SCPW-22-0000634

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

DEXTER K. KA‘IAMA,

Petitioner,

v.

CHAIRPERSON OF THE DISCIPLINARY BOARD OF THE HAWAI‘I SUPREME COURT,

Respondent.

MOTION FOR REQUEST OF JUDICIAL NOTICE IN SUPPORT OF PETITIONER’S REQUEST FOR WRIT OF MANDAMUS PURSUANT TO RULE 201, HAWAI‘I RULES OF EVIDENCE; EXHIBITS “1-5”; CERTIFICATE OF SERVICE

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Petitioner

MOTION FOR REQUEST OF JUDICIAL NOTICE IN SUPPORT OF PETITIONER'S REQUEST FOR WRIT OF MANDAMUS PURSUANT TO RULE 201, HAWAI'I RULES OF EVIDENCE

In accordance with Hawai'i Rule of Evidence 201, the Petitioner respectfully requests that the Supreme Court, in its consideration of Petitioner's request of judicial notice in support of Petitioner's request for a writ of mandamus, take judicial notice of §202, comment g, and §203, comment c of *Restatement (Third) of the Foreign Relations Law of the United States*, 1849 Treaty of Friendship, Commerce, and Navigation between the Hawaiian Kingdom and the United States, 9 Stat. 977, and the 1907 Hague Convention, I, for the Pacific Settlement of International Disputes, 36 Stat. 2199. The Petitioner also respectfully requests that this Court take judicial notice of the information contained in the exhibits attached hereto.

1. Exhibit 1 is a true and correct copy of Annex 2—*Cases Conducted under the Auspices of the PCA or with the Cooperation of the International Bureau*, Permanent Court of Arbitration's Annual Report of 2011. On page 51, the Permanent Court of Arbitration ("PCA") reported that Larsen – Hawaiian Kingdom arbitration was established "[p]ursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention)."

2. Exhibit 2 is a true and correct copy of the PCA's case repository for *Larsen v. Hawaiian Kingdom*, which is also accessible on the PCA's website at https://pca-cpa.org/en/cases/35/. The PCA acknowledges the Hawaiian Kingdom as a "State" and the Council of Regency as its government.

3. Exhibit 3 is a true and correct copy of Professor Federico Lenzerini's legal memorandum "Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration" [ECF 174-2].

4. Exhibit 4 is a true and correct copy of Professor Federico Lenzerini's "Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom" [ECF 55-2].

5. Exhibit 5 is a true and correct copy of the Declaration of Dr. David Keanu Sai [ECF 55-1] attesting to an agreement brokered by the PCA Deputy Secretary General Phyllis Hamilton between the Council of Regency and the United States granting access to all records and pleadings in the *Larsen v. Hawaiian Kingdom* arbitral proceedings.

DATED: Kailua, Hawai'i, October 26, 2022.

Respectfully submitted,

/s/ Dexter K. Ka'iama

Dexter K. Ka'iama (Bar No. 4249)

Exhibit “1”

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]

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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

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	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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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]
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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Exhibit “2”

Larsen v. Hawaiian Kingdom

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

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

Attachments

Award or other decision

>	Arbitral Award	15-05-2014	English

Other

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

Exhibit “3”

CIVIL LAW ON JURIDICAL FACT OF THE HAWAIIAN STATE AND THE CONSEQUENTIAL JURIDICAL ACT BY THE PERMANENT COURT OF ARBITRATION

FEDERICO LENZERINI*

5 December 2021

Juridical Facts

In the civil law tradition, a *juridical fact* (or *legal fact*) is a fact (or event) – determined either by natural occurrences or by humans – which produces consequences that are relevant according to law. Such consequences are defined *juridical effects* (or *legal effects*), and consist in the establishment, modification or extinction of rights, legal situations or *juridical* (or *legal*) *relationships* (*privity*). Reversing the order of the reasoning, among the multifaceted natural or social facts occurring in the world a fact is *juridical* when it is *legally relevant*, i.e. determines the production of *legal effects* per effect of a *legal* (*juridical*) *rule* (*provision*). In technical terms, it is actually the legal rule which produces legal effects, while the juridical fact is to be considered as the *condition* for the production of the effects. In practical terms, however, it is the juridical fact which activates a reaction by the law and makes the production of the effects concretely possible. At the same time, no fact can be considered as "juridical" without a legal rule attributing this quality to it.[1]

Both *rights*, *powers* or *obligations* – held by/binding a person or another subject of law (in international law, a State, an international organization, a people, or any other entity to which international law attributes legal personality) – may arise from a juridical fact.

Sometimes a juridical fact determines the production of legal effects irrespective of the action of a person or another subject of law. In other terms, in some cases legal effects are automatically produced by a(n *inactive*) juridical fact – only by virtue of the mere existence of the latter – without any need of an action by a legal subject. "Inactive juridical facts are events which occur more or less spontaneously, but still have legal effects because a certain reaction is regarded to be necessary to deal with the newly arisen circumstances".[2] Inactive juridical facts may be based on an occasional situation, a quality of a person or a thing, or the course of time.[3]

Juridical Acts

In other cases, however, the legal effects arising from a juridical fact only exist *potentially*, and, in order to concretely come into existence they need to be activated through a behaviour by a subject of law, which may consist of either an action or a passive behaviour. The legal effects may arise from either an *operational act* – i.e. a behaviour to which the law attributes legally-relevant effects for the sole ground of its existence, "although the acting [subject] had no intention to create this legal

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[1] See Lech Morawski, "Law, Fact and Legal Language", (1999) 18 *Law and Philosophy* 461, at 463.

[2] See "Legal System of Civil Law in the Netherlands", available at <http://www.dutchcivillaw.com/content/legalsystem022aa.htm> (accessed on 4 December 2021).

[3] Ibidem.

effect"[4] – or an act that a subject of law performs intentionally, "because he[/she/it] knows that the law will respond to it by acknowledging the conception of a particular legal effect. The act is explicitly [and voluntarily] chosen to let this legal effect arise".[5] In order to better comprehend this line of reasoning, one may consider the example of adverse possession,[6] which is determined by the juridical fact that a given span of time has passed during which the thing has continuously been in the possession without being claimed by its owner. However, in order for the possessor to effectively acquire the right to property, it is usually necessary to activate a legal action before the competent authority aimed at obtaining its legal recognition. In this and other similar cases a subject of law intentionally performs an act "to set the law in motion" with the purpose of producing a desired juridical effect. The legal subject concerned knows that, through performing such an act, the wanted juridical effect will be produced as a consequence of the existence of a juridical fact. Acts that are intentionally performed by a subject of law with the purpose of producing a desired legal effect are defined as *juridical acts* (or *legal acts*). It follows that an act consequential to a juridical fact (i.e. having the purpose of producing a given juridical effect in consequence of the existence of a juridical fact) is called *juridical* (or *legal*) *act*. The entitlement to perform a *juridical act* is the effect of a *power* attributed by the *juridical fact* to the legal subject concerned. The most evident difference between *juridical facts* and *juridical acts* is that, while the former "produce legal consequences regardless of a [person]'s will and capacity", the latter "are licit volitional acts – in the form of a manifestation of will – that are intended to produce legal consequences".[7]

Effects of Juridical Acts on Third Parties

One legal subject may only perform a juridical act unilaterally when it falls within her/his/its own legal sphere, but an unilateral juridical act may produce effects for other legal subjects as well. For instance, in private law unilateral juridical acts exist which produce juridical effects on third parties – for instance a will or a promise to donate a sum of money. Usually, unilateral juridical acts start to produce their effects from the moment when they are known by the beneficiary, and from that moment their withdrawal is precluded, unless otherwise provided for by applicable law (depending on the specific act concerned).

Similarly, bilateral or plurilateral juridical acts influencing the life of third parties are also provided by law – e.g. a contract in favour of third parties or a trust, typical of the common law tradition. Then, of course, the beneficiary of such acts may decide to refuse the benefits (if any) arising from them; however, if such benefits are not refused, said acts will definitely produce their effects, and may only be withdrawn within the limits established by law. Juridical acts also include the laws and regulations adopted by national parliaments, administrative acts, and, more in general, all acts determining – i.e. creating, modifying or abrogating – legal effects. *Acts of the judiciary* (judgments, orders, decrees, etc.) are also included in the concept of juridical acts. For instance, a judgment recognizing natural filiation produces the effects of filiation – with *retroactive effects* – "transform[ing] the [juridical] fact of procreation (in itself insufficient to create a legal relationship)

[4] Ibidem.
[5] Ibidem.
[6] Adverse possession refers to a legal principle – in force in many countries, especially of civil law – according to which a subject of law is granted property title over another subject's property by keeping continuous possession of it for a given (legally defined) period of time, on the condition that the title over the property is not claimed by the owner throughout the whole duration of that period of time.
[7] See Nikolaos A. Davrados, "A Louisiana Theory of Juridical Acts" (2020) 80 *Louisiana Law Review* 1119, at 1273.

into a state of filiation (recognized child) that is relevant to the law".[8] In this case, a juridical act of the judge actually leads to the recognition of a legal state – productive of a number of juridical effects, including *ex tunc* – arising from the juridical fact of the natural filiation. This is a perfect example of a juridical fact (exactly the natural filiation) whose legal effects exist *potentially*, and are activated by the juridical act represented by the judge's decision.

The Juridical Act of the Permanent Court of Arbitration (PCA) Recognizing the Juridical Fact of the Statehood of the Hawaiian Kingdom and the Council of Regency as its government

According to the *PCA Arbitration Rules*,[9] disputes included within the competence of the PCA include the following instances:

- disputes between two or more States;
- disputes between two parties of which only one is a State (i.e., disputes between a State and a private entity);
- disputes between a State and an international organization;
- disputes between two or more international organizations;
- disputes between an international organization and a private entity.

It is evident that, in order for a dispute to fall within the competence of the PCA, it is *always* necessary that either a State or an international organization are involved in the controversy. The case of *Larsen v. Hawaiian Kingdom*[10] was qualified by the PCA as a dispute between a State (The Hawaiian Kingdom) and a Private entity (Lance Paul Larsen).[11] In particular, the Hawaiian Kingdom was qualified as a non-Contracting Power under Article 47 of the 1907 Convention for the Pacific Settlement of International Disputes.[12] In addition, since the PCA allowed the Council of Regency to represent the Hawaiian Kingdom in the arbitration, it also implicitly recognized the former as the government of the latter.[13]

According to a civil law perspective, the juridical act of the International Bureau of the PCA instituting the arbitration in the case of *Larsen v. Hawaiian Kingdom* may be compared – *mutatis mutandis* – to a juridical act of a domestic judge recognizing a juridical fact (e.g. *filiation*) which is productive of certain legal effects arising from it according to law. Said legal effects may include, depending on applicable law, the power to stand before a court with the purpose of invoking certain rights. In the context of the *Larsen* arbitration, the juridical fact recognized by the PCA in favour of the Hawaiian Kingdom was its quality of *State* under international law. Among the legal effects produced by such a juridical fact, the entitlement of the Hawaiian Kingdom to be part of an international arbitration under the auspices of the PCA was included, since the existence of said juridical fact actually represented an indispensable condition for the Hawaiian Kingdom to be admitted in the *Larsen* arbitration, *vis-à-vis* a private entity (Lance Paul Larsen). Consequently, the

[8] See Armando Cecatiello, "Recognition of the natural child", available at <https://www.cecatiello.it/en/riconoscimento-del-figlio-naturale-2/> (accessed on 4 December 2021).

[9] The *PCA Arbitration Rules 2012* (available at <https://docs.pca-cpa.org/2015/11/PCA-Arbitration-Rules-2012.pdf>, accessed on 5 December 2021) constitute a consolidation of the following set of PCA procedural rules: the *Optional Rules for Arbitrating Disputes between Two States (1992)*; the *Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State* (1993); the *Optional Rules for Arbitration Between International Organizations and States* (1996); and *the Optional Rules for Arbitration Between International Organizations and Private Parties (1996)*.

[10] Case number 1999-01.

[11] See <https://pca-cpa.org/en/cases/35/> (accessed on 5 December 2021).

[12] Available at <https://docs.pca-cpa.org/2016/01/1907-Convention-for-the-Pacific-Settlement-of-International-Disputes.pdf> (accessed on 5 December 2021).

[13] See Declaration of Professor Federico Lenzerini [ECF 55-2].

International Bureau of the PCA carried out the juridical act consisting in establishing the arbitral tribunal as an effect of the recognition of the juridical fact in point. Likewise, e.g., the recognition of the juridical fact of filiation by a domestic judge, also the recognition of the Hawaiian Kingdom as a State had in principle retroactive effects, in the sense that the Hawaiian Kingdom did *not* acquire the condition of State per effect of the PCA's juridical act. Rather, the Hawaiian Kingdom's Statehood was a juridical fact that the PCA recognized as *pre-existing* to its juridical act.

The Effects of the Juridical Act of the PCA Recognizing the Juridical Fact of the Continued Existence of the Hawaiian Kingdom as a State and the Council of Regency as its government

At the time of the establishment of the *Larsen* arbitral tribunal by the PCA, the latter had 88 contracting parties.[14] One may safely assume that the PCA's juridical act consisting in the recognition of the juridical fact of the Hawaiian Kingdom as a State, through the institution of the *Larsen* arbitration, reflected a view shared by all such parties, on account of the fact that the decision of the International Bureau of the PCA was not followed by any complaints by any of them. In particular, it is especially meaningful that there was "no evidence that the United States, being a Contracting State [indirectly concerned by the *Larsen* arbitration], protested the International Bureau's recognition of the Hawaiian Kingdom as a State in accordance with Article 47".[15] On the contrary, the United States appeared to provide its acquiescence to the establishment of the arbitration, as it entered into an agreement with the Council of Regency of the Hawaiian Kingdom to access all records and pleadings of the dispute.

Under international law, the juridical act of the PCA recognizing the juridical fact of the Hawaiian Kingdom as a State may reasonably be considered as an important manifestation of – contextually – State practice and *opinio juris*, in support of the assumption according to which the Hawaiian Kingdom is actually – and has never ceased to be – a sovereign and independent State pursuant to customary international law. As noted a few lines above, it may be convincingly held that the PCA contracting parties actually agreed with the recognition of the juridical fact of the Hawaiian Kingdom as a State carried out by the International Bureau. In fact, in international law, *acquiescence* "concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State [or an international institution] would be called for".[16] The case in discussion is evidently a situation in the context of which, in the event that any of the PCA contracting parties would have disagreed with the recognition of the continued existence of the Hawaiian Kingdom as a State by the International Bureau through its juridical act, an explicit reaction would have been necessary. Since they "did not do so […] thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset*".[17]

[14] See <https://pca-cpa.org/en/about/introduction/contracting-parties/> (accessed on 5 December 2021).
[15] See David Keanu Sai, "The 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 (Honolulu 2020) 12, at 25.
[16] See Nuno Sérgio Marques Antunes, "Acquiescence", in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (2006), at para. 2.
[17] See International Court of Justice, *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

Exhibit “4”

LEGAL OPINION ON THE AUTHORITY OF THE COUNCIL OF REGENCY OF THE HAWAIIAN KINGDOM

PROFESSOR FEDERICO LENZERINI*

As requested in the Letter addressed to me, on 11 May 2020, by Dr. David Keanu Sai, Ph.D., Head of the Hawaiian Royal Commission of Inquiry, I provide below a legal opinion in which I answer the three questions included in the above letter, for purposes of public awareness and clarification of the Regency's authority.

a) Does the Regency have the authority to represent the Hawaiian Kingdom as a State that has been under a belligerent occupation by the United States of America since 17 January 1893?

1. In order to ascertain whether the Regency has the authority to represent the Hawaiian Kingdom *as a State*, it is preliminarily necessary to ascertain whether the Hawaiian Kingdom can actually be considered a State under international law. To this purpose, two issues need to be investigated, i.e.: a) whether the Hawaiian Kingdom was a State at the time when it was militarily occupied by the United States of America, on 17 January 1893; b) in the event that the solution to the first issue would be positive, whether the continuous occupation of Hawai'i by the United States, from 1893 to present times, has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law.
2. With respect to the first of the abovementioned issues, as acknowledged by the Arbitral Tribunal of the Permanent Court of Arbitration (PCA) in the *Larsen* case, "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."[1] At the time of the American occupation, the Hawaiian Kingdom fully satisfied the four elements of statehood prescribed by customary international law, which were later codified by the *Montevideo Convention on the Rights and Duties of States* in 1933[2]: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states. This is confirmed by the fact that

> "the Hawaiian Kingdom became a full member of the Universal Postal Union on 1 January 1882, maintained more than a hundred legations and consulates throughout the world, and entered into extensive diplomatic and treaty relations with other States that included Austria-Hungary,

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[1] See *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports*, 2001, 566, at 581.

[2] See *Montevideo Convention on the Rights and Duties of States*, 1933, 165 *LNTS* 19, Article 1. This article codified the so-called *declarative* theory of statehood, already accepted by customary international law; see Thomas D. Grant, "Defining Statehood: The Montevideo Convention and its Discontents", 37 *Columbia Journal of Transnational Law*, 1998-1999, 403; Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity*", The Hague/Boston/London, 2000, at 77; David J. Harris (ed.), *Cases and Materials on International Law*, 6th Ed., London, 2004, at 99.

> Belgium, Bremen, Denmark, France, Germany, Great Britain, Hamburg, Italy, Japan, Netherlands, Portugal, Russia, Spain, Sweden-Norway, Switzerland and the United States".[3]

It is therefore unquestionable that **in the 1890s the Hawaiian Kingdom was an independent State and, consequently, a subject of international law**. This presupposed that its territorial sovereignty and internal affairs could not be legitimately violated by other States.

3. Once established that the Hawaiian Kingdom was actually a State, under international law, at the time when it was militarily occupied by the United States of America, on 17 January 1893, it is now necessary to determine whether the continuous occupation of Hawai'i by the United States from 1893 to present times has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law. This issue is undoubtedly controversial, and may be considered according to different perspectives. As noted by the Arbitral Tribunal established by the PCA in the *Larsen* case, in principle the question in point might be addressed by means of a careful assessment carried out through "having regard *inter alia* to the lapse of time since the annexation [by the United States], subsequent political, constitutional and international developments, and relevant changes in international law since the 1890s".[4]
4. However – beyond all speculative argumentations and the consequential conjectures that might be developed depending on the different perspectives under which the issue in point could be addressed – in reality the argument which appears to overcome all the others is that a long-lasting and well-established rule of international law exists establishing that military occupation, irrespective of the length of its duration, *cannot* produce the effect of extinguishing the sovereignty and statehood of the occupied State. In fact, the validity of such a rule has *not* been affected by whatever changes occurred in international law since the 1890s. Consistently, as emphasized by the Swiss arbitrator Eugène Borel in 1925, in the famous *Affaire de la Dette publique ottomane*,

> "[q]uels que soient les effets de l'occupation d'un territoire par l'adversaire avant le rétablissement de la paix, il est certain qu'à elle seule cette occupation ne pouvait opérer juridiquement le transfert de souveraineté […] L'occupation, par l'un des belligérants, de […] territoire de l'autre belligérant est un pur fait. C'est un état de choses essentiellement provisoire, qui ne substitue pas légalement l'autorité du belligérant envahisseur à celle du belligérant envahi".[5]

This position was confirmed by, among others, the US Military Tribunal at Nuremberg in 1948, holding that "[i]n belligerent occupation the occupying power does not hold enemy territory by virtue of any legal right. On the contrary, it merely exercises a precarious and temporary actual control".[6] Indeed, as noted, much more recently, by Yoram Dinstein, "occupation does not affect sovereignty. The displaced sovereign loses possession of the occupied territory de facto but it retains title *de jure* [i.e. "as a matter of law"]".[7] In this regard, as previously specified, this

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[3] See David Keanu Sai, "Hawaiian Constitutional Governance", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 58, at 64 (footnotes omitted).

[4] See *Larsen v. Hawaiian Kingdom*, *supra* n. 1, at 9.2.

[5] See *Affaire de la Dette publique ottomane (Bulgarie, Irak, Palestine, Transjordanie, Grèce, Italie et Turquie)*, 18 April 1925, *Reports of International Arbitral Awards*, Volume I, 529, also available at <https://legal.un.org/riaa/cases/vol_I/529-614.pdf> (accessed on 16 May 2020), at 555 ("whatever are the effects of the occupation of a territory by the enemy before the re-establishment of peace, it is certain that such an occupation alone cannot legally determine the transfer of sovereignty […] The occupation, by one of the belligerents, of […] the territory of the other belligerent is nothing but a pure fact. It is a state of things essentially provisional, which does not legally substitute the authority of the invading belligerent to that of the invaded belligerent").

[6] See *USA v. Otto Ohlendorf et al. (Einsatzgruppen Trial)*, 10 April 1948, (1948) *LRTWC* 411, at 492.

[7] See Yoram Dinstein, *The International Law of Belligerent Occupation*, 2nd Ed., Cambridge, 2019, at 58.

conclusion can in no way be influenced by the length of the occupation in time, as "[p]rolongation of the occupation does not affect its innately temporary nature".[8] It follows that "'precarious' as it is, the sovereignty of the displaced sovereign over the occupied territory is not terminated" by belligerent occupation.[9] Under international law, "le transfert de souveraineté ne peut être considéré comme effectué juridiquement que par l'entrée en vigueur du Traité qui le stipule et à dater du jour de cette mise en vigueur",[10] which means, in the words of the famous jurist Oppenheim, that "[t]he only form in which a cession [of sovereignty] can be effected is an agreement embodied in a treaty between the ceding and the acquiring State. Such treaty may be the outcome of peaceable negotiations or of war".[11] Such a conclusion corresponds to "a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts".[12]

5. The United States has taken possession of the territory of Hawai'i solely through de facto occupation and unilateral annexation, without concluding any treaty with the Hawaiian Kingdom. Furthermore, it appears that such an annexation has taken place in contravention of the rule of *estoppel*. At it is known, in international law "the doctrine of estoppel protects legitimate expectations of States induced by the conduct of another State".[13] On 18 December 1893 President Cleveland concluded with Queen Lili'uokalani a treaty, by executive agreement, which obligated the President to restore the Queen as the Executive Monarch, and the Queen thereafter to grant clemency to the insurgents.[14] Such a treaty, which was never carried into effect by the United States, would have precluded the latter from claiming to have acquired Hawaiian territory, because it had evidently induced in the Hawaiian Kingdom the legitimate expectation that the sovereignty of the Queen would have been reinstated, an expectation which was unduly frustrated through the annexation. It follows from the foregoing that, according to a plain and correct interpretation of the relevant legal rules, **the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and a subject of international law**, despite the long and effective exercise of the attributes of government by the United States over Hawaiian territory.[15] In fact, in the event of illegal annexation, "the legal existence of […] States [is] preserved from extinction",[16] since "illegal occupation cannot of itself terminate statehood".[17] The possession of the attribute of statehood by the Hawaiian Kingdom was substantially confirmed by the PCA, which, before establishing the Arbitral Tribunal for the *Larsen* case, had to get assured that one of the parties of the arbitration was a State, as a necessary precondition for its jurisdiction to exist. In

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[8] Ibid.

[9] Ibid. (footnotes omitted). See also, consistently, Peter M.R. Stirk, *The Politics of Military Occupation*, Edinburgh, 2009, at 168 and 230.

[10] See *Affaire de la Dette publique ottomane*, *supra* n. 5, at 555 ("the transfer of sovereignty can only be considered legally effected by the entry into force of a treaty which establishes it and from the date of such entry into force").

[11] See Lassa FL Oppenheim, *Oppenheim's International Law*, 7th Ed., vol. 1, 1948, at 500.

[12] See Jean S. Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, Geneva, 1958, at 275.

[13] See Thomas Cottier, Jörg Paul Müller, "Estoppel", *Max Planck Encyclopedias of International Law*, April 2007, available at <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1401> (accessed on 20 May 2020).

[14] See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 1269, available at <https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf> (accessed on 20 May 2020).

[15] In this respect, it is to be emphasized that "a sovereign State would continue to exist despite its government being overthrown by military force"; see David Keanu Sai, "The Royal Commission of Inquiry", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 12, at 14.

[16] See James Crawford, *The Creation of States in International Law*, 2nd Ed., Oxford, 2006, at 702.

[17] See Ian Brownlie, *Principles of Public International Law*, 7th Ed., Oxford, 2008, at 78.

that case, the Hawaiian Kingdom was actually qualified as a "State", while the Claimant – Lance Paul Larsen – as a "Private entity."[18]

6. The conclusion according to which the Hawaiian Kingdom cannot be considered as having been extinguished – as a State – as a result of the American occupation also allows to confirm, *de plano*, that the Hawaiian Kingdom, as an independent State, **has been under uninterrupted belligerent occupation by the United States of America, from 17 January 1893 up to the moment of this writing**. This conclusion cannot be validly contested, even by virtue of the hypothetical consideration according to which, since the American occupation of Hawai'i has not substantially involved the use of military force, and has not encountered military resistance by the Hawaiian Kingdom,[19] it consequently could not be considered as "belligerent". In fact, a territory is considered occupied "when it is placed under the authority of the hostile army […] The law on occupation applies to all cases of partial or total occupation, even if such occupation does not encounter armed resistance. The essential ingredient for applicability of the law of occupation is therefore the actual control exercised by the occupying forces".[20] This is consistent with the rule expressed in Article 42 of the Regulations annexed to the *Hague Convention (IV) respecting the Laws and Customs of War on Land* of 1907 – affirming that a "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army" – as well as with Article 2 common to the four Geneva Conventions of 1949, establishing that such Conventions apply "to all cases of partial or total occupation of the territory of a High Contracting Party, *even if the said occupation meets with no armed resistance*" (emphasis added).
7. Once having ascertained that, under international law, the Hawaiian Kingdom continues to exist as an independent State, it is now time to assess the legitimacy and powers of the Regency. According to the *Lexico Oxford Dictionary*, a "regency" is "[t]he office of or period of government by a regent".[21] In a more detailed manner, the *Black's Law Dictionary*, which is the most trusted and widely used legal dictionary in the United States, defines the term in point as "[t]he man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the king".[22] Therefore, it appears that, in consideration of the current situation of the Hawaiian Kingdom, a regency is the right body entitled to provisionally exercise the powers of the Hawaiian Executive Monarch in the absence of the latter, an absence which forcibly continues at present due to the persistent situation of military occupation to which the Hawaiian territory is subjected.
8. In legal terms, the legitimacy of the Hawaiian Council of Regency is grounded on Articles 32 and 33 of the *Hawaiian Kingdom Constitution* of 1864. In particular, Article 32 states that "[w]henever, upon the decease of the Reigning Sovereign, the Heir shall be less than eighteen years of age, the Royal Power shall be exercised by a Regent Council of Regency; as hereinafter provided". As far as Article 33 is concerned, it affirms that

> "[i]t shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a Regent or Council of Regency, who shall administer the Government in

[18] See <https://pcacases.com/web/view/35> (accessed on 16 May 2020).
[19] It is to be noted, in this respect, that no armed resistance was opposed to the occupation despite the fact that, as acknowledged by US President Cleveland, the Queen "had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal"; see United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 453, available at <https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf> (accessed on 20 May 2020).
[20] See International Committee of the Red Cross, "The Law of Armed Conflict. Belligerent Occupation", Geneva, June 2002, available at <https://www.icrc.org/en/doc/assets/files/other/law9_final.pdf> (accessed on 17 May 2020), at 3.
[21] See <https://www.lexico.com/en/definition/regency> (accessed on 17 May 2020).
[22] See <https://thelawdictionary.org/regency/> (accessed on 17 May 2020).

> His name; and likewise the King may, by His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne; and 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 of 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, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign".

The Council of Regency was established by proclamation on February 28, 1997, by virtue of the offices made vacant in the Cabinet Council, on the basis of the doctrine of necessity, the application of which was justified by the absence of a Monarch. Therefore, **the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom**. The Council of Regency, composed by *de facto* officers, is actually serving as the provisional government of the Hawaiian Kingdom, and, should the military occupation come to an end, it shall immediately convene the Legislative Assembly, which "shall proceed to choose by ballot, a Regent of 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" until it shall not be possible to nominate a Monarch, pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864.

9. In light of the foregoing – particularly in consideration of the fact that, under international law, the Hawaiian Kingdom continues to exist as an independent State, although subjected to a foreign occupation, and that the Council of Regency has been established consistently with the constitutional principles of the Hawaiian Kingdom and, consequently, possesses the legitimacy of temporarily exercising the functions of the Monarch of the Kingdom – it is possible to conclude that **the Regency actually 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**.

b) Assuming the Regency does have the authority, what effect would its proclamations have on the civilian population of the Hawaiian Islands under international humanitarian law, to include its proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State on 3 June 2019?

10. As previously ascertained, the Council of Regency actually possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom and, consequently, has the authority to represent the Hawaiian Kingdom as a State pending the American occupation and, in any case, up to the moment when it shall be possible to convene the Legislative Assembly pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864. This means 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**.
11. In principle, however, such rights and powers are quite limited, by reason of the fact that the governmental authority of a government of a State under military occupation has been replaced by that of the occupying power, "[t]he authority of the legitimate power having in fact passed into the

hands of the occupant".[23] At the same time, the ousted government retains the function and the duty of, to the extent possible, preserving order, protecting the rights and prerogatives of local people and continuing to promote the relations between its people and foreign countries. In the *Larsen* case, the claimant even asserted that the Council of Regency had "an obligation and a responsibility under international law, to take steps to protect Claimant's nationality as a Hawaiian subject";[24] the Arbitral Tribunal established by the PCA, however, did not provide a response regarding this claim. In any event, leaving aside the latter specific aspect, in light of its position the Council of Regency may to a certain extent interact with the exercise of the authority by the occupying power. This is consistent with the fact that the occupant is under an international obligation 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".[25] Indeed, as noted by the eminent jurist Robert Y. Jennings in an influential article published in 1946,[26] one of the main purposes of the law of belligerent occupation is to protect the sovereign rights of the legitimate government of the occupied territory, and the obligations of the occupying power in this regard continue to exist "even when, in disregard of the rules of international law, it claims […] to have annexed all or part of an occupied territory".[27] It follows that, the ousted government being the entity which represents the "legitimate government" of the occupied territory, it may "attempt to influence life in the occupied area out of concern for its nationals, to undermine the occupant's authority, or both. One way to accomplish such goals is to legislate for the occupied population".[28] In fact, "occupation law does not require an exclusive exercise of authority by the Occupying Power. It allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory".[29] While in several cases occupants have maintained the inapplicability to the occupied territory of new legislation enacted by the occupied government, for the reason that it "could undermine their authority […] the majority of post-World War II scholars, also relying on the practice of various national courts, have agreed that the occupant should give effect to the sovereign's new legislation as long as it addresses those issues in which the occupant has no power to amend the local law, most notably in matters of personal status".[30] The Swiss Federal Tribunal has even held that "[e]nactments by the [exiled government] are constitutionally laws of the [country] and applied *ab initio* to the territory occupied […] even though they could not be effectively implemented until the liberation".[31] Although this position was taken with specific regard to exiled governments, and the Council of Regency was not established *in exile* but *in situ*, the conclusion, to the extent that it is considered valid, would not substantially change as regards the Council of Regency itself.

12. It follows from the foregoing that, under international humanitarian law, **the proclamations of the Council of Regency are not divested of effects as regards the civilian population of the Hawaiian Islands**. In fact, considering these proclamations as included in the concept of "legislation" referred

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[23] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

[24] See *Larsen v. Hawaiian Kingdom*, *supra* n. 1, at 12.8.

[25] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

[26] See "Government in Commission", 23 *British Year Book of International Law*, 1946, 112.

[27] See Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, *supra* n. 12, at 276.

[28] See Eyal Benvenisti, *The International Law of Occupation*, 2nd Ed., Oxford, 2012, at 104.

[29] See Philip Spoerri, "The Law of Occupation", in Andrew Clapham and Paola Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford, 2014, 182, at 190.

[30] See Benvenisti, *The International Law of Occupation*, *supra* n. 28, at 104-105.

[31] See *Ammon v. Royal Dutch Co.*, 21 *International Law Reports*, 1954, 25, at 27.

to in the previous paragraph,[32] they might even, if the concrete circumstances of the case so allow, apply retroactively at the end of the occupation, irrespective of whether or not they must be respected by the occupying power during the occupation, on the condition that the legislative acts in point do not "disregard the rights and expectations of the occupied population".[33] It is therefore necessary that the occupied government refrains "from using the national law as a vehicle to undermine public order and civil life in the occupied area".[34] In other words, in exercising the legislative function during the occupation, the ousted government is subjected to the condition of not undermining the rights and interests of the civilian population. However, once the latter requirement is actually respected, the proclamations of the ousted government – including, in the case of Hawai'i, those of the Council of Regency – may be considered applicable to local people, unless such applicability is explicitly refuted by the occupying authority, in its position of an entity bearing "the ultimate and overall responsibility for the occupied territory".[35] In this regard, however, it is reasonable to assume that the occupying power should not deny the applicability of the above proclamations when they do not undermine, or significantly interfere with the exercise of, its authority. This would be consistent with the obligation of the occupying power "to maintain the status quo ante (i.e. as it was before) in the occupied territory as far as is practically possible",[36] considering that local authorities are better placed to know what are the actual needs of the local population and of the occupied territory, in view of guaranteeing that the status quo ante is effectively maintained.

13. As regards, specifically, the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019,[37] it reads as follows:

> "Whereas, in order to account for the present circumstances of the prolonged illegal occupation of the Hawaiian Kingdom and to provide a temporary measure of protection for its territory and the population residing therein, the public safety requires action to be taken in order for the State of Hawai'i and its Counties to begin to comply with the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law:
> Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby recognize the State of Hawai'i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law;
> And, We do hereby further proclaim that the State of Hawai'i and its Counties shall preserve the sovereign rights of the Hawaiian Kingdom government, and to protect the local population from exploitation of their persons and property, both real and personal, as well as their civil and political rights under Hawaiian Kingdom law".

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[32] This is consistent with the assumption that the expression "laws in force in the country", as used by Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907 (see *supra*, text corresponding to n. 25), "refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents […] as well as administrative regulations and executive orders"; see Marco Sassòli, "Legislation and Maintenance of Public Order and Civil Life by Occupying Powers", 16 *European Journal of International Law*, 2005, 661, at 668-69.

[33] See Benvenisti, *The International Law of Occupation*, *supra* n. 28, at 105.

[34] Ibid., at 106.

[35] See *supra*, text corresponding to n. 29.

[36] See International Committee of the Red Cross, "The Law of Armed Conflict. Belligerent Occupation", *supra* n. 20, at 9.

[37] Available at <https://www.hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf> (accessed on 18 May 2020).

As it is evident from a plain reading of its text, this Proclamation pursues the clear purpose of ensuring the protection of the Hawaiian territory and the people residing therein against the prejudicial effects which may arise from the occupation to which such a territory is actually subjected. Therefore, it represents a legislative act aimed at furthering the interests of the civilian population through ensuring the correct administration of their rights and of the land. As a consequence, it has the nature of an act that is equivalent, in its rationale and purpose (although not in its precise subject), to a piece of legislation concerning matters of personal status of the local population, requiring the occupant to give effect to it.[38] It is true that the Proclamation of 3 June 2019 takes a precise position on the status of the occupying power, the State of Hawai'i and its Counties being a direct emanation of the United States of America. However, in doing so, the said Proclamation simply reiterates an aspect that is self-evident, since the fact that the State of Hawai'i and its Counties belong to the political organization of the occupying power, and that they are de facto administering the Hawaiian territory, is objectively irrefutable. It follows that the Proclamation in discussion simply restates rules already existing under international humanitarian law. In fact, the latter clearly establishes the obligation of the occupying power to preserve the sovereign rights of the occupied government (as previously ascertained in this opinion),[39] the "overarching principle [of the law of occupation being] that an occupant does not acquire sovereignty over an occupied territory and therefore any occupation must only be a temporary situation".[40] Also, it is beyond any doubts that an occupying power is bound to guarantee and protect the human rights of the local population, as defined by the international human rights treaties of which it is a party as well as by customary international law. This has been authoritatively confirmed, *inter alia*, by the International Court of Justice.[41] While the Proclamation makes reference to the duty of the State of Hawai'i and its Counties to protect the human rights of the local population "under Hawaiian Kingdom law", and not pursuant to applicable international law, this is consistent with the obligation of the occupying power to respect, to the extent possible, the law in force in the occupied territory. In this regard, respecting the domestic laws which protect the human rights of the local population undoubtedly falls within "the extent possible", because it certainly does not undermine, or significantly interfere with the exercise of, the authority of the occupying power, and is consistent with existing international obligations. In other words, the occupying power cannot be considered "absolutely prevented"[42] from applying the domestic laws protecting the human rights of the local population, unless it is demonstrated that the level of protection of human rights guaranteed by Hawaiian Kingdom law is less advanced than human rights standards established by international law. Only in this case, the occupying power would be under a duty to ensure in favour of the local population the higher level of protection of human rights guaranteed by international law. In sum, **the Council of Regency's Proclamation of 3 June 2019 may be considered as a domestic act implementing international rules at the internal level,**

[38] See *supra* text corresponding to n. 30.

[39] See, in particular, *supra*, para. 11.

[40] See United Nations, Officer of the High Commissioner of Human Rights, "Belligerent Occupation: Duties and Obligations of Occupying Powers", September 2017, available at <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ohchr_syria_-_belligerent_occupation_-_legal_note_en.pdf> (accessed on 19 May 2020), at 3.

[41] See, in particular, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, *ICJ Reports*, 2004, at 111-113; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgement of 19 December 2005, at 178. For a more comprehensive assessment of this issue see Federico Lenzerini, "International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation of the Hawaiian Kingdom", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 173, at 203-205.

[42] See *supra*, text corresponding to n. 25

which should be effected by the occupying power pursuant to international humanitarian law, since it does not undermine, or significantly interfere with the exercise of, its authority.

14. It may be concluded that, under international humanitarian law, **the proclamations of the Council of Regency** – including the Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State on 3 June 2019 – **have on the civilian population the effect of acts of domestic legislation aimed at protecting their rights and prerogatives, which should be, to the extent possible, respected and implemented by the occupying power**.

c) Comment on the working relationship between the Regency and the administration of the occupying State under international humanitarian law.

15. As previously noted, "occupation law […] allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory".[43] This said, it is to be kept well in mind that belligerent occupation necessarily has a *non-consensual nature*. In fact, "[t]he absence of consent from the state whose territory is subject to the foreign forces' presence […] [is] a precondition for the existence of a state of belligerent occupation. Without this condition, the situation would amount to a 'pacific occupation' not subject to the law of occupation".[44] At the same time, we also need to remember that the absence of armed resistance by the territorial government can in no way be interpreted as determining the existence of an implied consent to the occupation, consistently with the principle enshrined by Article 2 common to the four Geneva Conventions of 1949.[45]. On the contrary, the consent, "for the purposes of occupation law, […] [must] be genuine, valid and explicit".[46] It is evident that such a consent has never been given by the government of the Hawaiian Kingdom. On the contrary, the Hawaiian government opposed the occupation since its very beginning. In particular, Queen Lili'uokalani, executive monarch of the Hawaiian Kingdom, on 17 January 1893 stated that,

> "to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands".[47]

The opposition to the occupation has never been abandoned up to the time of this writing, although for some long decades it was stifled by the policy of *Americanization* brought about by the US government in the Hawaiian Islands. It has eventually revived in the last three lustrums, with the establishment of the Council of Regency.

16. Despite the fact that the occupation inherently configures as a situation unilaterally imposed by the occupying power – any kind of consent of the ousted government being totally absent – there still is some space for "cooperation" between the occupying and the occupied government – in the specific case of Hawai'i between the State of Hawai'i and its Counties and the Council of Regency.

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[43] See *supra*, text corresponding to n. 29.
[44] See Spoerri, "The Law of Occupation", supra n. 29, at 190.
[45] See *supra*, para. 6.
[46] See Spoerri, "The Law of Occupation", supra n. 29, at 190.
[47] See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 586.

Before trying to specify the characteristics of such a cooperation, it is however important to reiterate that, under international humanitarian law, the last word concerning any acts relating to the administration of the occupied territory is with the occupying power. In other words, "occupation law would allow for a vertical, but not a horizontal, sharing of authority […] [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory".[48] This vertical sharing of authority would reflect "the hierarchical relationship between the occupying power and the local authorities, the former maintaining a form of control over the latter through a top-down approach in the allocation of responsibilities".[49]

17. The cooperation referred to in the previous paragraph is implied or explicitly established in some provisions of the Fourth Geneva Convention of 1949. In particular, Article 47 states that

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

Through referring to possible agreements "concluded between the authorities of the occupied territories and the Occupying Power", this provision clearly implies the possibility of establishing cooperation between the occupying and the occupied government. More explicitly, Article 50 affirms that "[t]he Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children", while Article 56 establishes that, "[t]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory […]".

As far as United States practice is concerned, it acknowledges that "[t]he functions of the [occupied] government – whether of a general, provincial, or local character – continue only to the extent they are sanctioned".[50] With specific regard to cooperation with the occupied government, it is also recognized that "[t]he occupant may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions".[51]

18. Importantly, the provisions referred to in the previous paragraph exactly refer to issues related to the protection of civilian persons and of their rights, which is one of the two main aspects (together with the preservation of the sovereign rights of the Hawaiian Kingdom government) dealt with by the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019.[52] In practice, the cooperation advocated by the provisions in point may take different forms, one of which translates into the possibility for the ousted government to adopt legislative provisions concerning the above aspects. As previously seen, the occupying power has, *vis-à-vis* the ensuing legislation, a duty not to oppose to it, because it normally does not undermine, or significantly interfere with the exercise of, its authority. Further to this, it is reasonable to assume that – in light of the spirit and the contents of the provisions referred to in the previous paragraph – the occupying power has a duty to cooperate in giving

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[48] See International Committee of the Red Cross, *Expert Meeting. Occupation and Other Forms of Administration of Foreign Territory. Report*, Geneva, 2012, available at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf> (accessed on 20 May 2020), at 20.

[49] Ibid., at footnote 7.

[50] See "The Law of Land Warfare", *United States Army Field Manual* 27-10, July 1956, Section 367(a).

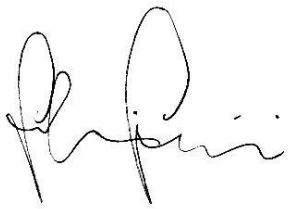
[51] Ibid., Section 367(b).

[52] See *supra*, text following n. 37.

realization to the legislation in point, unless it is "absolutely prevented" to do so. This duty to cooperate appears to be reciprocal, being premised on both the Council of Regency and the State of Hawai'i and its Counties to ensure compliance with international humanitarian law.

19. The latter conclusion is consistent with the logical (and legally-grounded) assumption that the ousted government is better placed than the occupying power in order to know what are the real needs of the civilian population and what are the concrete measures to be taken to guarantee an effective response to such needs. It follows that, through allowing the legislation in discussion to be applied – and through contributing in its effective application – the occupying power would better comply with its obligation, existing under international humanitarian law and human rights law, to guarantee and protect the human rights of the local population. It follows that the occupying power has a duty – if not a proper legal obligation – to cooperate with the ousted government to better realize the rights and interest of the civilian population, and, more in general, to guarantee the correct administration of the occupied territory.
20. In light of the foregoing, it may be concluded that **the working relationship between the Regency and the administration of the occupying State should 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**, provided that there are no objective obstacles for the occupying power to cooperate and that, in any event, the "supreme" decision-making power belongs to the occupying power itself. This conclusion is consistent with the position of the latter as "administrator" of the Hawaiian territory, as stated in the Council of Regency's Proclamation recognizing the State of Hawai'i and its Counties as the administration of the occupying State of 3 June 2019 and presupposed by the pertinent rules of international humanitarian law.

24 May 2020



Professor Federico Lenzerini

Exhibit “5”

DECLARATION OF DAVID KEANU SAI, Ph.D.

I, David Keanu Sai, declare the following:

1. Declarant is a Hawaiian subject residing in Mountain View, Island of Hawai'i, Hawaiian Kingdom. I am the Minister of the Interior, Minister of Foreign Affairs *ad interim*, and Chairman of the Council of Regency. Declarant served as Agent for the Hawaiian Kingdom in *Larsen v. Hawaiian Kingdom* arbitral proceedings at the Permanent Court of Arbitration from 1999-2001.

2. On or about mid-February 2000, declarant, as Agent for the Hawaiian Kingdom, had a phone conversation with the Secretary General of the Permanent Court of Arbitration (PCA), Tjaco T. van den Hout. In that conversation, the Secretary General stated to the declarant that the Secretariat was not able to find any evidence that the Hawaiian Kingdom had been extinguished as a State and admitted that the 1862 Hawaiian-Dutch Treaty was not terminated. The declarant understood that the Hawaiian Kingdom satisfied the PCA's institutional jurisdiction pursuant to Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes, I, whereby the PCA would be accessible to Non-Contracting States. The arbitral tribunal was not formed until June 9, 2000.

3. The Secretary General then stated to the declarant that in order to maintain the integrity of these proceedings, he recommended that the Hawaiian Kingdom Government provide a formal invitation to the United States to join in the arbitral proceedings. The declarant stated that he will bring this request up with the Council of Regency. After discussion, the Council of Regency accepted the Secretary General's request and declarant travelled by airplane with Ms. Ninia Parks, counsel for claimant, Lance P. Larsen, to Washington, D.C., on or about March 1, 2000.

4. On March 2, 2000, Ms. Parks and the declarant met with Sonia Lattimore, Office Assistant, L/EX, at 10:30 a.m. on the ground floor of the Department of State and presented her with two (2) binders, the first comprised of an Arbitration Log Sheet with accompanying documents on record at the Permanent Court of Arbitration. The second binder comprised of divers documents of the Acting Council of Regency as well as diplomatic correspondence with treaty partners of the Hawaiian Kingdom.

5. Declarant stated to Ms. Lattimore that the purpose of our visit was to provide these documents to the Legal Department of the U.S. State Department in order for the U.S. Government to be apprised of the arbitral proceedings already in train and that the Hawaiian Kingdom, by consent of the Claimant, extends an opportunity for the United States to join in the

arbitration as a party. Ms. Lattimore assured the declarant that the package would be given to Mr. Bob McKenna for review and assignment to someone within the Legal Department. Declarant told Ms. Lattimore that he and Ms. Parks will be in Washington, D.C., until close of business on Friday, and she assured declarant that she will call on declarant's cell phone by the close of business that day with a status report.

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

7. At 11:00 a.m., March 3, 2000, declarant called Mr. Crook and inquired about the receipt of the package. Mr. Crook stated that he did not have ample time to critically review the package but will get to it. Declarant stated that the reason for our visit was the offer by the Respondent Hawaiian Kingdom, by consent of the Claimant, by his attorney, for the United States Government to join in the arbitral proceedings already in motion. Declarant also advised Mr. Crook that Secretary General van den Hout of the PCA was aware of our travel to Washington, D.C., and the offer to join in the

arbitration. The Secretary General requested that the dialogue be reduced to writing and filed with the International Bureau of the PCA for the record.

8. Declarant further stated to Mr. Crook that enclosed in the binders were Hawaiian diplomatic protests lodged by declarant's former country men and women with the Depart of State in the summer of 1897, that are on record at the U.S. National Archives, in order for him to understand the gravity of the situation. Declarant also stated that included in the binders were two (2) protests by the declarant as an officer of the Hawaiian Government against the State of Hawai‘i for instituting unwarranted criminal proceedings against the declarant and other Hawaiian subjects under the guise of American municipal laws within the territorial dominion of the Hawaiian Kingdom.

9. In closing, the declarant stated to Mr. Crook that after a thorough investigation into the facts presented to his office, and following zealous deliberations as to the considerations offered, the Government of the United States shall resolve to decline our offer to enter the arbitration as a Party, the present arbitral proceedings shall continue without affect pursuant to the 1907 Hague Conventions IV and V, and the UNCITRAL Rules of arbitration. Mr. Crook acknowledged what was said and the conversation then came to a close. That day a letter confirming the content of the discussion was drafted by the declarant and sent to Mr. Crook. The letter

was also carbon copied to the Secretary General of the PCA, Ms. Parks, Mr. Keoni Agard, appointing authority for the arbitral proceedings, and Ms. Noelani Kalipi, Hawai‘i Senator Daniel Akaka’s Legislative Assistant.

10. Thereafter, the PCA’s Deputy Secretary General, Phyllis Hamilton, spoke with declarant over the phone and informed declarant that the United States, through its embassy in The Hague, notified the PCA that the United States had declined the invitation to join in the arbitral proceedings. Instead, the United requested permission from the Hawaiian Government and the Claimant to have access to the pleadings and records of the case. Both the Hawaiian Government and the Claimant consented to the United States’ request.

11. On March 21, 2000, Professor Christopher Greenwood, QC, was confirmed as an arbitrator, and on March 23, 2000, Gavan Griffith, QC, was confirmed as an arbitrator. On May 28, 2000, the arbitral tribunal was completed by the appointment of Professor James Crawford as the presiding arbitrator. On June 9, 2000, the parties jointly notified, by letter, to the Deputy Secretary General of the PCA that the arbitral tribunal had been duly constituted.

12. After written pleadings were filed by the parties with the PCA, oral hearings were held at the PCA on December 7, 8 and 11, 2000. The arbitral award was filed with the PCA on February 5, 2000 where the tribunal found that it

lacked subject matter jurisdiction because it concluded that the United States was an indispensable third party. Consequently, the Claimant was precluded from alleging that the Hawaiian Kingdom, by its Council of Regency, was liable for the unlawful imposition of American municipal laws over the Claimant's person within the territorial jurisdiction of the Hawaiian Kingdom without the participation of the United States.

13. After returning from The Hague in December of 2000, the Council of Regency determined that the declarant would enter University of Hawai'i at Mānoa as a graduate student in the political science department in order to directly address the misinformation regarding the continuity of the Hawaiian Kingdom as an independent and sovereign State that has been under a prolonged occupation by the United States since January 17, 1893 through research and publication of articles. The decision made by the Council of Regency was in accordance with Section 495—*Remedies of Injured Belligerent*, United States Army FM-27-10 states, "[i]n the event of violation of the law of war, the injured party may legally resort to remedial action of the following types: *a.* Publication of the facts, with a view to influencing public opinion against the offending belligerent."

14. The declarant received his master's degree in political science specializing in international relations and law in 2004 and received his Ph.D. degree in

political science with particular focus on the continuity of the Hawaiian Kingdom. Declarant has published multiple articles and books on the prolonged occupation of the Hawaiian Kingdom and its continued existence as a State under international law. Declarant's curriculum vitae can be accessed online at http://www2.hawaii.edu/~anu/pdf/CV.pdf. Declarant can be contacted at interior@hawaiiankingdom.org.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Mountain View, Hawaiian Kingdom, May 19, 2021.

David Keanu Sai