PRELIMINARY REPORT

Explicit Recognition of the Hawaiian State and of the Council of Regency as its Government by the United States of America

THE ROYAL COMMISSION OF INQUIRY:

Investigating War Crimes *and* Human Rights Violations Committed *in the* Hawaiian Kingdom

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HAWAIIAN KINGDOM

PRELIMINARY REPORT:
Explicit Recognition of the Hawaiian State and of the Council of Regency as its Government by the United States of America

This preliminary report of the Royal Commission of Inquiry ("Royal Commission") will address the United States explicit recognition of the continuity of the Hawaiian Kingdom, as a State, and the Council of Regency as its government that occurred during administrative proceedings at the Permanent Court of Arbitration (PCA) in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01. These proceedings were initiated on 8 November 1999 when a notice of arbitration was submitted to the International Bureau of the PCA by the claimant—Lance Larsen.

In a letter dated 15 March 2021, Bruce Schoenberg of the Securities Enforcement Branch of the State of Hawai'i stated, "[t]he Commissioner of Securities of the State of Hawaii is about to commence an enforcement action against [David Keanu Sai] and [Kau'i Sai-Dudoit] based upon the sale of unregistered Kingdom of Hawaii Exchequer Bonds, in violation of HRS § 485A-301." Attached herein is a copy of Schoenberg's letter.

The allegation by the State of Hawai'i that Hawaiian Kingdom government bonds, issued by the Council of Regency, are commercial bonds and subjected to the securities regulations is absurd. It would appear that the State of Hawai'i has taken a dubious position that the Council of Regency is a not a government and that the Hawaiian Kingdom does not exist. This position runs counter to the United States explicit recognition of the continuity of the Hawaiian Kingdom, as a State, and its government—the Council of Regency, when arbitral proceedings were instituted at the Permanent Court of Arbitration on 8 November 1999, thereby triggering the *Supremacy Clause* that preempts any interference by the State of Hawai'i.

While commercial bonds or securities "represent a share in a company or a debt owed by a company,"[1] a government bond is "[e]vidence of indebtedness issued by the government to finance its operations."[2] On its face, the Hawaiian Kingdom is not a commercial entity or business and the bondholders, who submit an application to purchase government bonds, are aware that they are loaning money to the Hawaiian government "to finance its operations."[3]

In similar fashion to the conditional redemption of Irish bonds when Ireland was fighting for its independence from the United Kingdom,[4] Hawaiian bonds shall be redeemable at par within 1 year after the 5th year from the date when the United States of America's military occupation of the

[1] Black's Law 1354 (6th ed., 1990).
[2] *Id*., 179.
[3] Hawaiian Kingdom bonds, Frequently Asked Questions (online at https://hawaiiankingdom.org/bonds/).
[4] The Irish government sold bonds in the United States with the following condition, "Said Bond to bear interest at five percent per annum from the first day of the seventh month after the freeing of the territory of the Republic of Ireland from Britain's military control and said Bond to be redeemable at par within one year thereafter."

Hawaiian Islands has come to an end and that the Hawaiian government is in effective control in the exercising of its sovereignty, as explicitly stated on the bond. Hawaiian Kingdom bonds are authorized under *An Act To authorize a National Loan and to define the uses to which the money borrowed shall be applied* (1886). Under Section 1 of the Act, "The Minister of Finance with the approval of the King in Cabinet Council is hereby authorized to issue coupon bonds of the Hawaiian Government."

After the passing of Queen Lili'uokalani on 11 November 1917, the throne became vacant to be later filled by an elected Monarch in accordance with Article 22 of the 1864 Constitution. This was the case when King Lunalilo was elected on January 8, 1873, and the election of King Kalākaua on February 12, 1874. Until such time that this provision can be effectively carried out when the United States occupation shall come to an end, Article 33 provides that the Cabinet Council shall serve as a Council of Regency in the absence of the Monarch. Hawaiian constitutional law provides that when the office of the Monarch is vacant, "a Regent or Council of Regency…shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King."[5]

Since 11 November 1917, the office of the Monarch became vacant and remained vacant until the Hawaiian Kingdom government was restored on 28 February 1997 by proclamation of the *acting* Regent.[6] On 26 September 1999, the office of Regent was transformed into a Council of Regency by Privy Council resolution.[7] The legal basis for the restoration of the Hawaiian government was Hawaiian constitutional law and the doctrine of necessity as utilized by governments that were formed in exile while their countries were belligerently occupied by a foreign State. The difference, however, is that the Hawaiian government was restored *in situ* and not in exile.

Quoting the dictum of the *Larsen v. Hawaiian Kingdom* arbitral tribunal, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[8] As a subject of international law, the Hawaiian State would continue to exist despite its government being unlawfully overthrown by the United States on 17 January 1893.

Distinct from the subject matter jurisdiction of the *Larsen v. Hawaiian Kingdom* ad hoc arbitral tribunal, the PCA must first possess "institutional jurisdiction" by virtue of Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes (I) before it could establish

[5] Art. 33, 1864 Hawaiian Constitution.
[6] David Keanu Sai, "Royal Commission of Inquiry" in David Keanu Sai (ed.) *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 18-21 (2020) (online at https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf).
[7] *Id.*, at 21.
[8] *Larsen v. Hawaiian Kingdom*, 119 Int'l L. Reports 566, 581 (2001).

the ad hoc tribunal in the first place ("The jurisdiction of the Permanent Court may, within the conditions laid down in the regulation, be extended to disputes [with] non-Contracting Powers.").[9] According to UNCTAD, there are three types of jurisdictions at the PCA, "Jurisdiction of the Institution," "Jurisdiction of the Arbitral Tribunal," and "Contentious/Advisory Jurisdiction."[10] Article 47 of the Convention provides for the jurisdiction of the PCA as an institution. Before the PCA could establish an ad hoc arbitral tribunal for the *Larsen* dispute it must possess institutional jurisdiction beforehand by ensuring that the Hawaiian Kingdom is a non-Contracting Power, thus bringing the international dispute within the auspices of the PCA.

Evidence of the PCA's recognition of the continuity of the Hawaiian Kingdom as a State and its government is found in Annex 2—*Cases Conducted Under the Auspices of the PCA or with the Cooperation of the International Bureau* of the PCA Administrative Council's annual reports from 2000 through 2011. Annex 2 of these annual reports stated that the *Larsen* arbitral tribunal was established "[p]ursuant to article 47 of the 1907 Convention."[11] Attached herein is a copy of Annex 2 of the 2011 annual report. Since 2012, the annual reports ceased to include all past cases conducted under the auspices of the PCA but rather only cases on the docket for that year. Past cases became accessible at the PCA's case repository on its website at https://pca-cpa.org/en/cases/.

The structure of the Permanent Court of Arbitration comprises "three bodies: (1) a panel of members [who serve as arbitrators]; (2) an International Bureau; and (3) an Administrative Council."[12] The Administrative Council is "composed of the Minister of Foreign Affairs of the Netherlands, as President, and of the diplomatic representatives at The Hague of state parties to the"[13] 1907 Convention. In accordance with Article 49 of the 1907 Convention, the "Council publishes an annual report on the work of the court, on the functioning of its administrative services, and on its expenditure."[14] The United States, by its embassy in The Hague, is a member of the Administrative Council and, therefore, co-publisher of the PCA annual reports. These annual reports explicitly acknowledge the status of the Hawaiian Kingdom as a non-Contracting Power. Unlike the United States, which is a Contracting Power to the Convention, the Hawaiian Kingdom is not a party to the Convention and, therefore, is a non-Contracting Power. The term non-Contracting Power is synonymous with non-Contracting State.

In determining the continued existence of the Hawaiian Kingdom as a non-Contracting State, the relevant rules of international law that apply to established States must be taken into account, and

[9] 36 Stat. 2199; Treaty Series 536.
[10] United Nations Conference on Trade and Development (UNCTAD), *Dispute Settlement: General Topics—1.3 Permanent Court of Arbitration* 15-16 (2003) (online at https://unctad.org/system/files/official-document/edmmisc232add26_en.pdf).
[11] Permanent Court of Arbitration, *Annual Reports*, Annex 2 (online at https://pca-cpa.org/en/about/annual-reports/).
[12] Manley O. Hudson, "The Permanent Court of Arbitration," 27(3) *Am. J. Int'l L.* 440, 442 (1933).
[13] *Id.*, 444.
[14] *Id.*

not those rules of international law that would apply to new States. Professor Lenzerini concluded that, "according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of international law. In fact, in the event of illegal annexation, 'the legal existence of […] States [is] preserved from extinction,' since 'illegal occupation cannot of itself terminate statehood.'"[15] The PCA Administrative Council did not "recognize" the Hawaiian Kingdom as a new State, but merely "acknowledged" its continuity since the nineteenth century for purposes of the PCA's institutional jurisdiction.

If the United States objected to the PCA Administrative Council's annual reports that the Hawaiian Kingdom is a non-Contracting State to the 1907 Convention, it would have filed a declaration with the Dutch Foreign Ministry as it did when it objected to Palestine's accession to the 1907 Convention on 28 December 2015. Palestine was seeking to become a Contracting State to the 1907 Convention and submitted its accession to the Dutch government on 30 October 2015. In its declaration, which the Dutch Foreign Ministry translated into French, the United States explicitly stated, inter alia, "the government of the United States considers that 'the State of Palestine' does not answer to the definition of a sovereign State and does not recognize it as such (translation)."[16] A copy of the notice in French is attached herein along with an English translation. The State of Palestine is a new State, whereas the Hawaiian Kingdom is a State in continuity since the nineteenth century. Furthermore, since the United States explicitly recognized the validity of the Hawaiian Kingdom as an independent State in the nineteenth century it is precluded from "contesting its validity at any future time."[17]

Because the State is a juristic person, it requires a government to speak on its behalf, without which the State is silent, and, therefore, there could be no arbitral tribunal to be established by the PCA. On the contrary, the PCA did form a tribunal after confirming the existence of the Hawaiian State and its government, the Council of Regency, pursuant to Article 47. In international intercourse, which includes arbitration at the PCA, Talmon articulates the relationship between the State and its government as follows:

> From the fact that States are juridical persons it follows that they must act through organs. In the words of the Permanent Court of International Justice, "States can act only by and through their agents and representatives." It is generally agreed that the organ representing the State in international intercourse is its government. But, as Professor Bin Cheng has rightly pointed out, "States not only act through their government but through their

[15] Federico Lenzerini, *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom* para. 5 (May 24, 2020) (online at https://hawaiiankingdom.org/pdf/Legal_Opinion_Re_Authority_of_Regency_Lenzerini.pdf).
[16] Ministry of Foreign Affairs of the Kingdom of the Netherlands, *Notification of the Declaration of the United States translated into French* (January 29, 2016) (online at https://repository.overheid.nl/frbr/vd/003316/1/pdf/003316_Notificaties_11.pdf).
[17] Georg Schwarzenberger, "Title to Territory: Response to a Challenge," 51(2) *Am. J. Int'l L.* 308, 316 (1957).

> government exclusively." The government, consequently, possesses the *jus repraesentationis omnimodae*, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. It is submitted that this is the case irrespective of whether the government is *in situ* or in exile.[18]

After the PCA verified the continued existence of the Hawaiian State, as a juristic person, it also simultaneously ascertained that the Hawaiian State was represented by its government—the Council of Regency. The PCA identified the international dispute in *Larsen* as between a "State" and a "private entity" in its case repository. The PCA's case description of the *Larsen* case is attached herein. Furthermore, the PCA described the dispute between the Council of Regency and Larsen as between a government and a resident of Hawai'i:

> Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.[19]

In 1994, the Intermediate Court of Appeals (ICA), in *State of Hawai'i v. Lorenzo*,[20] opened the door to the question as to whether or not the Hawaiian Kingdom continues to exist as a State. According to the ICA, Lorenzo argued, "the Kingdom was illegally overthrown in 1893 with the assistance of the United States; the Kingdom still exists as a sovereign nation [and] he is a citizen of the Kingdom."[21] Judge Walter Heen, author of the decision, denied Lorenzo's appeal and upheld the lower court's decision to deny Lorenzo's motion to dismiss. He explained that Lorenzo "presented no factual (or legal) basis for concluding that the Kingdom [continues to exist] as a state in accordance with recognized attributes of a state's sovereign nature."[22] While the ICA affirmed the trial court's decision, it admitted "the court's rationale is open to question in light of international law."[23] In other words, the ICA and the trial court did not apply international law in their decisions.

The PCA Administrative Council's annual reports from 2000-2011 clearly states that the United States, as a member of the Council, explicitly recognizes the continued existence of the Hawaiian

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[18] Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* 115 (1998).
[19] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at https://pca-cpa.org/en/cases/35/).
[20] *State of Hawai'i v. Lorenzo*, 77 Haw. 219; 883 P.2d 641 (1994).
[21] *Id*., 220; 642.
[22] *Id*., 221; 643.
[23] *Id*.

Kingdom as a non-Contracting State to the 1907 Convention as evidenced in the PCA Administrative Council's annual reports, which did apply international law. As such, the treaties between the Hawaiian Kingdom and the United States remain in full force and effect except where the law of occupation supersedes them. The other Contracting States with the Hawaiian Kingdom in its treaties, which include Austria,[24] Belgium,[25] Denmark,[26] France,[27] Germany,[28] Great Britain,[29] Hungary,[30] Italy,[31] Japan,[32] Luxembourg,[33] Netherlands, Norway,[34] Portugal,[35] Russia,[36] Spain,[37] Sweden,[38] and Switzerland,[39] are also members of the Administrative Council and, therefore, their acknowledgment of the continuity of the Hawaiian State is also an acknowledgment of the full force and effect of their treaties with the Hawaiian Kingdom except where the law of occupation supersedes them.[40]

AUTHORITY OF THE COUNCIL OF REGENCY AFFIRMED

Professor Lenzerini provided the legal basis, under both Hawaiian Kingdom law and the applicable rules of international law, for concluding that the Council of Regency "has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level."[41] He added that "the Council of Regency is exactly in the same position of a government of a State under military occupation, and is vested with the rights and powers recognized to governments of occupied States pursuant to international humanitarian law."[42]

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[24] Embassy of Austria, whose address is Van Alkemadelaan 342, 2597 AS Den Haag, Netherlands.
[25] Embassy of Belgium, whose address is Johan van Oldenbarneveltlaan 11, 2582 NE Den Haag, Netherlands.
[26] Embassy of Denmark, whose address is Koninginnegracht 30, 2514 AB Den Haag, Netherlands.
[27] Embassy of France, whose address is Anna Paulownastraat 76, 2518 BJ Den Haag, Netherlands.
[28] Embassy of Germany, whose address is Groot Hertoginnelaan 18-20, 2517 EG Den Haag, Netherlands.
[29] Embassy of Great Britain, whose address is Lange Voorhout 10, 2514 ED Den Haag, Netherlands.
[30] Embassy of Hungary, whose address is Hogeweg 14, 2585 JD Den Haag, Netherlands.
[31] Embassy of Italy, whose address is Parkstraat 28, 2514 JK Den Haag, Netherlands.
[32] Embassy of Japan, whose address is Tobias Asserlaan 5, 2517 KC Den Haag, Netherlands.
[33] Embassy of Luxembourg, whose address is Nassaulaan 8, 2514 JS Den Haag, Netherlands.
[34] Embassy of Norway, whose address is Eisenhowerlaan 77J, 2517 KK Den Haag, Netherlands.
[35] Embassy of Portugal, whose address is Zeestraat 74, 2518 AD Den Haag, Netherlands.
[36] Embassy of Russia, whose address is Andries Bickerweg 2, 2517 JP Den Haag, Netherlands.
[37] Embassy of Spain, whose address is Lange Voorhout 50, 2514 EG Den Haag, Netherlands.
[38] Embassy of Sweden, whose address is Johan de Wittlaan 7, 2517 JR Den Haag, Netherlands.
[39] Embassy of Switzerland, whose address is Lange Voorhout 42, 2514 EE Den Haag, Netherlands.
[40] For treaties of the Hawaiian Kingdom with Austria, Belgium, Denmark, France, Germany, Great Britain,Hungary, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Russia, Spain, Sweden and Switzerland see "Treaties with Foreign States," in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 237-310 (2020) (online at https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf).
[41] Lenzerini, *Legal Opinion*, at para. 9. See also Royal Commission of Inquiry, *Preliminary Report: The Authority of the Council of Regency of the Hawaiian Kingdom* (27 May 2020) (online at https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Regency_Authority.pdf).
[42] *Id*., para. 10.

As an Italian scholar of international law, Lenzerini's legal opinion is to be recognized as a means for determination of the rules of international law, unlike how legal opinions operate within the jurisprudence of the United States. The latter types of legal opinions are limited to an "understanding of the law as applied to the assumed facts."[43] They are not regarded as a source of the rules of United States law, which include the United States constitution, State constitutions, Federal and State statutes, common law, case law, and administrative law. Instead, these types of legal opinions have persuasive qualities but are not a source of the rules of law.

On the international plane, there is "no 'world government' [and] no central legislature with general law-making authority."[44] International law, however, is an essential component in the international system, which "has the character and qualities of law, and serves the functions and purposes of law, providing restraints against arbitrary state action and guidance in international relations."[45] Article 38(1) of the Statute of the International Court of Justice, when applied by the Court to settle international disputes, international law is comprised of:

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

The American Law Institute also concludes that, when "determining whether a rule has become international law, substantial weight is accorded to … the writings of scholars."[46] In the seminal case *The Paquete Habana*, the U.S. Supreme Court highlighted that:

> International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators who by years of labor, research, and experience have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.[47]

[43] *Black's Law*, 896.
[44] American Law Institute*, Restatement of the Law (Third)—The Foreign Relations Law of the United States* 17 (1987).
[45] *Id*.
[46] *Id*., §103(2)(c).
[47] *The Paquete Habana*, 175 U.S. 677, 700 (1900).

SOVEREIGN IMMUNITY

The doctrine of sovereign immunity, which is recognized in Hawaiian constitutional law under Article 40 ("The King cannot be sued or held to account in any Court or Tribunal of the Realm"), draws, in principle, from the English common law. Before becoming a constitutional monarchy, the Hawaiian Kingdom "bore a remarkable resemblance to the feudal system that prevailed in Europe during the Middle Ages."[48]

The doctrine, under English common law, has its roots in England's feudal system, where "each petty lord in England held or could hold his own court to settle the disputes of his vassals."[49] While the court "was the lord's own, it could hardly coerce him," and the "trusted counsellors who constituted [a lord's] court" could "claim no power over him their lord without his consent."[50] In this feudal hierarchy the "king, who stood at the apex of the feudal pyramid" and was "not subject to suit in his own court," was completely immune from suit because "there happened to be no higher lord's court in which he could be sued."[51]

With the rise of the State, positive law separated the person of the King from the office where the doctrine was transformed into "the immunity of the Crown."[52] Hawaiian constitutional law mitigates the potential austerity of such a doctrine whereby "[n]o act of the King shall have any effect unless it be countersigned by a Minister, who by that signature makes himself responsible" to the Legislative Assembly or by petition of mandamus or injunction of the citizenry.[53] Similarly, in the United States "the writ of mandamus and the injunction have been available in actions against individual government officials" to address ongoing legal violations.[54]

Consequently "a Regent or Council of Regency" that serves in the absence of the Monarch enjoys the benefit of sovereign immunity and cannot be the subject of any investigative proceedings or sued absent a waiver of this immunity. The Council of Regency retains its sovereign immunity and it has not waived its right except when it entered into an arbitration agreement with Lance Larsen, by his counsel, on 29 October 1999, to submit their dispute to binding arbitration.[55] The

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[48] W.D. Alexander, "A Brief History of Land Titles in the Hawaiian Kingdom," 2 *Haw. J.L. & Pol.* 175 (2006).
[49] David E. Engdahl, "Immunity and Accountability for Positive Governmental Wrongs," 44 *U. Colo. L. Rev.* 1, 2 (1972).
[50] *Id.*
[51] *Id.,* 2-3.
[52] George W. Pugh, "Historical Approach to the Doctrine of Sovereign Immunity," 13 *La. L. Rev.* 476, 478 (1953).
[53] *See*, Art. 42, 1864 Hawaiian Constitution, and *Castle v. Kapena*, 5 Haw. 27 (1883) ("Citizens…may bring mandamus against a public officer" and "[i]njunction, not mandamus, is the proper remedy to prevent a public officer from doing a contemplated illegal act.").
[54] Vicki C. Jackson, "Suing the Federal Government: Sovereignty, Immunity, and Judicial Independence," 35 *Geo. Wash. Int'l L. Rev.* 521, 525 (2003).
[55] *Stipulated Settlement Agreement Dismissing Entire Case Without Prejudice as to All Parties and All Issues and Submitting All Issues to Binding Arbitration*, October 29, 1999 (online at https://www.alohaquest.com/arbitration/pdf/Stipulated_Settlement.pdf).

United States has recognized the continuity of the Hawaiian State and the Council of Regency as its Government. Therefore, sovereign immunity is a right that can only be waived by consent of the Council of Regency.

THE SUPREMACY CLAUSE PREEMPTS THE STATE OF HAWAI'I FROM INTERFERENCE IN INTERNATIONAL RELATIONS BETWEEN THE UNITED STATES AND THE HAWAIIAN KINGDOM

There are two instances through which the United States government continued to recognize the Hawaiian Kingdom's Head of State after 17 January 1893 by executive agreements, through exchange of notes. The first was the executive agreement of restoration between Queen Lili'uokalani and President Grover Cleveland, by his U.S. Minister Albert Willis, of 18 December 1893, which took place eleven months after the overthrow of the Hawaiian government.[56] The second instance occurred between the United States, by its Department of State, and the Council of Regency after the PCA confirmed the existence of the Hawaiian State and its government in accordance with Article 47, and prior to its formation of the *Larsen* tribunal on 9 June 2000.

> Mr. Tjaco T. van den Hout, Secretary General of the PCA, spoke with [the Chair], as agent for the Hawaiian Kingdom, over the telephone and recommended that the Hawaiian government provide an invitation to the United States to join in the arbitration. The Hawaiian government agreed with the recommendation, which resulted in a conference call meeting on 3 March 2000 in Washington, D.C., between [the Chair of the Council], Larsen's counsel, Mrs. Ninia Parks, and John Crook from the State Department. The meeting was reduced to a formal note and mailed to Crook in his capacity as legal adviser to the State Department, and a copy of the note was submitted by the Council of Regency to the PCA Registry for record that the United States was invited to join in the arbitral proceedings. The note was signed off by the [Chair] as "Acting Minister of Interior and Agent for the Hawaiian Kingdom."
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> Thereafter, the PCA's Deputy Secretary General, Phyllis Hamilton, informed the [Chair] that the United States, through its embassy in The Hague, notified the PCA, by note verbal, that the United States declined the invitation to join the arbitral proceedings. Instead, the United States requested permission from the Hawaiian government to have access to the pleadings and records of the case. The Hawaiian government consented to the request. The PCA, represented by the Deputy Secretary General, served as an intermediary to secure an agreement between the Hawaiian Kingdom and the United States.[57]

The request by the United States of the Council of Regency's permission to access all records and pleadings of the proceedings, together with the subsequent granting of such a permission by the

[56] United States House of Representatives, 53d Cong., *Executive Documents on Affairs in Hawaii: 1894-95* 1179 (1895), ("Executive Documents") (online at https://hawaiiankingdom.org/pdf/EA_2(HI%20Claim).pdf).
[57] David Keanu Sai, "Royal Commission of Inquiry," in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 25 (2020).

Council of Regency, constitutes an agreement under international law. As Oppenheim asserts, "there exists no other law than International Law for the intercourse of States with each other, every agreement between them regarding any obligation whatever is a treaty."[58] The request by the United States constitutes an offer, and the Council of Regency's acceptance of the offer created an obligation, on the part of the Council of Regency, to allow the United States unfettered access. According to Hall, "a valid agreement is therefore concluded so soon as one party has signified his intention to do or to refrain from a given act, conditionally upon the acceptance of his declaration of intention by the other party as constituting an engagement, and so soon as such acceptance clearly indicated."[59] If, for the sake of argument, the Council of Regency later denied the United States access to the records and pleadings, the latter would, no doubt, call the former's action a violation of the agreement.

When the President of the United States enters into executive agreements, through his authorized agents, with foreign governments, it preempts state law or policies by operation of the *Supremacy Clause* under Article VI, para. 2 of the U.S. Constitution ("This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."). In *United States v. Belmont*, the Court stated that, "[p]lainly, the external powers of the United States are to be exercised without regard to state laws or policies,"[60] and "[i]n respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear."[61]

While the supremacy of treaties is expressly stated in the Constitution, the Supreme Court, in *United States v. Curtiss-Wright Export Corp.*, stated that the same rule holds "in the case of international compacts and agreements [when it forms] the very fact that complete power over international affairs is in the National Government and is not and cannot be subject to any curtailment or interference on the part of the several States."[62] In *United States v. Pink*, the Supreme Court reiterated that:

> No State can rewrite our foreign policy to conform to its own domestic policies. Power over external affairs is not shared by the States; it is vested in the national government exclusively. It need not be so exercised as to conform to state laws or state policies, whether they be expressed in constitutions, statutes, or judicial decrees. And the policies of the States become wholly irrelevant to judicial inquiry when the United States, acting within its constitutional sphere, seeks enforcement of its foreign policy in the courts.[63]

[58] Lassa Oppenheim, *International Law* 661 (3rd ed., 1920).
[59] William Edward Hall, *A Treatise on International Law* 383 (1904).
[60] *United States v. Belmont*, 301 U. S. 324, 330 (1937),
[61] *Id*.
[62] *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 330-31 (1936).
[63] *United States v. Pink*, 315 U.S. 203, 229-31, 233-34 (1942).

The "curtailment or interference" by the State of Hawai'i is its unqualified denial of the Council of Regency as a government and its authorized power to issue bonds. The State of Hawai'i is precluded from denying the status of the Council of Regency as a government by virtue of the *Supremacy Clause*, because the "national government" already recognized the Council of Regency as the government of the Hawaiian State in its agreement with the Council of Regency regarding access to the *Larsen* arbitral pleadings and records. The "national government," as a member of the PCA Administrative Council and co-publisher of the annual reports of 2000 through 2011, explicitly acknowledged the Hawaiian Kingdom as a State and its government—the Council of Regency—pursuant to Article 47 of the Convention. The action taken by the "national government," as a member of the Administrative Council, was by virtue of a treaty provision. The United States signed the Convention on 18 October 1907 and the Senate gave its consent to ratification on 2 April 1908. The Convention entered into force on 26 January 1910, and, consequently, the Convention became the supreme law of the land by virtue of the *Supremacy Clause.*

The annual reports are a function of the Administrative Council pursuant to Article 49 of the Convention. As such, the State of Hawai'i is precluded from any "curtailment or interference" of the actions taken by the United States, as a member of the PCA Administrative Council and co-publisher of the annual reports. Therefore, the State of Hawai'i is precluded from denying these facts and actions taken by the United States as a Contracting Power to the 1907 Convention because the United States government, from a domestic standpoint, enjoys "legal superiority over any conflicting provision of a State constitution or law."[64]

The 1907 Convention, which has been ratified by the Senate, and the action taken by the United States, as a member of the Administrative Council, pursuant to Article 49, preempt State of Hawai'i's law through the operation of the *Supremacy Clause*. The agreement entered into between the United States Department of State, by its embassy in The Hague, and the Council of Regency stems from the "Executive [that has] authority to speak as the sole organ" of international relations for the United States.[65] The Department of State, speaking on behalf of the United States, did not require Congressional approval or ratification of the Senate, or consultation with the State of Hawai'i. Therefore, the United States agreement with the Council of Regency to access all records and pleadings of the *Larsen* arbitral proceedings also preempts the State of Hawai'i, through the operation of the *Supremacy Clause*, from denying this international agreement or acting in ways inconsistent with it.

[64] Black's Law, 1440.
[65] *Belmont*, 330.

The restoration of the Hawaiian government by a "Council of Regency, as officers *de facto*, was a political act of self-preservation, not revolution, and was grounded upon the legal doctrine of limited necessity."[66] As such, according to pertinent U.S. practice, the Council of Regency did not require recognition by any other government, to include the United States, nor did it have to be in effective control of the Hawaiian State's territory unless it was a new regime born out of extra-legal changes in government. The legal doctrine of recognizing "new" governments of an existing State only arises when there are "extra-legal changes in government."[67] The Council of Regency was not established through "extra-legal changes in government" but rather through existing laws of the kingdom as it stood before 17 January 1893. The Council of Regency was not a new government but rather a successor in office to Queen Lili'uokalani in accordance with Hawaiian law. In other words, "[t]he existence of the restored government *in situ* was not dependent upon diplomatic recognition by foreign States, but rather operated on the presumption of recognition these foreign States already afforded the Hawaiian government as of 1893."[68]

If the Council of Regency was a new regime within an independent State, like the insurgency of 1893 that called themselves a provisional government, it would require *de facto* recognition by foreign governments after securing effective control of the territory away from the monarchical government. As stated by U.S. Secretary of State John Foster in a dispatch to Minister John Stevens dated 28 January 1893, "[t]he rule of this Government has uniformly been to recognize and enter into relation with an actual government in full possession of effective power with the assent of the people."[69] Applying this rule, President Cleveland concluded that the provisional government "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."[70] As such, the legal order of the Hawaiian Kingdom remained intact.

In the context of the international legal order, at the core of sovereignty is effective control of the territory of the State. However, under international humanitarian law, which is also called the laws of war and belligerent occupation, the principle of effectiveness is reversed. When the United States bore the responsibility of illegally overthrowing, by an "act of war," the Hawaiian Kingdom government, it transformed the state of affairs from a state of peace to a state of war, where you have the existence of two legal orders in one and the same territory, that of the occupying State—the United States—and that of the occupied State—the Hawaiian Kingdom.[71]

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[66] Sai, *Royal Commission of Inquiry*, 22.
[67] M. J. Peterson, *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995* 26 (1997).
[68] Sai, *Royal Commission of Inquiry*, 22.
[69] Executive Documents, 1179.
[70] *Id.*, 453 (online at https://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf).
[71] David Keanu Sai, "United States Belligerent Occupation of the Hawaiian Kingdom," in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 99-103 (2020).

Marek explains that in "the first place: of these two legal orders, that of the occupied State is regular and 'normal,' while that of the occupying power is exceptional and limited. At the same time, the legal order of the occupant is … strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness."[72] Therefore, belligerent occupation "is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned."[73] When the Hawaiian government was restored in 1997, it was not required to be in effective control of Hawaiian territory in order to give it legitimacy under international law. In needed only to be a successor of the last reigning Monarch in accordance with the laws of the Hawaiian Kingdom.

Quincy Wright, a renowned American political scientist, states that "international law distinguishes between a government and the state it governs."[74] And Judge James Crawford of the International Court of Justice clearly explains that "[b]elligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[75] Crawford's conclusion is based on the "presumption that the State continues to exist, with its rights and obligations ... despite a period in which there is...no effective government."[76] Applying this principle to the Second Gulf War, Crawford explains:

> The occupation of Iraq in 2003 illustrated the difference between 'government' and 'State'; when Members of the Security Council, after adopting SC res 1511, 16 October 2003, called for the rapid 'restoration of Iraq's sovereignty', they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restored.[77]

CONSTRAINTS ON UNITED STATES MUNICIPAL LAWS

All Federal, State of Hawai'i and County laws are not Hawaiian Kingdom law but rather constitute the municipal laws of the United States. As a result of the continuity of the Hawaiian State and its legal order, the law of occupation obliges the United States, as the occupying State, to administer the laws of the Hawaiian Kingdom, not the laws of the United States, until a peace treaty brings the occupation to an end. Article 43 of the 1907 Hague Regulations provides that "[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."[78] Article 64 of the

[72] Krystyna Marek, *Identity and Continuity of States in Public International Law* 102 (1968).
[73] *Id.*
[74] Quincy Wright, "The Status of Germany and the Peace Proclamation," 46(2) *Am. J. Int'l L.* 299, 307 (1952).
[75] James Crawford, *Creation of States in International Law* 34 (2nd ed., 2006).
[76] *Id*.
[77] *Id*, n. 157.
[78] 36 Stat. 2277; Treaty Series 539.

1949 Fourth Geneva Convention also states, "The penal laws of the occupied territory shall remain in force."[79]

These provisions of the Hague Regulations and the Geneva Convention was a principle of customary international law before its codification and was recognized by the United States during the Spanish-American War, when U.S. forces overthrew Spanish governance in Santiago de Cuba in July of 1898. This overthrow did not transfer Spanish sovereignty to the United States but triggered the customary international laws of occupation that were later codified under Article 43 of the 1899 Hague Convention, II, and succeeded under Article 43 of the 1907 Hague Convention, IV, and Article 64 of the 1949 Fourth Geneva Convention. This customary law was the basis for General Orders no. 101 issued by President McKinley to the War Department on 13 July 1898:

> The first effect of the military occupation of the enemy's territory is the severance of the former political relations of the inhabitants and the establishment of a new political power. … Though the powers of the military occupant are absolute and supreme and immediately operate upon the political condition of the inhabitants, the municipal laws of the conquered territory, such as affect private rights of person and property and provide for the punishment of crime, are considered as continuing in force, so far as they are compatible with the new order of things, until they are suspended or superseded by the occupying belligerent and in practice they are not usually abrogated, but are allowed to remain in force and to be administered by the ordinary tribunals, substantially as they were before the occupation.[80]

An armistice was eventually signed by the Spanish Government on 12 August 1898, after its territorial possessions of Philippines, Guam, Puerto Rico and Cuba were under the effective occupation and control of U.S. troops. This led to a treaty of peace that was signed by representatives of both countries in Paris on 10 December 1898. The United States Senate ratified the treaty on 6 February 1899, and Spain on 19 March. The treaty came into full force and effect on 11 April 1899.[81] It was after 11 April that Spanish title and sovereignty was transferred to the United States and American municipal laws enacted by the Congress replaced Spanish municipal laws that once applied over the territories of Philippines, Guam, and Puerto Rico. Under the treaty, Cuba would become an independent State.

In 1988, the Office of Legal Counsel (OLC), U.S. Department of Justice, examined the purported annexation of the Hawaiian Islands by a congressional joint resolution. Douglas Kmiec, Acting Assistant Attorney General, authored the opinion for Abraham Sofaer, legal advisor to the U.S. Department of State. After covering the limitation of congressional authority, the OLC found that it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint

[79] 6.3 U.S.T 3516, 3558 (1955).
[80] *Ochoa v. Hernandez*, 230 U.S. 139, 156 (1913).
[81] 30 Stat. 1754 (1899) (online at https://uniset.ca/fatca/b-es-ust000011-0615.pdf).

resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea."[82] The OLC cited constitutional scholar Westel Willoughby, who stated:

> The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in the 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.[83]

This OLC's conclusion is a position taken by the Federal government similar to the OLC's position that federal prosecutors cannot charge a sitting president with a crime.[84] From a policy standpoint, OLC opinions bind the federal government.

If it was unclear how Hawai'i was annexed by legislation, it would be equally unclear how the Congress could create a territorial government, under *An Act To provide a government for the Territory of Hawaii* in 1900, within the territory of a foreign State by legislation.[85] It would also be unclear how the Congress could rename the Territory of Hawai'i to the State of Hawai'i in 1959, under *An Act To provide for the admission of the State of Hawaii into the Union* by legislation.[86] As the Hawaiian court stated, in *In Re Francis de Flanchet*, "however general and comprehensive the phrases used in the municipal laws may be, they must always be restricted in construction, to places and persons upon whom the Legislature have authority and jurisdiction."[87]

In *The Lotus* case, the Permanent Court of International Justice explained that "the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State."[88] Therefore, it is a legal fact that United States legislation regarding Hawai'i, whether by a statute or a joint resolution, has no extraterritorial effect except by a "permissive rule," e.g., consent, by the Hawaiian Kingdom government. There is no such consent. A joint resolution of annexation is not a treaty and, therefore, the territory of the Hawaiian State was never ceded to the United States. The United States could no more annex the Hawaiian Islands by enacting a municipal law in 1898 than it could annex Canada today by enacting a municipal law.

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[82] Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," 12 *Op. O.L.C.* 238, 252 (1988).
[83] *Id*.
[84] Randolph D. Moss, "A Sitting President's Amenability to Indictment and Criminal Prosecution," 24 *Op. O.L.C.* 222-260 (2000).
[85] 31 Stat. 141 (1900).
[86] 73 Stat. 4 (1959).
[87] *In Re Francis de Flanchet*, 2 Haw. 96, 109 (1858).
[88] *Lotus*, PCIJ, ser. A no. 10 (1927), 18.

Municipal laws of the United States being imposed in the Hawaiian Kingdom constitute a violation of the law of occupation, in particular, the war crime of *usurpation of sovereignty*. The actus reus of the offense "would consist of the imposition of legislation or administrative measures by the occupying power that go beyond those required by what is necessary for military purposes of the occupation."[89] According to Schabas, who authored a legal opinion for the Royal Commission of Inquiry on the elements of war crimes committed in the Hawaiian Kingdom, the requisite elements for the war crime of *usurpation of sovereignty* are:

1. The perpetrator imposed or applied legislative or administrative measures of the occupying power going beyond those required by what is necessary for military purposes of the occupation.
2. The perpetrator was aware that the measures went beyond what was required for military purposes or the protection of fundamental human rights.
3. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.[90]

With regard to the last two elements, Schabas states:

1. There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict as international [...].
2. In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international [...].
3. There is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict [...].[91]

The prohibition of war crimes is an "old norm which [has] acquired the character of *jus cogens*."[92] According to the International Criminal Tribunal for the Former Yugoslavia (ICTY), international crimes, which include war crimes, are "universally condemned wherever they occur,"[93] because they are "peremptory norms of international law or jus cogens."[94] *Jus cogens* norms are

[89] William Schabas, "War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom," in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 157 (2020).
[90] *Id.*, 167.
[91] *Id.*, 167.
[92] Grigory I. Tunkin, "Jus Cogens in Contemporary International Law," 3 *U. Tol. L. Rev.* 107, 117 (1971).
[93] ICTY, *Prosecutor v. Furundzija*, Case No. IT-95-17/1, Judgment, 156 (Dec. 10, 1998).
[94] ICTY, *Prosecutor v. Kupreskic*, Case No. IT-95-16-T, Judgement, para. 520 (Jan. 14, 2000).

peremptory norms that "are nonderogable and enjoy the highest status within international law."[95] Schabas' legal opinion is undeniably, and pursuant to *The Paquette Habana* case, a means for the determination of the rules of international law.

In a letter of correspondence from Dr. Sai, as Head of the Royal Commission of Inquiry (RCI), to Attorney General Clare E. Connors, dated 2 June 2020, the Attorney General was notified that:

> Imposition of United States legislative and administrative measures constitutes the war crime of *usurpation of sovereignty* under customary international law. This includes the legislative and administrative measures of the State of Hawai'i and its Counties. Professor William Schabas, renowned expert in international criminal law, authored a legal opinion for the Royal Commission that identified *usurpation of sovereignty*, among other international crimes, as a war crime that has and continues to be committed in the Hawaiian Islands.[96]

Carbon copied to that letter was Governor David Ige, Lieutenant Governor Josh Green, President of the Senate Ron Kouchi, Speaker of the House of Representatives Scott Saiki, Adjutant General Kenneth Hara, City & County of Honolulu Mayor Kirk Caldwell, Hawai'i County Mayor Harry Kim, Maui County Mayor Michael Victorina, Kaua'i County Mayor Derek Kawakami, United States Senator Brian Schatz, United States Senator Mazie Hirono, United States Representative Ed Case, and United States Representative Tulsi Gabbard. For the purposes of international criminal law, it meets the requisite fourth element of the war crime of *usurpation of sovereignty* whereby the "perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation."

Furthermore, on 10 November 2020, the National Lawyers Guild (NLG) sent a letter to Governor Ige that stated:

> International humanitarian law recognizes that proxies of an occupying State, which are in effective control of the territory of the occupied State, are obligated to administer the laws of the occupied State. The State of Hawai'i and its County governments, and not the Federal government, meet this requirement of effective control of Hawaiian territory under Article 42 of the 1907 Hague Regulations, and need to immediately comply with the law of occupation. The United States has been in violation of international law for over a

[95] *Committee of United States Citizens in Nicaragua, et al., v. Reagan*, 859 F.2d 929, 940 (D.C. Cir. 1988); see also *Vienna Convention on the Law of Treaties*, art. 53, May 23, 1969, 1155 U.N.T.S. 331 (defining a jus cogens norm as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character").

[96] *Letter of the Royal Commission of Inquiry to State of Hawai'i Attorney General Clare E. Connors* (June 2, 2020), https://hawaiiankingdom.org/pdf/RCI_Ltr_to_State_of_HI_AG_(6.2.20).pdf.

> century, exercising, since 1893, the longest belligerent occupation of a foreign country in the history of international relations without establishing an occupying government.[97]

The NLG also stated that it "supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its effort to seek resolution in accordance with international law as well as its strategy to have the State of Hawai'i and its Counties comply with international humanitarian law as the administration of the Occupying State."[98] The NLG further stated that it "supports the actions taken by the Council of Regency and the RCI in its efforts to ensure compliance with the international law of occupation by the United States and the State of Hawai'i and its Counties."[99]

The NLG received the backing of the International Association of Democratic Lawyers (IADL) in its resolution adopted on 7 February 2021 *Calling Upon the United States to Immediately Comply with International Humanitarian Law in Its Prolonged Occupation of the Hawaiian Islands—Hawaiian Kingdom*. The IADL also "supports the Hawaiian Council of Regency"[100] and "calls on all United Nations members States and non-member States to not recognize as lawful a situation created by a serious violation of international law, and to not render aid or assistance in maintaining the unlawful situation. As an internationally wrongful act, all States shall cooperate to ensure the United States complies with international humanitarian law and consequently bring to an end the unlawful occupation of the Hawaiian Islands."[101] Furthermore, the "IADL fully supports the NLG's November 10, 2020 letter to State of Hawai'i Governor David Ige urging him to 'proclaim the transformation of the State of Hawai'i and its Counties into an occupying government pursuant to the Council of Regency's proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom'."[102]

The actions taken by the State of Hawai'i against government officials of the Hawaiian Kingdom—the occupied State, is a violation of Article 54 of the Fourth Geneva Convention, which states, "[t]he Occupying Power may not alter the status of public officials…in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against the them."[103] The Fourth Geneva Convention was ratified by the United States Senate on

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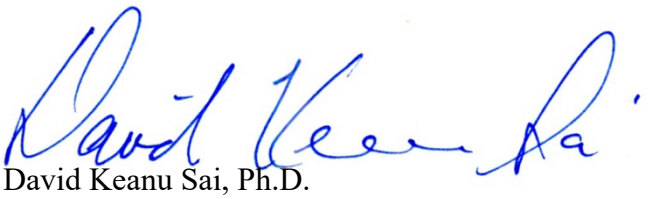
[97] *National Lawyers Guild Letter to State of Hawai'i Governor David Ige* (November 10, 2020) (online at https://nlginternational.org/newsite/wp-content/uploads/2020/11/Letter-from-the-NLG-to-State-of-HI-Governor-.pdf).
[98] *Id*., 2.
[99] *Id*., 3.
[100] Resolution of the International Association of Democratic Lawyers *Calling Upon the United States to Immediately Comply with International Humanitarian Law in Its Prolonged Occupation of the Hawaiian Islands—Hawaiian Kingdom* 3 (February 7, 2021) (online at https://hawaiiankingdom.org/pdf/IADL_Resolution_on_the_Hawaiian_Kingdom.pdf).
[101] *Id*.
[102] *Id*.
[103] 6.3 U.S.T 3516, 3552 (1955).

6 July 1955 and came into force on 2 February 1956. As such, the Fourth Geneva Convention comes under the *Supremacy Clause*.

The Council of Regency has not, and does not intend, to waive its sovereign immunity, in the course of the State of Hawai‘i committing the war crime of *usurpation of sovereignty* against them. In light of the awareness of the occupation by the aforementioned of the leadership of the State of Hawai‘i, these allegations against the Hawaiian government officials constitute malicious intent. As pointed out by Professor Lenzerini, under the rules of international law, “the working relationship between the Regency and the administration of the occupying State would have the form of a cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory.”[104] This unwarranted attack is a violation of the law of occupation, and as a proxy for the United States, it also constitutes an international wrongful act.



David Keanu Sai, Ph.D.
Head, *Royal Commission of Inquiry*

2 April 2021

[104] Lenzerini, *Legal Opinion*, para. 20.

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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COMMISSIONER OF SECURITIES

March 15, 2021

BY CERTIFIED MAIL, RRR,
BY FIRST CLASS MAIL AND
BY EMAIL TO: stevelaudig@gmail.com

Stephen Laudig, Esq.
1914 University Avenue, #103
Honolulu, HI 96822

RE: IN THE MATTER OF DAVID KEANU SAI AND KAU'I PENNY SAI-DUDOIT A/K/A KAU'I GOODHUE
CASE NO. SEU-2018-0003

Dear Mr. Laudig:

I am addressing this letter to you based upon your representation to Edith Feldman of our office on September 1, 2020 that you are counsel for respondents David Keanu Sai and Kau'i Penny Sai-Dudoit a/k/a Kau'i Goodhue in the above-referenced matter.

The Commissioner of Securities of the State of Hawaii is about to commence an enforcement action against respondents Sai and Goodhue based upon their sale of unregistered Kingdom of Hawaii Exchequer Bonds, in violation of HRS § 485A-301.

If your clients would like to resolve this matter prior to the commencement of formal litigation, please contact me by **March 31, 2021**.

Very truly yours,

Bruce A. Schoenberg
Securities Attorney

BAS:lm

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CASES CONDUCTED UNDER THE AUSPICES OF THE PCA OR WITH THE COOPERATION OF THE INTERNATIONAL BUREAU

For summaries of the arbitral awards in many of these cases, see P. Hamilton, et al., *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution – Summaries of Awards, Settlement Agreements and Reports* (Kluwer Law International 1999) pp. 29-281, and B. Macmahon and F. Smith, *Permanent Court of Arbitration Summaries of Awards 1999-2009* (TMC Asser Press 2010) pp. 39-312.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
1.	United States of America – Republic of Mexico	Pious Fund of the Californias	22 - 05 - 1902	14 - 10 - 1902	**Matzen** Sir Fry de Martens Asser de Savornin Lohman
2.	Great Britain, Germany and Italy – Venezuela	Preferential Treatment of Claims of Blockading Powers Against Venezuela	07 - 05 - 1903	22 - 02 - 1904	**Mourawieff** Lammasch de Martens
3.	Japan – Germany, France and Great Britain	Japanese House Tax leases held in perpetuity	28 - 08 - 1902	22 - 05 - 1905	**Gram** Renault Motono
4.	France – Great Britain	Muscat Dhows fishing boats of Muscat	13 - 10 - 1904	08 - 08 - 1905	**Lammasch** Fuller de Savornin Lohman
5.	France – Germany	Deserters of Casablanca	10/24 - 11 - 1908	22 - 05 - 1909	**Hammarskjöld** Sir Fry Fusinato Kriege Renault
6.	Norway – Sweden[2]	Maritime Boundary Grisbådarna Case	14 - 03 - 1908	23 - 10 - 1909	**Loeff**[3] Beichmann Hammarskjöld
7.	United States of America – Great Britain	North Atlantic Coast Fisheries	27 - 01 - 1909	07 - 09 - 1910	**Lammasch** de Savornin Lohman Gray Sir Fitzpatrick Drago
8.	United States of Venezuela – United States of America	Orinoco Steamship Company	13 - 02 - 1909	25 - 10 - 1910	**Lammasch** Beernaert de Quesada
9.	France – Great Britain	Arrest and Restoration of Savarkar	25 - 10 - 1910	24 - 02 - 1911	**Beernaert** Ce de Desart Renault Gram de Savornin Lohman

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
10.	Italy – Peru	Canevaro Claim	25 - 04 - 1910	03 - 05 - 1912	**Renault** Fusinato Alvarez Calderón
11.	Russia – Turkey[2]	Russian Claim for Indemnities damages claimed by Russia for delay in payment of compensation owed to Russians injured in the war of 1877-1878	22 - 07 - 1910/ 04 - 08 - 1910	11 - 11 - 1912	**Lardy** Bon de Taube Mandelstam[3] H.A. Bey[3] A.R. Bey[3]
12.	France – Italy	French Postal Vessel "Manouba"	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
13.	France – Italy	The "Carthage"	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
14.	France – Italy	The "Tavignano," "Camouna" and "Gaulois" Incident	08 - 11 - 1912	Settled by agreement of parties	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
15.	The Netherlands – Portugal[4]	Dutch-Portuguese Boundaries on the Island of Timor	03 - 04 - 1913	25 - 06 - 1914	**Lardy**
16.	Great Britain, Spain and France – Portugal[5]	Expropriated Religious Properties	31 - 07 - 1913	02/04 - 09 - 1920	**Root** de Savornin Lohman Lardy
17.	France – Peru[2]	French claims against Peru	02 - 02 - 1914	11 - 10 - 1921	**Ostertag**[3] Sarrut[3] Elguera
18.	United States of America – Norway[2]	Norwegian shipowners' claims	30 - 06 - 1921	13 - 10 - 1922	**Vallotton**[3] Anderson[3] Vogt[3]
19.	United States of America – The Netherlands[4]	The Island of Palmas case (or Miangas)	23 - 01 - 1925	04 - 04 - 1928	**Huber**
20.	Great Britain – France[2]	Chevreau claims	04 - 03 - 1930	09 - 06 - 1931	**Beichmann**
21.	Sweden – United States of America[2]	Claims of the Nordstjernan company	17 - 12 - 1930	18 - 07 - 1932	**Borel**
22.	Radio Corporation of America – China[2]	Interpretation of a contract of radio-telegraphic traffic	10 - 11 - 1928	13 - 04 - 1935	**van Hamel**[3] Hubert[3] Furrer[3]
23.	States of Levant under French Mandate – Egypt[2]	Radio-Orient	11 - 11 - 1938	02 - 04 - 1940	**van Lanschot**[3] Raestad Mondrup[3]

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
24.	France – Greece[2]	Administration of lighthouses	15 - 07 - 1931	24 - 07 - 1956	**Verzijl**[3] Mestre Charbouris[3]
25.	Turriff Construction (Sudan) Limited – Sudan[2]	Interpretation of a construction contract	21 - 10 - 1966	23 - 04 - 1970	**Erades**[3] Parker[3] Bentsi-Enchill[3]
26.	United States of America – United Kingdom of Great Britain and Northern Ireland[2]	Heathrow Airport user charges treaty obligations; amount of damages	16 - 12 - 1988	30 - 11 - 1992 02 - 05 - 1994 Settlement on amount of damages	**Foighel**[3] Fielding[3] Lever[3]
27.	Moiz Goh Pte. Ltd – State Timber Corporation of Sri Lanka[2]	Contract dispute	14 - 12 - 1989	05 - 05 - 1997	**Pinto**[3]
28.	African State – two foreign nationals[2]	Investment dispute	–	30 - 09 - 1997 Settled by agreement of parties	–
29.	Technosystem SpA – Taraba State Government and the Federal Government of Nigeria[2]	Contract dispute	21 - 02 - 1996	25 - 11 - 1996 Lack of jurisdiction	**Ajibola**
30.	Asian State-owned enterprise – three European enterprises[2]	Contract dispute	–	02 - 10 - 1996 Award on agreed terms	–
31.	State of Eritrea – Republic of Yemen[2]	Eritrea/Yemen: Sovereignty of various Red Sea Islands sovereignty; maritime delimitation	03 - 10 - 1996	09 - 10 - 1998 Award on sovereignty 17 - 12 - 1999 Award on maritime delimitation	**Jennings** Schwebel[3] El-Kosheri[3] Highet[3] Higgins
32.	Italy – Costa Rica[2]	Loan agreement between Italy and Costa Rica dispute arising under financing agreement	11 - 09 - 1997	26 - 06 - 1998	**Lalive**[3] Ferrari Bravo Hernandez Valle[3]
33.	Larsen – Hawaiian Kingdom[2]	Treaty interpretation	30 - 10 - 1999	05 - 02 - 2001	**Crawford**[3] Greenwood[3] Griffith[3]
34.	The Netherlands – France[2]	Treaty interpretation	21 - 10 -/17 - 12 - 1999	12 - 03 - 2004	**Skubiszewski** Guillaume Kooijmans[3]
35.	European corporation – African government	Contract dispute	04 - 08 - 2000	18 - 02 - 2003 Settled by agreement of parties	–
36.	Eritrea-Ethiopia Boundary Commission[2]	Boundary dispute	12 - 12 - 2000	13 - 04 - 2002	**Lauterpacht** Ajibola Reisman[3] Schwebel[3] Watts

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
37.	Eritrea-Ethiopia Claims Commission[2]	Settlement of claims arising from armed conflict	12 - 12 - 2000	01 - 07 - 2003 Partial Awards for prisoner of war claims 28 - 04 - 2004 Partial Awards for Central Front claims 17 - 12 - 2004 Partial Awards for civilians claims 19 - 12 - 2005 Partial Awards for remaining liability claims 17 - 08 - 2009 Final Award for damages	**van Houtte**[3] Aldrich[3] Crook[3] Paul[3] Reed[3]
38.	Dr. Horst Reineccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu – Bank for International Settlements[2]	Dispute with former private shareholders	07 - 03 - 2001 31 - 08 - 2001 24 - 10 - 2001	22 - 11 - 2002 Partial Award 19 - 09 - 2003 Final Award	**Reisman**[3] van den Berg[3] Frowein[3] Krafft[3] Lagarde[3]
39.	Ireland – United Kingdom[2]	Proceedings pursuant to the OSPAR Convention	15 - 06 - 2001	02 - 07 - 2003	**Reisman**[3] Griffith[3] Mustill[3]
40.	Saluka Investments B.V. – Czech Republic[2]	Investment treaty dispute	18 - 06 - 2001	17 - 03 - 2006 Partial Award	**Watts** Behrens[3] Fortier[3]
41.	Ireland – United Kingdom[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS) "MOX Plant Case"	25 - 10 - 2001	06 - 06 - 2008 Termination order following withdrawal of claim	**Mensah**[3] Fortier[3] Hafner Crawford[3] Watts
42.	European government – European corporation[2]	Investment treaty dispute	30 - 04 - 2002	24 - 05 - 2004 Settled by agreement of parties	–
43.	Two corporations – Asian government[2]	Contract dispute	16 - 08 - 2002	12 - 10 - 2004 Partial Award	–
44.	Telekom Malaysia Berhad – Government of Ghana[2]	Investment treaty dispute	10 - 02 - 2003	01 - 11 - 2005 Award on agreed terms	**Van den Berg**[3] Gaillard[3] Layton[3]
45.	Belgium – The Netherlands[2]	Dispute regarding the use and modernization of the "IJzeren Rijn" on the territory of The Netherlands	22/23 - 07 - 2003	24 - 05 - 2005	**Higgins** Schrans[3] Simma[3] Soons[3] Tomka
46.	Barbados – Trinidad and Tobago[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	16 - 02 - 2004	11 - 04 - 2006	**Schwebel**[3] Brownlie[3] Orrego Vicuña[3] Lowe[3] Watts
47.	Guyana – Suriname[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	24 - 02 - 2004	17 - 09 - 2007	**Nelson**[3] Hossain[3] Franck[3] Shearer Smit[3]

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
48.	Malaysia – Singapore[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	04 - 07 - 2003	01 - 09 - 2005 Award on agreed terms	**Pinto**[3] Hossain[3] Shearer Oxman[3] Watts
49.	1.The Channel Tunnel Group Limited 2. France-Mache S.A. – 1. United Kingdom 2. France[2]	Proceedings pursuant to the Treaty of Canterbury Concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link (Eurotunnel)	17 - 12 - 2003	30 - 01 - 2007 Partial Award 2010 Termination order	**Crawford**[3] Fortier[3] Guillaume Millett[3] Paulsson
50.	Chemtura Corporation (formerly Crompton Corporation) – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	17 - 10 - 2002/ 17 - 02 - 2005	02 - 08 - 2010	**Kaufmann-Kohler**[3] Brower[3] Crawford[3]
51.	Vito G. Gallo – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	30 - 03 - 2007	15 – 9 – 2011	**Fernández-Armesto**[3] Castel[3] Lévy[3]
52.	Romak S.A. - The Republic of Uzbekistan[2]	Proceedings pursuant to the Agreement between the Swiss Confederation and the Republic of Uzbekistan on the Promotion and the Reciprocal Protection of Investments	06 - 09 - 2007	26 - 11 - 2009	**Mantilla-Serrano**[3] Rubins[3] Molfessis[3]
53.	The Government of Sudan – The Sudan People's Liberation Movement/Army[2]	Delimitation of the Abyei area	11 - 07 - 2008	22 – 07 - 2009	**Dupuy**[3] Al-Khasawneh Hafner Reisman[3] Schwebel
54.	Centerra Gold Inc. & Kumtor Gold Co. – Kyrgyz Republic[2]	Investment agreement dispute	08 - 03 - 2006	29 - 06 - 2009 Termination order	**Van den Berg**[3]
55.	TCW Group & Dominican Energy Holdings – Dominican Republic[2]	Proceedings conducted under the Central America-DR-USA Free Trade Agreement (CAFTA-DR)	21 - 12 - 2007	16 – 07 - 2009 Consent Award	**Böckstiegel**[3] Fernández-Armesto[3] Kantor[3]
56.	Bilcon of Delaware *et al.* – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	26-05-2008	-	**Simma**[3] McRae Schwartz[3]

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
57.	HICEE B.V. – The Slovak Republic[2]	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	17 - 12 - 2008	23 - 05 - 2011 Partial Award 17 - 10 - 2011 Supplementary and Final Award	**Berman** Tomka Brower[3]
58.	Polis Fundi Immobliare di Banche Popolare S.G.R.p.A – International Fund for Agricultural Development (IFAD)[2]	Contract dispute	10 - 11 - 2009	17 - 12 - 2010	**Reinisch**[3] Canu[3] Stern[3]
59.	European American Investment Bank AG – The Slovak Republic[2]	Proceedings pursuant to the Agreement Between the Republic of Austria and the Czech and Slovak Federal Republic Concerning the Promotion and Protection of Investments	23 - 11 - 2009	–	**Greenwood** Petsche[3] Stern[3]
60.	Bangladesh – India[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	08 - 10 - 2009	–	**Wolfrum**[3] Mensah[3] Rao[3] Shearer Treves[3]
61.	China Heilongjiang International Economic & Technical Cooperative Corporation *et al.* – Mongolia[2]	Proceedings pursuant to the Agreement between the Government of the Mongolian People's Republic and the Government of the People's Republic of China concerning the Encouragement and Reciprocal Protection of Investments dated August 26, 1991	12 - 02 - 2010	–	**Donovan**[3] Banifatemi[3] Clodfelter[3]
62.	Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	22 – 05 – 2007	31 – 08 – 2011	**Böckstiegel**[3] Brower[3] Van den Berg[3]

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5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
63.	Achmea B.V. (formerly known as Eureko B.V.) – The Slovak Republic	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments Between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	01 – 10 – 2008		**Lowe**[3] Van den Berg[3] Veeder[3]
64.	Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	23 – 09 – 2009		**Veeder**[3] Grigera Naón[3] Lowe[3]
65.	Pakistan – India	Indus Waters Treaty Arbitration	17 – 05 – 2010		**Schwebel** Berman Wheater[3] Caflisch Paulsson Simma[3] Tomka
66.	Guaracachi America, Inc. & Rurelec PLC – The Plurinational State of Bolivia	Proceedings pursuant to the Treaty between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Bolivia for the Promotion and Protection of Investments	10 – 11 – 2010		**Júdice**[3] Conthe[3] Vinuesa
67.	The Republic of Mauritius - The United Kingdom of Great Britain and Northern Ireland	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	20 – 12 – 2010		**Shearer** Greenwood Hoffmann[3] Kateka[3] Wolfrum[3]

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MINISTÈRE DES AFFAIRES ÉTRANGÈRES DU ROYAUME DES PAYS-BAS
LA HAYE

CONVENTIONS CONCLUES À LA HAYE LE 18 OCTOBRE 1907
AU COURS DE LA CONFÉRENCE INTERNATIONALE DE LA PAIX DE 1907

Notification

Convention pour le règlement pacifique des conflits internationaux
(La Haye, le 18 octobre 1907)

Le Dépositaire, se référant à la notification dépositaire Conventions 1907 No. 01/2016 du 29 janvier 2016, transmet ci-joint la traduction française de la déclaration fait par les États-Unis du 28 décembre 2015.

DÉCLARATION

Les États-Unis, 28-12-2015

(*Traduction*)
Selon le gouvernement des États-Unis d'Amérique, l'« État de Palestine » n'est pas habilité à adhérer à la Convention.
Conformément à l'article 93 de la Convention, l'adhésion à la Convention était initialement limitée aux « Puissances conviées à la Deuxième Conférence de la Paix » réunie à La Haye en 1907. L'article 94 de la Convention stipule en outre que « Les conditions auxquelles les Puissances qui n'ont pas été conviées à la Deuxième Conférence de la Paix pourront adhérer à la présente Convention formeront l'objet d'une entente ultérieure entre les Puissances contractantes. »
Lors de sa réunion du 3 mars 1960, le conseil administratif de la Cour permanente d'arbitrage, après avoir consulté toutes les parties aux deux Conventions de La Haye pour le règlement pacifique des conflits internationaux, a décidé que le gouvernement des Pays-Bas inviterait après le 15 mars 1960 les membres des Nations unies n'ayant pas participé aux activités de la Cour permanente d'arbitrage à déclarer (I) s'ils considéraient être parties aux conventions de 1899 ou de 1907 pour le règlement pacifique des conflits internationaux, ou, si ce n'était pas le cas, (2) s'ils souhaitaient adhérer à ces conventions ou à l'une d'elles. Sur la base de l'entente ultérieure ainsi conclue par les parties à la Convention, la possibilité d'adhérer à la Convention a ainsi été étendue aux États membres des Nations unies.
Le gouvernement des États-Unis n'a connaissance d'aucune autre décision des parties à la Convention en vue d'élargir ladite possibilité d'adhésion aux entités qui ne sont pas membres des Nations unies. ' L'État de Palestine » n'est pas membre des Nations unies. Par ailleurs, le gouvernement des États-Unis estime que ' l'État de Palestine » ne répond pas à la définition d'un État souverain et ne le reconnaît pas comme tel. ' L'État de Palestine » n'étant ni « une Puissance conviée à la Deuxième Conférence de la Paix » ni un membre des Nations unies, il n'est pas éligible à l'adhésion à la Convention.
Le gouvernement des États-Unis estime que le Royaume des Pays-Bas, en sa qualité de dépositaire de la Convention, ne devrait pas inscrire « l'État de Palestine » comme partie à la Convention. En conséquence, le gouvernement des États-Unis déclare qu'il ne considèrera pas « l'État de Palestine » comme étant partie à la Convention, et ne considèrera avoir de liens conventionnels avec « l'État de Palestine » en vertu de ladite Convention.

La Haye, le 11 février 2016

MINISTRY OF FOREIGN AFFAIRS OF THE KINGDOM OF THE NETHERLANDS
THE HAGUE

CONVENTIONS CONCLUDED AT THE HAGUE ON 18 OCTOBER 1907
DURING THE INTERNATIONAL PEACE CONFERENCE OF 1907

Notification

Convention for the Pacific Settlement of International Disputes
(The Hague, 18 October 1907)

The Depositary, with reference to depositary notification Conventions 1907 No. 01/2016 of 29 January 2016, transmits herewith the French translation of the declaration made by the United States on 28 December 2015.

The Hague, 11 February 2016

MINISTRY OF FOREIGN AFFAIRS OF THE KINGDOM OF THE NETHERLANDS

The Hague

CONVENTIONS CONCLUDED AT THE HAGUE 18 OCTOBER 1907 DURING THE INTERNATIONAL CONFERENCE ON PEACE OF 1907

Notification

Convention for the peaceful regulation of international conflicts
(The Hague, October 18, 1907)

The Depository by referring to the notification deposited of the Conventions 1907 No. 01/2016 of January 29, 2016, conveys hereby the French translation of the declaration done by the United States of December 28, 2015.

DECLARATION

THE UNITED STATES, 28-12-2015

(Translation) According to the government of the United States of America the "State of Palestine" does not qualify to become a member of the Convention. In Conformity with article 93 of the Convention membership in the Convention was originally limited to "Powers invited to the Second Conference on Peace" gathered at The Hague in 1907. Article 94 of the Convention stipulates furthermore that "The conditions under which Powers which did not participate at the Second Conference on peace could become members in the present Convention shall be objects of a later understanding among the contracting Powers." At its meeting on March 3, 1960, the administrative council of the permanent Court of arbitration, having consulted all the parties at the two Conventions at the Hague for regulating peacefully international conflicts, decided that the government of the Netherlands would invite after March 15, 1960, the members of the United Nations which had not participatesd in the activities of the permanent Court of arbitration to declare 1) if they considered themselves as parties in the conventions of 1899 or 1907 for the peaceful regulating of international conflicts, or, if that was not the case, 2) if they wished to become members of these conventions or of one of them. On the basis of the later understanding so concluded by the parties of the Convention, the possibility of membership in the Convention was thus extended to the member States of the United Nations. The government of the United States does not have any knowledge of any other decision by the

parties of the Convention in respect to extending said possibilty of membership to entities which are not members of the United Nations. "The State of Palestine" is not a member of the United Nations. Furthermore the government of the United States considers that "the State of Palestine" does not answer to the definition of a sovereign State and does not recognize it as such. "The State of Palestine", being neither "a Power invited to the Second Conference of Peace", nor being a member of the United Nations, is not eligible for membership in the Convention. The government of the United States considers that the Kingdom of the Netherlands in its character as depositary of the Convention should not inscribe "the State of Palestine" as a party of the Convention. In consequence thereof the government of the United States declares that it will not consider "the State of Palestine" as being a party of the Convention and will not consider to have conventional ties with "the State of Palestine" on the basis of said Convention.

The Hague, February 11, 2016

The notifications deposited are accessible on line at the Web site of the Ministry of Foreign Affairs of the Kingdom of the Netherlands, at https//treatydatabase.overheid.nl.

Conventions 1907 No 05/2016

PERMANENT COURT OF ARBITRATION

Larsen v. Hawaiian Kingdom

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

In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings.

The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States' actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.

Case information

NAME(S) OF CLAIMANT(S)	Lance Paul Larsen (Private entity)
NAME(S) OF RESPONDENT(S)	The Hawaiian Kingdom (State)
NAMES OF PARTIES	-
CASE NUMBER	1999-01
ADMINISTERING INSTITUTION	Permanent Court of Arbitration (PCA)
CASE STATUS	Concluded
TYPE OF CASE	Other proceedings
SUBJECT MATTER OR ECONOMIC SECTOR	Treaty interpretation
RULES USED IN ARBITRAL PROCEEDINGS	UNCITRAL Arbitration Rules 1976
TREATY OR CONTRACT UNDER WHICH PROCEEDINGS WERE COMMENCED	[Other]
LANGUAGE OF PROCEEDING	English
SEAT OF ARBITRATION (BY COUNTRY)	Netherlands
ARBITRATOR(S)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
REPRESENTATIVES OF THE CLAIMANT(S)	Ms. Ninia Parks, Counsel and Agent
REPRESENTATIVES OF THE RESPONDENT(S)	Mr. David Keanu Sai, Agent Mr. Peter Umialiloa Sai, First deputy agent Mr. Gary Victor Dubin, Second deputy agent and counsel
REPRESENTATIVES OF THE PARTIES	
NUMBER OF ARBITRATORS IN CASE	3
DATE OF COMMENCEMENT OF PROCEEDING	08 November 1999
DATE OF ISSUE OF FINAL AWARD	05 February 2001
LENGTH OF PROCEEDINGS	1-2 years
ADDITIONAL NOTES	-

Documents

- Award or other decision
- Other

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