

May 23, 2016

Office of the United Nations High Commissioner for Human Rights
Human Rights Council Branch-Complaint Procedure Unit
OHCHR- Palais Wilson
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland

Re: Reporting War Crimes Committed against Mr. Kale Kepekaio Gumapac

To Whom It May Concern:

I represent Mr. Kale Kepekaio Gumapac under a limited power of attorney regarding war crimes committed against him by officials of the United States of America, the State of Hawai'i, and by Deutsche Bank. His case is currently before the Swiss Federal Criminal Court in Bellinzona.

In order to bring to the attention of the United Nations Human Rights Council the violation of Mr. Gumapac's rights under international humanitarian law and human rights law, and to draw attention on the humanitarian crisis of unimaginable proportions that have and continue to take place in the Hawaiian Islands, please find enclosed:

- (a) Complaint in accordance with article IV—*Complaint Procedure* of the annex to Human Rights Council resolution 5/1;
- (b) War Crimes Report: Humanitarian Crisis in the Hawaiian Islands; and
- (c) Declaration of David Keanu Sai, Ph.D.

Please acknowledge receipt of this communication, which can be sent via email to keanu.sai@gmail.com.

Sincerely,



David Keanu Sai, Ph.D.

Enclosures

HUMAN RIGHTS COUNCIL COMPLAINT

I. Information concerning the alleged victim if other than the author

Last name: Gumapac
First name: Kale Kepekaio
Nationality: Hawaiian
Address for correspondence: Dr. David Keanu Sai, P.O. Box 4146, Hilo, HI 96720
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The author, Dr. David Keanu Sai, is submitting this complaint on behalf of Mr. Kale Kepekaio Gumapac, as his attorney. Accompanying this complaint is the author's curriculum vitae, a Declaration by the author concerning war crime proceedings currently before the Swiss Federal Criminal Court in Bellinzona, and a Report by the author entitled "War Crimes Report: Humanitarian Crisis in the Hawaiian Islands." This complaint will reference the author's Declaration and Report herein below.

II. Information on the State concerned

Throughout the nineteenth century the Hawaiian Kingdom was a recognized independent and sovereign State with over ninety Legations and Consulates throughout the world. The United States of America (hereinafter "United States") explicitly recognized Hawaiian independence on July 6, 1844 and entered into a treaty of friendship, commerce and navigation on December 20, 1849.¹ The Hawaiian Kingdom maintained a Legation in Washington, D.C., and Consulates throughout the United States, while the United States maintained a Legation in Honolulu and Consulates throughout the Hawaiian Islands.²

After the United States admitted to have illegally installed an insurgency on January 17, 1893 for the purpose of acquiring the Hawaiian Islands by cession; after having entered into an executive agreement to reinstate Queen Lili'uokalani as the executive monarch; after having failed to reinstate the executive monarch that allowed for the insurgency to continue; after failing to ratify a so-called treaty of cession signed on June 16, 1897 with the insurgency because of the political actions taken by Queen Lili'uokalani and Hawaiian subjects; the Hawaiian Kingdom was occupied on August 12, 1898 during the Spanish-American War.³ The Hawaiian Kingdom has been under an illegal and prolonged occupation by the United States ever since.

Since the occupation began, the United States engaged in the criminal conduct of *genocide* under humanitarian law through *denationalization*. After local institutions of Hawaiian self-government were destroyed by the United States through its installed insurgency, a United States pattern of administration was imposed in 1900, whereby the former Hawaiian national character was obliterated.⁴ The United States interfered with the methods of education; compelled education in

¹ David Keanu Sai, *War Crimes Report: Humanitarian Crisis in the Hawaiian Islands* (May 23, 2016), para. 3.1.

² See Appendix II, *Hawaiian Register and Directory for 1893*, at 140.

³ See Sai, *War Crimes Report*, para. 4.1 – 5.12.

⁴ *Id.*, para. 12.1 – 12.13.

the English language; banned the use of Hawaiian, being the national language, in the schools; compulsory or automatic granting of United States citizenship upon Hawaiian nationals; imposed conscription of Hawaiian nationals into the armed forces of the United States; imposed the duty of swearing the oath of allegiance; confiscated and destroyed property of Hawaiian nationals for militarization; pillaged the property and estates of Hawaiian nationals; imposed American administrative and judicial systems; imposed American financial and economic administration; colonized Hawaiian territory with nationals of the United States; permeated the economic life through individuals whose nationality and/or allegiance was American; and denied Hawaiian nationals of aboriginal blood their vested right to health care at no charge at Queen's Hospital, which was established by the Hawaiian government for that purpose.

The United States did precisely what the Bulgarians, Austrians and Germans did to Serbia when the Serbian State was occupied by Bulgaria during the First World War, and which the 1919 *Commission on Responsibility of the Authors of the War and on Enforcement of Penalties* labeled as the war crime of *usurpation of sovereignty during military occupation, to wit*: “Serbian law, courts, and administration ousted; taxes collected under Bulgarian fiscal regime; Serbian currency suppressed; Austrians suspended many Serbian laws and substituted their own, especially in penal matters, in procedure, [and] judicial organization,” and under the war crime of *attempts to denationalize the inhabitants of occupied territory, to wit*: “Efforts to impose their national characteristics on the population; Serbian language forbidden in private as well as official relations; ...Bulgarian schools and churches substituted—attendance at school made compulsory; population forced to be present at Bulgarian national solemnities; [and] Austrians and Germans...interfered with the use of the Serbian language.”

However, despite the illegal overthrow of the Hawaiian government in 1893 and the criminal conduct of *genocide* through *denationalization* that has obliterated the Hawaiian national consciousness, the continuity of the Hawaiian Kingdom as a State is maintained under international law.⁵ In international arbitration proceedings under the auspices of the Permanent Court of Arbitration (hereafter “PCA”), The Hague, Netherlands, in *Lance Paul Larsen v. Hawaiian Kingdom*, the Secretariat of the PCA explicitly recognized the continued existence of the Hawaiian Kingdom as a State for the purpose of fulfilling the PCA’s requirement that it has institutional jurisdiction before it could establish an arbitral tribunal to address the dispute between a Hawaiian national and the Hawaiian government.⁶ According to the *American Journal of International Law*,

“At the center of the PCA proceedings was...that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States’ ‘unlawful imposition [over him] of [its] municipals’ through its political subdivision, the State of Hawai‘i. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him.”⁷

After oral hearings were held at the PCA on December 7, 8 and 11, 2000, the Tribunal issued its Award on February 5, 2001. In concluding that it was a necessary third party, and having

⁵ *Id.*, para. 8.1 – 10.5.

⁶ *Id.*, para. 1.4 – 1.6; see also Appendix “I,” *Larsen/Hawaiian Kingdom*, Permanent Court of Arbitration, PCA Case Repository.

⁷ David Bederman & Kurt Hilbert, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii*, 95 AM. J. INT’L L. 927, 928 (2001).

received confirmation that the United States declined formal invitations to join in the arbitral proceedings, the Tribunal could not maintain its jurisdiction in the absence of the United States. The Tribunal did, however, conclude by *dictum*, “that in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.”⁸

This *dictum* is significant because as an independent State since the nineteenth century, the United States, the United Kingdom and various other States recognized that only Hawaiian laws could extend over Hawaiian territory independent of any other law of any State, specifically the laws of the United States. The independence of Hawai‘i and the United States is embodied in Article 8, 1849 Hawaiian-American Treaty, which provides, “each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively.”⁹

The February 6, 2015 Report of the United States submitted to the United Nations High Commissioner for Human Rights in Conjunction with the Universal Periodic Review deliberately withheld information of the Hawaiian Kingdom despite the United States’ full and complete knowledge of arbitration proceedings held under the auspices of the PCA, and where the Secretariat of the PCA explicitly recognized the continuity of the Hawaiian Kingdom.

Under its domestic law and in direct violation of Article 8 of the 1849 Hawaiian-American Treaty, the United States coined the term “Native Hawaiian,” which it defines as “any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii,” and recognizes this group as “indigenous” with a right of self-determination in similar fashion to Native Americans as a tribal people.¹⁰ This is but another act of *genocide* in an attempt to further conceal a travesty of justice. Hawaiian nationals of aboriginal blood are not indigenous people as defined under United Nations instruments, but are defined under Hawaiian Kingdom law as Hawaiian subjects who comprise the majority of the national population prior to the overthrow of the Hawaiian government on January 17, 1893.

Furthermore, the draft report of the Working Group on the Universal Periodic Review of the United States dated May 21, 2015, and the final report of the United Nations Human Rights Council adopted on September 24, 2015, omits any mention of the Hawaiian Kingdom as well. Instead, the universal periodic review of the United States reflects this deception of labeling Native Hawaiian as an indigenous people and self-determination when Pakistan asked the United States to “Respond to the suggestion made by the UN Special Procedures in paragraph 69(n) of doc A/68/284 regarding cases of Alaska, Hawaii and Dakota.”¹¹ Paragraph 69(n) states, “The General Assembly may consider revisiting the reality of self-determination in today’s world and refer to the Special Committee on Decolonization and/or other United Nations instances communications by indigenous and unrepresented peoples where they reside, inter alia,

⁸ *Larsen v. Hawaiian Kingdom*, 119 INT’L L. REP. 566, 581 (2001), reprinted in 1 HAW. J. L. & POL. 299 (Summer 2004).

⁹ *Hawaiian-American Treaty of Friendship, Commerce and Navigation* (Dec. 20, 1849), available at: <http://hawaiiakingdom.org/pdf/Annex%206.pdf>.

¹⁰ S.J. Res. 19, 103d Cong., 107 Stat. 1510 (1993).

¹¹ *Draft report of the Working Group on the Universal Periodic Review—United States of America*, UN doc. A/HRC/WG.6/22/L.10 (21 May 2015), at 31.

in...Hawaii.”¹² This deception was also included in the summary report of ninety-one stakeholders submissions for the universal periodic review under the heading “Minorities and indigenous peoples.”¹³

The authorities responsible for *genocide* through *denationalization*, as principals, include the following Presidents of the United States who appointed Governors for the Territory of Hawai‘i from 1900 to 1959; and the Governors of the State of Hawai‘i, being the armed force of the United States since 1959.

Presidents: William McKinley (1897-1901), Theodore Roosevelt (1901-1909), William Howard Taft (1909-1913), Woodrow Wilson (1913-1921), Warren Harding (1921-1923), Calvin Coolidge (1923-1929), Herbert Hoover (1929-1933), Franklin Roosevelt (1933-1945), Harry Truman (1945-1953), Dwight Eisenhower (1953-1961), John Kennedy (1961-1963), Lyndon Johnson (1963-1969), Richard Nixon (1969-1974), Gerald Ford (1974-1977), James Carter, Jr. (1977-1981), Ronald Reagan (1981-1989), George H.W. Bush (1989-1993), William Clinton (1993-2001), George W. Bush (2001-2009), Barack Obama (2009-present).

Governors: William F. Quinn (1959-1962), John A. Burns (1962-1974), George Ariyoshi (1974-1986), John D. Waihe‘e III (1986-1994), Ben Cayetano (1994-2002), Linda Lingle (2002-2010), Neil Abercrombie (2010-2014), and David Ige (2014-present).

Currently, United States President Barack Obama, who represents officials of the United States, and Governor David Ige, who represents officials of the State of Hawai‘i have and continue to engage in the criminal conduct of *genocide* and other war crimes defined under international humanitarian law, as well as violations of human rights law. Both men cannot claim they were unaware of the illegal overthrow of the Hawaiian government and the ensuing violations of international law.

III. Facts of the complaint and nature of the alleged violations

When Mr. Gumapac and his former wife (hereafter collectively known as “Gumapac(s)”) purchased their home April 17, 2002, he was unaware that all ownership of real estate in the Hawaiian Islands was defective as a result of the illegal overthrow of the Hawaiian government on January 17, 1893. Property ownership was not capable of being transferred after January 17, 1893, because all notaries public and the registrars of the Bureau of Conveyances, which serves as the public registry of land titles in the Kingdom since 1845, stemmed from entities that were neither governments *de facto* nor *de jure*, but self-declared.

On December 12, 2005, the Gumapac(s) entered into a mortgaged loan with Argent Mortgage Company, LLC, who subsequently sold the mortgaged loan to Deutsche Bank National Trust Company (hereafter “Deutsche Bank”). The Gumapac(s) subsequently divorced, and Mr. Gumapac acquired the property in question.

¹² *Promotion of a democratic and equitable international order*—Report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas, UN doc. A/68/24 (7 August 2013), at 23.

¹³ *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, UN doc. A/HRC/WG.6/22/USA/3, at 10.

On November 22, 2011, Mr. Gumapac notified Deutsche Bank of the defect in his title and for Deutsche Bank to file an insurance claim based on the evidence Mr. Gumapac provided. Mr. Gumapac stated:

“To protect the lender in case of this type of situation, I was required by the original lender, Argent Mortgage Company, LLC, to purchase a loan title insurance policy in escrow or I wouldn’t get the loan. The policy covered the amount I borrowed, which was \$290,000.00. When Deutsche Bank National Trust Company purchased the loan it also included the title insurance policy I purchased for the protection of Argent Mortgage Company, LLC. If there is a defect in title, which is a covered risk under the lender’s policy, it pays off the balance of the loan owed to Deutsche Bank National Trust Company, being the assignee of Argent Mortgage Company, LLC.”¹⁴

Deutsche Bank disregarded Mr. Gumapac’s letter and instead filed a Complaint for Ejectment on December 15, 2011 in the Circuit Court of the Third Circuit, State of Hawai‘i. In a move to compel Deutsche Bank to file the insurance claim under the policy Mr. Gumapac purchased from Stewart Title Guaranty Company, Mr. Gumapac retained counsel to file a lawsuit in the United States District Court for the Central District of California, Western Division, on March 13, 2012.¹⁵

Deutsche Bank filed a motion to dismiss on March 29, 2012, arguing that the Court should grant its motion because American Courts have concluded that the Hawaiian Kingdom does not exist. The United States Federal Court granted Deutsche Bank’s motion.

This rising toll of impunity prompted Mr. Gumapac’s attorney, Dexter Kaiama, to file a protest and demand with Admiral Locklear, United States Pacific Command Commander (hereafter “PACOM”), in 2012, seeking intervention. In his protest and demand on July 6, 2012, Mr. Kaiama stated:

“As the Commander of the U.S. Pacific Command, your office is the direct extension of the United States President in the Hawaiian Islands through the Secretary of Defense. As the Hawaiian Kingdom continues to remain an independent and sovereign State, the Lili‘uokalani assignment and Article 43 of the 1907 Hague Convention IV mandates your office to administer Hawaiian Kingdom law in accordance with international law and the laws of occupation. The violations of my client’s right to a fair and regular trial are directly attributable to the President’s failure, and by extension your office’s failure, to comply with the Lili‘uokalani assignment and Article 43 of the 1907 Hague Convention, IV, which makes this an international matter.”¹⁶

Mr. Kaiama also notified the Office of the United Nations High Commissioner for Human Rights (hereafter “OHCHR”) in Geneva, Switzerland, in a letter dated August 20, 2012,¹⁷ and he filed a complaint with the Prosecutor of the International Criminal Court (hereafter “ICC”) dated February 18, 2013.¹⁸ Neither the PACOM, the OHCHR, nor the ICC took any action.

¹⁴ Declaration of David Keanu Sai, Ph.D. (May 23, 2016), Exhibit “3”.

¹⁵ *Gumapac v. Deutsche Bank National Trust Company, et al.*, United States District Court for the Central District of California, Western Division, Case No. CV-2:11-10767 ODW (CWx).

¹⁶ Kaiama to PACOM (July 6, 2012), available at: http://hawaiiankingdom.org/pdf/PACOM_Gumapac_Protest.pdf.

¹⁷ Kaiama to OHCHR (Aug. 20, 2012), available at: http://hawaiiankingdom.org/pdf/Gumapac_OHCHR_8_20_2012.pdf.

¹⁸ Kaiama to ICC (Feb. 18, 2013), available at: [http://hawaiiankingdom.org/pdf/ICC_Complaint_\(Gumapac\).pdf](http://hawaiiankingdom.org/pdf/ICC_Complaint_(Gumapac).pdf).

Through proceedings of a court without competent jurisdiction, officials of the State of Hawai'i Sheriff's Division evicted Mr. Gumapac from his home and arrested him after he refused to leave the property. He was later released on his own recognizance. Deutsche Bank thereafter seized the property from Mr. Gumapac who had to go before another court that was without competent jurisdiction under a charge of criminal trespass in two separate cases. The State of Hawai'i Prosecutor, without reason, eventually withdrew these two separate charges of criminal trespass. Mr. Gumapac was the victim of the war crimes of deprivation of a fair and regular trial, pillaging, and unlawful confinement.

In December 2014, the author, as the attorney for Mr. Gumapac, filed a complaint for war crimes committed against Mr. Gumapac by Deutsche Bank, officials of the State of Hawai'i, and others with the Swiss Federal Attorney General's Office under Articles 118 and 119 of the Swiss Criminal Procedure Code.¹⁹ On January 22, 2015, the complaint was amended to include Josef Ackermann, former CEO of Deutsche Bank, because he is a Swiss citizen and resides in Zurich.²⁰

The war crime investigation was assigned to Prosecutor Andreas Müller of the *Center of Competence of International Crimes* (hereafter "War Crimes Unit"). On February 3, 2015, Prosecutor Müller issued a report abandoning the criminal investigation by taking the position that the United States acquired the Hawaiian Islands through a national law, being a joint resolution enacted by its Congress on July 7, 1898, and, therefore, there is no armed conflict where war crimes have been committed, because the Hawaiian Kingdom no longer exists.²¹ A joint resolution is not international law and can have no effect beyond the territorial borders of the United States.

The author objected to this position taken by the prosecutor because he was in plain error of both United States law and also international law, which includes Article 8 of the 1849 Hawaiian-American Treaty. According to the United States Supreme Court, *U.S. v. Curtiss-Wright Export*, 299 U.S. 304, 318 (1936), "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." Additionally, the Permanent Court of International Justice, in *Lotus*, PCIJ ser. A no. 10 (1927) 18, stated, "Now 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."

On April 1, 2015, the author, on behalf of Mr. Gumapac, filed an Objection to the Prosecutor's reliance of a national law of the United States to have purportedly annexed foreign territory with the Swiss Federal Criminal Court in Bellinzona according to Article 393 of the Swiss Criminal Procedure Code.²² The Objection was sent via FedEx from Honolulu on April 1 and arrived at the

¹⁹ Swiss War Crime Complaint—*War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands* (Dec. 7, 2014), para. 15.8 – 15.22, available at: http://hawaiiakingdom.org/pdf/Swiss_AG_War_Crimes_Report.pdf.

²⁰ Amended Complaint of Kale Kepekaio Gumapac (Jan. 22, 2015), available at: http://hawaiiakingdom.org/pdf/Gumapac_Complaint_1_22_15.pdf.

²¹ Swiss Federal Prosecutor's Report (Feb. 3, 2015), available in the original German language at: http://hawaiiakingdom.org/pdf/Prosec_Rep_2_3_15_redacted.pdf, and available in the English translation at: http://hawaiiakingdom.org/pdf/Prosec_Rep_2_3_15_Eng_redacted.pdf. The name of the other complainant has been redacted for safety concerns.

²² Objection to Prosecutor's Report of Feb. 3, 2015 (Mar. 31, 2015), available in the original German language at: [http://hawaiiakingdom.org/pdf/Objection_Deutsch_\(redaction\).pdf](http://hawaiiakingdom.org/pdf/Objection_Deutsch_(redaction).pdf), and available in the English translation at: [http://hawaiiakingdom.org/pdf/Objection_4_1_15_English_\(redaction\).pdf](http://hawaiiakingdom.org/pdf/Objection_4_1_15_English_(redaction).pdf).

Federal Criminal Court on April 8. On April 9, the Federal Criminal Court issued an Order to Prosecutor Müller to turn over all evidence of his investigation for review by the Court.

On April 28, 2015, the Court issued its decision.²³ After naming former CEO of Deutsche Bank Josef Ackermann, together with former Governor of the State of Hawai‘i Neal Abercrombie, Lieutenant Governor Shan Tsutsui, former Director of Taxation Frederik Pablo, and former Deputy Director of Taxation Joshua Wisch as alleged war criminals of pillaging, the Court concluded that it could not accept the Objection because of a procedural technicality. According to the Swiss Criminal Procedure Code, an Objection must be filed within 10 days from receipt of the Prosecutor’s Report, which provided April 2, 2015 as the expiration date. The Court acknowledged that the Objection was sent by courier on April 1, but according to a decision in 2012 the Court could only accept packages from FedEx on the date it arrives and not the date sent.²⁴ Since the Objection arrived on April 8, the Court concluded it did not meet the 10-day requirement and denied the Objection on a procedural technicality.

After the Court’s decision, the author was informed by a very reliable source that a former Prosecutor of the War Crimes Unit admitted to another lawyer in Zurich, Switzerland, that after receiving the war crime complaint, the War Crime Unit could not refute the evidence of war crimes being committed in the Hawaiian Islands, and stated, anecdotally, it was as if a bomb went off in the office.²⁵ The former Prosecutor also admitted that the Attorney General’s Office deliberately used a procedural technicality to prevent the Federal Criminal Court from reviewing its investigation.²⁶

With this knowledge, preparation was being made to resubmit the war crime complaint, but the author recommended to Mr. Gumapac that the State of Hawai‘i’s Governor’s office should be made aware that Lieutenant Governor Shan Tsutsui, who was re-elected, was identified as an alleged war criminal for pillaging by the Swiss Federal Criminal Court. Furthermore, the author explained to Mr. Gumapac that this was an opportunity for Governor David Ige to begin to take corrective measures, and if he should take corrective measures and begin to comply with international humanitarian law, Mr. Gumapac should forego resubmitting the war crime complaint with Swiss authorities.

In June 2015, the author met with Governor Ige’s Chief of Staff, Mike McCartney, on three occasions that spanned over three weeks. Each weekly meeting lasted two hours and was held in Mr. McCartney’s office in the Executive Chamber of the State of Hawai‘i Capital building. In these meetings Mr. McCartney was given full disclosure of Mr. Gumapac’s case as well as how the State of Hawai‘i, being an armed force of the United States, could take remedial steps under international law to bring about compliance.

On July 2, 2015, the author provided Mr. McCartney a report titled “Military Government: Transformation of the State of Hawai‘i,” that covered what was discussed in the meetings and the remedial prescription of transforming the State of Hawai‘i from an armed force to a military government.²⁷ In the cover letter that accompanied the report, the author stated, “It is crucial that we maintain a line of communication on this very delicate topic, and I look forward to another

²³ See Sai, *Declaration*, Exhibit “4.”

²⁴ See Sai, *Declaration*, Exhibit “4,” p. 4.

²⁵ *Id.*, para. 7.

²⁶ *Id.*

²⁷ David Keanu Sai, Ph.D., *Military Government: Transformation of the State of Hawai‘i* (July 2, 2015), with cover letter addressed to Mike McCartney, available at: [http://hawaiiankingdom.org/pdf/McCartney_Ltr_7_2_15_\(Report\).pdf](http://hawaiiankingdom.org/pdf/McCartney_Ltr_7_2_15_(Report).pdf).

meeting with you after you've gone over the report."²⁸ After repeated attempts by the author to schedule a follow-up meeting with Mr. McCartney, the author recommended to Mr. Gumapac that he should resubmit the complaint with the War Crime Unit.

On behalf of Mr. Gumapac, the author resubmitted the war crime complaint dated August 18, 2015 to the War Crimes Unit via the Swiss Consulate General in San Francisco. Prosecutor Müller reinitiated the investigation that would last nearly five months.²⁹ On January 28, 2016, Prosecutor Müller, in his Report, again took the erroneous position that since a national law enacted by the United States Congress in 1898 annexed the Hawaiian Islands, there is no occupation and therefore no war crimes have been committed.³⁰ When the author received the Report, the 10-day window to file an Objection with the Swiss Federal Criminal Court would expire on February 23, 2016.

The author prepared the Objection and the Federal Criminal Court received the Objection on February 20, 2016.³¹ Two days later on February 22, the Court issued an Order to Prosecutor Müller to turn over all evidence of his investigation for review by the Court.³² On March 2, 2016, the Federal Criminal provided notice to the author that the case has been accepted for review and to deposit a security for court costs in the amount of CHF 2,000.00 in the Court's bank account before March 14, 2016 according to Article 383 of the Swiss Criminal Procedure Code.³³ In addition to the security deposit, the Court directed the author to resubmit the Objection with an original signature that also needed to be received by the Court before the March 14 expiration day. The Court received proof of deposit and the Objection with the author's original signature on March 9, 2016³⁴ via the Swiss Consulate General in San Francisco.³⁵

As a victim of war crimes, Mr. Gumapac is one of thousands, if not millions of victims who reside in the Hawaiian Islands under an unlawful alien administration. The primary reason why this humanitarian crisis of unimaginable proportions has gone undetected for over a century is a direct result of *genocide* through *denationalization* that has obliterated any memory of the Hawaiian national character at both the national and international levels.

In light of the aforementioned, the Human Rights Council is seized of the situation in the Hawaiian Islands, and the Council should act upon this Complaint without haste in accordance with the relevant measures under paragraph 109 of the annex to Human Rights Council resolution 5/1. Furthermore, the author, on behalf of Mr. Gumapac, requests the Human Rights Council to:

- Strongly call upon the Government of the United States of America and its armed force, the State of Hawai'i, to take urgent measures to comply fully with their obligations under international law, including international humanitarian law and human rights law;
- Underline that the Government of the United States of America has the primary responsibility to make every effort to strengthen the protection of the civilian population in the Hawaiian Islands and to investigate and bring to justice perpetrators of violations of human rights and international humanitarian law; and

²⁸ *Id.*

²⁹ See Sai, *Declaration*, Exhibit "5."

³⁰ *Id.*, Exhibit "7."

³¹ *Id.*, Exhibit "8."

³² *Id.*, Exhibit "9."

³³ *Id.*, Exhibit "10."

³⁴ *Id.*, Exhibit "11."

³⁵ *Id.*, Exhibit "12."

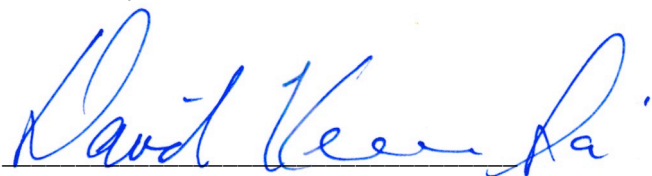
- Appoint a Special Rapporteur on the humanitarian crisis in the Hawaiian Islands given the gravity and severity of an illegal and prolonged occupation of an independent State that has been allowed to continue unfettered without precedent in the history of international relations.

Significantly, Mr. Gumapac does not want his identity to be kept confidential and is prepared to come before the Human Rights Council or any of its agencies in order to address violations of his rights under humanitarian law and human rights law.

IV. Exhaustion of domestic remedies

Mr. Gumapac is unable to exhaust any domestic remedies on account of the unlawful and prolonged occupation of the entire territory of the Hawaiian Kingdom by an alien administrative system imposed by the United States since the Spanish-American War. Any seeking of a remedy through the courts in Hawai'i would be ineffective because all the courts lack competent jurisdiction.

Dated: May 23, 2016.



David Keanu Sai, Ph.D.

WAR CRIMES REPORT:
HUMANITARIAN CRISIS IN THE HAWAIIAN ISLANDS

May 23, 2016

David Keanu Sai, Ph.D.*

1. PRELIMINARY STATEMENT

- 1.1. This Report is provided as an addendum to the Hawaiian Complaint submitted to the United Nations Human Rights Council, by email, on May 23, 2016, in accordance with article IV—*Complaint Procedure* of the annex to Human Rights Council resolution 5/1, in order for the Council to be seized of the situation in the Hawaiian Islands of consistent patterns of gross and reliably attested violations of humanitarian law, human rights law and fundamental freedoms. Additionally, paragraph 2 of the annex provides that “given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the review shall take into account applicable international humanitarian law.”
- 1.2. These violations of humanitarian law and human rights law arise out of the prolonged and illegal occupation of the entire territory of the Hawaiian Kingdom by the United States of America (United States) since the Spanish-American War on August 12, 1898, and the failure on the part of the United States to establish a direct system of administering the laws of the Hawaiian Kingdom during the occupation. The United States disguised its occupation of the Hawaiian Kingdom as if a treaty of cession acquired the Hawaiian Islands and thereby extinguished the Hawaiian Kingdom as an independent and sovereign State. There is no treaty.
- 1.3. For the past 123 years, the United States has committed a serious international wrongful act and deliberately misled the international community that the Hawaiian Islands had been incorporated into the territory of the United States. It has unlawfully imposed its national laws over Hawaiian territory, which includes its territorial seas, its exclusive economic zone, and its airspace, in violation of its treaties with the Hawaiian Kingdom and international humanitarian law, which is provided in the 1907 Hague Regulations (HC IV), the 1949 Geneva Conventions (GC IV) and its 1977 Additional Protocols. Hawaiian Kingdom law is binding over all persons and property within its territorial jurisdiction. According to the Hawaiian Civil Code:

* Dr. Sai has a Ph.D. in political science from the University of Hawai‘i at Manoa. This report includes portions of a brief authored by Dr. Matthew Craven, July 12, 2002. Dr. Craven has a Ph.D. in law from the University of Nottingham. He is currently Professor of International Law, Dean of the Faculty of Law and Social Science, University of London, School of Oriental and African Studies.

“The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.”¹

- 1.4. The first allegations of the violation of humanitarian law, being unfair trial and unlawful confinement, being grave breaches of the GC IV, were made the subject of an arbitral dispute in *Lance Larsen vs. the Hawaiian Kingdom*² at the Permanent Court of Arbitration (PCA), The Hague, Netherlands. The acting Hawaiian Council of Regency (Provisional Government) represented the Hawaiian Kingdom. Before the Secretariat of the PCA could establish a mixed-arbitral tribunal to address the dispute it needed to ensure that the PCA had institutional jurisdiction, which included disputes between a State and a private entity. Attached herein, as Appendix “I,” is the case *Larsen/Hawaiian Kingdom*, Permanent Court of Arbitration, PCA Case Repository.
- 1.5. In March 2000, the United States Embassy in The Hague notified the Secretariat that it did not dispute the existence of the Hawaiian Kingdom as a State, which prompted the constitution of the mixed-arbitral tribunal the following month in April.³ James Crawford, SC, served as President of the Tribunal, while he was a member of the International Law Commission and Special Rapporteur on State Responsibility from 1997–2001. Associate Arbitrators included Christopher Greenwood, QC, and Gavan Griffith, QC. Greenwood and Crawford currently serve as Judges on the International Court of Justice.
- 1.6. Oral hearings were held at the Peace Palace, The Hague, on December 7, 8, and 11, 2000. The author of this report served as lead agent for the Hawaiian Kingdom in these arbitral proceedings. According to the *American Journal of International Law*,

“At the center of the PCA proceedings was...that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was

¹ Hawaiian Kingdom Civil Code (Compiled Laws), §6. Civil Code available at: <http://hawaiiankingdom.org/civilcode/index.shtml>.

² See *Lance Larsen v. Hawaiian Kingdom*, 119 INT’L L. REP. 566 (2001), reprinted in 1 HAW. J. L. & POL. 299 (Summer 2004); see also Permanent Court of Arbitration, PCA Case Repository, *Larsen/Hawaiian Kingdom*, at <http://pcacases.com/web/view/35>, where the Hawaiian Kingdom is explicitly recognized by the PCA as a State. The formation of the provisional government of the Hawaiian Kingdom under the doctrine of necessity is explained in a legal brief by Dr. David Keanu Sai, *The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom* (August 4, 2013), available at: http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf.

³ See Sai’s *Continuity of the Hawaiian State*, at para. 9.2–9.4.

legally obligated to protect Larsen from the United States’ ‘unlawful imposition [over him] of [its] municipal laws’ through its political subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him.”⁴

- 1.7. On July 5, 2001, the Provisional Government filed a Complaint with the United Nations Security Council in New York as a State not a member of the United Nations pursuant to Article 35(2) of the United Nations Charter.⁵ The Complaint was accepted by China who served as President of the Security Council.⁶ The Security Council took no action.
- 1.8. On August 10, 2012, the Provisional Government submitted a Protest and Demand with the President of the United Nations General Assembly in New York as a State not a member of the United Nations pursuant to Article 35(2) of the United Nations Charter as a non-member State of the United Nations. Ms. Hanifa Mizoui, Ph.D., Special Coordinator, Third Committee and Civil Society, Office of the President of the Sixty-Sixth Session of the General Assembly, received and acknowledged the complaint.⁷ The General Assembly took no action.
- 1.9. On November 28, 2012, the Provisional Government signed its Instrument of Accession to the GC IV, and it was deposited with the General Secretariat of the Swiss Federal Department of Foreign Affairs in Berne, Switzerland, on January 14, 2013. The GC IV took immediate effect on the aforementioned date of deposit in accordance with Article 157 of the said Convention.⁸

⁴ David Bederman & Kurt Hilbert, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii*, 95 AM. J. INT’L L. 927, 928 (2001).

⁵ See the Charter of the United Nations:

CHAPTER VI: PACIFIC SETTLEMENT OF DISPUTES

Article 35

Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.

The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

⁶ Patrick Dumberry, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom’s Claim to Continue as an Independent State under International Law*, 2(1) CHINESE J. INT’L L. 655, 671-672 (2002). The Hawaiian Complaint (July 5, 2001), available at:

http://hawaiiankingdom.org/pdf/Hawaiian_UN_Complaint.pdf.

⁷ Hawaiian Kingdom Protest and Demand available at:

http://www.hawaiiankingdom.org/UN_Protest_pressrelease.shtml.

⁸ Hawaiian Instrument of Accession filed with the Swiss Foreign Ministry, January 14, 2013, available at: http://www.hawaiiankingdom.org/pdf/GC_Accession.pdf.

- 1.10. On January 25, 2016, the Provisional Government filed with the Registrar of the International Court of Justice instituting proceedings against Australia, Austria, Azerbaijan, Belgium, Brazil, Canada, Chile, China, Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Italy, Japan, Kiribati, Korea, Luxembourg, Malaysia, Marshall Islands, Mexico, Micronesia, Morocco, Nepal, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Portugal, Russia, Samoa, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tonga, and the United Kingdom for violations of international treaties to include international humanitarian law. The Registrar acknowledged receipt of the complaints on January 26, 2016, but the Court took no action.⁹
- 1.11. On March 7, 2016, the Provisional Government submitted another Complaint against the United States with the United Nations Security Council in New York as a State not a member of the United Nations pursuant to Article 35(2) of the United Nations Charter. The Complaint was accepted by Angola, but the Security Council took no action.¹⁰
- 1.12. Despite the inaction of these international bodies to address the illegal and prolonged occupation of the Hawaiian Kingdom, it has not diminished in the least the continual violations of international humanitarian law and human rights of the nationals and residents of the Hawaiian Islands. Furthermore, the exhaustion of domestic remedies would be ineffective because there have been no courts of competent jurisdiction in the Hawaiian Islands since January 17, 1893, as a direct result of United States intervention and the unlawful overthrow of the Hawaiian government.

2. METHODOLOGY AND ORGANIZATION OF REPORT

- 2.1. Since war crimes can only arise if there is an armed conflict between States—the United States and the Hawaiian Kingdom, it follows that the continuity of the Hawaiian Kingdom as an independent State and subject of international law is *condicio sine qua non*. It is therefore necessary to examine first the question of the Hawaiian Kingdom and State continuity, which will include the United States’ claim as its successor State, then followed by an examination of international humanitarian law.
- 2.2. The Report will answer, in the affirmative, three fundamental questions that are quintessential to the current situation in the Hawaiian Islands:
 - A. Did the Hawaiian Kingdom exist as an independent State and a subject of international law?

⁹ Registrar of the International Court of Justice acknowledgment dated Jan. 26, 2015, *available at*: http://hawaiiankingdom.org/pdf/ICJ_Ack_1_26_2015.pdf.

¹⁰ Hawaiian Complaint filed with the United Nations Security Council, Mar. 7, 2016, *available at*: http://hawaiiankingdom.org/pdf/Security_Council_Complaint_3_7_16.pdf.

B. Does the Hawaiian Kingdom continue to exist as an independent State and a subject of International Law, despite the illegal overthrow of its government by the United States?

C. Have war crimes been committed in violation of international humanitarian law?

2.3. A fourth element of the Report, which depends upon an affirmative answer to each of the above questions, is:

D. Is the United Nations Human Rights Council seized of the Hawaiian situation under the complaint procedure provided for in paragraph 87 of the annex to Human Rights Council resolution 5/1?

A. THE HAWAIIAN KINGDOM AS AN INDEPENDENT STATE

3. A SUBJECT OF INTERNATIONAL LAW

3.1. When the United Kingdom and France formally recognized the Hawaiian Kingdom as an “independent State” at the Court of London on November 28, 1843,¹¹ and later formally recognized by the United States of America on July 6, 1844 by letter to the Hawaiian government from Secretary of State John C. Calhoun,¹² the Hawaiian State was admitted into the Family of Nations. Since its recognition, the Hawaiian Kingdom entered into extensive treaty relations with a variety of States establishing diplomatic relations and trade agreements.¹³ To quote the *dictum* of the Permanent Court of Arbitration in 2001:

“A perusal of the material discloses that in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.”¹⁴

¹¹ The Anglo-French Joint Declaration available at: <http://hawaiiankingdom.org/pdf/Annex%202.pdf>.

¹² U.S. Secretary of State Calhoun’s letter available at: <http://hawaiiankingdom.org/pdf/Annex%203.pdf>.

¹³ The Hawaiian Kingdom entered into treaties with Austria-Hungary, June 18, 1875; Belgium, October 4, 1862; Bremen (succeeded by Germany), March 27, 1854; Denmark, October 19, 1846; France, September 8, 1858; French Tahiti, November 24, 1853; Germany, March 25, 1879; New South Wales (now Australia), March 10, 1874; Hamburg (succeeded by Germany), January 8, 1848); Italy, July 22, 1863; Japan, August 19, 1871, January 28, 1886; Netherlands & Luxembourg, October 16, 1862 (William III was also Grand Duke of Luxembourg); Portugal, May 5, 1882; Russia, June 19, 1869; Samoa, March 20, 1887; Spain, October 9, 1863; Sweden-Norway (now separate States), April 5, 1855; and Switzerland, July 20, 1864; the United Kingdom of Great Britain and Northern Ireland) March 26, 1846; and the United States of America, December 20, 1849, January 13, 1875, September 11, 1883, December 6, 1884. These treaties available at: <http://hawaiiankingdom.org/treaties.shtml>.

¹⁴ *Larsen v. Hawaiian Kingdom*, 119 INT’L L. REP. 566, 581 (2001), reprinted in 1 HAW. J. L. & POL. 299 (Summer 2004).

Additionally, the Hawaiian Kingdom became a full member of the Universal Postal Union on January 1, 1882. Attached herein, as Appendix “II,” is a registry of the Hawaiian Kingdom for the year 1893.

- 3.2. As an independent State, the Hawaiian Kingdom, along with other independent States within the Family of Nations, obtained an “international personality.” As such, all independent States “are regarded equal, and the rights of each not deemed to be dependent upon the possession of power to insure their enforcement.”¹⁵ According to Dickinson, the

“principle of equality has an important legal significance in the modern law of nations. It is the expression of two important legal principles. The first of these may be called the equal protection of the law or equality before the law. ...The second principle is usually described as equality of rights and obligations or more often as equality of rights.”¹⁶

International personality is defined as “the capacity to be the bearer of rights and duties under international law.”¹⁷ Crawford, however, distinguishes between “general” and “special” legal personality. The former “arises against the world (*erga omnes*),” and the latter “binds only consenting States.”¹⁸ As an independent State, the Hawaiian Kingdom, like the United States of America, has both “general” legal personality under international law as well as “special” legal personality under the 1893 executive agreements¹⁹ that bind both the Hawaiian Kingdom and the United States to certain duties and obligations as hereinafter described.

- 3.3. The consequences of statehood at that time were several. States were deemed to be sovereign not only in a descriptive sense, but were also regarded as being “entitled” to sovereignty. This entailed, among other things, the rights to free choice of government, territorial inviolability, self-preservation, free development of natural resources, of acquisition and of absolute jurisdiction over all persons and things within the territory of the State.²⁰ It was, however, admitted that intervention by another State was permissible in certain prescribed circumstances such as for purposes of self-preservation, for purposes of fulfilling legal engagements, or of opposing wrongdoing. Although intervention was not absolutely prohibited in this regard, it was

¹⁵ CHARLES CHENEY HYDE, *INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES* 20 (Vol. I, 1922).

¹⁶ EDWIN DEWITT DICKINSON, *THE EQUALITY OF STATES IN INTERNATIONAL LAW* 335 (1920).

¹⁷ SCHWARZENBERGER, *A MANUAL OF INTERNATIONAL LAW* 53 (6th ed., 1976).

¹⁸ JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 30 (2nd ed., 2006).

¹⁹ David Keanu Sai, *A Slipperty Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai'i today*, 10 *J. L. & SOC. CHALLENGES* 68, 119-121 (2008); see also *infra* para. 4.1–4.6.

²⁰ ROBERT PHILLIMORE, *COMMENTARIES UPON INTERNATIONAL LAW*, VOL. I, 216 (1879).

generally confined as regards the specified justifications. As Hall remarked, “The legality of an intervention must depend on the power of the intervening state to show that its action is sanctioned by some principle which can, and in the particular case does, take precedence of it.”²¹ A desire for simple aggrandizement of territory did not fall within these terms, and intervention for purposes of supporting one party in a civil war was often regarded as unlawful.²² In any case, the right of independence was regarded as so fundamental that any action against it “must be looked upon with disfavor.”²³

4. *FIRST ARMED CONFLICT WITH THE UNITED STATES—JANUARY 16, 1893*

- 4.1. “Governmental authority,” states Crawford, “is the basis for normal inter-State relations; what is an act of a State is defined primarily by reference to its organs of government, legislative, executive or judicial.”²⁴ On January 17, 1893, Queen Lili‘uokalani, who was constitutionally vested with the “executive power” under Article 31 of the Hawaiian constitution,²⁵ was unable to apprehend certain insurgents calling themselves the provisional government without armed conflict between United States troops, who were illegally landed by the United States Legation to protect the insurgents, and the Hawaiian police force headed by Marshal Charles Wilson. The Queen was forced to temporarily assign her police power to the President of the United States under threat of war calling for an investigation of its senior diplomat and military commander who had intervened in the internal affairs of the Hawaiian Kingdom, and, thereafter, to restore the government.²⁶ Upon receipt of the Queen’s diplomatic protest, United States President Cleveland initiated an investigation by first withdrawing a treaty, which provided for the cession of Hawaiian territory, from the United States Senate. To conduct the investigation, President Cleveland appointed a Special Commissioner, James Blount, to travel to the Hawaiian Islands in order to provide reports to the United States Secretary of State Walter Gresham. Blount arrived in Honolulu

²¹ WILLIAM EDWARD HALL, *A TREATISE ON INTERNATIONAL LAW* 298 (4th ed. 1895).

²² THOMAS LAWRENCE, *PRINCIPLES OF INTERNATIONAL LAW* 134 (4th ed. 1913).

²³ See HALL, *supra* note 21, at 298.

²⁴ See CRAWFORD, *supra* note 18, at 56.

²⁵ Constitution of the Hawaiian Kingdom, 1864, art. 31: “The person of the King is inviolable and sacred. His Ministers are responsible. To the King belongs the executive power. All laws that have passed the Legislative Assembly, shall require His Majesty’s signature in order to their validity,” available at: <http://hawaiiankingdom.org/pdf/Annex%204.pdf>.

²⁶ The diplomatic protest stated, “I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom. That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government. Now, 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.”

on March 31, 1893. He reported that, “in pursuance of a prearranged plan [between the insurgents, claiming to be a government, and the U.S. Legation], the Government thus established hastened off commissioners to Washington to make a treaty for the purpose of annexing the Hawaiian Islands to the United States.”²⁷

- 4.2. The investigation concluded that the United States Legation accredited to the Hawaiian Kingdom, together with United States Marines and Naval personnel, were directly responsible for the illegal overthrow of the Hawaiian government with the ultimate goal of transferring the Hawaiian Islands to the United States from an installed puppet government.²⁸ The President acknowledged that the

“military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawai‘i or for the *bona fide* purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the *de facto* and the *de jure* government.”²⁹

“When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in a manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*.”³⁰

- 4.3. The investigation also detailed the culpability of the United States government in violating international laws, as well as Hawaiian State territorial sovereignty and concluded it must provide *restitutio in integrum*—restoration to the original situation before the United States intervention occurred on January 16, 1893. According to Oppenheim, it “is obvious that there must be a pecuniary reparation for a material damage; and at least a formal apology on the part of the delinquent will in every case be necessary.”³¹ In the *Chorzow Factory* case, the Permanent Court of International Justice, stated:

“The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral decisions—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all

²⁷ United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai‘i: 1894-95, (Government Printing Office 1895), 587, [hereafter Executive Documents]. Reprinted at 1 HAW. J. L. & POL. 136 (Summer 2004). The Executive Documents are available at the University of Hawai‘i at Manoa Library website at: <http://libweb.hawaii.edu/digicoll/annexation/blount.html>.

²⁸ *Id.* at 567.

²⁹ *Id.*, at 451.

³⁰ *Id.*, at 453.

³¹ LASSA OPPENHEIM, INTERNATIONAL LAW, VOL. I—PEACE 318-319 (7th ed. 1948).

probability, have existed if that act had not been committed. Restitution in kind or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear.”³²

- 4.4. Prior to his first of several meetings with the Queen at the United States Legation in Honolulu, the new United States Minister Plenipotentiary Albert Willis was instructed by Gresham to provide an apology on behalf of the President for the United States’ illegal actions taken by its diplomat and troops. Gresham’s instructions provided,

“On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination, making known to her the President’s sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.

You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed.”³³

- 4.5. The first meeting with the Queen was held at the United States Legation on November 13, 1893, where Willis conveyed the apology and the condition of reinstatement as he was instructed.³⁴ The Queen, however, did not accept the President’s condition of reinstatement.³⁵ Additional meetings were held on December 16 and 18, and through negotiations and *exchange of notes* between the Queen and Willis, settlement for the illegal overthrow of the Hawaiian government was finally achieved by executive agreement on December 18, 1893.³⁶ On the part of the United States, the President committed to restore the government as it stood before the landing of United States troops on January 16, 1893, and, thereafter, on the part of the Hawaiian Kingdom, the Queen committed to granting amnesty to the insurgents and assume all obligations of the self-proclaimed provisional government. Myers explains, “*Exchange of notes* is the most flexible form of a treaty... The exchange consists of an offer and an acceptance... The offering instrument contains a text of the proposed

³² *The Factory at Chorzow* (Germany v. Poland), P.C.I.J. (series A) No. 17, at 47 (1927).

³³ See Executive Documents, *supra* note 27, at 464.

³⁴ *Id.*, at 1242.

³⁵ *Id.*, at 1243.

³⁶ *Id.*, at 1269-1270.

agreement and the acceptance invariably repeats it verbatim, with assent.”³⁷
According to Garner,

“Agreements in the form of an *exchange of notes* between certain high officials acting on behalf of States, usually their Ministers of Foreign Affairs or diplomatic representatives are numerous... They are employed for a variety of purposes and, like instruments which are designated as ‘treaties’, they may deal with any matter which is a proper subject of international regulation. One of their most common objects is to record the understandings of the parties to a treaty which they have previously entered into; but they may record an entirely new agreement, sometimes one which has been reached as a result of negotiation. While the purpose of an agreement effected by any *exchange of notes* may not differ from that of instruments designated by other names, it is strikingly different in its form from a ‘treaty’ or a ‘convention.’ Unlike a treaty, the relations which it establishes or seeks to establish is recorded, not in a single highly formalized instrument, but in two or more letters usually called ‘notes,’ signed by Ministers or other officials.”³⁸

The first executive agreement, by *exchange of notes*, was the temporary and conditional assignment of executive power (police power) from the Queen to the President on January 17, 1893, and the acceptance of the assignment by the President on March 9, 1893 when he initiated the investigation. The second executive agreement, by *exchange of notes*, was the President’s “offer” to restore the *de jure* government on condition that the Queen would commit to grant amnesty to the insurgents on November 13, 1893, and the “acceptance” by the Queen of this condition on December 18, 1893. The two executive agreements are referred to herein as the *Lili‘uokalani assignment* and the *Agreement of restoration*, respectively.

- 4.6. By virtue of the *Lili‘uokalani assignment*, police power³⁹ of the Hawaiian Kingdom was temporarily vested in the President of the United States to faithfully administer Hawaiian Kingdom law, until the Hawaiian Kingdom government is restored pursuant to the *Agreement of restoration*, whereby the police power is reassigned and thereafter the Monarch, or its successor, to grant amnesty. The failure of Congress to authorize the President to use force in carrying out these agreements did not diminish the validity of the *Lili‘uokalani assignment* and the *Agreement of restoration*. Despite over a century of non-compliance, these executive agreements remain binding upon the office of President of the United States to date. According to Wright, the

³⁷ Denys P. Myers, *The Names and Scope of Treaties*, 51 AM. J. INT’L L. 590 (1957).

³⁸ 29 AM. J. INT’L L., Supplement, 698 (1935).

³⁹ Police power is the inherent power of government to exercise reasonable control over persons and property within its jurisdiction in the interest of the general security, health, safety, morals, and welfare except where legally prohibited.

President binds “himself and his successors in office by executive agreements.”⁴⁰

- 4.7. President Cleveland failed to follow through in his commitment to administer Hawaiian law and re-instate the *de jure* government as a result of partisan wrangling in the United States Congress. In a deliberate move to further isolate the Hawaiian Kingdom from any assistance by other States and treaty partners and to reinforce and protect the puppet regime installed by United States officials, the Senate and House of Representatives each passed similar resolutions in 1894 strongly warning other States “that any intervention in the political affairs of these islands by any other Government will be regarded as an act unfriendly to the United States.”⁴¹ Although the Hawaiian government was not restored and the country thrown into civil unrest as a result, the continuity of the Hawaiian State was nevertheless maintained.
- 4.8. On June 20, 1894, Queen Lili‘uokalani filed another protest with United States Secretary of State Gresham, through its Legation in Honolulu, concerning the insurgency installed by the United States on January 17, 1893.

Honolulu, H.I. June 20th 1894

To His Excellency
Albert S. Willis
U.S. Envoy Extraordinary Minister Plenipotentiary

Sir,

Having in mind the amicable relations hitherto existing between the government which you here represent and the government of Hawaii, as evidenced by many years of friendly intercourse, and being desirous of bringing to the attention of your government the facts here following, I, Liliuokalani, by the grace of God, and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest that I am now and have continuously been since the 20th day of January A.D. 1891, the Constitutional Sovereign of the Hawaiian Kingdom; that on the 17th day of January A.D. 1893 – (in the words of the President of the United States himself) – “By an act of war, committed with the participation of a diplomatic representative of the United States, and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured peoples requires we should endeavor to repair;” that on said date I and my government prepared a written protest against any and all acts done against myself and the Constitutional government of the Hawaiian Kingdom by certain persons claiming to have established a

⁴⁰ QUINCY WRIGHT, *THE CONTROL OF FOREIGN RELATIONS*, 235 (1922).

⁴¹ 26 U.S. CONG. REC., 53rd Congress, 2nd Session, 5499.

provisional government of and for this Kingdom, that said protest was forwarded to the President of the United States, also to Sanford B. Dole, Vice Chairman of the Executive Council of the said Provisional government, and was by the latter duly acknowledged; that in response to said protest the President of the United States sent a special commissioner in the person of Honorable James H. Blount to Honolulu to make an accurate, full, and impartial investigation of the facts attending the subversion of the Constitutional Government of Hawai'i and the installment in its place of the Provisional Government; that said Commissioner arrived in Honolulu on the 29th day of March, A.D. 1893 and fulfilled his duties with untiring diligence and with care tact and fairness; that said Commissioner found that the government of Hawaii surrendered its authority under a threat of war, until such time only as the government of the United States, upon the facts being presented to it should reinstate the Constitutional Sovereign, and the provisional government was created to exist until terms of union with the United States of America have been negotiated and agreed upon, also that but for the lawless occupation of Honolulu under false pretenses by the United States forces and but for the United States Minister's recognition of the provisional government when the United States forces were its sole support, and constituted its only military strength, I, and my government would never have yielded to the provisional government, even for a time, and for the sole purpose of submitting my case to the enlightened justice of the United States, or for any purpose; also that the great wrong done to this feeble but independent state by an abuse of the authority of the United States should be undone by restoring the legitimate government.

That since the happening of said events, the executive and the Congress of the United States have formally declined the overtures of the said Provisional Government for the annexation of the Hawaiian Islands to the United States. That notwithstanding said recited facts, said provisional government has continued to exercise the functions of government in this Kingdom to the present date, and that its course, from the time of its inception to the present, has been marked by a succession of arbitrary, illiberal and despotic acts, and by the enactment and enforcement of pretended "laws" subversive of the first principles of free government and utterly at variance with the traditions, history, habits, and wishes of the Hawaiian people.

That said Provisional Government has now recently convened and is now holding what it is pleased to term a constitutional convention, composed of nineteen (19) self-appointed members being the President and Executive and Advisory Councils of said provisional government, and eighteen (18) delegates elected by less than ten percent (10%) of the legal voters of the Kingdom, consisting almost entirely of aliens, and chiefly of such aliens as have no permanent home or interest in Hawaii, and which said convention is now considering a draft of a constitution (copy of which is hereto attached) submitted for its approval by the Executive Council of said

provisional government consisting of the President and Ministers thereof.

That it is the expressed purpose of the said provisional government to promulgate such Constitution as shall be approved by said convention without submitting it to a vote of the people, or of any of the people, and to thereupon proclaim a government under such constitution, and under the name of the Republic of Hawaii.

That the said provisional government has not assumed a republican or other Constitutional form, but has remained a mere executive council or oligarchy, set up without the consent of the people; that it has not sought to find a permanent basis of popular support, and has given no evidence of an intention to do so; that its representatives assert that the people of Hawaii are unfit for popular government and frankly avow that they can be best ruled by arbitrary or despotic power, and that the proposed constitution so submitted by said executive council of the provisional government for the approval of said convention does not provide for or contemplate a free, popular or republican form of government but does contemplate and provide for a form of government of arbitrary and oligarchical powers, concentrated in the hands of a few individuals irresponsible to the people, or to the representatives of the people, and which is opposed to all modern ideas of free government.

Wherefore, I, the constitutional sovereign of the Hawaiian Kingdom on behalf of myself and the people of my said Kingdom do hereby again most solemnly protest against the acts aforesaid and against any and all other acts done against myself, my people, and the Constitutional government of the Hawaiian Kingdom, and I do hereby most earnestly request that the government represented by you will not extend its recognition to any pretended government of the Hawaiian Islands under whatever name it may apply for such recognition, other than the constitutional government so deposed as aforesaid, – except such government shall show its title to exist by the will of the people of Hawai'i, expressed at an election wherein the whole people shall have had an opportunity, unembarrassed by force, and undeterred by fear or fraud to register their preferences as to the form of government under which they will live.⁴²

- 4.9. Four years passed before Cleveland's presidential successor, William McKinley, entered into a second treaty of cession with the same individuals who participated in the illegal overthrow with the United States legation in 1893, and were now calling themselves the Republic of Hawai'i. This second

⁴² Queen Lili'uokalani's Protest of the Provisional Government, January 20, 1894, *available at*: <http://libweb.hawaii.edu/digicoll/annexation/protest/pdfs/liliu4.pdf>.

treaty was signed on June 16, 1897 in Washington, D.C., but would “be taken up immediately upon the convening of Congress next December.”⁴³

- 4.10. Queen Lili’uokalani was in the United States at the time of the signing of the treaty and protested the second annexation attempt of the country. While in Washington, D.C., the Queen filed a diplomatic protest with the United States Department of State on June 17, 1897. The Queen stated, in part:

“I, Lili’uokalani of Hawai’i, by the will of God named heir apparent on the tenth day of April, A.D. 1877, and by the grace of God Queen of the Hawaiian Islands on the seventeenth day of January, A.D. 1893, do hereby protest against the ratification of a certain treaty, which, so I am informed, has been signed at Washington by Messrs. Hatch, Thurston, and Kinney, purporting to cede those Islands to the territory and dominion of the United States. I declare such a treaty to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me.”⁴⁴

Hawaiian political organizations in the Islands filed additional protests with the Department of State in Washington, D.C. These organizations were the Men and Women’s Hawaiian Patriotic League (Hui Aloha ‘Aina), and the Hawaiian Political Association (Hui Kalai’aina).⁴⁵ In addition, a petition of 21,269 signatures of Hawaiian subjects and resident aliens protesting annexation was filed with the Senate when it convened in December 1897.⁴⁶ As a result of these protests, the Senate was unable to garner enough votes to ratify the so-called treaty.

5. SECOND ARMED CONFLICT WITH THE UNITED STATES—1898 SPANISH-AMERICAN WAR

- 5.1. On April 25, 1898, Congress declared war on Spain. Battles were fought in the Spanish colonies of Puerto Rico and Cuba in the Atlantic, as well as the Spanish colonies of the Philippines and Guam in the Pacific. After Commodore Dewey defeated the Spanish Fleet in the Philippines on May 1, 1898, the United States administration made active preparations for an expansion of the war into a general war of aggression by invading and occupying the territory of the Hawaiian Kingdom.⁴⁷ In accordance with those

⁴³ “Hawaiian Treaty to Wait—Senator Morgan Suggests that It Be Taken Up at This Session Without Result.” *The New York Times*, 3 (July 25, 1897).

⁴⁴ LILI’UOKALANI, HAWAI’I’S STORY BY HAWAI’I’S QUEEN, 354 (1964); Protest reprinted in 1 HAW. J.L. & POL. 227 (Summer 2004).

⁴⁵ These protests are available at: <http://hawaiiankingdom.org/pdf/Annex%2018.pdf>.

⁴⁶ The signature petition is available at: <http://hawaiiankingdom.org/pdf/Annex%2019.pdf>.

⁴⁷ The United States Attorney General concluded in 1855, “It is a settled principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral state for belligerent purposes without the

plans, they caused United States troops to violate Hawai'i's neutrality and eventually occupy the Hawaiian Kingdom in order to facilitate the carrying out of their military operations against the Spanish in the Pacific.⁴⁸ The invasion and occupation of Hawaiian territory had been specifically planned in advance, in violation of the executive agreements of 1893.

- 5.2. On May 4, 1898, U.S. Congressman Francis Newlands, submitted a joint resolution for the annexation of the Hawaiian Islands to the House Committee on Foreign Affairs. Six days later, hearings were held on the Newlands resolution, and in testimony submitted to the committee, U.S. military leaders called for the immediate occupation of the Hawaiian Islands due to military necessity for both during the war with Spain and for any future wars that the United States would enter. U.S. Naval Captain Alfred Mahan stated to the committee:

“It is obvious that if we do not hold the islands ourselves we cannot expect the neutrals in the war to prevent the other belligerent from occupying them; nor can the inhabitants themselves prevent such occupation. The commercial value is not great enough to provoke neutral interposition. In short, in war we should need a larger Navy to defend the Pacific coast, because we should have not only to defend our own coast, but to prevent, by naval force, an enemy from occupying the islands; whereas, if we preoccupied them, fortifications could preserve them to us. In my opinion it is not practicable for any trans-Pacific country to invade our Pacific coast without occupying Hawaii as a base.”⁴⁹

- 5.3. While the debates ensued in both the U.S. House and Senate, the *U.S.S. Charleston*, a protected cruiser, was ordered to lead a convoy of 2,500 troops to reinforce U.S. troops in the Philippines and Guam. These troops were boarded on the transport ships of the *City of Peking*, the *City of Sidney* and the *Australia*. In a deliberate violation of Hawaiian neutrality during the war as well as of international law, the convoy, on May 21, set a course to the Hawaiian Islands for re-coaling purposes. The convoy arrived in Honolulu on June 1, and took on 1,943 tons of coal before it left the islands on June 4.⁵⁰
- 5.4. As soon as it became apparent that the self-declared Republic of Hawai'i, a puppet regime of the United States since 1893, had welcomed the U.S. Naval convoys and assisted in re-coaling their ships, H. Renjes, Spanish Vice-Consul in Honolulu, lodged a formal protest on June 1, 1898. Minister Harold Sewall, from the U.S. Legation in Honolulu, notified Secretary of State

consent of the neutral government.” Caleb Cushing, “Foreign Enlistments in the United States,” 7 OPP. ATT. GEN. 367 (1855).

⁴⁸ See Sai, *supra* note 19, at 80-82.

⁴⁹ 31 U.S. CONG. REC., 55th Congress, 2nd Session, 5771.

⁵⁰ U.S. Minister to Hawai'i Harold Sewall to U.S. Secretary of State William R. Day, No. 167, (June 4, 1898), Hawai'i Archives.

William R. Day of the Spanish protest in a dispatch dated June 8. Renjes declared, “In my capacity as Vice Consul for Spain, I have the honor today to enter a formal protest with the Hawaiian Government against the constant violations of Neutrality in this harbor, while actual war exists between Spain and the United States of America.”⁵¹ A second convoy of troops bound for the Philippines, on the transport ships the *China*, *Zelandia*, *Colon*, and the *Senator*, arrived in Honolulu on June 23, and took on 1,667 tons of coal.⁵²

- 5.5. In a secret session of the U.S. Senate on May 31, 1898, Senator William Chandler warned of the consequences *Alabama claims* arbitration (Geneva award), whereby Great Britain was found guilty of violating its neutrality during the American Civil War and compensated the United States with 15.5 million dollars in gold.

Senator Chandler cautioned the Senate. “What I said was that if we destroyed the neutrality of Hawai‘i Spain would have a claim against Hawai‘i which she could enforce according to the principles of the Geneva Award and make Hawai‘i, if she were able to do it, pay for every dollar’s worth of damage done to the ships of property of Spain by the fleet that may go out of Hawai‘i.”⁵³

He later asked Senator Stephen White, “whether he is willing to have the Navy and Army of the U.S. violate the neutrality of Hawai‘i?”⁵⁴ Senator White responded, “I am not, as everybody knows, a soldier, nor am I familiar with military affairs, but if I were conducting this Govt. and fighting Spain I would proceed so far as Spain was concerned just as I saw fit.”⁵⁵

Senator Henry Cabot Lodge answered Senator White’s question directly. “I should have argued then what has been argued ably since we came into secret legislative session, that at this moment the Administration was compelled to violate the neutrality of those islands, that protests from foreign representatives had already been received and complications with other powers were threatened, that the annexation or some action in regard to those islands had become a military necessity.”⁵⁶

- 5.6. The transcripts of the Senate’s secret session were not made public until 1969, after the Senate passed a resolution authorizing the U.S. National Archives to open the records. The Associated Press in Washington, D.C., reported, that “the secrecy was clamped on during a debate over whether to seize the

⁵¹ *Id.*, No. 168 (June 8, 1898).

⁵² *Id.*, No. 175 (June 27, 1898).

⁵³ “Transcript of the Senate Secret Session on Seizure of the Hawaiian Islands, May 31, 1898,” 1 HAW. J. L. & POL. 278 (Summer 2004).

⁵⁴ *Id.*, 279.

⁵⁵ *Id.*

⁵⁶ *Id.*, 280.

Hawaiian Islands—called the Sandwich Islands then—or merely developing leased areas of Pearl Harbor to reinforce the U.S. fleet at Manila Bay.”⁵⁷ Concealed by the debating rhetoric of congressional authority to annex foreign territory, the true intent of the Senate, as divulged in these transcripts, was to have the joint resolution serve merely as consent, on the part of the Congress, for the President to utilize his war powers in the occupation and seizure of the Hawaiian Islands as a matter of military necessity.

- 5.7. Commenting on the United States flagrant violation of Hawaiian neutrality, T.A. Bailey stated,

The position of the United States was all the more reprehensible in that she was compelling a weak nation to violate the international law that had to a large degree been formulated by her own stand on the Alabama claims. Furthermore, in line with the precedent established by the Geneva award, Hawai‘i would be liable for every cent of damage caused by her dereliction as a neutral, and for the United States to force her into this position was cowardly and ungrateful. At the end of the war, Spain or cooperating power would doubtless occupy Hawai‘i, indefinitely if not permanently, to insure payment of damages, with the consequent jeopardizing of the defenses of the Pacific Coast.”⁵⁸

- 5.8. Unable to procure a treaty of cession acquiring the Hawaiian Islands as required by international law, Congress unilaterally enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War.⁵⁹ The territorial limitation of Congressional laws are indisputable, and to quote from the United States Supreme Court:

“Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens...., 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. Otherwise, the United States is not completely sovereign.”⁶⁰

- 5.9. Many government officials and constitutional scholars were at a loss in explaining how a joint resolution could have extra-territorial force in annexing Hawai‘i, a foreign and sovereign State, because during the 19th century, as

⁵⁷ Associated Press, “Secret Debate on U.S. Seizure of Hawaii Revealed,” *Honolulu Star-Bulletin*, A1 (February 1, 1969), available at: [http://hawaiiankingdom.org/pdf/Star_Bulletin\(1969\).pdf](http://hawaiiankingdom.org/pdf/Star_Bulletin(1969).pdf).

⁵⁸ T.A. Bailey, *The United States and Hawaii During the Spanish-American War*, 36(3) AM. HIST. REV. 557 (April 1931).

⁵⁹ 30 U.S. Stat. 750.

⁶⁰ *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

Born states, “American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction.”⁶¹ During the debate in Congress, Representative Thomas H. Ball characterized the annexation of the Hawaiian State by joint resolution as “a deliberate attempt to do unlawfully that which can not be lawfully done.”⁶² Westel Willoughby, a U.S. constitutional scholar at the time, explained the quandary.

The constitutionality of the annexation of Hawai‘i, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature it is enacted.⁶³

- 5.10. The citizenry and residents of the Hawaiian Kingdom also understood the illegality of the joint resolution. On October 20, 1900, the following editorial was published in the Maui News newspaper making reference to statements made by Thomas Clark who was formerly British, but acquired Hawaiian citizenship through naturalization in 1867. Clark was also a signatory to the 21,269 signature petition against the treaty of annexation that was before the United States Senate.

Thomas Clark, a candidate for Territorial senator from Maui, holds that it was an unconstitutional proceeding on the part of the United States to annex the Islands without a treaty, and that as a matter of fact, the Island[s] are not annexed, and cannot be, and that if the democrats come in to power they will show the thing up in its true light and demonstrate that...the Islands are de facto independent at the present time.⁶⁴

- 5.11. In 1988, the U.S. Department of Justice concurred with Willoughby in a legal opinion. Assistant U.S. Attorney General Kmiec concluded, “It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawai‘i can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.”⁶⁵

⁶¹ GARY BORN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 493 (3rd ed. 1996).

⁶² 31 U.S. CONG. REC. 5975 (1898).

⁶³ WESTEL WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES Westel Willoughby, (2nd ed. 1929), 427.

⁶⁴ The Maui News article available at: <http://hawaiiankingdom.org/blog/?p=189>.

⁶⁵ Douglas Kmiec, Department of Justice, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, in 12 OP. OFF. OF LEGAL COUNSEL 238, 252 (1988).

- 5.12. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War, and the occupation was justified as a military necessity in order to reinforce and supply the troops that had been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. Following the close of the Spanish-American War by the Treaty of Paris,⁶⁶ United States troops remained in the Hawaiian Islands and continued its occupation to date in violation of international law and the 1893 *Lili'uokalani assignment* and the *Agreement of restoration*. The United States Supreme Court has also confirmed that military occupation, which is deemed provisional, does not transfer sovereignty of the occupied State to the occupant State even when the *de jure* sovereign is deprived of power to exercise its right within the occupied territory.⁶⁷ Hyde states, in “consequence of belligerent occupation, the inhabitants of the district find themselves subjected to a new and peculiar relationship to an alien ruler to whom obedience is due.”⁶⁸
- 5.13. In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i*,⁶⁹ which succeeded the so-called Republic of Hawai'i. Further usurping Hawaiian sovereignty in 1959, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union*, hereinafter “Statehood Act.”⁷⁰ These laws, which have no extraterritorial effect, stand in direct violation of the *Lili'uokalani assignment* and *Agreement restoration*, being international compacts, the HC IV, and the GC IV. Additionally, these laws merely changed the name of the original regime, being the provisional government. Therefore, these so-called governments were self-declared and cannot be construed to be public in nature, but rather are private entities. The precise definitions of these entities under international law are “militias” as defined under Article 1, 1907 Hague Regulations that holds allegiance to the United States.⁷¹

⁶⁶ 30 U.S. Stat. 1754.

⁶⁷ *Thirty Hogsheads of Sugar v. Boyle*, 13 U.S. 191 (1815); *United States v. Rice*, 17 U.S. 246 (1819); *Flemming v. Page*, 50 U.S. 603 (1850); see also United States Army Field Manual 27-10, *Section 358—Occupation Does Not Transfer Sovereignty*. Being an incident of war, 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 exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress.

⁶⁸ CHARLES CHENEY HYDE, *INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES* 363 (Vol. II, 1922).

⁶⁹ 31 U.S. Stat. 141.

⁷⁰ 73 U.S. Stat. 4.

⁷¹ Article 1 provides, “The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: 1. To be commanded by a person responsible for his

5.14. The State of Hawai‘i cannot claim to be a government *de jure* or *de facto*. Customary international law defines this organization as an armed force of the occupying state. Military manuals define armed forces as “organized armed groups which are under a command responsible to that party for the conduct of its subordinates.”⁷² According to Henckaerts and Doswald-Beck, “this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,”⁷³ and that this “definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status.”⁷⁴ Article 1 of the 1907 Hague Convention, IV, provides that

“The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: (1) To be commanded by a person responsible for his subordinates; (2) To have a fixed distinctive emblem recognizable at a distance; (3) To carry arms openly; and (4) To conduct their operations in accordance with the laws and customs of war.”

5.15. The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier’s military or an occupier’s armed force such as the State of Hawai‘i, and that the “occupation extends only to the territory where such authority has been established and can be exercised.”⁷⁵ According to Ferraro, “occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts.”⁷⁶ Although unlawful, it is a fact that the United States created the State of Hawai‘i through congressional action and signed it into law by its President, Dwight D. Eisenhower, in 1959. The United States also approved the constitution of the State of Hawai‘i that provides for its organizational structure.

5.16. While effectiveness is at the core of sovereignty in international law, it is also at the core of belligerent occupation. For without effective control by the occupying state and its armed forces the duty to administer the laws of the occupied state would fail. Marek explains,

“A comparison of the scope of the two legal orders, of the occupied and the occupying State, co-existing in one and the same territory

subordinates; 2. To have a fixed distinctive emblem recognizable at a distance; To carry arms openly; and 4. To conduct their operations in accordance with the laws and customs of war.”

⁷² JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW VOL. I*, 14 (2009).

⁷³ *Id.*, at 15.

⁷⁴ *Id.*

⁷⁵ 1907 Hague Convention, IV, Article 42.

⁷⁶ TRISTAN FERRARO, *Determining the beginning and end of an occupation under international humanitarian law*, 94 (no. 885) *INT’L REV RED CROSS* 133, 134 (Spring 2012).

and limiting each other, throws an interesting light on one aspect of the principle of effectiveness in international law. 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, as has been strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness. It can produce legal effects outside the occupied territory and may even develop and expand, not be reason of its effectiveness, but solely on the basis of the positive international rule safeguarding its continuity. Thus, the relation between effectiveness and title seems to be one of inverse proportion: while a strong title can survive a period of non-effectiveness, a weak title must rely heavily, if not exclusively, on full and complete effectiveness. It is the latter which makes up for the weakness in title. Belligerent occupation presents an illuminating example of this relation of inverse proportion. Belligerent occupation is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned."⁷⁷

- 5.17. As an armed force and successor of the provisional government, the State of Hawai'i established its authority over 137 islands,⁷⁸ "together with their appurtenant reefs and territorial and archipelagic waters."⁷⁹ These islands include the major islands of Hawai'i, Maui, O'ahu, Kaua'i, Molokai, Lana'i, Ni'ihau, and Kaho'olawe. The effectiveness of the control exercised by the State of Hawai'i over this territory, as an armed force for the United States, triggers the application of occupation law.

-Allegiance to the United States

The State of Hawai'i, as an armed force, bears its allegiance to the United States where its public officers, to include its Governor, take the following oath of office: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as [...] to best of my ability."⁸⁰

-Commanded by a Person Responsible for His Subordinates

A Governor who is elected by U.S. citizens in Hawai'i is head of the State of Hawai'i. The Governor is responsible for the execution of its laws from its legislature and to carry out the decisions by its courts. The Governor is also the "commander in chief of the armed forces of the State and may call

⁷⁷ See MAREK, at 102.

⁷⁸ "Hawai'i Facts and Figures" (December 2014), State of Hawai'i Department of Business, Economic Development & Tourism.

⁷⁹ State of Hawai'i Constitution, Article XV, section 1, available at <http://lrbhawaii.org/con/>.

⁸⁰ *Id.*, Article XVI, sec. 4.

out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion.”⁸¹ The Governor’s subordinates include all “executive and administrative offices, departments and instrumentalities of the state government.”⁸²

-Fixed Distinctive Emblem Recognizable at a Distance

According to its constitution, “The Hawaiian flag shall be the flag of the State.”⁸³

-Carry Arms Openly

Law enforcement officers of the State of Hawai‘i, including the Sheriff’s Division, Department of Land and Natural Resources, and the police of the State’s four Counties, all openly carry arms. The State of Hawai‘i Department of Defense’s Army National Guard and Air National Guard, who openly carry arms while in tactical training, are also law enforcement officers

-Conduct Operations in Accordance with the Laws and Customs of War

The Governor is the commander in chief of the State’s Armed Forces, and is responsible for the suppression or prevention of insurrection or lawless violence, as well as repelling an invasion, proving the State of Hawai‘i is capable of conducting operations in accordance with the laws and customs of war during occupation. The State of Hawai‘i Department of Defense’s Army National Guard and Air National Guard are trained in the laws and customs of war, and has been deployed to international armed conflicts throughout the world, *e.g.* Iraq war, Afghanistan war, Vietnam war, Korean war, World War II, and World War I,⁸⁴

6. FRAUD COMMITTED BEFORE THE UNITED NATIONS

- 6.1. In 1946, prior to the passage of the Statehood Act, the United States further misrepresented its relationship with Hawai‘i when its permanent representative to the United Nations identified Hawai‘i as a non-self-governing territory under the administration of the United States since 1898. In accordance with Article 73(e) of the U.N. Charter, the United States permanent representative erroneously reported Hawai‘i as a non-self-

⁸¹ *Id.*, Article V, sec. 5.

⁸² *Id.*, sec. 6.

⁸³ *Id.*, Article XV, sec. 3.

⁸⁴ State of Hawai‘i Department of Defense, available at <http://dod.hawaii.gov/>.

governing territory that was acknowledged in a resolution by United Nations General Assembly.⁸⁵

- 6.2. On June 4, 1952, the Secretary General of the United Nations reported information submitted to him by the permanent representative of the United States regarding American Samoa, Hawai'i, Puerto Rico and the Virgin Islands.⁸⁶ In this report, the United States made no mention that the Hawaiian Islands were an independent State since 1843 and that its government was illegally overthrown by U.S. forces, which was later settled by an executive agreement through *exchange of notes*. The representative also fails to disclose diplomatic protests that succeeded in preventing the second attempt to annex the Islands by a treaty of cession in 1897. Instead, the representative provides a picture of Hawai'i as a non-State nation, by stating:

“The Hawaiian Islands were discovered by James Cook in 1778. At that time divided into several petty chieftainships, they were soon afterwards united into one kingdom. The Islands became an important port and recruiting point for the early fur and sandalwood traders in the North Pacific, and the principal field base for the extensive whaling trade. When whaling declined after 1860, sugar became the foundation of the economy, and was stimulated by a reciprocity treaty with the United States (1876).

American missionaries went to Hawaii in 1820; they reduced the Hawaiian language to written form, established a school system, and gained great influence among the ruling chiefs. In contact with foreigners and western culture, the aboriginal population steadily declined. To replace this loss and to furnish labourers for the expanding sugar plantations, large-scale immigration was established.

When later Hawaiian monarchs showed a tendency to revert to absolutism, political discords and economic stresses produced a revolutionary movement headed by men of foreign birth and ancestry. The Native monarch was overthrown in 1893, and a republic government established. Annexation to the United States was one aim of the revolutionists. After a delay of five years, annexation was accomplished.

...The Hawaiian Islands, by virtue of the Joint Resolution of Annexation and the Hawaiian Organic Act, became an integral part of the United States and were given a territorial form of government which, in the United States political system, precedes statehood.”⁸⁷

⁸⁵ *Transmission of Information under Article 73e of the Charter*, December 14, 1946, United Nations General Assembly Resolution 66(I).

⁸⁶ *Information from Non-self-governing Territories: Summary and Analysis of Information Transmitted Under Article 73 e of the Charter. Report of the Secretary General: Summary of Information transmitted by the Government of the United States of America*, 4 June 1952, United Nations, Document A/2135.

⁸⁷ *Id.*, at 16-17.

The stated “Joint Resolution of Annexation and the Hawaiian Organic Act” are not international laws, but rather national laws of the United States. Sources of international law, in rank of precedence, are: international conventions, international custom, general principles of law recognized by civilized nations, and judicial decisions and the teachings of the most highly qualified publicists of the various nations.⁸⁸ The legislation of every State, including the United States of America and its Congress, are not sources of international law, but rather sources of domestic laws of the States whose legislatures enacted them. In *The Lotus*, the Permanent Court of International Justice stated, “Now 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.”⁸⁹ According to Crawford, derogation of this principle will not be presumed, which he refers to as the *Lotus* presumption.⁹⁰

- 6.3. In 1959, the Secretary General received a communication from the United States permanent representative that they will no longer transmit information regarding Hawai‘i because it supposedly “became one of the United States under a new constitution taking affect on [August 21, 1959].”⁹¹ This resulted in a General Assembly resolution stating it “Considers it appropriate that the transmission of information in respect of Alaska and Hawaii under Article 73e of the Charter should cease.”⁹² Evidence that the United Nations was not aware of Hawaiian independence since 1843 can be gleaned from the following statement by the United Nations.

“Though the General Assembly considered that the manner in which Territories could become fully self-governing was primarily through the attainment of independence, it was observed in the Fourth Committee that the General Assembly had recognized in resolution 748 (VIII) that self-government could also be achieved by association with another State or group of States if the association was freely chosen and was on a basis of absolute equality. There was unanimous agreement that Alaska and Hawaii had attained a full measure of self-government and equal to that enjoyed by all other self-governing constituent states of the United States. Moreover, the people of Alaska and Hawaii had fully exercised their right to choose their own form of government.”⁹³

⁸⁸ Statute of the International Court of Justice, Article 38.

⁸⁹ *Lotus*, PCIJ, ser. A no. 10, 18 (1927).

⁹⁰ JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 41-42 (2nd ed., 2006).

⁹¹ *Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America*, United Nations, Document no. A/4226, at 99.

⁹² *Cessation of the transmission of information under Article 73 e of the Charter in respect of Alaska and Hawaii*, December 12, 1959, United Nations General Assembly Resolution 1469 (XIV).

⁹³ *Repertory of Practice of United Nations Organs, Extracts relating to Article 73 of the Charter of the United Nations*, Supplement No. 1 (1955-1959), volume 3, at 200, para. 101.

6.4. Although the United Nations passed two resolutions acknowledging Hawai‘i to be a non-self-governing territory that has been under the administration of the United States of America since 1898 and was granted self-governance in 1959, it did not affect the continuity of the Hawaiian State because, foremost, because United Nations resolutions are not binding on member States of the United Nations,⁹⁴ let alone a non-member State—the Hawaiian Kingdom. Crawford explains, “Of course, the General Assembly is not a legislature. Mostly its resolutions are only recommendations, and it has no capacity to impose new legal obligations on States.”⁹⁵ Secondly, the information provided to the General Assembly by the United States was distorted and flawed. In *East Timor*, Portugal argued that resolutions of both the General Assembly and the Security Council acknowledged the status of East Timor as a non-self-governing territory and Portugal as the administering power and should be treated as “givens.”⁹⁶ The International Court of Justice, however, did not agree and found

“that it cannot be inferred from the sole fact that the above-mentioned resolutions of the General Assembly and the Security Council refer to Portugal as the administering Power of East Timor that they intended to establish an obligation on third States.”⁹⁷

Even more problematic is when the decisions embodied in the resolutions as “givens” are wrong. Acknowledging this possibility, Bowett states, “where a decision affects a State’s legal rights or responsibilities, and can be shown to be unsupported by the facts, or based upon a quite erroneous view of the facts, or a clear error of law, the decision ought in principle to be set aside.”⁹⁸ Öberg also concurs and acknowledges that resolutions “may have been made on the basis of partial information, where not all interested parties were heard, and/or too urgently for the facts to be objectively established.”⁹⁹ As an example, Öberg cited Security Council Resolution 1530, March 11, 2004, that “misidentified the perpetrator of the bomb attacks carried out in Madrid, Spain, on the same day.”¹⁰⁰

7. MILITARIZATION OF THE HAWAIIAN ISLANDS

7.1. For the past century, the Hawaiian Kingdom has served as a base of military operations for United States troops during World War I and World War II. In 1947, the United States Pacific Command (USPACOM), being a unified

⁹⁴ IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 14 (4th ed. 1990).

⁹⁵ See CRAWFORD, *supra* note 18, at 113.

⁹⁶ In *East Timor* (Portugal v. Australia) [1995] ICJ Rep. 90, at 103, para. 30.

⁹⁷ *Id.*, at 104, para. 32.

⁹⁸ Derek Bowett, *The Impact of Security Council Decisions on Dispute Settlement Procedures*, 5 EUR. J. INT’L L. 89, 97 (1994).

⁹⁹ Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16(5) EUR. J. INT’L L. 879, 892 (2005).

¹⁰⁰ *Id.*, at n. 82.

combatant command, was established as an outgrowth of the World War II command structure, with its headquarters on the Island of O‘ahu. Since then, USPACOM has served as a base of military operations during the Korean War, the Vietnam War, the Gulf War, the Afghan War, the Iraq War, and the current war on terrorism. There are currently 118 U.S. military sites throughout the Hawaiian Kingdom that comprise 230,929 acres.¹⁰¹ The island of O‘ahu has the majority of military sites at 94,250 acres.

- 7.2. The United States Navy’s Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise (RIMPAC) every other even numbered year, which is the largest international maritime warfare exercise. RIMPAC is a multinational, sea control and power projection exercise that collectively consists of activity by the U.S. Army, Air Force, Marine Corps, and Naval forces, as well as military forces from other foreign States. During the month long exercise, RIMPAC training events and live fire exercises occur in open-ocean and at the military training locations throughout the Hawaiian Islands. In 2014, Australia, Brunei, Canada, Chile, Colombia, France, India, Indonesia, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, People’s Republic of China, Peru, Republic of Korea, Republic of the Philippines, Singapore, Tonga, and the United Kingdom participated in the RIMPAC exercises.
- 7.3. Since the belligerent occupation by the United States began on August 12, 1898 during the Spanish-American War, the Hawaiian Kingdom, as a neutral State, has been in a state of war for over a century. Although it is not a state of war in the technical sense that was produced by a declaration of war, it is, however, a war in the material sense that Dinstein says, is “generated by actual use of armed force, which must be comprehensive on the part of at least one party to the conflict.”¹⁰² The military action by the United States on August 12, 1898 against the Hawaiian Kingdom triggered the change from a state of peace into a state of war—*jus in bello*, where the laws of war would apply.
- 7.4. When neutral territory is occupied, however, the laws of war are not applied in its entirety. According to Takahashi, Japan limited its application of the Hague Convention to its occupation of Manchuria, being a province of a neutral China, in its war against Russia, to Article 42—on the elements and sphere of military occupation, Article 43—on the duty of the occupant to

¹⁰¹ U.S. military training locations on the Island of Kaua‘i: Pacific Missile Range Facility, Barking Sands Tactical Underwater Range, and Barking Sands Underwater Range Expansion; the entire Islands of Ni‘ihau and Ka‘ula; on the Island of O‘ahu: Pearl Harbor, Lima Landing, Pu‘uloa Underwater Range—Pearl Harbor, Barbers Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawai‘i, Marine Corps Training Area Bellows, Hickam Air Force Base, Kahuku Training Area, Makua Military Reservation, Dillingham Military Reservation, Wheeler Army Airfield, and Schofield Barracks on the Island of O‘ahu; and on the Island of Hawai‘i: Bradshaw Army Airfield and Pohakuloa Training Area.

¹⁰² YORAM DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENSE*, 16 (2nd ed. 1994).

respect the laws in force in the country, Article 46—concerning family honour and rights, the lives of individuals and their private property as well as their religious conviction and the right of public worship, Article 47—on prohibiting pillage, Article 49—on collecting the taxes, Article 50—on collective penalty, pecuniary or otherwise, Article 51—on collecting contributions, Article 53—concerning properties belonging to the state or private individuals, which may be useful in military operations, Article 54—on material coming from neutral states, and Article 56—on the protection of establishments consecrated to religious, warship, charity, etc.¹⁰³

- 7.5. Hawai‘i’s situation was anomalous and without precedent. The closest similarity to the Hawaiian situation would not take place until sixteen years later when Germany occupied the neutral States of Belgium and Luxembourg in its war against France from 1914-1919. The Allies considered Germany’s actions against these neutral States to be acts of aggression. According to Garner, the “immunity of a neutral State from occupation by a belligerent is not dependent upon special treaties, but is guaranteed by the Hague convention as well as the customary law of nations.”¹⁰⁴

B. THE CONTINUITY OF THE HAWAIIAN KINGDOM AS AN INDEPENDENT STATE

8. *GENERAL CONSIDERATIONS*

- 8.1. The issue of State continuity usually arises in cases in which some element of the State has undergone some significant transformation, such as changes in its territory or in its form of government. A claim as to State continuity is essentially a claim as to the continued independent existence of a State for purposes of international law in spite of such changes. It is predicated, in that regard, upon an insistence that the State’s legal identity has remained intact. If the State concerned retains its identity it can be considered to “continue” and *vice versa*. Discontinuity, by contrast, supposes that the identity of the State has been lost or fundamentally altered in such a way that it has ceased to exist as an independent State and, as a consequence, rights of sovereignty in relation to territory and population have been assumed by another “successor” State to the extent provided by the rules of succession. At its heart, therefore, the issue of State continuity is concerned with the parameters of a State’s existence and demise, or extinction, in international law.
- 8.2. The claim of State continuity on the part of the Hawaiian Kingdom has to be opposed as against a claim by the United States as to its succession. It is apparent, however, that this opposition is not a strict one. Principles of succession may operate even in cases where continuity is not called into question, such as with the cession of a portion of territory from one State to another, or occasionally in case of unification. Continuity and succession are,

¹⁰³ SAKUYE TAKAHASHI, *INTERNATIONAL LAW APPLIED TO THE RUSSO-JAPANESE WAR* 251 (1908).

¹⁰⁴ JAMES WILFORD GARNER, *INTERNATIONAL LAW AND THE WORLD WAR*, 251 (Vol. II 1920).

in other words, not always mutually exclusive but might operate in tandem. It is evident, furthermore, that the principles of continuity and succession may not actually differ a great deal in terms of their effect.

- 8.3. Even if it is relatively clear as to when States may be said to come into being for purposes of international law, the converse is far from being the case. Beyond the theoretical circumstance in which a body politic has dissolved, *e.g.* by submergence of the territory or the dispersal of the population, it is apparent that all cases of putative extinction will arise in cases where certain changes of a material nature have occurred—such as a change in government and change in the territorial configuration of the State. The difficulty, however, is in determining when such changes are merely incidental, leaving intact the identity of the State, and when they are to be regarded as fundamental going to the heart of that identity. It is evident, moreover, that States are complex political communities possessing various attributes of an abstract nature which vary in space as well as time, and, as such, determining the point at which changes in those attributes are such as to affect the State's identity will inevitably call for very fine distinctions.
- 8.4. It is generally held, nevertheless, that there exist several uncontroversial principles that have some bearing upon the issue of continuity. These are essentially threefold, all of which assume an essentially negative form. First, that the continuity of the State is not affected by changes in government even if of a revolutionary nature. Secondly, that continuity is not affected by territorial acquisition or loss, and finally that it is not affected by military occupation. Crawford points out that,

“There is a strong presumption that the State continues to exist, with its rights and obligations, despite revolutionary changes in government, or despite a period in which there is no, or no effective, government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”¹⁰⁵

Furthermore, the *dictum* of the Permanent Court of Arbitration in *Larsen v. Hawaiian Kingdom* acknowledging the Hawaiian Kingdom to be an independent State in the nineteenth century is also *presumptive evidence*, “which must be received and treated as true and sufficient until and unless rebutted by other evidence,”¹⁰⁶ *i.e.* evidence of the Hawaiian State and its continuity shall be the presumption unless rebutted.

- 8.5. Each of these principles reflects upon one of the key incidents of statehood—territory, government (legal order) and independence—making clear that the issue of continuity is essentially one concerned with the existence of States:

¹⁰⁵ See CRAWFORD, *supra* note 18, at 34.

¹⁰⁶ BLACK'S LAW DICTIONARY 1186 (6th ed. 1990).

unless one or more of the key constituents of Statehood are entirely and permanently lost, State identity will be retained. Their negative formulation, furthermore, implies that there exists a general presumption of continuity. As Hall was to express the point, a State retains its identity

“so long as the corporate person undergoes no change which essentially modifies it from the point of view of its international relations, and with reference to them it is evident that no change is essential which leaves untouched the capacity of the state to give effect to its general legal obligations or to carry out its special contracts.”¹⁰⁷

The only exception to this general principle is to be found in case of multiple changes of a less than total nature, such as where a revolutionary change in government is accompanied by a broad change in the territorial delimitation of the State.¹⁰⁸

- 8.6. If 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, absent of which the presumption remains. It might be objected that formally speaking, the survival or otherwise of a State should be regarded as independent of the legitimacy of any claims to its territory on the part of other States. It is commonly recognized that a State does not cease to be such merely in virtue of the existence of legitimate claims over part or parts of its territory. Nevertheless, where those claims comprise the entirety of the territory of the State, as they do in case of Hawai‘i, and when they are accompanied by effective governance to the exclusion of the Hawaiian Kingdom, it is difficult, if not impossible, to separate the two questions. The survival of the Hawaiian Kingdom is, it seems, premised upon the “legal” basis of present or past United States claims to sovereignty over the Islands.
- 8.7. In light of such considerations, any claim to State continuity will be dependent upon the establishment of two legal facts: *first*, that the State in question existed as a recognized entity for purposes of international law at some relevant point in history; and, *secondly*, that intervening events have not been such as to deprive it of that status. It should be made very clear, however, that the issue is not simply one of “observable” or “tangible facts,” but more specifically of “legally relevant facts.” It is not a case, in other words, simply of observing how power or control has been exercised in relation to persons or territory, but of determining the scope of “authority,” which is understood as “a legal entitlement to exercise power and control.” Authority differs from

¹⁰⁷ See HALL, *supra* note 21, at 22.

¹⁰⁸ See generally, KRISTYNA MAREK, IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW (2nd ed. 1968).

mere control by not only being essentially rule-governed, but also in virtue of the fact that it is not always entirely dependent upon the exercise of that control. As Arbitrator Huber noted in the *Island of Palmas Case*:

“Manifestations of sovereignty assume... different forms according to conditions of time and place. Although continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as inhabited or uninhabited regions are involved, or regions enclosed within territories in which sovereignty is incontestably displayed or again regions accessible from, for instance, the high seas.”¹⁰⁹

- 8.8. Thus, while “the continuous and peaceful display of territorial sovereignty” remains an important measure for determining entitlements in cases where title is disputed, or where “no conventional line of sufficient topographical precision exists,” it is not always an indispensable prerequisite for legal title. This has become all the more apparent since the prohibition on the annexation of territory became firmly implanted in international law, and with it the acceptance that certain factual situations will not be accorded legal recognition, *ex inuria ius non oritur*.
- 8.9. In light of the evident existence of Hawai‘i as a sovereign State for some period of time prior to 1898, it would seem that the issue of continuity turns upon the question whether Hawai‘i can be said to have subsequently ceased to exist according to the terms of international law. Current international law recognizes that a State may cease to exist in one of two scenarios: *first*, by means of that State’s integration with another State in some form of union; or, *second*, by its dismemberment, such as in the case of the Socialist Federal Republic of Yugoslavia or Czechoslovakia. As will be seen, events in Hawai‘i in 1898 are capable of being construed in several ways, but it is evident that the most obvious characterization was one of cession by joint resolution of the Congress.
- 8.10. Turning then to the law as it existed at the critical date of 1898, it was generally held that a State might cease to exist in one of three scenarios:
 - (a) By the destruction of its territory or by the extinction, dispersal or emigration of its population, which is a theoretical disposition.
 - (b) By the dissolution of the corpus of the State.¹¹⁰
 - (c) By the State’s incorporation, union, or submission to another.¹¹¹

¹⁰⁹ *Island of Palmas Case (Netherlands v. United States)* 2 R.I.A.A. 829.

¹¹⁰ Cases include the dissolution of the German Empire in 1805-6; the partition of the Pays-Bas in 1831 or of the Canton of Bale in 1833

¹¹¹ Cases include the incorporation of Cracow into Austria in 1846; the annexation of Nice and Savoy by France in 1860; the annexation of Hannover, Hesse, Nassau and Schleswig-Holstein and Frankfurt into Prussia in 1886.

- 8.11. Neither (a) nor (b) is applicable in the current scenario. In case of (c) commentators have often distinguished between two processes—one of which involved a voluntary act, *i.e.* union or incorporation, the other of which came about by non-consensual means, *i.e.* conquest and submission followed by annexation.¹¹² It is evident that annexation or “conquest” was regarded as a legitimate mode of acquiring title to territory,¹¹³ and it would seem to follow that in case of total annexation—annexation of the entirety of the territory of a State, the defeated State would cease to exist.
- 8.12. Although annexation was regarded as a legitimate means of acquiring territory, it was recognized as taking a variety of forms.¹¹⁴ It was apparent that a distinction was typically drawn between those cases in which the annexation was implemented by a Treaty of Peace, and those which resulted from an essentially unilateral public declaration on the part of the annexing power after the defeat of the opposing State, which the former was at war with. The former would be governed by the particular terms of the treaty in question, and give rise to a distinct type of title.¹¹⁵ Since treaties were regarded as binding irrespective of the circumstances surrounding their conclusion and irrespective of the presence or absence of coercion,¹¹⁶ title acquired in virtue of a peace treaty was considered to be essentially derivative, *i.e.* being transferred from one State to another. There was little, in other words, to distinguish title acquired by means of a treaty of peace backed by force, and a voluntary purchase of territory: in each case the extent of rights enjoyed by the successor were determined by the agreement itself. In case of conquest absent an agreed settlement, by contrast, title was thought to derive simply from the fact of military subjugation and was complete “from the time [the conqueror] proves his ability to maintain his sovereignty over his conquest, and manifests, by some authoritative act... his intention to retain it as part of his own territory.”¹¹⁷ What was required, in other words, was that the conflict be complete—acquisition of sovereignty *durante bello* being clearly excluded, and that the conqueror declare an intention to annex.¹¹⁸
- 8.13. What remained a matter of some dispute, however, was whether annexation by way of subjugation should be regarded as an original or derivative title to territory and, as such, whether it gave rise to rights in virtue of mere occupation, or rather more extensive rights in virtue of succession—a point of

¹¹² See J. Westlake, *The Nature and Extent of the Title by Conquest*, 17 L. Q. REV. 392 (1901).

¹¹³ LASSA OPPENHEIM, *INTERNATIONAL LAW*, VOL. I, 288 (9th ed. 1996), Oppenheim remarks that “[a]s long as a Law of Nations has been in existence, the states as well as the vast majority of writers have recognized subjugation as a mode of acquiring territory.”

¹¹⁴ HENRY HALLECK, *INTERNATIONAL LAW*, 811 (1861); HENRY WHEATON, *ELEMENTS OF INTERNATIONAL LAW II*, c. iv, s. 165. (8th ed. 1866).

¹¹⁵ See LAWRENCE, *supra* note 22, at 165-6 (“Title by conquest arises only when no formal international document transfers the territory to its new possessor.”)

¹¹⁶ Vienna Convention on the Law of Treaties, art. 52 (1969).

¹¹⁷ HENRY HALLECK, *INTERNATIONAL LAW*, 468 (3rd ed. 1893).

¹¹⁸ This point was of considerable importance following the Allied occupation of Germany in 1945.

particular importance for possessions held in foreign territory.¹¹⁹ Rivier, for example, took the view that conquest involved a three stage process: (a) the extinction of the State in virtue of *debellatio* which (b) rendered the territory *terra nullius* leading to (c) the acquisition of title by means of occupation.¹²⁰ Title, in other words, was original, and rights of the occupants were limited to those, which they possessed perhaps under the doctrine *uti possidetis de facto*. Others, by contrast, seemed to assume some form of “transfer of title” as taking place, *i.e.* that conquest gave rise to a derivative title,¹²¹ and concluded in consequence that the conqueror “becomes, as it were, the heir or universal successor of the defunct or extinguished State.”¹²² Much depended, in such circumstances, as to how the successor came to acquire title.

- 8.14. It should be pointed out, however, that even if annexation/conquest was generally regarded as a mode of acquiring territory, United States policy during this period was far more skeptical of such practice. As early as 1823 the United States had explicitly opposed, in the form of the Monroe Doctrine, the practice of European colonization¹²³ and in the First Pan-American Conference of 1889 and 1890 it had proposed a resolution to the effect that “the principle of conquest shall not...be recognized as admissible under American public law.”¹²⁴ It had, furthermore, later taken the lead in adopting a policy of non-recognition of “any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928”¹²⁵ which was confirmed as a legal obligation in a resolution of the Assembly of the League of Nations in 1932. Even if such a policy was not to amount to a legally binding commitment on the part of the United States not to acquire territory by use or threat of force during the latter stages of the 19th century, there is the doctrine of estoppel that would operate to prevent the United States subsequently relying upon forcible annexation as a basis for claiming title to the Hawaiian Islands. Furthermore, annexation by conquest clearly would not apply to the case at hand because the Hawaiian Kingdom was never at war with the United States thereby preventing *debellatio* from arising as a mode of acquisition.

¹¹⁹ For an early version of this idea see EMERICH DE Vattel, *THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW*, BK. III, SEC. 193-201 (1758, trans. C. Fenwick, 1916). C. BYNKERSHOEK, *QUAESTIONUM JURIS PUBLICI LIBRI DUO*, BK. I, 32-46 (1737, trans. Frank T., 1930).

¹²⁰ RIVIER, *PRINCIPES DU DROIT DES GENS*, VOL. I, 182 (1896).

¹²¹ See PHILLIMORE, *supra* note 20, I, at 328.

¹²² See HALLECK, *supra* note 114, at 495.

¹²³ “The American continents, by the free and independent conditions which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European Powers.” James Monroe, Message to Congress, December 2, 1823.

¹²⁴ JOHN BASSET MOORE, *A DIGEST OF INTERNATIONAL LAW*, VOL. 1, 292 (1906).

¹²⁵ J.W. WHEELER-BENNETT (ED.), *DOCUMENTS ON INTERNATIONAL AFFAIRS 1932-23* (1933). See also David Turns, *The Stimson Doctrine of Non-Recognition: Its Historical Genesis and Influence on Contemporary International Law*, 2 *CHINESE J. INT’L L.* 105-143 (2003).

9. THE FUNCTION OF ESTOPPEL

9.1. The principle that a State cannot benefit from its own wrongful act is a general principle of international law referred to as estoppel.¹²⁶ The rationale for this rule derives from the *maxim pacta sunt servanda*—every treaty in force is binding upon the parties and must be performed by them in good faith,¹²⁷ and “operates so as to preclude a party from denying the truth of a statement of fact made previously by that party to another whereby that other has acted to his detriment.”¹²⁸ According to MacGibbon, underlying “most formulations of the doctrine of estoppel in international law is the requirement that a State ought to be consistent in its attitude to a given factual or legal situation.”¹²⁹ In municipal jurisdictions there are three forms of estoppel—estoppel by judgment as in matters of court decisions; estoppel by deed as in matters of written agreement or contract; and estoppel by conduct as in matters of statements and actions. Bowett states that these forms of estoppel, whether treated as a rule of evidence or as substantive law, are as much part of international law as they are in municipal law, and due to the diplomatic nature of States relations, he expands the second form of estoppel to include estoppel by “Treaty, Compromise, Exchange of Notes, or other Undertaking in Writing.”¹³⁰ Brownlie states that because estoppel in international law rests on principles of good faith and consistency, it is “shorn of the technical features to be found in municipal law.”¹³¹ Bowett enumerates the three essentials establishing estoppel in international law:

1. The statement of fact must be clear and unambiguous.
2. The statement of fact must be made voluntarily, unconditionally, and must be authorized.
3. There must be reliance in good faith upon the statement either to the detriment of the party so relying on the statement or to the advantage of the party making the statement.¹³²

9.2. To ensure consistency in State behavior, the Permanent Court of International Justice, in a number of cases, affirmed the principle “that a State cannot invoke its municipal law as a reason for failure to fulfill its international obligation.”¹³³ This principle was later codified under Article 27 of the 1969 Vienna Convention on the Law of Treaties, whereby “a party may not invoke the provisions of its internal law as justification for its failure to perform a

¹²⁶ WILLIAM EDWARD HALL, *A TREATISE ON INTERNATIONAL LAW* 383 (8th ed. 1924).

¹²⁷ See Vienna Convention, *supra* note 116, art. 26.

¹²⁸ D.W. Bowett, *Estoppel Before International Tribunals and its Relation to Acquiescence*, 33 BRIT. Y. B. INT'L L. 201 (1957).

¹²⁹ I.C. MacGibbon, *Estoppel in International Law*, 7 INT'L. & COMP. L. Q. 468 (1958).

¹³⁰ See Bowett, *supra* note 128, at 181.

¹³¹ See BROWNLIE, *supra* note 94, at 641.

¹³² See Bowett, *supra* note 128, at 202.

¹³³ Series A/B, No. 44 (1932) (*Polish Nationals in Danzig*), at 24; Series A, No. 24 (1930), at 12, and Series A/B, No. 46 (1932), at 167 (*Free Zones*); Series B, No. 17 (1930) (*Greco-Bulgarian Communities*), at 32.

treaty.”¹³⁴ It is self-evident that the 1893 *Lili‘uokalani assignment* and the *Agreement of restoration* meets the requirements of the first two essentials establishing estoppel, and, as for the third, reliance in good faith was clearly displayed and evidence in a memorial to President Cleveland by the Hawaiian Patriotic League on December 27, 1893. As stated in the memorial:

“And while waiting for the result of [the investigation], with full confidence in the American honor, the Queen requested all her loyal subjects to remain absolutely quiet and passive, and to submit with patience to all the insults that have been since heaped upon both the Queen and the people by the usurping Government. The necessity of this attitude of absolute inactivity on the part of the Hawaiian people was further indorsed and emphasized by Commissioner Blount, so that, if the Hawaiians have held their peace in a manner that will vindicate their character as law-abiding citizens, yet it can not and must not be construed as evidence that they are apathetic or indifferent, or ready to acquiesce in the wrong and bow to the usurpers.”¹³⁵

- 9.3. Continued reliance was also displayed by the formal protests of the Queen and Hawaiian political organizations regarding the aforementioned second treaty of cession signed in Washington, D.C., on June 16, 1897. These protests were received and filed in the office of Secretary of State John Sherman and continue to remain a record of both dissent and evidence of reliance upon the conclusion of the investigation by President Cleveland and his obligation and commitment to *restitutio in integrum*—restoration of the *de jure* Hawaiian government. A memorial of the Hawaiian Patriotic League that was filed with the United States Hawaiian Commission for the creation of the territorial government appears to be the last “public” act of reliance made by a large majority of the Hawaiian citizenry.¹³⁶ The Commission was established on July 8, 1898 after President McKinley signed the joint resolution of annexation on July 7, 1898, and held meetings in Honolulu from August through September of 1898. The memorial, which was also printed in two Honolulu newspapers, one in the Hawaiian language¹³⁷ and the other in English,¹³⁸ stated, in part:

“WHEREAS: By memorial the people of Hawaii have protested against the consummation of an invasion of their political rights, and have fervently appealed to the President, the Congress and the People of the United States, to refrain from further participation in the wrongful annexation of Hawaii; and

¹³⁴ See Vienna Convention, *supra* note 116, art. 27.

¹³⁵ See Executive Documents, *supra* note 27, at 1295, reprinted in 1 HAW. J. L. & POL. 217 (Summer 2004).

¹³⁶ Munroe Smith, Record of Political Events, 13(4) POL. SCI. Q. 745, 752 (Dec. 1898).

¹³⁷ *Memoriala A Ka Lahui* (Memorial of the Citizenry), KE ALOHA AINA, Sept. 17, 1898, at 3.

¹³⁸ *What Monarchists Want*, THE HAWAIIAN STAR, Sept. 15, 1898, at 3.

WHEREAS: The Declaration of American Independence expresses that Governments derive their just powers from the consent of the governed:

THEREFORE, BE IT RESOLVED: That the representatives of a large and influential body of native Hawaiians, we solemnly pray that the constitutional government of the 16th day of January, A.D. 1893, be restored, under the protection of the United States of America.”

This memorial clearly speaks to the people’s understanding and reliance of the 1893 *Agreement of restoration* and the duties and obligations incurred by the United States even after the Islands were purportedly annexed.

9.4. There is no dispute between the United States and the Hawaiian Kingdom regarding the illegal overthrow of the *de jure* Hawaiian government, and the 1893 executive agreements—the *Lili‘uokalani assignment* and the *Agreement of restoration*, constitutes evidence of final settlement. As such, the United States cannot benefit from its deliberate non-performance of its obligation of administering Hawaiian law and restoring the *de jure* government under the 1893 executive agreements over the reliance held by the Hawaiian Kingdom and its citizenry in good faith and to their detriment. Therefore, the United States is estopped from asserting any of the following claims:

1. Recognition of any pretended government other than the Hawaiian Kingdom as both the *de facto* and the *de jure* government of the Hawaiian Islands;
2. Annexation of the Hawaiian Islands by joint resolution in 1898;
3. Establishment of a territorial government in 1900;
4. Administration of the Hawaiian Islands as a non-self-governing territory since 1898 pursuant to Article 73(e) of the U.N. Charter; and
5. Establishment of a State government in 1959.

9.5. The failure of the United States to restore the *de jure* government is a “breach of an international obligation,” and, therefore, an international wrongful act. The severity of this breach has led to the unlawful seizure of Hawaiian independence, imposition of a foreign nationality upon the citizenry of an occupied State, mass migrations and settlement of foreign citizens, and the economic and military exploitation of Hawaiian territory—all stemming from the United States government’s violation of international law and treaties. In a 1999 report for the United Nations Centennial of the First International Peace Conference, Greenwood states:

“Accommodation of change in the case of prolonged occupation must be within the framework of the core principles laid down in the Regulations on the Laws and Customs of War on Land and the Fourth Convention, in particular, the principle underlying much of the Regulations on the Laws and Customs of War on Land, namely

that the occupying power may not exploit the occupied territories for the benefit of its own population.”¹³⁹

Despite the egregious violations of Hawaiian State sovereignty by the United States since January 16, 1893, the principle of estoppel not only serves as a shield that bars the United States from asserting any legal claim of sovereignty over the Hawaiian Islands, but also a shield that protects the continued existence of the Hawaiian Kingdom, the nationality of its citizenry, and its territorial integrity as they existed in 1893. Additionally, the principle of *ex injuria jus non oritur*—unjust acts cannot create law, equally applies.

10. ACQUISITIVE PRESCRIPTION

- 10.1. As pointed out above, the continuity of the Hawaiian State may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, which is not strictly limited to annexation. The United States, in other words, would be entitled to maintain its claim over the Hawaiian Islands so long as it could show some basis for asserting that claim other than merely its original claim of annexation in 1898. The strongest type of claim in this respect is the “continuous and peaceful display of territorial sovereignty.” The emphasis given to the “continuous and peaceful display of territorial sovereignty” in international law derives in its origin from the doctrine of occupation, which allowed states to acquire title to territory that was effectively *terra nullius*. Occupation, in this form, is distinct from military occupation of another State’s territory. It is apparent, however, and in line with the approach of the International Court of Justice in the *Western Sahara Case*,¹⁴⁰ that the Hawaiian Islands cannot be regarded as *terra nullius* for purpose of acquiring title by mere occupation. According to some, nevertheless, effective occupation may give rise to title by way of what is known as “acquisitive prescription.”¹⁴¹ As Hall maintained, title or sovereignty “by prescription arises out of a long continued possession, where no original source of proprietary right can be shown to exist, or where possession in the first instance being wrongful, the legitimate proprietor has neglected to assert his right, or has been unable to do so.”¹⁴² Johnson explains in more detail:

“Acquisitive Prescription is the means by which, under international law, legal recognition is given to the right of a state to exercise sovereignty over land or sea territory in cases where that state has, in fact, exercised its authority in a continuous, uninterrupted, and peaceful manner over the area concerned for a sufficient period of

¹³⁹ CHRISTOPHER GREENWOOD, INTERNATIONAL HUMANITARIAN LAW (LAWS OF WAR): REVISED REPORT PREPARED FOR THE CENTENNIAL OF THE FIRST INTERNATIONAL PEACE CONFERENCE, PURSUANT TO UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS A/RES/52/154 AND A/RES/53/99, 47 (1999).

¹⁴⁰ I.C.J. Rep. 1975.

¹⁴¹ For a discussion of the various approaches to this issue see OPPENHEIM, *supra* note 111, at 705-6.

¹⁴² See HALL, *supra* note 124, at 143.

time, provided that all other interested and affected states (in the case of land territory the previous possessor, in the case of sea territory neighboring states and other states whose maritime interests are affected) have acquiesced in this exercise of authority. Such acquiescence is implied in cases where the interested and affected states have failed within a reasonable time to refer the matter to the appropriate international organization or international tribunal or—exceptionally in cases where no such action was possible—have failed to manifest their opposition in a sufficiently positive manner through the instrumentality of diplomatic protests.”¹⁴³

Although no case before an international court or tribunal has unequivocally affirmed the existence of acquisitive prescription as a mode of acquiring title to territory,¹⁴⁴ and although Judge Moreno Quintana in his dissenting opinion in the *Rights of Passage* case¹⁴⁵ found no place for the concept in international law, there is considerable evidence that points in that direction. For example, the continuous and peaceful display of sovereignty, or some variant thereof, was emphasized as the basis for title in the *Minquiers and Ecrehos Case* (France v. United Kingdom),¹⁴⁶ the *Anglo-Norwegian Fisheries Case* (United Kingdom v. Norway)¹⁴⁷ and in the *Island of Palmas Arbitration* (United States v. Netherlands).¹⁴⁸

- 10.2. If a claim to acquisitive prescription is to be maintained in relation to the Hawaiian Islands, various *indicia* have to be considered including, for example, the length of time of effective and peaceful occupation, the extent of opposition to or acquiescence in that occupation, and, perhaps, the degree of recognition provided by third States. However, “no general rule [can] be laid down as regards the length of time and other circumstances which are necessary to create such a title by prescription. Everything [depends] upon the merits of the individual case.”¹⁴⁹ As regards the temporal element, the United States could claim to have peacefully and continuously exercised governmental authority in relation to Hawai’i for over a century. This is somewhat more than was required for purposes of prescription in the *British Guiana-Venezuela Boundary Arbitration*, for example,¹⁵⁰ but it is clear that time alone is certainly not determinative. Similarly, in terms of the attitude of third States, it is evident that apart from the initial protest of the Japanese Government in 1897, none has opposed the extension of United States jurisdiction to the Hawaiian Islands. Indeed the majority of States may be

¹⁴³ D.H.N. Johnson, *Acquisitive Prescription in International Law*, 27 BRIT. Y. B. INT’L L. 332, 353 (1950).

¹⁴⁴ Prescription may be said to have been recognized in the *Chamizal Arbitration*, 5 AM. J. INT’L L. 782, 785 (1911); the *Grisbadana Arbitration* P.C.I.J. 1909; and the *Island of Palmas Arbitration*, *supra* note 107.

¹⁴⁵ I.C.J. Rep. 1960, at 6.

¹⁴⁶ I.C.J. Rep. 1953, at 47

¹⁴⁷ I.C.J. Rep. 1951, at 116.

¹⁴⁸ See *Palmas case*, *supra* note 107.

¹⁴⁹ See OPPENHEIM, *supra* note 111, at 706.

¹⁵⁰ The arbitrators were instructed by their treaty terms of reference to allow title if based upon “adverse holding or prescription during a period of fifty years.” 28 R.I.A.A (1899) 335.

said to have acquiesced in its claim to sovereignty in virtue of acceding to its exercise of sovereign prerogatives in respect of the Islands, but this acquiescence by other States was based on misleading and false information that was presented to the United Nations by the United States as before mentioned. It could be surmised, as well, that the United States misled other States regarding Hawai'i even prior to the establishment of the United Nations in 1945. It is important, however, not to attach too much emphasis to third party recognition. As Jennings points out, in case of adverse possession “[r]ecognition or acquiescence on the part of third States... must strictly be irrelevant.”¹⁵¹

- 10.3. More difficult, in this regard, is the issue of acquiescence or protest as between the Hawaiian Kingdom and the United States. In the *Chamizal* Arbitration it was held that the United States could not maintain a claim to the Chamizal tract by way of prescription in part because of the protests of the Mexican government.¹⁵² The Mexican government, in the view of the Commission, had done “all that could be reasonably required of it by way of protest against the illegal encroachment.”¹⁵³ Although it had not attempted to retrieve the land by force, the Commission pointed out that:

“however much the Mexicans may have desired to take physical possession of the district, the result of any attempt to do so would have provoked scenes of violence and the Republic of Mexico can not be blamed for resorting to the milder forms of protest contained in its diplomatic correspondence.”¹⁵⁴

In other words, protesting in any way that might be “reasonably required” should effectively defeat a claim of acquisitive prescription.

- 10.4. Ultimately, a “claim” to prescription is not equal to a “title” by prescription, especially in light of the presumption of title being vested in the State the claim is made against. Johnson acknowledges this distinction when he states that the “length of time required for the establishment of a prescriptive title on the one hand, and the extent of the action required to prevent the establishment of a prescriptive title on the other hand, are invariably matters of fact to be decided by the international tribunal before which the matter is eventually brought for adjudication.”¹⁵⁵ The United States has made no claim to acquisitive prescription before any international body, but, instead, has reported to the United Nations in 1952 the fraudulent claim that the “Hawaiian Islands, by virtue of the Joint Resolution of Annexation and the Hawaiian Organic Act, became an integral part of the United States and were given a

¹⁵¹ See OPPENHEIM, *supra* note 113, at 39.

¹⁵² *The Chamizal Arbitration Between the United States and Mexico*, 5 AM. J. INT’L L. 782 (1911).

¹⁵³ *Id.*, at 807.

¹⁵⁴ *Id.*

¹⁵⁵ See Johnson, *supra* note 143, at 354.

territorial form of government which, in the United States political system, precedes statehood.”¹⁵⁶

- 10.5. When President Cleveland accepted, by *exchange of notes*, the police power from the Queen under threat of war, and by virtue of that assignment initiated a presidential investigation that concluded the Queen, as Head of State and Head of Government, was both the *de facto* and *de jure* government of the Hawaiian Islands, and subsequently entered into a second executive agreement to restore the government on condition that the Queen or her successor in office would grant amnesty to the insurgents, the United States admitted that title or sovereignty over the Hawaiian Islands remained vested in the Hawaiian Kingdom and no other. Thus, it is impossible for the United States to claim to have acquired title to the Hawaiian Islands in 1898 from the government of the so-called Republic of Hawai‘i, because the Republic of Hawai‘i, by the United States’ own admission, was “self-declared.”¹⁵⁷ Furthermore, by the terms of the 1893 executive agreements—the *Lili‘uokalani assignment* and the *Agreement of restoration*, the United States recognized the continuing sovereignty of the Hawaiian Kingdom over the Hawaiian Islands despite its government having yet to be restored under the agreement. Therefore, the presumption may also be based on the general principle of international law, *pacta sunt servanda*, whereby an agreement in force is binding upon the parties and must be performed by them in good faith.

C. WAR CRIMES COMMITTED IN THE HAWAIIAN ISLANDS

11. *INTERNATIONAL ARMED CONFLICT*

- 11.1. Before war crimes can be alleged to have been committed there must be a state of war *sensu stricto*—an international armed conflict between States. Clapham, director of the Geneva Academy of International Humanitarian Law and Human Rights and professor in international law at the Graduate Institute, however, states, “The classification of an armed conflict under international law is an objective legal test and not a decision left to national governments or any international body, not even the UN Security Council.”¹⁵⁸ As an international armed conflict is a question of fact, these facts must be objectively tested by the principles of international humanitarian law as

¹⁵⁶ See *Communication from the United States of America*, *supra* note 91.

¹⁵⁷ *Joint Resolution To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawai‘i* (Apology Resolution), 103d Cong., 107 U.S. Stat. 1510 (1993), reprinted in 1 HAW. J. L. & POL. 290 (Summer 2004). The resolution stated, in part, “Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States.”

¹⁵⁸ Ellen Wallace, “War Report”: *global report calls for caution with armed conflict label*, ELLEN’S SWISS NEWS WORLD (Dec. 10, 2013) at <http://genevalunch.com/2013/12/10/war-report-global-report-calls-caution-armed-conflict-label/>.

provided in the 1907 Hague Conventions, the 1949 Geneva Conventions and its 1977 Additional Protocols.

- 11.2. Since the 1949 Geneva Conventions, the expression “armed conflict” substituted the term “war” in order for the Conventions to 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 (Common Article 2).” According to the International Committee of the Red Cross (ICRC) Commentary of the GC IV, this wording of Article 2 “was based on the experience of the Second World War, which saw territories occupied without hostilities, the Government of the occupied country considering that armed resistance was useless. In such cases the interests of protected persons are, of course, just as deserving of protection as when the occupation is carried out by force.”¹⁵⁹ According to Casey-Maslen, an international armed conflict exists “whenever one state uses any form of armed force against another, irrespective of whether the latter state fights back,” which “includes the situation in which one state invades another and occupies it, even if there is no armed resistance.”¹⁶⁰ The ICRC Commentary further clarifies that “Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to the human person as such is not measured by the number of victims.”¹⁶¹
- 11.3. Although the Conventions apply to Contracting State Parties, it is universally understood that the Conventions reflect customary international law that bind all States. On this subject, the Commentary clarifies that “any Contracting Power in conflict with a non-Contracting Power will begin by complying with the provisions of the Convention pending the adverse Party’s declaration.”¹⁶² Even if a State should denounce the Fourth Convention according to Article 158, the denouncing State “would nevertheless remain bound by the principles contained in [the Convention] in so far as they are the expression of the imprescriptible and universal rules of customary international law.”¹⁶³
- 11.4. “According to the Rules of Land Warfare of the United States Army,” Hyde explains, “belligerent or so-called military occupation is a question of fact. It presupposes a hostile invasion as a result of which the invader has rendered the invaded Government incapable of publicly exercising its authority, and that the invader is in a position to substitute and has substituted his own

¹⁵⁹ JEAN S. PICTET, COMMENTARY ON THE IV GENEVA CONVENTION, RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR, 21 (1958).

¹⁶⁰ STUART CASEY-MASLEN, WAR REPORT 2012 (2013), at 7.

¹⁶¹ See PICTET, *supra* note 159, at 20.

¹⁶² *Id.*, at 24.

¹⁶³ *Id.*, at 625.

authority for that of the legitimate government of the territory invaded.”¹⁶⁴ The armed conflict arose out of the United States’ belligerent occupation of Hawaiian territory in order to wage war against the Spanish in the Pacific without the consent from the lawful authorities of the Hawaiian Kingdom. Since the end of the Spanish-American War by the 1898 Treaty of Paris, the Hawaiian Kingdom has remained belligerently occupied and its territory was used as a base of military operations during World War I and II, the Korean War, the Vietnam War, the Gulf War, the Iraqi War, the United States war on terrorism, and currently the state of war declared by the Democratic People’s Republic of Korea (DPRK) against the United States and the Republic of Korea on March 30, 2013.¹⁶⁵

- 11.5. According to Oppenheim, a “declaration of war is a communication by one State to another that the condition of peace between them has come to an end, and a condition of war has taken its place;”¹⁶⁶ and war is “considered to have commenced from the date of its declaration, although actual hostilities may not have been commenced until much later.”¹⁶⁷ While customary international law does not require a formal declaration of war to be made before international law recognizes a state of war, it does, however, provide notice to not only the opposing State of the intent of the declarant State, but also to all neutral States that a state of war has been established.
- 11.6. The Hawaiian Kingdom has again been drawn into another state of war as evidenced in DPRK’s March 30, 2013 declaration of war, which stated, “It is self-evident that any military conflict on the Korean Peninsula is bound to lead to an all-out war, a nuclear war now that even U.S. nuclear strategic bombers in its military bases in the Pacific including Hawaii and Guam and in its mainland are flying into the sky above south Korea to participate in the madcap DPRK-targeted nuclear war moves.” The day before the declaration of war, DPRK’s Korean Central News Agency reported, Supreme Commander of the Korean People’s Army Marshal Kim Jong Un “signed the plan on technical preparations of strategic rockets of the KPA, ordering them to be standby for fire so that they may strike any time the U.S. mainland, its military bases in the operational theaters in the Pacific, including Hawaii and Guam, and those in south Korea.”¹⁶⁸ In response to the declaration of war, the BBC reported, “The US Department of Defense said on Wednesday it would

¹⁶⁴ CHARLES CHENEY HYDE, *LAND WARFARE*, 8 (1918).

¹⁶⁵ See “North-South Relations Have Been Put at State of War: Special Statement of DPRK,” *Korean Central News Agency of DPRK*, posted on March 30, 2013, <http://www.kcna.co.jp/index-e.htm>.

¹⁶⁶ LASSA OPPENHEIM, *INTERNATIONAL LAW*, VOL. II, 293 (7th ed. 1952).

¹⁶⁷ *Id.*, 295.

¹⁶⁸ See “Kim Jong Un Convenes Operation Meeting, Finally Examines and Ratifies Plan for Firepower Strike,” *Korean Central News Agency of DPRK*, posted on March 29, 2013, <http://www.kcna.co.jp/index-e.htm>.

deploy the ballistic Terminal High Altitude Area Defense System (Thaad) to Guam in the coming weeks.”¹⁶⁹

- 11.7. In light of the DPRK’s declaration of war, the Hawaiian Kingdom is situated in a region of war that places its civilian population in perilous danger similar to Japan’s attack of U.S. military forces situated in the Hawaiian Islands of December 7, 1941. According to Oppenheim, “The region of war is that part of the surface of the earth in which the belligerents may prepare and execute hostilities against each other.”¹⁷⁰ While neutral States do not fall within the region of war, there are exceptional cases, such as when a belligerent invades a neutral State, *i.e.* Luxembourg by Germany during World War I. The United States invasion of the Hawaiian Kingdom occurred during the Spanish-American War and has since been prolonged.
- 11.8. The gravity of the Hawaiian situation has been heightened by the DPRK’s detonation of a hydrogen bomb on January 6, 2015, and its test firing of a missile that used ballistic missile technology that could transport a nuclear warhead on February 7, 2016. The United States’ response to was to convert its Aegis Ashore Missile Defense Test Complex on the island of Kaua’i into a combat-ready facility to prepare for an incoming intercontinental missile with a nuclear warhead.¹⁷¹ This action is a clear indication that the United States is taking this North Korean threat seriously, and is therefore, intentionally placing the entire Hawaiian Kingdom, a neutral territory, into harms way. Furthermore, the Russian Federation declared on January 1, 2016, that NATO is a threat to its security, and tensions with China have escalated over territorial disputes in the South China Seas. All these situations clearly place the Hawaiian Islands as a military target for Russia and China as well.

12. GENOCIDE—DENATIONALIZATION

- 12.1. Prior to World War I, violations of international law did not include war crimes, or, in other words, crimes where individuals, as separate and distinct from the State, could be prosecuted and where found guilty be punished, which included the death penalty. The *Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties (Commission on Responsibility)* of the Paris Peace Conference of 1919 took up the matter of war crimes after World War I (1914-1918). The Commission identified 32

¹⁶⁹ See “North Korea threatens: US to move missile defenses to Guam,” *BBC News Asia*, posted on April 4, 2013, <http://www.bbc.com/news/world-us-canada-22021832>.

¹⁷⁰ See OPPENHEIM, VOL. II, *supra* note 166, at 237.

¹⁷¹ Andrea Shalal, *Exclusive: U.S. weighs making Hawaii missile test site operational – sources*, REUTERS, Jan. 22, 2016, available at <http://www.reuters.com/article/us-usa-missile-defense-hawaii-idUSKCN0V0008>.

war crimes, one of which was “attempts to denationalize the inhabitants of occupied territory.”¹⁷²

- 12.2. Although the 1907 Hague Convention, IV, did not specify the term “denationalization” as a war crime, the *Commission on Responsibility* relied on the preamble of the 1899 Hague Convention, II, which states, “Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity and the requirements of the public conscience.” This preamble has been called the *Martens clause*, which was based on a declaration read by the Russian delegate, Professor von Martens, at the Hague Peace Conference in 1899.
- 12.3. In October of 1943, the United States, the United Kingdom and the Soviet Union established the *United Nations War Crimes Commission* (UNWCC). World War II had been waging since 1939, and atrocities committed by Germany, Italy and Japan drew the attention of the Allies to hold individuals responsible for the commission of war crimes. On December 2, 1943, the UNWCC adopted by resolution the list of war crimes that were drawn up by the *Commission on Responsibility* in 1919 with the addition of another war crime—indiscriminate mass arrests. The UNWCC was organized into three Committees: Committee I (facts and evidence), Committee II (enforcement), and Committee III (legal matters).
- 12.4. Committee III was asked to draft a report expanding on the war crime of “denationalization” and its criminalization under international law. Committee III did not rely solely on the *Martens clause* as the *Commission on Responsibility* did in 1919, but rather used it as an aid to interpret the articles of the 1907 Hague Convention, IV. It, therefore, concluded that “attempts to denationalize the inhabitants of occupied territory” violated Article 43, where the occupying State must respect the laws of the occupied State; Article 46, where family honor and rights and individual life must be respected; and Article 56, where the property of institutions dedicated to education is protected.
- 12.5. In 1944, Professor Raphael Lemkin first coined the term “genocide” in his publication *Axis Rule in Occupied Europe*. Genocide is “the destruction of a nation or of an ethnic group.”¹⁷³ The 1919 *Commission on Responsibility* did list “murders and massacres; systematic terrorism” as war crimes, but Professor Lemkin’s definition of *genocide* was much broader and more

¹⁷² Carnegie Endowment for International Peace, *Violations of the Laws and Customs of War: Report of the Majority and Dissenting Reports of the American and Japanese Members of the Commission on Responsibilities at the Conference of Paris* (1919), Pamphlet No. 32, at 18.

¹⁷³ RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE*, 79-95 (1973).

encompassing. According to Lemkin, “Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.”¹⁷⁴

- 12.6. “Genocide has two phases,” argued Lemkin, “one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the population and the colonization of the area by the oppressor’s own nationals. Denationalization was the word used in the past to describe the destruction of a national pattern.” Lemkin believed that *denationalization* was inadequate and should be replaced with *genocide*. Furthermore, Lemkin states that *genocide* is systemic and carried out in the following fields: political, social, cultural, economic, biological, physical, religious, and moral.¹⁷⁵
- 12.7. The term *genocide*, however, was not a war crime under international humanitarian law at the time, but it appears that Committee III was in agreement with Lemkin that it should be a war crime. The problem that faced Committee III was how to categorize *genocide* as a war crime under the Hague Convention, IV. On September 27, 1945, Committee III argued that *denationalization* was not a single act of “depriving the inhabitants of the occupied territory of their national characteristics,” but rather a program that attempted to achieve this result through: “interference with the methods of education; compulsory education in the language of the occupant; ... the ban on the using of the national language in schools, streets and public places; the ban on the national press and on the printing and distributing of books in the language of the occupied region; the removal of national symbols and names, both personal and geographical; [and] interference with religious services as far as they have a national peculiarity.”¹⁷⁶
- 12.8. Committee III also argued that *denationalization* included other activities such as: “compulsory or automatic granting of the citizenship of the occupying Power; imposing the duty to swearing the oath of allegiance to the occupant; the introduction of the administrative and judicial system of the occupying

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*, 82-90.

¹⁷⁶ See “Draft Report of Committee III on Criminality of Attempts to Denationalise the Inhabitants of Occupied Territory,” 27 Sept. 1945, Doc. III/17(1), at para. VI, UNWCC.

Power, the imposition of its financial, economic and labour administration, the occupation of administrative offices by nationals of the occupying Power; compulsion to join organizations and associations of the occupying Power; colonization of the occupied territory by nationals of the occupant, exploitation and pillage of economic resources, confiscation of economic enterprises, permeation of the economic life through the occupying State or individuals of the nationality of the occupant.”¹⁷⁷

- 12.9. There were apparent similarities between Lemkin’s definition of *genocide* and the Committee III’s definition of *denationalization*. Professor Lemkin argued that *genocide* was more than just mass murder of a particular group of people, which was already identified as a war crime by the 1919 Commission on Responsibility, but “the specific losses of civilization in the form of the cultural contributions which can only be made by groups of people united through national...characteristics.”¹⁷⁸ Similarly, Committee III argued that *denationalization* “kill[s] the soul of the nation,” and was “the counterpoint to the physical act of killing the body, which was ordinary murder.”¹⁷⁹ In its October 4, 1945 report “*Criminality of Attempts to Denationalise the Inhabitants of Occupied Territory*,” Committee III renamed *denationalization* to be *genocide*.¹⁸⁰
- 12.10. In the *Trial of Ulrich Greifelt and Others* (October 10, 1947-March 10, 1948) at Nuremberg, the United States Military Tribunal asserted Committee III’s interpretation that *genocide* can be committed through the war crime of *denationalization*. In its decision, the Tribunal concluded that, “genocide...may be perpetuated through acts representing war crimes. Among these cases are those coming within the concept of forced denationalisation.”¹⁸¹
- 12.11. The Tribunal explained, “In the list of war crimes drawn up by the 1919 Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, there were included as constituting war crimes ‘attempts to denationalize the inhabitants of occupied territory.’ Attempts of this nature were recognized as a war crime in view of the German policy in territories annexed by Germany in 1914, such as in Alsace and Lorraine. At that time, as during the war of 1939-1945, inhabitants of an occupied territory were subjected to measures intended to deprive them of their national

¹⁷⁷ *Id.*

¹⁷⁸ Raphael Lemkin, *Genocide as a Crime under International Law*, 41 AM. J. INT’L L. 145, 147 (1947).

¹⁷⁹ See “Preliminary Report of the Chairman of Committee III,” C.148, 28 Sept. 1945, 6/34/PAG-3/1.1.0, at 2, UNWCC.

¹⁸⁰ See “Criminality of Attempts to Denationalise the Inhabitants of Occupied Territory,” Report presented by Committee III, C.149, 4 Oct. 1945, 6/34/PAG-3/1.1.0, at para. II, UNWCC.

¹⁸¹ *Trial of Ulrich Greifelt and Others* (case no. 73), 13 Law Reports of Trials of War Criminals 1, 42 (1949).

characteristics and to make the land and population affected a German province.”¹⁸²

12.12. When the Hawaiian Kingdom was occupied during the Spanish-American War, the United States operated in complete disregard to the recognized principles of the law of occupation at the time. Instead of administering the laws of the Hawaiian Kingdom, being the occupied State, the United States imposed its own laws, administration, judiciary and economic life throughout the Hawaiian Islands in violation of Hawaiian independence and sovereignty. According to Professor Lemkin, this action taken by the United States would be considered as “the imposition of the national pattern of the oppressor,” which is the second phase of *genocide* after the national pattern of the occupied State had been destroyed under the first phase.¹⁸³

12.13. In other words, the actions taken by the United States was precisely what the Axis Powers did in occupied territories during World War I and II, which, according to Committee III, included “interference with the methods of education; compulsory education in the language of the occupant; ... the ban on the using of the national language in schools, streets and public places; the ban on the national press and on the printing and distributing of books in the language of the occupied region; the removal of national symbols and names, both personal and geographical; [and] interference with religious services as far as they have a national peculiarity. [As well as] compulsory or automatic granting of the citizenship of the occupying Power; imposing the duty to swearing the oath of allegiance to the occupant; the introduction of the administrative and judicial system of the occupying Power, the imposition of its financial, economic and labour administration, the occupation of administrative offices by nationals of the occupying Power; compulsion to join organizations and associations of the occupying Power; colonization of the occupied territory by nationals of the occupant, exploitation and pillage of economic resources, confiscation of economic enterprises, permeation of the economic life through the occupying State or individuals of the nationality of the occupant.”¹⁸⁴

13. WAR CRIMES: HC IV

Article 43—The 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.

13.1. When the United States began the occupation at 12 noon on August 12, 1898, it deliberately failed to administer the laws of the Hawaiian Kingdom as it

¹⁸² *Id.*

¹⁸³ See LEMKIN, *AXIS RULE*, at 79.

¹⁸⁴ See *supra*, para. 12.7 and 12.8.

stood prior to the unlawful overthrow of the Hawaiian Kingdom government by the United States on January 17, 1893. Instead, the United States unlawfully maintained the continued presence and administration of law of the self-declared Republic of Hawai‘i that was a puppet regime established through United States intervention on January 17, 1893. The puppet regime was originally called the provisional government, which was later changed to the Republic of Hawai‘i on July 4, 1894. The provisional government was neither a government *de facto* nor *de jure*, but self-proclaimed as concluded by President Cleveland in his message to the Congress on December 18, 1893, and the Republic of Hawai‘i was acknowledged as *self-declared* by the Congress in a joint resolution apologizing on the one hundredth anniversary of the illegal overthrow of the Hawaiian Kingdom government on November 23, 1993.

- 13.2. Since April 30, 1900, the United States imposed its national laws over the territory of the Hawaiian Kingdom in violation of international law and the laws of occupation. By virtue of congressional legislation, the so-called Republic of Hawai‘i was subsumed. Through *An Act to provide a government for the Territory of Hawai‘i*, “the phrase ‘laws of Hawaii,’ as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii in force on the twelfth day of August, eighteen hundred and ninety-eight.”¹⁸⁵ When the Territory of Hawai‘i was succeeded by the State of Hawai‘i on March 18, 1959 through United States legislation, the Congressional Act provided that all “laws in force in the Territory of Hawaii at the time of admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii.”¹⁸⁶ Furthermore:

“the term ‘Territorial law’ includes (in addition to laws enacted by the Territorial Legislature of Hawaii) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Hawaii prior to its admission into the Union, and the term ‘laws of the United States’ includes all laws or parts thereof enacted by the Congress that (1) apply to or within Hawaii at the time of its admission into the Union, (2) are not ‘Territorial laws’ as defined in this paragraph, and (3) are not in conflict with any other provision of this Act.”¹⁸⁷

- 13.3. Article 43 does not transfer sovereignty to the occupying power.¹⁸⁸ Section 358, United States Army Field Manual 27-10, declares, “Being an incident of

¹⁸⁵ 31 U.S. Stat. 141 (1896-1901).

¹⁸⁶ 73 U.S. Stat. 11 (1959).

¹⁸⁷ *Id.*

¹⁸⁸ See EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 8 (1993); GERHARD VON GLAHN, *THE OCCUPATION OF ENEMY TERRITORY — A COMMENTARY ON THE LAW AND PRACTICE OF BELLIGERENT*

war, 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.” Sassòli further elaborates, “The occupant 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.”¹⁸⁹

- 13.4. The United States’ failure to comply with the 1893 executive agreements to reinstate the Queen and her cabinet, and its failure to comply with the law of occupation to administer Hawaiian Kingdom law as it stood prior to the unlawful overthrow of the Hawaiian government on January 17, 1893, when it occupied the Hawaiian Islands during the 1898 Spanish-American War, renders all administrative and legislative acts of the provisional government, the Republic of Hawai‘i, the Territory of Hawai‘i and currently the State of Hawai‘i are all illegal and void because these acts stem from governments that are neither *de facto* nor *de jure*, but self-declared. As the United States is a government that is both *de facto* and *de jure*, its legislation, however, has no extraterritorial effect except under the principles of active and passive personality jurisdiction. In particular, this has rendered all conveyances of real property and mortgages to be defective since January 17, 1893, because of the absence of a competent notary public under Hawaiian Kingdom law. Since January 17, 1893, all notaries public stem from a self-declared government.

Article 45—It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the [Occupying] Power.

- 13.5. When the provisional government was established through the support and protection of U.S. troops on January 17, 1893, it proclaimed that it would provisionally “exist until terms of union with the United States of America have been negotiated and agreed upon.” The provisional government was not a new government, but rather a small group of insurgents that usurped and seized the executive office of the Hawaiian Kingdom. With the backing of U.S. troops it further proclaimed, “All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named persons: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office.” All government officials were coerced and forced to sign oaths of allegiance, “I...do solemnly swear in the presence of

OCCUPATION 95 (1957); Michael Bothe, *Occupation, Belligerent*, in Rudolf Bernhardt (dir.), *ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW*, vol. 3, 765 (1997).

¹⁸⁹ Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, INTERNATIONAL HUMANITARIAN LAW RESEARCH INITIATIVE 5 (2004), available at: <http://www.hpperresearch.org/sites/default/files/publications/sassoli.pdf>.

Almighty God, that I will support the Provisional Government of the Hawaiian Islands, promulgated and proclaimed on the 17th day of January, 1893. Not hereby renouncing, but expressly reserving all allegiance to any foreign country now owing by me.”

- 13.6. The compelling of inhabitants serving in the Hawaiian Kingdom government to swear allegiance to the occupying power, through its puppet regime, the provisional government, began on January 17, 1893 with oversight by United States troops until April 1, 1893, when they were ordered to depart Hawaiian territory by U.S. Special Commissioner, James Blount, who began the presidential investigation into the overthrow. When Special Commissioner Blount arrived in the Hawaiian Kingdom on March 29, 1893, he reported to U.S. Secretary of State Walter Gresham, “The troops from the *Boston* were doing military duty for the Provisional Government. The American flag was floating over the government building. Within it the Provisional Government conducted its business under an American protectorate, to be continued, according to the avowed purpose of the American minister, during negotiations with the United States for annexation.”
- 13.7. Due to the deliberate failure of the United States to carry out the 1893 *executive agreements* to reinstate the Queen and her cabinet of officers, the insurgents were allowed to maintain their unlawful control of the government with the employment of American mercenaries. The provisional government was renamed the Republic of Hawai‘i on July 4, 1894. The United States has directly compelled the inhabitants of the Hawaiian Kingdom to swear allegiance to the United States when serving in the so-called Territory of Hawai‘i and State of Hawai‘i governments in direct violation of Article 45 of the HC IV. Section 19 of the Territorial Act provides, “That every member of the legislature, and all officers of the government of the Territory of Hawaii, shall take the following oath: I do solemnly swear (or affirm), in the presence of Almighty God, that I will faithfully support the Constitution and laws of the United States, and conscientiously and impartially discharge my duties as a member of the legislature, or as an officer of the government of the Territory of Hawaii.”¹⁹⁰ Section 4, Article XVI of the State of Hawai‘i constitution provides, “All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: ‘I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as ... to best of my ability.’”

¹⁹⁰ 31 U.S. Stat. 145 (1896-1901).

Article 46—Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.

- 13.8. Beginning on 20 July 1899, President McKinley began to set aside portions of lands by executive orders for “installation of shore batteries and the construction of forts and barracks.”¹⁹¹ The first executive order set aside 15,000 acres for two Army military posts on the Island of O‘ahu called Schofield Barracks and Fort Shafter. This soon followed the securing of lands for Pearl Harbor naval base in 1901 when the U.S. Congress appropriated funds for condemnation of seven hundred nineteen (719) acres of private lands surrounding Pearl River, which later came to be known as Pearl Harbor.¹⁹² By 2012, the U.S. military has one hundred eighteen (118) military sites that span 230,929 acres of the Hawaiian Islands, which is 20% of the total acreage of Hawaiian territory.¹⁹³

Article 47—Pillage is formally forbidden.

- 13.9. Since January 17, 1893, there has been no lawful government exercising its authority in the Hawaiian Islands, *e.g.* provisional government (1893-1894), Republic of Hawai‘i (1894-1900), Territory of Hawai‘i (1900-1959) and the State of Hawai‘i (1959-present). As these entities were neither governments *de facto* nor *de jure*, but self-proclaimed, and their collection of tax revenues and non-tax revenues, *e.g.* rent and purchases derived from real estate, were not for the benefit of a *bona fide* government in the exercise of its police power, it can only be considered as benefitting private individuals who are employed by the State of Hawai‘i.
- 13.10. Pillage or plunder is “the forcible taking of private property by an invading or conquering army,”¹⁹⁴ which, according to the Elements of Crimes of the International Criminal Court, must be seized “for private or personal use.”¹⁹⁵ As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.¹⁹⁶ The residents of the Hawaiian Islands have been the subject of pillaging and plundering since the

¹⁹¹ See Robert H. Horwitz, Judith B. Finn, Louis A. Vargha, and James W. Ceaser, *Public Land Policy in Hawai‘i: An Historical Analysis*, 20 (State of Hawai‘i Legislative Reference Bureau Report No. 5, 1969).

¹⁹² See John D. VanBrackle, “Pearl Harbor from the First Mention of ‘Pearl Lochs’ to Its Present Day Usage,” 21-26 (undated manuscript on file in Hawaiian-Pacific Collection, Hamilton Library, University of Hawai‘i at Manoa).

¹⁹³ See U.S. Department of Defense’s Base Structure Report (2012), available at: <http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf>.

¹⁹⁴ See BLACK’S LAW, *supra* note 106, at 1148.

¹⁹⁵ Elements of Crimes, International Criminal Court, Pillage as a war crime (ICC Statute, Article 8(2)(b)(xvi) and (e)(v)).

¹⁹⁶ JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, INTERNATIONAL COMMITTEE OF THE RED CROSS—CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. 1, RULES 185 (2009).

establishment of the provisional government by the United States on January 17, 1893 and continues to date by its successor, the State of Hawai‘i.

Article 48—If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

- 13.11. Unlike the State of Hawai‘i that claims to be a public entity, but in reality is private, the United States government is a public entity and not private, but its exercising of authority in the Hawaiian Islands in violation of international laws is unlawful. Therefore, the United States cannot be construed to have committed the act of pillaging since it is public, but has appropriated private property through unlawful contributions, *e.g.* federal taxation, which is regulated by Article 48. And Article 49 provides, “If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.” The United States collection of federal taxes from the residents of the Hawaiian Islands is an unlawful contribution that is exacted for the sole purpose of supporting the United States federal government and not for “the needs of the army or of the administration of the territory.” See also paragraphs 13.1 – 13.4 below.

Article 55—The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

- 13.12. With the backing of United States troops, the provisional government unlawfully seized control of all government property, both real and personal. In 1894, the provisional government’s successor, the so-called Republic of Hawai‘i, seized the private property of Her Majesty Queen Lili‘uokalani, which was called Crown lands, and called it public lands. According to Hawaiian Kingdom law, the Crown lands were distinct from the public lands of the Hawaiian government since 1848, which comprised roughly 1 million acres, and the government lands comprised roughly 1.5 million acres. The total acreage of the Hawaiian Islands comprised 4 million acres.
- 13.13. In a case before the Hawaiian Kingdom Supreme Court in 1864 that centered on Crown lands, the court stated:

“In our opinion, while it was clearly the intention of Kamehameha III to protect the lands which he reserved to himself out of the domain which had been acquired by his family through the prowess and skill of his father, the conqueror, from the danger of being

treated as public domain or Government property, it was also his intention to provide that those lands should descend to his heirs and successors, the future wearers of the crown which the conqueror had won; and we understand the act of 7th June, 1848, as having secured both those objects. Under that act the lands descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property, in like manner as was done by Kamehameha III.”¹⁹⁷

- 13.14. In 1898, the United States seized control of all these lands and other property of the Hawaiian Kingdom government as evidenced by the joint resolution of annexation. The resolution stated, that the United States has acquired “the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining.”¹⁹⁸

Article 56—The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

- 13.15. In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai‘i*,¹⁹⁹ and shortly thereafter, intentionally sought to “Americanize” the inhabitants of the Hawaiian Kingdom politically, culturally, socially, and economically. To accomplish this, a plan was instituted in 1906 by the Territorial government, titled “Programme for Patriotic Exercises in the Public Schools, Adopted by the Department of Public Instruction.”²⁰⁰ A reporter of New York’s *Harper’s Weekly* visited Ka‘iulani Public School and reported on the program. Inglis wrote:

“At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building. ...Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American

¹⁹⁷ See *Estate of His Majesty Kamehameha IV*, 3 Haw. 715, 725 (1864).

¹⁹⁸ 30 U.S. Stat. 750 (1896-1898).

¹⁹⁹ 31 U.S. Stat. 141 (1896-1901).

²⁰⁰ *Programme for Patriotic Exercises in the Public Schools, Territory of Hawaii, adopted by the Department of Public Instruction* (1906), available at: http://hawaiiankingdom.org/pdf/1906_Patriotic_Exercises.pdf.

flag that was dancing in the northeast trade-wind forty feet about their heads. ...‘Attention!’ Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. ‘Salute!’ was the principal’s next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: ‘We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!’”²⁰¹

13.16. The policy was to denationalize the children of the Hawaiian Islands on a massive scale, which included forbidding the children from speaking the Hawaiian national language, only English. Its intent was to obliterate any memory of the national character of the Hawaiian Kingdom that the children may have had and replace it, through inculcation, with American patriotism.

13.17. At the close of the First World War, the *Commission on Responsibility* concluded that the Bulgarians, Austrians and Germans committed these war crimes when they occupied the Serbian State during the First World War from 1915-1918. The *Commission* found that Bulgaria committed the war crime of *usurpation of sovereignty during military occupation* when it “Proclaimed that the Serbian State no longer existed, and that Serbian territory had become Bulgarian,” and that official orders efforts of Bulgarisation.”²⁰² Furthermore, the *Commission* concluded Bulgarian, Austrian and German authorities committed the following acts under the war crime of *usurpation of sovereignty during occupation*:

- Serbian law, courts, and administration ousted
- Taxes collected under Bulgarian fiscal regime
- Serbian currency suppressed
- Public property removed or destroyed, including books, archives and MSS (*e.g.* from the National Library, the University Library, Serbian Legation at Sofia, French Consulate at Uskub)
- Prohibited sending Serbian Red Cross to occupied Serbia
- The Austrians suspended many Serbian laws and substituted their own especially in penal matters, in procedure, judicial organization, &c.
- Museums belonging to the State (*e.g.* Belgrade, Detchani) were emptied and the contents taken to Vienna²⁰³

²⁰¹ William Inglis, *Hawai‘i’s Lesson to Headstrong California*, HARPER’S WEEKLY, Feb. 16, 1907, at 227, available at: http://hawaiiankingdom.org/pdf/1907_Harpers_Weekly.pdf.

²⁰² See Carnegie Endowment for International Peace, *supra* note 172, at 38.

²⁰³ *Id.*

13.18. Under the war crime of *attempts to denationalize the inhabitants of occupied territory*, the *Commission* also concluded Bulgarian, Austrian and German authorities committed the following acts:

- Efforts to impose their national characteristics on the population
- Serbian language forbidden in private as well as in official relations. People beaten for saying ‘Good morning’ in Serbian
- Inhabitants forced to give their names a Bulgarian form
- Serbian books banned—were systematically destroyed
- Archives of churches and law courts destroyed
- Schools and churches closed, sometimes destroyed
- Bulgarian schools and churches substituted—attendance at school made compulsory
- Population forced to be present at Bulgarian national solemnities
- Austrians and Germans interfered with religious worship, by deportation of priests and requisition of churches for military purposes. Interfered with use of Serbian language²⁰⁴

13.19. At the close of the Second World War, the United Nations War Commission’s *Committee III* was asked to provide a report on war crime charges against four Italians accused of denationalization in the occupied State of Yugoslavia. The charge stated that, “the Italians started a policy, on a vast scale, of denationalization. As a part of such policy, they started a system of ‘re-education’ of Yugoslav children. This re-education consisted of forbidding children to use the Serbo-Croat language, to sing Yugoslav songs and forcing them to salute in a fascist way.”²⁰⁵ The question before *Committee III* was whether or not “denationalization” constituted a war crime that called for prosecution or merely a violation of international law. In concluding that denationalization is a war crime, the *Committee* reported:

“It is the duty of belligerent occupants to respect, unless absolutely prevented, the laws in force in the country (Art. 43 of the Hague Regulations). Inter alia, family honour and rights and individual life must be respected (Art. 46). The right of a child to be educated in his own native language falls certainly within the rights protected by Article 46 (‘individual life’). Under Art. 56, the property of institutions dedicated to education is privileged. If the Hague Regulations afford particular protection to school buildings, it is certainly not too much to say that they thereby also imply protection for what is going to be done within those protected buildings. It

²⁰⁴ *Id.*, at 39.

²⁰⁵ E. Schwelb, *Note on the Criminality of “Attempts to Denationalize the Inhabitants of Occupied Territory”* (Appendix to Doc, C, I. No. XII) – Question Referred to Committee III by Committee I, United Nations War Crime Commission, Doc. III/15 (September 10, 1945), at 1, available at: http://hawaiiankingdom.org/pdf/Committee_III_Report_on_Denationalization.pdf.

would certainly be a mistaken interpretation of the Hague Regulations to suppose that while the use of Yugoslav school buildings for Yugoslav children is safe-guarded, it should be left to the unfettered discretion of the occupant to replace Yugoslav education by Italian education.”²⁰⁶

13.20. Denationalization through Germanization also took place during the Second World War. According to Nicholas,

“Within weeks of the fall of France, Alsace-Lorraine was annexed and thousands of citizens deemed too loyal to France, not to mention all its ‘alien-race’ Jews and North African residents, were unceremoniously deported to Vichy France, the southeastern section of the country still under French control. This was done in the now all too familiar manner: the deportees were given half an hour to pack and were deprived of most of their assets. By the end of July 1940, Alsace and Lorraine had become Reich provinces. The French administration was replaced and the French language totally prohibited in the schools. By 1941, the wearing of berets had been forbidden, children had to sing ‘Deutschland über Alles’ instead of ‘La Marseillaise’ at school, and racial screening was in full swing.”²⁰⁷

13.21. Under the heading “Germanization of Occupied Territories,” Count III(j) of the Nuremberg Indictment, it provides:

“In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported *de jure* annexation and enforced conscription into the German Armed Forces. This was carried out in most of the occupied countries including: Norway, France...Luxembourg, the Soviet Union, Denmark, Belgium, and Holland.”²⁰⁸

²⁰⁶ *Id.*, at 6.

²⁰⁷ LYNN H. NICHOLAS, *CRUEL WORLD: THE CHILDREN OF EUROPE IN THE NAZI WEB* 277 (2005).

²⁰⁸ *See* Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, at 27, 63 (Nuremberg, Germany, 1947).

14. WAR CRIMES: GC IV

Article 147—Extensive..appropriation of property, not justified by military necessity and carried out unlawfully and wantonly

- 14.1. In 2013, the United States Internal Revenue Service, hereinafter “IRS,” illegally appropriated \$7.1 million dollars from the residents of the Hawaiian Islands.²⁰⁹ During this same year, the government of the State of Hawai‘i additionally appropriated \$6.5 billion dollars illegally.²¹⁰ The IRS is an agency of the United States and cannot appropriate money from the inhabitants of an occupied State without violating international law. The State of Hawai‘i is a political subdivision of the United States established by an Act of Congress in 1959 and being an entity without any extraterritorial effect, it couldn’t appropriate money from the inhabitants of an occupied State without violating the international laws of occupation.
- 14.2. According to the laws of the Hawaiian Kingdom, taxes upon the inhabitants of the Hawaiian Islands include: an annual poll tax of \$1 dollar to be paid by every male inhabitant between the ages of seventeen and sixty years; an annual tax of \$2 dollars for the support of public schools to be paid by every male inhabitant between the ages of twenty and sixty years; an annual tax of \$1 dollar for every dog owned; an annual road tax of \$2 dollars to be paid by every male inhabitant between the ages of seventeen and fifty; and an annual tax of $\frac{3}{4}$ of 1% upon the value of both real and personal property.²¹¹
- 14.3. The *Merchant Marine Act*, June 5, 1920 (41 U.S. Stat. 988), hereinafter referred to as the *Jones Act*, is a restraint of trade and commerce in violation of international law and treaties between the Hawaiian Kingdom and other foreign States. According to the *Jones Act*, all goods, which includes tourists on cruise ships, whether originating from Hawai‘i or being shipped to Hawai‘i must be shipped on vessels built in the United States that are wholly owned and crewed by United States citizens. And should a foreign flag ship attempt to unload foreign goods and merchandise in the Hawaiian Islands it will have to forfeit its cargo to the U.S. Government, or an amount equal to the value of the merchandise or cost of transportation from the person transporting the merchandise.
- 14.4. As a result of the *Jones Act*, there is no free trade in the Hawaiian Islands. 90% of Hawai‘i’s food is imported from the United States, which has

²⁰⁹ See IRS, *Gross Collections, by Type of Tax and State and Fiscal Year, 1998-2012*, available at: <http://www.irs.gov/uac/SOI-Tax-Stats-Gross-Collections,-by-Type-of-Tax-and-State,-Fiscal-Year-IRS-Data-Book-Table-5>.

²¹⁰ See State of Hawai‘i Department of Taxation Annual Reports, available at: <http://files.hawaii.gov/tax/stats/stats/annual/13annrpt.pdf>.

²¹¹ See Civil Code of the Hawaiian Islands, *To Consolidate and Amend the Law Relating to Internal Taxes* (Act of 1882), at 117-120, available at: http://www.hawaiiankingdom.org/civilcode/pdf/CL_Title_2.pdf.

created a dependency on outside food. The three major American ship carriers for the Hawaiian Islands are Matson, Horizon Lines, and Pasha Hawai'i Transport Services, as well as several low cost barge alternatives. Under the *Jones Act*, these American carriers travel 2,400 miles to ports on the west coast of the United States in order to reload goods and merchandise delivered from Pacific countries on foreign carriers, which would have otherwise come directly to Hawai'i ports. The cost of fuel and the lack of competition drive up the cost of shipping and contribute to Hawai'i's high cost of living, and according to the USDA Food Cost, Hawai'i residents in January 2012 pay an extra \$417 per month for food on a thrifty plan than families who are on a thrifty plan in the United States.²¹² Therefore, appropriating monies directly through taxation and appropriating monies indirectly as a result of the *Jones Act* to benefit American ship carriers and businesses are war crimes.

Article 147—Compelling a...protected person to serve in the forces of an [Occupying] Power

- 14.5. The United States Selective Service System is an agency of the United States government that maintains information on those potentially subject to military conscription. Under the *Military Selective Service Act*, "it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder."²¹³ Conscription of the inhabitants of the Hawaiian Kingdom unlawfully inducted into the United States Armed Forces through the Selective Service System occurred during World War I (September 1917-November 1918), World War II (November 1940-October 1946), Korean War (June 1950-June 1953), and the Vietnam War (August 1964-February 1973). Andrew L. Pepper, Esq., heads the Selective Service System in the Hawaiian Islands headquartered on the Island of O'ahu.
- 14.6. Although induction into the United States Armed Forces has not taken place since February 1973, the requirements to have residents of the Hawaiian Island who reach the age of 18 to register with the Selective Service System for possible induction is a war crime.

²¹² See United States Department of Agriculture Center for Nutrition Policy and Promotion, *Cost of Food at Home*, available at: <http://www.cnpp.usda.gov/USDAFoodCost-Home.htm#AK%20and%20HI>.

²¹³ See Title 50 U.S.C. App. 453, The Military Selective Service Act.

Article 147—Willfully depriving a..protected person of the rights of fair and regular trial

- 14.7. Since 18 December 1893, there have been no lawfully constituted courts in the Hawaiian Islands whether Hawaiian Kingdom courts or military commissions established by order of the Commander of PACOM in conformity with the HC IV, GC IV, and the international laws of occupation. All Federal and State of Hawai‘i Courts in the Hawaiian Islands derive their authority from the United States Constitution and the laws enacted in pursuance thereof. As such these Courts cannot claim to have any authority in the territory of a foreign State and therefore are not properly constituted to give defendant(s) a fair and regular trial.

Article 147—Unlawful deportation or transfer or unlawful confinement

- 14.8. According to the United States Department of Justice, the prison population in the Hawaiian Islands in 2009 was at 5,891.²¹⁴ Of this population there were 286 aliens.²¹⁵ Two paramount issues arise—first, prisoners were sentenced by courts that were not properly constituted under Hawaiian Kingdom law and/or the international laws of occupation and therefore were unlawfully confined, which is a war crime under this court’s jurisdiction; second, the alien prisoners were not advised of their rights in an occupied State by their State of nationality in accordance with the 1963 *Vienna Convention on Consular Relations*.²¹⁶ Compounding the violation of alien prisoners rights under the *Vienna Convention*, Consulates located in the Hawaiian Islands were granted exequaturs by the government of the United States by virtue of United States treaties and not treaties between the Hawaiian Kingdom and these foreign States.
- 14.9. In 2003, the State of Hawai‘i Legislature allocated funding to transfer up to 1,500 prisoners to private corrections institutions in the United States.²¹⁷ By June of 2004, there were 1,579 Hawai‘i inmates in these facilities. Although the transfer was justified as a result of overcrowding, the government of the State of Hawai‘i did not possess authority to transfer, let alone to prosecute in the first place. Therefore, the unlawful confinement and transfer of inmates are war crimes.

²¹⁴ See United States Department of Justice’s Bureau of Justice Statistics, *Prisoners in 2011*, available at: <http://www.bjs.gov/content/pub/pdf/p11.pdf>.

²¹⁵ See United States Government Accountability Office, *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs* (March 2011), available at: <http://www.gao.gov/new.items/d11187.pdf>.

²¹⁶ See *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, 466.

²¹⁷ See State of Hawai‘i, Department of Public Safety, *Response to Act 200, Part III, Section 58, Session Laws of Hawai‘i 2003 As Amended by Act 41, Part II, Section 35, Session Laws of Hawai‘i 2004*, (January 2005), available at: http://lrhawaii.info/reports/legrpts/psd/2005/act200_58_slh03_05.pdf.

Article 147—The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

- 14.10. Once a State is occupied, international law preserves the *status quo* of the occupied State as it was before the occupation began. To preserve the nationality of the occupied State from being manipulated by the occupying State to its advantage, international law only allows individuals born within the territory of the occupied State to acquire the nationality of their parents—*jus sanguinis*. To preserve the *status quo*, Article 49 of the GC IV mandates that the “Occupying Power shall not...transfer parts of its own civilian population into the territory it occupies.” For individuals, who were born within Hawaiian territory, to be a Hawaiian subject, they must be a direct descendant of a person or persons who were Hawaiian subjects prior to the American occupation that began on 12 August 1898. All other individuals born after 12 August 1898 to the present are aliens who can only acquire the nationality of their parents.
- 14.11. According to the 1890 government census, Hawaiian subjects numbered 48,107, with the aboriginal Hawaiian, both pure and part, numbering 40,622, being 84% of the national population, and the non-aboriginal Hawaiians numbering 7,485, being 16%. Despite the massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, which, according to the State of Hawai‘i numbers 1,302,939 in 2009,²¹⁸ the *status quo* of the national population of the Hawaiian Kingdom is maintained. Therefore, under the international laws of occupation, the aboriginal Hawaiian population of 322,812 in 2009 would continue to be 84% of the Hawaiian national population, and the non-aboriginal Hawaiian population of 61,488 would continue to be 16%. The balance of the population in 2009, being 918,639, are aliens who were illegally transferred, either directly or indirectly, by the United States as the occupying Power, and therefore are war crimes.

Article 147—Destroying or seizing the [Occupied State’s] property unless such destruction or seizure be imperatively demanded by the necessities of war

- 14.12. On 12 August 1898, the United States seized approximately 1.8 million acres of land that belonged to the government of the Hawaiian Kingdom and to the office of the Monarch. These lands were called Government lands and Crown lands, respectively, whereby the former being public lands and the latter

²¹⁸ See State of Hawai‘i. Department of Health, Hawai‘i Health Survey (2009), available at: <http://www.ohadatabook.com/F01-05-11u.pdf>; see also David Keanu Sai, *American Occupation of the Hawaiian State: A Century Gone Unchecked*, 1 HAW. J. L. & POL. 63-65 (Summer 2004).

private lands.²¹⁹ These combined lands constituted nearly half of the entire territory of the Hawaiian Kingdom.

- 14.13. Military training locations include Pacific Missile Range Facility, Barking Sands Tactical Underwater Range, and Barking Sands Underwater Range Expansion on the Island of Kaua‘i; the entire Islands of Ni‘ihau and Ka‘ula; Pearl Harbor, Lima Landing, Pu‘uloa Underwater Range—Pearl Harbor, Barbers Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawai‘i, Marine Corps Training Area Bellows, Hickam Air Force Base, Kahuku Training Area, Makua Military Reservation, Dillingham Military Reservation, Wheeler Army Airfield, and Schofield Barracks on the Island of O‘ahu; and Bradshaw Army Airfield and Pohakuloa Training Area on the Island of Hawai‘i.
- 14.14. The United States Navy’s Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise (RIMPAC) every other even numbered year, which is the largest international maritime warfare exercise. RIMPAC is a multinational, sea control and power projection exercise that collectively consists of activity by the U.S. Army, Air Force, Marine Corps, and Naval forces, as well as military forces from other foreign States. During the month long exercise, RIMPAC training events and live fire exercises occur in open-ocean and at the military training locations throughout the Hawaiian Islands.
- 14.15. In 2006, the United States Army disclosed to the public that depleted uranium (DU) was found on the firing ranges at Schofield Barracks on the Island of O‘ahu.²²⁰ It subsequently confirmed DU was also found at Pohakuloa Training Area on the Island of Hawai‘i and suspect that DU is also at Makua Military Reservation on the Island of O‘ahu.²²¹ The ranges have yet to be cleared of DU and the ranges are still used for live fire. This brings the inhabitants who live down wind from these ranges into harms way because when the DU ignites or explodes from the live fire, it creates tiny particles of aerosolized DU oxide that can travel by wind. And if the DU gets into the drinking water or oceans it would have a devastating effect across the islands.

²¹⁹ Public lands were under the supervision of the Minister of the Interior under Article I, Chapter VII, Title 2—*Of The Administration of Government*, Civil Code, at §39-§48 (1884), and Crown lands were under the supervision of the Commissioners of Crown Lands under *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*, Civil Code, Appendix, at 523-525 (1884). Crown lands are private lands that “descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property,” *In the Matter of the Estate of His Majesty Kamehameha IV., late deceased*, 2 Haw.715, 725 (1864), subject to *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*.

²²⁰ See U.S. Army Garrison-Hawai‘i, Depleted Uranium on Hawai‘i’s Army Ranges, available at: <http://www.garrison.hawaii.army.mil/du/>.

²²¹ *Id.*

14.16. The Hawaiian Kingdom has never consented to the establishment of military installations throughout its territory and these installations and war-gaming exercises stand in direct violation of Articles 1, 2, 3 and 4, 1907 Hague Convention, V, *Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land*, HC IV, and GC IV, and therefore are war crimes.

D. HUMAN RIGHTS COUNCIL SEIZED OF THE HUMANITARIAN CRISIS
IN THE HAWAIIAN ISLANDS

15. *COMPLAINT PROCEDURE*

15.1. Paragraph 86 of the annex to Human Rights Council resolution 5/1 provides “that the complaint procedure is impartial, objective, efficient, victims-oriented and conducted in a timely manner.” Furthermore, paragraph 87 provides that a complaint “shall be admissible, provided that:

(a) It is not manifestly politically motivated and its object is consistent with the Charter of the United Nations, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law;

(b) It gives a factual description of the alleged violations, including the rights which are alleged to be violated;

(c) Its language is not abusive. However, such a communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language;

(d) It is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including non-governmental organizations, acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and claiming to have direct and reliable knowledge of the violations concerned. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence;

(e) It is not exclusively based on reports disseminated by mass media;

(f) It does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United

Nations or similar regional complaints procedure in the field of human rights;

(g) Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.”

- 15.2. The Hawaiian Complaint and its accompanying Report have met the aforementioned criteria provided for in paragraph 86 of the annex, and that the information provided in both the Complaint and Report reveals “a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.” The Complainant, Mr. Gumapac is a Hawaiian subject, and, as a resident of the Hawaiian Islands, is a victim of violations of human rights and humanitarian law, which can be similarly claimed and attested to by all Hawaiian subjects and aliens that reside in the Hawaiian Islands.

16. CONCLUSION

- 16.1. The utter disregard by the United States of international humanitarian law for over a century has created a humanitarian crisis of unimaginable proportions. According to Bernard,

“The notion that the occupier’s conduct towards the population of an occupied territory must be regulated underpins the current rules of humanitarian law governing occupation. Another pillar of this body of law is the duty to preserve the institutions of the occupied state. Occupation is not annexation; it is viewed as a temporary situation, and the Occupying Power does not acquire sovereignty over the territory concerned. Not only does the law endeavour to prevent the occupier from wrongfully exploiting the resources of the conquered territory; it also requires the occupier to provide for the basic needs of the population and to ‘restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country [Article 43, 1907 Hague Convention, IV]’. The measures taken by the occupier must therefore preserve the *status quo ante* (this is known as the conservationist principle).”²²²



David Keanu Sai, Ph.D.

²²² Vincent Bernard, *Editorial: Occupation*, 94 (885) International Review of the Red Cross 5 (Spring 2012).

Appendix “I”



Permanent Court of Arbitration

PCA Case Repository

Larsen/Hawaiian Kingdom

Case name	Larsen/Hawaiian Kingdom
Case description	<p>Dispute between Lance Paul Larsen (Claimant) and The Hawaiian Kingdom (Respondent) whereby</p> <p>a) Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is in continual violation of its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, and in violation of the principles of international law laid [down] in the Vienna Convention on the Law of Treaties, 1969, by allowing the unlawful imposition of American municipal laws over claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.</p> <p>b) Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is also in continual violation of the principles of international comity by allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.</p>
Name(s) of claimant(s)	Lance Paul Larsen (Private entity)
Name(s) of respondent(s)	The Hawaiian Kingdom (State)
Names of parties	
Case number	
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Other proceedings
Subject matter or economic sector	Treaty interpretation
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	<p>Other</p> <p>The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America</p>
Language of proceeding	English
Seat of arbitration (by country)	Netherlands
Arbitrator(s)	<p>Dr. Gavan Griffith QC</p> <p>Professor Christopher J. Greenwood QC</p> <p>Professor James Crawford SC (President of the Tribunal)</p>
Representatives of the claimant(s)	Ms. Ninia Parks, Counsel and Agent
Representatives of the respondent(s)	<p>Mr. David Keanu Sai, Agent</p> <p>Mr. Peter Umialiloa Sai, First deputy agent</p> <p>Mr. Gary Victor Dubin, Second deputy agent and counsel</p>
Representatives of the parties	

Number of arbitrators in case 3

Date of commencement of proceeding [dd-mm-yyyy] 08-11-1999

Date of issue of final award [dd-mm-yyyy] 05-02-2001

Length of proceedings 2-3 years

Additional notes

Attachments

- Other -

- ["Annex 1 - President Cleveland's Message to the Senate and the House of Representatives " - 18-12-1893 \(English\)](#)
- ["Joint Resolution - To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii." - 23-11-1993 \(English\)](#)
- ["Case Cover Page" - 15-05-2014 \(English\)](#)

Award or other decision

- ["Arbitral Award" - 15-05-2014 \(English\)](#)



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Appendix “II”

HAWAIIAN
ALMANAC AND ANNUAL
FOR
1893.

A HANDBOOK OF INFORMATION

ON MATTERS RELATING TO THE HAWAIIAN ISLANDS, ORIGINAL
AND SELECTED, OF VALUE TO MERCHANTS,
TOURISTS AND OTHERS.

THOS. G. THRUM, COMPILER AND PUBLISHER.

Nineteenth Year of Publication.

Hawaiian Copyright by THOS. G. THRUM, December 29, 1892.

HONOLULU, H. I.:
PRESS PUBLISHING CO. STEAM PRINT.
1892.

HAWAIIAN REGISTER AND DIRECTORY FOR 1893.

The Court.

HER MAJESTY, LILIUOKALANI, *6*. September 2, 1838; succeeded to the Throne January 29, 1891, on the death of her brother, King Kalakaua; *m.* to his late Royal Highness Jno. Owen Dominis, Prince Consort, who was *6*. March 10, 1832, and *d.* August 27, 1891. Daughter of Kapaakea and Keohokalole.

Her Majesty the Dowager Queen KAPIOLANI, *6*. December 31, 1835.

Her Royal Highness the Princess VICTORIA-KAWEKIU-KAIULANI-LUNALILO-KALANINUI-AHILAPALAPA, *6*. October 16, 1875, daughter of Her late K. H. Princess Likelike and His Ex A. S. Cleghorn, K. G. C., Member of the Privy Council of State. Proclaimed Heir Apparent, to the Throne, March 9, 1891.

His Excellency ARCHIBALD SCOTT CLEGHORN, K. G. C., Gover or of Oahu and member of Privy Council of State. Father of the Heir Apparent.

Her Royal Highness VIRGINIA KAPOOLOKU POOMAIKELANI, *6*. April 7, 1839. Sister to the Queen Dowager.

His Royal Highness Prince DAVID KAWANANAKOA, son of H. R. H. Princess Kekaulike, *6*. February 19, 1868.

His Royal Highness Prince JONAH KUHIO KALANIANAOLE, son of H. R. H. Princess Kekaulike, *6*. March 28, 1870.

Her Majesty's Chamberlain, MAJOR JAS. W. ROBERTSON.

Her Majesty's Staff.

Cols C. P. Iaukea, J H Boyd, R Hoapili Baker W. H. Cornwell, J D Holt, Jr, H F Bertelmann J. T. Baker and E K Lilikalani.

The Cabinet.

Her Majesty, THE QUEEN.

Minister of Foreign Affairs, His Ex M P Robinson; Minister of the Interior, His Ex G N Wilcox; Minister of Finance, His Ex P C Jones; Attorney-General, His Ex C Brown.

Governors.

His Ex A S Cleghorn, Governor of Oahu.
His Ex T W Everett, Governor of Maui.
His Ex J T Baker, Governor of Hawaii.
His Ex W H Rice, Governor of Kauai.

Governor of Oahu's Staff.

Majors J W Robertson, Sam'l Nowlein.

Privy Council of State.

Her Majesty, THE QUEEN.

Hons. C R Bishop, A S Cleghorn, A F Judd, H A Widemann, H M Whitney, J A Cummins, G Rhodes, J M Smith, J S Walker, W J Smith, W F Allen, D Kahanu, J E Bush, C P Iaukea, G W Macfarlane, P P Kanoa, W D Alexander, E K Lilikalani, P Neumann, S Parker, J T Baker, R H Baker, S M Damon, J K Kaunamano, A N Tripp, J G Hoapili, F H Hayselden, W G Irwin, D H Nahinu, A Rosa, J B Atherton, J T Waterhouse, Jr, J Ena., W H Cornwell, R F Bickerton, C B Wilson, F S

Pratt, J O Carter, H R H, D Kawanakoa, S B Dole, G C Beckley, A Fernandez, P. Isenberg, Jr, Jno Richardson, J W Robertson. C P Iaukea, Secretary.

Legislative Assemblage, Session of 1893.

OFFICERS.

President..... Hon J S Walker
Vice-President..... Hon J Kauhane
Secretary..... C J McCarthy
Interpreter..... W L Wilcox
Sergeant-at-Arms..... F J Testa
Chaplain..... Rev J Waia mau
The Cabinet Ministers hold seats in the House ex-officio.

HOUSE OF NOBLES.

OAHU:

Hons. D W Pua, A P Peterson, C L Hopkins. Term expires Feb 1894.
Hons. J S Walker, C O Berger, Jno Ena. Term expires Feb 1896.
Hons. J A Cummins, J N S Williams, C B Maile. Term expires Feb 1898.

MAUI:

Hons R D Walbridge, W H Cornwell. Term expires Feb 1894.
Hons. H P Baldwin, W Y Horner. Term expires Feb 1896.
Hons. Jas Anderson, L A Thurston. Term expires Feb 1898.

HAWAII:

Hons. R R Hind, J G Hoapili. Term expires Feb 1894.
Hons. J Kauhane, J M Horner. Term expires Feb 1896.
Hons. Alex Young, Jos Mardsen. Term expires Feb 1898.

KAUAI:

Hon. P P Kanoa. Term expires Feb 1894.
Hon. Alex McBryde. Term expires Feb 1896.
Hon. A Dreier. Term expires Feb 1898.

REPRESENTATIVES.

OAHU:

Honolulu:—Hons. W C Wilder, J W Bipi-kane, C W Ashford, S K Aki, S K Pua.
Ewa:—Hon A Kauhi. Waialua:—Hon R W Wilcox. Koolau, J E Bush.

MAUI:

Lahaina:—Hon Wm White. Wailuku:—Hons W P Kanealii, W Edmonds. Makawao:—Hon J Kaluna. Hana:—Hon J K Iosepa. Molokai:—Hon T S Nahinu.

HAWAII:

Hilo:—Hons J Nawahi, K M Koahou, A Horner. Hamakua:—Hon J K Kaunamano. Kohala:—Hon G P Kama'oha. Kona:—Hon J H Waipuilani. Kau:—Hon J N Kapahu.

KAUAI:

Koloa:—Hon W O Smith. Waimea:—Hon J A Akina. Hanalei:—Hon A S Wilcox.

Department of Judiciary.

SUPREME COURT.

Chief Justice..... Hon A F Judd
First Associate Justice..... Hon R F Bickerton
Second Associate Justice..... Hon S B Dole

Clerk Judiciary Department..... Henry Smith

Circuit Judges.

First Judge 1st Circuit, Oahu.....
 Second Judge 1st Circuit, Oahu.....
 Second Circuit, Maui..... Hon A N Kepoikai
 3rd and 4th Circuits, Hawaii..... Hon S L Austin
 Fifth Circuit, Kauai..... Hon J Hardy

CLERKS OF SUPREME AND CIRCUIT COURTS:

H Smith..... ex officio
 1st clerk 1st Circuit, Oahu..... F. Wundenberg
 2nd clerk 1st Circuit, Oahu..... Geo Lucas
 Second Circuit, Maui..... Goodale Armstrong
 3rd and 4th Circuits, Hawaii..... Daniel Porter
 Fifth Circuit, Kauai..... R W T Purvis

INTERPRETERS, ETC.

Hawaiian..... W Luther Wilcox
 Chinese..... Li Cheung
 Portuguese..... J M Vivas
 Stenographer..... J W Jones

District Magistrates.

OAHU.

Wm Foster..... Honolulu
 Ewa
 J K Kupau..... Waianae
 J Kaluhi..... Koolauloa
 S H Kalamakee..... Waiialua
 F Pahia..... Koolaupoko

MAUI.

W H Daniels..... Wailuku
 D Kahaulelio..... Lahaina
 Chas Copp..... Makawao
 J H S Kaleo..... Hana
 J K Piimanu..... Kipahulu, Hana
 M Kealoha..... Honuaula
 D Kalaokalani..... Molokai
 S Kahoohalahala..... Lanai

KAUAI.

S R Hapuku..... Lihue
 J W Kala..... Koloa
 R Puuki..... Hanalei
 J K Kapaniaia..... Waimea
 J W Iota..... Kawaihau

HAWAII.

G W A Hapai..... 1st District, Hilo
 Jos Perisson..... 2nd District, Hilo
 R H Atkins..... North Kohala
 S H Mahuka..... South Kohala
 E W Barnard..... North Hilo
 Edwin Thomas..... Hamakua
 Jas M Kauwila..... Puna
 J H S Martin..... West Kau
 Kekani Pa..... East Kau
 S B Kaalawamaka..... North Kona
 S M Kekoa..... South Kona

Department of Foreign Affairs.

Minister of Foreign Affairs. His Ex M P Robinson
 Secretary of Department..... F P Hastings
 Clerks of Department, W H Wright, Ed Stiles,
 H R H D Kawanakoa.

Diplomatic Representatives Accredited to the Court of Hawaii.

United States—His Ex John L Stevens, Envoy
 Extraordinary and Minister Plenipotentiary;
 residence, Nuanu Avenue.
 Portugal—Senhor A de Souza Canavaro, Charge
 d'Affaires and Consul-General; residence, Bere-
 tania street.

Great Britain—His Ex J H Wodehouse, Minis-
 ter Resident; residence, Emma street.
 France—Mons G M G Bosseron d'Anglade, Con-
 sul Commissioner; residence, Beretania street.
 Chancellor, Mons A Vizzavona.
 Japan—Mons S Fugii, Diplomatic Agent and
 Consul General. Secretary, G Narita.

Foreign Consuls, Etc.

United States—Consul-General, H W Severance;
 Vice and Deputy Consul-General, W Porter
 Boyd.

Italy—F A Schaefer, (Dean of the Consular Corps)
 Chili..... F A Schaefer
 German Empire..... H F Glade
 Sweden and Norway..... H W Schmidt
 Denmark..... H R Macfarlane
 Peru..... Bruce Cartwright
 Belgium..... J F Hackfeld
 Netherlands..... J H Paty
 Spain—Vice-Consul..... H Kenjes
 Austro-Hungary..... H F Glade
 Russia, Acting Vice-Consul..... J F Hackfeld
 Great Britain, Vice-Consul..... T R Walker
 Mexico..... H Renjes
 (Attaches to Consulate: F Lanno, G Narita,
 H Ito.)

China—Commercial Agent, Goo Kim; Assistant
 Commercial Agent, Wong Kwai.

United States Cons'l'r Ag't, Hilo..... C Furneaux
 U S Consular Agent, Kahului..... A F Hopke
 U S Consular Agent, Mahukona..... C L Wight

Diplomatic and Consular Representatives of Hawaii Abroad.

In the United States.

United States—J Mott Smith, Envoy Extraordi-
 nary and Minister Plenipotentiary, Washington,
 D C.

New York—E H Allen, Consul-General.
 San Francisco—F S Pratt, Consul-General for
 the Pacific States: California, Oregon and
 Nevada and Washington. J B Maholin, Vice
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 San Diego, Cal..... Jas W Girvin, Consul
 Boston..... Lawrence Bond, Consul
 Portland, Or..... J McCracken, Consul
 Port Townsend, Wash..... James G Swan, Consul
 Seattle..... G R Carter, Consul

Mexico, Central and South America.

U S of Mexico, Mexico—Col W J De Gress, Con-
 sul. R H Baker, Vice-Consul.
 Manzanillo..... Robert James Barney, Consul
 Guatemala..... Henry Tolke, Consul
 Peru, Lima—R H Beddy, Charge d'Affaires and
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Callao, Peru..... S Crosby, Consul
 Chile—Valparaiso. D Thomas, Charge d'Affaires
 and Consul-General.

Monte Video, Uruguay: Conrad Hughes, Consul
 Philippine Islands, Iloilo—George Shelmerdine,
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Manila..... Jasper M Wood, Consul

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London..... A Hoffnung, Charge d'Affaires
 Secretary of Legation, S B Francis Hoffnung,
 Manley Hopkins, Consul.

Liverpool..... Harold Janion, Consul
 Bristol..... Mark Whitwell, Consul
 Hull..... W Moran, Consul
 Newcastle on Tyne..... E Biesterfeld, Consul

Falmouth..... C R Broad, Consul
 Dover (and the Cinque Ports), Francis William Prescott, Consul.
 Cardiff and Swansea..... H Goldberg, Consul
 Edinburgh and Leith..... E G Buchanan, Consul
 Glasgow..... Jas Dunn, Consul
 Dundee..... J G Zoller, Consul
 Dublin..... R Jas Murphy, Vice-Consul
 Queenstown..... Geo B Dawson, Consul
 Belfast..... W A Ross, Consul
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 Dunedin, N Z..... Henry Driver, Consul
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 Shanghai, China..... Hon J Johnstone Keswick.

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 Marseilles..... G du Cayla, Consul
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 Dijon H..... Vielhouanne, Consul
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 Dresden..... Augustus P Buss, Consul
 Karlsruhe..... H Muller, Consul

Austria.

Vienna..... V von Schonberger, Consul

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 Cadiz..... James Shaw, Consul
 Valencia..... Vicente Chust, Consul
 Malaga—F T De Navarra, Consul; F Gimenez y Navarra, Vice-Consul.
 Cartagena..... J Paris, Consul
 Las Palmas, Gran Canaria, Luis Facony Quevedo, Consul; J Bravo de Laguna, Vice-Consul
 Santa Cruz..... B M y Baitalier, Vice-Consul
 Arcife de Lanzarote—E Morales y Rodriguez, Vice-Consul.

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 Oporto..... Narciso M Ferro, Consul
 Madeira..... F Rodrigues, Consul
 St Michaels..... A de S Moreira, Consul
 St Vincent, Cape de Verde Islands—C Martins Vice-Consul.

Italy.

Rome.... James Clinton Hooker, Consul-General
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Netherlands.

Amsterdam..... D H Schmul, Consul-General
 Dordrecht..... P J Bowman Consul.

Belgium

Antwerp..... Victor Forge, Consul-General
 Ghent..... E Coppieiers, Consul
 Liege..... Jules Blanpain, Consul
 Bruges..... Emile Van den Brande, Consul

Sweden and Norway.

Stockholm... CA Engalls, Acting Consul-General
 Christiania..... L Samson, Consul
 Lyskil..... H Bergstrom, Vice-Consul
 Gothenburg..... Gustav Kraak, Vice-Consul

Denmark.

Copenhagen....., Consul-General

Japan.

Tokio, His Excellency R Walker Irwin, Minister Resident.
 Hiogo and Osaka..... Samuel Endicott, Consul

Interior Department.

Minister of Interior..... His Ex G N Wilcox
 Chief Clerk of Department..... J A Hassinger
 Clerks—J H Boyd, M K Keohokalole, J L Aholo, S Mahaulu, Geo Ross, Edwd S Boyd.
 Electoral Registrar..... Wray Taylor
 Registrar of Conveyances..... Thos G Thrum
 Deputy Registrar..... Malcolm Brown
 Supt Public Works and C E..... W E Rowell
 Superintendent Water Works..... J C White
 Clerk of Water Works..... A Lucas
 Supt Electric Lights..... Jno Cassidy
 Road Supervisor, Honolulu..... W H Cummins
 Commissioner of Patents..... C T Gulick
 Physician Insane Asylum..... Dr A McWayne

Government Surveying Corps.

W D Alexander..... Surveyor-General
 J F Brown..... Assistant in charge of gov't lands
 C J Lyons..... Assistant in charge of office
 F S Dodge..... Assistant

Board of Immigration.

His Ex Hon G N Wilcox..... President
 Members—His Ex A S Cleghorn, Hon M P Robinson, Hon Joseph B Atherton, Jas B Castle, Esq, Jas G Spencer, Esq.
 Wray Taylor..... Secretary
 G O Nacayama... Inspector-in-Chief of Japanese Immigrants.

Board of Health.

President..... D Dayton
 Members: Hon S Parker, J O Carter, J T Waterhouse, J F Colburn.
 Secretary..... Chas Wilcox
 Agents..... C B Reynolds, G W C Jones, S Ku

GOVERNMENT PHYSICIANS.

OAHU—Honolulu, Dr H G McGrew; Waialua, Dr L F Alvarez; Waianae, Dr N Russel.
 KAUAI—Waimea, Dr D Campbell; Hanalei, ———, Puna, Dr St D G Waiters; Koloa, Dr Jared K Smith.

MAUI—Makawao, Dr C L Stow; Hana, Dr T Allen; Wailuku, Dr Geo Herbert; Lahaina, Dr C Davison.

HAWAII—Hamakua, Dr C B Greenfield; Hilo, Dr R B Williams; N Hilo, Dr L S Thompson; Kau, Dr C B Cooper; Kohala, Dr B D Bond; Kona, Dr H A Lindley.

ISLAND OF MOLOKAI, Dr A Mouritz. LEPER SETTLEMENT, Dr R Oliver.

Road Boards.

HAWAII.

Hilo..... J T Baker, J T Unea, W G Kaihenui.
North Hilo... A C Palfrey, L S Thompson, W S Walker.

Puna.....
Kau..... W K Moi, J Ikaika, K Kimokea
Hamakua..... A Lidgate, J H Kaumeleiau, C Williams.

N Kohala... E P Low, D H Kailau, D W Pue
S Kohala... W Hookuanui, W K Davis, J Maguire
N Kona... J Kaelemakule, J K Nahale, S B Kaalawamaka.
S Kona... D H Nahinu, K M M Hu, W Punikaia

MAUI.

Lahaina... R H Makekan, G Kauhi, S Kaluakini
Wailuku... A Barnes, H Center, E B Friel
Hana... D Center, J P Sylva, M H Reuter
Makawao... J Kalama, L A Andrews
Molokai... S K Kupihea, S Kekahuna, J H Mahoe

OAHU.

Honolulu... C B Dwight, A Fernandez, S M Kaaukai.
Koolaupoko... F Pahia, J H Kealo, E P Aikue.
Koolauloa... L J Aylett, S Kapu, L K Naone.
Waialua... E S Timoteo, S H Kalamakee, B Naukana.
Ewa and Waianae... L P Halualani, Poe, J Pinao

KAUAI.

Koloa... J K Smith, A Cropp.
Lihue... S W Wilcox, S G D Walters, J H K Kaiwi.
Kauai... S N Hundley, D Lovell, J W Lota
Hanalei... S Kanewanui, G W Mahikoa, E Kuapuhi.
Waimea... J K Kapuniai, T Brandt, J Kamalinui
Niihau... M W Keale, J B Kaomea, A W Kawaiula

Commissioners of Crown Lands.

His Ex M P Robinson, His Ex C Brown, Col C P Iaukea.
Col C P Iaukea..... Agent

Commissioners of Boundaries.

Hawaii..... F S Lyman
Maui, Molokai and Lanai... S F Chillingworth
Oahu..... Wm Foster
Kauai..... J Hardy

Commissioners of Fences.

HAWAII.

Hilo..... B Brown.
Hamakua.....
North Kona... G McDougall, E Kahulanui, J K Nahale.
South Kona... M Barrett, J W Smith S Keku-
mano.
North Kohala... H L Holstein, R Hind, Jr.
South Kohala... S H Mahuka
Kau... D W Kaemoku, C Meinecke, N C Haley

MAUI.

Lahaina... K Nahaolelua, E S Kaiue, _____
Wailuku... W A McKay, N Kepoikai, W B Keanu.
Makawao..... R von Tempsky, E Hele-
kunihi.

Hana... O Unna, J Nakila, P K Kaumakaole
Molokai... D Kailua, J Kaoo, J H Mahoe

OAHU.

Kona... D Kahanu, P Jones, W S Wond
Ewa and Waianae... S Andrews, J Kekahuna, H Kapu.

Waialua... H Wharton, J Amara, J F Anderson.
Koolauloa... J Kaluhi, J L Naili, W C Lane
Koolaupoko... G Barenabe, M Rose

KAUAI.

Kauai... J P Kaumualii, Napalehua, J M Kealoha.
Koloa and Lihue... S Kaiu, E Kopke, J Gandall

Agents to Grant Marriage Licences.

Hawaii—

Hilo... J Kanaeholo, B Naaikauna, L Severance,
D H Hitchcock, L Kaapa, W Nailima
E W Barnard, J M Kauhi, S K Pookalani.
Hamakua... J N Haena, S B Kaleo, M
Beniamina, W A Mio, J Kanakaoluna.
North Kohala... Jno Nalii, E de Harne, D S
Kahookano, J S Smithies, K Kaai.

South Kohala... James Bright
North Kona... J Kaelemakule
South Kona... Jos Kaeo, J W Maele, S W Kino,
W J Wright, Jno Nahinu.

Puna... D Kapela
Kau... T C Wills, C Meinecke

Maui—

Wailuku... Chas Wilcox, J Haole, A N Kepoi-
kai, P Pakualani, J Kealoalii.

Lahaina... D Kahaulelio
Makawao... H P Keliikipi, H Kawainaka, Jas
Anderson, M Naaieono.

Hana... P Momoa, S W Kaai, D Napihao, J
Nakila, Jr, C Andrews, P H Kaumakaole,
Kaanapali... S M Sylva
Molokai... R W Meyer, D Kalua, K Kainuwai.
J H Babcock.

Lanai.....
Oahu—

Kona... W J Smith, C T Gulick, J H Boyd, P
Jones, J H Thompson.

Koolaupoko... E P Aikue
Koolauloa... W C Lane, J L Naili, L B Nainoa
Ewa and Waianae... J Kahalualani, D Malo
Waialua... J F Anderson

Kauai—

Koloa... A W Maioho, J Kala
Lihue... J H K Kaiwi
Kauai... W H Williams

Hanalei... Naohenui, J Kakina, Kaumeheiva,
J H Barenaba, E Kuapuhi.

Waimea... S E Kaula, E L Kauai, D Kua.
Niihau... F Sinclair, G S Gay

Commissioners of Private Ways and Water Rights.

HAWAII.

Hilo..... J T Brown
Hamakua.....

North Kohala... E C Bond
South Kohala... Z Pakiki
Kau... J H S Martin
Puna... A W Maioho

MAUI.

Lahaina.....M Makalua
 Wailuku.....S E Kaiue
 Makawao.....E Helekunihi
 Hana.....S W Kaai
 Kaanapali.....J A Kaukau
 Molokai.....D Kailua

OAHU.

Kona.....Mrs E M Nakuina
 Koolaupoko.....G Barenaba
 Koolauloa.....J Kaluhi
 Waiialua.....J Amara
 Ewa and Waianae.....J Kekahuna

KAUAI.

Koloa and Lihue.....S R Hapuku
 Waimea.....E L Kauai
 Hanalei and Kawaihau.....S U Kaneole

Agents to Take Acknowledgments to Instruments.

ISLAND OF OAHU.

Honolulu..M Brown, F M Hatch, W A Whit-
 ing, A S Hartwell, V V Ashford, F W Mac-
 farlane, J M Vivas, P Jones, W L Wilcox,
 W L Holokahiki, J M Kaneakua, S M Kaau-
 kai, D Dayton, W C Parke, H Holmes.
 Ewa.....L K Halualani
 Waianae.....J K Kekahuna
 Waiialua.....S N Emerson, S K Mahoe
 Koolauloa..W C Lane, H Kauaihilo, E P Aikue
 Koolaupoko.....A Ku

ISLAND OF MAUI.

Lahaina.....H Dickenson.
 Kaanapali.....D M Kalama
 Honuaula.....S P Halama
 Wailuku..T W Everett, W S Maule, G P Wilder,
 A N Keipoikai.
 Makawao.....S F Chillingworth, J Kalama,
 J Kamakele.
 Hana.....J Grunwald, J Gardner, S W Kaai
 Kaupo.....J Kawaiiaea
 Koolau.....Jas Saunders
 Kipahulu.....J Nakila, Jr

MOLOKAI AND LANAI.

Molokai—Kala, R W Meyer, Pukoo, S P Ku-
 pihea; Halawa, M Kane; Kalaupapa, Ambrose
 Hutchinson, D H Pierce.
 Lanai.....

ISLAND OF HAWAII.

N Kohala..D S Kahookano, J W Moanau'i, C
 H Pulaa.
 S Kohala.....F Spencer, Geo Bell, Miss E W
 Lyons.
 Hamakua—J W Leonhart, T P Kaeeae, Chas
 Williams.
 Hilo..W C Borden, G W A Hapai, A B Loeben-
 stein, S W Pa, D I Wailani, J T Unea, Jas
 Mattoon.
 Puna.....J Kauwila
 Kau.....C Meinecke, W Kaaemoku, S Patten
 S Kona.....J W Maele
 N Kona.....D Alawa, J W H I Kihe

ISLAND OF KAUAI.

Koloa.....E Strehz
 Waimea.....L H Stolz, E L Kauai
 Lihue.....S W Wilcox, J B Hanaike
 Hanalei.....J C Long, J B Alexander, J Radway
 Kawaihau.....L K Kaumualii, J M Kealoha
 Niihau.....J B Kaomea

Inspectors of Animals.

Oahu.....W T Monsarratt, V S, P Isenberg Jr.
 Hawaii..W H Shipman, A Wall, C E Richardson
 Maui.....W Marshall, S F Chillingworth,
 Kauai.....S Hundley, L Kahlbaum

Notaries Public.

Hawaii..D Porter, E W Barnard, A E Hitch-
 cock, Thos Aiu, J Kaeo, W Kaaemoku, W J
 Wright S H Haaheo, J S Smithies, W L
 Eaton, S Haanio, Jr, Jas Bright, I K Kekaula,
 I H Sherwood, E E Richards, G P Tulloch,
 W P Fennel, C Williams, D H Nahinu, Z Paa-
 kiki, J K Naeole, S W Kekuwa.
 Maui.....J P Silva, C H Dickey, W F Moss-
 man, M Makalua, E Helekunihi, E Lililehua,
 J Richardson, P K Kauimakaole, W P Haia,
 S E Kaiue, E B Friel, P M Kaluna, F W
 Hardy, J H Babcock.
 Oahu..J H Paty, C T Gulick, S B Dole, Jas M
 Monsarratt, M Brown, T W Hobron, V V Ash-
 ford, W Foster, C L Carter, J L Kaulukou, N
 M Lowrey, J A Magoon, G K Wilder, W C
 Achi, J M Camara Jr, S K Ka-ne, C W Ash-
 ford, E Johnson, F J Testa, J A Hassinger, C
 F Peterson, D Lamb, C E Vida, H Lose, A
 Rosa, J H Thompson, J H Kahookano, N Fer-
 nandez, J H Paele, H Holmes, W L Peterson,
 J W Luning, J H Nakookoo, A M Brown, J
 K Kaupu, A Perry.
 Kauai..L H Stolz, J C Long, J A Akina, J H
 Kawelo, Jno M Kealoha.

Agents to Acknowledge Contracts for Labor.

Oahu—Honolulu, C T Gulick, J A Hassinger, J
 W Robertson, Samuel Kuula, Chas Phillips,
 Moses Keliiaa, John Lucas, W S Wond, W
 H Tell, F S Lyman Jr, J E Brown, T N
 Starkey, F Godfrey J H Thompson.
 Waiialua—C H Kalama, S N Emerson, S K
 Mahoe, H N Kahulu.
 Koolauloa—M Makuuau, W C Lane, M Ka-
 anuu.
 Koolaupoko.....G Barenaba, P E Aikue
 Ewa and Waianae..J D Holt, J K Kaanaana,
 J Kekahuna, J Kahoa.
 Hawaii..Hilo, L Severance, L E Swain, A B
 Loebenstein, D B Wahine.
 N Kona.....J G Hoapili, J W Smith
 S Kona.....J Nahinu, W J Wright
 Hamakua...J P Leiahi, Kimo, J Waiohinu, C
 Williams, J L Kanakaoluna.
 N Kohala..H Rickard, D S Kahookano, J W
 Moanau'i, W L Eaton, G P Tulloch, C J
 Falk, G H Kaailau.
 S Kohala.....Geo Bell, Jas Bright, J Jones
 Kau...W Kaaemoku, R Zeigler, J C Searle,
 C Thompson, T P Harris.
 Puna.....J N Kamoku
 Maui—Lahaina..K Nahaolelua, S L Kalaikini,
 J Kulailua, M Makalua, G Kaluakini, T C
 Forsyth.
 Wailuku..J Richardson, P S Kalama, W S
 Maule, S E Kaiue, C L Kookoo, S E Kalei-
 kau, J Haole, E R Biven.
 Makawao..J K Smyth, Keliikipi, P Keaupuni
 Hana..F Wittrock, P Kaiumakaole, Kaehe,
 Jr, B K Kaiwiae, J Murdock, J Hakila, J
 P Sylva.
 Molokai.....Geo Kekipi, S K Piiapoo

Kauai—Koloa, E Strehz, H C Norton, E Kaaloa
Lihue, J B Hanaïke, C H Willis, H K Kahale
Hanalei, J W Loka, J Kakina, J Kukuia, J H
Mahoe, J B Alexander.
Waimea, J H Kapukui, S E Kaula, I H
Kaaupwai.
Kawaihau, E Kaiu, J M Kealoha
Niihau, J B Kaomea

Department of Finance.

Minister of Finance, His Ex P C Jones
Registrar of Public Accounts, G E Smithies
Auditor General, Geo J Ross
Collector General of Customs, A S Cleghorn
Clerk of Registrar, C A Widemann
Tax Assr and Collr, Oahu, C N Spencer
" " Maui, C H Dickey
" " Hawaii, H C Austin
" " Kauai, J K Fariey
Collector Port of Hilo, J Stuppelbeen
Collector Port of Kahului, E Hoffmann
Collector Port of Lahaina (ex-officio) F H Hayselden.
Collector Port of Mahukona, J S Smithies
Collector Port of Kealahou, E Strehz
Collector Port of Kawaihau, E Strehz
Port Surveyor, Kahului, W S Maule
Port Surveyor, Hilo, G Nakapuahi

Customs Department, Honolulu.

Collector, A S Cleghorn
Deputy Collector, G E Boardman
Bookkeeper, O Stillman
Statistical Clerks, Wm Chamberlain, C K Stillman, C E Coville, J B Gibson.
Store Keeper, F B McStocker
Assistant Store Keeper, E Langley
Harbor Master, Capt A Fuller
Pilots—Captains A McIntyre, P P Shepherd, J C Lorenzen
Port Surveyor, C L Crabb
Guards—J Crowder, G Parminter, E Devauchelie
R W Holt, W H Aldrich, C H Clark.

Post Office Department.

Walter Hill, Postmaster-General
J G Rothwell, Book-keeper and Cashier
E Wodehouse, Savings Bank Department
F B Oat, Money Order Department
G E Thrum, General Delivery Department

Department of Attorney-General.

Attorney-General, His Ex C Brown
Deputy Attorney-General, G K Wilder
Marshal of the Hawaiian Islands, C B Wilson
Deputy Marshals, J A Mehrtens
Clerk to Marshal, H M Dow
Sheriff of Hawaii, E G Hitchcock
Sheriff of Maui, F H Hayselden
Sheriff of Kauai, S W Wilcox
Jailor of Oahu Prison, A N Tripp

Oahu—Deputy Sheriffs, Ewa, W S Wond; Waianaë, S K Hui; Waialua, J Amara; Koolauloa, H Kawaihilo; Koolaupoko, E P Aikue.

Kauai—Sheriff, S W Wilcox; Deputy Sheriffs: Lihue, C H Willis; Koloa, E Kaaloa; Waimea, L H Stolz; Hanalei, W E H Deverill, Kawaihau, S Kaiu.

Molokai—Deputy Sheriff, Pukoo, E Lililehua.

Maui—Sheriff, F H Hayselden; Deputy Sheriffs, Lahaina, R P Hose; Wailuku, S F Chillingworth; Makawao, Lorrin Andrews; Hana, M H Reuter.

Hawaii—Sheriff, E G Hitchcock; Deputy Sheriffs, North Hilo, L E Swain; Hamakua, J W Moanali; South Kohala, W Hookuanui; North Kohala, Chas Pulaa, North Kona, J K Nahale; South Kona, Lakalo; Kau, W J Yates; Puna, J E Eldarts.

Board of Prison Inspectors.

Jas G Spencer, J F Colburn, W A Whiting.

Board of Education.

President, Chas R Bishop
Members—W D Alexander, W W Hall, S M Damon, W Hill.
Inspector General of Schools, A T Atkinson
Secretary, W J Smith
Assistant, G C Potter

School Agents in Commission.

HAWAII.

Hilo, L Severance
Puna, J E Eldarts
Kau, C Meinecke
North and South Kona, J D Paris, Jr
South Kohala, Miss E W Lyons
North Kohala, Dr B D Bond
Hamakua, C Williams

MAUI.

Lahaina and Lanai, H Dickenson
Wailuku, A Barnes
Hana, F Wittrock
Makawao, C H Dickey
Molokai, R W Meyer

OAHU.

Honolulu, W J Smith
Ewa and Waianaë, W J Smith
Waialua, J F Anderson
Koolauloa, W C Lane
Koolaupoko, (acting) W J Smith

KAUAI.

Waimea and Niihau, T H Gibson
Koloa, Lihue, J K Burkett
Hanalei, W E H Deverill
Kawaihau, G H Fairchild

Chamber of Commerce.

President, C R Bishop
Vice-President, F A Schaefer
Secretary and Treasurer, J B Atherton

Board of Underwriters—Agencies.

Boston, C Brewer & Co
Philadelphia, C Brewer & Co
New York, A J Cartwright
Liverpool, T H Davies & Co
Lloyds, London, T H Davies & Co
San Francisco, H Hackfeld & Co
Bremen, Dresden, Vienna, F A Schaefer

Honolulu Board of Underwriters.

F A Schaefer, President
J H Paty, Vice-President
C O Berger, Secretary and Treasurer

Packet Agencies.

Boston Packets..... C Brewer & Co
 Planters' Line, San Francisco..... C Brewer & Co
 Pioneer, Liverpool..... T H Davies & Co
 Merchants' Line, San Francisco..... Castle & Cooke
 New York Line..... Castle & Cooke
 Oceanic S S Co's Line..... W G Irwin & Co
 Pacific Mail S S Company..... H Hackfeld & Co
 Oriental and Oceanic S S Co..... H Hackfeld & Co
 Bremen Packets..... H Hackfeld & Co
 Hawaiian Packet Line S F..... H Hackfeld & Co
 Glasgow and Honolulu..... F A Schaefer & Co

Honolulu Fire Department.

Organized 1851. Biennial Election of Engineers
 First Monday in December.

Officers for 1890-92:

Chief Engineer..... Julius Asch
 First Assistant Engineer..... Jas H Hunt
 Second Assistant Engineer..... D L Kalawaia
 Secretary and Treasurer..... Henry Smith
 Fire Marshal and Survey Engineer..... Jno Neil
 Honolulu Engine Company No 1 (steam) formed
 1850, organized July 18, 1855. Annual election
 of officers, first Wednesday in July.
 Mechanic Engine Company No 2 (steam) organ-
 ized December, 1850, admitted February 3,
 1850. Annual election of officers, first Wednes-
 day in February.
 Hawaii Engine Co No 4 (steam) organized
 February, 1861. Annual election of officers, first
 Tuesday in February.
 China Engine Company No 5 (steam), organized
 February, 1879.
 Protection Hook and Ladder Company No 1,
 re-organized September, 1857. Annual election
 of officers, first Monday in September.
 Fire Police, Captain T E Krouse.

Fire Wards of Honolulu.

No. 1—Bounded by School, Likelike, Judd and
 Punchbowl streets.
 No. 2—Bounded by Beretania, Liliha, School
 and Fort streets.
 No. 3—Bounded by King, Beretania and Fort
 streets.
 No. 4—Bounded by Water Front, King and Fort
 streets.
 No. 5—Bounded by Water Front, Fort, King
 and Richard streets.
 No. 6—Bounded by King, Fort, Beretania and
 Richard streets.
 No. 7—Bounded by Beretania, Fort, School and
 Punchbowl streets.
 No. 8—Bounded by Water Front, Richards,
 Beretania and Punchbowl streets.
 No. 9—Bounded by Water Front, Punchbowl
 and Victoria streets.
 No. 10—Bounded by King, Victoria and Piiko'
 streets.
 No. 11—Bounded by Piikoi, Wilder avenue and
 Punahou streets.
 No. 12—Beyon' Punahou street.
 No. 13—The Harbor.

Queen's Hospital.
 ERECTED IN 1860.

President..... Her Majesty
 Vice-President..... C R Bishop
 Sec'y..... F A Schaefer | Treas..... J H Paty
 Auditor..... J S Walker
 Physicians..... G P Andrews, C B Wood
 Executive Committee—C R Bishop, J H Paty,
 F A Schaefer, A S Cleghorn.

Hawaiian Historical Society.

Organized Jan., 11, 1892.

President..... Hon C R Bishop
 Vice-President..... J S Emerson
 Recording Secretary..... Rev C M Hyde, D.D.
 Corresponding Secretary..... Prof W D Alexander
 Treasurer..... G P Castle
 Librarian..... Rev R R Hoes, U.S.N.

American Relief Fund.

Organized 1864. Meets annually February 22
 President.....
 Secretary and Treasurer..... C R Bishop

British Club.

Organized 1852. Premises on Alakea Street, two
 doors below Beretania.

President..... A S Cleghorn
 Sec'y..... F M Swanzy | Treas..... J G Spencer
 Managers—A S Cleghorn, W A Whiting, F M
 Swanzy, J G Spencer, A Jaeger, Dr Robt
 McKibbin, H Focke.

British Benevolent Society.

Organized 1860. Meets annually April 23.
 President..... J H Wodehouse
 Vice-President..... Rev A Mackintosh
 Sec'y..... F M Swanzy | Treas.....

German Benevolent Society.

Organized August 22, 1856.

President..... J F Hackfeld
 Secretary..... John F Eckart
 Treasurer..... F Klamp

Portuguese Ladies' Benevolent Society.

Organized December, 1886.

President.... Mrs Cannavaro, Mrs W G Irwin,
 Mrs C M Hyde
 Vice-Presidents.....
 Secretary..... Mrs Wm Foster
 Treasurer..... E Hutcheson

The St. Antonio Benevolent Society.

Organized 1876: Incorporated 1890.

President..... J M Camara, Jr
 Vice-President..... J B Vieira
 Secretary..... J S Ramos
 Treasurer..... C L Brito

**Portuguese Mutual Benefit Society of Ha-
 waii.**

Organized Jan. 1882: Incorporated 1887.

President..... J M Vivas
 Vice-President..... J G Silva
 Secretary..... M Gosmao Silva
 Treasurer..... A G Silva, Jr

Stranger's Friend Society.

Organized 1852. Annual Meeting in June.

President..... Mrs W F Allen
 Vice-Presidents..... Mrs A Mackintosh, Mrs T H
 Hobron.
 Secretary..... Mrs S M Damon
 Treasurer..... Mrs E W Jordan
 Directress..... Mrs S H Dowset,

Mission Children's Society.

Organized 1851. Annual Meeting in June.
 President..... W R Castle
 Vice-President..... Mrs S B Dole
 Recording Secretary..... W J Forbes
 Cor Secretary..... Mrs L B Coan
 Elective Members..... Mrs A S Hartwell, Dr N B
 Emerson.
 Treasurer..... W F Frear

Board of Hawaiian Evangelical Association.

Originally organized 1823.
 Constitution revised 1863. Annual meeting June
 President..... Hon A F Judd
 Vice-President..... H Waterhouse
 Corresponding Secretary..... Rev O P Emerson
 Recording Secretary..... Rev C M Hyde, D D
 Treasurer, W W Hall | Auditor, J B Atherton

Woman's Board of Missions.

Organized 1871.
 President..... Mrs C M Hyde
 Recording Secretary..... Mrs S E Bishop
 Home Cor Sec'y..... Mrs G P Castle
 Foreign Cor Sec'y..... Mrs E H McCully
 Treasurer..... Mrs B F Dillingham
 Auditor..... W W Hall

Sailors' Home Society.

Organized 1853. Meets annually in December.
 President..... C R Bishop
 Secretary, F A Schaefer | Treasurer, J H Pacy
 Ex Com, S M Damon, J B Atherton, C M Cooke

Missionary Gleaners—Branch of Woman's Board.

President..... Mrs E Jones
 Vice-President..... Miss C Gilman
 Rec Secretary..... Miss E R Hopper
 Cor Secretary..... Mrs E C Damon
 Treasurer..... Mrs T W Hobron
 Directress..... Miss H S Judd

Woman's Christian Temperance Union.

Organized Dec., 1884.
 President..... Mrs J M Whitney
 Vice-Presidents..... Mrs C M Hyde, Mrs E G
 Beckwith, Mrs E W Jordan.
 Recording Secretary..... Mrs R Jay Greene
 Corresponding Secretary..... Mrs E W Jordan
 Treasurer..... Mrs L B Coan
 Auditor..... W A Bowen

Young Men's Christian Association.

Organized 1869. Annual meeting in April.
 President..... Hon J B Atherton
 Vice-President..... C B Ripley
 Secretary..... W L Howard
 Treasurer..... H F Wichman
 General Secretary..... H W Peck

Library and Reading Room Association.

Organized March, Incorporated June 24, 1879.
 President..... A J Cartwright
 Vice-President..... M M Scott
 Secretar..... H A Parmelee
 Treasure..... Miss M A Burbank

Hawaiian Rifle Association.

Organized December, 1885.
 President..... J H Soper
 Vice-President..... Hon S B Dole
 Secretary and Treasurer..... Walter E Wall

Honolulu Cemetery Association.

President..... Hon J I Dowsett
 Vice-President..... Hon J T Waterhouse, Jr
 Secretary..... J H Pacy
 Treasurer..... B Cartwright

Oahu College.

Located at Punahou, two miles east of Honolulu.
 F A Hosmer, A M..... President
 Mental and Moral Sciences.
 A B Lyons, M D, F C S, Chemistry and Natur-
 al Sciences.
 Miss L F Dale, Vocal and Instrumental Music
 and French.
 A W Crockett, A B., Latin and English Liter-
 ature.
 Miss M R Wing..... Greek, Rhetoric, etc
 J Q Wood, A B..... Mathematics, History and
 English.
 P H Dodge..... Drawing and Painting

Punahou Preparatory.

Miss Margaret Brewer, Principal: First and
 Second Grades.
 Miss Helen M Sorenson. Third and Fourth Grades.
 Miss Ella B Snow..... Fifth and Sixth Grades
 Miss Carrie A Gilman..... Seventh and Eighth
 Grades.
 Miss M Birch Fanning..... Kindergarten

Kamehameha Schools.

Located at Kalihi, west of Honolulu.
 Rev W B Oleson..... Principal
 U Thompson, Asst..... Instructor in Carpentry
 G H Babb Asst..... Instructor in Wood-turning
 R P Anderson..... Supt. Manual Labor
 L C Lyman..... Drawing, Supt. Machine Shop
 Mr Ruetsky, Assist..... Instructor in Printing
 Miss C Pope, Asst..... Instructor in Sewing
 Mrs W B Oleson..... Assistant

Kamehameha Preparatory.

Miss Malone..... Principal
 Misses E Halstead, A E Knapp, R Hoppin
 Assistants.

Publications.

The *Hawaiian Gazette*, issued weekly by the
 Hawaiian Gazette Co. on Tuesdays. H M
 Whitney, Manager.
 The *Daily Pacific Commercial Advertiser*, is-
 sued by the Hawaiian Gazette Co. every morn-
 ing (except Sundays). H N Castle, Editor; H
 M Whitney, Manager.
 The *Daily Bulletin*, issued every evening (ex-
 cept Sundays), by the Daily Bulletin Co. D
 Logan, Editor. Weekly issue on Tuesdays.
 The *Friend*, issued on the first of each month.
 Rev. S. E. Bishop, Editor.
 The *Anglican Church Chronicle*, issued on the
 first Saturday of every month. Rev. A. Mack-
 intosh, Editor.
 The *Paradise of the Pacific*, issued monthly. F
 Godfrey, Editor, J J Williams, Manager.
 The *Planters' Monthly*, issued on the 15th of
 each month. H. M. Whitney, Editor.
 The *Honolulu Diocesan Magazine*, issued quar-
 terly. Rt Rev Bishop Willis, Editor.

The *Kuokoa* (native), issued every Saturday morning, by the Hawaiian Gazette Co. J U Kawainui, Editor.

A *Uniao Lusitana-Hawaiiiana*, amalgamation of the *Luso* and *Aurora*, (Portuguese) issued every Saturday, C Pereira, Editor.

The *Hawaiian-Chinese News*, issued weekly, Ho Fon, Editor.

Hawaii Holomua (native), issued daily and weekly. J G M Sheldon, Editor.

The *Ka Oiaio* (native), issued every Friday, J E Bush Editor. Issues also a daily, *Ka Leo o ka Lahui* for native, and *The Voice of the Nation* for English readers.

Chinese Times, issued weekly, Chang Tin Sang, Editor.

The *Japanese Weekly News*, issued Mondays in the Japanese language. B Onoma, Editor.

The Liberal, issued semi-weekly, part English and part Hawaiian. Hon R W Wilcox, Editor.

Handicraft, issued monthly during the school year at the Kamehameha School. Rev W B Oleson, Editor.

A *Sentinella* (Portuguese), issued weekly on Saturday. J M Vivas, Editor.

HAWAIIAN ALMANAC AND ANNUAL, issued the latter part of December for the following year. Thos G Thrum, Editor and Publisher.

Lodges.

LODGE LE PROGRES DE L'OCEANIE, No 124, A F & A M; meets on King St., on the last Monday in each month.

HAWAIIAN, No 21, F & A M; meets in its hall corner Queen and Fort Streets, on the first Monday in each month.

HONOLULU CHAPTER, No 1, R A M; meets in the hall of Le Progres de l'Oceanie on the third Thursday of each month.

HONOLULU COMMANDERY NO 1 KNIGHTS TEMPLAR meets at the Lodge Room of Le Progres de l'Oceanie second Thursday of each month.

KAMEHAMEHA LODGE OF PERFECTION. No. 1. A & A S R; meets in the hall of Le Progres de l'Oceanie on the fourth Thursday of each month.

NUUANU CHAPTER OF ROSE CROIX, No 1, A & A S R; meets at the hall of Le Progres de l'Oceanie, first Thursday in the month.

ALEXANDER LIHOLIHO COUNCIL No 1, OF KADOSH; meets on the third Monday of alternate months from February.

EXCELSIOR LODGE, No 1, I O O F; meets at the hall in Odd Fellows' Building, on Fort St. every Tuesday evening.

HARMONY LODGE, No 2, I O O F; meets each Monday evening in Harmony Hall.

POLYNESIA ENCAMPMENT, No 1, I O O F; meets in Odd Fellows' Building, Fort street, first and third Fridays of each month.

PACIFIC DEGREE LODGE, No 1, DAUGHTERS OF REBEKAH; meets at Excelsior Hall, Fort street, second and fourth Fridays of each month.

OAHU LODGE No 1, K of P; meets every Wednesday at hall on Fort Street.

MYSTIC LODGE, No 2, K of P; meets every Thursday evening, at Harmony Hall.

SECTION No 225—ENDOWMENT RANK, K of P; meets on the second Saturday of January, July and December in the hall of Oahu Lodge.

MAILE LODGE, No. 4, KNIGHTS OF PYTHIAS; meets every Saturday night in Lyceum Build-

ing, Honokaa, Hawaii. Visiting brothers always welcome.

HAWAIIAN COUNCIL No 689, AMERICAN LEGION OF HONOR; meets on second and fourth Friday evenings of each month in Harmony hall.

OCEANIC COUNCIL, No 777, AMERICAN LEGION OF HONOR; meets on the first and third Thursdays of each month, at the K of P hall.

HAWAIIAN TRIBE, No 1, IMP. O R M; meets at the hall of Oahu Lodge, K of P, every Friday evening.

COURT LUNALILO, No 6600; A O of FORESTERS meets at hall of Oahu Lodge, K of P, on second and fourth Tuesdays of each month.

GEO. W DE LONG POST, No 45, G A R; meets the second Tuesday of each month at Harmony hall.

CAPT. COOK LODGE No. 353, ORDER SONS OF ST. GEORGE; meets at the K of P Hall, Fort St., every Saturday evening.

Places of Worship.

CENTRAL UNION CHURCH (Congregational), corner of Beretania and Richards sts, Rev E G Beckwith, D.D., Pastor. Services every Sunday at 11 A M and 7:30 P M. Sunday School meets one hour before morning service. Prayer meeting Wednesday evenings at 7:30.

ROMAN CATHOLIC CHURCH, Fort Street, near Beretania; Rt Rev Gulstan F Ropert, Bishop of Panopolis; Revs Leonor and Clement, assisting. Services every Sunday at 10 A M, and at 4:30 P M. Low Mass every day at 6 and 7 A M. High Mass Sundays and Saints' days at 10 A M.

ST. ANDREW'S CATHEDRAL, Emma Square. First Congregation. Clergy: Rt Rev Bishop Willis, and Rev V H Kitcat. Services on Sunday: Holy Communion at 6:30 A M. Morning prayer, with sermon at 11 A M. Hawaiian Evensong 3:30 P M. Evening Prayer with sermon 7:30 P M. Holy Communion at 11 A M the last Sunday in each month. Sunday School 10 A M. Daily prayer at 7 A M.

Second Congregation, Rev A Mackintosh, Pastor. Services on Sunday: Morning prayer with sermon, 9:45 A M; Evening prayer with sermon 6:30 P M. Holy Communion first Sunday in month, 9:45 A M. Sunday School 10 A M. Evening prayer, with address every Friday, at 7:30 P M.

Chinese Congregation. Services on Sunday at 11 A M and 7:30 P M. Evening prayer every Wednesday, at 7:30 P M.

CHRISTIAN CHINESE CHURCH, Fort Street, F W Damon, acting Pastor. Services every Sunday at 10:30 A M and 7:30 P M. Prayer Meeting Wednesdays at 7:30 P M.

NATIVE CHURCHES.

KAWAIAHAO CHURCH (Congregational), corner of King and Punchbowl Streets, Rev H H Parker, Pastor. Services in Hawaiian every Sunday at 11 A M, and at 7:30 on Sunday evenings alternating with Kaumakapili. Sunday School at 10 A M. Prayer Meeting, Wednesday at 7:30 P M.

KAUMAKAPILI CHURCH (Congregational), Beretania street near Maunakea. Rev J Waiamau, Pastor. Services in Hawaiian every Sunday at 11 A M, and at 7:30 P M on Sunday evenings alternating with Kawaiahao. Sunday School at 10 A M. Prayer Meeting every Wednesday at 7:30 P M.

DECLARATION OF DAVID KEANU SAI, PH.D.

I, David Keanu Sai, Ph.D., declare under penalty that the following is true and correct:

1. Exhibits “1” – “12” that are referenced herein are available at: http://hawaiiankingdom.org/pdf/Sai_Dec_UNHRC_Exhibits.pdf.
2. By virtue of a Limited Power of Attorney, Declarant represents Mr. Kale Kepekaio Gumapac in administrative criminal proceedings before Swiss authorities concerning the allegations of war crimes that resulted from the deliberate failure and refusal by Deutsche Bank, as the assignee of Argent Mortgage Company, LLC, to file an insurance claim under its loan title insurance policy purchased by Mr. Gumapac after they were notified and provided evidence of Mr. Gumapac’s defective title in fee-simple. Attached hereto as Exhibit “1” is a true and correct copy of the Limited Power of Attorney dated December 10, 2014.
3. Mr. Gumapac was required, as a condition of the loan, to purchase a loan title insurance policy for the protection of the lender if there is found to be a defect in his title to property. While a defective title renders Mr. Gumpac’s mortgage with Deutsche Bank void and the promissory note unsecured, the title insurance would cover the debt owed by Mr. Gumapac to Deutsche Bank. Attached hereto as Exhibit “2” is a true and correct copy of the Lender’s Title Insurance Policy Mr. Gumapac purchased for Deutsche Bank, as the assignee of Argent Mortgage Company, LLC.
4. Mr. Gumapac provided Deutsche Bank evidence of the defective title to property and demanded that Deutsche Bank file an insurance claim under the loan policy Mr. Gumapac purchased at escrow. Attached hereto as Exhibit “3” is a true and correct copy of Mr. Gumapac’s demand letter to Deutsche Bank dated November 22, 2011 without exhibits. Deutsche Bank refused to file the title insurance claim and proceeded to commit the war crimes of “willfully depriving a protected person of the rights of fair and regular trial (Art. 147, Fourth Geneva Convention),” “unlawful confinement (Id.),” and “pillaging” (Art. 33, Fourth Geneva Convention),” through extrajudicial proceedings in the Third Circuit Court of the State of Hawai‘i.
5. At all times throughout the extrajudicial proceedings, Mr. Gumapac maintained that the Court was not properly constituted and provided actual notice with

evidence that the Hawaiian Kingdom continues to exist as an independent and sovereign State that has been under an illegal and prolonged occupation by the United States of America since the Spanish-American War in 1898. Under international law, the American occupation of the Hawaiian Kingdom is an international armed conflict “even if the...occupation [met] with no armed resistance (Art. 2, Fourth Geneva Convention).” At no time can the alleged war criminals claim they were unaware of the facts that established an armed conflict between the Hawaiian Kingdom and the United States of America. According to the *Elements of Crimes adopted at the 2010 Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May – 11 June 2010*, “there 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. ...There is only [however] a requirement for the awareness of the factual circumstances that established the existence of an armed conflict.”

6. Here follows the list of alleged war criminals who have been under a war crimes investigation by the Swiss Attorney General’s Office since August of 2014, which is now before the Swiss Federal Criminal Court in Bellinzona, Switzerland:
 - a. Josef Ackermann, as former CEO of Deutsche Bank;
 - b. Jürgen Fitschen, Anshu Jain, Stefan Krause, Stephan Leithner, Stuart Lewis, Rainer Neske and Henry Richotte, as members of Deutsche Bank’s Management Board;
 - c. Greg Nakamura, as Judge of the Third Circuit Court in *Deutsche Bank National Trust Company v. Gumapac*, civil no. 11-1-0590;
 - d. Charles Prather, Sofia Hiroson, Michael Wong, as the attorneys for Deutsche Bank in *Deutsche Bank National Trust Company v. Gumapac*, civil no. 11-1-0590;
 - e. Glenn Swanson, Sandra Hegerfeldt, Jessica Hall, Dana Kenny, as realtors for the firm Savio Realty;
 - f. Shawn Tsuha, Patrick Kawai, as officials of the State of Hawai‘i Department of Public Safety Sheriff’s Department in *Deutsche Bank National Trust Company v. Gumapac*, civil no. 11-1-0590;

- g. Samuel Jelsma, Reed Mahuna, Brian Hunt, as officials of the County of Hawai'i Police Department in *State of Hawai'i v. Gumapac*, criminal no. 3DCW-13-0002865;
 - h. Glenn Hara, as Judge of the Third Circuit in *State of Hawai'i v. Gumapac*, criminal no. 3DCW-13-0002865; and
 - i. Mitch Roth, as Prosecuting Attorney for the County of Hawai'i in *State of Hawai'i v. Gumapac*, criminal no. 3DCW-13-0002865.
- 7. A previous complaint alleging war crimes against the aforementioned perpetrators was the subject of a decision by the Swiss Federal Criminal Court Objections Chamber dated April 28, 2015 in *Gumapac, et al. v. Office of the Federal Attorney General*, case no. BB 2015.36+37. Declarant has redacted the name of the other complainant for security reasons. After a recital of the allegations, the Court concluded it could not accept the Objection because of a procedural technicality. Attached hereto as Exhibit "4" is a true and correct copy of the Decision of the Objections Chamber dated April 28, 2015 in German with an English translation.
- 8. Declarant is informed and believes, and upon such information and belief, that a former Prosecutor of the Attorney General's War Crime Unit (Center of Competence for International Crimes) admitted to another lawyer in Zurich, Switzerland, that after receiving the war crime complaints, the War Crime Unit could not refute the evidence of war crimes being committed in Hawai'i, and stated, anecdotally, it was as if a bomb went off in the office. The former Prosecutor also admitted that the Swiss Attorney General's Office deliberately used a procedural technicality to prevent the Federal Criminal Court from reviewing the investigation. Declarant was notified of this information after the Federal Criminal Court issued their decision on April 28, 2015.
- 9. With this knowledge, the Declarant filed, on behalf of Mr. Gumapac, a renewed War Crime Complaint with the Swiss Attorney General dated August 18, 2015 under Articles 118 and 119 of the Swiss Criminal Procedure Code. Attached hereto as Exhibit "5" is a true and correct copy of the renewed Complaint to the Swiss Attorney General. Included in the renewed Complaint, was a report by the

Declarant titled “War Crime Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands” dated December 7, 2014. Attached hereto as Exhibit “6” is a true and correct copy of the War Crime Report without attachments.

10. On January 28, 2016, the Prosecutor of the Swiss Attorney General’s Office issued an investigative report denying that war crimes have been committed against Mr. Gumapac claiming the United States of America annexed Hawai‘i in 1898, and therefore Hawai‘i is not occupied. Attached hereto as Exhibit “7” is a true and correct copy of the Prosecutor’s Report dated January 28, 2016 in German with an English translation. In his report, the Prosecutor took the position that Hawai‘i was annexed by a Congressional joint resolution on July 7, 1898, being a United States law. The Prosecutor is in plain error because a joint resolution is a “national law” of the United States and not a source of “international law.” According to the United States Supreme Court, *U.S. v. Curtiss-Wright Export*, 299 U.S. 304, 318 (1936), “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.” Additionally, the Permanent Court of International Justice, in *Lotus*, PCIJ ser. A no. 10 (1927) 18, stated, “Now 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.”
11. Under Article 393 of the Swiss Criminal Procedure Code “An objection is admissible against...the rulings...of the public prosecutor...responsible for prosecuting contraventions,” and under Article 396 of the same, “An objection against decisions issued in writing...must be filed within 10 days in writing and with a statement of grounds with the objections authority.” Declarant received the Prosecutor’s Report dated January 28, 2016 on February 13, 2016, which made the ten-day period expire on February 23, 2016.
12. On February 20, 2016, the Federal Criminal Court Objections Chamber received

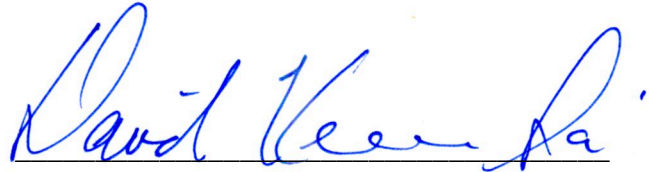
Mr. Gumapac's Objection dated February 17, 2016, through the Swiss Postal Service in Geneva. On February 22, 2016, the Court issued an Order to the Prosecutor to immediately provide all evidence of his investigation to the Court. Attached hereto as Exhibit "8" is a true and correct copy of the Objection to the Prosecutor's Report of January 28, 2016 in German with an English translation. Also attached herein as Exhibit "9" is a true and correct copy of the Order by the Objections Chamber to the Prosecutor of February 22, 2016 in German with an English translation.

13. The Declarant received a letter from the Federal Criminal Court dated March 2, 2016 that the case has been accepted for review and for Declarant to deposit CHF (Swiss Francs) 2,000.00 into the Court's account as payment of security by March 14, 2016. Article 383 of the Swiss Criminal Procedure Code provides, "The director of appellate proceedings may require the private claimant to lodge security within a time limit to cover any costs and damages." The Court also stated that the undersigned would need to provide another copy of the written Objection dated February 17, 2016 with an original signature. Compliance with time limits is covered under Article 91 of the Swiss Criminal Procedure Code, which states, "Submissions must be delivered on the day of expiry of the time limit at the latest to the criminal justice authority or handed for delivery to SwissPost, a Swiss diplomatic or consular representation." Attached hereto as Exhibit "10" is a true and correct copy of the Objections Chamber's Letter dated March 2, 2016 in German with an English translation.
14. On March 9, 2016, the undersigned delivered a copy of a receipt confirming the deposit of CHS (Swiss Francs) 2,000.00 for security, and a copy of the Objection dated February 17, 2016 with the original signature to the Swiss Consulate in San Francisco, United States. Attached hereto as Exhibit "11" is a true and correct copy of the Letter to the Objections Chamber dated March 9, 2016 in German with an English translation, without a copy of the Objection dated February 17, 2016 with an original signature since the Objection is already provided in Exhibit "8." Attached hereto as Exhibit "12" is a true and correct copy of the Acknowledgment by the Swiss Consulate in San Francisco dated March 9, 2016,

which is evidenced by stamp on the top left corner of the document.

15. The purpose of these proceedings is to have the Federal Criminal Court uphold Mr. Gumapac's Objection that a United States law cannot annex a foreign State. According to Article 397(3) of the Swiss Criminal Procedure Code, if the Court "upholds an objection to a ruling abandoning proceedings, it may issue instructions to the public prosecutor...on the continuation of the proceedings."

Dated: Mountain View, Hawai'i, May 23, 2016.



DAVID KEANU SAI, PH.D.