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Mr. Bruce A. Schoenberg
Securities Enforcement Branch
335 Merchant Street, Room 205
Honolulu, HI 96810

RE: *In the Matter of David Keanu Sai and Kauʻi Sai-Dudoit a/k/a Kauʻi Goodhue Case no. SEU-2018-0003*

Aloha Mr. Schoenberg:

The State of Hawaiʻi alleges that Hawaiian Kingdom government bonds, issued by the Council of Regency, are "commercial" bonds and thus subject to regulation as a "security" has no basis in fact or law and is *absurd*. The face of the bonds themselves, and your description of them as "Exchequer Bonds,"[1] in your March 15, 2021 letter should end this discussion. However, the State of Hawaiʻi takes the factually, and legally, untenable position that the Council of Regency is a not a government and that the Hawaiian Kingdom does not exist. This letter serves to correct the error of your position and establish that the United States has, and does, explicitly recognize the continuity of the Hawaiian Kingdom, as a State, and its government—the Council of Regency. It did so in administrative arbitral proceedings that were instituted at the Permanent Court of Arbitration on 8 November 1999. This triggered the *Supremacy Clause* that preempts any interference by the State of Hawaiʻi. The investigation you propose is such an interference.

Commercial bonds, or securities, "represent a share in a company or a debt owed by a company."[2] A government bond is "[e]vidence of indebtedness issued by the government to finance its operations."[3] The Hawaiian Kingdom is neither a commercial entity nor a business. Would be bondholders, that submit an application to purchase government bonds, are aware that they are loaning money to the Hawaiian government "to finance its operations."[4]

[1] Schoenburg to Laudig (Mar. 15, 2021), https://hawaiiankingdom.org/pdf/Schoenberg_to_Laudig_ltr_(3.15.21).pdf.
[2] Black's Law, 6th ed, at 1354.
[3] Id., at 179.
[4] Hawaiian Kingdom bonds, Frequently Asked Questions, https://hawaiiankingdom.org/bonds/.

The legal status of these bonds is no different from the "conditional redemption" of Irish bonds when Ireland was fighting for its independence from the United Kingdom.[5] Hawaiian bonds shall be redeemable at par within 1 year after the 5th year from the date when the United States of America's military occupation of the Hawaiian Islands has come to an end and that the Hawaiian government is in effective control and exercising its sovereignty. This is explicitly stated on the bond. Under Hawaiian Kingdom law, Hawaiian Kingdom bonds are authorized under *An Act To authorize a National Loan and to define the uses to which the money borrowed shall be applied* (1886). Under Section 1 of the Act, "The Minister of Finance with the approval of the King in Cabinet Council is hereby authorized to issue coupon bonds of the Hawaiian Government."

After the passing of Queen Lili'uokalani on 11 November 1917, the Kingdom throne became vacant. That vacancy will be filled, later, with the election of a Monarch, by the Legislative Assembly, in accordance with Article 22 of the 1864 Constitution. This was the case when King Lunalilo was elected on January 8, 1873, and the election of King Kalākaua on February 12, 1874. Until such time when this provision can be effectively carried out when the United States occupation comes to an end, Article 33 provides that the Cabinet Council shall serve as a Council of Regency in the absence of the Monarch. Hawaiian constitutional law provides that when the office of the Monarch is vacant, "a Regent or Council of Regency…shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King."[6]

On 11 November 1917, the office of the Monarch became vacant. It remained vacant until the Hawaiian Kingdom government was restored on 28 February 1997 via a proclamation of the *acting* Regent.[7] On 26 September 1999, the office of Regent became, via a Privy Council resolution, a Council of Regency.[8] The legal foundation for the restoration of the Hawaiian government are Hawaiian constitutional law and the doctrine of necessity as utilized by governments formed in exile while their countries were belligerently occupied by a foreign State. The only difference being that the Hawaiian government was restored *in situ*, not in exile.

Explicit Recognition by the United States of the Continuity of the Hawaiian Kingdom and its restored government by its Council of Regency

The Permanent Court of Arbitration (PCA), before it may establish an ad hoc tribunal regarding an international dispute, must first determine that it possesses "institutional jurisdiction" under

[5] The Irish government sold bonds in the United States with the following condition, "Said Bond to bear interest at five percent per annum from the first day of the seventh month after the freeing of the territory of the Republic of Ireland from Britain's military control and said Bond to be redeemable at par within one year thereafter."
[6] See Art. 33, 1864 Hawn. Const.
[7] David Keanu Sai, Royal Commission of Inquiry in David Keanu Sai (ed.) "The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom" (2020), at 18-21, https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf.
[8] Id., at 21.

Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes (I) ("The **jurisdiction of the Permanent Court** may, within the conditions laid down in the regulation, be extended to disputes [with] non-Contracting Powers [emphasis added].").[9] Such a determination is distinct from the subject matter jurisdiction of the ad hoc arbitral tribunals that are formed by the PCA.

According to the United Nations, the PCA has three types of jurisdictions: "Jurisdiction of the Institution;" "Jurisdiction of the Arbitral Tribunal;" and, "Contentious/Advisory Jurisdiction."[10] Article 47 of the Convention provides for the jurisdiction of the PCA as an institution. Before the PCA could have established an ad hoc arbitral tribunal for the *Larsen* case it had to possess institutional jurisdiction first. This was achieved by confirming that the Hawaiian Kingdom is a "non-contracting power." This determination brought the international dispute between Larsen and the Hawaiian Kingdom under the auspices of the PCA.

Evidence supporting the PCA's recognition of the continuity of the Hawaiian Kingdom as a State and its government is found in Annex 2—*Cases Conducted Under the Auspices of the PCA or with the Cooperation of the International Bureau* of the PCA Administrative Council's annual reports from 2000 through 2011. Annex 2 of these annual reports stated that the *Larsen* arbitral tribunal was established "[p]ursuant to article 47 of the 1907 Convention."[11] Attached, hereto, is a copy of Annex 2 of the 2011 annual report. Since 2012, the annual reports ceased to include all past cases conducted under the auspices of the PCA and only lists cases having matters on the docket for that year. Past cases have since been accessible at the PCA's website case repository located at https://pca-cpa.org/en/cases/.

The Permanent Court of Arbitration is comprised of "three bodies: (1) a panel of members [who serve as arbitrators]; (2) an International Bureau; and (3) an Administrative Council."[12] The Administrative Council is "composed of the Minister of Foreign Affairs of the Netherlands, as President, and of the diplomatic representatives at The Hague of state parties to the conventions."[13] According to Article 49 of the 1907 Convention, it is the Administrative Council that "furnishes…an annual report on the labors of the Court, the working of the administration, and the expenditure." The United States, by its embassy in The Hague, is a member of the Administrative Council and co-author of the PCA annual reports. These annual reports explicitly acknowledge the status of the Hawaiian Kingdom as a non-Contracting Power. The United States is a Contracting Power to the Convention. The Hawaiian Kingdom is not a signatory to the Convention and,

[9] 36 Stat. 2199; Treaty Series 536; see also
[10] United Nations Conference on Trade and Development, Dispute Settlement: General Topics—1.3 Permanent Court of Arbitration (2003) at 15-16, https://unctad.org/system/files/official-document/edmmisc232add26_en.pdf.
[11] Permanent Court of Arbitration, Annual Reports, Annex 2, https://pca-cpa.org/en/about/annual-reports/.
[12] Manley O. Hudson, "The Permanent Court of Arbitration," 27, No. 3 Am. J. Int'l L. 440, 442 (1933).
[13] Id., at 444.

therefore, is a non-Contracting Power. The term 'non-Contracting Power' is synonymous with non-Contracting State.

The relevant rules of international law that apply to established States, not international law rules that apply to new States, are used to determine the continued existence of the Hawaiian Kingdom as a non-Contracting State. Professor Federico Lenzerini concluded, that "according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of international law. In fact, in the event of illegal annexation, 'the legal existence of […] States [is] preserved from extinction,' since 'illegal occupation cannot of itself terminate statehood.'"[14] The PCA Administrative Council did not "recognize" the Hawaiian Kingdom as a new State, but only "acknowledged" its continuity since the nineteenth century for the purposes of PCA's institutional jurisdiction.

In international arbitrations before the PCA, a State, as a juridical person, requires a government to speak on its behalf, without which the State is silent and, therefore, there could be no arbitral tribunal to be established by the PCA. The PCA formed a tribunal ***after*** confirming the existence of the Hawaiian State and its government, the Council of Regency, pursuant to Article 47. In international intercourse, which includes arbitration at the PCA, Professor Stefan Talmon articulates the relationship between the State and its government:

> From the fact that States are juridical persons it follows that they must act through organs. In the words of the Permanent Court of International Justice, "States can act only by and through their agents and representatives." It is generally agreed that the organ representing the State in international intercourse is its government. But, as Professor Bin Cheng has rightly pointed out, "States not only act through their government but through their government exclusively." The government, consequently, possesses the *jus repraesentationis omnimodae*, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. It is submitted that this is the case irrespective of whether the government is *in situ* or in exile.[15]

After the PCA verified the continued existence of the Hawaiian State, as a juridical person, it also simultaneously confirmed and verified that the Hawaiian State was represented by its government—the Council of Regency. The PCA identified the international dispute in *Larsen* as between a "State" and a "private entity" in its case repository. The PCA's formal description of the *Larsen* case is attached hereto. Further, the PCA described the dispute between the Council of Regency and Larsen as between a government and a resident of Hawai'i.

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[14] Federico Lenzerini, Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom (May 24, 2020), para. 5, https://hawaiiankingdom.org/pdf/Legal_Opinion_Re_Authority_of_Regency_Lenzerini.pdf.
[15] Stefan Talmon, Recognition of Governments in International Law: With Particular Reference to Governments in Exile (1998), at 115.

> Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the **Government of the Hawaiian Kingdom** is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom [emphasis added].[16]

In 1994, the Intermediate Court of Appeals, in *State of Hawai'i v. Lorenzo*,[17] opened the door to the question as to whether or not the Hawaiian Kingdom continues to exist as a State. Lorenzo argued, that "the Kingdom was illegally overthrown in 1893 with the assistance of the United States; the Kingdom still exists as a sovereign nation [and] he is a citizen of the Kingdom."[18] Judge Walter Heen, author of the opinion, denied Lorenzo's appeal and upheld the lower court decision to dismiss Lorenzo's motion to dismiss. He explained that Lorenzo "presented no factual (or legal) basis for concluding that the Kingdom [continues to exist] **as a state** in accordance with recognized attributes of a state's sovereign nature [emphasis added]."[19] While affirming the trial court's conclusion, the appellate court admitted "the [trial] court's rationale is open to question in light of international law."[20] In other words, neither the appellate nor trial court applied international law in their decisions. The *Larsen* proceedings at the PCA closed the door to this question and affirmatively answers 'the Kingdom [continues to exist] as state in accordance with recognized attributes of a state's sovereign nature.'

The PCA Administrative Council's annual reports from 2000-2011, where the United States is a member of the Administrative Council and co-author of its reports, explicitly recognize the continued existence of the Hawaiian Kingdom as a non-Contracting State to the 1907 Convention. Furthermore, the International Bureau of the PCA, in its case repository, explicitly acknowledges the Hawaiian Kingdom as a "State." Unlike the State of Hawai'i courts, the PCA applied international law in its conclusion that the Hawaiian Kingdom continues to exist and is represented by a restored Hawaiian government—the Council of Regency.

Authority of the Council of Regency Affirmed

Professor Lenzerini states the legal basis, both under Hawaiian Kingdom law and the applicable rules of international law, for concluding that the Council of Regency "has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the

[16] Permanent Court of Arbitration Case Repository, Larsen v. Hawaiian Kingdom, PCA Case no. 1999-01, https://pca-cpa.org/en/cases/35/.
[17] State of Hawai'i v. Lorenzo, 77 Haw. 219; 883 P.2d 641 (1994).
[18] Id., 220; 642.
[19] Id., 221; 643.
[20] Id.

United States of America since 17 January 1893, both at the domestic and international level."[21] The "Council of Regency is exactly in the same position of a government of a State under military occupation, and is vested with the rights and powers recognized to governments of occupied States pursuant to international humanitarian law."[22] A copy of Professor Lenzerini's legal opinion is attached hereto.

As an international law scholar, the Lenzerini legal opinion is recognized as a source of the rules of international law. An "opinion regarding the rules of international law" is a qualitatively different entity from "legal opinions" as used within United States jurisprudence. The latter "legal opinions" are merely an "understanding of the law as applied to the assumed facts."[23] These "legal opinions" are not a source of United States law. These sources include the United States constitution, State constitutions, Federal and State statutes, rules and regulations, common law, case law opinions, and administrative law. These types of "legal opinions" may be persuasive of what the law is but are not, themselves, a source of law.

Unlike States, there is "no 'world government' [and] no central legislature with general law-making authority" on the international plane.[24] International law, however, is an essential component in the international system, which "has the character and qualities of law, and serves the functions and purposes of law, providing restraints against arbitrary state action and guidance in international relations."[25] According to Article 38(1) of the Statute of the International Court of Justice, sources of international law comprise of:

a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b) international custom, as evidence of general practice accepted as law;
c) the general principles of law recognized by civilized nations;
d) …judicial decisions and the teachings of the most highly qualified publicists of the various nations for the determination of rules of law.

The American Law Institute concludes that when "determining whether a rule has become international law, substantial weight is accorded to…the writings of scholars."[26] As highlighted in the seminal case *The Paquete Habana*, the U.S. Supreme Court explains:

> International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are

[21] Lenzerini, Legal Opinion, para. 9,
[22] Id., para. 10.
[23] Black's Law Dictionary, 6th ed., (1990), at 896.
[24] American Law Institute, Restatement of the Law (Third)—The Foreign Relations Law of the United States (1987), at 17.
[25] Id.
[26] Id., §103(2)(c).

> duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators who by years of labor, research, and experience have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.[27]

Sovereign Immunity

The principles and doctrine of sovereign immunity, which is recognized in Hawaiian constitutional law under Article 40 ("The King cannot be sued or held to account in any Court or Tribunal of the Realm"), is drawn from the English common law. Before becoming a constitutional monarchy, the Hawaiian Kingdom "bore a remarkable resemblance to the feudal system that prevailed in Europe during the Middle Ages."[28]

The English common law doctrine was rooted in England's feudal system where "each petty lord in England held or could hold his own court to settle the disputes of his vassals."[29] While the court "was the lord's own, it could hardly coerce him," and the "trusted counsellors who constituted [a lord's] court" could "claim no power over him their lord without his consent."[30] In this feudal hierarchy the "king, who stood at the apex of the feudal pyramid" and was "not subject to suit in his own court," was completely immune from suit because "there happened to be no higher lord's court in which he could be sued."[31]

With the rise of the State, positive law separated the person of the Monarch from the office where the doctrine was transformed into "the immunity of the Crown."[32] Hawaiian constitutional law reduces the potential abuse of such a doctrine by requiring that "[n]o act of the King shall have any effect unless it be countersigned by a Minister, who by that signature makes himself responsible" to the Legislative Assembly or by petition of mandamus or injunction of the citizenry.[33] Similarly, in the United States "the writ of mandamus and the injunction have been available in actions against individual government officials" to address ongoing legal violations.[34]

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[27] The Paquete Habana, 175 U.S. 677, 700 (1900).
[28] W.D. Alexander, A Brief History of Land Titles in the Hawaiian Kingdom, 2 Haw. J.L. & Pol. 175 (2006).
[29] David E. Engdahl, Immunity and Accountability for Positive Governmental Wrongs, 44 U. Colo. L. Rev. 1, 2 (1972).
[30] Id.
[31] Id. at 2-3.
[32] George W. Pugh, Historical Approach to the Doctrine of Sovereign Immunity, 13 La. L. Rev. 476, 478 (1953).
[33] See, Art. 42, 1864 Hawn. Const., and Castle v. Kapena, 5 Haw. 27 (1883) ("Citizens…may bring mandamus against a public officer" and "[i]njunction, not mandamus, is the proper remedy to prevent a public officer from doing a contemplated illegal act.").
[34] Vicki C. Jackson, Suing the Federal Government: Sovereignty, Immunity, and Judicial Independence, 35 Geo. Wash. Int'l L. Rev. 521, 525 (2003).

Consequently "a Regent or Council of Regency" that serves in the absence of the Monarch enjoys the benefit of sovereign immunity and cannot be the subject of any investigative proceedings or be sued absent a waiver of this immunity. The Council of Regency retains its sovereign immunity, and it has not waived its right except when it entered into an arbitration agreement with Lance Larsen, by his counsel, on 29 October 1999, to submit their dispute to binding arbitration at the PCA.[35]

The *Supremacy Clause* Preempts the State of Hawai'i from Interference in International Relations between the United States and the Hawaiian Kingdom

There are two instances that the United States government continued its recognition of the Hawaiian Kingdom's Head of State after 17 January 1893 by executive agreements, through exchange of notes. The first was the executive agreement of restoration between Queen Lili'uokalani and President Grover Cleveland, by his U.S. Minister Albert Willis, of 18 December 1893. This took place eleven months after the invasion and overthrow of the Hawaiian government by the United States military.[36] The second instance occurred when the United States, acting through its embassy in The Hague, and the Hawaiian Kingdom, acting through its Council of Regency, after the PCA confirmed the existence of the Hawaiian State and its government in accordance with Article 47, and prior to its formation of the *Larsen* tribunal on 9 June 2000.

According to the Chairman of the Council of Regency and Minister of the Interior, Dr. David Keanu Sai:

> Mr. Tjaco T. van den Hout, Secretary General of the PCA, spoke with [the Chair], as agent for the Hawaiian Kingdom, over the telephone and recommended that the Hawaiian government provide an invitation to the United States to join in the arbitration. The Hawaiian government agreed with the recommendation, which resulted in a conference call meeting on 3 March 2000 in Washington, D.C., between [the Chair of the Council], Larsen's counsel, Mrs. Ninia Parks, and John Crook from the State Department. The meeting was reduced to a formal note and mailed to Crook in his capacity as legal adviser to the State Department, and a copy of the note was submitted by the Council of Regency to the PCA Registry for record that the United States was invited to join in the arbitral proceedings. The note was signed off by the [Chair] as "Acting Minister of Interior and Agent for the Hawaiian Kingdom."
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> Thereafter, the PCA's Deputy Secretary General, Phyllis Hamilton, informed the [Chair] that the United States, through its embassy in The Hague, notified the PCA, by note verbal, that the United States declined the invitation to join the arbitral proceedings. Instead, the

[35] Stipulated Settlement Agreement Dismissing Entire Case Without Prejudice as to All Parties and All Issues and Submitting All Issues to Binding Arbitration, October 29, 1999, https://www.alohaquest.com/arbitration/pdf/Stipulated_Settlement.pdf.
[36] Executive Documents, at 1269, https://hawaiiankingdom.org/pdf/EA_2(HI%20Claim).pdf.

> United States requested permission from the Hawaiian government to have access to the pleadings and records of the case. The Hawaiian government consented to the request. The PCA, represented by the Deputy Secretary General, served as an intermediary to secure an agreement between the Hawaiian Kingdom and the United States.[37]

The United States Government, acting through its embassy in The Hague, asked the Hawaiian Kingdom's Council of Regency for permission—which was granted—to access all records and pleadings of the proceedings. This request and consent created an agreement under international law. As Oppenheim notes, "there exists no other law than International Law for the intercourse of States with each other, every agreement between them regarding any obligation whatever is a treaty."[38] The request by the United States constitutes an offer, and the Council of Regency's acceptance of the offer created an obligation, on the part of the Council of Regency, to allow the United States unfettered access. According to Hall, "a valid agreement is therefore concluded so soon as one party has signified his intention to do or to refrain from a given act, conditionally upon the acceptance of his declaration of intention by the other party as constituting an engagement, and so soon as such acceptance clearly indicated."[39] If, for the sake of argument, the Council of Regency later denied the United States access to the records and pleadings, the latter would, no doubt, call the former's action a violation of the agreement.

When the President of the United States enters into executive agreements, through his authorized agents, with foreign governments, it preempts state law or policies by operation of the *Supremacy Clause* under Article VI, para. 2 of the U.S. Constitution ("This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."). In *United States v. Belmont*, the Court stated, "[p]lainly, the external powers of the United States are to be exercised without regard to state laws or policies,"[40] and "[i]n respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear."[41]

While the supremacy of treaties is expressly stated in the Constitution, the Supreme Court, in *United States v. Curtiss-Wright Export Corp.*, stated the same rule holds "in the case of international compacts and agreements [when it forms] the very fact that complete power over international affairs is in the National Government and is not and cannot be subject to any

[37] Sai, Royal Commission of Inquiry, at 25.
[38] Lassa Oppenheim, International Law, 3rd ed. (1920) at 661.
[39] William Edward Hall, A Treatise on International Law (1904), at 383.
[40] United States v. Belmont, 301 U. S. 324, 330 (1937),
[41] Id.

curtailment or interference on the part of the several States."[42] In *United States v. Pink*, the Supreme Court reiterated:

> No State can rewrite our foreign policy to conform to its own domestic policies. Power over external affairs is not shared by the States; it is vested in the national government exclusively. It need not be so exercised as to conform to state laws or state policies, whether they be expressed in constitutions, statutes, or judicial decrees. And the policies of the States become wholly irrelevant to judicial inquiry when the United States, acting within its constitutional sphere, seeks enforcement of its foreign policy in the courts.[43]

The 'curtailment or interference' by the State of Hawai'i is its unqualified failure to recognize the Council of Regency as a government and its authority and power to issue government bonds. The 'national government' already recognized the Council of Regency as the government of the Hawaiian State in its agreement with the Council of Regency regarding access to the *Larsen* arbitral pleadings and records. This recognition by the United States Government taken together with the *Supremacy Clause*, precludes the State of Hawai'i from acting inconsistently from its superior by denying the status of the Council of Regency as a government.

The 'national government,' as a member of the PCA Administrative Council and co-author of the annual reports of 2000 through 2011, has explicitly, and implicitly, acknowledged and recognized the Hawaiian Kingdom as a State and its government—the Council of Regency, pursuant to Article 47 of the Convention. This action taken by the 'national government,' as a member of the Administrative Council, was by virtue of a treaty provision. The United States signed the Convention on 18 October 1907 and the Senate gave its consent to ratification on 2 April 1908. The Convention entered into force on 26 January 1910, and, consequently, the Convention became the supreme law of the land by virtue of the *Supremacy Clause*.

These annual reports are publications of the Administrative Council pursuant to Article 49 of the Convention. The State of Hawai'i is precluded from any 'curtailment or interference' of the actions taken by the United States, as a member of the PCA Administrative Council and co-author of the annual reports. These reports are *prima facie* evidence of the United States explicit recognition of the continuity of the Hawaiian Kingdom as a State and the Council of Regency as its government. Therefore, the State of Hawai'i is precluded, and estopped, from denying these facts and actions taken by the United States as a Contracting Power to the Convention.

The 1907 Convention, which has been ratified by the U.S. Senate, and the action taken by the United States, as a member of the Administrative Council, pursuant to Article 49, preempt State of Hawai'i law through the operation of the *Supremacy Clause*. The agreement entered into between the United States Department of State and the Council of Regency grows out of the

[42] United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 330-31 (1936)
[43] United States v. Pink, 315 U.S. 203, 229-31, 233-34 (1942)

"Executive authority to speak as the sole organ" of international relations for the United States.[44] The embassy in The Hague, speaking on behalf of the United States, did not require Congressional approval or ratification of the Senate, or consultation with the State of Hawai'i, and, therefore, the United States agreement with the Council of Regency to access all records and pleadings of the *Larsen* arbitral proceedings also preempts, as estops, the State of Hawai'i from denying either the existence, or consequences, of the agreement through the operation of the *Supremacy Clause*.

United States Practice of Recognition of "New" Governments of Existing States

The restoration of the Hawaiian government in the form of its "Council of Regency, as officers *de facto*, was a political act of self-preservation, not revolution, and grounded upon the legal doctrine of limited necessity."[45] No "diplomatic" recognition by any other government, including the United States, is required nor does the Council of Regency have to be in effective control of Hawaiian State territory unless it was a new regime born out of extra-legal changes in government. The legal doctrine of recognition of "new" governments of an existing State only arises when there are "extra-legal changes in government."[46] The Council of Regency was not established through 'extra-legal changes in government' but rather through the normal operation of existing kingdom laws as they stood before 17 January 1893. The Council of Regency is not a "new" government but rather a constitutionally-recognized successor to Queen Lili'uokalani in accordance with Hawaiian law. In other words, "[t]he existence of the restored government *in situ* was not dependent upon diplomatic recognition by foreign States, but rather operated on the presumption of recognition these foreign States already afforded the Hawaiian government as of 1893."[47]

If the Council of Regency were a new regime within an independent State, like the 1893 insurgency which was called a "provisional" government, it would require *de facto* recognition after securing effective control of the territory away from the monarchical government. As stated by U.S. Secretary of State John Foster in its 28 January 1893 dispatch to U.S. Minister John Stevens, "[t]he rule of this Government has uniformly been to recognize and enter into relation with an actual government in full possession of effective power with the assent of the people."[48] Applying this rule, President Cleveland concluded that the provisional government "was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition."[49] As such, the legal order of the Hawaiian Kingdom remained intact.

[44] United States v. Belmont, 301 U.S. 324, 330 (1937)
[45] Id., at 22.
[46] M. J. Peterson, Recognition of Governments: Legal Doctrine and State Practice, 1815-1995 (1997), at 26.
[47] Sai, Royal Commission of Inquiry, at 22.
[48] United States House of Representatives, 53d Cong., Executive Documents on Affairs in Hawaii: 1894-95 (1895), at 1179 ("Executive Documents").
[49] Id., 453, https://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf.

At the core of recognition is effective control of the territory of the State. Under international humanitarian law, also called the laws of war and belligerent occupation, the principle of effectiveness is reversed. Here the United States bears responsibility for illegally overthrowing, by an "act of war," the Hawaiian Kingdom government. The invasion transformed the state of affairs between the United States and the Hawaiian Kingdom from a state of peace to a state of war in which two legal orders exist in a single territory, that of the occupying State—the United States and that of the occupied State—the Hawaiian Kingdom.[50]

Professor Krystina Marek explains that in "the first place: of these two legal orders, that of the occupied State is regular and 'normal,' while that of the occupying power is exceptional and limited. At the same time, the legal order of the occupant is…strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness."[51] Belligerent occupation "is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned."[52] When the constitutional Hawaiian government was restored in 1997, it was not required to be in effective control of Hawaiian territory in order for it to be legitimate under international law. In needed only to be a lawful successor of the last reigning Monarch in accordance with the laws of the Hawaiian Kingdom.

As the *Larsen v. Hawaiian Kingdom* arbitral tribunal stated, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[53] As a subject of international law, the Hawaiian State continues to exist despite its government having been, admittedly, unlawfully overthrown by the United States.

Professor Quincy Wright, a renowned U.S. political scientist, states that "international law distinguishes between a government and the state it governs."[54] Judge James Crawford of the International Court of Justice explains that "[b]elligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[55] Crawford's conclusion is based on the "presumption that the State continues to exist, with its rights and obligations...despite a period in which there is...no effective government."[56] Applying this principle to the Second Gulf War, Crawford explains:

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[50] David Keanu Sai, United States Belligerent Occupation of the Hawaiian Kingdom in David Keanu Sai (ed.) "The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom" (2020), at 99-103.
[51] Krystyna Marek, Identity and Continuity of States in Public International Law (1968), at 102.
[52] Id.
[53] Larsen v. Hawaiian Kingdom, 119 Int'l L. Reports 566, 581 (2001).
[54] Quincy Wright, The Status of Germany and the Peace Proclamation, 46, no. 2 Am. J. Int'l L. 299, 307 (1952).
[55] James Crawford, Creation of States in International Law, 2nd ed. (2006), at 34.
[56] Id.

> The occupation of Iraq in 2003 illustrated the difference between 'government' and 'State'; when Members of the Security Council, after adopting SC res 1511, 16 October 2003, called for the rapid 'restoration of Iraq's sovereignty', they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restored.[57]

Constraints on United States Municipal Laws

The statute relied on by the Commissioner of Securities of the State of Hawai'i, HRS § 485A-301, is not Hawaiian Kingdom law. It is a municipal law of the political subdivision of the United States, the State of Hawai'i. As an occupying State, the United States is obligated to administer Hawaiian Kingdom laws, not U.S. law, until a peace treaty ending the state of war brings the occupation to an end. Article 43 of the 1907 Hague Regulations provides that "[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."[58] Article 64 of the 1949 Fourth Geneva Convention also states, "[t]he penal laws of the occupied territory shall remain in force."[59]

This command of international law, described in this provision of the Hague Regulations and the Geneva Convention, was a well-recognized principle of customary international law in 1893 that existed before its codification in 1899. It had been recognized by the United States since at least the United States-Mexican War of 1846-1848. It was adhered to during the Spanish-American War when U.S. forces overthrew and replaced Spanish governance in Cuba in July of 1898 and the Philippines in August 1898. The overthrows in Cuba and the Philippines did not transfer Spanish sovereignty to the United States but triggered the customary international laws of occupation that were later codified under Article 43 of the 1899 Hague Convention, II, and succeeded under Article 43 of the 1907 Hague Convention, IV, and Article 64 of the 1949 Fourth Geneva Convention. This customary law was the basis for General Orders no. 101 issued by President McKinley to the War Department on 13 July 1898:

> The first effect of the military occupation of the enemy's territory is the severance of the former political relations of the inhabitants and the establishment of a new political power. … Though the powers of the military occupant are absolute and supreme and immediately operate upon the political condition of the inhabitants, the municipal laws of the conquered territory, such as affect private rights of person and property and provide for the punishment of crime, are considered as continuing in force, so far as they are compatible with the new order of things, until they are suspended or superseded by the occupying belligerent and in practice they are not usually abrogated, but are allowed to remain in force

[57] Id, n. 157.
[58] 36 Stat. 2277; Treaty Series 539.
[59] 6.3 U.S.T 3516, 3558 (1955).

> and to be administered by the ordinary tribunals, substantially as they were before the occupation.[60]

An armistice was eventually signed by the Spanish Government on 12 August 1898, after its territorial possessions of Philippines, Guam, Puerto Rico and Cuba were under the effective occupation and control of U.S. troops. This led to a treaty of peace that was signed by representatives of both countries in Paris on 10 December 1898. The United States Senate ratified the treaty on 6 February 1899, and Spain on 19 March. The treaty came into full force and effect 11 on April 1899.[61] It was after April 11 that Spanish title and sovereignty was transferred to the United States and American municipal laws enacted by the Congress replaced Spanish municipal laws that once applied over the territories of Philippines, Guam, and Puerto Rico. Under the treaty, Cuba became an independent State.

In 1988, the Office of Legal Counsel (OLC), of the U.S. Department of Justice, examined the so-called "annexation" of the Hawaiian Islands by a congressional joint resolution, being a municipal law. Douglas Kmiec, then Acting Assistant Attorney General, authored the opinion for Abraham Sofaer, legal advisor to the U.S. Department of State. After covering the limitations of congressional authority, the OLC concluded that it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea."[62] Had there been a constitutional power, surely the OLC would have found and noted it. The OLC writes that it is 'unclear which constitutional power Congress exercised' is an admission by a failure to deny that there was, indeed no such annexation power. Call it an "Emperor's new clothes" moment. The OLC cited constitutional scholar Westel Willoughby who stated:

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

[60] Ochoa v. Hernandez, 230 U.S. 139, 156 (1913).
[61] 30 Stat. 1754 (1899), https://uniset.ca/fatca/b-es-ust000011-0615.pdf.
[62] Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," 12 Op. O.L.C. 238, 252 (1988).
[63] Id.

The OLC conclusions are positions taken by the United States Government similar to the OLC position that US prosecutors cannot bring criminal charges against a sitting president.[64] From a policy standpoint, OLC opinions bind the United States Government.

If it was unclear how Hawai'i could be "annexed" by legislation, it is equally unclear how Congress could create a territorial government under *An Act To provide a government for the Territory of Hawaii* in 1900 within the territory of a foreign State.[65] It would also be unclear how a Congress could then rename the "Territory of Hawai'i" as the "State of Hawai'i" in 1959 under *An Act To provide for the admission of the State of Hawaii into the Union*.[66] As the Hawaiian Kingdom court stated, in *In Re Francis de Flanchet*, "however general and comprehensive the phrases used in the municipal laws may be, they must always be restricted in construction, to places and persons upon whom the Legislature have authority and jurisdiction."[67]

In *The Lotus* case, the Permanent Court of International Justice explained that "the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State."[68] Therefore, it is a presumption that United States legislation, whether by a statute or a joint resolution, has no extraterritorial effect except by a 'permissive rule.' Such a 'permissive rule' would be consent by the Hawaiian Kingdom government. There has been no such consent. A joint resolution is not a treaty and, therefore, the territory of the Hawaiian State was never ceded to the United States. The United States could no more annex the Hawaiian Islands by enacting a joint resolution in 1898 than it could annex Canada today by enacting a joint resolution.

War Crime of Usurpation of Sovereignty and Jus Cogens

Imposing the municipal laws of the United States in Hawaiian Kingdom territory is a violation of the law of occupation. It is the war crime called *usurpation of sovereignty*. The actus reus of the offense "would consist of the imposition of legislation or administrative measures by the occupying power that go beyond those required by what is necessary for military purposes of the occupation."[69] According to Professor William Schabas, author of an opinion, or statement, of international law for the Royal Commission of Inquiry on the elements of war crimes committed in the Hawaiian Kingdom, the requisite elements for the war crime of *usurpation of sovereignty* are:

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[64] Randolph D. Moss, "A Sitting President's Amenability to Indictment and Criminal Prosecution," 24 Op. O.L.C. 222-260 (2000).
[65] 31 Stat. 141 (1900).
[66] 73 Stat. 4 (1959).
[67] In Re Francis de Flanchet, 2 Haw. 96, 109 (1858)
[68] Lotus, PCIJ, ser. A no. 10 (1927), 18.
[69] William Schabas, War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom in David Keanu Sai (ed.) "The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom" (2020), at 157.

1. The perpetrator imposed or applied legislative or administrative measures of the occupying power going beyond those required by what is necessary for military purposes of the occupation.
2. The perpetrator was aware that the measures went beyond what was required for military purposes or the protection of fundamental human rights.
3. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.[70]

With regard to the last two elements, Schabas states:

1. There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict as international [...].
2. In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international [...].
3. There is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict [...].[71]

The prohibition of war crimes is an "old norm which [has] acquired the character of *jus cogens*."[72] According to the International Criminal Tribunal for the Former Yugoslavia (ICTY), international crimes, including war crimes, are "universally condemned wherever they occur,"[73] because they are "peremptory norms of international law or jus cogens."[74] Jus cogens norms are peremptory norms that "are nonderogable and enjoy the highest status within international law."[75] The Schabas legal opinion is undeniably, and pursuant to *The Paquette Habana* case, is both a statement, and a source, of the rules of international law.

In a correspondence from Dr. Sai, as Head of the Royal Commission of Inquiry (RCI), to State of Hawai'i Attorney General Clare E. Connors dated 2 June 2020, she was notified that:

> Imposition of United States legislative and administrative measures constitutes the war crime of *usurpation of sovereignty* under customary international law. This includes the legislative and administrative measures of the State of Hawai'i and its Counties. Professor William Schabas, renowned expert in international criminal law, authored a legal opinion

[70] Id., 167.
[71] Id., 167.
[72] Grigory I. Tunkin, "Jus Cogens in Contemporary International Law," 3 U. Tol. L. Rev. 107, 117 (1971).
[73] ICTY, Prosecutor v. Furundzija, Case No. IT-95-17/1, Judgment, (Dec. 10, 1998), 156)
[74] ICTY, Prosecutor v. Kupreskic, Case No. IT-95-16-T, Judgement (Jan. 14, 2000), para. 520
[75] Committee of United States Citizens in Nicaragua, et al., v. Reagan, 859 F.2d 929, 940 (D.C. Cir. 1988); see also Vienna Convention on the Law of Treaties, art. 53, May 23, 1969, 1155 U.N.T.S. 331 (defining a jus cogens norm as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character").

> for the Royal Commission that identified *usurpation of sovereignty*, among other international crimes, as a war crime that has and continues to be committed in the Hawaiian Islands.[76]

Also receiving copies of that letter was: Governor David Ige; Lieutenant Governor Josh Green; President of the Senate Ron Kouchi; Speaker of the House of Representatives Scott Saiki; Adjutant General Kenneth Hara; then-City & County of Honolulu Mayor Kirk Caldwell; then-Hawai'i County Mayor Harry Kim; then-Maui County Mayor Michael Victorina; then-Kaua'i County Mayor Derek Kawakami; United States Senators Brian Schatz and Mazie Hirono; United States Representatives Ed Case and Tulsi Gabbard. For the purposes of international criminal law, it meets the requisite fourth element of the war crime of *usurpation of sovereignty* whereby the "perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation."

Furthermore, on 10 November 2020, the National Lawyers Guild (NLG) sent a letter to Governor Ige that stated:

> International humanitarian law recognizes that proxies of an occupying State, which are in effective control of the territory of the occupied State, are obligated to administer the laws of the occupied State. The State of Hawai'i and its County governments, and not the Federal government, meet this requirement of effective control of Hawaiian territory under Article 42 of the 1907 Hague Regulations, and need to immediately comply with the law of occupation. The United States has been in violation of international law for over a century, exercising, since 1893, the longest belligerent occupation of a foreign country in the history of international relations without establishing an occupying government.[77]

The NLG stated that it "supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its effort to seek resolution in accordance with international law as well as its strategy to have the State of Hawai'i and its Counties comply with international humanitarian law as the administration of the Occupying State."[78] The NLG also stated that it "supports the actions taken by the Council of Regency and the RCI in its efforts to ensure compliance with the international law of occupation by the United States and the State of Hawai'i and its Counties."[79] Attached, herein, is a copy of the NLG's letter to Governor Ige.

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[76] Letter of the Royal Commission of Inquiry to State of Hawai'i Attorney General Clare E. Connors (June 2, 2020), https://hawaiiankingdom.org/pdf/RCI_Ltr_to_State_of_HI_AG_(6.2.20).pdf.
[77] National Lawyers Guild Letter to State of Hawai'i Governor David Ige (November 10, 2020), https://nlginternational.org/newsite/wp-content/uploads/2020/11/Letter-from-the-NLG-to-State-of-HI-Governor-.pdf.
[78] Id., 2.
[79] Id., 3.

The NLG received the backing of the International Association of Democratic Lawyers (IADL) in its resolution adopted on 7 February 2021 *Calling Upon the United States to Immediately Comply with International Humanitarian Law in Its Prolonged Occupation of the Hawaiian Islands—Hawaiian Kingdom*. The IADL also "supports the Hawaiian Council of Regency"[80] and "calls on all United Nations member States and non-member States to not recognize as lawful a situation created by a serious violation of international law, and to not render aid or assistance in maintaining the unlawful situation. As an internationally wrongful act, all States shall cooperate to ensure the United States complies with international humanitarian law and consequently bring to an end the unlawful occupation of the Hawaiian Islands."[81] Furthermore, the "IADL fully supports the NLG's November 10, 2020 letter to State of Hawai'i Governor David Ige urging him to 'proclaim the transformation of the State of Hawai'i and its Counties into an occupying government pursuant to the Council of Regency's proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom."[82] Attached, herein, is a copy of the IADL resolution.

The actions taken by the State of Hawai'i against government officials of the Hawaiian Kingdom—the occupied State, is also a violation of Article 54 of the Fourth Geneva Convention, which states, "[t]he Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against the them."[83] The Fourth Geneva Convention was ratified by the United States Senate on 6 July 1955 and came into force on 2 February 1956. As such, the Fourth Geneva Convention comes under the *Supremacy Clause*.

Dr. David Keanu Sai, Chairman of the Council of Regency, and Mrs. Kau'i Sai-Dudoit, Minister of Finance, will not participate in this outrageous and lawless investigation which is preempted by the *Supremacy Clause*. The Council of Regency has not, and does not intend, to waive its sovereign immunity, in the course of the State of Hawai'i committing the war crime of *usurpation of sovereignty* against them. In light of the awareness of the occupation by the Governor and Attorney General, these allegations against a bona fide government and its officers constitute malicious intent. As pointed out by Professor Lenzerini, under the rules of international law, "the working relationship between the Regency and the administration of the occupying State would have the form of a cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory."[84] This unwarranted attack is a violation of the law of occupation, and as a proxy for the United States, it also constitutes an international wrongful act.

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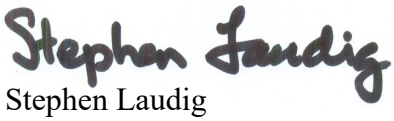
[80] Resolution of the International Association of Democratic Lawyers Calling Upon the United States to Immediately Comply with International Humanitarian Law in Its Prolonged Occupation of the Hawaiian Islands—Hawaiian Kingdom (February 7, 2021), at 3, https://hawaiiankingdom.org/pdf/IADL_Resolution_on_the_Hawaiian_Kingdom.pdf.
[81] Id.
[82] Id.
[83] 6.3 U.S.T 3516, 3552 (1955).
[84] Lenzerini, Legal Opinion, para. 20.

A copy of this letter is being sent to: United States Department of State; Royal Commission of Inquiry; Governor David Ige; Lieutenant Governor Josh Green; Attorney General Clare E. Connors; President of the Senate Ron Kouchi; Speaker of the House of Representatives Scott Saiki; Adjutant General Kenneth Hara; City & County of Honolulu Mayor Rick Blangiardi; Hawai‘i County Mayor Mitch Roth; Maui County Mayor Michael Victorina; Kaua‘i County; Mayor Derek Kawakami; United States Senators Brian Schatz and Mazie Hirono, and United States Representatives Ed Case and Kai Kahele; the National Lawyers Guild; and the International Association of Democratic Lawyers.

In conclusion, we are concerned that officials, officers, agents, and employees of the State of Hawai‘i are targeting Hawaiian subjects, who are protected persons under the Fourth Geneva Convention, engaged in lawful activities aimed at ensuring compliance with the law of occupation by the United States and its proxy, the State of Hawai‘i and Counties. The illegality of the 1893 invasion and overthrow has been admitted by the United States Government. If the invasion and overthrow were unlawful and illegal, then too are all the fruits of that poisonous tree including the occupation. Despite this chain of illegalities, officials, officers, agents, and employees of the State of Hawai‘i use monies derived from the war crime of *usurpation of sovereignty*, i.e. taxation, to attack and harass officers of the Council of Regency.

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

Sincerely,



Stephen Laudig
HBN #8038

cc: United States Department of State
Royal Commission of Inquiry
Governor David Ige
Lieutenant Governor Josh Green
Attorney General Clare E. Connors
Adjutant General Kenneth Hara
President of the Senate Ron Kouchi
Speaker of the House of Representatives Scott Saiki

City & County of Honolulu Mayor Rick Blangiardi
Hawai‘i County Mayor Mitch Roth
Maui County Mayor Michael Victorina
Kaua‘i County Mayor Derek Kawakami
United States Senator Brian Schatz
United States Senator Mazie Hirono
United States Representative Ed Case
United States Representative Kai Kahele
National Lawyers Guild
International Association of Democratic Lawyers

Enclosures as noted.

CASES CONDUCTED UNDER THE AUSPICES OF THE PCA OR WITH THE COOPERATION OF THE INTERNATIONAL BUREAU

For summaries of the arbitral awards in many of these cases, see P. Hamilton, et al., *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution – Summaries of Awards, Settlement Agreements and Reports* (Kluwer Law International 1999) pp. 29-281, and B. Macmahon and F. Smith, *Permanent Court of Arbitration Summaries of Awards 1999-2009* (TMC Asser Press 2010) pp. 39-312.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
1.	United States of America – Republic of Mexico	Pious Fund of the Californias	22 - 05 - 1902	14 - 10 - 1902	**Matzen** Sir Fry de Martens Asser de Savornin Lohman
2.	Great Britain, Germany and Italy – Venezuela	Preferential Treatment of Claims of Blockading Powers Against Venezuela	07 - 05 - 1903	22 - 02 - 1904	**Mourawieff** Lammasch de Martens
3.	Japan – Germany, France and Great Britain	Japanese House Tax leases held in perpetuity	28 - 08 - 1902	22 - 05 - 1905	**Gram** Renault Motono
4.	France – Great Britain	Muscat Dhows fishing boats of Muscat	13 - 10 - 1904	08 - 08 - 1905	**Lammasch** Fuller de Savornin Lohman
5.	France – Germany	Deserters of Casablanca	10/24 - 11 - 1908	22 - 05 - 1909	**Hammarskjöld** Sir Fry Fusinato Kriege Renault
6.	Norway – Sweden[2]	Maritime Boundary Grisbådarna Case	14 - 03 - 1908	23 - 10 - 1909	**Loeff**[3] Beichmann Hammarskjöld
7.	United States of America – Great Britain	North Atlantic Coast Fisheries	27 - 01 - 1909	07 - 09 - 1910	**Lammasch** de Savornin Lohman Gray Sir Fitzpatrick Drago
8.	United States of Venezuela – United States of America	Orinoco Steamship Company	13 - 02 - 1909	25 - 10 - 1910	**Lammasch** Beernaert de Quesada
9.	France – Great Britain	Arrest and Restoration of Savarkar	25 - 10 - 1910	24 - 02 - 1911	**Beernaert** Ce de Desart Renault Gram de Savornin Lohman

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
10.	Italy – Peru	Canevaro Claim	25 - 04 - 1910	03 - 05 - 1912	**Renault** Fusinato Alvarez Calderón
11.	Russia – Turkey[2]	Russian Claim for Indemnities damages claimed by Russia for delay in payment of compensation owed to Russians injured in the war of 1877-1878	22 - 07 - 1910/ 04 - 08 - 1910	11 - 11 - 1912	**Lardy** Bon de Taube Mandelstam[3] H.A. Bey[3] A.R. Bey[3]
12.	France – Italy	French Postal Vessel "Manouba"	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
13.	France – Italy	The "Carthage"	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
14.	France – Italy	The "Tavignano," "Camouna" and "Gaulois" Incident	08 - 11 - 1912	Settled by agreement of parties	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube
15.	The Netherlands – Portugal[4]	Dutch-Portuguese Boundaries on the Island of Timor	03 - 04 - 1913	25 - 06 - 1914	**Lardy**
16.	Great Britain, Spain and France – Portugal[5]	Expropriated Religious Properties	31 - 07 - 1913	02/04 - 09 - 1920	**Root** de Savornin Lohman Lardy
17.	France – Peru[2]	French claims against Peru	02 - 02 - 1914	11 - 10 - 1921	**Ostertag**[3] Sarrut[3] Elguera
18.	United States of America – Norway[2]	Norwegian shipowners' claims	30 - 06 - 1921	13 - 10 - 1922	**Vallotton**[3] Anderson[3] Vogt[3]
19.	United States of America – The Netherlands[4]	The Island of Palmas case (or Miangas)	23 - 01 - 1925	04 - 04 - 1928	**Huber**
20.	Great Britain – France[2]	Chevreau claims	04 - 03 - 1930	09 - 06 - 1931	**Beichmann**
21.	Sweden – United States of America[2]	Claims of the Nordstjernan company	17 - 12 - 1930	18 - 07 - 1932	**Borel**
22.	Radio Corporation of America – China[2]	Interpretation of a contract of radio-telegraphic traffic	10 - 11 - 1928	13 - 04 - 1935	**van Hamel**[3] Hubert[3] Furrer[3]
23.	States of Levant under French Mandate – Egypt[2]	Radio-Orient	11 - 11 - 1938	02 - 04 - 1940	**van Lanschot**[3] Raestad Mondrup[3]

1. The names of the presidents are typeset in bold.
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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
24.	France – Greece[2]	Administration of lighthouses	15 - 07 - 1931	24 - 07 - 1956	**Verzijl**[3] Mestre Charbouris[3]
25.	Turriff Construction (Sudan) Limited – Sudan[2]	Interpretation of a construction contract	21 - 10 - 1966	23 - 04 - 1970	**Erades**[3] Parker[3] Bentsi-Enchill[3]
26.	United States of America – United Kingdom of Great Britain and Northern Ireland[2]	Heathrow Airport user charges treaty obligations; amount of damages	16 - 12 - 1988	30 - 11 - 1992 02 - 05 - 1994 Settlement on amount of damages	**Foighel**[3] Fielding[3] Lever[3]
27.	Moiz Goh Pte. Ltd – State Timber Corporation of Sri Lanka[2]	Contract dispute	14 - 12 - 1989	05 - 05 - 1997	**Pinto**[3]
28.	African State – two foreign nationals[2]	Investment dispute	–	30 - 09 - 1997 Settled by agreement of parties	–
29.	Technosystem SpA – Taraba State Government and the Federal Government of Nigeria[2]	Contract dispute	21 - 02 - 1996	25 - 11 - 1996 Lack of jurisdiction	**Ajibola**
30.	Asian State-owned enterprise – three European enterprises[2]	Contract dispute	–	02 - 10 - 1996 Award on agreed terms	–
31.	State of Eritrea – Republic of Yemen[2]	Eritrea/Yemen: Sovereignty of various Red Sea Islands sovereignty; maritime delimitation	03 - 10 - 1996	09 - 10 - 1998 Award on sovereignty 17 - 12 - 1999 Award on maritime delimitation	**Jennings** Schwebel[3] El-Kosheri[3] Highet[3] Higgins
32.	Italy – Costa Rica[2]	Loan agreement between Italy and Costa Rica dispute arising under financing agreement	11 - 09 - 1997	26 - 06 - 1998	**Lalive**[3] Ferrari Bravo Hernandez Valle[3]
33.	Larsen – Hawaiian Kingdom[2]	Treaty interpretation	30 - 10 - 1999	05 - 02 - 2001	**Crawford**[3] Greenwood[3] Griffith[3]
34.	The Netherlands – France[2]	Treaty interpretation	21 - 10 -/17 - 12 - 1999	12 - 03 - 2004	**Skubiszewski** Guillaume Kooijmans[3]
35.	European corporation – African government	Contract dispute	04 - 08 - 2000	18 - 02 - 2003 Settled by agreement of parties	–
36.	Eritrea-Ethiopia Boundary Commission[2]	Boundary dispute	12 - 12 - 2000	13 - 04 - 2002	**Lauterpacht** Ajibola Reisman[3] Schwebel[3] Watts

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
37.	Eritrea-Ethiopia Claims Commission[2]	Settlement of claims arising from armed conflict	12 - 12 - 2000	01 - 07 - 2003 Partial Awards for prisoner of war claims 28 - 04 - 2004 Partial Awards for Central Front claims 17 - 12 - 2004 Partial Awards for civilians claims 19 - 12 - 2005 Partial Awards for remaining liability claims 17 - 08 - 2009 Final Award for damages	**van Houtte**[3] Aldrich[3] Crook[3] Paul[3] Reed[3]
38.	Dr. Horst Reineccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu – Bank for International Settlements[2]	Dispute with former private shareholders	07 - 03 - 2001 31 - 08 - 2001 24 - 10 - 2001	22 - 11 - 2002 Partial Award 19 - 09 - 2003 Final Award	**Reisman**[3] van den Berg[3] Frowein[3] Krafft[3] Lagarde[3]
39.	Ireland – United Kingdom[2]	Proceedings pursuant to the OSPAR Convention	15 - 06 - 2001	02 - 07 - 2003	**Reisman**[3] Griffith[3] Mustill[3]
40.	Saluka Investments B.V. – Czech Republic[2]	Investment treaty dispute	18 - 06 - 2001	17 - 03 - 2006 Partial Award	**Watts** Behrens[3] Fortier[3]
41.	Ireland – United Kingdom[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS) "MOX Plant Case"	25 - 10 - 2001	06 - 06 - 2008 Termination order following withdrawal of claim	**Mensah**[3] Fortier[3] Hafner Crawford[3] Watts
42.	European government – European corporation[2]	Investment treaty dispute	30 - 04 - 2002	24 - 05 - 2004 Settled by agreement of parties	–
43.	Two corporations – Asian government[2]	Contract dispute	16 - 08 - 2002	12 - 10 - 2004 Partial Award	–
44.	Telekom Malaysia Berhad – Government of Ghana[2]	Investment treaty dispute	10 - 02 - 2003	01 - 11 - 2005 Award on agreed terms	**Van den Berg**[3] Gaillard[3] Layton[3]
45.	Belgium – The Netherlands[2]	Dispute regarding the use and modernization of the "IJzeren Rijn" on the territory of The Netherlands	22/23 - 07 - 2003	24 - 05 - 2005	**Higgins** Schrans[3] Simma[3] Soons[3] Tomka
46.	Barbados – Trinidad and Tobago[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	16 - 02 - 2004	11 - 04 - 2006	**Schwebel**[3] Brownlie[3] Orrego Vicuña[3] Lowe[3] Watts
47.	Guyana – Suriname[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	24 - 02 - 2004	17 - 09 - 2007	**Nelson**[3] Hossain[3] Franck[3] Shearer Smit[3]

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
48.	Malaysia – Singapore[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	04 - 07 - 2003	01 - 09 - 2005 Award on agreed terms	**Pinto**[3] Hossain[3] Shearer Oxman[3] Watts
49.	1.The Channel Tunnel Group Limited 2. France-Mache S.A. – 1. United Kingdom 2. France[2]	Proceedings pursuant to the Treaty of Canterbury Concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link (Eurotunnel)	17 - 12 - 2003	30 - 01 - 2007 Partial Award 2010 Termination order	**Crawford**[3] Fortier[3] Guillaume Millett[3] Paulsson
50.	Chemtura Corporation (formerly Crompton Corporation) – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	17 - 10 - 2002/ 17 - 02 - 2005	02 - 08 - 2010	**Kaufmann-Kohler**[3] Brower[3] Crawford[3]
51.	Vito G. Gallo – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	30 - 03 - 2007	15 – 9 – 2011	**Fernández-Armesto**[3] Castel[3] Lévy[3]
52.	Romak S.A. - The Republic of Uzbekistan[2]	Proceedings pursuant to the Agreement between the Swiss Confederation and the Republic of Uzbekistan on the Promotion and the Reciprocal Protection of Investments	06 - 09 - 2007	26 - 11 - 2009	**Mantilla-Serrano**[3] Rubins[3] Molfessis[3]
53.	The Government of Sudan – The Sudan People's Liberation Movement/Army[2]	Delimitation of the Abyei area	11 - 07 - 2008	22 – 07 - 2009	**Dupuy**[3] Al-Khasawneh Hafner Reisman[3] Schwebel
54.	Centerra Gold Inc. & Kumtor Gold Co. – Kyrgyz Republic[2]	Investment agreement dispute	08 - 03 - 2006	29 - 06 - 2009 Termination order	**Van den Berg**[3]
55.	TCW Group & Dominican Energy Holdings – Dominican Republic[2]	Proceedings conducted under the Central America-DR-USA Free Trade Agreement (CAFTA-DR)	21 - 12 - 2007	16 – 07 - 2009 Consent Award	**Böckstiegel**[3] Fernández-Armesto[3] Kantor[3]
56.	Bilcon of Delaware *et al.* – Government of Canada[2]	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	26-05-2008	-	**Simma**[3] McRae Schwartz[3]

1. The names of the presidents are typeset in bold.
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3. Not a Member of the Permanent Court of Arbitration.
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5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
57.	HICEE B.V. – The Slovak Republic[2]	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	17 - 12 - 2008	23 - 05 - 2011 Partial Award 17 - 10 - 2011 Supplementary and Final Award	**Berman** Tomka Brower[3]
58.	Polis Fundi Immobliare di Banche Popolare S.G.R.p.A – International Fund for Agricultural Development (IFAD)[2]	Contract dispute	10 - 11 - 2009	17 - 12 - 2010	**Reinisch**[3] Canu[3] Stern[3]
59.	European American Investment Bank AG – The Slovak Republic[2]	Proceedings pursuant to the Agreement Between the Republic of Austria and the Czech and Slovak Federal Republic Concerning the Promotion and Protection of Investments	23 - 11 - 2009	–	**Greenwood** Petsche[3] Stern[3]
60.	Bangladesh – India[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	08 - 10 - 2009	–	**Wolfrum**[3] Mensah[3] Rao[3] Shearer Treves[3]
61.	China Heilongjiang International Economic & Technical Cooperative Corporation *et al.* – Mongolia[2]	Proceedings pursuant to the Agreement between the Government of the Mongolian People's Republic and the Government of the People's Republic of China concerning the Encouragement and Reciprocal Protection of Investments dated August 26, 1991	12 - 02 - 2010	–	**Donovan**[3] Banifatemi[3] Clodfelter[3]
62.	Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	22 – 05 – 2007	31 – 08 – 2011	**Böckstiegel**[3] Brower[3] Van den Berg[3]

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
63.	Achmea B.V. (formerly known as Eureko B.V.) – The Slovak Republic	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments Between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	01 – 10 – 2008		**Lowe**[3] Van den Berg[3] Veeder[3]
64.	Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	23 – 09 – 2009		**Veeder**[3] Grigera Naón[3] Lowe[3]
65.	Pakistan – India	Indus Waters Treaty Arbitration	17 – 05 – 2010		**Schwebel** Berman Wheater[3] Caflisch Paulsson Simma[3] Tomka
66.	Guaracachi America, Inc. & Rurelec PLC – The Plurinational State of Bolivia	Proceedings pursuant to the Treaty between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Bolivia for the Promotion and Protection of Investments	10 – 11 – 2010		**Júdice**[3] Conthe[3] Vinuesa
67.	The Republic of Mauritius - The United Kingdom of Great Britain and Northern Ireland	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	20 – 12 – 2010		**Shearer** Greenwood Hoffmann[3] Kateka[3] Wolfrum[3]

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

PERMANENT COURT OF ARBITRATION

Larsen v. Hawaiian Kingdom

Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.

In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings.

The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States' actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.

Case information

NAME(S) OF CLAIMANT(S)	Lance Paul Larsen (Private entity)
NAME(S) OF RESPONDENT(S)	The Hawaiian Kingdom (State)
NAMES OF PARTIES	-
CASE NUMBER	1999-01
ADMINISTERING INSTITUTION	Permanent Court of Arbitration (PCA)
CASE STATUS	Concluded
TYPE OF CASE	Other proceedings
SUBJECT MATTER OR ECONOMIC SECTOR	Treaty interpretation
RULES USED IN ARBITRAL PROCEEDINGS	UNCITRAL Arbitration Rules 1976
TREATY OR CONTRACT UNDER WHICH PROCEEDINGS WERE COMMENCED	[Other]
LANGUAGE OF PROCEEDING	English
SEAT OF ARBITRATION (BY COUNTRY)	Netherlands
ARBITRATOR(S)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
REPRESENTATIVES OF THE CLAIMANT(S)	Ms. Ninia Parks, Counsel and Agent
REPRESENTATIVES OF THE RESPONDENT(S)	Mr. David Keanu Sai, Agent Mr. Peter Umialiloa Sai, First deputy agent Mr. Gary Victor Dubin, Second deputy agent and counsel
REPRESENTATIVES OF THE PARTIES	
NUMBER OF ARBITRATORS IN CASE	3
DATE OF COMMENCEMENT OF PROCEEDING	08 November 1999
DATE OF ISSUE OF FINAL AWARD	05 February 2001
LENGTH OF PROCEEDINGS	1-2 years
ADDITIONAL NOTES	-

Documents

- Award or other decision
- Other

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

PROFESSOR FEDERICO LENZERINI*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[8] Ibid.

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

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

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

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

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

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

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

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

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

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

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

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

[18] See <https://pcacases.com/web/view/35> (accessed on 16 May 2020).

[19] It is to be noted, in this respect, that no armed resistance was opposed to the occupation despite the fact that, as acknowledged by US President Cleveland, the Queen "had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal"; see United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1895, at 453, available at <https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf> (accessed on 20 May 2020).

[20] See International Committee of the Red Cross, "The Law of Armed Conflict. Belligerent Occupation", Geneva, June 2002, available at <https://www.icrc.org/en/doc/assets/files/other/law9_final.pdf> (accessed on 17 May 2020), at 3.

[21] See <https://www.lexico.com/en/definition/regency> (accessed on 17 May 2020).

[22] See <https://thelawdictionary.org/regency/> (accessed on 17 May 2020).

> His name; and likewise the King may, by His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne; and should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent of Council of Regency, who shall administer the Government in the name of the King, and exercise all the powers which are Constitutionally vested in the King, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign".

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

9. In light of the foregoing – particularly in consideration of the fact that, under international law, the Hawaiian Kingdom continues to exist as an independent State, although subjected to a foreign occupation, and that the Council of Regency has been established consistently with the constitutional principles of the Hawaiian Kingdom and, consequently, possesses the legitimacy of temporarily exercising the functions of the Monarch of the Kingdom – it is possible to conclude that **the Regency actually has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level**.

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

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

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

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

[23] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.
[24] See *Larsen v. Hawaiian Kingdom*, *supra* n. 1, at 12.8.
[25] See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.
[26] See "Government in Commission", 23 *British Year Book of International Law*, 1946, 112.
[27] See Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, *supra* n. 12, at 276.
[28] See Eyal Benvenisti, *The International Law of Occupation*, 2nd Ed., Oxford, 2012, at 104.
[29] See Philip Spoerri, "The Law of Occupation", in Andrew Clapham and Paola Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford, 2014, 182, at 190.
[30] See Benvenisti, *The International Law of Occupation*, *supra* n. 28, at 104-105.
[31] See *Ammon v. Royal Dutch Co.*, 21 *International Law Reports*, 1954, 25, at 27.

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

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

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

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

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

[34] Ibid., at 106.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

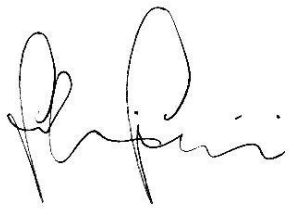
18. Importantly, the provisions referred to in the previous paragraph exactly refer to issues related to the protection of civilian persons and of their rights, which is one of the two main aspects (together with the preservation of the sovereign rights of the Hawaiian Kingdom government) dealt with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

[48] See International Committee of the Red Cross, *Expert Meeting. Occupation and Other Forms of Administration of Foreign Territory. Report*, Geneva, 2012, available at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf> (accessed on 20 May 2020), at 20.
[49] Ibid., at footnote 7.
[50] See "The Law of Land Warfare", *United States Army Field Manual* 27-10, July 1956, Section 367(a).
[51] Ibid., Section 367(b).
[52] See *supra*, text following n. 37.

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

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

24 May 2020



Professor Federico Lenzerini

national lawyers guild

"An organization of lawyers, law students, legal workers, and jailhouse lawyers... in the service of the people, to the end that human rights shall be regarded as more sacred than property interests." Preamble to the NLG Constitution

November 10, 2020

Dear Governor Ige, State of Hawai‘i;

The National Lawyers Guild (NLG), the oldest and largest progressive bar association in the United States, with 70 chapters and more than 6,000 members, calls upon the State of Hawai‘i and its County governments, as the proxy of the United States, which is in effective control of Hawaiian territory, to immediately comply with international humanitarian law while the United States continues its prolonged and illegal occupation of the Hawaiian Kingdom since 1893.

International humanitarian law recognizes that proxies of an occupying State, which are in effective control of the territory of the occupied State, are obligated to administer the laws of the occupied State. The State of Hawai‘i and its County governments, and not the Federal government, meet this requirement of effective control of Hawaiian territory under Article 42 of the 1907 Hague Regulations, and need to immediately comply with the law of occupation. The United States has been in violation of international law for over a century, exercising, since 1893, the longest running belligerent occupation of a foreign country in the history of international relations without establishing an occupying government.

In *Larsen v. Hawaiian Kingdom* (2001), the Permanent Court of Arbitration recognized "that in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States." [1] The lack of any U.S. congressional authority to unilaterally annex a foreign State's territory without a treaty was noted in a 1988 memorandum by the Office of Legal Counsel of the U.S. Department of Justice where it concluded "It is therefore unclear which constitutional power of Congress exercised when it acquired Hawaii by joint resolution." [2]

Its author, Douglas Kmiec, cited constitutional scholar Westel Willoughby:

> "The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. … Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature it is enacted." [3]

On February 25, 2018, Dr. Alfred M. deZayas, a United Nations Independent Expert, communicated to two State of Hawai‘i trial judges and members of the judiciary:

> "I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military

> occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States)." [4]

The NLG International Committee established a Hawaiian Kingdom Subcommittee in March of 2019 [5], and in December of 2019, the NLG's full membership voted and passed a resolution on the independent sovereign State of the Hawaiian Kingdom that was introduced at its annual convention in Durham, North Carolina: "the National Lawyers Guild calls upon the United States of America immediately to begin to comply with international humanitarian law in its prolonged and illegal occupation of the Hawaiian Islands." [6]

On January 13, 2020, the NLG publicly elaborated its position regarding the prolonged occupation of the Hawaiian Kingdom. [7]

- NLG strongly condemns the prolonged and illegal occupation of the Hawaiian Islands.
- NLG also condemns the unlawful presence and maintenance of the United States Indo-Pacific Command with its 118 military sites throughout the Hawaiian Islands, which has caused the islands to be targeted for nuclear strike by North Korea, China and Russia.
- NLG calls for the United States to immediately comply with international humanitarian law and begin to administer the laws of the Hawaiian Kingdom as the occupied State.
- NLG calls on the legal and human rights community to view the United States presence in the Hawaiian Islands through the prism of international law and to roundly condemn it as an illegal occupation under international law.
- NLG supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.
- NLG calls on all United Nations member States and non-member States to not recognize as lawful a situation created by a serious violation of international law, and to not render aid or assistance in maintaining the unlawful situation. As an internationally wrongful act, all States shall cooperate to ensure the United States complies with international humanitarian law and consequently bring to an end the unlawful occupation of the Hawaiian Islands.

Dr. Keanu Sai, Chairman of the Council of Regency, a recognized scholar and co-chair of the NLG's Hawaiian Kingdom Subcommittee, is also the Head of the Royal Commission of Inquiry (RCI). The RCI's mandate is to investigate war crimes and human rights violations committed in the Hawaiian Kingdom and to provide recommendations in order to hold to account those individuals who committed war crimes and human rights violations in accordance with international humanitarian law. [8]

Dr. Federico Lenzerini, a professor of international law from the University of Siena, Italy, authored a legal opinion affirming the lawful authority of the Council of Regency under international humanitarian law, and, thereby, the RCI's investigative authority. [9] The NLG supports the actions taken by the Council of Regency and the RCI in its efforts to ensure compliance with the international laws of occupation by the United States and the State of Hawai'i and its Counties.

As an organization committed to the mission that human rights and the rights of ecosystems are more sacred than property interests, the NLG is deeply concerned that international humanitarian law continues to be flagrantly violated with apparent impunity by the State of Hawai'i and its County governments. This has led to the commission of war crimes and human rights violations of a colossal scale throughout the Hawaiian Islands. International criminal law recognizes that the civilian inhabitants of the Hawaiian Islands are "protected persons" who are afforded protection under international humanitarian law and their rights are vested in international treaties. There are no statutes of limitation for war crimes, as you must be aware.

We urge you, Governor Ige, to proclaim the transformation of the State of Hawai'i and its Counties into an occupying government pursuant to the Council of Regency's proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom. [10] This would include carrying into effect the Council of Regency's proclamation of October 10, 2014 that bring the laws of the Hawaiian Kingdom in the nineteenth century up to date. [11] We further urge you and other officials of the State of Hawai'i and its Counties to familiarize yourselves with the contents of the recent eBook published by the RCI and its reports that comprehensively explains the current situation of the Hawaiian Islands and the impact that international humanitarian law and human rights law have on the State of Hawai'i and its inhabitants. [12]

Best Regards,

National Lawyers Guild

[1] *Larsen v. Hawaiian Kingdom*, 119 *Int'l L. Reports* 566, 581 (2001); see also *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, PCA Case no. 1999-01: https://pca-cpa.org/en/cases/35/.

[2] Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," 12 *Op. O.L.C.*, 238, 252 (1988): https://hawaiiankingdom.org/pdf/1988_Opinion_OLC.pdf.

[3] Ibid.

[4] https://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf

[5] https://www.nlg.org/guild-notes/article/nlg-international-committee-announces-new-hawaiian-kingdom-subcommittee/

[6] https://www.nlg.org/wp-content/uploads/2019/08/Hawaiian-Subcommittee-Resolution-Final.pdf

[7] https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/

[8] https://hawaiiankingdom.org/royal-commission.shtml

[9] https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Regency_Authority.pdf

[10] https://hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf

[11] https://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf

[12] https://hawaiiankingdom.org/royal-commission.shtml

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IADL RESOLUTION CALLING UPON THE UNITED STATES TO IMMEDIATELY COMPLY WITH INTERNATIONAL HUMANITARIAN LAW IN ITS PROLONGED OCCUPATION OF THE HAWAIIAN ISLANDS—THE HAWAIIAN KINGDOM

The International Association of Democratic Lawyers (IADL) is a non-governmental organization of human rights lawyers founded in 1946, with member associations throughout the world and with consultative status in ECOSOC. IADL is dedicated to upholding international law and promoting the tenets of the UN Charter in furtherance of peace and justice.

The IADL strongly condemns the January 1893 invasion of the Hawaiian Kingdom by the United States and its subsequent unlawful and prolonged occupation to date, a clear violation of customary international law at the time, which is currently set out in Article 2(4) of the Charter of the United Nations prohibiting the use of force. The IADL has always been a proponent of the rule of law and a State's obligation to comply with international humanitarian law, which includes the law of occupation.

In 2001, the Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom*, stated "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties." [1] The Hawaiian Kingdom currently has treaties with Austria, Belgium, Bremen, Denmark, France, Germany, Great Britain, Hamburg, Hungary, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Russia, Spain, Sweden, Switzerland and the United States. [2] The Hawaiian Kingdom also became a member of the Universal Postal Union on January 1, 1882.

After completing an investigation into the United States role in the overthrow of the Hawaiian Kingdom government on January 17, 1893, President Cleveland apprised the Congress of his findings and conclusions. In his message to the Congress, he stated, "And so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an act of war." [3] The President concluded, that "the military occupation of Honolulu by the United States on the day mentioned was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property." [4]

This invasion coerced Queen Lili'uokalani, executive monarch of the Hawaiian Kingdom, to conditionally surrender to the superior power of the United States military, where she stated, "Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and

reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands." The President acknowledged that by "an act of war…the Government of a…friendly and confiding people has been overthrown." [5]

Through executive mediation between the Queen and the new U.S. Minister to the Hawaiian Islands, Albert Willis, that lasted from November 13, 1893 through December 18, 1893, an agreement of peace was reached. [6] According to the executive agreement, by exchange of notes, the President committed to restoring the Queen as the constitutional sovereign, and the Queen agreed, after being restored, to grant a full pardon to the insurgents. Political wrangling in the Congress, however, blocked President Cleveland from carrying out his obligation of restoration of the Queen.

Five years later, at the height of the Spanish-American War, President Cleveland's successor, William McKinley, signed a congressional joint resolution of annexation on July 7, 1898, unilaterally seizing the Hawaiian Islands for military purposes. In the *Lotus* case, the Permanent Court of International Justice stated that "the first and foremost restriction imposed by international law upon a State is that…it may not exercise its power in any form in the territory of another State." [7]

This rule of international law was acknowledged by the Supreme Court in *United States v. Curtiss-Wright, Corp.* (1936), when the court stated, "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." [8] In 1988, the U.S. Department of Justice's Office of Legal Counsel concluded, it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution." [9]

Under international law, "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." [10]

Despite the limitations of United States legislation, the Congress went ahead and enacted the Territorial Act (1900) changing the name of the governmental infrastructure to the Territory of Hawai‘i. [11] Fifty-nine years later, the Congress changed the name of the Territory of Hawai‘i to the State of Hawai‘i in 1959 under the Statehood Act. [12] The governmental infrastructure of the Hawaiian Kingdom continued as the governmental infrastructure of the State of Hawai‘i.

On February 25, 2018, United Nations Independent Expert, Dr. Alfred M. deZayas, in his communication with members of the State of Hawai‘i Judiciary wrote, "I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the laws of the occupier (the United States)." [13]

The IADL fully supports the National Lawyers Guild's 2019 resolution that "calls upon the United States of America immediately to begin to comply with international humanitarian law in its prolonged and illegal occupation of the Hawaiian Islands." [14] Together with the National Lawyers Guild (NLG):

- IADL strongly condemns the prolonged and illegal occupation of the Hawaiian Islands.
- IADL also condemns the unlawful presence and maintenance of the United States Indo-Pacific Command with its 118 military sites throughout the Hawaiian Islands.
- IADL calls for the United States to immediately comply with international humanitarian law and begin to administer the laws of the Hawaiian Kingdom as the occupied State.
- IADL calls on the legal and human rights community to view the United States presence in the Hawaiian Islands through the prism of international law and to roundly condemn it as an illegal occupation under international law.
- IADL supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.
- IADL calls on all United Nations member States and non-member States to not recognize as lawful a situation created by a serious violation of international law, and to not render aid or assistance in maintaining the unlawful situation. As an internationally wrongful act, all States shall cooperate to ensure the United States complies with international humanitarian law and consequently bring to an end the unlawful occupation of the Hawaiian Islands.

The IADL recognizes that the United States' violations of international humanitarian law have led to the commission of war crimes and human rights violations in the Hawaiian Islands. The IADL also recognizes that the civilian population in the Hawaiian Islands are "protected persons" and their rights during a belligerent occupation are vested in the 1949 Fourth Geneva Convention and the 1977 Additional Protocol.

For the restoration of international law and the tenets of the UN Charter, the IADL calls upon the United States to immediately comply with international humanitarian law and the law of occupation in its prolonged and illegal occupation of the Hawaiian Islands.

The IADL fully supports the NLG's November 10, 2020 letter to State of Hawai‘i Governor David Ige urging him to "proclaim the transformation of the State of Hawai‘i and its Counties into an occupying government pursuant to the Council of Regency's proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom. This would include carrying into effect the Council of Regency's proclamation of October 10, 2014 that bring the laws of the Hawaiian Kingdom in the nineteenth century up to date." [15]

IADL reiterates that supporting the tenets of the UN Charter also means that member States must comply with the *Articles of State Responsibility for Internationally Wrongful Acts* (2001). [16] The U.S. violation of the Hawaiian Kingdom's sovereignty and its failure to comply with

international humanitarian law for over a century is an internationally wrongful act. As such, member States have an obligation to not "recognize as lawful a situation created by a serious breach…nor render aid or assistance in maintaining that situation," [17] and member States "shall cooperate to bring to an end through lawful means any serious breach [by a member State of an obligation arising under a peremptory norm of general international law]." [18]

[1] *Larsen v. Hawaiian Kingdom*, 119 *Int'l L. Reports* 566, 581 (2001). Case description for the *Larsen* case online at https://pca-cpa.org/en/cases/35/.

[2] International Treaties between the Hawaiian Kingdom and other Powers (online at https://hawaiiankingdom.org/treaties.shtml).

[3] President Cleveland's Message to the Congress 451 (December 18, 1893) (online at https://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf).

[4] *Id*., 452.

[5] *Id*., 456.

[6] Executive Agreement, by exchange of notes, between President Cleveland and Queen Lili'uokalani (December 18, 1893) (online at https://hawaiiankingdom.org/pdf/EA_2(HI%20Claim).pdf).

[7] *Lotus*, PCIJ Series A, No. 10, 18 (1927).

[8] *United States v. Curtiss-Wright, Corp.*, 299 U.S. 304, 318 (1936)

[9] Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," 12 *Op. O.L.C.* 238, 252 (1988) (online at https://hawaiiankingdom.org/pdf/1988_Opinion_OLC.pdf).

[10] Krystyna Marek, *Identity and Continuity of State in Public International Law* 110 (2nd ed., 1968).

[11] *An Act To provide a government for the Territory of Hawaii*, 31 Stat. 141 (1900).

[12] *An Act To provide for the admission of the State of Hawaii into the Union*, 73 Stat. 4 (1959).

[13] Letter from U.N. Independent Expert Dr. deZayas to Members of the Judiciary of the State of Hawai'i (25 Feb. 2018) (online at https://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf).

[14] NLG Calls Upon US to Immediately Comply with International Humanitarian Law in its Illegal Occupation of the Hawaiian Islands (January 13, 2020) (online at https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/).

[15] NLG letter urges implementation on international law in U.S.-occupied Hawaiian Kingdom (2020) (online at https://nlginternational.org/2020/11/nlg-letter-urges-implementation-of-international-law-in-u-s-occupied-hawaiian-kingdom/).

[16] United Nations, Responsibility of States for Internationally Wrongful Acts (2001) (online at https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf).

[17] *Id.*, Article 41(2).

[18] *Id.*, Article 41(1).