

COMPLAINT AGAINST THE UNITED STATES OF AMERICA

To the President of the Security Council.

On behalf of the *Acting* Government of the Hawaiian Kingdom I have the honor

- (a) to refer to Article 35 (2) of the Charter of the United Nations;
- (b) the Declaration of the Hawaiian Kingdom accepting the obligations of Pacific Settlement under the United Nations Charter for the purposes of these proceedings, attached hereto as Attachment no. 1; and
- (c) to state that the *Acting* Government of the Hawaiian Kingdom hereby appoints as its Agent H.E. *Acting* Minister of Interior David Keanu Sai and that his address is P.O. Box 2194, Honolulu, H.I. 96805-2194, telephone no: (808) 239-5347, fax no: (808) 239-6212, e-mail: interiorhk@hawaii.rr.com

Under the authority conferred upon the Security Council by the Charter of the United Nations, I hereby submit on behalf of the *Acting* Government of the Hawaiian Kingdom a Complaint, with Attachments, against the Government of the United States of America in the following case.

I. PRELIMINARY STATEMENTS

To assist the Security Council in its evaluation of the merits of this submission, the *Acting* Government of the Hawaiian Kingdom would like to preface this Complaint with the following preliminary statements and then a statement of the facts:

- 1.1 This case arises out of the prolonged and illegal occupation of the entire territory of the Hawaiian Kingdom by the United States of America since the Spanish-American War of 1898, and the failure on the part of the United States of America to establish a direct system of administering the laws of the Hawaiian Kingdom. As will be described below, this action constitutes a fundamental breach of Hawaiian State sovereignty and the treaties entered between the Hawaiian Kingdom and the United States, as well as the 1907 Hague Regulations and international law.
- 1.2 The Hawaiian Kingdom acquired the recognition of its independence on December 19, 1842, by the United States of America; April 1, 1843, by the United Kingdom; and by joint proclamation between the United Kingdom and France on November 28, 1843. On May 16, 1854, the Hawaiian Kingdom declared itself a neutral State, and whose neutrality became a provision in divers treaties with other independent States. At the time of the recognition of Hawaiian independence, the Hawaiian Kingdom's government was a constitutional monarchy, and for the next fifty years, it would develop a complete system of laws, both civil and criminal, and have treaty relations of a *most favored nation*

status with the major powers of the world, including the United States of America. The *Dominion of the Hawaiian Kingdom*, with supporting Annexes, is a report attached hereto as Attachment no. 2. This report provides the Security Council with an overview of the Hawaiian Kingdom's political history to the present, including the following statement of facts.

II. STATEMENT OF FACTS

- 2.1 On January 14, 1893, Her Hawaiian Majesty Queen Lili'uokalani summoned into the throne room of the Palace, the diplomatic corps, members of the Supreme Court and the Legislative Assembly, as well as a committee of the Hawaiian Political Association, which comprised of aboriginal Hawaiian subjects vehemently opposed to the illegal 1887 constitution as evidenced by a multitude of signature petitions the organization had collected. Her Majesty's intention on this day was to reaffirm the 1864 Constitution as a counter to the illegal 1887 constitution.
- 2.2 This action, on the part of the Queen, generated excitement amongst a minority of the non-aboriginal Hawaiian subjects and alien community, who were co-conspirators in the so-called 1887 constitution that illegally allowed aliens to vote in the Kingdom elections. This faction would convince the Queen's ministers to delay her announcement in order to formulate a counter. Thereafter, the Queen regrettably informed her guests that she yielded under the advice of her ministers, and promised that on some future day a new constitution would be sought.
- 2.3 In response to the Queen's delay, a meeting of approximately fifty to one hundred people, primarily resident aliens, met at a private office in Honolulu and selected a so-called Committee of Safety, which comprised of thirteen individuals. The national breakdown of this so-called committee was: (6) Hawaiian subjects, not of the aboriginal race, (5) American citizens, (1) British subject, and (1) German subject. Between the 14th and 16th of January, 1893, the committee had been meeting with the resident United States Minister assigned to the Hawaiian Kingdom, His Excellency John Stevens, to formulate a plan of annexing the Hawaiian Islands to the United States.
- 2.4 On January 16, 1893, a meeting was organized by the so-called Committee of Safety to protest the Queen's efforts to nullify the illegal constitution of 1887. Continuing to mask their true intentions, the committee sought to procure a resolution to be passed by those people in attendance that would denounce the Queen and empower the committee.
- 2.5 On that same day the so-called committee, which was comprised of only five (5) Americans out of thirteen (13), had sent a note to the United States Minister purporting that American lives and property were in danger and concluded that,

"We are unable to protect ourselves without the aid, and therefore pray for the protection of the United States forces."

- 2.6 After delivery of the note, the committee had re-evaluated their treasonous actions, and sent a small contingent to persuade the American Minister not to land the troops until the next day. The request was denied. The American Minister, in violation of the international law of non-intervention, said that the orders have been issued and whether the Committee of Safety was ready or not, the troops will land. Captain Wiltse, U.S. Naval Commander of the U.S.S. Boston, was ordered to land a force,

"...for the protection of the United States legation, United States consulate, and to secure the safety of American life and property."

- 2.7 Thereafter, between the hours of 4 and 5 p.m., an invasion force of over 160 well-armed U.S. troops, with two (2) pieces of artillery, were landed and marched through the streets of Honolulu to a position previously selected by Minister Stevens on January 16, 1893. The location of the detachment was directly across the Government building and in plain view of the Palace.
- 2.8 Immediately following the unprovoked landing of the American troops, the Governor of the island of O'ahu, His Excellency Archibald Cleghorn, sent a communication to the U.S. Minister protesting the landing of the troops and called it an unwarranted invasion of Hawaiian soil. At the same time the Hawaiian Minister of Foreign Affairs, His Excellency Samuel Parker, sent a communication to the U.S. Minister and demanded an explanation for the landing of American troops. The U.S. Minister evaded both communications. The American troops were located a few hundred yards from the Government building at a place between Music Hall and Arian Hall. Members of the so-called Committee of Safety predetermined this location and the U.S. Minister before American troops disembarked the U.S.S. Boston.
- 2.9 On January 17, 1893, at about 2:30 p.m., members of this treasonous group proceeded in squads to the Government building, where the American troops were already situated, in order to read their so-called proclamation abrogating the monarchical form of government and seeking annexation to the United States. But in order for these traitors not to be noticed and arrested by Hawaiian officials, they separated in their march. The Committee of Safety had sent Mr. A.S. Wilcox to see if there were any Hawaiian Government troops present at the Government building, and when informed there was none, they proceeded to the Government building and read the proclamation only a few hundred yards from the fortified position of American troops. Only at the end of the reading of the proclamation did the insurrectionary troops, numbering a mere thirty (30) to forty (40), begin to assemble.
- 2.10 U.S. Special Investigator James Blount who was investigating the circumstances of the so-called revolution later requested Rear Admiral Skerrett, ranking officer

of the U.S. Naval Force in the Pacific, to comment on the location of American troops. Rear Admiral Skerrett stated,

"In my opinion it was unadvisable to locate the troops there, if they were landed for the protection of the United States citizens, being distantly removed from the business portion of the town, and generally far away from the United States legation and consulate-general, as well as being distant from the houses and residences of United States citizens...Had Music Hall been seized by the Queen's troops, they would have been under their fire, had such been their desire. It is for these reasons that I consider the position occupied as illy selected. Naturally, if they were landed with a view to support the Provisional Government troops, then occupying the Government building, it was a wise choice, as they could enfilade any troops attacking them from the palace grounds in front."

2.11 In his investigation, U.S. Special Investigator James Blount also commented on the location of the American troops by stating that,

"A part of the Queen's forces, numbering 224, were located at the station house, about one-third of a mile from the Government building. The Queen, with a body of 50 troops, was located at the palace, north of the Government building about 400 yards. A little northeast of the palace and some 200 yards from it, at the barracks, was another body of 272 troops. These forces had 14 pieces of artillery, 386 rifles, and 16 revolvers. West of the Government building and across a narrow street were posted Capt. Wiltse and his troops, these likewise having artillery and small arms. The Government building is in a quadrangular-shaped piece of ground surrounded by streets. The American troops were so posted as to be in front of any movement of troops, which should approach the Government building on three sides, the fourth being occupied by themselves. Any attack on the Government building from the east side would expose the American troops to the direct fire of the attacking force. Any movement of troops from the palace toward the Government building in the event of a conflict between the military forces would have exposed them to the fire of the Queen's troops. In fact, it would have been impossible for a struggle between the Queen's forces and the forces of the committee of safety to have taken place without exposing them to the shots of the Queen's forces."

2.12 He concluded by stating that,

"A building was chosen where there were no troops stationed, where there was no struggle to be made to obtain access, with an American force immediately contiguous with the mass of the population impressed with its unfriendly attitude. Aye, more than this -- before any demand for surrender had even been made on the Queen or on the commander of any officer of any of her military forces at any of the points where her troops

were located, the American minister had recognized the Provisional Government and was ready to give it the support of the United States troops!"

- 2.13 Former United States Congressman James Blount conducted the official report of this Presidential established investigation. Based on this report the Secretary State, W.Q. Gresham, advised the President that:

"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 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. Can the United States consistently insist that other nations shall respect the independence of Hawai'i 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."

- 2.14 In a dispatch to United States Minister Albert Willis, assigned to the Hawaiian Islands, and successor to Minister Stevens, Secretary of State, Gresham, states that:

"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 of 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."

- 2.15 Her Majesty Queen Lili'uokalani, faced with a very serious decision of granting amnesty to the traitors, requested additional clarity and reasoning from the President of the United States. This inquiry made by Her Majesty was conveyed by Minister Willis to Secretary of State Gresham. On December 3, 1893, Her Majesty's inquiry received the following response:

"Should the Queen refuse assent to the written conditions, you will at once inform her that the President will cease interposition in her behalf, and that

while he deems it his duty to endeavor to restore to the sovereign the constitutional government of the islands, his further efforts in that direction will depend upon the Queen's unqualified agreement that all obligations created by the Provisional Government in a proper course of administration shall be assumed and upon such pledges by her as will 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. The President feels that by our original interference and what followed we have incurred responsibilities to the whole Hawaiian community, and it would not be just to put one party at the mercy of the other. Should the Queen ask whether if she accedes to conditions active steps will be taken by the United States to effect her restoration or to maintain her authority thereafter, you will say that the President can not use force without the authority of Congress. Should the Queen accept conditions and the Provisional Government refuse to surrender, you will be governed by previous instructions. If the Provisional Government asks whether the United States will hold the Queen to fulfillment of stipulated conditions, you will say, the President, acting under dictates of honor and duty as he has done in endeavoring to effect restoration, will do all in his constitutional power to cause observance of the conditions he has imposed."

- 2.16 On December 18, 1893, in an interview with U.S. Minister Willis at the legation of the United States, Her Majesty the Queen consented only to a conditional amnesty for those individuals involved in the establishment and support of the Provisional Government. Her conditional consent fell short of President Cleveland's request. Later that day, Her Majesty, after pondering over the interview, had determined that in the best interest of the nation she would accede to President Cleveland's request. That same day, she sent the following letter to Minister Willis:

"Since I had the interview with you this morning I have given the most careful and conscientious thought as to my duty, and I now of my own free will give my conclusions. I must not feel vengeful to any of my people. If I am restored by the United States I must forget myself and remember only my dear people and my country. I must forgive and forget the past, permitting no proscription or punishment of any one, but trusting that all will hereafter work together in peace and friendship for the good and for the glory of our beautiful and once happy land. Asking you to bear to the President and to the Government he represents a message of gratitude from me and from my people, and promising, with God's grace, to prove worthy of the confidence and friendship of your people."

- 2.17 Attached to the letter was the following declaration by Her Majesty and witnessed by J.O. Carter, in part:

"I, Lili'uokalani, 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 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."

- 2.18 Her Majesty's agreement to the conditions of restoration occurred on the same day President Cleveland addressed the United States Congress on the findings of James Blount. Her Majesty's agreement was not made a part of his message. On December 18, 1893, President Grover Cleveland reported fully and accurately on the basis in part of the Blount report on the illegal acts of the traitors. President Cleveland 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. He further stated that:

"[w]hen 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..."

- 2.19 In accordance with the principles of international law, the revolutionaries were not successful in obtaining *de facto* recognition. Since the revolutionaries failed to obtain *de facto* recognition, the legal standing of the Hawaiian Kingdom, the legitimate sovereign over the Hawaiian Islands, remained intact.
- 2.20 President Cleveland reminded the United States Congress of the special conditions of Her Majesty Queen Lili'uokalani's surrender of her executive authority, where 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."

President Cleveland further stated that 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" and called for the restoration of the Government of the Hawaiian Kingdom.

He also stated

"...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 "...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."

- 2.21 Acknowledging the actions taken by the U.S. Minister in January of 1893 as illegal, both under international and municipal laws, U.S. President Grover Cleveland called for the restoration of the Hawaiian Kingdom Government on December 18, 1893. In his message to the U.S. Congress, he rescinded the U.S. Minister's *de facto* recognition of January 17, 1893, by stating that the Provisional Government was neither *de facto* nor *de jure*, and admits to intervention by concluding that

"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."

- 2.22 Attached to the findings of fact, the President expressed

"...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...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."

- 2.23 What was not known by the President when he delivered the message to the United States Congress on December 18, 1893, was that Her Hawaiian Majesty Queen Lili'uokalani had agreed with the proposed condition of amnesty in a communication with U.S. Minister Albert Willis, successor to U.S. Minister John

- Stevens, on the very same day President Cleveland addressed the U.S. Congress. With all the conditions having been met, the United States failed to assist in the restoration of the lawful government of the Hawaiian Islands for more political reasons than that of a legal duty and obligation.
- 2.24 In view of what has been said regarding the historical background of the fake revolution and the creation of the puppet government called the provisional government, the continuity of the Hawaiian Kingdom as a subject of international law remained intact. Thus the problem of the continuity of the Hawaiian Kingdom as independent State involves no doctrinal difficulty.
- 2.25 Although the standing of the puppet “provisional” government has been negated under international law, the individuals who embarked on this most treacherous course would not recognize the findings of the U.S. President nor to the lawful right of the Hawaiian Kingdom Government. Instead, they maintained their opposition to the law by taking advantage of the time that had elapsed during the U.S. investigation. In the absence of lawfulness, this self-proclaimed entity that arose out of illegal actions taken by the U.S. diplomatic and military personnel, were allowed to grow and recruit individuals seeking power and wealth, while the United States Congress addressed the Hawaiian issue as requested by U.S. President Cleveland in his speech on December 18, 1893. Since its illegal birth, the Provisional Government's intent was never to be an independent nation and a subject of international law, but rather sought annexation to the United States as a territory. Under the Cleveland administration the dream of annexation (which was brokered under the Harrison administration), soon became a nightmare of American liability and criminal acts, which to this day has not been resolved. Notwithstanding international law, this traitorous group, who called themselves the provisional government, maintained itself until a more sympathetic administration could replace President Cleveland's.
- 2.26 Unable to succeed at this first attempt of annexation, the self-proclaimed provisional government declared itself to be the Republic of Hawai‘i on July 4, 1894. This self-proclaimed Republic of Hawai‘i maintained its opposition to the restoration of the Hawaiian Kingdom Government as called for by United States President Grover Cleveland. On the day of the Republic's proclamation, its so-called Minister of Foreign Affairs, Francis M. Hatch, sent a dispatch to U.S. Minister, Albert S. Willis, who was assigned to the Hawaiian Islands. Mr. Hatch apprised the U.S. Minister of the re-formation of the provisional government into the Republic of Hawai‘i and the naming of its President and cabinet. Mr. Hatch also requested that the U.S. Minister Willis bestow recognition to the self-proclaimed Republic of Hawai‘i.
- 2.27 The next day, U.S. Minister Willis responded by acknowledging the receipt of Hatch's dispatch and concluded that it could not offer any more recognition to the self-proclaimed Republic of Hawai‘i than the U.S. President gave to the provisional government. The letter read that in

"...reply to your note reciting the foregoing facts, I have the honor to inform you that I hereby, as far as I have the right so to do, extend to the Republic of Hawai'i the recognition accorded its predecessor, the Provisional Government of the Hawaiian Islands. I do this in the belief that I represent the President of the United States, to whom, as the Executive Chief of the Government, my action in the premises will be promptly submitted for his necessary approval."

- 2.28 Since President Cleveland made no subsequent approval of U.S. Minister Willis' conditional response to Mr. Hatch, the July 5th letter could not be construed to be diplomatically sanctioned. Furthermore, U.S. Minister Willis, in his letter, afforded the Republic of Hawai'i no more recognition than the provisional government held, which was neither *de facto* nor *de jure*.
- 2.29 On June 16, 1897, a second attempt of a treaty of annexation was signed in Washington, D.C., between representatives of the self-proclaimed Republic of Hawai'i and the newly elected President of the United States of America, William McKinley. This so-called treaty remained subject to ratification or approval by two-thirds of the United States Senate.
- 2.30 On June 18, 1897, in Washington, D.C., the Honorable Joseph Heleluhe, for and on behalf of Her Majesty Queen Lili'uokalani filed in the U.S State Department, a formal protest to this second attempt of a treaty of annexation. A certified copy of the entire protest from the United States National Archives is attached hereto as Attachment no. 3. In particular, Her Majesty stated:

"Because said treaty ignores, not only all professions of perpetual amity and good faith made by the United States in former treaties with the sovereigns representing the Hawaiian people, but all treaties made by those sovereigns with other and friendly powers, and it is thereby in violation of international law.

Because, by treating with the parties claiming at this time the right to cede said territory of Hawaii, the Government of the United States receives such territory from the hands of those whom its own magistrates (legally elected by the people of the United States, and in office in 1893) pronounced fraudulently in power and unconstitutionally ruling Hawaii."

- 2.31 Fortifying Her Majesty Queen Lili'uokalani's second letter of protest were petitions, in both the Hawaiian and English versions, from the Presidents of the Hawaiian organizations of the Men and Women's Hawaiian Patriotic League (also known as the Hui Aloha 'Aina), and the Hawaiian Political Party (also known as the Hui Kālai'āina). A great majority of the Hawaiian people was associated with these organizations. These petitions were signed on February 4, 1897, and addressed newly elected United States President William McKinley. The Honorable Joseph Heleluhe filed these petitions in the United States Department

of State in July of that same year. In order to show solidarity, all three organizations' Presidents drafted identical petitions, in part:

"Your Petitioner therefore respectfully submits to Your Excellency (William McKinley),

- That the one hope and trust of the Hawaiian people is the same today and has been expressed in several petitions heretofore presented to the Government of the United States, they entertain the firm belief that Your Excellency will do justice to this Nation during Your term of Office.

- That this trust of the Hawaiian people is strengthened by the recollection of the friendly action of the Government of the United States in 1843, when an assurance of the Independence of the Islands was given by the President to Delegates from Hawaii through which assurance the recognition of their independence by the Governments of England and France was readily obtained.

- That no cause whatever can arise that will alter or change the mind of the Hawaiian people and their desire to see the Monarchy restored, and the Throne occupied by the Queen, who would never have been deposed by a handful of foreigners but for the support rendered them by the U.S. Ship Boston.

- That the Queen and her people are of one mind that in the event of restoration amnesty should be granted to those who were concerned in the overthrow of the Monarchy on January 17, 1893.

Your Petitioner therefore prays that the Monarchical form of Government to which the Nation is attached may be restored to the Hawaiian Islands and Queen Lili'uokalani reinstated in the Throne, which for the avoidance of a conflict between her soldiers and a detachment from the U.S. Ship Boston, which had invaded her realm in support of the insurgents by order of the U.S. Minister, Her Majesty resigned under solemn protest and appeal to the President of the United States relying on the Justice of the President and people of that great country and confident that a Nation so great and powerful would never allow so great a wrong to remain unredressed."

- 2.32 Without adhering to the diplomatic protests from the Queen and these Hawaiian organizations, President McKinley proceeded to submit the so-called treaty of annexation to the United States Senate for approval. The Senate was scheduled to convene in December of 1897. Appraised of President McKinley's intentions, the three organizations quickly mobilized and instituted two new signature petitions, which vehemently protested annexation. Of the three signature petitions, it was decided by the Hawaiian organizations to submit the petition from the Men and Women's Hawaiian Patriotic League to the United States Senate when it convenes in December of 1897. It was determined that the signature petition from the Hawaiian Political Association, (or Hui Kālai'āina), which numbered nearly 17,000 signatures would be withheld because it might receive a negative response by the U.S. Senators because of the petition's pro-Monarchy wording of the

petition. The Men and Women's Hawaiian Patriotic League petitions numbered over 21, 000 signatures. Here follows the preface to the signatures:

"Whereas, there has been submitted to the Senate of the United States of America a Treaty for the Annexation of the Hawaiian Islands to the said United States of America, for consideration at its regular session in December, A.D. 1897; therefore, We, the undersigned, native Hawaiian citizens and residents of the District of _____, island of _____, who are members of the (Women's) Hawaiian Patriotic League of the Hawaiian Islands, and others who are in sympathy with said League, earnestly protest against the annexation of the said Hawaiian Islands to the said United States of America in any form or shape."

- 2.33 As a result of these protests and other legal questions surrounding the self-proclaimed Republic of Hawai'i, the United States Senate failed to obtain the required two-thirds vote, as mandated by the United States Constitution, to ratify the so-called treaty of annexation. The dominion of the Hawaiian Kingdom remained intact.
- 2.34 On April 25, 1898, after the failed annexation of the Hawaiian Islands, the United States Congress established an Act Declaring that war exists between the United States of America and the Kingdom of Spain. The Declaration of War was retroactive to April 21, 1898. The International Laws of War were activated between the two countries.
- 2.35 On May 1, 1898, the United States' Navy's Asiatic Squadron under Commodore Dewey defeated the Spanish Pacific Squadron at the Battle of Manila bay in the Philippines. The Philippine Islands were a territorial colony of Spain, together with Guam. The International Laws of War regulated the U.S. Navy's hostile incursion into the territory of the Kingdom of Spain, and consequently the warring parties were termed "belligerent States." The Hawaiian Kingdom and its territorial dominion was a neutral State, whose territory was considered under international law inviolable by any belligerent State.
- 2.36 On May 10, 1898, hearings were held in the U.S. House Committee on Foreign Affairs concerning Democratic Representative Francis Griffith Newlands' resolution to provide for annexing the Hawaiian Islands to the United States of America. In testimony given before this committee, United States Naval Captain Alfred T. Mahan and U.S. Army General John Schofield explained the military importance as to why the resolution should be submitted to a vote by the U.S. Congress.
- 2.37 Captain Alfred T. Mahan stated:

"It is obvious that if we do not hold the islands ourselves we can not expect the neutrals in the war to prevent the other belligerent from occupying them; nor can the inhabitants themselves prevent such

occupation. The commercial value is not great enough to provoke neutral interposition. In short, in war we should need a larger Navy to defend the Pacific coast, because we should have not only to defend our coast, but also to prevent, by naval force, an enemy from occupying the islands; whereas, if we pre-occupied them, fortifications could preserve them to us. In my opinion it is not practicable for any trans-Pacific country to invade our Pacific coast without occupying Hawaii as a base.” (emphasis added)

2.38 General John Schofield added:

“We got a preemption title to those islands through the volunteer action of our American missionaries who went there and civilized and Christianized those people and established a Government that has no parallel in the history of the world, considering its age, and we made a preemption which nobody in the world thinks of disputing, provided we perfect our title. If we do not perfect it in due time, we have lost those islands. Anybody else can come in and undertake to take them. So it seems to me the time is now ripe when this Government should do that which has been in contemplation from the beginning...” (emphasis added)

2.39 On July 6, 1898, during the height of armed conflicts with the Kingdom of Spain, in both the Pacific Ocean and the Caribbean, the United States Congress passed the joint resolution purporting to annex the Hawaiian Islands. President McKinley then signed this resolution on the following day. U.S. Representative Ball characterized the effort to annex Hawai‘i by joint resolution as:

“...a deliberate attempt to do unlawfully that which can not be lawfully done.”

2.40 United States constitutional scholar, Westel Willoughby, wrote:

“The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force -- confined in its operation to the territory of the State by whose legislature it is enacted.”

2.41 Thus, the purported sovereignty of the self-proclaimed Republic of Hawai‘i, and not the sovereignty of the Hawaiian Kingdom were transferred to the United States of America. On a platform at the base of ‘Iolani Palace in Honolulu, Harold Sewall, from the McKinley administration and successor to United States Minister Willis of the Cleveland administration, stated

“Mr. President, I present you a certified copy of a joint resolution of the Congress of the United States, approved by the President on July 7th,

1898, entitled 'Joint Resolution to provide for annexing the Hawaiian Islands to the United States.' This joint resolution accepts, ratifies and confirms, on the part of the United States, the cession formally consented to and approved by the Republic of Hawai'i."

- 2.42 Sanford B. Dole, the so-called President of the self-proclaimed Republic of Hawai'i, addressing Harold M. Sewall's Congressional joint resolution, attempted to maintain the facade of a bi-lateral treaty of cession by replying

"A treaty of political union having been made, and the cession formally consented to and approved by the Republic of Hawaii, having been accepted by the United States of America, I now, in the interest of the Hawaiian body politic, and with full confidence in the honor, justice and friendship of the American people, yield up to you as the representative of the Government of the United States, the sovereignty and public property of the Hawaiian Islands."

- 2.43 Even though the self-proclaimed Republic of Hawai'i was absorbed into the United States of America, and the United States' presence in the Hawaiian Islands increased as a consequence of occupation, this did not terminate the continuity of the Hawaiian Kingdom as a member of the Community of States. These events did constitute a violation of the treaties entered into between the Hawaiian Kingdom and the United States of America and constituted a violation of international law. Her Majesty's protest, having been filed in the United States Department of State on June 18, 1897, was actual notice of international violations.

- 2.44 On August 13, 1898, the Klondike steamer entered Honolulu Harbor with American troops of the 1st New York Volunteer Infantry and U.S. Volunteer Engineers on board. They were stationed at the first U.S. military post to be established in the Hawaiian Islands called Camp McKinley, which was located below Diamond Head in Waikiki on the Island of O'ahu.

- 2.45 This unprovoked incursion by a belligerent State into the territory of a neutral State was a violation of the Laws of War, as well as a breach of the treaties and conventions entered into between the Hawaiian Kingdom and the United States and the obligations thereunder. The specific engagement of peace and amity between the countries is stated in Article I of the 1849 Hawaiian-American Treaty which provides

"There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors."

- 2.46 Also violated were the obligations agreed to between the two States in regard to American citizenry residing in the Hawaiian Kingdom and the subjugation of that citizenry to Hawaiian laws and statutes and to no other. Article VIII of the said 1849 Treaty provides, in part

"...and each of the two contracting parties engage that the citizens or subjects of the other residing in their respective States shall enjoy their property and personal security, in as full and ample manner of their own citizens or subjects, of the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively."

2.47 Under the international laws of occupation, more particularly Article 43 of the 1907 Hague Convention IV, the occupying government must establish a system of direct administration of the laws of the country that it's occupying. In other words, the United States government, as an illegally occupying government in the Hawaiian Islands since its unprovoked incursion by its troops on August 13, 1898, was mandated to administer Hawaiian Kingdom law over the territory and not its own, until they withdraw. This is not a mere descriptive assumption by the occupying government, but rather it is the law of occupation.

2.48 Instead of establishing a system to administer Hawaiian Kingdom law in 1898, the United States, by its Congress in 1900, created a puppet government. This government, called the Territorial Government of the Hawaiian Islands, would enforce American law throughout the Hawaiian Kingdom. United States President William McKinley appointed the most heinous criminal in the Kingdom, Sanford B. Dole its first governor. Sanford B. Dole, a traitor to the Kingdom, was given authority by a United States President to punish and even put to death any Hawaiian subject or loyalist to the Kingdom who would threaten his so-called authority. United States military bases sprang up throughout the islands and together with the Territorial Government they imposed their rule over Hawaiian nationals. Having lost control over its ports of entry, American citizens unknowingly flocked to the Hawaiian Islands under the false impression that it was lawfully annexed, and soon overwhelmed the population of Hawaiian nationals.

2.49 In 1945, the United Nations was created with the United States as one of its charter members. According to its Charter, the United Nations would promote the protection of human rights and establish a process of de-colonization for those people who have *not yet attained* independence as a nation. United Nations General Assembly Resolution 1514 provides that

"...all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

2.50 In accordance with Article 73 (e) of the United Nations Charter, member States who had colonial possessions were required to report yearly to the Secretary General the status of their colonies in relation to self-determination. It was at this point that the United States committed fraud before this international organization by fraudulently reporting the Hawaiian Islands as a U.S. colony along with Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico and the Virgin

Islands. The underlying problem here was that the Hawaiian Kingdom had already achieved independence for the Hawaiian Islands since 1842, and the United States and other members of the Community of States also recognized this independence. Independence though, could not be claimed for the territories of Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico nor the Virgin Islands.

- 2.51 This attempt to mask the American occupation of the Hawaiian Kingdom is what forged the creation of the Puppet State of Hawai‘i in 1959. In 1959, the American Ambassador to the United Nations reported to the Secretary General that

"...since 1946, the United States has transmitted annually to the Secretary General information on the Territory of Hawai‘i pursuant to Article 73 (e) of the Charter. However, on August 21, 1959 Hawai‘i became one of the United States under a new constitution taking effect on that date. In the light of this change in the constitutional position and status of Hawai‘i, the United States Government considers it no longer necessary or appropriate to continue to transmit information on Hawai‘i under Article 73 (e)."

- 2.52 In regard to the continuity of Statehood during occupation Professor Marek, author of *Identity and Continuity of States in Public International Law*, (1968) states,

"Since the law relating to the continuity of the occupied State is clear and unequivocal, any acts of the occupying power which are not in accordance therewith are clear violations of international law," and "...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."

III. STATE INTERESTS SUBJECT TO INTERNATIONAL REMEDIES

- 3.1 The *International Law Commission*, in its draft articles concerning State responsibility, defines an international crime as:

"[a]n internationally wrongful act, which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole..."

- 3.2 The failure of the United States Government to execute both the civil and penal laws of the Hawaiian Kingdom while illegally occupying the islands, not only affected the property rights of subjects of the Hawaiian Kingdom resident in the Hawaiian Islands, but the property rights of all other residents, foreign nationals or otherwise, residing or doing business in the islands.

- 3.3 Since the illegal occupation, and continuing through today, both domestic taxation and the collection of duties upon foreign imports are administered and collected under the auspices of United States law and not in accordance with Hawaiian Kingdom law. And the transference of property, both real and personal, by subjects of the Hawaiian Kingdom or citizens or subjects of foreign States while resident within the territorial jurisdiction of the Hawaiian Kingdom, are subject to Hawaiian Kingdom law and not the domestic laws of an occupying government.
- 3.4 In addition, commercial treaties concluded between the Hawaiian Kingdom and other independent States, engage that the nationals of these States, while resident within the Hawaiian Kingdom are to be afforded the equal protection of Hawaiian Kingdom law. As these treaties remain intact they are still binding upon the high contracting States and their nationals, which includes the United States of America.
- 3.5 Furthermore, Article 19, section 3(a) of the Draft Articles of State Responsibility, provisionally adopted by the Draft Committee of the *International Law Commission* had determined that an international crime may result from:
- "...a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression."
- 3.6 Commencing from the date of the illegal occupation of the Hawaiian Kingdom by the United States of America in 1898, military installations were erected throughout the islands in violation of its Neutrality. The United States military installations on the island of O'ahu, to include its naval facilities at Pearl Harbor, was the sole reason for Japan's attack on Hawaiian Kingdom soil on December 7, 1941.
- 3.7 Hawaiian subjects, who were indoctrinated in the belief that they were American nationals, served in many American conflicts throughout the world to date, and many of whom ultimately gave their lives for a country not their own. Presently, the military installations throughout the Hawaiian Islands continue to place the Hawaiian Kingdom and its nationals in perilous danger. These actions by the United States of America constitute an international crime as defined by the *International Law Commission*.
- 3.8 §901(c) of *The Foreign Relations Law of the United States* (1986), in regards to the discontinuance of an international violation, states:
- "The obligation of a state to terminate a violation of international law may include discontinuance, revocation, or cancellation of the act (whether legislative, administrative, or judicial) that caused the violation; abstention from further violation; or performance of an act that the state was obligated but failed to perform. For instance, there is an obligation to repeal a law illegally annexing a foreign territory..." (emphasis added)

3.9 In regard to the obligations for all States, the *International Law Commission on State Responsibility* has determined that:

"An international crime committed by a State entails an obligation for every other State:

- (a) Not to recognize as lawful the situation created by the crime;
- (b) Not to render aid or assistance to the State which has committed the crime in maintaining the situation so created;
- (c) To cooperate with other States in carrying out the obligations under subparagraphs (a) and (b); and
- (d) To cooperate with other States in the application of measures designed to eliminate the consequences of the crime."

3.10 The international obligation of the United States is two fold: first, to comply with the 1907 Hague Conventions IV and V, as they relate to the occupation of a neutral and independent State; and, second, to the treaty obligations entered into with the Hawaiian Kingdom, as well as all treaties made by the Hawaiian Kingdom with other independent States.

IV. THE NATURE OF THE HAWAIIAN KINGDOM'S CLAIM

4.1 Article 35(2) of the Charter 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 purposes of the dispute, the obligations of pacific settlement provided in the present Charter."

4.2 The United States of America is a Member of the United Nations, and thus party to the Charter. The Hawaiian Kingdom is a non-Member State of the United Nations, and has accepted in advance the obligations of pacific settlement provided in the present Charter (Attachment no. 1).

V. ACTION REQUESTED

5.1 For the reasons set forth above, the *Acting* Government of the Hawaiian Kingdom respectfully requests and expects the Security Council, in accordance with Article 36 (1) of the United Nations Charter, to investigate the Hawaiian Kingdom question, in particular, the merits of this complaint, and to recommend appropriate procedures or methods of adjustment.

5.2 The *Acting* Government of the Hawaiian Kingdom reserves the right to present supplementary arguments and observations as and when the procedure of the

Security Council offers the occasion to do so. For this purpose, the Hawaiian Kingdom is willing to abide by whatever time limits fixed by the Security Council to ensure the just and speedy disposition of the case to which this Complaint refers.

Date: 05 July 2001

Respectfully submitted,

David Keanu Sai,
Agent.

UNITED NATIONS SECURITY COUNCIL

COMPLAINT
AGAINST THE UNITED STATES OF AMERICA

BY THE ACTING GOVERNMENT
OF THE HAWAIIAN KINGDOM

CONCERNING THE AMERICAN OCCUPATION
OF THE HAWAIIAN KINGDOM

Attachment no. 1

Triby Council Resolution

Accepting the Obligations of Pacific Settlement provided
in the present Charter of the United Nations

The Council of Regency of the Hawaiian Kingdom, at a special meeting held on June 30, 2001, resolved to declare for the purposes of the Complaint to be filed against the United States of America at the United Nations' Security Council, that the Acting Government of the Hawaiian Kingdom, in accordance with Article 35, paragraph 2 of the Charter of the United Nations, accepts the obligations of Pacific Settlement provided in the present Charter of the United Nations, except in cases where the parties have agreed or shall agree to have recourse to another procedure or to another method of pacific settlement. The present Declaration does not apply to disputes relating to questions, which under international law, fall exclusively within the jurisdiction of the Hawaiian Kingdom, as well as to territorial disputes. The aforesaid obligation is accepted until such time as notice may be given to terminate the acceptance.

By Order of the Council

So Ordered this 30th day of June, A.D. 2001.

Council of Regency of the Hawaiian Kingdom

[signed]

Peter Umialiloa Sai,
Vice-Chairman of the Council of Regency

UNITED NATIONS SECURITY COUNCIL

COMPLAINT
AGAINST THE UNITED STATES OF AMERICA

BY THE ACTING GOVERNMENT
OF THE HAWAIIAN KINGDOM

CONCERNING THE AMERICAN OCCUPATION
OF THE HAWAIIAN KINGDOM

Attachment no. 2

DOMINION OF THE HAWAIIAN KINGDOM



Dominion of the Hawaiian Kingdom prepared for the United Nations' Security Council as an Attachment to the Complaint filed by the Hawaiian Kingdom against the United States of America, 05 July 2001.

David Keanu Sai
Agent for the Hawaiian Kingdom

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VI LIST OF ANNEXES

I. THE HAWAIIAN KINGDOM

- 1.1 Prior to the first arrival of Europeans in 1778, the inhabitants of the Hawaiian Islands lived in a highly organized, self-sufficient, social system, with a sophisticated language, culture, religion and a land tenure that bore a remarkable resemblance to the feudal system of ancient Europe. ¹
- 1.2 His Majesty King Kamehameha I established the monarchical government of the Hawaiian Islands in 1810. He ruled the Hawaiian Islands from April 1810 until his death in May 1819. Upon the death of King Kamehameha I, his son King Kamehameha II was successor to the throne and ruled the Hawaiian Islands from May 8, 1819 to July 1824 when he died of measles in London. His Majesty King Kamehameha III, the second son of His Majesty King Kamehameha I, was successor to the throne upon the death of Kamehameha II in July 1824.
- 1.3 The Hawaiian Kingdom was governed until 1838, without legal enactments, and was based upon a system of common law, which consisted partly of the ancient kapu (taboo) and the practices of the celebrated Chiefs, that had been passed down by tradition since time immemorial. ² The Declaration of Rights, proposed and signed by His Majesty King Kamehameha III on June 7, 1839, was the first essential departure from the ancient ways.

I.1 ESTABLISHING A CONSTITUTIONAL FORM OF GOVERNMENT

- 1.4 The Declaration of Rights of 1839 recognized three classes of persons having vested rights in the lands; 1st, the Government; 2nd, the Chiefs; and 3rd, the native Tenants. It declared protection of these rights to both the Chiefly and native Tenant classes. ³ These rights were not limited to the land, but included the right to

"...life, limb, liberty, freedom from oppression; the earnings of his hands and the productions of his mind, not however to those who act in violation of the laws." ⁴

- 1.5 One year later on October 8, 1840, His Majesty King Kamehameha III voluntarily relinquished his absolute powers and attributes, by promulgating a constitution that recognized three grand divisions of a civilized monarchy; the King as the Chief Executive, the Legislature, and the Judiciary. ⁵ The Legislative Department

¹ See Annex 14, p. 105

² See Annex 1, *Compiler's Preface*, p. 3

³ See Annex 2, *Principles Adopted by the Board of Commissioners to Quiet Land Titles, in Their Adjudication of Claims Presented to Them*, Statute Laws, 1846, p. 83.

⁴ See Annex 9, *1839 Declaration of Rights*, as the preamble to the 1840 Constitution, p. 8.

⁵ See Annex 1, *Compiler's Preface*, p. 1; "In 1840 he (His Majesty Kamehameha III) granted the first Constitution by which he declared and established the equality before the law of all his subjects, chiefs and people alike. By that Constitution, he voluntarily divested himself of some of his powers and attributes as an absolute Ruler, and conferred certain political rights upon his subjects, admitting them to share with

- of the Kingdom was composed of the King, the House of Nobles, and the House of Representatives; each had a negative on the other. The King represented the vested right of the Government class, the House of Nobles represented the vested right of the Chiefly class, and the House of Representatives represented the vested rights of the Tenant class. The Government was established to protect and acknowledge the rights already declared by the 1839 Declaration of Rights.
- 1.6 The Constitution generally defined the duties of each branch of government. Civilly, the laws embraced the usual rights and duties of the social relations between the three classes of people, and initiated the internal development of the country with the promotion of industry and commerce. In these laws, the fundamental basis of landed tenure was declared, and relaxing the vassal service of the Chiefly and Tenant classes encouraged cultivation of the soil, under a feudal tenancy similar to ancient Europe.
 - 1.7 On June 24, 1845, a Joint Resolution was enacted by the Legislature and signed into law ⁶ calling upon the Attorney General to draw up a complete set of the existing laws embracing the organic forms of the different departments, namely, the Executive and Judicial branches. These laws were to outline their duties and modes of procedure. This brought forth the First Act of Kamehameha III to Organize the Executive Ministries, the Second Act of Kamehameha III to Organize the Executive Departments, and the Third Act of Kamehameha III to Organize the Judiciary Department. These Acts came to be known as the *Organic Acts of 1845-46*.
 - 1.8 On September 27, 1847, the Legislature passed a law calling upon Chief Justice William L. Lee to establish a Penal Code. In 1850, a Penal Code was submitted to the Legislature by Chief Justice Lee and signed into law by His Majesty King Kamehameha III. The Penal Code had adopted the principles of the English common law. ⁷ On June 22, 1865, the Judges of the Supreme Court were directed, by an act of the Legislature, to compile and ready to publish the Penal Laws of the Kingdom. The matter required a compilation of the amendments and additions made to the Penal Code since 1850. In 1869 a revised Penal Code was published. ⁸
 - 1.9 In 1851, the Hawaiian Kingdom Legislature passed a resolution calling for the appointment of three commissioners, one to be chosen by the King, one by the House of Nobles, and one by the House of Representatives. The duty of these commissioners was to revise the Constitution of 1840. The draft of the revised Constitution was submitted to the Legislature and approved by both the House of

himself in legislation and government. This was the beginning of a government as contradistinguished from the person of the King, who was thenceforth to be regarded rather as the executive chief and political head of the nation than its absolute governor.” 2 Hawaiian Reports 720, *In the Matter of the Estate of His Majesty Kamehameha IV*, late deceased.

⁶ See Annex 1, Compiler’s Preface, p. 5.

⁷ See Annex 3, p. iv.

⁸ See Annex 5.

Nobles and the House of Representatives and signed into law by the King on June 14, 1852.⁹ By its terms, the Constitution would not take effect until December 6, 1852.

- 1.10 On April 6, 1853, Alexander Liholiho was named successor to the office of the Constitutional Monarch by His Majesty King Kamehameha III in accordance with Article 25 of the Constitution of 1852.¹⁰ Article 25 provides that the

"...successor (of the Throne) shall be the person whom the King and the House of Nobles shall appoint and publicly proclaim as such, during the King's life..."

- 1.11 One year later on December 15th, His Majesty King Kamehameha III passed away and Alexander Liholiho ascended to the office of Constitutional Monarch. He was thereafter called King Kamehameha IV.
- 1.12 Since the passage of the Organic Acts of 1845-46, a Joint Resolution was passed by the Legislature and signed into law in 1856, calling upon Prince Lot Kamehameha, Chief Justice William L. Lee, and Associate Justice George M. Robertson to form a committee and prepare a complete Civil Code and to report the same for the sanction of the Legislature in 1858.¹¹ Pursuant to the resolution, on May 2, 1859, a Civil Code was finally passed by the Legislative Assembly and signed into law on May 17, 1859. Session laws subsequently enacted by the Legislature amended or added to the Civil and Penal Codes.
- 1.13 The nationality or political status of persons ancillary to the Hawaiian Kingdom are termed Hawaiian subjects. The native inhabitants of the Hawaiian Islands became subjects of the Kingdom as a consequence of the unification of the islands by His Majesty King Kamehameha I at the turn of the 19th century. Since Hawai'i became constitutional, foreigners were capable of becoming Hawaiian nationals either through naturalization or denization. Under the naturalization laws of the Kingdom, foreigners who resided in the Hawaiian Islands for at least five years could apply to the Minister of Interior for naturalization,¹² whereby

"Every foreigner so naturalized, shall be deemed to all intents and purposes a native of the Hawaiian Islands, be amenable only to the laws of this Kingdom, and to the authority and control thereof, be entitled to the protection of said laws, and be no longer amenable to his native sovereign while residing in this Kingdom, nor entitled to resort to his native country for protection or intervention. He shall be amenable, for every such resort, to the pains and penalties annexed to rebellion by the Criminal Code. And

⁹ See Annex 9, *1852 Constitution*, p. 36.

¹⁰ *Ibid*, *His Majesty's Speech at the Opening of the Legislature*, April 7, 1855, p. 49.

¹¹ See Annex 4, *Preface*, p. iii.

¹² See Annex 6, *Naturalization of Foreigners*, §432, p. 104.

every foreigner so naturalized, shall be entitled to all the rights, privileges and immunities of an Hawaiian subject."

1.14 Denization was a constitutional prerogative of the Office of the Monarch, whereby, a foreigner may have all the rights and privileges of a Hawaiian subject, but is not required to relinquish his allegiance to his native country as is required under naturalization.¹³ Denization was "dual citizenship," which was accompanied by an oath of allegiance to the Hawaiian Kingdom. It was reserved to those foreigners who may not have resided in the Kingdom for five years or more, but their services were necessary in the affairs of government both local and abroad. The children of Hawaiian denizens born on Hawaiian territory were considered Hawaiian subjects. Examples of Hawaiian denizens were special envoys that negotiated international treaties and officers serving in the Hawaiian government.

1.15 On November 30, 1863, His Majesty King Kamehameha IV passed away unexpectedly, and consequently, left the Kingdom without a publicly proclaimed successor. On the very same day, the Kuhina Nui (Premier) in Privy Council publicly proclaimed Lot Kapuaiwa the successor to the Throne, in accordance with Article 25 of the Constitution of 1852. He was thereafter called King Kamehameha V. Article 47, of the Constitution of 1852, provides that

"...whenever the throne shall become vacant by reason of the King's death the Kuhina Nui (Premier) shall perform all the duties incumbent on the King, and shall have and exercise all the powers, which by this Constitution are vested in the King."

1.16 When His Majesty King Kamehameha V ascended to the throne, he had refused to take the oath of office until the Constitution was altered.¹⁴ This refusal was constitutionally authorized by Article 94 of the 1852 Constitution which provided that:

"...[t]he King, after approving this Constitution, shall take the following oath..."

1.17 This provision implied a choice to take or not take the oath, which His Majesty King Kamehameha V felt should be constitutionally altered. Another provision of the 1852 Constitution needing alteration was the sovereign prerogative provided in article 45 which stated that

"...[a]ll important business of the Kingdom which the King chooses to transact in person, he may do, but not without the approbation of the Kuhina Nui (Premier). The King and Kuhina Nui (Premier) shall have a negative on each other's public acts."

¹³ See Annex 6, *Naturalization for Foreigners*, §433, p. 105.

¹⁴ See Annex 9, *His Majesty's Speech at the Opening of the Legislature of 1864*, p. 99.

- 1.18 This sovereign prerogative allowed the Monarch the constitutional authority to alter or amend laws without Legislative approval. These anomalous provisions needed to be altered along with the instituting of voter qualifications for the House of Representatives. His Majesty King Kamehameha V, in Privy Council, resolved to look into the legal means of convening the first Constitutional Convention.
- 1.19 On July 7, 1864, His Majesty King Kamehameha V called for a Convention in order to draft a new constitution.¹⁵ The Convention was not comprised of delegates elected by the people with the specific task of altering the constitution, but rather their elected officials serving in the House of Representatives, together with the House of Nobles and the King in Privy Council who would convene in special session. Between July 7 and August 8, 1864, each article in the proposed Constitution was read and discussed until they arrived at Article 62. Article 62 defined the qualification of voters for the House of Representatives. After days of debate over this article, the Convention arrived at an absolute deadlock. The House of Representatives was not able to agree on this article. As a result, His Majesty King Kamehameha V, in exercising his sovereign prerogative by virtue of Article 45 of the constitution, dissolved the convention and proclaimed a new constitution on August 20, 1864.
- 1.20 In His Majesty King Kamehameha V's speech at the opening of the Legislative Assembly of 1864, he explained his abovementioned action of dissolving the Convention and proclaiming a new constitution.¹⁶ He stated that the
- "...forty-fifth article (of the Constitution of 1852) reserved to the Sovereign the right to conduct personally, in cooperation with the Kuhina Nui (Premier), but without the intervention of a Ministry or the approval of the Legislature, such portions of the public business as he might choose to undertake..."
- 1.21 This public speech before the Legislative Assembly occurred without contest, and therefore must be construed as a positive statement of the approbation of the Kuhina Nui (Premier) as required by Article 45 of the said Constitution of 1852. However, this sovereign prerogative was removed from the 1864 Constitution, thereby preventing any future Monarch of the right to alter the constitution without the approval of two-thirds of all members of the Legislative Assembly. All articles of the constitution previously agreed upon in convention remained, except for the voter requirements for the House of Representatives. The property qualifications instituted in Articles 61 and 62 were repealed by the Legislature in 1874.¹⁷

¹⁵ See Annex 9, *His Majesty's Speech at the Opening of the Legislature of 1864*, p. 99.

¹⁶ *Ibid.*

¹⁷ See Annex 6, *Of the House of Representatives*, section 2, p. 222. The Act of 1874 repealed the voter qualifications under Article 62 of the 1864 Constitution.

1.22 Under what has been termed the Kamehameha Constitution (1864), the Monarch was now required to take the oath of office and the sovereign prerogative was removed. Also removed was the office of the Kuhina Nui (Premier), which was found to be overlapping with the duties of the Minister of Interior. The bi-cameral nature of the legislative body was also removed. Where once the legislature would formally sit in two distinct Houses (House of Nobles and the House of Representatives), it was now changed to a uni-cameral House where the

"...[l]egislative 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."

1.23 On December 11, 1872, His Majesty King Kamehameha V passed away without naming a successor to the office of Constitutional Monarch.¹⁸ As a consequence to the passing of the late King, the Legislative Assembly readied itself to exercise the constitutional authority it possessed to elect, by ballot, a native Chief to be the Constitutional Monarch. Article 22 of the Constitution of 1864 of the Hawaiian Kingdom provides such authority and states

".should the Throne become vacant, then the Cabinet Council, immediately after the occurring of such vacancy, shall cause a meeting of the Legislative Assembly, who shall elect by ballot some native Ali'i (Chief) of the Kingdom as Successor to the Throne..."

1.24 On January 8, 1873, William Charles Lunalilo was elected as successor to the office of Constitutional Monarch in accordance with Article 22 of the Constitution of 1864.¹⁹ After the election of His Majesty King Lunalilo, the Legislative Assembly made thirty proposed amendments to the Constitution in this special session, which according to Hawaiian constitutional law would be taken up for a final vote by the next Legislative Assembly in April of 1874. In His Majesty's speech at the closure of this special session he stated, in part,

"I congratulate the Nation on your unanimity in recommending certain amendments to the Constitution. Ample time will now be given to the people to consider the propriety of their final adoption, so that the next Legislative Assembly will be prepared to act upon them, with a decision and intelligence worthy of your own."²⁰

¹⁸ See Annex 9, *Address of the Cabinet to the Legislature in Extra Session Assembled, January 8, 1873*, p. 123.

¹⁹ *Ibid*, *Address of the Cabinet to the Legislature in Extra Session Assembled, February 12, 1874*, p. 126.

²⁰ *Ibid*, *His Majesty's Speech at the Prorogation of the Legislative Assembly of 1873*, p. 125. In order to amend the constitution, Article 80 provides: "Any amendment or amendments to this Constitution may be proposed in the Legislative Assembly, and if the same shall be agreed to by a majority of the members thereof, such proposed amendment or amendments shall be entered on its journal, with the yeas and nays taken thereon, and referred to the next Legislature; which proposed amendment or the next election of

- 1.25 One year later on February 3rd, 1874, His Majesty King Lunalilo died without naming a successor.²¹ The Hawaiian Legislature once again met in special session and elected David Kalākaua to the office of Constitutional Monarch on February 12th, 1874.
- 1.26 In accordance with the Constitution, His Majesty's first royal act was to nominate and confirm his younger brother, William P. Leleiohoku, as successor. On April 10, 1877, following the death of heir-apparent William P. Leleiohoku, King David Kalākaua publicly proclaimed Lydia Kamaka‘eha Lili‘uokalani to be his successor to the office of Constitutional Monarch in accordance with Article 22 of the Constitution of 1864.²²
- 1.27 Between April 30th and August 8th of 1874, the Legislative Assembly was convened in regular session. During that session, the legislature was only able to confirm, by 2/3's vote of all members of the Legislative Assembly, two (2) of the thirty (30) proposed amendments made by the 1873 Legislative Assembly. These two amendments to the constitution removed the property qualifications in Articles 61 and 62 regarding the candidacy and elections of Representatives for the Legislative Assembly.²³
- 1.28 In 1880, the Legislative Assembly passed an Act to Provide for the Codification and revision of the Laws of the Kingdom. His Majesty's Ministers requested an opinion of the Justices of the Supreme Court, in regard to the 1880 Act, to determine what was necessary. The Justices stated there was no need to establish another code, but rather a compilation be made of the laws, then in force, and as they stood amended, but without any changes in the words and phrases of statutes. Pursuant to the opinion of the Justices and in accordance with the 1880 Act, a book was published in 1884 entitled the "Compiled Laws of the Hawaiian Kingdom."²⁴
- 1.29 On October 16, 1886, King David Kalākaua adjourned the Hawaiian Legislature after it met in Legislative session for 129 days.²⁵ This Legislature was not scheduled to reconvene in Legislative Session until April of 1888. Article 46 of the Constitution of 1864 provides that the

Representatives; and if in the next Legislature such proposed amendment or amendments shall be agreed to by two-thirds of all members of the Legislative Assembly, and be approved by the King, such amendment or amendments shall become part of the Constitution of this country.”

²¹ See Annex 9, *Address of the Cabinet to the Legislature in Extra Session Assembled, February 12, 1874*, p. 126.

²² Ibid, *His Majesty's Speech at the Opening of the Legislative Assembly, April 30, 1878*, p. 138.

²³ See Annex 6, *Article XXXII – Of the Election of Representatives*, pp. 220 – 234.

²⁴ See Annex 6.

²⁵ See Annex 9, *His Majesty's Speech at the Prorogation of the Legislative Assembly of 1886*, p. 157.

"...Legislative Body shall assemble biennially, in the month of April, and at such other time as the King may judge necessary, for the purpose of seeking the welfare of the nation."

I.2 THE ILLEGAL CONSTITUTION OF 1887

- 1.30 In 1887, while the Legislature remained out of session, a minority of subjects of the Hawaiian Kingdom and foreign nationals, which included citizens of the United States, met to organize a takeover of the political rights of the aboriginal Hawaiian population in the Kingdom.²⁶ These individuals were organized under the name "Honolulu Rifles." On July 1, 1887, these individuals threatened His Majesty King David Kalākaua to accept a new Cabinet Council, and five days later the members of this new cabinet forced a new constitution upon the King. This new constitution did not obtain the consent or ratification of the Legislative Assembly who had remained adjourned since October 16, 1886.
- 1.31 Under this so-called constitution a new Legislature was elected while the lawful Legislature remained out of session. The voters, which for the first time included aliens, had to swear an oath to support the so-called constitution before they could vote. The insurgents used the alien vote to offset the majority vote of the aboriginal Hawaiian population, in order to gain control of the Legislative Assembly,²⁷ while the so-called 1887 constitution provided the self imposed Cabinet Council to control the Monarch. This new Legislature was not properly constituted under the Constitution of 1864, or the lawfully executed Session Laws of the Legislative Assembly of the Hawaiian Kingdom.
- 1.32 In spite of the illegal efforts to promulgate this so-called constitution, the 1886 Legislative Assembly did not ratify this so-called constitution pursuant to Article 80 of the 1864 Constitution. Article 80 states:
- "Any amendment or amendments to this Constitution may be proposed in the Legislative Assembly, and if the same shall be agreed to by a majority of the members thereof, such proposed amendment or amendments shall be entered on its journal, with the yeas and nays taken thereon, and referred to the next Legislature; which proposed amendment or the next election of Representatives; and if in the next Legislature such proposed amendment or amendments shall be agreed to by two-thirds of all members of the Legislative Assembly, and be approved by the King, such amendment or amendments shall become part of the Constitution of this country."
- 1.33 Organized resistance by the native subjects of the country resulted in the creation of the Hawaiian Political Party, also known as the Hui Kālai‘āina, who protested

²⁶ See Annex 10, *Interview with Chief Justice A.F. Judd, Honolulu, May 16, 1893*, pp. 828-844.

²⁷ *Ibid.*

against the so-called constitution of 1887.²⁸ Hui Kālai‘āina consistently petitioned His Majesty King David Kalākaua to resort back to the 1864 constitution because it was the legal constitution of the Country.

- 1.34 Notwithstanding the extortion of the so-called constitution of 1887, commonly known as the "bayonet constitution," the Constitution of 1864 with amendments, the Compiled Laws of 1884, the Penal Code, and the Session laws of the Legislative Assembly of 1884²⁹ and 1886,³⁰ remain in full force and have legal effect in the Hawaiian Kingdom until today. Article 78, of the Constitution of 1864, provides that all

"...laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws heretofore enacted, or that may hereafter be enacted, which are contrary to this Constitution, shall be null and void."

- 1.35 On January 20, 1891, His Majesty King David Kalākaua passed away in San Francisco, while visiting the United States.³¹ His named successor, Lydia Kamaka‘eha Lili‘uokalani, ascended to the office of Constitutional Monarch and was thereafter called Queen Lili‘uokalani. On January 14, 1893, in an attempt to counter the effects of the so-called constitution of 1887, Her Majesty Queen Lili‘uokalani, drafted a new constitution that embodied the principles and wording of the Constitution of 1864. This draft constitution remained subject to ratification by two-thirds of all members of the legitimate Legislative Assembly that had been out of session since October 16, 1886.

- 1.36 Those insurgents who actively participated in the extortion of the so-called 1887 constitution were also the same perpetrators affiliated with the unsuccessful revolution of January 17, 1893. Between 1887 and 1893, the self-imposed government officials who were installed under the so-called 1887 constitution became an oligarchy, as they tried to combat the organized resistance within the Kingdom.

I.3 THE HAWAIIAN DOMAIN

- 1.37 On March 16, 1854, in Honolulu, His Excellency Robert C. Wyllie, Minister of Foreign Affairs of the Hawaiian Kingdom, informed: William Miller, Esq., Her British Majesty's Commissioner; M. Louis Emile Perrin, Consul Commissioner and Plenipotentiary of His Imperial Majesty the Emperor of the French; and

²⁸ See Annex 10, *Statement of Facts made by the Hui Kālai‘āina (Hawaiian Political Association)*, p. 483.

²⁹ See Annex 7.

³⁰ See Annex 8.

³¹ See Report of Dr. G.W. Woods, entitled *Medical Report to Hon. John A. Cummins, Minister of Foreign Affairs, on the Last Illness and Death of Kalākaua I, King of Hawai‘i*, Archives of Hawai‘i, Honolulu.

Honorable David L. Gregg, United States Commissioner, of the islands constituting the Hawaiian domain:

"I have the honor to make known to you that that the following islands, &c., are within the domain of the Hawaiian Crown, viz:

Hawai'i, containing about, 4,000 square miles;

Maui, 600 square miles;

O'ahu, 520 square miles;

Kaua'i, 520 square miles;

Molokai, 170 square miles;

Lana'i, 100 square miles;

Ni'ihau, 80 square miles;

Kaho'olawe, 60 square miles;

Nihoa, known as Bird Island,

Molokini)

Lehua) Islets, little more than barren rocks:

Ka'ula)

and all Reefs, Banks and Rocks contiguous to either of the above, or within the compass of the whole."³²

- 1.38 On May 16, 1854, His Majesty King Kamehameha III proclaimed State Neutrality of the Hawaiian Kingdom. The 1854 Proclamation of Hawaiian neutrality, stated:

"...that Our neutrality is to be respected by all Belligerents, to the full extent of Our Jurisdiction, which by Our fundamental laws is to the distance of one marine league (three miles), surrounding each of Our Islands of Hawai'i, Maui, Kaho'olawe, Lanai, Molokai, O'ahu, Kaua'i and Ni'ihau, commencing at low water mark on each of the respective coasts, of said Islands, and includes all the channels passing between and dividing said Islands, from Island to Island..."³³

- 1.39 Four additional Islands were annexed to the Hawaiian Kingdom domain under the international doctrine of discovery subsequent to the reign of His Majesty King Kamehameha III. These islands are as follows:

- a. Laysan Island, 800 miles northwest of Honolulu, was annexed to the Hawaiian Kingdom by discovery of Captain John Paty on May 1, 1857, during the reign of His Majesty King Kamehameha IV.³⁴
- b. Lisiansky Island, 920 miles northwest of Honolulu, also was annexed by discovery of Captain John Paty on May 10, 1857.³⁵
- c. Palmyra Island, a cluster of low islets, 1,100 miles southwest of Honolulu, was taken possession of by Captain Zenas Bent on April 15,

³² See Annex 12, p. 5.

³³ See Annex 11.

³⁴ See Annex 12, p. 7.

³⁵ Ibid.

1862, and proclaimed as Hawaiian Territory during the reign of His Majesty King Kamehameha IV, as per "By Authority" notice in the "Polynesian" newspaper of June 21, 1862.³⁶

- d. Ocean Island, also called Kure atoll, 1,800 miles northwest of Honolulu, was acquired September 20, 1886, as per proclamation of Colonel J.H. Boyd, empowered for such service during the reign of His Majesty King Kalākaua.³⁷

1.40 A revised survey of the Hawaiian Islands³⁸ constituting the Hawaiian Kingdom are as follows:

<u>Island:</u>	<u>Location:</u>	<u>Square Miles/Acreage:</u>
Hawai‘i	19° 30' N 155° 30' W	4,028.2 / 2,578,048
Mauī	20° 45' N 156° 20' W	727.3 / 465,472
O‘ahu	21° 30' N 158° 00' W	597.1 / 382,144
Kaua‘i	22° 03' N 159° 30' W	552.3 / 353,472
Molokai	21° 08' N 157° 00' W	260.0 / 166,400
Lana‘i	20° 50' N 156° 55' W	140.6 / 89,984
Ni‘ihau	21° 55' N 160° 10' W	69.5 / 44,480
Kaho‘olawe	20° 33' N 156° 35' W	44.6 / 28,544
Nihoa	23° 06' N 161° 58' W	0.3 / 192
Molokini	20° 38' N 156° 30' W	0.04 / 25.6
Lehua	22° 01' N 160° 06' W	0.4 / 256
Ka‘ula	21° 40' N 160° 32' W	0.2 / 128
Laysan	25° 50' N 171° 50' W	1.6 / 1,024
Lisiansky	26° 02' N 174° 00' W	0.6 / 384
Palmyra	05° 52' N 162° 05' W	4.6 / 2,944
Ocean (a.k.a. Kure atoll)	28° 25' N 178° 25' W	<u>0.4 / 256</u>
TOTAL:		6,427.74 / 4,113,753.6

1.41 The Islands comprising the domain of the Hawaiian Kingdom are located in the Pacific Ocean between 5° and 23° north latitude and 154° and 178° west longitude.³⁹

I.5 A BRIEF OVERVIEW OF HAWAIIAN LAND TENURE

1.42 In all cases, Kamehameha I was the original and sole possessor of the freehold estate of inheritance. As the constitution of 1840 states, in part, that

³⁶ See Annex 12, p. 7.

³⁷ Ibid, p. 8.

³⁸ See Gazetteer no. 24, Hawaiian Islands, Office of Geography, U.S. Department of Interior, Washington, D.C., September 1956. University of Hawai‘i Hamilton Library.

³⁹ See Annex 13.

"Kamehameha I, was the founder of the kingdom, and to him belonged all the land from one end of the Islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I was the head, and had the management of the landed property. Wherefore, there was not formerly, and is not now any person who could convey away the smallest portion of land without the consent of the one who had, or has the direction of the kingdom. These are the persons who have had the direction of it from that time down, Kamehameha II, Ka'ahumanu I, and at the present time Kamehameha III." ⁴⁰

- 1.43 The ancient system of land titles in the Hawaiian Islands, was entirely different from that of tribal ownership prevailing in New Zealand, and from the village or communal system of Samoa, but bore a remarkable resemblance to the feudal system that prevailed in Europe during the Middle Ages. ⁴¹

"The tenures were in one sense feudal, but they were not military, for the claims of the superior on the inferior were mainly either for produce of the land or for labor, military service being rarely or never required of the lower orders. All persons possessing landed property, whether superior landlords, tenants or sub-tenants, owed and paid to the King not only a land tax, which he assessed at pleasure, but also, service which was called for at discretion, on all the grades, from the highest down. They also owed and paid some portion of the productions of the land, in addition to the yearly taxes. They owed obedience at all times. All these were rendered not only by natives, but also by foreigners who received lands from Kamehameha I and Kamehameha II, and...a failure to render any of these has always been considered a just cause for which to forfeit the lands. It is therefore certain that the tenure was far from being allodial (inheritable), either in principle or practice...The same rights which the King possessed over the superior landlords and all under them, the several grades of landlords possessed over their inferiors, so that there was a joint ownership of the land; the King really owning the allodium (inheritance), and the person in whose hands he placed the land, holding it in trust." ⁴²

- 1.44 On December 10th, 1845, the Hawaiian Kingdom, by its Legislative Assembly, initiated the necessary steps toward offering all subjects inheritable estates. Such steps would provide security in land holdings and help develop and foster the economic growth of the country. The first step was to establish a Board of Commissioners to Quiet Land Titles (also known as the Land Commission) under the Second Act of Kamehameha III to organize the Executive Departments of the

⁴⁰ See Annex 9, *Constitution of 1840*, p. 9.

⁴¹ See Annex 14, p. 105.

⁴² See Annex 2, *Principles Adopted by the Board of Commissioners to Quiet Land Titles in Their Adjudication of Claims Presented to Them, Session Law, 1846*, p. 81.

Hawaiian Islands.⁴³ Section 1 of the Act establishing the Land Commission stated:

"His Majesty shall appoint, through the Minister of Interior, and upon consultation with the Privy Council, five commissioners, one of whom shall be the Attorney-General of this Kingdom, to a board for the investigation and final ascertainment or rejection of all claims of private individuals, whether natives or foreigners, to any landed property acquired anterior (prior) to the passage of this Act."

1.45 Before inheritable estates could be offered by the Hawaiian Government after the 10th day of December, 1845, without affecting any prior existing rights in the land, an inventory of all claims to land titles throughout the islands, acquired before the 10th day of December, 1845, had to be made. All fee-simple titles, life estates or leases, needed to be validated or invalidated by an authorized and competent party (i.e. the Land Commission).⁴⁴ Section 10 of the same Act states that the

"...Minister of Interior shall have power in concurrence with the Privy Council, and under the sanction of His Majesty, to issue to any lessee or tenant for life of lands so confirmed, being a Hawaiian subject, a patent in fee-simple for the same, upon payment of a commutation to be agreed upon by His Majesty in Privy Council."

1.46 Under §7, article II, chapter VII, part I of the Second Act of Kamehameha III to organize the Executive Departments of the Hawaiian Islands, conditions and restrictions were placed upon title to land in the Hawaiian Islands as follows:

"Land so patented shall never revert to the king of these islands, nor escheat to this government, for any other cause than attainder of high treason, as defined in the criminal code, nor be diverted from the patentee or his assigns, except by operation of law under sale in virtue of a judicial decree, or for the non-payment of taxes as prescribed in the third part of this act, or the utter default of heirs of the testate or intestate owners, being Hawaiian subjects, as in the fifth part of this act prescribed; but the patented lands shall descend to the lineal or collateral heirs, being Hawaiians, of the patentee and his assigns, as tenants in common, unless otherwise prescribed by the will of a testate patentee."⁴⁵

1.47 On August 20th, 1846, the Land Commission drew up certain principles that would guide them in the adjudication of each claim submitted before them.⁴⁶

⁴³ See Annex 1, *Article IV. Of the Board of Commissioners to Quiet Land Titles*, p. 107.

⁴⁴ *Supra*. note 40, "To All Claimants of Land in the Hawaiian Islands," p. 89.

⁴⁵ See Annex 1, *Article II. Of the Disposition of Government Lands*, §7, p. 101.

⁴⁶ See Annex 2, *Principles Adopted by the Board of Commissioners to Quiet Land Titles in Their Adjudication of Claims Presented to Them, Session Law, 1846*, p. 81.

The Land Commission arrived at these principles by careful examination of numerous witnesses; among whom were some of the oldest chiefs. These chiefs possessed large tracts of land, which equally with other lands, came under the adjudication of the Land Commission, and the principles that were about to be laid down. The principles continue to state, in part, that the

"King (Government), in disposing of the allodium, should offer it first to the superior lord, that is, to the person who originally received the land in trust from the King; since by doing so, no injury is inflicted on any of the inferior lords or tenants, they being protected by law in their rights as before; and most obviously the King could not dispose of the allodium to any other person without infringing on the rights of the superior lord. But even when such lord shall have received an allodial title from the King by purchase or otherwise, the rights of the tenants and sub-tenants must still remain unaffected, for no purchase, even from the Sovereign himself, can vitiate the rights of third parties...It being therefore fully established, that there are but three classes of persons having vested rights in the land -- 1st, the Government, 2nd, the landlord, and 3rd, the (native) tenant, it next becomes necessary to ascertain the proportional rights of each."

- 1.48 In addition to the investigation by the Land Commission, the subject of formulating an instrument to divide out the undivided rights in the land was discussed at length in the King's Privy Council on December 11th, 1847.⁴⁷ Before the formal discussion ensued, it was noted that the legislature resolved that there are the following classes of rights inherent in all lands, 1st, the Government, 2nd, the Konohiki (Landlord), and 3rd, People or Tenants.⁴⁸ It also became obvious that the King held a dual role. At one end, he was the chief executive or head of state of the Government, and on the other, he was the Great Feudal Chief of all the landlords.
- 1.49 On December 18th, 1847, seven rules were introduced by William L. Lee, Chief Justice of the Hawaiian Kingdom Supreme Court, and unanimously voted upon and passed by the King and his Privy Council.⁴⁹ With these rules the King in Privy Council resolved to effect, through the assistance of a Committee, a division of lands between the Konohikis (Landlords) of the Kingdom. On March 7th, 1848, this division was completed. This process came to be known as the Great Mahele of 1848. His Majesty King Kamehameha III resumed possession of the larger part of the lands as a Konohiki (Landlord) life estate. The balance of lands was granted to the other Konohikis (Landlords) as freehold life estates certified to the Land Commission for its formal award. Both Kamehameha III's life estate and the other Konohikis' life estates were capable of being converted into inheritable estates, by payment to the Government of a commutation. Such

⁴⁷ See Annex 14, pp. 111-116; see also *Minutes of the Privy Council of State, December 11, 1847*, Archives of Hawai'i, Honolulu; and 2 Hawaiian Reports 720, *In the Matter of the Estate of His Majesty Kamehameha IV., late deceased*.

⁴⁸ Ibid.

⁴⁹ Ibid.

commutation was fixed in the Privy Council.⁵⁰ All interests were subject to the rights of native tenants to divide their vested interest in fee-simple.⁵¹

- 1.50 As a result of the Great Mahele of 1848, the ancient rights in the land held by the Konohiki (Landlord), and the common people, as native tenants, were incorporated and protected under Kingdom law. Under the laws and the conditions of the Great Mahele, native tenants were capable of acquiring fee-simple titles from the Government or Konohiki (Landlord) whenever they desired. Subsequent laws enacted by the Hawaiian Legislative Assembly further evolved the Hawaiian land tenure system and consequently defined the corporate rights of the State over real property. By 1886, the Hawaiian Kingdom had enacted specific laws on transference and conditions of title, probate proceedings, and heirship rights.⁵²
- 1.51 Foreign nationals were not allowed to acquire fee-simple titles to land at this time. Subsequently, this restriction was removed by an "*Act to Abolish the disabilities of Aliens to acquire and convey lands in fee-simple,*" passed by the Hawaiian Legislature on the 10th day of July 1850.⁵³

⁵⁰ See Annex 14, pp. 111-116; see also *Minutes of the Privy Council of State, December 11, 1847*, Archives of Hawai'i, Honolulu; and 2 Hawaiian Reports 720, *In the Matter of the Estate of His Majesty Kamehameha IV., late deceased*.

⁵¹ See Annex 3, *An Act Confirming Certain Resolutions of the King and Privy Council, passed on the 21st day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges*, p. 202; see also Annex 15.

⁵² See Annexes 6, 7, 8.

⁵³ See Annex 3, *An Act to Abolish the Disabilities of Aliens to Acquire and Convey Lands in Fee-simple*, p. 146.

II. THE HAWAIIAN KINGDOM STATEHOOD

- 2.1 To counter the strong possibility of foreign encroachment on Hawaiian territory, His Majesty King Kamehameha III dispatched a Hawaiian delegation to the United States and Europe with the power to settle difficulties with other nations, and negotiate treaties. This delegation's ultimate duty was to secure the recognition of Hawaiian Independence from the major powers of the world. In accordance with this goal, Timoteo Ha'alilio, William Richards and Sir George Simpson were commissioned as joint Ministers Plenipotentiary on April 8, 1842.¹ Sir George Simpson, shortly thereafter, left for England, via Alaska and Siberia, while Mr. Ha'alilio and Mr. Richards departed for the United States, via Mexico, on July 8, 1842.²
- 2.2 On December 19, 1842, the Hawaiian delegation, while in the United States of America, secured the assurance of United States President Tyler that the United States would recognize Hawaiian independence.³ The delegation then proceeded to meet their colleague, Sir George Simpson, in Europe and together they secured formal recognition from Great Britain and France. On April 1, 1843, Lord Aberdeen on behalf of Her Britannic Majesty Queen Victoria, assured the Hawaiian delegation that

"Her Majesty's Government was willing and had determined to recognize the independence of the Sandwich Islands under their present sovereign."⁴

- 2.3 On November 28, 1843, at the Court of London, the British and French Governments entered into a joint agreement for the recognition of Hawaiian independence.⁵ The Proclamation read as follows:

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the French, taking into consideration the existence in the Sandwich Islands of a government capable of providing for the regularity of its relations with foreign nations, have thought it right to engage, reciprocally, to consider the Sandwich Islands as an Independent State, and never to take possession, neither directly or under the title of Protectorate, or under any other form, of any part of the territory of which they are composed."

¹ See Hawaiian Almanac and Annual for 1893, *History of the Provisional Cession of the Hawaiian Islands and their Restoration*, p. 45. Archives of Hawai'i, Honolulu.

² Ibid.

³ See Annex 10, *Message from the President of the United States, respecting the trade and commerce of the United States with the Sandwich Islands and with diplomatic intercourse with their Government*, p. 39.

⁴ *Supra*. note 1.

⁵ See Annex 10, *Declaration of Great Britain and France relative to the independence of the Sandwich Islands, London, November 28, 1843*, p. 64.

II.1 **COMMERCIAL TREATIES AND CONVENTIONS CONCLUDED BETWEEN THE HAWAIIAN KINGDOM AND OTHER WORLD POWERS**

- 2.4 As an expression of the Hawaiian Kingdom's independent statehood, divers treaties and conventions were concluded that engaged in
- (a) Commercial trade, under the most favored nation status,
 - (b) Established consular affairs and the protection of the rights of citizens or subjects of foreign states while within the territory of the Hawaiian Kingdom, and
 - (c) Afforded the protection of the rights of Hawaiian subjects in territories of foreign states.

Existing commercial treaties and conventions with the Hawaiian Kingdom are as follows:

II.1.a. **AUSTRIA-HUNGARY**

- 2.5 On June 18, 1875, a Treaty was signed between Austria-Hungary and the Hawaiian Kingdom in London and thereafter ratified by both governments.⁶ Article IV of this treaty provides:

"[t]he Citizens of each high contracting Parties when resident in the territory of the other shall enjoy the most constant and complete protection for their persons and property, and for this purpose they shall have free and easy access to the Courts of Justice, provided by law, in pursuit and defense of their rights. They shall be at liberty to employ lawyers, advocates or Agents to prosecute or defend their rights before such Courts of Justice. In fact they shall enjoy in this respect all the rights and privileges which are granted to natives, and shall be subject to the same conditions."

- 2.6 Following the dismemberment of Austria-Hungary into two separate States of Austria and Hungary following the first Word War, Hungary also became a State party with Austria to the 1875 Treaty with the Hawaiian Kingdom.
- 2.7 Neither Austria or Hungary nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XIX of the 1875 Treaty. Therefore this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

II.1.b **BELGIUM**

- 2.8 On October 4, 1862, a Treaty was signed between Belgium and the Hawaiian Kingdom in Brussels and thereafter ratified by both governments.⁷ Article IV of this treaty provides:

⁶ See Annex 16.

⁷ See Annex 17, p. 71.

"[t]he respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently they shall have free and easy access to the court of justice in the pursuit and defense of their rights in every instance and degree of jurisdiction established by the laws."

2.9 Neither Belgium nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1862 Treaty. Therefore this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

2.10 According to international law, former Belgian territories, which acquired their independence from Belgium are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Belgian Treaty as of 1893.⁸ A former Belgian territory is:

(a) Zaire. Independence: June 30, 1960.

II.1.c BREMEN

2.11 On August 7, 1851, a Treaty was signed between the Free Hanseatic City of Bremen and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.⁹ Article II of this treaty provides:

"[t]he citizens of Bremen residing within the dominions of the King of the Hawaiian Islands, shall enjoy the same protection in regard to their civil rights, as well as to their persons and properties, as native subjects; and the King of the Hawaiian Islands engages to grant to the citizens of Bremen, the same rights and privileges which now are, or may hereafter be granted to, or enjoyed by any other foreigners, subjects of the most favored nation."

2.12 Neither Bremen nor its successor State Germany gave notice to the Hawaiian Kingdom of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

⁸ See Oppenheim, *International Law* (1955), vol. 1, p. 167. He states: "...there is room for the view that in case of separation resulting in the emergence of a new State the latter is bound by – or at least entitled to accede to – general treaties of a 'law-making' nature, especially those of a humanitarian character." See also Fenwick, *International Law*, p. 153.

⁹ See Annex 4, pp. 476-479; see also Annex 17, pp. 43-46.

II.1.d DENMARK

2.13 On October 19, 1846, a Treaty was signed between Denmark and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.¹⁰ Article II of this treaty provides:

"[t]he subjects of His Majesty the King of Denmark, residing within the dominions of the King of the Hawaiian Islands, shall enjoy the same protection in regard to their civil rights as well as to their persons and properties, as native subjects; and the King of the Hawaiian Islands engages to grant to Danish subjects the same rights and privileges which now are, or may hereafter be, granted to or enjoyed by any other foreigners, subjects of the most favored nation."

2.14 Neither Denmark nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

2.15 According to international law, former Danish territories, which acquired their independence from Denmark are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Danish Treaty as of 1893.¹¹ A former Danish territory is:

(a) Iceland. Independence: June 7, 1944.

II.1.e FRANCE

2.16 On March 26, 1846, a Treaty was signed between France and the Hawaiian Kingdom in Honolulu, and thereafter ratified by both governments.¹²

2.17 On November 24, 1853, a Postal Convention was signed between France's Protectorate Government of Tahiti and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.¹³

2.18 On October 29, 1857, a third Treaty was signed between France and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.¹⁴ Article IV of this treaty provides:

"[t]heir respective subjects shall enjoy, in both States, a constant and complete protection for their persons and properties. They shall, consequently, have free and easy access to the tribunals of justice, in

¹⁰ See Annex 4, pp. 447-452; see also Annex 17, pp. 11-13.

¹¹ *Supra*. note 8.

¹² See Annex 4, pp. 443-445; see also Annex 17, pp. 7-8.

¹³ See Annex 17, pp. 41-42.

¹⁴ See Annex 4, pp. 489-514; see also Annex 17, pp. 57-69.

prosecution and defense of their rights, in every instance, and in all the degrees of jurisdiction established by the laws."

- 2.19 The French Treaty of 1857 effectively replaced the former French Treaty of 1846. Neither France nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVI of the 1857 Treaty. Therefore this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.
- 2.20 According to international law, former French territories, which acquired their independence from France are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-French Treaties as of 1893.¹⁵ These former French territories include:
- (a) Algeria. Independence: July 5, 1962.
 - (b) Benin. Independence: August 1, 1960.
 - (c) Burkina Faso. Independence: August 5, 1960.
 - (d) Central African Republic. Independence: August 13, 1960.
 - (e) Chad. Independence: August 11, 1960.
 - (f) Comoros. Independence: July 6, 1975.
 - (g) Congo. Independence: August 15, 1960.
 - (h) Djibouti. Independence: June 27, 1977.
 - (i) Gabon. Independence: August 17, 1960.
 - (j) Guinea. Independence: October 2, 1958.
 - (k) Ivory Coast. Independence: August 7, 1960.
 - (l) Laos. Independence: July 19, 1949.
 - (m) Madagascar. Independence: June 26, 1960.
 - (n) Mali. Independence: September 22, 1960.
 - (o) Mauritania. Independence: November 28, 1960.
 - (p) Morocco. Independence: March 2, 1956.
 - (q) Niger. Independence: August 3, 1960.
 - (r) Senegal. Independence: April 4, 1960.
 - (s) Tunisia. Independence: March 20, 1956.
 - (t) Vanuatu. Independence from France and Great Britain: July 30, 1980.
 - (u) Vietnam. Independence: September 2, 1945.

II.1.f GERMANY

- 2.21 On March 25, 1879, a Treaty was signed between Germany and the Hawaiian Kingdom in Berlin and thereafter ratified by both governments and exchanged.¹⁶ Article II of this treaty provides:

"[t]he subjects and citizens of the two High Contracting Parties may remain and reside in any part of said territories respectively and shall

¹⁵ *Supra*, note 8.

¹⁶ See Annex 17, pp. 129-142.

receive and enjoy full and perfect protection for their persons and property. They shall have free and easy access to the courts of justice, provided by law, in pursuit and defense of their rights, and they shall be at liberty to choose and employ lawyers, advocates or agents to pursue or defend their rights before such courts of justice; and they shall enjoy in this respect all the rights and privileges as native subjects or citizens."

- 2.22 Neither Germany nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVI of the 1879 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

II.1.g **GREAT BRITAIN**

- 2.23 On November 16, 1836, a Treaty was signed between Lord Edward Russel, on behalf of the United Kingdom, and His Majesty King Kamehameha III in Honolulu.¹⁷
- 2.24 On February 12, 1844, a second Convention of Commerce, Navigation, etc., was signed between the United Kingdom and the Hawaiian Kingdom in Lahaina, island of Maui, and thereafter ratified by both governments.¹⁸ This British Treaty of 1844 effectively replaced the former Hawaiian-Anglo Treaty of 1836.
- 2.25 On March 26, 1846, a third Treaty was signed between the United Kingdom and the Hawaiian Kingdom in Honolulu, and thereafter ratified by both governments. This British Treaty of 1846 effectively replaced the former Hawaiian-Anglo Treaty of 1844.¹⁹ Article II of this treaty provides:

"[t]he subjects of Her Britannic Majesty residing within the dominions of the King of the Sandwich Islands, shall enjoy the same protection in regard to their civil rights as well as to their persons and properties, as native subjects; and the King of the Sandwich Islands engages to grant to British subjects the same rights and privileges which now are, or hereafter may be, granted to or enjoyed by any other foreigners, subjects of the most favored nation."

- 2.26 On July 10, 1851, a fourth Treaty was signed between the United Kingdom and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.²⁰ The Treaty of 1851 effectively replaced the former Treaty of 1846. Article VIII of this treaty provides:

¹⁷ See Annex 10, *Anglo-Hawaiian Treaty of November 16, 1836*, p. 37.

¹⁸ See Annex 10, p. 65

¹⁹ See Annex 4, pp. 445-446; see also Annex 17, pp. 9-10.

²⁰ See Annex 4, pp. 467-476; see also Annex 17, pp. 31-39.

"the subjects of either of the contracting parties, in the territories of the other, shall receive and enjoy full and perfect protection for their persons and property, and shall have free and open access to the courts of justice in the said countries, respectively, for the prosecution and defense of their just rights..."

- 2.27 Neither Great Britain nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.
- 2.28 On March 10, 1874, a Postal Convention was signed between the United Kingdom's Colonial Government of New South Wales and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.²¹ Neither country gave notice to the other of its intention to terminate this Postal Convention in accordance with the terms of Article IX. Therefore this New South Wales Postal Convention is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.
- 2.29 According to international law, former British territories, which acquired their independence from the United Kingdom are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-British Treaties as of 1893.²² These former British territories include:
- (a) Afghanistan. Independence: August 1919.
 - (b) Antigua and Barbuda. Independence: November 1, 1981.
 - (c) Australia. Independence: January 1, 1901.
 - (d) Bahamas. Independence: July 10, 1973.
 - (e) Bahrain. Independence: August 15, 1971.
 - (f) Bangladesh. Independence from Pakistan on December 16, 1971. Pakistan acquired Independence from Great Britain on August 14, 1947.
 - (g) Barbados. Independence: November 30, 1966.
 - (h) Belize. Independence: September 21, 1981.
 - (i) Bhutan. Independence from India on August 8, 1949. India acquired Independence from Great Britain on August 15, 1947.
 - (j) Botswana. Independence: September 30, 1966.
 - (k) Cyprus. Independence: August 16, 1960.
 - (l) Dominica. Independence: November 3, 1978.
 - (m) Egypt. Independence: February 28, 1922.
 - (n) Fiji. Independence: October 10, 1970.
 - (o) The Gambia. Independence: February 18, 1965.
 - (p) Ghana. Independence: March 6, 1957.
 - (q) Grenada. Independence: February 7, 1974.

²¹ See Annex 17, pp. 119-121.

²² *Supra.* note 8.

- (r) Guyana. Independence: May 26, 1966.
- (s) India. Independence: August 15, 1947.
- (t) Ireland. Independence: December 6, 1921.
- (u) Jamaica. Independence: August 6, 1962.
- (v) Kenya. Independence: December 12, 1963.
- (w) Kiribati. Independence: July 12, 1979.
- (x) Kuwait. Independence: June 19, 1961.
- (y) Lesotho. Independence: October 4, 1966.
- (z) Malawi. Independence: July 6, 1964.
- (aa) Malaysia. Independence: August 31, 1957.
- (bb) Maldives. Independence: July 26, 1965.
- (cc) Malta. Independence: September 21, 1964.
- (dd) Mauritius. Independence: March 12, 1968.
- (ee) Myanmar. Independence: January 4, 1948.
- (ff) Namibia. Independence from South Africa on March 21, 1990.
South Africa acquired Independence from Great Britain on
May 31, 1910.
- (gg) New Zealand. Independence: September 26, 1907.
- (hh) Nigeria. Independence: October 1, 1960.
- (ii) Pakistan. Independence: August 14, 1947.
- (jj) Qatar. Independence: September 3, 1971.
- (kk) Saint Kitts and Nevis. Independence: September 19, 1983.
- (ll) Saint Lucia. Independence: February 22, 1979.
- (mm) Saint Vincent and the Grenadines. Independence: October 27,
1979.
- (nn) Seychelles. Independence: June 29, 1976.
- (oo) Sierra Leone. Independence: April 27, 1961.
- (pp) Singapore. Independence from Malaysia on August 9, 1965.
Malaysia acquired Independence from Great Britain on August
31, 1957.
- (qq) Solomon Islands. Independence: July 7, 1978.
- (rr) Somalia. Independence: June 26, 1960.
- (ss) South Africa. Independence: May 31, 1910.
- (tt) Sri Lanka. Independence: February 4, 1948.
- (uu) Sudan. Independence: January 1, 1956.
- (vv) Swaziland. Independence: September 6, 1968.
- (ww) Tonga. Independence: June 4, 1970.
- (xx) Trinidad and Tobago. Independence: August 31, 1962.
- (yy) Tuvalu. Independence: October 1, 1978.
- (zz) Uganda. Independence: October 9, 1962.
- (aaa) United Arab Emirates. Independence: December 2, 1971.
- (bbb) Vanuatu. Independence from both France and Great Britain on
July 30, 1980.
- (ccc) Zambia. Independence: October 24, 1964.
- (ddd) Zimbabwe. Independence: April 18, 1980.

II.1.h HAMBURG

- 2.30 On January 8, 1848, a Treaty was signed between the Republic and free Hanseatic City of Hamburg and the Hawaiian Kingdom in Honolulu, and thereafter ratified by both governments.²³ Article II of this treaty provides:

"[t]he citizens of the Republic of Hamburg, residing within the dominions of the King of the Hawaiian Islands, shall enjoy the same protection in regard to their civil rights, as well as to their persons and properties, as native subjects; and the King of the Hawaiian Islands engages to grant to citizens of the Republic of Hamburg the same rights and privileges which now are, or may hereafter be, granted to or enjoyed by any other foreigners, subjects of the most favored nation."

- 2.31 Neither Hamburg or its successor state (i.e. Germany) nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force, continues to have legal effect until today and is at all times relevant to these proceedings. The succeeding State to the Hamburg Treaty of 1848 is presently Germany.

II.1.i ITALY

- 2.32 On July 22, 1863, a Treaty was signed between Italy and the Hawaiian Kingdom in Paris and thereafter ratified by both governments.²⁴ Article IV of this treaty provides:

"[t]he respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently, they shall have free and easy access to the courts of justice in the pursuit and defense of their rights, in every instance and degree of jurisdiction established by the laws."

- 2.33 Neither Italy nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1863 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.
- 2.34 According to international law, former Italian territories, which acquired their independence from Italy are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Italian Treaty as of 1893.²⁵ These former Italian territories include:
- (a) Holy See. Independence: February 11, 1929.

²³ See Annex 4, pp. 453-455; see also Annex 17, pp. 15-17.

²⁴ See Annex 17, pp. 89-97

²⁵ *Supra.* note 8.

(b) Libya. Independence: December 24, 1951.

II.1.j JAPAN

2.35 On August 19, 1871, a Treaty was signed between Japan and the Hawaiian Kingdom in the city of Yedo and thereafter ratified by both governments.²⁶ Article II of this treaty provides:

"[t]he subjects of each of the two high contracting parties, respectively, shall have the liberty freely and securely to come with their ships and cargoes to all places, ports and rivers in the territories of the other, where trade with other nations is permitted; they may remain and reside in any such ports, and places respectively, and hire and occupy houses and warehouses, and may trade in all kinds of produce, manufactures and merchandise of lawful commerce, enjoying at all times the same privileges as may have been, or may hereafter be granted to the citizens or subjects of any other nation, paying at all times such duties and taxes as may be exacted from the citizens or subjects of other nations doing business or residing within the territories of each of the high contracting parties."

2.36 Neither Japan nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article VI of the 1871 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

2.37 On January 28, 1886, a Convention between Japan and the Hawaiian Kingdom was concluded and signed in Tokyo and thereafter ratified by both governments and exchanged.²⁷ Neither Japan nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this Convention in accordance with the principles of customary international law. Therefore, this Japanese Convention is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

II.1.k NETHERLANDS

2.38 On October 16, 1862, a Treaty was signed between the Netherlands and the Hawaiian Kingdom in The Hague and thereafter ratified by both governments.²⁸ Article II of this treaty provides:

"[t]he respective subjects of the two high contracting parties shall be perfectly and in all respects assimilated on their establishment and settlement, whether for a longer or shorter time in the States and Colonies of the other party on the terms granted to the subjects of the most favored

²⁶ See Annex 17, pp. 115-117.

²⁷ Ibid, pp. 147-150.

²⁸ Ibid, pp. 79-81.

nation in all which concerns the permission of sojourning, the exercise of legal professions, imposts, taxes, in a word, all the conditions relative to sojourn and establishment."

- 2.39 Neither the Netherlands nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article VI of the 1862 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.
- 2.40 According to international law, former Dutch territories, which acquired their independence from the Netherlands are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Dutch Treaty as of 1893.²⁹ These former Dutch territories include:
- (a) Indonesia. Independence: August 17, 1945.
 - (b) Suriname. Independence: November 25, 1975.

II.1.1 PORTUGAL

- 2.41 On May 5, 1882, a Provisional Convention was signed between Portugal and the Hawaiian Kingdom in Lisbon and thereafter ratified by both governments.³⁰ Article I of this convention provides:

"[t]he Consular Agents, the subjects, the ships and products of the soil, or of the industry of one of the two countries, will enjoy on the territory of the other the same exemptions, privileges, and immunities which other Consular Agents, subjects, ships and products of the soil, or of the industry of the most favored nation, enjoy."

- 2.42 Neither Portugal nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this Provisional Convention in accordance with the principles of customary international law. Therefore, this Portuguese Provisional Convention is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.
- 2.43 According to international law, former Portuguese territories, which acquired their independence from Portugal are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Portuguese Treaty as of 1893.³¹ These former Portuguese territories include:
- (a) Angola. Independence: November 11, 1975.
 - (b) Cape Verde. Independence: July 5, 1975.
 - (c) Guinea-Bissau. Independence: September 24, 1973.
 - (d) Mozambique. Independence: June 25, 1975.
 - (e) Sao Tome and Principe. Independence: July 12, 1975.

²⁹ *Supra.* note 8.

³⁰ See Annex 17, pp. 143-145.

³¹ *Supra.* note 8.

II.1.m RUSSIA

2.44 On June 19, 1869, a Treaty was signed between Russia and the Hawaiian Kingdom in Paris and thereafter ratified by both governments.³² Article II of this treaty provides:

"[t]he subjects of His Majesty the Emperor of all the Russias, and the subjects of His Majesty the King of the Hawaiian Islands, shall be treated reciprocally on the footing of the most favored nation."

2.45 Neither Russia nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

2.46 According to international law, former Russian territories, which acquired their independence from Russia or its successor, the Union of Soviet Socialist Republics, are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Russo Treaty as of 1893.³³ These former territories include:

- (a) Armenia. Independence: September 23, 1991.
- (b) Azerbaijan. Independence: August 30, 1991.
- (c) Belarus. Independence: August 25, 1991.
- (d) Finland. Independence: December 6, 1917.
- (e) Georgia. Independence: April 9, 1991.
- (f) Kazakhstan. Independence: December 6, 1991.
- (g) Kyrgyzstan. Independence: August 31, 1991.
- (h) Latvia. Independence: August 21, 1991.
- (i) Lithuania. Independence: March 11, 1990.
- (j) Moldova. Independence: August 27, 1991.
- (k) Tajikistan. Independence: September 9, 1991.
- (l) Turkmenistan. Independence: October 27, 1991.
- (m) Ukraine. Independence: August 24, 1991.
- (n) Uzbekistan. Independence: August 31, 1991.

II.1.n SAMOA

2.47 On February 17, 1887, in Samoa, and on March 20, 1887, in Honolulu, a Treaty of Political Confederation between Samoa and the Hawaiian Kingdom, was concluded and signed, and thereafter ratified by both governments and exchanged.³⁴ The treaty provides that Malietoa, King of Samoa, agrees to bind himself as follows:

³² See Annex 17, pp. 99-100.

³³ *Supra.* note 8.

³⁴ *Supra.* note 32, pp. 171-173.

"...to enter into a Political Confederation with His Majesty Kalākaua, King of the Hawaiian Islands,"

and gives his solemn pledge that he

"...will conform to whatever measures may hereafter be adopted by His Majesty Kalākaua and be mutually agreed upon to promote and carry into effect this Political Confederation, and to maintain it now and forever."

2.48 Neither Samoa nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this Treaty of Political Confederation in accordance with the principles of customary international law. Therefore, this Treaty of Political Confederation is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

II.1.o SPAIN

2.49 On October 29, 1863, a Treaty was signed between Spain and the Hawaiian Kingdom in London and thereafter ratified by both governments.³⁵ Article IV of this treaty provides:

"[t]he respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently, they shall have free and easy access to the courts of justice in the pursuit and defense of their rights, in every instance and degree of jurisdiction established by the laws."

2.50 Neither Spain nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1863 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

2.51 According to international law, former Spanish territories, which acquired their independence from Spain are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Spanish Treaty as of 1893.³⁶ These former Spanish territories include:

- (a) Cuba. Independence: May 20, 1902.
- (b) Equatorial Guinea. Independence: October 12, 1968.

³⁵ See Annex 17, pp. 101-109.

³⁶ *Supra.* note 8.

II.1.p SWISS CONFEDERATION

- 2.52 On July 20, 1864, a Treaty was signed between the Swiss Confederation and the Hawaiian Kingdom in Berne and thereafter ratified by both governments.³⁷
Article III of the treaty provides:

"[t]he citizens of each of the contracting parties shall enjoy on the territory of the other the most perfect and complete protection for their persons and their property. They shall in consequence have free and easy access to the tribunals of justice for their claims and the defense of their rights, in all cases and in every degree of jurisdiction established by the law."

- 2.53 Neither the Swiss Confederation nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XIII of the 1864 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

II.1.q SWEDEN AND NORWAY

- 2.54 On July 1, 1852, a Treaty was signed between Sweden and Norway and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.³⁸
Article II of the treaty provides:

"[t]here shall be between all the dominions of His Swedish and Norwegian Majesty, and the Hawaiian Islands, a reciprocal freedom of commerce. The subjects of each of the two contracting parties, respectively, shall have liberty freely and securely to come with their ships and cargoes to all places, ports and rivers in the territories of the other, where trade with other nations is permitted. They may remain and reside in any part of the said territories, respectively, and hire and occupy houses and warehouses and my trade, by wholesale or retail, in all kinds of produce, manufactures or merchandise of lawful commerce, enjoying the same exemptions and privileges as native subjects, and subject always to the same laws and established customs as native subjects."

- 2.55 Neither Norway nor Sweden nor the Hawaiian Kingdom gave notice to the other of their intentions to terminate this treaty in accordance with the terms of Article XVII of the 1852 Treaty. Therefore, the treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.
- 2.56 According to international law, former Swedish/Norwegian territories, which acquired their independence from this union are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-

³⁷ See Annex 17, pp. 83-87.

³⁸ See Annex 4, pp. 480-489; see also Annex 17, pp. 47-55.

Swedish/Norwegian Treaty as of 1893.³⁹ The former Swedish/Norwegian territory is:

- (a) Norway. Independence: October 26, 1905.

II.1.r UNITED STATES OF AMERICA

2.57 On December 20, 1849, the Treaty between the United States of America and the Hawaiian Kingdom was concluded and signed in Washington, D.C.⁴⁰ Ratifications by both countries were exchanged in Honolulu on the Island of O‘ahu, on August 24, 1850.⁴¹ Article VIII of the treaty provides:

“...each of the two contracting parties engages that the citizens or subjects of the other residing in their respective States shall enjoy their property and personal security in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries, respectively.”

2.58 In addition, Article XVI of the said treaty provides that any:

“...citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same, and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.”

2.59 Neither the United States nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XVI of the 1849 Treaty. Therefore, the treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

2.60 On May 4, 1870, a Postal Convention was signed between the United States of America and the Hawaiian Kingdom in Washington, D.C., and thereafter ratified by both governments.⁴² Neither country gave notice to the other of its intention to terminate this Postal Convention in accordance with the terms of Article VIII of the 1870 Convention. Therefore, this Postal Convention is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

2.61 On January 30, 1875, a Convention of Commercial Reciprocity between the United States of America and the Hawaiian Kingdom was concluded and signed in Washington, D.C., and thereafter ratified by both governments and

³⁹ *Supra.* note 8.

⁴⁰ See Annex 4, pp. 457-467; see also Annex 17, pp. 21-29; see also Annex 10, pp. 79-85.

⁴¹ See Annex 4, pp. 466.

⁴² See Annex 17, pp. 111-113.

exchanged.⁴³

- 2.62 On September 11, 1883, a Convention between the United States of America's Post Office Department and the Hawaiian Kingdom's Post Office Department, concerning the Exchange of Money Orders, was concluded and signed in Washington, D.C. Thereafter this convention was ratified by both governments and exchanged.⁴⁴ Neither country gave notice to the other of its intention to terminate this Postal Convention concerning Money Orders in accordance with the terms of Article XVI of the 1883 Convention. Therefore the United States Postal Convention concerning Money Orders is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.
- 2.63 On December 6, 1884, a Supplementary Convention to the 1875 Convention of Commercial Reciprocity, between the United States of America and the Hawaiian Kingdom was concluded and signed in Washington, D.C., but the Hawaiian Kingdom did not ratify the Supplementary Convention until 1887 under illegal circumstances.⁴⁵ The ratification by the Hawaiian Kingdom is certainly questionable, because the ratification took place after a new Cabinet was forced upon His Majesty David Kalākaua and the subsequent imposition of the so-called 1887 constitution.⁴⁶
- 2.64 According to international law, former American territories, which acquired their independence from the United States of America are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-American Treaties as of 1893.⁴⁷ The former American territory is:
- (a) Philippines. Independence: July 4, 1946.

II.1.s UNIVERSAL POSTAL UNION

- 2.65 On March 21, 1885, an Additional Act to the Universal Postal Union Convention of June 1, 1878, between the Hawaiian Kingdom, and the governments of the United Kingdom, Germany, United States of America, Argentine Republic, Austria, Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, United States of Columbia, Republic of Costa Rica, Denmark, Dominican Republic, Egypt, Ecuador, Spain, France, Canada, British India, Greece, Guatamala, Republic of

⁴³ See Annex 17, pp. 123-127; see also Annex 10, pp. 164-167.

⁴⁴ See Annex 17, pp. 161-169.

⁴⁵ See Annex 10, p. 23.

⁴⁶ See *1969 Vienna Convention on the Law of Treaties, Article 46*, which provides that: "A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance," 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969); also refer to paragraphs 1.28–1.32 of this report that outlines the circumstances of the illegal constitution of 1887 and the so-called Cabinet Council. These events took place before the ratification of the 1884 Supplementary Convention granting the exclusive use of Pearl Harbor to the United States of America.

⁴⁷ *Supra.* note 8.

Hayti, Republic of Honduras, Italy, Japan, Republic of Liberia, Luxembourg, Mexico, Montenegro, Nicaragua, Paraguay, Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Servia, Kingdom of Siam, Sweden, Norway, Switzerland, Turkey, Uruguay and Venezuela, was concluded and signed at Lisbon and thereafter ratified and exchanged by the governments.⁴⁸

- 2.66 None of the countries gave notice to the Hawaiian Kingdom of their intentions to terminate this Additional Act to the Universal Postal Union Convention in accordance with the principles of customary international law. Therefore, the Additional Act to the Universal Postal Union Convention is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

II.2 HAWAIIAN NEUTRALITY

- 2.67 The Hawaiian Kingdom, as an independent State, was an influential player in the formation of the first principles of international law as it related to neutrality and the rights of national vessels during war. As a result of the Crimean War (1853-1856) between Russia and the Ottoman Empire, the governments of England and France, prior to their impending involvement, each issued formal Declarations on March 28, 1854, and March 29, 1854, respectively, that declared neutral ships and goods would not be captured. Both Declarations were later delivered to the Hawaiian Kingdom government by the British⁴⁹ and French⁵⁰ Commissioners resident in the Hawaiian Islands on July 7, 1854.

- 2.68 Accompanying the British correspondence to the Hawaiian Government that provided a copy of the Declaration of Neutral Rights was a copy of Her Britannic Majesty's Privy Council Resolution of April 15, 1854, that expanded upon the rights of neutral States. The resolution provided, in part,

"Now it is this day ordered by and with the advice of Her Privy Council, that all vessels under a neutral or friendly flag, being neutral or friendly property, shall be permitted to import into any port or place in Her Majesty's dominions all goods and merchandise whatsoever, to whomsoever the same may belong; and to export from any port or place in Her Majesty's dominions to any port not blockaded, any cargo or goods, not being contraband of war, or not requiring a special permission, to whomsoever the same may belong."⁵¹

- 2.69 Knowing of the breakout of the Crimean War, His Majesty King Kamehameha III formally proclaimed the Hawaiian Kingdom as a Neutral State with its territorial

⁴⁸ See Annex 17, pp. 151-159.

⁴⁹ See Annex 18.

⁵⁰ See Annex 19.

⁵¹ *Supra*. note 49. Her Britannic Majesty's Privy Council Resolution is an attachment to the British Commissioner's correspondence to the Hawaiian Government.

jurisdiction extending one marine league (three miles) from the coasts of each of its islands on May 16, 1854.⁵²

- 2.70 On June 15, 1854, in Privy Council Assembled, the Committee on the National Rights in regards to prizes had delivered its report. His Excellency Robert C. Wyllie presented the report of the committee and the following resolution was passed and later made known to the Representatives of the Nations who were at war.

"Resolved: That in the Ports of this neutral Kingdom, the privilege of Asylum is extended equally and impartially to the armed *neutral vessels and prizes made by such vessels of all the belligerents, but no authority can be delegated by any of the Belligerents to try and declare lawful and transfer the property of such prizes within the King's Jurisdiction; nor can the King's Tribunals exercise any such jurisdiction, except in cases where His Majesty's Neutral Jurisdiction and Sovereignty may have been violated by the Captain of any vessel within the bounds of that Jurisdiction."⁵³

- 2.71 On July 7, 1854, the British Consul General to the Hawaiian Kingdom forwarded a dispatch to the Minister of Foreign Affairs in regards to an interpretation of the Privy Council Resolution of June 15, 1854, concerning "armed national vessels and prizes." The French Commissioner also requested clarification. These dispatches were read in Privy Council assembled on July 17, 1854, and the following resolutions were passed.

Resolved: That by the words armed national vessels and prizes in the Resolution of the 15th June, are meant only vessels regularly organized and Commissioned on national account, and what prizes they may make; and that that Resolution does not extend the privileges of Asylum in the ports of this Kingdom to vessels armed on private account or the prizes taken by them, whatever may be the flag under which such vessels may sail: Therefore all Privateers and prizes made by them are hereby prohibited from entering the Ports of this Kingdom, unless in such circumstances of distress as that their exclusion would involve a sacrifice of life, and then only, under special permission from the King, after proofs to His Majesty's satisfaction, of such circumstances of distress.

Resolved: That the communications of the Representatives of Great Britain and France, be published in the Polynesian of Saturday next; and

⁵² See Annex 11.

⁵³ See Annex 20.

* - the term *neutral* must be construed to be a misprint by the recorder of the Privy Council. Subsequent communications and resolutions refer to the word *national* and not *neutral* when referring to this resolution of June 15, 1854.

that the Resolution of this day relating to Privateers, be published every week during the War, under the Resolution of the 15th June last." ⁵⁴

- 2.72 On December 6, 1854, the U.S. Commissioner assigned to the Hawaiian Kingdom, His Excellency David L. Gregg, sent the following dispatch to the Hawaiian Kingdom government regarding the recognition of neutral rights. The correspondence stated, in part,

"...I have the honor to transmit to you a project of a declaration in relation to neutral rights which my Government has instructed me to submit to the consideration of the Government of Hawai'i, and respectfully to request its approval and adoption. As you will perceive it affirms the principles that free ships make free goods, and that the property of neutrals, not contraband of war, found on board of Enemies ships, is not confiscable. These two principles have been adopted by Great Britain and France as rules of conduct towards all neutrals in the present European war; and it is pronounced that neither nation will refuse to recognize them as rules of international law, and to conform to them in all time to come. The Emperor of Russia has lately concluded a convention with the United States, embracing these principles as permanent, and immutable, and to be scrupulously observed towards all powers which accede to the same." ⁵⁵

- 2.73 On January 12, 1855, the U.S. Commissioner also sent another dispatch to the Hawaiian Government that contained a copy of the July 22, 1854 Convention between the United States of America and Russia embracing certain principles in regard to neutral rights. ⁵⁶

- 2.74 After careful review of the U.S. President's request, the Hawaiian Kingdom Government, by His Majesty King Kamehameha IV in Privy Council, passed the following resolution on March 26, 1855.

"Resolved: That the Declaration of accession to the principles of neutrality to which the President of the United States invites the King, is approved, and Mr. Wyllie is authorized to sign and seal the same and pass it officially to the Commissioner of the United States in reply to his dispatches of the 6th December and 12th January last." ⁵⁷

- 2.75 Following the Privy Council meeting on the same day, His Excellency Robert C. Wyllie signed the Declaration of Accession to the Principles of Neutrality as requested by the United States President and delivered the same to the American Commissioner to the Hawaiian Kingdom, His Excellency David L. Gregg. The Declaration provided, in part,

⁵⁴ See Annex 21.

⁵⁵ See Annex 22.

⁵⁶ See Annex 23.

⁵⁷ See Annex 24.

"And whereas His Majesty the King of the Hawaiian Islands, having considered the aforesaid invitation of the President of the United States, and the Rules established in the foregoing convention respecting the rights of neutrals during war, and having found such rules consistent with those proclaimed by Her Britannic Majesty in Her Declaration of the 28th March 1854, and by His Majesty the Emperor of the French in the Declaration of the 29th of the same month and year, as well as with Her Britannic Majesty's order in Council of the 15th April same year, and with the peaceful and strictly neutral policy of this Kingdom as proclaimed by His late Majesty King Kamehameha III on the 11th May 1854, amplified and explained by Resolutions of His Privy Council of State of the 15th June and 17th July same year, His Majesty, by and with the advice of His Cabinet and Privy Council, has authorized the undersigned to declare in His name, as the undersigned now does declare that His Majesty accedes to the humane principles of the foregoing convention, in the sense of its III Article." ⁵⁸

- 2.76 On April 5, 1855, His Majesty King Kamehameha IV, successor in office to His late Majesty King Kamehameha III, ratified the 1852 Treaty with the Kingdom of Sweden and Norway, which included the rights of neutrality. Article XV provides,

"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." ⁵⁹

- 2.77 Similar provisions of neutral rights of the Hawaiian Kingdom were also made a part of the treaties with Spain (1863, Article XXVI), ⁶⁰ Germany (1879, Article VIII) ⁶¹ and Italy (1869, Additional Article). ⁶²

- 2.78 On April 7, 1855, His Majesty King Kamehameha IV opened the Legislative Assembly. In that speech he reiterated the Kingdom's neutrality by stating, in part,

"It is gratifying to me, on commencing my reign, to be able to inform you, that my relations with all the great Powers, between whom and myself

⁵⁸ See Annex 25.

⁵⁹ See Annex 17, p. 54.

⁶⁰ Ibid, p. 108.

⁶¹ Ibid, p. 133.

⁶² Ibid, p. 96.

exist treaties of amity, are of the most satisfactory nature. I have received from all of them, assurances that leave no room to doubt that my rights and sovereignty will be respected. My policy, as regards all foreign nations, being that of peace, impartiality and neutrality, in the spirit of the Proclamation by the late King, of the 16th May last, and of the Resolutions of the Privy Council of the 15th June and 17th July. I have given to the President of the United States, at his request, my solemn adhesion to the rule, and to the principles establishing the rights of neutrals during war, contained in the Convention between his Majesty the Emperor of all the Russias, and the United States, concluded in Washington on the 22nd July last." ⁶³

2.79 The abovementioned actions on the part of the Governments of England, France, Russia, the United States of America and the Hawaiian Kingdom relating to the development of the principles of international law in relation to neutrality provided the necessary pretext for the leading European maritime powers to meet in Paris, after the Crimean War, and enter into a joint declaration that provided the following four principles,

- (a) Privateering is, and remains, abolished.
- (b) The neutral flag covers enemy's goods, with the exception of contraband of war.
- (c) Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.
- (d) Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy. ⁶⁴

2.80 The aforementioned Declarations and the 1854 Russian-American Convention represented the first recognition of the right of neutral States to conduct free trade without any hindrance from war. Stricter guidelines for neutrality were later established in the 1871 Anglo-American Treaty made during the wake of the American Civil War, whereby both parties agreed to the following rules.

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Second, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose

⁶³ See Annex 9, p. 57.

⁶⁴ See Fiedman, Leon, *The Law of War, a documentary history*, New York, vol. 1, p. 156.

of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties." ⁶⁵

- 2.81 Newer and stricter rules for the conduct of neutral States were expounded upon in the 1874 Brussels Conference, and later these principles were codified in the Fifth and Thirteenth Hague Conventions of 1907, governing, respectively, the rights and duties of neutral States in Land and Maritime warfare.
- 2.82 Since the 1842, wherein England and France admitted the Hawaiian Islands into the great Family of Nations, the Hawaiian Kingdom participated in the establishment and growth of the international law of neutrality. With the Hawaiian Kingdom's unique location in the middle of the North Pacific Ocean for both commercial trade and a sanctuary for ships at war, the maritime powers of Europe and America found it prudent to include the Hawaiian Kingdom in the evolution of the principles and subsequent codification of neutral rights. As a neutral State, the Hawaiian Kingdom was afforded all the protection of international law it had helped to establish, and by 1893 the principles of neutral rights were enough to preclude any other independent State from infringing upon the sovereign and neutral rights of the Hawaiian Kingdom.
- 2.83 It was the United States of America, in its 1871 Anglo-American Treaty, that established rules preventing belligerent States from utilizing neutral territory or ports for warlike purposes such as outfitting vessels, recruiting troops, or basing military operations. It would only be twenty-two years later that the United States and the Hawaiian Kingdom would find themselves entangled in a web of deception and fraud that was perpetuated by American expansionists in gross violation of the sovereign and neutral rights of the Hawaiian Kingdom. From the illegal intervention by the United States into the civil affairs of the Hawaiian Kingdom in 1893, to the subsequent creation of American puppet governments and a state in an occupied neutral territory, the deception would last for over a century.

⁶⁵ See Annex 26.

III. AMERICAN INTERVENTION

- 3.1 On January 14, 1893, Her Hawaiian Majesty Queen Lili'uokalani summoned into the throne room of the Palace, the diplomatic corps, members of the Supreme Court and the Legislative Assembly, as well as a committee of the Hawaiian Political Association, which comprised of aboriginal Hawaiian subjects vehemently opposed to the so-called 1887 constitution as evidenced by a multitude of signature petitions the organization had collected.¹ Her Majesty's intention on this day was to reaffirm the 1864 Constitution as a counter to the so-called 1887 constitution.
- 3.2 This action, on the part of the Queen, generated excitement amongst a minority of the non-aboriginal Hawaiian subjects and alien community, who were co-conspirators in the so-called 1887 constitution that illegally allowed aliens to vote in the Kingdom elections. This faction would convince the Queen's ministers to delay her announcement in order to formulate a counter. Thereafter, the Queen regrettably informed her guests that she yielded under the advice of her ministers, and promised that on some future day a new constitution would be sought.²
- 3.3 In response to the Queen's delay, a meeting of approximately fifty to one hundred people, primarily resident aliens, met at a private office in Honolulu and selected a so-called Committee of Safety, which comprised of thirteen individuals. The national breakdown of this so-called committee was: (6) Hawaiian subjects, not of the aboriginal race, (5) American citizens, (1) British subject, and (1) German citizen.³ Between the 14th and 16th of January, 1893, the committee had been meeting with the United States Minister assigned to the Hawaiian Kingdom, His Excellency John Stevens, to formulate a plan of annexing the Hawaiian Islands to the United States.⁴
- 3.4 On January 16, 1893, a meeting was organized by the so-called Committee of Safety to protest the Queen's effort to nullify the illegal constitution of 1887.⁵ Continuing to mask their true intentions, the committee sought to procure a resolution to be passed by those in attendance that would denounce the Queen and empower the committee.
- 3.5 On that same day the so-called committee, which was comprised of only five (5) Americans out of thirteen (13), sent a note to the United States Minister purporting that American lives and property were in danger and concluded that,

¹ See Annex 10, *Report from U.S. Special Investigator James Blount to U.S. Secretary of State Gresham, July 17, 1893, with attachments*, p. 581.

² Ibid.

³ Ibid, p. 588.

⁴ Ibid, p. 584, 594.

⁵ Ibid.

"We are unable to protect ourselves without the aid, and therefore pray for the protection of the United States forces." ⁶

III.1 AMERICAN OCCUPATION OF THE HAWAIIAN KINGDOM OF JANUARY 16, 1893

3.6 After delivery of the note, the committee had re-evaluated their treasonous actions, and sent a small contingent to persuade the American Minister not to land the troops until the following day. The request was denied. ⁷ The American Minister, in violation of the international law of non-intervention, said that the orders had been issued and whether the Committee of Safety was ready or not, the troops would land. Captain Wiltse, U.S. Naval Commander of the U.S.S. Boston, was ordered to land a force

"...for the protection of the United States legation, United States consulate, and to secure the safety of American life and property." ⁸

3.7 Thereafter, between the hours of 4 and 5 p.m., an invasion force of over 160 well-armed U.S. troops, with two (2) pieces of artillery, were landed and marched through the streets of Honolulu to a position previously selected by Minister Stevens on January 16, 1893. ⁹ The location of the detachment was directly across the Government building and in plain view of the Palace.

3.8 Immediately following the unprovoked landing of the American troops, the Governor of the island of O‘ahu, His Excellency Archibald Cleghorn, sent a communication to the U.S. Minister protesting the landing of the troops and called it an unwarranted invasion of Hawaiian soil. ¹⁰ At the same time the Hawaiian Minister of Foreign Affairs, His Excellency Samuel Parker, sent a communication to the U.S. Minister and demanded an explanation for the landing of American troops. ¹¹ The U.S. Minister evaded both communications. The American troops were located a few hundred yards from the Government building at a place between Music Hall and Arian Hall. Members of the so-called Committee of Safety and the U.S. Minister predetermined this location before American troops disembarked the U.S.S. Boston.

III.2 THE FAKE REVOLUTION OF JANUARY 17, 1893

3.9 On January 17, 1893, at about 2:30 p.m., members of this treasonous group proceeded in squads to the Government building, where the American troops were already situated, in order to read their so-called proclamation abrogating the

⁶ See Annex 10, *Report from U.S. Special Investigator James Blount to U.S. Secretary of State Gresham, July 17, 1893, with attachments*, p. 584.

⁷ *Ibid*, *U.S. President Cleveland's Message to the U.S. Congress, December 18, 1893*, p. 451.

⁸ *Ibid*, *Letter from U.S. Minister John Stevens to Mr. Foster, January 18, 1893*, p. 208.

⁹ *Supra*. note 6, p. 597; see also *U.S. President Cleveland's Message to the U.S. Congress, December 18, 1893*, p. 451.

¹⁰ *Ibid*, p. 585.

¹¹ *Ibid*.

monarchical form of government and seeking annexation to the United States.¹² In order to avoid detection and arrest by Hawaiian officials, the traitors separated in their march. The Committee of Safety had sent Mr. A.S. Wilcox to see if there were any Hawaiian Government troops present at the Government building. When informed there were none, they proceeded to the Government building and read the proclamation just a few hundred yards from the fortified position of American troops. Only at the end of the reading of the proclamation did the insurrectionary troops, numbering a mere thirty (30) to forty (40), begin to assemble.

- 3.10 U.S. Special Investigator James Blount who was investigating the circumstances of the so-called revolution later requested Rear Admiral Skerrett, ranking officer of the U.S. Naval Force in the Pacific, to comment on the location of American troops. Rear Admiral Skerrett stated,

"In my opinion it was inadvisable to locate the troops there, if they were landed for the protection of the United States citizens, being distantly removed from the business portion of the town, and generally far away from the United States legation and consulate-general, as well as being distant from the houses and residences of United States citizens...Had Music Hall been seized by the Queen's troops, they would have been under their fire, had such been their desire. It is for these reasons that I consider the position occupied as illy selected. Naturally, if they were landed with a view to support the Provisional Government troops, then occupying the Government building, it was a wise choice, as they could enfilade any troops attacking them from the palace grounds in front."¹³

- 3.11 In his investigation, U.S. Special Investigator James Blount also commented on the location of the American troops by stating that,

"A part of the Queen's forces, numbering 224, were located at the station house, about one-third of a mile from the Government building. The Queen, with a body of 50 troops, was located at the palace, north of the Government building about 400 yards. A little northeast of the palace and some 200 yards from it, at the barracks, was another body of 272 troops. These forces had 14 pieces of artillery, 386 rifles, and 16 revolvers. West of the Government building and across a narrow street were posted Capt. Wiltse and his troops, these likewise having artillery and small arms. The Government building is in a quadrangular-shaped piece of ground surrounded by streets. The American troops were so posted as to be in front of any movement of troops, which should approach the Government building on three sides, the fourth being occupied by themselves. Any attack on the Government building from the east side would expose the

¹² See Annex 10, *Report from U.S. Special Investigator James Blount to U.S. Secretary of State Gresham, July 17, 1893, with attachments*, p. 585.

¹³ *Ibid*, *Letter from U.S. Admiral Skerrett to James Blount, May 20, 1893*, p. 538.

American troops to the direct fire of the attacking force. Any movement of troops from the palace toward the Government building in the event of a conflict between the military forces would have exposed them to the fire of the Queen's troops. In fact, it would have been impossible for a struggle between the Queen's forces and the forces of the committee of safety to have taken place without exposing them to the shots of the Queen's forces." ¹⁴

3.12 He concluded by stating that,

"A building was chosen where there were no troops stationed, where there was no struggle to be made to obtain access, with an American force immediately contiguous with the mass of the population impressed with its unfriendly attitude. Aye, more than this -- before any demand for surrender had even been made on the Queen or on the commander of any officer of any of her military forces at any of the points where her troops were located, the American minister had recognized the Provisional Government and was ready to give it the support of the United States troops!" ¹⁵

3.13 Thereafter, Mr. Samuel Damon, a member of the so-called Provisional Government, proceeded to the Station House, which was under the command of the Marshal of the Hawaiian Kingdom, Charles Wilson. At the Station House was also the Cabinet Council. Mr. Damon had demanded that Her Majesty's Cabinet and Marshal Wilson yield themselves to the Provisional Government because the U.S. Minister had already afforded the Provisional Government de facto recognition and that there ought not to be bloodshed. ¹⁶ After many discussions between the Cabinet and Mr. Damon, both parties went to the Government building. After verifying the fortification of American troops, Her Majesty's Cabinet and Mr. Damon, together with others, went to the palace and urged the Queen to acquiesce. The Queen was assured that she could file a protest against what had taken place and that she would be entitled to a hearing at Washington, D.C. After about an hour, the Queen and her Cabinet reluctantly yielded with the following protest.

"I, Lili'uokalani, 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

¹⁴ See Annex 10, *Report from U.S. Special Investigator James Blount to U.S. Secretary of State Gresham, July 17, 1893, with attachments*, p. 585.

¹⁵ *Ibid.*, p. 586.

¹⁶ *Ibid.*

troops to be landed at Honolulu and declared that he would support the provisional government. Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon 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." ¹⁷

- 3.14 On January 19, 1893, individuals representing the self-proclaimed provisional government sailed for the United States on a steamer especially chartered for the occasion. They arrived in San Francisco on January 28th, and later arrived in Washington, D.C., on February 3rd. ¹⁸ On February 14, 1893, a treaty of annexation was signed between the self-proclaimed provisional government and the United States' Secretary of State, under the Harrison administration. The United States assumed that it was a popular revolt in the islands and that no troops or officers of the United States were present or took part in the uprising. ¹⁹ On February 15, 1893, this treaty of annexation was submitted to the United States Senate for ratification. Thereafter, the United States Presidency changed with President Grover Cleveland succeeding President Benjamin Harrison.

III.3 U.S. PRESIDENTIAL FACT FINDING INVESTIGATION CALLS FOR RESTORATION OF THE HAWAIIAN KINGDOM GOVERNMENT.

- 3.15 Upon receipt of Her Majesty's protest, newly elected President Grover Cleveland, on March 9, 1893, withdrew the treaty of annexation from the United States Senate. ²⁰ President Cleveland then dispatched a representative to Hawai'i to impartially investigate the causes of the so-called revolution. The representative was to report back to President Cleveland with his findings. President Cleveland would then review the report before deciding whether or not to re-submit the treaty of annexation.
- 3.16 Former United States Congressman James Blount conducted the official report of this Presidential established investigation. Based on this report the Secretary of State, W.Q. Gresham, advised the President that:

"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 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

¹⁷ See Annex 10, *Report from U.S. Special Investigator James Blount to U.S. Secretary of State Gresham, July 17, 1893, with attachments*, p. 586.

¹⁸ *Ibid*, *U.S. President Cleveland's Message to the U.S. Congress, December 18, 1893*, p. 446.

¹⁹ *Ibid*.

²⁰ *Ibid*, *Letter from U.S. Secretary of State Gresham to U.S. Minister Albert Willis, October, 18, 1893*, p. 1189-1190.

of justice. Can the United States consistently insist that other nations shall respect the independence of Hawai‘i 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." ²¹

- 3.17 In a dispatch to United States Minister Albert Willis, assigned to the Hawaiian Islands, and successor to Minister Stevens, Secretary of State, Gresham, states that:

"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 of 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." ²²

- 3.18 Her Majesty Queen Lili‘uokalani, faced with a very serious decision of granting amnesty to the traitors, requested additional clarity and reasoning from the President of the United States. This inquiry made by Her Majesty was conveyed by Minister Willis to Secretary of State Gresham. On December 3, 1893, Her Majesty's inquiry received the following response:

"Should the Queen refuse assent to the written conditions, you will at once inform her that the President will cease interposition in her behalf, and that while he deems it his duty to endeavor to restore to the sovereign the constitutional government of the islands, his further efforts in that direction will depend upon the Queen's unqualified agreement that all obligations created by the Provisional Government in a proper course of administration shall be assumed and upon such pledges by her as will 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. The President feels that by our original interference and what followed we have incurred responsibilities to the whole Hawaiian community, and it would not be just to put one party at

²¹ See Annex 10, *Letter from U.S. Secretary of State Gresham to U.S. President Cleveland, October 18, 1893*, p. 459-463.

²² *Ibid*, *Letter from U.S. Secretary of State Gresham to U.S. Minister Albert Willis, December 3, 1893*, p. 1191.

the mercy of the other. Should the Queen ask whether if she accedes to conditions active steps will be taken by the United States to effect her restoration or to maintain her authority thereafter, you will say that the President can not use force without the authority of Congress. Should the Queen accept conditions and the Provisional Government refuse to surrender, you will be governed by previous instructions. If the Provisional Government asks whether the United States will hold the Queen to fulfillment of stipulated conditions, you will say, the President, acting under dictates of honor and duty as he has done in endeavoring to effect restoration, will do all in his constitutional power to cause observance of the conditions he has imposed." ²³

- 3.19 On December 18, 1893, in an interview with U.S. Minister Willis at the legation of the United States, Her Majesty the Queen consented only to a conditional amnesty for those individuals involved in the establishment and support of the Provisional Government. ²⁴ Her conditional consent fell short of President Cleveland's request. Later that day, Her Majesty, after pondering over the interview, had determined that in the best interest of the nation she would accede to President Cleveland's request. That same day, she sent the following letter to Minister Willis:

"Since I had the interview with you this morning I have given the most careful and conscientious thought as to my duty, and I now of my own free will give my conclusions. I must not feel vengeful to any of my people. If I am restored by the United States I must forget myself and remember only my dear people and my country. I must forgive and forget the past, permitting no proscription or punishment of any one, but trusting that all will hereafter work together in peace and friendship for the good and for the glory of our beautiful and once happy land. Asking you to bear to the President and to the Government he represents a message of gratitude from me and from my people, and promising, with God's grace, to prove worthy of the confidence and friendship of your people." ²⁵

- 3.20 Attached to the letter was the following declaration by Her Majesty and witnessed by J.O. Carter, in part:

"I, Lili'uokalani, 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 and pledge myself that, if reinstated as the constitutional

²³ See Annex 10, *Letter from U.S. Secretary of State Gresham to U.S. Minister Albert Willis, December 3, 1893*, p. 437.

²⁴ *Ibid*, *Letter from U.S. Minister Albert Willis to Secretary of State Gresham, December 19, 1893*, p. 1266-1268.

²⁵ *Ibid*, *Letter from U.S. Minister Albert Willis to Secretary of State Gresham, December 20, 1893, enclosures no. 1 and 2*, p. 1269-1270.

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." ²⁶

- 3.21 Her Majesty's agreement to the conditions of restoration occurred on the same day President Cleveland addressed the United States Congress on the findings of James Blount. Her Majesty's agreement was not made a part of his message. On December 18, 1893, President Grover Cleveland reported fully and accurately on the basis in part of the Blount report on the illegal acts of the traitors. President Cleveland 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. He further stated that:

"[w]hen 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..." ²⁷

- 3.22 In accordance with the principles of international law, the revolutionaries were not successful in obtaining *de facto* recognition. Since the revolutionaries failed to obtain *de facto* recognition, the legal standing of the Hawaiian Kingdom, the legitimate sovereign over the Hawaiian Islands, remained intact.

- 3.23 President Cleveland reminded the United States Congress of the special conditions of Her Majesty Queen Lili'uokalani's surrender of her executive authority, where 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." ²⁸

²⁶ See Annex 10, *Letter from U.S. Minister Albert Willis to Secretary of State Gresham, December 20, 1893, enclosure no. 2*, p. 1269-1270.

²⁷ *Ibid*, *U.S. President Cleveland's Message to the U.S. Congress, December 18, 1893*, p. 453.

²⁸ See Annex 10, *U.S. President Cleveland's Message to the U.S. Congress, December 18, 1893*, p. 457.

President Cleveland further stated that 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"

and called for the restoration of the Government of the Hawaiian Kingdom. He also stated

"...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

"...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."²⁹

- 3.24 On December 23, 1893, Minister Willis received a lengthy letter from Sanford Dole regarding the self-proclaimed provisional government's non-compliance to President Cleveland's findings and conclusions.³⁰ This letter concluded, in part:

"I am instructed to inform you, Mr. Minister, that the Provisional Government of the Hawaiian Islands respectfully and unhesitatingly declines to entertain the proposition of the President of the United States that it should surrender its authority to the ex-Queen."

- 3.25 Without Congressional approval, President Cleveland was limited as to enforcing his conclusions, and limited as to his active participation in the restoration of the Hawaiian Government. Since the treaty of annexation was not re-submitted by President Cleveland, the Hawaiian Kingdom's sovereignty remained intact. However, the question of what assistance the United States would provide to restore the legitimate government remained unanswered.

III.4 THE AMERICAN THESIS

- 3.26 Between January 14, 1893 and December 19, 1893, there existed two U.S. Presidents and their administrations, being President Benjamin Harrison and President Grover Cleveland, respectively. The pattern of actions taken by these

²⁹ See Annex 10, *U.S. President Cleveland's Message to the U.S. Congress, December 18, 1893*, p. 457.

³⁰ *Ibid*, *Letter from U.S. Minister Albert Willis to Secretary of State Gresham, December 23, 1893, enclosure*, p. 1275-1282.

two Presidents toward the Hawaiian Kingdom, as an Independent State, was strikingly different within the framework of international law. President Harrison entertained the idea of annexing the Hawaiian Islands at any cost, while President Cleveland wholly dispensed with the idea after a thorough investigation was done into the events surrounding the so-called revolution, which concluded that the United States diplomat and military personnel were directly responsible for the so-called revolution.

- 3.27 Under the Harrison administration U.S. Minister John Stevens afforded the Provisional Government premature *de facto* recognition, seemingly with the approval of the President of the United States, on January 17, 1893. By this intervention, the Provisional Government was afforded the international personality, as the presumed successor to the Hawaiian Kingdom Government, to negotiate a treaty of annexation with the United States on February 14, 1893. Conversely, the actions taken by President Cleveland and his administration between the months of March and December of 1893 had effectively rescinded the notion of *de facto* recognition of the Provisional Government and its attempt to provide for annexing the Hawaiian Islands to the United States of America, without first legally obtaining State successorship from the Hawaiian Kingdom.

III.5 ILLEGALITY OF THE 1893 REVOLUTION

- 3.28 Revolution by definition is an internal State phenomenon. It is a legal act under international law that does not affect the continuity of the State, but only when the insurgents have met the objective test of *de facto* will the continuity of the State cease to be protected. As the continuity of an independent State remains protected under international law during a revolution, the revolution's legality must be denied if it is a product of outside forces.

- 3.29 Professor Marek explains,

"It is a well-known rule of customary international law that third States are under a clear duty of non-intervention and non-interference in civil strife within a State. Any such interference is an unlawful act, even if, far from taking the form of military assistance to one of the parties, it is merely confined to premature recognition of the rebel government."³¹

- 3.30 It has been clearly noted in the U.S. Presidential investigation of the so-called revolution that the United States Minister John Stevens had conspired with a minority of insurgents between January 14th and 16th, 1893. It can be said that the U.S. Minister had encouraged the insurgents with his intent of landing American troops and providing *de facto* recognition of the Provisional Government once the Government building was in their control. As noted previously, there was no need to adversely seize the Government building because there were no Hawaiian government officials stationed in the area to oppose them.

³¹ See Marek, K., *Identity and Continuity of States in Public International Law*, 1968, Geneva, p. 64.

Clearly, these actions could not be considered to be protected under international law as a revolution, but rather evolved due to the unlawful acts of another independent State's intervention.

3.31 Oppenheim-Lauterpracht comments on the illegality of intervention by another independent State by stating,

"...while subversive activities against foreign States on the part of private persons do not in principle engage the international responsibility of a State, such activities when emanating directly from the Government itself or indirectly from organizations receiving from it financial or other assistance or closely associated with it by virtue of the constitution of the State concerned, amount to a breach of International Law." ³²

3.32 Professor Marek concludes,

"Thus, there is intervention, and not revolution, if the revolutionary movement in one State is instigated and supported by a foreign State; if the alleged revolution is conducted by citizens, or, a fortiori, by organs of that foreign State; if it takes place under foreign pressure, as for example military occupation." ³³

III.6 PUPPET CHARACTER OF THE PROVISIONAL GOVERNMENT

3.33 On January 16, 1893, American troops made an unwarranted invasion of Hawaiian territory and only made their intentions known on the following day when the self-proclaimed Committee of Safety declared the formation of a Provisional Government. The invasion of Hawaiian soil was a hostile act by a third State over the sovereign right of the Hawaiian Kingdom. In a letter of correspondence to the U.S. Secretary of State, Special Investigator James Blount commented on the illegality of the landing of American troops, by stating that,

"...the fact that the landing of the troops under existing circumstances could, according to all law and precedent, be done only on the request of the existing Government, having failed in utilizing the Queen's cabinet, resorted to the new device of a committee of safety, made of Germans, British, Americans, and natives of foreign origin, led and directed by two native subjects of the Hawaiian Islands. With these leaders, subjects of the Hawaiian Islands, the American minister consulted freely as to the revolutionary movement and gave them assurance of protection from danger at the hands of the royal Government and forces." ³⁴

³² See Oppenheim-Lauterpracht, *International Law*, 7th ed., vol. I, 1948, p. 261.

³³ See Marek, K., *Identity and Continuity of States in Public International Law*, 1968, Geneva, p. 65.

³⁴ See Annex 10, *Report from U.S. Special Investigator James Blount to U.S. Secretary of State Gresham, July 17, 1893, with attachments*, p. 589.

- 3.34 Regarding the occupation of the Hawaiian Kingdom, U.S. President Cleveland had concluded from the investigation 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 of an occupation by consent or as an occupation necessitated by dangers threatening American life and property."³⁵

- 3.35 The American military occupation was to support the future establishment of a provisional government that would seek annexation to the United States. Therefore it must be construed that the U.S. Minister, in an attempt to avoid international responsibility for an American invasion of Hawaiian soil, affords de facto recognition to a government it had previously helped to create. Thus you have an attempt to assimilate the differing characteristics of a *de facto* government, which arises out of a lawful revolution within an independent State, and a fake revolution, by intervention of a third State, and the subsequent creation of a puppet government. A puppet government is the organ of the occupant and any agreement or agreements made between them is really an agreement made by the occupant with themselves, as the puppet government can possess no standing under international law as a contracting party.³⁶

III.7 THE ATTITUDE OF THE INTERNATIONAL COMMUNITY

- 3.36 The very creation of a puppet government by a fake revolution is an illegal act that creates an illegal situation. The presumption to de facto recognition afforded by the international community was based upon the internal State phenomenon of revolutions, and not predicated upon an illegal occupation and intervention by a third State. It follows that the Provisional Government was not independent, but a puppet of the United States that provided a cover for its aggression and attempt of fraudulent annexation. As such, it did not have any affect upon the continuity and identity of the Hawaiian Kingdom as an independent State.

III.8 FAILED REVOLUTIONISTS DECLARE THEMSELVES THE REPUBLIC OF HAWAI‘I

- 3.37 Unable to succeed at this first attempt of annexation, the self-proclaimed provisional government declared itself to be the Republic of Hawai‘i on July 4, 1894. This self-proclaimed Republic of Hawai‘i maintained its opposition to the restoration of the Hawaiian Kingdom Government as called for by United States President Grover Cleveland. On the day of the Republic's proclamation, its so-called Minister of Foreign Affairs, Francis M. Hatch, sent a dispatch to U.S. Minister, Albert S. Willis, who was assigned to the Hawaiian Islands. Mr. Hatch

³⁵ See Annex 10, *U.S. President Cleveland's Message to the U.S. Congress, December 18, 1893*, p. 452.

³⁶ See Marek, K., *Identity and Continuity of States in Public International Law*, 1968, Geneva, p. 114.

apprised the U.S. Minister of the re-formation of the provisional government into the Republic of Hawai‘i and the naming of its President and cabinet. Mr. Hatch also requested that the U.S. Minister Willis bestow recognition to the self-proclaimed Republic of Hawai‘i.

- 3.38 The next day, U.S. Minister Willis responded by acknowledging the receipt of Hatch's dispatch and concluded that it could not offer any more recognition to the self-proclaimed Republic of Hawai‘i than the U.S. President gave to the provisional government. The letter read that in

"...reply to your note reciting the foregoing facts, I have the honor to inform you that I hereby, as far as I have the right so to do, extend to the Republic of Hawai‘i the recognition accorded its predecessor, the Provisional Government of the Hawaiian Islands. I do this in the belief that I represent the President of the United States, to whom, as the Executive Chief of the Government, my action in the premises will be promptly submitted for his necessary approval."³⁷

- 3.39 Since President Cleveland made no subsequent approval of U.S. Minister Willis' conditional response to Mr. Hatch, the July 5th letter could not be construed to be diplomatically sanctioned. Furthermore, U.S. Minister Willis, in his letter, afforded the Republic of Hawai‘i no more recognition than the provisional government held, which was neither *de facto* nor *de jure*.³⁸

- 3.40 On January 7, 1895, the Republic of Hawai‘i declared martial law. This declaration was the self-proclaimed Republic's attempt to gain international recognition as the legitimate government of Hawai‘i. On January 16, 1895, the self-proclaimed Republic of Hawai‘i then arrested Her Majesty Queen Lili‘uokalani and charged her with treason.³⁹ These charges were later changed to "misprision of treason." On January 17, 1895, the self-proclaimed Republic convened a military commission to carry out the court martial of Her Majesty and

³⁷ See Annex 10, *Letter from U.S. Minister Albert Willis to Secretary of State Gresham, July 9, 1894, enclosure no. 5*, p. 1374.

³⁸ *Ibid*, *U.S. President Cleveland's Message to the U.S. Congress, December 18, 1893*, p. 453; see also Hackworth, *Digest*, vol. 1, pp. 175-176. The objective test is sometimes divided into two parts: (1) control over the machinery of government and (2) the acquiescence of public opinion or the absence of organized resistance. In a memorandum of March 28, 1913, prepared by the Assistant Secretary of State, Adee, with reference to the recognition of the Government of the Republic of China, it was said: "...ever since the American Revolution entrance upon diplomatic intercourse with foreign states has been *de facto*, dependent upon the existence of three conditions of fact: the control of the administrative machinery of the state; the general acquiescence of its people; and the ability and willingness of their government to discharge international and conventional obligations. The form of government has not been a conditional factor in such recognition; in other words, the *de jure* element of legitimacy of title has been left aside, probably because liable to involve dynastic or constitutional questions hardly within our competency to adjudicate, especially so when the organic form of government has been changed, as by revolution, from a monarchy to a commonwealth or vice versa. The general practice in such cases has been to satisfy ourselves that the change was effective and to enter into relation with the authority in *de facto* possession."

³⁹ See Annex 10, *Letter from U.S. Minister Albert Willis to Secretary of State Gresham, January 30, 1895*, p. 1396-1397.

her supporters. On January 24, 1895, while in prison, Her Majesty was forced to sign a document "abdicating the throne."⁴⁰ She signed this document because the self-proclaimed Republic had threatened to execute Hawaiian nationals as well as foreign nationals if Her Majesty did not sign an abdication. Sadly, on February 5, 1895, Her Majesty was arraigned before this so-called military tribunal. Her so-called trial began thereafter.

3.41 The above actions of the self-proclaimed Republic of Hawai‘i clearly showed that it was not internationally recognized as the *de facto* government of the Hawaiian Islands.

- First and foremost, it was evident that the United States recognized that the Constitutional Government headed by Queen Lili‘uokalani remained the *de jure* government after the unsuccessful revolution of January 17, 1893.
- Secondly, in accordance with Chapter III of the Hawaiian Penal Code,⁴¹ it was the Hawaiian Kingdom that possessed the "prosecutorial" authority to criminally try persons within the Kingdom, and not the self-proclaimed Republic of Hawai‘i.
- Thirdly, only the Queen, as head of state, by and with the advise of her Privy Council, could suspend the writ of *habeas corpus* and declare martial law.⁴²
- And, finally, because there was no Minister of Her Majesty's Cabinet Council to counter-sign the Queen's so-called "abdication," which is mandated by Article 42 of the 1864 Constitution, it had no effect of law.⁴³

III.9 SECOND ANNEXATION ATTEMPT OF 1897

3.42 On June 16, 1897, a second attempt of a treaty of annexation was signed in Washington, D.C., between representatives of the self-proclaimed Republic of Hawai‘i and the newly elected President of the United States of America, William McKinley.⁴⁴ This so-called treaty remained subject to ratification or approval by two-thirds of the United States Senate.

3.43 On June 18, 1897, in Washington, D.C., the Honorable Joseph Heleluhe, for and on behalf of Her Majesty Queen Lili‘uokalani filed in the U.S State Department, a formal protest to this second attempt of a treaty of annexation.⁴⁵ This so-called treaty attempted to transfer the territory and sovereignty of the Hawaiian Kingdom to the United States of America. In her protest, Her Majesty stated:

⁴⁰ See Annex 10, *Letter from U.S. Minister Albert Willis to Secretary of State Gresham, January 30, 1895*, p. 1396-1397.

⁴¹ See Annex 5, *Chapter III, Local Jurisdiction of Offenses*, p. 5.

⁴² See Annex 9, *Article 5 of the 1864 Constitution*, p. 88.

⁴³ *Ibid*, *Article 42 of the 1864 Constitution*, p. 92.

⁴⁴ See Annex 27.

⁴⁵ See Annex 28; and see also *Attachment no. 3* of the Complaint filed with the United Nation’s Security Council by the Hawaiian Kingdom against the United States of America

"I, Lili'uokalani of Hawaii, by the will of God named heir apparent on the tenth day of April, A.D. 1877, and by the grace of God Queen of the Hawaiian Islands on the seventeenth day of January, A.D. 1893, do hereby protest against the ratification of a certain treaty, which, so I am informed, has been signed at Washington by Messrs. Hatch, Thurston, and Kinney, purporting to cede those Islands to the territory and dominion of the United States. 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.

Because the official protests made by me on the seventeenth day of January, 1893, to the so-called Provisional Government was signed by me, and received by said government with the assurance that the case was referred to the United States of America for arbitration.

Because that protest and my communications to the United States Government immediately thereafter expressly declare that I yielded my authority to the forces of the United States in order to avoid bloodshed, and because I recognized the futility of a conflict with so formidable a power.

Because the President of the United States, the Secretary of State, and an envoy commissioned by them reported in official documents that my government was unlawfully coerced by the forces, diplomatic and naval, of the United States; that I was at the date of their investigations the constitutional ruler of my people.

Because neither the above-named commission nor the government which sends it has ever received any such authority from the registered voters of Hawaii, but derives its assumed powers from the so-called committee of public safety, organized on or about the seventeenth day of January, 1893, said committee being composed largely of persons claiming American citizenship, and not one single Hawaiian was a member thereof, or in any way participated in the demonstration leading to its existence.

Because my people, about forty thousand in number, have in no way been consulted by those, three thousand in number, who claim the right to destroy the independence of Hawaii. My people constitute four-fifths of the legally qualified voters of Hawaii, and excluding those imported for the demands of labor, about the same proportion of the inhabitants.

Because said treaty ignores, not only the civic rights of my people, but, further, the hereditary property of their chiefs. Of the 4,000,000 acres

composing the territory said treaty offers to annex, 1,000,000 or 915,000 acres has in no way been heretofore recognized as other than the private property of the constitutional monarch, subject to a control in now way differing from other items of a private estate.

Because it is proposed by said treaty to confiscate said property, technically called the crown lands, those legally entitled thereto, either now or in succession, receiving no consideration whatever for estates, their title to which has been always undisputed, and which is legitimately in my name at this date.

Because said treaty ignores, not only all professions of perpetual amity and good faith made by the United States in former treaties with the sovereigns representing the Hawaiian people, but all treaties made by those sovereigns with other and friendly powers, and it is thereby in violation of international law.

Because, by treating with the parties claiming at this time the right to cede said territory of Hawaii, the Government of the United States receives such territory from the hands of those whom its own magistrates (legally elected by the people of the United States, and in office in 1893) pronounced fraudulently in power and unconstitutionally ruling Hawaii.

Therefore I, Lili'uokalani of Hawaii, do hereby call upon the President of that nation, to whom alone I yielded my property and my authority, to withdraw said treaty (ceding said Islands) from further consideration. I ask the honorable Senate of the United States to decline to ratify said treaty, and I implore the people of this great and good nation, from whom my ancestors learned the Christian religion, to sustain their representatives in such acts of justice and equity as may be in accord with the principles of their fathers, and to the Almighty Ruler of the universe, to him who judgeth righteously, I commit my cause.

Done at Washington, District of Columbia, United States of America, this seventeenth day of June, in the year eighteen hundred and ninety-seven."

- 3.44 Fortifying Her Majesty Queen Lili'uokalani's second letter of protest were petitions, in both the Hawaiian and English versions, from the Presidents of the Hawaiian organizations of the Men and Women's Hawaiian Patriotic League (also known as the Hui Aloha 'Āina), and the Hawaiian Political Association (also known as the Hui Kālai'āina). A great majority of the Hawaiian people was associated with these organizations. These petitions were signed on February 4, 1897, and addressed newly elected United States President William McKinley. The Honorable Joseph Heleluhe filed these petitions in the United States

Department of State on July 24, 1897.⁴⁶ In order to show solidarity, all three organizations' Presidents drafted identical petitions, in part:

"Your Petitioner therefore respectfully submits to Your Excellency (William McKinley),

- That the one hope and trust of the Hawaiian people is the same today and has been expressed in several petitions heretofore presented to the Government of the United States, they entertain the firm belief that Your Excellency will do justice to this Nation during Your term of Office.
- That this trust of the Hawaiian people is strengthened by the recollection of the friendly action of the Government of the United States in 1843, when an assurance of the Independence of the Islands given by the President to Delegates from Hawaii through which assurance the recognition of their independence by the Governments of England and France was readily obtained.
- That no cause whatever can arise that will alter or change the mind of the Hawaiian people and their desire to see the Monarchy restored, and the Throne occupied by the Queen, who would never have been deposed by a handful of foreigners but for the support rendered them by the U.S. Ship Boston.
- That Queen and her people are of one mind that in the event of restoration amnesty should be granted to those who were concerned in the overthrow of the Monarchy on January 17, 1893.

Your Petitioner therefore prays that the Monarchical form of Government to which the Nation is attached may be restored to the Hawaiian Islands and Queen reinstated in the Throne, which for the avoidance of a conflict between her soldiers and a detachment from the U.S. Ship Boston, which had invaded her realm in support of the insurgents by order of the U.S. Minister, Her Majesty resigned under solemn protest and appeal to the President of the United States relying on the Justice of the President and people of that great country and confident that a Nation so great and powerful would never allow so great a wrong to remain unredressed."

- 3.45 Without adhering to the diplomatic protests from the Queen and these Hawaiian organizations, President McKinley proceeded to submit the so-called treaty of annexation to the United States Senate for approval. The Senate was scheduled to convene in December of 1897. Being apprised of President McKinley's intentions, the three organizations quickly mobilized and instituted two new signature petitions, which vehemently protested annexation. Of the three signature petitions, it was decided by the Hawaiian organizations to submit the petition from the Men and Women's Hawaiian Patriotic League to the United States Senate when it convenes in December of 1897. It was determined that the signature petition from the Hawaiian Political Association, (or Hui Kālai'āina), which numbered nearly 17,000 signatures would be withheld because it might

⁴⁶ See Annex 29.

receive a negative response by the U.S. Senators because of the petitions pro-Monarchy wording of the petition. The Men and Women's Hawaiian Patriotic League petitions numbered over 21, 000 signatures.⁴⁷ Here follows the preface to the signatures:

"Whereas, there has been submitted to the Senate of the United States of America a Treaty for the Annexation of the Hawaiian Islands to the said United States of America, for consideration at its regular session in December, A.D. 1897; therefore, We, the undersigned, native Hawaiian citizens and residents of the District of _____, island of _____, who are members of the (Women's) Hawaiian Patriotic League of the Hawaiian Islands, and others who are in sympathy with said League, earnestly protest against the annexation of the said Hawaiian Islands to the said United States of America in any form or shape."

- 3.46 As a result of these protests and other legal questions surrounding the self-proclaimed Republic of Hawai'i, the United States Senate failed to obtain the required two-thirds vote, as mandated by the United States Constitution, to ratify the so-called treaty of annexation. The dominion of the Hawaiian Kingdom remained intact.

III.10 LEGAL EVALUATION

- 3.47 Neither the provisional government nor the Republic of Hawai'i ever intended to be independent, whether legal or actual. Its sole purpose was to transfer itself at some future date to the United States of America when an opportunity arose. It could also be said that the creation of the Republic of Hawai'i was an attempt to impress upon the United States a similarity of government which would make them much more attractable for a subsequent annexation. Either way, the so-called Republic could gain no more authority than the provisional government held. It too was neither *de facto* nor *de jure*, which arose out of intervention by a United States diplomat and naval representatives.

- 3.48 Professor Lauterpracht explains,

"If a community...were to become, legally or actually, a satellite of another State, it would not be fulfilling the primary condition of independence and would not accordingly be entitled to recognition as a State."⁴⁸

- 3.49 Attached to this problem is the fact that the Republic's predecessor was the provisional government which arose as a puppet government of the United States Minister resident in the Hawaiian Islands, and whose sole purpose was to negotiate a treaty of annexation with the United States of America. This purpose

⁴⁷ See Annex 30.

⁴⁸ See Lauterpracht, H., *Recognition in International Law*, 1947, Cambridge, p. 27-28.

was not altered when the provisional government declared themselves to be the Republic of Hawai‘i by a so-called constitutional convention. As an instrument of disguised law breaking, puppet creations escape all legal definition.

- 3.50 The relationship between the Republic of Hawai‘i and the United States of America seems to bear a remarkable resemblance to the relationship between Japan and the Republic of Manchukuo (circa. 1931-45). On this point Professor Marek explains,

"Following her attack on China in 1931, Japan refrained from a straightforward annexation of Manchuria, preferring to set up in that part of China a puppet State which served all the purposes of annexation in everything but name." ⁴⁹

- 3.51 The only differing aspect in this comparison is that the United States of America had attempted to annex the Hawaiian Islands by entering into a treaty with its puppet governments, and not by the consent of the *de jure* Hawaiian Kingdom government. Very much like the United States Presidential 1893 Fact Finding Commission which concluded that

"The Lawful government of Hawai‘i was overthrown...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," ⁵⁰

the League of Nations Report of the Commission of Enquiry into the Sino-Japanese relations, including the question of Manchukuo, stated,

"It is clear that the Independence Movement, which had never been heard of in Manchuria before September 1931, was only made possible by the presence of the Japanese troops. ...The evidence received from all sources has satisfied the Commission that while there were a number of factors which contributed to the creation of 'Manchukuo', the two which, in combination, were most effective and without which, in our judgment, the new State could not have been formed were the presence of Japanese troops and the activities of Japanese officials, both civil and military." ⁵¹

- 3.52 As President Cleveland concluded that the provisional government "...was neither *de facto* nor *de jure*," and called for the restoration of the Hawaiian Kingdom Government, the League of Nations Commission concluded, *inter alia*, that,

⁴⁹ Marek, K., *Identity and Continuity of States in Public International Law*, 1968, Geneva, p. 173.

⁵⁰ See Annex 10, p. 455.

⁵¹ See *Report of the Commission of Enquiry*, League of Nations Publications, VII, 1932, 12, p. 97

"...the maintenance and recognition of the present regime in Manchukuo would be...unsatisfactory."⁵²

⁵² See *Report of the Commission of Enquiry*, League of Nations Publications, VII, 1932, 12, p. 128.

IV. SECOND AMERICAN OCCUPATION OF THE HAWAIIAN KINGDOM

- 4.1 On April 25, 1898, after the failed annexation of the Hawaiian Islands, the United States Congress established an Act Declaring that war exists between the United States of America and the Kingdom of Spain. The Declaration of War was retroactive to April 21, 1898. The International Laws of War were activated between the two countries.
- 4.2 On May 1, 1898, the United States' Navy's Asiatic Squadron under Commodore Dewey defeated the Spanish Pacific Squadron at the Battle of Manila bay in the Philippines.¹ The Philippine Islands were a territorial colony of Spain, together with Guam. The International Laws of War regulated the U.S. Navy's hostile incursion into the territory of the Kingdom of Spain, and consequently the warring parties were termed "belligerent States." The Hawaiian Kingdom and its territorial dominion was a neutral State, whose territory was considered under international law inviolable by any belligerent State.

IV.1 UNITED STATES MUNICIPAL LAW ERRONEOUSLY PURPORTS TO ANNEX THE HAWAIIAN ISLANDS IN 1898

- 4.3 On May 10, 1898, hearings were held in the U.S. House Committee on Foreign Affairs concerning Democratic Representative Francis Griffith Newlands' resolution to provide for annexing the Hawaiian Islands to the United States of America.² In testimony given before this committee, United States Naval Captain Alfred T. Mahan and U.S. Army General John Schofield explained the military importance as to why the resolution should be submitted to a vote by the U.S. Congress.
- 4.4 Captain Mahan stated:

“It is obvious that if we do not hold the islands ourselves we can not expect the neutrals in the war to prevent the other belligerent from occupying them; nor can the inhabitants themselves prevent such occupation. The commercial value is not great enough to provoke neutral interposition. In short, in war we should need a larger Navy to defend the Pacific coast, because we should have not only to defend our coast, but to prevent, by naval force, an enemy from occupying the islands; whereas, if we pre-occupied them, fortifications could preserve them to us. In my opinion it is not practicable for any trans-Pacific country to invade our Pacific coast without occupying Hawai‘i as a base.” (emphasis added)³

¹ See Coffman, T., *Nation Within: The Story of America's Annexation of the Nation Hawai'i*, 1998, p. 279.

² See United States Congressional Record, 55th Congress, 2nd Session, vol. XXXI, p. 4600.

³ Ibid, pp. 5771-5772.

4.5 General Schofield added:

“We got a preemption title to those islands through the volunteer action of our American missionaries who went there and civilized and Christianized those people and established a Government that has no parallel in the history of the world, considering its age, and we made a preemption which nobody in the world thinks of disputing, provided we perfect our title. If we do not perfect it in due time, we have lost those islands. Anybody else can come in and undertake to take them. So it seems to me the time is now ripe when this Government should do that which has been in contemplation from the beginning...” (emphasis added)⁴

4.6 On July 6, 1898, during the height of armed conflicts with the Kingdom of Spain, in both the Pacific Ocean and the Caribbean, the United States Congress passed the joint resolution purporting to annex the Hawaiian Islands. President McKinley then signed this resolution on the following day. U.S. Representative Ball characterized the effort to annex Hawai‘i by joint resolution as:

“...a deliberate attempt to do unlawfully that which can not be lawfully done.”⁵

4.7 United States constitutional scholar, Westel Willoughby, wrote:

“The constitutionality of the annexation of Hawai‘i, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force -- confined in its operation to the territory of the State by whose legislature it is enacted.”⁶

4.8 The United States Congress attempted to sever the treaty relations of the Hawaiian Kingdom with other independent States, and replacing it with their own treaties, by stating in the 1898 joint resolution purporting to annex the Hawaiian Islands that:

“The existing treaties with the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such treaties as may exist, or as may be hereafter concluded, between the United States and such foreign nations.”⁷

⁴ See United States Congressional Record, 55th Congress, 2nd Session, vol. XXXI, pp. 5771-5772.

⁵ Ibid, p. 5975.

⁶ See Willoughby, W. *The Constitutional Law of the United States*, 2nd Ed. 1929, vol. 1, §239, p. 427.

⁷ See U.S. Statutes at Large, *Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States*, July 7, 1898, vol. 3, pp. 750-751.

4.9 On this note, Westel Willoughby states:

“The termination of a treaty as an international compact carries with it the annulment of the agreement as a law of the land; but its annulment as a law by Congress does not carry with it its annulment as an international compact.”⁸

4.10 Thus, the purported sovereignty of the self-proclaimed Republic of Hawai‘i, and not the sovereignty of the Hawaiian Kingdom were transferred to the United States of America. On a platform at the base of ‘Iolani Palace in Honolulu, Harold Sewall, from the McKinley administration and successor to United States Minister Willis of the Cleveland administration, stated

"Mr. President, I present you a certified copy of a joint resolution of the Congress of the United States, approved by the President on July 7th, 1898, entitled 'Joint Resolution to provide for annexing the Hawaiian Islands to the United States.' This joint resolution accepts, ratifies and confirms, on the part of the United States, the cession formally consented to and approved by the Republic of Hawai‘i." ⁹

4.11 Sanford B. Dole, the so-called President of the self-proclaimed Republic of Hawai‘i, addressing Harold M. Sewall's Congressional joint resolution, attempted to maintain the facade of a bi-lateral treaty of cession by replying

"A treaty of political union having been made, and the cession formally consented to and approved by the Republic of Hawai‘i, having been accepted by the United States of America, I now, in the interest of the Hawaiian body politic, and with full confidence in the honor, justice and friendship of the American people, yield up to you as the representative of the Government of the United States, the sovereignty and public property of the Hawaiian Islands." ¹⁰

4.12 Notwithstanding the demise of the self-proclaimed Republic of Hawai‘i and its subsequent incorporation into the United States of America, the continuity of the Hawaiian Kingdom as an independent State together with its territory remained unaffected. These events, though, violated the treaties entered into between the Hawaiian Kingdom and the United States of America and therefore international law. Her Majesty's protest, having been filed in the United States Department of State on June 18, 1897, was actual notice of these international violations.

4.13 On August 13, 1898, the Klondike steamer entered Honolulu Harbor with American troops of the 1st New York Volunteer Infantry and U.S. Volunteer

⁸ See Willoughby, W. *The Constitutional Law of the United States*, 2nd Ed. 1929, vol. 1, §324, p. 585.

⁹ See Thurston, L., *The Fundamental Law of Hawai‘i*, Honolulu, 1904, pp. 253-256.

¹⁰ *Ibid.*

Engineers on board.¹¹ They were stationed at the first U.S. military post to be established in the Hawaiian Islands called Camp McKinley, which was located below the volcanic crater called Diamond Head in Waikiki on the Island of O‘ahu.

- 4.14 This unprovoked incursion by a belligerent State into the territory of a neutral State was a violation of the Laws of War, as well as a breach of the treaties and conventions entered into between the Hawaiian Kingdom and the United States and the obligations thereunder. The specific engagement of peace and amity between the countries is stated in Article I of the 1849 Hawaiian-American Treaty, which provides

"There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors."¹²

- 4.15 Also violated were the obligations agreed to between the two States in regard to American citizenry residing in the Hawaiian Kingdom and the subjugation of that citizenry to Hawaiian laws and statutes and to no other. Article VIII of the said 1849 Treaty provides, in part

"...and each of the two contracting parties engage that the citizens or subjects of the other residing in their respective States shall enjoy their property and personal security, in as full and ample manner of their own citizens or subjects, of the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively."¹³

IV.2 U.S. FAILS TO ESTABLISH SYSTEM OF DIRECT ADMINISTRATION OF HAWAIIAN KINGDOM LAWS

- 4.16 Under the international laws of occupation, more particularly Article 43 of the 1907 Hague Convention IV, the occupying government must establish a system of direct administration of the laws of the country that it's occupying.¹⁴ In other words, the United States government, as an illegally occupying government in the Hawaiian Islands since its unprovoked incursion by its troops on August 13, 1898, was mandated to administer Hawaiian Kingdom law over the territory and not its own, until they withdraw. This is not a mere descriptive assumption by the occupying government, but rather it is the law of occupation.

¹¹ See Addleman, William, *History of the U.S. Army in Hawai'i, 1849-1939*. Typescript only available at Archives of Hawai'i, Honolulu (a chronology of military history in Hawai'i based on General Orders of the War Department and other documents).

¹² See Annex 4, p. 458; see also Annex 17, p. 21; see also Annex 10, p. 79.

¹³ See Annex 4, pp. 460-461; see also Annex 17, p. 24; see also Annex 10, pp. 81-82.

¹⁴ See Benvenisti, E., *The International Law of Occupation*, Princeton, 1992, p. 4.

4.17 Eyal Benvenisti states that,

"Modern occupants came to prefer, from a variety of reasons, not to establish such a direct administration. Instead, they would purport to annex or establish puppet states or governments, make use of existing structures of government, or simply refrain from establishing any form of administration. In these cases the occupants would tend not to acknowledge the applicability of the law of occupation to their own surrogates' activities, and when using surrogate institutions, would deny any international responsibility for the latter's actions." ¹⁵

IV.3 THE ESTABLISHMENT OF AN AMERICAN PUPPET GOVERNMENT IN 1900

4.18 On April 30, 1900, the United States, by municipal legislation, signed into law an "Act to provide a government for the Territory of Hawai'i." ¹⁶ In accordance with this law U.S. President William McKinley appointed Sanford B. Dole, of the self-proclaimed Republic of Hawai'i, as Governor for the Territory of Hawai'i. This violated both International and Hawaiian Kingdom law. Under Hawaiian Kingdom law, as one of the principle conspirators behind the fake revolution of 1893, Sanford Dole was a traitor. Under International Law, this is a violation by the United States because it is imposing its laws within the Hawaiian Kingdom. The language of this Congressional Act appointing Sanford Dole, is provided in Section 66:

"That the executive power of the government of the Territory of Hawai'i shall be vested in a governor, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and shall hold office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President."

4.19 Moreover, with respect to other language under the foregoing Act, members of the self-proclaimed Republic of Hawai'i were purportedly granted American citizenship. This is a direct violation of The Hague Regulations, which mandate an occupying nation cannot impose its own laws over the inhabitants of the occupied territory, as well as the principle under international law that provides municipal legislation does not extend beyond its territorial borders. Thus, the Territorial Act that granted the members of the self-proclaimed Republic of Hawai'i United States citizenship effectively provided *pseudo* protection for their violations of Kingdom Law. Section 4 of the Act covering citizenship states:

"That all persons who were citizens of the Republic of Hawai'i on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawai'i."

¹⁵ See Benvenisti, E., *The International Law of Occupation*, Princeton, 1992, p. 5.

¹⁶ See U.S. Statutes at Large, *Act to provide a Government for the Territory of Hawai'i*, April 30, 1900, vol. 31, pp. 141-162.

4.20 On July 9, 1921, the United States Congress amended the 1900 "*Act to provide a government for the Territory of Hawai‘i*," by establishing a Hawaiian Homes Commission.¹⁷ This commission was authorized to grant, ninety-nine (99) year leases on certain Government or Crown lands of the Hawaiian Kingdom, to aboriginal Hawaiians who possessed one-half native Hawaiian blood. For the first time, native Hawaiians were classified according to a blood quantum, thereby providing another example of direct imposition by the United States' laws within the Hawaiian Kingdom. Section 201(7) of this 1921 Act provides:

"The term 'native Hawaiian' means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778."

IV.4 AMERICAN STATEHOOD FOR THE SO-CALLED TERRITORY OF HAWAI‘I IN 1959

4.21 On November 7, 1950, residents of the so-called Territory of Hawai‘i, adopted a Constitution for the proposed incorporation of the State of Hawai‘i into the United States.¹⁸ These residents were made up of United States citizens and those who thought they were United States citizens. Those so-called United States citizens, who were descendants of Hawaiian subjects, were in fact Kingdom subjects. These Kingdom subjects were under the false impression and belief that Hawai‘i was lawfully annexed by the United States in 1898, which supposedly changed their political status from Hawaiian subjects to American citizens. This constituted further indoctrination by the United States.

4.22 On March 18, 1959, the United States Congress accepted the 1950 Constitution of American citizens resident in the Hawaiian Islands and established an Act to provide for the admission of the State of Hawai‘i into the Union.¹⁹ Section 7(b) of this 1959 Act, provides that:

"At an election designated by proclamation of the Governor of Hawai‘i, which may be either the primary or the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, the following propositions:

- (1) Shall Hawai‘i immediately be admitted into the Union as a State?
- (2) The boundaries of the State of Hawai‘i shall be as prescribed in the Act of Congress approved (date of approval of this Act) and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

¹⁷ See U.S. Statutes at Large, July 9, 1921, vol. 67, pp. 108-115.

¹⁸ See Annex 31, p. 100.

¹⁹ See Annex 31, p. 101; see also United Statutes at Large, *Act to Provide for the admission of the State of Hawai‘i into the Union, March 18, 1959*, vol. 73, pp. 4-13.

(3) All provisions of the Act of Congress approved (date of approval of this Act) reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Hawai‘i are consented to fully by said State and its people."

4.23 On June 27, 1959, an election was held in accordance with section 7(b) of the 1959 Act whereby a majority of the residents of the Territory of Hawai‘i voted for admission into the United States as a State. This election and subsequent municipal legislation constitutes more United States violations.

4.24 On August 21, 1959, more violations occurred as this election resulted in a United States Presidential Proclamation, by Dwight D. Eisenhower, admitting the so-called State of Hawai‘i into the United States. It states, in part, that the U.S. President declares and proclaims that:

"...the procedural requirements imposed by the Congress on the State of Hawai‘i to entitle that State to admission into the Union have been complied with in all respects and that admission of the State of Hawai‘i into the Union on an equal footing with the other States of the Union is now accomplished." ²⁰

IV.5 UNITED STATES COMMITS FRAUD BEFORE UNITED NATIONS

4.25 In 1945, the United Nations was created with the United States as one of its charter members. According to its Charter, the United Nations would promote the protection of human rights and establish a process of de-colonization for those people who have *not yet attained* independence as a nation. United Nations General Assembly Resolution 1514 provides that

"...all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." ²¹

4.26 In accordance with Article 73 (e) of the United Nations Charter, member States who had colonial possessions were required to report yearly to the Secretary General the status of their colonies in relation to self-determination. It was at this point that the United States committed fraud before this international organization by fraudulently reporting the Hawaiian Islands as a U.S. colony along with Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico and the Virgin Islands. ²² The underlying problem here was that the Hawaiian Kingdom had already achieved independence for the Hawaiian Islands since 1842, and the

²⁰ See Annex 31, p. 105.

²¹ See *United Nations Resolutions adopted by the General Assembly, Resolution 1514*, 15th session, vol. 1, 1960, p. 66.

²² See Annex 32.

United States and other members of the Community of States also recognized this independence. Independence, at the time, could not be claimed for the territories of Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico nor the Virgin Islands.

- 4.27 This attempt to mask the American occupation of the Hawaiian Kingdom is what forged the creation of the Puppet State of Hawai‘i in 1959. In 1959, the American Ambassador to the United Nations reported to the Secretary General that

"...since 1946, the United States has transmitted annually to the Secretary General information on the Territory of Hawai‘i pursuant to Article 73 (e) of the Charter. However, on August 21, 1959 Hawai‘i became one of the United States under a new constitution taking effect on that date. In the light of this change in the constitutional position and status of Hawai‘i, the United States Government considers it no longer necessary or appropriate to continue to transmit information on Hawai‘i under Article 73 (e)." ²³

- 4.28 In regard to the continuity of Statehood during occupation Professor Marek states:

"Since the law relating to the continuity of the occupied State is clear and unequivocal, any acts of the occupying power which are not in accordance therewith are clear violations of international law." ²⁴

And

"...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." ²⁵

IV.6 UNITED STATES ATTORNEY GENERAL’S OFFICE QUESTIONS ANNEXATION OF THE HAWAIIAN ISLANDS IN 1988 LEGAL OPINION

- 4.29 On October 4, 1988, Douglas W. Kmiec, Acting Assistant U.S. Attorney General, drafted a legal opinion for the Legal Adviser to the U.S. State Department, on the *Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea*. ²⁶ The opinion concluded, in pertinent part, that:

- “• The President has the authority to issue a proclamation extending the jurisdiction of the United States over the territorial sea from three to twelve miles out.
- The President also has the authority to assert the United States' sovereignty over the extended territorial sea, although most such claims in the nation's history have been executed by treaty.

²³ See Annex 31, p. 99.

²⁴ See Marek, K., *Identity and Continuity of States in Public International Law*, 1968, Geneva, p. 110.

²⁵ Ibid.

²⁶ See *Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea* (October 4, 1988), Opinions of the Office of Legal Counsel, U.S. Department of Justice, vol. 12, p. 238.

- There is a serious question whether Congress has the authority either to assert jurisdiction over an expanded territorial sea for purposes of international law or to assert the United States' sovereignty over it.”

4.30 The opinion also states, in regards to the purported 1898 annexation of the Hawaiian Islands, that:

“It is therefore unclear which constitutional power Congress exercised when it acquired Hawai‘i by joint resolution.”

**IV.7 UNITED STATES CONGRESS IN 1993 APOLOGIZES TO NATIVE HAWAIIANS
 COMMEMORATING 100TH ANNIVERSARY OF ILLEGAL OVERTHROW OF THE
 HAWAIIAN KINGDOM**

4.31 On November 3, 1993, the United States Congress enacted a resolution that acknowledged the 100th anniversary of the January 17, 1893 illegal overthrow of the Hawaiian Kingdom Government, and offered an apology to native Hawaiians as a distinct ethnic group.²⁷ This "apology resolution" is flawed. This Resolution correlates the reconciliation efforts of the United States Government to the indigenous peoples right to self-determination. The native Hawaiians do not fall under the international term of indigenous peoples, otherwise known as dependent peoples, because they are nationals of an independent State, the Hawaiian Kingdom.

4.32 The political status and protection of Hawaiian subjects fall under Hawaiian Kingdom law and the Law of Nations. The relationship between the Hawaiian Kingdom and the United States is a State-to-State relationship. It is not State to the Nationals of the State (i.e. who are separate and distinct by ethnicity) relationship.

4.33 This "apology resolution," although, did acknowledged the continued existence of the Hawaiian Kingdom, as an independent State. The 1993 Apology Resolution reads, in pertinent part:

"Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawai‘i, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887...

Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum..."

²⁷ See U.S. Public Law 103-150, 103rd Congress, *Joint Resolution to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawai‘i*, November 3, 1993.

IV.8 UNITED STATES SOLICITOR-GENERAL IMPLICATES THE UNITED STATES GOVERNMENT UNDER THE LAWS OF WAR IN 1999

4.34 In July of 1999, Seth Waxman, Solicitor General for the United States Government, further implicated his government's actions toward the Hawaiian Kingdom under the international laws and customs of war on land by stating that:

"Between 1826 and 1893, the United States recognized the Kingdom as a sovereign nation and signed several treaties with it.

The United States has concluded that it...bears a responsibility for the destruction of their [Hawaiian] government and the unconsented and uncompensated taking of their lands." ²⁸

IV.9 THE ESTABLISHMENT OF U.S. MILITARY INSTALLATIONS IN THE HAWAIIAN KINGDOM

4.35 Since the illegal occupation in 1898, the following American military installations were established throughout the Hawaiian Islands in violation of the Hawaiian Kingdom's rights of neutrality and the international law of occupation: ²⁹

- (a) 1902 Pearl Harbor Naval Base; Barbers Point Naval Station
- (b) 1907 Fort Shafter and Tripler Medical Center (Army)
- (c) 1922 Wheeler Air Force base
- (d) 1938 Hickam Air Force base; Bellows Training Area; Barking Sands Training Area
- (e) 1939 Kane'ohe Marine Corps Base
- (f) 1941 Schofield Barracks (Army); Pohakuloa Training Area; Kahuku Training Area

IV.10 ALIEN POPULATION EXPLODES DURING AMERICAN OCCUPATION

4.36 In order to arrive at some estimation as to the population of Hawaiian subjects presently residing in the islands today, an analysis can be made by comparing the last census report in the Hawaiian Kingdom, being 1890, ³⁰ and the 1990 ³¹ United States census a century later. Here we would be able to develop an increase factor to estimate the number of Hawaiian subjects (both aboriginal and non-aboriginal) presently in the islands as compared to the foreign national population.

²⁸ See *Brief for the United States as Amicus Curiae Supporting Respondent*, Rice v. Cayetano, no. 98-818, U.S. Supreme Court.

²⁹ See Cragg, *Guide to Military Installations*, 1997, pp. 101-108.

³⁰ See *Hawaiian Kingdom Census, 1890*, Hawai'i Archives; see also Annex 10, p. 920.

³¹ See *United States, Bureau of the Census, 1990 Census of Population, General Population Characteristics*, Hawai'i.

- 4.37 According to the 1890 census it listed the population at 96,073. 48,117 (50.1%) comprised the Hawaiian nationals and 47,956 (49.9%) comprised the foreign national population. Of the Hawaiian national population the census listed the aboriginal Hawaiian at 40,622 (84.4%) and those Hawaiian nationals of foreign origin at 7,495 (15.6%). Of the foreign national population the census listed Japanese nationals at 18,474 (38.5%); Chinese nationals at 15,570 (32.5%); American nationals at 1,928 (4%); British nationals at 1,344 (3%); German nationals at 1,034 (2%); Portuguese nationals at 8,602 (18%); and all other nationalities at 1,004 (2%).
- 4.38 As a result of the illegal occupation of the country there has been no Hawaiian Kingdom government officials naturalizing foreigners in accordance with Kingdom law since 1893 to the present, and unlike the United States, people who are born on Hawaiian soil do not automatically become Hawaiian subjects. The only way to acquire Hawaiian citizenship is either born of Hawaiian subject parentage or by naturalization under the laws of the country.³² The increase or decrease of the foreign population is arbitrary. The importance is the Hawaiian national population.
- 4.39 In the 1990 United States census, aboriginal Hawaiians grew to a population of 138,742 from 40,622 in 1890. An increase of 98,120 or a factor of 3.4 ($138,742 \div 40,622$). If we apply this same factor of 3.4 to the 1890 population of Hawaiian nationals of foreign origin it would compute to 25,483 ($7,495 \times 3.4$), with an increase of 17,988. Therefore, taking the entire population of Hawai'i in 1990 at 1,108,229, we can safely estimate that a minimum of 164,225 (14.8%) were Hawaiian subjects; 944,004 (85.2%) were foreign nationals.
- 4.40 These calculations serve as a very conservative estimate of the population breakdown of Hawaiian nationals versus foreign nationals here today in the islands. It does not include those Hawaiian nationals (both aboriginal and foreign origin) residing outside of the country. When these numbers are attainable the amount of Hawaiian nationals will surely increase.
- 4.41 Between 1890 and 1990 the population in the Hawaiian Islands had grown from 96,073 to 1,108,229, with an increase of 1,012,156. If we assume that the foreign population of 1890 remained in the islands we could apply the same increase factor of 3.4 and arrive at a foreign estimation of 163,050. Combined with the estimation of Hawaiian nationals today, being 164,225, you would have 327,275, which leaves 780,954 foreign nationals migrating here under United States control. The onslaught of foreign nationals arriving in country has clearly overwhelmed the national population by 85.2%.

³² See Annex 6, pp. 104-106.

IV.11 LEGAL EVALUATION

4.42 The actions taken by the United States of America during the prolonged occupation of the Hawaiian Kingdom, together with the international community, by the United Nations, have given rise to three overriding principles of international law. *First*, illegal occupation cannot of itself terminate statehood;³³ *secondly*, there exists a duality of legal orders in an occupied State;³⁴ and *thirdly*, the sovereignty of an established State cannot be affected without its consent.³⁵

4.43 Occupation is a definite legal situation, which is strictly limited by the Hague Regulations. As such, the limitations imposed upon the occupant are determined by the international principle of the continuity of the occupied State. This principle, in its negative aspect, limits the authority of the occupier, but, in its positive aspect, it provides for the unchanged international personality of the occupied State. Professor Brownlie explains,

"...that a state remains 'independent', in the sense of retaining separate personality, if a foreign legal order impinges on it, provided that the impingement occurs under a title of international law. It follows that illegal occupation cannot of itself terminate statehood. Elsewhere the general question of balancing effectiveness and the principle *ex injuria non oritur jus* is considered. Here it must suffice to point out that, when elements of certain strong norms (the *jus cogens*) are involved, it is less likely that recognition and acquiescence will offset the original illegality."³⁶

4.44 Regarding the provisional aspect of occupation, the *British Manual of Military Law*, 1929, provides,

"...the sovereignty of the legitimate owner of the territory is only temporarily latent, but it still exists and in no way passes to the occupant. The latter's rights are merely transitory, and he should only exercise such power as is necessary for the purposes of the war, the maintenance of order and safety, and the proper administration of the country...The occupant, therefore, must not treat the country as part of his own territory, nor consider the inhabitants as his lawful subjects."³⁷

4.45 Along the same lines the United States Basic Field Manual, Rules of Land Warfare, provides,

³³ See Marek, K., *Identity and Continuity of States in Public International Law*, 1968, Geneva, p. 110.

³⁴ *Ibid*, p. 102.

³⁵ See Brownlie, I., *Principles of Public International Law*, 4th ed., 1990, p. 287.

³⁶ See Brownlie, I., *Principles of Public International Law*, 1979, p. 82.

³⁷ See *British Manual of Military Law*, 1929, no. 12, pp. 67-68.

"Military occupation is a question of fact...It does not transfer sovereignty to the occupant...the sovereignty of the occupied territory is not vested in the occupying power. The occupation is essentially provisional."³⁸

4.46 Attached to the principle of international law providing for the continued existence of an established State during occupation, the legal order of the occupied State logically remains intact. Although its effectiveness is greatly diminished by the fact of occupation, its legality provides its sustainability. As such, the Hague Regulations provides for the co-existence of two distinct legal orders, that of the occupier and the occupied. The former is regulated by international law, while the occupied nation's organic and municipal laws determine the latter. Professor Marek explains,

"...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...strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness. It can produce legal effect 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. Thus, the relation between effectiveness and title seems to be one of inverse proportion: while a strong title can survive a period of non-effectiveness, a weak title must rely heavily, if not exclusively, on full and complete effectiveness. It is the latter, which makes up for the weakness in title. Belligerent occupation presents an illuminating example of this relation of inverse proportion."³⁹

4.47 Professor Marek concludes,

"Belligerent occupation is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned. The explanation of this unusual fact is to be found in the temporary nature of belligerent occupation. International law could not permanently relinquish the requirement of effectiveness, since this would mean reducing international law and relations to a pure fiction. But belligerent occupation is by definition not of a lasting character. Sooner or later it is bound to end..."⁴⁰

4.48 As the Hawaiian Kingdom's existence is a matter defined by international law, any challenge of its sovereignty must be made before an international tribunal possessing the proper jurisdiction to render such challenge warranted. To date, there has been no legal challenge by any other State or international organization

³⁸ See *United States Basic Field Manual, Rules of Land Warfare*, 1940, pp. 73-74.

³⁹ See Marek, K., *Identity and Continuity of States in Public International Law*, 1968, Geneva, p. 102.

⁴⁰ *Ibid.*

to the continued existence of the legal personality of the Hawaiian Kingdom as an independent State in accordance with customary and conventional international law. Along these lines, Professor Marek asserts that the laws of occupation,

"...has positively outlawed the creation of puppets as a means of indirectly violating the international occupation regime. It has branded them as illegal. Whatever their claims, they are unable to break the continuity of the occupied State to which they are in no way related, whether they take the form of puppet States or puppet governments. In the event of the creation by the occupant of a puppet State or States on the territory of the occupied State, the latter survives, with its legal status unchanged."⁴¹

4.49 In the absence of any judicial award extinguishing Hawaiian statehood, the *1907 Hague Regulations* not only outlines the duty and obligations of the occupier, but maintains and protects the international personality of the occupied State, even in the absence of effectiveness. Notwithstanding the violations of the duties imposed upon the United States of America by both customary and conventional international law over the territory of the Hawaiian Kingdom, the Hawaiian Kingdom's sovereign status and its legal order remained unaffected, and capable of being reinstated.

⁴¹ See Marek, K., *Identity and Continuity of States in Public International Law*, 1968, Geneva, p. 102.

V. REINSTATING THE HAWAIIAN KINGDOM GOVERNMENT

5.1 Occupation does not legally change the legal order of the occupied State. As such, the laws of the Hawaiian Kingdom, as they existed previous to the fake revolution of 1893, continue to remain the Law of the Land, and Chapter II, section 6 of the Hawaiian Civil Code, provides,

"The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while 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." ¹

V.1 THE ESTABLISHMENT OF THE FIRST CO-PARTNERSHIP FIRM UNDER AMERICAN OCCUPATION ON DECEMBER 10, 1995

5.2 On December 10, 1995, a Hawaiian general partnership was formed in compliance with an *Act to Provide for the Registration of Co-partnership Firms*, 1880. ² The partnership was named the Perfect Title Company and functioned as a land title abstracting company. ³ Since the enactment of the 1880 Co-partnership Act, members of co-partnership firms within the Kingdom had filed their articles of agreements in the *Bureau of Conveyances*. ⁴

5.3 That same *Bureau of Conveyances* is presently administered by the occupational force of the United States, through the State of Hawai'i, pursuant to United States municipal legislation. Such legislation required that all documents prior to filing with the Bureau be acknowledged by a United States/State of Hawai'i notary public. In order for the partners of the Perfect Title Company to get their articles of agreement filed in the Bureau of Conveyances, pursuant to the said 1880 Co-partnership Act, the following protest was incorporated and made a part of their articles of agreement, which stated,

"Each partner also agrees that the business is to be operated in strict compliance to the business laws of the Hawaiian Kingdom as noted in the 'Compiled Laws of 1884' and the 'session laws of 1884 and 1886.' Both partners are native Hawaiian subjects by birth and therefore are bound and subject to the laws above mentioned. And it is further agreed by both partners that due to the filing requirements of the Bureau of Conveyances to go before a foreign notary public within the Hawaiian Kingdom, they do this involuntarily and against their will." ⁵

¹ See Annex 6, §6, chapter II, p. 2.

² Ibid, *An Act to Provide for the Registration of Co-partnership Firms*, pp. 648-650.

³ See Annex 33.

⁴ See Annex 34.

⁵ *Supra*. note 3, paragraph 6.

5.4 The Perfect Title Company was to have commenced on the 10th day of December, 1995, but there was no representation of the Hawaiian Government to ensure compliance with the co-partnership statute from that date. In accordance with the 1880 Co-partnership Act, a duty and an obligation was established between the Interior Department and co-partnership firms in the Kingdom. At one end of the statute, the registration of co-partnerships was a requirement, while at the other end of the statute; the Interior Department was to ensure that co-partnerships maintained their compliance with the statute. Thus, the partners of the Perfect Title Company had to abide by the duty and corresponding obligation in order to satisfy the statute under Kingdom law.

5.5 Section 7 of the Co-partnership Act of 1880 clearly outlines the duty of the Interior department and the corresponding obligation of the members of co-partnerships in the Kingdom, which states,

"The members of every co-partnership who shall neglect or fail to comply with the provisions of this law, shall severally and individually be liable for all the debts and liabilities of such co-partnership and may be severally sued therefore, without the necessity of joining the other members of the co-partnership in any action or suit, and shall also be severally be liable upon conviction, to a penalty not exceeding five dollars for each and every day while such default shall continue; which penalties may be recovered in any Police or District Court." ⁶

V.2 REINSTATING THE HAWAIIAN KINGDOM GOVERNMENT, BY AND THROUGH THE HAWAIIAN KINGDOM CO-PARTNERSHIP STATUTE

5.6 The partners of Perfect Title Company desired to establish a legitimate co-partnership pursuant to Hawaiian Kingdom law. Such a co-partnership had not been created in the Hawaiian Kingdom for over one hundred years, because the Hawaiian Kingdom has experienced an illegal and prolonged occupation by the United States. As a result, the Hawaiian Kingdom Government had ceased to operate. In light of the above, the partners of the Perfect Title Company reasoned that the Hawaiian corporate body of government had to be re-established pursuant to Hawaiian Kingdom law, in order for the Perfect Title Company to exist as a legal co-partnership firm.

5.7 Therefore, in order for the Government of the Hawaiian Kingdom to be re-activated, an *Acting* Executive Head of State had to be established in conformity with the laws of the Hawaiian Kingdom. Black's Law Dictionary defines an acting officer as

⁶ See Annex 6, *An Act to Provide for the Registration of Co-partnership Firms*, section 7, p. 649.

"...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." ⁷

- 5.8 The last legitimate Hawaiian Legislative Assembly of 1886 was prevented from reconvening as a result of the extortion of the 1887 Constitution. ⁸ The subsequent Legislative Assembly of 1887 was based on an illegal constitution, which altered existing voting rights, which led to the illegal election of the 1887 Legislature. As a result, there existed no legitimate Nobles in the Legislative Assembly when Her Hawaiian Majesty Queen Lili'uokalani ascended to the Office of Monarch in 1891, and therefore, the Queen was unable to obtain confirmation for her named successors from those Nobles of the 1886 Legislative Assembly as required by the 1864 Constitution. Her Majesty had first intended that Princess Ka'iulani be the named successor to the Office of Monarch, and subsequently considered Prince David Kawananākoa and Prince Jonah Kūhiō Kalaniana'ole as her successors. Tragically, when Her Majesty died on November 11, 1917, there were no legitimate Noblemen of the 1886 Legislative Assembly to confirm her abovementioned nominations. Article 22 of the 1864 Constitution eloquently illustrates the requirements, and states, in part,

"...the successor shall be the person whom the Sovereign shall appoint with the consent of the Nobles, and publicly proclaim as such during the King's life." ⁹

- 5.9 In the absence of a confirmed successor to the Throne by the Nobles of the Legislative Assembly, Article 33 of the Constitution of 1864 provides that

"...should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King..." ¹⁰

- 5.10 The law did not assume that the whole of the Hawaiian Kingdom Government would be made vacant. Consequently, the law did not formalize provisions that described every step of the reactivation of the Government. Thus, the following course of action was taken to re-activate the Hawaiian Kingdom Government by and through its Executive branch.

⁷ See Black's Law Dictionary, 6th Ed. (1990), p. 26.

⁸ See paragraphs 1.30 to 1.36 of this report, which explains the circumstances of the illegal constitution of 1887 and its affect upon the Legislative Assembly to confirm any nominations made by Her Hawaiian Majesty Queen Lili'uokalani.

⁹ See Annex 9, p. 90.

¹⁰ Ibid, p. 91.

- 5.11 Properly interpreted, Article 33 of the 1864 Constitution, provides that the Cabinet Council shall be a "temporary" Council of Regency until a proper Legislative Assembly can be convened to choose, by ballot, some native Ali'i (Chief) to be Monarch, as provided in Article 22 of the Hawaiian Constitution.¹¹ Article 33 further states that the Regent or Council of Regency shall administer the Government in the name of the Monarch, and exercise all the Powers, which are constitutionally vested in the Monarch.
- 5.12 Article 42 of the 1864 Constitution,¹² provides that the Cabinet Council consists of the Minister of Foreign Affairs, the Minister of Interior, the Minister of Finance and the Attorney General of the Kingdom. Proper interpretation of this law allows the Minister of Interior to assume the powers vested in the Cabinet Council in absentia of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General, and consequently serve as the Council of Regency.
- 5.13 Chapter XXVI, section 1249 of the Hawaiian Civil Code,¹³ provides that a bureau is established in the department of the Interior called the Bureau of Conveyances and that a Registrar shall superintend said bureau. Proper interpretation of this Law allows the Registrar of Conveyances to assume the powers vested in the Minister of Interior in absentia of the same; then assume the powers vested in the Cabinet Council in absentia of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and finally the Registrar can assume the position of the Council of Regency.
- 5.14 The 1880 Co-partnership Act¹⁴ requires members of co-partnerships to register their articles of agreement in the Bureau of Conveyances, being within the Department of the Interior. This statute places an obligation on members of co-partnerships to register, and at the same time, this statute places a corresponding duty on the Interior department to ensure compliance with the statute. Logic and necessity dictated that in the absence of an executor of the Interior department, a registered co-partnership could assume the department's duty. In order to accomplish this, it was logical that this registered co-partnership could assume the powers vested in the Registrar of the Bureau of Conveyances in absentia of the same; then assume the powers vested in the Minister of Interior in absentia of the same; then assume the powers vested in the Cabinet Council in absentia of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and, finally assume the power of the Council of Regency.
- 5.15 This abovementioned process of ascension can be analogized to a Private in an Army that rises up the ranks during battle, in the absence of all ranking soldiers above him. In this type of extraordinary scenario, a Private could ultimately assume the rank of General of the Army in an "acting" role, until relieved by a

¹¹ See Annex 9, p. 90.

¹² Ibid, p. 92.

¹³ See Annex 6, §1249, *Article LI. Of the Registrar of Conveyances – His Duties, &c.*, p. 405.

¹⁴ Ibid, p. 649.

properly commissioned General. The critical point to be made about this process in relation to the Hawaiian Kingdom's corporate body, is that each position assumed by the Hawaiian Kingdom Trust company, a registered co-partnership under the 1880 Co-partnership Act, is an "acting" position until the government can be made "permanent" by a legally constituted Legislative Assembly.¹⁵

V.3 THE HAWAIIAN KINGDOM TRUST COMPANY, A GENERAL PARTNERSHIP, ESTABLISHED TO ASSUME ROLE OF ABSENTEE GOVERNMENT ON DECEMBER 15, 1996

5.16 On December 15, 1995, the partners of Perfect Title Company formed a second partnership called the Hawaiian Kingdom Trust Company.¹⁶ The partners intended that this registered partnership would exist as a company *acting* for and on behalf of the Hawaiian Kingdom "absentee" Government. As of December 15, 1995, there were no other co-partnerships registered in accordance with the said 1880 Co-partnership Act, except for the Perfect Title Company. Therefore, and in light of the ascension process explained in the previous paragraphs, the Hawaiian Kingdom Trust Company could then "act" as the Registrar of the Bureau of Conveyances, the Minister of Interior, the Cabinet Council, and ultimately as the Council of Regency.

5.17 Article 1 of the Hawaiian Kingdom Trust Company's deed of general partnership provided, in part, that

"...the company will serve in the capacity of *acting* for and on behalf of the Hawaiian Kingdom government. The company has adopted the Hawaiian Constitution of 1864 and the laws lawfully established in the administration of the same. The company is to commence on the 15th day of December, A.D. 1995, and shall remain in existence until the absentee government is re-established and fully operational, upon which all records and monies of the same will be transferred and conveyed over to the office of the Minister of Interior, to have and to hold under the authority and jurisdiction of the Hawaiian Kingdom."¹⁷

5.18 Deeds of Trusts authorizing the Hawaiian Kingdom Trust Company to serve as a company acting for and on behalf of the Hawaiian Government further outlined the role of the trust company and the fiduciary duty between the trustees and the beneficiaries. The Deeds of Trust provided, in part, that

¹⁵ See Annex 6, Title 3, *Of the Legislative Department*, Annex 6, pp. 214-234, provides for the regulations and the conducting of elections; and Article 28 of the Constitution, states, in pertinent part: "The King, by and with the advice of His Privy Council, convenes the Legislative Assembly at the seat of Government;" and Article 33 provides that a Regency "...shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King..."

¹⁶ See Annex 35.

¹⁷ *Ibid.*

"...the grantors, in consideration aforesaid and in order to more effectually carry out the intention of this deed doth hereby grant unto the said trustee, its successors and assigns full power to serve in the place of the absentee government, for the benefit of the same; and in the name of the trust to institute and prosecute to final judgment and execution all suits and actions at law, in equity and in admiralty for any breach or violation of Hawaiian law, at the expense of the grantors; and the same to defend if brought against the said grantors by any pretended proprietor or foreign government; and to refer any matter in dispute to arbitration and the same to settle and compromise; and to do all acts in the management of the affairs of said parties as if it were the absentee government in the capacity aforementioned." ¹⁸

- 5.19 Grantors of the Deeds of Trust to the Hawaiian Kingdom Trust Company, a general partnership, also paid the trust back taxes, which are explained as follows,

"And the grantors, to show their good faith as native Hawaiian subjects, agree to pay into the trust the sum of one-hundred and three dollars (\$103.00), which shall serve as payment of all back taxes owed to the Hawaiian Kingdom government, to be computed at a rate of a dollar and love for each and every year the grantors and their families have been absent from the kingdom since the year of 1893; and the same agrees to adhere to all of the internal tax laws of the kingdom, which include an assessment of taxes to be determined on the 1st day of July of each and every year and the collection of the same on the 15th day of December, in accordance to the Act of 1882 relating to internal taxes, Compiled Laws of the Hawaiian Kingdom, p. 117, to be paid into the trust account." ¹⁹

- 5.20 The Trustees of the Hawaiian Kingdom Trust Company were not only competent to serve as the Acting Cabinet Council, but also possessed a fiduciary duty toward its beneficiaries to serve in the capacity of the Hawaiian Kingdom Government, until the Government is re-established in accordance with the terms of the 1864 Constitution. The Deeds of Trust also provided the following proviso,

"It is also agreed that as soon as the absentee government is lawfully re-established and is fully operational, the company will transfer by deed all rights, titles, interests and appurtenances hereinbefore conveyed by the grantors, over to the office of the Minister of Interior, to have and to hold under the authority and jurisdiction of the Hawaiian Kingdom, and that upon this conveyance the trust shall then be terminated." ²⁰

¹⁸ See Annex 36.

¹⁹ Ibid.

²⁰ Ibid.

V.4 **TRUSTEES OF THE HAWAIIAN KINGDOM TRUST COMPANY, A GENERAL PARTNERSHIP, APPOINT ACTING REGENT ON MARCH 1, 1996**

- 5.21 In order to avoid impropriety and/or conflict of interest under the 1880 Co-partnership Act, the partners of the Perfect Title Company, reasoned that an *Acting* Regent, having no interests in either company, must be appointed to serve as representative of the Hawaiian Kingdom Government. This appointment would have to be made by the Trustees of the Hawaiian Kingdom Trust Company since it represented the interests of the Kingdom Government. Therefore, the Trust Company looked to Article XXXI, Chapter XI, Title 3 of the Hawaiian Civil Code, whereby the *Acting* Regency would be constitutionally authorized to direct the Executive Branch of the Kingdom Government in the formation and execution of the reconvening of the Legislative Assembly, so that the government can be made permanent.
- 5.22 In light of the above, the Trustees of the Hawaiian Kingdom Trust Company decided to appoint the undersigned as *Acting* Regent to represent the Hawaiian Government in place of the Trust Company, because of his expertise in Hawaiian Kingdom law. It was also agreed upon by the Trustees that Ms. Nai'a-Ulumaimalu would replace the undersigned as Trustee of the Trust Company and partner of the Perfect Title Company. Since the undersigned was also a Trustee and partner of the two companies, it was decided that the undersigned would relinquish his entire interest in both companies to the other Trustee and partner before accepting the Regency appointment. After the other Trustee and partner of the two companies had acquired a complete interest, a redistribution of interest would be conveyed to Ms. Nai'a-Ulumaimalu. Both deeds transferring interests will be signed one day before the date of the actual redistribution, and be duly registered in the Bureau of Conveyances in conformity with Section 3 of the 1880 Co-partnership Act. This simultaneous transaction was agreed to in order to maintain the standing of the two partnerships and not have them lapse into sole-proprietorships.
- 5.23 On February 27, 1996, the undersigned conveyed by deed all of his one-half (1/2) undivided interest in both companies to Mr. Donald A. Lewis, the other sole partner of the Perfect Title Company and the other sole Trustee of the Hawaiian Kingdom Trust Company, but the deed of transfer was not to take effect until February 28, 1996.²¹
- 5.24 Concurrent and in a simultaneous transaction, on February 27, 1996, Mr. Donald A. Lewis conveyed by deed a one percent (1%) undivided interest in the Hawaiian Kingdom Trust Company and the Perfect Title Company to Ms. Nai'a-Ulumaimalu, but the transfer would not take effect until February 28, 1996.²² Ms. Nai'a-Ulumaimalu, in effect, became a one percent (1%) Trustee of the Hawaiian Kingdom Trust Company and a one percent (1%) partner of the Perfect

²¹ See Annex 37.

²² See Annex 38.

Title Company with Mr. Lewis, who retained a ninety-nine percent (99%) interest in both companies.

- 5.25 On March 1, 1996, the Trustees of the Hawaiian Kingdom Trust Company appointed the undersigned to the Office of Regent, and filed a notice of this appointment with the Bureau of Conveyances.²³ Thereafter, the Hawaiian Kingdom Trust Company resumed its role as a general partnership within the meaning of the 1880 Co-partnership Act, and no longer served as a company acting for and on behalf of the Hawaiian Government.
- 5.26 On May 15, 1996, the Trustees of the Hawaiian Kingdom Trust Company conveyed by deed all of its right, title and interest acquired by thirty-eight (38) Deeds of Trust to the *Acting* Regent, and stipulated that the Trust Company would be dissolved in accordance with the provisions of its deed of general partnership on June 30, 1996.²⁴ The transfer and subsequent dissolution, was made in accordance with section 3 of the 1880 Co-partnership Act.

V.5 LEGAL EVALUATION OF THE REINSTATEMENT OF THE HAWAIIAN KINGDOM GOVERNMENT

- 5.27 The Hawaiian Kingdom Government did not foresee the possibility of its territory subjected to prolonged occupation by another independent State, where indoctrination and the manipulation of its political history has affected the present psyche of its national population and has subdued the function of government. Therefore, it did not provide for reinstating the function of its government, as the organ of the State, either in exile or within its own territory. But it neither placed any limitations upon the government, either by its constitution or statutes that could serve as a bar to its reinstatement. Although the present Hawaiian Kingdom government is not in exile from its own territory, it does possess similar attributes of a government in exile, which State practice, judicial decisions and international scholars can serve to better elucidate the legal basis of its reinstatement.
- 5.28 The unfortunate events of World War I and II in Europe, has illuminated the legal basis of exiled governments while under occupation, and as a matter of State practice and relevant judicial decisions, minor flaws in the constitutionality of the exiled governments have been flatly ignored. In this regard, the King's Bench Division in *re Amand* (1941-42), which is quoted by Taborsky, *The Czechoslavic Cause*,

“...these are emergency circumstances and emergency circumstances render imperative the creation of emergency laws...when a state of

²³ See Annex 39.

²⁴ See Annex 40.

emergency exists...the constitution does not apply first and foremost, but the vital interests of State and people.”²⁵

5.29 In *Hoogeven et Al.* (1943-45), the Belgian Court of Cassation stated,

“There can be no doubt but that the legislative powers envisaged in Articles 79 and 82 of the Constitution ought, in principle, to be exercised by all the Ministers of the King, assembled in Council. But as the national sovereignty cannot be in suspense, its exercise cannot be impeded by the circumstances that certain Ministers are prevented from meeting with their colleagues.”²⁶

5.30 Professor Marek states,

“...while the requirement of 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 its actual uninterrupted continuity.”²⁷

5.31 Professor Oppenheimer also provides that

“...such government is the only *de jure* sovereign power of the country the territory of which is under belligerent occupation.”²⁸

5.32 While legal measures of the occupant are strictly limited by the Hague Regulations, the legal order of the occupied State continues not only to be valid, but can be enforced outside of the occupied territory. Thus Professor Marek explains,

“...whether a law-breaking attitude of the occupying power makes it possible for the legal order of the occupied State to retain a certain amount of effectiveness in the occupied territory, or whether, in disregard of the Hague Conventions the occupant eliminates even the last traces of that effectiveness, the continuity of the occupied State is safeguarded, not by an act of will of the occupying power, but by a clear, objective rule of international law.”²⁹

5.33 The right of Hawaiian nationals to reinstate their government, by its statutory provisions, is clear and unequivocal under the international principle of the

²⁵ See Taborsky, *The Czechoslovak Cause*, p. 107. The passage quoted is not reproduced in the Amand Case, *Annual Digest and Reports of Public International Law Cases*, case no. 28 (1941-41).

²⁶ See *Annual Digest and Reports of Public International Law Cases*, case no. 148 (1943-45).

²⁷ See Marek, K., *Identity and Continuity of States in Public International Law*, 1968, Geneva, p. 98.

²⁸ See Oppenheimer, F.W., *Governments and Authorities in Exile*, *American Journal of International Law*, (1942), p. 568.

²⁹ *Supra.* note 27, p. 86.

continuity of the occupied State and its legal order, and Professor Marek emphasizes that,

"...it is always the legal order of the 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 territorial 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 territorial State and that of the occupied State, represented by its exiled government, is not one of delegation, but of co-existence."³⁰

5.34 The legal basis for the reassertion of the Hawaiian Kingdom government, by and through a Hawaiian Kingdom general partnership statute, is clearly extraordinary, but the exigencies of the time had demanded it. In the absence of any Hawaiian national(s) adhering to the statutory laws of the country as provided by the country's constitutional limitations on December 10, 1995, a process was established for the creation of the Hawaiian Kingdom Trust Company to serve as a company acting for and on behalf of the absentee government, pending the reconvening of the Legislative Assembly to elect by ballot permanent officers of the government as provided for under Article 22 of the Hawaiian Constitution.

V.6 **QUIET TITLE ACTION INSTITUTED BY THE HAWAIIAN KINGDOM TRUST COMPANY AND THE PERFECT TITLE**

5.35 As a result of the failure of the United States of America to administer the laws of the Hawaiian Kingdom regarding the transference of real estate since January 17, 1893, the Trustees of the Hawaiian Kingdom Trust Company, serving as a company *acting* for and on behalf of the absentee Hawaiian Kingdom Government, began the process to repair land titles. On February 3, 1996, the Trustees of the Trust Company passed a resolution that describes this process. The resolution is as follows:

"Whereas...it has become necessary to the prosperity of our Kingdom and proper physical, mental and moral improvement of our beneficiaries, who retain a vested undivided right in all the lands of the Hawaiian Islands, as native Hawaiian subjects, that the necessary steps be taken for the quieting of all land titles in the Hawaiian Islands. Due to the fact that all patents in fee-simple, having originated from the Hawaiian Kingdom government, were subject to the corporate rights of this body politic, it is by the authority vested in us...that we are authorized to initiate these necessary steps in accordance with Hawaiian law, as if we are the absentee government. The Trustees having convened, it was

Resolved, 1st. That Perfect Title Company, a general partnership established and existing under and by virtue of the laws of the Hawaiian

³⁰ See Marek, K., *Identity and Continuity of States in Public International Law*, 1968, Geneva, p. 91.

Kingdom and duly registered in the Bureau of Conveyances as document #95-153346, be chosen to investigate and confirm or reject all claims to land arising after the 10th day of December, A.D. 1845.

2nd. That the same be employed at a compensation to be hereafter determined, derivable solely from the fees and perquisites resulting from the labors of Perfect Title Company.

3rd. That said company be duly sworn to fidelity in the discharge of its duties as such. That it be, and is, hereby authorized to receive claims and evidences for our after consideration, from and after the first publication hereof. That its office is at 850 Richards Street, suite 507, in Honolulu, phone #808-524-4477 and fax #808-524-0771, for the transaction of its duties, and for the facility of claimants. And that it be discharged with keeping all records and proceedings upon claims.

4th. That claims submitted for settlement be taken up and acted upon according to the order of their presentation, and be settled according to order taken in each case by majority in number of Perfect Title Company. Only property where Native Tenants are claiming under their vested right, will be advanced.

5th. That the stated hours of Perfect Title Company be held Monday through Friday, commencing at 8 a.m. until 4:30 p.m.

6th. That these resolutions be published in the Pacific Business News, the Ka Wai Ola newspapers and any other newspaper that circulates throughout the Hawaiian Islands, concurrently with the notice to claimants required by law, to the end that they may be apprised of these by-laws established by the Hawaiian Kingdom Trust Company." ³¹

5.36 In order to aide the process of repairing land titles, the Trustees of the Hawaiian Kingdom Trust Company adopted the following six principles that were made a part of the abovementioned resolution.

"1st. The field of Perfect Title Company is 'the investigation and final ascertainment or rejection of all claimants of fee-simple titles, whether Hawaiian subjects or foreigners, to any landed property acquired after December 10th, A.D. 1845.

2nd. The more minute powers of Perfect Title Company for organization, and to carry out these objects, are specified and conferred; as the power to summon parties and enforce mandates, and to administer oaths. These are auxiliary to the power and objects of the company respecting land titles, which it is chosen to confirm or reject definitely.

3rd. The principles by which the Company are to be governed in deciding certain questions (i.e.) 'testate and intestate interests, tenant in common, lineal and collateral heirship, conditions and services of holding good title, commutation, and native tenant rights,' are to be those laws established by the civil code of the Hawaiian Kingdom.

³¹ See Annex 41.

4th. From the fact that certain unlawful acts were committed since the 16th day of January, A.D. 1893, by Hawaiian subjects and foreigners, which ultimately placed the Hawaiian Kingdom government into 'abeyance,' and also from the fact that the native Hawaiian subjects still retain a vested undivided right in all the lands of the Hawaiian Islands; a few of these native Hawaiian subjects have come forward and granted to the Hawaiian Kingdom Trust Company, by certain 'deeds of trusts,' full power to serve in the place of the Hawaiian Kingdom government for their benefit. It is by the authority that the Hawaiian Kingdom Trust Company designates Perfect Title Company, such power of confirming or rejecting land titles. The Trust Company must infer that these native Hawaiian subjects intended the utmost liberality to prevail towards the claimants, rather against the pecuniary interests of themselves or the Hawaiian Kingdom government.

5th. Perfect Title Company is only authorized to ascertain a claimant's kind and amount of title, and to award for or against that title, 'wholly or in part.' They are not authorized to grant leases or patents.

6th. Connected with each claim of a fee-simple title, is its abstract of title, without the ascertainment and demarcation of which, it were impossible to make an award, or to quiet the title. The Trust Company is therefore under the necessity of causing each claimant to pay for their own investigation and determination of title at an expense of \$10.00 per year, from the year of their claim back to the 10th day of December, A.D. 1845, payable to Perfect Title Company, before the Trust Company can issue a formal award in confirmation of the claim."³²

5.37 On February 6, 1996, in order to consummate the appointment of Perfect Title Company for the investigation of land claims, both the Hawaiian Kingdom Trust Company and the Perfect Title Company entered into a "covenant of agreement." The 1996 agreement between the Hawaiian Kingdom Trust Company and the Perfect Title Company read, in part,

"That the said party of the first part (Hawaiian Kingdom Trust Company) has chosen the party of the second part (Perfect Title Company), to investigate and confirm or reject all claims of fee-simple titles to land in accordance to the resolution passed by the party of the first part on the 3rd day of February, A.D. 1996...That said party of the second part for the considerations hereinafter mentioned do for themselves their executors and administrators covenant and agree to and with the said party of the first part its heirs and assigns that they will investigate all claims to fee-simple titles in accordance with the abovementioned resolution, at a cost of ten dollars (\$10.00) per year to be computed from the date of the claim back to the 10th day of December, A.D. 1845, which shall also include any and all miscellaneous costs incurred by the investigation (i.e.) 'probate records, photocopying, and plane fare,' to be paid by the claimant.

³² See Annex 41.

That upon these investigations, the party of the first part shall issue awards in confirmation of the investigated claims.

In consideration whereof the said party of the first part doth for itself and its heirs and assigns covenant and agree to and with the said party of the second part and their executors and administrators to allow them the abovementioned consideration. And the said parties hereto bind themselves and their heirs, executors and administrators and assigns to the true and faithful performance of the agreement herein contained. And these presents are upon this condition that in case of breach of the agreement herein, by the party of the second part, the party of the first part may without any notice or demand or process of law terminate this agreement." ³³

- 5.38 In the February 19th, 1996 issue of the Pacific Business newspaper, the March issue of the Ka Wai Ola o Oha newspaper, and in the March 9th, 1997 issue of the Honolulu Advertiser, the Trustees of the Hawaiian Kingdom Trust Company published the following notice.

"TO ALL CLAIMANTS OF FEE-SIMPLE TITLES
IN THE HAWAIIAN ISLANDS.

Perfect Title Company has been appointed by the Hawaiian Kingdom Trust Company to investigate and confirm or reject all claims of fee-simple titles arising after the 10th day of December, A.D. 1845, in accordance to Hawaiian law. The 'articles of agreement' and the 'principles' adopted in adjudicating each claim is registered as document #96-016046 in the Bureau of Conveyances for public viewing.

The company is prepared to hear the parties or their counsel in defense of their titles to lands, and is prepared to receive in writing the claims and evidences (i.e. TMK#, etc.) of fee-simple title, which parties may have to offer at the office of Perfect Title Company. The claimant shall be responsible for the total cost of the investigation.

All persons are required to file with the company by depositing specifications of their fee-simple title(s) to land and to adduce the evidence upon which they claim title to any land in the Hawaiian Islands, before the expiration of two years from this date; or in default of so-doing, they will after that time be forever barred of all right to recover the same in the courts of justice.

Dated this 14th day of February, 1996." ³⁴

- 5.39 The Trustees of the Hawaiian Kingdom Trust Company offered to claimants of estates in fee-simple the opportunity to submit evidence of their assumed title (i.e. deed of conveyance or heirship rights). Claimants could submit evidence of their fee-simple title at the office of Perfect Title Company between February 14, 1996

³³ See Annex 42.

³⁴ See Annex 43.

and February 14, 1998. If the evidence did not support the claim to a fee-simple title, the Trustees of the Hawaiian Kingdom Trust Company also offered rejected claimants the opportunity to remedy their claims in accordance with Hawaiian Kingdom law. The Trustees of the Trust Company provided the following explanation of the benefits that would result from the above process.

"1st. They will quiet the title, hitherto 'clouded,' and leave the owner, whether in fee or for years, to the free agency and independent proprietorship of his lands confirmed, subject to rights of native tenants. So long as a cloud on title continues to remain on all lands of the Hawaiian Islands, an encumbrance is thus placed upon the title, which prevents real sales, or transfers from party to party, and, by parity of reasoning, to real mortgages also. To quiet the title, and disembarass the owner or temporary possessor from this clog upon his free agency, is beneficial to that proprietor in the highest degree, and also to the nation; for it not only sets apart definitely what belongs to the claimant, but, untying his hands enables him to use his property more freely, by mortgaging it for commercial objects, and by building upon it, with the definite prospect that it will descend to his heirs. This will tend more rapidly in the establishment of the Hawaiian Kingdom 'government' to maintain this permanency, without which chaos and uncertainty will no doubt re-occur.

2nd. The patent or leases issued by the Hawaiian Kingdom Trust Company, are for certain fixed and ascertained extents or dimensions of land. These titles will be offered to those whose claims were rejected. This will allow a remedy to be offered to those entitled to the same."³⁵

5.40 The trustees of the Hawaiian Kingdom Trust Company continued to elaborate on the trust company's intent to remedy rejected claims by stating that the

"...foregoing prefatory remarks and explanations necessary to a clear understanding of the awards upon which they are about to enter, and indispensable to which awards, it is necessary to lay down the following general principles, to which they have arrived by critical study of the civil code, and careful examination of numerous deeds and abstracts of title.

The native Hawaiian subjects who retain their undivided 'vested' right in the lands, need not be required to present their native tenant claims for investigation, but are required to present the same if they are in current possession of a fee-simple title. These inherent vested rights are protected by the constitution and laws of the Hawaiian Kingdom, and can never be divested by third parties. Native proprietors and foreign residents are thus put upon the same footing in regard to their titles, in consistency with Article VIII of the Treaty concluded with the United States...Article II of the treaty concluded with Great Britain...Article VIII of the treaty concluded with Sweden and Norway...Article IV of the treaty concluded

³⁵ See Annex 41.

with France...Article IV of the treaty concluded with Belgium...Article II of the treaty concluded with the Netherlands...Article III of the treaty concluded with the Swiss Confederation...Article IV of the treaty concluded with Italy...Article II of the treaty concluded with Russia...Article IV of the treaty concluded with Spain...Article II of the treaty concluded with Japan...and Article II of the treaty concluded with Germany...

1st. In all cases where the land obtained from any grantor, Perfect Title Company will strictly inquire into the right of the grantor to make such disposition of the land; and will confirm or reject, according to the right of the such grantor, regardless of consideration, occupancy or after improvements.

2nd. In all cases where the land has been legally and validly obtained from the lawful proprietor, by written grant or deed, and that the current claimant is in conformity with all lawful conditions attached to said grantor deed, Perfect Title Company will construe the claimant's rights by the wording of the instrument.

3rd. In all cases where a claimant's title has been rejected, the Hawaiian Kingdom Trust Company will offer, as a remedy, the opportunity to purchase the previously claimed property by agreement of lease or a fee-simple grant at market value. The Hawaiian Kingdom Trust Company, in asserting this principle, does not mean to assume that the Hawaiian government be the only landlord, but will strictly adhere to the landlord whose name and estate is named in the Great Mahele of 1848, otherwise known as the 'division of lands' among the landlords, and who obtained lawful fee-simple titles by Royal Patents. Where the land so claimed be situated in the estate of the Government, Hawaiian Kingdom Trust Company shall issue a title in this name, and where it be situated in the estate of a Konohiki (landlord), title shall be issued by the appropriate name, whether it be under the name of the 'crown land commissioners' or a specifically named landlord.

4th. The title of all lands, whether rightfully or wrongfully claimed, either by natives or foreigners, in the entire kingdom, which shall not have been presented to Perfect Title Company for adjudication, confirmation or rejection, on or before the 14th day of February, 1998, are declared to belong to the Hawaiian Kingdom government. Parties who thus neglect to present their titles, do so in defiance of the law, and cannot complain of the effect of their own disobedience." ³⁶

- 5.41 As mentioned in paragraphs 5.21 to 5.26 above, on February 27, 1996, the Trustees of the Hawaiian Kingdom Trust Company instituted the process of appointing an *Acting* Regent to serve in their place. The *Acting* Regent was competent to repair land titles that originally derived from the Hawaiian Kingdom Government since 1845, and also became the successor to the Hawaiian Kingdom Trust Company in the "covenant of agreement" with the Perfect Title Company as

³⁶ See Annex 41.

mentioned in paragraph 5.37 of this report. Thus, the *Acting* Regent was empowered to remedy rejected claims that have been properly investigated by the Perfect Title Company in accordance with the aforementioned *covenant of agreement*.

- 5.42 The *Acting* Regent issued a Proclamation on March 1, 1996 confirming the quieting of all land titles in the Hawaiian Islands. The Proclamation stated, in part,

"Whereas the aforementioned companies (Hawaiian Kingdom Trust Company and Perfect Title Company) have mutually entered into 'Articles of Agreement,' duly registered as document no. 96-016046 in the Bureau of Conveyances, in the adjudication of each claim to fee-simple title,

Now, therefore, I David Keanu Sai, Regent of the Hawaiian Kingdom, by virtue of the authority in me vested, do hereby confirm this great act, with the following exception, to wit;

1st. Where the Hawaiian Kingdom Trust Company would issue patents in fee-simple or enter into lease agreements for individuals who qualify for the same, this shall now be done by the Office of the Regent, or in such person as will be lawfully delegated by the same.

2nd. Upon the completion of all investigative reports, the Hawaiian Kingdom Trust Company shall enter into the Bureau of Conveyances a notice of determination, for public record."³⁷

- 5.43 Perfect Title Company maintained a staff of thirteen (13) employees, which comprised of title abstractors and secretarial services. On February 23, 1996 at 10:59 a.m., Mr. Colin Malani filed the first claim to a fee-simple title. This first title investigation was assigned claim no. 1. The final claim for investigation was submitted by Ms. Jan Lei Pa'alua on February 14, 1998 at 9:20 p.m., and assigned claim no. 611.

- 5.44 Perfect Title Company's investigations and findings created a firestorm throughout the real estate industry that included Hawai'i escrow companies and title insurance firms in the United States. As a result of Perfect Title Company's investigations on certain parcels of landed property, the following occurred: (1) promissory notes formerly secured by mortgage agreements were rendered unsecured because the land title under the mortgage agreement was invalid; (2) borrowers, who had purchased title insurance policies for the protection of the lenders should there be anything wrong with the title, initiated insurance claims against the title insurance firms to pay to the lenders the balance owed on the promissory notes; (3) Hawai'i land title companies were not able to refute the abstracts of title done by the Perfect Title Company, which were from the public records; and (4) these title companies were exposed and liable for doing incomplete title searches, which were grounds to initiate the title insurance

³⁷ See Annex 44.

policies issued by underwriters from title insurance firms in the United States. As a result of the above, Title Guaranty of Hawai‘i, the largest Hawai‘i title company, instituted a propaganda campaign against the Perfect Title Company aimed at slandering the work and reputations of those connected with the Perfect Title Company. Ultimately, this campaign resulted in the unlawful arrest and subsequent criminal indictments against the principals of the Perfect Title Company. This Report has attached newspaper accounts that provide evidence of these events.³⁸

- 5.45 On September 5, 1997, the Perfect Title Company offices were unlawfully raided by the occupying government, through the Honolulu Police Department, Criminal Investigation Division. Mr. Donald A. Lewis, Perfect Title Company's President, was arrested along with his secretary, Mrs. Christine Chew, as well as the *Acting* Regent. All three were subsequently released with an investigation pending. During the subsequent investigation, the occupational government's State of Hawai‘i Attorney General's officer secured so-called grand jury indictments of burglary and attempted theft of real property against the *Acting* Regent, Mr. Lewis and Mr. and Mrs. Michael Simafranca, who were clients of Perfect Title Company.³⁹ The *Acting* Regent and Mr. Lewis posted a \$5000.00 bail each. Mr. and Mrs. Simafranca were later arrested as well and posted bail.
- 5.46 The occupational government alleged that the fee-simple title held by Mr. and Mrs. Simafranca was foreclosed and sold at auction to a realtor who subsequently sold the property to Mr. and Mrs. Craig Uyehara. Mr. Uyehara at the time was employed as an attorney for the occupational government in the Department of Commerce and Consumer Affairs. Prior to the transference of the property at auction, Mr. and Mrs. Simafranca had filed a claim with the Perfect Title Company to investigate the validity of their fee-simple title. Mr. and Mrs. Simafranca were assigned claim no. 64. Perfect Title Company had concluded, by investigation, that the Simafranca's had no claim to a fee-simple title, because the fee-simple interest remained vested in Mr. James Austin, who died testate in 1894, and whose estate remained subject to probate proceedings of a competent tribunal under laws of the Hawaiian Kingdom.⁴⁰ The self-proclaimed Republic of Hawai‘i unlawfully probated Mr. Austin's estate. As a result of the investigation, the Simafranca's proceeded to remedy their claim to a fee-simple title by securing a warranty deed⁴¹ and a warranty of seisin⁴² from the *Acting* Regent, and subsequently notified their title insurance company, by and through Title Guaranty of Hawai‘i, to initiate the title insurance policy they had purchased to protect the lender. The Simafranca's letters went unanswered by Title Guaranty of Hawai‘i, and the so-called foreclosure and auction continued.

³⁸ See Annex 45.

³⁹ See Annex 46.

⁴⁰ See Annex 47.

⁴¹ See Annex 48.

⁴² See Annex 49.

5.47 Mr. and Mrs. Simafranca did not live on the property that was investigated by the Perfect Title Company and subsequently remedied, but had been renting the property to a tenant. Their tenant continued to reside at the property throughout the so-called foreclosure process and subsequent sale. After the tenant moved out of the home, Mr. and Mrs. Simafranca traveled to their home to change the lock on the door and were confronted by Mr. and Mrs. Uyehara. A police officer was called to the scene and advised the Simafrancas and the Uyeharas to consult legal advise because this is a land title dispute. Nothing arose out of this situation until the occupational government's State of Hawai'i Attorney General's office moved for indictments a year later.

5.48 During arraignment, His Excellency David Keanu Sai and Mr. Donald Lewis refused to enter a plea in a court that possessed no sovereign authority in the Hawaiian Kingdom. The presiding Justice entered a plea of "not guilty" for them. His Excellency entered a protest to the court. The protest stated, in part,

"As a native subject of the Hawaiian Kingdom, I do hereby solemnly protest against any and all acts done against myself by certain citizens of the United States claiming to have authority under the guise of a United States Government "State", within the dominion and sovereignty of the Hawaiian Islands; a claim which stands in violation of treaties entered between our two nations, international law and my civil rights.

The court which issued the warrant for my arrest, no. 97-3082, has no legal basis and is not a competent tribunal within the meaning of Article VIII, Treaty of 1850...Now to avoid any harm coming to my family, friends and fellow countrymen of the Hawaiian Kingdom by the unlawful serving of the abovementioned warrant, I do this under protest and impelled by said threat of harm, yield my person to the Government of the purported State of Hawai'i..."⁴³

5.49 During the pre-trial hearings, occupational Judge Sandra Simms continually denied defense counsels' motions to dismiss for lack of jurisdiction. Trial began on February 17, 1999. After the occupying government, through the State of Hawai'i Attorney General's Office, presented its so-called case, all parties moved for immediate dismissal. Mr. Lewis was acquitted, but the *Acting* Regent and Mr. and Mrs. Simafranca were denied acquittal. As the trial continued, the defense argued that the events surrounding the unsuccessful revolution of 1893, the self-proclaimed Republic of Hawai'i, the unsuccessful treaty of annexation attempts, and the subsequent occupation of the Hawaiian Kingdom by the United States all contributed to affect the fee-simple title claimed by Mr. and Mrs. Uyehara. A twelve-person jury made up of American citizens found the Hawaiian subject defendants guilty on all counts. All three Hawaiian subjects then faced a maximum of ten (10) years imprisonment when sentenced on March 7, 2000.

⁴³ See Annex 50.

5.50 On February 15, 2000, before the sentencing, His Excellency did file a protest against Judge Sandra Simms and Deputy Attorney General Dwight Nadamoto, both officers of the occupational government for violation of the rights of Hawaiian subjects within the territorial jurisdiction of the Hawaiian Kingdom. A copy of the protest was made a part of the trial docket and also registered with the International Bureau of the Permanent Court of Arbitration⁴⁴ and with John Crook, legal adviser to the United States State Department in Washington, D.C. Here follows the protest,

"In the name of the Hawaiian Kingdom and its Government, which the undersigned has the honor to represent, and in order to explain clearly for the information of all concerned; is issued, a Protest.

Whereas, there was no annexation of our country, the Hawaiian Kingdom, or any of its territory by the United States of America as provided by international law and the acquisition of territories by means of discovery, accretion, cession, conquest, or prescription; and

Whereas, our sovereignty as an Independent nation State has remained intact since its recognition by the Queen of England and the King of France on November 28, 1843, to the present, notwithstanding the fact that the Hawaiian government (body politic), being separate and distinct from the Nation State, lapsed into abeyance for over 100 years due to circumstances associated with the unlawful incursion of our territory by the United States of America; and

Whereas, the unlawful incursion into Hawaiian territory by the United States in 1898, absent a treaty of cession, occurred without the consent of the nationals of the Hawaiian Kingdom nor its Government; and

Whereas, this incursion occurred in the territory of a Neutral State when the United States of America, as a Belligerent State, was already at war with Spain, and used our territory as a staging ground for conflicts in the Spanish territories of the Philippines and Guam, and divers world conflicts to date;

Whereas, during the occupation of the Hawaiian Islands Article 43 of the Hague Regulations imposes the duty on the occupant to "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," and implies to the extent to which the law of the land, and particularly its private law, is not abrogated, but remains in force; and

Whereas, the basic rule of wartime occupations stipulates that sovereignty of the territory does not pass to the occupying power, therefore the rights of occupancy cannot be co-extensive with those of sovereignty; and

Whereas, according to international law it is immaterial whether the government established over an occupied territory be called a military

⁴⁴ See Permanent Court of Arbitration, The Hague, *Larsen vs. the Hawaiian Kingdom*, case no. 99-001.

or civil government, because its character is the same and the source of its authority is the same, which is a government imposed by force, and the legality of its acts is determined by the laws of war; and

Whereas, it would then be within the rights of the nationals of the occupied nation to re-establish their government (in a temporary manner subject to the approval of the aggregate) within the confines of Hawaiian Kingdom domestic law and begin the exercising of those rights and the corresponding obligations and duties existing between the government and its nationals under the laws of occupation; and

Whereas, the criminal proceedings of attempted theft of real property that were instituted against the undersigned, Mr. Donald A. Lewis, Mr. Michael Simafranca, and Mrs. Carol Simafranca under the laws of the United States of America, via the State of Hawai‘i, have no basis in fact or law, but rather is a political act by members of the government of the State of Hawai‘i, and said proceedings stand in gross violation of Article 43 of the Hague Convention IV of 1907, as well as Article VIII of the Hawaiian-American Treaty of 1849; and

Whereas, on November 8, 1999, arbitral proceedings were instituted by a Hawaiian national, Mr. Lance Paul Larsen, against the Government of the Hawaiian Kingdom at the Permanent Court of Arbitration at The Hague, Netherlands; and

Whereas, the Arbitral Tribunal is asked to determine, on the basis of the Hague Conventions IV and V of 18 October 1907, and the rules and principles of international law, whether the rights of the Claimant under international law as a Hawaiian subject are being violated, and if so, does he have any redress against the Respondent Government of the Hawaiian Kingdom; and

Whereas, the undersigned is presently serving as Agent for the Hawaiian Kingdom during arbitral proceedings and is registered with the Permanent Court of Arbitration together with 1st Deputy Agent Peter Umialiloa Sai, 2nd Deputy Agent Gary Victor Dubin, Esquire, and 3rd Deputy Agent Kau‘i P. Goodhue; and

Whereas, if the decision of the said Arbitral Tribunal shall determine that the Hawaiian Islands are presently being occupied by the United States of America, and the laws of occupation are instituted pursuant to the Hague Conventions IV and V of 1907, it will profoundly affect the present criminal proceedings and the persons responsible for the same.

Now, therefore, be it known, that I solemnly Protest against every act and measure in the premises; and do Declare that from and after the date of said instituting of criminal proceedings until the decision of said Arbitral Tribunal, I hold Judge Sandra Simms and Deputy Attorney General Dwight Nadamoto, both being American nationals, answerable for any and every act, by which the undersigned, Mr. Donald A. Lewis, Mr. Michael Simafranca, and Mrs. Carol Simafranca, as Hawaiian subjects and residents of the Hawaiian Islands, shall be incarcerated in violation of their just rights and privileges secured under both Hawaiian

Kingdom law and international law, or who may suffer inconvenience or losses, or be forced to exact monies to a government not their own.

And I do hereby most solemnly Protest against the said Judge Sandra Simms and Deputy Attorney General Dwight Nadamoto, American nationals aforesaid, and all others whom it may concern, holding them responsible for their violation of the Hague Conventions IV and V, that was signed by their government, the United States of America, at The Hague October, 18, 1907, and duly ratified and deposited with the Netherlands Government November 27, 1909, should the said International Tribunal decide that under international law the Hawaiian Islands are presently being occupied by the United States of America pursuant to the said Hague Conventions IV and V, 1907.

Done at Honolulu, O'ahu, Hawaiian Islands, at the office of the Minister of Interior for the Government of the Hawaiian Kingdom, this 15th day of February, 2000."⁴⁵

- 5.51 At the sentencing hearing the *Acting* Regent was sentenced to so-called five (5) years probation on one count of attempted theft of real property, and Mr. and Mrs. Simafranca were sentenced to five (5) years probation each for burglary and an additional five (5) years each for attempted theft of real property. United States Judge Sandra Simms was very apologetic during the sentencing and made the following remark.

"Sometimes when there's change, (when) there's revolution, it's painful."

V.7 FURTHER ACTIONS TAKEN BY THE ACTING REGENCY TO RE-ASSERT STATE RESPONSIBILITY AND OBLIGATIONS

- 5.52 On February 28, 1997, a Proclamation of the *Acting* Regent of the Hawaiian Kingdom was printed in the March 9, 1997 issue of the Honolulu Sunday Advertiser, which stated, in part, that the

"...Hawaiian Monarchical system of Government is hereby re-established," and the "...Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code are in full force. All Hawaiian Laws and Constitutional principles not consistent herewith are void and without effect."⁴⁶

- 5.53 On February 13, 1998, the *Acting* Regent had made the following Proclamation of National Voter Registration, which was printed in March 1998 issue of the Hawaiian News. The 1998 Proclamation, stated, in part, that

⁴⁵ See Annex 51.

⁴⁶ See Annex 52.

"...before the elections shall take place to reconvene the House of Representatives, a registration of voters within the Realm must first take place beginning on the 14th day of February, A.D. 1998, and extending to a time to be hereafter determined, so that subjects of the Kingdom may be apprised of their constitutional rights and voter qualifications; and that all back taxes to be paid by qualified voters, in accordance with law, shall be computed at a rate of one dollar (\$1.00) for each and every year the qualified voter and his predecessors have been absent from the Constitutional Government of the Hawaiian Kingdom since the 17th day of January, A.D. 1893, to the date of the qualified voter's registration."⁴⁷

- 5.54 On March 12, 1997, at a public meeting held at the Queen Lili'uokalani Children Center at Halona, on the island of O'ahu, it was brought to the attention of Regent's office, by a female subject of the Kingdom, that there is no provision in the law that bars female subjects from voting in the election for Representatives of the Kingdom. She asserted that although the "voter qualification" statute specifically relates to the male gender, §15, chapter III, title I, provides, in part, that

"...every word importing the masculine gender only, may extend to and include females as well as males."

- 5.55 Based upon the dubious nature of the election statute, in its relation toward both genders, the Hawaiian Kingdom, by its *Acting* Regency, issued a legal opinion.⁴⁸ The 1997 legal opinion concluded that,

"The issue here is not a question of whether Hawaiian women can or cannot participate in the election of Representatives or serving as a candidate for the House of Representatives, but whether there is any provision in the election laws that preclude Hawaiian women from participating. If no such provision exists, as the case be, then Hawaiian women do have a right to participate in the electoral process under their political right, and that the male gender referred to in the "qualifications of electors" does not preclude the female gender, provided the female is a subject of the Kingdom, of the age of 20 and is neither an idiot, an insane person, or a convicted felon."

V.8 TWO FAILED ATTEMPTS BY THE HAWAIIAN KINGDOM TO RESOLVE ILLEGAL OCCUPATION WITHIN UNITED STATES SUPREME COURT

- 5.56 On November 17, 1997, the *Acting* Regent filed a Petition for a Writ of Mandamus⁴⁹ against the President William Jefferson Clinton in the United States Supreme Court at Washington, D.C. The petition, which was filed under the

⁴⁷ See Annex 53.

⁴⁸ See Annex 54.

⁴⁹ See Annex 55.

Supreme Court's original jurisdiction, sought to compel the United States President to execute the treaties entered between the United States of America and the Hawaiian Kingdom. On December 12, 1997, the Supreme Court had deliberately misfiled the Petition under the Supreme Court's appellate jurisdiction and not its original jurisdiction.

5.57 On January 9, 1998, the President of the United States, through its Solicitor General, filed in the United States Supreme Court, a Waiver. The waiver stated that the United States Government

“...waives its right to file a response to the petition in this case, unless requested to do so by the court.”⁵⁰

5.58 On February 12, 1988, the Petition was amended by the *Acting* Regent, which provided,

"That pursuant to the rules set forth in the United States Supreme Court for Extraordinary Writs under Title 28, section 1651, United States Code, and in compliance with the Treaty of Friendship, Commerce and Navigation, 1850, and the Convention of 1887, between the Hawaiian Kingdom and the United States of America, the PETITIONER requests the Court to mandate the President of the United States, namely, the Honorable William Jefferson Clinton, to;

1. Acknowledge the treaty obligations of the United States of America as mandated under Article VI, §2 of the United States Constitution.
2. Immediately execute the laws of the Hawaiian Kingdom, being the Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code, for the control and management of public affairs and the protection of the public peace until terms of transition and complete withdrawal have been negotiated and agreed upon.
3. Require all officers under the government of the State of Hawai'i and its municipal corporations to sign oaths of allegiance to the Government of the Hawaiian Kingdom in accordance with §430 and §431 of the Civil Code of the Hawaiian Kingdom, Compiled Laws, 1884, p. 105, and thereafter continue to exercise their functions and perform the duties of their respective offices in compliance with the Civil and Penal Codes of the Hawaiian Kingdom.
4. That this Court order the Respondent to guarantee that all Hawaiian laws and Constitutional principles of the Hawaiian Kingdom shall be in force until amended by the Legislative Council to be hereafter convened under and by virtue of the

⁵⁰ See United States Supreme Court, case no. 97-969, *Waiver filed by the Solicitor General*.

laws of the Hawaiian Kingdom, and in particular, the Constitution of 1864.

5. That this Court order the Respondent to dispatch an Envoy Plenipotentiary to Honolulu, Island of O‘ahu, to establish negotiations with the Petitioner and to assist in the ongoing transition and reinstatement of the constitutional Government in accordance with "established" laws of the Hawaiian Kingdom and in compliance with the treaties that exist between the two nations.
6. That this Court issue a Writ of Prohibition to all legislative, executive and judicial officers of the United States of America within the territorial jurisdiction of the Hawaiian Kingdom, including all legislative, executive and judicial Officers of the State of Hawai‘i and all of its municipal corporations, ordering them all to cease and desist from any of their activities, until the terms of transition and reinstatement of the constitutional Government of the Hawaiian Kingdom, aforementioned, have been negotiated and agreed upon.
7. That this Court award monetary reparations to the PETITIONER for all the harm that has been inflicted upon the Hawaiian Kingdom and its subjects by the United States government, aforesaid, to be held in trust by the PETITIONER for the Hawaiian Kingdom and its subjects, until such time as the Government of the Hawaiian Kingdom is completely re-established.
8. That this Court grant such other and further relief as is just and equitable." ⁵¹

5.59 On March 20, 1998, the *Acting* Regent was notified by the Clerk that the Petition would go before the Justices of the United States Supreme Court for a third time. After this third conference, on March 23, 1998, the Supreme Court denied the Hawaiian Kingdom’s request for a Writ of Mandamus, without explanation. ⁵² A petition for a rehearing was filed, but this attempt proved to be futile. ⁵³

5.60 A second attempt to resolve the illegal occupation within the United States Supreme Court was made on August 6, 1998, when a Complaint for Treaty violations, ⁵⁴ with accompanying motions and attachments, were hand delivered to the Clerk of the United States Supreme by the *Acting* Regent at Washington, D.C. Explicit instructions were given to the Clerk that these documents were to be filed under the Court’s original jurisdiction on the basis of Article III, §2 of the United States Constitution and 28 U.S.C. §1251(b)(1).

⁵¹ See Annex 56, p. 23.

⁵² See United States Supreme Court, case no. 97-969, *Order of March 23, 1998*.

⁵³ See Annex 57.

⁵⁴ See Annex 58.

5.61 On August 12, 1998, the Clerk of the Supreme Court, William K. Suter, through Francis J. Lorson, notified the *Acting* Regent by correspondence that the

"...motion for leave to file a bill of complaint and appendix were received August 6, 1998, and must be returned." ⁵⁵

5.62 In a telephone conversation between Francis J. Lorson, deputy Clerk of the United States Supreme Court and Francis A. Boyle, Esquire, legal adviser to the *Acting* Regent, the deputy Clerk had admitted that he was acting pursuant to verbal instructions issued to him by the Justices of the Court. By direction from the deputy Clerk of the Court, on October 8, 1998, the *Acting* Regent filed a Motion to Direct the Clerk of the Court to file Complaint. In its Motion the Acting Regent requested

"...that this Court (1) grant Plaintiffs' Motion to Direct the Clerk of the Court to file Motion for Leave to File a Bill of Complaint, Complaint, Memorandum in Support and Appendix thereto, (2) grant leave requested in Plaintiff's Motion for Leave to file a Bill of Complaint, and (3) grant relief requested in Plaintiffs' Bill of Complaint." ⁵⁶

5.63 The Motion to Direct the Clerk of the Court to file the Complaint was assigned docket no. M-26, and was denied on May 18, 1998 without explanation. ⁵⁷ In view of the futile attempts made by the Hawaiian Kingdom to address the illegal occupation of the Hawaiian Kingdom within the judicial system of the United States, the Hawaiian Kingdom would concentrate its efforts at an international level.

V.9 **GRANTING OF LIMITED POWERS OF ATTORNEY TO HAWAIIAN KINGDOM TREATY PARTNERS**

5.64 The Honorable Niklaus Schweizer, serving in Hawai'i as Honorary Consul for the Swiss Confederation under the pretense of the Swiss Treaty with the United States, did admit on several occasions to the *Acting* Regent that the 1864 Treaty between the Swiss Confederation and the Hawaiian Kingdom was never officially terminated and is therefore, still in effect. Article XIII of the 1864 Hawaiian-Swiss Treaty, in regards to the effect and termination of said Treaty, states as follows,

"The stipulations of the present treaty shall take effect in the two countries from the hundredth day after the exchange of the ratifications. The treaty shall remain in vigor for ten years, dating from the day of the said exchange. In case neither of the contracting parties shall have notified twelve months before the end of the said period its intention to terminate

⁵⁵ See Annex 59, paragraph 7.

⁵⁶ See Annex 59, paragraph 18.

⁵⁷ See United States Supreme Court, case no. M-26, *Order of May 18, 1998*.

the same, this treaty will continue obligatory till the expiry of a year, reckoning from the day on which either of the contracting parties shall give notice of its termination." ⁵⁸

- 5.65 Presently, there is no official record of notification by either the Swiss Confederation Government or the Hawaiian Kingdom Government expressing any desire to initiate the termination clause of the said Hawaiian-Swiss Treaty.
- 5.66 Regarding corresponding duties and obligations between the Swiss Confederation and the Hawaiian Kingdom, in relation to consular affairs, Article VII provides as follows,

"It shall be free for each of the two contracting parties to nominate Consuls, Vice-Consuls or Consular Agents, in the territories of the other. But before any of these officers can act as such, he must be acknowledged and admitted by the government to which he is sent, according to the ordinary usage, and either of the contracting parties may except from the residence of consular officers such particular places as it may deem fit." ⁵⁹

- 5.67 Article X, section 459 of the Hawaiian Civil Code acknowledges diplomatic and consular agents of foreign nations and states in part,

"No foreign consul, or consular or commercial agent shall be authorized to act as such, or entitled to recover his fees and perquisites in the courts of this Kingdom, until he shall have received his exequatur." ⁶⁰

- 5.68 On April 29, 1999, the undersigned, as *Acting* Regent, did grant under the Hawaiian Kingdom Seal, to the Honorable Niklaus Schweizer, an Exequatur as Consul of Switzerland at Honolulu. This action on part of the *Acting* Regent was in accordance with Article VII of the 1864 Hawaiian-Swiss Treaty and Article X, section 459 of the Hawaiian Civil Code. The Exequatur reads as follows:

"Be it known to all whom it may concern that Niklaus R. Schweizer is hereby acknowledged by the Hawaiian Kingdom, by its Regent, pro tempore, as Consul for Switzerland at 4231 Papu Circle in Honolulu, in accordance with Article VII of the Treaty with the Swiss Confederation, July 20, 1864, and all his official acts, as such, are ordered to receive full faith and credit by the authorities of this Government." ⁶¹

- 5.69 Article III of the 1864 Hawaiian-Swiss Treaty also provides, in part, that,

⁵⁸ See Annex 17, p. 87.

⁵⁹ Ibid, p. 86.

⁶⁰ See Annex 6, *The Diplomatic and Consular Agents of Foreign Nations*, §459, p. 112.

⁶¹ See Annex 60.

"The citizens of each of the contracting parties shall enjoy on the territory of the other the most perfect and complete protection for their persons and their properties. They shall in consequence have free and easy access to the tribunals of justice for their claims and the defense of their rights, in all cases and in every degree of jurisdiction established by the law." ⁶²

- 5.70 On April 29, 1999, *Exequaturs* were also granted to the Consulates of Belgium, France, Germany, Italy, Japan, Norway and Portugal under the Seal of the Hawaiian Kingdom.
- 5.71 On April 29, 1999, in light of Article II of the 1864 Hawaiian-Swiss Treaty, the *Acting* Regent, in Privy Council assembled, resolved to grant, to the Swiss Confederation, a Limited Power of Attorney. ⁶³ This Limited Power of Attorney authorized the Swiss Government to "step-in" and protects Swiss nationals while they are within the territory of the Hawaiian Kingdom. The Hawaiian Kingdom Government is not a fully functioning body and is unable to afford the "*most perfect and complete protection*" for Swiss nationals at this time. More specifically, it is the unlawful imposition of United States' municipal laws, within the territorial jurisdiction of the Hawaiian Kingdom that is preventing the Hawaiian Kingdom Government from fulfilling its obligation under Article III of the Hawaiian-Swiss Treaty.
- 5.72 On May 4, 1999, a letter of correspondence was sent to Her Excellency Ruth Dreifuss, President of the Swiss Confederation, notifying Her Excellency's government of the Hawaiian Kingdom Government's action of granting the said Limited Power of Attorney. The diplomatic correspondence stated, in part:

"...in consequence of the difficulties in which we now find ourselves involved, and our opinion of the impossibility of complying with the stipulations articulated in the Treaty made between our two nations, in particular, Article III, which provides protection of Swiss citizens and their properties, We do hereby vest in the Government of the Swiss Confederation, by its President, and through the agency of its officers created by its laws, a Limited Power of Attorney to act in cooperation with the Hawaiian Kingdom pursuant to Title II of the Administration of the Government, Civil Code of the Hawaiian Islands, Compiled Laws 1884, pp. 6 thru 215 for the benefit of the subjects of the same and the citizens and subjects of foreign States, while within the limits of this kingdom, which includes Swiss citizens, except so far as exception is made by the laws of nations in respect to Ambassadors or others." ⁶⁴

⁶² See Annex 17, p. 84.

⁶³ See Annex 60.

⁶⁴ *Ibid.*

5.73 On July 16, 1999, the *Acting* Regent, in Privy Council assembled, did resolve to grant Limited Powers of Attorney to the States of Belgium,⁶⁵ Denmark,⁶⁶ England,⁶⁷ France,⁶⁸ Germany,⁶⁹ Italy,⁷⁰ Japan,⁷¹ Netherlands,⁷² Norway,⁷³ Portugal,⁷⁴ Russia,⁷⁵ Spain,⁷⁶ Sweden,⁷⁷ and the United States of America.⁷⁸ The Hawaiian Kingdom also sent Letters of Correspondence to the Governments of these aforementioned States apprising them of the Sovereign, Governmental, and Diplomatic situations that exist within the Hawaiian Kingdom. The above actions were in line with the purpose and intent of fulfilling the Hawaiian Kingdom's treaty obligations and international responsibilities to protect foreign nationals within the territorial jurisdiction of the Hawaiian Kingdom.

V.10 HAWAIIAN KINGDOM'S RATIFICATION OF THE 1907 HAGUE CONVENTION ESTABLISHING THE PERMANENT COURT OF ARBITRATION AND THE 1969 VIENNA CONVENTION ON THE LAW OF TREATIES

5.74 On July 5, 1999, the Hawaiian Kingdom, by its *Acting* Regent, in Privy Council assembled, resolved to ratify the 1907 Hague Convention for the Pacific Settlement of International Disputes.⁷⁹ A duly certified ratification of the said convention was sent to the Netherlands Government, through the International Bureau of the Permanent Court of Arbitration.⁸⁰

5.75 On July 13, 1999, the Hawaiian Kingdom, by its *Acting* Regent, in Privy Council assembled, also resolved to ratify the 1969 Vienna Convention on the Law of Treaties.⁸¹ A duly certified ratification of the said convention was sent to His Excellency Kofi Anan, Secretary General of the United Nations.⁸²

⁶⁵ See Annex 61.

⁶⁶ See Annex 62.

⁶⁷ See Annex 63.

⁶⁸ See Annex 64.

⁶⁹ See Annex 65.

⁷⁰ See Annex 66.

⁷¹ See Annex 67.

⁷² See Annex 68.

⁷³ See Annex 69.

⁷⁴ See Annex 70.

⁷⁵ See Annex 71.

⁷⁶ See Annex 72.

⁷⁷ See Annex 73.

⁷⁸ See Annex 74.

⁷⁹ See Annex 75.

⁸⁰ Ibid.

⁸¹ See Annex 76.

⁸² Ibid.

V.11 COMMISSIONS OF GOVERNMENT OFFICIALS

- 5.76 Since the appointment of the *Acting* Regent, there have been twenty-six (26) commissions in order to fill the vacancies of the Executive and Judicial Departments of the Hawaiian Kingdom.⁸³ The governmental positions, as statutorily provided previous to the illegal constitution of 1887, are the basis of the Hawaiian Kingdom government while under American occupation.⁸⁴ All commissioned officers of the Hawaiian Government possess their authority in an *acting* role, subject to confirmation by the Legislative Assembly to be hereafter convened in accordance with Article 22 of the Constitution of the country.
- 5.77 In September of 1999 the *Acting* Regent had commissioned, in accordance with statutory provisions, Peter Umialiloa Sai as *Acting* Minister of Foreign Affairs, Kau‘i P. Goodhue as *Acting* Minister of Finance, and Gary V. Dubin, Esquire, as *Acting* Attorney General. On September 10, 1999, it was determined by resolution of the Privy Council,

"...that the office of the Minister of Interior shall be resumed by David Keanu Sai, thereby absolving the office of the Regent, pro tempore, and the same to be replaced by the Cabinet Council as a Council of Regency, pro tempore, within the meaning of Article 33 of the Constitution of the Country."⁸⁵

V.12 DISPUTE BETWEEN THE *ACTING* GOVERNMENT OF THE HAWAIIAN KINGDOM AND A HAWAIIAN SUBJECT GOES BEFORE THE PERMANENT COURT OF ARBITRATION

- 5.78 On November 9, 1999, arbitral proceedings were initiated by Mr. Lance Paul Larsen, by his attorney, Ninia Parks, Esq., against the *Acting* Government of the Hawaiian Kingdom, by its Council of Regency. The International Bureau of the Permanent Court of Arbitration in The Hague, Netherlands, served as the registry. The attorney for the Claimant alleged that the Council of Regency is responsible for the protection of her client who is a Hawaiian subject, from the illegal actions of the United States government, and its political subdivision, the State of Hawai‘i, and therefore liable for redress of those violations of her client's rights as protected by the constitution and laws of the Hawaiian Kingdom, and the 1907 Hague Conventions IV and V. The *Acting* Government acknowledged the violations, but disputed the liability, due to the circumstances of American occupation.
- 5.79 On October 4, 1999, Mr. Larsen was imprisoned for thirty days, seven of which were solitary confinement, for adhering to Hawaiian Kingdom law, while within the territorial limits of the Hawaiian Kingdom. His adherence to Hawaiian

⁸³ See Annex 77.

⁸⁴ See Annex 78.

⁸⁵ See Annex 79.

Kingdom law was based upon the principle of international law that provides a duality of legal systems existing in an occupied State, that of the occupied State and that of the occupying State. The Tribunal was asked

"...to determine, on the basis of the Hague Conventions IV and V of 18 October 1907, and the rules and principles of international law, whether the rights of the Claimant under international law as a Hawaiian subject are being violated, and if so, does he have any redress against the Respondent Government of the Hawaiian Kingdom?"

5.80 On March 3, 1999, the United States of America was provided an opportunity to join in the arbitration,⁸⁶ but has remained silent throughout the proceedings thereafter. Notwithstanding, pleadings were submitted to the Arbitral Tribunal regarding the dispute, which also included a voluminous amount of annexes provided by the *Acting* Government of the Hawaiian Kingdom that firmly established the Hawaiian Kingdom as an Independent State under international law since November 28, 1843. On December 7, 8, and 11, 2000, oral hearings were held at the Permanent Court of Arbitration in The Hague, Netherlands, addressing two preliminary concerns of the Tribunal. First, was the dispute between the Parties capable of proceeding under arbitration, and, second, was the United States of America as a necessary party to the arbitration.

5.81 On February 5, 2001, the Arbitral Tribunal issued its Award.⁸⁷ Regarding the verification of the continued existence of the Hawaiian Kingdom as an Independent State, the Arbitral Tribunal stated the following in paragraph 7.4 of the Award.

"A perusal of the material discloses 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."

5.82 As an Independent State, the Hawaiian Kingdom was a subject of international law and was protected from unilateral acts made against it without its consent, especially in regard to the occupation of its territory by the United States of America. Professor James Crawford provides that

"Belligerent occupation, *per se*, does not extinguish the State. And generally, the presumption - in practice a strong one - is in favor of the continuance, and against the extinction, of an established State."⁸⁸

⁸⁶ See Annex 80.

⁸⁷ See Annex 81.

⁸⁸ See Crawford, J., *Creation of States in International Law*, Oxford, 1979, p. 417

To date, the United States of America has not proven its claim over the presumption of Hawaiian Independence before any International Tribunal.

5.83 The Arbitral Tribunal continued to state in paragraph 7.4 of the Award that on

"...6 July 1898, Joint Resolution No. 55 was passed by the United States House of Representatives and Senate to provide for the annexation of the Hawaiian Islands to the United States. This followed an uncompleted process of annexation attempted during the administration of President Grover Cleveland in 1893."

5.84 It is a well-known principle of international law that an internal law of one Independent State cannot affect the territory of another Independent State, which is limited by the extent of the territory of the Independent State that enacted the statute. Thus, a Joint Resolution enacted by the United States Congress cannot affect the territory of the Hawaiian Kingdom, as an Independent State, no more than it could affect the territory of the United Kingdom, France, or any other Independent State. The only effect one Independent State can have upon another Independent State is through the obligation and terms of a bi-lateral Treaty. This principle is embodied in Article 27 of the Vienna Convention on the Law of Treaties, that states a

"...party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." ⁸⁹

5.85 The Hawaiian Kingdom presently has treaties with the United States of America concerning commercial trade and consular relations, and the United States cannot justify the failure to perform these treaties by invoking its internal laws. Examples of United States' internal laws purporting to affect Hawai'i include the 1898 Joint Resolution of annexation, 1900 Act creating a Government for the Territory of Hawai'i, 1921 Act establishing the Hawaiian Homes Commission, 1959 Act establishing Hawai'i as a State of the Union, and finally the 1993 Joint Resolution Apologizing for the Illegal Overthrow of the Hawaiian Kingdom.

5.86 Attached to the Award, the Arbitral Tribunal provided a copy of the complete *Message of U.S. President Grover Cleveland on December 18, 1893*, and the *1993 Joint Resolution Apologizing for the illegal overthrow of the Hawaiian Kingdom*. President Cleveland's Message is the conclusion of an international fact-finding investigation done in 1893, and the 1993 Apology law is an internal piece of legislation by the U.S. Congress. U.S. President Cleveland's Message is a true apology to the Hawaiian Kingdom and implicates the United States for violating international law and the sovereignty of the Hawaiian Kingdom as an Independent State, while the 1993 Apology law cannot be regarded as an apology, but rather an internal piece of legislation justifying the United States' non-

⁸⁹ See *Vienna Convention on the Law of Treaties*, 1969, Article 27.

compliance to international law and the treaties entered with the Hawaiian Kingdom.

- 5.87 Regarding the particular dispute between the *Acting* Government of the Hawaiian Kingdom and Mr. Larsen, the Arbitral Tribunal had determined

"...that there is no dispute between the parties capable of submission to arbitration, and that in any event, the Tribunal is precluded from the consideration of the issues raised by the parties by reason of the fact that the United States of America is not a party to the proceedings and has not consented to them."

- 5.88 The issue of whether or not Mr. Larsen has redress against the Acting Government of the Hawaiian Kingdom, the Arbitral Tribunal had concluded that it does not fall within scope of arbitration because Mr. Larsen is not seeking damages from the Hawaiian government. On this note, the Arbitral Tribunal stated in paragraph 11.3 of the Award that

"The first such principle is derived from the fact that the function of international arbitral tribunals in contentious proceedings is to determine disputes between the parties, not to make abstract rulings."

- 5.89 Throughout the pleadings and in oral arguments before the Tribunal, both the Hawaiian government and Mr. Larsen's attorney admitted they are not adversarial to each other, but rather are seeking a better understanding of the relationship between a national and his government within the framework of occupational law and the responsibility of the Hawaiian government.

- 5.90 On several occasions the arbitrators had stated that they were willing to reconstitute themselves into a Fact-finding Commission of Inquiry under the auspices of the Permanent Court of Arbitration, but the Parties at the time did not pursue that option. In paragraph 13.2 of the Award the Arbitral Tribunal again reiterated the option of Fact-finding by stating that,

"The Tribunal notes 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."

- 5.91 In paragraph 11.23 of the Award, the Arbitral Tribunal stated that it

"...cannot rule on the lawfulness of the conduct of the respondent (Hawaiian Government) in the present case if the decision would entail or require, as a necessary foundation for the decision between the parties, an evaluation of the lawfulness of the conduct of the United States of

America, or, indeed, the conduct of any other State which is not a party to the proceedings before the Tribunal."

It did go on to state, though, in paragraph 11.24 that it

"...is also possible that the principle does not apply where the finding involving an absent third party is merely a finding of fact, not entailing or requiring any legal assessment or qualification of that party's conduct or legal position. In the present case, however, the parties did not seek to rely on any possible exception to the principle..."

- 5.92 On March 23, 2001, the Parties had notified the International Bureau of the Permanent Court of Arbitration, by agreement, to formally request that the Arbitral Tribunal be reconstituted into a Fact-finding Commission of Inquiry under the auspices of the Permanent Court of Arbitration in order to proceed to the matter of responsibility and liability on the part of the Hawaiian Government to Mr. Larsen.⁹⁰
- 5.93 On April 27, 2001, the Security Council, by its President, His Excellency Sir Jeremy Greenstock, KCMG, was notified by the undersigned about the recent arbitration case held at the Permanent Court of Arbitration, The Hague, between the *Acting* Government of the Hawaiian Kingdom and a Hawaiian subject.⁹¹ The Arbitral Tribunal, duly constituted, consisted of Professor James Crawford, QC, as President, with Professor Christopher Greenwood, QC, and Mr. Gavan Griffith, QC, serving as associate members.

⁹⁰ See Annex 82.

⁹¹ See Annex 83.

LIST OF ANNEXES

- ANNEX 1: Statute Laws of His Majesty Kamehameha III, vol. 1 (1845 & 1846).
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- ANNEX 3: Penal Code of the Hawaiian Kingdom (1850).
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- ANNEX 8: Session Laws of the Hawaiian Kingdom's Legislative Assembly (1886).
- ANNEX 9: Roster Legislatures of Hawai‘i, 1841-1918, Compiled by Robert C. Lydecker, Librarian (1918).
- ANNEX 10: The Executive Documents of the United States House of Representatives, 53d Congress, 1894-95, Appendix II, Foreign Relations, 1894, Affairs in Hawai‘i, volumes 1 and 2.
- ANNEX 11: March 16, 1854 Proclamation of Hawaiian Neutrality.
- ANNEX 12: Islands of the Hawaiian Domain, Prepared by A.P. Taylor, Librarian (January 10, 1931).
- ANNEX 13: Map of the Hawaiian Islands, scale 1:5,000,000 at the equator, Series 1105.
- ANNEX 14: Hawaiian Almanac and Annual for 1891, *A Brief History of Land Titles in the Hawaiian Kingdom*, by W.D. Alexander, Surveyor General, pp. 105-124.
- ANNEX 15: *Kekiekie v. Edward Dennis* (1851), 1 Hawaiian Reports 69; and *Kukiiahu v. William Gill* (1851), 1 Hawaiian Reports 90.
- ANNEX 16: 1875 Treaty between the Hawaiian Kingdom and Austira-Hungary.
- ANNEX 17: Treaties and Conventions of the Hawaiian Kingdom, Ka Elele (1887).
- ANNEX 18: Letter of Correspondence from the British Commissioner to the Hawaiian Kingdom Government, July 7, 1854, enclosing Neutral Declaration and

Privy Council Resolution. Hawai‘i Archives, 403-11-170, Foreign Officials in Hawai‘i, Great Britain, January-July 1854.

- ANNEX 19: French Neutral Declaration, with translation, March 29, 1854. Hawai‘i Archives, 403-5-79, Foreign Officials in Hawai‘i, France, April-August 1854.
- ANNEX 20: Hawaiian Kingdom Privy Council Resolution of June 15, 1854, Privy Council Minutes, vol. 6, p. 333. Hawai‘i Department of Land and Natural Resources.
- ANNEX 21: Hawaiian Kingdom Privy Council Resolution of July 17, 1854, Privy Council Minutes, vol. 6, p. 363. Hawai‘i Department of Land and Natural Resources.
- ANNEX 22: Letter of Correspondence from the American Commissioner to the Hawaiian Kingdom Government, December 6, 1854. Hawai‘i Archives, 403-24-377, Foreign Officials in Hawai‘i, U.S. Commissioners, December 1854.
- ANNEX 23: Letter of Correspondence from the American Commissioner to the Hawaiian Kingdom Government, January 12, 1855, enclosing a copy of the 1854 Russian-American Treaty of Neutral Rights. Hawai‘i Archives, 403-24-377, Foreign Officials in Hawai‘i, U.S. Commissioners, January 1855.
- ANNEX 24: Hawaiian Kingdom Privy Council Resolution of March 26, 1855, Privy Council Minutes, vol. 7, p. 15. Hawai‘i Department of Land and Natural Resources.
- ANNEX 25: Hawaiian Kingdom 1855 Declaration Acceding to Principles of Neutral Rights. Hawai‘i Archives, 403-24-378, Foreign Officials in Hawai‘i, U.S. Commissioners, February-March 1855.
- ANNEX 26: 1871 Anglo-American Treaty, U.S. Statutes at Large, vol. 17, pp. 863-877.
- ANNEX 27: 1897 Treaty of Annexation between the United States of America and the self-proclaimed Republic of Hawai‘i
- ANNEX 28: Her Hawaiian Majesty Queen Lili‘uokalani's Protest filed in the United States Department of State, June 18, 1897.
- ANNEX 29: 1897 Petitions of Redress to United States President William McKinley by the Honorable James Kaulia, President of the Hawaiian Men's Patriotic League, the Honorable Mrs. James Campbell, President of the Hawaiian Women's Patriotic League, and the Honorable David Kalauokalani, President of the Hui Kālai‘āina.

- ANNEX 30: 1897 Signature Petitions of the Hawaiian Men and Women's Patriotic Leagues Protesting Annexation of the Hawaiian Islands to the United States.
- ANNEX 31: United Nations Agenda item 36, Information from non-Self-Governing Territories transmitted under Article 73 e of the Charter: reports of the Secretary General and of the Committee on Information from non-Self-Governing Territories, annexes, 14th Session, 1959.
- ANNEX 32: United Nations General Assembly Resolution 66 (I), Transmission of Information under Article 73(e) of the Charter, December 14, 1946.
- ANNEX 33: Co-partnership Agreement establishing Perfect Title Company, December 10, 1995.
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- ANNEX 43: Newspaper Notice to Quiet Title printed in the February 19, 1996 issue of the Pacific Business News, Honolulu.

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- ANNEX 50: 1997 Protest by His Excellency David Keanu Sai, *Acting* Regent.
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- ANNEX 52: February 28, 1997 Proclamation of *Acting* Regent declaring the Hawaiian Monarchical form of Government is re-established.
- ANNEX 53: February 13, 1998 Proclamation of *Acting* Regent declaring a National Voter Registration.
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- ANNEX 55: Petition for Writ of Mandamus (1997), by His Excellency David Keanu Sai, *Acting* Regent of the Hawaiian Kingdom against the President of the United States of America, case no. 97-969, United States Supreme Court.
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- ANNEX 58: Motion for Leave to File a Bill of Complaint, Complaint, and Memorandum in Support (1998), by His Excellency David Keanu Sai, *Acting* Regent of the Hawaiian Kingdom against the President of the United States of America, United States Supreme Court, and Appendix.

- ANNEX 59: Motion to Direct the Clerk of the Court to File a Motion for Leave to File a Bill of Complaint, Complaint, and Memorandum in Support (1998), United States Supreme Court.
- ANNEX 60: 1999 transmittal Letter to the Swiss Government, with attached Swiss Exequatur and Limited Power of Attorney from the Hawaiian Kingdom Government.
- ANNEX 61: 1999 transmittal Letter to the Belgian Government, with attached Belgian Exequatur and Limited Power of Attorney from the Hawaiian Kingdom Government.
- ANNEX 62: 1999 transmittal Letter to the British Government, with attached British Limited Power of Attorney from the Hawaiian Kingdom Government.
- ANNEX 63: 1999 transmittal Letter to the Danish Government, with attached Danish Limited Power of Attorney from the Hawaiian Kingdom Government.
- ANNEX 64: 1999 transmittal Letter to the French Government, with attached French Exequatur and Limited Power of Attorney from the Hawaiian Kingdom Government.
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- ANNEX 66: 1999 transmittal Letter to the Italian Government, with attached Italian Exequatur and Limited Power of Attorney from the Hawaiian Kingdom Government.
- ANNEX 67: 1999 transmittal Letter to the Japanese Government, with attached Japanese Exequatur and Limited Power of Attorney from the Hawaiian Kingdom Government.
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- ANNEX 75: Hawaiian Kingdom Government's Ratification of the 1907 Hague Convention for the Pacific Settlement of International Disputes.
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- ANNEX 77: Twenty-six (26) commissions of Hawaiian Kingdom *Acting* Government Officers.
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- ANNEX 80: Letter of March 3, 2000, by His Excellency David Keanu Sai, Agent for the Hawaiian Kingdom, documenting a telephone discussion he had with John Crook, Legal Adviser to the United States Department of State for the United Nations, in Washington D.C., about an offer to extend to the United States an opportunity to join in the Lance Larsen v. the Hawaiian Kingdom arbitration.
- ANNEX 81: Arbitral Award of February 5, 2001, Lance Larsen vs. the Hawaiian Kingdom, Permanent Court of Arbitration, The Hague, case no. 99-001.
- ANNEX 82: Notification by the Parties of the Hawaiian Arbitration to the International Bureau of the Permanent Court of Arbitration, jointly requesting the Arbitral Tribunal to be reconstituted into a Fact-finding Commission of Inquiry, March 23, 2001.
- ANNEX 83: Letter of Correspondence from the Agent of the Hawaiian Kingdom to the President of the Security Council, notifying the Council of the recent arbitration case held at the Permanent Court of Arbitration, The Hague, between the *Acting* Government of the Hawaiian Kingdom and a Hawaiian subject, April 27, 2001.

UNITED NATIONS SECURITY COUNCIL

COMPLAINT
AGAINST THE UNITED STATES OF AMERICA

BY THE ACTING GOVERNMENT
OF THE HAWAIIAN KINGDOM

CONCERNING THE AMERICAN OCCUPATION
OF THE HAWAIIAN KINGDOM

Attachment no. 3

To Hon. John Sherman,
Secretary of State
United States of America,

Dear Sir,

On behalf of the Hawaiian Patriotic League, on behalf of the Hui Kālai‘āina, organizations of the native and part native people of the Hawaiian Islands for the restoration of Constitutional Government, and the perpetuation of the Independence under their own rulers of the Islands, and by Commissions duly executed by such organizations conferring upon me authority, as well as in my own right as a representative of the people of Hawai‘i I herewith hand to you the duly executed protest of Her Majesty, Lili‘uokalani, by the grace of God, the reigning sovereign of those Islands on the seventeenth day of January, A.D. 1893, at which date she yielded her property and authority as our Queen to the forces, diplomatic and naval of the United States of America.

In the name of said associations of the people, and in the name of the majority of the voters registered at the date of such submission of our cause to the government of the United States, I do hereby support and confirm each and every representation of the said protest of our said Queen Lili‘uokalani, do add thereto to the protest of the people I represent against the consideration, ratification or enforcement of a certain treaty as therein stated which purports to cede the territory of the Hawaiian Islands to the United States of America, and for the reasons stated to you in such protest made on our behalf by our aforesaid Queen Lili‘uokalani,

Done at Washington, this 17th day of June, 1897.

[signed] Joseph Heleluhe

I, Lili'uokalani of Hawai'i, by the will of God named heir apparent on the tenth day of April, A.D. 1877, and by the grace of God Queen of the Hawaiian Islands on the seventeenth day of January, A.D. 1893, do hereby protest against the ratification of a certain treaty, which, so I am informed, has been signed at Washington by Messrs. Hatch, Thurston, and Kinney, purporting to cede those Islands to the territory and dominion of the United States. 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.

BECAUSE the official protests made by me on the seventeenth day of January, 1893, to the so-called Provisional Government was signed by me, and received by said government with the assurance that the case was referred to the United States of America for arbitration.

BECAUSE that protest and my communications to the United States Government immediately thereafter expressly declare that I yielded my authority to the forces of the United States in order to avoid bloodshed, and because I recognized the futility of a conflict with so formidable a power.

BECAUSE the President of the United States, the Secretary of State, and an envoy commissioned by them reported in official documents that my government was unlawfully coerced by the forces, diplomatic and naval, of the United States; that I was at the date of their investigations the constitutional ruler of my people.

BECAUSE neither the above-named commission nor the government which sends it has ever received any such authority from the registered voters of Hawaii, but derives its assumed powers from the so-called committee of public safety, organized on or about the seventeenth day of January, 1893, said committee being composed largely of persons claiming American citizenship, and not one single Hawaiian was a member thereof, or in any way participated in the demonstration leading to its existence.

BECAUSE my people, about forty thousand in number, have in no way been consulted by those, three thousand in number, who claim the right to destroy the independence of Hawaii. My people constitute four-fifths of the legally qualified voters of Hawaii, and excluding those imported for the demands of labor, about the same proportion of the inhabitants.

BECAUSE said treaty ignores, not only the civic rights of my people, but, further, the hereditary property of their chiefs. Of the 4,000,000 acres composing the territory said treaty offers to annex, 1,000,000 or 915,000 acres has in no way been heretofore recognized as other than the private property of the constitutional monarch, subject to a control in now way differing from other items of a private estate.

BECAUSE it is proposed by said treaty to confiscate said property, technically called the crown lands, those legally entitled thereto, either now or in succession, receiving no

consideration whatever for estates, their title to which has been always undisputed, and which is legitimately in my name at this date.

BECAUSE said treaty ignores, not only all professions of perpetual amity and good faith made by the United States in former treaties with the sovereigns representing the Hawaiian people, but all treaties made by those sovereigns with other and friendly powers, and it is thereby in violation of international law.

BECAUSE, by treating with the parties claiming at this time the right to cede said territory of Hawaii, the Government of the United States receives such territory from the hands of those whom its own magistrates (legally elected by the people of the United States, and in office in 1893) pronounced fraudulently in power and unconstitutionally ruling Hawaii.

THEREFORE *I, Lili'uokalani of Hawaii*, do hereby call upon the President of that nation, to whom alone I yielded my property and my authority, to withdraw said treaty (ceding said Islands) from further consideration. I ask the honorable Senate of the United States to decline to ratify said treaty, and I implore the people of this great and good nation, from whom my ancestors learned the Christian religion, to sustain their representatives in such acts of justice and equity as may be in accord with the principles of their fathers, and to the Almighty Ruler of the universe, to him who judgeth righteously, I commit my cause.

Done at Washington, District of Columbia, United States of America, this seventeenth day of June, in the year eighteen hundred and ninety-seven.

[signed] Lili'uokalani

[signed] Joseph Heleluhe)
[signed] Wakeki Heleluhe) Witness to signature
[signed] Julius A. Palmer)