**DEXTER K. KA'IAMA, ESQ.**
*Acting* Attorney General
P.O. Box 2194
Honolulu, HI 96805-2194
Email: attorneygeneral@hawaiiankingdom.org

May 14, 2021

TO: All Offices, Officers, Agencies, Agents and/or such Duly Authorized Representative(s)

RE: NOTICE OF INTENT TO FILE IN THE U.S. FEDERAL COURT FOR THE DISTRICT OF HAWAI`I

This office hereby provides due Notice of Intent to File its Complaint for Declaratory and Injunctive Relief ("Complaint") and Plaintiff's Motion for Temporary Restraining Order ("TRO") in *Hawaiian Kingdom v. Joseph Robinnette Biden Jr. et al.* Copies of the unfiled Complaint and TRO are attached to this notice.

Respectfully,

Dexter K. Ka`iama

Encls.

DEXTER K. KA‘IAMA (Bar No. 4249)
DEPARTMENT OF THE ATTORNEY
GENERAL, HAWAIIAN KINGDOM
P.O. Box 2194
Honolulu, HI 96805-2194
Telephone: (808) 284-5675
Email: attorneygeneral@hawaiiankingdom.org

*Attorney for Plaintiff, Hawaiian Kingdom*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; JANE HARDY, in her official capacity as Australia’s Consul to Hawai‘i and the United Kingdom’s Consul to Hawai‘i; JOHANN URSCHITZ, in his official capacity as Austria’s Honorary Consul to Hawai‘i; M. JAN RUMI, in his official capacity as Bangladesh’s Honorary Consul to Hawai‘i and Morocco’s Honorary Consul to Hawai‘i; JEFFREY DANIEL LAU, in his official capacity as Belgium’s Honorary Consul to Hawai‘i; ERIC G.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; SUMMONS

CRISPIN, in his official capacity as Brazil's Honorary Consul to Hawai‘i; GLADYS VERNOY, in her official capacity as Chile's Honorary Consul to Hawai‘i; ANN SUZUKI CHING, in her official capacity as the Czech Republic's Honorary Consul to Hawai‘i; BENNY MADSEN, in his official capacity as Denmark's Honorary Consul to Hawai‘i; KATJA SILVERAA, in her official capacity as Finland's Honorary Consul to Hawai‘i; GUILLAUME MAMAN, in his official capacity as France's Honorary Consul to Hawai‘i; DENIS SALLE, in his official capacity as Germany's Honorary Consul to Hawai‘i; KATALIN CSISZAR, in her official capacity as Hungary's Honorary Consul to Hawai‘i; SHEILA WATUMULL, in her official capacity as India's Honorary Consul to Hawai‘i; MICHELE CARBONE, in his official capacity as Italy's Honorary Consul to Hawai‘i; YUTAKA AOKI, in his official capacity as Japan's Consul to Hawai‘i; JEAN-CLAUDE DRUI, in his official capacity as Luxembourg's Honorary Consul to Hawai‘i; ANDREW M. KLUGER, in his official capacity as Mexico's Honorary Consul to Hawai‘i; HENK ROGERS, in his official capacity as Netherland's Honorary Consul to Hawai‘i; KEVIN BURNETT, in his official capacity as New Zealand's Consul to Hawai‘i; NINA HAMRE FASI, in her official capacity as Norway's Honorary Consul to Hawai‘i; JOSELITO A. JIMENO, in his official capacity as the Philippines's Consul to Hawai‘i; BOZENA ANNA JARNOT, in her official capacity as Poland's Honorary Consul to Hawai‘i; TYLER DOS SANTOS-TAM, in his official capacity as Portugal's Honorary Consul to

Hawai‘i; R.J. ZLATOPER, in his official capacity as Slovenia’s Honorary Consul to Hawai‘i; HONG, SEOK-IN, in his official capacity as the Republic of South Korea’s Consul to Hawai‘i; JOHN HENRY FELIX, in his official capacity as Spain’s Honorary Consul to Hawai‘i; BEDE DHAMMIKA COORAY, in his official capacity as Sri Lanka’s Honorary Consul to Hawai‘i; ANDERS G.O. NERVELL, in his official capacity as Sweden’s Honorary Consul to Hawai‘i; THERES RYF DESAI, in her official capacity as Switzerland’s Honorary Consul to Hawai‘i; COLIN T. MIYABARA, in his official capacity as Thailand’s Honorary Consul to Hawai‘i; DAVID YUTAKA IGE, in his official capacity as Governor of the State of Hawai‘i; TY NOHARA, in her official capacity as Commissioner of Securities; DAMIEN ELEFANTE, in his official capacity as the acting director of the Department of Taxation of the State of Hawai‘i; RICK BLANGIARDI, in his official capacity as Mayor of the City & County of Honolulu; MITCH ROTH, in his official capacity as Mayor of the County of Hawai‘i; MICHAEL VICTORINO, in official capacity as Mayor of the County of Maui; DEREK KAWAKAMI, in his official capacity as Mayor of the County of Kaua‘i; CHARLES E. SCHUMER, in his official capacity as U.S. Senate Majority Leader; NANCY PELOSI, in her official capacity as Speaker of the United States House of Representatives; RON KOUCHI, in his official capacity as Senate President of the State of Hawai‘i; SCOTT SAIKI, in his official capacity as Speaker of the House of Representatives of the State of Hawai‘i;

TOMMY WATERS, in his official capacity as Chair and Presiding Officer of the County Council for the City and County of Honolulu; MAILE DAVID, in her official capacity as Chair of the Hawai‘i County Council; ALICE L. LEE, in her official capacity as Chair of the Maui County Council; ARRYL KANESHIRO, in his official capacity as Chair of the Kaua‘i County Council; the UNITED STATES OF AMERICA; the STATE OF HAWAI‘I; the CITY & COUNTY OF HONOLULU; the COUNTY OF HAWAI‘I; the COUNTY OF MAUI; and the COUNTY OF KAUA‘I,

Defendants.

## INTRODUCTION

1. The Council of Regency, in its official capacity as a government representing the Hawaiian Kingdom, brings this action to protect its officers of the Council of Regency, Dr. David Keanu Sai, Ph.D., Chairman of the Council of Regency, Minister of the Interior, and Minister of Foreign Relations *ad interim*, and Mrs. Kau‘i P. Sai-Dudoit, Minister of Finance.

2. The Council of Regency also brings this action on behalf of all Hawaiian subjects and resident aliens that reside within the territorial jurisdiction of the Hawaiian Kingdom that are subject to its laws.

## JURISDICTION AND VENUE

3. “A foreign sovereign…who has a demand of a civil nature against any person here, may prosecute it in our courts. To deny him this privilege would manifest a want of comity and friendly feeling.”[1] While this court is operating within the territory of the Hawaiian Kingdom and not within the territory of the United States, its jurisdiction is found as an Article II Court.[2] Being an Article II Court established during the Spanish-American War, the “jurisdiction of the Puerto Rican court was limited to those cases ‘which

[1] *The Sapphire v. Napoleon III*, 11 Wallace 164, 167 (1871).
[2] David J. Bederman, “Article II Courts,” 44 *Mercer L. Rev.* 825 (1992-1993).

would be properly cognizable by the circuit or district courts of the United States.'"[3]

4. This Court has Federal Question Jurisdiction under 28 U.S.C. § 1331 because this action arises under the U.S. Constitution and Treaties, which includes the 1849 Hawaiian-American Treaty of Friendship, Commerce and Navigation,[4] the 1907 Hague Convention, IV (1907 Hague Regulations),[5] the 1907 Hague Convention, V,[6] and the 1949 Geneva Convention, IV (1949 Fourth Geneva Convention).[7]

5. The Court is authorized to award the requested declaratory and injunctive relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) and (e)(1). The events giving rise to this claim occurred in this District, and the Defendants are being sued in their official capacities.

## PARTIES

7. DAVID KEANU SAI, Ph.D., is the Minister of the Interior, Minister of Foreign Affairs *ad interim*,[8] and Chairman of the Council of Regency. As

---

[3] *Id*., 844.
[4] 9 Stat. 977 (1841-1851).
[5] 36 Stat. 2277 (1907).
[6] 36 Stat. 2310 (1907).
[7] 6.3 U.S.T 3516 (1955).
[8] His Excellency Peter Umialiloa Sai, Minister of Foreign Affairs, died on October 17, 2018, and, thereafter, by proclamation of the Council of Regency on November

Minister of the Interior he is responsible for having "a general supervision over internal affairs of the kingdom, and to faithfully and impartially execute the duties assigned by law to his department."[9] As Minister of Foreign Affairs *ad interim* he is responsible for conducting "the correspondence of this Government, with diplomatic and consular agents of all foreign nations, accredited to this Government, and with the public ministers, consuls, and other agents of the Hawaiian Islands, in foreign countries, in conformity with the law of nations, and as the [Regency] shall, from time to time, order and instruct."[10] As Chairman of the Council of Regency he is responsible for the direction and overall management of the Council. The Chairman also served as Agent for the Hawaiian Kingdom in *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration case no. 1999-01.

8. KAUʻI P. SAI-DUDOIT is the Minister of Finance. The Minister of Finance is responsible for having "a general supervision over the financial affairs of the Kingdom, and to faithfully and impartially execute the duties assigned by law to [her] department. [She] is charged with the enforcement of all revenue

---

11, 2019, His Excellency Dr. David Keanu Sai was designated "to be Minister of Foreign Affairs *ad interim* while remaining as Minister of the Interior and Chairman of the Council of Regency," https://hawaiiankingdom.org/pdf/Proc_Minister_Foreign_Affairs_Ad_interim.pdf.

[9] §34, *Hawaiian Civil Code*, Compiled Laws of the Hawaiian Kingdom (1884).

[10] *Id*., §437.

laws; the collection of duties on foreign imports; the collection of taxes; the safe keeping and disbursement of the public moneys, and with all such other matters as may, by law, be placed in [her] charge."[11] The Minister of Finance also served as 3rd Deputy Agent for the Hawaiian Kingdom in *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration case no. 1999-01.

9. DEXTER KE'EAUMOKU KA'IAMA is the Attorney General. The Attorney General is charged with representing the Hawaiian Kingdom in Federal Court on matters of public concern.

10. The Civil Code of the Hawaiian Kingdom provides "[t]he laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws."[12]

11. The Council has an interest in protecting the health, safety, and welfare of its residents during the prolonged occupation of its territory by the United States since January 17, 1893 and ensuring international humanitarian law is complied with. Article 43 of the 1907 Hague Regulations and Article 46 of

[11] *Id*., §469.
[12] *Id*., §6.

the 1949 Fourth Geneva Convention, obliges the United States, as the occupying State, to administer the laws of the Hawaiian Kingdom, the occupied State. The Council also has an interest in the federal system where "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."[13] The Council's interests extend to all residents within Hawaiian territory to include resident aliens.

12. Defendant JOSEPH ROBINETTE BIDEN, JR. is the President of the United States. He is responsible for the faithful execution of United States laws.

13. Defendant KAMALA HARRIS is the Vice-President of the United States and President of the United States Senate. She is responsible for the faithful execution of United States laws and the enactment of United States legislation when presiding as President of the United States Senate.

14. Defendant ADMIRAL JOHN AQUILINO is the Commander of the U.S. Indo-Pacific Command.

15. Defendant CHARLES P. RETTIG is the Commissioner of the Internal Revenue Service. He is responsible for the United States tax system.

16. Defendant JANE HARDY is Australia's Consul to Hawai'i.

[13] *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 330-31 (1936).

17. Defendant JOHANN URSCHITZ is Austria's Honorary Consul to Hawai‘i.

18. Defendant M. JAN RUMI is Bangladesh's Honorary Consul to Hawai‘i and Morocco's Honorary Consul to Hawai‘i.

19. Defendant JEFFREY DANIEL LAU is Belgium's Honorary Consul to Hawai‘i.

20. Defendant ERIC G. CRISPIN is Brazil's Honorary Consul to Hawai‘i.

21. Defendant GLADYS VERNOY is Chile's Honorary Consul to Hawai‘i.

22. Defendant ANN SUZUKI CHING is the Czech Republic's Honorary Consul to Hawai‘i.

23. Defendant BENNY MADSEN is Denmark's Honorary Consul to Hawai‘i.

24. Defendant KATJA SILVERAA is Finland's Honorary Consul to Hawai‘i.

25. Defendant GUILLAUME MAMAN is France's Honorary Consul to Hawai‘i.

26. Defendant DENIS SALLE is Germany's Honorary Consul to Hawai‘i.

27. Defendant KATALIN CSISZAR is Hungary's Honorary Consul to Hawai‘i.

28. Defendant SHEILA WATUMULL is India's Honorary Consul to Hawai‘i.

29. Defendant MICHELE CARBONE is Italy's Honorary Consul to Hawai‘i.

30. Defendant YUTAKA AOKI is Japan's Consul to Hawai‘i.

31. Defendant JEAN-CLAUDE DRUI is Luxembourg's Honorary Consul to Hawai‘i.

32. Defendant ANDREW M. KLUGER is Mexico's Honorary Consul to Hawai‘i.

33. Defendant HENK ROGERS is Netherland's Honorary Consul to Hawai'i.

34. Defendant KEVIN BURNETT is New Zealand's Consul to Hawai'i.

35. Defendant NINA HAMRE FASI is Norway's Honorary Consul to Hawai'i.

36. Defendant JOSELITO A. JIMENO is the Philippines's Consul to Hawai'i.

37. Defendant BOZENA ANNA JARNOT is Poland's Honorary Consul to Hawai'i.

38. Defendant TYLER DOS SANTOS-TAM is Portugal's Honorary Consul to Hawai'i.

39. Defendant R.J. ZLATOPER is Slovenia's Honorary Consul to Hawai'i.

40. Defendant HONG, SEOK-IN is the Republic of South Korea's Consul to Hawai'i.

41. Defendant JOHN HENRY FELIX is Spain's Honorary Consul to Hawai'i.

42. Defendant BEDE DHAMMIKA COORAY is Sri Lanka's Honorary Consul to Hawai'i.

43. Defendant ANDERS G.O. NERVELL is Sweden's Honorary Consul to Hawai'i.

44. Defendant THERES RYF DESAI is Switzerland's Honorary Consul to Hawai'i.

45. Defendant COLIN T. MIYABARA is Thailand's Honorary Consul to Hawai'i.

46. Defendant DAVID YUTAKE IGE is the Governor of the State of Hawai‘i. He is responsible for faithful execution of State of Hawai‘i laws.

47. Defendant DAMIEN ELEFANTE is the acting director of the Department of Taxation of the State of Hawai‘i.

48. Defendant TY NOHARA is the Commissioner of Securities for the State of Hawai‘i.

49. Defendant RICK BLANGIARDI is the Mayor of the City & County of Honolulu. He is responsible for the faithful execution of City & County of Honolulu ordinances.

50. Defendant MITCH ROTH is the Mayor of Hawai‘i County. He is responsible for the faithful execution of Hawai‘i County ordinances.

51. Defendant MICHAEL VICTORINO is the Mayor of Maui County. He is responsible for the faithful execution of Maui County ordinances.

52. Defendant DEREK KAWAKAMI is the Mayor of Kaua‘i County. He is responsible for the faithful execution of Kaua‘i County ordinances.

53. Defendant CHARLES E. SCHUMER is the Majority Leader of the United States Senate. He is responsible for the enactment of United States legislation.

54. Defendant NANCY PELOSI is the Speaker of the United States House of Representatives. She is responsible for the enactment of United States legislation.

55. Defendant RON KOUCHI is the President of the Senate of the State of Hawai‘i. He is responsible for the enactment of State of Hawai‘i legislation.

56. Defendant SCOTT SAIKI is the Speaker of the House of Representatives of the State of Hawai‘i. He is responsible for the enactment of State of Hawai‘i legislation.

57. Defendant TOMMY WATERS is the Chair of the County Council for the City and County of Honolulu. He is responsible for the enactment of City and County of Honolulu legislation.

58. Defendant MAILE DAVID is the Chair of the Hawai‘i County Council. She is responsible for the enactment of Hawai‘i County legislation.

59. Defendant ALICE L. LEE is the Chair of the Maui County Council. She is responsible for the enactment of Maui County legislation.

60. Defendant ARRYL KANESHIRO is the Chair of the Kaua‘i County Council. He is responsible for the enactment of Kaua‘i County Council legislation.

61. Defendant UNITED STATES OF AMERICA includes all branches of government, their agencies and departments.

62. Defendant STATE OF HAWAI‘I includes all branches of government, their agencies and departments.

63. Defendant CITY & COUNTY OF HONOLULU includes all branches of government, their agencies and departments.

64. Defendant COUNTY OF HAWAI‘I includes all branches of government, their agencies and departments.

65. Defendant COUNTY OF MAUI includes all branches of government, their agencies and departments.

66. Defendant COUNTY OF KAUA‘I includes all branches of government, their agencies and departments.

## ALLEGATIONS

### A. Continuity of the Hawaiian Kingdom as an independent and sovereign State after its government was illegally overthrown by the United States on January 17, 1893

67. “[I]n 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.”[14] In a message to the Congress, President Grover Cleveland acknowledged that “[b]y an act of war, committed with the participation of a diplomatic representative of the United States and without the authority of Congress [on January 17, 1893], the Government of a feeble but friendly and confiding people has been

[14] *Larsen v. Hawaiian Kingdom*, 119 Int’l L. Reports 566, 581 (2001).

overthrown."[15] As a subject of international law, the Hawaiian State would continue to exist despite its government being unlawfully overthrown by the United States on January 17, 1893.

68. President Cleveland entered into a treaty, by exchange of notes, with Queen Lili'uokalani on December 18, 1893, whereby the President committed to restoring the Queen as the Executive Monarch, and, thereafter, the Queen committed to granting a full pardon to the insurgents. Political wrangling in the Congress, however, prevented President Cleveland from carrying out his obligations under the executive agreement. Five years later, the United States Congress enacted a joint resolution for the purported annexation of the Hawaiian Islands that was signed into law on July 7, 1898 by President William McKinley.

69. Professor Wright, a renowned American political scientist, states that "international law distinguishes between a government and the state it governs."[16] And Judge 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

[15] United States House of Representatives, 53d Cong., *Executive Documents on Affairs in Hawaii: 1894-95* 456 (1895), ("Executive Documents").
[16] Quincy Wright, "The Status of Germany and the Peace Proclamation," 46(2) *Am. J. Int'l L.* 299, 307 (1952).

occupied State."[17] 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."[18] 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."[19]

70. Professor Craven opined, "[i]f one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States."[20]

---

[17] James Crawford, *Creation of States in International Law* 34 (2nd ed., 2006).
[18] *Id*.
[19] *Id*, n. 157.
[20] Matthew Craven, "Continuity of the Hawaiian Kingdom as a State under International Law," in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 128 (2020).

## B. Constraints on United States Municipal Laws

71. 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 municipal 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."[21] Article 64 of the 1949 Fourth Geneva Convention also states, "[t]he penal laws of the occupied territory shall remain in force."[22]

72. Article 43 does not transfer sovereignty to the occupying power.[23] Section 358, United States Army Field Manual 27-10, declares, "military occupation confers upon the invading force the means of exercising control for the period

[21] 36 Stat. 2277, 2306 (1907).
[22] 6.3 U.S.T. 3516, 3558 (1955).
[23] See Eyal Benvenisti, *The International Law of Occupation* 8 (1993); Gerhard von Glahn, *The Occupation of Enemy of Territory—A Commentary on the Law and Practice of Belligerent Occupation* 95 (1957); Michael Bothe, "Occupation, Belligerent," in Rudolf Bernhardt (dir.), *Encyclopedia of Public International Law*, vol. 3, 765 (1997).

of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty." "The occupant," according to Professor Sassòli, "may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation." Professor Sassòli further explains that the "expression 'laws in force in the country' in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders."[24]

73. These provisions of the Hague Regulations and the Fourth Geneva Convention were customary international law before its codification under Article 43 of the 1899 Hague Convention, II, and succeeded under Article 43 of the 1907 Regulations and Article 64 of the 1949 Fourth Geneva Convention. Prior to its codification, these customary laws were 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

[24] Marco Sassòli, "Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century," *International Humanitarian Law Research Initiative* 6 (2004) (online at https://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf).

overthrow did not transfer Spanish sovereignty to the United States but triggered the customary international laws of occupation, which formed the basis for General Orders no. 101 issued by President McKinley to the War Department on July 13, 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.[25]

74. An armistice was eventually signed by the Spanish Government on August 12, 1898, after its territorial possessions of Philippines, Guam, Puerto Rico

[25] *Ochoa v. Hernandez*, 230 U.S. 139, 156 (1913).

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 February 6, 1899, and Spain on March 19. The treaty came into full force and effect on April 11, 1899.[26] It was after April 11 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. There is no treaty of cession between the Hawaiian Kingdom and the United States.

75. 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 resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent

[26] 30 Stat. 1754 (1899) (online at https://uniset.ca/fatca/b-es-ust000011-0615.pdf).

for a congressional assertion of sovereignty over an extended territorial sea."[27]

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.[28]

76. This OLC's conclusion is a position taken by the National Government similar to the OLC's position that federal prosecutors cannot charge a sitting president with a crime.[29] From a policy standpoint, OLC opinions bind the National Government to include its courts. 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*

---

[27] Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," 12 *Op. O.L.C.* 238, 252 (1988).
[28] *Id*.
[29] Randolph D. Moss, "A Sitting President's Amenability to Indictment and Criminal Prosecution," 24 *Op. O.L.C.* 222-260 (2000).

*Territory of Hawaii* in 1900, within the territory of a foreign State by legislation.[30] 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.[31]

77. In its 1824 decision in *The Apollon*, the Supreme Court concluded that the "laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."[32] The Hawaiian Kingdom Supreme Court also cited *The Apollon* in its 1858 decision, *In re Francis de Flanchet*, where the court stated that the "laws of a nation cannot have force to control the sovereignty or rights of any other nation within its own jurisdiction. And 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."[33] Both the *Apollon* and *Flanchet* cases addressed the imposition of French municipal laws within the territories of the United States and the Hawaiian Kingdom. Furthermore, the United States Supreme Court reiterated

[30] 31 Stat. 141 (1900).
[31] 73 Stat. 4 (1959).
[32] *The Apollon*, 22 U.S. 362, 370 (1824).
[33] *In Re Francis de Flanchet*, 2 Haw. 96, 108-109 (1858).

this principle in its 1936 decision in *United States v. Curtiss Wright Export Corp.*, where the Court stated:

> Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law. As a member of the family of nations, the right and power of the United States in that field are equal to the right and power of the other members of the international family.[34]

78. In the 1927 *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."[35] Therefore, it is a legal fact that United States legislation regarding Hawai'i, whether by a statute or by a joint resolution, have 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 Hawaiian Kingdom never consented to any cession

[34] *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).
[35] *Lotus*, PCIJ, ser. A no. 10 (1927), 18.

of its territorial sovereignty to the United States. The United States could no more unilaterally annex the Hawaiian Islands by enacting a municipal law in 1898 than it could unilaterally annex Canada today by enacting a municipal law.

79. Furthermore, the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation with the United States on December 20, 1849.[36] Article 8 provides, "and each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states, shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively (emphasis added)." The treaty was ratified by both parties and ratifications were exchanged on August 24, 1850. The treaty was proclaimed on November 9, 1850.

**C. Restoration of the Government of the Hawaiian Kingdom**

80. After the passing of Queen Lili'uokalani on November 11, 1917, the throne became vacant to be later filled by an elected Monarch in accordance with Article 22 of the 1864 Constitution.[37] This was the case when King Lunalilo

[36] 9 Stat. 977 (1841-1851).
[37] Art. 42, 1864 Hawaiian Constitution, provides, "In case there is no heir as above provided, then the successor shall be the person whom the Sovereign shall appoint

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, comprised of the Minister of the Interior, the Minister of Finance, the Minister of Foreign Affairs and the Attorney General,[38] 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."[39]

81. Since November 11, 1917, the office of the Monarch became vacant and remained vacant until the Hawaiian Kingdom Government was restored on

---

with the consent of the Nobles, and publicly proclaim as such during the King's life; but should there be no such appointment and proclamation, and the Throne should become vacant, then the Cabinet Council, immediately after the occurring of such vacancy, shall cause a meeting of the Legislative Assembly, who shall elect by ballot some native Alii of the Kingdom as Successor to the Throne; and the Successor so elected shall become a new *Stirps* for a Royal Family; and the succession from the Sovereign thus elected, shall be regulated by the same law as the present Royal Family of Hawaii."

[38] *Id*., Art. 42 provides, "The King's cabinet shall consist of the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance, and the Attorney General of the Kingdom."

[39] *Id*., Art. 33.

February 28, 1997 by proclamation of the *acting* Regent.[40] On September 26, 1999, the office of Regent was transformed into a Council of Regency by Privy Council resolution.[41] 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. In the words of Professor Wright, "mutual respect by states for one another's independence leaves the form and continuance of its government to the domestic jurisdiction of a state."[42]

82. With a view to bringing compliance with international humanitarian law by the State of Hawai'i and its County governments, and recognizing their effective control of Hawaiian territory in accordance with Article 42 of the 1907 Hague Regulations, the Council of Regency proclaimed and recognized

---

[40] 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).

[41] *Id.*, at 21.

[42] Quincy Wright, "Non-Military Intervention," in K.W. Deutsch and S. Hoffman (eds.), *The Relevance of International Law: Essays in Honor of Leo Gross* 14 (1968).

their existence as the administration of the occupying State on June 3, 2019. The proclamation read:

> 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.[43]

83. The State of Hawai‘i and its Counties, under the laws and customs of war during occupation, can now serve as the administrator of the ‘laws in force in the country,’ which includes the 2014 decree of provisional laws by the Council of Regency in accordance with Article 43. The 2014 proclamation read:

> And, We do hereby proclaim that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international

[43] Council of Regency, Proclamation Recognizing the State of Hawai‘i and its Counties (June 3, 2019) (online at https://hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf).

> laws of occupation and international humanitarian law, and if it be the case they shall be regarded as invalid and void.[44]

84. 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 January 17, 1893, both at the domestic and international level."[45] 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."[46]

85. 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

---

[44] Council of Regency, Proclamation of Provisional Laws of the Realm (October 10, 2014) (online at https://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf).
[45] Lenzerini, *Legal Opinion*, at para. 9. A copy of the legal opinion is attached as Exhibit 1.
[46] *Id*., para. 10. 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).

the law as applied to the assumed facts."[47] 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.

86. On the international plane, there is "no 'world government' [and] no central legislature with general law-making authority."[48] 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."[49] Article 38(1)(d) of the Statute of the International Court of Justice, when applied by the Court to settle international disputes, international law includes "judicial decisions and the teachings of the most highly qualified publicists of the various nations for the determination of rules of law."

87. The American Law Institute also concludes that, when "determining whether a rule has become international law, substantial weight is accorded to…the

[47] *Black's Law*, 896.
[48] American Law Institute*, Restatement of the Law (Third)—The Foreign Relations Law of the United States* 17 (1987).
[49] *Id*.

writings of scholars."[50] 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 (emphasis added).[51]

**D. United States Explicit Recognition of the continued existence of the Hawaiian Kingdom and the Council of Regency as its government**

[50] *Id*., §103(2)(c).
[51] *The Paquete Habana*, 175 U.S. 677, 700 (1900).

88. The unlawful imposition of American municipal laws came to the attention of the United States in a complaint for injunctive relief filed with the United States District Court for the District of Hawai‘i on August 4, 1999 in *Larsen v. United Nations, et al*.[52] The United States and the Council of Regency representing the Hawaiian Kingdom were named as defendants in the complaint.

COUNT ONE

141. Plaintiff repeats and realleges paragraphs 1 through 140.

142. Defendant UNITED STATES OF AMERICA and Defendant HAWAIIAN KINGDOM are in continual violation of the said 1849 Treaty of Friendship, Commerce and Navigation between the same, and in violation of the principles of international law laid in the Vienna Convention on the Law of Treaties, 1969, by allowing the unlawful imposition of American municipal laws over Plaintiff's person within the territorial jurisdiction of the Hawaiian Kingdom.

COUNT TWO

143. Plaintiff repeats and realleges paragraphs 1 through 140.

[52] *Larsen v. United Nations et al.*, case #1:99-cv-00546-SPK, document #1.

144. Defendant UNITED STATES OF AMERICA and Defendant HAWAIIAN KINGDOM are in continual violation of principles of international comity by allowing the unlawful imposition of American municipal laws over Plaintiff's person within the territorial jurisdiction of the Hawaiian Kingdom

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Issue a permanent injunction on all proceedings by Defendant UNITED STATES OF AMERICA and its political subdivision, the State of Hawai‘i and its several Counties, against this Plaintiff in Hawai‘i State Courts, including the Hilo and Puna District Courts of the Third Circuit, and the Honolulu District Court of the First Circuit, until the International Title to the Hawaiian Islands can be properly adjudicated between Defendant UNITED STATES OF AMERICA and Defendant HAWAIIAN KINGDOM at the Permanent Court of Arbitration at The Hague, Netherlands, in accordance with the Treaty of Friendship, Commerce and Navigation between the United States and the Hawaiian Kingdom, December 20, 1849, 18 U.S. Stat. 406, The Hague Convention for the Pacific Settlement of

International Disputes, 1907, 36 U.S. Stat. 2199, and the Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969), as well as principles of international comity arising from those instruments, and in order to establish the rights of other subjects of the Hawaiian Kingdom and foreign nationals within the Hawaiian Islands similarly situated.

89. On October 13, 1999 a notice of voluntary dismissal without prejudice was filed as to the United States and nominal defendants [United Nations, France, Denmark, Sweden, Norway, United Kingdom, Belgium, Netherlands, Italy, Spain, Switzerland, Russia, Japan, Germany, Portugal and Samoa] by the plaintiff.[53] On October 29, 1999, the remaining parties, Larsen and the Hawaiian Kingdom, entered into a stipulated settlement agreement dismissing the entire case without prejudice as to all parties and all issues and submitting all issues to binding arbitration. An agreement between Plaintiff Lance Paul Larsen and Defendant Hawaiian Kingdom to submit the dispute to final and binding arbitration at the Permanent Court of Arbitration at the The Hague, the Netherlands was entered into on October 30, 1999.[54] The stipulated

[53] *Id*., document #6.
[54] Agreement between plaintiff Lance Paul Larsen and defendant Hawaiian Kingdom to submit the dispute to final and binding arbitration at the Permanent Court of Arbitration at The Hague, the Netherlands (October 30, 1999), https://www.alohaquest.com/arbitration/pdf/Arbitration_Agreement.pdf.

settlement agreement was filed by the plaintiff on November 5, 1999.[55] An order dismissing the case by Judge Samuel P. King, on behalf of the plaintiff, was entered on November 11, 1999. On November 8, 1999, a notice of arbitration was filed with the International Bureau of the Permanent Court of Arbitration—*Lance Paul Larsen v. Hawaiian Kingdom*.[56]

90. As stated in the plaintiff's complaint, the "International Title to the Hawaiian Islands can be properly adjudicated between Defendant UNITED STATES OF AMERICA and Defendant HAWAIIAN KINGDOM at the Permanent Court of Arbitration at The Hague, Netherlands," by virtue of the Permanent Court of Arbitration's institutional jurisdiction.

91. 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 (1907 PCA Convention), before it could establish 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 [States] [emphasis added].").[57]

---

[55] *Larsen v. United Nations et al.*, document #8.
[56] Notice of Arbitration (November 8, 1999), https://www.alohaquest.com/arbitration/pdf/Notice_of_Arbitration.pdf.
[57] 36 Stat. 2199. The Senate ratified the 1907 PCA Convention on April 2, 1898 and entered into force on January 26, 1910.

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."[58] 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 needed to possess institutional jurisdiction beforehand by ensuring that the Hawaiian Kingdom is a non-Contracting State, thus bringing the international dispute within the auspices of the PCA.

92. 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."[59] 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

[58] 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).
[59] Permanent Court of Arbitration, *Annual Reports*, Annex 2 (online at https://pca-cpa.org/en/about/annual-reports/).

cases became accessible at the PCA's case repository on its website at https://pca-cpa.org/en/cases/.

93. 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 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.'"[60] 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. What was sought by the plaintiff in *Larsen v. United Nations, et al*., where the "International Title to the Hawaiian Islands can be properly adjudicated between Defendant UNITED STATES OF

[60] 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).

AMERICA and Defendant HAWAIIAN KINGDOM at the Permanent Court of Arbitration at The Hague, Netherlands," was accomplished by virtue of Article 47 of the 1907 PCA Convention.

94. 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 PCA 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 PCA Convention on December 28, 2015. Palestine was seeking to become a Contracting State to the 1907 PCA Convention and submitted its accession to the Dutch government on October 30, 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)."[61] While the State of Palestine is a new State, the Hawaiian Kingdom is a State in continuity since the nineteenth century. Furthermore, since the United States explicitly recognized the

[61] 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).

validity of the Hawaiian Kingdom as an independent State in the nineteenth century it is precluded from "contesting its validity at any future time."[62]

95. 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, the Permanent Court of International Justice, in *German Settlers in Poland*, explained that "States can act only by and through their agents and representatives."[63] As Professor Talmon states, "[t]he government, consequently, possesses the *jus repraesentationis omnimodae*, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. [Talmon submits] that this is the case irrespective of whether the government is *in situ* or in exile."[64]

96. After the PCA verified the continued existence of the Hawaiian State, as a juristic person, it also simultaneously ascertained that the Hawaiian State was

---

[62] Georg Schwarzenberger, "Title to Territory: Response to a Challenge," 51(2) *Am. J. Int'l L.* 308, 316 (1957).
[63] *German Settlers in Poland,* 1923, *PCIJ, Series B, No. 6*, 22.
[64] Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* 115 (1998).

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. 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."[65]

97. In 1994, the Intermediate Court of Appeals (ICA), in *State of Hawai'i v. Lorenzo*,[66] opened the door to the question as to whether or not the Hawaiian

[65] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at https://pca-cpa.org/en/cases/35/).
[66] *State of Hawai'i v. Lorenzo*, 77 Haw. 219; 883 P.2d 641 (1994).

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."[67] 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."[68] While the ICA affirmed the trial court's decision, it admitted "the court's rationale is open to question in light of international law."[69] In other words, the ICA and the trial court did not apply international law in their decisions.

98. 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 Kingdom as a non-Contracting State to the 1907 PCA Convention as evidenced in the PCA Administrative Council's annual reports. Unlike the ICA and the trial court, the PCA Administrative Council did apply international law in their determination of the continued existence of the Hawaiian Kingdom as an independent and

[67] *Id*., 220; 642.
[68] *Id*., 221; 643.
[69] *Id*.

sovereign State for jurisdictional purpose of the PCA. 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,[70] Belgium,[71] Denmark,[72] France,[73] Germany,[74] Great Britain,[75] Hungary,[76] Italy,[77] Japan,[78] Luxembourg,[79] Netherlands, Norway,[80]

[70] Embassy of Austria, whose address is Van Alkemadelaan 342, 2597 AS Den Haag, Netherlands.
[71] Embassy of Belgium, whose address is Johan van Oldenbarneveltlaan 11, 2582 NE Den Haag, Netherlands.
[72] Embassy of Denmark, whose address is Koninginnegracht 30, 2514 AB Den Haag, Netherlands.
[73] Embassy of France, whose address is Anna Paulownastraat 76, 2518 BJ Den Haag, Netherlands.
[74] Embassy of Germany, whose address is Groot Hertoginnelaan 18-20, 2517 EG Den Haag, Netherlands.
[75] Embassy of Great Britain, whose address is Lange Voorhout 10, 2514 ED Den Haag, Netherlands.
[76] Embassy of Hungary, whose address is Hogeweg 14, 2585 JD Den Haag, Netherlands.
[77] Embassy of Italy, whose address is Parkstraat 28, 2514 JK Den Haag, Netherlands.
[78] Embassy of Japan, whose address is Tobias Asserlaan 5, 2517 KC Den Haag, Netherlands.
[79] Embassy of Luxembourg, whose address is Nassaulaan 8, 2514 JS Den Haag, Netherlands.
[80] Embassy of Norway, whose address is Eisenhowerlaan 77J, 2517 KK Den Haag, Netherlands.

Portugal,[81] Russia,[82] Spain,[83] Sweden,[84] and Switzerland,[85] are also members of the PCA 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.[86]

99. The Consular Corps Hawai‘i is comprised of 38 countries, 32 of which are also members of the PCA Administrative Council in The Hague, Netherlands. These countries include, Australia, Austria, Bangladesh, Belgium, Brazil, Chile, Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Italy, Japan, Luxembourg, Mexico, Morocco, Netherlands, New Zealand,

---

[81] Embassy of Portugal, whose address is Zeestraat 74, 2518 AD Den Haag, Netherlands.
[82] Embassy of Russia, whose address is Andries Bickerweg 2, 2517 JP Den Haag, Netherlands.
[83] Embassy of Spain, whose address is Lange Voorhout 50, 2514 EG Den Haag, Netherlands.
[84] Embassy of Sweden, whose address is Johan de Wittlaan 7, 2517 JR Den Haag, Netherlands.
[85] Embassy of Switzerland, whose address is Lange Voorhout 42, 2514 EE Den Haag, Netherlands.
[86] 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).

Norway, Philippines, Poland, Portugal, Slovenia, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Thailand and the United Kingdom via the Australian Consulate.

100. §458 of the Hawaiian Civil Code states, "[n]o foreign consul, or consular or commercial agent shall be authorized to act as such, or entitled to recover his fees and perquisites in the courts of this Kingdom, until he shall have received his exequatur." These consulates have not presented their credentials to the Hawaiian Kingdom in order to receive exequaturs but rather received their exequaturs from the United States under the municipal laws of the United States.

101. In diplomatic packages sent to the foreign embassies in Washington, D.C., that maintain consulates in the territory of the Hawaiian Kingdom by DAVID KEANU SAI, as Minister of Foreign Affairs *ad interim*, on April 15th and 20th of 2021, the Ambassadors were notified that their Consulates "within the territory of the Hawaiian Kingdom is by virtue of 'American municipal laws,' which stand in violation of Hawaiian sovereignty and independence, and, therefore constitutes an internationally wrongful act." The diplomatic note further stated that the "Council of Regency acknowledges that [foreign] nationals should be afforded remedial prescriptions regarding defects in their real estate holdings that have resulted from the illegal occupation in

accordance with 'laws and established customs' of the Hawaiian Kingdom." This subject is covered in the Royal Commission of Inquiry's Preliminary Report re *Legal Status of Land Titles throughout the Realm*[87] and its Supplemental Report re *Title Insurance*."[88]

102. The explicit recognition by the United States of the continued existence of the Hawaiian Kingdom as a State and the Council of Regency as its government prevents the denial of this civil action in the courts of the United States under the political question doctrine. In *Williams v. Suffolk Insurance Co.*, the Supreme Court rhetorically asked whether there could be "any doubt, that when the executive branch of the government, which is charged with our foreign relations…assumes a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department."[89] In *Jones v. United States*, the Supreme Court concluded that "[w]ho is the sovereign, *de jure* or *de facto,* of a territory is not a judicial, but is a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers,

[87] Royal Commission of Inquiry, Preliminary Report—*Legal Status of Land Titles throughout the Realm* (16 July 2020) (online at https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Land_Titles.pdf).
[88] *Id*., Supplemental Report—*Title Insurance* (28 October 2020) (online at https://hawaiiankingdom.org/pdf/RCI_Supp_Report_Title_Insurance.pdf).
[89] *Williams v. Suffolk Insurance Co.*, 36 U.S. 415, 420 (1839).

citizens, and subjects of that government. This principle has always been upheld by this Court, and has been affirmed under a great variety of circumstances."[90] As a leading constitutional scholar, Professor Corwin, concluded, "[t]here is no more securely established principle of constitutional practice than the exclusive right of the President to be the nation's intermediary in its dealing with other nations."[91] The 'executive' did determine '[w]ho is the sovereign' of the Hawaiian Kingdom, and, therefore, since there is no political question, it 'binds the judges, as well as all other officers, citizens, and subjects of that government.'

**E. United States practice of recognizing governments of existing States**

103. 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."[92] 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 Kingdom's territory unless it was a new regime born out of revolutionary changes in government. The legal doctrine of recognizing "new" governments of an existing State only arises

[90] *Jones v. United States*, 137 U.S. 202, 212 (1890).
[91] Edward Corwin, *The President: Office and Powers*, 1787-1984 214 (1957).
[92] Sai, *Royal Commission of Inquiry*, 22.

when there are "extra-legal changes in government."[93] 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 January 17, 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."[94]

104. 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 resident Minister John Stevens in the Hawaiian Islands dated January 28, 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

[93] M. J. Peterson, *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995* 26 (1997).
[94] Sai, *Royal Commission of Inquiry*, 22.

the people (emphasis added)."[95] 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."[96] As such, the legal order of the Hawaiian Kingdom remained intact for it "is a dictum of international law that it will presume the old order as continuing."[97]

105. 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.[98]

---

[95] Executive Documents, 1179.
[96] *Id.*, 453 (online at https://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf).
[97] Osmond K. Fraenkel, *A Digest of Cases on International Law Relating to Recognition of Governments* 4 (1925).
[98] 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).

106. Professor 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."[99] 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."[100] 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.

**F. United States explicit recognition of the continued existence of the Hawaiian Kingdom as an independent and sovereign State triggers the *Supremacy Clause***

107. There are two instances through which the United States government continued to recognize the Hawaiian Kingdom's Head of State after January 17, 1893 by executive agreements, through exchange of notes. The first was

[99] Krystyna Marek, *Identity and Continuity of States in Public International Law* 102 (1968).
[100] *Id.*

the executive agreement of restoration between Queen Lili‘uokalani and President Grover Cleveland, by his U.S. Minister Albert Willis, of December 18, 1893, which took place eleven months after the overthrow of the Hawaiian government.[101] The second instance occurred between the United States, by its Department of State through its embassy in The Hague, 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 the PCA's formation of the *Larsen* tribunal on June 9, 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

[101] 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).

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."

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.[102]

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

[102] 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).

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."[103] 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 to all records and pleadings of the arbitral proceedings. 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."[104] If, for the sake of argument, the Council of Regency later denied the United States access to the records and pleadings of the arbitral proceedings, the latter would, no doubt, call the former's action a violation of the agreement.

109. When the President of the United States enters into executive agreements, through his authorized agents, with foreign governments, it preempts U.S. 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

[103] Lassa Oppenheim, *International Law* 661 (3rd ed., 1920).
[104] William Edward Hall, *A Treatise on International Law* 383 (1904).

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 [the State of Hawai‘i] shall be bound thereby, anything in the Constitution or laws of [the State of Hawai‘i] to the contrary notwithstanding."). In *United States v. Belmont*, the Court stated, "[p]lainly, the external powers of the United States are to be exercised without regard to [State of Hawai‘i] laws or policies,"[105] and "[i]n respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear."[106]

110. 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."[107] 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

[105] *United States v. Belmont*, 301 U. S. 324, 330 (1937),
[106] *Id*.
[107] *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 330-31 (1936).

> 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.[108]

111. 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 by virtue of the PCA's institutional jurisdiction under Article 47 of the 1907 PCA Convention and with regard to accessing 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

[108] *United States v. Pink*, 315 U.S. 203, 229-31, 233-34 (1942).

to Article 47 of the 1907 PCA 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 October 18, 1907 and the Senate gave its consent to ratification on April 2, 1908. The Convention entered into force on January 26, 1910, and, consequently, the PCA Convention became the supreme law of the land by virtue of the *Supremacy Clause.*

112. 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 State to the 1907 PCA Convention because the United States government, from a domestic standpoint, enjoys "legal superiority over any conflicting provision of a State constitution or law."[109]

113. The 1907 PCA Convention, which has been ratified by the Senate, and the action taken by the United States, as a member of the PCA Administrative Council, pursuant to Article 49, preempt State of Hawai'i laws through the

[109] Black's Law, 1440.

operation of the *Supremacy Clause*. The agreement entered into between the U.S. 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.[110] 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.

**G. Unlawful presence of U.S. military forces in the Hawaiian Kingdom**

114. To preserve its political independence, should war break out in the Pacific Ocean, the Hawaiian Kingdom ensured that its neutrality would be recognized beforehand. Provisions recognizing Hawaiian neutrality were incorporated in

[110] *Belmont*, 330.

its treaties with Sweden-Norway (1852),[111] Spain (1863)[112] and Germany (1879).[113] "A nation that wishes to secure her own peace," says de Vattel, "cannot more successfully attain that object than by concluding treaties" of neutrality.[114]

115. The gravity of the Hawaiian situation has been heightened by North Korea's announcement that "all of its strategic rocket and long-range artillery units are assigned to strike bases of the U.S. imperialist aggressor troops in the U.S.

[111] Article XV states, "All vessels bearing the flag of Sweden and Norway in time of war shall receive every possible protection, short of actual hostility, within the ports and waters of His Majesty the King of the Hawaiian Islands; and His Majesty the King of Sweden and Norway engages to respect in time of war the neutral rights of the Hawaiian Kingdom, and to use his good offices with all other powers, having treaties with His Majesty the King of the Hawaiian Islands, to induce them to adopt the same policy towards the Hawaiian Kingdom;" accessed January 17, 2021, http://hawaiiankingdom.org/pdf/Sweden_Norway_Treaty.pdf.

[112] Article XXVI states, "All vessels bearing the flag of Spain shall, in time of war, receive every possible protection, short of active hostility, within the ports and waters of the Hawaiian Islands, and Her Majesty the Queen of Spain engages to respect, in time of war the neutrality of the Hawaiian Islands, and to use her good offices with all the other powers having treaties with the same, to induce them to adopt the same policy toward the said Islands;" accessed January 17, 2021, http://hawaiiankingdom.org/pdf/Spanish_Treaty.pdf.

[113] Article VIII states, "All vessels bearing the flag of Germany or Hawaii shall in times of war receive every possible protection, short of actual hostility, within the ports and waters of the two countries, and each of the High Contracting Parties engages to respect under all circumstances the neutral rights of the flag and the dominions of the other;" accessed January 17, 2021, http://hawaiiankingdom.org/pdf/German_Treaty.pdf.

[114] Emerich De Vattel, *The Law of Nations*, 6th ed., 333 (1844).

mainland and on Hawaii."[115] The New York Times also reported that the North Korean command stated, "They should be mindful that everything will be reduced to ashes and flames the moment the first attack is unleashed."[116]

116. On April 13, 2021, the New York Times reported "China's effort to expand its growing influence represents one of the largest threats to the United States, according to a major annual intelligence report released on Tuesday, which also warned of the broad national security challenges posed by Moscow and Beijing."[117] Furthermore, on April 21, 2021, the New York Times reported that Russian President Vladimir "Putin says nations that threaten Russian's security will 'regret their deeds.'"[118] The New York Times also reported that "Russia's response will be 'asymmetric, fast and tough' if it is forced to defend its interests, Mr. Putin said, pointing to what he claimed were Western

---

[115] Choe Sang-Hun, North Korea Calls Hawaii and U.S. Mainland Targets, New York Times (Mar. 26, 2013) (online at http://www.nytimes.com/2013/03/27/world/asia/north-korea-calls-hawaii-and-us-mainland-targets.html).

[116] *Id*.

[117] Julian E. Barnes, China Poses Biggest Threat to U.S., Intelligence Report Says, New York Times (April 13, 2021) (online at https://www.nytimes.com/2021/04/13/us/politics/china-national-security-intelligence-report.html).

[118] Andrew E. Kramer, Ivan Nechepurenko, Anton Troianovski and Katie Rogers, Putin says nations that threaten Russia's security will 'regret their deeds,' New York Times (Mar. 26, 2013) (online at https://www.nytimes.com/2021/04/21/world/europe/putin-russia-threats.html).

efforts at regime change in neighboring Belarus as another threat to Russia's security."[119]

117. The island of O'ahu serves as headquarters for the U.S. Indo-Pacific Command, with its Subordinate Component Commands—U.S. Marine Forces Pacific, U.S. Pacific Fleet, U.S. Army Pacific, U.S. Pacific Air Forces and Special Operations Command Pacific. "Camp H.M. Smith, home of the headquarters of Commander, U.S. Indo-Pacific Command and the Commanding General of Marine Forces Pacific, is located on Oahu's Halawa Heights at an elevation of about 600 feet above Pearl Harbor near the community of Aiea."[120] Defendant JOHN AQUILINO stated, "The most dangerous concern is that of military force against Taiwan. To combat that, the forward posture west of the international dateline is how [current INDO-PACOM Commander Adm. Phil] Davidson describes it—and I concur with that: forces positioned to be able to respond quickly, and not just our forces."[121]

---

[119] *Id*.

[120] Indo-Pacific Command, *History of United States Indo-Pacific Command* (online at https://www.pacom.mil/About-USINDOPACOM/History/#:~:text=Camp%20H.M.%20Smith%2C%20home%20of,near%20the%20community%20of%20Aiea).

[121] Megan Eckstein, Senate Confirms Aquilino to Serve as Next INDO-PACOM Commander, USNI News (April 21, 2021) (online at https://news.usni.org/2021/04/21/senate-confirms-aquilino-to-serve-as-next-indo-pacom-

118. The significance of North Korea's declaration of war of March 30, 2013, and China's threat to Taiwan has specifically drawn the Hawaiian Kingdom, being a neutral State, into the region of war because it has been targeted as a result of the United States 115 military bases and installations throughout the territory of the Hawaiian Kingdom. There is no consent or status of forces agreement between the Hawaiian Kingdom and the United States that would have allowed stationing of U.S. military forces.

119. The maintenance of United States military installations within the territory of the Hawaiian Kingdom, being a neutral State, are an imminent threat to the civilian population of the Hawaiian Kingdom and is a violation of Article 4 of the 1907 Hague Convention, V, whereby, "[c]orps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents.".[122] Article 1 provides that "[t]he territory of neutral Powers is inviolable."[123] The 1907 Hague Convention, V, was ratified by the United States Senate on March 10, 1908 and came into force on January 26, 1910. As such, the 1907 Hague Convention, V, comes under the *Supremacy Clause*.

---

commander#:~:text=U.S.%20Pacific%20Fleet%20Commander%20Adm,currently%20filled%20by%20Adm.%20Phil%E2%80%A6).

[122] 36 Stat. 2310, 2323 (1907).

[123] *Id*., 2322.

## H. *Jus cogens* and certain war crimes committed in the Hawaiian Kingdom

120. Professor Schabas, who authored a legal opinion for the Royal Commission of Inquiry on the elements of war crimes committed in the Hawaiian Kingdom, notes the United States position on war crimes during the First Gulf War:

> In a diplomatic note to the Government of Iraq in 1991, the Government of the United States declared that 'under International Law, violations of the Geneva Conventions, the Geneva Protocol of 1925, or related International Laws of armed conflict are war crimes, and individuals guilty of such violations may be subject to prosecution at any time, without any statute of limitations. This includes members of the Iraqi armed forces and civilian government officials.' [124]

121. Municipal laws of the United States being imposed in the Hawaiian Kingdom constitute a violation of the law of occupation, which, according to Professor Schabas, is the war crime of *usurpation of sovereignty*. The actus reus of the offense "would consist of the imposition of legislation or administrative

[124] 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* 155 (2020)

measures by the occupying power that go beyond those required by what is necessary for military purposes of the occupation."[125] All war crimes committed in the Hawaiian Kingdom have a direct nexus and extend from the war crime of *usurpation of sovereignty*.

122. According to Professor Schabas, the requisite elements for the following war crimes are:

> *Elements of the war crime of usurpation of sovereignty during occupation*
>
> 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.

[125] *Id*., 157.

4. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.[126]

*Elements of the war crime of denationalization*

1. The perpetrator participated in the imposition or application of legislative or administrative measures of the occupying power directed at the destruction of the national identity and national consciousness of the population.
2. The perpetrator was aware that the measures were directed at the destruction of the national identity and national consciousness of the population.
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 circumstance that established the existence of the armed conflict and subsequent occupation.

*Elements of the war crime of pillage*

1. The perpetrator appropriated certain property.

[126] *Id.*, 167.

2. The perpetrator intended to deprive the owner of property and to appropriate it for private or personal use.
3. The appropriation was without the consent of the owner.
4. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

*Elements of the war crime of confiscation or destruction of property*

1. The perpetrator confiscated or destroyed property in an occupied territory, be it that belonging to the State or individuals.
2. The confiscation or destruction was not justified by military purposes of the occupation or by the public interest.
3. The perpetrator was aware that the owner of the property was the State or an individual and that the act of

confiscation or destruction was not justified by military purposes of the occupation or by the public interest.

4. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
5. The perpetrator was aware of factual circumstance that established the existence of the armed conflict and subsequent occupation.

*Elements of the war crime of deprivation of fair and regular trial*

1. The perpetrator deprived one or more persons in an occupied territory of fair and regular trial by denying judicial guarantees recognized under international law, including those of the fourth Geneva Convention and the International Covenant on Civil and Political Rights.
2. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
3. The perpetrator was aware of factual circumstance that established the existence of the armed conflict and subsequent occupation.

*Elements of the war crime of deporting civilians of the occupied territory*

1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons in the occupied State to another State or location, including the occupying State, or to another location within the occupied territory, by expulsion or coercive acts.
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

123. With regard to the last two elements of the aforementioned war crimes, 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 [...].[127]

124. The prohibition of war crimes is an "old norm which [has] acquired the character of *jus cogens*."[128] According to the International Criminal Tribunal for the Former Yugoslavia (ICTY), international crimes, which include war crimes, are "universally condemned wherever they occur,"[129] because they are "peremptory norms of international law or jus cogens."[130] *Jus cogens* norms are peremptory norms that "are nonderogable and enjoy the highest status

[127] *Id.*, 167.
[128] Grigory I. Tunkin, "Jus Cogens in Contemporary International Law," 3 *U. Tol. L. Rev.* 107, 117 (1971).
[129] ICTY, *Prosecutor v. Furundzija*, Case No. IT-95-17/1, Judgment, 156 (Dec. 10, 1998).
[130] ICTY, *Prosecutor v. Kupreskic*, Case No. IT-95-16-T, Judgement, para. 520 (Jan. 14, 2000).

within international law."[131] Schabas' legal opinion is undeniably, and pursuant to *The Paquette Habana* case, a means for the determination of the rules of international law.

125. In a letter of correspondence from Dr. Sai, as Head of the Royal Commission of Inquiry (RCI), to Attorney General Clare E. Connors, dated June 2, 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.[132]

---

[131] *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").

[132] *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.

126. 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."

127. Furthermore, on November 10, 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 century, exercising, since 1893, the longest belligerent occupation of a foreign country in the history of international relations without establishing an occupying government.[133]

128. 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."[134] 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."[135]

129. The NLG received the backing and support of the International Association of Democratic Lawyers (IADL) in its resolution adopted on February 7, 2021 *Calling Upon the United States to Immediately Comply with International*

---

[133] *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).
[134] *Id.*, 2.
[135] *Id.*, 3.

*Humanitarian Law in Its Prolonged Occupation of the Hawaiian Islands—Hawaiian Kingdom*. The IADL also "supports the Hawaiian Council of Regency"[136] 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."[137] 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'."[138]

[136] 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).
[137] *Id*.
[138] *Id*.

130. Defendant STATE OF HAWAI‘I has met the ‘requirement for the awareness of the factual circumstances that established the existence of an armed conflict’ of the aforementioned war crimes.

## I. State of Hawai‘i violates international law and the *Supremacy Clause* by attacking officers of the Council of Regency

131. In a letter dated March 15, 2021, Bruce Schoenberg of the Securities Enforcement Branch of the State of Hawai‘i (SOH-Enforcement Branch) 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.”[139]

132. By letter dated March 26, 2021, attorney Stephen Laudig, on behalf of [David Keanu Sai] and [Kau‘i Sai-Dudoit], responded to the March 15, 2021 letter from the SOH-Enforcement Branch.[140] Attorney Laudig’s letter included specific notice of the: (a) Explicit Recognition by the United States of the Continuity of the Hawaiian Kingdom and its restored government by its Council of Regency; (b) Authority of the Council of Regency; (c) Sovereign

[139] Bruce A. Schoenberg to Stephen Laudig (March 15, 2021) (online at https://hawaiiankingdom.org/pdf/Schoenberg_to_Laudig_ltr_(3.15.21).pdf).
[140] Stephen Laudig to Bruce A. Schoenberg (March 26, 2021) (online at https://hawaiiankingdom.org/pdf/Laudig_to_Schoenberg_(3.26.21).pdf).

Immunity; (d) Preemption of the State of Hawai`i from Interference in International Relations between the United States and the Hawaiian Kingdom; (e) United States Practice of Recognition of "New" Governments of Existing States; (f) "Constraints on United States Municipal Laws; and (g) Usurpation of Sovereignty and Jus Cogens.

133. After having received neither an acknowledgement of receipt, nor a response to his March 26, 2021 communication, but merely an April 8, 2021 communication from the SOH-Enforcement Branch, by email, asking whether he would "accept service of process on behalf of Mr. Sai and Ms. Goodhue", Attorney Laudig, by communication dated April 12, 2021, submitted his supplemental communication to the SOH-Securities Enforcement Branch.[141] Included in his April 12, 2021 supplemental communication, Attorney Laudig stated:

> I am not authorized to accept service of process until the SOH: 1] acknowledges receipt of the communication of the 26th; and, 2] responds to the points made in it regarding the United States' explicit recognition of the continuity of the Hawaiian Kingdom as a State and the Council of Regency as its

[141] Stephen Laudig to Bruce A. Schoenberg (April 12, 2021) (online at https://hawaiiankingdom.org/pdf/Laudig_to_Schoenberg_(4.12.21).pdf).

government, which it did during arbitral proceedings at the Permanent Court of Arbitration (PCA) between 8 November 1999, when the arbitral proceedings were initiated, and 9 June 2000 when the arbitral tribunal was formed. This explicit recognition by the U.S. Department of State, acting through its embassy in The Hague which sits as a member of the PCA Administrative Council, triggers the Supremacy Clause. According to the USPS, your office received the communication of 26 March on 29 March.

As stated in that communication, the actions taken by the SOH have serious repercussions under U.S. constitutional law and also international humanitarian law. These include the war crime of usurpation of sovereignty. This non-response is an acquiescence to the facts and the law cited in that communication and precludes the SOH from proceeding without violating the Supremacy Clause.

According to *Notes of Advisory Committee on Proposed Federal Rules of Evidence* (Rule 801):

> Under established principles an admission may be made by adopting or acquiescing in the statement of

another. While knowledge of contents would ordinarily be essential, this is not inevitably so: "X is a reliable person and knows what he is talking about." See McCormick §246, p. 527, n. 15. Adoption or acquiescence may be manifested in any appropriate manner. When silence is relied upon, the theory is that the person would, under the circumstances, protest the statement made in his presence, if untrue.1

[Ft. nt. 1, citing Cornell Law School, Legal Information Institute, "Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay," https://www.law.cornell.edu/rules/fre/rule_801. [Last accessed as of 14 April 2021]

Furthermore, according to the New York Court of Appeals, in *People v. Vining*, 2017 NY Slip Op 01144:

> An adoptive admission occurs "when a party acknowledges and assents to something 'already uttered by another person, which thus becomes effectively the party's own admission'" (People v Campney, 94 NY2d 307, 311 [1999], citing 4 75 Wigmore, Evidence § 1609,

at 100 [Chadbourne rev]). Assent can be manifested by silence, because "a party's silence in the face of an accusation, under circumstances that would prompt a reasonable person to protest, is generally considered an admission" (Robert A. Barker & Vincent C. Alexander, Evidence in New York State and Federal Courts § 8:17 [2016]; see also People v Koerner, 154 NY 355, 374 [1897] ["If he is silent when he ought to have denied, the presumption of acquiescence arises"]). We have also recognized that "an equivocal or evasive response may similarly be used against [a] party either as an adoptive admission by silence or an express assent" (Campney, 94 NY2d at 316 [Smith, J., dissenting], quoting 2 McCormick, Evidence, op cit., § 262, at 176). Here, despite the dissent's characterization, the defendant was not silent in the face of the victim's accusations. He gave "equivocal or evasive response[s]" (id.).2

[Ft. Nt. 2, citing *People v. Vining*, 2017 NY Slip Op 01144, https://law.justia.com/cases/new-york/court-of-appeals/2017/1.html. [Last accessed 14 April 2021]

My clients look forward to the SOH's response to the communication and the specific points that were made. Upon receipt I will consult with my clients accordingly, regarding the SOH inquiry as to service of process.

If you are of the opinion that I have a mis-stated either a fact, or a principle of international law, Hawaiian Kingdom law, or United States domestic law, I look forward to you providing what the SOH contends is authority that, in your opinion, contradicts any of the facts or counters any of the conclusions of law stated.

134. Thereafter, by letter dated April 15, 2021, the SOH-Enforcement Branch, while acknowledging receipt, was non-responsive and/or provided equivocal or evasive responses to Attorney Laudig's letters dated March 15, 2021 and April 12, 2021.[142] Instead, the SOH-Enforcement Branch affirmed its commitment to pursue enforcement claims against [David Keanu Sai] and

[142] Bruce A. Schoenberg to Stephen Laudig (April 15, 2021) (online at https://hawaiiankingdom.org/pdf/Schoenberg_to_Laudig_ltr_(4.15.21).pdf).

[Kauʻi Sai-Dudoit] in violation of Hawaiian Kingdom law, the *Supremacy Clause* and international humanitarian law.

135. The allegation by the State of Hawaiʻi 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 Hawaiʻi 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 November 8, 1999, thereby triggering the *Supremacy Clause* that preempts any interference by the State of Hawaiʻi.

136. While commercial bonds or securities "represent a share in a company or a debt owed by a company,"[143] a government bond is "[e]vidence of indebtedness issued by the government to finance its operations."[144] 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

[143] Black's Law 1354 (6th ed., 1990).
[144] *Id*., 179.

aware that they are loaning money to the Hawaiian government 'to finance its operations.'[145]

137. In similar fashion to the conditional redemption of Irish bonds when Ireland was fighting for its independence from the United Kingdom,[146] 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 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."

138. The actions taken by the State of Hawai'i against government officials of the Hawaiian Kingdom—the occupied State, is also a violation of Article 54 of the Fourth Geneva Convention, which states, "[t]he Occupying Power may

[145] Hawaiian Kingdom bonds, Frequently Asked Questions (online at https://hawaiiankingdom.org/bonds/).

[146] 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."

not…in any way apply sanctions to or take any measures of coercion or discrimination against them."[147] The Fourth Geneva Convention was ratified by the United States Senate on July 6, 1955 and came into force on February 2, 1956. As such, the Fourth Geneva Convention comes under the *Supremacy Clause*. Furthermore, as the U.S. Supreme Court stated in *Underhill v. Hernandez*, "[e]very sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory."[148]

139. The Council of Regency has not, and does not intend, to waive its sovereign immunity. In light of the awareness of the occupation by the aforementioned leadership of the State of Hawai‘i, these allegations against the Hawaiian government officials constitute malicious intent—*mens rea*. 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."[149] These unwarranted attacks

[147] 6.3 U.S.T 3516, 3552 (1955).
[148] *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897).
[149] Lenzerini, *Legal Opinion*, para. 20.

is a violation of the law of occupation, and as a proxy for the United States, it also constitutes an international wrongful act.

## CAUSE OF ACTION

### COUNT I

### (*Supremacy Clause*)

140. The foregoing allegations are realleged and incorporated by reference herein.

141. The *Supremacy Clause* prohibits the State of Hawai‘i from ‘any curtailment or interference’ of the United States explicit recognition of the Council of Regency as the government of the Hawaiian Kingdom.

142. As the government of the Hawaiian Kingdom, 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…and is vested with the rights and powers recognized to governments of occupied States pursuant to international humanitarian law.’

143. The *Supremacy Clause* reserves foreign relations to the ‘National Government’ and, therefore, regulation of the sale of foreign government bonds “within” the United States where State statutes provide an exemption from registration of securities guaranteed by a foreign government which the United States maintains diplomatic relations. Hawaiian Kingdom bonds

"within" Hawaiian territory are regulated by Hawaiian municipal laws and not U.S. municipal laws.

144. The Council of Regency possesses the statutory power to issue Exchequer Bonds in accordance with *An Act To authorize a National Loan and to define the uses to which the money borrowed shall be applied* (1886).

145. Through actions described in this Complaint, Defendant TY NOHARA has violated the *Supremacy Clause* and the 1849 Hawaiian-American Treaty of Friendship, Commerce and Navigation, the 1907 Hague Regulations, and the 1949 Fourth Geneva Convention. Defendant's violation inflicts ongoing harm to the officers of the Council of Regency and the sovereign interests of the Hawaiian Kingdom within its own territory.

## CAUSE OF ACTION

### COUNT II

### (Usurpation of Sovereignty)

146. The foregoing allegations are realleged and incorporated by reference herein.

147. The 1849 Hawaiian-American Treaty of Friendship, Commerce and Navigation, the 1907 Hague Regulations and the 1949 Fourth Geneva Convention, prohibits the imposition of all laws of the United States and the State of Hawai‘i and its Counties, to include the United States constitution, State of Hawai‘i constitution, Federal and State of Hawai‘i statutes, County

ordinances, common law, case law, and administrative law within the territory of the Hawaiian Kingdom as an occupied State. As a neutral State, the 1907 Hague Convention, V, prohibits the maintenance of United States military installations within the territory of the Hawaiian Kingdom.

148. In enacting and implementing the laws of the United States, to include the laws of the State of Hawai‘i and its Counties, *i.e.*, the United States constitution, State of Hawai‘i constitution, Federal and State of Hawai‘i statutes, County ordinances, common law, case law, and administrative law within the territory of the Hawaiian Kingdom and the maintenance of United States military installations are acts contrary to the *Supremacy Clause* of the U.S. Constitution whereby "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

149. Furthermore, in enacting and implementing the laws of the United States, to include the laws of the State of Hawai‘i and its Counties, *i.e.*, the United States constitution, State of Hawai‘i constitution, Federal and State of Hawai‘i statutes, County ordinances, common law, case law, administrative law, and the maintenance of United States military installations, Defendants JOSEPH ROBINETTE BIDEN JR., KAMALA HARRIS, ADMIRAL JOHN

AQUILINO, CHARLES P. RETTIG, CHARLES E. SCHUMER, NANCY PELOSI, DAVID YUTAKE IGE, DAMIEN ELEFANTE, RICK BLANGIARDI, MITCH ROTH, MICHAEL VICTORINO, AND DEREK KAWAKAMI, RON KOUCHI, SCOTT SAIKI, TOMMY WATERS, TOMMY WATERS, ALICE L. LEE, and ARRYL KANESHIRO have exceeded their statutory authority, engaged in violating the 1849 Hawaiian-American Treaty of Friendship, Commerce and Navigation, the 1907 Hague Regulations, the 1907 Hague Convention, V, and the 1949 Fourth Geneva Convention, and has failed to comply with international humanitarian law by administering the laws of the Hawaiian Kingdom, which include the 1864 constitution, statutes, common law, case law, and administrative law.

150. Through their actions described in this Complaint, Defendants have violated the substantive requirements of international humanitarian law. Defendants' violations inflict ongoing harm upon residents of the Hawaiian Islands, to include resident aliens, and the sovereign interests of the Hawaiian Kingdom.

## CAUSE OF ACTION

### COUNT III

### (Pillaging and Destruction of Property)

151. The foregoing allegations are realleged and incorporated by reference herein.

152. International humanitarian law prohibits pillaging and destruction of property through the collection of taxes that are exacted from the residents of the Hawaiian Kingdom by the Internal Revenue Service of the United States and the Department of Taxation of the State of Hawai‘i in violation of Article 8 of the 1849 Hawaiian-American Treaty of Friendship, Commerce and Navigation, Article 43 of the 1907 Hague Regulations, and Article 64 of the 1949 Fourth Geneva Convention.

153. The Internal Revenue Service is an agency of the United States, and the Department of Taxation is an agency of the State of Hawai‘i.

154. International humanitarian law provides for the United States, as the occupying State, to collect taxes as provided under Hawaiian Kingdom law and not the laws of the United States.

155. In implementing United States tax laws, these agencies have and continue to commit violations of the international criminal law of pillaging and destruction of property. This, among other actions by Defendants CHARLES P. RETTIG and DAMIEN ELEFANTE, impacts substantive rights of the civilian population whose rights are envisaged under Article 4 of the 1949 Geneva Convention, IV, as “protected persons.”

156. Through their actions described in this Complaint, Defendants CHARLES P. RETTIG and DAMIEN ELEFANTE have violated international humanitarian

law, which includes the 1949 Hawaiian-American Treaty of Friendship, Commerce and Navigation, the 1907 Hague Regulations, and the 1949 Fourth Geneva Convention. Defendants' violations inflict ongoing harm upon the residents of the Hawaiian Islands, to include resident aliens, and the sovereign interests of the Hawaiian Kingdom.

## CAUSE OF ACTION

### COUNT V

### (Exequaturs)

157. The foregoing allegations are realleged and incorporated by reference herein.

158. §458 of the Hawaiian Civil Code requires foreign consulates to receive exequaturs from the Hawaiian Kingdom government and not from the government of the United States.

159. International humanitarian law prohibits *usurpation of sovereignty* by granting exequaturs to foreign consulates under American municipal laws within the territory of the Hawaiian Kingdom in violation of Article 8 of the 1849 Hawaiian-American Treaty of Friendship, Commerce and Navigation, Article 43 of the 1907 Hague Regulations, and Article 64 of the 1949 Fourth Geneva Convention.

160. International humanitarian law provides for the United States, as the occupying State, to ensure that foreign consulates within the territory of the

Hawaiian Kingdom are in compliance with Hawaiian Kingdom law and not the laws of the United States.

161. Through their actions described in this Complaint, Defendants, JANE HARDY, JOHANN URSCHITZ, M. JAN RUMI, JEFFREY DANIEL LAU, ERIC G. CRISPIN, GLADYS VERNOY, ANN SUZUKI CHING, BENNY MADSEN, KATJA SILVERAA, GUILLAUME MAMAN, DENIS SALLE, KATALIN CSISZAR, SHEILA WATUMULL, MICHELE CARBONE, YUTAKA AOKI, JEAN-CLAUDE DRUI, ANDREW M. KLUGER, HENK ROGERS, KEVIN BURNETT, NINA HAMRE FASI, JOSELITO A. JIMENO, BOZENA ANNA JARNOT, TYLER DOS SANTOS-TAM, R.J. ZLATOPER, HONG, SEOK-IN, JOHN HENRY FELIX, BEDE DHAMMIKA COORAY, ANDERS G.O. NERVELL, THERES RYF DESAI, and COLIN T. MIYABARA, who are foreign Consuls in the territory of the Hawaiian Kingdom, have violated international humanitarian law, which includes the 1907 Hague Regulations, the 1949 Fourth Geneva Convention, the 1851 Hawaiian-British Treaty, the 1875 Hawaiian-Austro/Hungarian Treaty, the 1862 Hawaiian-Belgian Treaty, the 1846 Hawaiian-Danish Treaty, the 1857 Hawaiian-French Treaty, the 1879 Hawaiian-German Treaty, 1863 Hawaiian-Italian Treaty, the 1871 Hawaiian-Japanese Treaty, the 1862 Hawaiian-Dutch Treaty, the 1852 Hawaiian-

Norwegian/Swedish Treaty, the 1882 Hawaiian-Portuguese Treaty, the 1863 Hawaiian-Spanish Treaty, the 1864 Hawaiian-Swiss Treaty, and the principles of international law. Defendants have violated the sovereign interests of the Hawaiian Kingdom.

## PRAYER FOR RELIEF

162. WHEREFORE, the Hawaiian Kingdom prays that the Court:

a. Declare that all laws of the United States and the State of Hawai‘i and its Counties, to include the United States constitution, State of Hawai‘i constitution, Federal and State of Hawai‘i statutes, County ordinances, common law, case law, administrative law, and the maintenance of United States military installations are unauthorized by, and contrary to, the Constitution and Treaties of the United States;

b. Enjoin Defendants from implementing or enforcing all laws of the United States and the State of Hawai‘i and its Counties, to include the United States constitution, State of Hawai‘i constitution, Federal and State of Hawai‘i statutes, County ordinances, common law, case law, administrative law, and the maintenance of United States military installations across the territory of the Hawaiian Kingdom;

c. Enjoin Defendants who are or agents of foreign diplomats from serving as foreign consulates within the territorial jurisdiction of the Hawaiian

Kingdom until they have presented their credentials to the Hawaiian Kingdom Government and received exequaturs.

d. Pursuant to Federal Rule of Civil Procedure 65(b)(2), set an expedited hearing within fourteen (14) days to determine whether the Temporary Restraining Order should be extended; and

e. Award such additional relief as the interests of justice may require.

DATED: Honolulu, Hawai‘i, May __, 2021.

Respectfully submitted,

/s/ Dexter K. Ka‘iama

DEXTER K. KA‘IAMA (Bar No. 4249)
Attorney General of the Hawaiian Kingdom

DEPARTMENT OF THE ATTORNEY GENERAL, HAWAIIAN KINGDOM

*Attorney for Plaintiff, Hawaiian Kingdom*

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF HAWAIʻI**

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; JANE HARDY, in her official capacity as Australia's Consul to Hawaiʻi and the United Kingdom's Consul to Hawaiʻi; JOHANN URSCHITZ, in his official capacity as Austria's Honorary Consul to Hawaiʻi; M. JAN RUMI, in his official capacity as Bangladesh's Honorary Consul to Hawaiʻi and Morocco's Honorary Consul to Hawaiʻi; JEFFREY DANIEL LAU, in his official capacity as Belgium's Honorary Consul to Hawaiʻi; ERIC G. CRISPIN, in his official capacity as Brazil's Honorary Consul to Hawaiʻi; GLADYS VERNOY, in her official capacity as Chile's Honorary Consul to Hawaiʻi; ANN SUZUKI CHING, in her official capacity as the Czech Republic's Honorary Consul to Hawaiʻi; BENNY MADSEN, in his official capacity as Denmark's Honorary Consul to

Civil Action No.

Hawai‘i; KATJA SILVERAA, in her official capacity as Finland’s Honorary Consul to Hawai‘i; GUILLAUME MAMAN, in his official capacity as France’s Honorary Consul to Hawai‘i; DENIS SALLE, in his official capacity as Germany’s Honorary Consul to Hawai‘i; KATALIN CSISZAR, in her official capacity as Hungary’s Honorary Consul to Hawai‘i; SHEILA WATUMULL, in her official capacity as India’s Honorary Consul to Hawai‘i; MICHELE CARBONE, in his official capacity as Italy’s Honorary Consul to Hawai‘i; YUTAKA AOKI, in his official capacity as Japan’s Consul to Hawai‘i; JEAN-CLAUDE DRUI, in his official capacity as Luxembourg’s Honorary Consul to Hawai‘i; ANDREW M. KLUGER, in his official capacity as Mexico’s Honorary Consul to Hawai‘i; HENK ROGERS, in his official capacity as Netherland’s Honorary Consul to Hawai‘i; KEVIN BURNETT, in his official capacity as New Zealand’s Consul to Hawai‘i; NINA HAMRE FASI, in her official capacity as Norway’s Honorary Consul to Hawai‘i; JOSELITO A. JIMENO, in his official capacity as the Philippines’s Consul to Hawai‘i; BOZENA ANNA JARNOT, in her official capacity as Poland’s Honorary Consul to Hawai‘i; TYLER DOS SANTOS-TAM, in his official capacity as Portugal’s Honorary Consul to Hawai‘i; R.J. ZLATOPER, in his official capacity as Slovenia’s Honorary Consul to Hawai‘i; HONG, SEOK-IN, in his official capacity as the Republic of South Korea’s Consul to Hawai‘i; JOHN HENRY FELIX, in his official capacity as Spain’s Honorary Consul to Hawai‘i; BEDE DHAMMIKA COORAY, in his official capacity as Sri

Lanka's Honorary Consul to Hawai‘i; ANDERS G.O. NERVELL, in his official capacity as Sweden's Honorary Consul to Hawai‘i; THERES RYF DESAI, in her official capacity as Switzerland's Honorary Consul to Hawai‘i; COLIN T. MIYABARA, in his official capacity as Thailand's Honorary Consul to Hawai‘i; DAVID YUTAKA IGE, in his official capacity as Governor of the State of Hawai‘i; TY NOHARA, in her official capacity as Commissioner of Securities; DAMIEN ELEFANTE, in his official capacity as the acting director of the Department of Taxation of the State of Hawai‘i; RICK BLANGIARDI, in his official capacity as Mayor of the City & County of Honolulu; MITCH ROTH, in his official capacity as Mayor of the County of Hawai‘i; MICHAEL VICTORINO, in official capacity as Mayor of the County of Maui; DEREK KAWAKAMI, in his official capacity as Mayor of the County of Kaua‘i; CHARLES E. SCHUMER, in his official capacity as U.S. Senate Majority Leader; NANCY PELOSI, in her official capacity as Speaker of the United States House of Representatives; RON KOUCHI, in his official capacity as Senate President of the State of Hawai‘i; SCOTT SAIKI, in his official capacity as Speaker of the House of Representatives of the State of Hawai‘i; TOMMY WATERS, in his official capacity as Chair and Presiding Officer of the County Council for the City and County of Honolulu; MAILE DAVID, in her official capacity as Chair of the Hawai‘i County Council; ALICE L. LEE, in her official capacity as Chair of the Maui County Council; ARRYL KANESHIRO, in his

official capacity as Chair of the Kaua‘i County Council; the UNITED STATES OF AMERICA; the STATE OF HAWAI‘I; the CITY & COUNTY OF HONOLULU; the COUNTY OF HAWAI‘I; the COUNTY OF MAUI; and the COUNTY OF KAUA‘I,

Defendants.

**DECLARATION OF PROFESSOR FEDERICO LENZERINI**

**Exhibit 1**

# DECLARATION OF PROFESSOR FEDERICO LENZERINI

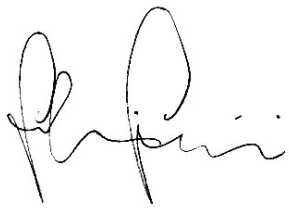
I, Federico Lenzerini, declare the following:

1. I am an Italian citizen residing in Siena, Italy. I am the author of the legal opinion on the authority of the Council of Regency of the Hawaiian Kingdom dated 24 May 2020, which a true and correct copy of the same is attached hereto.

2. I have a Ph.D. in international law and I am a Professor of International Law, University of Siena, Italy, Department of Political and International Sciences. For further information see https://docenti.unisi.it/it/lenzerini. I can be contacted at federico.lenzerini@unisi.it.

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

DATED: Siena, Italy, 13 May 2021.



Professor Federico Lenzerini

# 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,

* Ph.D., International Law. Professor of International Law, University of Siena (Italy), Department of Political and International Sciences. For further information see <https://docenti.unisi.it/it/lenzerini> The author can be contacted at federico.lenzerini@unisi.it

[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

---

[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

---

[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

[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".

---

[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.

---

[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]

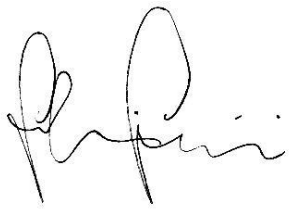
18. Importantly, the provisions referred to in the previous paragraph exactly refer to issues related to the protection of civilian persons and of their rights, which is one of the two main aspects (together with the preservation of the sovereign rights of the Hawaiian Kingdom government) dealt with 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

[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

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF HAWAIʻI**

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; JANE HARDY, in her official capacity as Australia's Consul to Hawaiʻi and the United Kingdom's Consul to Hawaiʻi; JOHANN URSCHITZ, in his official capacity as Austria's Honorary Consul to Hawaiʻi; M. JAN RUMI, in his official capacity as Bangladesh's Honorary Consul to Hawaiʻi and Morocco's Honorary Consul to Hawaiʻi; JEFFREY DANIEL LAU, in his official capacity as Belgium's Honorary Consul to Hawaiʻi; ERIC G. CRISPIN, in his official capacity as Brazil's Honorary Consul to Hawaiʻi; GLADYS VERNOY, in her official capacity as Chile's Honorary Consul to Hawaiʻi; ANN SUZUKI CHING, in her official capacity as the Czech Republic's Honorary Consul to Hawaiʻi; BENNY MADSEN, in his official capacity as Denmark's Honorary Consul to

Civil Action No.

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

Hawai‘i; KATJA SILVERAA, in her official capacity as Finland’s Honorary Consul to Hawai‘i; GUILLAUME MAMAN, in his official capacity as France’s Honorary Consul to Hawai‘i; DENIS SALLE, in his official capacity as Germany’s Honorary Consul to Hawai‘i; KATALIN CSISZAR, in her official capacity as Hungary’s Honorary Consul to Hawai‘i; SHEILA WATUMULL, in her official capacity as India’s Honorary Consul to Hawai‘i; MICHELE CARBONE, in his official capacity as Italy’s Honorary Consul to Hawai‘i; YUTAKA AOKI, in his official capacity as Japan’s Consul to Hawai‘i; JEAN-CLAUDE DRUI, in his official capacity as Luxembourg’s Honorary Consul to Hawai‘i; ANDREW M. KLUGER, in his official capacity as Mexico’s Honorary Consul to Hawai‘i; HENK ROGERS, in his official capacity as Netherland’s Honorary Consul to Hawai‘i; KEVIN BURNETT, in his official capacity as New Zealand’s Consul to Hawai‘i; NINA HAMRE FASI, in her official capacity as Norway’s Honorary Consul to Hawai‘i; JOSELITO A. JIMENO, in his official capacity as the Philippines’s Consul to Hawai‘i; BOZENA ANNA JARNOT, in her official capacity as Poland’s Honorary Consul to Hawai‘i; TYLER DOS SANTOS-TAM, in his official capacity as Portugal’s Honorary Consul to Hawai‘i; R.J. ZLATOPER, in his official capacity as Slovenia’s Honorary Consul to Hawai‘i; HONG, SEOK-IN, in his official capacity as the Republic of South Korea’s Consul to Hawai‘i; JOHN HENRY FELIX, in his official capacity as Spain’s Honorary Consul to Hawai‘i; BEDE DHAMMIKA COORAY, in his official capacity as Sri

Lanka's Honorary Consul to Hawai‘i; ANDERS G.O. NERVELL, in his official capacity as Sweden's Honorary Consul to Hawai‘i; THERES RYF DESAI, in her official capacity as Switzerland's Honorary Consul to Hawai‘i; COLIN T. MIYABARA, in his official capacity as Thailand's Honorary Consul to Hawai‘i; DAVID YUTAKA IGE, in his official capacity as Governor of the State of Hawai‘i; TY NOHARA, in her official capacity as Commissioner of Securities; DAMIEN ELEFANTE, in his official capacity as the acting director of the Department of Taxation of the State of Hawai‘i; RICK BLANGIARDI, in his official capacity as Mayor of the City & County of Honolulu; MITCH ROTH, in his official capacity as Mayor of the County of Hawai‘i; MICHAEL VICTORINO, in official capacity as Mayor of the County of Maui; DEREK KAWAKAMI, in his official capacity as Mayor of the County of Kaua‘i; CHARLES E. SCHUMER, in his official capacity as U.S. Senate Majority Leader; NANCY PELOSI, in her official capacity as Speaker of the United States House of Representatives; RON KOUCHI, in his official capacity as Senate President of the State of Hawai‘i; SCOTT SAIKI, in his official capacity as Speaker of the House of Representatives of the State of Hawai‘i; TOMMY WATERS, in his official capacity as Chair and Presiding Officer of the County Council for the City and County of Honolulu; MAILE DAVID, in her official capacity as Chair of the Hawai‘i County Council; ALICE L. LEE, in her official capacity as Chair of the Maui County Council; ARRYL KANESHIRO, in his

official capacity as Chair of the Kaua‘i County Council; the UNITED STATES OF AMERICA; the STATE OF HAWAI‘I; the CITY & COUNTY OF HONOLULU; the COUNTY OF HAWAI‘I; the COUNTY OF MAUI; and the COUNTY OF KAUA‘I,

Defendants.

**PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER**

## PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

Pursuant to Rules 7 and 65 of the Federal Rules of Civil Procedure and Local Rule 7.2 for the U.S. District Court for the District of Hawai‘i, Plaintiff Hawaiian Kingdom, by and through its counsel, hereby moves this Honorable Court for a temporary restraining order prohibiting Defendants from enforcing or implementing all laws of the United States and the State of Hawai‘i and its Counties, to include the United States constitution, State of Hawai‘i constitution, Federal and State of Hawai‘i statutes, County ordinances, common law, case law, and administrative law across the territory of the Hawaiian Kingdom, to include its territorial sea, and the maintenance of United States military installations, and thereby violating the *Supremacy Clause*, in particular, the 1849 Hawaiian-American Treaty of Friendship, Commerce and Navigation, the 1907 Hague Regulations, the 1907 Hague Convention, V, the 1949 Fourth Geneva Convention, and international humanitarian law.

The implementation and enforcement of United States municipal laws within the territory of the Hawaiian Kingdom, to include its territorial sea, have caused, and continue to cause, irreparable injury to Plaintiff and all civilians residing within the territorial jurisdiction of the Hawaiian Kingdom. As an immediate remedy, and to ensure compliance with the 1849 Hawaiian-American Treaty of Friendship, Commerce and Navigation, the 1907 Hague Regulations, the 1907 Hague

Convention, V, the 1949 Fourth Geneva Convention, and international humanitarian law, Plaintiff asks that the Court enter a temporary restraining order enjoining Defendants from implementing or enforcing United States municipal laws within the territory of the Hawaiian Kingdom, to include its territorial sea, and the maintenance of United States military installations. Plaintiff requests that the Court set an expedited hearing to determine whether such order should remain in place.

This motion is supported by the attached Memorandum in Support of Plaintiff's Motion for Temporary Restraining Order and the records and files in this action, as well as any additional submissions and oral argument that may be considered by the Court.

DATED: Honolulu, Hawai‘i, May __, 2021.

Respectfully submitted,

/s/ Dexter K. Ka‘iama

DEXTER K. KA‘IAMA (Bar No. 4249)
Attorney General of the Hawaiian Kingdom

DEPARTMENT OF THE ATTORNEY GENERAL, HAWAIIAN KINGDOM

*Attorney for Plaintiff, Hawaiian Kingdom*

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF HAWAIʻI**

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; JANE HARDY, in her official capacity as Australia's Consul to Hawaiʻi and the United Kingdom's Consul to Hawaiʻi; JOHANN URSCHITZ, in his official capacity as Austria's Honorary Consul to Hawaiʻi; M. JAN RUMI, in his official capacity as Bangladesh's Honorary Consul to Hawaiʻi and Morocco's Honorary Consul to Hawaiʻi; JEFFREY DANIEL LAU, in his official capacity as Belgium's Honorary Consul to Hawaiʻi; ERIC G. CRISPIN, in his official capacity as Brazil's Honorary Consul to Hawaiʻi; GLADYS VERNOY, in her official capacity as Chile's Honorary Consul to Hawaiʻi; ANN SUZUKI CHING, in her official capacity as the Czech Republic's Honorary Consul to Hawaiʻi; BENNY MADSEN, in his official capacity as Denmark's Honorary Consul to

Civil Action No.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

Hawai‘i; KATJA SILVERAA, in her official capacity as Finland’s Honorary Consul to Hawai‘i; GUILLAUME MAMAN, in his official capacity as France’s Honorary Consul to Hawai‘i; DENIS SALLE, in his official capacity as Germany’s Honorary Consul to Hawai‘i; KATALIN CSISZAR, in her official capacity as Hungary’s Honorary Consul to Hawai‘i; SHEILA WATUMULL, in her official capacity as India’s Honorary Consul to Hawai‘i; MICHELE CARBONE, in his official capacity as Italy’s Honorary Consul to Hawai‘i; YUTAKA AOKI, in his official capacity as Japan’s Consul to Hawai‘i; JEAN-CLAUDE DRUI, in his official capacity as Luxembourg’s Honorary Consul to Hawai‘i; ANDREW M. KLUGER, in his official capacity as Mexico’s Honorary Consul to Hawai‘i; HENK ROGERS, in his official capacity as Netherland’s Honorary Consul to Hawai‘i; KEVIN BURNETT, in his official capacity as New Zealand’s Consul to Hawai‘i; NINA HAMRE FASI, in her official capacity as Norway’s Honorary Consul to Hawai‘i; JOSELITO A. JIMENO, in his official capacity as the Philippines’s Consul to Hawai‘i; BOZENA ANNA JARNOT, in her official capacity as Poland’s Honorary Consul to Hawai‘i; TYLER DOS SANTOS-TAM, in his official capacity as Portugal’s Honorary Consul to Hawai‘i; R.J. ZLATOPER, in his official capacity as Slovenia’s Honorary Consul to Hawai‘i; HONG, SEOK-IN, in his official capacity as the Republic of South Korea’s Consul to Hawai‘i; JOHN HENRY FELIX, in his official capacity as Spain’s Honorary Consul to Hawai‘i; BEDE DHAMMIKA COORAY, in his official capacity as Sri

Lanka's Honorary Consul to Hawai‘i; ANDERS G.O. NERVELL, in his official capacity as Sweden's Honorary Consul to Hawai‘i; THERES RYF DESAI, in her official capacity as Switzerland's Honorary Consul to Hawai‘i; COLIN T. MIYABARA, in his official capacity as Thailand's Honorary Consul to Hawai‘i; DAVID YUTAKA IGE, in his official capacity as Governor of the State of Hawai‘i; TY NOHARA, in her official capacity as Commissioner of Securities; DAMIEN ELEFANTE, in his official capacity as the acting director of the Department of Taxation of the State of Hawai‘i; RICK BLANGIARDI, in his official capacity as Mayor of the City & County of Honolulu; MITCH ROTH, in his official capacity as Mayor of the County of Hawai‘i; MICHAEL VICTORINO, in official capacity as Mayor of the County of Maui; DEREK KAWAKAMI, in his official capacity as Mayor of the County of Kaua‘i; CHARLES E. SCHUMER, in his official capacity as U.S. Senate Majority Leader; NANCY PELOSI, in her official capacity as Speaker of the United States House of Representatives; RON KOUCHI, in his official capacity as Senate President of the State of Hawai‘i; SCOTT SAIKI, in his official capacity as Speaker of the House of Representatives of the State of Hawai‘i; TOMMY WATERS, in his official capacity as Chair and Presiding Officer of the County Council for the City and County of Honolulu; MAILE DAVID, in her official capacity as Chair of the Hawai‘i County Council; ALICE L. LEE, in her official capacity as Chair of the Maui County Council; ARRYL KANESHIRO, in his

official capacity as Chair of the Kaua‘i County Council; the UNITED STATES OF AMERICA; the STATE OF HAWAI‘I; the CITY & COUNTY OF HONOLULU; the COUNTY OF HAWAI‘I; the COUNTY OF MAUI; and the COUNTY OF KAUA‘I,

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER**

## TABLE OF CONTENTS

Page

## TABLE OF AUTHORITIES

Page(s)

**CASES:**

United States



Hawaiian Kingdom



International

**STATUTES:**



**TREATY PROVISIONS:**

**UNITED NATIONS:**

**CONSTITUTIONAL PROVISIONS:**



**OTHER AUTHORITIES:**

## INTRODUCTION

On July 7, 1898, President William McKinley signed a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*.[1] That Joint Resolution triggered the imposition of United States municipal laws within the territorial jurisdiction of the Hawaiian Kingdom that spanned 123 years in violation of the 1849 Hawaiian-American Treaty of Friendship, Commerce and Navigation,[2] and in violation of international humanitarian laws that were later codified under the 1907 Hague Regulations,[3] the 1907 Hague Convention, V,[4] and the 1949 Fourth Geneva Convention.[5]

This pleading is not a political question nor is it about politics or rhetoric—it is about treaties and the law. The simple fact is that the imposition of United States municipal laws within the territory of the Hawaiian Kingdom, a sovereign and independent State, is unlawful. By imposing United States municipal laws within the territory of a foreign State it violates the *Supremacy Clause* of the U.S. Constitution. By those same acts, it also violates the rules and principles of international law, international humanitarian law and international human rights law. The Hawaiian Kingdom and its residents have and continue to be grievously harmed

[1] 30 Stat. 750 (1898).
[2] 9 Stat. 977 (1841-1851).
[3] 36 Stat. 2277 (1907).
[4] 36 Stat. 2310 (1907).
[5] 6.3 U.S.T. 3516 (1949).

by these violations of international law and the provisions of self-executing treaties that were ratified by the United States Senate.

The Hawaiian Kingdom respectfully asks this Court to enter a temporary restraining order blocking the implementation and enforcement of all municipal laws of the United States to include the United States constitution, State of Hawai‘i constitution, Federal and State of Hawai‘i statutes, County ordinances, common law, case law, administrative law, and the maintenance of United States military installations across the territory of the Hawaiian Kingdom. The test for such remedy is met: the Hawaiian Kingdom is likely to succeed in showing on the merits that the unlawful imposition of all municipal laws of the United States is unlawful several times over. The Hawaiian Kingdom has and continues to be irreparably harmed by the unlawful implementation and enforcement of all municipal laws of the United States and its maintenance of United States military installations. The motion should be granted.

## FACTUAL BACKGROUND

### A. President Cleveland Calls the United States Invasion and Overthrow of the Hawaiian Kingdom Government Unlawful

On January 16, 1893, under orders by U.S. Minister John Stevens, the city of Honolulu was invaded by a detachment of U.S. troops “supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were

accompanied by a hospital corps with stretchers and medical supplies."[6] This invasion coerced Queen Lili'uokalani, Executive Monarch of the Hawaiian Kingdom, to conditionally surrender to the superior power of the United States military.[7]

President Cleveland initiated a presidential investigation on March 11, 1893 by appointing Special Commissioner James Blount to travel to the Hawaiian Islands and provide periodic reports to the U.S. Secretary of State Walter Gresham. Commissioner Blount arrived in the Islands on March 29 after which he "directed the removal of the flag of the United States from the government building and the return of the American troops to their vessels."[8] His last report was dated July 17, 1893, and on October 18, 1893, Secretary of State Gresham notified the President:

> Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice.[9]

---

[6] United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 451 (1895) (hereafter "Executive Documents") (online at https://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf).
[7] *Id*., 586.
[8] *Id*., 568.
[9] *Id*., 462-463.

On December 18, 1893, President Cleveland delivered a *manifesto*[10] to the Congress on his investigation into the overthrow of the Hawaiian Kingdom Government. The President concluded that the "military occupation of Honolulu by the United States…was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property."[11] He also determined "that the provisional government owes its existence to an armed invasion by the United States."[12] Finally, the President admitted that by "an act of war…the Government of a feeble but friendly and confiding people has been overthrown."[13]

Through executive mediation between the Queen and the new U.S. Minister to the Hawaiian Islands, Albert Willis, that lasted from November 13 through December 18, an agreement of peace was reached. According to the executive agreement, by exchange of notes, the President committed to restoring the Queen as the constitutional sovereign, and the Queen agreed, after being restored, to grant a full pardon to the insurgents. Political wrangling in the Congress, however, blocked

[10] *Manifesto* is defined as a "formal written declaration, promulgated by…the executive authority of a state or nation, proclaiming its reasons and motives for…important international action." Black's Law 963 (6th ed., 1990).
[11] Executive Documents., 452.
[12] *Id*., 454.
[13] *Id*.

President Cleveland from carrying out his obligation of restoring the Queen as the Executive Monarch.

Five years later, at the height of the Spanish-American War, President Cleveland's successor, William McKinley, signed a congressional joint resolution of annexation on July 7, 1898, unilaterally seizing the Hawaiian Islands. The legislation of every State, including the United States and its Congress, are not sources of international law. In *The Lotus* case*,* the Permanent Court of International Justice stated 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."[14] According to Judge Crawford, derogation of this principle will not be presumed.[15]

Furthermore, as long as the occupation continues, the Occupying State cannot "annex the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts."[16]

---

[14] *Lotus*, PCIJ Series A, No. 10, 18 (1927).
[15] James Crawford, *The Creation of States in International Law* 41 (2nd ed., 2006).
[16] Jean S. Pictet, *Commentary—The Geneva Conventions of 12 August 1949* 275 (1958).

Despite the United States' admitted illegality of its overthrow of the Hawaiian government, it did not affect the continued existence of the Hawaiian Kingdom as a State. Professor Wright, a renowned American political scientist, states that "international law distinguishes between a government and the state it governs."[17] And Judge 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."[18] 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."[19] 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.'"[20]

---

[17] Quincy Wright, "The Status of Germany and the Peace Proclamation," 46(2) *Am. J. Int'l L.* 299, 307 (1952).
[18] Crawford, 34.
[19] *Id*.
[20] 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).

Stark parallels can be drawn between what the United States did to the Hawaiian Kingdom and what Iraq did to Kuwait in 1990, commonly referred to as the First Gulf War. Just as Iraq, without justification, invaded Kuwait and overthrew the Kuwaiti government on August 2, 1990, and then unilaterally announced it annexed Kuwaiti territory on August 8, 1990, the United States did the same to the Hawaiian Kingdom and its territory. Where Kuwait was under a belligerent occupation by Iraq for 7.5 months, the Hawaiian Kingdom has been under a belligerent occupation by the United States for 128 years. Unlike Kuwait, the Hawaiian Kingdom did not have the United Nations Security Council to draw attention to the illegality of Iraq's invasion and annexation of Kuwaiti territory.

## B. Imposition of United States Municipal Laws Created A Humanitarian Crisis

Fundamental to deciphering the Hawaiian situation is to discern between a state of peace and a state of war. "Traditional international law," states Judge Greenwood, "was based upon a rigid distinction between the state of peace and the state of war."[21] This bifurcation provides the proper context by which certain rules of international law would or would not apply. The laws of war—*jus in bello*, otherwise known today as international humanitarian law, are not applicable in a

[21] Christopher Greenwood, "Scope of Application of Humanitarian Law," in Dieter Fleck, ed., *The Handbook of the International Law of Military Operations* 45 (2nd ed., 2008).

state of peace. Inherent in the rules of *jus in bello* is the co-existence of two legal orders, being that of the occupying State and that of the occupied State. As an occupied State, the continuity of the Hawaiian Kingdom has been maintained for the past 128 years by the positive rules of international law, notwithstanding the absence of effectiveness, which is required during a state of peace.[22]

The failure of the United States to comply with international humanitarian law, for over a century, has created a humanitarian crisis of unimaginable proportions where war crimes have since risen to a level of *jus cogens*. At the same time, the obligations have *erga omnes* characteristics—flowing to all States. The international community's failure to intercede, as a matter of *obligatio erga omnes*, is explained by the United States deceptive portrayal of Hawai'i as an incorporated territory. As an international wrongful act, States have an obligation to not "recognize as lawful a situation created by a serious breach … nor render aid or assistance in maintaining that situation,"[23] and States "shall cooperate to bring to an end through lawful means any serious breach [by a State of an obligation arising under a peremptory norm of general international law]."[24]

---

[22] Crawford, 34; Krystyna Marek, *Identity and Continuity of States in Public International Law* 102 (2nd ed., 1968).
[23] *Articles of Responsibility of States for Internationally Wrongful Acts, Yearbook of the International Law Commission, 2001,* vol. II, Article 41(2) (Part Two). Text reproduced as it appears in the annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4.
[24] *Id.*, Article 41(1).

*Jus cogens* norms are defined as those "peremptory norms" that "are nonderogable and enjoy the highest status within international law."[25] Such norms come first from "customary international law," which is a body of law that "results from a general and consistent practice of states followed by them from a sense of legal obligation."[26] After a norm or rule has been incorporated into customary international law, it may become a *jus cogens*, or peremptory norm, if there is "further recognition by the international community as a whole that this is a norm from which no derogation is permitted."[27] Once a norm has become *jus cogens*, it is incapable of being derogated by any State, and if a treaty or agreement conflicts with the norm, it is void.[28]

Since the atrocities of the Second World War, the development of the concept of *jus cogens* norms has corresponded with a shift in international law that went from "the formal structure of the relationships between States and the delimitation of their jurisdiction to the development of substantive rules on matters of common concern

---

[25] *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").
[26] *Comm. of U.S. Citizens*, at 940 (quoting Restatement Third §102(2)).
[27] *Id*.
[28] Vienna Convention art. 53; *Comm. of U.S. Citizens*, at 940.

vital to the growth of an international community and to the individual well-being of the citizens of its member States."[29]

As such, *jus cogens* norms have developed as an expression of the international community's recognition that all States are obligated to respect certain fundamental rights of individuals. It is clear that war crimes are not only international crimes along with crimes against humanity, genocide, and aggression,[30] but "are *jus cogens*" as well.[31] In particular, the prohibition of war crimes is an "old norm which [has] acquired the character of *jus cogens*."[32] There is also a sufficient legal basis for concluding that war crimes are part of *jus cogens*.[33] According to the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), international

[29] Wilfred Jenks, *The Common Law of Mankind* 17 (1958).
[30] Terje Einarsen, *The Concept of Universal Crimes in International Law* 21 (2012).
[31] M. Cherif Bassiouni, "International Crimes: Jus Cogens and Obligatio Erga Omnes," 59(4) *Law & Contemp Probs* 63, 68 (1996).
[32] Grigory I. Tunkin, "Jus Cogens in Contemporary International Law," 3 *U. Tol. L. Rev.* 107, 117 (1971).
[33] The 1993 International Tribunal For the Former Yugoslavia and the 1994 International Tribunal for Rwanda statutes include the Statute of the International Tribunal for the Former Yugoslavia, U.N. SCOR, 48th Sess., 3217th mtg., at 1, U.N. Doc. S/RES/827 (1993) and the Statute for the International Tribunal for Rwanda, U.N. SCOR, 49th Sess., 3453rd mtg., at 1, U.N. Doc. S/RES/955 (1994), and address Genocide, Crimes Against Humanity, and War Crimes.

crimes, which includes war crimes, are "universally condemned wherever they occur,"[34] because they are "peremptory norms of international law or jus cogens."[35]

Since 1898 when the United States began to usurp its authority by imposing its legislation and administrative measures within Hawaiian territory, much has evolved in customary international law. Usurpation of sovereignty was made a war crime by the *Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties* established at the Paris Peace Conference in 1919 in the aftermath of the First World War. The Commission provided examples of the war crime of usurpation of sovereignty during the First World War that bore a striking resemblance to the American occupation of Hawai‘i. In the case of the occupation of the Serbian State "Serbian law, courts and administration [were] ousted"[36] by Bulgaria, and taxes were "collected under [the] Bulgarian fiscal regime [and not the Serbian fiscal regime]." Another example the Commission provided was when "Austrians suspended many Serbian laws and substituted their own, especially in penal matters, in procedure, judicial organization, etc."[37]

---

[34] ICTY, *Prosecutor, v. Furundzija*, Case No. IT-95-17/1, Judgment, 156 (10 Dec. 1998).
[35] ICTY, *Prosecutor v. Kupreskic*, Case No. IT-95-16-T, Judgment, para. 520 (14 Jan. 2000).
[36] Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, *Violations of the Laws and Customs of War, Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities*, Conference of Paris, 1919, Annex, TNA FO 608/245/4.
[37] *Id*.

According to Schabas, usurpation of sovereignty is recognized as a war crime under customary international law.[38] In the Hawaiian situation, he states that "the usurpation of sovereignty would appear to have been total since the beginning of the twentieth century,"[39] and that it is not an instantaneous act or event but rather a continuous offense that "consists of discrete acts."[40] As such, the *actus reus* of the offense of usurpation of sovereignty occurs where 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."[41] And the *mens rea* would consist of where the "perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation."[42] Schabas explains, "[t]here is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international. In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict

---

[38] William Schabas, "War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom," in David Keanu Sai (ed.) *Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 155-157, 167 (2020) (online at: https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf).
[39] *Id*., 157.
[40] *Id*.
[41] *Id*., 167.
[42] *Id*., 168.

as international [but]…only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict."[43]

From a human rights standpoint, "implications arising from such a crime are determined by the fact that it usually hinders the effective exercise by the citizens of the occupied State of the right to participate in government, provided for by Article 25 [International Covenant on Civil and Political Rights] and Article 23 [American Convention on Human Rights]."[44] Lenzerini explains:

> Even supposing that the citizens of the country to which sovereignty has been usurped are given the formal opportunity to participate in the government installed on their territory by the occupied State, this would hardly comply with the requirement, inherent in the right in point, that all citizens shall enjoy the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives. In fact, it is reasonable to maintain that in most cases the representatives "freely chosen" by the citizens of the occupied State

[43] *Id*., 167.
[44] 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 Committed in the Hawaiian Kingdom* 208 (2020).

would be part of the political organization of the latter, and not of the government imposed by the occupying power.[45]

What was once recognized as a delict or violation of international law by the State in 1898 has risen today to the level of an international crime where criminal culpability falls upon persons and not the State. In the words of the International Military Tribunal, "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."[46] The passage of time will not remove the stain of criminal culpability for persons who commit war crimes because there is no statute of limitation.[47] However, enquiry into the commission of war crimes can last up to "80 years, bearing in mind the age of criminal responsibility."[48]

### 1. *Larsen v. Hawaiian Kingdom*—Permanent Court of Arbitration

The first allegation of the war crime of usurpation of sovereignty,[49] was made the subject of an arbitral dispute in *Lance Larsen vs. Hawaiian Kingdom* at the

---

[45] *Id*.
[46] *France et al. v. Göring et al.*, 22 IMT 411, 466 (1948).
[47] As a *jus cogens*—peremptory norm, customary international law prohibits any statute of limitation for war crimes. See also GA Res. 3 (I); GA Res. 170 (II); GA Res. 2583 (XXIV); GA Res. 2712 (XXV); GA Res. 2840 (XXVI); GA Res. 3020 (XXVII); and GA Res. 3074 (XXVIII).
[48] Schabas, 155.
[49] Memorial of Lance Paul Larsen (22 May 2000), *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, at para. 62-64, (online at http://www.alohaquest.com/arbitration/memorial_larsen.htm).

Permanent Court of Arbitration ("PCA"), whereby the claimant alleged that the Council of Regency was legally liable "for allowing the unlawful imposition of American municipal laws" over him within Hawaiian territory.[50] The war crime of usurpation of sovereignty 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."[51]

In order to ensure that the dispute is international, the PCA must possess institutional jurisdiction first,[52] before it could form *ad hoc* tribunals. The jurisdiction of the PCA is distinguished from the subject-matter jurisdiction of the *ad hoc* tribunal presiding over the dispute between the parties. International disputes, capable of being accepted under the PCA's institutional jurisdiction, include disputes between: any two or more States; a State and an international organization (i.e. an intergovernmental organization); two or more international organizations; a State and a private party; and an international organization and a private entity.[53] The PCA accepted the case as a dispute between a State and a private party, and acknowledged the Hawaiian Kingdom to be a non-Contracting State under Article

[50] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at https://pca-cpa.org/en/cases/35/).
[51] Schabas, 157.
[52] United Nations, *United Nations Conference on Trade and Development: Dispute Settlement* 15 (2003).
[53] *Id*.

47 of the Hague Convention for the Pacific Settlement of International Disputes, I ("1907 PCA Convention")[54] in its annual reports from 2001 to 2011.[55] Oral hearings were held at the PCA on December 7, 8 and 11, 2000.

Article 47 of the 1907 PCA Convention reads, "[t]he jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting [States] or between Contracting [States] and non-Contracting [States], if the parties are agreed on recourse to this Tribunal." Opening the Court to "non-Contracting [States]" is a treaty provision that is decided by the PCA's International Bureau. For non-Contracting States to have access to the "jurisdiction of the Permanent Court" they must exist as a State in accordance with recognized attributes of a State's sovereign nature.[56] While the government of the Hawaiian Kingdom was unlawfully overthrown by 'an act of war,' committed by the United States, Hawaiian Statehood remained intact along with its permanent population and defined territory. In other words, the Hawaiian Kingdom was not claiming to be a new State but rather continues to exist as an independent State since the nineteenth century.

---

[54] 36 Stat. 2199 (1907).
[55] *Annual Reports of the PCA* (online at https://pca-cpa.org/en/about/annual-reports/).
[56] Article 1, 1933 *Montevideo Convention on the Rights and Duties of States* defines a State "as a person of international law [that] possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states."

As an intergovernmental organization, the PCA, through its International Bureau, was vested with the authority by the "Contracting Powers" under Article 47 to grant access to the jurisdiction of the Permanent Court to non-Contracting States. In determining whether a State exists in accordance with Article 47, the International Bureau must rely on the rules of customary international law as it relates to an existing State under belligerent occupation. Evidence of the PCA's recognition of the continuity of the Hawaiian Kingdom as a State and its government—the Council of Regency, 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."[57] 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 Kingdom as a non-Contracting State to the 1907 PCA Convention as evidenced in the PCA Administrative Council's annual reports.

Before the *Larsen* tribunal was formed on June 9, 2000, Tjaco T. van den Hout, Secretary General of the PCA, spoke with Dr. DAVID KEANU SAI

[57] Permanent Court of Arbitration, *Annual Reports*, Annex 2 (online at https://pca-cpa.org/en/about/annual-reports/).

("Chairman of the Council of Regency"), 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 March 3, 2000 in Washington, D.C., between the Chairman of the Council of Regency, 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.[58] The note was signed off by the Chairman of the Council of Regency as "Acting Minister of Interior and Agent for the Hawaiian Kingdom."

Under international law, this note served as an offering instrument that contained the following text:

> [T]he reason for our visit was the offer by the…Hawaiian Kingdom, by consent of the Claimant [Larsen], by his attorney, Ms. Ninia Parks, for the United States Government to join in the arbitral proceedings presently instituted under the auspices of the Permanent

[58] "Letter confirming telephone conversation with U.S. State Department relating to arbitral proceedings at the Permanent Court of Arbitration, 3 Mar. 2000, (online at http://hawaiiankingdom.org/pdf/State_Dpt_Ltr_(3.3.2000).pdf).

> Court of Arbitration at The Hague, Netherlands. … [T]he State Department should review the package in detail and can get back to the Acting Council of Regency by phone for continued dialogue. I gave you our office's phone number…, of which you acknowledged. I assured you that we did not need an immediate answer, but out of international courtesy the offer is still open, notwithstanding arbitral proceedings already in motion. I also advised you that Secretary-General van den Hout of the Permanent Court of Arbitration was aware of our travel to Washington, D.C. and the offer to join in the arbitration. As I stated in our conversation he requested that the dialogue be reduced to writing and filed with the International Bureau of the Permanent Court of Arbitration for the record, and you acknowledged.

Thereafter, the PCA's Deputy Secretary General, Phyllis Hamilton, informed the Chairman of the Council of Regency that the United States, through its embassy in The Hague, notified the PCA, by *note verbale*, 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 this 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.

According to Wilmanns, "[l]egally there is no difference between a formal note, a *note verbale* and a memorandum. They are all communications which become legally operative upon the arrival at the addressee. The legal effects depend on the substance of the note, which may relate to any field of international relations."[59] And as "a rule, the recipient of a note answers in the same form. However, an acknowledgment of receipt or provisional answer can always be given in the shape of a *note verbale*, even if the initial note was of a formal nature."[60]

The request by the United States of the Council of Regency's permission to access all records and pleadings of the arbitral proceedings, together with the subsequent granting of such a permission by the Council of Regency, constitutes an agreement under international law. As Professor 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."[61] 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 to all records and pleadings of the arbitral proceedings. According to Hall, "a valid agreement is therefore concluded

[59] Johst Wilmanns, "Note," in 9 *Encyclopedia of Public International Law* 287 (1986).
[60] *Id*.
[61] Lassa Oppenheim, *International Law* 661 (3rd ed., 1920).

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."[62] If, for the sake of argument, the Council of Regency later denied the United States access to the records and pleadings of the arbitral proceedings, the latter would, no doubt, call the former's action a violation of the agreement.

### 2. The Law of Occupation

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."[63] After the *Larsen* case, the policy of the Council would be threefold: *first*, exposure of the prolonged occupation; *second*, ensure that the United States complies with international humanitarian law; and, *third*, prepare for an effective transition to a *de jure* government when the occupation ends.

---

[62] William Edward Hall, *A Treatise on International Law* 383 (1904).

[63] "United States Basic Field Manual F.M. 27-10 (Rules of Land Warfare), though not a source of law like a statute, prerogative order or decision of a court, is a very authoritative publication." *Trial of Sergeant-Major Shigeru Ohashi and Six Others,* 5 Law Reports of Trials of Law Criminals (United Nations War Crime Commission) 27 (1949).

The United States' belligerent occupation rests squarely within the regime of the law of occupation in international humanitarian law. The application of the regime of occupation law "does not depend on a decision taken by an international authority,"[64] and "the existence of an armed conflict is an objective test and not a national 'decision.'"[65] According to Article 42 of the 1907 Hague Regulations, a State's territory is considered occupied when it is "actually placed under the authority of the hostile army."

Article 42 has three requisite elements: first, the presence of a foreign State's forces; second, the exercise of authority over the occupied territories by the foreign State or its proxy; and, third, the non-consent by the occupied State. President Cleveland's 1893 manifesto to the Congress, which is Annexure 1 in the *Larsen v. Hawaiian Kingdom* Award,[66] and the continued U.S. presence today, without a treaty of peace, firmly meets all three elements of Article 42. Hawai'i's people, however, have become denationalized and the history of the Hawaiian Kingdom has been, for

[64] C. Ryngaert and R. Fransen, "EU extraterritorial obligations with respect to trade with occupied territories: Reflections after the case of Front Polisario before EU courts," 2(1) *Europe and the World: A Law Review* 8 (2018).
[65] Stuart Casey-Maslen, ed., *The War Report* 2012 ix (2013).
[66] *Larsen v. Hawaiian Kingdom*, Annexure 1, 119 *Int'l L. Rep.* 566, 598-610 (2001).

all intents and purposes, obliterated within three generations since the United States' takeover.[67]

The Council deemed it their duty to explain to Hawai'i's people that before the PCA could facilitate the formation of the *Larsen* tribunal, it had to ensure that it possessed jurisdiction as an institution. This jurisdiction required that the Hawaiian Kingdom be a "State." This finding authorized the Hawaiian Kingdom's access to the PCA pursuant to Article 47 of the 1907 PCA Convention, as a non-Contracting State to the treaty. This acknowledgement is significant on two levels, first, the Hawaiian Kingdom had to currently exist as a State under international law, otherwise the PCA would not have accepted the dispute to be settled through international arbitration, and second, the PCA Administrative Council and by the voluntary act of the United States to secure access to the arbitral records explicitly recognized the Council of Regency as the government of the Hawaiian Kingdom.

History of the illegal overthrow and purported annexation of the Hawaiian Islands is provided not only in the pleadings of the *Larsen* case,[68] but also in a 2002

---

[67] David Keanu Sai, "United States Belligerent Occupation of the Hawaiian Kingdom," David Keanu Sai (ed.) *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 114 (2020) (online at: https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf).

[68] *Larsen v. Hawaiian Kingdom* Arbitration Log Sheet (online at http://www.alohaquest.com/arbitration/log. htm).

legal opinion by Professor Craven titled *Continuity of the Hawaiian Kingdom*. Craven wrote the legal opinion for the Council of Regency as part of the latter's focus on exposure of the Hawaiian Kingdom's legal status under international law, through academic research, after the Council of Regency returned from The Hague in 2000. Craven's memo was also referenced in Judge Crawford's seminal book, *The Creation of States in International Law*. Judge Crawford wrote, "Craven offers a critical view on the plebiscite affirming the integration of Hawaii into the United States."[69]

Because international law provides for the presumption of the continuity of the State despite the overthrow of its government by another State, it shifts the burden of proof. As explained by Judge Crawford, "[t]here is a presumption that the State continues to exist, with its rights and obligations … despite a period in which there is … no effective, government."[70] Crawford further concludes that "[b]elligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[71]

"If one were to speak about a presumption of continuity," explains Craven, "one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts sustaining its rebuttal. The continuity of the

[69] Crawford, 623, n. 83.
[70] *Id*., 34.
[71] *Id*.

Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains."[72] Craven's opinion is premised on the theory that once recognition of a new State is granted it "is incapable of withdrawal"[73] by the recognizing States and that "recognition estops [precludes] the State which has recognized the title from contesting its validity at any future time."[74] Therefore, because the "Hawaiian Kingdom existed as an independent State [and] recognized as such by the United States of America,"[75] the United States is precluded 'from contesting its validity at any future time' unless it has extinguished Hawaiian statehood in accordance with international law.

In his legal opinion, Craven interrogated modes of extinction by which, under international law, the United States could provide rebuttable evidence that the Hawaiian State was indeed extinguished. Notwithstanding the imposition of United States municipal laws, he found no such evidence under international law to support

[72] Matthew Craven, "Continuity of the Hawaiian Kingdom as a State under International Law," in David Keanu Sai (ed.) *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 128 (2020).
[73] Oppenheim, 137.
[74] Georg Schwarzenberger, "Title to Territory: Response to a Challenge," 51(2) *Am. J. Int'l L.* 308, 316 (1957).
[75] *Larsen*, 581.

a claim that the United States extinguished Hawaiian Statehood. As such, Craven cited implications regarding the continuity of the Hawaiian Kingdom.

a) That authority exercised by US over Hawai‘i is not one of sovereignty i.e. that the US has no legally protected ‘right’ to exercise that control and that it has no original claim to the territory of Hawai’i or right to obedience on the part of the Hawaiian population. Furthermore, the extension of US laws to Hawai’i, apart from those that may be justified by reference to the law of (belligerent) occupation would be contrary to the terms of international law.

b) That the Hawaiian people retain a right to self-determination in a manner prescribed by general international law. Such a right would entail, at the first instance, the removal of all attributes of foreign occupation, and a restoration of the sovereign rights of the dispossessed government.

c) That the treaties of the Hawaiian Kingdom remain in force as regards other States in the name of the Kingdom (as opposed to the US as a successor State) except as may be affected by the principle *rebus sic stantibu* or impossibility of performance.

d) That the Hawaiian Kingdom retains a right to all State property including that held in the territory of third states, and is liable for the debts of the Hawaiian Kingdom incurred prior to its occupation.[76]

Regarding the implication that 'the Hawaiian people retain a right to self-determination,' Professor Lenzerini notes:

> Based on the postulation…that the Hawaiian Kingdom was occupied by the United States in 1893 and that it has remained in the same condition since that time, it may be concluded that the potential implications on such a situation arising from the applicable international legal rules on human rights and self-determination are remarkable. [Therefore,] an adequate legal basis would exist for claiming in principle the international responsibility of the United States of America—as occupying Power—for violations of both internationally recognized human rights to the prejudice of individuals and of the right of the Hawaiian people to freely exercise self-determination.[77]

[76] Craven, 126.
[77] Lenzerini, 215.

## STANDARD OF REVIEW

To obtain a temporary restraining order or a preliminary injunction, a plaintiff must demonstrate that (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest.[78] The Ninth Circuit has "also articulated an alternate formulation of the *Winter* test, under which 'serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.'"[79] However, due to the international nature of these pleadings, there is an exception to *Winter's* test of the balance of the equities and public interest favoring relief because the imposition of United States municipal laws within a foreign State without its consent is an international wrongful act. As such, there can be no application of the balance of the equities and public interest favoring relief in an internationally wrongful act. Furthermore, "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" is an international crime.[80]

---

[78] *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008).
[79] *Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) (internal quotation marks omitted).
[80] Schabas, 157.

## ARGUMENT

The Hawaiian Kingdom meets this standard. First, it has a substantial likelihood of success on the merits because the imposition of the municipal laws of the United States and the maintenance of United States military installations within the territorial jurisdiction of the Hawaiian Kingdom is unlawful. It is a violation of international law and constitutional law. Among other things, it is a violation of the *Supremacy Clause*. Second, the Hawaiian Kingdom has and continues to suffer irreparable harm if relief is not granted. The United States cannot suffer any hardship if the implementation and enforcement of United States municipal law and the maintenance of United States military installations is enjoined because usurpation of sovereignty is an international crime, while complying with international humanitarian law is the law.

### A. The Hawaiian Kingdom Is Likely To Succeed on the Merits of Its Claims.

#### 1. Imposition of United States Municipal Laws Violates International Law

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 municipal 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."[81] Article 64 of the 1949 Fourth Geneva Convention also states, "[t]he penal laws of the occupied territory shall remain in force."[82]

Article 43 does not transfer sovereignty to the occupying power.[83] Section 358, United States Army Field Manual 27-10, declares, "military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty." "The occupant," according to Professor Sassòli, "may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation." Sassòli further explains that the "expression 'laws in force in the country' in Article 43 refers

[81] 36 Stat. 2277, 2306 (1907).
[82] 6.3 U.S.T. 3516, 3558 (1955).
[83] See Eyal Benvenisti, *The International Law of Occupation* 8 (1993); Gerhard von Glahn, *The Occupation of Enemy of Territory—A Commentary on the Law and Practice of Belligerent Occupation* 95 (1957); Michael Bothe, "Occupation, Belligerent," in Rudolf Bernhardt (dir.), *Encyclopedia of Public International Law*, vol. 3, 765 (1997).

not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders."[84]

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 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."[85] The OLC cited constitutional scholar Professor 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,

[84] Marco Sassòli, "Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century," *International Humanitarian Law Research Initiative* 6 (2004) (online at https://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf).
[85] Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," 12 *Op. O.L.C.* 238, 252 (1988).

> 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.[86]

This OLC's conclusion is a position taken by the National Government similar to the OLC's position that federal prosecutors cannot charge a sitting president with a crime.[87] From a policy standpoint, OLC opinions bind the National Government to include its courts. 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.[88] 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.[89]

In its 1824 decision in *The Apollon*, the Supreme Court concluded that the "laws of no nation can justly extend beyond its own territories except so far as

---

[86] *Id*.
[87] Randolph D. Moss, "A Sitting President's Amenability to Indictment and Criminal Prosecution," 24 *Op. O.L.C.* 222-260 (2000).
[88] 31 Stat. 141 (1900).
[89] 73 Stat. 4 (1959).

regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."[90] The Hawaiian Kingdom Supreme Court also cited *The Apollon* in its 1858 decision, *In re Francis de Flanchet*, where the court stated that the "laws of a nation cannot have force to control the sovereignty or rights of any other nation within its own jurisdiction. And 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."[91] Both the *Apollon* and *Flanchet* cases addressed the imposition of French municipal laws within the territories of the United States and the Hawaiian Kingdom. Furthermore, the United States Supreme Court reiterated this principle in its 1936 decision in *United States v. Curtiss Wright Export Corp.*, where the Court stated:

> Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law. As a member of the family of nations, the right and power of the United States in that field

[90] *The Apollon*, 22 U.S. 362, 370 (1824).
[91] *In Re Francis de Flanchet*, 2 Haw. 96, 108-109 (1858).

are equal to the right and power of the other members of the international family.[92]

In the 1927 *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."[93] Therefore, it is a legal fact that United States legislation regarding Hawai'i, whether by a statute or by 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 Hawaiian Kingdom never consented to any cession of its territorial sovereignty to the United States. The United States could no more unilaterally annex the Hawaiian Islands by enacting a municipal law in 1898 than it could unilaterally annex Canada today by enacting a municipal law.

**2. The Imposition of United States Municipal Laws Violates the *Supremacy Clause***

Article VI of the U.S. Constitution provides:

[92] *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).
[93] *Lotus*, 18.

> This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.[94]

This clause provides that 'Treaties made…under the Authority of the United States' shall be given effect by judges. Article II of the U.S. Constitution gives the treaty making power to the President and to one of the houses of the Congress, where the Senate is required to attain a two-thirds vote for ratification. Article VI then declares that once the treaties have been ratified, they have the force of supreme federal law and directs judges to give them effect despite any conflict with state law. According to Professor Vázquez, the "Supremacy Clause was the Founders' solution to one of the principal 'vices' or 'evils' of the Articles of Confederation. The Articles gave Congress the power to conclude treaties, but they did not establish a mechanism for their enforcement."[95] The 1849 Hawaiian-American Treaty of Friendship, Commerce and Navigation, the 1907 Hague Regulations, the 1907 Hague Convention, V, and the 1949 Fourth Geneva Convention are self-executing and do

[94] U.S. Const. art. VI, cl 2.
[95] Carlos Manuel Vázquez, "Treaties as Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties," 122(2) *Harv. Law Rev,* 599, 617 (2008).

not require an act of the Congress for their implementation. Furthermore, with the exception of the 1849 Hawaiian-American Treaty of Friendship, Commerce and Navigation, these treaties have no intra-territorial effect but apply over the territory of a foreign State.

As Chief Justice Marshall made clear in *Foster v. Nielson*, "[i]n the United States a different principle is established: Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision."[96] Earlier, Chief Justice Marshall stated, "where a treaty is the law of the land, and as such affects the rights of parties litigating in court, that treaty as much binds those rights and is as much to be regarded by the court as an act of congress."[97]

### 3. The Explicit Recognition of the Continued Existence of the Hawaiian Kingdom by the United States Precludes the Invoking of the Political Question Doctrine

The explicit recognition by the United States of the continued existence of the Hawaiian Kingdom as a State and the Council of Regency as its government by virtue of Article 47 of the 1907 PCA Convention and its subsequent agreement with

[96] *Foster v. Nielson*, 27 U.S. (2 Pet.) 253 (1829).
[97] *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103, 109-110 (1801).

the Council of Regency prevents the denial of this civil action in the courts of the United States under the political question doctrine. In *Williams v. Suffolk Insurance Co.*, the Supreme Court rhetorically asked whether there could be "any doubt, that when the executive branch of the government, which is charged with our foreign relations…assumes a fact in regard to the sovereignty of any island or country, it is conclusive on the judicial department."[98] In *Sai v. Clinton*[99] and in *Sai v. Trump*[100] the court erred when it invoked the political question doctrine. In both cases the plaintiff provided evidence of the Hawaiian Kingdom's continuity by virtue of the proceedings at the Permanent Court of Arbitration in *Larsen v. Hawaiian Kingdom*.

In *Jones v. United States*, the Supreme Court concluded that "[w]ho is the sovereign, *de jure* or *de facto,* of a territory is not a judicial, but is a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens, and subjects of that government. This principle has always been upheld by this Court, and has been affirmed under a great variety of circumstances."[101] As a leading constitutional scholar, Professor Corwin, concluded, "[t]here is no more securely established principle of constitutional practice than the exclusive right of the

[98] *Williams v. Suffolk Insurance Co.*, 36 U.S. 415, 420 (1839).
[99] *Sai v. Clinton*, 778 F. Supp. 2d 1 - Dist. Court, Dist. of Columbia (2011).
[100] *Sai v. Trump*, 325 F. Supp. 3d 68 - Dist. Court, Dist. of Columbia (2018).
[101] *Jones v. United States*, 137 U.S. 202, 212 (1890).

President to be the nation's intermediary in its dealing with other nations."[102] The 'executive' did determine '[w]ho is the sovereign' of the Hawaiian Kingdom, and, therefore, since there is no political question, it 'binds the judges, as well as all other officers, citizens, and subjects of that government.'

**B. The Hawaiian Kingdom Has and Continues to Suffer Irreparable Harm If Relief Is Not Granted.**

The Hawaiian Kingdom has and continues to be irreparably harmed if Defendants are not temporarily enjoined from implementing and enforcing United States municipal laws and the maintenance of United States military installations within the territorial jurisdiction of the Hawaiian Kingdom.

Defendants have identified no exigency, allowed under international humanitarian law, that demands the implementing and enforcing of United States municipal laws and the maintenance of United States military installations within the territorial jurisdiction of the Hawaiian Kingdom.

## CONCLUSION

The Motion for a Temporary Restraining Order should be granted, and Defendants should be restrained from implementing and enforcing United States municipal laws and the maintenance of the United States military installations within the territory of the Hawaiian Kingdom.

---

[102] Edward Corwin, *The President: Office and Powers*, 1787-1984 214 (1957).

DATED: Honolulu, Hawai‘i, May __, 2021.

Respectfully submitted,

/s/ Dexter K. Ka‘iama

DEXTER K. KA‘IAMA (Bar No. 4249)
Attorney General of the Hawaiian Kingdom

DEPARTMENT OF THE ATTORNEY GENERAL, HAWAIIAN KINGDOM

*Attorney for Plaintiff, Hawaiian Kingdom*

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF HAWAIʻI**

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; JANE HARDY, in her official capacity as Australia's Consul to Hawaiʻi and the United Kingdom's Consul to Hawaiʻi; JOHANN URSCHITZ, in his official capacity as Austria's Honorary Consul to Hawaiʻi; M. JAN RUMI, in his official capacity as Bangladesh's Honorary Consul to Hawaiʻi and Morocco's Honorary Consul to Hawaiʻi; JEFFREY DANIEL LAU, in his official capacity as Belgium's Honorary Consul to Hawaiʻi; ERIC G. CRISPIN, in his official capacity as Brazil's Honorary Consul to Hawaiʻi; GLADYS VERNOY, in her official capacity as Chile's Honorary Consul to Hawaiʻi; ANN SUZUKI CHING, in her official capacity as the Czech Republic's Honorary Consul to Hawaiʻi; BENNY MADSEN, in his official capacity as Denmark's Honorary Consul to

Civil Action No.

Hawai‘i; KATJA SILVERAA, in her official capacity as Finland’s Honorary Consul to Hawai‘i; GUILLAUME MAMAN, in his official capacity as France’s Honorary Consul to Hawai‘i; DENIS SALLE, in his official capacity as Germany’s Honorary Consul to Hawai‘i; KATALIN CSISZAR, in her official capacity as Hungary’s Honorary Consul to Hawai‘i; SHEILA WATUMULL, in her official capacity as India’s Honorary Consul to Hawai‘i; MICHELE CARBONE, in his official capacity as Italy’s Honorary Consul to Hawai‘i; YUTAKA AOKI, in his official capacity as Japan’s Consul to Hawai‘i; JEAN-CLAUDE DRUI, in his official capacity as Luxembourg’s Honorary Consul to Hawai‘i; ANDREW M. KLUGER, in his official capacity as Mexico’s Honorary Consul to Hawai‘i; HENK ROGERS, in his official capacity as Netherland’s Honorary Consul to Hawai‘i; KEVIN BURNETT, in his official capacity as New Zealand’s Consul to Hawai‘i; NINA HAMRE FASI, in her official capacity as Norway’s Honorary Consul to Hawai‘i; JOSELITO A. JIMENO, in his official capacity as the Philippines’s Consul to Hawai‘i; BOZENA ANNA JARNOT, in her official capacity as Poland’s Honorary Consul to Hawai‘i; TYLER DOS SANTOS-TAM, in his official capacity as Portugal’s Honorary Consul to Hawai‘i; R.J. ZLATOPER, in his official capacity as Slovenia’s Honorary Consul to Hawai‘i; HONG, SEOK-IN, in his official capacity as the Republic of South Korea’s Consul to Hawai‘i; JOHN HENRY FELIX, in his official capacity as Spain’s Honorary Consul to Hawai‘i; BEDE DHAMMIKA COORAY, in his official capacity as Sri

Lanka's Honorary Consul to Hawai‘i; ANDERS G.O. NERVELL, in his official capacity as Sweden's Honorary Consul to Hawai‘i; THERES RYF DESAI, in her official capacity as Switzerland's Honorary Consul to Hawai‘i; COLIN T. MIYABARA, in his official capacity as Thailand's Honorary Consul to Hawai‘i; DAVID YUTAKA IGE, in his official capacity as Governor of the State of Hawai‘i; TY NOHARA, in her official capacity as Commissioner of Securities; DAMIEN ELEFANTE, in his official capacity as the acting director of the Department of Taxation of the State of Hawai‘i; RICK BLANGIARDI, in his official capacity as Mayor of the City & County of Honolulu; MITCH ROTH, in his official capacity as Mayor of the County of Hawai‘i; MICHAEL VICTORINO, in official capacity as Mayor of the County of Maui; DEREK KAWAKAMI, in his official capacity as Mayor of the County of Kaua‘i; CHARLES E. SCHUMER, in his official capacity as U.S. Senate Majority Leader; NANCY PELOSI, in her official capacity as Speaker of the United States House of Representatives; RON KOUCHI, in his official capacity as Senate President of the State of Hawai‘i; SCOTT SAIKI, in his official capacity as Speaker of the House of Representatives of the State of Hawai‘i; TOMMY WATERS, in his official capacity as Chair and Presiding Officer of the County Council for the City and County of Honolulu; MAILE DAVID, in her official capacity as Chair of the Hawai‘i County Council; ALICE L. LEE, in her official capacity as Chair of the Maui County Council; ARRYL KANESHIRO, in his

official capacity as Chair of the Kaua‘i County Council; the UNITED STATES OF AMERICA; the STATE OF HAWAI‘I; the CITY & COUNTY OF HONOLULU; the COUNTY OF HAWAI‘I; the COUNTY OF MAUI; and the COUNTY OF KAUA‘I,

Defendants.

## CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.5(e), I hereby certify that the foregoing Memorandum in Support of Plaintiff's Motion for Temporary Restraining Order is in Times New Roman, 14-point font and contains 8,733 words, exclusive of case caption, table of contents, table of authorities, and identification of counsel, as reported by the word processing system used to produce the document. This word count is in compliance with the limitation set forth in Local Rule 7.5(b).

DATED: Honolulu, Hawai‘i, May __, 2021.

Respectfully submitted,

/s/ Dexter K. Ka‘iama

DEXTER K. KA‘IAMA (Bar No. 4249)
Attorney General of the Hawaiian Kingdom

DEPARTMENT OF THE ATTORNEY GENERAL, HAWAIIAN KINGDOM

*Attorney for Plaintiff, Hawaiian Kingdom*

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF HAWAIʻI**

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his official capacity as President of the United States; KAMALA HARRIS, in her official capacity as Vice-President and President of the United States Senate; ADMIRAL JOHN AQUILINO, in his official capacity as Commander, U.S. Indo-Pacific Command; CHARLES P. RETTIG, in his official capacity as Commissioner of the Internal Revenue Service; JANE HARDY, in her official capacity as Australia's Consul to Hawaiʻi and the United Kingdom's Consul to Hawaiʻi; JOHANN URSCHITZ, in his official capacity as Austria's Honorary Consul to Hawaiʻi; M. JAN RUMI, in his official capacity as Bangladesh's Honorary Consul to Hawaiʻi and Morocco's Honorary Consul to Hawaiʻi; JEFFREY DANIEL LAU, in his official capacity as Belgium's Honorary Consul to Hawaiʻi; ERIC G. CRISPIN, in his official capacity as Brazil's Honorary Consul to Hawaiʻi; GLADYS VERNOY, in her official capacity as Chile's Honorary Consul to Hawaiʻi; ANN SUZUKI CHING, in her official capacity as the Czech Republic's Honorary Consul to Hawaiʻi; BENNY MADSEN, in his official capacity as Denmark's Honorary Consul to

Civil Action No.

Hawai‘i; KATJA SILVERAA, in her official capacity as Finland’s Honorary Consul to Hawai‘i; GUILLAUME MAMAN, in his official capacity as France’s Honorary Consul to Hawai‘i; DENIS SALLE, in his official capacity as Germany’s Honorary Consul to Hawai‘i; KATALIN CSISZAR, in her official capacity as Hungary’s Honorary Consul to Hawai‘i; SHEILA WATUMULL, in her official capacity as India’s Honorary Consul to Hawai‘i; MICHELE CARBONE, in his official capacity as Italy’s Honorary Consul to Hawai‘i; YUTAKA AOKI, in his official capacity as Japan’s Consul to Hawai‘i; JEAN-CLAUDE DRUI, in his official capacity as Luxembourg’s Honorary Consul to Hawai‘i; ANDREW M. KLUGER, in his official capacity as Mexico’s Honorary Consul to Hawai‘i; HENK ROGERS, in his official capacity as Netherland’s Honorary Consul to Hawai‘i; KEVIN BURNETT, in his official capacity as New Zealand’s Consul to Hawai‘i; NINA HAMRE FASI, in her official capacity as Norway’s Honorary Consul to Hawai‘i; JOSELITO A. JIMENO, in his official capacity as the Philippines’s Consul to Hawai‘i; BOZENA ANNA JARNOT, in her official capacity as Poland’s Honorary Consul to Hawai‘i; TYLER DOS SANTOS-TAM, in his official capacity as Portugal’s Honorary Consul to Hawai‘i; R.J. ZLATOPER, in his official capacity as Slovenia’s Honorary Consul to Hawai‘i; HONG, SEOK-IN, in his official capacity as the Republic of South Korea’s Consul to Hawai‘i; JOHN HENRY FELIX, in his official capacity as Spain’s Honorary Consul to Hawai‘i; BEDE DHAMMIKA COORAY, in his official capacity as Sri

Lanka's Honorary Consul to Hawai‘i; ANDERS G.O. NERVELL, in his official capacity as Sweden's Honorary Consul to Hawai‘i; THERES RYF DESAI, in her official capacity as Switzerland's Honorary Consul to Hawai‘i; COLIN T. MIYABARA, in his official capacity as Thailand's Honorary Consul to Hawai‘i; DAVID YUTAKA IGE, in his official capacity as Governor of the State of Hawai‘i; TY NOHARA, in her official capacity as Commissioner of Securities; DAMIEN ELEFANTE, in his official capacity as the acting director of the Department of Taxation of the State of Hawai‘i; RICK BLANGIARDI, in his official capacity as Mayor of the City & County of Honolulu; MITCH ROTH, in his official capacity as Mayor of the County of Hawai‘i; MICHAEL VICTORINO, in official capacity as Mayor of the County of Maui; DEREK KAWAKAMI, in his official capacity as Mayor of the County of Kaua‘i; CHARLES E. SCHUMER, in his official capacity as U.S. Senate Majority Leader; NANCY PELOSI, in her official capacity as Speaker of the United States House of Representatives; RON KOUCHI, in his official capacity as Senate President of the State of Hawai‘i; SCOTT SAIKI, in his official capacity as Speaker of the House of Representatives of the State of Hawai‘i; TOMMY WATERS, in his official capacity as Chair and Presiding Officer of the County Council for the City and County of Honolulu; MAILE DAVID, in her official capacity as Chair of the Hawai‘i County Council; ALICE L. LEE, in her official capacity as Chair of the Maui County Council; ARRYL KANESHIRO, in his

official capacity as Chair of the Kaua‘i County Council; the UNITED STATES OF AMERICA; the STATE OF HAWAI‘I; the CITY & COUNTY OF HONOLULU; the COUNTY OF HAWAI‘I; the COUNTY OF MAUI; and the COUNTY OF KAUA‘I,

Defendants.

**[PROPOSED] TEMPORARY RESTRAINING ORDER**

This matter came before the Court on Plaintiff's Motion for Temporary Restraining Order. The Court has considered the motion and documents filed therewith, the Hawaiian Kingdom's Complaint for Declaratory and Injunctive Relief, and the arguments of counsel provide at an emergency hearing held _____, at _____a.m./p.m. Having considered the foregoing, the Court hereby finds and concludes as follows.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff has and continues to face an immediate and irreparable injury because of the implementation and enforcement of United States municipal laws and the maintenance of the United States military installations within the territory of the Hawaiian Kingdom. The imposition of United States municipal laws within the territorial jurisdiction of the Hawaiian Kingdom, which includes its territorial sea, has, and continues to affect the employment, education, business and property, both real and personal, of residents throughout the Hawaiian Islands, and has and continues to harm the Hawaiian Kingdom itself through negative impacts upon its economy and sovereignty.

The foregoing harms are ongoing and significant.

A temporary restraining order against Defendants, in the manner set forth below, is necessary until a determination of the merits of Plaintiff's claims may be held.

Plaintiff took the following reasonable steps to provide sufficient notice to Defendants as to its intention to file the instant motion:

a. Plaintiff delivered a copy of the Complaint and instant motion papers to the United States Attorney for the District of Hawai‘i;

b. Plaintiff delivered a copy of the Complaint and instant motion papers to the Attorney General of the State of Hawai‘i;

c. Plaintiff sent a copy of the same documents by certified mail to the Commander of the Indo-Pacific Command;

d. Plaintiff sent a copy of the same documents by certified mail to the Attorney General of the United States; and

e. Plaintiff sent a copy of the same documents by email to the following foreign consulates in the Hawaiian Islands: Australia, Austria, Bangladesh, Belgium, Brazil, Chile, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Japan, Luxembourg, Mexico, Morocco, Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, Slovenia, South Korea, Spain, Sri Lanka, Sweden, Switzerland and Thailand;

f. Plaintiff sent a copy of the same documents by certified mail to the Indian Consulate;

g. Plaintiff called the office of the United States Attorney for the District of Hawai‘i on May 10, 2021 to notify that office of Plaintiff’s intention to file the instant motion later the same day.

This is not a political question, and the Court has jurisdiction over Defendants and the subject matter of this case.

Plaintiff’s efforts to contact Defendants reasonably and substantially complied with the requirements of Federal Rule of Civil Procedure 65 (b).

No security bond is required under Federal Rule of Civil Procedure 65(c) because, like the United States, the Hawaiian Kingdom is a government of a sovereign and independent State. International rules of comity afford the Hawaiian Kingdom certain privileges the United States possesses as a government under the Federal Rules of Civil Procedure limited only by the principles and rules of international humanitarian law.

To obtain a temporary restraining order, Plaintiff must establish: (1) a likelihood of success on the merits; and (2) that irreparable harm is likely in the absence of preliminary relief. *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). That (3) that the balance of the equities tips in Plaintiff's favor and (4) that an injunction is in the public interest of the *Winter's* test are excepted due to the nature of this case under international law.

Based on the foregoing, there is a strong likelihood that Plaintiff will succeed on the merits of its claim, and the irreparable injury is likely to continue if the request relief is not issued.

**TEMPORARY RESTRAINING ORDER**

Now, therefore, it is hereby ADJUDGED, ORDERED, and DECREED that:

1. Defendants all their respective officers, agents, servants, employees, and attorneys, and persons in active concert or participation with them receive actual notice of this Order, hereby are enjoined fully from implementing

and enforcing United States municipal laws and the maintenance of the United States military installations within the territory of the Hawaiian Kingdom.

2. Pursuant to Federal Rule of Civil Procedure 65(b)(2), the Court sets an expedited hearing for _____ to determine whether this Temporary Restraining Order should be extended.

DATED: Honolulu, Hawai‘i, _____.

_____

U.S. District Judge