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MEMORANDUM ON THE MILITARY FORCE OF THE HAWAIIAN KINGDOM
AND THE IMPLICATION OF INTERNATIONAL HUMANITARIAN LAW AND
THE LAW OF OCCUPATION

In 1845, the Hawaiian Kingdom organized its military under the command of the Governors of the several islands of Hawai‘i, Maui, O‘ahu and Kaua‘i but subordinate to the Monarch. According to the statute, “male subjects of His Majesty, between the ages of eighteen and forty years, shall be liable to do military duty in the respective islands where they have their most usual domicil, whenever so required by proclamation of the governor thereof.”¹ Those exempt from military duty included ministers of religion of every denomination, teachers, members of the Privy Council of State, executive department heads, members of the House of Nobles and Representatives when in session, judges, sheriffs, notaries public, registers of wills and conveyances, collectors of customs, poundmasters and constables.²

In 1847, the *Polynesian* newspaper reported the standing army comprised of 682 of all ranks: the “corps which musters at the fort, including officers, 286; corps of King’s Guards, including officers, 363; stationed at the battery, on Punch Bowl Hill, 33.”³ On 17 December 1852, King Kamehameha III, in Privy Council, established the First Hawaiian Cavalry, commanded by Captain Henry Sea.⁴

In 1886, the Legislature enacted *An Act to Organize the Military Forces of the Kingdom*, “for the purpose of more complete military organization in any case requiring recourse to arms and to maintain and provide a sufficient force for the internal security and good order of the Kingdom, and being also in pursuance of Article 26th of the Constitution.”⁵ The Act

¹ “Statute Laws of His Majesty Kamehameha III,” *Hawaiian Kingdom*, Vol. I 69 (1846).

² *Id.*, 70.

³ “Military,” *Polynesian* 138 (9 Jan. 1847).

⁴ “First Hawaiian Cavalry,” *Polynesian* 130 (25 Dec. 1852).

⁵ *An Act to Organize the Military Forces of the Kingdom*, Laws of His Majesty Kalakaua I 37 (1886).

of 1886 established “a regular Military and Naval force, not exceed two hundred and fifty men, rank and file,” and the “term of enlistment shall be for five years, which term may be extended from time to time by re-enlistment.”⁶ This military force was headed by a Lieutenant General as Commander-in-Chief and the supreme command under the Executive Monarch as Generalissimo.⁷ This military force was renamed the King’s Royal Guard in 1890,⁸ and the Executive Monarch was thereafter called the “Commander-in-Chief of all the Military Forces”⁹ and not Generalissimo. The King’s Royal Guard was the only military force of the kingdom.¹⁰

Upon ascending to the throne on 29 January 1891, Queen Lili‘uokalani, as the Executive Monarch, succeeded her predecessor King David Kalākaua as Commander-in-Chief of the Royal Guard. The command structure of the Royal Guard consisted of a Captain and two Lieutenants. These officers were authorized “to make, alter and revoke all regulations not repugnant to the provisions of [the Act of 1890], concerning enlistment, discipline, exercises, accoutrements, arms and clothing and to make such other rules and orders as may be necessary to carry into effect the provisions of [the Act of 1890], and to provide and prescribe penalties for any violations of such regulations not extending to deprivation of life or limb, or the infliction of corporeal punishment.”¹¹ All rules, regulations or orders required the approval of the Executive Monarch that was countersigned by the Minister of Foreign Affairs.¹²

On 17 January 1893, a small group of insurgents, with the protection of United States troops, declared the establishment of a provisional government whereby 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 [...] 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, [and] Arthur P. Peterson, Attorney General, who are hereby removed from office.”¹³ The insurgency further stated that all “Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils.”¹⁴

⁶ *Id.*

⁷ *Id.*, 38.

⁸ *An Act to Provide for a Military Force to be Designated as the “King’s Royal Guard,”* Laws of His Majesty Kalakaua I 107 (1890).

⁹ *Id.*

¹⁰ *Id.*, 108.

¹¹ *Id.*, 107.

¹² *Id.*

¹³ *Proclamation*, Laws of the Provisional Government of the Hawaiian Islands vii (1893).

¹⁴ *Id.*, viii.

The military force of the provisional government was not an organized unit or militia but rather armed insurgents under the command of John Harris Soper. Soper attended a meeting of the leadership of the insurgents calling themselves the Committee of Safety in the evening of 16 January 1893, where he was asked to command the armed wing of the insurgency. Although Soper served as Marshal of the Hawaiian Kingdom under King Kalākaua, he admitted in an interview with U.S. Special Commissioner James Blount on 17 June 1893, who was investigating the overthrow of the Hawaiian Kingdom government by direction of U.S. President Grover Cleveland, that he “was not a trained military man, and was rather adverse to accepting the position [he] was not especially trained for, under the circumstances, and that [he] would give them an answer on the following day; that is, in the morning.”¹⁵ Soper told Special Commissioner Blount he accepted the offer after learning that “Judge Sanford Dole [agreed] to accept the position as the head of the [provisional] Government.”¹⁶ The insurgency renamed the Queen’s Royal Guard to the National Guard by *An Act to Authorize the Formation of a National Guard* on 27 January 1893.¹⁷ Soper was thereafter commissioned as Colonel to command the National Guard.

On 17 January 1893, Queen Lili‘uokalani conditionally surrendered to the United States and not the insurgency, thereby transferring effective control of Hawaiian territory to the United States.¹⁸ Under customary international law, a State’s effective control of another State’s territory by an act of war triggers the Occupying State’s military to establish a military government to provisionally administer the laws of the Occupied State. This rule was later codified under Articles 42 and 43 of the 1899 Hague Regulations, which was superseded by Articles 42 and 43 of the 1907 Hague Regulations. When Special Commissioner Blount ordered U.S. troops to return to the U.S.S. Boston on 1 April 1893,¹⁹ effective control of Hawaiian territory was left with the insurgency calling itself the provisional government.

Special Commissioner Blount submitted his final report on 17 July 1893, to U.S. Secretary of State Walter Gresham.²⁰ Secretary of State Gresham submitted his report to President Cleveland on 18 October 1893,²¹ and President Cleveland notified the Congress of his findings and conclusions on 18 December 1893.²² In his message to the Congress, he stated:

¹⁵ United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawaii: 1894-95*, 972 (1895) (hereafter “Executive Documents”).

¹⁶ *Id.*

¹⁷ *An Act to Authorize the Formation of a National Guard*, Laws of the Provisional Government of the Hawaiian Islands 8 (1893).

¹⁸ Executive Documents, 586.

¹⁹ *Id.*, 597.

²⁰ *Id.*, 567.

²¹ *Id.*, 459.

²² *Id.*, 445.

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 officer's 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 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 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 accusation 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.²³

Under international law, the provisional government was an armed force of the United States in effective control of Hawaiian territory since 1 April 1893, after the departure of U.S. troops. As an armed proxy of the United States, they were obliged to provisionally administer the laws of the Hawaiian Kingdom until a peace treaty was negotiated and agreed upon between the United States and the Hawaiian Kingdom. In other words, it would have been Colonel Soper’s duty to head the military government as its military governor after President Cleveland completed his investigation of the overthrow of the Hawaiian Kingdom government and notified the Congress on 18 December 1893. A military government was not established under international law but rather the insurgency maintained the facade that they were a *de jure* government.

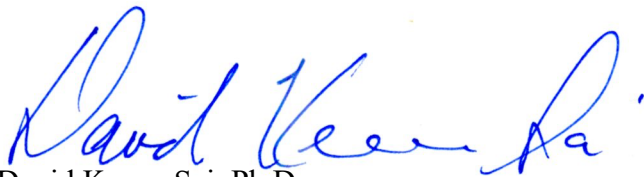
The insurgency changed its name to the Republic of Hawai‘i on 4 July 1894. Under *An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard* of 13 August 1895, the National Guard was reorganized and commanded by the Adjutant of the General Staff that headed a regiment comprised of battalions with companies.²⁴

²³ *Id.*, 453.

²⁴ *An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard*, Laws of the Republic of Hawaii 29 (1895).

Under *An Act To provide a government for the Territory of Hawaii* enacted by the U.S. Congress on 30 April 1900,²⁵ the Act of 1895 continued in force. Under section 6 of the Act of 1900, “the laws not inconsistent with the Constitution or laws of the United States or the provisions of this Act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States.” Colonel Soper continued to command the National Guard as Adjutant until 2 April 1907, when he retired. The Hawai‘i National Guard continued in force under *An Act To provide for the admission of the State of Hawaii into the Union* enacted by the U.S. Congress on 18 March 1959.²⁶

The Adjutant General of the State of Hawai‘i is the direct successor of Colonel Soper of the armed force calling itself the provisional government, and, like his predecessor, is obliged under international humanitarian law and the law of occupation to transform the State of Hawai‘i, like Colonel Soper should have done with the provisional government, into a military government as its military governor until a treaty of peace between the United States and the Hawaiian Kingdom has been negotiated and agreed upon in accordance with the laws of both countries.²⁷ U.S. Army doctrine and regulations provide guidance on establishing a military government in effective control of the territory of a foreign State. This is not a function for a civilian not trained by the U.S. Army such as the Governor of the State of Hawai‘i, especially with the implication of war crimes already being committed by State of Hawai‘i officials.



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²⁵ *An Act To provide a government for the Territory of Hawaii*, 31 Stat. 141 (1900).

²⁶ *An Act To provide for the admission of the State of Hawaii into the Union*, 73 Stat. 4 (1959).

²⁷ See *Memorandum on the Role and Function of the Military Government of Hawai‘i* (7 April 2023) (online at https://hawaiiankingdom.org/pdf/HK_Memo_Military_Gov.pdf), and *Supplemental Memorandum on the Role and Function of the Military Government of Hawai‘i* (28 April 2023) (online at https://hawaiiankingdom.org/pdf/HK_Supp_Memo_Military_Gov.pdf).