United States treaties and not by treaties between the Hawaiian Kingdom and these foreign states.

198. In 2003, the State of Hawai‘i Legislature allocated funding to transfer up to 1,500 prisoners to private corrections institutions in the United States.[235] By June of 2004, there were 1,579

[232] United States Department of Justice's Bureau of Justice Statistics, *Prisoners in 2011*, available at: http://www.bjs.gov/content/pub/pdf/p11.pdf (last visited 16 May 2018).
[233] United States Government Accountability Office, *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs* (March 2011), available at: http://www.gao.gov/new.items/d11187.pdf (last visited 16 May 2018).
[234] *LaGrand* (Germany v. United States of America), Judgment, I.C.J. Reports 2001, p. 466.
[235] State of Hawai‘i, Department of Public Safety, Response to Act 200, Part III, Section 58, Session Laws of Hawai‘i 2003 As Amended by Act 41, Part II, Section 35, Session Laws of Hawai‘i 2004 (January 2005), available at: http://lrbhawaii.info/reports/legrpts/psd/2005/act200_58_slh03_05.pdf (last visited 16 May 2018).

Hawai‘i inmates in these facilities. Although the transfer was justified as a result of overcrowding, the government of the State of Hawai‘i did not possess authority to transfer, let alone to prosecute these prisoners in the first place. Therefore, the unlawful confinement and transfer of inmates are war crimes.

Article 147—The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

199. Once a state is occupied, international law preserves the *status quo* of the occupied state to what it was before the occupation began. To preserve the nationality of the occupied state from being manipulated by the occupying state to its advantage, international law only allows individuals born within the territory of the occupied state to acquire the nationality of their parents—*jus sanguinis*. To preserve the *status quo*, Article 49 of the GC IV mandates that the "Occupying Power shall not […] transfer parts of its own civilian population into the territory it occupies." For individuals, who were born within Hawaiian territory during the occupation, to be a Hawaiian subject, they must be a direct descendant of a person or persons who were Hawaiian subjects prior to 17 January 1893. All other individuals, born after 17 January 1893 to the present, are aliens who can only acquire the nationality of their parents. According to von Glahn, "children born in territory under enemy occupation possess the nationality of their parents."[236]

200. According to the 1890 government census, Hawaiian subjects numbered 48,107, with the aboriginal Hawaiian, both pure and part, numbering 40,622, being 84% of the national population, and the non-aboriginal Hawaiians numbering 7,485, being 16%. Despite the

[236] Gerhard von Glahn, *Law Among Nations* 780 (6th ed., 1992).

massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, which, according to the State of Hawai'i numbered 1,302,939 in 2009,[237] the *status quo* of the national population of the Hawaiian Kingdom is maintained. Therefore, under the international laws of occupation, the aboriginal Hawaiian population of 322,812 in 2009 would continue to be 84% of the Hawaiian national population, and the non-aboriginal Hawaiian population of 61,488 would continue to be 16%. The balance of the population in 2009, being 918,639, would be aliens who were illegally transferred, either directly or indirectly, by the United States as the occupying Power, and therefore these transferes are war crimes.

Article 147—Destroying or seizing the [Occupied State's] property unless such destruction or seizure be imperatively demanded by the necessities of war

201. On 12 August 1898, the United States seized approximately 1.8 million acres of land that belonged to the Government of the Hawaiian Kingdom and to the office of the Monarch. These lands were called Government lands and Crown lands, respectively, whereby the former being public lands and the latter private lands.[238] These combined lands constituted nearly half of the entire territory of the Hawaiian Kingdom.

[237] State of Hawai'i. Department of Health, Hawai'i Health Survey (2009), available at: http://www.ohadatabook.com/F01-05-11u.pdf (last visited 16 May 2018); *see* also Sai, American Occupation of the Hawaiian State*, supra* note 3, at 63-65.

[238] Public lands were under the supervision of the Minister of the Interior under Article I, Chapter VII, Title 2—*Of The Administration of Government*, Civil Code, §§ 39-48 (1884), and Crown lands were under the supervision of the Commissioners of Crown Lands under *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*, Civil Code, Appendix, pp. 523-525 (1884). Crown lands are private lands that "descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property," *In the Matter of the Estate of His Majesty Kamehameha IV., late deceased*, 2 Haw.715, 725 (1864), subject to *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*.

202. Military training locations include Pacific Missile Range Facility, Barking Sands Tactical Underwater Range, and Barking Sands Underwater Range Expansion on the Island of Kauaʻi; the entire Islands of Niʻihau and Kaʻula; Pearl Harbor, Lima Landing, Puʻuloa Underwater Range—Pearl Harbor, Barbers Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawaiʻi, Marine Corps Training Area Bellows, Hickam Air Force Base, Kahuku Training Area, Makua Military Reservation, Dillingham Military Reservation, Wheeler Army Airfield, and Schofield Barracks on the Island of Oʻahu; and Bradshaw Army Airfield and Pohakuloa Training Area on the Island of Hawaiʻi.

203. The United States Navy's Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise ("RIMPAC"), every other even numbered year, and is the largest international maritime warfare exercise in the world. RIMPAC is a multinational, sea control and power projection exercise that collectively consists of activity by the U.S. Army, Air Force, Marine Corps, and Naval forces, as well as military forces from other foreign states. During the month long exercise, RIMPAC training events and live fire exercises occur in the open-ocean and at the military training locations throughout the Hawaiian Islands.

204. Moreover, in 2006, the United States Army disclosed to the public that depleted uranium ("DU") was found on the firing ranges at Schofield Barracks on the Island of Oʻahu.[239] The army subsequently confirmed that DU was also found at Pohakuloa Training Area on the Island of Hawaiʻi and suspect that DU is also at Makua Military Reservation on the Island

[239] U.S. Army Garrison-Hawaiʻi, Depleted Uranium on Hawaiʻi's Army Ranges, available at: http://www.garrison.hawaii.army.mil/du/ (last visited 16 May 2018).

of O‘ahu.[240] These ranges have yet to be cleared of DU and are still used for live fire. This brings the inhabitants, who live down wind from these ranges, into harms way because when the DU ignites or explodes from the live fire, it creates tiny particles of hazardous aerosolized DU oxide that can travel by wind. And if the DU gets into the drinking water or into oceans it would have a devastating effect across the islands.

205. The Hawaiian Kingdom has never consented to the establishment of military installations throughout its territory and these installations and war-gaming exercises stand in direct violation of Articles 1, 2, 3 and 4, of HC V, HC IV, and GC IV, and therefore are war crimes.

VI. RESPONDENTS' WAIVER OF OBJECTION TO THE CONTINUITY OF THE HAWAIIAN KINGDOM AND ITS RESTORED GOVERNMENT

206. As hereinbefore stated, the United States together with all of the Respondents, who are Contracting Powers to the HC I, have remained silent since arbitral proceedings were instituted on 8 November 1999 with respect to the PCA's designation of the Hawaiian Kingdom as a Non-Contracting Power (state) pursuant to Article 47 of the HC I (Article 26 of the 1899 Hague Convention, I). The legal consequence of such conduct is that these Contracting Powers are precluded from raising any questions as to the Hawaiian Kingdom's status as a sovereign state and as to the *acting* Council of Regency serving as its government.

207. As a matter of international law, the subsequent conduct of the Contracting Powers, to the consensual or contractual obligations resulting from Article 47 of the HC I, provides a basis

[240] *Id*.

for deciding both questions of interpretation and questions concerning Non-Contracting Powers.[241] Furthermore, the cumulative effect of the PCA's annual reports from 2002 through 2011, which were received by the Contracting Powers, have by their conduct accepted or recognized the continuity of the Hawaiian Kingdom as sovereign state and the *acting* Council of Regency as its provisional government independent of the law of treaties.

208. In the *Temple of Preah Vihear* case,[242] the International Court of Justice placed considerable reliance on the conduct of Thailand that spanned a period of 50 years. The Court stated:

> It has been contended on behalf of Thailand that this communication of the maps by the French authorities was, so to speak, ex parte, and that nor formal acknowledgment of it was either requested of, or given by, Thailand. In fact, as will be seen presently, an acknowledgment by conduct was undoubtedly made in a very definite way; but even if it were otherwise, it is clear that the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced. Qui tacet consentire videtur si loqui debuisset ac potuisset.[243]
>
> The Court however considers that Thailand in 1908-1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory. The Court considers further that, looked as a whole, Thailand's subsequent conduct confirms and bears out her original acceptance, and that Thailand's acts on the ground do not suffice to negative this. Both Parties, by their conduct, recognized the line and thereby in effect agreed to regard it as being the frontier line.[244]

[241] Lord McNair, *The Law of Treaties*, 424-429 (1961).
[242] *Temple of Preah Vihear*, Merits, I.C.J. Reports 1962, p. 6.
[243] *Id.*, at 23.
[244] *Id*., at 32-33.

209. Similarly, in the present case, the failure of the United States, as well as the other Contracting Powers to the HC I, which includes all of the Respondents, precludes them from challenging the status of the continuity of the Hawaiian Kingdom as a sovereign state and the *acting* Council of Regency as its provisional government.

VII. EXPRESS ADMISSIONS OF RESPONSIBILITY BY THE UNITED STATES

A. The Legal Basis of Admissibility of Evidence in the Form of Admissions of Government Officials

210. The basic concepts and principles of the law of evidence are part of the "derivation from general principles common to the major legal systems of the world" to which reference is made to § 102, Restatement Third of Foreign Relations Law of the United States (1987). The admissibility and relevance of express and implied admissions is widely recognized in common law countries. In *Pollack v. Metropolitan Life Insurance Co.*, the Court cited *Wigmore on Evidence* (1940) by stating, that "The statements made out of court by a party-opponent are universally deemed admissible, when offered against him."[245] International jurisprudence also refer to the relevance of admissions.[246]

211. International tribunals have given evidential weight to the statements made by government officials.[247] In the *Nuclear Tests* cases (*Australia v. France*), the Court held that statements,

[245] *Pollack v. Metropolitan Life Insurance Co.*, 138 F.2d 123, 125 (3d Cir. 1943).
[246] Bin Cheng, *General Principles of Law and Applied by International Courts and Tribunals* 141-147 (1953); *Aerial Incident of 27 July 1955* (Israel v. Bulgaria; United States of America v. Bulgaria; United Kingdom v. Bulgaria), I.C.J. Pleadings 1959, Memorial of Israel, p. 45, at pp. 99-100, paras. 89-91).
[247] *Corfu Channel* case (Merits), I.C.J. Reports 1949, p. 4, at pp. 18-19; *Minquiers and Ecrehos* case (France/United Kingdom), I.C.J. Reports 1953, p. 47, at pp. 71-72; *Fisheries Jurisdiction* case (United Kingdom v. Iceland) (Merits), I.C.J. Reports 1974, p. 3, at pp. 28-29, para. 65; *Case concerning United States Diplomatic and Consular Staff in Tehran* (United States v. Iran), I.C.J. Reports 1980, p. 3, at pp. 9-10, para. 12; p. 17, para. 27.

whether oral or written, made by the French President had the character of a legal undertaking.[248] The Court stated:

> 49. Of the statements by the French Government now before the Court, the most essential are clearly those made by the President of the Republic. There can be no doubt, in view of his functions, that his public communications or statements, oral or written, as Head of State, are in international relations acts of the French [s]tate. His statements, and those of members of the French Government acting under his authority, up to the last statement made by the Minister of Defense (of 11 October 1974), constitute a whole. Thus, in whatever form these statements were expressed, they must be held to constitute an engagement of the [s]tate, having regard to their intention and to the circumstance in which they are made.
>
> 50. The unilateral statements of the French authorities were made outside the Court, publicly and *erga omnes*, even though the first of them was communicated to the Government of Australia. As was observed above, to have legal effect, there was no need for these statements to be addressed to a particular [s]tate, nor was acceptance by any other [s]tate required. The general nature and characteristics of these statements are decisive for the evaluation of the legal implications, and it is to the interpretation of the statements that the Court must now proceed. The is entitled to presume, at the outset, that these Statements were not made *in vacuo*, but in relation to the tests which constitute the very object of the present proceedings, although France has not appeared in the case.[249]

212. In order to determine a pattern of conduct as proof of the state's attitude, the International Court of Justice has consistently relied on the contents of diplomatic exchanges, statements by government officials, as well as silence in the face of public events and the statements of other Parties, to include international organizations relative to the matter at hand. In the *Corfu Channel* case, the Court referenced "Albania's attitude before and after the disaster

[248] *Nuclear Tests* cases (Australia v. France) (Judgment, I.C.J. Reports 1974, p. 253, at p. 267, para. 43).
[249] *Id*., at 269-270.

of October 22nd, 1946."[250] This is an instance of state responsibility and the evidence addressed was Albania's knowledge of the laying of mines in the subject area.

213. Another example of the Court's reliance upon the conduct of state, that includes the statements of government officials, is in the *Temple of Preah Vihear* case where the Court considered Thailand's course of conduct in accepting the "Annex I map" and the boundary it indicated.[251]

214. Now that the legal basis of the admissibility of evidence, in the form of admissions made by government officials, statements of intention by officials and the significance of the attitude or conduct of a state, has been established, here follows the evidence itself.

B. Express Admissions Made by President Cleveland and Other Officials of the United States Government

215. On 11 March 1893 President Cleveland sent to Honolulu, as his Special Commissioner, James H. Blount, former chairman of the House Committee on Foreign Affairs. Commissioner Blount was tasked to "investigate and fully report to the President all the facts you can learn respecting the condition of affairs in the Hawaiian Islands, the causes of the revolution by which the Queen's Government was overthrown, the sentiment of the people toward existing authority, and, in general, all that can fully enlighten the President touching the subjects of your mission."[252]

216. After Commissioner Blount arrived in Honolulu on 29 March 1893, he sent periodic reports to the Secretary of State. In his final report dated 17 July 1893, Commissioner Blount

[250] *Corfu Channel* case (Merits), pp. 18-20.
[251] *Case concerning the Temple of Preah Vihear* (Cambodia v. Thailand), Merits, I.C.J. Reports 1962, p. 6, at pp. 22-29, 32-33.
[252] Executive Documents, *supra* note 44, at 1185, available at http://hawaiiankingdom.org/pdf/Gresham_to_Blount_(3.11.1893).pdf (last visited 16 May 2018).

stated, "The foregoing pages are respectfully submitted as the connected report indicated in your instructions. It is based upon the statements of individuals and the examination of public documents."[253] After careful consideration of the facts of the case provided by the Special Commissioner, Secretary of State Gresham, on 18 October 1893, relayed the following to the President:

> The Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign, and the Provisional Government was created "to exist until terms of union with the United States of America have been negotiated and agreed upon." A careful consideration of the facts will, I think, convince you that the treaty which was withdrawn from the Senate for further consideration should not be resubmitted for its action thereon.
>
> Should not the great wrong done to a feeble but independent [s]tate by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice.
>
> Can the United States consistently insist that other nations shall respect the independence of Hawaii while not respecting it themselves? Our Government was the first to recognize the independence of the Islands and it should be the last to acquire sovereignty over them by force and fraud.[254]

217. The nature of the request to President Cleveland is important for three reasons. First, Secretary of State Gresham admits to a state of war, whereby an act of hostility, on the part of the United States, precipitated the overthrow of the Hawaiian Kingdom Government. Second, Gresham discerns the Hawaiian state from its government, which he called for its

[253] *Id*., at 604-605.
[254] Executive Documents, *supra* note 44, at 463-564, available at http://hawaiiankingdom.org/pdf/Gresham_Report_(10.18.1893).pdf (last visited 16 May 2018).

restoration. Third, there is no indication of a justification for the actions taken by the United States, but rather a direct admittance of state responsibility.

218. As will be shown, President Cleveland's message to the Congress the following month on 18 December 1893 acknowledges the breaches of customary international law rules relating both to the use of force by states and the principle of non-intervention.

> And so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawaii or for the bona fide purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at the time was undisputed and was both the *de facto* and the *de jure* government.[255]

> When our Minister recognized the provisional government [on 17 January 1893] the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government de facto nor de jure. … Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal, while the [insurgents], by actual search, had discovered that there were but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew

[255] Executive Documents, *supra* note 44, at 451, available at http://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf (last visited 16 May 2018).

> that she could not withstand the power of the United States, but she believed that she might safely trust to its justice.[256]
>
> By an act of war, committed with the participation of a diplomatic representative of the United States and without the authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair.[257]
>
> The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond a breach of which subjects him to legal liabilities; and the United States is aiming to maintain itself as one of the most enlightened of nations would do its citizens gross injustice if it applied to its international relations any other than a high standard of honor and morality. On that ground the United States can not properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.[258]

219. These passages are indeed, forceful, confirmation of the fact that the United States Government was the controlling agent behind the overthrow of the Hawaiian Kingdom

[256] *Id*., at 453.
[257] *Id*., at 456.
[258] *Id*., at 456-457.

Government. President Cleveland also acknowledged that the acts of war committed by the United States had no justification under international law or self-defense under the rules of *jus ad bellum*. Hence, a legal state of war has ensued since 16 January 1893 whereby the United States must comply with the rules of *jus in bello*.

C. The General Principle of State Responsibility

220. The principle that responsibility attaches to every internationally wrongful act of the state is the starting point. Judge Ago authoritatively stated this in his Third Report as Special Rapporteur to the International Law Commission:

> One of the principles most deeply rooted in the doctrine of international law and most strongly upheld by [s]tate practice and judicial decisions is the principle that any conduct of a [s]tate which international law classified as a wrongful act entails the responsibility of that [s]tate in international law. In other words, whenever a [s]tate is guilty of an internationally wrongful act against another [s]tate, international responsibility is established "immediately as between the two [s]tates," as was held by the Permanent Court of International Justice in the *Phosphates in Morocco* case. (*Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 28.) Moreover, as stated by the Italian-United States Conciliation Commission set up under Article 83 of the Treaty of Peace of 10 February 1947 (United Nations, *Treaty Series*, Vol. 49, p. 167), no [s]tate may "escape the responsibility arising out of the exercise of an illicit action from the viewpoint of the general principles of international law" (*Armstrong Cork Company case*, 22 October 1953, United Nations, Reports of International Arbitral Awards, Vol. XIV (United Nations publication, Sales No. 65.V.4, p. 163))." (*Yearbook of the International Law Commission, 1971*, II (Part One), p. 199, at p. 205, para. 30.)

221. It is a recognized general principle that the commission of an act, that is either contrary to customary international law or in breach of treaty obligations, gives rise to responsibility for the damage and loss of life resulting from this illegal conduct. The application of this principle can be found in the Judgment of the *Corfu Channel* case:

> The Court therefore reaches the conclusion that Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life which resulted from them, and that there is a duty upon Albania to pay compensation to the United Kingdom.[259]

222. The United States has also recognized this principle in its practice with other states. The following is a telegram from the United States Secretary of State to the Ambassador of Tokyo, for transmission to the Japanese Government:

> The Government and people of the United States have been deeply shocked by the facts of the bombardment and sinking of the U.S.S. *Panay* and the sinking or burning of the American steamers Meiping, Meian and Meisian [Meihsia] by Japanese aircraft.
>
> The essential facts are that these American vessels were in the Yangtze River by uncontested and in contestable right, that they were flying the American flag: that they were engaged in their legitimate and appropriate business, that they were, at the moment, conveying American official and private personnel away from points where danger had developed; that they had several times changed their position, moving upriver, in order to avoid danger, and that they were attacked by Japanese bombing planes. With regard to the attack, a responsible Japanese naval officer at Shanghai has informed the Commander-in-Chief of the American Asiatic Fleet that the four vessels were proceeding upriver: that a Japanese plane endeavoured to ascertain their nationality, flying at an altitude of three hundred meters, but was unable to distinguish the flags; that three Japanese bombing planes, six Japanese fighting planes, six Japanese bombing planes, in sequence, made attacks which resulted in the damaging of one of the American steamers, and the sinking of the U.S.S. Panay and the other steamers.
>
> Since the beginning of the present unfortunate hostilities between Japan and China, the Japanese Government and various Japanese authorities at various points have repeatedly assured the Government and authorities of the United States that it is the intention and purpose of the Japanese Government and the Japanese armed forces to respect fully the rights and interests of other powers. On several occasions, however, acts of Japanese armed forces have violated the rights of the United States, have seriously

[259] *Corfu Channel case*, Merits, I.C.J. Reports 1949, p. 4, at p. 23.

> endangered the lives of America nationals and have destroyed American property. In several instances, the Japanese Government has admitted the facts, has expressed regrets, and has given assurances that every precaution will be taken against recurrence of such incidents. In the present case, acts of Japanese armed forces have taken place in complete disregard of American rights, have taken American life, and have destroyed American property both public and private.
>
> In these circumstances, the Government of the United States requests and expects of the Japanese Government a formally recorded expression of regret, an undertaking to make complete and comprehensive indemnifications, and an assurance that definite and specific steps have been taken which will ensure that hereafter American nationals, interests and property in China will not be subjected to attack by Japanese armed forces or unlawful interference by any Japanese authorities or forces whatsoever.[260]

223. In a similar note to the Bulgarian Government on 2 August 1955, the United States Government stated:

> The United States Government protests emphatically against the brutal action of Bulgarian military personnel on July 27, 1955, in firing upon a commercial aircraft of the El Al Israel Airlines, which was lawfully engaged as an international carrier. This attack, which resulted in the destruction of the aircraft, and the death of all personnel aboard, including several United States citizens, constitutes a grave violation of accepted principles of international law. The Bulgarian Government has acknowledged responsibility for this action.
>
> The United States Government demands that the Bulgarian Government (1) take all appropriate measures to prevent a recurrence of incidents of this nature and inform the United States Government concerning these measure; (2) punish all persons responsible for this incident; and (3) provide prompt and adequate compensation to the United States Government for the families of the United States citizens killed in this attack.[261]

[260] *Foreign Relations of the United States, Japan, 1931-1941*, vol. I, U.S.G.P.O., p. 523 (1943).
[261] Margorie M. Whiteman, *Digest of International Law*, vol. 8 891 (1967).

224. Additional evidence of United States recognition of this principle can be retrieved from Marjorie M. Whiteman, *Digest of International Law*, Vol. 8, U.S.G.P.O., Dept. of State Publication 8290, p. 888-906; and from Richard B. Lillich (ed.), *International Law of State Responsibility for Injuries to Aliens*, p. 221-224 (1983).

VIII. UNITED STATES' MANDATE TO ADMINISTER HAWAIIAN KINGDOM LAW

225. Article 43 of the HC IV and Article 64 of the GC IV mandates Respondent Trump, as the President and executive officer of the occupying state, to administer the laws of the Hawaiian Kingdom, the occupied state, after it has secured effective control of the occupied state's territory in accordance with Article 42 of the HC IV.

226. "Article 43 does not confer on the occupying power any sovereignty over the occupied territory. The occupant may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator."[262] "The expression 'laws in force in the country' in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders, provided that the 'norms' in question are general and abstract."[263]

227. International law prohibits the administration of the domestic laws of the occupying state within the territory of the occupied state.

228. Both the HC IV and the GC IV have been duly ratified by the United States Senate and, therefore, constitute the Supreme Law of the Land and must be faithfully executed.

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[262] Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law, Cambridge, June 25-27 5 (2004).
[263] *Id*., at 6.

229. Misrepresentations and omissions of material fact constitute deceptive acts or practices prohibited by the HC IV and the GC IV.

IX. INJURIES TO PROTECTED PERSONS

230. Protected Persons throughout the Hawaiian Kingdom, to include Hawaiian subjects, have suffered and continue to suffer violations of their rights secured under international humanitarian laws as set forth above. Absent the granting of immediate mandamus relief by this Court, Respondent Trump will continue to injure Protected Persons whose rights are protected under the HC IV, the GC IV, international humanitarian laws, and customary international laws.

231. While this action is not seeking monetary damages or reparations for injuries attributed to the illegal occupation of the Hawaiian Kingdom, the Iraqi occupation of Kuwait in 1990 is very similar in circumstance, which speaks to the severity of when a state fails to comply with international humanitarian law. The Iraqi invasion of Kuwait is eerily analogous to the American invasion of the Hawaiian Kingdom coupled with similar titles and sequence of events: (1) Iraq invaded Kuwait on 2 August 1990; (2) a puppet government was set up by Iraq on 4 August 1990 called the "Provisional Free Kuwaiti Government"; (3) the "Provisional Government" declared itself to be the "Republic of Kuwait" on 7 August 1990; and (4) on 28 August 1990 Iraq annexed Kuwaiti territory renaming the "Republic of Kuwait" to the "Kuwait Governorate," Iraq's 19th province.[264] During the occupation, which ended on 25 February 1991, Iraq did not comply with the HC IV and the GC IV in

[264] Eyal Benvenisti, *The International Law of Occupation* 170 (2nd ed., 2012).

the administration of Kuwaiti law, but rather unlawfully imposed Iraqi law within Kuwaiti territory.

232. In response to Iraq's violations of international humanitarian law, the United Nations Security Council established the United Nations Compensation Commission ("UNCC") in 1991. The UNCC was created as a subsidiary organ of the Security Council under Security Council resolution 687 (1991).[265] The UNCC's mandate was to process claims and pay compensation for losses and damage incurred as a direct result of Iraq's unlawful invasion and occupation of Kuwait. The UNCC awarded $52.4 billion dollars to approximately 1.5 million successful claims. As the Iraqi invasion and occupation equaled 207 days, the total amount of reparations paid can be calculated at $254,368,932.04 per day.

233. If this sample of reparations calculations is taken and applied to the Hawaiian situation, that would be 45,770 days since the invasion on 16 January 1893 to 11 May 2018, which calculates to a total of $11,642,466,019,417.48. This amount is approximately $11.6 trillion dollars.

234. Hence, the severity of the Hawaiian situation warrants the intervention by this Court.

X. THE POLITICAL QUESTION DOCTRINE

235. "The principle that the court lacks jurisdiction over political questions that are by their nature 'committed to the political branches to the exclusion of the judiciary' is as old as the fundamental principle of judicial review." *Schneider v. Kissinger*, 412 F.3d 190, 193 (D.C. Cir. 2005) (quoting *Antolok v. United States*, 873 F.2d 369, 379 (D.C. Cir. 1989)

[265] United Nations Security Council resolution 687 (1991), available at: https://uncc.ch/sites/default/files/attachments/documents/res0687.pdf (last visited 16 May 2018).

(opinion of Sentelle, J.)). In *Jones v. United States*, 137 U.S. 202, 212 (1890), the Supreme Court stated:

> Who is the sovereign, *de jure* or *de facto*, of a territory, is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens, and subjects of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances.

236. In *Baker v. Carr*, 369 U.S. 186 (1962), the Supreme Court bifurcates the branches regarding the political question doctrine as to who determines "[w]ho is the sovereign, *de jure* or *de facto*." "[T]he judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory … Similarly, recognition of belligerency abroad is an executive responsibility." See id., at 212. Political questions for the Congress to determine, and not the Executive, include the status of Indian tribes and whether a government within United States territory is republican in form. "'It is for [Congress]…and not the courts, to determine when the true interests of the Indian require his release from [the] condition of tutelage.'" See id., at 216. And under Article IV, § 4 "of the Constitution, it rests with Congress to decide what government is the established one in a State. For, as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not." See id., at 220.

237. Petitioner's claims are justiciable and does not present a political question because Respondent Trump, as the successor President of the United States, acknowledged the continuity of the Hawaiian Kingdom as an independent and sovereign state, and provided recognition, *de facto*, of the Hawaiian government, by an exchange of *notes verbales,* in

2000 with the State Department. Furthermore, all Nominal Respondents who are member states of the PCA also acknowledged the Hawaiian Kingdom's continuity and the recognition, *de facto*, of the Hawaiian government through receipt of the PCA's annual reports from 2002 through 2011.

238. Federal courts in the past have mistakenly deferred to the Congress, and not the Executive, as the authority in determining who is the sovereign, *de jure* or *de facto*, over the Hawaiian Islands. See *United States v. Lorenzo*, 995 F.2d 1448, 1456 (9th Cir.1993); *Wang Foong v. United States*, 69 F.2d 681, 682 (9th Cir.1934); *Naehu v. Hawai'i*, Civil No. 01-00579 SOM/KSC, slip op. (D.Haw. Sept. 6, 2001); *Uy v. Wells Fargo*, 2011 WL 1235590 (D.Haw.2011); *Yellen v. U.S.*, 2014 WL 2532460 (D.Haw. June 5, 2014); *Algal Partners, L.P. v. Santos*, No. Civ. 13-00562 LEK, 2014 WL 1653084 (D.Haw. Apr. 23, 2014); *Sai v. Clinton*, 778 F.Supp.2d 1, 6 (D.D.C.), aff'd sub nom. *Sai v. Obama*, No. 11-5142, 2011 WL 4917030 (D.C.Cir. Sept. 26, 2011); *Waialele v. Offices of U.S. Magistrate(s)*, No. Civ. 11-00407 JMS/RL, 2011 WL 2534348 (D.Haw. June 24, 2011); and *Kupihea v. United States*, No. CIV. 09-00311SOMKSC, 2009 WL 2025316, at *2 (D.Haw. July 10, 2009). This mistake is plainly obvious in light of President Cleveland's Message to the Congress (18 Dec. 1893), the *Larsen v. Hawaiian Kingdom* (1999-2001), and the agreement, by exchange of *notes verbales*, between the Hawaiian government and the State Department in 2000.

239. In *Sai v. Clinton*, 778 F.Supp.2d 1, 6 (D.D.C.), the D.C. Court clearly relied on the Congress, not the Executive, when deciding that the case was non-justiciable because of the political question doctrine. The Court stated, "[i]n addition, the Constitution vests Congress with the 'Power to dispose of and make all needful Rules and Regulations

respecting the Territory or other Property belonging to the United States.' U.S. Const., Art. IV, § 3, cl. 2. Therefore, there is a textually demonstrable constitutional commitment of these issues to the [Congress]." The Court then attempted to justify its decision by concluding, "it would be impossible for this Court to grant the relief requested by Plaintiff without disturbing a judgment of the legislative and executive branches that has remained untouched by the federal courts for over a century. Since its annexation in 1898 and admission to the Union as a State in 1959, Hawaii has been firmly established as part of the United States. The passage of time and the significance of the issue of sovereignty present an unusual need for unquestioning adherence to a political decision already made."

240. In its decision, the *Sai v. Clinton* Court fundamentally erred on three points. First, the Court did not take into account the political determination of President Cleveland, as the chief executive, in his message to the Congress that "[b]y an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people as been overthrown,"[266] thus transforming the situation from a state of peace to a state of war. And in both 1893, by Presidential message, and in 1993, by joint resolution, the Congress expressly recognized the President's political determination that "acts of war" were committed against the Hawaiian Kingdom and cannot be claimed otherwise. See Public Law 103-150 (1993).

241. Second, the Court could not claim Congress could annex territory of a foreign state, let alone establish a government in that foreign state, by domestic legislation, without being in direct opposition with the Supreme Court in *The Apollon*, 22 U.S. 362, 370 (1824) ("[t]he

[266] Executive Documents, *supra* note 44, at 456.

laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."); *U.S. v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936) ("[n]either the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens."); and *U.S. v. Belmont*, 301 U.S. 324, 326 (1937) ("our Constitution, laws and policies have no extraterritorial operation unless in respect of our own citizens").

242. And, third, the "passage of time" or prescription is not a recognized principle of international law as between independent states, but it is, however, a recognized principle of United States law as between States of the Union. In *Louisiana v. Mississippi*, 202 U.S. 1, 53 (1906), the Supreme Court stated:

> The question is one of boundary, and this court has many times held that, as between the states of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it should be accepted as conclusive, whatever the international rule might be in respect of the acquisition by prescription of large tracts of country claimed by both.

243. In *The Chamizal Case* (Mexico, United States), 11 R.I.A.A., pp. 309-347 (15 June 1911), the United States claimed it acquired sovereignty over 600 acres of Mexican territory, called *El Chamizal*, by prescription. The United States was attempting to assert a domestic principle in international arbitration proceedings. The Tribunal responded:

> Without thinking it necessary to discuss the very controversial question as to whether the right of prescription invoked by the United States is an accepted principle of the law of nations, in the absence of any convention establishing a term of prescription, the commissioners are unanimous in coming to the conclusion that the possession of the United States was not of such a character as to found a prescriptive title.

244. Absent an international tribunal's decision that the United States has acquired sovereignty over the Hawaiian Islands, this Court must ensure that it discerns between what is international law and what is United States law, for "operations of the nation in [foreign] territory must be governed by treaties, international understandings and compacts, and the principles of international law." See *U.S. v. Belmont*, 301 U.S. 324, 326 (1937).

245. Moreover, "a Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared." *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547 (1924). Along similar lines, the Hawaiian Kingdom Supreme Court in *Schillaber v. Waldo et al.*, 1 Haw. 31, 32 (1847), stated:

> I trust that the maxim of this Court ever has been, and every will be, that which is beautifully expressed in the Hawaiian coat of arms, namely, "*The life of the land is preserved by righteousness*." We know of no other rule to guide us in the decision of questions of this kind, than the supreme law of the land, and to this we bow with reverence and veneration, even though the stroke fall on our own head. In the language of another "Let justice be done though the heavens fall." Let the laws be obeyed, though it ruin every judicial and executive officer in the Kingdom. Courts may err. Clerks may err. Marshals may err—they err in every land daily; but when they err let them correct their errors without consulting pride, expediency, or any other consequence.

XI. THE COURT SHOULD ISSUE A DECLARATORY JUDGMENT AND WRIT OF MANDAMUS

246. Respondent Trump represents, expressly or by implication, that he will continue to violate Article 43 of the HC IV and Article 64 of the GC IV in all instances.

247. In truth and in fact, Respondent Trump has not complied with international humanitarian law in all instances.

248. Therefore, representations that Hawai‘i is a State of the United States are false and misleading and constitute deceptive acts or practices in violation of the HC IV and GC IV, the principle of *pacta sunt servanda*, and the Supremacy Clause. “[T]he courts have the authority to construe treaties and executive agreements, and it goes without saying that interpreting congressional legislation is a recurring and accepted task for the federal courts.” *Japan Whaling Ass’n v. American Cetacean Soc’y*, 478 U.S. 221, 230, 106 S.Ct. 2860, 92 L.Ed.2d 166 (1986).

249. As President of the United States, Respondent Trump is precluded from claiming sovereign immunity pursuant to 5 U.S.C. § 702.

250. Nominal Respondents are named in this action because they are connected with the subject-matter of Petitioner’s action. Petitioner is not seeking any specific relief from them.

XII. PRAYER FOR RELIEF

251. Wherefore, Petitioner, pursuant to the All Writs Act, 28 U.S.C. § 1651(a), the Administrative Procedure Act, 5 U.S.C. § 702, and the Court’s own equitable powers, requests that this Court:

a. Grant immediate mandamus relief enjoining Respondent Trump from acting in derogation of the HC IV, the GC IV, international humanitarian laws, and customary international laws;

b. Award Petitioner such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of Protected Persons’ injuries during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions; and

c. Enter a permanent injunction to prevent future violations of the HC IV, the GC IV, international humanitarian laws, and customary international laws by Respondent Trump.

Dated: Honolulu, Hawai'i, 22 June 2018.

DAVID KEANU SAI, Ph.D., *pro se*

UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

DAVID KEANU SAI, Ph.D., *pro se* Chairman of the *acting* Council of Regency of the Hawaiian Kingdom P.O. Box 2194 Honolulu, HI 96805-2194 *Petitioner*, vs. DONALD JOHN TRUMP, President of the United States of America The White House 1600 Pennsylvania Avenue, NW Washington, D.C. 20500; PHILIP S. DAVIDSON, Admiral, U.S. Navy Commander, United States Indo-Pacific Command Box 64031 Camp H.M. Smith, Hawai‘i 96861-4031; DAVID IGE, Governor of the State of Hawai‘i Executive Chambers State Capitol Honolulu, Hawai‘i 96813; *Respondents*, MALCOLM TURNBULL, Prime Minister of Australia Embassy of Australia 1601 Massachusetts Avenue, NW Washington, D.C. 20036; CHRISTIAN KERN, Chancellor of Austria	Declaration of David Keanu Sai

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)
Nominal Respondents.)
)

DECLARATION OF DAVID KEANU SAI

I, DAVID KEANU SAI, Ph.D., declare under penalty that the following is true and correct:

1. My name is David Keanu Sai and I am the Petitioner.
2. I am capable of making this declaration, and the facts contained in this declaration are true and correct to the best of my knowledge and belief.
3. I have read the foregoing *Emergency Petition for a Writ of Mandamus under the All Writs Act and the Administrative Procedure Act*, and the facts stated therein are true and correct.

Dated: Honolulu, Hawai'i, 22 June 2018.

DAVID KEANU SAI, Ph.D., pro se

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 2018, I served the foregoing *Emergency Petition for a Writ of Mandamus under the All Writs Act and the Administrative Procedure Act* by placing a true copy in the United States mail, with certified delivery, to the following:

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President of the United States of America
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Commander, U.S. Indo Pacific Command
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