Administrative Council of the Permanent Court of Arbitration

at the Hague, the Netherlands

HAWAIIAN KINGDOM—LANCE PAUL LARSEN

INTERNATIONAL COMMISSION OF INQUIRY
PROCEEDINGS STEMMING FROM THE
LARSEN V. HAWAIIAN KINGDOM CASE

COMPLAINT BY THE HAWAIIAN KINGDOM

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COMPLAINT BY THE HAWAIIAN KINGDOM

1. I have the honor to refer to the Special Agreement of 19 January 2017, as amended, instituting proceedings on behalf of the Hawaiian Kingdom and Lance Paul Larsen, a Hawaiian national, to form an International Commission of Inquiry, in accordance with Part III, 1907 Hague Convention for the Pacific Settlement for International Disputes, a Complaint against the His Excellency Hugo H. Siblesz, Secretary-General of the Permanent Court of Arbitration, for conduct beyond the conditions provided by the Hague Convention, and for taking the position of protecting the United States of America thereby violating the impartiality of his office. The Administrative Council should take corrective action and direct the Secretary General to comply with Article 15 of the 1907 Hague Convention for these fact-finding proceedings.

2. In the course of the United States of America's unlawful and prolonged belligerent occupation of the Hawaiian Kingdom, the United States has committed and continues to commit violations of customary international law, the 1907 Hague Convention, IV, and the 1949 Geneva Convention, IV. The United States has ratified both conventions. *See 1907 Hague Convention, IV, 36 U.S. Stat. 2277 (1904-1911); 1949 Geneva Convention, IV, 6.3 U.S.T. 3516 (1955). Pacta sunt servanda*—"[e]very treaty in force is binding upon the parties to and must be performed by them in good faith." *See 1969 Vienna Convention on the law of treaties, Article 26*. A Complaint is made in this case to protect and preserve the respective rights of the Hawaiian Kingdom and Lance Paul Larsen.

3. The Hawaiian Kingdom's attached Brief in Support of its Complaint describes the *Larsen v. Hawaiian Kingdom* arbitration and these fact-finding proceedings within the context of an unjust state of war that has and continues to be waged against the Hawaiian Kingdom and its citizenry since 16 January 1893 when United States troops invaded Hawaiian territory and unlawfully seized the Hawaiian government. After a thorough presidential investigation that was completed on 18 October 1893, President Grover Cleveland notified the Congress the following month that by an "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." *See Larsen v. Hawaiian Kingdom, 119 International Law Reports, 2001, Annexure 1, President Cleveland's message to the Senate and House of Representatives dated 18 December 1893, p. 608*. Over a century later, in 1999, Seth Waxman, Solicitor General for the United States stated, "[b]etween 1826 and 1893, the United States recognized the Kingdom as a sovereign nation and signed several treaties with it. …The United States has concluded that it…bears a responsibility for the destruction of their government and the unconsented and uncompensated taking of their lands." *See Brief for the United States as Amicus Curiae Supporting Respondent, Rice v. Cayetano, no. 98-818, U.S. Supreme Court*.

4. Also described in the Brief, Austria [formerly the Austro-Hungarian Empire], Belgium, Brazil, China, France, Germany, Guatemala, Hungary [formerly the Austro-Hungarian Empire], Italy, Japan, Luxembourg [formerly under the territorial sovereignty of the Netherlands], Mexico, Netherlands, Norway [formerly the Swedish-Norwegian Union], Peru, Portugal, Russia, Spain, Sweden [formerly the Swedish-Norwegian Union], Switzerland, and

the United Kingdom violated their duty of neutrality when an unjust state of war existed between the Hawaiian Kingdom and the United States by recognizing the American installed puppet regime calling itself the so-called Republic of Hawai'i in 1894. President Cleveland determined their predecessor, the so-called Provisional Government, to be insurgents, and notified Congress they were "neither a government *de facto* nor *de jure*." *See Larsen v. Hawaiian Kingdom, 119 International Law Reports, 2001, Annexure 1, President Cleveland's message to the Senate and House of Representatives dated 18 December 1893, p. 605*. As such, these States could not transform the provisional government's successor, the so-called Republic of Hawai'i, into a *de facto* government through recognition without violating the rules of *jus in bello* and the duty of these States to neutrality.

5. There is no treaty of peace and the United States has illegally occupied and purported to have annexed the Hawaiian Islands in similar fashion to the Italian invasion of Ethiopia in 1935 and its purported annexation, the German invasion of Luxembourg in 1940 and its purported annexation, and the Iraqi invasion of Kuwait in 1990 and its purported annexation. The United States has used its effective control to unlawfully impose its domestic laws over Hawaiian territory, carried out a policy of denationalization, and established 118 military installations currently under the command of the United States Pacific Command, being one of six geographic Unified Combatant Commands of the United States Armed Forces. The unlawful presence of these military installations has caused the Democratic People's Republic of Korea (North Korea) to target the Hawaiian Islands for nuclear attack.

I. Prima Facie Competence of the Administrative Council

6. The Administrative Council has competence over the Complaint pursuant to Article 49 of the 1907 Hague Convention whereby the "Administrative Council, composed of the Diplomatic Representatives of the Contracting Powers accredited to The Hague and of the Netherlands Minister for Foreign Affairs, who will act as President, is charged with the direction and control of the International Bureau;" and Article VIII of the 1900 Rules of Procedure of the Administrative Council of the Permanent Court of Arbitration, whereby the International Bureau is "subject to the control and direction of the Council."

III. Statement of Facts

7. The first allegations of war crimes committed by the United States, being unfair trial, unlawful confinement and pillaging, were the subject of an arbitral dispute in *Larsen v. Hawaiian Kingdom* held under the auspices of the Permanent Court of Arbitration from 1999 to 2001, PCA Case no. 1999-01. Mr. Larsen alleged that the Council of Regency of the Provisional Government of the Hawaiian Kingdom was negligent for allowing the unlawful imposition of American laws within Hawaiian territory over his person in violation of treaties and customary international law.

8. In February 2000, the undersigned, as Agent for the Hawaiian Kingdom, had a conversation by telephone with Secretary General Tjaco T. van den Hout who stated that the International Bureau could find no evidence that the Hawaiian Kingdom does not exist as a State and acknowledged that the 1862 Hawaiian-Dutch treaty was not cancelled. He further stated to

the undersigned that the Hawaiian Kingdom, with the consent of Mr. Larsen's Counsel, should provide an invitation to the United States to join in the arbitral proceedings.

9. The parties traveled to Washington, D.C., and on 3 March 2000, a conference call meeting was held with Mr. John Crook from the United States Department of State, after which the undersigned addressed a letter to the Secretary General stating what took place in the meeting and that the invitation was offered as requested. The International Bureau is in possession of this letter. By mid-March, the undersigned received a telephone call from Deputy Secretary General Phyllis Hamilton stating that the International Bureau received word from the American Embassy that the United States did not accept the invitation to join in the arbitration but asked permission from the Hawaiian Kingdom to have access to all records and pleadings of the case, which the undersigned, as Agent for the Hawaiian Kingdom, concurred. Counsel for Mr. Larsen, after speaking to the Deputy Secretary General, also concurred. The Arbitral Tribunal was constituted the following month in April and Memorials and Counter-Memorials were submitted.

10. On 17 July 2000, the Tribunal issued Procedural Order no. 3 that addressed whether the tribunal possessed jurisdiction of the subject matter as a result of the absence of the United States under the indispensible third party rule. Hearings were scheduled for 7, 8, and 11 December 2000 at the Permanent Court of Arbitration on this matter. The Tribunal concluded that it did not have subject-matter jurisdiction because of the absence of the United States in the arbitral proceedings (119 *International Law Reports* (2001) 566-615). The Tribunal, however, acknowledged that the parties could resort to fact-finding proceedings.

11. In the Arbitral Award (p. 597), the Tribunal stated, "[a]t one stage of the proceedings the question was raised whether some of the issues which the parties wished to present might not be dealt with by way of a fact-finding process. In addition to its role as a facilitator of international arbitration and conciliation, the Permanent Court of Arbitration has various procedures for fact-finding, both as between States and otherwise." The Tribunal pointed out that "Part III of each of the Hague Conventions of 1899 and 1907 provide for International Commissions of Inquiry [and the] PCA has also adopted Optional Rules for Fact-finding Commissions of Inquiry (*Ibid*)."

12. On 23 March 2000, the parties did pursue the course of fact-finding by reconstituting the Tribunal into a Fact-finding Commission of Inquiry pursuant to the Optional Rules for Fact-finding Commissions of Inquiry that was filed with the International Bureau. The Hawaiian Kingdom later withdrew from this course after entering into an agreement with Mr. Larsen on 21 September 2001, whereby "in exchange for the Hawaiian Kingdom's effort to address the illegal and prolonged occupation of the Hawaiian Kingdom at the United Nations, the parties agree that they shall take the action necessary to discontinue the present proceedings brought by Lance Paul Larsen against the Hawaiian Kingdom in the Permanent Court of Arbitration. The above agreement is made without prejudice to the Hawaiian Kingdom's position that it bears no responsibility for the injuries incurred by Lance Paul Larsen from the occupational government of the United States of America." This agreement is also in the possession of the International Bureau.

13. For the past 17 years, the Provisional Government of the Hawaiian Kingdom has primarily

devoted its focus on addressing the effects of denationalization—Americanization, and raising the awareness of the continuity of the Hawaiian Kingdom as a State through academic research initiated at the University of Hawai'i at Manoa. This decision to directly address the United States policy of denationalization that was initiated in the early 20th century was prompted after meeting with His Excellency, the late Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium, in Brussels, on 12 December 2000. Ambassador Bihozagara attended a hearing at the International Court of Justice on 8 December 2000, *Democratic Republic of Congo v. Belgium*, where he was made aware of the Hawaiian arbitration.

14. In this meeting Ambassador Bihozagara conveyed to the undersigned, in the presence of two of Deputy Agents for the Hawaiian Kingdom in the arbitral proceedings, Mr. Peter Umialiloa Sai, Minister of Foreign Affairs, and Ms. Kau'i P. Dudoit, Minister of Finance, that Rwanda was prepared to bring to the attention of the United Nations General Assembly the illegal and prolonged occupation of the Hawaiian Kingdom by the United States of America since 1893. After careful consideration in council with the aforementioned Deputy Agents, the undersigned conveyed to His Excellency that the Hawaiian Kingdom could not, in good conscience, accept the offer when the Hawaiian people, at the time, remained ignorant of the continued existence of their country as a result of denationalization on a grand scale. *See enclosed brief "The Larsen v. Hawaiian Kingdom Case at the Permanent Court of Arbitration and Why There Is An Ongoing Illegal State of War with the United States of America since 16 January 1893," para. 4.6, 8.16-8.20.*

15. After 17 years of continuous education and exposure led by the Hawaiian Kingdom, however, the Provisional Government can now state with confidence that a considerable segment of the Hawaiian people are now aware of the prolonged occupation and the continuity of their country—the Hawaiian Kingdom—under customary international law. *See e.g. blog article "American National Teachers Union Recognizes the Illegal Occupation of the Hawaiian Kingdom," available at: http://hawaiiankingdom.org/blog/american-national-teachers-union-recognizes-the-illegal-occupation-of-the-hawaiian-kingdom/*.

16. After the Tribunal's 2015 Award on Jurisdiction and Admissibility in the *South China Sea* arbitration (Philippines v. China) where it cited the *Larsen v. Hawaiian Kingdom* as a precedent case on the indispensible third party rule, together with *Monetary Gold Removed from Rome in 1943* case (Italy v. France, United Kingdom, and the United States) and *East Timor case* (Portugal v. Australia), began to reconsider fact-finding proceedings under the auspices of the Permanent Court of Arbitration and eventually approached Mr. Larsen. *See Award on Jurisdiction and Admissibility (29 October 2015), South China Sea case (Philippines v. China), para. 181.*

17. On 22 August 2016, the parties entered into a Special Agreement to form an International Commission of Inquiry and the Secretary General was notified in accordance with Article 2(4) of the PCA Optional Rules for Fact-finding Commissions of Inquiry by joint letter of the parties. Pursuant to Article VII of the Special Agreement of the Hawaiian Kingdom deposited $10,000.00 (USD) into the bank account of the Permanent Court of Arbitration. On 7 September 2016 the Secretary General wrote a letter addressed to the undersigned stating, in part, "[i]n view of recent pronouncements by PCA Members States regarding the status of

entities that are not Member States of the United Nations, I do not consider that the International Bureau of the PCA is in a position to assist with your request."

18. The undersigned was puzzled by the Secretary General's response because why would membership to the United Nations be a prerequisite to these proceedings that stem from arbitral proceedings already held under the auspices of the Permanent Court of Arbitration? The undersigned responded to the Secretary General by letter dated 13 September 2016.

19. After the undersigned received no answer from the Secretary General, Professor Federico Lenzerini, who was at the time serving as Counsel and Advocate for the Hawaiian Kingdom, was requested to reach out to the Secretary General in order to seek clarification. After an email to the Secretary General of 27 December 2016 by Professor Lenzerini, and a few telephone calls he had with the Secretary General's secretary with the purpose of scheduling a meeting, the Secretary General refused to meet and instead sent Professor Lenzerini a letter on 11 January 2017. He stated, in part, "I attach a copy of my letter dated 7 September 2016, confirming that the International Bureau of the PCA is not in a position to assist with your client's request to commence a fact-finding proceeding." He did not clarify what was meant regarding membership of the United Nations, but just reiterated what was stated to the undersigned in his original letter of 7 September 2016.

20. The Hawaiian Kingdom, as a State, is a Non-Contracting Power in accordance with Article 47 of the 1907 Hague Convention and Article 26 of the 1899 Hague Convention, which was acknowledged by the International Bureau in its 2011 Annual Report on page 51. In view of the Secretary General's refusal to consider the legitimate request of inquiries made by a Non-Contracting Power, the parties dispensed with forming an International Commission of Inquiry under the Optional Rules and adopted Part III of the 1907 Hague Convention, as proposed by the Arbitral Tribunal, in a new Special Agreement of 19 January 2017, where the duly constituted Commission "shall sit at a place of its choosing." The Hawaiian Kingdom was officially qualified as a "State" by the Permanent Court of Arbitration in the *Larsen* case, which, as a principle of international law, triggers the rule of estoppel. Therefore, the Permanent Court of Arbitration is estopped from denying its own previous determination when the Hawaiian Kingdom has relied in good faith upon that determination.

21. Unlike the Optional Rules, Part III of the 1907 Hague Convention does not involve the participation of the Secretary General but rather the International Bureau. In particular, Article 15 provides, the "International Bureau of the Permanent Court of Arbitration acts as a registry for the Commissions which sit at The Hague, and shall place its offices and staff at the disposal of the Contracting Powers [and Non-Contracting Powers pursuant to Article 47] for the use of the Commission of Inquiry." The undersigned respectfully emphasizes the word "shall" and not "may." This wording in the Convention clearly stipulates that it is not discretionary, but a duty, of the International Bureau, to place its offices and staff at the disposal of commissions of inquiry established in accordance with the rules of the 1907 Hague Convention, I, including commissions established by Non-Contracting Powers.

22. Professor Francesco Francioni, who at the time was serving as the appointing authority under the new Special Agreement, sent the Secretary General a letter on 6 June 2017 "inquiring whether the Permanent Court of Arbitration can be the venue for the work of the proposed

Commission, and whether the International Bureau of the Permanent Court of Arbitration could serve as registry for the Commission and provide for its sitting, pursuant to Article 15 of the Convention." He responded to Professor Francioni by letter on 14 June 2017, stating, in part, "I have the honor to refer you to previous correspondence with Dr. Federico Lenzerini." The Secretary General's letter clearly appears deliberately evasive.

23. As a result of the unusual nature of the Secretary General's conduct and unfriendly manner exhibited by his office, the parties amended the Special Agreement to have the sitting of the proposed Commission of Inquiry in Honolulu pursuant to Article 16 of the 1907 Hague Convention, which provides that the Commission "appoints a Secretary-General, whose office serves as registry, [and have] charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague." On 14 October 2017, the Commission of Inquiry was duly constituted under Part III of the Hague Convention with the appointments of Professor William Schabas, Professor Pierre d'Argent and Professor d'Aspremont. At the request of Professor d'Argent, the parties amended the sitting of the Commission of Inquiry to revert back to have the sitting at The Hague.

24. On 24 October 2017, the undersigned received an email from Professor William Schabas, on behalf of all three commissioners, stating that "[a]fter confirming that the Permanent Court of Arbitration has no involvement in the fact-finding commission, [they] have concluded that it will lack the necessary legal and administrative foundation. Accordingly, the three of us have decided to resign and withdraw from the project." The next day I responded to all three commissioners: "I kindly ask that having been duly constituted under the 1907 Hague Convention, I, to refrain at this time from withdrawing until this matter has been addressed by the Administrative Council." The undersigned did receive word by email that they would not heed the request to remain. Up to this point, the Hawaiian Kingdom viewed the conduct of the Secretary General as obstruction, but the Secretary General has now unduly interfered with a duly constituted commission of inquiry formed under Part III of the 1907 Hague Convention. The former commissioners conveyed to the undersigned that once the Permanent Court of Arbitration acknowledges these proceedings they would accept reappointments.

25. In order for the undersigned to prepare a response to the detrimental actions taken by the Secretary General in these proceedings, information was sought on the Secretary General's statement that "recent pronouncements by PCA Members States regarding the status of entities that are not Member States of the United Nations, I do not consider that the International Bureau of the PCA is in a position to assist with your request." The International Middle East Media Center published an online article on 15 March 2016 titled *Palestine Becomes A Full Member Of 'The Court of Arbitration.'* Three PCA Members States—the United States, Canada and Israel—objected to Palestine becoming a PCA Member State. It was reported that the "United States, Canada and Israel strongly opposed the move, and presented a number of proposals that were meant to obstruct the vote under various 'justifications,' including the claim that membership with this court requires a full membership with the United Nations. The majority of world countries rejected those claims, and affirmed the Palestinian right to become a member with the court." It appears the Secretary General's statement of "recent pronouncements by PCA Member States" was referring to a position statement taken by the United States, Canada and Israel. It would

appear to the Hawaiian Kingdom that the Secretary General was representing the interest of the United States and not operating within the confines of the 1907 Hague Convention. Of significance, is that this position statement was voted down by the Administrative Council in its meeting of 14 March 2016.

26. In light of the foregoing, the undersigned wrote a letter to the Secretary General dated 26 October 2017 to reconsider his untenable position and to meet with the undersigned in order to coordinate with the International Bureau's staff its role in these international commission of inquiry proceedings. If the Secretary General would again disregard the request of the Hawaiian Kingdom in its attempt to repair these proceedings, it would leave the Hawaiian Kingdom no recourse but to file a complaint with the Administrative Council.

27. The undersigned, along with his attaché, arrived in The Hague on 6 November 2017, and after two failed attempts to reach out to the Secretary General to meet an email was sent to Ms. Jennifer Eringarrd, assistant to the Secretary General, on 7 November 2017 stating that a formal complaint will be filed with the Administrative Council.

V. The Measures Requested

28. On the basis of the facts set forth in this Complaint and the supporting Brief, and in order to bring the International Bureau in compliance with the 1907 Hague Convention, the Hawaiian Kingdom respectfully requests the Administrative Council to take corrective action forthwith and direct the Secretary General to comply with Article 15 of the 1907 Hague Convention in order for these fact-finding proceedings to be repaired.

Respectfully submitted,

David Keanu Sai, Ph.D.
Hawaiian Ambassador-at-Large
Agent for the Hawaiian Kingdom

8 November 2017.

BRIEF IN SUPPORT OF THE COMPLAINT BY THE HAWAIIAN KINGDOM

1. THE BRIEF

1.1. The first allegations of war crimes committed in Hawai'i, being unfair trial, unlawful confinement and pillaging,[1] were made the subject of an arbitral dispute in *Lance Larsen vs. Hawaiian Kingdom* at the Permanent Court of Arbitration (hereafter "PCA").[2] Oral hearings were held at the PCA on 7, 8 and 11 December 2000. As an intergovernmental organization, the PCA must possess institutional jurisdiction before it can form *ad hoc* tribunals. The jurisdiction of the PCA is distinguished from the subject-matter jurisdiction of the *ad hoc* tribunal over the dispute between the parties. Disputes capable of being accepted under the PCA's institutional jurisdiction include disputes between: any two or more states; a state and an international organization (i.e. an intergovernmental organization); two or more international organizations; a state and a private party; and an international organization and a private entity.[3] The PCA accepted the case as a dispute between a state and a private party, and acknowledged the Hawaiian Kingdom as a non-Contracting Power under Article 47 of the 1907 Hague Convention, I (hereafter "1907 HC I").[4] As stated on the PCA's website:

> Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity,

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[1] Memorial of Lance Paul Larsen (May 22, 2000), *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, at para. 62-64, "Despite Mr. Larsen's efforts to assert his nationality and to protest the prolonged occupation of his nation, [on] 4 October 1999, Mr. Larsen was illegally imprisoned for his refusal to abide by the laws of the State of Hawaii by State of Hawaii. At this point, Mr. Larsen became a political prisoner, imprisoned for standing up for his rights as a Hawaiian subject against the United States of America, the occupying power in the prolonged occupation of the Hawaiian islands.… While in prison, Mr. Larsen did continue to assert his nationality as a Hawaiian subject, and to protest the unlawful imposition of American laws over his person by filing a Writ of Habeus [sic] Corpus with the Circuit Court of the Third Circuit, Hilo Division, State of Hawaii.… Upon release from incarceration, Mr. Larsen was forced to pay additional fines to the State of Hawaii in order to avoid further imprisonment for asserting his rights as a Hawaiian subject," available at http://www.alohaquest.com/arbitration/memorial_larsen.htm (last visited 15 October 2017).
Article 33, 1949 Geneva Convention, IV, "Pillage is prohibited. Reprisals against protected persons and their property are prohibited;" Article 147, 1949 Geneva Convention, IV, "Grave breaches […] shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: …unlawful confinement of a protected person,… wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention;" see also International Criminal Court, *Elements of War Crimes* (2011), at 16 (Article 8 (2) (a) (vi)—War crime of denying a fair trial), 17 (Article 8 (2) (a) (vii)-2—War Crime of unlawful confinement), and 26 (Article 8 (2) (b) (xvi)—War Crime of pillaging).
[2] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, available at https://pca-cpa.org/en/cases/35/ (last visited 15 October 2017).
[3] United Nations, *United Nations Conference on Trade and Development: Dispute Settlement* (United Nations New York and Geneva, 2003), at 15.
[4] PCA Annual Report, Annex 2 (2011), at 51, n. 2.

> for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.[5]

1.2. The Government of the Hawaiian Kingdom, as it stood on 17 January 1893, was restored in 1995, *in situ* and not *in exile*.[6] Governments formed as the legal successor of the last recognized government *in situ,* in an acting capacity, do not require diplomatic recognition, but rather operate as the successor to the diplomatic recognition already afforded the last recognized government before the invasion. Therefore, an *acting* Council of Regency comprised of four Ministers—Interior, Foreign Affairs, Finance and the Attorney General—was established in accordance with the Hawaiian constitution and the doctrine of necessity to serve in the absence of the executive monarch.[7] By virtue of this process a provisional government, (hereafter "Hawaiian government"), comprised of officers *de facto,* was established.[8] According to U.S. constitutional scholar Thomas Cooley,

> A provisional government is supposed to be a government de facto for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity.[9]

1.3. Like other governments formed in exile during foreign occupations, the Hawaiian government did not receive its mandate from the Hawaiian citizenry, but rather by virtue of Hawaiian constitutional law, and therefore represents the Hawaiian state.[10] As in 2001, Bederman and Hilbert reported in 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

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[5] *Larsen v. Hawaiian Kingdom*, Cases, Permanent Court of Arbitration, available at https://pca-cpa.org/en/cases/35/ (last visited 15 October 2017).

[6] David Keanu Sai, *Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*, 25-51 (4 August 2013), *available at* http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf (last visited 15 October 2017).

[7] See *e.g., Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969); *Mitchell v. Director of Public Prosecutions*, L.R.C. (Const.) 35, 88–89 (1986).

[8] *Id.*, at 40-48. On April 3, 2014, the Directorate of International Law, Swiss Federal Department of Foreign Affairs, in Bern, accepted the *acting* Government's letter of credence for its Envoy whose mission was to initiate negotiations with the Swiss Confederation to serve as a Protecting Power in accordance with the 1949 Geneva Convention, IV. The negotiations are ongoing.

[9] Thomas M. Cooley, "Grave Obstacles to Hawaiian Annexation," *The Forum* (1893), 389, at 390.

[10] The policy of the Hawaiian government is threefold: first, exposure of the prolonged occupation; second, ensure that the United States complies with international humanitarian law; and, third, prepare for an effective transition to a de jure government when the occupation ends. The Strategic Plan of the Hawaiian government is available at http://hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf (last visited 15 October 2017).

> 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] 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.[11]

1.4. The Tribunal concluded that it did not possess subject matter jurisdiction in the case because of the indispensible third party rule. The Tribunal explained:

> It follows that the Tribunal cannot determine whether the respondent [the Hawaiian Kingdom] has failed to discharge its obligations towards the claimant [Larsen] without ruling on the legality of the acts of the United States of America. Yet that is precisely what the *Monetary Gold* principle precludes the Tribunal from doing. As the International Court of Justice explained in the *East Timor* case, "the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case."[12]

1.5. The Tribunal, however, acknowledged that the parties to the arbitration could pursue fact-finding. The Tribunal stated, "[a]t one stage of the proceedings the question was raised whether some of the issues which the parties wished to present might not be dealt with by way of a fact-finding process. In addition to its role as a facilitator of international arbitration and conciliation, the Permanent Court of Arbitration has various procedures for fact-finding, both as between States and otherwise."[13] The Tribunal noted "that the interstate fact-finding commissions so far held under the auspices of the Permanent Court of Arbitration have not confined themselves to pure questions of fact but have gone on, expressly or by clear implication, to deal with issues of responsibility for those facts."[14] The Tribunal pointed out that "Part III of each of the Hague Conventions of 1899 and 1907 provide for International Commissions of Inquiry. The PCA has also adopted Optional Rules for Fact-finding Commissions of Inquiry."[15]

1.6. To date, there have only been five international commissions of inquiry held under the auspices of the PCA—the first in 1905, *The Dogger Bank Case* (Great Britain – Russia), and the last in 1962, *"Red Crusader" Incident* (Great Britain – Denmark). These commissions of inquiry have been employed in cases "in which 'honor' and 'essential interests' were unquestionably involved, for the determination of legal as

[11] David Bederman & Kurt Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensible third parties—legal status of Hawaii," 95 *American Journal of International Law* (2001) 927, at 928.
[12] Larsen v. Hawaiian Kingdom, 119 *International Law Reports* (2001) 566, at 596 (hereafter "Larsen case").
[13] *Id*., at 597.
[14] *Id*.
[15] *Id*., at n. 28.

well as factual issues, and by tribunals whose composition and proceedings more closely resembled courts than commission of inquiry as originally conceived [under the 1907 HC I]."[16]

1.7. On 19 January 2017, the Hawaiian government and Lance Larsen entered into a Special Agreement to form an international commission of inquiry. As proposed by the Tribunal, both Parties agreed to the rules provided under Part III—*International Commissions of Inquiry* (Articles 9-36), 1907 HC I. After the Commission is formed they will select a Secretary General to serve as a registry and the location for its sitting.[17] According to Article III of the Special Agreement:

> The Commission is requested to determine: *First*, what is the function and role of the Government of the Hawaiian Kingdom in accordance with the basic norms and framework of international humanitarian law; *Second*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Lance Paul Larsen, and, by extension, toward all Hawaiian subjects domiciled in Hawaiian territory and abroad in accordance with the basic norms and framework of international humanitarian law; and, *Third*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Protected Persons who are domiciled in Hawaiian territory and those Protected Persons who are transient in accordance with the basic norms and framework of international humanitarian law.[18]

1.8. Since humanitarian law is a set of rules that seek to limit the effects of war on persons who are not participating in the armed conflict, such as civilians of an occupied state, the *Larsen* case and the fact-finding proceedings must stem from an actual state of war—a war not in theory but a war in fact. More importantly, the application of the principle of *intertemporal law* is critical to understanding the arbitral dispute between Larsen and the Hawaiian Kingdom. The dispute stemmed from the illegal state of war with the United States that began in 1893. Judge Huber famously stated that, "a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled."[19]

2. The Hawaiian Kingdom as a Subject of International Law

2.1. To quote the *dictum* of the *Larsen v. Hawaiian Kingdom* Tribunal, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of

[16] J.G. Merrills, *International Dispute Settlement* (4th ed., 2005), at 59.
[17] Amendment to Special Agreement (26 March 2017), available at http://hawaiiankingdom.org/pdf/Amend_Agmt_3_26_17.pdf (last visited 15 October 2017).
[18] Amendment to Special Agreement (15 October 2017), available at http://hawaiiankingdom.org/pdf/ICI_Agmt_1_19_17(amended).pdf (last visited 15 October 2017).
[19] *Island of Palmas* arbitration case (Netherlands and the United States of America), R.I.A.A., vol. II, 829 (1949).

treaties."[20] As an independent state, the Hawaiian Kingdom entered into extensive treaty relations with a variety of states establishing diplomatic relations and trade agreements.[21] According to Westlake in 1894, the *Family of Nations* comprised, "First, all European States.… Secondly, all American States.… Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State."[22]

2.2. To preserve its political independence should there be war, the Hawaiian Kingdom sought to ensure that its neutrality would be recognized beforehand. Provisions recognizing Hawaiian neutrality were incorporated in the treaties with Sweden-Norway, Spain and Germany. "A nation that wishes to secure her own peace," says Vattel, "cannot more successfully attain that object than by concluding treaties [of] neutrality."[23]

2.3. Under customary international law in force in the nineteenth century, the territory of a neutral State could not be violated. This principle was codified by Article 1 of the 1907 Hague Convention, V, stating that the "territory of neutral Powers is inviolable." According to Politis, "[t]he law of neutrality, fashioned as it had been by custom and a closely woven network of contractual agreements, was to a great extent codified by the beginning of the [20th] century."[24] As such, the Hawaiian Kingdom's territory could not be trespassed or dishonored, and its neutrality "constituted a guaranty of independence and peaceful existence."[25]

3. From a State of Peace to an Unjust State of War

3.1. "Traditional international law was based upon a rigid distinction between the state of peace and the state of war," says Judge Greenwood.[26] "Countries were either in a state of peace or a state of war; there was no intermediate state."[27] This is also reflected by the fact that the renowned jurist of international law, Lassa Oppenheim, separated his

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[20] Larsen case, *supra* note 12, at 581.
[21] The Hawaiian Kingdom entered into treaties with Austria-Hungary (now separate states), 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 (Willliam 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.
[22] John Westlake, *Chapters on the Principles of International Law* (1894), at 81. In 1893, there were 44 other independent and sovereign states in the *Family of Nations*: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chili, Colombia, Costa Rica, Denmark, Ecuador, France, Germany, Great Britain, Greece, Guatemala, Hawaiian Kingdom, Haiti, Honduras, Italy, Liberia, Liechtenstein, Luxembourg, Netherlands, Mexico, Monaco, Montenegro, Nicaragua, Orange Free State that was later annexed by Great Britain in 1900, Paraguay, Peru, Portugal, Romania, Russia, San Domingo, San Salvador, Serbia, Spain, Sweden-Norway, Switzerland, Turkey, United States of America, Uruguay, and Venezuela. In 1945, there were 45, and today there are 193.
[23] Emerich De Vattel, *The Law of Nations* (6th ed., 1844), at 333.
[24] Nicolas Politis, *Neutrality and Peace* (1935), at 27.
[25] *Id*., at 31.
[26] Christopher Greenwood, "Scope of Application of Humanitarian Law," in Dieter Fleck (ed.), *The Handbook of the International Law of Military Operations* (2nd ed., 2008), at 45.
[27] *Id*.

treatise on *International Law* into two volumes, Vol. I—*Peace,* and Vol. II—*War and Neutrality*. In the nineteenth century, war was recognized as lawful, but it had to be justified under *jus ad bellum*. War could only be waged to redress a State's injury. As Vattel stated, "[w]hatever strikes at [a sovereign state's] rights is an injury, and a just cause of war."[28]

3.2. The Hawaiian Kingdom enjoyed a state of peace with all states. This state of affairs, however, was violently interrupted by the United States when the state of peace was transformed to a state of war that began on 16 January 1893 when United States troops invaded the kingdom. The following day, Queen Lili'uokalani, as the executive monarch of a constitutional government, made the following protest and a conditional surrender of her authority to the United States in response to military action taken against the Hawaiian government. The Queen's 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.[29]

3.3. Under international law, the landing of United States troops without the consent of the Hawaiian government was an act of war. But in order for an act of war not to transform the state of affairs to a state of war, the act must be justified or lawful under international law, e.g. the necessity of landing troops to secure the protection of the lives and property of United States citizens in the Hawaiian Kingdom. According to Wright, "[a]n act of war is an invasion of territory … and so normally illegal. Such an act if not followed by war gives grounds for a claim which can be legally avoided only by proof of some special treaty or necessity justifying the act."[30] The quintessential question is whether or not the United States troops were landed to protect American lives or were they landed to wage war against the Hawaiian Kingdom.

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[28] Vattel, *supra* note 23, at 301.
[29] Larsen case, Annexure 2, *supra* note 12, at 612.
[30] Quincy Wright, "Changes in the Concept of War," 18 *American Journal of International Law* (1924) 755, at 756.

3.4. According to Brownlie, "[t]he right of war, as an aspect of sovereignty, which existed in the period before 1914, subject to the doctrine that war was a means of last resort in the enforcement of legal rights, was very rarely asserted either by statesmen or works of authority without some stereotyped plea to a right of self-preservation, and of self-defence, or to necessity or protection of vital interests, or merely alleged injury to rights or national honour and dignity."[31] The United States had no dispute with the Hawaiian Kingdom that would have warranted an invasion and overthrow of the Hawaiian government of a neutral and independent state.

3.5. In 1993, the United States Congress enacted a joint resolution offering an apology for the overthrow.[32] Of significance in the resolution was a particular preamble clause, which stated: "[w]hereas, in a message to Congress on December 18, 1893, President Grover Cleveland reportedly fully and accurately on the illegal acts of the conspirators, described such acts as an 'act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress,' and acknowledged that by such acts the government of a peaceful and friendly people was overthrown."[33] At first read, however, it would appear that the "conspirators" were the subjects that committed the "act of war," but this is misleading. First, under international law, only a state can commit an "act of war," whether through its military and/or its diplomat; and, second, conspirators within a country could only commit the high crime of treason, not "acts of war." These two concepts are reflected in the terms coup *de main* and *coup d'état*. The former is a successful invasion by a foreign state's military force,while the latter is a successful internal revolt, which was also referred to in the nineteenth century as a revolution.

3.6. In a petition to President Cleveland from the Hawaiian Patriotic League, its leadership, comprised of Hawaiian statesmen and lawyers, clearly articulated the difference between a "*coup de main"* and a "revolution." The petition read:

> Last January [1893], a political crime was committed, not only against the legitimate Sovereign of the Hawaiian Kingdom, but also against the whole of the Hawaiian nation, a nation who, for the past sixty years, had enjoyed free and happy constitutional self-government. This was done by a *coup de main* of U.S. Minister Stevens, in collusion with a cabal of conspirators, mainly faithless sons of missionaries and local politicians angered by continuous political defeat, who, as revenge for being a hopeless minority in the country, resolved to "rule or ruin" through foreign help. The facts of this "revolution," as it is improperly called, are now a matter of history.[34]

3.7. Whether by chance or design, the 1993 Congressional apology resolution did not

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[31] Ian Brownlie, *International Law and the Use of Force by States* (1963), at 41.
[32] Larsen case, Annexure 2, *supra* note 12, at 611-15.
[33] *Id.,* at 612.
[34] United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95, (Government Printing Office 1895), 1295, (hereafter "Executive Documents"), available at http://hawaiiankingdom.org/pdf/HPL_Petition_12_27_1893.pdf (last visited 15 October 2017).

accurately reflect what President Cleveland stated in his message to the Congress in 1893. When Cleveland stated the "military demonstration upon the soil of Honolulu was of itself an act of war," he was referring to United States armed forces and not to any of the conspirators.[35] Cleveland noted "that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies."[36] This *act of war* was the initial stage of a *coup de main*.

3.8. As part of the plan, the U.S. diplomat, John Stevens, would prematurely recognize the small group of insurgents on January 17th as if they were successful revolutionaries thereby giving it a veil of *de facto* status. In a private note to Sanford Dole, head of the insurgency, and written under the letterhead of the United States legation on 17 January 1893, Stevens wrote: "Judge Dole: I would advise not to make known of my recognition of the de facto Provisional Government until said Government is in possession of the police station."[37] A government created through intervention is a puppet regime of the intervening State, and, as such, has no lawful authority. "Puppet governments," according to Marek, "are organs of the occupant and, as such form part of his legal order. The agreements concluded by them with the occupant are not genuine international agreements [because] such agreements are merely decrees of the occupant disguised as agreements which the occupant in fact concludes with himself. Their measures and laws are those of the occupant."[38]

3.9. Customary international law recognizes a successful revolution when insurgents secure complete control of all governmental machinery and have the acquiescence of the population. U.S. Secretary of State Foster acknowledged this rule in a dispatch to Stevens on 28 January 1893: "[y]our course in recognizing an unopposed *de facto* government appears to have been discreet and in accordance with the facts. The rule of this government has uniformly been to recognize and enter into relation with any actual government in full possession of effective power with the assent of the people."[39] According to Lauterpacht, "[s]o long as the revolution has not been successful, and so long as the lawful government … remains within national territory and asserts its authority, it is presumed to represent the State as a whole."[40] With full knowledge of what constituted a successful revolution, Cleveland provided a blistering indictment in his message to the Congress:

> When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety …

[35] Larsen case, Annexure 1, *supra* note 12, at 604.
[36] *Id*.
[37] Letter from United States Minister, John L. Stevens, to Sanford B. Dole, 17 January 1893, W. O. Smith Collection, HEA Archives, HMCS, Honolulu, available at http://hmha.missionhouses.org/items/show/889 (last visited 15 October 2017).
[38] Krystyna Marek, *Identity and Continuity of States in Public International Law* (2nd ed., 1968), at 114.
[39] Executive Documents, *supra* note 34, at 1179.
[40] E. Lauterpacht, *Recognition in International Law* (1947), at 93.

> declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister's recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge.[41]

3.10. "Premature recognition is a tortious act against the lawful government," explains Lauterpacht, which "is a breach of international law."[42] And according to Stowell, a "foreign state which intervenes in support of [insurgents] commits an act of war against the state to which it belongs, and steps outside the law of nations in time of peace."[43] Furthermore, Stapleton concludes, "[o]f all the principles in the code of international law, the most important—the one which the independent existence of all weaker States must depend—is this: no State has a right FORCIBLY to interfere in the internal concerns of another State."[44]

3.11. Cleveland then explained to the Congress the egregious effects of war that led to the Queen's conditional surrender to the United States:

> Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal.… In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice.[45]

3.12. The President's finding that the United States embarked upon a war with the Hawaiian Kingdom in violation of the law unequivocally acknowledged a state of war in fact existed since 16 January 1893. According to Lauterpact, an illegal war is "a

[41] Larsen case, Annexure 1, *supra* note 12, at 605.
[42] E. Lauterpacht, *supra* note 40, at 95.
[43] Ellery C. Stowell, *Intervention in International Law* (1921) at 349, n. 75.
[44] Augustus Granville Stapleton, *Intervention and Non-Intervention* (1866), at 6. It appears that Stapleton uses all capitals in his use of the word 'forcibly' to draw attention to the reader.
[45] Larsen case, Annexure 1, *supra* note 12, at 606.

war of aggression undertaken by one belligerent side in violation of a basic international obligation prohibiting recourse to war as an instrument of national policy."[46] However, despite the President's admittance that the acts of war were not in compliance with *jus ad bellum*—justifying war—the United States was still obligated to comply with *jus in bello*—the rules of war—when it occupied Hawaiian territory. In the *Hostages Trial* (the case of *Wilhelm List and Others*), the Tribunal rejected the prosecutor's view that, since the German occupation arose out of an unlawful use of force, Germany could not invoke the rules of belligerent occupation. The Tribunal explained:

> The Prosecution advances the contention that since Germany's war against Yugoslavia and Greece were aggressive wars, the German occupant troops were there unlawfully and gained no rights whatever as an occupant.… [W]e accept the statement as true that the wars against Yugoslavia and Greece were in direct violation of the Kellogg-Briand Pact and were therefore criminal in character. But it does not follow that every act by the German occupation forces against person or property is a crime.… At the outset, we desire to point out that international law makes no distinction between a lawful and unlawful occupant in dealing with the respective duties of occupant and population in the occupied territory.[47]

3.13. As such, the United States remained obligated to comply with the laws of occupation despite it being an illegal war. As the Tribunal further stated, "whatever may be the cause of a war that has broken out, and whether or not the cause be a so-called just cause, the same rules of international law are valid as to what must not be done, [and what] may be done."[48] According to Wright, "[w]ar begins when any state of the world manifests its intention to make war by some overt act, which may take the form of an act of war."[49] In his review of customary international law in the nineteenth century, Brownlie found "that in so far a 'state of war' had any generally accepted meaning it was a situation regarded by one or both parties to a conflict as constituting a 'state of war'".[50] Cleveland's determination that by an "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," the action was not justified.[51]

3.14. What is of particular significance is that Cleveland referred to the Hawaiian people as "friendly and confiding," not "hostile." This is a classical case of where the United States President admits an unjust war not justified by *jus ad bellum*, but a state of war nevertheless for international law purposes. According to United States

[46] H. Lauterpacht, "The Limits of the Operation of the Law of War," 30 *British Yearbook of International Law* (1953) 206.
[47] *USA v. William List et al.* (Case No. 7), Trials of War Criminals before the Nuremburg Military Tribunals (hereafter 'Hostages Trial'), Vol. XI (1950), 1247.
[48] *Id.*
[49] Quincy Wright, "Changes in the Concept of War," 18 *American Journal of International Law* (1924) 755, at 758.
[50] Brownlie, *supra* note 31, at 38.
[51] Larsen case, Annexure 1, *supra* note 12, at 608.

constitutional law, the President is the sole representative of the United States in foreign relations. In the words of U.S. Justice Marshall, "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign nations."[52] Therefore, the President's political determination that by an act of war the government of a friendly and confiding people was unlawfully overthrown would not have only produced resonance with the members of the Congress, but to the international community as well, and the duty of third states to invoke neutrality.

3.15. Furthermore, in a state of war, the principle of effectiveness that you would otherwise have during a state of peace is reversed because of the existence of two legal orders in one and the same territory. Marek explains, "[i]n 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."[53] Therefore, "[b]elligerent occupation is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned."[54]

3.16. Cleveland told the Congress that he initiated negotiations with the Queen "to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned."[55] What Cleveland did not know at the time of his message to the Congress was that the Queen, on the very same day in Honolulu, accepted the conditions for settlement in an attempt to return the state of affairs to a state of peace. The executive mediation began on 13 November 1893 between the Queen and U.S. diplomat Albert Willis and an agreement was reached on 18 December.[56] The President was not aware of the agreement until after he delivered his message.[57] Despite being unaware, President Cleveland's political determination in his message to the Congress was nonetheless conclusive that the United States was in a state of war with the Hawaiian Kingdom and was directly responsible for the unlawful overthrow of its government. Oppenheim defines war as "a contention between States for the purpose of overpowering each other."[58]

3.17. Once a state of war ensued between the Hawaiian Kingdom and the United States,

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[52] 10 Annals of Cong. 613 (1800).
[53] Marek, *supra* note 38, at 102.
[54] *Id*.
[55] Larsen case, Annexure 1, *supra* note 12, at 610.
[56] David Keanu Sai, "A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and Its Use and Practice Today," 10 *Journal of Law & Social Challenges* (2008) 68, at 119-127.
[57] Executive Documents, *supra* note 34, at 1283. In this dispatch to U.S. Diplomat Albert Willis from Secretary of State Gresham on January 12, 1894, he stated, "Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President's decision. The matter now being in the hands of the Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you." The state of war ensued.
[58] L. Oppenheim, *International Law*, vol. II—War and Neutrality (3rd ed., 1921), at 74.

"the law of peace ceased to apply between them and their relations with one another became subject to the laws of war, while their relations with other states not party to the conflict became governed by the law of neutrality."[59] This outbreak of a state of war between the Hawaiian Kingdom and the United States would "lead to many rules of the ordinary law of peace being superseded…by rules of humanitarian law," e.g. acquisitive prescription.[60] A state of war "automatically brings about the full operation of all the rules of war and neutrality."[61] And, according to Venturini, "[i]f an armed conflict occurs, the law of armed conflict must be applied from the beginning until the end, when the law of peace resumes in full effect."[62] "For the laws of war … continue to apply in the occupied territory even after the achievement of military victory, until either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant."[63] In the *Tadić* case, the ICTY indicated that the laws of war—international humanitarian law—applies from "the initiation of … armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached."[64] Only by an agreement between the Hawaiian Kingdom and the United States could a state of peace be restored, without which a state of war ensues.[65] An attempt to transform the state of war to a state of peace was made by executive agreement on 18 December 1893. Cleveland, however, was unable to carry out his duties and obligations under the agreement to restore the situation that existed before the unlawful landing of American troops due to political wrangling in the Congress.[66] Hence, the state of war continued.

3.18. International law distinguishes between a "declaration of war" and a "state of war." According to McNair and Watts, "the absence of a declaration … will not of itself render the ensuing conflict any less a war."[67] In other words, since a state of war is based upon concrete facts of military action, there is no requirement for a formal declaration of war to be made other than providing formal notice of a State's "intention either in relation to existing hostilities or as a warning of imminent hostilities."[68] In 1946, a United States Court had to determine whether a naval

[59] Greenwood, *supra* note 26, at 45.
[60] *Id*., at 46. As opposed to belligerent occupation during a state of war, peaceful occupation during a state of peace over territory of another state could rise to a title of sovereignty under acquisitive prescription if there was a continuous and peaceful display of territorial sovereignty by the encroaching state without any objection by the encroached state. In this regard, effectiveness in the display of sovereign authority over territory of another state must be peaceful and not belligerent. *Jus in bello* proscribes acquisitive prescription.
[61] Myers S. McDougal and Florentino P. Feliciano, "The Initiation of Coercion: A Multi-temporal Analysis," 52 *American Journal of International Law* (1958) 241, at 247.
[62] Gabriella Venturini, "The Temporal Scope of Application of the Conventions," in Andrew Clapham, Paola Gaeta, and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (2015), at 52.
[63] Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (1996), at 224.
[64] ICTY, *Prosecutor v. Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), October 2, 1995, at §70.
[65] Under United States municipal laws, there are two procedures by which an international agreement can bind the United States. The first is by a treaty whose entry into force can only take place after two-thirds of the United States Senate has given its advice and consent under Article II, section 2, Clause 2 of the U.S. Constitution. The second is by way of an executive agreement entered into by the President that does not require ratification by the Senate. *See United States v. Belmont*, 301 U.S. 324, 326 (1937); *United States v. Pink,* 315 U.S. 203, 223 (1942); *American Insurance Association v. Garamendi*, 539 U.S. 396, 415 (2003).
[66] Sai, Slippery Path, *supra* note 56, at 125-127.
[67] Lord McNair and A.D. Watts, *The Legal Effects of War* (1966), at 7.
[68] Brownlie, *supra* note 31, at 40.

captain's life insurance policy, which excluded coverage if death came about as a result of war, covered his demise during the Japanese attack of Pearl Harbor on 7 December 1945. It was argued that the United States was not at war at the time of his death because the Congress did not formally declare war against Japan until the following day.

3.19. The Court denied this argument and explained "the formal declaration by the Congress on December 8th was not an essential prerequisite to a political determination of the existence of a state of war commencing with the attack on Pearl Harbor."[69] Therefore, the conclusion reached by President Cleveland that 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,"[70] was a "political determination of the existence of a state of war," and that a formal declaration of war by the Congress was not essential. The "political determination" by President Cleveland, regarding the actions taken by the military forces of the United States since 16 January 1893, was the same as the "political determination" by President Roosevelt regarding actions taken by the military forces of Japan on 7 December 1945. Both political determinations of acts of war by these Presidents created a state of war for the United States under international law.

3.20. Foremost, the overthrow of the Hawaiian government did not affect, in the least, the continuity of the Hawaiian state, being the subject of international law. Wright asserts that "international law distinguishes between a government and the state it governs."[71] Cohen also posits that "[t]he state must be distinguished from the government. The state, not the government, is the major player, the legal person, in international law."[72] As Judge Crawford explains, "[t]here is a presumption that the State continues to exist, with its rights and obligations … despite a period in which there is … no effective, government."[73] He further concludes that "[b]elligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[74] Commenting on the occupation of the Hawaiian Kingdom, Dumberry states,

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[69] *New York Life Ins. Co. v. Bennion*, 158 F.2d 260 (C.C.A. 10th, 1946), 41(3) *American Journal of International Law* (1947) 680, at 682.
[70] Larsen case, Annexure 1, *supra* note 12, at 608.
[71] Quincy Wright, "The Status of Germany and the Peace Proclamation," 46(2) *American Journal of International Law* (Apr. 1952) 299, at 307.
[72] Sheldon M. Cohen, *Arms and Judgment: Law, Morality, and the Conduct of War in the Twentieth Century* (1989), at 17.
[73] James Crawford, *The Creation of States in International Law* (2nd ed., 2006), at 34. 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.
[74] *Ibid*. Crawford also stated, the "occupation of Iraq in 2003 illustrated the difference between 'government' and 'State'; when Members of the Security Council, after adopting SC res 1511, 16 October 2003, called for the rapid 'restoration of Iraq's sovereignty', they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restore." *Ibid*, n. 157.

> The 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.[75]

4. THE BEGINNING OF THE PROLONGED OCCUPATION

4.1. What was the Hawaiian Kingdom's status after the unlawful overthrow of its government for international law purposes? In the absence of an agreement that would have transformed the state of affairs back to a state of peace, the state of war prevails over what *jus in bello* would call belligerent occupation. Article 41 of the 1880 Institute of International Law's *Manual on the Laws of War on Land* declared that a "territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there." This definition was later codified under Article 42 of the 1899 Hague Convention, II, and then superseded by Article 42 of the 1907 Hague Convention, IV (hereafter "HC IV"), which provides that "[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." Effectiveness is at the core of belligerent occupation.

4.2. The hostile army, in this case, included not only United States armed forces, but also its puppet regime that was disguising itself as a "provisional government." As an entity created through intervention it existed as an armed militia that worked in tandem with the United States armed forces under the direction of the U.S. diplomat John Stevens. Under the rules of *jus in bello*, the occupant does not possess the sovereignty of the occupied state and therefore cannot compel allegiance.[76] To do so would imply that the occupied state, as the subject of international law and whom allegiance is owed, was cancelled and its territory unilaterally annexed into the territory of the occupying state. International law would allow this under the doctrine of *debellatio*. *Debellatio*, however, could not apply to the Hawaiian situation as a result of the President's determination that the overthrow of the Hawaiian government was unlawful and, therefore, did not meet the test of *jus ad bellum*. As an

[75] 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 Journal of International Law (2002) 655, at 682.

[76] Article 45, 1899 Hague Convention, II, "Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited;" see also Article 45, 1907 Hague Convention, IV, "It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power." On 24 January 1895, the puppet regime calling itself the Republic of Hawai'i coerced Queen Lili'uokalani to abdicate the throne and to sign her allegiance to the regime in order to "save many Royalists from being shot" (William Adam Russ, Jr., *The Hawaiian Republic (1894-98) And Its Struggle to Win Annexation* (1992), at 71). As the rule of *jus in bello* prohibits inhabitants of occupied territory to swear allegiance to the hostile Power, the Queen's oath of allegiance is therefore unlawful and void.

unjust war, the doctrine of *debellatio* was precluded from arising. That is to say, *debellatio* is conditioned on a legal war. According to Schwarzenberger, "[i]f, as a result of legal, as distinct from illegal, war, the international personality of one of the belligerents is totally destroyed, victorious Powers may … annex the territory of the defeated State or hand over portions of it to other States."[77]

4.3. After United States troops were removed from Hawaiian territory on 1 April 1893, by order of President Cleveland's special investigator, James Blount, he was not aware that the provisional government was a puppet regime. As such, they remained in full power where, according to the Hawaiian Patriotic League, the "public funds have been outrageously squandered for the maintenance of an unnecessary large army, fed in luxury, and composed *entirely* of aliens, mainly recruited from the most disreputable classes of San Francisco."[78] After the President determined the illegality of the situation and entered into an agreement to reinstate the executive monarch, the puppet regime refused to give up its power. Despite the President's failure to carry out the agreement of reinstatement and to ultimately transform the state of affairs to a state of peace, the situation remained a state of war and the rules of *jus in bello* continued to apply to the Hawaiian situation.

4.4. When the provisional government was formed through intervention, it merely replaced the executive monarch and her cabinet with insurgents calling themselves an executive and advisory councils. All Hawaiian government officials remained in place and were coerced into signing oaths of allegiance to the new regime with the oversight of United States troops.[79] This continued when the American puppet changed its name to the so-called republic of Hawai'i on 4 July 1894 with alien mercenaries replacing American troops.

4.5. Under the guise of a Congressional joint resolution of annexation, United States armed forces physically reoccupied the Hawaiian Kingdom on 12 August 1898, during the Spanish-American War. According to the United States Supreme Court, "[t]hough the [annexation] resolution was passed July 7, [1898] the formal transfer was not made until August 12, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States."[80] Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and "they protested annexation occurring without the consent of the governed."[81] Marek asserts that, "a disguised annexation

[77] Georg Schwarzenberger, *International Law as applied by International Courts and Tribunals*. Vol. II: The Law of Armed Conflict (1968), at 167.
[78] Executive Documents, *supra* note 34, at 1296.
[79] *Ibid*, at 211, "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 person: 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 Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils."
[80] *Territory of Hawai'i v. Mankichi*, 190 U.S. 197, 212 (1903).
[81] Tom Coffman, *Nation Within: The History of the American Occupation of Hawai'i* (2016), at 322. Coffman initially published this book in 1998 titled *Nation Within: The Story of the American Annexation of the Nation of Hawai'i*. Coffman explained, "In the book's subtitle, the word *Annexation* has been replaced by the word

aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State."[82] Even the U.S. Department of Justice in 1988, opined, it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution."[83]

4.6. In 1900, the Congress renamed the republic of Hawai'i to the Territory of Hawai'i under *An Act To provide a government for the Territory of Hawai'i*,[84] commonly known as the "Organic Act." Shortly thereafter, the Territory of Hawai'i intentionally sought to "Americanize" the school children throughout the Hawaiian Islands. To accomplish this, they instituted a policy of denationalization in 1906, titled "Programme for Patriotic Exercises in the Public Schools," where the national language of Hawaiian was banned and replaced with the American language of English.[85] One of the leading newspapers for the insurgents, who were now officials in the territorial regime, printed a story on the plan of denationalization. The Hawaiian Gazette reported:

> As a means of *inculcating* patriotism in the schools, the Board of Education [of the territorial government] has agreed upon a plan of patriotic observance to be followed in the celebration of notable days in American history, this plan being a composite drawn from the several submitted by teachers in the department for the consideration of the Board. It will be remembered that at the time of the celebration of the birthday of Benjamin Franklin, an agitation was begun looking to a better observance of these notable national days in the schools, as tending to inculcate patriotism in a school population that needed that kind of teaching, perhaps, more than the mainland children do [emphasis added].[86]

It is important here to draw attention to the use of the word "inculcate." As a verb, the term imports force such as to convince, implant, and indoctrinate. Brainwashing is its colloquial term.

4.7. Further usurping Hawaiian sovereignty, the Congress, in 1959, renamed the Territory of Hawai'i to the State of Hawai'i under *An Act To provide for the admission of the State of Hawai'i into the Union*.[87] These Congressional laws, which have no extraterritorial effect, did not, in the least, transform the puppet regime into a military

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Occupation, referring to America's occupation of Hawai'i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word *occupation*," at xvi.

[82] Marek, *supra* note 38, at 110.

[83] Douglas Kmiec, Department of Justice, "Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea," 12 *Opinions of the Office of Legal Counsel* (1988) 238, at 262.

[84] 31 U.S. Stat. 141.

[85] Programme for Patriotic Exercises in the Public Schools, Territory of Hawai'i, adopted by the Department of Public (1906), available at http://hawaiiankingdom.org/pdf/1906_Patriotic_Exercises.pdf (last visited 15 October 2017).

[86] Patriotic Program for School Observance, *Hawaiian Gazette* (3 April 1906), at 5, available at http://hawaiiankingdom.org/pdf/Patriotic_Program_Article.pdf (last visited 15 October 2017).

[87] 73 U.S. Stat. 4.

government recognizable under the rules of *jus in bello*. The maintenance of the puppet also stands in direct violation of the customary international law in 1893, the 1907 HC IV, and the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV (hereafter "1949 GC IV"). It is important to note for the purposes of *jus in bello* that the United States never made an international claim to the Hawaiian Islands through *debellatio*. Instead, the United States in 1959 reported to the United Nations Secretary General that "Hawaii has been administered by the United States since 1898. As early as 1900, Congress passed an Organic Act, establishing Hawaii as an incorporated territory in which the Constitution and laws of the United States, which were not locally inapplicable, would have full force and effect."[88] This extraterritorial application of American laws are not only in violation of *The Lotus* case principle,[89] but is prohibited by the rules of *jus in bello*.

4.8. As an occupying state, the United States was obligated to establish a military government, whose purpose would be to provisionally administer the laws of the occupied state—the Hawaiian Kingdom—until a treaty of peace or agreement to terminate the occupation has been done. "Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory."[90] The administration of occupied territory is set forth in the Hague Regulations, being Section III of the 1907 HC IV. According to Schwarzenberger, "Section III of the Hague Regulations … was declaratory of international customary law."[91] Also, consistent with what was generally considered the international law of occupation in force at the time of the Spanish-American War, the "military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials."[92] Many other authorities also viewed the Hague Regulations as mere codification of customary international law, which was applicable at the time of the overthrow of the Hawaiian government and subsequent occupation.[93]

4.9. Since 1893, there was no military government established by the United States under the rules of *jus in bello* to administer the laws of the Hawaiian Kingdom as it stood prior to the overthrow. Instead, what occurred was the unlawful seizure of the apparatus of Hawaiian governance, its infrastructure, and its properties—both real and personal. It was a theft of an independent state's self-government.

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[88] United Nations, "Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America" (24 September 1959), Document no. A/4226, Annex 1, at 2.
[89] *Lotus*, 1927 PCIJ Series A, No. 10, at 18.
[90] United States Army Field Manual 27-10 (1956), at sec. 362.
[91] Georg Schwarzenberger, "The Law of Belligerent Occupation: Basic Issues," 30 *Nordisk Tidsskrift Int'l Ret* (1960), 11.
[92] Munroe Smith, "Record of Political Events," 13(4) *Political Science Quarterly* (1898), 745, at 748.
[93] Gerhard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (1957), 95; David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (2002), 57; Ludwig von Kohler, *The Administration of the Occupied Territories*, vol. I, (1942) 2; United States Judge Advocate General's School Tex No. 11, Law of Belligerent Occupation (1944), 2 (stating that "Section III of the Hague Regulations is in substance a codification of customary law and its principles are binding signatories and non-signatories alike").

5. THE DUTY OF NEUTRALITY OF THIRD STATES

5.1. When the state of peace was transformed to a state of war, all other states were under a duty of neutrality. "Since neutrality is an attitude of impartiality, it excludes such assistance and succour to one of the belligerents as is detrimental to the other, and, further such injuries to the one as benefit the other."[94] The duty of a neutral state, not a party to the conflict, "obliges him, in the first instance, to prevent with the means at his disposal the belligerent concerned from committing such a violation," e.g. to deny recognition of a puppet regime unlawfully created by an act of war.[95]

5.2. Twenty states violated their obligation of impartiality by recognizing the so-called republic of Hawai'i and consequently became parties to the conflict.[96] These states include: Austria-Hungary (1 January 1895);[97] Belgium (17 October 1894);[98] Brazil (29 September 1894);[99] Chile (26 September 1894);[100] China (22 October 1894);[101] France (31 August 1894);[102] Germany (4 October 1894);[103] Guatemala (30 September 1894);[104] Italy (23 September 1894);[105] Japan (6 April 1897);[106] Mexico (8 August 1894);[107] Netherlands (2 November 1894);[108] Norway-Sweden (17 December 1894);[109]

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[94] Oppenheim, *supra* note 58, at 401.
[95] *Id*., at 496.
[96] Greenwood, *supra* note 26, at 45.
[97] Austria-Hungary's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-austro-hungary/ (last visited 15 October 2017).
[98] Belgium's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-belgium/ (last visited 15 October 2017).
[99] Brazil's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-brazil/ (last visited 15 October 2017).
[100] Chile's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-chile/ (last visited 15 October 2017).
[101] China's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-china/ (last visited 15 October 2017).
[102] France's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-france/ (last visited 15 October 2017).
[103] Germany's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-germanyprussia/ (last visited 15 October 2017).
[104] Guatemala's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-guatemala/ (last visited 15 October 2017).
[105] Italy's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-italy/ (last visited 15 October 2017).
[106] Japan's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/05/27/recognition-of-the-republic-of-hawaii-japan/ (last visited 15 October 2017).
[107] Mexico's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-mexico/ (last visited 15 October 2017).
[108] The Netherlands' recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-netherlands/ (last visited 15 October 2017).

Peru (10 September 1894);[110] Portugal (17 December 1894);[111] Russia (26 August 1894);[112] Spain (26 November 1894);[113] Switzerland (18 September 1894);[114] and the United Kingdom (19 September 1894).[115]

5.3. "If a neutral neglects this obligation," states Oppenheim, "he himself thereby commits a violation of neutrality, for which he may be made responsible by a belligerent who has suffered through the violation of neutrality committed by the other belligerent and acquiesced in by him."[116] The recognition of the so-called republic of Hawai'i did not create any legality or lawfulness of the puppet regime, but rather is the indisputable evidence that these states' violated their obligation to be neutral. Diplomatic recognition of governments occurs during a state of peace and not during a state of war, unless providing recognition of belligerent status. These recognitions were not recognizing the republic as a belligerent in a civil war with the Hawaiian Kingdom, but rather under the false pretense that the republic succeeded in a so-called revolution and therefore was the new government of Hawai'i during a state of peace.

6. The State of Hawai'i as a Private Armed Force

6.1. When the United States assumed control of its installed puppet regime under the new heading of Territory of Hawai'i in 1900, and later the State of Hawai'i in 1959, it surpassed "its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts."[117] The legislation of every state, including the United States of America and its Congress, are not sources of international law. In *The Lotus* case, the Permanent Court of International Justice stated that "[n]ow 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

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[109] Norway-Sweden's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-swedennorway/ (last visited 15 October 2017).
[110] Peru's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-peru/ (last visited 15 October 2017).
[111] Portugal's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-portugal/ (last visited 15 October 2017).
[112] Russia's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-russia/ (last visited 15 October 2017).
[113] Spain's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-spain/ (last visited 15 October 2017).
[114] Switzerland's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-switzerland/ (last visited 15 October 2017).
[115] The United Kingdom's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-britain/ (last visited 15 October 2017).
[116] Oppenheim, *supra* note 58, at 497.
[117] Eyal Benvenisti, *The International Law of Occupation* (1993), at 19.

territory of another State."[118] According to Judge Crawford, derogation of this principle will not be presumed.[119]

6.2. Since Congressional legislation has no extraterritorial effect, it cannot unilaterally establish governments in the territory of a foreign state. According to the U.S. Supreme Court, "[n]either 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."[120] The Court also concluded that "[t]he laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."[121] Therefore, the State of Hawai'i cannot claim to be a government as its only claim to authority derives from Congressional legislation that has no extraterritorial effect. As such, *jus in bello* defines it as an organized armed group.[122]

6.3. "[O]rganized armed groups … are under a command responsible to that party for the conduct of its subordinates."[123] 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,"[124] 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."[125] Article 1 of the 1907 HC 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.

6.4. Since the *Larsen* case, defendants that have come before courts of this armed group have begun to deny the courts' jurisdiction based on the narrative in this article. In a contemptible attempt to quash this defense, the Supreme Court of the State of Hawai'i in 2013 responded to a defendant who "contends that the courts of the State of Hawai'i lacked subject matter jurisdiction over his criminal prosecution because the defense proved the existence of the Hawaiian Kingdom and the illegitimacy of the State of Hawai'i government,[126] with "*whatever may be said regarding the lawfulness"*

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[118] *Lotus, supra* note 89.
[119] Crawford, *supra* note 73, at 41.
[120] United States v. Curtiss Wright Export Corp., 299 U.S. 304, 318 (1936).
[121] The Apollon, 22 U.S. 362, 370 (1824).
[122] Article 1, 1899 Hague Convention, II, and Article 1, 1907 Hague Convention, IV.
[123] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I (2009), at 14.
[124] *Id*., at 15.
[125] *Id*.
[126] *State of Hawai'i v. Dennis Kaulia*, 128 Hawai'i 479, 486 (2013).

of its origins, "the State of Hawai'i … is now, a lawful government [emphasis added]."[127] Unable to rebut the factual evidence being presented by defendants, the highest so-called court of the State of Hawai'i could only resort to power and not legal reason, whose decision has been used to allow prosecutors and plaintiffs to dispense with these legal arguments. On this note, Marek explains that an occupier without title or sovereignty "must rely heavily, if not exclusively, on full and complete effectiveness."[128]

6.5. The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier's military and/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."[129] According to Ferraro, "occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts."[130]

7. Commission of War Crimes in the Hawaiian Kingdom

7.1. The Rome Statute of the International Criminal Court defines war crimes as "serious violations of the laws and customs applicable in international armed conflict."[131] The United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in armed conflicts that involve United States troops, to be "the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime."[132] In the *Larsen* case, the alleged war crimes included deliberate acts as well as omissions. The latter include the failure to administer the laws of the occupied state (Article 43, 1907 HC IV), while the former were actions denying a fair and regular trial, unlawful confinement (Article 147, 1949 GC IV), and pillaging (Article 47, 1907 HC IV, and Article 33, 1907 GC IV).

7.2. International case law indicates that there must be a mental element of intent for the prosecution of war crimes, whereby war crimes must be committed willfully, either intentionally—*dolus directus*, or recklessly—*dolus eventualis*. According to Article 30(1) of the Rome Statute, an alleged war criminal is "criminally responsible and liable for punishment … only if the material elements [of the war crime] are committed with intent and knowledge." Therefore, in order for prosecution of the responsible person(s) to be possible there must be a mental element that includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that "a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary

[127] *Id*., at 487.
[128] Marek, *supra* note 38, at 102.
[129] 1907 Hague Convention, IV, Article 42.
[130] Tristan Ferraro, "Determining the beginning and end of an occupation under international humanitarian law," 94 (885) *International Review of the Red Cross* (Spring 2012) 133, at 134.
[131] International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).
[132] U.S. Army Field Manual 27-10, sec. 499 (July 1956).

course of events." Furthermore, the International Criminal Court's *Elements of a War Crime*, states that "[t]here is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict."[133]

7.3. Is there a particular time or event that could serve as a definitive point of knowledge for purposes of prosecution? In other words, where can there be "awareness that a circumstance exists or a consequence will occur in the ordinary course of events" stemming from the illegality of the overthrow of the Hawaiian government on 17 January 1893? For the United States and other foreign governments in existence in 1893, that definitive point would be 18 December 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian government.

7.4. For the private sector and foreign governments that were not in existence in 1893, however, the United States' 1993 apology for the illegal overthrow of the Hawaiian government should be considered as serving as that definitive point of knowledge. In the form of a Congressional joint resolution enacted into United States law, the law specifically states that the Congress "on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai'i on January 17, 1893 acknowledges the historical significance of this event."[134] Additionally, the Congress urged "the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai'i."[135]

7.5. Despite the mistake of facts and law riddled throughout the apology resolution, it nevertheless serves as a specific point of knowledge and the ramifications that stem from that knowledge. Evidence that the United States knew of such ramifications was clearly displayed in the apology law's disclaimer, "[n]othing in this Joint Resolution is intended to serve as a settlement of any claims against the United States."[136] It is a presumption that everyone knows the law, which stems from the legal maxim *ignorantia legis neminem excusat*—ignorance of the law excuses no one. Unlike the United States government, being a public body, the State of Hawai'i cannot claim to be a government at all, and therefore is merely a private organization. Therefore, awareness and knowledge for members of the State of Hawai'i would have begun with the enactment of the apology resolution in 1993.

7.6. International law today criminalizes an unjust war as a "crime of aggression." Under Article 8 *bis* of the Rome Statute, a war is criminal if a state aggressively utilizes its military force "against the sovereignty, territorial integrity or political independence of another State."[137] There can be no doubt that the American invasion and overthrow of the government of a "friendly and confiding people" was an aggressive war waged with malicious intent that violated the Hawaiian Kingdom's right of self-determination—duty of non-intervention, its territorial integrity and political independence.

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[133] ICC Elements of a War Crime, Article 8.
[134] Larsen case, Annexure 2, *supra* note 12, at 614.
[135] *Id*., at 615
[136] *Id*.
[137] Rome Statute, art. 8 *bis* (2).

7.7. The installation of the puppet regime also violated the rights of the Hawaiian people. The installed puppet in 1893, together with their organs, according to the Hawaiian Patriotic League, "have repeatedly threatened murder, violence, and deportation against all those not in sympathy with the present state of things, and the police being in their control, intimidation is a common weapon, under various forms, even that of nocturnal searches in the residences of peaceful citizens."[138] These criminal acts would not have occurred if the United States complied with the law of occupation. Customary international law at the time mandated an occupying state to provisionally administer the laws of the occupied state. Article 43 of the 1907 HC IV provides that "[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." The "text of Article 43," according to Benvenisti, "was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law."[139] Graber also states, that "nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code."[140]

7.8. In similar fashion to the Hawaiian situation, Germany, when it occupied Croatia during the Second World War, established a puppet regime in violation of international law to serve as its surrogate. On this matter, the Nuremberg Tribunal, in the *Hostages Trial*, pronounced:

> Other than the rights of occupation conferred by international law, no lawful authority could be exercised by the Germans. Hence, they had no legal right to create an independent sovereign state during the progress of the war. They could set up such a provisional [military] government as was necessary to accomplish the purposes of the occupation but further than that they could not legally go. We are of the view that Croatia was at all times here involved an occupied country and that all acts performed by it were those for which [Germany] the occupying power was responsible.[141]

7.9. The United States failure to form a military government throughout the duration of the prolonged occupation since 17 January 1893 has rendered all acts by the puppet regimes—provisional government (1893 – 94), republic of Hawai'i (1894 – 1900), Territory of Hawai'i (1900 – 1959), and the State of Hawai'i (1959 – present)—which would have otherwise emanated from a *bona fide* military government, unlawful and void. As the occupying power, the United States is responsible for the acts of the State of Hawai'i just as the Germans were responsible for the acts of the so-called State of Croatia during the Second World War, which, in these proceedings of an international commission of inquiry, includes the alleged war crimes committed

[138] Executive Documents, *supra* note 34, at 1297.
[139] Benvenisti, *supra* note 117, at 8.
[140] Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914* (1949), at 143.
[141] Hostages Trial, *supra* note 47, at 1302.

against Lance Larsen.[142]

8. WAR CRIMES: 1907 HAGUE CONVENTION, 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.

8.1. The United States failed to administer the laws of the Hawaiian Kingdom as it stood prior to the unlawful overthrow of the Hawaiian Kingdom government on 17 January 1893. Instead, the United States unlawfully maintained the continued presence and administration of law through its puppet regime established through intervention. The puppet regime was originally called the provisional government, which was later changed in name only to the Republic of Hawai'i on 4 July 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 18 December 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 23 November 1993.

8.2. Since 30 April 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."[143] When the Territory of Hawai'i was succeeded by the State of Hawai'i on 18 March 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."[144] Furthermore:

> [T]he 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

[142] Memorial of Lance Paul Larsen, *supra* note 1.
[143] 31 U.S. Stat. 141 (1896-1901).
[144] 73 U.S. Stat. 11 (1959).

> Union, (2) are not 'Territorial laws' as defined in this paragraph, and (3) are not in conflict with any other provision of this Act.[145]

8.3. Article 43 does not transfer sovereignty to the occupying power.[146] Section 358, United States Army Field Manual 27-10, declares, "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." 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."[147]

8.4. 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 17 January 1893, rendered 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 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 17 January 1893, because of the absence of a competent notary public under Hawaiian Kingdom law. Since 17 January 1893, all notaries public stemmed from unlawful entities.

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

8.5. When the provisional government was established through the support and protection of U.S. troops on 17 January 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 installed through intervention. 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."

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[145] *Id*.
[146] See Benvenisti, *supra* note 117, at 8; von Glahn, *supra* note 93, at 95; Michael Bothe, *Occupation, Belligerent*, in Rudolf Bernhardt (dir.), *Encyclopedia of Public International Law*, vol. 3 (1997), at 765.
[147] 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.hpcrresearch.org/sites/default/files/publications/sassoli.pdf (last visited 15 October 2017).

All government officials were coerced and forced to sign oaths of allegiance, "I…do solemnly swear in the presence of 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."

8.6. 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 17 January 1893 with oversight by United States troops until 1 April 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 29 March 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."[148]

8.7. As a result of 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 4 July 1894. In 1900, the Republic was renamed the Territory of Hawai'i, and the United States 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, beginning in 1959, to the State of Hawai'i in direct violation of Article 45 of the HC IV.

8.8. 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."[149] 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.'"

[148] Executive Documents, *supra* note 34, at 568.
[149] 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.

8.9. 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."[150] 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.[151] By 2012, the U.S. military has one hundred eighteen (118) military sites that span 230,929 acres of the Hawaiian Islands.[152]

Article 47—Pillage is formally forbidden.

8.10. Since 17 January 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.

8.11. Pillage or plunder is "the forcible taking of private property by an invading or conquering army,"[153] which, according to the Elements of Crimes of the International Criminal Court, must be seized "for private or personal use."[154] As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.[155] The residents of the Hawaiians Islands have been the subject of pillaging and plundering since the establishment of the provisional government by the United States on January 17, 1893 and continue to date by its successor, the State of Hawai'i.

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[150] Robert H. Horwitz, Judith B. Finn, Louis A. Vargha, and James W. Ceaser, *Public Land Policy in Hawai'i: An Historical Analysis* (State of Hawai'i Legislative Reference Bureau Report No. 5, 1969), at 20.
[151] John D. VanBrackle, "Pearl Harbor from the First Mention of 'Pearl Lochs' to Its Present Day Usage," (undated manuscript on file in Hawaiian-Pacific Collection, Hamilton Library, University of Hawai'i at Manoa), at 21-26.
[152] U.S. Department of Defense's Base Structure Report (2012), available at: http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf (last visited 15 October 2017).
[153] Henry Campbell Black, *Black's Law Dictionary* (1990), at 1148.
[154] Elements of Crimes, International Criminal Court, Pillage as a war crime (ICC Statute, Article 8(2)(b)(xvi) and (e)(v)).
[155] Jean-Marie Henckaerts and Louise Doswald-Beck, *International Committee of the Red Cross—Customary International Humanitarian Law*, vol. 1, Rules (2009), at 185.

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.

8.12. 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."

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.

8.13. 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.

8.14. 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.[156]

8.15. 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."[157]

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.

8.16. In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i*,[158] 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."

> 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 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!"[159]

8.17. The policy was to denationalize the children of the Hawaiian Islands on a massive

[156] *Estate of His Majesty Kamehameha IV*, 3 Haw. 715 (1864), at 725.
[157] 30 U.S. Stat. 750 (1896-1898).
[158] 31 U.S. Stat. 141 (1896-1901).
[159] William Inglis, *Hawaii's Lesson to Headstrong California*, Harper's Weekly (16 Feb. 1907), at 228.

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. "Usurpation of sovereignty during military occupation" and "attempts to denationalize the inhabitants of occupied territory" was recognized as international crimes since 1919.[160]

8.18. 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."[161] 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 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.[162]

8.19. 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

[160] Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, *Report Presented to the Preliminary Peace Conference, 29 March 1919*, 14 AM. J. INT'L L. 95 (1920).
[161] E. Schwelb, *Note on the Criminality of "Attempts to Denationalize the Inhabitants of Occupied Territory" (Appendix to Doc, C, 1. No. XII) – Question Referred to Committee III by Committee I*, United Nations War Crime Commission, Doc. III/15 (10 September 1945), at 1, available at: http://hawaiiankingdom.org/pdf/Committee_III_Report_on_Denationalization.pdf (last visited 15 October 2017).
[162] *Id*., at 6.

> 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.[163]

8.20. Under the heading "Germanization of Occupied Territories," Count III (j) of the Nuremburg 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.[164]

9. WAR CRIMES: 1949 GENEVA CONVENTION, IV

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

9.1. In 2013, the United States Internal Revenue Service, hereafter IRS, illegally appropriated $7.1 million dollars from the residents of the Hawaiian Islands.[165] During this same year, the government of the State of Hawai'i additionally appropriated $6.5 billion dollars illegally.[166] 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 is precluded from appropriating money from the inhabitants of an occupied State without violating the international laws of occupation.

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[163] Lynn H. Nicholas, Cruel World: *The Children of Europe in the Nazi Web* (2005), at 277.
[164] Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1 (Nuremberg 14 November 1945 – 1 October 1946), at 63.
[165] 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 (last visited 15 October 2017).
[166] State of Hawai'i Department of Taxation Annual Reports, available at: http://files.hawaii.gov/tax/stats/stats/annual/13annrpt.pdf (last visited 15 October 2017).

9.2. 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 ¾ of 1% upon the value of both real and personal property.[167]

9.3. The *Merchant Marine Act,* 5 June 1920,[168] 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.

9.4. 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 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.[169] 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.

9.5. 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

[167] 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 (last visited 15 October 2017).
[168] 41 U.S. Stat. 988.
[169] 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 (last visited 15 October 2017).

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."[170] 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).

9.6. 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.

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

9.7. Since 17 January 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.

9.8. According to the United States Department of Justice, the prison population in the Hawaiian Islands in 2009 was at 5,891.[171] Of this population there were 286 aliens.[172] 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*.[173] 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.

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[170] Title 50 U.S.C. App. 453, The Military Selective Service Act.

[171] United States Department of Justice's Bureau of Justice Statistics, *Prisoners in 2011*, available at: http://www.bjs.gov/content/pub/pdf/p11.pdf (last visited 15 October 2017).

[172] 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 (last visited 15 October 2017).

[173] LaGrand (*Germany v. United States of America*), Judgment, I.C.J. Reports 2001, at 466.

9.9. 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.[174] 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.

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.

9.10. 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 17 January 1893. All other individuals born after January 17th to the present are aliens who can only acquire the nationality of their parents. According to von Glahn, "children born in territory under enemy occupation possess the nationality of their parents."[175]

9.11. 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,[176] 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.

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[174] 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://lrbhawaii.info/reports/legrpts/psd/2005/act200_58_slh03_05.pdf (last visited 15 October 2017).

[175] von Glahn, *supra* note 93, at 780.

[176] State of Hawai'i. Department of Health, Hawai'i Health Survey (2009), available at: http://www.ohadatabook.com/F01-05-11u.pdf (last visited 15 October 2017); *see* also David Keanu Sai, *American Occupation of the Hawaiian State: A Century Gone Unchecked*, 1 Hawaiian Journal of Law and Politics (Summer 2004), at 63-65.

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

9.12. 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 private lands.[177] These combined lands constituted nearly half of the entire territory of the Hawaiian Kingdom.

9.13. 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.

9.14. 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.

9.15. In 2006, the United States Army disclosed to the public that depleted uranium, hereafter DU, was found on the firing ranges at Schofield Barracks on the Island of O'ahu.[178] 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.[179] 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.

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[177] 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 (1884), at §39-§48, 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 (1884), at 523-525. 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. (1864), at 725, subject to *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*.

[178] U.S. Army Garrison-Hawai'i, Depleted Uranium on Hawai'i's Army Ranges, available at: http://www.garrison.hawaii.army.mil/du/ (last visited 15 October 2017).

[179] *Id.*

9.16. 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, of HC V, HC IV, and GC IV, and therefore are war crimes.

10. CONCLUSION

10.1. Fundamental to deciphering the Hawaiian situation is to discern between a state of peace and a state of war. This parting of the seas provides the proper context by which the application of certain rules of international law would or would not apply. The laws of war—*jus in bello*, otherwise known today as international humanitarian law, are not applicable in a state of peace. Inherent in the rules of *jus in bello* is the co-existence of two legal orders, being that of the occupying state and that of the occupied state. As an occupied state, the continuity of the Hawaiian Kingdom has been maintained for the past 124 years by the positive rules of international law, notwithstanding the absence of effectiveness that would otherwise be required during a state of peace.[180]

10.2. Anticipating complete disorder and confusion when the United States begins to comply with Article 43 of the Hague Regulations to administer the laws of the occupied State—the Hawaiian Kingdom, the Council of Regency on 10 October 2014 proclaimed provisional laws in order to mitigate the disruption. After citing the preambles, the proclamation read:

> Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby acknowledge that acts necessary to peace and good order among the citizenry and residents of the Hawaiian Kingdom, such for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful government, but acts in furtherance or in support of rebellion or collaborating against the Hawaiian Kingdom, or intended to defeat the just rights of the citizenry and residents under the laws of the Hawaiian Kingdom, and other acts of like nature, must, in general, be regarded as invalid and void;
>
> And, We do hereby proclaim that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United

[180] Crawford, *supra* note 73, at 34; Marek, *supra* note 38, at 102.

States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international humanitarian law, and if it be the case they shall be regarded as invalid and void;

And, We do hereby further proclaim that the currency of the United States shall be a legal tender at their nominal value in payment for all debts within this Kingdom pursuant to *An Act To Regulate the Currency* (1876);

And, We do hereby call upon the said Commander of the United States Pacific Command, and those subordinate military personnel to whom he may delegate such authority to seize control of our government, calling itself the State of Hawai'i, by proclaiming the establishment of a military government, during the present prolonged military occupation and until the military occupation has ended, to exercise those powers allowable under the international laws of occupation and international humanitarian law;

And, We do require all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, to obey promptly and fully, in letter and in spirit, such proclamations, rules, regulations and orders, as the military government may issue during the present military occupation of the Hawaiian Kingdom so long as these proclamations, rules, regulations and orders are in compliance with the laws and provisional laws of the Hawaiian Kingdom, the international laws of occupation and international humanitarian law;

And, We do further require that all courts of the Hawaiian Kingdom, whether judicial or administrative, shall administer the provisional laws hereinbefore proclaimed forthwith;

And, We do further require that Consular agents of foreign States within the territory of the Hawaiian Kingdom shall comply with Article X, Chapter VIII, Title 2—Of the Administration of Government, Civil Code of the Hawaiian Islands (Compiled Laws, 1884) and the Law of Nations;

And, We do further require every person now holding any office of profit or emolument under the State of Hawai'i and its Counties, being the Hawaiian government, take and subscribe the oath of allegiance in accordance with *An Act to Provide for the Taking of the Oath of*

Allegiance by Persons in the employ of the Hawaiian Government (1874).[181]

10.3. The failure of the United States to comply with international humanitarian law for over a century has created a humanitarian crisis of unimaginable proportions where war crimes has since risen to a level of *jus cogens*—compelling law. At the same time, the obligations, in point, have *erga omnes* characteristics—flowing to all states. The international community's failure to intercede, as a matter of *obligatio erga omnes,* can only be explained by the United States deceptive portrayal of Hawai'i as an incorporated territory. As an international wrongful act, states have an obligation to not "recognize as lawful a situation created by a serious breach … nor render aid or assistance in maintaining that situation,"[182] and states "shall cooperate to bring to an end through lawful means any serious breach [by a state of an obligation arising under a peremptory norm of general international law]."[183]

Respectfully submitted,

David Keanu Sai, Ph.D.
Hawaiian Ambassador-at-Large
Agent for the Hawaiian Kingdom

8 November 2017.

[181] Proclamation, Hawaiian Council of Regency (10 Oct. 2014), available at: http://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf (last visited 15 October 2017).
[182] Responsibility of States for International Wrongful Acts (2001), Article 41(2).
[183] *Id*., Article 41(1).

Enclosures

SPECIAL AGREEMENT

The Government of the Hawaiian Kingdom, by its Acting Council of Regency, and Lance Paul Larsen, a Hawaiian subject, hereinafter collectively the "Parties,"

Mindful of the presumption of the Hawaiian Kingdom's continued existence, as an independent State under customary international law, despite the United States of America's admitted unlawful invasion and overthrow of the legitimate Government of the Hawaiian Kingdom, on January 17, 1893, and the subsequent re-invasion and military occupation of the Hawaiian Kingdom, being neutral territory during the Spanish-American War that continues to the present; and

Conscious that territory of the Hawaiian Kingdom was explicitly recognized as neutral under Article 26 of the 1863 Hawaiian-Spanish Treaty, and, under customary international law, the territory of a neutral State was recognized as inviolable during the Spanish-American War, which was subsequently codified under Article 1 of the 1907 Hague Convention, V, *Respecting the Rights and Duties of Neutral Powers*; and

Aware that "military occupation is a question of fact, that presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded (United States Army Field Manual 27-10, paragraph 355)"; and

Acting in compliance with Hawaiian constitutional law and within the legal parameters of necessity, the Government of the Hawaiian Kingdom was re-established on December 15, 1995, and styled the Acting Council of Regency, as officers *de facto*, serving in the absence of the Executive Monarch; and

Stressing their desire to settle a dispute between the Parties, whereby Lance Paul Larsen alleged that the Government of the Hawaiian Kingdom was committing negligence for allowing the unlawful imposition of American municipal laws that led to war crimes committed against him, being a Protected Person under Article 4 of the 1949 Geneva Convention, IV, by agents of the United States of America when he was deprived of a right to a fair and regular trial that led to his unlawful confinement, both being defined as grave breaches and war crimes under Article 147 of the 1949 Geneva Convention, IV; and

Being unable to resolve their dispute through international arbitration in *Lance Paul Larsen v. Hawaiian Kingdom*, being a contentious case between a State and a Private

entity, held under the auspices of the Permanent Court of Arbitration pursuant to Article 47 of the 1907 Hague Convention, I, (Article 26 of the 1899 Hague Convention, I), on account of the United States of America's refusal to participate in the arbitral proceedings, thereby preventing, under Procedural Order no. 3, the Tribunal to adjudge and declare "(1) that his rights as a Hawaiian subject are being violated under international law as a result of the prolonged occupation of the Hawaiian Islands by the United States of America, and (2) that the plaintiff does have redress against the Respondent Government in relation to these violations," in light of the principle of the indispensible third-party rule, pursuant to the *Monetary Gold Case* (Italy v. France, United Kingdom of Great Britain and Northern Ireland, and United States of America) and *Case Concerning East Timor* (Portugal v. Australia); and

Taking notice that the *Lance Paul Larsen v. Hawaiian Kingdom* Case was recognized by the South China Sea Arbitral Tribunal (Philippines v. China) in its Award on Jurisdiction and Admissibility as a precedent case, along with the *Monetary Gold Case* and the *Case Concerning East Timor*, regarding the principle of the indispensable third-party rule; and

Acknowledging that the Arbitral Tribunal in its Award noted the prospect for the Parties to pursue fact-finding enquiry by stating, "fact-finding commissions so far held under the auspices of the Permanent Court of Arbitration have not confined themselves to pure questions of fact but have gone on, expressly or by clear implication, to deal with issues of responsibility for those facts (Award, paragraph 13.2)"; and

Recognizing that the Government of the Hawaiian Kingdom has an obligation and responsibility to protect the just rights of its citizenry under a military occupation, which includes Lance Paul Larsen, in light of the complexities of international humanitarian law and the role and function of the government of an occupied State toward its citizenry; and

Cognizant of the continued unlawful imposition of American municipal laws throughout Hawaiian territory that continues to place Lance Paul Larsen in economic hardship and suffering, since the aforementioned war crimes were committed against his person; and

Remain firm to re-establish a trustful and lasting relationship, between a national and his government, while both parties are provisionally under a prolonged occupation by the United States of America, and where both Parties mutually agree that there is no dispute between them, but rather a situation; and

Endeavor to fairly resolve this situation according to a coherent body of legal rules, in a manner fitting the principles of international humanitarian law and the basic fundamental

right of every person to life, liberty, and of pursuing and obtaining safety and happiness, during a belligerent occupation;

Having jointly accepted the recommendation of the Tribunal, in its Award in *Lance Paul Larsen v. Hawaiian Kingdom,* the Parties entered into a Special Agreement to form an International Commission of Inquiry under the auspices of the Permanent Court of Arbitration, as follows,

ARTICLE I
International Commission of Inquiry

1. The International Commission of Inquiry, hereinafter the "Commission," shall sit at The Hague, Netherlands.
2. The Commission shall consist of three (3) Commissioners to be chosen by the Secretary-General of the Permanent Court of Arbitration, as the appointing authority, under Article 3(c) of the *Permanent Court of Arbitration Optional Rules for Fact-Finding Commissions of Inquiry*.
3. The International Bureau of the Permanent Court of Arbitration at The Hague shall act as a channel of communications between the Parties and the Commission, and provide secretariat including, *inter alia*, arranging for hearing rooms and stenographic or electronic records of hearings.

ARTICLE II
Title of Case

Parties: Hawaiian Kingdom – Lance Paul Larsen
Case: Incidents of War Crimes in the Hawaiian Islands—The Larsen Case

ARTICLE III
Issue before the Commission

The Commission is requested to determine: *First*, what is the function and role of the Government of the Hawaiian Kingdom in accordance with the basic norm and framework of international humanitarian law; and, *Second*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Lance Paul Larsen, and, by extension, toward all Hawaiian subjects domiciled in Hawaiian territory and abroad in accordance with the basic norm and framework of international humanitarian law.

ARTICLE IV
Proceedings

1. The Parties shall co-operate with the Commission in good faith and shall, in particular, comply with requests by the Commission to submit written materials, provide evidence and attend meetings.
2. All such documents submitted to the Commission shall, at the same time, be transmitted to the other Party and to the International Bureau.
3. The Commission shall give the Parties every opportunity to be present at hearings and investigations, and to submit documents, present evidence and have witnesses and experts called.
4. The Commission, after notice to the Parties, may consult any experts of its choice. Such experts shall perform their functions impartially and conscientiously.
5. The language of the proceedings shall be English.
6. All matters relating to the fact-finding proceedings, including the investigation, hearings, deliberations and findings of the Commission, shall be made public.

ARTICLE V
Rules

The rules applicable to the matter shall be the *Permanent Court of Arbitration Optional Rules for Fact-Finding Commissions of Inquiry*, unless otherwise determined by the terms of this Agreement.

ARTICLE VI
Costs

All costs incurred under Article 16 of the *Permanent Court of Arbitration Optional Rules for Fact-Finding Commissions of Inquiry* shall be borne by the Government of the Hawaiian Kingdom, with the exception of any legal fees and costs incurred by Lance Paul Larsen for his representation in these proceedings, which includes travel and expenses.

ARTICLE VII
Deposits

The Government of the Hawaiian Kingdom agrees to deposit $10,000.00 (USD) in advance for the costs referred to in Article 16 as soon as this Agreement shall be notified to the International Bureau of the Permanent Court of Arbitration.

ARTICLE VIII

Execution of Agreement

1. This agreement shall enter into force on the date of the signatures of the two Parties.
2. This Agreement shall be notified to the International Bureau of the Permanent Court of Arbitration, in accordance with Article 2(4) of the *Permanent Court of Arbitration Optional Rules for Fact-Finding Commissions of Inquiry*, by joint letter of the Parties.

In witness whereof, the undersigned, being duly authorized thereto, have in the city of Hilo, Hawaiian Islands, signed this Special Agreement on August 22, 2016.

David Keanu Sai, Ph.D.
Chairman, Acting Council of Regency
Minister of the Interior of the Hawaiian Kingdom

Lance Paul Larsen

August 22, 2016

His Excellency Mr. Hugo H. Siblesz, Secretary-General
International Bureau of the Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

Re: Hawaiian Kingdom – Lance Paul Larsen, Incidents of War Crimes in the Hawaiian Islands—the Larsen Case

Greetings:

We, the undersigned, have the honor to inform you that the Government of the Hawaiian Kingdom and Lance Paul Larsen have accepted the recommendation of the Arbitral Tribunal in its Award, dated February 5, 2001, for the parties to pursue the course of fact-finding enquiry under the auspices of the Permanent Court of Arbitration. Therefore, we have entered into a Special Agreement to form an International Commission of Inquiry under the *Permanent Court of Arbitration Optional Rules for Fact-Finding Commissions of Inquiry*. Pursuant to Article 4(3)(c) of the *Permanent Court of Arbitration Optional Rules for Fact-finding Commissions of Inquiry*, this Special Agreement is hereby transmitted to you in order to enable the facilitation of these proceedings. We are the same parties to the *Lance Paul Larsen v. Hawaiian Kingdom* case held under the auspices of the Permanent Court of Arbitration, from 1999 through 2001.

David Keanu Sai, Ph.D.
Chairman of the Acting Council of Regency
Minister of the Interior of the Hawaiian Kingdom

Lance Paul Larsen

Dr. David Keanu Sai
Chairman, Acting Council of Regency
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September 7, 2016

RE: FACT-FINDING INQUIRY

Dear Dr. Sai,

The PCA acknowledges receipt of your letter of 23 August 2016 regarding fact-finding proceedings under the auspices of the PCA.

I note in this regard that the Permanent Court of Arbitration Optional Rules for Fact-finding Commissions of Inquiry are intended to include a State as a party to the proceedings. In view of recent pronouncements by PCA Member States regarding the status of entities that are not Member States of the United Nations, I do not consider that the International Bureau of the PCA is in a position to assist with your request. As this is the case, I would ask that you provide me with your banking instructions in order that the funds you have transferred to the PCA may be reimbursed to you.

Yours sincerely,

Hugo H. Siblesz
Secretary-General

DR. DAVID KEANU SAI
Chairman, *Acting* Council of Regency
Minister of the Interior of the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194
Email: interior@hawaiiankingdom.org

September 13, 2016

Excellency:

This is to acknowledge receipt of your communication of September 7, 2016. The Special Agreement of August 22, 2016, between the Hawaiian Kingdom Government and Mr. Larsen to form a fact-finding commission of inquiry is in direct response to the recommendation of the Tribunal in its Award in *Larsen v. Hawaiian Kingdom* (1999-2001). The Tribunal stated, "In addition to its role as a facilitator of international arbitration and conciliation, the Permanent Court of Arbitration has various procedures for fact-finding, both as between States and otherwise."[1] The Tribunal further stated it could "reconstitute itself as a fact-finding commission, [but a] new compromis or agreement would…have been required."[2] As pointed out by the Tribunal, "Part III of each of the Hague Conventions of 1899 and 1907 provide for International Commissions of Inquiry," and that the "PCA has also adopted Optional Rules for Fact-finding Commissions of Inquiry."[3] In other words, the Tribunal provided two options to form a fact-finding commission, the first under the 1907 Hague Convention, and, second, the Optional Rules. The International Bureau facilitates both options.

Initially, the parties did not enter into an agreement to form a fact-finding commission of inquiry, but that does not preclude the parties from entering into an agreement at a later date. During the arbitration, the parties had to contend with the prospect of who would bear the burden of the costs for fact-finding since Mr. Larsen, as claimant, bore the costs, which amounted in excess of $150,000.00 (USD) for arbitration. Under Article VI of the Special Agreement it was agreed that the Hawaiian Kingdom would bear the burden of costs for the fact-finding.

Therefore, this is not a new proceeding for the PCA to determine its institutional jurisdiction, but rather, a continuation of the proceedings already held under the jurisdiction of the PCA that moves from a dispute under arbitration to a situation under fact-finding. As such, your position in the acknowledgment letter is in plain error and violates the principle that the PCA, as an intergovernmental organization, cannot blow

[1] Award, para. 13.1.
[2] *Id*., para. 13.2.
[3] *Id*., n. 28.

hot and cold—*allegans contraria non audiendus est*. Furthermore, the PCA is estopped from denying the existence of the Hawaiian Kingdom as a State when it had already recognized Hawaiian Statehood as a requisite under the PCA's institutional jurisdiction, which prompted the formation of the *ad hoc* Tribunal. From the record, I have taken the liberty of pointing out two instances where the PCA acknowledged the Hawaiian Kingdom as a State for administrative purposes.

The first instance is in the PCA Case Repository containing "Larsen/Hawaiian Kingdom," wherein the Respondent—Hawaiian Kingdom is identified as a "State" and the Claimant—Lance Paul Larsen as a "Private entity."[4] The second instance is in Annex 2—*Cases conducted under the auspices of the PCA or with the cooperation of the International Bureau*, PCA Annual Report 2011. The "Larsen – Hawaiian Kingdom" arbitration was listed as the thirty-third case that came under the auspices of the PCA pursuant to "article 47 of the 1907 Convention."[5] Article 47 provides, "The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal." Only States, and not non-State actors, can be Contracting Powers or non-Contracting Powers to the Convention under international law. Moreover, the Tribunal in its Award on Jurisdiction and Admissibility (Oct. 29, 2015), in the landmark *South China Sea* arbitration (Philippines v. China) cited *Larsen v. Hawaiian Kingdom*, along with *Monetary Gold Removed from Rome in 1943* and *East Timor*, as precedent cases regarding the principle of the indispensable third-party rule.[6]

For the purpose of articulating Hawaiian Statehood, it is important to draw your attention to the *dictum* in the *Larsen v. Hawaiian Kingdom* Award where the Tribunal acknowledged the origin of Hawaiian Statehood. The Tribunal concluded "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognised 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."[7] Under the principle of the presumption of State continuity despite the overthrow of its government—in this case the Hawaiian government was overthrown by the United States of America on January 17, 1893, and the United States admitted its conduct in this overthrow was unlawful—the Hawaiian Kingdom, as a State, would continue to exist unless it was extinguished under international law.[8] According to Judge Crawford, who served as the Presiding Arbitrator in *Larsen v. Hawaiian Kingdom*, "There is a strong presumption that the State continues to exist, with its rights and

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[4] Available at https://pcacases.com/web/view/35.
[5] Available at https://pca-cpa.org/wp-content/uploads/sites/175/2015/12/PCA-annual-report-2011.pdf.
[6] Available at https://pcacases.com/web/sendAttach/1506.
[7] Available at https://pcacases.com/web/sendAttach/123.
[8] Award, Annexure 1, "President Cleveland's message to the Senate and House of Representatives dated 18 December 1893," 119 INT'L L. REP. 566, 608 (2001). President Cleveland notified the Congress, "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 people requires we should endeavour to repair."

obligations, despite…a period in which there is no…government;"[9] and when the Hawaiian Kingdom was again invaded and occupied by the United States during the Spanish-American War on August 12, 1898, Judge Crawford also stated, "Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[10] Hence, the continuity of the Hawaiian State may be refuted only by reference to a valid demonstration of legal title, or sovereignty, *i.e*. treaty of cession, by a successor State, absent of which the presumption of continuity remains in the Hawaiian Kingdom.

In addition to multiple treaties with other States, as well as its numerous diplomatic and consular posts throughout the world in the nineteenth century, the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation with the Netherlands (Oct. 16, 1862),[11] which included Luxembourg, and maintained a Legation in Amsterdam and a Consulate in Dordrecht. Reciprocally, the Netherlands maintained a Consulate in Honolulu. There has been no notice of termination provided by either the Hawaiian Kingdom or the Netherlands in accordance with Article VI, and, therefore the treaty remains in full force and effect today. According to Article VI, "In case that neither the one nor the other shall have notified twelve months before the expiration of said period of ten years the intention of terminating its conditions, the treaty shall continue in force for another year, to reckon from the date on which the other contracting party shall have given notice and so on from year to year."

Your predecessor, Secretary-General Tjaco T. van den Hout, communicated with me by telephone in February 2000 that there existed no evidence of the Hawaiian State's extinguishment under international law, which prompted the Secretary-General's request that the Hawaiian Kingdom Government provide a formal invitation to the United States of America to join in the arbitration. This invitation was made in Washington, D.C., on March 3, 2000, in a conference call between myself, the Agent for the Hawaiian Kingdom, Ms. Ninia Parks, Counsel for Mr. Larsen, and John Crook of the United States Department of State. A summary letter of this discussion was sent to Mr. Crook, and a carbon copy was sent to Secretary-General van den Hout for the record to show that the invitation was in fact provided to the United States as requested.[12]

Thereafter, the United States diplomatic post in The Hague notified the International Bureau that it declined the invitation, but asked permission of both the Hawaiian Kingdom Government and Mr. Larsen to have access to the records of the case. Both parties granted permission and the formation of the *ad hoc* Tribunal was completed in April 2000. Of particular note was the presence of Mr. P.J.H. Jonkman, former Secretary-General of the PCA, at the opening day of the oral hearings held at the Permanent Court of Arbitration's hearing room on December 7, 2000. As the Presiding Arbitrator, Judge Crawford introduced Mr. Jonkman to the parties at the start of the hearing.

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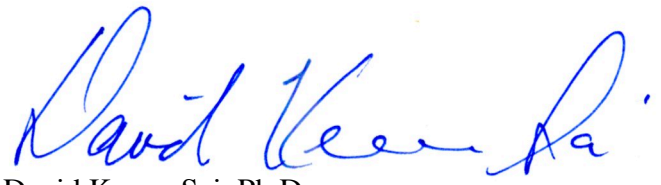
[9] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 34 (2nd ed., 2006).
[10] *Id*.
[11] Available at http://hawaiiankingdom.org/pdf/Annex%2047.pdf.
[12] The International Bureau has a copy of the letter dated March 3, 2000, and is also available at http://www.alohaquest.com/arbitration/letter_000303.htm.

This now sudden and abrupt change in conduct by your office is puzzling. I can only assume it was made without understanding the facts and circumstances of the Larsen case since you were not the Secretary-General of the PCA when the arbitral proceedings occurred. Therefore, in the spirit of comity, I have attached a brief I authored in 2013 titled, *The Continuity of the Hawaiian State and the Legitimacy of the Acting Government of the Hawaiian Kingdom*, in order for you to be better acquainted with the Hawaiian Kingdom's unique history. The brief was provided to Dr. Stuart Casey-Maslen, head of research at the Geneva Academy of International Humanitarian Law and Human Rights. The brief was cited in *The War Report: Armed Conflict in 2013*,[13] and *The War Report: Armed Conflict in 2014*.[14] The *War Report* is a project of the Geneva Academy of International Humanitarian Law and Human Rights.

In light of the aforementioned, the Hawaiian Kingdom Government, in earnest, renews its request for your office to serve as the appointing authority pursuant to Article 3(c) of the *PCA Optional Rules for Fact-Finding Commissions of Inquiry*, and for the International Bureau to promptly facilitate these proceedings. The initial deposit of $10,000.00 (USD) includes the cost for the non-refundable administrative fee for the Secretary-General to act as the appointing authority under the *PCA Optional Rules for Fact-Finding Commissions of Inquiry*.

Please accept, Excellency, the expression of my highest consideration.



David Keanu Sai, Ph.D.
Chairman, *Acting* Council of Regency
Minister of the Interior of the Hawaiian Kingdom

His Excellency
Mr. Hugo H. Siblesz, Secretary-General
International Bureau of the Permanent Court of Arbitration

Enclosure

[13] THE WAR REPORT: ARMED CONFLICT IN 2013 28, n. 73 (Stuart Casey-Maslen ed., 2014).
[14] THE WAR REPORT: ARMED CONFLICT IN 2014 24, n. 57 (Annyssa Bellal ed., 2015).

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11 January 2017

RE: FACT-FINDING INQUIRY

Dear Dr. Lenzerini,

I acknowledge receipt of your e-mail message of 27 December 2016. For your information, I attach a copy of my letter dated 7 September 2016, confirming that the International Bureau of the PCA is not in a position to assist with your client's request to commence a fact-finding proceeding.

I note that the arbitration proceedings to which you refer were terminated by a final award dated 5 February 2001.

Additionally, I should clarify that the wiring of unsolicited funds to the PCA, as acknowledged by e-mail from the PCA on 6 February 2016, does not entail the commencement of proceedings at the PCA. As stated in my prior letter, upon receipt of the banking instructions of your client, the PCA will reimburse these funds.

Yours sincerely,

Hugo H. Siblesz
Secretary-General

Encl.: Letter of 7 September 2016

SPECIAL AGREEMENT

The Government of the Hawaiian Kingdom, by its Acting Council of Regency, and Lance Paul Larsen, a Hawaiian subject, hereinafter collectively the "Parties,"

Mindful of the presumption of the Hawaiian Kingdom's continued existence, as an independent State under customary international law, despite the United States of America's admitted unlawful invasion and overthrow of the legitimate Government of the Hawaiian Kingdom, on January 17, 1893, and the subsequent re-invasion and military occupation of the Hawaiian Kingdom, being neutral territory during the Spanish-American War that continues to the present; and

Conscious that territory of the Hawaiian Kingdom was explicitly recognized as neutral under Article 26 of the 1863 Hawaiian-Spanish Treaty, and, under customary international law, the territory of a neutral State was recognized as inviolable during the Spanish-American War, which was subsequently codified under Article 1 of the 1907 Hague Convention, V, *Respecting the Rights and Duties of Neutral Powers*; and

Aware that "military occupation is a question of fact, that presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded (United States Army Field Manual 27-10, paragraph 355)"; and

Acting in compliance with Hawaiian constitutional law and within the legal parameters of necessity, the Government of the Hawaiian Kingdom was re-established on December 15, 1995, and styled the Acting Council of Regency, as officers *de facto*, serving in the absence of the Executive Monarch; and

Stressing their desire to settle a dispute between the Parties, whereby Lance Paul Larsen alleged that the Government of the Hawaiian Kingdom was committing negligence for allowing the unlawful imposition of American municipal laws that led to war crimes committed against him, being a Protected Person under Article 4 of the 1949 Geneva Convention, IV, by agents of the United States of America when he was deprived of a right to a fair and regular trial that led to his unlawful confinement, both being defined as grave breaches and war crimes under Article 147 of the 1949 Geneva Convention, IV; and

Being unable to resolve their dispute through international arbitration in *Lance Paul Larsen v. Hawaiian Kingdom*, being a contentious case between a State and a Private

entity, held under the auspices of the Permanent Court of Arbitration pursuant to Article 47 of the 1907 Hague Convention, I, (Article 26 of the 1899 Hague Convention, I), on account of the United States of America's refusal to participate in the arbitral proceedings, thereby preventing, under Procedural Order no. 3, the Tribunal to adjudge and declare "(1) that his rights as a Hawaiian subject are being violated under international law as a result of the prolonged occupation of the Hawaiian Islands by the United States of America, and (2) that the plaintiff does have redress against the Respondent Government in relation to these violations," in light of the principle of the indispensible third-party rule, pursuant to the *Monetary Gold Case* (Italy v. France, United Kingdom of Great Britain and Northern Ireland, and United States of America) and *Case Concerning East Timor* (Portugal v. Australia); and

Taking notice that the *Lance Paul Larsen v. Hawaiian Kingdom* Case was recognized by the South China Sea Arbitral Tribunal (Philippines v. China) in its Award on Jurisdiction and Admissibility as a precedent case, along with the *Monetary Gold Case* and the *Case Concerning East Timor*, regarding the principle of the indispensable third-party rule; and

Acknowledging that the Arbitral Tribunal in its Award noted the prospect for the Parties to pursue fact-finding enquiry by stating, "fact-finding commissions so far held under the auspices of the Permanent Court of Arbitration have not confined themselves to pure questions of fact but have gone on, expressly or by clear implication, to deal with issues of responsibility for those facts (Award, paragraph 13.2)"; and

Recognizing that the Government of the Hawaiian Kingdom has an obligation and responsibility to protect the just rights of its citizenry under a military occupation, which includes Lance Paul Larsen, in light of the complexities of international humanitarian law and the role and function of the government of an occupied State toward its citizenry; and

Cognizant of the continued unlawful imposition of American municipal laws throughout Hawaiian territory that continues to place Lance Paul Larsen in economic hardship and suffering, since the aforementioned war crimes were committed against his person; and

Remain firm to re-establish a trustful and lasting relationship, between a national and his government, while both parties are provisionally under a prolonged occupation by the United States of America, and where both Parties mutually agree that there is no dispute between them, but rather a situation; and

Endeavor to fairly resolve this situation according to a coherent body of legal rules, in a manner fitting the principles of international humanitarian law and the basic fundamental

right of every person to life, liberty, and of pursuing and obtaining safety and happiness, during a belligerent occupation;

This Special Agreement shall supersede and replace the former Special Agreement made between the Parties dated 22 August 2016;

Having jointly accepted the recommendation of the Tribunal, in its Award in *Lance Paul Larsen v. Hawaiian Kingdom,* the Parties entered into a Special Agreement to form an International Commission of Inquiry under the auspices of the Permanent Court of Arbitration, as follows,

ARTICLE I
International Commission of Inquiry

1. The International Commission of Inquiry, hereinafter the "Commission," shall sit at The Hague, Netherlands.
2. The Commission shall consist of three (3) Commissioners to be chosen by the Parties.
3. The International Bureau of the Permanent Court of Arbitration at The Hague shall act as a channel of communications between the Parties and the Commission, and provide secretariat including, *inter alia*, arranging for hearing rooms and stenographic or electronic records of hearings [amended 3/26/17; 10/5/17; 10/15/17].

ARTICLE II
Title of Case

Parties: Hawaiian Kingdom – Lance Paul Larsen
Case: Incidents of War Crimes in the Hawaiian Islands—The Larsen Case

ARTICLE III
Issue before the Commission

The Commission is requested to determine: *First*, what is the function and role of the Government of the Hawaiian Kingdom in accordance with the basic norms and framework of international humanitarian law; *Second*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Lance Paul Larsen, and, by extension, toward all Hawaiian subjects domiciled in Hawaiian territory and abroad in accordance with the basic norms and framework of international humanitarian law; and, *Third*, what are the duties and obligations of the Government of the Hawaiian Kingdom

toward Protected Persons who are domiciled in Hawaiian territory and those Protected Persons who are transient in accordance with the basic norms and framework of international humanitarian law [amended 10/7/17].

ARTICLE IV
Proceedings

1. The Parties shall co-operate with the Commission in good faith and shall, in particular, comply with requests by the Commission to submit written materials, provide evidence and attend meetings.
2. All such documents submitted to the Commission shall, at the same time, be transmitted to the other Party and to the International Bureau.
3. The Commission shall give the Parties every opportunity to be present at hearings and investigations, and to submit documents, present evidence and have witnesses and experts called.
4. The Commission, after notice to the Parties, may consult any experts of its choice. Such experts shall perform their functions impartially and conscientiously.
5. The language of the proceedings shall be English.
6. All matters relating to the fact-finding proceedings, including the investigation, hearings, deliberations and findings of the Commission, shall be made public.

ARTICLE V
Rules

The rules applicable to the matter shall be Part III—*International Commissions of Inquiry*, 1907 Hague Convention for the Pacific Settlement of International Disputes, unless otherwise determined by the terms of this Agreement.

ARTICLE VI
Costs

All costs incurred for these proceedings shall be borne by the Government of the Hawaiian Kingdom, with the exception of any legal fees and costs incurred by Lance Paul Larsen for his representation in these proceedings, which includes travel and expenses.

ARTICLE VII
Deposits

The Government of the Hawaiian Kingdom agrees to deposit $10,000.00 (USD) in advance for the costs referred to in Article VI as soon as this Agreement shall be notified to the International Bureau of the Permanent Court of Arbitration.

ARTICLE VIII
Execution of Agreement

1. This agreement shall enter into force on the date of the signatures of the two Parties.
2. This Agreement shall be notified to the International Bureau of the Permanent Court of Arbitration by joint letter of the Parties.

In witness whereof, the undersigned, being duly authorized thereto, have in the city of Hilo, Hawaiian Islands, signed this Special Agreement on January 19, 2017.

[*signed*]
David Keanu Sai, Ph.D.
Chairman, Acting Council of Regency
Minister of the Interior of the Hawaiian Kingdom

[*signed*]
Lance Paul Larsen

AMENDMENT TO SPECIAL AGREEMENT

The Hawaiian Kingdom and Lance Paul Larsen, by their respective representatives, hereby amends Article I of the Special Agreement entered into between the Parties on January 19, 2017 to form an International Commission of Inquiry by replacing said article with the following, to wit:

1. The International Commission of Inquiry, hereinafter the "Commission," shall sit at a place of its choosing.
2. The Commission shall consist of three (3) Commissioners to be chosen by an appointing authority to be determined hereafter by the Parties.
3. The Commission shall appoint a Secretary-General, whose office serves as a registry.
4. It is the function of the registry, under the control of the President of the Commission, to make the necessary arrangements for the sittings of the Commission, the preparation of the Minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau of the Permanent Court of Arbitration at The Hague.

In witness whereof, the undersigned, being duly authorized thereto, have in the city of Kailua, Hawaiian Islands, signed this Amendment to the Special Agreement on March 26, 2017.

David Keanu Sai, Ph.D., *Agent*
Chairman, Acting Council of Regency
Minister of the Interior of the Hawaiian Kingdom

Dexter Kaiama, *Attorney*
for Lance Paul Larsen

AMENDMENT TO SPECIAL AGREEMENT

The Hawaiian Kingdom and Lance Paul Larsen, by their respective representatives, hereby amends Article I of the Special Agreement entered into between the Parties on January 19, 2017 to form an International Commission of Inquiry by replacing said article with the following, to wit:

1. The International Commission of Inquiry, hereinafter the "Commission," shall sit at the city of Honolulu, Hawaiian Kingdom.
2. The Commission shall consist of three (3) Commissioners to be chosen by the Parties.
3. The Commission shall appoint a Secretary-General, whose office serves as a registry.
4. It is the function of the registry, under the control of the President of the Commission, to make the necessary arrangements for the sittings of the Commission, the preparation of the Minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau of the Permanent Court of Arbitration at The Hague.

In witness whereof, the undersigned, being duly authorized thereto, have in the city of Honolulu, Hawaiian Kingdom, signed this Amendment to the Special Agreement on October 5, 2017.

David Keanu Sai, Ph.D., *Agent*
Chairman, Acting Council of Regency
Minister of the Interior of the Hawaiian Kingdom

Dexter Kaiama, *Attorney*
for Lance Paul Larsen

AMENDMENT TO SPECIAL AGREEMENT

The Hawaiian Kingdom and Lance Paul Larsen, by their respective representatives, hereby amends Article III of the Special Agreement entered into between the Parties on January 19, 2017 to form an International Commission of Inquiry by replacing said article with the following, to wit:

> The Commission is requested to determine: *First*, what is the function and role of the Government of the Hawaiian Kingdom in accordance with the basic norms and framework of international humanitarian law; *Second*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Lance Paul Larsen, and, by extension, toward all Hawaiian subjects domiciled in Hawaiian territory and abroad in accordance with the basic norms and framework of international humanitarian law; and, *Third*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Protected Persons who are domiciled in Hawaiian territory and those Protected Persons who are transient in accordance with the basic norms and framework of international humanitarian law.

In witness whereof, the undersigned, being duly authorized thereto, have in the city of Honolulu, Hawaiian Kingdom, signed this Amendment to the Special Agreement on October 7, 2017.

David Keanu Sai, Ph.D., *Agent*
Chairman, Acting Council of Regency
Minister of the Interior of the Hawaiian Kingdom

Dexter Kaiama, *Attorney*
for Lance Paul Larsen

AMENDMENT TO SPECIAL AGREEMENT

The Hawaiian Kingdom and Lance Paul Larsen, by their respective representatives, hereby amends Article I of the Special Agreement entered into between the Parties on January 19, 2017 to form an International Commission of Inquiry by replacing said article with the following, to wit:

1. The International Commission of Inquiry, hereinafter the "Commission," shall sit at The Hague, Netherlands.
2. The Commission shall consist of three (3) Commissioners to be chosen by the Parties.
3. The International Bureau of the Permanent Court of Arbitration at The Hague shall act as a channel of communications between the Parties and the Commission, and provide secretariat including, *inter alia*, arranging for hearing rooms and stenographic or electronic records of hearings.

In witness whereof, the undersigned, being duly authorized thereto, have in the city of Honolulu, Hawaiian Kingdom, signed this Amendment to the Special Agreement on October 15, 2017.

David Keanu Sai, Ph.D., *Agent*
Chairman, Acting Council of Regency
Minister of the Interior of the Hawaiian Kingdom

Dexter Kaiama, *Attorney*
for Lance Paul Larsen

EUROPEAN UNIVERSITY INSTITUTE

H.E Hugo Hans Siblesz
Permanent Court of Arbitration
Peace Palace – Carnegieplein 2
2517 KJ The Hague – The Netherlands

Dear Secretary-General,

The Parties of the *Larsen v. Hawaiian Kingdom* dispute, PCA Case number 1999/01, have contacted me with the view of proposing my nomination, on the basis of a Supplemental Agreement signed on March 3, 2017, as *Appointing Authority* with the task of forming an International Commission of Inquiry. Such Commission should proceed to ascertain the facts relating to the subject matter of their dispute. The Commission should be designated and should work pursuant to the rules of Part III of the 1907 Hague Convention for the Pacific Settlement of International Disputes – in the context of which the Hawaiian Kingdom is a non-Contracting Power, in accordance with Article 47 of the Convention – as established by the Special Agreement signed by the Parties to the dispute on January 19, 2017. The Parties have agreed by an amendment to the Special Agreement signed on March 26, 2017, that the Commission "shall sit at a place of its choosing".
With this letter I am inquiring whether the Permanent Court of Arbitration can be the venue for the work of the proposed Commission, and whether the International Bureau of the Permanent Court of Arbitration could serve as registry for the Commission and provide for its sitting, pursuant to Article 15 of the Convention (as the PCA already served as the registry and provided the sitting of the Arbitral Tribunal in *Larsen v. Hawaiian Kingdom*). To this end, I have been informed that the Hawaiian Kingdom has made a preliminary deposit in the PCA account to cover the initial expenses determined by the establishment and the work of the Commission.

Grateful for an early response to this letter,
please, accept the expression of my highest consideration

Francesco Francioni
Professor Emeritus of International Law
European University Institute , Florence 6 June 2017

COUR PERMANENTE D'ARBITRAGE

PERMANENT COURT OF ARBITRATION

Prof. Francesco Francioni
European University Institute
Florence
Italy

BY E-MAIL: FRANCESCO.FRANCIONI@EUI.EU

PCA 202641
DIRECT DIAL: +31 70 302 4165
E-MAIL: BUREAU@PCA-CPA.ORG

14 June 2017

RE: INTERNATIONAL COMMISSION OF INQUIRY

Dear Professor Francioni,

In response to your letter of June 6, 2017, inquiring whether the Permanent Court of Arbitration can be the venue for the work of the proposed International Commission of Inquiry referred to in your letter, and whether the International Bureau of the Permanent Court of Arbitration could serve as registry for the Commission, I have the honor to refer you to previous correspondence with Dr. Federico Lenzerini (attached).

It follows that the PCA is not in a position to act as registry or venue for this matter.

Please accept the expression of my highest esteem.

Hugo H. Siblesz
Secretary-General

Gmail Keanu Sai <keanu.sai@gmail.com>

Appointment of Commissioner for the International Commission of Inquiry

William Schabas <W.Schabas@mdx.ac.uk> Tue, Oct 24, 2017 at 4:22 AM
To: "Keanu Sai, Ph.D." <keanu.sai@gmail.com>
Cc: "Federico Lenzerini, Ph.D." <federico.lenzerini@unisi.it>, Ben Emmerson <BenEmmerson@matrixlaw.co.uk>, Paul Venables <PaulVenables@matrixlaw.co.uk>, Jean D'Aspremont <jean.daspremont@manchester.ac.uk>, Pierre d'Argent <pierre.dargent@uclouvain.be>

Dear Mr Sai,
After confirming that the Permanent Court of Arbitration has no involvement in the fact-finding commission, we have concluded that it will lack the necessary legal and administrative foundation. Accordingly, the three of us have decided to resign and withdraw from the project.
William Schabas
Pierre d'Argent
Jean d'Aspremont

William A. Schabas OC MRIA
Professor of international law
School of Law | Middlesex University | London | United Kingdom NW4 4BT
Off.: +44 (0) 2084.114314 | Mob.: +44 (0) 7428.784703 | Res. (London) +44 (0) 2084.589033 | Res. (Paris) +33 (0)1.7550.7715
skype: william.schabas | w.schabas@mdx.ac.uk blog:humanrightsdoctorate.blogspot.com

Middlesex University London

From: Keanu Sai, Ph.D. <keanu.sai@gmail.com>
Sent: 15 October 2017 23:37:43
To: William Schabas
Cc: Federico Lenzerini, Ph.D.; Ben Emmerson; Paul Venables; Dexter Kaiama
Subject: Re: Appointment of Commissioner for the International Commission of Inquiry

[Quoted text hidden]

Middlesex University London

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24K

Appointment of Commissioner for the International Commission of Inquiry

Keanu Sai, Ph.D. <keanu.sai@gmail.com> Wed, Oct 25, 2017 at 5:31 AM
To: William Schabas <W.Schabas@mdx.ac.uk>
Cc: "Federico Lenzerini, Ph.D." <federico.lenzerini@unisi.it>, Ben Emmerson <BenEmmerson@matrixlaw.co.uk>, Paul Venables <PaulVenables@matrixlaw.co.uk>, Jean D'Aspremont <jean.daspremont@manchester.ac.uk>, Pierre d'Argent <pierre.dargent@uclouvain.be>

Dear Professors Schabas, d'Aspremont, and d'Argent.

I kindly ask that having been duly constituted under the 1907 Hague Convention, I, to refrain at this time from withdrawing until this matter has been addressed by the Administrative Council. The Hawaiian Kingdom has already been acknowledged by the Permanent Court of Arbitration, not only as a State in *Larsen v. Hawaiian Kingdom* arbitration, but also as a Non-Contracting Power pursuant to Article 47 of the Hague Convention as noted in its 2011 Annual Report, p. 51.

Sincerely,
Keanu.
[Quoted text hidden]

DR. DAVID KEANU SAI
Agent and Ambassador-at-large for the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194
Email: interior@hawaiiankingdom.org

26 October 2017

Excellency:

The first allegations of war crimes committed by the United States, being unfair trial, unlawful confinement and pillaging, were the subject of an arbitral dispute in *Larsen v. Hawaiian Kingdom* held under the auspices of the Permanent Court of Arbitration from 1999 to 2001, PCA Case no. 1999-01. Mr. Larsen alleged that the Council of Regency of the Provisional Government of the Hawaiian Kingdom was negligent for allowing the unlawful imposition of American laws within Hawaiian territory over his person in violation of treaties and customary international law. At the request of Secretary General Tjaco T. van den Hout in a telephone conversation he had with me in February 2000, I travelled to Washington, D.C., with counsel for Mr. Larsen, to meet with John Crook from the United States Department of State to provide an invitation for the United States to join in the proceedings.

The conference call meeting was held on 3 March 2000, after which I addressed a letter to the Secretary General stating what took place in the meeting and that the invitation was offered. The International Bureau has this letter. By mid-March, I received a telephone call from Deputy Secretary General Phyllis Hamilton that the International Bureau received word from the American Embassy that the United States denied the invitation to join in the arbitration but asked permission from the Hawaiian Kingdom to have access to all records and pleadings of the case, which I concurred. Counsel for Mr. Larsen, after speaking to the Deputy Secretary General, also concurred. The Arbitral Tribunal was constituted the following month in April and Memorials and Counter-Memorials were submitted.

On 17 July 2000, the Tribunal issued Procedural Order no. 3 that addressed whether the tribunal possessed jurisdiction of the subject matter as a result of the absence of the United States under the indispensible third party rule. Hearings were scheduled for 7, 8, and 11 December 2000 at the Permanent Court of Arbitration on this matter. The Tribunal concluded that it did not have subject-matter jurisdiction because of the absence of the United States in the arbitral proceedings (119 *International Law Reports* (2001) 566-615). The Tribunal, however, acknowledged that the parties could resort to fact-finding proceedings.

In the Arbitral Award (p. 597), the Tribunal stated, "[a]t one stage of the proceedings the question was raised whether some of the issues which the parties wished to present might not be dealt with by way of a fact-finding process. In addition to its role as a facilitator of international arbitration and conciliation, the Permanent Court of Arbitration has various procedures for fact-finding, both as between States and otherwise." The Tribunal pointed out that "Part III of each of the Hague Conventions of 1899 and 1907 provide for International Commissions of Inquiry [and the] PCA has also adopted Optional Rules for Fact-finding Commissions of Inquiry (*Ibid*)."

On 23 March 2000, the parties did pursue the course of fact-finding by reconstituting the Tribunal into a Fact-finding Commission of Inquiry pursuant to the Optional Rules for Fact-finding Commissions of Inquiry that was filed with the International Bureau. The Hawaiian Kingdom later withdrew from this course after entering into an agreement with Mr. Larsen on 21 September 2001, whereby "in exchange for the Hawaiian Kingdom's effort to address the illegal and prolonged occupation of the Hawaiian Kingdom at the United Nations, the parties agree that they shall take the action necessary to discontinue the present proceedings brought by Lance Paul Larsen against the Hawaiian Kingdom in the Permanent Court of Arbitration. The above agreement is made without prejudice to the Hawaiian Kingdom's position that it bears no responsibility for the injuries incurred by Lance Paul Larsen from the occupational government of the United States of America." This agreement was also filed with the International Bureau.

On 22 August 2016, the parties entered into a Special Agreement to form an International Commission of Inquiry and your office was notified in accordance with Article 2(4) of the PCA Optional Rules for Fact-finding Commissions of Inquiry by joint letter of the parties. Pursuant to Article VII of the Special Agreement of the Hawaiian Kingdom deposited $10,000.00 (USD) into the bank account of the Permanent Court of Arbitration. On 7 September 2016 you wrote a letter addressed to me stating, in part, "[i]n view of recent pronouncements by PCA Members States regarding the status of entities that are not Member States of the United Nations, I do not consider that the International Bureau of the PCA is in a position to assist with your request." I was puzzled by your response because I did not know why membership to the United Nations had anything to do with our request to form an International Commission of Inquiry pursuant to the Optional Rules, which was the substance of my response to you by letter dated 13 September 2016.

After I received no answer from you I requested Professor Federico Lenzerini, who was at the time serving as Counsel and Advocate for the Hawaiian Kingdom, to reach out to you in order to seek clarification of your reasoning to deny these proceedings. After an email to you of 27 December 2016 by Professor Lenzerini, and a few telephone calls he had with your secretary with the purpose of scheduling a meeting, you refused to meet and instead sent Professor Lenzerini a letter on 11 January 2017. You stated, in part, "I attach a copy of my letter dated 7 September 2016, confirming that the International Bureau of the PCA is not in a position to assist with your client's request to commence a fact-finding proceeding." You did not clarify what you meant regarding membership of

the United Nations, but just reiterated what you stated to me in your original letter. This position appears in itself ambiguous.

The Hawaiian Kingdom, as a State, in the arbitration proceedings was a Non-Contracting Power in accordance with Article 47 of the 1907 Hague Convention and Article 26 of the 1899 Hague Convention, which was acknowledged by the International Bureau in its 2011 Annual Report on page 51, which was a year before you began your tenure as Secretary General. In view of your refusal to consider the legitimate request of inquiries made by a Non-Contracting Power, the parties dispensed with forming an International Commission of Inquiry under the Optional Rules and adopted Part III of the 1907 Hague Convention, as proposed by the Arbitral Tribunal, in a new Special Agreement of 19 January 2017, where the duly constituted Commission "shall sit at a place of its choosing."

Unlike the Optional Rules, Part III of the 1907 Hague Convention does not involve the participation of the Secretary General but rather the International Bureau. In particular, Article 15 provides, the "International Bureau of the Permanent Court of Arbitration acts as a registry for the Commissions which sit at The Hague, and shall place its offices and staff at the disposal of the Contracting Powers [and Non-Contracting Powers pursuant to Article 47] for the use of the Commission of Inquiry." I want to emphasize "shall" and not "may." This wording clearly stipulates that it is not discretionary, but a duty, of the International Bureau, to place its offices and staff at the disposal of commissions of inquiry established in accordance with the rules of the 1907 Hague Convention, I, including commissions established by Non-Contracting Powers.

Professor Francesco Francioni, who at the time was serving as the appointing authority under the new Special Agreement, sent you a letter on 6 June 2017 "inquiring whether the Permanent Court of Arbitration can be the venue for the work of the proposed Commission, and whether the International Bureau of the Permanent Court of Arbitration could serve as registry for the Commission and provide for its sitting, pursuant to Article 15 of the Convention." You responded to Professor Francioni by letter on 14 June 2017, stating, in part, "I have the honor to refer you to previous correspondence with Dr. Federico Lenzerini."

As a result of the curious nature of your conduct and generally unfriendly manner exhibited by the office of the Secretary General, the parties amended the Special Agreement to have the sitting of the proposed Commission of Inquiry in Honolulu pursuant to Article 16, which also provides that the Commission "appoints a Secretary-General, whose office serves as registry, [and have] charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague." On 14 October 2017, the Commission of Inquiry was duly constituted under Part III of the Hague Convention with the appointments of Professor William Schabas, Professor Pierre d'Argent and Professor d'Aspremont. At the request of Professor d'Argent, the parties amended the sitting of the Commission of Inquiry to revert back to have the sitting at The Hague.

On 24 October 2017, I received an email from Professor William Schabas, on behalf of all three commissioners, notifying me that "[a]fter confirming that the Permanent Court of Arbitration has no involvement in the fact-finding commission, [they] have concluded that it will lack the necessary legal and administrative foundation. Accordingly, the three of us have decided to resign and withdraw from the project." The next day I responded to all three commissioners: "I kindly ask that having been duly constituted under the 1907 Hague Convention, I, to refrain at this time from withdrawing until this matter has been addressed by the Administrative Council. The Hawaiian Kingdom has already been acknowledged by the Permanent Court of Arbitration, not only as a State in *Larsen v. Hawaiian Kingdom* arbitration, but also as a Non-Contracting Power pursuant to Article 47 of the Hague Convention as noted in its 2011 Annual Report, p. 51." In line with your pattern of conduct, it is reasonable to assume that Professor Schabas contacted you.

In order to prepare this response to you, I sought information on your statement "[i]n view of recent pronouncements by PCA Members States regarding the status of entities that are not Member States of the United Nations, I do not consider that the International Bureau of the PCA is in a position to assist with your request." What I found is, honestly, disappointing, and appears objectively inconsistent with the position you have taken with respect to our commission of inquiry. The International Middle East Media Center published an online article on 15 March 2016 titled *Palestine Becomes A Full Member Of 'The Court of Arbitration.'* Three PCA Members States—the United States, Canada and Israel—objected to Palestine becoming a PCA Member State. It was reported that the "United States, Canada and Israel strongly opposed the move, and presented a number of proposals that were meant to obstruct the vote under various 'justifications,' including the claim that membership with this court requires a full membership with the United Nations. The majority of world countries rejected those claims, and affirmed the Palestinian right to become a member with the court." It appears your statement of "recent pronouncements by PCA Member States" was this.

First, the Hawaiian Kingdom has not sought to be a PCA Member State by acceding to the Hague Conventions of 1899 and 1907 as Palestine did, but is an acknowledged Non-Contracting Power to these Conventions that is pursuing fact-finding that directly stems from the *Larsen v. Hawaiian Kingdom* arbitration that was already held under the auspices of the Permanent Court of Arbitration from 1999-2001, and assigned PCA Case no. 1999-01. *Second*, you made the Hawaiian Kingdom believe it was a pronouncement of all the PCA Member States, being the Administrative Council, and not that it was a purely political claim asserted by only three Member States led by the United States.

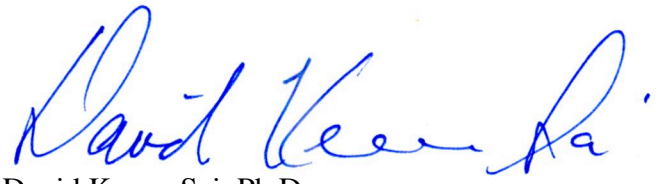
Your actions in this matter appear to be not in line with your duties as Secretary General for the International Bureau that tried to deny the legitimacy of a duly constituted Commission of Inquiry formed under and by virtue of Part III of the 1907 Hague Convention, to the detriment of the Hawaiian Kingdom.

In light of the foregoing, the Hawaiian Kingdom kindly requests you to reconsider your position on the matter, or—in the event that you feel unable to do so—to recuse yourself

from these proceedings and immediately direct someone from the International Bureau to meet with representatives of the Hawaiian Kingdom, as a Non-Contracting Power, who will be arriving in The Hague the second week of November, in order to coordinate with the Bureau's staff "for the use of the Commission of Inquiry" pursuant to Article 15. We have secured a location for the first hearing of the Commission of Inquiry in Honolulu on the 16 and 17 January 2018 of which the Commissioners acknowledged. On 19 October 2017, the Hawaiian Kingdom wired $30,000.00 (USD) into the PCA bank account in addition to the original wiring of $10,000.00 (USD).

I would like to advise you that, should you ignore this request, the Hawaiian Kingdom would be submitting a formal complaint with the Administrative Council in order to be offered the opportunity to duly exercise its rights with respect to these proceedings in accordance with the 1907 Hague Convention as a Non-Contracting Power.

Sincerely



David Keanu Sai, Ph.D.
Agent and Ambassador-at-large for the Hawaiian Kingdom

His Excellency
Mr. Hugo H. Siblesz, Secretary-General
International Bureau of the Permanent Court of Arbitration

cc: His Excellency
Bert Koenders, Dutch Minister of Foreign Affairs
President, PCA Administrative Council

His Excellency
Jean Pierre Karabaranga, Rwandan Ambassador to the Netherlands
Member State, PCA Administrative Council

Professor William Schabas
Commissioner of Inquiry

Professor Pierre d'Argent
Commissioner of Inquriy

Professor d'Aspremont
Commissioner of Inquiry

Dexter K. Ka‘iama, Esquire
Counsel for Lance Paul Larsen

Enclosures

DR. DAVID KEANU SAI
Agent and Ambassador-at-large for the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194
Email: interior@hawaiiankingdom.org

30 October 2017

Excellency:

Yesterday, Professor Federico Lenzerini, as Deputy Agent for the Hawaiian Kingdom, called by phone the International Bureau to schedule a meeting next week with representatives of the Hawaiian Kingdom. He was told that the request for scheduling a meeting must be in writing. This letter serves that purpose.

I have the honor to refer to the letter of correspondence of 26 October 2017, whereby "the Hawaiian Kingdom kindly request[ed] you to reconsider your position on the matter, or—in the event that you feel unable to do so—to recuse yourself from these proceedings and immediately direct someone from the International Bureau to meet with representatives of the Hawaiian Kingdom, as a Non-Contracting Power, who will be arriving in The Hague the second week of November, in order to coordinate with the Bureau's staff 'for the use of the Commission of Inquiry' pursuant to Article 15."

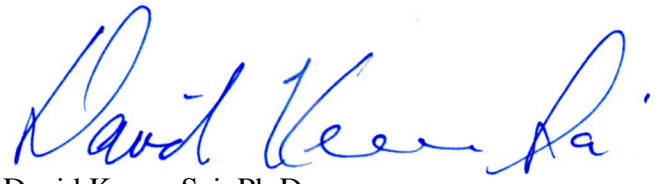
Therefore, pursuant to Article VI of the 19 January 2017 Special Agreement, as amended, that "[a]ll costs incurred for these proceedings shall be borne by the Government of the Hawaiian Kingdom," Article VIII of the Rules of Procedure of the PCA Administrative Council whereby the International Bureau serves "as intermediary to the Powers," and in the case of these proceedings between a "Power" and a "Private entity,"[1] and Article 15 of the 1907 Hague Convention, which provides the International Bureau "acts as registry for the Commissions which sit at The Hague, and shall place its offices and staff at the disposal of the Contracting [and non-Contracting] Powers for the use of the Commission of Inquiry," I am requesting that a meeting take place between the Hawaiian Kingdom

[1] The PCA recognized the Hawaiian Kingdom as a Power, being a non-Contracting Power, "[p]ursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention." *See PCA 2011 Annual Report, p. 51, n. 2*. Article 47 of the 1907 Hague Convention provides, "[t]he jurisdiction of the Permanent Court of Arbitration may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal." In its Case Repository, the PCA acknowledges the Hawaiian Kingdom as a "State" and Lance Larsen as a "Private entity." *See Larsen v. Hawaiian Kingdom, at:* https://pca-cpa.org/en/cases/35/. The PCA extended its jurisdiction between Contracting Powers or non-Contracting Powers and a Private entity since 11 November 1928 in *Radio Corporation of America v. China* arbitration. *See PCA 2011 Annual Report, p. 50.*

and the International Bureau next week at the Peace Palace at a day and time to be determined.

I will be arriving with my assistant in The Hague on Monday 6 November and departing Friday afternoon 10 November. Please provide a day that is convenient for a person or persons within the International Bureau to meet. The purpose of the meeting is to coordinate the role of the International Bureau for these fact-finding proceedings and the dispersing of the monies deposited in the PCA bank account by the Hawaiian Kingdom. The first hearings have been scheduled for 16 and 17 January 2017 in Honolulu.

Sincerely,



David Keanu Sai, Ph.D.
Agent and Ambassador-at-large for the Hawaiian Kingdom

His Excellency
Mr. Hugo H. Siblesz, Secretary-General
International Bureau of the Permanent Court of Arbitration

cc: His Excellency
Bert Koenders, Dutch Minister of Foreign Affairs
President, PCA Administrative Council

His Excellency
Jean Pierre Karabaranga, Rwandan Ambassador to the Netherlands
Member State, PCA Administrative Council

Professor William Schabas
Commissioner of Inquiry

Professor Pierre d'Argent
Commissioner of Inquriy

Professor d'Aspremont
Commissioner of Inquiry

Dexter K. Ka'iama, Esquire
Counsel for Lance Paul Larsen