



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

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20 December 2023

Mr. David Nanopoulos  
Chief, Treaty Section, Office of Legal Affairs  
United Nations Headquarters  
2 UN Plaza - 323 E 44th Street  
Room No. DC2-0520  
New York, NY 10017

Re: Permanent Court of Arbitration's practice of recognizing the continuity of the Hawaiian Kingdom and the Council of Regency as law (*opinio juris*)

Dear Mr. Nanopoulos:

The primary issue before you as Chief of the Treaty Section is not whether the Hawaiian Kingdom is a sovereign and independent State, but rather whether the Hawaiian Kingdom continues to exist as a State and subject of international law. I brought to your attention, in my letter dated 13 December 2023, another practice of the United Nations (UN) Secretary General that is relevant to the Hawaiian situation in determining whether an entity claiming the legal personality of a State from the nineteenth century would be a decision "by a competent organ representative of the international community of States as a whole on the general issue of continuity and discontinuity of statehood."

Thus, in the Hawaiian situation, as to whether the Hawaiian Kingdom continues to exist as a State since the nineteenth century, that "competent organ" is the Permanent Court of Arbitration (PCA), which has held observer status in the General Assembly since 1993. In *Larsen v. Hawaiian Kingdom*, the PCA recognized the Hawaiian Kingdom as a non-Contracting State pursuant to Article 47 of the 1907 Hague Convention on the Pacific Settlement of International Disputes (PCA Convention), and it recognized the Council of Regency as its government. The dispute between the parties came before the PCA on 8 November 1999.

At the time of the arbitral proceedings, there were 88 Contracting States to the PCA Convention and those States, that have diplomatic representatives accredited to the Netherlands, sit on the PCA's Administrative Council. None of these States, including the United States of America, objected to the practice by the PCA Secretary General of recognizing the continuity of the Hawaiian Kingdom as a non-Contracting State to the PCA Convention and of recognizing the Council of Regency as its government. Along with the practice of States that establish law (*opinio juris*) there is the practice of international organizations, in certain cases, that can also establish law (*opinio juris*). The action taken by the Secretary General applies "mutatis mutandis to the forms of evidence of acceptance of law (*opinio juris*) of international organizations."<sup>1</sup>

By virtue of Article 47 of the PCA Convention, the Contracting States transferred exclusive competence to the Secretariat to determine whether an entity is a non-Contracting State or a Contracting State for the purposes of the PCA's jurisdiction. According to the International Law Commission, the "[f]ailure to react over time to a practice may serve as evidence of acceptance as law (*opinio juris*), provided [these] States were in a position to react and the circumstances called for some reaction."<sup>2</sup> Consequently, the silence and acquiescence of these States is evidence of their acceptance as law (*opinio juris*) of the PCA Secretary General's practice of recognizing the continuity of Hawaiian Statehood.

Since 1999, an additional 34 States have become parties to the PCA Convention for a total of 122 Contracting States, none of which objected to the PCA Secretary General's recognition of the continuity of the Hawaiian Kingdom and the Council of Regency as its government. Therefore, the silence and acquiescence by these 34 States constitutes evidence of their acceptance as law (*opinio juris*) of the Secretary General's practice in the Hawaiian situation. With the exception of Kosovo and Palestine, 120 of these States are also members of the United Nations and have accepted as law the PCA Secretary General's recognition of the continuity of Hawaiian Statehood.<sup>3</sup>

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<sup>1</sup> United Nations, *Yearbook of the International Law Commission*, vol. II, Part Two 104, commentary n. 7 (2018).

<sup>2</sup> *Id.*, 103, conclusion 10 (3).

<sup>3</sup> Albania, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Belarus, Belgium, Belize, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Chile, Democratic Republic of China, Colombia, Democratic Republic of the Congo, Costa Rica, Croatia, Cuba, Cyprus, Czechia, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Georgia, Germany, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kenya, Republic of Korea, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Malta, Mauritius, Mexico, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, North Macedonia, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, Democratic Republic of São Tomé and Príncipe, Saudi Arabia, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Thailand, Togo, Türkiye, Uganda, Ukraine,

The Hawaiian Kingdom's continued existence as a State and subject of international law is not a political matter. There is no position of difficulty for the UN Secretary General to take when the PCA's recognition of the Hawaiian Kingdom's continuity has already been accepted as law (*opinio juris*) by 120 members of the United Nations. Therefore, the UN Secretary General is obliged to receive the Hawaiian Kingdom's instrument of accession to the Rome Statute which he received on 10 December 2012.

With sentiments of the highest regard,



H.E. David Keanu Sai, Ph.D.

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United Arab Emirates, United States of America, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Viet Nam, Zambia, and Zimbabwe.