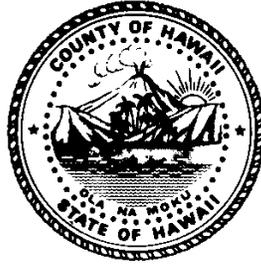


JEN RUGGLES
Council Member
District 5 – Puna Mauka,
Pahoa Mauka, Kalapana



Public Works & Parks and Recreation
Committee Chair
Public Safety & Mass Transit
Committee Chair

Phone: 808-961-8263
Fax: 808-961-8912
Email: Jen.Ruggles@hawaiiicounty.gov

Hawai'i County Building
25 Aupuni St. Suite 1402
Hilo, HI 96720

HAWAI'I COUNTY COUNCIL

December 3, 2018

Governor David Ige, State of Hawai'i
Executive Chambers
State Capitol
Honolulu, HI 96813

Chief Justice Mark E. Recktenwald, State of Hawai'i
Ali'iolani Hale
417 S. King Street
Honolulu, HI 96813

Associate Justice Paula A. Nakayama, State of Hawai'i
Ali'iolani Hale
417 S. King Street
Honolulu, HI 96813

Associate Justice Sabrina S. McKenna, State of Hawai'i
Ali'iolani Hale
417 S. King Street
Honolulu, HI 96813

Associate Justice Richard W. Pollack, State of Hawai'i
Ali'iolani Hale
417 S. King Street
Honolulu, HI 96813

Associate Justice Michael D. Wilson, State of Hawai'i
Ali'iolani Hale
417 S. King Street
Honolulu, HI 96813

Re: War crimes of extensive destruction of property committed by the State of Hawai‘i

Dear Governor Ige:

I am an elected public official of the Hawai‘i County Council serving District 5—Western Puna, in the State of Hawai‘i. To my dismay, I have become aware of Hawai‘i’s status as a nation-state, under international law, which has been under an illegal occupation by the United States since it, by its own admission, illegally overthrew the Hawaiian Kingdom government on January 17, 1893. I have done my due diligence to become educated on this subject and I have reached out to experts in this field. I’ve learned that after a presidential investigation was completed on October 18, 1893, then-United States President Grover Cleveland notified the Congress, two months later, and stated 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. 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

These acts of war created a state of war between the United States and the Hawaiian Kingdom which replaced the state of peace which had existed up to that point. International law bound, and still binds, the United States to adhere to the law of occupation. The law of occupation was later codified under the 1907 Hague Convention, IV (“HCIV”), and the 1949 Geneva Convention, IV (“GCIV”).² The United States Senate bound the United States by its ratification of both the HCIV and the GCIV and their provisions became United States federal law. Violations of these conventions are ‘war crimes’ as defined by 18 U.S.C. §2441. Article 154 of the GCIV clearly states that it is supplemental to the HCIV. According to Amnesty International, war crimes are “crimes that violate the laws and customs of war defined by the Geneva and Hague Conventions.”³

Larsen v. Hawaiian Kingdom at the Permanent Court of Arbitration

Any and all impositions of United States laws in the Hawaiian Islands violate Article 43 of the HCIV and Article 64 of the GCIV. These articles mandate that the United States, as the occupying State, administer Hawaiian Kingdom law, as the Hawaiian Kingdom is the occupied State. The claimant, Lance Paul Larsen, alleged that the United States failure to administer Hawaiian Kingdom law led to his unfair trial and unlawful confinement by the State of Hawai‘i, which are war crimes. This led to a dispute between Larsen and the Hawaiian Kingdom government, which had been restored in 1995, in which Larsen alleged that the Hawaiian government is liable “for allowing the unlawful imposition of American municipal laws over the claimant’s

¹ President Cleveland’s Message to Congress (Dec. 18, 1893), available at: [http://hawaiiankingdom.org/pdf/Cleveland's_Message_\(12.18.1893\).pdf](http://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf).

² For an analysis of the state of war between the Hawaiian Kingdom and the United States see 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 Oct. 2017), hereafter “Illegal State of War,” available at: http://hawaiiankingdom.org/pdf/Illegal_War_Brief_English.pdf.

³ Amnesty International, *Armed Conflict*, available at: <https://www.amnesty.org/en/what-we-do/armed-conflict/>.

person within the territorial jurisdiction of the Hawaiian Kingdom”⁴ that led to his rights being violated by the United States through the State of Hawai‘i.

The Permanent Court of Arbitration (“PCA”) accepted the dispute on November 8, 1999 captioning it *Lance Paul Larsen v. Hawaiian Kingdom* and assigned it PCA Case no. 1999-01. The PCA Secretariat acknowledged both the continuity of the Hawaiian Kingdom, as a State under international law, and the existence of its government, in the form of the Council of Regency, as its organ.⁵ In the *American Journal of International Law*, Bederman and Hilbert noted:

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.⁶

Prior to forming the Tribunal, the PCA Secretary General recommended that the Hawaiian Kingdom government invite the United States to join in the dispute. On March 3, 2000, at a meeting with the State Department, the U.S. government was invited by the Hawaiian government to join, but declined.⁷ The PCA Tribunal, as part of the proceedings, concluded that the U.S. was a necessary party whose presence was required for Mr. Larsen to maintain his suit against the Hawaiian government. The U.S.’s choice to absent itself and thus not participate in the proceedings, prevented the Tribunal from reaching the issues of whether the United States, as the occupying State, had violated Mr. Larsen’s rights because it was absent and was not present to contest the allegations. The Tribunal, prompted by the United States failure to appear recommended that Larsen and the Hawaiian Government form an “international fact-finding commission of inquiry” under the jurisdiction of the PCA where the indispensable third party rule did not apply.⁸ These international commissions of inquiry under the PCA have a role similar to investigative grand juries. In Larsen, the commission of inquiry would be looking into what entities and persons are responsible for the war crimes committed against Mr. Larsen.

Jurisdiction of the International Criminal Court Over the Hawaiian Islands

On November 28, 2012, the Hawaiian Council of Regency acceded to the Rome Statute of the International Criminal Court (ICC) by depositing the necessary instrument of accession with the Secretary General of the United Nations General Assembly, United Nations Treaty Section, pursuant to Article 125(3) of the Rome Statute. It was received on December 10, 2012.⁹ ICC jurisdiction over actions occurring on Hawaiian

⁴ *Larsen v. Hawaiian Kingdom*, PCA case no. 1999-01, available at: <https://pca-cpa.org/en/cases/35/>.

⁵ *Illegal State of War*, p. 2-3.

⁶ David Bederman & Kurt Hilbert, “Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii,” 95 *American Journal of International Law* (2001), p. 928.

⁷ 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), p. 3-4.

⁸ *Illegal State of War*, p. 3-4.

territory began on March 4, 2013, in accordance with Article 126 of the Rome Statute. Crimes within the ICC’s jurisdiction include genocide, crimes against humanity, war crimes, and crimes of aggression.

United Nations Independent Expert—Dr. Alfred M. de Zayas

On February 25, 2018, a United Nations Independent Expert, Dr. Alfred M. de Zayas, of the Office of the High Commissioner for Human Rights in Geneva, Switzerland, sent a written communication to members of the State of Hawai‘i Judiciary calling upon the United States and the State of Hawai‘i to comply with the HCIV and GCIV. I am aware that your office did receive a copy of the U.N. Expert’s letter through the Swiss postal service in Geneva on February 4, 2018.¹⁰

Independent Experts, also known as Special Rapporteurs, receive information on allegations of human rights violations and communicate with governments to address the violations. He wrote:

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).

After reading Dr. deZayas’ memorandum I attempted to verify his claim of ‘a fraudulent annexation.’ It became apparent to me that there is no clear U.S. constitutional basis for the enforcement of United States law on Hawaiian Kingdom territory. This lack of express authority to annex via legislation was noted by a legal opinion issued by the United States Department of Justice Office of Legal Counsel in 1988 which found that it could not identify any constitutional authority for the congressional joint resolution in 1898 to annex the Hawaiian Islands.¹¹

The congressional record clearly shows that members of the Congress knew the limitations of legislation. On July 4, 1898, Senator William Allen of Nebraska said, “The Constitution and the statutes are territorial in their operation; that is, they can not have any binding force or operation beyond the territorial limits of the government in which they are promulgated. In other words, the Constitution and statutes can not reach across the territorial boundaries of the United States into the territorial domain of another government and affect that government or persons or property therein.”¹² He continued to clarify, that the “power of acquiring additional territory, rests exclusively in the President and the Senate, that it is an executive power which in its very nature can not be exercised by the House of Representatives, and that the only method of exercising it is by treaty and not by joint resolution or act of Congress; and the case of Texas, when rightly understood, forms no

⁹ Hawaiian Kingdom’s Instrument of Accession to the Rome Statute (Nov. 28, 2012), available at: https://hawaiiankingdom.org/pdf/Inst_Accession.pdf.

¹⁰ La Poste RC857411606CH – Registered international (Switzerland → United States of America), available at: [https://hawaiiankingdom.org/pdf/La_Poste_Tracking_US_Pres_Trump\).pdf](https://hawaiiankingdom.org/pdf/La_Poste_Tracking_US_Pres_Trump).pdf).

¹¹ 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.

¹² 31 Cong. Rec. 6635.

exception to this rule; therefore an attempt to annex or acquire territory by act or joint resolution of Congress is in violation of the letter, spirit, and policy of the Constitution.”¹³ On February 28, 1900, Senator Allen asserted, “I utterly repudiate the power of Congress to annex the Hawaiian Islands by a joint resolution such as passed the Senate. It is ipso facto null and void.”¹⁴

As a Council member, I have come to understand that legislation is limited to the territorial jurisdiction of the law-making body. The U.S. Congress has no constitutional authority, nor any authority under international law, to unilaterally annex a foreign country by a joint resolution. Neither the term “annex” or “annexation” or any equivalent power was granted to the U.S. Congress in the 1789 Constitution, nor any amendment. Similarly, the U.K. Parliament has no authority to annex the United States back into the United Kingdom via an act of Parliament.

This lack of authority is consistent with the United States Supreme Court’s ruling in *United States v. Curtiss Wright Corporation*, 299 U.S. 304, 318 (1936). It said: “Neither the Constitution nor the laws passed in pursuant 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.” Then-Acting Assistant Attorney General, Douglas W. Kmiec, of the Office of Legal Counsel, in acknowledging this lack of authority, opined, “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.”¹⁵ The United States could no more annex Hawai‘i by enacting a domestic statute than it could annex Canada today by statute.

It appears the Independent Expert’s communication to the State of Hawai‘i is an accurate, and so far, uncontested, statement of international law which accurately describes the legal obligations of the occupying power, the United States, as a Contracting Power, as well as its State of Hawai‘i, to comply with the provisions of the HCIV and the GCIV.

National Education Association Publishes Articles on the State of War between
the United States and the Hawaiian Kingdom since 1893 and the Prolonged Occupation

Showing an awareness of Hawai‘i’s history, the National Education Association (NEA) published an article on April 2, 2018 titled “The Illegal Overthrow of the Hawaiian Kingdom Government.”¹⁶ I recommend the reading of this article. In this first of three articles the NEA acknowledged that “on December 18, 1893, the President proclaimed by manifesto, in a message to the United States Congress, the circumstances for committing acts of war against the Hawaiian Kingdom that transformed a state of peace to a state of war on January 16, 1893.” The NEA concluded:

¹³ *Id.*

¹⁴ 33 Cong. Rec. 2391.

¹⁵ *Id.*, p. 262.

¹⁶ NEA Today, *The Illegal Overthrow of the Hawaiian Kingdom Government* (Apr. 2, 2018), available at: <http://neatoday.org/2018/04/02/the-illegal-overthrow-of-the-hawaiian-kingdom-government/>.

Despite the unprecedented prolonged nature of the illegal occupation of the Hawaiian Kingdom by the United States, the Hawaiian State, as a subject of international law, is afforded all the protection that international law provides. “Belligerent occupation,” concluded Judge Crawford in his book, *The Creation of States in International Law* (2nd ed., 2006), “does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State (p. 34).” Without a treaty of peace, the laws of war and neutrality would continue to apply.

On October 1, 2018, the NEA published a second article, which I also recommend, titled “The U.S. Occupation of the Hawaiian Kingdom” which acknowledged the prolonged occupation of Hawai‘i that has lasted 125 years.¹⁷ The NEA concluded:

A state of peace between the Hawaiian Kingdom and the United States was transformed to a state of war when United States troops invaded the Hawaiian Kingdom on January 16, 1893, and illegally overthrew the Hawaiian government the following day. Only by way of a treaty of peace can the state of affairs be transformed back to a state of peace. The 1907 Hague Convention, IV, and the 1949 Geneva Convention, IV, mentioned by the UN official regulate the occupying State during a state of war.

On October 13, 2018, the NEA published a third and final article, likewise recommended, titled “The Impact of the U.S. Occupation on the Hawaiian People.” The NEA concluded:

In his doctoral dissertation, Kauai writes, “From one of the most progressive independent states in the world to one of the most forgotten. If not for the US, where would Hawai‘i rank among the countries of the world today in regard to health care, political rights, civil rights, economy, and the environment? In the 19th century Hawai‘i was a global leader in many ways, even despite its size (Willy Kauai, *The Color of Nationality* (doctoral dissertation, political science, University of Hawai‘i (2014), p. 298).”

These three articles stemmed from a resolution passed by the NEA’s *Annual Meeting and Representative Assembly* on July 4, 2017. The resolution 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.”¹⁸

The delegates from the Hawai‘i State Teachers Association (HSTA), an affiliate member union of the NEA, introduced the resolution. After its passage, the HSTA posted this message on its Facebook page:

Today, the National Education Association’s Representative Assembly, meeting in Boston, approved New Business Item 37, “The NEA will publish an article that documents the illegal overthrow of the Hawaiian Monarchy in 1893, the prolonged illegal occupation of the United

¹⁷ NEA Today, *The U.S. Occupation of the Hawaiian Kingdom* (Oct. 1, 2018), available at: <http://neatoday.org/2018/10/01/the-u-s-occupation-of-the-hawaiian-kingdom/>.

¹⁸ NEA New Business Item 37 (2017), available at: <https://ra.nea.org/business-item/2017-nbi-037/>.

States in the Hawaiian Kingdom and the harmful effects that this occupation has had on the Hawaiian people and resources of the land.” Mahalo to Chris Santomauro, a teacher at Kaneohe Elementary, who introduced the proposal and Uluhani Waialeale, a teacher at Kualapuu charter school on Moloka’i, whose impassioned and articulate argument in favor of the Hawaiian overthrow measure swayed a majority of teachers from across the country to support it.¹⁹

The NEA is the largest labor union and professional interest group in the United States with 3.2 million members. It represents public school teachers, faculty members, education support professionals, retired educators, and students preparing to become teachers.

Fraudulent Annexation Does Not Preclude the Application of the Hague and Geneva Conventions

There seems to be a belief that the annexation of Hawai‘i in 1898 by a joint resolution would make the HCIV and GCIV inapplicable. However, Article 47 of the GCIV, titled “Inviolability of Rights,” states:

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

“Annexation” is specifically referred to in Article 47. Neither the GCIV, nor customary international law, recognizes it as lawful when it occurs in the absence of a treaty of peace. Annexation means to add or join. It is the outcome of cession and not the act of cession. Professor Oppenheim explains, “Cession of State territory is the transfer of sovereignty over State territory by the owner-State to another State.”²⁰ He concludes that 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, and the cession may be one with or without compensation.”²¹

There is no peace treaty between the Hawaiian Kingdom and the United States.

According to the International Committee of the Red Cross (“ICRC”) Commentary on the GCVI, “It will be well to note that the reference to annexation in this Article cannot be considered as implying recognition of this manner of acquiring sovereignty.”²² The “Occupying Power cannot therefore annex the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in a peace treaty. This is a universally-recognized rule and is endorsed by jurists and confirmed by numerous

¹⁹ Hawai‘i State Teachers Association Facebook available at:

<https://www.facebook.com/HawaiiStateTeachersAssociation/photos/pcb.10155394592413340/10155394591193340/?type=3&theater>.

²⁰ Lassa Oppenheim, *International Law*, vol. 1 (1912), p. 285.

²¹ *Id.*, p. 286-287.

²² International Committee of Red Cross, Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1958), hereafter “ICRC Commentary,” p. 276.

rulings of international and national courts.”²³ According to the ICRC, “an Occupying Power continues to be bound to apply the Convention as a whole even when, in disregard of the rules of international law, it claims during a conflict to have annexed all or part of an occupied territory.”²⁴ The United States Supreme Court in *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), also acknowledged that the ICRC commentary, which includes the ICRC’s commentary on the GCIV, previously referenced, is authoritative as to the interpretation of the articles of the Geneva Conventions.

Protected Persons

Article 4 of the GCIV defines *protected persons* as civilians who find themselves in the hands of a party to the conflict of which they are not nationals. Applying this definition to the Hawaiian Islands, *protected persons* are nationals of the Hawaiian Kingdom and nationals of foreign States who find themselves under the control of the United States in the territory of Hawaiian Kingdom. When codified in 1949, it would not have been understood to protect United States nationals. The definition has been broadened to include nationals of the occupying State—here the United States—by the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia decision in its 1999 *Tadic* case opinion.²⁵ The Court reasoned that the ‘protected person’ status is not determined as excluding those having the occupying State’s nationality, but rather is determined by the person’s “allegiance” to the territory they are in.

Under Hawaiian Kingdom law, all persons on Hawaiian soil, other than those who swore an oath of allegiance to the United States, owe allegiance to the Hawaiian Kingdom. Chapter VI of the Hawaiian Penal Code, states “Allegiance is the obedience and fidelity due to the kingdom from those under its protection. ... An alien, whether his native country be at war or at peace with this kingdom, owes allegiance to this kingdom during his residence therein.”²⁶ Since 1999, international criminal law appears to classify U.S. nationals, who are in Hawaiian Kingdom territory, as *protected persons*. Their presence, under Hawaiian Kingdom law, mandates their allegiance to the Hawaiian Kingdom even while a state of war exists between their country, the United States, and the Hawaiian Kingdom. While the Hawaiian Kingdom is unable to protect those under its protection as a result of the apparent occupation, international law mandates that the United States, as the occupying State, serve as the temporary protector of their rights.

According to the ICRC, “Whether a war is ‘just’ or ‘unjust’, whether it is a war of aggression or of resistance to aggression, whether the intention is to merely occupy territory or to annex it, in no way affects the treatment protected persons should receive.”²⁷ The Nuremburg Tribunal stated, in *USA v. William List et al.*, that “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.”²⁸

²³ *Id.*, p. 275.

²⁴ *Id.*, p. 276.

²⁵ ICTY, *Tadic case*, Case No. IT-94-1-A, Judgment, Appeals Chamber, 15 July 1999, para. 168 and 169, available at <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>.

²⁶ Hawaiian Penal Code, sections 2 & 3, Chapter VI—Treason, available at http://hawaiiankingdom.org/penalcode/pdf/Penal_Code.pdf.

²⁷ *Id.*, p. 16-17.

²⁸ *USA v. William List et al.* (Case No. 7), Trials of War Criminals before the Nuremburg Military Tribunals, Vol. XI (1950), p. 1247.

Petition for Writ of Mandamus—*Sai v. Trump*

On July 18, 2018, all legislators for the State of Hawai‘i and County Councils, including myself, were notified that the Hawaiian Kingdom government, acting through its Council of Regency, filed a petition for writ of mandamus with the United States District Court for the District of Columbia against United States President Donald Trump, and others, including the State of Hawai‘i’s Governor, David Ige.²⁹ The notice stated:

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.

On August 29, 2018, Assistant United States Attorney for the District of Columbia, Rhoda L. Campbell notified, by email, the petitioner, Dr. David Keanu Sai, that she would be “requesting a 30-day extension of time, to and through, October 10, 2018, to Answer or otherwise respond to your complaint. Please inform me of your position.” Dr. Sai responded, “Notwithstanding the emergency nature of the petition for writ of mandamus, I am agreeable to your request.”³⁰ Before the U.S. Attorney filed a motion for extension of time to answer the petition for writ of mandamus, on September 11, 2018, Judge Chutkan issued an order dismissing the petition.

The order stated, “Because Sai’s claims involve a political question, this court is without jurisdiction to review his claims and the court will therefore DISMISS the Petition.” Despite the order of dismissal on a political question basis, the U.S. Attorney sought to set aside the order of dismissal and filed a “Motion for Extension of Time to Answer in light of the order dismissing this action.” Judge Chutkan denied the motion by minute order the same day as the dismissal. It appears the U.S. Attorney was aware of the consequences of the dismissal on the grounds of a political question, which is not a dismissal based on standing, ripeness, and mootness that define the circumstances by which federal courts may decide legal issues. This was a dismissal based on a political question and the court’s lack of jurisdiction. According to Leigh, “even if a federal court is convinced that the legislative or executive branch violated the Constitution, the court lack’s jurisdiction to issue such a declaration, because that constitutional question is ‘committed’ to another branch.”³¹

When a petition for writ of mandamus is dismissed because of a political question, according to U.S. case law, all the allegation of facts in the petition are accepted by the court as true. Political questions come under Rule 12(b)(1) of the Federal Rules of Civil Procedure. When a complaint, or petition, is dismissed due to the ‘political question’ doctrine, it means that the federal court is concluding that the matter belongs to the political branches, i.e. the executive or legislative branches of the federal government, for resolution. The

²⁹ *Sai v. Trump, et al.*, Emergency Petition for Writ of Mandamus filed June 25, 2018, available at: https://hawaiiankingdom.org/pdf/Petition_for_Mandamus.pdf.

³⁰ See UPDATE Emergency Petition for Writ of Mandamus—U.S. Attorney Will Seek 30 day Extension, Hawaiian Kingdom Blog, available at <http://hawaiiankingdom.org/blog/update-emergency-petition-for-writ-of-mandamus-u-s-attorney-will-seek-30-day-extension/>.

³¹ Tara Leigh Grove, “The Lost History of the Political Question Doctrine” (2015), 1909. *Faculty Publications*. Paper 1796, available at: <http://scholarship.law.wm.edu/facpubs/1796>.

dismissal is not a finding that denies the truth of the facts alleged in the petition, but rather that the court is prevented from hearing the matter because of the political question.-

U.S. federal caselaw recognizes that a “court must accept as true all factual allegations contained in the [petition] when reviewing a motion to dismiss pursuant to Rule 12(b)(1),” *Lin v. United States*, 539 F. Supp. 2d 173 (D.D.C. 2008) *aff’d* 561 F.3d 502 (2009). *Lin v. United States* was a political question dismissal. Additionally, a court may consider material other than the allegations of the petition in determining whether it has jurisdiction to hear the case, as long as it accepts the factual allegations in the petition as true. *See Jerome Stevens Pharm., Inc. v. FDA*, 402 F.3d 1249, 1253-54 (D.C.Cir.2005); *St. Francis Xavier Parochial Sch.*, 117 F.3d at 624-25 n. 3; *Herbert v. Nat’l Acad. of Scis.*, 974 F.2d 192, 197 (D.C.Cir.1992); *Haase v. Sessions*, 835 F.2d 902, 906 (D.C.Cir.1987); *Hohri v. United States*, 782 F.2d 227, 241 (D.C.Cir.1986). And the U.S. Supreme Court stated that when reviewing a “decision granting a motion to dismiss,” the court “must accept as true all the factual allegations in the [petition].” *U.S. v. Gaubert*, 499 U. S. 315, 327 (1991).

Judge Chutkan’s “political question” dismissal of the petition accepted, as it must, as true all of the factual allegations in the petition. These facts included: a state of war exists between the Hawaiian Kingdom and the United States since January 16, 1893 (para. 83-107); there is a duty of neutrality during the state of war by third States (para. 108-110); the U.S. obligation to administer the laws of the Hawaiian Kingdom (para. 111-120); ‘Americanization’ through denationalization of the Hawaiian Kingdom population (para. 121-125); the State of Hawai‘i is not a government but a private armed force for the United States (para. 126-131); the restoration of the Hawaiian Kingdom government in 1995 (para. 132-151); the U.S. recognition *de facto* of the restored Hawaiian Kingdom government stemming from the *Larsen v. Hawaiian Kingdom* case before the Permanent Court of Arbitration, (para. 152-160); and the commission of war crimes in the Hawaiian Kingdom (para. 161-205).

Concern Over Incurring Criminal Liability for War Crimes

As an elected official of the State of Hawai‘i, I am an “agent” of the United States, as defined under Article 29 of the GCIV. As such, I have incurred responsibility to “take the greatest pains to ensure that the State services in contact with the protected persons are in actual fact capable of applying the provisions of the Convention.”³² I am also bound “to respect and ‘ensure respect for’ the Convention in all circumstances”³³ by every and all agents of the United States as the occupying State. My first step was to inquire of Hawai‘i County Corporation Counsel, legal counsel for the Hawai‘i County Council, Mr. Joe Kamelamela, to assure me, in my capacity as a council member, as to whether I, as a council member, had incurred, or would incur, criminal liability for legislating United States law in violation of Article 43 of the HCIV and Article 64 of the GCIV. To do this I retained legal counsel and a letter was sent to Mr. Kamelamela on my behalf on August 21, 2018.³⁴ The following day, Mr. Kamelamela wrote me an unacceptable opinion simply asserting, without any reasoning, that I “will not incur any criminal liability under state, federal and international law.”³⁵

³² Penal Code, *Id.*, p. 210.

³³ *Id.*

³⁴ Council member Jennifer Ruggles Inquiry Regarding Allegations of War Crimes and Criminal Liability (Aug. 21, 2018), available at: <https://jenruggles.com/wp-content/uploads/Stephen-Laudigs-Letter-to-Corporation-Counsel-8-21-18.pdf>.

³⁵ Corporation Counsel Joe Kamelamela’s Response to Council member Ruggles Inquiry (Aug. 22, 2018), available at: <https://jenruggles.com/wp-content/uploads/Kamelamela-Response-Letter-2018-08-22.pdf>.

Going Public as a Whistle Blower

Corporation Counsel failed to provide either an explanation, rationale, or a basis for his one-sentence conclusion. This failing prompted a follow-up letter dated August 28, 2018.³⁶ When Corporation Counsel gave me his unqualified opinion that I will not be incurring criminal liability, he did not dispute either the occupation of Hawai‘i by the United States nor the commission of war crimes against *protected persons*. He conceded, by not contesting, that the Hawaiian Islands is under a U.S. occupation. The evidence provided to Corporation Counsel included Dr. deZayas’ letter to the State of Hawai‘i judiciary of February 25, 2018. Corporation Counsel left me no choice but to become a whistleblower and inform the public that the United States government and the State of Hawai‘i engaged, and continues to engage, in illicit activity by violating provisions of the HCIV and the GCIV.

According to the ICRC, “the Hague Regulations [HCIV] is not applicable only to the inhabitants of the occupied territory; it also protects the separate existence of the State, its institutions, and its laws. This provision is not valid due to the existence of the new [GCIV], the new GCIV merely amplifies it in so far as the question of the protection of civilians is concerned.”³⁷ “The expression ‘laws in force in the country’ in Article 43,” explains Sassoli, “refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents, as well as administrative regulations and executive orders.”³⁸

I understand this phrase to mean the entire legal order of the Hawaiian Kingdom.

Oath of Office

My oath of office requires me to uphold and defend the United States and the State of Hawai‘i constitutions. It obligates me to not advance legislation which violates the federal constitution. It obligates me to uphold the federal constitution. Article VI, paragraph 2,—the *Supremacy Clause*—establishes the federal constitution’s primacy over the State of Hawai‘i constitution and laws, which states:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The HCVI and the GCIV are treaties made under the authority of the United States. Corporation Counsel Kamelamela did not deny the facts I provided him, through my attorney, of the occupation of Hawai‘i, the application of the HCIV and the GCIV, nor the protection afforded *protected persons* under the GCIV. My oath requires upholding the federal constitution and laws, which, by definition includes the HCIV and the GCIV and ensure respect for the conventions in all circumstances as they apply throughout the territory of the Hawaiian Kingdom.

³⁶ Council member Jennifer Ruggles Response to Corporation Counsel Kamelamela’s opinion (Aug. 28, 2018), available at: https://jenruggles.com/wp-content/uploads/Laudig_Ltr_to_Corp_Counsel_8.28.2018-.pdf.

³⁷ ICRC Commentary, Article 47, p. 273

³⁸ Marco Sassoli, *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, 6 (2004).

State of Hawai‘i is an Armed Force under International Law

When the United States assumed control of the regime it had installed in 1893, under a “new label” of “Territory of Hawai‘i” in 1900, and a later “re-labelling” as the “State of Hawai‘i” in 1959, it transgressed the limits of its authority “under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts.”³⁹ The legislation of all States, including the United States by its Congress, is not a source of international law. In *The Lotus Case*, the Permanent Court of International Justice noted that 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.”⁴⁰ According to Judge Crawford, derogation of this principle will not be presumed.⁴¹

Since Congressional legislation has no extraterritorial effect, it cannot unilaterally establish governments in, or over, the territory of a foreign State. As I previously stated, the U.S. Supreme Court noted, “Neither the [federal] Constitution nor [congressional] laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens.”⁴² The State of Hawai‘i cannot, therefore claim to be a lawful government because its only claim to authority derives from congressional legislation that has no extraterritorial effect. The “State of Hawai‘i” meets the *jus in bello*—the laws of war definition of an organized armed group acting for and on behalf of the United States within the territory of the Hawaiian Kingdom.⁴³

Organized “armed groups...are under a command responsible to that party for the conduct of its subordinates.”⁴⁴ Henckaerts and Doswald-Beck note that, “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,”⁴⁵ 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.”⁴⁶ Article 1 of the 1907 HC 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.

Since the *Larsen* case decision, *protected persons* who were defendants in proceedings before courts of this armed force have begun to contest the courts’ jurisdiction as extra-judicial. In a contemptible attempt to quash this defense, the Supreme Court of the State of Hawai‘i in 2013 responded to a protected person, who “contends that the courts of the State of Hawai‘i lacked subject matter jurisdiction over his criminal prosecution

³⁹ Eyal Benvenisti, *The International Law of Occupation* 19 (1993).

⁴⁰ *Lotus*, PCIJ, ser. A no. 10, 18 (1927).

⁴¹ James Crawford, *The Creation of States in International Law* 41 (2nd ed. 2006).

⁴² *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

⁴³ Article 1, 1899 Hague Convention, II, and Article 1, 1907 Hague Convention, IV.

⁴⁴ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I, 14 (2009).

⁴⁵ *Id.*, at 5.

⁴⁶ *Id.*

because the defense proved the existence of the Hawaiian Kingdom and the illegitimacy of the State of Hawai‘i government,”⁴⁷ with “*whatever may be said regarding the lawfulness*” of its origins, “*the State of Hawai‘i...is now, a lawful government* [emphasis added].”⁴⁸ The Hawai‘i Supreme Court’s phrasing ‘whatever may be said regarding the lawfulness’ is an “arresting” statement for a body that holds itself out as a court of law as it is tantamount to an admission of initial illegality that “somehow” by the mere passage of time ripens into “legality.” Thieves take no good title and are unable to transfer anything other than “possession” of stolen property. Unable to disprove the factual truths being presented by *protected persons*, the highest court of the State of Hawai‘i resorted to the language of Montague’s *kratocracy*, which is a “government by those who are strong enough to seize power through force or cunning.”

This opinion of the State of Hawai‘i highest court has since been continuously invoked by prosecutors in criminal cases and plaintiffs, in civil cases, to avoid the undisputed irretrievable factual and legal conclusions of the continued existence of the Hawaiian Kingdom, as a subject of international law, and the lack of legitimacy of the State of Hawai‘i as a government.

According to Marek, an occupier without title or sovereignty “must rely heavily, if not exclusively, on full and complete effectiveness.”⁴⁹ The application of the principle of effectiveness is different during a state of peace than in a state a war. During peace, effective control over the territory of the State is the mainstay of sovereignty exercised by the government. It is effective control of occupied territory during war that is the genesis of the obligation to administer the laws of the occupied State. Marek explains:

In 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. [Therefore] belligerent occupation is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned.⁵⁰

The laws and customs of war during occupation apply only in territories that have come under the authority of either the occupying State’s military or its armed force, such as the State of Hawai‘i. The “occupation extends only to the territory where such authority has been established and can be exercised.”⁵¹ Ferraro notes that, “occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts.”⁵²

Extensive Destruction of Property Not Justified by Military Necessity

Under international law, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly is a war crime. The construction of permanent fixtures on

⁴⁷ State of Hawai‘i v. Dennis Kaulia, 128 Hawai‘i 479, 486 (2013).

⁴⁸ *Id.*, at 487.

⁴⁹ Krystyna Marek, Identity and Continuity of States in Public International Law 102 (1968).

⁵⁰ *Id.*

⁵¹ 1907 Hague Convention, IV, Article 42.

⁵² 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).

public property that belongs to the Hawaiian Kingdom government is extensive destruction of that property. As an Agent for the occupying State, be advised that the construction of the 30-meter telescope is a war crime in violation of:

- Article 56, Hague Convention, IV (1907), “All seizure of, destruction or willful damage done to institutions [dedicated to religion, charity and education, the arts and sciences, even when State property], historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings;”
- Article 53, Geneva Convention, IV (1949), “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations;” and
- Article 147, Geneva Convention, IV (1949), “Grave breaches... shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: ... extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

The United States military’s omission of preventing the destruction of the public property of the Hawaiian Kingdom is also a war crime in violation of:

- Article 55, Hague Convention, IV (1907), “The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the [occupied] State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”

The Final Declaration adopted by the *International Conference for the Protection of War Victims* in 1993 urged all States to make every effort to, “Reaffirm and ensure respect for the rules of international humanitarian law applicable during armed conflicts protecting...the natural environment...against wanton destruction causing serious environmental damage.” In its advisory opinion in the *Nuclear Weapons case* in 1996, the International Court of Justice stated, “States must take environmental considerations into account when assessing what is necessary and proportionate... Respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principle of necessity.”

War crimes of destruction of real property on the summit of Mauna Kea belonging to the occupied State have been committed since the State of Hawai‘i leased 13,321.054 acres of the summit of Mauna Kea to the University of Hawai‘i in 1968. Thirteen telescopes have been constructed as permanent fixtures since 1970, and the thirty-meter telescope will make it fourteen. TMT International Observatory, LLC, has already committed the war crime of destruction of property when it began the construction of the 30-meter telescope by breaking ground, and has committed secondary war crimes of unlawful confinement (Article 147, Geneva Convention, IV) when 31 individuals who were preventing TMT International Observatory, LLC, from committing additional destruction were arrested by law enforcement of the State of Hawai‘i on April 2, 2015.

As an armed force, the State of Hawai‘i was never lawfully vested with the freehold in fee-simple to the ahupua‘a of Ka‘ohe, and therefore its so-called general lease no. S-4191 to the University of Hawai‘i dated June 21, 1968 is null and void. Under Hawaiian Kingdom law, the ahupua‘a of Ka‘ohe is government land under the management of the Department of Interior and not the State of Hawai‘i Board of Land and Natural Resources (BLNR). Consequently, all 10 subleases from the University of Hawai‘i that extend to December 31, 2033 are null and void as well, to wit:

- National Aeronautics and Space Administration dated November 29, 1974;
- Canada-France-Hawai‘i Telescope Corporation dated December 18, 1975;
- Science Research Council dated January 21, 1976;
- California Institute of Technology dated December 20, 1983;
- Science and Engineering Research Council dated February 10, 1984;
- California Institute of Technology dated December 30, 1985;
- Associated Universities, Inc., dated September 28, 1990;
- National Astronomical Observatory of Japan dated June 5, 1992;
- National Science Foundation dated September 26, 1994; and
- Smithsonian Institution dated September 28, 1995.

Therefore, the University of Hawai‘i’s sublease to TMT International Observatory, LLC, would also be considered null and void.

State of Hawai‘i’s Admission to the War Crime of Extensive Destruction of Property

In an opinion dated October 30, 2018, the State of Hawai‘i Supreme Court affirmed that the BLNR properly applied the law in analyzing whether a permit should be issued for the Thirty-Meter Telescope.⁵³ This opinion, however, was based on a so-called “degradation principle,” where legal protection is lost “where degradation of the resource is of sufficient severity as to constitute a substantial adverse impact.”⁵⁴ Justice Wilson, in his dissenting opinion of November 9, 2018, explicitly stated the BLNR decision was:

Because the area affected by the Thirty Meter Telescope Project (TMT or TMT project) was previously subjected to a substantial adverse impact, the BLNR finds that the proposed TMT project could not have a substantial adverse impact on the existing natural resources. [BLNR Decision and Order, p. 219, COL 180] Under this analysis, the cumulative negative impacts from development of prior telescopes caused a substantial adverse impact; [BLNR Decision and Order, p. 220, COL 183] therefore, TMT could not be the cause of a substantial adverse impact. As stated by the BLNR, TMT could not “create a tipping point where impacts became significant.” [BLNR Decision and Order, p. 222, COL 200] Thus, addition of another telescope

⁵³ *In Re Conservation District Use Application for TMT*, SCOT-17-0000777, Opinion, State of Hawai‘i Supreme Court (Oct. 30, 2018), available at: <http://www.courts.state.hi.us/wp-content/uploads/2018/10/SCOT-17-0000777.pdf>.

⁵⁴ *In Re Conservation District Use Application for TMT*, SCOT-17-0000777, Dissenting Opinion, Wilson, J. (Nov. 9, 2018), p. 1, available at: <http://www.courts.state.hi.us/.../11/SCOT-17-0000777dis.pdf>.

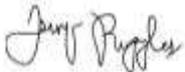
—TMT—could not be the cause of a substantial adverse impact on the existing resources because the tipping point of a substantial adverse impact had previously been reached.⁵⁵

[T]he cumulative effects of astronomical development and other uses in the summit area of Mauna Kea have previously resulted in impacts that are substantial, significant and adverse.” [BNLR Decision and Order p. 220, COL 183]⁵⁶

Of significance, is that Justice Wilson stated it “is undisputed that the relevant area of the TMT project has suffered a substantial adverse impact to cultural resources due to the construction of twelve telescopes.” According to the BLNR there are currently “eight optical/infrared observatories, three submillimeter observatories and a radio telescope.”⁵⁷

This letter serves to give the State of Hawai‘i Governor’s office, as well as the Supreme Court, both knowledge, and “awareness of the factual circumstances that established the existence of an armed conflict” between the Hawaiian Kingdom and the United States, the application of the HCIV and GCIV, and the protection afforded civilians as *protected persons*. Therefore, as Governor of the State of Hawai‘i, I respectfully call upon your office to cease and desist from pursuing the construction of the TMT project and to comply with the HCIV and GCIV throughout Hawaiian territory. Hence, my duty under the HCIV and GCIV, as an Agent for the occupying State, is to ensure that compliance with the conventions continues as well as reporting the commission of war crimes to the Federal Bureau of Investigation and other authorities under international law.

Sincerely,



Jennifer Ruggles

Hawai‘i County Council Member

cc: Office of the Prosecutor, International Criminal Court
President, Human Rights Council
United Nations Independent Expert for the Promotion of a Democratic and Equitable
International Order
International Committee of the Red Cross
Amnesty International
Human Rights Watch
Federal Bureau of Investigation

⁵⁵ *Id.*, p. 2.

⁵⁶ *Id.*, p. 7-8.

⁵⁷ *Id.*, p. 7, note 4.