

**LAW OFFICE OF  
DEXTER K. KAIAMA**

111 Hekili Street, Suite A1607  
Kailua, Hawai'i 96734

Tel. No. (808) 284-5675

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April 14, 2013

***E-mail Delivered***

Detective Derek Morimoto  
Criminal Investigations Section, Area 1  
349 Kapiolani Street  
Hilo, Hawai'i 96720  
[dmorimoto@co.hawaii.hi.us](mailto:dmorimoto@co.hawaii.hi.us)

***Re: Complaint for the Commission of Secondary Felonies  
Under Title 18 U.S.C. §1512(c)(2) and §372***

Dear Detective Morimoto:

This communication and complaint is provided to the Criminal Investigations Section, Area 1, regarding the commission of secondary felonies by certain District and Circuit Court judges, clerks of these judges, and attorneys that have a direct nexus to your investigation of felonies committed against my clients pursuant to 18 U.S.C. §2441 of the *War Crimes Act* whereby my clients have been willfully deprived a fair and regular trial by a court that is not properly constituted pursuant to the 1949 Geneva Convention, IV. I have been made aware that you are the detective investigating the following criminal complaints made by my clients that were drawn by Officer Leland Pa.

1. Criminal Complaint no. C13004901  
Victim: LORIANNE AMAVISCA  
Perpetrators: District Court Judge HARRY P. FREITAS; Plaintiff FEDERAL NATIONAL MORTGAGE ASSOCIATION; Plaintiff's attorneys BLUE KAANEHE, ESQ., CHARLES PRATHER, ESQ., and PETER K. KEEGAN, ESQ.
2. Criminal Complaint no. C13004904  
Victims: STEPHEN & ALAMA SCHWARTZ  
Perpetrators: Circuit Court Judge RONALD IBARRA, Plaintiff BANK OF HAWAI'I, and Plaintiff's attorney MITZI A. LEE, ESQ.

3. Criminal Complaint no. C13004910  
Victim: HARRIS BRIGHT  
Perpetrators: Circuit Court Judge GREG K. NAKAMURA; Plaintiff DEUTSCHE BANK TRUST COMPANY AMERICAS; and Plaintiff's attorneys CHARLES R. PRATHER, ESQ., SOFIA M. HIROSANE, ESQ., and MICHAEL G.K. WONG, ESQ.
4. Criminal Complaint no. C13004911  
Victims: HELEN & CRESENCIO SAPLA  
Perpetrators: Circuit Court Judge GLENN S. HARA; Plaintiff THE BANK OF NEW YORK MELLON; and Plaintiff's attorneys ROBERT E. CHAPMAN, ESQ., and MARY MARTIN, ESQ.
5. Criminal Complaint no. C13004913  
Victims: EDNA & ROMEO SALOM  
Perpetrators: Circuit Court Judge GREG K. NAKAMURA; Plaintiff VANDERBILT MORTGAGE AND FINANCE, INC., a Tennessee corporation, U.S.A.; and Plaintiff's attorneys ROBERT D. TRIANTOS, ESQ., and EDMUND W.K. HAITSUKA, ESQ.
6. Criminal Complaint no. C13004915  
Victim: KALE GUMAPAC  
Perpetrators: Circuit Court Judge GREG K. NAKAMURA; Plaintiff DEUTSCHE BANK NATIONAL TRUST COMPANY; and Plaintiff's attorneys CHARLES R. PRATHER, ESQ., and SOFIA M. HIROSANE, ESQ.
7. Criminal Complaint no. C13004916  
Victims: SALOTE & KULI TEAUPA  
Perpetrators: District Court Judge JOSEPH FLORENDO; Plaintiff WELLS FARGO BANK, N.A.; and Plaintiff's attorneys BLUE KAANEHE, ESQ., PETER T. STONE, ESQ., CHARLES PRATHER, ESQ., and PETER K. KEEGAN, ESQ.

My clients reported to Officer Pa that, for their statement of being a victim of a felony under 18 U.S.C. §2441, they are relying on the information and evidence provided in the complaints I prepared for the International Criminal Court (ICC), The Hague, Netherlands, and if there are any questions by the police department regarding the investigation to contact myself as their attorney. I am aware that you have copies of the aforementioned ICC complaints because they were provided to Officer Pa when the felony complaints were initiated. 18 U.S.C. §2441 provides:

(a) Whoever, whether inside or **outside the United States**, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the death penalty.

(b) The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) As used in this section the term “war crime” means any conduct (1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949.

Article 147 of the Fourth Geneva Convention defines one of the grave breaches as “willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention.” ***Willfully depriving my clients of the rights of a fair and regular trial is a war crime and felony punishable under the War Crimes Act, Title 18, U.S.C., §2441 that also applies “outside” of the United States of America.***

House of Representatives Report no. 104-698, at 5, from the House Committee on the Judiciary on the War Crimes Act, states that, “military commissions could be used to provide a mechanism for the prosecution of war criminals.” Congress “has left to the President, and the military commanders representing him, to employ the commission, as occasion may require, for the investigation and punishment of violations of the laws of war and other offenses not cognizable by court-martial.” (Id.) According to Winthrop, “Military Law and Precedents” (1920), at 835, “In the absence of any statute prescribing by whom military commissions shall be constituted, they have been constituted in practice by the same commanders as are empowered by Arts. 72 and 73 to order general courts-martial.” Article 22—§822, Uniform Code of Military Justice, *Who may convene general courts-martial*, has superseded Articles 72 and 73. §822(a) provides, “General courts-martial may be convened by—(3) the commanding officer of a unified or specified combatant command,” *i.e. Commander, United States Pacific Command (PACOM)*, which was established as a unified command since January 1, 1947.

The United States President is the sole representative of the United States in foreign relations, and military commanders represent him outside of the United States. Admiral Samuel J. Locklear III, Commander of the U.S. Pacific Command, is that military commander here in the Hawaiian Islands who is responsible under the 1996 War Crimes

Act, Title 18 U.S.C. §2441. Therefore, Preliminary investigations by the Hawai'i Police Department for violations of 18 U.S.C. §2441 should be routed to the U.S. Pacific Command for prosecution.

## **BACKGROUND**

I represent clients who have been deprived of a fair and regular trial in civil proceedings in the District and Circuit Courts of the Third Circuit. These Courts are illegally constituted in the territory of the Hawaiian Kingdom whereby a properly constituted court would be a United States non-political military commission established by order of the Commander of the United States Pacific Command, being the extension of the United States President, who is responsible for the faithful execution of United States treaties.

Accordingly, the court(s) transcripts, rulings, minute orders and/or filed orders in these proceedings provide clear evidence of the Courts' grave breaches of Article 147 of the Fourth Geneva Convention that has been criminalized under 18 U.S.C. §2441.

Unable to procure a treaty of cession from the Hawaiian Kingdom government acquiring the Hawaiian Islands as required by international law, Congress enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War (30 U.S. Stat. 750) as a war measure. Congressional laws have no extraterritorial effect and are confined to United States territory.

The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War. The occupation reinforced and supplied the troops that have been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. Following the close of the Spanish-American War by the Treaty of Paris signed December 10, 1898 (30 U.S. Stat. 1754), U.S. troops remained in the Hawaiian Islands and continued its occupation to date in violation of international law.

Article 6, 1863 Lieber Code, regulated U.S. troops during the occupation of the Hawaiian Islands in 1898 and mandated the Commander of U.S. troops to administer the laws of the occupied country, being the civil and penal laws of the Hawaiian Kingdom. Article 6 was superseded by Article 43, 1899 Hague Convention, II (32 U.S. Stat. 1803), and then superseded by Article 43, 1907 Hague Convention, IV (36 U.S. Stat. 2227). Article 43 of the 1907 Hague Convention, IV, mandates the U.S. military to administer the civil and penal laws of the Hawaiian Kingdom. On August 12, 1949, the United States signed and ratified the (IV) *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* of 12 August 1949 (6 U.S.T. 3516, T.I.A.S No. 3365, 75 U.N.T.S. 287). In July 1956, the U.S. Department of the Army published Field Manual 27-10—The Law of Land Warfare. According to the United States Supreme Court:

“Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens; and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.... [T]he court recognized, and in each of the cases cited [involving the exercise of the sovereign power of the United States] found, the warrant for its conclusion is not in the provisions of the Constitution, but in the law of nations”. United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 318 (1936).

Illegally usurping Hawaiian sovereignty, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i* on April 30, 1900 (31 U.S. Stat. 141); and on March 18, 1959, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union* (73 U.S. Stat. 4). These laws not only have no extraterritorial effect, but also stand in direct violation of the 1907 Hague Convention, IV, the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV, and 18 U.S.C. §2441.

The aforementioned Acts of the U.S. Congress constitute a usurpation of sovereignty during occupation by the United States and is the basis of the court's exercise of jurisdiction within the territory of the Hawaiian Islands. Without a treaty of cession, whereby the Hawaiian Kingdom transferred the Hawaiian Islands to the United States, these congressional acts, which includes the 1959 Statehood Act is a usurpation of Hawaiian sovereignty.

Since 1898, the United States methodically and pursuant to plan “Americanized” the Hawaiian Islands by denationalizing the occupants of the Hawaiian Kingdom. Through “Americanization” the national character of the Hawaiian Kingdom as an independent and sovereign State was eventually eradicated by assimilating Hawaiian nationals into the United States of America politically, culturally, socially, and economically. This plan included mass migration of American colonists, economic domination, installation of puppet governments, purported *de jure* annexation, and the installation of military bases throughout the Hawaiian Islands. As “Germanization in occupied territories” during the Second World War was a war crime, being Count III (J) of the Nuremburg Indictment, so is “Americanization.”

Courts illegally constituted in the territory of another sovereign and independent state is an extension of this war crime. See Alwyn V. Freeman, “War Crimes by Enemy Nationals Administering Justice in Occupied Territory,” 41 Am. J. Int'l L. 579-610, 606

(1947); and 15 Law Reports of Trials of War Criminals (United Nations War Crime Commission) 131 (1949). Therefore, by extension, the District and Circuit Courts of the Third Circuit cannot be considered lawfully constituted and my clients were willfully deprived of their right to get a fair and regular trial after presenting clear and convincing evidence that the Hawaiian Kingdom continues to exist as an occupied state.

On August 10, 2012, David Keanu Sai, Ph.D., filed a Protest and Demand with the President of the United Nations General Assembly in New York (Exhibit "4" Declaration of David Keanu Sai, Ph.D., provided in the accompanying CD). The Protest and Demand was received and acknowledged by the President of the Sixty-Sixth Session of the General Assembly (Exhibit "1" Declaration of David Keanu Sai, Ph.D.). The Protest and Demand was accepted under Article 35(2) of the United Nations Charter, which provides:

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

Having met the procedural and substantive requirements under Article 35(2) of the United Nations Charter, Dr. Mezoui presented it to the President of the General Assembly. If the Hawaiian Islands were an incorporated territory of the United States and indeed the State of Hawai'i did lawfully exist, the office of the President of the United Nations General Assembly would not have received and acknowledged the Protest and Demand from the Hawaiian Kingdom without violating the sovereignty of the United States of America.

In July and August 2012, I submitted various Protests and Demands for war crimes upon the United States Pacific Command at Camp Smith pursuant to 18 U.S.C. §4—*misprision of felony*, which provides that a witness to the commission of a felony is obligated to report the felony to a "civil or military authority under the United States." I also submitted the aforementioned Protests and Demands as formal complaints with the Office of the United Nations High Commissioner for Human Rights, Human Rights Council Branch—Complaint Procedure Unit, at Geneva, Switzerland, pursuant to the *International Covenant on Civil and Political Rights* (1966) that was ratified by the United States of America on June 8, 1992. Here follows the list of the complainants.

- War Crime Complaint dated August 20, 2012  
Victims: LANDISH K. & ROBIN R. ARMITAGE, husband and wife  
Perpetrator: District Court Judge BARBARA T. TAKASE

- War Crime Complaint dated August 20, 2012  
Victim: HARRIS BRIGHT  
Perpetrator: Circuit Court Judge GREG NAKAMURA
- War Crime Complaint dated August 20, 2012  
Victim: KALE KEPEKAIO GUMAPAC  
Perpetrator: Circuit Court Judge GREG NAKAMURA
- War Crime Complaint dated August 20, 2012  
Victims: SAMSON OKAPUA KAMAKEA, SR. & TALIA  
POMAIKAI KAMAKEA, husband and wife  
Perpetrator: Circuit Court Judge GREG K. NAKAMURA
- War Crime Complaint dated August 20, 2012  
Victim: ELAINE E. KAWASAKI  
Perpetrators: Circuit Court Judge GLENN S. HARA

On or about November 6, 2012, Officer Pa called the “Office of the United Nations High Commissioner for Human Rights, Human Rights Council Branch-Complaint Procedure Unit, United Nations Office at Geneva” and that a spokesperson confirmed they are in receipt of the complaints but could not provide any more assistance. Officer Pa stated the spokesperson recommended that he “contact U.S. departments that deal with war crime complaints.” (Declaration of Leland Pa, para. 6, provided in the accompanying CD).

On November 8, 2012, at 9:30 a.m., Officer Pa called the headquarters of the U.S. Pacific Command at Camp Smith, Island of O‘ahu, and spoke with Ronald Winfrey, Principal Deputy Staff Judge Advocate. Officer Pa informed Winfrey of his concerns and how these complaints could affect his duties as a police officer. When asked about the complaints made on behalf of my clients, Winfrey stated, “he knows those complaints because out of all the complaints he has read those are the most precise and clear.” (Id., para. 9).

Pa stated that as he “began discussing the basis of the complaints such as no treaty of annexation, Mr. Winfrey candidly and without hesitation said, ‘Oh yes, there is no treaty.’” (Id., para. 10) According to Officer Pa, Winfrey attempted to ease Officer Pa’s concerns about the implications of war crimes by stating that U.S. Courts will not hear these cases because they would be dismissed for lack of jurisdiction. Officer Pa then asked Winfrey to respond to his questions.

- “Since there is no treaty, can the unresolved issues of the executive agreements and Hawaii’s occupation get resolved by a U.S. Court in the future?” Winfrey “stated that is possible.” (Id., para. 19 & 20).

- “If a U.S. Court should find in favor of plaintiff’s claim regarding the executive agreements and Hawai’i’s occupation, then the prosecution of said War Crimes would come into play?” Winfrey “stated that is possible.” (Id., para. 21 & 22).
- “Since there is no treaty, the plaintiff does not need a U.S. court ruling? The Plaintiff could get these issues resolved in an International venue and then prosecution of war crimes would come into play?” Winfrey “stated that is possible.” (Id., para. 23-24).

Officer Pa informed Winfrey that as a police officer he swore “an oath to uphold the laws and constitution of the United States. Article 6, clause 2 of the U.S. constitution declares that treaties, which includes executive agreements, are the supreme law of the land. Because there is no treaty of annexation we are faced with a difficult situation, which needs clarification and I find it necessary to notify my superiors.” (Id., para. 25).

Pursuant to the inquiries set forth hereinabove, in January, 2013, Office Pa prepared and submitted his report/memorandum through his chain of command to Police Chief Harry S. Kubojiri concerning potential problems for law enforcement dealing with the commission of war crimes. Officer Pa’s report included a request for Officer’s training in dealing with victims reporting the commission of war crimes. To date, no response or action has been taken on Officer Pa’s report and request for training.

On December 10, 2012, Dr. Sai also deposited an instrument of accession acceding to the jurisdiction of the International Criminal Court (ICC) with the Secretary-General, whereby the ICC will have jurisdiction over Hawaiian territory starting on March 4, 2013 (Exhibit “6” Declaration of David Keanu Sai, Ph.D.). The ICC prosecutes “individuals” and not States for war crimes, in particular, failure to provide a fair trial. See Article 8(2)(a)(vi) of the Rome Statute (1998). The Instrument of Accession was accepted under Article 125(3) of the Rome Statute, which provides:

**This Statute shall be open by all States.** Instruments of accession shall be deposited with the Secretary-General of the United Nations.

On January 14, 2013, Dr. Sai also deposited, by courier, an instrument of accession acceding to the 1949 Fourth Geneva Convention for the Protection of Civilian Persons in Time of War with Ambassador Benno Bättig, General Secretariat of the Swiss Federal Department of Foreign Affairs (FDFA), received at his office in Berne, Switzerland (Exhibit “9” Declaration of David Keanu Sai, Ph.D., provided in the accompanying CD). Article 156 of the Fourth Geneva Convention provides that accessions shall be notified in writing to the Swiss Federal Council and the Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified. The Swiss Federal Council receives accessions through the



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FDFA. According to Article 159, the Swiss Federal Council also informs the Secretary-General of the United Nations of all ratifications, accessions and denunciations received by them. The United States also ratified the Fourth Geneva Convention on February 8, 1955 (6.3 U.S.T. 3516).

Pursuant to Article 157, the Convention took immediate effect from the date of the deposit because Hawai'i is currently under occupation. By acceding to the Fourth Geneva Convention, the Hawaiian Kingdom, as a State, became a High Contracting Party and its territory now comes under the Fourth Geneva Convention and Hawaiian nationals are presently considered "protected persons."

The International Criminal Court prosecutes perpetrators who commit war crimes that violate the rights of "protected persons" as defined by the Fourth Geneva Convention. The Instrument of Accession was accepted under Article 155 of the Fourth Geneva Convention, which provides:

From the date of its coming into force, it shall be **open to any [State] Power** in whose name the present Convention has not been signed, to accede to this Convention.

## COMPLAINT

It has been brought to my attention that Officer Pa has been placed on leave without pay while under internal investigation for carrying out his duties in compliance with 18 U.S.C. §2441.

Having obtained the HCPD/OPS Complaint (a true and correct copy of which I have been authorized to enclose for your records), and upon further information provided to me by Officer Pa when I spoke with him over the phone regarding the status of the investigation of my clients' complaints, I believe good cause exists which obliges me to report to your office and request your investigation into the possibility that a conspiracy, with the intention to intimidate and/or obstruct the fulfillment of Officer Pa's duty to complete his investigation into the criminal complaints that were reported by my clients and followed by his (Officer Pa's) routing of said complaints to the United States Pacific Command, has occurred. The HCPD/OPS complaint against Officer Pa presents evidence of the crimes of obstruction of justice and conspiracy and identifies the alleged perpetrators.

Accordingly, pursuant to 18 U.S.C. §4 and the enclosed HCPD/OPS complaint, I am reporting the commission of secondary felonies committed by judges of the third circuit, court clerks of the third circuit and attorneys.

**1. CHARGE 1—Obstruction of Justice (18 U.S.C. §1512(c)(2))**

Charge 1 of the Complaint against Officer Pa under “specifications,” states, “It is alleged that on February 28, 2013, while off duty, you telephoned State of Hawai'i Judges and Private Attorneys identifying yourself as a Police Officer with the Hawai'i County Police Department and informed them that they are the subjects of war crime complaints made against them and requested that they be interviewed as part of your investigation and provide a statement to you.” ***Charges 2-17 and 38-39, specifically identifies the names of the judges, judges' clerks and the attorneys.***

Upon information and belief, Officer Pa will confirm that the reason why he called while off duty was because his shift didn't start until 3:30pm and that he wouldn't have enough time to contact those named in the criminal complaints. More importantly, upon information and belief, Officer Pa will confirm that he was unable to document the calls he made to these judges and attorneys in an official report because he was relieved of his duties before he could prepare and submit his report.

The calls and identities of the judges and judges' clerks referred to in the HCPD/OPS complaint were noted in Officer Pa's notes, and had not been revealed by Officer Pa, due to his untimely being placed on administrative leave without pay. Officer Pa has personally retained continued and uninterrupted possession of said call notes.

Upon information and belief, Officer Pa will also confirm that, prior to being served with the HCPD/OPS complaint, he was told by his Captain, Robert Wagner, that judges and attorneys have been calling upstairs. Officer Pa will confirm his understanding of the term “upstairs” meant the upper chain of command of the Hawai'i County Police Department.

In light of this information, it can be reasonably concluded that the only way for the HCPD/OPS to have known that Officer Pa had in fact called the judges, judges' clerks and attorneys was to have been told by the judges, judges' clerks and attorneys themselves. Captain Wagner's statement to Officer Pa (prior to Office Pa's receiving the HCPD/OPS complaint) corroborates this conclusion. Instead of calling Officer Pa as the initial investigator, based upon the information enclosed or contained hereinabove, it appears these judges and attorneys, being the alleged principals to the felony complaint, called the upper chain of command of the Police Department to complain against Officer Pa.

On behalf of my clients, I submit this presents clear evidence of obstruction of justice by obstructing an official criminal investigation. At a minimum, it obliges me to report these occurrences to your office and demand your office take immediate and appropriate action.

**Obstruction of justice.** An attempt to interfere with the administration of the courts, the judicial system, or law enforcement officers, including threatening witnesses, improper conversations with jurors, hiding evidence, or interfering with an arrest. Such activity is a crime.

From the mere fact that you have been assigned to investigate the criminal complaints initiated by Officer Pa clearly indicates that this is an official investigation, and any attempt to obstruct or impede an official investigation is a violation of 18 U.S.C. §1512(c)(2).

**CHAPTER 73—OBSTRUCTION OF JUSTICE**

**18 U.S.C. §1512(c)(2).** Whoever corruptly...obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years or both.

**2. CHARGE 2—Conspiracy to impede or injure officer (18 U.S.C. §372)**

The complaint against Officer Pa is cloaked with the appearance of an internal investigation with the Hawai'i Police Department named as the complainant, when it should be an external matter with the judges and attorneys as the complainants. According to HPD/OPS-001 (PO/FORM GO 302-A) (04-25-12) Office of Professional Standards, complaints made against police officers require the complainants to notarize their complaints to ensure the truthfulness of the allegations. But to have the judges and attorneys submit notarized complaints against Officer Pa, when they are the alleged principals and accomplices in Officer Pa's criminal investigation, would clearly be *prima facie* evidence of obstruction of justice and violations of 18 U.S.C. §1512(c)(2) and §372. The complaint and actions taken against Officer Pa is a deliberate attempt to conceal the actions of the judges and attorneys. Conspiracy is an agreement by two or more people to commit an illegal act using illegal means and is a violation of 18 U.S.C. §372.

**18 U.S.C. §372. Conspiracy to impede or injure officer**

If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat...any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his

property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined under this title or imprisoned not more than six years, or both.

This complaint, made on behalf of my clients, alleges the following named judges, judge's court clerks and attorneys, identified in the enclosed HCPD/OPS complaint, appear to have engaged or otherwise participated in the commission of secondary felonies of obstruction of justice and conspiracy pursuant to 18 U.S.C. §1512(c)(2) and §372. These secondary felonies have a direct nexus with the original felonies that your office is currently investigating. The following judges, judge's court clerks and/or attorneys, identified in the HCPD/OPS complaint, are the alleged perpetrators of the secondary felonies:

1. *Principal*—Judge Greg Nakamura;
2. *Principal*—Judge Ronald Ibarra;
3. *Principal*—Judge Glenn Hara;
4. *Principal*—Judge Harry Freitas;
5. *Principal/Accomplice*—Court Clerk Shaylina Quenga;
6. *Principal/Accomplice*—Court Clerk Jaime Takimoto;
7. *Principal/Accomplice*—Robert Kim, Esq.;
8. *Principal/Accomplice*—Edmund Haitzuka, Esq.;
9. *Principal/Accomplice*—Robert Triantos, Esq.;
10. *Principal/Accomplice*—Peter Kubota, Esq.;
11. *Principal/Accomplice*—Mitzi Lee, Esq.

**3. CHARGE 3—Misuse of the prestige of judicial office  
(Rule 1.3, Haw. Revised Rules of Judicial Conduct)**

Specifically, as more fully disclosed in the HCPD/OPS complaint and information set forth hereinabove, these judges have used their professions to obstruct and impede an official criminal proceedings against themselves in violation of Rule 1.3 of the Hawai'i Revised Code of Judicial Conduct (HRCJC).

**Rule 1.3 (HRCJC). Avoiding misuse of the prestige of judicial office**

A judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

**Comment:** [1a] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or

deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials.

As a result of my appearance as counsel for my clients in hearings before the aforementioned judges of the District and Circuit Courts of the Third Circuit, I personally witnessed the commission of felonies described herein by said judges and attorneys for the plaintiffs identified herein.

Accordingly, in light of the evidence presented by this submission, that the aforementioned judges and attorneys have committed secondary felonies, I respectfully demand that you immediately apprehend these perpetrators and place them under arrest in order to put a stop to the flagrant violations that have and continue to transpire against the rights of my clients. Additionally, your apprehension and arrest of these perpetrators are vital to ensure the integrity of the criminal investigative process and a public trust that reporting of such crimes will be protected against the unlawful influence, interference and/or obstruction by perpetrators of felonies under 18 U.S.C. §2441.

Additionally, the Criminal Investigations Section, Area 1, should immediately conduct an investigation into these occurrences initiated by the Police Captain and the detective identified in the HCPD-OPS complaint against Office Pa as accessories after the fact.

1. *Accessory after the fact*—Police Captain Samuel Kawamoto; and
2. *Accessory after the fact*—Police Detective Brian D. Prudencio.

Upon information and belief my clients will confirm that, when he contacted them, Detective Prudencio gave my clients the impression that he was investigating their complaints when in fact he was investigation Officer Pa. This is unacceptable to mislead victims of a felony who were relying on the Hawai'i Police Department to do an impartial, independent and fair investigation of the alleged crime committed against them. When Detective Prudencio contacted me, he only admitted to investigating Officer Pa after I asked if he was calling me about my clients' complaints.

## CONCLUSION

My clients have told me that you have indicated to them that you intend to route the investigation of their complaints to the Federal Bureau of Investigation. I respectfully submit this is in error, **because the appropriate Federal agency outside of the United States pursuant to 18 U.S.C. §2441 is the United States Pacific Command, Staff Judge Advocate, as explained hereinabove.**

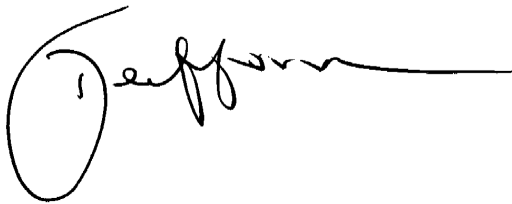
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Upon information and belief, Officer Pa will confirm his telephone conversations with Ronald Winfrey, Principal Deputy Staff Judge Advocate, USPACOM, regarding the routing of the criminal investigations, which I believe will be important to your investigation and appropriate actions taken by your office.

Therefore, upon completion of your preliminary investigation, the Criminal Investigation Section, Area 1, please properly route the reports to the Staff Judge Advocate of the U.S. Pacific Command, being the proper federal agency "outside" of U.S. territory, pursuant to 18 U.S.C. §2441, and §822(a)(3), Article 22, Uniform Code of Military Justice.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dexter K. Kaiama', with a long horizontal flourish extending to the right.

Dexter K. Kaiama, Esq.

enclosures

cc: International Criminal Court  
Office of the Prosecutor  
Communications  
Post Office Box 19519  
2500 CM The Hague  
The Netherlands (Holland)

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

Admiral Samuel J. Locklear III, USN  
HQ USPACOM  
Attn JOO  
Box 64028  
Camp H.M. Smith, HI 96861-4031

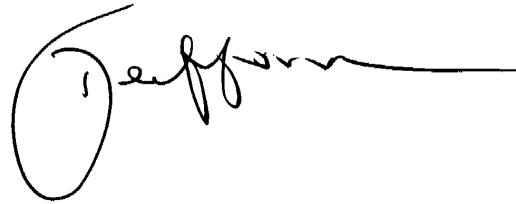
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### VERIFICATION

Pursuant to Title 18 U.S.C. §1001, I, Dexter K. Kaiama, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation of the foregoing complaint.

Dated: April 14, 2013

A handwritten signature in black ink, appearing to read 'Dexter K. Kaiama', with a long horizontal flourish extending to the right.

Dexter K. Kaiama

**DECLARATION OF DAVID KEANU SAI, PH.D.**

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

1. I have a Ph.D. in political science specializing in international relations, international law, U.S. constitutional law and Hawaiian constitutional law. My contact information is 47-605 Puapo'o Place, Kaneohe, Hawai'i, 96744, 808-383-6100 and e-mail address at [keanu.sai@gmail.com](mailto:keanu.sai@gmail.com).
2. The Hawaiian Kingdom, as an independent and sovereign state, has forty-six (46) treaty partners, to wit: Argentina, Austria, Belgium, Bolivia, Brazil, Bulgaria, Chile, Colombia, Costa Rica, Denmark, Dominican Republic Egypt, Ecuador, El Salvador, France, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, Iran, Italy, Japan, Liberia, Luxembourg, Mexico, Montenegro, Netherlands, Nicaragua, Norway, Paraguay, Peru, Portugal, Romania, Russia, Serbia, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, and Venezuela.
3. The aforementioned treaties have not been terminated by consent of the parties and still remain in full force and effect.
4. States who gained their independence from State parties to treaties with the Hawaiian Kingdom, whether as colonial possessions, mandate territories or trust territories, are also successor State parties to the treaties with the Hawaiian Kingdom, which now includes one-hundred and twenty-seven (127) States.



5. On August 1, 2012, the *acting* government of the Hawaiian Kingdom commissioned me as Ambassador-at-large to bring to the attention of the international community the illegal and prolonged occupation of the Hawaiian Kingdom and to prepare a Protest and Demand to be filed with the President of the United Nations General Assembly under Article 35(2) of the Charter of the United Nations.
6. Article 35(2) of the United Nations Charter provides, “a State which is not a Member of the United Nations may bring to the attention of the...General Assembly any dispute to which it is a party...” The Hawaiian Kingdom is a non-Member State of the United Nations.
7. On August 10, 2012, I was granted permission to enter the United Nations facility and Mrs. Hanifa Mezoui, Ph.D., Special Coordinator, Third Committee and Civil Society, Office of the President of the Sixty-Sixth Session of the General Assembly received me in the headquarters for the President of the United Nations General Assembly.
8. After I presented my credentials and explained the circumstances of the Hawaiian situation and that I was there to file a Protest and Demand against one-hundred and seventy-three (173) member States of the United Nations for treaty violations as a non-member State under Article 35(2) of the United Nations Charter, Dr. Mezoui acknowledged receipt of the Protest and Demand and a CD of PDF files of Annexes.
9. Attached hereto as Exhibit “1” is a true and correct copy of Dr. Mezoui’s acknowledgment of receipt.

10. One-hundred and twenty (120) named States in the Protest and Demand are also members of the Group of 77 at the United Nations. Mr. Pierre Forien, on behalf of the Executive Secretary of the Group of 77, also acknowledged receipt of the Protest and Demand and a CD of PDF files of Annexes on August 10, 2012 at the United Nations.
11. Attached hereto as Exhibit “2” is a true and correct copy of Mr. Forien’s acknowledgment of receipt.
12. The Protest and Demand and a CD of PDF files of Annexes was also acknowledged and received by Mr. Carlyle Corbin, Ph.D., Executive Secretary of the Council of Presidents, which is a think tank comprised of former Presidents of the United Nations General Assembly that advises the sitting President, on August 10, 2012.
13. Attached hereto as Exhibit “3” is a true and correct copy of Dr. Corbin’s acknowledgment of receipt.
14. All one-hundred and seventy-three (173) named States in the Protest and Demand received a copy of the same by their Permanent Missions to the United Nations in New York.
15. Attached hereto as Exhibit “4” is a true and correct copy of the Protest and Demand (without annexes) and the cover letter to the President of the United Nations General Assembly. The PDFs of the Annexes can be accessed online at [http://hawaiiankingdom.org/UN\\_Protest\\_Annexes.shtml](http://hawaiiankingdom.org/UN_Protest_Annexes.shtml).
16. Attached hereto as Exhibit “5” is a true and correct copy of a second letter received by the President of the United Nations General Assembly dated

August 14, 2012.

17. On August 19, 2012, I received a telephone call from Dr. Mourad Ahmia, Executive Secretary of the Group of 77 at the United Nations, in New York City, notifying me that after further review by the President's office the Protest and Demand met the procedural requirements under the Charter of the United Nations and that the Hawaiian Kingdom, being a State not a member of the United Nations, the Hawaiian Protest and Demand was forwarded to the President of the United Nations General Assembly, H.E. Mr. Nassir Abdulaziz Al-Nasser of Qatar, under Article 35(2) of the Charter of the United Nations.
18. Dr. Ahmia also told me that H.E. Nassir Abdulaziz Al-Nasser would be passing on the Protest and Demand and all relevant documents to his successor H.E. Vuk Jeremić of the Republic of Serbia, who took office on September 18, 2012.
19. On November 28, 2012, the acting Government of the Hawaiian Kingdom acceded to the Rome Statute establishing the International Criminal Court, The Hague, Netherlands.
20. Attached hereto as Exhibit "6" is a true and correct copy of the Instrument of Accession dated November 28, 2012.
21. On December 10, 2012, I deposited the Instrument of Accession with the Secretary-General of the United Nations, by the United Nations Treaty Section, Office of Legal Affairs, in New York City. The International Criminal Court prosecutes individuals and not States for war crimes.
22. Attached hereto as Exhibit "7" is a true and correct copy of the cover letter to

the Secretary-General of the United Nations dated December 10, 2012.

23. Attached hereto as Exhibit “8” is a true and correct copy of the United Nations Treaty Section, Office of Legal Affairs, acknowledgment and receipt of the Instrument of Accession.

24. On January 14, 2013, I deposited, by courier, an instrument of accession acceding to the 1949 Fourth Geneva Convention for the Protection of Civilian Persons in Time of War with Ambassador Benno Bättig, General Secretariat of the Swiss Federal Department of Foreign Affairs (FDFA), received at his office in Berne, Switzerland. The Fourth Geneva Convention took immediate effect on January 14, 2013 pursuant to Article 157 of the Fourth Geneva Convention.

25. Attached hereto as Exhibit “9” is a true and correct copy of the Swiss Government’s acknowledgement and receipt dated January 14, 2013 and the Instrument of Accession dated November 28, 2012.

26. I am qualified and competent to testify on the matters stated herein and further as an expert witness in matters concerning the Legal Continuity of the Hawaiian Kingdom as an Independent and Sovereign State.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: Honolulu, Hawai’i, January 16, 2013.

A handwritten signature in black ink, appearing to read "David Keanu Sai". The signature is fluid and cursive, with a distinct dot at the end of the final stroke.

---

David Keanu Sai

# **Exhibit “1”**



**DR. DAVID KEANU SAI, PH.D.**

Ambassador-at-large for the Hawaiian Kingdom  
P.O. Box 2194  
Honolulu, HI 96805-2194  
Tel: (808) 383-6100  
E-mail: interior@hawaiiankingdom.org  
Website: <http://hawaiiankingdom.org/>

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**ACKNOWLEDGMENT OF RECEIPT**

I hereby acknowledge the receipt of the following documents from the Ambassador-at-large for the Hawaiian Kingdom deposited with the President of the United Nations General Assembly pursuant to Article 35(2) of the United Nations Charter:

1. Protest and Demand dated 9 August 2012; and
2. CD of PDF files of Annexes to the Protest and Demand.

Hanifa Mezoui  
(Signature)

10 August 2012  
(Date)



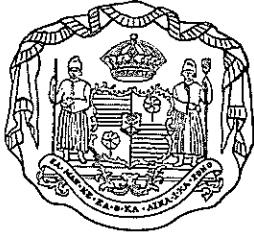
**Hanifa Mezoui, PhD**

Special Coordinator  
Third Committee and Civil Society  
Office of the President of the Sixty-Sixth  
Session of the General Assembly.

United Nations  
Room: NL-2082 T  
New York, NY 10017

T (+1-212) 963-3573  
C (+1-917) 238-2714  
F (+1-212) 963-3301  
E mezouih@un.org

## **Exhibit “2”**



**DR. DAVID KEANU SAI, PH.D.**

Ambassador-at-large for the Hawaiian Kingdom  
P.O. Box 2194  
Honolulu, HI 96805-2194  
Tel: (808) 383-6100  
E-mail: interior@hawaiiankingdom.org  
Website: <http://hawaiiankingdom.org/>


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**ACKNOWLEDGMENT OF RECEIPT**

I hereby acknowledge the receipt of the following documents from the Ambassador-at-large for the Hawaiian Kingdom deposited with the Executive Secretary of the Group of 77 at the United Nations:

1. Protest and Demand dated 9 August 2012 deposited with the President of the United Nations General Assembly pursuant to Article 35(2) of the United Nations Charter; and
2. CD of PDF files of Annexes to the Protest and Demand.

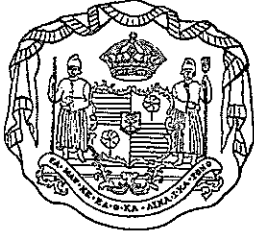
PIERRE FORIEN

  
\_\_\_\_\_  
(Signature)

08/10/2012  
\_\_\_\_\_  
(Date)



# **Exhibit “3”**



**DR. DAVID KEANU SAI, PH.D.**

Ambassador-at-large for the Hawaiian Kingdom

P.O. Box 2194

Honolulu, HI 96805-2194

Tel: (808) 383-6100

E-mail: [interior@hawaiiankingdom.org](mailto:interior@hawaiiankingdom.org)

Website: <http://hawaiiankingdom.org/>

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**ACKNOWLEDGMENT OF RECEIPT**

I hereby acknowledge the receipt of the following documents from the Ambassador-at-large for the Hawaiian Kingdom deposited with the Executive Secretary of the Council of Presidents of the United Nations:

1. Protest and Demand dated 9 August 2012 deposited with the President of the United Nations General Assembly pursuant to Article 35(2) of the United Nations Charter; and
2. CD of PDF files of Annexes to the Protest and Demand.

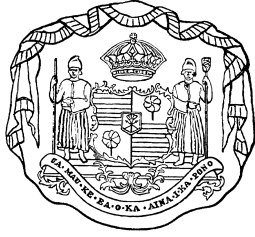
A handwritten signature in cursive script, appearing to read 'C. C. Chiu', written above a horizontal line.

(Signature)

A handwritten date '10/08/12' written above a horizontal line.

(Date)

**Exhibit “4”**



**DAVID KEANU SAI, PH.D.**

Ambassador-at-large for the Hawaiian Kingdom  
P.O. Box 2194  
Honolulu, HI 96805-2194  
Tel: (808) 383-6100  
E-mail: interior@hawaiiankingdom.org  
Website: <http://hawaiiankingdom.org/>

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August 9, 2012

Excellency:

In accordance with Article 35(2) of the United Nations Charter, I have the honor on behalf of the *acting* government, to bring to the attention of the United Nations General Assembly, by its President, a Protest and Demand of the prolonged occupation of the Hawaiian Kingdom, being a non-Member State of the United Nations, attached herein together with a CD of PDF files of Annexes to the Protest and Demand and other pertinent documents. The Hawaiian Kingdom achieved the recognition of its independence as a sovereign State on November 28, 1843 by joint proclamation from Great Britain and France and by 1893, the Hawaiian Kingdom maintained over ninety legations and consulates throughout the world and has been a Member State of the Universal Postal Union since January 1, 1882.

Unable to procure a treaty of cession from the Hawaiian Kingdom acquiring the Hawaiian Islands as required by international law, the United States Congress enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War as a war measure. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War, and the occupation was justified by the United States as a military necessity in order to reinforce and supply the troops that have been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. Following the close of the Spanish-American War by the 1898 Treaty of Paris, U.S. troops remained in the Hawaiian Islands and continued its illegal occupation to date in violation of the 1893 *Lili'uokalani assignment and Agreement restoration*, being international compacts established through *exchange of notes*, the 1907 Hague Convention, IV, and the 1949 Geneva Convention, IV.

Furthering the illegal occupation, United States President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i* on April 30, 1900; and on March 18, 1959, United States President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union*. These laws, which include the 1898 joint resolution of annexation, have no extraterritorial effect and stand in direct violation of international law and the 1893 *Lili'uokalani assignment and Agreement restoration*. Actions taken against the Hawaiian

Kingdom by the United States constitutes serious international wrongful acts pursuant to the *Responsibility of States for International Wrongful Acts* (2001).

I had the honor of serving as Agent for the *acting* Government of the Hawaiian Kingdom in arbitral proceedings before the Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports* 566 (2001).<sup>1</sup> The Arbitral Tribunal in the *Larsen* arbitration comprised of Professor James Crawford, SC, Presiding Arbitrator, who at the same time was a member of the United Nations International Law Commission and *Special Rapporteur* on State Responsibility (1997-2001); Professor Christopher Greenwood, QC, Associate Arbitrator, who now serves as a Judge on the International Court of Justice since February 6, 2009; and Gavan Griffith, QC, Associate Arbitrator, who served as former Solicitor General for Australia. The jurisdictional basis of the Permanent Court of Arbitration in *Larsen v. Hawaiian Kingdom* was a dispute between a State and a private person. I also served as Agent for the *acting* Government when I filed a Complaint against the United States of America with the United Nations Security Council on July 5, 2001, under the Presidency of China.<sup>2</sup>

The Hawaiian Kingdom will withdraw States from this Protest and Demand, with the exception of the United States of America, when said States shall declare, whether individually or collectively, that they will not recognize as lawful the United States of America's presence and authority within the territory, territorial seas, exclusive economic zone and airspace of the Hawaiian Kingdom according to Article 41(2), *Responsibility of States for International Wrongful Acts* (2001), excepting the United States' temporary and limited authority vested by virtue of the 1893 *Lili'uokalani assignment*, Article 43 of the 1907 Hague Convention, IV, and international law.

The Hawaiian Kingdom will be providing individual packets for the Permanent Representatives of the named States that contain a cover letter with accompanying CD of PDF files of the Protest and Demand and Annexes.

Please accept, Excellency, the assurances of my highest consideration,



David Keanu Sai

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<sup>1</sup> Bederman & Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai'i," 95 *American Journal of International Law* 927-933 (2001).

<sup>2</sup> 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* 655-684 (2002); and 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 in Hawai'i today," 10 *Journal of Law and Social Challenges* 68-133 (Fall 2008).

# PROTEST and DEMAND

BY

THE HAWAIIAN KINGDOM

FOR SERIOUS BREACHES OF  
OBLIGATIONS UNDER PEREMPTORY  
NORMS OF GENERAL INTERNATIONAL  
LAW COMMITTED BY:

THE UNITED STATES OF AMERICA,

AND INTERNATIONALLY WRONGFUL  
ACTS COMMITTED BY:

AFGHANISTAN, ALGERIA, ANGOLA, ANTIGUA AND BARBUDA, ARGENTINA, ARMENIA, AUSTRALIA, AUSTRIA, AZERBAIJAN, BAHAMAS, BAHRAIN, BANGLADESH, BARBADOS, BELARUS, BELGIUM, BELIZE, BENIN, BHUTAN, BOLIVIA (PLURINATIONAL STATE OF), BOTSWANA, BRAZIL, BRUNEI DARUSSALAM, BULGARIA, BURKINA FASO, BURUNDI, CAPE VERDE, CENTRAL AFRICAN REPUBLIC, CHAD, CHILE, COLOMBIA, COMOROS, CONGO, COSTA RICA, COTE D'IVOIRE, CUBA, CYPRUS, CZECH REPUBLIC, DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, DEMOCRATIC REPUBLIC OF THE CONGO, DENMARK, DJIBOUTI, DOMINICA, DOMINICAN REPUBLIC, ECUADOR, EGYPT, EL

SALVADOR, EQUATORIAL GUINEA, FIJI, FINLAND, FRANCE, GABON, GAMBIA, GEORGIA, GERMANY, GHANA, GREECE, GRENADA, GUATEMALA, GUINEA, GUINEA-BISSAU, GUYANA, HAITI, HONDURAS, HUNGARY, ICELAND, INDIA, INDONESIA, IRAN (ISLAMIC REPUBLIC OF), IRAQ, IRELAND, ITALY, JAMAICA, JAPAN, JORDAN, KAZAKHSTAN, KENYA, KIRIBATI, KUWAIT, KYRGYZSTAN, LAO PEOPLE'S DEMOCRATIC REPUBLIC, LATVIA, LEBANON, LESOTHO, LIBERIA, LIBYA, LITHUANIA, LUXEMBOURG, MADAGASCAR, MALAWI, MALAYSIA, MALDIVES, MALI, MALTA, MARSHALL ISLANDS, MAURITANIA, MAURITIUS, MEXICO, MICRONESIA (FEDERATED STATES OF), MONTENEGRO, MOROCCO, MOZAMBIQUE, MYANMAR, NAMIBIA, NAURU, NETHERLANDS, NEW ZEALAND, NICARAGUA, NIGER, NIGERIA, NORWAY, PAKISTAN, PALAU, PAPUA NEW GUINEA, PARAGUAY, PERU, PHILIPPINES, POLAND, PORTUGAL, QATAR, REPUBLIC OF CAMEROON, REPUBLIC OF KOREA, REPUBLIC OF MOLDOVA, ROMANIA, RUSSIAN FEDERATION, RWANDA, SAINT KITTS AND NEVIS, SAINT LUCIA, SAINT VINCENT AND THE GRENADINES, SAMOA, SAN MARINO, SAO TOME AND PRINCIPE, SENEGAL, SERBIA, SEYCHELLES, SIERRA LEONE, SINGAPORE, SLOVAKIA, SLOVENIA, SOLOMON ISLANDS, SOMALIA, SOUTH SUDAN, SOUTH AFRICA, SPAIN, SRI LANKA, SUDAN, SURINAME, SWAZILAND, SWEDEN, SWITZERLAND, SYRIAN ARAB REPUBLIC, TAJIKISTAN, THAILAND, TIMOR-LESTE, TOGO, TONGA, TRINIDAD AND TOBAGO, TUNISIA, TURKEY, TURKMENISTAN, TUVALU, UGANDA, UKRAINE, UNITED ARAB EMIRATES, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, UNITED REPUBLIC OF TANZANIA, URUGUAY, UZBEKISTAN, VANUATU, VENEZUELA (BOLIVARIAN REPUBLIC OF), VIET NAM, ZAMBIA, AND ZIMBABWE

## PROTEST and DEMAND

9 August 2012

**BY:** THE HAWAIIAN KINGDOM,

which appoints as Agent for purposes of this Protest and Demand His Excellency Dr. David Keanu Sai, Ph.D., its Ambassador-at-large.

**AGAINST:** One hundred seventy-three (173) member States of the United Nations, being the UNITED STATES OF AMERICA, AFGHANISTAN, ALGERIA, ANGOLA, ANTIGUA AND BARBUDA, ARGENTINA, ARMENIA, AUSTRALIA, AUSTRIA, AZERBAIJAN, BAHAMAS, BAHRAIN, BANGLADESH, BARBADOS, BELARUS, BELGIUM, BELIZE, BENIN, BHUTAN, BOLIVIA (PLURINATIONAL STATE OF), BOTSWANA, BRAZIL, BRUNEI DARUSSALAM, BULGARIA, BURKINA FASO, BURUNDI, CAPE VERDE, CENTRAL AFRICAN REPUBLIC, CHAD, CHILE, COLOMBIA, COMOROS, CONGO, COSTA RICA, COTE D'IVOIRE, CUBA, CYPRUS, CZECH REPUBLIC, DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, DEMOCRATIC REPUBLIC OF THE CONGO, DENMARK, DJIBOUTI, DOMINICA, DOMINICAN REPUBLIC, ECUADOR, EGYPT, EL SALVADOR, EQUATORIAL GUINEA, FIJI, FINLAND, FRANCE, GABON, GAMBIA, GEORGIA, GERMANY, GHANA, GREECE, GRENADA, GUATEMALA, GUINEA, GUINEA-BISSAU, GUYANA, HAITI, HONDURAS, HUNGARY, ICELAND, INDIA, INDONESIA, IRAN (ISLAMIC REPUBLIC OF), IRAQ, IRELAND, IRAQ, ITALY, JAMAICA, JAPAN, JORDAN, KAZAKHSTAN, KENYA, KIRIBATI, KUWAIT, KYRGYZSTAN, LAO PEOPLE'S DEMOCRATIC REPUBLIC, LATVIA, LEBANON, LESOTHO, LIBERIA, LIBYA, LITHUANIA, LUXEMBOURG, MADAGASCAR, MALAWI, MALAYSIA, MALDIVES, MALI, MALTA, MARSHALL ISLANDS, MAURITANIA, MAURITIUS, MEXICO, MICRONESIA (FEDERATED STATES OF), MONTENEGRO, MOROCCO, MOZAMBIQUE, MYANMAR, NAMIBIA, NAURU, NETHERLANDS, NEW ZEALAND, NICARAGUA, NIGER, NIGERIA, NORWAY, PAKISTAN, PALAU, PAPUA NEW GUINEA, PARAGUAY, PERU, PHILIPPINES, POLAND, PORTUGAL, QATAR, REPUBLIC OF CAMEROON, REPUBLIC OF KOREA, REPUBLIC OF MOLDOVA, ROMANIA, RUSSIAN FEDERATION, RWANDA, SAINT KITTS AND NEVIS, SAINT LUCIA, SAINT VINCENT AND THE GRENADINES, SAMOA, SAN MARINO, SAO TOME AND PRINCIPE, SENEGAL, SERBIA, SEYCHELLES, SIERRA LEONE, SINGAPORE, SLOVAKIA, SLOVENIA, SOLOMON ISLANDS, SOMALIA, SOUTH SUDAN, SOUTH AFRICA, SPAIN, SRI LANKA, SUDAN, SURINAME, SWAZILAND, SWEDEN, SWITZERLAND, SYRIAN ARAB REPUBLIC, TAJIKISTAN, THAILAND, TIMOR-LESTE, TOGO, TONGA, TRINIDAD AND TOBAGO, TUNISIA, TURKEY,



TURKMENISTAN, TUVALU, UGANDA, UKRAINE, UNITED ARAB EMIRATES, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, UNITED REPUBLIC OF TANZANIA, URUGUAY, UZBEKISTAN, VANUATU, VENEZUELA (BOLIVARIAN REPUBLIC OF), VIET NAM, ZAMBIA, ZIMBABWE.

## I. LEGAL GROUNDS

(1) “A state which is not a Member of the United Nations may bring to the attention of the...General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter,” Article 35(2), U.N. Charter. The Hawaiian Kingdom accepts the obligations of pacific settlement (Annex 1).

(2) Violations of the principle that a State may not exercise its authority on the territory of another State and of the principle of sovereign equality among all States whether members or non-members of the United Nations.

(3) “There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character,” Article 12, *Responsibility of States for International Wrongful Acts* (2001).

(4) “The State responsible for the internationally wrongful act is under an obligation (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require,” Article 30, *Responsibility of States for International Wrongful Acts* (2001).

(5) “The responsible State is under an obligation to make full reparation for the injury caused by the international wrongful act,” Article 31(1), *Responsibility of States for International Wrongful Acts* (2001).

(6) “Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State,” Article 31(2), *Responsibility of States for International Wrongful Acts* (2001).

(7) “The responsible State may not rely on the provisions of its internal law as justification for failure to comply with the obligations,” Article 32, *Responsibility of States for International Wrongful Acts* (2001).

(8) “Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination,” Article 34, *Responsibility of States for International Wrongful Acts* (2001).

(9) “A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfill the obligation,” Article 40(2), *Responsibility of States for International Wrongful Acts* (2001).

(10) “States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40,” Article 41(1), *Responsibility of States for International Wrongful Acts* (2001).

(11) “No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation,” Article 41(2), *Responsibility of States for International Wrongful Acts* (2001).

## II. NATURE OF THE CLAIM

This case arises out of the prolonged and illegal occupation of the entire territory of the Hawaiian Kingdom by the United States of America since the Spanish-American War on August 12, 1898, and the failure on the part of the United States of America to establish a direct system of administering the laws of the Hawaiian Kingdom. There are currently 119 United States military sites throughout the Hawaiian Islands encompassing 230,622 acres of land under the command and control of the United States Pacific Command whose headquarters is situated on the Island of O‘ahu. These military sites have been illegally established within the territory of the Hawaiian Kingdom and have consequently placed the Hawaiian State and its population in grave danger from military attack by foreign States, *e.g.* Japan’s military attack of United States military sites on the Island of O‘ahu on December 7, 1941, and the threat of missile attacks from China, the Democratic People’s Republic of Korea, and the Russian Federation.

The United States disguised its occupation of the Hawaiian Kingdom as if a treaty of cession annexed the Hawaiian Islands. There is no treaty. For the past 114 years, the United States of America has committed a serious international wrongful act and deliberately misled the international community that the Hawaiian Islands had been incorporated into the territory of the United States. It has unlawfully imposed its internal laws over Hawaiian territory, which includes its territorial seas, its exclusive economic zone, and its airspace, in violation of its treaties with the Hawaiian Kingdom, the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law.

The Hawaiian Kingdom herein files this Protest and Demand as a non-member State pursuant to Article 35(2) of the United Nations Charter against the aforementioned member States for the violation of treaties and international law and calls upon the United Nations General Assembly:

1. To ensure the United States of America comply with the 1893 *Lili‘uokalani assignment & Agreement of restoration*, 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law, as hereinafter described;
2. To ensure that the United States of America establishes a military government, to include tribunals, to administer and enforce the civil and penal laws of the Hawaiian Kingdom pursuant to the 1893 *Lili‘uokalani*

*assignment* and Article 43 of the 1907 Hague Convention, IV, as hereinafter described;

3. To ensure that all member States of the United Nations shall not recognize as lawful the United States of America's presence and authority within the territory, territorial seas, exclusive economic zone and airspace of the Hawaiian Kingdom, except for its temporary and limited authority vested under the 1893 *Lili'uokalani assignment* and Article 43 of the 1907 Hague Convention, IV, as hereinafter described;
4. To ensure full reparation for the injury caused by the serious breach of obligations and internationally wrongful acts in the form of restitution, compensation and satisfaction, whether singly or in combination.

### III. PRELIMINARY STATEMENT

The Hawaiian Kingdom received the recognition of its independence and sovereignty by joint proclamation from the United Kingdom and France on November 28, 1843 (Annex 2), and by the United States of America on July 6, 1844 (Annex 3). At the time of the recognition of Hawaiian independence, the Hawaiian Kingdom's government was a constitutional monarchy that developed a complete system of laws, both civil and criminal, and have treaty relations of a *most favored nation* status with the major powers of the world, including the United States of America.

#### A. PERMANENT POPULATION

According to Professor Crawford, "If States are territorial entities, they are also aggregates of individuals. A permanent population is thus necessary for statehood, though, as in the case of territory, no minimum limit is apparently prescribed."<sup>1</sup> Professor Giorgetti explains, "Once recognized, States continue to exist and be part of the international community even if their population changes. As such, changes in one of the fundamental requirements of statehood do not alter the identity of the State once recognized."<sup>2</sup>

The population of the Hawaiian Islands can but be studied by one unfamiliar with the native tongue from its several census reports. A census is taken every six years. The last report is for the year 1890. From this it appears that the whole population numbers 89,990. This number includes natives, or, to use another designation, Kanakas, half-castes (persons containing an admixture of other than native blood in any proportion with it), Hawaiian-born foreigners of all races or nationalities other than natives,

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<sup>1</sup> James Crawford, *The Creation of States in International Law*, 2<sup>nd</sup> ed. (Oxford, 2006), 52.

<sup>2</sup> Chiara Giorgetti, *A Principled Approach to State Failure* (Martinus Nijhoff Publishers, 2010), 55

Americans, British, Germans, French, Portuguese, Norwegians, Chinese, Polynesians, and other nationalities.

Americans number 1,928; natives and half-castes, 40,612; Chinese, 15,301; Japanese, 12,360; Portuguese, 8,602; British, 1,344; Germans, 1,034; French, 70; Norwegians, 227; Polynesians, 588; and other foreigners 419.

It is well at this point to say that of the 7,495 Hawaiian-born foreigners 4,117 are Portuguese, 1,701 Chinese and Japanese, 1,617 other white foreigners, and 60 of other nationalities.<sup>3</sup>

The permanent population has exceedingly increased since the 1890 census and according to the last census in 2011 by the United States that number is now at 1,374,810.<sup>4</sup> International law, however, protects the *status quo* of the national population of an occupied State during occupation. According to Professor von Glahn, “the nationality of the inhabitants of occupied areas does not ordinarily change through the mere fact that temporary rule of a foreign government has been instituted, inasmuch as military occupation does not confer *de jure* sovereignty upon an occupant. Thus under the laws of most countries, children born in territory under enemy occupation possess the nationality of their parents, that is, that of the legitimate sovereign of the occupied area.”<sup>5</sup> Any individual today who is a direct descendent of a person who lawfully acquired Hawaiian citizenship prior to the U.S. occupation that began at noon on August 12, 1898, is a Hawaiian subject. Hawaiian law recognizes all others who possess the nationality of their parents as part of the alien population.

## B. DEFINED TERRITORY

According to Judge Huber, “Territorial sovereignty...involves the exclusive right to display the activities of a State.”<sup>6</sup> Crawford also states, “Territorial sovereignty is not ownership of but governing power with respect to territory.”<sup>7</sup>

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

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<sup>3</sup> United States House of Representatives, 53<sup>rd</sup> Congress, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 1895), 539

<sup>4</sup> *2011 Population Estimates*. United States Census Bureau, Population Division.

<sup>5</sup> Gehard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (University of Minnesota Press 1957), 60.

<sup>6</sup> *Island of Palmas Case*, 1 RIAA 829, 839 (Arbitrator Huber) 4 ILR 3 (1928), 103, 108, 110, 111, 113, 114, 418, 479, 482, 487, 492.

<sup>7</sup> Crawford, 56.

while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.<sup>8</sup>

The Islands constituting the defined territory of the Hawaiian Kingdom on January 17, 1893, together with its territorial seas whereby the channels between adjacent Islands are contiguous, its exclusive economic zone of two hundred miles, and its air space, include:

<u>Island:</u>	<u>Location:</u>	<u>Square Miles/Acreage:</u>
Hawai‘i	19° 30' N 155° 30' W	4,028.2 / 2,578,048
Maui	20° 45' N 156° 20' W	727.3 / 465,472
O‘ahu	21° 30' N 158° 00' W	597.1 / 382,144
Kaua‘i	22° 03' N 159° 30' W	552.3 / 353,472
Molokai	21° 08' N 157° 00' W	260.0 / 166,400
Lana‘i	20° 50' N 156° 55' W	140.6 / 89,984
Ni‘ihau	21° 55' N 160° 10' W	69.5 / 44,480
Kaho‘olawe	20° 33' N 156° 35' W	44.6 / 28,544
Nihoa	23° 06' N 161° 58' W	0.3 / 192
Molokini	20° 38' N 156° 30' W	0.04 / 25.6
Lehua	22° 01' N 160° 06' W	0.4 / 256
Ka‘ula	21° 40' N 160° 32' W	0.2 / 128
Laysan	25° 50' N 171° 50' W	1.6 / 1,024
Lisiansky	26° 02' N 174° 00' W	0.6 / 384
Palmyra	05° 52' N 162° 05' W	4.6 / 2,944
Ocean	28° 25' N 178° 25' W	<u>0.4 / 256</u>
TOTAL:		6,427.74 / 4,113,753.6

### C. GOVERNMENT

According to Crawford, “Governmental authority is the basis for normal inter-State relations; what is an act of a State is defined primarily by reference to its organs of government, legislative, executive or judicial.”<sup>9</sup> Since 1864, the Hawaiian Kingdom fully adopted the separation of powers doctrine in its constitution, being the cornerstone of constitutional governance.

Article 20. The Supreme Power of the Kingdom in its exercise, is divided into the Executive, Legislative, and Judicial; these shall always be preserved distinct, and no Judge of a Court of Record shall ever be a member of the Legislative Assembly.

Article 31. To the [Queen] belongs the executive power.

<sup>8</sup> Compiled Laws of the Hawaiian Kingdom (1884), §6.

<sup>9</sup> Crawford, 56.

Article 45. The Legislative power of the Three Estates of this Kingdom is vested in the King, and the Legislative Assembly; which Assembly shall consist of the Nobles appointed by the King, and of the Representatives of the People, sitting together.

Article 66. The Judicial Power shall be divided among the Supreme Court and the several Inferior Courts of the Kingdom, in such manner as the Legislature may, from time to time, prescribe, and the tenure of office in the Inferior Courts of the Kingdom shall be such as may be defined by the law creating them. (Annex 4).

### ***1. Power to Declare and Wage War & to Conclude Peace***

The power to declare war and to conclude peace is constitutionally vested in the office of the Monarch pursuant to Article 26, Hawaiian Constitution, “The [Queen] is the Commander-in-Chief of the Army and Navy, and for all other Military Forces of the Kingdom, by sea and land; and has full power by [Her]self, or by any officer or officers [She] may judge best for the defence and safety of the Kingdom. But [she] shall never proclaim war without the consent of the Legislative Assembly.” (Annex 4).

### ***2. To Maintain Diplomatic Ties with Other Sovereigns***

Maintaining diplomatic ties with other States is vested in the office of the Monarch pursuant to Article 30, Hawaiian Constitution, “It is the [Queen’s] Prerogative to receive and acknowledge Public Ministers...” (Annex 4). The officer responsible for maintaining diplomatic ties with other States is the Minister of Foreign Affairs whose duty is “to conduct the correspondence of [the Hawaiian] Government, with the diplomatic and consular agents of all foreign nations, accredited to this Government, and with the public ministers, consuls, and other agents of the Hawaiian Islands, in foreign countries, in conformity with the law of nations, and as the [Queen] shall from time to time, order and instruct.” §437, Compiled Laws of the Hawaiian Kingdom. (Annex 5). The Minister of Foreign Affairs shall also “have the custody of all public treaties concluded and ratified by the Government; and it shall be his duty to promulgate the same by publication in the government newspaper. When so promulgated, all officers of this government shall be presumed to have knowledge of the same.” §441, Compiled Laws of the Hawaiian Kingdom. (Annex 5).

### ***3. To Acquire Territory by Discovery or Occupation***

Between 1822 and 1886, the Hawaiian Kingdom exercised the power of discovery and occupation that added five additional islands to the Hawaiian Domain. By direction of Ka‘ahumanu in 1822, Captain William Sumner took possession of the Island of Nihoa. On May 1, 1857; Laysan Island was taken possession by Captain John Paty for the Hawaiian Kingdom; on May 10, 1857 Captain Paty also took possession of Laysianky

Island; Palmyra Island was taken possession of by Captain Zenas Bent on April 15, 1862; and Ocean Island was acquired September 20, 1886, by proclamation of Colonel J.H. Boyd.

#### ***4. To Make International Agreements and Treaties and Maintain Diplomatic Relations with other States***

Article 29, Hawaiian Constitution, provides, “The [Queen] has the power to make Treaties. Treaties involving changes in the Tariff or in any law of the Kingdom shall be referred for approval to the Legislative Assembly.” (Annex 4). As a result of the United States of America’s recognition of Hawaiian independence, the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation, Dec. 20<sup>th</sup> 1849 (Annex 6); Treaty of Commercial Reciprocity, Jan. 13, 1875 (Annex 7); Postal Convention Concerning Money Orders, Sep. 11, 1883 (Annex 8); and a Supplementary Convention to the 1875 Treaty of Commercial Reciprocity, Dec. 6, 1884 (Annex 9).

The Hawaiian Kingdom also entered into treaties with Austria-Hungary, June 18, 1875; Belgium, October 4, 1862; Bremen (succeeded by Germany), March 27, 1854; Denmark, October 19, 1846; France, September 8, 1858; French Tahiti, November 24, 1853; Germany, March 25, 1879; the United Kingdom of Great Britain and Northern Ireland) March 26, 1846; New South Wales (now Australia), March 10, 1874 (Annex 17); Hamburg (succeeded by Germany), January 8, 1848) (Annex 18); Italy, July 22, 1863; Japan, August 19, 1871, January 28, 1886; Netherlands, October 16, 1862; 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.

Foreign Legations accredited to the Court of the Hawaiian Kingdom in the city of Honolulu included the United States of America, Portugal, Great Britain, France and Japan.

Foreign Consulates in the Hawaiian Kingdom included the United States of America, Italy, Chile, Germany, Sweden-Norway, Denmark, Peru, Belgium, Netherlands, Spain, Austria-Hungary, Russia, Great Britain, Mexico and China.

Hawaiian Legations accredited to foreign States included the United States of America in the city of Washington, D.C.; Great Britain in the city of London; France in the city of Paris, Russia in the city of Saint Petersburg; Peru in the city of Lima; and Chile in the city of Valparaiso.

Hawaiian Consulates in foreign States included the United States of America in the cities of New York, San Francisco, Philadelphia, San Diego, Boston, Portland, Port Townsend and Seattle; Mexico in Mexico city and the city of Manzanillo; Guatemala; Peru in the city of Callao; Chile in the city of Valparaiso; Uruguay in the city of Monte Video; Philippines (former Spanish territory) in the city of Iloilo and Manila; Great Britain in the cities of London, Bristol, Hull, Newcastle on Tyne, Falmouth, Dover,

Cardiff and Swansea, Edinburgh and Leith, Glasgow, Dundee, Queenstown, Belfast; Ireland (former British territory) in the cities of Liverpool, and Dublin; Canada (former British territory) in the cities of Toronto, Montreal, Bellville, Kingston Rimouski, St. John's, Varmouth, Victoria, and Vancouver; Australia in the cities of Sydney, Melbourne, Brisbane, Hobart, and Launceston; New Zealand (former British territory) in the cities of Auckland and Dunedin; China in the cities of Hong Kong and Shanghai; France in the cities of Paris, Marseilles, Bordeaux, Dijon, Libourne and Papeete; Germany in the cities of Bremen, Hamburg, Frankfort, Dresden and Karlsruhe; Austria in the city of Vienna; Spain in the cities of Barcelona, Cadiz, Valencia Malaga, Cartegena, Las Palmas, Santa Cruz and Arrecife de Lanzarote; Portugal in the cities of Lisbon, Oporto Madeira, and St. Michaels; Cape Verde (former Portuguese territory) in the city of St. Vincent; Italy in the cities of Rome, Genoa, and Palermo; Netherland in the cities of Amsterdam and Dordrecht; Belgium in the cities of Antwerp, Ghent, Liege and Bruges; Sweden in the cities of Stockholm, Lyskil, and Gothenburg; Norway in the city of Oslo (formerly known as Kristiania); Denmark in the city of Copenhagen; and Japan in the city of Tokyo.

#### IV. STATEMENT OF THE FACTS

##### A. THE *LILI'UOKALANI* ASSIGNMENT OF EXECUTIVE POWER & THE AGREEMENT OF RESTORATION OF THE HAWAIIAN KINGDOM GOVERNMENT

“Governmental authority,” states Crawford, “is the basis for normal inter-State relations; what is an act of a State is defined primarily by reference to its organs of government, legislative, executive or judicial.”<sup>10</sup> On January 17, 1893, Queen Lili'uokalani, who was constitutionally vested with the “executive power” under Article 31 of the Hawaiian Constitution, was unable to apprehend certain insurgents calling themselves the provisional government without armed conflict between U.S. troops and the Hawaiian police force headed by Marshal Charles Wilson. She was forced to temporarily assign her executive power to the President of the United States under threat of war under the following protest.

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.

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<sup>10</sup> Crawford, 56.



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 [executive] authority which I claim as the constitutional sovereign of the Hawaiian Islands. (Annex 10, at 461).

### ***1. Presidential Investigation initiated by President Cleveland***

United States President Cleveland's investigation found that the United States Legation accredited to the Hawaiian Kingdom, together with United States Marines and Naval personnel, were directly responsible for the illegal overthrow of the Hawaiian government with the ultimate goal of transferring the Hawaiian Islands to the United States from an installed government.<sup>11</sup> U.S. Special Commissioner Blount reported that, "in pursuance of a prearranged plan, the Government thus established hastened off commissioners to Washington to make a treaty for the purpose of annexing the Hawaiian Islands to the United States."<sup>12</sup> The report also detailed the culpability of the United States government in violating international laws, as well as Hawaiian State territorial sovereignty.

President Cleveland described the United States' action as an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress."<sup>13</sup> Thus he acknowledged that through such acts the government of a peaceful and friendly people was overthrown. Cleveland further stated that 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 endeavor to repair."<sup>14</sup> According Professor Marek:

It is a well-known rule of customary international law that third States are under a clear duty of non-intervention and non-interference in civil strife within a State. Any such interference is an unlawful act, even if, far from taking the form of military assistance to one of the parties, it is merely confined to premature recognition of the rebel government.<sup>15</sup>

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<sup>11</sup> United States House of Representatives, 53<sup>rd</sup> Congress, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office 1895), 567, [hereafter Executive Documents]. Reprinted at 1 *Hawaiian Journal of Law & Politics* 136 (Summer 2004).

<sup>12</sup> *Id.*, 587.

<sup>13</sup> *Id.*, 456. Reprinted at 1 *Hawaiian Journal of Law & Politics* 201 (Summer 2004).

<sup>14</sup> *Id.*

<sup>15</sup> Krystyna Marek, *Identity and Continuity of States in Public International Law*, 2<sup>nd</sup> ed., (Librairie Droz 1968), 64.

In a dispatch to United States Minister Plenipotentiary Albert Willis, assigned to the Hawaiian Kingdom, on October 18, 1893, U.S. Secretary of State Gresham apprised Willis of the findings of the Presidential investigation.

The Provisional Government was not established by the Hawaiian people, or with their consent or acquiescence, nor has it since existed with their consent. The Queen refused to surrender her powers to the Provisional Government until convinced that the minister of the United States had recognized it as the *de facto* authority, and would support and defend it with the military force of the United States, and that resistance would precipitate a bloody conflict with that force. She was advised and assured by her ministers and by leaders of the movement for the overthrow of her government, that if she surrendered under protest her case would afterwards be fairly considered by the President of the United States. The Queen finally wisely yielded to the armed forces of the United States then quartered in Honolulu, relying upon the good faith and honor of the President, when informed of what had occurred, to undo the action of the minister and reinstate her and the authority which she claimed as the constitutional sovereign of the Hawaiian Islands.

After a patient examination of Mr. Blount's reports the President is satisfied that the movement against the Queen, if not instigated, was encouraged and supported by the representative of this Government at Honolulu; that he promised in advance to aid her enemies in an effort to overthrow the Hawaiian Government and set up by force a new government in its place; and that he kept this promise by causing a detachment of troops to be landed from the *Boston* on the 16<sup>th</sup> of January, and by recognizing the Provisional Government the next day when it was too feeble to defend itself and the constitutional government was able to successfully maintain its authority against any threatening force other than that of the United States already landed.

The President has therefore determined that he will not send back to the Senate for its action thereon the treaty which he withdrew from that body for further consideration on the 9th day of March last. On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination, making known to her the President's sincere regret that the reprehensible conduct of

the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.

You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed. (Annex 10, at 463-464).

In the initial meeting with U.S. Minister Willis on November 13, 1893, at the U.S. Legation in Honolulu, Queen Lili'uokalani refused to grant amnesty and cited Chapter VI—Treason, Hawaiian Penal Code.

1. Treason is hereby defined to be any plotting or attempt to dethrone or destroy the King, or the levying of war against the King's government, or the adhering to the enemies thereof giving them aid and comfort, the same being done by a person owing allegiance to this kingdom.

9. Whoever shall commit the crime of treason, shall suffer the punishment of death; and all his property shall be confiscated to the government. (Annex 11).

But after one month of continued negotiation with U.S. Minister Willis, Queen Lili'uokalani, on December 18, 1893, signed the following declaration agreeing to grant amnesty after the government is restored.

I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and

immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government. I further solemnly agree to accept the restoration under the constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained. I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown. (Annex 12, at 1269).

On December 20, 1893, Willis dispatched the Queen's acceptance of the condition of restoration to Gresham in Washington, D.C. In a dispatch to Willis on January 13, 1893, Gresham acknowledged receipt of the Queen's declaration.

On the 18<sup>th</sup> ultimo the President sent a special message to Congress communicating copies of the Mr. Blount's reports and the instructions given to him and you. On the same day, answering a resolution of the House of Representatives, he sent copies of all correspondence since March 4, 1889, on the political affairs and relations of Hawaii, withholding, for sufficient reasons, only Mr. Stevens' No. 70 of October 8, 1892, and your No. 3 of November 16, 1893. The President therein announced that the conditions of restoration suggested by him to the Queen had not proved acceptable to her, and that since the instructions sent to you to insist upon those conditions he had not learned that the Queen was willing to assent to them. The President thereupon submitted the subject to the more extended powers and wider discretion of Congress, adding the assurance that he would be gratified to cooperate in any legitimate plan which might be devised for a solution of the problem consistent with American honor, integrity, and morality.

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 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, including your No. 3, heretofore withheld, and all instructions sent to you. In the meantime, while keeping the Department fully informed of the course of events, you will, until further notice, consider your special instructions upon this subject have been fully complied with. (Annex 12, at 1283-1284).

## **2. *Settlement by Executive Agreements through Exchange of Notes***

According to Professor Garner, “Agreements in the form of an *exchange of notes* between certain high officials acting on behalf of States, usually their Ministers of Foreign Affairs or diplomatic representatives are numerous... They are employed for a variety of purposes and, like instruments which are designated as ‘treaties’, they may deal with any matter which is a proper subject of international regulation. One of their most common objects is to record the understandings of the parties to a treaty which they have previously entered into; but they may record an entirely new agreement, sometimes one which has been reached as a result of negotiation. While the purpose of an agreement effected by any *exchange of notes* may not differ from that of instruments designated by other names, it is strikingly different in its form from a ‘treaty’ or a ‘convention.’ Unlike a treaty, the relations which it establishes or seeks to establish is recorded, not in a single highly formalized instrument, but in two or more letters usually called ‘notes,’ signed by Ministers or other officials.”<sup>16</sup> Dr. Myers explains, “*Exchange of notes* is the most flexible form of a treaty... The exchange consists of an offer and an acceptance... The offering instrument contains a text of the proposed agreement and the acceptance invariably repeats it verbatim, with assent.”<sup>17</sup>

The purpose of President Cleveland submitting the matter to Congress was to seek the authorization of force to be employed against the insurgents. It was not to seek authority for the agreements with Queen Lili‘uokalani. After President Cleveland notified Congress by Presidential message on January 13, 1894 of the *Agreement of restoration* made with Queen Lili‘uokalani, newspapers reported the settlement and the defiance of the insurgency to step down. *New York Tribune*, January 14, 1894 (Annex 13); *St. Paul Sunday Globe newspaper*, January 14, 1894 (Annex 14); *The Princeton Union newspaper*, January 18, 1894 (Annex 15); and *Hawai‘i Holomua newspaper*, January 24, 1894 (Annex 16).

Under and by virtue of the *Lili‘uokalani assignment*, executive power of the Hawaiian Kingdom remains vested in the President of the United States to faithfully administer Hawaiian Kingdom law, until the Hawaiian Kingdom government is restored

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<sup>16</sup> 29 *American Journal of International Law Supplement* 698 (1935).

<sup>17</sup> Denys P. Myers, *The Names and Scope of Treaties*, 51 *American Journal of International Law* 590 (1957).

pursuant to the *Agreement of restoration*, whereby the executive power is reassigned and thereafter the Monarch to grant amnesty. The failure of Congress to authorize the President to use force did not diminish the validity of the executive agreements, being the *Lili'uokalani assignment* and the *Agreement of restoration*. Despite over a century of non-compliance, these executive agreements remain binding upon the office of President of the United States to date. According to Professor Wright, the President binds “himself and his successors in office by executive agreements.”<sup>18</sup>

President Cleveland failed to follow through in his commitment to administer Hawaiian law and re-instate the constitutional government as a result of partisan wrangling in the U.S. Congress.<sup>19</sup> In a deliberate move to further isolate the Hawaiian Kingdom from any assistance by other States and treaty partners and to reinforce and protect the puppet government installed by U.S. officials, the Senate and House of Representatives each passed similar resolutions in 1894 strongly warning other countries “that any intervention in the political affairs of these islands by any other Government will be regarded as an act unfriendly to the United States.”<sup>20</sup>

The Hawaiian Kingdom was thrown into civil unrest as a result. Five years passed before Cleveland’s presidential successor, William McKinley, entered into a second treaty of cession with the same individuals who participated in the illegal overthrow with the U.S. legation in 1893, and were now calling themselves the Republic of Hawai’i. This second treaty was signed on June 16, 1897 in Washington, D.C., but would “be taken up immediately upon the convening of Congress next December.”<sup>21</sup>

### **3. *Protests Prevent Second Attempt to Annex Hawaiian Islands by Treaty***

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

I, Lili’uokalani of Hawai’i, by the will of God named heir apparent on the tenth day of April, A.D. 1877, and by the grace of God Queen of the Hawaiian Islands on the seventeenth day of January, A.D. 1893, do hereby protest against the ratification of a certain treaty, which, so I am informed, has been signed at Washington by Messrs. Hatch, Thurston, and Kinney, purporting to cede those Islands to the territory and dominion of the United States. I declare

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<sup>18</sup> Quincy Wright, *The Control of American Foreign Relations*, (The MacMillan Co., 1922), 235.

<sup>19</sup> Ralf Kuykendall, *The Hawaiian Kingdom: 1874-1893, The Kalakaua Dynasty*, vol. III (Honolulu: University of Hawai’i Press 1967), 647.

<sup>20</sup> Senate Resolution, May 31, 1894, 53<sup>rd</sup> Congress, 2<sup>nd</sup> Session, vol. 26.

<sup>21</sup> “Hawaiian Treaty to Wait—Senator Morgan Suggests that It Be Taken Up at This Session Without Result.” *The New York Times*, 3 (July 25, 1897).

such a treaty to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me.<sup>22</sup> (Annex 17)

Hawaiian political organizations in the Islands filed additional protests with the Department of State in Washington, D.C. These organizations were the Men and Women's Hawaiian Patriotic League (Hui Aloha 'Aina), and the Hawaiian Political Association (Hui Kalai'aina).<sup>23</sup> (Annex 18) In addition, a petition of 21,269 signatures of Hawaiian subjects and resident aliens protesting annexation was filed with the Senate when it convened in December 1897.<sup>24</sup> (Annex 19) The Senate was unable to garner enough votes to ratify the so-called treaty, but events would quickly change as war loomed between the United States of America and Spain.

The legal significance of these protests creates a fundamental bar to any future claim the United States may assert over the Hawaiian Islands by acquisitive *prescription*. "*Prescription*," according to Professor Gerhard von Glahn, "means that a foreign state occupies a portion of territory claimed by a state, encounters no protest by the 'owner,' and exercises rights of sovereignty over a long period of time."<sup>25</sup>

#### ***4. Illegal Seizure and Occupation of the Hawaiian Islands by the United States of America during the Spanish-American War***

Unable to procure a treaty of cession from the Hawaiian Kingdom government acquiring the Hawaiian Islands as required by international law, Congress enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War (Annex 20) as a war measure. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War, and the occupation was justified as a military necessity in order to reinforce and supply the troops that have been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. The justification as a war measure was clearly displayed in a secret session of the United States Senate on May 31, 1898 (Annex 21). Following the close of the Spanish-American War by the Treaty of Paris signed December 10, 1898,<sup>26</sup> U.S. troops remained

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<sup>22</sup> Liliuokalani, *Hawaii's Story by Hawaii's Queen* (Charles E. Tuttle Co., Inc. 1964), 354. Reprinted at 1 *Hawaiian Journal of Law & Politics* 227 (Summer 2004).

<sup>23</sup> Tom Coffman, *Nation Within: The Story of America's Annexation of the Nation of Hawai'i* (Tom Coffman/Epicenter 1999), 268.

<sup>24</sup> Noenoe Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Duke University Press 2004), 145-159. See also Coffman, 273-287.

<sup>25</sup> Gerhard von Glahn's, *Law Among Nations*, 6<sup>th</sup> ed., (Macmillan Publishing Company 1992), 371.

<sup>26</sup> 30 U.S. Stat. 1754

in the Hawaiian Islands and continued its occupation to date in violation of international law and the 1893 *Lili'uokalani assignment* and the *Agreement of restoration*.

Furthering the illegal occupation, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i* on April 30, 1900 (Annex 22); and on March 18, 1959, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union* (Annex 23). These laws, which include the 1898 joint resolution of annexation, have no extraterritorial effect and stand in direct violation of the *Lili'uokalani assignment* and *Agreement restoration*, being international compacts, the 1907 Hague Convention, IV, and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV.

### ***5. United States Misrepresents Hawai'i before the United Nations General Assembly***

In 1946, prior to the passage of the Statehood Act, the United States further misrepresented its relationship with Hawai'i when the United States ambassador to the United Nations identified Hawai'i as a non-self-governing territory under the administration of the United States since 1898. In accordance with Article 73(e) of the U.N. Charter, the United States ambassador reported Hawai'i as a non-self-governing territory.<sup>27</sup> The fundamental flaw is that Hawai'i should have never been placed on the list in the first place, because it already achieved self-governance as a sovereign independent State beginning in 1843 and acknowledged by the Arbitral Tribunal in *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, in 2001. In *Larsen*, the Tribunal determined, "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." (Annex 24, p. 581).

Hawai'i was deliberately treated as a non-self-governing territory or colonial possession in order to conceal the United States' prolonged occupation of an independent and sovereign State for military purposes. The reporting of Hawai'i as a non-self-governing territory also coincided with the United States establishment of the military headquarters for the Pacific Command (PACOM) on the Island of O'ahu. If the United Nations had been aware of Hawai'i's continued legal status as an occupied and neutral State, member States of the United Nations would have prevented the United States from maintaining their military presence.

The initial Article 73(e) list comprised of non-sovereign territories under the control of sovereign States such as Australia, Belgium, Denmark, France, Netherlands, New Zealand, United Kingdom and the United States. In addition to Hawai'i, the U.S. also reported its territories of Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico and the Virgin Islands. The U.N. General Assembly, in a resolution entitled "Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter," defined

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<sup>27</sup> *Transmission of Information under Article 73e of the Charter*, December 14, 1946, United Nations General Assembly Resolution 66(I).



self-governance in three forms: a sovereign independent State; free association with an independent State; or integration with an independent State.<sup>28</sup> None of the territories on the list of non-self-governing territories, with the exception of Hawai'i, were recognized sovereign States.

Despite past misrepresentations of Hawai'i before the United Nations by the United States, there are two facts that still remain. First, inclusion of Hawai'i on the United Nations list of non-self-governing territories was an inaccurate depiction of a sovereign State whose rights had been violated; and, second, Hawai'i remains a sovereign and independent State despite the illegal overthrow of its government in 1893 and the prolonged occupation of its territory for military purposes since 1898.

#### **B. ESTABLISHING THE *ACTING* GOVERNMENT OF THE HAWAIIAN KINGDOM**

On December 10, 1995, a general partnership was formed in compliance with an *Act to Provide for the Registration of Co-partnership Firms*, 1880. (Annex 25). The partnership was named the Perfect Title Company (PTC), and functioned as a land title abstracting company. (Annex 26). Since the enactment of the 1880 Co-partnership Act, members of co-partnership firms within the Kingdom registered their articles of agreements in the Bureau of Conveyances, being a part of the Interior department of the Hawaiian Kingdom. This same Bureau of Conveyances continues to exist and is presently administered by the United States of American, by its political subdivision, the State of Hawai'i. The law requires a notary public to acknowledge all documents before being registered with the Bureau,<sup>29</sup> but there have been no lawful notaries public in the Islands since 1893. All State of Hawai'i notaries public are commissioned under and by virtue of United States law. Therefore, in order for the partners of PTC to get their articles of agreement registered in the Bureau of Conveyances in compliance with the 1880 co-partnership statute, the following protest was incorporated and made a part of PTC's articles of agreement, which stated:

Each partner also agrees that the business is to be operated in strict compliance to the business laws of the Hawaiian Kingdom as noted in the "Compiled Laws of 1884" and the "session laws of 1884 and 1886." Both partners are native Hawaiian subjects by birth and therefore are bound and subject to the laws above mentioned. And it is further agreed by both partners that due to the filing requirements of the Bureau of Conveyances to go before a

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<sup>28</sup> *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter*, December 15, 1960, United Nations Resolution 1541 (XV).

<sup>29</sup> Hawai'i Revised Statutes, §502-41.

foreign notary public within the Hawaiian Kingdom, they do this involuntarily and against their will.<sup>30</sup>

PTC commenced on December 10, 1995, but there was no *military* government to ensure PTC's compliance with the co-partnership statute from that date. The registration of co-partnerships creates a contract between co-partnerships on the one hand, and the Minister of the Interior, representing the government, on the other. It is obligatory for co-partnerships to register their articles of agreement with the Minister of the Interior, and for the Minister of the Interior, it is his duty to ensure that co-partnerships maintain their compliance with the statute. This is a contractual relationship, whereby:

there must be a promise binding the person[s] subject to the obligation; and in order to give a binding force to the promise the obligation must come within the sphere of Agreement. There must be an acceptance of the promise by the person to whom it is made, so that by their mutual consent the one is bound to the other. A Contract then springs from the offer of a promise and its acceptance.<sup>31</sup>

The registration of co-partnerships is the offer of the promise by its members to abide by the obligation imposed by the statute, and the acceptance of this offer by the Interior department creates a contractual relationship whereby "one is bound to the other." Section 7 of the 1880 Co-partnership Act clearly outlines the obligation imposed upon the members of co-partnerships in the Kingdom, which states:

The members of every co-partnership who shall neglect or fail to comply with the provisions of this law, shall severally and individually be liable for all the debts and liabilities of such co-partnership and may be severally sued therefore, without the necessity of joining the other members of the co-partnership in any action or suit, and shall also be severally liable upon conviction, to a penalty not exceeding five dollars for each and every day while such default shall continue; which penalties may be recovered in any Police or District Court.<sup>32</sup>

The partners of PTC desired to establish a legitimate co-partnership pursuant to Hawaiian Kingdom law and in order for the title company to exist as a legal co-partnership firm, the government had to be reestablished in an *acting* capacity in order to serve as a necessary party to the contractual relationship created under and by virtue of the statute. An acting official is "not an appointed incumbent, but merely a *locum tenens*,

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<sup>30</sup> Co-partnership Agreement establishing Perfect Title Company, December 10, 1995, document no. 95-153346, Hawai'i Bureau of Conveyances.

<sup>31</sup> Sir William R. Anson, *Principles of the Law of Contract* (Callaghan and Company, 1880), 11.

<sup>32</sup> Compiled Laws, 649.

who is performing the duties of an office to which he himself does not claim title.”<sup>33</sup> It is an official that temporarily assumes the duties and authority of government.

The last legitimate Hawaiian Legislative Assembly of 1886 was prevented from reconvening as a result of the 1887 revolution. The subsequent Legislative Assembly of 1887 was based on an illegal constitution, which altered existing voting rights, and led to the illegal election of the 1887 Legislature. As a result, there existed no legitimate Nobles in the Legislative Assembly when Queen Lili’uokalani ascended to the Office of Monarch in 1891, and therefore, the Queen was unable to obtain confirmation for her named successors from those Nobles of the 1886 Legislative Assembly as required by the 1864 Constitution. Tragically, when the Queen died on November 11, 1917, there were no lawful successors to the Throne. In the absence of a confirmed successor to the Throne by the Nobles of the Legislative Assembly, Article 33 of the Constitution of 1864 provides:

“should a Sovereign decease...and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King.” (Annex 4)

Hawaiian law did not assume that the whole of the Hawaiian government would be made vacant, and, consequently, the law did not formalize provisions for the reactivation of the government in extraordinary circumstances. Therefore, a deliberate course of action was taken to re-activate the Hawaiian government by and through its executive branch as officers *de facto*. In view of such an extreme emergency, Professor Oppenheimer states that, “a temporary deviation from the wording of the constitution is justifiable if this is necessary to conserve the sovereignty and independence of the country.”<sup>34</sup>

When properly interpreted, the 1864 Constitution provides that the Cabinet Council shall be a Council of Regency until a proper Legislative Assembly can be convened to “elect by ballot some native Ali’i [Chief] of the Kingdom as Successor to the Throne.” (Annex 4) It further provides that the Regent or Council of Regency “shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King.” (Annex 4) The Constitution also provides that the Cabinet Council “shall consist of the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance, and the Attorney General of the Kingdom, and these

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<sup>33</sup> *Black’s Law*, 6th ed. (West Publishing Company 1990), 26.

<sup>34</sup> F.E. Oppenheimer, “Governments and Authorities in Exile,” 36 *American Journal of International Law* 581 (1942).

shall be His Majesty's Special Advisers in the Executive affairs of the Kingdom.” (Annex 4)

Interpretation of these constitutional provisions allows for the Minister of Interior to assume the powers vested in the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General, and consequently serve as Regent. This is a similar scenario that took place in 1940 when German forces invaded Belgium and captured King Leopold. As a result, the Belgian cabinet became a government in exile and, as a council of Regency, assumed all powers constitutionally vested in the King. Oppenheimer explains:

As far as Belgium is concerned, the capture of the king did not create any serious constitutional problems. According to Article 82 of the Constitution of February 7, 1821, as amended, the cabinet of ministers have to assume supreme executive power if the King is unable to govern. True, the ministers are bound to convene the House of Representatives and the Senate and to leave it to the decision of the united legislative chambers to provide for a regency; but in view of the belligerent occupation it is impossible for the two houses to function. While this emergency obtains, the powers of the King are vested in the Belgian Prime Minister and the other members of the cabinet.<sup>35</sup>

The 1880 Co-partnership Act requires members of co-partnerships to register their articles of agreement in the Bureau of Conveyances, which is within the Interior department.<sup>36</sup> The Minister of the Interior holds a seat of government as a member of the cabinet council, together with the other ministers. Article 43 of the Constitution provides that, “Each member of the King’s Cabinet shall keep an office at the seat of Government, and shall be accountable for the conduct of his deputies and clerks.” Necessity dictated that in the absence of any “deputies or clerks” of the Interior department, the partners of a registered co-partnership could assume the duty of the same because of the current state of affairs. Therefore, it was reasonable that partners of a registered co-partnership could assume the powers vested in the Registrar of the Bureau of Conveyances in the absence of the same; then assume the powers vested in the Minister of Interior in the absence of the same; then assume the powers constitutionally vested in the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and, finally assume the power constitutionally vested in the Cabinet as a Regency. A regency is defined as “the man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the [monarch].”<sup>37</sup>

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<sup>35</sup> Oppenheimer, 569.

<sup>36</sup> Compiled Laws, §1249.

<sup>37</sup> Black’s Law, 1282.

With the specific intent of assuming the “seat of Government,” the partners of PTC formed a second partnership called the Hawaiian Kingdom Trust Company (HKTC) on December 15, 1995. (Annex 27). The partners intended that this registered partnership would serve as a provisional surrogate for the Council of Regency. Therefore, and in light of the ascension process explained above, HKTC could then serve as officers *de facto* for the Registrar of the Bureau of Conveyances, the Minister of Interior, the Cabinet Council, and ultimately as the Council of Regency. Article 1 of HKTC 's deed of general partnership provided:

“The above mentioned parties have agreed to form a general partnership under the firm name of Hawaiian Kingdom Trust Company in the business of administering, investigating, determining and the issuing of land titles, whether in fee, or for life, or for years, in such manner as Hawaiian law prescribes... The company will serve in the capacity of *acting* for and on behalf of the Hawaiian Kingdom government. The company has adopted the Hawaiian Constitution of 1864 and the laws lawfully established in the administration of the same. The company is to commence on the 15th day of December, A.D. 1995, and shall remain in existence until the absentee government is re-established and fully operational, upon which all records and monies of the same will be transferred and conveyed over to the office of the Minister of Interior, to have and to hold under the authority and jurisdiction of the Hawaiian Kingdom.”

Thirty-eight deeds of trusts conveyed by Hawaiian subjects to HKTC acknowledged the trust as a company acting for and on behalf of the Hawaiian government and outlined the role of the trust company and its fiduciary duty it had to its beneficiaries.<sup>38</sup> (Annex 28). HKTC was not only competent to serve as the *acting* cabinet council, but also possessed a fiduciary duty toward its beneficiaries to serve in that capacity until the government is re-established *de jure* in accordance with the terms of the 1893 Cleveland-Lili'uokalani agreement. According to Pomeroy:

“Active or special trusts are those in which, either from the express direction of the language creating the trust, or from the very nature of the trust itself, the trustees are charged with the performance of active and substantial duties with respect to the control, management, and

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<sup>38</sup> See Deeds of Trust to the Hawaiian Kingdom Trust Company, a general partnership, Doc. no.'s 96-004246, 96-006277, 96-014116, 96-026387, 96-026388, 96-028714, 96-024845, 96-032930, 96-044551, 96-044550, 96-047382, 96-047380, 96-047379, 96-047381, 96-056981, 96-052727, 96-060519, 96-032728, 96-057667, 96-057668, 96-060520, 96-061209, 96-061207, 96-056980, 96-052729, 96-063384, 96-063385, 96-063382, 96-057664, 96-019923, 96-046712, 96-063386, 96-063382, 96-063383, 96-066996, 96-061208 and 96-046711, State of Hawai'i Bureau of Conveyances.

disposition of the trust property for the benefit of the *cestui que trustent* [beneficiary of a trust]. They may, except when restricted by statute, be created for every purpose not unlawful, and, as a general rule, may extend to every kind of property, real and personal.”<sup>39</sup>

The purpose of HKTC was two fold; first, to ensure PTC complies with the co-partnership statute, and, second, provisionally serve as the government of the Hawaiian Kingdom. What became apparent was the seeming impression of a conflict of interest, whereby the duty to comply and the duty to ensure compliance was vested in the same two partners of the two companies. Therefore, in order to avoid this apparent conflict of interest, the partners of both PTC and HKTC, reasoned that an *acting* Regent, having no interests in either company, should be appointed to serve as representative of the Hawaiian government. Since HKTC assumed to represent the interests of the Hawaiian government in an acting capacity, the trustees would therefore make the appointment. The trustees looked to Article XXXI, Chapter XI, Title 3 of the Hawaiian Civil Code (Annex 29), whereby the *acting* Regency would be constitutionally authorized to direct the executive branch of the government in the formation and execution of the reconvening of the Legislative Assembly, so that the government could procedurally move from provisional to *de jure*.<sup>40</sup>

### ***1. Acting Government Proclaimed on February 28, 1997***

It was agreed that David Keanu Sai, now the present Ambassador-at-large of the *acting* Government and Agent for this Protest and Demand, would be appointed to serve as *acting* Regent, but could not retain an interest in the two companies prior to the appointment. In that meeting, it was agreed upon and decided that Nai’a-Ulumaimalu would replace the aforementioned as trustee of HKTC and partner of PTC. The plan was to maintain the standing of the two partnerships under the co-partnership statute, and not have them lapse into sole-proprietorships. To accomplish this, the Agent would relinquish his entire one-half interest by deed of conveyance in both companies to Lewis (Annex 30); after which Lewis would convey a redistribution of interest to Nai’a-Ulumaimalu (Annex 31), whereby the former would hold a ninety-nine percent interest in the two companies and the latter a one percent interest in the same. In order to have these two transactions take place simultaneously without affecting the standing of the two partnerships, both deeds of conveyance would happen on the same day but won’t take effect until the following day, February 28, 1996. These conveyances were registered in the Bureau of Conveyances in conformity with the 1880 Co-partnership Act.

With the transactions completed, the Trustees then appointed the Agent as *acting* Regent on March 1, 1996, and thereafter filed a notice of this appointment with the Bureau of Conveyances. (Annex 32). Thereafter, HKTC resumed its role as a general partnership within the meaning of the 1880 Co-partnership Act, and no longer served as

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<sup>39</sup> John Norton Pomeroy, *A Treatise on Equity Jurisprudence as Administered in the United States of America* (Bancroft-Whitney Company, 1907), 553.

<sup>40</sup> Compiled Laws, 214-234.

“a company *acting* for and on behalf of the Hawaiian Kingdom government” and prepared for the dissolution of the company. On May 15, 1996, the Trustees conveyed by deed all of its right, title and interest acquired by thirty-eight deeds of trust to the *acting* Regent, and stipulated that the company would be dissolved in accordance with the provisions of its deed of general partnership on June 30, 1996. (Annex 33).

The transfer and subsequent dissolution, was made in accordance with section 3 of the 1880 Co-partnership Act, which provides that “whenever any change shall take place in the constitution of any such firm...a statement of such change or dissolution shall also be filed in the said office of the Minister of the Interior, within one month from such...dissolution.”<sup>41</sup> On February 28, 1997, a Proclamation by the *acting* Regent announcing the restoration of the Hawaiian government was printed in the March 9, 1997 issue of the Honolulu Sunday Advertiser newspaper. The proclamation stated, in part, that the:

“Hawaiian Monarchical system of Government is hereby re-established, [and the] Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code are in full force. All Hawaiian Laws and Constitutional principles not consistent herewith are void and without effect.”<sup>42</sup> (Annex 34).

Since the appointment of the *acting* Regent, there have been twenty-six commissions that filled vacancies of the executive and judicial departments. These governmental positions, as statutorily provided, comprise officers *de facto* of the Hawaiian government while under American occupation. Governmental positions that are necessary for the reconvening of the Legislative Assembly in accordance with Title III of the Civil Code would be filled by commissioned officers *de facto*.

In September 1999, the *acting* Regent commissioned Peter Umialiloa Sai as *acting* Minister of Foreign Affairs, Kau‘i P. Sai-Dudoit, formerly known as Kau‘i P. Goodhue, as *acting* Minister of Finance, and Gary V. Dubin, Esquire, as *acting* Attorney General. At a meeting of the Cabinet Council on September 10, 1999, it was determined by resolution “that the office of the Minister of Interior shall be resumed by David Keanu Sai, thereby absolving the office of the Regent, *pro tempore*, and the same to be replaced by the Cabinet Council as a Council of Regency, *pro tempore*, within the meaning of Article 33 of the Constitution of the Country.” (Annex 35). The Agent serves as Prime Minister and chairman of the *acting* Council of Regency.<sup>43</sup>

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<sup>41</sup> Compiled Laws, 649.

<sup>42</sup> Proclamation of *Acting* Regent declaring the Hawaiian Monarchical form of Government is re-established, February 28, 1997, published in the March 9, 1997 issue of the Honolulu Sunday Advertiser. Also recorded in its entirety in the Bureau of Conveyances as document no. 97-027541.

<sup>43</sup> After the office of Premier (Prime Minister) was repealed by the 1864 Constitution, the term Prime Minister referred to the person who organized government in the Cabinet Council, whether that person was to be the Minister of the Interior, Minister of Foreign Affairs, Minister of Finance or the Attorney General.

Democratic principles are suspended during occupations. Military government is imposed “either by reason of military necessity as a right under international law, or as an obligation under international law,” but regulated by The Hague and Geneva Conventions.<sup>44</sup> The *acting* Regency was not established out of democratic principles, but out of necessity in order to serve as the provisional organ of the Hawaiian Kingdom and represent its interest during the occupation. It serves as a component of a military government yet to be established, and not the sole organ of the occupied State. The legitimacy of the *acting* Regency is derived strictly from law and legal principles of the Hawaiian Kingdom and functions under the limited legal doctrine of necessity. The right of Hawaiian nationals to reinstate their government, by its statutory provisions, is clear and unequivocal under the international principle of the continuity of the occupied State and its legal order.

The Hawaiian government did not foresee the possibility of its territory subjected to prolonged occupation, where indoctrination and the manipulation of its political history affected the psyche of its national population. Therefore, it did not provide a process for reinstating the government, being the organ of the State, either in exile or within its own territory. But at the same time, it did not place any constitutional or statutory limitations upon the restoration of its government that could serve as a bar to its reinstatement—save for the legal parameters of necessity. The legal basis for the reassertion of Hawaiian governance, by and through a Hawaiian general partnership statute, is clearly extraordinary, but the exigencies of the time demanded it. In the absence of any Hawaiian subjects adhering to the statutory laws of the country as provided for by the country’s constitutional limitations, the abovementioned process was established for the establishment of an *acting* Regency, pending the reconvening of the Legislative Assembly to elect by ballot a Regent or Regency *de jure* as provided for under Article 22 of the Constitution. Professor Marek emphasizes that:

“it is always the legal order of the State which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the delegation of the territorial State nor any rule of international law other than the one safeguarding the continuity of an occupied State. The relation between the legal order of the territorial State and that of the occupied State...is not one of delegation, but of co-existence.”<sup>45</sup>

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<sup>44</sup> “United States Army and Navy Manual of Military Government and Civil Affairs,” *U.S. Army Field Manual 27-5*, 2 (December 22, 1843).

<sup>45</sup> Krystyna Marek, *Identity and Continuity of States in Public International Law*, 2<sup>nd</sup> ed., (Librairie Droz, 1968), 91.



## 2. *The Doctrine of Necessity Underlies the Legal Basis of the acting Government*

Dr. Wolff states, “in so far as conditions provided for in the constitutional law cannot be complied with owing to the occupation of the country by the enemy, a dispossessed government can act without being compelled to fulfill those conditions.”<sup>46</sup> Also commenting on exiled governments, Marek explains that, “while the requirement of internal legality must in principle be fulfilled for an exiled government to possess the character of a State organ, minor flaws in such legality are easily cured by the overriding principle of its actual uninterrupted continuity.”<sup>47</sup> Oppenheimer also explains “such government is the only *de jure* sovereign power of the country the territory of which is under belligerent occupation.”<sup>48</sup> It follows, *a fortiori*, that when an “occupant fails to share power with the lawful government under the auspices of international law, the latter is not precluded from taking whatever countermeasures it can in order to protect its interests during and after the occupation.”<sup>49</sup>

Bateman states the “duty correlative of the right of political existence, is obviously that of political self-preservation; a duty the performance of which consists in constant efforts to preserve the principles of the political constitution.”<sup>50</sup> Political self-preservation is adherence to the legal order of the State, whereas national self-preservation is where the principles of the constitution are no longer acknowledged, *i.e.* revolution.<sup>51</sup> The establishment of an *acting* Regent—an officer *de facto*, would be a political act of self-preservation, not revolution, and be grounded upon the legal doctrine of limited necessity. According to Professor de Smith, a British constitutional scholar, deviations from a State’s constitutional order “can be justified on grounds of necessity.”<sup>52</sup> He continues to explain that “State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution.”<sup>53</sup> Lord Pearce also states that there are certain limitations to the principle of necessity, “namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful... Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign.”<sup>54</sup>

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<sup>46</sup> Ernst Wolff, “The International Position of Dispossessed Governments at Present in England,” 6 *Modern Law Review* 215 (1942-1943).

<sup>47</sup> Marek, 98.

<sup>48</sup> Oppenheimer, 568.

<sup>49</sup> Eyal Benvenisti, *The International Law of Occupation* (Princeton University Press, 1993), 212.

<sup>50</sup> William O. Bateman, *Political and Constitutional Law of the United States of America* (G.I. Jones and Company, 1876), 22.

<sup>51</sup> *Id.*

<sup>52</sup> Stanley A. de Smith, *Constitutional and Administrative Law* (Penguin Books, Ltd., 1986), 80.

<sup>53</sup> *Id.*

<sup>54</sup> *Madzimbamuto v. Lardner-Burke* (1969), 1 A.C. 645, 732.

In *Chandrika Persaud v. Republic of Fiji*, Judge Gates took up the matter of the legal doctrine of necessity and drew from the decision in the *Mitchell case*,<sup>55</sup> which provided that the requisite conditions for the principle of necessity consists of:

1. An imperative necessity must arise because of the existence of exceptional circumstances not provided for in the Constitution, for immediate action to be taken to protect or preserve some vital function of the State;
2. There must be no other course of action reasonably available;
3. Any such action must be reasonably necessary in the interest of peace, order, and good government; but it must not do more than is necessary or legislate beyond that;
4. It must not impair the just rights of citizens under the Constitution; and
5. It must not be one the sole effect and intention of which is to consolidate or strengthen the revolution as such.

Professor Brookfield summarized the principle of necessity as the “power of a Head of State under a written Constitution extends by implication to executive acts, and also legislative acts taken temporarily (that is, until confirmed, varied or disallowed by the lawful Legislature) to preserve or restore the Constitution, even though the Constitution itself contains no express warrant for them.”<sup>56</sup> Brookfield also explains “such powers are not dependent on the words of a particular Constitution, except in so far as that Constitution designates the authority in whom the implied powers would be found to reside.”<sup>57</sup>

The assumption by private citizens up the chain of constitutional authority in government to the office of Regent, as enumerated under Article 33 of the Constitution, is a *de facto* process born out of necessity. Judge Cooley defines a officer *de facto* “to be one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law,” but rather “comes in by claim and color of right.”<sup>58</sup> According to Chief Justice Steere, the “doctrine of a *de facto* officer is said to have originated as a rule of public necessity to prevent public mischief and protect the rights of innocent third parties who may be interested in the acts of an assumed officer apparently clothed with authority and the courts have sometimes gone far with delicate reasoning to sustain the rule where threatened rights of third parties were concerned.”<sup>59</sup> Officers *de facto* are distinguished from a *de facto* government. The former is born out of a *de jure* government under and by virtue of the principle of necessity, while the latter is revolutionary.

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<sup>55</sup> *Mitchell v. Director of Public Prosecutions* (1986), L.R.C. (Const) 35, 88–89.

<sup>56</sup> F.M. Brookefield, “The Fiji Revolutions of 1987,” *New Zealand Law Journal* 250, 251 (July 1988).

<sup>57</sup> *Id.*

<sup>58</sup> Thomas M. Cooley, *A Treatise on the Law of Taxation* (Callaghan and Company, 1876), 185.

<sup>59</sup> *Carpenter v. Clark*, 217 Michigan 63, 71 (1921).

## V. STATEMENT OF THE GROUNDS ON WHICH THE PROTEST AND DEMAND TO THE UNITED NATIONS GENERAL ASSEMBLY IS BASED

The *acting* Government is not seeking *de facto* recognition of the Hawaiian Kingdom, but rather is operating on the *de jure* recognition already afforded the Hawaiian Kingdom since the 19<sup>th</sup> century. The *acting* Government, as officers *de facto*, is an extension of the original *de jure* government of the Hawaiian Kingdom.

The *acting* Government has represented the Hawaiian Kingdom in arbitral proceedings before the Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566 (2001) (Annex 24).<sup>60</sup> The Arbitral Tribunal in the *Larsen* arbitration comprised of Professor James Crawford, SC, Presiding Arbitrator, who at the same time was a member of the United Nations International Law Commission and *Special Rapporteur* on State Responsibility (1997-2001); Professor Christopher Greenwood, QC, Associate Arbitrator, who now serves as a Judge on the International Court of Justice since February 6, 2009; and Gavan Griffith, QC, Associate Arbitrator, who served as former Solicitor General for Australia. The jurisdictional basis of the Permanent Court of Arbitration in *Larsen v. Hawaiian Kingdom* was a dispute between a State and a private person. The *acting* Government also filed a Complaint against the United States of America with the United Nations Security Council on July 5, 2001.<sup>61</sup>

On December 12, 2000, the day after oral hearings were held at the Permanent Court of Arbitration, a meeting took place in Brussels between Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium, and the Agent and two deputy agents representing the *acting* Government in the *Larsen case*.<sup>62</sup> Ambassador Bihozagara attended a hearing before the International Court of Justice on December 8, 2000, (*Democratic Republic of the Congo v. Belgium*), where he was made aware of the Hawaiian arbitration case that was also taking place across the hall in the Peace Palace.<sup>63</sup> After inquiring into the case, he called for the meeting and wished to convey that his government was prepared to bring to the attention of the United Nations General Assembly the prolonged occupation of the Hawaiian Kingdom by the United States.

Recalling his country's experience of genocide and the length of time it took for the international community to finally intervene as a matter of international law, Ambassador Bihozagara conveyed to the Agent that the illegal and prolonged occupation of the Hawai'i was unacceptable and should not be allowed to continue. Despite the excitement of the offer, apprehension soon took its hold and the acting government could not, in

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<sup>60</sup> Bederman & Hilbert, "Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai'i," 95 *American Journal of International Law* 927-933 (2001).

<sup>61</sup> 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* 655-684 (2002); and 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 in Hawai'i today," 10 *Journal of Law and Social Challenges* 68-133 (Fall 2008).

<sup>62</sup> Sai, *A Slippery Path*, 130-131.

<sup>63</sup> Arrest Warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium*), Provisional Measures, Order of 8 December 2000, I.C.J. Reports 2000, p. 182.

good conscience, accept the offer and put Rwanda in a position of reintroducing Hawai‘i’s State continuity before the United Nations, when Hawai‘i’s community, itself, remained ignorant of Hawai‘i’s profound legal position. The Agent thanked Ambassador Bihozagara for his government’s offer, but the timing was premature. The Agent conveyed to the ambassador that the gracious offer could not be accepted without placing Rwanda in a vulnerable position of possible political retaliation by the United States of America, but that the *acting* government should instead focus its attention on continued exposure and education of the occupation both at the national and international levels.

In line with exposure on the international level, the *acting* Government was successful in filing a complaint, as a non-member State, with the United Nations Security Council under the Presidency of China on July 5, 2001.<sup>64</sup> Professor Dumberry, who’s article in the Chinese Journal of International Law addressed the complaint, stated, “Article 35(2) of the only grants the right for States which are not members of the United Nations to bring disputes and situations ‘to the attention’ of the Security Council; it does not oblige the Security Council to actually ‘consider’ the matter brought to its attention.”<sup>65</sup> Despite the Security Council’s failure to consider the matter, the complaint, nevertheless, was not challenged nor quashed by the United States of America, but instead, according to Dumberry, “the United States, which is a permanent member of the Security Council, ahs most certainly strongly objected to the inclusion of this Complaint on the agenda, and is likely to have lobbied other States to act in a similar fashion.”<sup>66</sup> As the Hawaiian complaint remained procedurally unabated, Russian Ambassador Vitaly Churkin, who served as President of the Security Council, was notified by letter dated March 1, 2008 of the *acting* Government’s intent to amend the Hawaiian complaint pursuant to the 2001 *Articles on Responsibility of States for International Wrongful Acts*. (Annex 36).

It is in this capacity, the *acting* Government files this Protest and Demand to bring to the attention of the United Nations General Assembly the prolonged and illegal occupation of the Hawaiian Kingdom.

**A. CONCERNING THE VIOLATION OF THE PRINCIPLE THAT A STATE  
MAY NOT EXERCISE ITS AUTHORITY ON THE TERRITORY OF  
ANOTHER STATE**

The Permanent Court of International Justice acknowledged, “the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.”<sup>67</sup> By virtue of the 1893 *Lili‘uokalani assignment* of executive power, the President of the United States was temporarily

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<sup>64</sup> Dumberry, 671-672.

<sup>65</sup> *Id.*, 671.

<sup>66</sup> *Id.*, 672.

<sup>67</sup> S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7), p. 19.

assigned, under threat of war, the authority to administer Hawaiian law until the government is restored in accordance with the *Agreement of restoration*. After the government has been restored and the executive power reassigned, the Queen, or her successor in office, would thereafter grant amnesty to the insurgents.

While Hawai'i was clearly not a participant in the hostilities of the Spanish-American War, the United States occupied the Hawaiian Islands for the purpose of waging the war against Spain on August 12, 1898, as well as to fortify the islands as a military outpost for the defense of the United States in future conflicts.

The “power exercising effective control within another’s sovereign territory has only temporary managerial powers,” and during “that limited period, the occupant administers the territory on behalf of the sovereign.”<sup>68</sup> The actions taken by the McKinley administration, with the consent of the Congress by joint resolution, clearly intended to mask the violation of international law as if the annexation took place by treaty. As Marek states, “a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State.”<sup>69</sup>

Article 6, Lieber Code (1863), regulated U.S. troops during the occupation of the Hawaiian Islands in 1898 and mandated the Commander of U.S. troops to administer the laws of the occupied country, being the civil and penal laws of the Hawaiian Kingdom. Article 6 was superseded by Article 43, 1899 Hague Convention, II (32 U.S. Stat. 1803), and then superseded by Article 43, 1907 Hague Convention, IV (Annex 37). Article 43 of the 1907 Hague Convention, IV, reinforces the 1893 *Lili'uokalani assignment* that mandates the President to provisionally administer the civil and penal laws of the Hawaiian Kingdom. On August 12, 1949, the United States signed and ratified the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV, of 12 August 1949 (Annex 38). In July 1956, the U.S. Department of the Army published Field Manual 27-10—The Law of Land Warfare.

Article 43 of the 1907 Hague Regulations, delimits the power of the occupant and serves as a fundamental bar on its free agency within an occupied neutral State.<sup>70</sup> Although the United States signed and ratified both Hague Regulations, which post-date the occupation of the Hawaiian Islands, the “text of Article 43,” according to Professor Benvenisti, “was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law.”<sup>71</sup> Professor Graber also states “nothing distinguishes the writing of the period

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<sup>68</sup> Benvenisti, 6.

<sup>69</sup> Marek, 110.

<sup>70</sup> The United States signed the 1899 Hague Regulations respecting Laws and Customs of War on Land at The Hague on July 29, 1899 and ratified by the Senate March 14, 1902; see 32(1) U.S. Stat. 1803. The 1907 Hague Regulations respecting Laws and Customs of War on Land was signed at The Hague October 18, 1907 and ratified by the Senate March 10<sup>th</sup> 1908; see 36 U.S. Stat. 2277. The United States also signed the 1907 Hague Regulations respecting the Rights and Duties of Neutral Powers at The Hague on October 18, 1907 and ratified by the Senate on March 10<sup>th</sup> 1908; see 36 U.S. Stat. 2310.

<sup>71</sup> Benvenisti, 8.

following the 1899 Hague code from the writing prior to that code.<sup>72</sup> Consistent with this understanding of the international law of occupation during the Spanish-American war, Professor Smith reported that 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.”<sup>73</sup> This instruction to U.S. troops during the Spanish-American war to apply the local laws of the occupied State was made pursuant to Article 6 of the Lieber Code.

With specific regard to occupying neutral territory, the Arbitral Tribunal, in *Coenca Brothers vs. Germany* (1927), concluded “the occupation of Salonika by the Allies in the autumn of 1915 constituted a violation of Greek neutrality.”<sup>74</sup> Later, in the *Chevreau* case (1931), the Arbitrator concluded that the status of the British forces while occupying Persia (Iran)—a neutral State in the First World War—was analogous to “belligerent forces occupying enemy territory.”<sup>75</sup> Professor Oppenheim observes that an occupant State on neutral territory “does not possess such a wide range of rights with regard to the occupied country and its inhabitants as he possesses in occupied enemy territory.”<sup>76</sup> Although the Hague Regulations apply only to territory belonging to an enemy, Professor Feilchenfeld states, “it is, nevertheless, usually held that the rules on belligerent occupation will also apply where a belligerent, in the course of the war, occupies neutral territory, even if the neutral power should have failed to protest against the occupation.”<sup>77</sup> While Hawai’i was a neutral state at the time of its occupation during the Spanish American war, the law of occupation ought to be not only applied with equal force and effect, but that the occupier would be shorn of its belligerent rights in Hawaiian territory as a result of Hawai’i’s neutrality and the obligations incurred under the 1893 *Lili‘uokalani assignment* and the *Agreement of restoration*.

## B. CONCERNING THE VIOLATIONS OF TREATIES AND INTERNATIONAL LAW

The Hawaiian Kingdom is a member State of the Universal Postal Union since January 1, 1882, has forty-six (46) State treaty partners, and, to a limited degree, one hundred twenty-seven (127) successor State quasi-treaty partners. In this Protest and Demand, the Hawaiian Kingdom’s identification of successor States collectively includes former colonial, mandate or trust territories. This identification is made without any prejudice to the particular rights of each successor States in relation to the mode of exercising self-determination when they achieved their independence.

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<sup>72</sup> Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914*, (Columbia University Press 1949), 143.

<sup>73</sup> Munroe Smith, “Record of Political Events,” 13(4) *Political Science Quarterly* 748 (Dec. 1898).

<sup>74</sup> *Coenca Brothers v. Germany*, (Greco-German Mixed Arbitral Tribunal, December 1<sup>st</sup> 1927, case no. 389). Annual Digest of Public International Law Cases, 1927 & 1928, (Longmans, Green and Co., 1931), 571.

<sup>75</sup> “*Chevreau case* (In the Matter of the Claim Madame Chevreau Against the United Kingdom),” 27 *American Journal of International Law* 160 (1933).

<sup>76</sup> Lassa Oppenheim, *International Law*, 7<sup>th</sup> ed., (David McKay Co. 1948-52), 241.

<sup>77</sup> Ernst Feilchenfeld, *The International Economic Law of Belligerent Occupation* (Carnegie Endowment for International Peace 1942), 8.

According to Professor Oppenheim, “there is room for the view that in case of separation resulting in the emergence of a new State the latter is bound by—or at least entitled to accede to—general treaties of a ‘law-making’ nature, especially those of a humanitarian character.”<sup>78</sup> Beato explains, “contrary to conventional law’s clean slate doctrine, relatively few newly independent states renounce all of their predecessor state’s treaties. Instead, new states tend to adopt a pragmatic approach which balances issues of self-determination and sovereignty in foreign affairs against the need to foster stability in international relations.”<sup>79</sup> Professor Hershey states that it “is generally agreed that the purely local or personal rights and obligations of the [predecessor State]...remain with the [successor State].”<sup>80</sup> Treaty obligations to private individuals survive the succession and bind the successor State.<sup>81</sup>

Provisions of these treaties not only protect the private rights and obligations of the citizenry of the predecessor States and their successor States while within the territory of the Hawaiian Kingdom, but also protect the private rights and obligations of the citizenry of the Hawaiian Kingdom while within the territories of the predecessor States and their successor States. This rule stems from the principle of international law that change in sovereignty does not affect the private rights of individuals.

Currently, forty-six (46) member States stand in violation of treaties with the Hawaiian Kingdom and international law, and one hundred twenty-seven (127) successor States stand in violation, to a lesser degree, to certain provisions of their predecessor States’ treaties that are private in nature and not public.

### ***1. Austria/Hungary—Treaty of Friendship, Commerce and Navigation***

On June 18, 1875, a Treaty was signed between Austria-Hungary and the Hawaiian Kingdom in London and thereafter ratified by both governments (Annex 39). Article IV of this treaty provides:

“the Citizens of each high contracting Parties when resident in the territory of the other shall enjoy the most constant and complete protection for their persons and property, and for this purpose they shall have free and easy access to the Courts of Justice, provided by law, in pursuit and defense of their rights. They shall be at liberty to employ lawyers, advocates or Agents to prosecute or defend their rights before such Courts of Justice. In fact they shall enjoy in

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<sup>78</sup> See Oppenheim, *International Law* (1955), vol. 1, p. 167. See also Fenwick, *International Law*, p. 153.

<sup>79</sup> Andrew M. Beato, “Newly Independent and Separating States’ Succession to Treaties,” 9(2) *American University Journal of International Law & Policy* (1994): 525-558, 544.

<sup>80</sup> Amos. S. Hershey, “The Succession of States,” 5(2) *American Journal of International Law* 285-297, 289 (Apr., 1911).

<sup>81</sup> Thos. Baty, “Division of States: Its Effect on Obligations,” *Transactions of the Grotius Society, Vol. 9, Problems of Peace and War, Papers Read before the Society in the year 1923* (1923), 119-129, 125.

this respect all the rights and privileges which are granted to natives, and shall be subject to the same conditions.”

Following the dismemberment of Austria-Hungary into two separate States of Austria and Hungary following the first World War, Hungary also became a State party with Austria to the 1875 Treaty with the Hawaiian Kingdom.

Neither Austria nor Hungary nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XIX of the 1875 Treaty. Therefore this treaty is still in full force, continues to have legal effect to date. Former Austro-Hungarian territories, which acquired their independence from Austria-Hungary, are successor States to, at the very least, Article IV of the Hawaiian-Austro/Hungarian Treaty. Former Austro-Hungarian territories are:

- a. Czech Republic. Independence: October 28, 1918.
- b. Poland. Independence: November 11, 1918.
- c. Slovakia. Independence: Independence: October 28, 1918.

## ***2. Belgium—Treaty of Amity, Commerce and Navigation***

On October 4, 1862, a Treaty was signed between Belgium and the Hawaiian Kingdom in Brussels and thereafter ratified by both governments (Annex 40). Article IV of this treaty provides:

“the respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently they shall have free and easy access to the court of justice in the pursuit and defense of their rights in every instance and degree of jurisdiction established by the laws.”

Neither Belgium nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1862 Treaty. Therefore this treaty is still in full force and continues to have legal effect to date. Former Belgian territories, which acquired their independence from Belgium, are successor States to, at the very least, Article IV of the Hawaiian-Belgian Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Belgian territories are:

- a. Democratic Republic of the Congo. Independence: June 30, 1960.
- b. Burundi. Independence from Belgian Trusteeship on July 1, 1962
- c. Rwanda. Independence from Belgian Trusteeship on July 1, 1962



### ***3. Denmark—Treaty of Friendship, Commerce and Navigation***

On October 19, 1846, a Treaty was signed between Denmark and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments (Annex 41). Article II of this treaty provides:

“the subjects of His Majesty the King of Denmark, residing within the dominions of the King of the Hawaiian Islands, shall enjoy the same protection in regard to their civil rights as well as to their persons and properties, as native subjects; and the King of the Hawaiian Islands engages to grant to Danish subjects the same rights and privileges which now are, or may hereafter be, granted to or enjoyed by any other foreigners, subjects of the most favored nation.”

Neither Denmark nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force and continues to have legal effect to date. Former Danish territories, which acquired their independence from Denmark, are successor States to, at the very least, Article II of the Hawaiian-Danish Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. A former Danish territory is:

- a. Iceland. Independence: June 7, 1944.

### ***4. France—Treaty of Friendship, Commerce and Navigation***

On October 29, 1857, a third Treaty was signed between France and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments (Annex 42). Article IV of this treaty provides:

“their respective subjects shall enjoy, in both States, a constant and complete protection for their persons and properties. They shall, consequently, have free and easy access to the tribunals of justice, in prosecution and defense of their rights, in every instance, and in all the degrees of jurisdiction established by the laws.”

Neither France nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVI of the 1857 Treaty. Therefore this treaty is still in full force and continues to have legal effect to date. Former French territories, which acquired their independence from France, are successor States to, at the very least, Article IV of the Hawaiian-French Treaty with regard to the citizenry

of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former French territories, which includes mandate territories, are:

- a. Algeria. Independence: July 5, 1962.
- b. Benin. Independence: August 1, 1960.
- c. Burkina Faso. Independence: August 5, 1960.
- d. Central African Republic. Independence: August 13, 1960.
- e. Chad. Independence: August 11, 1960.
- f. Comoros. Independence: July 6, 1975.
- g. Congo. Independence: August 15, 1960.
- h. Côte D'Ivoire. Independence: August 7, 1960.
- i. Djibouti. Independence: June 27, 1977.
- j. Gabon. Independence: August 17, 1960.
- k. Guinea. Independence: October 2, 1958.
- l. Lao People's Democratic Republic. Independence: July 19, 1949.
- m. Lebanon. Independence from French Mandate: November 22, 1943.
- n. Madagascar. Independence: June 26, 1960.
- o. Mali. Independence: September 22, 1960.
- p. Mauritania. Independence: November 28, 1960.
- q. Morocco. Independence: March 2, 1956.
- r. Niger. Independence: August 3, 1960.
- s. Republic of Cameroon. Independence from French Trusteeship on January 1, 1960.
- t. Senegal. Independence: April 4, 1960.
- u. Syria. Independence from French Mandate: April 17, 1946.
- v. Togo. Independence from French Trusteeship on April 27, 1960.
- w. Tunisia. Independence: March 20, 1956.
- x. Vanuatu. Independence from France and Great Britain: July 30, 1980.
- y. Viet Nam. Independence: September 2, 1945.

##### ***5. Germany—Treaty of Friendship, Commerce and Navigation and Consular Convention***

On March 25, 1879, a Treaty was signed between Germany and the Hawaiian Kingdom in Berlin and thereafter ratified by both governments and exchanged (Annex 43). Article II of this treaty provides:

“the subjects and citizens of the two High Contracting Parties may remain and reside in any part of said territories respectively and shall receive and enjoy full and perfect

protection for their persons and property. They shall have free and easy access to the courts of justice, provided by law, in pursuit and defense of their rights, and they shall be at liberty to choose and employ lawyers, advocates or agents to pursue or defend their rights before such courts of justice; and they shall enjoy in this respect all the rights and privileges as native subjects or citizens.”

Neither Germany nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVI of the 1879 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date.

#### ***6. United Kingdom of Great Britain and Northern Island— Treaty of Friendship, Commerce and Navigation***

On July 10, 1851, a Treaty was signed between the United Kingdom and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments (Annex 44). Article VIII of this treaty provides:

“the subjects of either of the contracting parties, in the territories of the other, shall receive and enjoy full and perfect protection for their persons and property, and shall have free and open access to the courts of justice in the said countries, respectively, for the prosecution and defense of their just rights...”

Neither Great Britain nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force and continues to have legal effect to date. Former British territories, which acquired their independence from Great Britain, are successor States to, at the very least, Article VIII of the Hawaiian-British Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former British territories, which includes mandate territories, are:

- a. Afghanistan. Independence: August 19, 1919.
- b. Antigua and Barbuda. Independence: November 1, 1981.
- c. Australia. Independence: January 1, 1901.
- d. Bahamas. Independence: July 10, 1973.
- e. Bahrain. Independence: August 15, 1971.
- f. Bangladesh. Independence from Pakistan on December 16, 1971. Pakistan acquired Independence from Great Britain on August 14, 1947.
- g. Barbados. Independence: November 30, 1966.

- h. Belize. Independence: September 21, 1981.
- i. Bhutan. Independence from India on August 8, 1949. India acquired Independence from Great Britain on August 15, 1947.
- j. Botswana. Independence: September 30, 1966.
- k. Brunei Darussalam. Independence: January 1, 1984.
- l. Cyprus. Independence: August 16, 1960.
- m. Dominica. Independence: November 3, 1978.
- n. Egypt. Independence: February 28, 1922.
- o. Fiji. Independence: October 10, 1970.
- p. Gambia. Independence: February 18, 1965.
- q. Ghana. Independence: March 6, 1957.
- r. Grenada. Independence: February 7, 1974.
- s. Guyana. Independence: May 26, 1966.
- t. India. Independence: August 15, 1947.
- u. Iraq. Independence from British Mandate: October 3, 1932.
- v. Ireland. Independence: December 6, 1921.
- w. Israel. Independence from British Mandate: May 14, 1948.
- x. Jamaica. Independence: August 6, 1962.
- y. Jordan. Independence from British Mandate: May 25, 1946.
- z. Kenya. Independence: December 12, 1963.
- aa. Kiribati. Independence: July 12, 1979.
- bb. Kuwait. Independence: June 19, 1961.
- cc. Lesotho. Independence: October 4, 1966.
- dd. Malawi. Independence: July 6, 1964.
- ee. Malaysia. Independence: August 31, 1957.
- ff. Maldives. Independence: July 26, 1965.
- gg. Malta. Independence: September 21, 1964.
- hh. Mauritius. Independence: March 12, 1968.
- ii. Myanmar. Independence: January 4, 1948.
- jj. Namibia. Independence from South African Mandate on March 21, 1990. South Africa acquired Independence from Great Britain on May 31, 1910.
- kk. Nauru. Independence from Australia, New Zealand and Great Britain Trusteeship on January 31, 1968. New Zealand acquired Independence from Great Britain on September 26, 1907, and Australia acquired Independence from Great Britain on January 1, 1901.
- ll. New Zealand. Independence: September 26, 1907.

- mm. Nigeria. Independence: October 1, 1960.
- nn. Pakistan. Independence: August 14, 1947.
- oo. Papua New Guinea. Independence from Australian Trusteeship on September 16, 1975. Australia acquired Independence from Great Britain on January 1, 1901.
- pp. Qatar. Independence: September 3, 1971.
- qq. Saint Kitts and Nevis. Independence: September 19, 1983.
- rr. Saint Lucia. Independence: February 22, 1979.
- ss. Saint Vincent and the Grenadines. Independence: October 27, 1979.
- tt. Samoa. Independence from New Zealand Trusteeship on January 1, 1962. New Zealand acquired Independence from Great Britain on September 26, 1907.
- uu. Seychelles. Independence: June 29, 1976.
- vv. Sierra Leone. Independence: April 27, 1961.
- ww. Singapore. Independence from Malaysia on August 9, 1965. Malaysia acquired Independence from Great Britain on August 31, 1957.
- xx. Solomon Islands. Independence: July 7, 1978.
- yy. Somalia. Independence: June 26, 1960.
- zz. South Africa. Independence: May 31, 1910.
- aaa. South Sudan. Independence from Sudan on July 9, 2011. Sudan acquired Independence from Great Britain on January 1, 1956.
- bbb. Sri Lanka. Independence: February 4, 1948.
- ccc. Sudan. Independence: January 1, 1956.
- ddd. Swaziland. Independence: September 6, 1968.
- eee. Tonga. Independence: June 4, 1970.
- fff. Trinidad and Tobago. Independence: August 31, 1962.
- ggg. Tuvalu. Independence: October 1, 1978.
- hhh. Uganda. Independence: October 9, 1962.
- iii. United Arab Emirates. Independence: December 2, 1971.
- jjj. United Republic of Tanzania. Tanganyika became independent on December 9, 1961 from British Trusteeship; Zanzibar became independent on December 19, 1963; Tanganyika united with Zanzibar on April 26, 1964 to form the United Republic of Tanganyika and Zanzibar; renamed United Republic of Tanzania.

- kkk. Vanuatu. Independence from both France and Great Britain on July 30, 1980.
- lll. Zambia. Independence: October 24, 1964.
- mmm. Zimbabwe. Independence: April 18, 1980.

### ***7. Italy—Treaty of Amity, Commerce and Navigation***

On July 22, 1863, a Treaty was signed between Italy and the Hawaiian Kingdom in Paris and thereafter ratified by both governments (Annex 45). Article IV of this treaty provides:

“the respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently, they shall have free and easy access to the courts of justice in the pursuit and defense of their rights, in every instance and degree of jurisdiction established by the laws.”

Neither Italy nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1863 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date. Former Italian territories, which acquired their independence from Italy, are successor States to, at the very least, Article IV of the Hawaiian-Italian Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Italian territory is:

- a. Libya. Independence: December 24, 1951.

### ***8. Japan—Treaty of Amity and Commerce***

On August 19, 1871, a Treaty was signed between Japan and the Hawaiian Kingdom in the city of Yedo and thereafter ratified by both governments (Annex 46). Article II of this treaty provides:

“the subjects of each of the two high contracting parties, respectively, shall have the liberty freely and securely to come with their ships and cargoes to all places, ports and rivers in the territories of the other, where trade with other nations is permitted; they may remain and reside in any such ports, and places respectively, and hire and occupy houses and warehouses, and may trade in all kinds of produce, manufactures and merchandise of lawful commerce, enjoying at all times the same privileges as may have been, or may hereafter be granted to the citizens or subjects of any other nation, paying at all times such duties and taxes as may be exacted from the citizens or subjects of

other nations doing business or residing within the territories of each of the high contracting parties.”

Neither Japan nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article VI of the 1871 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date. Former Japanese territories, which acquired their independence from Japan, are successor States to, at the very least, Article II of the Hawaiian-Japanese Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Japanese territories are:

- d. North Korea. Independence: August 15, 1945.
- e. South Korea. Independence: August 15, 1945.

### ***9. Netherlands—Treaty of Friendship, Commerce and Navigation***

On October 16, 1862, a Treaty was signed between the Netherlands and the Hawaiian Kingdom in The Hague and thereafter ratified by both governments (Annex 47). Article II of this treaty provides:

“the respective subjects of the two high contracting parties shall be perfectly and in all respects assimilated on their establishment and settlement, whether for a longer or shorter time in the States and Colonies of the other party on the terms granted to the subjects of the most favored nation in all which concerns the permission of sojourning, the exercise of legal professions, imposts, taxes, in a word, all the conditions relative to sojourn and establishment.”

Neither the Netherlands nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article VI of the 1862 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date. Former Dutch territories, which acquired their independence from the Netherlands, are successor States to, at the very least, Article II of the Hawaiian-Dutch Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Dutch territories are:

- a. Indonesia. Independence: August 17, 1945.
- b. Suriname. Independence: November 25, 1975.

### ***10. Portugal—Treaty of Friendship and Commerce***

On May 5, 1882, a Provisional Convention was signed between Portugal and the Hawaiian Kingdom in Lisbon and thereafter ratified by both governments (Annex 48). Article I of this convention provides:

“the Consular Agents, the subjects, the ships and products of the soil, or of the industry of one of the two countries, will enjoy on the territory of the other the same exemptions, privileges, and immunities which other Consular Agents, subjects, ships and products of the soil, or of the industry of the most favored nation, enjoy.”

Neither Portugal nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this Provisional Convention in accordance with the principles of customary international law. Therefore, this Portuguese Provisional Convention is still in full force and continues to have legal effect to date. Former Portuguese territories, which acquired their independence from Portugal, are successor States to, at the very least, Article I of the Hawaiian-Portuguese Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Portuguese territories are:

- a. Angola. Independence: November 11, 1975.
- b. Cape Verde. Independence: July 5, 1975.
- c. Guinea-Bissau. Independence: September 24, 1973.
- d. Mozambique. Independence: June 25, 1975.
- e. Sao Tome and Principe. Independence: July 12, 1975.
- f. Timor-Leste. Independence: November 28, 1975. May 20, 2002 is the official date of international recognition of Timor-Leste’s independence from Indonesia.

### *11. Russia—Treaty of Commerce and Navigation*

On June 19, 1869, a Treaty was signed between Russia and the Hawaiian Kingdom in Paris and thereafter ratified by both governments (Annex 49). Article II of this treaty provides:

“the subjects of His Majesty the Emperor of all the Russias, and the subjects of His Majesty the King of the Hawaiian Islands, shall be treated reciprocally on the footing of the most favored nation.”

Neither Russia nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force and continues to have legal effect to date. Former Russian territories, which acquired their independence from Russia, are successor States to, at the very least, Article II of the Hawaiian-Russian Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Russian territories are:



- a. Armenia. Independence: September 23, 1991.
- b. Azerbaijan. Independence: August 30, 1991.
- c. Belarus. Independence: August 25, 1991.
- d. Finland. Independence: December 6, 1917.
- e. Georgia. Independence: April 9, 1991.
- f. Kazakhstan. Independence: December 6, 1991.
- g. Kyrgyzstan. Independence: August 31, 1991.
- h. Latvia. Independence: August 21, 1991.
- i. Lithuania. Independence: March 11, 1990.
- j. Republic of Moldova. Independence: August 27, 1991.
- k. Tajikistan. Independence: September 9, 1991.
- l. Turkmenistan. Independence: October 27, 1991.
- m. Ukraine. Independence: August 24, 1991.
- n. Uzbekistan. Independence: August 31, 1991.

### ***12. Spain—Treaty of Peace and Friendship***

On October 29, 1863, a Treaty was signed between Spain and the Hawaiian Kingdom in London and thereafter ratified by both governments (Annex 50). Article IV of this treaty provides:

“the respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently, they shall have free and easy access to the courts of justice in the pursuit and defense of their rights, in every instance and degree of jurisdiction established by the laws.”

Neither Spain nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1863 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date day. Former Spanish territories, which acquired their independence from Spain, are successor States to, at the very least, Article IV of the Hawaiian-Spanish Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former Spanish territories are:

- a. Cuba. Independence: May 20, 1902.
- b. Equatorial Guinea. Independence: October 12, 1968.

### ***13. Switzerland—Treaty of Friendship, Establishment and Commerce***

On July 20, 1864, a Treaty was signed between the Swiss Confederation and the Hawaiian Kingdom in Berne and thereafter ratified by both governments (Annex 51). Article III of the treaty provides:

“the citizens of each of the contracting parties shall enjoy on the territory of the other the most perfect and complete protection for their persons and their property. They shall in consequence have free and easy access to the tribunals of justice for their claims and the defense of their rights, in all cases and in every degree of jurisdiction established by the law.”

Neither the Swiss Confederation nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XIII of the 1864 Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Therefore, this treaty is still in full force and continues to have legal effect to date.

### ***14. Sweden and Norway—Treaty of Friendship, Commerce and Navigation***

On July 1, 1852, a Treaty was signed between Sweden and Norway and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments (Annex 52). Article II of the treaty provides:

“there shall be between all the dominions of His Swedish and Norwegian Majesty, and the Hawaiian Islands, a reciprocal freedom of commerce. The subjects of each of the two contracting parties, respectively, shall have liberty freely and securely to come with their ships and cargoes to all places, ports and rivers in the territories of the other, where trade with other nations is permitted. They may remain and reside in any part of the said territories, respectively, and hire and occupy houses and warehouses and my trade, by wholesale or retail, in all kinds of produce, manufactures or merchandise of lawful commerce, enjoying the same exemptions and privileges as native subjects, and subject always to the same laws and established customs as native subjects.”

Following the separation of Austria-Hungary into two separate States, both States remained parties to the 1852 Treaty with the Hawaiian Kingdom. Neither Norway nor Sweden nor the Hawaiian Kingdom gave notice to the other of their intentions to

terminate this treaty in accordance with the terms of Article XVII of the 1852 Treaty. Therefore, the treaty is still in full force and continues to have legal effect to date.

***15. United States of America—Treaty of Friendship,  
Commerce and Navigation***

On December 20, 1849, the Treaty between the United States of America and the Hawaiian Kingdom was concluded and signed in Washington, D.C. Ratifications by both countries were exchanged in Honolulu on the Island of O’ahu, on August 24, 1850. (Annex 6). Article VIII of the treaty provides:

“...each of the two contracting parties engages that the citizens or subjects of the other residing in their respective States shall enjoy their property and personal security in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries, respectively.”

In addition, Article XVI of the said treaty provides that any:

“...citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same, and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.”

Neither the United States nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XVI of the 1849 Treaty. Therefore, this treaty is still in full force and continues to have legal effect to date. Former United States territories, which acquired their independence from the United States, are successor States to, at the very least, Article VIII of the Hawaiian-American Treaty with regard to the citizenry of the successor State that effectively replaced the citizenry of the predecessor State in the treaty. Former United States territories are:

- a. Federated States of Micronesia. Independence from American trusteeship on November 3, 1986.
- b. Marshall Islands. Independence from American trusteeship on October 21, 1986.
- c. Palau. Independence from American trusteeship on October 1, 1994.
- d. Philippines. Independence: July 4, 1946.

***16. United States of America—1907 Hague Convention, IV,  
respecting Laws and Customs of War on Land***

The United States of America signed at The Hague Convention, IV, on October 18, 1907 and ratified by the Senate March 10, 1908 (Annex 37). This treaty is still in full force and continues to have legal effect to date and binds the United States of America to administer the laws of the Hawaiian Kingdom. Article 43 of the treaty provides:

“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”

Article 55 of the treaty also provides:

“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 country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”

***17. United States of America—1907 Hague Convention, V,  
respecting the Rights and Duties of Neutral Powers***

The United States of America also signed the 1907 Hague Regulations respecting the Rights and Duties of Neutral Powers at The Hague on October 18, 1907 and ratified by the Senate on March 10, 1908. (Annex 53). This treaty is still in full force and continues to have legal effect to date and binds the United States of America to respect the neutrality of the Hawaiian Kingdom. Article 1 of the treaty provides:

“The territory of neutral Powers is inviolable.”

Article 2 of the treaty provides:

“Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.”

Article 3 of the treaty provides:

“Belligerents are likewise forbidden to: (a) Erect on the territory of a neutral Power a wireless telegraphy station or other apparatus for the purpose of communicating with

belligerent forces on land or sea; (b) Use any installation of this kind established by them before the war on the territory of a neutral Power for purely military purposes, and which has not been opened for the service of public messages.”

Article 4 of the treaty provides:

“Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents.”

***18. Foreign Consulates Unlawfully Established within the territory of the Hawaiian Kingdom***

The United States of America has accredited thirty-four (34) foreign Consulates that are unlawfully maintained within the territory of the Hawaiian Kingdom in violation of international law and Hawaiian law, to wit:

- |   |   |
|---|---|
| (1) CONSULATE OF AUSTRALIA<br>Consul General Scott Dewar<br>1000 Bishop Street, P.H.<br>Honolulu, Hawai‘i 96813-4299                | (2) CONSULATE OF BELGIUM<br>Honorary Consul Jeffrey Lau<br>707 Richards Street, Suite 600<br>Honolulu, Hawai‘i 96813-4693 |
| (3) CONSULATE OF BRAZIL<br>Honorary Consul Eric Crispin<br>745 Fort Street Mall, Suite 1450<br>Honolulu, Hawai‘i 96813              | (4) CONSULATE OF CHILE<br>Honorary Consul Gladys Vernoy<br>2240 Kuhio Avenue, P.H. 3804<br>Honolulu, Hawai‘i 96815-2820   |
| (5) CONSULATE OF CZECH REPUBLIC<br>Honorary Consul Ann Ching<br>591 Paikau Street<br>Honolulu, Hawaii 96816                         | (6) CONSULATE OF DENMARK<br>Honorary Consul Claus Hansen<br>1150 Kikowaena St.<br>Honolulu, Hawai‘i 96819-2227            |
| (7) CONSULATE OF FINLAND<br>Honorary Consul Katja Silveraa<br>411 Hobron Lane, Suite 808<br>Honolulu, Hawai‘i 96815                 | (8) CONSULATE OF FRANCE<br>Honorary Consul Patricia Lee<br>P.O. Box 22009<br>Honolulu, Hawaii 96823                       |
| (9) CONSULATE OF HUNGARY<br>Honorary Consul<br>Katalin Csiszar, Ph.D.<br>1960 East-West Road, Suite T415<br>Honolulu, Hawai‘i 96822 | (10) CONSULATE OF INDIA<br>Honorary Consul Sheila Watumull<br>P.O. Box 10905<br>Honolulu, Hawai‘i 96816                   |
| (11) CONSULATE OF ITALY<br>Honorary Consul Michele  | (12) CONSULATE OF JAPAN<br>Consul General Yoshihiko Kamo  |

- Carbone, M.D., Ph.D.  
735 Bishop Street, Suite 201  
Honolulu, Hawai‘i 96813
- 1742 Nuuanu Avenue  
Honolulu, Hawai‘i 96817-3201
- (13) CONSULATE OF KIRIBATI  
Honorary Consul William Paupe  
95 Nakolo Place  
Honolulu, Hawai‘i 96819-1845
- (14) CONSULATE OF SOUTH KOREA  
Consul General Young Kil Suh  
2756 Pali Highway  
Honolulu, Hawai‘i 96817-1491
- (15) CONSULATE OF LUXEMBOURG  
Honorary Consul  
Jean-Claude Drui  
2176 Lauwiliwili Street, #101  
Kapolei, Hawai‘i 96707
- (16) CONSULATE OF MARSHALL ISLANDS  
Consul General Noda Lojkar  
1888 Lusitana Street, Suite 301  
Honolulu, Hawai‘i 96813-1518
- (17) CONSULATE OF MEXICO  
Honorary Consul Andrew Kluger  
818 South King Street, #2100  
Honolulu, Hawai‘i 96813
- (18) CONSULATE OF MICRONESIA  
Consul General Akillino Susaia  
3049 Ualena Street, Suite 910  
Honolulu, Hawai‘i 96819-1999
- (19) CONSULATE OF MOROCCO  
Honorary Consul M. Jan Rum  
1419 Sixteenth Avenue  
Honolulu, Hawai‘i 96816
- (20) CONSULATE OF THE NETHERLANDS  
Honorary Consul Gaylord Tom  
745 Fort St. Mall, Suite 702  
Honolulu, Hawai‘i 96813-3814
- (21) CONSULATE OF NEW ZEALAND  
Honorary Consul Peter Lewis  
3929 Old Pali Road  
Honolulu, Hawai‘i 96817
- (22) CONSULATE OF NORWAY  
Honorary Consul Nina Fasi  
949 Wainiha Street  
Honolulu Hawai‘i 96825
- (23) CONSULATE OF PERU  
Honorary Consul Carlos  
Juarez, Ph.D.  
1188 Fort Street Mall Suite 305  
Honolulu, Hawai‘i 96813-2471
- (24) CONSULATE OF THE PHILIPPINES  
Consul General Julius Torres  
2433 Pali Highway  
Honolulu, Hawai‘i 96817-1452
- (25) CONSULATE OF POLAND  
Honorary Consul Bozena Jarnot  
2825 South King Street, Suite 2701  
Honolulu, Hawai‘i 96826-3535
- (26) CONSULATE OF PORTUGAL  
Honorary Consul John Felix, Ph.D.  
P.O. Box 240778  
Honolulu, Hawai‘i 96824
- (27) CONSULATE OF SAN MARINO  
Honorary Consul Yukio Takahashi  
4615 Kahala Avenue  
Honolulu, Hawai‘i 96816-5210
- (28) CONSULATE OF SLOVENIA  
Admiral R.J. Zlatoper, USN (RET)  
900 Fort Street Mall, Suite 920  
Honolulu, Hawai‘i 96813

- |  |   |
|--|---|
| <p>(29) CONSULATE OF SPAIN<br/> Honorary Vice Consul<br/> John Felix, Ph.D.<br/> P.O. Box 240778<br/> Honolulu, Hawai‘i 96824</p>          | <p>(30) CONSULATE OF SRI LANKA<br/> Honorary Consul Kusuma Cooray<br/> 60 North Beretania Street, Suite 410<br/> Honolulu, Hawai‘i 96817-4754</p> |
| <p>(31) CONSULATE OF SWEDEN<br/> Honorary Consul James M. Cribley<br/> 737 Bishop Street, Suite 2600<br/> Honolulu, Hawai‘i 96813-3283</p> | <p>(32) CONSULATE OF SWITZERLAND<br/> Honorary Consul Theres Ryf Desai<br/> 616 Kahiau Loop<br/> Honolulu, Hawai‘i 96821-2450</p>                 |
| <p>(33) CONSULATE OF THAILAND<br/> Honorary Consul Colin Miyabara<br/> 866 Iwilei Road, Suite 201<br/> Honolulu, Hawai‘i 96817</p>         | <p>(34) CONSULATE OF TONGA<br/> Honorary Consul Annie Kaneshiro<br/> 738 Kaheka Street, Suite 306B<br/> Honolulu, Hawai‘i 96814-3726</p>          |

The *Lili‘uokalani assignment* did not authorize the U.S. Department of State to accredit foreign Consulates within the territory of the Hawaiian Kingdom. Foreign Consulates can only be accredited in the Hawaiian Islands by exequatur under Hawaiian Kingdom law pursuant to §458, Article X, Chapter VIII, Title 2, Compiled Laws of the Hawaiian Kingdom (Annex 5), which the *Lili‘uokalani assignment* calls for the faithful execution by the United States of America.

### ***19. Universal Postal Union—Treaty of Berne***

On January 1, 1882, the Hawaiian Kingdom joined the Universal Postal Union as a member State and acceded to the 1874 Treaty of Berne establishing the General Postal Union, which came to be known as the Universal Postal Union. The Hawaiian Kingdom was also a signatory to the *Additional Act to the Universal Postal Union Convention of June 1, 1878*, on March 21, 1885, (Annex 54) together with the other member States of the United Kingdom of Great Britain and Northern Ireland, Germany, United States of America, Argentina, Austria, Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, Columbia, Costa Rica, Denmark, Dominican Republic, Egypt, Ecuador, Spain, France, Canada, India, Greece, Guatemala, Haiti, Honduras, Italy, Japan, Liberia, Luxembourg, Mexico, Montenegro, Nicaragua, Paraguay, Netherlands, Peru, Persia (Iran), Portugal, Romania, Russia, El Salvador, Serbia, Sweden, Norway, Switzerland, Thailand, Turkey, Uruguay and Venezuela, was concluded and signed at Lisbon and thereafter ratified and exchanged by the governments.

The Hawaiian Kingdom has provided no notice of termination of its membership and maintains that it is still a member State of the Universal Postal Union. Therefore, the membership is still in full force and continues to have legal effect to date.

## **20. War Crimes Committed Against Civilian Population**

Since April 6, 2012, protests and demands for the commission of war crimes by civilian judges of the State of Hawai'i, being a political subdivision of the United States of America, against civilians who are invoking Hawaiian Kingdom law were sent to Admiral Locklear, Commander of the U.S. Pacific Command, pursuant to Section 495(b), Department of the Army Field Manual 27-10; Hague Convention No. IV, *Respecting the Laws and Customs of War on Land*, 18 October 1907; the Geneva Convention *Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949; and Title 18 U.S.C. §2441(c)(1) (Annex 55). These war crimes are continuing to date.

### **VI. ADMISSIBILITY OF THE PRESENT PROTEST AND DEMAND**

It cannot be sufficiently stressed that conditions laid down under Article 35(2) of the Charter of the United Nations are satisfied.

The HAWAIIAN KINGDOM is a non-member State of the United Nations and the UNITED STATES OF AMERICA, AFGHANISTAN, ALGERIA, ANGOLA, ANTIGUA AND BARBUDA, ARGENTINA, ARMENIA, AUSTRALIA, AUSTRIA, AZERBAIJAN, BAHAMAS, BAHRAIN, BANGLADESH, BARBADOS, BELARUS, BELGIUM, BELIZE, BENIN, BHUTAN, BOLIVIA (PLURINATIONAL STATE OF), BOTSWANA, BRAZIL, BRUNEI DARUSSALAM, BULGARIA, BURKINA FASO, BURUNDI, CAPE VERDE, CENTRAL AFRICAN REPUBLIC, CHAD, CHILE, COLOMBIA, COMOROS, CONGO, COSTA RICA, COTE D'IVOIRE, CUBA, CYPRUS, CZECH REPUBLIC, DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, DEMOCRATIC REPUBLIC OF THE CONGO, DENMARK, DJIBOUTI, DOMINICA, DOMINICAN REPUBLIC, ECUADOR, EGYPT, EL SALVADOR, EQUATORIAL GUINEA, FIJI, FINLAND, FRANCE, GABON, GAMBIA, GEORGIA, GERMANY, GHANA, GREECE, GRENADA, GUATEMALA, GUINEA, GUINEA-BISSAU, GUYANA, HAITI, HONDURAS, HUNGARY, ICELAND, INDIA, INDONESIA, IRAN (ISLAMIC REPUBLIC OF), IRAQ, IRELAND, ITALY, JAMAICA, JAPAN, JORDAN, KAZAKHSTAN, KENYA, KIRIBATI, KUWAIT, KYRGYZSTAN, LAO PEOPLE'S DEMOCRATIC REPUBLIC, LATVIA, LEBANON, LESOTHO, LIBERIA, LIBYA, LITHUANIA, LUXEMBOURG, MADAGASCAR, MALAWI, MALAYSIA, MALDIVES, MALI, MALTA, MARSHALL ISLANDS, MAURITANIA, MAURITIUS, MEXICO, MICRONESIA (FEDERATED STATES OF), MONTENEGRO, MOROCCO, MOZAMBIQUE, MYANMAR, NAMIBIA, NAURU, NETHERLANDS, NEW ZEALAND, NICARAGUA, NIGER, NIGERIA, NORWAY, PAKISTAN, PALAU, PAPUA NEW GUINEA, PARAGUAY, PERU, PHILIPPINES, POLAND, PORTUGAL, QATAR, REPUBLIC OF CAMEROON, REPUBLIC OF KOREA, REPUBLIC OF MOLDOVA, ROMANIA, RUSSIAN FEDERATION, RWANDA, SAINT KITTS AND NEVIS, SAINT LUCIA, SAINT VINCENT AND THE GRENADINES, SAMOA, SAN MARINO, SAO TOME AND PRINCIPE, SENEGAL, SERBIA, SEYCHELLES, SIERRA LEONE, SINGAPORE, SLOVAKIA, SLOVENIA, SOLOMON ISLANDS, SOMALIA, SOUTH SUDAN, SOUTH AFRICA, SPAIN, SRI LANKA, SUDAN, SURINAME, SWAZILAND, SWEDEN, SWITZERLAND, SYRIAN ARAB REPUBLIC, TAJIKISTAN, THAILAND, TIMOR-LESTE, TOGO, TONGA, TRINIDAD AND TOBAGO, TUNISIA, TURKEY, TURKMENISTAN, TUVALU, UGANDA, UKRAINE, UNITED ARAB EMIRATES, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, UNITED REPUBLIC OF TANZANIA, URUGUAY, UZBEKISTAN,



VANUATU, VENEZUELA (BOLIVARIAN REPUBLIC OF), VIET NAM, ZAMBIA, and ZIMBABWE are member States of the United Nations.

The HAWAIIAN KINGDOM will withdraw States named in this Protest and Demand, with the exception of the United States of America, when said States shall declare, whether individually or collectively, that they will not recognize as lawful the United States of America's presence and authority within the territory, territorial seas, exclusive economic zone and airspace of the Hawaiian Kingdom according to Article 41(2), *Responsibility of States for International Wrongful Acts* (2001), except for the United States' temporary and limited authority vested by virtue of the 1893 *Lili'uokalani assignment*, Article 43 of the 1907 Hague Convention, IV, and international law.

The HAWAIIAN KINGDOM also reserves the right to present further grounds for its Protest and Demand giving fuller particulars, which it will deposit with the President of the United Nations General Assembly in due course.

A handwritten signature in black ink, appearing to read "David Keanu Sai". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping tail.

David Keanu Sai

## ANNEXES

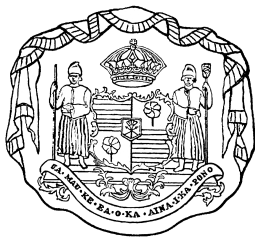
- Annex 1: Hawaiian Kingdom's Acceptance of the Obligations of Pacific Settlement
- Annex 2: Anglo-French Proclamation Recognizing Hawaiian Independence (Nov. 28, 1843).
- Annex 3: United States Recognition of Hawaiian Independence (July 6, 1844)
- Annex 4: Hawaiian Constitution (1864)
- Annex 5: Chapter VIII—Department of Foreign Affairs, Compiled Laws of the Hawaiian Kingdom (1884)
- Annex 6: Hawaiian-United States Treaty of Friendship, Commerce and Navigation (December 20, 1849)
- Annex 7: Hawaiian-United States Treaty of Commercial Reciprocity (January 13, 1875)
- Annex 8: Hawaiian-United States Postal Convention Concerning Money Orders (September 11, 1883)
- Annex 9: Hawaiian-United States Supplementary Convention to the 1875 Treaty of Commercial Reciprocity (December 6, 1884)
- Annex 10: *Lili'uokalani assignment* (January 17, 1893) through Exchange of Notes
- Annex 11: Treason—Penal Code of the Hawaiian Kingdom
- Annex 12: *Agreement of restoration* (December 18, 1893) through Exchange of Notes
- Annex 13: *New York Tribune* (January 14, 1894)
- Annex 14: *St. Paul Sunday Globe newspaper* (January 14, 1894)
- Annex 15: *The Princeton Union newspaper* (January 18, 1894)
- Annex 16: *Hawai'i Holomua newspaper* (January 24, 1894)
- Annex 17: Diplomatic Protest by Queen Lili'uokalani (June 17, 1897)
- Annex 18: Protests by the Hawaiian Patriotic League and the Hawaiian Political Association (July 24, 1897)

- Annex 19: Signature Petition 21,269 signatures Protesting Annexation by the Hawaiian Patriotic League (1897)
- Annex 20: United States Congress' *Joint Resolution to provide for annexing the Hawaiian Islands to the United States* (July 7, 1898)
- Annex 21: Transcripts of the Secret Session of the United States Senate regarding the occupation of the Hawaiian Islands, May 31, 1898.
- Annex 22: United States Congress' *An Act To provide a government for the Territory of Hawai'i* (April 30, 1900)
- Annex 23: United States Congress' *An Act To provide for the admission of the State of Hawai'i into the Union* (March 18, 1959)
- Annex 24: *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566 (2001)
- Annex 25: Hawaiian Legislature's *Act to Provide for the Registration of Co-partnership Firms*, 1880
- Annex 26: Deed of General Partnership for Perfect Title Company (December 10, 1995)
- Annex 27: Deed of General Partnership for the Hawaiian Kingdom Trust Company (December 15, 1995)
- Annex 28: Deeds of Trust to the Hawaiian Kingdom Trust Company
- Annex 29: Title 3—Legislative Department, Compiled Laws of the Hawaiian Kingdom (1884)
- Annex 30: Deed of Conveyance from David Keanu Sai to Donald Lewis (February 27, 1996)
- Annex 31: Deed of Conveyance from Donald Lewis to Nai'a Ulumaimalu (February 27, 1995)
- Annex 32: Notice of Appointment of *acting* Regent on March 1, 1996, by the Trustees of the Hawaiian Kingdom Trust Company (March 14, 1996)
- Annex 33: Deed of Conveyance from the Trustees of the Hawaiian Kingdom Trust Company to David Keanu Sai as *acting* Regent
- Annex 34: Newspaper printing of Proclamation of the Restoration of the Hawaiian Kingdom Government by the *acting* Regent on February 28, 1997 (March 9, 1997)

- Annex 35: Privy Council Resolution establishing an acting Council of Regency to replace the acting Regent (September 10, 1999)
- Annex 36: *Acting Government Letter to Russian Ambassador Vitaly Churkin, President of the Security Council (March 1, 2008).*
- Annex 37: *1907 Hague Convention, IV, respecting Laws and Customs of War on Land*
- Annex 38: *1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV*
- Annex 39: *Austria/Hungary—Treaty of Friendship, Commerce and Navigation (June 18, 1875)*
- Annex 40: *Belgium—Treaty of Amity, Commerce and Navigation (October 4, 1862)*
- Annex 41: *Denmark—Treaty of Friendship, Commerce and Navigation (October 19, 1846)*
- Annex 42: *France—Treaty of Friendship, Commerce and Navigation (October 29, 1857)*
- Annex 43: *Germany—Treaty of Friendship, Commerce and Navigation and Consular Convention (March 25, 1879)*
- Annex 44: *United Kingdom of Great Britain and Northern Island—Treaty of Friendship, Commerce and Navigation (July 10, 1851)*
- Annex 45: *Italy—Treaty of Amity, Commerce and Navigation (July 22, 1863)*
- Annex 46: *Japan—Treaty of Amity and Commerce (August 19, 1871)*
- Annex 47: *Netherlands—Treaty of Friendship, Commerce and Navigation (October 16, 1862)*
- Annex 48: *Portugal—Treaty of Friendship and Commerce (May 5, 1882)*
- Annex 49: *Russia—Treaty of Commerce and Navigation (June 19, 1869)*
- Annex 50: *Spain—Treaty of Peace and Friendship (October 29, 1863)*
- Annex 51: *Switzerland—Treaty of Friendship, Establishment and Commerce (July 20, 1864)*

- Annex 52: Sweden and Norway—*Treaty of Friendship, Commerce and Navigation* (July 1, 1852)
- Annex 53: *1907 Hague Convention, V, respecting the Rights and Duties of Neutral Powers*
- Annex 54: Universal Postal Union—*Additional Act to the Universal Postal Union Convention of June 1, 1878* (March 21, 1885)
- Annex 55: War Crime Protests and Demands communicated with the United States Pacific Command without exhibits

# **Exhibit “5”**



**DAVID KEANU SAI, PH.D.**

Ambassador-at-large for the Hawaiian Kingdom

P.O. Box 2194

Honolulu, HI 96805-2194

Tel: (808) 383-6100

E-mail: [interior@hawaiiankingdom.org](mailto:interior@hawaiiankingdom.org)

Website: <http://hawaiiankingdom.org/>

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August 14, 2012

Excellency:

Recalling my country's Protest and Demand of 9 August 2012 that was acknowledged and received by Dr. Mezoui on behalf of your Excellency on 10 August 2012 pursuant to Article 35(2) of the Charter of the United Nations at the headquarters for President of the General Assembly, I would like to make the following clarifications and request.

Although the provision of Article 35(2) of the Charter of the United Nations states a "State which is not a Member of the United Nations may bring to the attention of the General Assembly any dispute," we are not in *dispute* with the United States of America with regard to the non-compliance of the 1893 *Lili'uokalani assignment & Agreement of restoration*, 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law. Nor are we in *dispute* with the other named States. Rather, my country views this as a *situation* and not a *dispute*. My country's acceptance of the obligations of pacific settlement was made should a *dispute* arise with the named States in the Protest and Demand.

It is also my country's understanding that there is binding precedence with regard to the legal consequences for States, other than the United States of America, regarding the prolonged occupation of the Hawaiian Islands that are enumerated in the International Court of Justice's Advisory Opinion of 21 June 1971, *Legal Consequences for States of the continued presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970)*. While the Court's advisory opinion centered on rights of the mandatory, being Namibia, that had yet, at the time, been able to exercise self-determination and independence and, as a result, the legal consequences of States, the Hawaiian Protest and Demand centers on the rights of the Hawaiian Islands who already exercised self-determination and achieved the international recognition of its independence since 28 November 1843, and, as a result, the legal consequences of States. The Hawaiian Islands being the State, while the Hawaiian Kingdom being its government.

The United States obligations to the Hawaiian Kingdom arises from the 1893 *Lili'uokalani assignment & Agreement of restoration*, 1899 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law, where in similar fashion the

obligations of South Africa with regard to Namibia arose under the General Assembly resolution 2145 (XXI), the Security Council Resolution 276 (1970), the Charter of the United Nations, and international law. Therefore, the legal consequences for States with regard to the Hawaiian situation are enumerated as follows:

- a) Member States are under obligation (subject to (d) below) to abstain from entering into treaty relations with the United States of America in all cases in which the Government of the United States of America purports to act on behalf of or concerning the Hawaiian Islands. With respect to existing bilateral treaties member States must abstain from invoking or applying those treaties or provisions of treaties concluded by the United States of America on behalf of or concerning the Hawaiian Islands, which involve active intergovernmental co-operation. With respect to multilateral treaties, the same rule cannot be applied to certain general conventions such as those with humanitarian character, the non-performance of which may adversely affect the people of the Hawaiian Islands: it will be for the competent international organs to take specific measures in this respect.
- b) Member States are under obligation to abstain from sending diplomatic or special missions to the United States of America including in their jurisdiction the territory of the Hawaiian Islands, to abstain from sending consular agents to the Hawaiian Islands, and to withdraw any such agents already there; and to make it clear to the United States of America that the maintenance of diplomatic or consular relations does not imply any recognition of its authority with regard to the Hawaiian Islands.
- c) Member States are under obligation to abstain from entering into economic and other forms of relations with the United States of America on behalf of or concerning the Hawaiian Islands which may entrench its authority over the territory.
- d) However, non-recognition should not result in depriving the people of the Hawaiian Islands of any advantages derived from international co-operation. In particular, the illegality or invalidity of acts performed by the Government of the United States of America on behalf of or concerning the Hawaiian Islands during its illegal annexation on 12 August 1898 and subsequent prolonged occupation cannot be extended to such acts as the registration of births, deaths and marriages.

In light of the prolonged and illegal occupation of the Hawaiian Islands since 12 August 1898 and the severity of the Hawaiian situation, my country makes the following requests:

1. Because the term of the President is coming to an end next month and a new President will be entering office, my country requests that the



Protest and Demand and all relevant documents be provided to the successor President and his administration.

2. Because of the legal, political and economic severity of the Hawaiian situation and the obligation of States to abstain: (a) from entering into treaty relations with the United States of America in all cases in which the Government of the United States of America purports to act on behalf of or concerning the Hawaiian Islands; (b) from sending diplomatic or special missions to the United States of America including in their jurisdiction the territory of the Hawaiian Islands, to abstain from sending consular agents to the Hawaiian Islands, and to withdraw any such agents already there; and (c) from entering into economic and other forms of relations with the United States of America on behalf of or concerning the Hawaiian Islands which may entrench its authority over the territory, my country requests that the Hawaiian situation be placed on the agenda at the opening of the Sixty-Seventh Session of the General Assembly in order for all one hundred ninety-three (193) members of the United Nations to be made aware of the Hawaiian situation, and not just the one hundred seventy-three (173) member States named in the Protest and Demand.
3. Because of the complexities of the Hawaiian situation, my country requests that member States of the General Assembly and the Security Council peruse my doctoral dissertation titled “American Occupation of the Hawaiian Kingdom,” with particular focus on chapter 5 titled “Righting the Wrong: Beginning the Transition from Occupied State to Restored State” that proposes a general plan for the United Nations to address the prolonged occupation. The dissertation and other law journal articles on this topic I authored can be accessed on the accompanying CD to the Protest and Demand provided to your office and the other named member States in the Protest and Demand. The dissertation and law journal articles, however, can also be downloaded from the internet at [www2.hawaii.edu/~anu/publications](http://www2.hawaii.edu/~anu/publications).
4. And because the General Assembly lacks the necessary powers to carry out sections 1, 2, and 4 of Section II—Nature of the Claim, Protest and Demand (pages 5-6), my country requests the Sixty-Seventh Session of the General Assembly to enlist the co-operation of the Security Council. The Security Council is vested with the necessary authority under Article 24 of the Charter.

Please accept, Excellency, the assurances of my highest consideration,

A handwritten signature in black ink, appearing to read "David Keanu Sai". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping tail.

David Keanu Sai

cc: Executive Secretary, Council of Presidents  
Executive Secretary, Group of 77 at the United Nations  
Permanent Mission for China  
Named States in the Protest and Demand

# **Exhibit “6”**

# Instrument of Accession

Whereas the Statute of the International Criminal Court was concluded at Rome on 17 July 1998;

And Whereas Article 125(3) of the Statute specifies that the Statute shall be open to accession by all States;

Now Therefore, the Hawaiian Kingdom, having considered the Statute, hereby Accedes to it, and undertakes faithfully to abide by all the provisions contained therein.

In Witness Whereof, I have hereunto set my hand, and caused the Great Seal of the Kingdom to be affixed this 23<sup>rd</sup> day of November A.D. 2012.

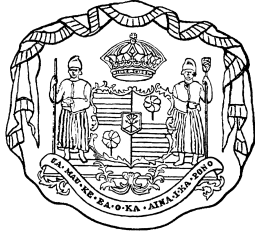


Peter Umialiloa Sai,  
Vice-Chairman of the Acting Council of Regency  
Acting Minister of Foreign Affairs

By the Council

Kau'i P. Sai-Dudoit,  
Acting Minister of Finance

## **Exhibit “7”**



**DAVID KEANU SAI, PH.D.**

Ambassador-at-large for the Hawaiian Kingdom  
P.O. Box 2194  
Honolulu, HI 96805-2194  
Tel: (808) 383-6100  
E-mail: [interior@hawaiiankingdom.org](mailto:interior@hawaiiankingdom.org)  
Website: <http://hawaiiankingdom.org/>

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10 December 2012

Secretariat  
Treaty Section  
Office of Legal Affairs  
United Nations  
New York, NY 10017

Excellency:

In accordance with Article 125(3) of the Rome Statute, I have the honor on behalf of the *acting* government, a State not a member of the United Nations, of depositing with the United Nations Treaty Section my government's instrument of accession to the Roman Statute, and that my government understands that the Statute shall enter into force on the first day of the month after the 60<sup>th</sup> day following the deposit of my government's instrument of accession.

I am also enclosing my government's Protest and Demand of the prolonged occupation of the Hawaiian Kingdom that was deposited with the President of the United Nations General Assembly pursuant to Article 35(2) of the United Nations Charter on 10 August 2012. The Protest and Demand was acknowledged and received by Mrs. Hanifa Mezoui, Ph.D., Special Coordinator, Third Committee and Civil Society, Office of the President of the Sixty-Sixth Session of the General Assembly. Attached are the Protest and Demand and an accompanying CD with Annexes.

Please accept, Excellency, the assurances of my highest consideration,

A handwritten signature in black ink, appearing to read 'David Keanu Sai'.

David Keanu Sai

Enclosures

# **Exhibit “8”**



**DAVID KEANU SAI, PH.D.**

Ambassador-at-large for the Hawaiian Kingdom  
P.O. Box 2194  
Honolulu, HI 96805-2194  
Tel: (808) 383-6100  
E-mail: interior@hawaiiankingdom.org  
Website: <http://hawaiiankingdom.org/>

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**ACKNOWLEDGMENT OF RECEIPT**

I hereby acknowledge the receipt of the following document from the Ambassador-at-large for the Hawaiian Kingdom, a State not a member of the United Nations, deposited with the Secretary General of the United Nations General Assembly, by the United Nations Treaty Section, pursuant to Article 125(3) of the Rome Statute:

1. Instrument of accession dated 28 November 2012.

Bernadette MUTIRENDE

(Signature)

A handwritten signature in black ink, appearing to read 'Bernadette Mutirende'.

Dec 10, 2012

(Date)



# **Exhibit “9”**

## ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge the receipt of the following documents from the Hawaiian Kingdom, a State not a member of the United Nations, deposited with the Swiss Federal Council, by the Swiss Federal Department of Foreign Affairs, pursuant to Article 156 of the 1949 Geneva Convention for the Protection of Civilian Persons in Time of War:

1. Instrument of accession to the 1949 Geneva Convention for the Protection of Civilian Persons in Time of War, dated 28 November 2012.
2. Protest and Demand dated 9 August 2012.
3. CD of Annexes to the Protest and Demand and other relevant documents.
4. DVD Packet of the Larsen v. Hawaiian Kingdom arbitration case.

Benno Bättig

\_\_\_\_\_  
(Print name)

  
\_\_\_\_\_  
(Signature)

*14.1.2013*  
\_\_\_\_\_  
(Date)

# Instrument of Accession

Whereas a Convention for the Protection of Civilian Persons in Time of War was concluded at Geneva on 12 August 1949;

And Whereas Article 155 of the Convention specifies that the Convention shall be open to accession by any State Power;

Now Therefore, the Hawaiian Kingdom, having considered the Convention, hereby Accedes to it, and undertakes faithfully to abide by all the provisions contained therein.

In Witness Whereof, I have hereunto set my hand, and caused the Great Seal of the Kingdom to be affixed this 20<sup>th</sup> day of November A.D. 2012.



Peter Umialiloa Sai,  
Vice-Chairman of the Acting Council of Regency  
Acting Minister of Foreign Affairs

By the Council

Kau'i P. Sai-Dudoit,  
Acting Minister of Finance

## DECLARATION OF LELAND PA

I, LELAND PA, declare under penalty that the following is true and correct:

1. I am a police officer for the Hawai'i Police Department, badge number 284.
2. According to the Hawai'i Police Department Standards of Conduct, section 5.2.9(h), "General Responsibilities—Officers shall, at all times, take appropriate action to: Identify potentially serious law enforcement and government problems".
3. As part of my duty to identify potentially serious law enforcement and government problems, I obtained copies of war crime complaints from the Law Office of Dexter K. Kaiama, esquire, Seven Waterfront Plaza 500 Ala Moana Blvd., suite 400 Honolulu, Hawai'i 96813, in early September 2012. I began my inquiry into these complaints to see how it would affect myself as a police officer for the County of Hawai'i and if it would pose potential problems for law enforcement and government officials.
4. These complaints were filed with the HQ U.S. Pacific Command, Camp Smith, Hawai'i, and the Office of the United Nations High Commissioner for Human Rights Geneva, Switzerland. These complaints accused State of Hawai'i Third Circuit Court Judges Greg Nakamura and Glen S. Hara, and District Court Judge Barbara Takase of willfully depriving a protected person the rights of a fair and regular trial during occupation, being a war crime under the 1949 Geneva Convention, IV. These complaints were based on the 1893 Executive Agreements between U.S. President Grover Cleveland and Queen Lili'uokalani, 1907 Hague Convention, IV, 1949 Geneva Convention, IV, and U.S. Army Field Manual 27-10.
5. On 11-06-12 at about 2230 hours I telephoned the Office of the United Nations High Commissioner for Human Rights, Human Rights Council Branch-Complaint Procedure Unit. United Nations Office at Geneva CH-1211 Geneva 10, Switzerland Bus. Ph: 011 412 291 79220.
6. I spoke with a male representative that confirmed the complaints but could not provide any more assistance except to advise me to contact U.S. departments that deal with war crime complaints.
7. On 11-08-12 at about 0930 hours I telephoned HQ USPACOM, P.O. Box 64028 Camp H.M. Smith, Hawai'i, PH: (808) 477-6378. I spoke with a male party who identified himself as being RONALD WINFREY, Principal Deputy Staff Judge Advocate, U.S. Pacific Command. I informed him of my inquiry and concerns of how these complaints could directly affect my duties and me as a police officer for the County of Hawai'i.
8. Mr. Winfrey stated he receives many complaints and some are not really complaints but long winded writings. I specified that the war crime complaints I'm referring to

were coming from the law office of Dexter K. Kaiama, esquire.

9. Mr. Winfrey stated he knows those complaints because out of all the complaints he has read those are the most precise and clear.
10. As I began discussing the basis of the complaints such as no treaty of annexation, Mr. Winfrey candidly and without hesitation said, “Oh yes, there is no treaty”.
11. I brought to his attention the two sole executive agreements mentioned in the complaint. The 1893 Lili‘uokalani assignment and the Agreement of restoration entered into by United States President Grover Cleveland and Queen Lili‘uokalani for the investigation and settlement of the illegal overthrow.
12. I stated that according to the U.S. Supreme Court sole executive agreements are treaties. As treaties, they bind the United States President to administer Hawaiian Kingdom Law and the Laws of occupation in Hawai‘i.
13. Mr. Winfrey stated that the executive agreements and the issue of Hawai‘i being occupied have never been ruled on in a U.S. Court and they remain unresolved.
14. Mr. Winfrey in an attempt to ease my concerns stated that these types of cases when addressed by U.S. Courts will get dismissed for lack of jurisdiction and not one has gone up on appeal.
15. I informed Mr. Winfrey that there is a Federal case that went on appeal dealing with the exact subject matter and he said, “I was not aware of that”.
16. I stated that the case was dismissed for lack of jurisdiction because it posed a political question. One of the cases the Judge cited was *Lin v. United States*. In *Lin*, the Appellate Court held that, although the court had the authority to construe treaties, the political question doctrine deprived it of the authority to do so because the executive failed to recognize Taiwan’s sovereignty. However, once the executive recognizes the sovereign then there is no political question and the court has jurisdiction.
17. Unlike Taiwan, the Executive already determined Hawai‘i’s sovereignty on July 6, 1844. The executive also extended further recognition by entering into the abovementioned sole executive agreements with Queen Lili‘uokalani.
18. I asked Mr. Winfrey the following questions and got the following responses.
19. Since there is no treaty, can the unresolved issues of the executive agreements and Hawaii’s occupation get resolved by a U.S. Court in the future?
20. Mr. Winfrey stated that it is possible.
21. If a U.S. Court should find in favor of plaintiff’s claim regarding the executive

agreements and Hawai'i's occupation, then the prosecution of said War Crimes would come into play?

22. Mr. Winfrey stated that is possible.

23. Since there is no treaty, the plaintiff does not need a U.S. court ruling? The Plaintiff could get these issues resolved in an International venue and then prosecution of war crimes would come into play?

24. Mr. Winfrey stated that is possible.

25. I informed Mr. Winfrey that as a police officer I have sworn an oath to uphold the laws and constitution of the United States. Article 6, clause 2 of the U.S. constitution declares that treaties, which includes executive agreements, are the supreme law of the land. Because there is no treaty of annexation we are faced with a difficult situation, which needs clarification and I find it necessary to notify my superiors.

26. Mr. Winfrey stated he understood my concerns and thanked me for the conversation and for being so knowledgeable on the subject.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: Hilo, Hawai'i, December 15, 2012.



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Leland Pa

HAWAII POLICE DEPARTMENT

COMPLAINT REPORT

OPS 13-012

Internal

External

Complaint Received: Date 2/28/2013 Time 0815 hrs By: Capt. Kawamoto

How Reported: On View  In Person  Other

Referred By: Captain Samuel Kawamoto

Assigned By: Captain Samuel Kawamoto Date 2/28/2013 Time 0815 hrs

COMPLAINANT: Hawaii Police Department

Address: 349 Kapiolani Street Hilo, Hawaii Phone: 935-3311

Employer: \_\_\_\_\_ Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

Victim: \_\_\_\_\_ Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

Witness(s): \_\_\_\_\_ Address: \_\_\_\_\_  
: \_\_\_\_\_ Phone: \_\_\_\_\_

ACCUSED OFFICER: Officer Leland Pa Badge # 284

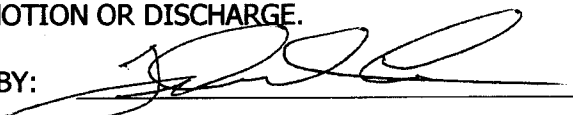
Rank: Police Officer II District/Division: Hilo Cellblock Watch: \_\_\_\_\_

DATE OF INCIDENT: 02-28-2013 TIME: 0809 hrs ON  OFF  DUTY

LOCATION OF INCIDENT: 777 Kilauea Avenue Hilo, Hawaii

- ALLEGED VIOLATION:
- (G.O. VIOLATION) General Order 300, 5., 5.2., 5.2.1., Standard of Conduct ( 1 Charge )
  - General Order 300, 5., 5.3., 5.3.1., d. Misuse of Position or Office ( 8 Charges )
  - General Order 300, 5., 5.3., 5.3.4., jj. Subversive Acts Prohibited ( 8 Charges )
  - General Order 300, 5., 5.2., 5.2.3., RE: Procedures Manual Section 6.3., 4., 4.4., 4.4.1., b. ( 7 Charges )
  - General Order 300, 5., 5.2., 5.2.3., RE: Procedures Manual Section 6.3., 4., 4.4., 4.4.3., c. ( 7 Charges )
  - General Order 300, 5., 5.2., 5.2.3., RE: Procedures Manual Section 13.2., 12., 12.1., 12.1.1. ( 6 Charges )

IN ACCORDANCE WITH ARTICLE 12, "POLICE OFFICER'S PROTECTION" OF THE SHOPO CONTRACT, YOU ARE BEING INFORMED IN WRITING THAT THIS COMPLAINT IS OF SUCH A NATURE THAT IT COULD RESULT IN YOUR DISCIPLINE, DEMOTION OR DISCHARGE.

COPY RECEIVED BY:  Date 03-01-13 Time 1450 hrs

INVESTIGATOR: \_\_\_\_\_ Rank: \_\_\_\_\_  
SERVED BY: \_\_\_\_\_ Rank: \_\_\_\_\_

**ALLEGED VIOLATION(S)**

**CHARGE 1** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.1. Standard of Conduct – Officers and employees shall conduct their lives in such a manner as to avoid bringing themselves or the department into disrepute.

**Specification**

It is alleged that on February 28, 2013, while off duty, you telephoned State of Hawaii Judges and Private Attorneys identifying yourself as a Police Officer with the Hawaii County Police Department and informed them that they are the subjects of war crime complaints made against them and requested that they be interviewed as part of your investigation and provide a statement to you.

Your actions of contacting these individuals in such a manner brought disrepute to yourself and the department, which is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.1. Standard of Conduct.

**CHARGE 2** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official



positions with the department to gain personal favors or to conduct non-police activities.

**Specification**

It is alleged that on February 28, 2013, while off-duty, you telephoned Court Clerk Shaylina Quenga, identified yourself as a Police Officer from the Hawaii County Police Department and left a message for Judge Harry Freitas for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

**CHARGE 3** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

**Specification**

It is alleged that on February 28, 2013, while off duty, you telephoned and spoke to Court Clerk Shaylina Quenga and identified

yourself as a Police Officer from the Hawaii County Police Department and left a message for Judge Harry Freitas informing him that you are conducting an investigation of committing war crimes and he is a suspect.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

**CHARGE 4** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

**Specification**

It is alleged that on February 28, 2013, while off-duty, you telephoned Judge Greg Nakamura and left a message for him identifying yourself as a Police Officer from the Hawaii County Police Department for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

**CHARGE 5** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

**Specification**

It is alleged that on February 28, 2013, while off duty, you telephoned Judge Greg Nakamura and left a message identifying yourself as a Police Officer from the Hawaii County Police Department and left a message informing him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules or Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

**CHARGE 6** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

**Specification**

It is alleged that on February 28, 2013, while off-duty, you telephoned Judge Glenn Hara and left a message identifying yourself as a Police Officer from the Hawaii County Police Department and left a message for him for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

**CHARGE 7** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

**Specification**

It is alleged that on February 28, 2013, while off duty, you telephoned Judge Glenn Hara identifying yourself as a Police Officer from the Hawaii County Police Department and left a message informing him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

**CHARGE 8** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

**Specification**

It is alleged that on February 28, 2013, while off-duty, you telephoned Court Clerk Jaime Takimoto, identified yourself as a Police Officer from the Hawaii County Police Department and left a message for Judge Ronald Ibarra for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

**CHARGE 9** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

**Specification**

It is alleged that on February 28, 2013, while off duty, you telephoned Court Clerk Jaime Takimoto identifying yourself as a Police Officer from the Hawaii County Police Department and left a message for Judge Ronald Ibarra informing him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

**CHARGE 10** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

**Specification**

It is alleged that on February 28, 2013, while off-duty, you telephoned Attorney Robert Kim, identified yourself as a Police Officer from the Hawaii County Police Department for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

**CHARGE 11** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

**Specification**

It is alleged that on February 28, 2013, while off duty, you telephoned Attorney Robert Kim, identified yourself as a Police Officer from the Hawaii County Police Department and informed him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

**CHARGE 12** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

**Specification**

It is alleged that on February 28, 2013, while off-duty, you telephoned Attorney Edmund Haisuka, and identified yourself as a Police Officer from the Hawaii County Police Department for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.



**CHARGE 13** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

**Specification**

It is alleged that on February 28, 2013, while off duty, you telephoned Attorney Edmund Haituka, identified yourself as a Police Officer from the Hawaii County Police Department and informed him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

**CHARGE 14** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

**Specification**

It is alleged that on February 28, 2013, while off-duty, you telephoned Attorney Robert Triantos, and identified yourself as a Police Officer from the Hawaii County Police Department for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

**CHARGE 15** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

**Specification**

It is alleged that on February 28, 2013, while off duty, you telephoned Attorney Robert Triantos, identified yourself as a Police Officer from the Hawaii County Police Department and informed him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

**CHARGE 16** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.1. Class A Rules

d. Misuse of Position or Office – Members shall not use their official positions with the department to gain personal favors or to conduct non-police activities.

**Specification**

It is alleged that on January 24, 2013, you telephoned Attorney Peter Kubota, and identified yourself as a Police Officer from the Hawaii County Police Department for the purpose of obtaining a statement relative to a war crime complaint.

Your actions of using your official position as a Police Officer with the Hawaii Police Department to conduct investigations outside of your jurisdiction or responsibilities places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3. Rules of Conduct, 5.3.1. Class A Rules, d. Misuse of Position or Office.

**CHARGE 17** General Order 300 Standards of Conduct

5. Procedures

5.3. Rules of Conduct

5.3.4. Class D Rules

jj. Subversive Acts Prohibited – Members shall not perform any acts or make any statements oral or written or otherwise which tend to bring the department or its officers into disrepute or ridicule, or which destructively criticize the department or its administrative officers in the performance of their official duties, or which tend to disrupt or impair the performance of official duties and obligations of officers of the department; or which tend to interfere with or subvert the reasonable supervision or proper discipline of members of the department.

**Specification**

It is alleged that on January 24, 2013, you telephoned Attorney Peter Kubota, identified yourself as a Police Officer from the Hawaii County Police Department and informed him that you are conducting an investigation of a complaint made against him for committing war crimes.

Conducting such an investigation disrupts and/or impairs the performance of your official assigned duties. This places you in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.3 Rules of Conduct, 5.3.4. Class D Rules, jj. Subversive Acts Prohibited.

**CHARGE 18** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

### **Specification**

On or about February 22, 2013, it is alleged that you initiated police report number C13004901 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

**CHARGE 19** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS

c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include the direction in which the investigation is proceeding.

- In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.
- The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

**Specification**

On or about February 22, 2013, it is alleged that after initiating police report number C13004901, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

**CHARGE 20** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event the report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

**Specification**

On or about February 22, 2013, it is alleged that you initiated police report number C13004904 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

**CHARGE 21** General Order 300 Standards of Conduct

- 5. Procedures
- 5.2. Professional Conduct and Responsibilities
- 5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

- 4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS



- c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include the direction in which the investigation is proceeding.
- In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.
  - The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

### **Specification**

On or about February 22, 2013, it is alleged that after initiating police report number C13004904, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

### **CHARGE 22** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

**Specification**

On or about February 22, 2013, it is alleged that you initiated police report number C13004910 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies,

etc., RE: Procedures Manual Section 6.3 REPORT WRITING  
PROCEDURES, 4.4., 4.4.1., b.

**CHARGE 23** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING  
PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS

c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include the direction in which the investigation is proceeding.

- In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.

- The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

### **Specification**

On or about February 22, 2013, it is alleged that after initiating police report number C13004910, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

### **CHARGE 24** General Order 300 Standards of Conduct

- 5. Procedures
  - 5.2. Professional Conduct and Responsibilities
    - 5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

- 4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT,  
MISCELLANEOUS SERVICE REPORT

- b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.
  - In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

**Specification**

On or about February 22, 2013, it is alleged that you initiated police report number C13004911 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

**CHARGE 25** General Order 300 Standards of Conduct

5. Procedures
  - 5.2. Professional Conduct and Responsibilities
    - 5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING  
PROCEDURES

4.4. Investigating officers are responsible for the  
timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS

- c. Initial supplementaries shall be dictated  
within 24 hours after a report number is  
drawn. An initial supplementary shall  
include, at the minimum, details of all  
investigative work conducted at the time  
the report was taken, including all  
statements, furthermore it shall include  
the direction in which the investigation is  
proceeding.
- In any event, the initial  
supplementary should be  
completed no later than 48 hours  
after a report number is drawn.
  - The approving supervisor shall  
make a notation in the RMS  
Incident Module comments tab as  
to the reasons for any delays in  
the initial supplementary report  
being completed within the allotted  
time frame.

**Specification**

On or about February 22, 2013, it is alleged that after initiating  
police report number C13004911, you did not dictate the initial  
supplementary report within 24 hours, or in any event no later than  
48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300  
Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and

Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

**CHARGE 26** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

**Specification**

On or about February 22, 2013, it is alleged that you initiated police report number C13004913 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

**CHARGE 27** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS

c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include



the direction in which the investigation is proceeding.

- In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.
- The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

### **Specification**

On or about February 22, 2013, it is alleged that after initiating police report number C13004913, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

### **CHARGE 28** General Order 300 Standards of Conduct

- 5. Procedures
- 5.2. Professional Conduct and Responsibilities
- 5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i

and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay.

### **Specification**

On or about February 22, 2013, it is alleged that you initiated police report number C13004915 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

**CHARGE 29** General Order 300 Standards of Conduct

5. Procedures

## 5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

### 4.4.3. SUPPLEMENTAL REPORTS

- c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include the direction in which the investigation is proceeding.
  - In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.
  - The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

**Specification**

On or about February 22, 2013, it is alleged that after initiating police report number C13004915, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

**CHARGE 30** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.1. INCIDENT REPORT, ACCIDENT REPORT, MISCELLANEOUS SERVICE REPORT

b. The initial report module shall be completed and forwarded to a supervisor for approval within 24 hours by the employee being assigned to the case.

- In the event that report is unable to be completed within 24 hours, the approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reason for the delay

**Specification**

On or about February 22, 2013, it is alleged that you initiated police report number C13004916 and did not forward the initial report to a supervisor for approval within 24 hours as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.1., b.

**CHARGE 31** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 6.3 REPORT WRITING  
PROCEDURES

4.4. Investigating officers are responsible for the timely submittal of all reports, which include:

4.4.3. SUPPLEMENTAL REPORTS

- c. Initial supplementaries shall be dictated within 24 hours after a report number is drawn. An initial supplementary shall include, at the minimum, details of all investigative work conducted at the time the report was taken, including all statements, furthermore it shall include the direction in which the investigation is proceeding.
- In any event, the initial supplementary should be completed no later than 48 hours after a report number is drawn.
  - The approving supervisor shall make a notation in the RMS Incident Module comments tab as to the reasons for any delays in the initial supplementary report being completed within the allotted time frame.

### **Specification**

On or about February 22, 2013, it is alleged that after initiating police report number C13004916, you did not dictate the initial supplementary report within 24 hours, or in any event no later than 48 hours after the report number was drawn.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedure Manual 6.3 REPORT WRITING PROCEDURES, 4.4., 4.4.3., c.

### **CHARGE 32** General Order 300 Standards of Conduct

#### 5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF  
EVIDENCE/PROPERTY

12.1. General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

**Specification**

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004901 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

**CHARGE 33** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF  
EVIDENCE/PROPERTY

12.1. General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

**Specification**

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004904 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

**CHARGE 34** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities



5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF  
EVIDENCE/PROPERTY

12.1 General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

**Specification**

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004910 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

**CHARGE 35** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF  
EVIDENCE/PROPERTY

12.1 General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

**Specification**

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004911 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

**CHARGE 36** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF  
EVIDENCE/PROPERTY

12.1 General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

**Specification**

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004915 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

**CHARGE 37** General Order 300 Standards of Conduct

5. Procedures

5.2. Professional Conduct and Responsibilities

5.2.3. Obedience to Laws, Written Orders, Policies, etc. – Officers and employees of the department shall observe and obey all Federal and State Laws, Ordinances of the County of Hawai`i and all orders, policies, directives, regulations, etc., of the Department.

RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES

12. CUSTODY AND TRANSMITTAL OF  
EVIDENCE/PROPERTY

12.1 General –

12.1.1. Employees who recover evidence/property shall initiate the chain of custody and deliver the evidence/property to the appropriate Repository by the end of their tour of duty unless exceptional circumstances exists, e.g., medical emergency, and is approved by the employee's supervisor.

**Specification**

On or about February 22, 2013, it is alleged that you recovered evidence under police report number C13004916 and did not deliver the evidence/property to the appropriate Repository by the end of your tour of duty as required.

Your action is contrary to and in violation of General Order 300 Standards of Conduct, 5. Procedures, 5.2. Professional Conduct and Responsibilities, 5.2.3. Obedience to Laws, Written Orders, Policies, etc., RE: Procedures Manual Section 13.2 EVIDENCE PROCEDURES, 12., 12.1., 12.1.1.

March 01, 2013

TO : LELAND PA, POLICE OFFICER, HILO CELLBLOCK  
FROM : BRIAN D. PRUDENCIO, POLICE DETECTIVE, OFFICE OF PROFESSIONAL STANDARDS  
SUBJECT: ADMINISTRATIVE INVESTIGATION, OPS 2013-012  
GARRITY RIGHTS

You are being informed in writing of your Garrity Rights in accordance with the current State of Hawai'i Organization of Police Officers Agreement with the County of Hawai'i, Article 12. Police Officer's Protection – Administrative Investigations and Interrogations. B. Administrative Investigations and Interrogations of Internal and External Complaints. 2. Limitations. o. Garrity Rights. As follows:

*It is my understanding that this statement is made for administrative, internal Police Department purposes only and will not be used as part of an official criminal investigation. This statement is made by me after being ordered to do so by lawful supervisory officers. It is my understanding that refusing to obey an order to make this statement that I can be disciplined for insubordination and that the punishment for insubordination can be up to and including termination of employment. This statement is made only pursuant to such orders and the potential punishment/discipline that can result for failure to obey that order.*  
Garrity v. New Jersey, 385 U.S. 493, 87 S. Ct. 616, 17 L.Ed.2d 562 (1967).

REVIEWED AND SIGNED: 

DATE/TIME: 03-01-13/1509

SERVED BY: 

DATE/TIME: 03-01-13/1509

March 01, 2013

TO : LELAND PA, POLICE OFFICER, HILO CELLBLOCK  
FROM : BRIAN D. PRUDENCIO, DETECTIVE, OFFICE OF PROFESSIONAL STANDARDS  
SUBJECT: ADMINISTRATIVE INVESTIGATION, OPS 2013-012  
MEMORANDUM RESPONSE TO MISCONDUCT COMPLAINT

Per Article 12 of the Collective Bargaining Agreement, I am providing you with a copy of the alleged misconduct complaint.

Be advised:

1. You have the right to review Article 12 of the SHOPO union contract, and I am affording you the opportunity to consult with a union representative or someone else of your choice prior to submitting your memorandum.
2. Through your signature, you have acknowledged those rights prior to submitting your memorandum.
3. You are directed to submit a memorandum in response to this complaint to me within seven (7) days from the date of receipt.
4. Should your explanation of the events be unclear or lacking in detail, you will be required to submit to an interrogation as defined in Article 12 of the collective bargaining agreement to further clarify your memorandum and the allegations made against you.

By authority of the Police Chief, you are hereby ordered to answer this complaint specifically, directly and narrowly relating to your duties and actions as a member of the Hawai'i County Police Department.

REVIEWED AND SIGNED: 

DATE/TIME: 03-01-13 / 1511

SERVED BY: 

DATE/TIME: 03-01-13 / 1511

DATE DUE: 03-08-13

be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(b) PROPERTY SUBJECT TO FORFEITURE.—

(1) IN GENERAL.—The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, that constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) APPLICABILITY OF CHAPTER 46.—The provisions of chapter 46 of this title relating to civil forfeitures shall apply to any seizure or civil forfeiture under this subsection.

(Added Pub. L. 109-164, title I, §103(d)(1), Jan. 10, 2006, 119 Stat. 3563.)

### CHAPTER 118—WAR CRIMES

Sec.	
2441.	War crimes.
2442.	Recruitment or use of child soldiers.

#### AMENDMENTS

2008—Pub. L. 110-340, §2(a)(3)(A), Oct. 3, 2008, 122 Stat. 3736, added item 2442.

1996—Pub. L. 104-294, title VI, §605(p)(2), Oct. 11, 1996, 110 Stat. 3510, redesignated item 2401 as 2441.

#### § 2441. War crimes

(a) OFFENSE.—Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) CIRCUMSTANCES.—The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) DEFINITION.—As used in this section the term “war crime” means any conduct—

(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;

(2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;

(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or

(4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996

(Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.

(d) COMMON ARTICLE 3 VIOLATIONS.—

(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term “grave breach of common Article 3” means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrat-

ing, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

(H) **SEXUAL ASSAULT OR ABUSE.**—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

(I) **TAKING HOSTAGES.**—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

(2) **DEFINITIONS.**—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

(A) the term “severe mental pain or suffering” shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

(B) the term “serious bodily injury” shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

(C) the term “sexual contact” shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

(D) the term “serious physical pain or suffering” shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

- (i) a substantial risk of death;
- (ii) extreme physical pain;
- (iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or
- (iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

(E) the term “serious mental pain or suffering” shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term “severe mental pain or suffering” (as defined in section 2340(2) of this title), except that—

- (i) the term “serious” shall replace the term “severe” where it appears; and
- (ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term “serious and non-transitory mental harm (which need not be prolonged)” shall replace the term “prolonged mental harm” where it appears.

(3) **INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.**—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an of-

fense under subsection (a) by reasons of subsection (c)(3) with respect to—

- (A) collateral damage; or
- (B) death, damage, or injury incident to a lawful attack.

(4) **INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.**—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.

(5) **DEFINITION OF GRAVE BREACHES.**—The definitions in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.

(Added Pub. L. 104–192, §2(a), Aug. 21, 1996, 110 Stat. 2104, §2401; renumbered §2441, Pub. L. 104–294, title VI, §605(p)(1), Oct. 11, 1996, 110 Stat. 3510; amended Pub. L. 105–118, title V, §583, Nov. 26, 1997, 111 Stat. 2436; Pub. L. 107–273, div. B, title IV, §4002(e)(7), Nov. 2, 2002, 116 Stat. 1810; Pub. L. 109–366, §6(b)(1), Oct. 17, 2006, 120 Stat. 2633.)

#### REFERENCES IN TEXT

Section 101 of the Immigration and Nationality Act, referred to in subsec. (b), is classified to section 1101 of Title 8, Aliens and Nationality.

The date of the enactment of the Military Commissions Act of 2006, referred to in subsec. (d)(2)(E)(ii), is the date of enactment of Pub. L. 109–366, which was approved Oct. 17, 2006.

#### AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109–366, §6(b)(1)(A), added par. (3) and struck out former par. (3) which read as follows: “which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949, or any protocol to such convention to which the United States is a party and which deals with non-international armed conflict; or”.

Subsec. (d). Pub. L. 109–366, §6(b)(1)(B), added subsec. (d).

2002—Subsecs. (a) to (c). Pub. L. 107–273 made technical correction to directory language of Pub. L. 105–118, §583. See 1997 Amendment notes below.

1997—Subsec. (a). Pub. L. 105–118, §583(1), as amended by Pub. L. 107–273, substituted “war crime” for “grave breach of the Geneva Conventions”.

Subsec. (b). Pub. L. 105–118, §583(2), as amended by Pub. L. 107–273, substituted “war crime” for “breach” in two places.

Subsec. (c). Pub. L. 105–118, §583(3), as amended by Pub. L. 107–273, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(c) **DEFINITIONS.**—As used in this section, the term ‘grave breach of the Geneva Conventions’ means conduct defined as a grave breach in any of the international conventions relating to the laws of warfare signed at Geneva 12 August 1949 or any protocol to any such convention, to which the United States is a party.”

1996—Pub. L. 104–294 renumbered section 2401 of this title as this section.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–366, §6(b)(2), Oct. 17, 2006, 120 Stat. 2635, provided that: “The amendments made by this subsection [amending this section], except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 [amending this section] (as amended by section 4002(e)(7) of Public Law 107–273).”



**§ 1512. Tampering with a witness, victim, or an informant**

(a)(1) Whoever kills or attempts to kill another person, with intent to—

(A) prevent the attendance or testimony of any person in an official proceeding;

(B) prevent the production of a record, document, or other object, in an official proceeding; or

(C) prevent the communication by any person to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

(A) influence, delay, or prevent the testimony of any person in an official proceeding;

(B) cause or induce any person to—

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

(3) The punishment for an offense under this subsection is—

(A) in the case of a killing, the punishment provided in sections 1111 and 1112;

(B) in the case of—

(i) an attempt to murder; or

(ii) the use or attempted use of physical force against any person;

imprisonment for not more than 30 years; and

(C) in the case of the threat of use of physical force against any person, imprisonment for not more than 20 years.

(b) Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation<sup>1</sup> supervised release,<sup>1</sup> parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than 20 years, or both.

**(c) Whoever corruptly—**

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

**(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,**

**shall be fined under this title or imprisoned not more than 20 years, or both.**

(d) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(1) attending or testifying in an official proceeding;

(2) reporting to a law enforcement officer or judge of the United States the commission or possible commission of a Federal offense or a violation of conditions of probation<sup>1</sup> supervised release,<sup>1</sup> parole, or release pending judicial proceedings;

(3) arresting or seeking the arrest of another person in connection with a Federal offense; or

(4) causing a criminal prosecution, or a parole or probation revocation proceeding, to be sought or instituted, or assisting in such prosecution or proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than 3 years, or both.

(e) In a prosecution for an offense under this section, it is an affirmative defense, as to which the defendant has the burden of proof by a preponderance of the evidence, that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully.

(f) For the purposes of this section—

(1) an official proceeding need not be pending or about to be instituted at the time of the offense; and

(2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

(g) In a prosecution for an offense under this section, no state of mind need be proved with respect to the circumstance—

<sup>1</sup> So in original.

Pub. L. 103-322, § 320101(d)(2), inserted “the assault involved in the use of a dangerous weapon, or” after “and if”.

Pub. L. 103-322, §§ 320101(d)(1), 330016(1)(K), amended subsec. (e) identically, substituting “shall be fined under this title” for “shall be fined not more than \$5,000” after “subsection (a) of this section”.

1988—Subsec. (a). Pub. L. 100-690 inserted a comma after “section 3056 of this title”.

1986—Subsec. (a). Pub. L. 99-646, § 62(1), inserted “a major Presidential or Vice Presidential candidate (as defined in section 3056 of this title)”.

Subsec. (h). Pub. L. 99-646, § 62(2), substituted “individual” for “official”.

1982—Pub. L. 97-285, § 2(a), substituted “Congressional, Cabinet, and Supreme Court assassination, kidnaping, and assault; penalties” for “Congressional assassination, kidnaping, and assault” in section catchline.

Subsec. (a). Pub. L. 97-285, § 1(a), expanded coverage of subsec. (a) to cover the killing of any individual who is a member of the executive branch of the Government and the head, or a person nominated to be head during the pendency of such nomination, of a department listed in section 101 of title 5 or the second ranking official in such department, the Director (or a person nominated to be Director during the pendency of such nomination) or Deputy Director of Central Intelligence, or a Justice of the United States, as defined in section 451 of title 28, or a person nominated to be a Justice of the United States, during the pendency of such nomination.

Subsecs. (h), (i). Pub. L. 97-285, § 1(b), added subsecs. (h) and (i).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of this title.

#### REPORT TO MEMBER OF CONGRESS ON INVESTIGATION CONDUCTED SUBSEQUENT TO THREAT ON MEMBER'S LIFE

Pub. L. 95-624, § 19, Nov. 9, 1978, 92 Stat. 3466, provided that: “The Federal Bureau of Investigation shall provide a written report to a Member of Congress on any investigation conducted based on a threat on the Member's life under section 351 of title 18 of the United States Code.”

### CHAPTER 19—CONSPIRACY

Sec.	
371.	Conspiracy to commit offense or to defraud United States.
372.	Conspiracy to impede or injure officer.
373.	Solicitation to commit a crime of violence.

#### AMENDMENTS

1984—Pub. L. 98-473, title II, § 1003(b), Oct. 12, 1984, 98 Stat. 2138, added item 373.

#### § 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 103-322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

#### HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 88, 294 (Mar. 4, 1909, ch. 321, § 37, 35 Stat. 1096; Mar. 4, 1909, ch. 321, § 178a, as added Sept. 27, 1944, ch. 425, 58 Stat. 752).

This section consolidates said sections 88 and 294 of title 18, U.S.C., 1940 ed.

To reflect the construction placed upon said section 88 by the courts the words “or any agency thereof” were inserted. (See *Haas v. Henkel*, 1909, 30 S. Ct. 249, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112, where court said: “The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful functions of any department of government.” Also, see *United States v. Walter*, 1923, 44 S. Ct. 10, 263 U. S. 15, 68 L. Ed. 137, and definitions of department and agency in section 6 of this title.)

The punishment provision is completely rewritten to increase the penalty from 2 years to 5 years except where the object of the conspiracy is a misdemeanor. If the object is a misdemeanor, the maximum imprisonment for a conspiracy to commit that offense, under the revised section, cannot exceed 1 year.

The injustice of permitting a felony punishment on conviction for conspiracy to commit a misdemeanor is described by the late Hon. Grover M. Moscovitz, United States district judge for the eastern district of New York, in an address delivered March 14, 1944, before the section on Federal Practice of the New York Bar Association, reported in 3 Federal Rules Decisions, pages 380-392.

Hon. John Paul, United States district judge for the western district of Virginia, in a letter addressed to Congressman Eugene J. Keogh dated January 27, 1944, stresses the inadequacy of the 2-year sentence prescribed by existing law in cases where the object of the conspiracy is the commission of a very serious offense.

The punishment provision of said section 294 of title 18 was considered for inclusion in this revised section. It provided the same penalties for conspiracy to violate the provisions of certain counterfeiting laws, as are applicable in the case of conviction for the specific violations. Such a punishment would seem as desirable for all conspiracies as for such offenses as counterfeiting and transporting stolen property in interstate commerce.

A multiplicity of unnecessary enactments inevitably leads to confusion and disregard of law. (See reviser's note under section 493 of this title.)

Since consolidation was highly desirable and because of the strong objections of prosecutors to the general application of the punishment provision of said section 294, the revised section represents the best compromise that could be devised between sharply conflicting views.

A number of special conspiracy provisions, relating to specific offenses, which were contained in various sections incorporated in this title, were omitted because adequately covered by this section. A few exceptions were made, (1) where the conspiracy would constitute the only offense, or (2) where the punishment provided in this section would not be commensurate with the gravity of the offense. Special conspiracy provisions were retained in sections 241, 286, 372, 757, 794, 956, 1201, 2271, 2384 and 2388 of this title. Special conspiracy provisions were added to sections 2153 and 2154 of this title.

#### AMENDMENTS

1994—Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$10,000”.

#### § 372. Conspiracy to impede or injure officer

If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from

discharging any duties thereof, or to induce by like means any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined under this title or imprisoned not more than six years, or both.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 107-273, div. B, title IV, §4002(d)(1)(D), Nov. 2, 2002, 116 Stat. 1809.)

#### HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §54 (Mar. 4, 1909, ch. 321, §21, 35 Stat. 1092).

Scope of section was enlarged to cover all possessions of the United States. When the section was first enacted in 1861 there were no possessions, and hence the use of the words "State or Territory" was sufficient to describe the area then subject to the jurisdiction of the United States. The word "District" was inserted by the codifiers of the 1909 Criminal Code.

#### AMENDMENTS

2002—Pub. L. 107-273 substituted "under this title" for "not more than \$5,000".

### § 373. Solicitation to commit a crime of violence

(a) Whoever, with intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against property or against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in such conduct, shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half of the maximum fine prescribed for the punishment of the crime solicited, or both; or if the crime solicited is punishable by life imprisonment or death, shall be imprisoned for not more than twenty years.

(b) It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited. A renunciation is not "voluntary and complete" if it is motivated in whole or in part by a decision to postpone the commission of the crime until another time or to substitute another victim or another but similar objective. If the defendant raises the affirmative defense at trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

(c) It is not a defense to a prosecution under this section that the person solicited could not be convicted of the crime because he lacked the state of mind required for its commission, because he was incompetent or irresponsible, or because he is immune from prosecution or is not subject to prosecution.

(Added Pub. L. 98-473, title II, §1003(a), Oct. 12, 1984, 98 Stat. 2138; amended Pub. L. 99-646, §26,

Nov. 10, 1986, 100 Stat. 3597; Pub. L. 103-322, title XXXIII, §330016(2)(A), Sept. 13, 1994, 108 Stat. 2148.)

#### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322 inserted "(notwithstanding section 3571)" before "fined not more than one-half".

1986—Subsec. (a). Pub. L. 99-646 substituted "property or against the person of another" for "the person or property of another" and inserted "life imprisonment or" before "death".

### CHAPTER 21—CONTEMPTS

Sec.

- |      |   |
|------|---|
| 401. | Power of court.   |
| 402. | Contempts constituting crimes.                                  |
| 403. | Protection of the privacy of child victims and child witnesses. |

#### AMENDMENTS

1990—Pub. L. 101-647, title II, §225(b)(2), Nov. 29, 1990, 104 Stat. 4806, added item 403.

1949—Act May 24, 1949, ch. 139, §8(a), (b), 63 Stat. 90, struck out "CONSTITUTING CRIMES" in chapter heading and substituted "Contempts constituting crimes" for "Criminal contempts" in item 402.

### § 401. Power of court

A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 107-273, div. B, title III, §3002(a)(1), Nov. 2, 2002, 116 Stat. 1805.)

#### HISTORICAL AND REVISION NOTES

Based on section 385 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, §268, 36 Stat. 1163).

Said section 385 conferred two powers. The first part authorizing courts of the United States to impose and administer oaths will remain in title 28, U.S.C., 1940 ed., Judicial Code and Judiciary. The second part relating to contempt of court constitutes this section.

Changes in phraseology and arrangement were made.

#### AMENDMENTS

2002—Pub. L. 107-273 inserted "or both," after "fine or imprisonment," in introductory provisions.

### § 402. Contempts constituting crimes

Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by a fine under this title or imprisonment, or both.