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July 2, 2015

Mike McCartney
Chief of Staff, Governor
Executive Chambers
State Capitol
Honolulu, Hawaii 96813

Re: Report on Military Government

Dear Mike:

Enclosed please find a report I authored, titled *Military Government: Transformation of the State of Hawai'i*, for your consideration. As you know after we met on three previous occasions, this is a serious matter with profound political and economic consequences. After our last meeting I scoured through the laws and customs of war and international humanitarian law, and I discovered that the State of Hawai'i is fully authorized to declare itself as a Military Government in accordance with provisions in the State Constitution and the laws and customs of war during occupation.

The process will be reminiscent of Governor Poindexter's declaration of a Military Government under martial law in 1941, but a civilian rather than a military officer will be the Military Governor. It will also be shorn of the military dictatorship that plagued the Military Government then, and, as you will see in the report, it will be pretty much business as usual with some alterations necessary because of international law. The State of Hawai'i is currently playing in a negative-sum game and it needs to take the necessary steps to gain positive-sums. The State of Hawai'i does not have the luxury of time on its side.

I spoke with my client who is the Swiss citizen and he has agreed not to pursue the re-filing of the complaint to Swiss authorities, but only on condition that the State of Hawai'i begins to comply with the laws and customs of war during occupation by establishing a Military Government. My other client, Mr. Gumapac has also agreed to the same terms regarding the State of Hawai'i judge that presided over his unfair trial and the officers from the Sheriff's Department who pillaged his home, so long as there is restitution so he can return to his home and property. He will, however, maintain his criminal complaint against Deutsche Bank and Joseph Ackermann with the Swiss Authorities.

I will also be presenting this report as a paper at an academic conference at the University of Cambridge, England, in September, titled *Sovereignty and Imperialism: Non European*

Powers in the Age of Empire. I am enclosing a copy of my letter of invitation. Oxford Press will also publish papers presented at the conference.

It is crucial that we maintain a line of communication on this very delicate topic, and I look forward to another meeting with you after you've gone over the report. I am also enclosing a flash-drive that has Appendix I-VI of the report.

Sincerely,

Keanu Sai, Ph.D.

enclosures



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Dr. Keanu Sai
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USA

Cambridge, 20 March 2015

Letter of Invitation

Dear Dr. Sai,

We hereby have the honour to invite you to the conference *Sovereignty and Imperialism: Non-European Powers in the Age of Empire* to be held at the University of Cambridge, from 10 to 12 September 2015.

The conference will explore how the few formally independent non-European states, most notably Abyssinia, China, Japan, the Ottoman Empire, Persia and Siam, managed to keep European imperialism at bay, while others, such as Hawaii, Korea, Madagascar and Morocco, struggled but then succumbed to imperial powers.

We would be delighted if you would be interested in contributing a paper on relations between Europe, America and Hawaii. We also plan to publish the papers in a volume with Oxford University Press.

We will be able to provide accommodation at Cambridge and cover up to \$ 150 of your travel costs.

Yours sincerely,

David Motadel



Military Government: Transformation of the State of Hawai‘i

Dr. Keanu Sai
Political Scientist

July 2, 2015

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SUMMARY

The author's doctoral research¹ in political science, published law reviewed articles,² and books³ are focused on Hawai'i's legal status as an occupied state that has gone unchecked for over a century. Not only were the international rights of a neutral country violated, but also the violation of human rights took place on a grand scale that was hidden under a cloak of deception and lies. These abuses are now coming to the forefront as documents are surfacing that has changed Hawai'i before the whole world.

Critical to the author's research was finding a remedial prescription to right the wrong, given the magnitude and complexity of Hawai'i's situation. The author's conclusion in his doctoral dissertation was, "Establishing a military government will shore up these blatant abuses of protected persons under one central authority, that has not only the duty, by the obligation, of suppressing conduct contrary to the Hague and Geneva conventions taking place in an occupied State."⁴

This report provides a comprehensive analysis and legal reasoning for the State of Hawai'i to transform itself from an Armed Force to a Military Government, in light of the growing knowledge and awareness of Hawai'i's legal status as an occupied state. The transformation must take place in conformity with the laws and customs of war during occupation and international humanitarian law. This revelation has profound ramifications not for only the State of Hawai'i and the United States, but also for the international community at large and their citizenry. Failure to do so will be catastrophic.

¹ David Keanu Sai, *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State* (December 2008) (unpublished Ph.D. dissertation, University of Hawai'i at Manoa) (on file with the University of Hawai'i Hamilton Library), available at [http://www2.hawaii.edu/~anu/pdf/Dissertation\(Sai\).pdf](http://www2.hawaii.edu/~anu/pdf/Dissertation(Sai).pdf).

² DAVID KEANU SAI, *American Occupation of the Hawaiian State: A Century Unchecked*, 1 HAW. J. L. & POL. 46 (2004), available at [http://www2.hawaii.edu/~hslp/journal/vol1/Sai_Article_\(HJLP\).pdf](http://www2.hawaii.edu/~hslp/journal/vol1/Sai_Article_(HJLP).pdf); DAVID KEANU SAI, *A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai'i today*, 10 J. L. & SOC. CHALLENGES 69 (Fall 2008), available at <http://www2.hawaii.edu/~anu/pdf/Indigeneity.pdf>.

³ DAVID KEANU SAI, *LARSEN CASE (LANCE LARSEN VS. HAWAIIAN KINGDOM)*, PERMANENT COURT OF ARBITRATION (2003); DAVID KEANU SAI, *UA MAU KE EA: SOVEREIGNTY ENDURES* (2011).

⁴ See Sai Dissertation, at 239

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Appendix I – Dr. Keanu Sai, *Brief, Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom* (Aug. 4, 2013)⁵

Appendix II – Proclamation of the *Acting* Government (Oct. 10, 2014)⁶

Appendix III – Transcript of Proceedings, State of Hawai'i vs. Kaiula Kalawe English, criminal no. 14-1-0819, State of Hawai'i vs. Robin Wainuhea Dudoit, criminal no. 14-1-0820, Circuit Court of the Second Circuit, State of Hawai'i (Mar. 5, 2015)⁷

Appendix IV – Programme for Patriotic Exercise in the Public Schools (1907)⁸

Appendix V – Swiss Judgment, Gumapac vs. Attorney General (April 28, 2014), Original in German,⁹ translation into English¹⁰

Appendix VI – Army Field Manual FM 27-5, Civil Affairs Military Government (Oct. 1947)¹¹

⁵ Appendix I, available at http://hawaiiakingdom.org/pdf/Continuity_Brief.pdf.

⁶ Appendix II, available at http://hawaiiakingdom.org/pdf/Proc_Provisional_Laws.pdf.

⁷ Appendix III, available at http://hawaiiakingdom.org/pdf/Transcript_Molokai_hearing.pdf.

⁸ Appendix IV, available at

<http://ia600604.us.archive.org/17/items/programmeforpatr00hawa/programmeforpatr00hawa.pdf>.

⁹ Appendix V (German), available at

[http://hawaiiakingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_\(redacted\).pdf](http://hawaiiakingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_(redacted).pdf).

¹⁰ Appendix V (English), available at

[http://hawaiiakingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_\(redacted\).pdf](http://hawaiiakingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_(redacted).pdf).

INTRODUCTION

Customary international law, in particular the laws and customs of war on land, provides for the establishment of a Military Government during belligerent occupation of an independent and sovereign state. The failure of the United States to establish a Military Government since the prolonged occupation of the Hawaiian Kingdom began during the Spanish-American War has led to unimaginable violations of international law and human rights, called international humanitarian law, that has profound ramifications not only for Hawai'i, but for the world at large.

The prolonged occupation of a friendly and neutral state, during war for military interest, is unparalleled and unprecedented. Military interest and necessity would apply solely to belligerent states and not to neutral states, whose neutrality was critical to the balance of power amongst the members of the family of nations. Hawai'i ensured its place as a neutral state throughout the nineteenth century. The closest parallel to Hawai'i's situation would not take place until sixteen years later when the Germans occupied the neutral state of Luxemburg prior to the breakout of World War I in 1914. Germany justified this occupation as a matter of military necessity, claiming that France had made overtures of occupying Luxemburg in order to launch attacks against Germany. Although Germany's claims were unfounded, it did not seek to unilaterally seize Luxemburg's sovereignty, but allowed Luxemburg's government to continue until the occupation ended in 1918. In World War II, however, Germany did attempt to unilaterally seize the neutral state of Luxemburg after Germany had occupied it, and the perpetrators were prosecuted for war crimes after the war.

FIRST ARMED CONFLICT: UNITED STATES INTERVENTION

In 2001, the Permanent Court of Arbitration acknowledged that, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."¹² As an independent state, the Hawaiian Kingdom was a subject of international law, which prohibited intervention in its domestic affairs by other states. According to Brownlie,

"The principal corollaries of the sovereignty and equality of states are: (1) a jurisdiction, *prima facie* exclusive, over a territory and the permanent population living there; (2) a duty of non-intervention in the area of exclusive jurisdiction of other states; and (3) the dependence of obligations arising from customary law and treaties on the consent of the obligor."¹³

¹¹ Appendix VI, available at http://www.loc.gov/rr/frd/Military_Law/pdf/FM-27-5-1947.pdf.

¹² *Larsen v. Hawaiian Kingdom*, 119 INT'L L. REP. 566, 581 (2001).

¹³ IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 287 (4th ed. 1990).

Should a state seek to merge into another state, international law only allows it through cession. “Cession of State territory is the transfer of sovereignty over State territory by the owner-State to another State,”¹⁴ says Oppenheim. “The only form in which a cession 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.”¹⁵ Through peaceful negotiations, the United States acquired by treaty, the former territories of the French in Louisiana in 1803,¹⁶ the Spanish in Florida in 1819,¹⁷ the British in Oregon in 1846,¹⁸ the Russian in Alaska in 1867,¹⁹ and the Danish in the Virgin Islands in 1916.²⁰ The United States acquired, through treaties of conquest, the former territories of the British in the Americas in 1783,²¹ the Mexicans in territory north of the Rio Grande in 1848, which includes Texas,²² and the Spanish in the Philippines, Guam and Puerto Rico in 1898.²³ Hawai‘i is the only territory the United States claims without a treaty.

International law also distinguishes between the state and its government, where the latter is the physical manifestation that exercises the sovereignty of the former. Hoffman emphasizes that a government “is not a State any more than man’s words are the man himself,” but “is simply an expression of the State, an agent for putting into execution the will of the State.”²⁴ Wright also concluded, “international law distinguishes between a government and the state it governs.”²⁵ Therefore, a sovereign State would continue to exist despite its government being overthrown by military force. “There is a presumption that the State continues to exist, with its rights and obligations...despite a period in which there is no, or no effective, government,” explains Crawford. “Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”²⁶ Crawford states,

“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.”²⁷

The Hawaiian Kingdom Civil Code provides, “The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while

¹⁴ L. OPPENHEIM, INTERNATIONAL LAW, vol. 1, 499 (7th ed. 1948).

¹⁵ *Id.*, at 500.

¹⁶ 8 U.S. Stat. 200; Treaty Series 86.

¹⁷ 8 U.S. Stat. 252; Treaty Series 327.

¹⁸ 9 U.S. Stat. 869; Treaty Series 120.

¹⁹ 15 U.S. Stat. 539; Treaty Series 301.

²⁰ 39 U.S. Stat. 1706; Treaty Series 629.

²¹ 8 U.S. Stat. 80; Treaty Series 104.

²² 9 U.S. Stat. 922; Treaty Series 207.

²³ 30 U.S. Stat. 1754; Treaty Series 343.

²⁴ FRANK SARGENT HOFFMAN, THE SPHERE OF THE STATE OR THE PEOPLE AS A BODY-POLITIC 19 (1894).

²⁵ QUINCY WRIGHT, *The Status of Germany and the Peace Proclamation*, 46(2) AM. J. INT’L L. 299, 307 (Apr. 1952).

²⁶ JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 34 (2d ed. 2006).

²⁷ *Id.*

within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.”²⁸ The Hawaiian Kingdom Penal Code defines treason “to be any plotting or attempt to dethrone or destroy the King, or the adhering to the enemies thereof, giving them aid and comfort, the same being done by a person owing allegiance to this kingdom.”²⁹ For any person committing the crime of treason “shall suffer the punishment of death; and all his property shall be confiscated to the government.”³⁰

On January 16, 1893, the United States intervened in the internal affairs of the kingdom when its diplomat—Minister John Stevens, ordered the landing of U.S. troops to actively participate in the treasonous take over of the Hawaiian government. The following day, U.S. troops forcibly removed the executive Monarch—Queen Lili’uokalani, and her Cabinet of four ministers, and replaced them with insurgents led by Hawai’i Supreme Court Judge Sanford Dole. The insurgents’ proclamation of January 17, 1893 stated:

“All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named person: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office. All Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils.”³¹

Once the regime change was effected, all government officers and employees were forced to sign oaths of allegiance or face termination or arrest.³² This being done under the oversight of U.S. troops after Minister Stevens declared Hawai’i to be an American Protectorate on February 1, 1893. The purpose of the regime change was for the provisional government to cede, by treaty, Hawai’i’s sovereignty and territory to the United States.

One month after the treaty of annexation was signed in Washington, D.C., on February 14, 1893, under President Benjamin Harrison and submitted to the Senate for ratification, President Grover Cleveland, Harrison’s successor, withdrew the treaty and initiated an investigation into the overthrow of the Hawaiian Government. President Cleveland concluded that the provisional government was neither *de facto* nor *de jure*, but self-declared,³³ and the U.S. “military demonstration upon the soil of Honolulu was itself an

²⁸ Hawaiian Kingdom Civil Code, §6 (Compiled Laws 1884).

²⁹ Hawaiian Kingdom Penal Code, Chapter VI, sec. 1 (1869).

³⁰ *Id.*, at Sec. 9.

³¹ ROBERT C. LYDECKER, ROSTER LEGISLATURES OF HAWAII 188 (1918).

³² Oath of Allegiance to Provisional Government, available at http://hawaiiankingdom.org/blog/wp-content/uploads/2014/01/Oath_Provisional_Gov.jpg.

³³ United States House of Representatives, 53d Cong., Executive Documents on Affairs in Hawai’i: 1894-95, 453 (Government Printing Office 1895).

act of war.”³⁴ The President then notified the Congress that he began executive mediation with the Queen to reinstate her and her Cabinet of ministers on condition she would grant amnesty to the insurgents. The first of several meetings were held at the U.S. Legation in Honolulu on November 13, 1893.³⁵ An agreement was reached on December 18, 1893,³⁶ but President Cleveland was unable to get Congressional authorization for the use of force in order to redeploy the troops to Hawai'i. The agreement was not carried out. This executive agreement is recognized under international law as a treaty.³⁷

On July 4, 1894, the insurgency declared the Provisional Government to be the Republic of Hawai'i and continued to have government officers and employees sign oaths of allegiance under threat by American mercenaries who were employed by the insurgency.³⁸ The proclamation of the insurgents stated,

“it is hereby declared, enacted and proclaimed by the Executive and Advisory Councils of the Provisional Government and by the elected Delegates, constituting said Constitutional Convention, that on and after the Fourth day of July, A.D. 1894, the said Constitution shall be the Constitution of the Republic of Hawaii and the Supreme Law of the Hawaiian Islands.”³⁹

On June 17, 1897, the day after a second treaty of annexation was signed in Washington, D.C., under President William McKinley, Cleveland's successor; Queen Lili'uokalani submitted a formal protest to the U.S. State Department. Her protest stated,

“I declare such a treaty to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me.”⁴⁰

President McKinley ignored the protest and submitted the treaty to the Senate for ratification. Additional protests were filed with the Senate from the people, which included a 21,269 signature-petition of members and supporters of the Hawaiian Patriotic

³⁴ *Id.*, at 451.

³⁵ *Id.*, at 1241-43.

³⁶ *Id.*, at 1269-73.

³⁷ See *Dames & Moore v. Regan*, 453 U. S. 654, 679, 682-683 (1981); *United States v. Pink*, 315 U. S. 203, 223, 230 (1942); *United States v. Belmont*, 301 U. S. 324, 330-331 (1937); see also L. HENKIN, *FOREIGN AFFAIRS AND THE UNITED STATES CONSTITUTION* 219, 496, n. 163 (2d ed. 1996) (“Presidents from Washington to Clinton have made many thousands of agreements ... on matters running the gamut of U. S. foreign relations”).

³⁸ Oath of Allegiance to Republic of Hawai'i, available at http://hawaiiankingdom.org/blog/wp-content/uploads/2014/01/Oath_Republic.jpg. In a 1993 joint resolution apologizing for the illegal overthrow of the government of the Hawaiian Kingdom, the U.S. Congress acknowledged that the Republic of Hawai'i was self-declared. 107 U.S. Stat. 1510, 1512 (1993).

³⁹ See LYDECKER, at 225.

⁴⁰ Queen Lili'uokalani's Protest against Treaty of Annexation, June 17, 1897, available at <http://libweb.hawaii.edu/digicoll/annexation/protest/liliu5.html>.

League protesting the annexation of Hawai'i. By March of 1898, the treaty is dead after the Senate was unable to garner enough votes for ratification.

SECOND ARMED CONFLICT: UNITED STATES OCCUPATION

On May 4, 1898, Congressman Francis Newlands submitted a joint resolution for the annexing of the Hawaiian Islands to the U.S. House Committee on Foreign Affairs after Commodore Dewey defeated the Spanish fleet at Manila Bay, Philippines, on May 1. On May 17, the joint resolution was reported out of the committee without amendment and headed to the floor of the House of Representatives. The joint resolution's accompanying Report justified the congressional action to seize the Hawaiian Islands as a matter of military interest. The Report stated,

“The leading nations—England, France, Germany, Japan, Spain, and the United States—have each a Pacific Squadron. Every one of these squadrons is stronger than ours save that of Spain, which is the weakest. Had the war in which we are now engaged been with any of the other powers they might have worsted our fleet and seized the Hawaiian Islands, which are not now defended by any fortification or cannon, thus exactly reversing our recent good fortune at Manila. They would then have had a convenient base for supplies, coal, and repairs, from which to actively harry and devastate our coast. But were we in complete possession of the Hawaiian Islands and they properly prepared for defense (which eminent officers of the Army and Navy stated to the committee could be done at a cost of \$500,000), our fleet, even if pressed by a greatly superior sea power, would have an impregnable refuge at Pearl Harbor, backed by a friendly population and militia, with all the resources of the large city of Honolulu and a small but fruitful country. Holding this all important strategic point, the enemy could not remain in that part of the Pacific, thousands of miles from any base, without running out of coal sufficient to get back to their own possessions. The islands would secure both our fleet and our coast.”⁴¹

Despite objections by Senators and Representatives that foreign territory can only be acquired by treaty and not through a congressional statute, President McKinley signs the joint resolution into law on July 7, 1898, and the occupation of the Hawaiian Islands began on August 12. The war with Spain did not come to an end until April 11, 1899, after documents of ratifications of the Treaty of Paris were exchanged. Customary international law mandated the United States, as the occupying state, to establish a Military Government in order to provisionally administer the laws of the occupied state, being the laws of the Hawaiian Kingdom that stood prior to the regime change on January 17, 1893. Instead of establishing a Military Government, the U.S. authorities allowed the insurgents to maintain control until the Congress could reorganize the so-called Republic of Hawai'i.

⁴¹ House Committee on Foreign Affairs Report to accompany H. Res. 259, May 17, 1898, 2 (House Report no. 1355, 55th Congress, 2d session).

By statute, the U.S. Congress changed the name of the Republic of Hawai'i to the Territory of Hawai'i on April 30, 1900. The Territorial Act stated,

“The constitution and statute laws of the Republic of Hawaii then in force, set forth in a compilation made by Sidney M. Ballou under the authority of the legislature, and published in two volumes entitled ‘Civil Laws’ and ‘Penal Laws,’ respectively, and in the Session Laws of the Legislature for the session of eighteen hundred and ninety-eight, are referred to in this Act as ‘Civil Laws,’ ‘Penal Laws,’ and ‘Session Laws.’”⁴²

On March 18, 1959, the U.S. Congress again by statute changed the name of the Territory of Hawai'i to the State of Hawai'i. The Statehood Act stated,

“All Territorial laws in force in the Territory of Hawaii at the time of its admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii.”⁴³

When the United States created the Territory of Hawai'i in 1900 it surpassed “its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts.”⁴⁴ The purpose of this extraterritorial prescription was to conceal the occupation of the Hawaiian Kingdom and bypass the duty of administering the laws of the occupied state in accordance with the 1899 Hague Convention, II, which the United States had ratified. Article 43, provides:

“The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

The 1899 Hague Convention, II, was superseded by the 1907 Hague Convention, IV, and the text of Article 43 was slightly altered to read,

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

The United States creation of the State of Hawai'i in 1959, as the successor of the Territory of Hawai'i, not only stood in direct violation of Article 43, but also the duty of non-intervention in the internal affairs of another state.

⁴² 31 U.S. Stat. 141.

⁴³ 73 U.S. Stat. 4.

⁴⁴ EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 19 (1993).

LIMITS OF U.S. CONGRESSIONAL LEGISLATION

Sources of international law are, in rank of precedence: international conventions, international custom, general principles of law recognized by civilized nations, and judicial decisions and the teachings of the most highly qualified publicists of the various nations.⁴⁵ The legislation of every state, to include the United States of America and its Congress, is not a source of international law, but rather a source of municipal law of the state whose legislature enacted it. In *The Lotus*, the International Court stated, “Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State.”⁴⁶ According to Crawford, derogation of this principle will not be presumed, which he refers to as the *Lotus* presumption.⁴⁷

Since Congressional legislation, whether by a statute or a joint resolution, has no extraterritorial effect, it is not a source of international law, which “governs relations between independent States.”⁴⁸ The U.S. Supreme Court has always adhered to this principle. The U.S. Supreme 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.”⁴⁹

The Supreme Court also concluded, “The laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction.”⁵⁰ Adhering to this principle, the U.S. Attorney General’s Office of Legal Counsel was befuddled by Congress’s annexation of the Hawaiian Islands by a joint resolution. In a 1988 legal opinion, the Office of Legal Counsel addressed the annexation of the Hawaiian Islands by joint resolution. Douglas Kmiec, Acting Assistant Attorney General, authored the memorandum for Abraham D. Sofaer, legal advisor to the U.S. State Department. After covering the limitation of Congressional authority and the objections made by members of the Congress, Kmiec concluded,

“Notwithstanding these constitutional objections, Congress approved the joint resolution and President McKinley signed the measure in 1898. Nevertheless, whether this action demonstrates the constitutional power of Congress to acquire territory is certainly questionable. ... It is therefore 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

⁴⁵ Statute of the International Court of Justice, Article 38.

⁴⁶ *Lotus*, PCIJ, ser. A no. 10, 18 (1927).

⁴⁷ See CRAWFORD, at 41-42.

⁴⁸ See *Lotus*, at 18.

⁴⁹ *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

⁵⁰ *The Apollon*, 22 U.S. 362, 370 (1824).

appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.”⁵¹

This 1988 opinion clearly undermines the claim of sovereignty over the Hawaiian Islands by the United States. If the Attorney General’s Office of Legal Counsel is “unclear” as to the authority of Congress to annex the Hawaiian Islands, it surely cannot be considered as a valid demonstration of legal title by the United States as the successor to the Hawaiian Kingdom under international law. If the United States is not the successor, then the presumption of the Hawaiian Kingdom’s existence as an independent state is maintained.

CONTINUANCE OF INTERNATIONAL TREATIES

The first friendship treaty the Hawaiian Kingdom entered into as a sovereign state was with Denmark on October 19, 1846. Other friendship treaties followed with Hamburg, succeeded by Germany, (January 8, 1848), the United States of America (December 20, 1849), the United Kingdom (July 10, 1851), Bremen, succeeded by Germany, (March 27, 1854), Sweden-Norway, now separate states, (April 5, 1855), France (September 8, 1858), Belgium (October 4, 1862), Netherlands (October 16, 1862), Luxembourg (October 16, 1862), Italy (July 22, 1863), Spain (October 9, 1863), Switzerland (July 20, 1864), Russia (June 19, 1869), Japan (August 19, 1871), Austria-Hungary, now separate states (June 18, 1875), Germany (March 25, 1879), and Portugal (May 5, 1882). Neither the Hawaiian Kingdom nor any of these states expressed any intention to terminate any of the treaties according to the provisions provided in each of the treaties, and therefore remain in full force and effect.

These treaties have the “most favored nation” clause, and secure the equal application of commercial trade in the Hawaiian Islands to all treaty partners. These treaties have all been violated by the United States through the unlawful imposition of the *Merchant Marine Act* (1920)—also known as the *Jones Act*—that has secured commercial control over the seas to United States citizens, which has consequently placed the citizens of these foreign states at a commercial disadvantage.⁵² The clause is designed

“to establish the principle of equality of international treatment. The test of whether the principle is violated by the concession of advantages to a particular nation is not the form in which such concession is made, but the condition on which it is granted; whether it is given for a price, or whether this price is in the nature of a substantial equivalent, and not a mere evasion.”⁵³

Treaties “are legally binding, because there exists a customary rule of International Law that treaties are binding. The binding effect of that rule rests in the last resort on the fundamental assumption, which is neither consensual nor necessarily legal, of the

⁵¹ DOUGLAS W. KMIIEC, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, 12 OPINIONS OF THE OFFICE OF LEGAL COUNSEL 238, 252 (1988).

⁵² 46 U.S.C. §883-1.

⁵³ BLACK’S LAW DICTIONARY 1013 (6th ed. 1990).

objectively binding force of International Law,”⁵⁴ states Oppenheim. “No distinction should be made between more or less important parts of a treaty as regards its execution. Whatever may be the importance or the insignificance of a part of a treaty, it must be executed in good faith, for the binding force of a treaty covers all its parts and stipulations equally.”⁵⁵

STATE OF HAWAI‘I UNDER INTERNATIONAL LAW

While the State of Hawai‘i cannot claim to be a government *de jure* or *de facto*, customary international law defines the organization as an Armed Force for the occupying state. Military manuals define Armed Forces as “organized armed groups which are under a command responsible to that party for the conduct of its subordinates.”⁵⁶ According to Henckaerts and Doswald-Beck, “this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,”⁵⁷ and that this “definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status.”⁵⁸ Article 1 of the 1907 Hague Convention, IV, provides that

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

The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier’s military or an occupier’s Armed Force, such as the State of Hawai‘i, and that the “occupation extends only to the territory where such authority has been established and can be exercised.”⁵⁹ According to Ferraro, “occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts.”⁶⁰ Although unlawful, it is a fact that the United States created the State of Hawai‘i through congressional action and signed into law by its President, Dwight D. Eisenhower, in 1959. It is also a fact that the United States approved the constitution of the State of Hawai‘i that provides for its organizational structure.

⁵⁴ See OPPENHEIM, at 794.

⁵⁵ *Id.*, 829.

⁵⁶ JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, vol. I, 14 (2009).

⁵⁷ *Id.*, at 15.

⁵⁸ *Id.*

⁵⁹ 1907 Hague Convention, IV, Article 42.

⁶⁰ TRISTAN FERRARO, *Determining the beginning and end of an occupation under international humanitarian law*, 94 (no. 885) INT’L REV RED CROSS 133, 134 (Spring 2012).

As an Armed Force, the State of Hawai'i established its authority over 137 islands,⁶¹ “together with their appurtenant reefs and territorial and archipelagic waters.”⁶² These islands include the major islands of Hawai'i, Maui, O'ahu, Kaua'i, Molokai, Lana'i, Ni'ihau, and Kaho'olawe. It is the effectiveness of the control exercised by the State of Hawai'i over this territory, as an Armed Force for the United States, which triggers the application of occupation law.

Allegiance to the United States

The State of Hawai'i, as an Armed Force, bears its allegiance to the United States where its public officers, to include its Governor, take the following oath of office: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as [...] to best of my ability.”⁶³

Commanded by a Person Responsible for His Subordinates

A Governor who is elected by U.S. citizens in Hawai'i is head of the State of Hawai'i. The Governor is responsible for the execution of its laws from its legislature and to carry out the decisions by its courts. The Governor is also the “commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion.”⁶⁴ The Governor's subordinates include all “executive and administrative offices, departments and instrumentalities of the state government.”⁶⁵

Fixed Distinctive Emblem Recognizable at a Distance

According to its constitution, “The Hawaiian flag shall be the flag of the State.”⁶⁶

Carry Arms Openly

Law enforcement officers of the State of Hawai'i, to include the Sheriff's Division, Department of Land and Natural Resources, and the police of the State's four Counties, all openly carry arms. Also included are the State of Hawai'i's Army National Guard and Air National Guard who openly carry arms while in tactical training.

⁶¹ “Hawai'i Facts and Figures” (December 2014), State of Hawai'i Department of Business, Economic Development & Tourism.

⁶² State of Hawai'i Constitution, Article XV, section 1, available at <http://lrbhawaii.org/con/>.

⁶³ *Id.*, Article XVI, sec. 4.

⁶⁴ *Id.*, Article V, sec. 5.

⁶⁵ *Id.*, sec. 6.

⁶⁶ *Id.*, Article XV, sec. 3.

Conduct Operations in Accordance with the Laws and Customs of War

As the Governor is the commander in chief of the State's Armed Forces, and is responsible for the suppression or prevention of insurrection or lawless violence, as well as repelling an invasion, the State of Hawai'i is capable of conducting operations in accordance with the laws and customs of war during occupation.

ACTING GOVERNMENT OF THE HAWAIIAN KINGDOM

In 1996, remedial steps were taken under the doctrine of necessity to reinstate the Hawaiian Kingdom government as it was under our late Queen Lili'uokalani on January 17, 1893.⁶⁷ An *acting* Council of Regency was established in accordance with the Hawaiian Constitution and the doctrine of necessity to serve in the absence of the executive monarch. By virtue of this process an *acting* Government comprised of *de facto* officers was established and has since received diplomatic recognition.⁶⁸

From 1999-2001, the *acting* Government represented the Hawaiian Kingdom in international arbitration proceedings, *Larsen vs. Hawaiian Kingdom*, at the Permanent Court of Arbitration (PCA), The Hague, Netherlands.⁶⁹ In its commentary on international decisions in the *American Journal of International Law*, Bederman and Hilbert state,

“At the center of the PCA proceeding was the argument that Hawaiians never directly relinquished to the United States their claim of inherent sovereignty either as a people or over their national lands, and accordingly that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' ‘unlawful imposition [over him] of [its] municipal laws’ through its political subdivision, the State of Hawaii. As a result of this responsibility,

⁶⁷ David Keanu Sai, *Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*, 25-51 (August 4, 2013), available at http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf. Appendix I.

⁶⁸ *Id.*, at 40-48. On April 3, 2014, the Directorate of International Law, Swiss Federal Department of Foreign Affairs, in Bern, accepted the *acting* Government's letter of credence for its Envoy whose mission was to initiate negotiations with the Swiss Confederation to serve as a Protecting Power in accordance with the 1949 Geneva Convention, IV. The negotiations are ongoing.

⁶⁹ The author served as lead agent for the *acting* Government in these arbitral proceedings. For law-reviewed articles on the Hawaiian arbitration, see BEDERMAN & HILBERT, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai'i*, 95 AM. J. INT'L L. 927, 928 (2001); see also DAVID KEANU SAI, *American Occupation of the Hawaiian State: A Century Unchecked*, 1 HAW. J. L. & POL. 46 (Summer 2004); and PATRICK DUMBERRY, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law*, 2(1) CHINESE J. INT'L L. 655, 682 (2002).

Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States committed against him.”⁷⁰

After oral hearings were held at the Permanent Court of Arbitration on December 7, 8 and 11, the *acting* Government was called to a meeting in Brussels, Belgium, by His Excellency Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium. Ambassador Bihozagara was at the International Court of Justice where he was made aware of the Hawaiian Kingdom arbitration. At this meeting in Brussels on December 12, Ambassador Bihozagara conveyed to the *acting* Government that his government was prepared to bring to the attention of the United Nations General Assembly the prolonged occupation of the Hawaiian Kingdom.

“Recalling his country’s experience of genocide and the length of time it took for the international community to finally intervene as a matter of international law, Ambassador Bihozagara conveyed to the author that the illegal and prolonged occupation of Hawai‘i was unacceptable and should not be allowed to continue. Despite the excitement of the offer, apprehension soon took hold and the acting government could not, in good conscience, accept the offer and put Rwanda in a position of reintroducing Hawai‘i’s State continuity before the United Nations, when Hawai‘i’s community, itself, remained ignorant of Hawai‘i’s profound legal position. The author thanked Ambassador Bihozagara for his government’s offer, but the timing was premature. The author conveyed to the ambassador that the gracious offer could not be accepted without placing Rwanda in a vulnerable position of possible political retaliation by the United States, but that the acting government should instead focus its attention on continued exposure of the occupation both at the national and international levels.”⁷¹

What faced the *acting* Government was the prolonged nature of the occupation, together with the United States violation of the laws and customs of war during occupation, its devastating effect on Hawai‘i’s political economy, and the violation of international humanitarian law. The exigency of the situation is what prompted the *acting* Government to exercise its legislative authority as a matter of necessity. On October 10, 2014, the *acting* Council of Regency decreed, by Proclamation, provisional laws for the Kingdom, subject to ratification by the Legislative Assembly when called into session, in order to provide for the proper legal foundation for the administration of Hawaiian Kingdom laws in compliance with the law and customs of war during occupation. The Proclamation decreed,

“that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international

⁷⁰ See BEDERMAN & HILBERT, at 928.

⁷¹ See SAI, *Slippery Path*, at 131.

humanitarian law, and if it be the case they shall be regarded as invalid and void.”⁷²

The Proclamation also called upon

“all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, to obey promptly and fully, in letter and in spirit, such proclamations, rules, regulations and orders, as the military government may issue during the present military occupation of the Hawaiian Kingdom so long as these proclamations, rules, regulations and orders are in compliance with the laws and provisional laws of the Hawaiian Kingdom, the international laws of occupation and international humanitarian law.”⁷³

Although, Hawaiian law prohibits the enactment of retrospective laws,⁷⁴ the doctrine of necessity would allow for it in extraordinary circumstances. Necessity is where the “power of a Head of State under a written Constitution extends by implication to executive acts, and also legislative acts taken temporarily (that is, until confirmed, varied or disallowed by the lawful Legislature) to preserve or restore the Constitution, even though the Constitution itself contains no express warrant for them.”⁷⁵ Deviations from a State’s constitutional order “can be justified on grounds of necessity,”⁷⁶ states de Smith. “State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution.”⁷⁷ Lord Pearce also states that there are certain limitations to the principle of necessity,

“namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful...Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign.”⁷⁸

According to Sassòli, “The expression ‘laws in force in the country’ in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders, provided that the ‘norms’ in question are general and abstract.”⁷⁹ The Proclamation is a part of the “laws in force in the country”

⁷² Proclamation (October 10, 2014), available at http://hawaiiakingdom.org/pdf/Proc_Provisional_Laws.pdf. Appendix II.

⁷³ *Id.*

⁷⁴ Hawaiian Kingdom Constitution (1864), Article 16—“No Retrospective Laws shall ever be enacted;” see also Hawaiian Kingdom Civil Code, §5—“No law shall have any retrospective operation.”

⁷⁵ F.M. BROOKEFIELD, *The Fiji Revolutions of 1987*, NEW ZEALAND L. J. 250, 251 (July 1988).

⁷⁶ STANLEY A. DE SMITH, *CONSTITUTIONAL AND ADMINISTRATIVE LAW* 80 (1986).

⁷⁷ *Id.*

⁷⁸ *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969).

⁷⁹ Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, 6 (Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law, Cambridge, June 25-27, 2004).

as a “decree” of the *acting* Government that must be administered in accordance with Article 43.

At an evidentiary hearing held on March 5, 2015, where the Court received the author as an expert in international law, the Court took judicial notice of the brief titled, “*The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom.*”⁸⁰ According to the State of Hawai‘i Rules of Evidence, Rule 201(b)(2), a “judicially noticed fact must be one not subject to reasonable dispute in that it is...capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” When the trial court took judicial notice of the brief it not only recognized the continuity of the Hawaiian Kingdom to be true, but it also recognized the establishment of the *acting* government to be true. The State of Hawai‘i cannot claim otherwise, unless it can show that the evidentiary hearing was unfair and did not allow the Prosecutor to object to the judicial notice, which was not the case.

DENATIONALIZATION THROUGH AMERICANIZATION

In 1906 began the intentional and methodical plan of *Americanization* intended to not only conceal the violation of Hawai‘i’s sovereignty and the international law of occupation, but to obliterate the national consciousness of the Hawaiian Kingdom in the minds of the children who were attending the public and private schools throughout the islands. This program was developed by the Territory of Hawai‘i’s Department of Public Instruction and called “Programme for Patriotic Exercises in the Public Schools.” The purpose of the program was to inculcate American patriotism in the minds of the children and forced them to speak English and not Hawaiian.

According to the Programme, “The teacher will call one of the pupils to come forward and stand at one side of the desk while the teacher stands at the other. The pupil shall hold an American flag in military style. At second signal all children shall rise, stand erect and salute the flag, concluding with the salutation, ‘We give our heads and our hearts to God and our Country! One Country! One Language! One flag!’”⁸¹ In 1907, Harper’s Weekly magazine covered the *Americanization* taking place at Ka‘ahumanu and Ka‘iulani Public Schools.⁸² Below is a photo taken by the reporter of Harper’s Weekly at Ka‘iulani Public School.

⁸⁰ Transcript of Proceedings, State of Hawai‘i vs. Kaiula Kalawe English, criminal no. 14-1-0819, State of Hawai‘i vs. Robin Wainuhea Dudoit, criminal no. 14-1-0820, Circuit Court of the Second Circuit, State of Hawai‘i (Mar. 5, 2015), available at http://hawaiiankingdom.org/pdf/Transcript_Molokai_hearing.pdf. Appendix III.

⁸¹ Territory of Hawai‘i, Programme for Patriotic Exercises (1906), 4, available at <http://ia600604.us.archive.org/17/items/programmeforpatr00hawa/programmeforpatr00hawa.pdf>. Appendix IV.

⁸² William Inglis, *Hawaii’s Lesson to Headstrong California*, HARPER’S WEEKLY, Feb. 16, 1907, at 228.



Under customary international law, *Americanization* is a war crime of attempting to denationalize the inhabitants of an occupied territory. Germans and Italians were prosecuted for the same war crime after World War II for implementing a systematic plan of *Germanization* and *Italianization* in occupied territories. According to the Nuremberg Indictment of Nazis,

"In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported de jure annexation and enforced conscription into the German Armed Forces. This was carried out in most of the occupied countries including: Norway, France, Luxembourg, the Soviet Union, Denmark, Belgium, and Holland."⁸³

Since the Programme began, *Americanization* had become so pervasive and institutionalized throughout Hawai'i, that the national consciousness of the Hawaiian Kingdom was nearly obliterated, but for the institutional recovery of the Hawaiian language and the resurrection of diligent historical research that has begun to uncover the true status of the Hawaiian Kingdom as an independent state under an illegal and prolonged occupation. This revelation is reconnecting Hawai'i to the international community and its treaty partners regarding the violations of rights and war crimes committed against the citizens and subjects of foreign states who have visited, resided or have done business in the Hawaiian Islands.

⁸³ Nuremberg Trial Proceedings, Indictment, Count 3, Article VIII (J), available at <http://avalon.law.yale.edu/imt/count3.asp>.

WAR CRIMES COMMITTED WITH IMPUNITY

Since the 1949 Geneva Conventions, the expression “armed conflict” substituted the term “war” in order for the Conventions to apply “to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance (Common Article 2).” According to the International Committee of the Red Cross (ICRC) Commentary of Geneva Convention, IV, this wording of Article 2 “was based on the experience of the Second World War, which saw territories occupied without hostilities, the Government of the occupied country considering that armed resistance was useless. In such cases the interests of protected persons are, of course, just as deserving of protection as when the occupation is carried out by force.”⁸⁴

Casey-Maslen, editor of the War Report, states an international armed conflict exists “whenever one state uses any form of armed force against another, irrespective of whether the latter state fights back,” which “includes the situation in which one state invades another and occupies it, even if there is no armed resistance.”⁸⁵ The ICRC Commentary further clarifies that “Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to the human person as such is not measured by the number of victims.”⁸⁶

The International Criminal Court defines war crimes as “serious violations of the laws and customs applicable in international armed conflict.”⁸⁷ United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in armed conflicts that involve United States troops, to be “the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime.”⁸⁸ War crimes include deliberate acts as well as omissions, which the latter includes the failure to administer the laws of the occupied state (Article 43, 1907 Hague Convention, IV) and failure to provide a fair and regular trial (Article 147, Geneva Convention, IV).

International case law indicates that there must be a mental element of intent for the prosecution of war crimes, whereby war crimes must be committed willfully, either intentionally—*dolus directus*, or recklessly—*dolus eventualis*. According to Article 30(1) of the Rome Statute, the defendant is “criminally responsible and liable for punishment...only if the material elements [of the war crime] are committed with intent and knowledge.” Therefore, in order to prosecute there must be a mental element that includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that “a person has intent where: (a) In relation to conduct,

⁸⁴ JEAN S. PICTET, COMMENTARY ON THE IV GENEVA CONVENTION, RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 21 (1958).

⁸⁵ STUART CASEY-MASLEN, WAR REPORT 2012 7 (2013).

⁸⁶ See PICTET, at 20.

⁸⁷ International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).

⁸⁸ U.S. Army Field Manual 27-10, sec. 499 (July 1956).

that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.” Furthermore, the International Criminal Court’s *Elements of a War Crime*, states that there is no requirement for a legal evaluation to be done by the perpetrator.⁸⁹

Is there a particular time or event that could serve as a definitive point of knowledge for purposes of prosecution? In other words, where can there be “awareness that a circumstance exists or a consequence will occur in the ordinary course of events” stemming from the illegality of the overthrow of the Hawaiian Kingdom government on January 17, 1893? For the United States government that definitive point would be December 18, 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian Kingdom government and called the landing of U.S. troops an act of war. For the private sector, however, it is the opinion of the author of this report, that the United States’ 1993 apology for the illegal overthrow of the Hawaiian Kingdom government, would serve as that definitive point of knowledge for those who are not in the service of government. In the form of a Congressional joint resolution enacted into United States law, the law specifically states that the Congress “on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai‘i on January 17, 1893 acknowledges the historical significance of this event.”⁹⁰ Additionally, the Congress also urged “the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai‘i.”⁹¹

Despite the mistake of facts and law riddled throughout the apology resolution, it nevertheless serves as a specific point of knowledge and the ramifications that stem from that knowledge. Evidence that the United States knew of the ramifications was clearly displayed in the apology law’s disclaimer, “Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.”⁹² It is a presumption that everyone knows the law, which stems from the legal maxim *ignorantia legis neminem excusat* (ignorance of the law excuses no one). Unlike the United States government, being a public body, the State of Hawai‘i government cannot claim to be a government at all, and therefore is merely a private organization. Therefore, awareness and knowledge for members of the State of Hawai‘i would have begun with the enactment of the Apology resolution in 1993.

In *State of Hawai‘i v. Lorenzo* (1994),⁹³ the State of Hawai‘i Intermediate Court of Appeals considered an appeal by a defendant that argued the courts in the State of Hawai‘i have no jurisdiction as a direct result of the illegal overthrow of the government of the Hawaiian Kingdom. The basis of the appeal stemmed from the lower court’s ruling, “Although the Court respects Defendant’s freedom of thought and expression to believe that jurisdiction over the Defendant for the criminal offenses in the instant case should be

⁸⁹ See ICC Elements of a War Crime, Article 8.

⁹⁰ See Apology Resolution, at 1513.

⁹¹ *Id.*

⁹² *Id.*, at 1514.

⁹³ *State of Hawai‘i v. Lorenzo*, 77 Haw. 219 (1994).

with a sovereign, Native Hawaiian entity, like the Kingdom of Hawaii, such an entity does not preempt nor preclude jurisdiction of this court over the above-entitled matter.”⁹⁴ After acknowledging that the “United States Government recently recognized the illegality of the overthrow of the Kingdom and the role of the United States in that event,”⁹⁵ the appellate court denied the appeal.

The appellate court reasoned, the “essence of the lower court’s decision is that even if, as Lorenzo contends, the 1893 overthrow of the Kingdom was illegal, that would not affect the court’s jurisdiction in this case.”⁹⁶ The Court, however, admitted its “rationale is open to question in light of international law.”⁹⁷ The Court also admitted, “The illegal overthrow leaves open the question whether the present governance should be recognized.”⁹⁸ Although the courts of the State of Hawai‘i are not properly constituted, because it is an Armed Force and not a government, this clearly confirms awareness by the State of Hawai‘i.

In light of both the lower and appellate courts’ ignorance of international law and the presumption of continuity of an established state despite the illegal overthrow of its government, it clearly presents a case of applying the wrong law. According to the International Criminal Court’s elements of crimes, there “is no requirement for a legal evaluation by the perpetrator,” but “only a requirement of awareness.”⁹⁹ The *Lorenzo case* has become the seminal case used to quash all claims by defendants that the courts in the State of Hawai‘i are not properly constituted. There can be no doubt that the decisions made by each of the judges confronted with this defense has ruled against the defendants with full awareness since the Apology resolution in 1993 and the *Lorenzo case* in 1994.

War crimes that have and continue to be committed in the Hawaiian Islands include, but are not limited to: *pillaging* (Article 47, Hague Convention, IV, and Article 33, Geneva Convention, IV); *destroying public property belonging to the occupied State* (Article 55, Hague Convention, IV, and Article 147 Geneva Convention, IV); *denationalization in the public schools* (Article 56, Hague Convention, IV); *extensive appropriation of property, not justified by military necessity and carried out unlawfully and wantonly* (Article 147, Geneva Convention, IV); *depriving individuals of a fair and regular trial* (Article 147, Geneva Convention, IV); and *unlawful deportation or transfer or unlawful confinement* (Article 147, Geneva Convention, IV).

This is a human rights crisis of unimaginable proportions. Here follows some of the most serious war crimes that will have a paralyzing effect on the State of Hawai‘i as an Armed Force.

⁹⁴ *Id.*, at 220.

⁹⁵ *Id.*, at 221.

⁹⁶ *Id.*, at 220.

⁹⁷ *Id.*, at 220-221.

⁹⁸ *Id.*, at 221, n. 2.

⁹⁹ See ICC Elements of Crimes, Article 8 – Introduction.

War Crime—Pillaging through Taxation

Articles 46-54 of Hague Convention, IV, contain the rules governing the treatment of both personal and real property belonging to inhabitants of the occupied territory. Under Article 47, “pillage is formally forbidden.” In light of the “absolute character of the rule and of its obvious purpose to prevent plundering by any individual, the rule of the article would seem to extend to plundering by any national of the occupant, and generally any person subject to its local jurisdiction, including inhabitants as well as civilian officials of the occupant.”¹⁰⁰ The State of Hawai‘i’s officials and members, being the occupant state’s Armed Force and not a Military Government, must not plunder for the private use and purpose of maintaining the organization.

The State of Hawai‘i is an Armed Force comprised of private individuals under the guise of being a *de jure* government. Consequently, the compulsory collection of what it calls taxes, is in fact not taxes at all, but rather revenues derived through pillaging. Pillage or plunder is “the forcible taking of private property,”¹⁰¹ which, according to the Elements of Crimes of the International Criminal Court, must be seized “for private or personal use.”¹⁰² As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.¹⁰³

Currently the State of Hawai‘i, to include the Counties, derives their revenues through the collection of 14 taxes by the State of Hawai‘i (income tax, estate and transfer tax, general excise tax, transient accommodation tax, use tax, public service company tax, banks and other financial corporations franchise tax, fuel tax, liquor tax, cigarette and tobacco tax, conveyance tax, rental motor vehicle and tour vehicle surcharge tax, unemployment insurance tax, and insurance premiums tax), and 3 taxes by the Counties (real property tax, motor vehicle weight tax, and public utility franchise tax). The State of Hawai‘i’s primary revenue is the general excise tax, followed by the individual income tax. In 2014, the State of Hawai‘i and the Counties collected \$6.58 billion in taxes. Of all the war crimes, pillaging through taxation has not only affected the inhabitants of the islands, but also the international community that have traveled through the islands or have been engaged in commercial activities in the islands.

The authority to levy taxes is a fiscal and property right of an independent and sovereign state. Taxes constitute a portion of the property of the State and consist of obligatory contributions, which the States is authorized to levy upon individuals and corporations in order to provide necessary services of the State. The state’s government freely exercises this right as long as it is in conformity with its public law. The public law of the Hawaiian Kingdom provides a list of obligatory contributions, which along with taxes,¹⁰⁴

¹⁰⁰ ERNST H. FEILCHENFELD, THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION 30 (1958).

¹⁰¹ See BLACK’S LAW, at 1148.

¹⁰² Elements of Crimes, International Criminal Court, Pillage as a war crime (ICC Statute, Article 8(2)(b)(xvi) and (e)(v)).

¹⁰³ See HENCKAERTS AND DOSWALD-BECK, at 185.

¹⁰⁴ See Hawaiian Civil Code, at 117-136.

includes customs and duties on foreign trade,¹⁰⁵ health insurance for visiting tourists,¹⁰⁶ land sales,¹⁰⁷ and bonds.¹⁰⁸ Since January 17, 1893, there has been no government, but rather Armed Forces established by the United States—the Provisional Government (1893-1894), Republic of Hawai'i (1894-1900), Territory of Hawai'i (1900-1959) and currently the State of Hawai'i (1959-present). As these entities were neither governments *de facto* nor *de jure*, their collection of tax revenues were not for the benefit of a *bona fide* government in the exercise of its police power.

Unlike the State of Hawai'i, which is an Armed Force, the United States is a *de jure* government, but its exercising of authority in the Hawaiian Islands in violation of international laws is unlawful. Therefore, the United States cannot be construed to have committed the act of pillaging since it is a legitimate government, but has appropriated private property through unlawful contributions, *e.g.* federal taxation, which is regulated by Article 48, 1907 Hague Convention, IV. The subsequent Article (49) provides, “If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.” The United States collection of federal taxes from the residents of the Hawaiian Islands is an unlawful contribution that is exacted for the sole purpose of supporting the United States federal government and not for “the needs of the army or of the administration of the territory.”

War Crime—Omission of Administering Hawaiian Laws

The willful omission to administer Hawaiian law as mandated under Article 43, Hague Convention, IV, has placed Hawai'i's political economy into peril. In particular, all commercial entities registered to do business in the Hawaiian Islands, since January 17, 1893, which includes sole proprietorships, general partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, corporations, s corporations, and limited liability companies, are illegal. Their legal basis stems from pretended governments, and not the Hawaiian Kingdom. Foreign commercial entities doing business in Hawai'i are also illegal because “Every corporation or incorporated company formed or organized under the laws of any foreign State, which may be desirous of carrying on business in this Kingdom and to take, hold and convey real estate therein, shall [register with] the office of the Minister of the Interior.”¹⁰⁹

Furthermore, all real estate transactions, *e.g.* deeds, leases or mortgages, since January 17, 1893 were not capable of being conveyed because the notaries public and the registrars of conveyances were self-declared and therefore unlawful. Hawaiian law requires that all conveyances be registered in the Bureau of Conveyances. “To entitle any conveyance, or other instrument to be recorded, it shall be acknowledged by the party or parties

¹⁰⁵ *Id.*, at 137-150.

¹⁰⁶ *Id.*, at 666.

¹⁰⁷ *Id.*, at 10.

¹⁰⁸ *Id.*, at 523, 565, 582, 599, 609, 627, 681.

¹⁰⁹ An Act Relating to Corporations and Incorporated Companies Organized under the Laws of Foreign Countries and Carrying on Business in this Kingdom (1880).

executing the same, before the Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public of this Kingdom, or before some minister, commissioner or consul of the Hawaiian Islands, or some notary public or judge of a court of record in any foreign country.”¹¹⁰ This has not only rendered all conveyances of real estate defective, but has also voided all mortgages, which serve as security instruments for loans.

A deed not properly notarized and recorded in the government registry is a covered risk in title insurance policies. Title insurance is a “policy issued by a title company after searching the title, representing the state of that title and insuring the accuracy of the title search against claims of title defects.”¹¹¹ There are two policies of title insurance; a lender’s policies that cover the lender’s debt due to the invalidity of the mortgage loan, and an owner’s policies that cover the value of the owner’s property at the time the policies were purchased. Title insurance policies are predominantly sold in the United States.

As mortgage loans have been unsecured since 1893, this has a dramatic and devastating effect today on the investment rating and net value of mortgaged-backed securities that comprise mortgage loans from Hawai‘i. Mortgage-backed securities are pools of mortgage loans purchased from mortgage lenders by U.S. Government sponsored enterprises, such as Fannie Mae or Freddie Mac, or private institutions, who then sells claims to the monthly payments to investors in the form of securities called *tranches* (slices). The investor banks can also reshape these *tranches* into other securities called collateralized-debt-obligations. Mortgage-backed securities issued by Fannie Mae and Freddie Mac are given the highest investment rating of AAA and are the most actively traded commodity in the U.S. bond market.

Coupled with the fact that mortgage lenders are illegally doing business in Hawai‘i and borrowers have title insurance to pay off their debt, this revelation not only has the capacity of throwing the title insurance industry spiraling into bankruptcy, but will void stocks owned by shareholders of Hawai‘i mortgage lenders listed on the stock markets of NASDAQ, NYSE, and AMEX, such as Bank of Hawai‘i. This is not limited to Hawai‘i mortgage lenders listed on the stock markets, but all Hawai‘i businesses listed, such as Hawaiian Electric Industries. Business entities created under State of Hawai‘i law would simply vanish. Furthermore, title insurance companies could target the State of Hawai‘i for reimbursement under subrogation. This has the capacity of bringing the United States economy, which would include Hawai‘i, to the brink of financial disaster.

War Crime – Unfair Trials and Pillaging

All judicial and administrative courts in the Hawaiian Islands are not properly constituted under the laws of the Hawaiian Kingdom, nor are they properly constituted as courts of a Military Government. As such, these courts cannot provide a fair trial and therefore

¹¹⁰ See Hawaiian Civil Code, at §1255.

¹¹¹ See BLACK’S LAW, at 806.

decisions and judgments are extra-judicial. Since 2011, defendants in over 100 civil cases, whose homes were being foreclosed in Circuit Courts of the State of Hawai'i or being evicted as a result of non-judicial foreclosures in the district courts of the State of Hawai'i, were challenging the subject matter jurisdiction of these courts based upon evidence that the Hawaiian Kingdom, as an independent and sovereign state, continues to exist. As such, the controlling law for jurisdictions of any and all courts, whether judicial or administrative, within the territory of the Hawaiian Kingdom is Hawaiian law and not United States law.

As an occupied State, Hawaiian Kingdom law is the controlling law. In every case, the judges systematically and summarily denied the motions to dismiss without providing any rebuttable evidence that the courts are properly constituted, and homes were pillaged. The war crimes of unfair trial and pillaging also occurred in light of the fact that the mortgage lenders were provided evidence by those being foreclosed of defects in their titles and the invalidity of the mortgage instruments, but the mortgage lenders refused to file title insurance claims. What is more abhorrent and criminal is that borrowers were required to purchase lender's policies of title insurance for the protection of the mortgage lenders as a condition of the mortgage loan should the mortgage become void as a result of a defect in title.

Common Article 3 of the 1949 Geneva Conventions prohibits "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Article 43 of the Hague Convention, IV, mandates the occupying State "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." According to United States Justice Kennedy, in *Hamdan v. Rumsfeld*, there was no need to determine whether or not defendants received a fair trial by the military commissions in Guantanamo Bay because they were not properly constituted in the first place. Justice Kennedy reasoned that the fairness of a trial is a moot point since the Court already found that "the military commissions...fail to be regularly constituted under Common Article 3."¹¹²

As an Armed Force of the United States, the State of Hawai'i is a pretended government. All decisions and judgments made by State of Hawai'i judicial and administrative courts are extrajudicial done "outside the course of regular judicial proceedings."¹¹³ And where individuals have been sentenced to prison, they have the status of prisoners of war and protection afforded under the 1949 Geneva Convention, III. Summary judgments stem from "willfully depriving a prisoner of war of the rights of fair and regular trial." which is a war crime under Article 130.

¹¹² *Hamdan v. Rumsfeld*, 548 U.S. 557, 655 (2006).

¹¹³ See BLACK'S LAW, at 586.

RISK OF DELAY

It is impossible for the State of Hawai'i to maintain its existence in light of the ascending knowledge of Hawai'i's legal status as an independent state under an illegal and prolonged occupation. The foundation of the existence of the State of Hawai'i is directly traced to the provisional government, which was illegally established through intervention by the U.S. diplomat with the assistance of U.S. troops in 1893. In similar fashion through intervention, the U.S. Congress illegally established the State of Hawai'i in 1959 in direct violation of its mandate to administer the laws of the Hawaiian Kingdom. This omission by the United States is not only a war crime, but has consequently placed every official and employee of the State of Hawai'i into a position of criminal liability as war crimes have and continue to be committed on a colossal scale. In the latest edition of the War Report, 2013, Hawai'i's occupation is noted under the category of international armed conflicts. Casey-Maslen states, "Other belligerent occupations that have been alleged include the occupation by the UK of the Falkland Islands/Malvinas (Argentina claims this as sovereign territory), of Tibet by China, and of the state of Hawaii by the USA."¹¹⁴ Hawai'i would not be noted here unless there is an evidential basis.

On April 28, 2015, a judgment by the Swiss Federal Criminal Court's Objections Chamber specifically named the former CEO of Deutsche Bank, Josef Ackermann, former State of Hawai'i Governor, Neil Abercrombie, current Lieutenant Governor, Shan Tsutsui, former Director of Taxation, Frederik Pablo, and former Deputy Director of Taxation, Joshua Wisch, as alleged war criminals.¹¹⁵ The Swiss Federal Criminal Court is addressing war crime complaints filed with the Swiss Attorney General by a Hawaiian national who is alleging that Deutsche Bank pillaged his home as a direct result of an unfair trial in a State of Hawai'i court;¹¹⁶ and by a Swiss citizen alleging that the State of Hawai'i pillaged his private property through taxation.¹¹⁷

Switzerland is a civil-law state, as opposed to a common-law state like the United States and the United Kingdom. Under the Swiss criminal procedure, judges have the capacity to conduct criminal investigations as an investigative magistrate, along with the prosecutor and the police. The Objections Chamber of the Federal Criminal Court oversees investigative magistrates, prosecutors and police if a person objects to their

¹¹⁴ See CASEY-MASLEN, at 28.

¹¹⁵ Kale Kepekaio Gumapac, et al. v. Office of Federal Attorney General, BB 2015.36+37 (April 28, 2015), original in German *available at* [http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_\(redacted\).pdf](http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_(redacted).pdf), translation into English *available at* [http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_\(redacted\).pdf](http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_(redacted).pdf).

Appendix V.

¹¹⁶ War Crimes Report, Dec. 7, 2014, *available at* http://hawaiiankingdom.org/pdf/Swiss_AG_War_Crimes_Report.pdf. See also Gumapac's Amended War Crimes Complaint, Jan. 22, 2015, *available at* http://hawaiiankingdom.org/pdf/Gumapac_Amended_Complaint_1_22_15.pdf.

¹¹⁷ Unnamed Swiss citizen's War Crime Complaint, Jan. 21, 2015, *available at* [http://hawaiiankingdom.org/pdf/Swiss_Complaint_\(redacted\).pdf](http://hawaiiankingdom.org/pdf/Swiss_Complaint_(redacted).pdf).

decisions in a criminal investigation. The Federal Criminal Court's April 28 judgment addressed an objection by a Hawaiian and a Swiss national who were both objecting to the Attorney General's decision to terminate the criminal investigation. The Prosecutor decided not to pursue an indictment because it took the position that Hawai'i was annexed by a congressional joint resolution.¹¹⁸ In its decision, however, the Court appears to not have been convinced that Hawai'i was annexed by a domestic law of the United States, and began to state the relevant facts and allegations of the case that read like an indictment. Instead of concluding with charges, the Court stated it was prevented from moving forward because the filing of the objection did not meet the time line of ten days.¹¹⁹

In the civil-law tradition, a Prosecutor will need to present written charges—an indictment, to a court for confirmation. According to O'Connor, "the indictment will describe the acts committed by the suspect, and outline the applicable law and the evidence upon which the accusation rests."¹²⁰ This is similar to the contents of an indictment you would find in the common-law system. In a common-law indictment, "the prosecutor must present sufficient evidence to establish the identity of the accused, and probable cause to arrest him or her. However, the 'requirement of sufficient evidence to establish [these two facts] is considerably less exacting than a requirement of sufficient evidence to warrant a guilty finding.'"¹²¹ It is clear that the Swiss Court, in its statement, named the accused and provided probable cause. Probable cause is defined as an "apparent state of facts found to exist upon reasonable intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime."¹²²

What the judgment does not reference is that on April 9, a day after the Court received the objection by FedEx, a directive from the President of the Objections Chamber was sent to the Prosecutor. The directive stated, "In the matter mentioned above, a complaint against your decision not to engage of February 15, 2015 has been received at the Federal Criminal Court. You are requested to furnish the Federal Criminal Court right away with the records established in the abovementioned matter (including documents of receipt) with an index of the records."¹²³ The Court's recital of facts came from the record of the Prosecutor's investigation and not from the victims, which the Court clearly noted after citing the facts of the case by stating in parenthesis (case files, box section 3+act. 1.1). In

¹¹⁸ Swiss Prosecutor's Report on War Crimes in Hawai'i, dated February 3, 2015 (English translation), available at http://hawaiiakingdom.org/pdf/Prosec_Rep_2_3_15_Eng_redacted.pdf.

¹¹⁹ The objection was sent off from Honolulu by FedEx on April 1, one day prior to the close of the ten-day period, but it did not reach the Objections Chamber until April 8. Under Swiss procedure, the Courts can only accept deliveries of private couriers, *i.e.* FedEx, on the date it was delivered and not the date sent as it would if it was sent via the Swiss postal service or a diplomatic representative in a foreign country. The Swiss Federal Criminal Court Objections Chamber, in its decision, cited A & B., Ltd. vs. Office of the Federal Attorney General, reference no. BB.2012.155-156 (October 31, 2012), as the basis for its rationale.

¹²⁰ DR. VIVIENNE O'CONNOR, *Practitioner's Guide: Common Law and Civil Law Traditions*, INPROL 26 (March 2012), available at <http://www2.fjc.gov/sites/default/files/2015/Common%20and%20Civil%20Law%20Traditions.pdf>.

¹²¹ *Commonwealth v. Caracciola*, 409 Mass. 648, 650 (1991).

¹²² See BLACK'S LAW, at 1201.

¹²³ Directive from President of Objections Chamber to Prosecutor, April 9, 2015, available at http://hawaiiakingdom.org/pdf/FCC_Ltr_4_9_15_redacted.pdf.

other words, the Prosecutor was prepared to pursue written charges, but decided not to because the United States claimed it annexed Hawai'i by legislation.

The purpose of criminal investigations is to collect facts that aim to identify and locate the guilty parties and to provide evidence of their guilt.¹²⁴ It is important to keep in mind that the time line is a procedural matter and that it did not diminish the facts of the case. A simple remedy would be to re-file a second complaint with the Attorney General and cite the evidence that is already in the possession of the Prosecutor. Here follows the English translation from German of the Court's decision.

“The Objections Chamber states:

-that on December 22, 2014 the former [diplomat], introduced a report by David Keanu Sai (henceforth “Sai”) of December 7, 2014 to the Office of the Federal Attorney General, which stated that war crimes had been committed in Hawaii;

-that according to this report, Sai suspects the US-American authorities of committing war crimes and pillaging by way of the unlawful levying of taxes, since all locally established authorities are said to be unconstitutional according to Hawaiian Kingdom law;

-that by way of a letter dated January 21, 2015, [Unnamed Swiss citizen] (henceforth “[the Swiss citizen]”) and his representative Sai made a criminal complaint with the Office of the Federal Attorney General, stating that [the Swiss] was a victim of a war crime according to Art. 115 StPO, because during the years 2006-2007 and 2011-2013, he had paid taxes to US-American authorities in Hawaii without justification, and that [the Swiss citizen], in addition, is the victim of fraud, committed by the State of Hawaii, because together with his wife he wanted to acquire a real estate property, which however on the basis of the lacking legitimacy of the official authorities of Hawaii to transfer the property title, was not possible, for which reason the governor of the State of Hawaii Neil Abercrombie (henceforth “Abercrombie”), Lieutenant Shan Tsutsui (henceforth “Tsutsui”), the director of the Department of Taxation Frederik Pablo (henceforth “Pablo”) and his deputy Joshua Wisch (henceforth “Wisch”) are to be held criminally accountable for the pillaging of [the Swiss citizens's] private property and for fraud;

-that, in addition, by way of a letter dated January 22, 2015, Sai, in the name of Kale Kepekaio Gumapac (henceforth “Gumapac”) contacted the office of the Federal Attorney General and requested that criminal proceedings against Josef Ackermann (henceforth “Ackermann”), the former CEO of Deutsche Bank National Trust Company (henceforth “Deutsche Bank”) be opened and in this connection invoked rights deriving from Art. 1 of the friendship treaty between the Swiss Confederation and the then Hawaiian Kingdom of July 20, 1864, which has not been cancelled; that this complaint arose from a civil dispute between Gumapac and Deutsche Bank; that Gumapac was the owner of a property on Hawaii and a mortgagee of Deutsche Bank; that however the title of property, due to the illegal annexation of the Kingdom of Hawaii, was null and void, since

¹²⁴ CHARLES E. O'HARA, FUNDAMENTALS OF CRIMINAL INVESTIGATION 5 (2nd ed. 1970).

the local US-American notaries were not empowered to transfer title; that Deutsche Bank did not recognize this fact and that it had foreclosed on Gumapac's house to cover the mortgage debt, instead of claiming its rights stemming from a "title insurance;" that the bank therefore pillaged Gumapac's house according to the international laws of war (case files, box section 3 and 5);

-that the office of the Federal Attorney General on February 3, 2015 decreed a decision of non-acceptance of the criminal complaints and civil suits against Ackermann, Abercrombie, Tsutsui, Pablo and Wisch on account of war crimes allegedly committed in Hawaii between 2006 and 2013 (case files, box section 3 + act. 1.1);

-that Gumapac and [the Swiss citizen] introduced, in opposition to this, an objection on March 31, 2015 to the Objections Chamber of the Federal Criminal Court and accordingly requested the cancellation of the decision of non-acceptance, and the carrying out of the criminal proceedings against the defendants indicated by them (act. 1)."¹²⁵

The recital of these facts and the naming of State of Hawai'i officials, as alleged war criminals, should be alarming to the State of Hawai'i. If Hawai'i were a part of the United States there would be no grounds for the allegation of war crimes; and the naming of State of Hawai'i officials, being government officials of the United States, would be a direct act of intervention in the internal affairs of the United States on the part of Switzerland, and consequently a violation of the 1850 U.S.-Swiss treaty¹²⁶ and international law. Additionally, the naming of the CEO of Deutsche Bank should also be alarming to other lending institutions, *e.g.* First Hawaiian Bank, who have also committed war crimes of pillaging through unlawful foreclosures.

Furthermore, the Swiss Court also acknowledged that the 1864 treaty between the Hawaiian Kingdom and Switzerland was not cancelled. This is a significant concession because since a treaty is the highest source of international law, it is also an agreement between two or more sovereign states. This is another indication that the Court does not recognize Hawai'i as part of the United States, because if it were annexed under international law, the Swiss treaty would have become void. All "treaties concluded between two States become void through the extinction of one of the contracting parties."¹²⁷ According to Hyde, "When a state relinquishes its life as such through incorporation into, or absorption by, another state, the treaties of the former are believed to be automatically terminated."¹²⁸ Therefore, by acknowledging that the Hawaiian-Swiss treaty was not canceled is tantamount to acknowledging the continuity of the Hawaiian Kingdom as a state and treaty partner.

¹²⁵ See Gumapac, et al. v. Office of Federal Attorney General, English translation.

¹²⁶ 11 U.S. Stat. 587; Treaty Series 353.

¹²⁷ See OPPENHEIM, at 851.

¹²⁸ Charles Cheney Hyde, *The Termination of the Treaties of a State in Consequence of its Absorption by Another—The Position of the United States*, 26 AM. J. INT'L L. 133 (1932).

Along with the Swiss proceedings, a war crime complaint has also been filed with the Canadian authorities alleging destruction of property on Mauna Kea by the construction of telescopes.¹²⁹ Additional complaints are planned to be filed with the authorities of other countries, all of which have similar war crime statutes as the Swiss. Prior to the Swiss proceedings, complaints against State of Hawai'i judges and mortgage lenders were also filed with the Prosecutor of the International Criminal Court in The Hague, Netherlands.¹³⁰ Countries that have similar war crime statutes as Switzerland are also state parties to the Rome Statute of the International Criminal Court, which provides that primary responsibilities for the prosecution for war crimes are with the member states, while the International Criminal Court has complimentary jurisdiction.¹³¹ The International Criminal Court will prosecute if states are unwilling or unable to prosecute themselves.

Compliance with the law of occupation and the administration of Hawaiian Kingdom law will remedy the blatant violations of international law and the large-scale commission of war crimes that would appear to be part of a systematic plan or policy, whether by chance or design. As the State of Hawai'i is the product of an unlawful act, it cannot claim any powers or rights as a government—*ex injuria jus non oritur* (illegal acts cannot create law). It is an Armed Force, whose actions are limited by the laws and customs of war on land. The fact that the State of Hawai'i has acted as if it were a government is why it is in the dire situation it is in now. The remedy for the State of Hawai'i is to be a legitimate government, and the only legitimate government during occupations is a Military Government.

REMEDIAL PRESCRIPTION

In decision theory, a negative-sum game is where everyone loses. Any decision from a loss can only have the effect of a loss—a lose-lose situation. The State of Hawai'i is presently operating from a position of no lawful authority, and everything that it has done or that it will do is unlawful. There can be no fruit from a poisonous tree. The rapidly growing knowledge and awareness of the prolonged occupation of Hawai'i has the effect of causing the State of Hawai'i to speedily descend and crash. The State of Hawai'i has found itself in a mammoth negative-sum game. In order to stave off the inevitable, the *acting* Government and the State of Hawai'i must cooperate so that positive-sums are realized. The laws and customs of war during occupation provide the legal basis for the State of Hawai'i to realize positive-sums, which the *acting* Government has been adhering to since its inception in 1996.

¹²⁹ KITV News, *TMT protesters in Canada file formal war crime*, available at

<http://www.kitv.com/news/tmt-protesters-in-canada-file-formal-war-crimes/33066402>.

¹³⁰ Hawaiian Kingdom Blog, *International Criminal Court to Consider Alleged War Crimes Committed by State of Hawai'i Officials, Judges, Banks and Attorneys*, available at

<http://hawaiiankingdom.org/blog/international-criminal-court-to-consider-alleged-war-crimes-committed-by-state-of-hawaii-officials-judges-banks-and-attorneys/>.

¹³¹ Rome Statute, International Criminal Court, preamble, “the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions.”

Critical to the administration of Hawaiian law is the establishment of Military Government, which is “defined as the supreme authority exercised by an armed occupying force over the lands, properties, and inhabitants of an enemy, allied, or domestic territory.”¹³² The establishment of a Military Government is not limited to the U.S. military, but to any Armed Force that is in effective control of occupied territory. U.S. Army Field Manual FM 27-5 provides that an “armed force in territory other than that of [of the occupied state] has the duty of establishing CA/MG [civil affairs/military government] when the government of such territory is absent or unable to function properly.”¹³³ What distinguishes the U.S. military stationed in the Hawaiian Islands from the State of Hawai'i in light of the laws and customs of war during occupation, is that the State of Hawai'i, as an Armed Force, is in effective control of the majority of Hawaiian territory. U.S. military sites number 118 that span 230,929 acres of the Hawaiian Islands, which is 20% of the total acreage of Hawaiian territory.¹³⁴

As an Armed Force whose allegiance is to the occupier, the State of Hawai'i has no choice but to establish itself as a Military Government, which is allowable under the laws and customs of war during occupation. To do so, would prevent the collapse of the State of Hawai'i that would no doubt lead to an economic catastrophe with devastating effect on the U.S. market and the global economy. Military Government is empowered under the laws and customs of war during occupation to provisionally serve as the administrator of the “laws in force in the country,” which includes the “decree” of the *acting* Government in accordance with Article 43. Without the decree of the *acting* Government all commercial entities created by the State of Hawai'i, e.g. corporations and partnerships, and all conveyances of real estate would simply evaporate. Therefore, it is crucial for the Military Government to work in tandem with the *acting* Government to ensure the lawfulness of its actions for not only the present, but also for the future maintenance of Hawai'i's economy.

The proclamation for the establishment of a Military Government would be done in like fashion to the declaration of martial law for the Hawaiian Islands from December 7, 1941 to April 4, 1943. Governor Joseph Poindexter and Lieutenant General Walter Short relied on section 67 of the 1900 Territorial Act (48 U.S.C. §532) as the basis to declare martial law under a Military Government headed by General Short as the Military Governor, being appointed by Poindexter.¹³⁵ The Proclamation, however, required the prior approval

¹³² United States Army and Navy Manual of Civil Affairs Military Government, Army Field Manual FM 27-5, Navy Manual OPNAV P22-1115, 2-3 (October 1947), available at http://www.loc.gov/rr/frd/Military_Law/pdf/FM-27-5-1947.pdf. Appendix VI.

¹³³ *Id.*, at 4.

¹³⁴ See U.S. Department of Defense's Base Structure Report (2012), available at <http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf>.

¹³⁵ §67. Enforcement of law — That the governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, or summon the posse comitatus, or call out the militia of the Territory to prevent or suppress lawless violence, invasion, insurrection, or rebellion in said Territory, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory, or any part thereof, under martial law until communication can be had with the President and his decision thereon made known.

of President Franklin D. Roosevelt, since the Governor of the Territory of Hawai'i was a Presidential appointment. When the Armed Force was transformed from Territory to the State of Hawai'i in 1959, section 67 was superseded by Article V, section 5 of the State of Hawai'i Constitution, which gives the Governor full and complete authorization to declare martial law without the prior approval of the President. Section 5 provides, "The governor shall be commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion."

The fundamental difference between Martial Law and Military Government is that the former is instituted within domestic territory when the military supersedes the civil authority on the grounds of self-preservation during a foreign invasion, while the latter is instituted in foreign territory when the occupied state's government ceases to operate as a result of an armed conflict. Military Government "derives its authority from the customs of war, and not the municipal law."¹³⁶ Its functions, however, are the same except for the venue.

"Military government is exercised when an armed force has occupied such territory, whether by force or agreement, and has substituted its authority for that of the sovereign or previous government. The right of control passes to the occupying force limited only by the rules of international law and established customs of war."¹³⁷

There is no question as to the authority of the Governor to declare the establishment of a Military Government, but there will be questions as to the authority of the individual himself if he is an alleged war criminal. Unlike former Governor Abercrombie, Governor David Ige is not currently under criminal investigation for war crimes. The filing of the second complaint with the Swiss authorities is pending, which does explicitly name Governor Ige, the new Director of Taxation, Maria E. Zielinski, and Deputy Director, Joseph K. Kim. Another complaint for pillaging is also pending to be filed by a New Zealand citizen with the New Zealand Ministry of Justice in Wellington, which has a similar war crime statute as Switzerland. Before establishing a Military Government, Governor Ige has to ensure that he is not the subject of a criminal investigation, which would violate the clean hands doctrine. He cannot be perceived as acting in bad faith. In order to do just he must be just.

In order to transform the State of Hawai'i into a Military Government, the Governor will need to decree, by Proclamation, the establishment of Military Government in accordance with section 28 of FM 27-5. Central to the proclamation is the administration of Hawaiian Kingdom law in accordance with Article 43 to include the decree of the *acting* Government of October 10, 2014. Additionally, the proclamation will also decree that all State of Hawai'i judicial and executive officers and employees remain in operation with the exception of the legislative bodies to include the Legislature and County Councils. This reasoning is because "since supreme legislative power is vested in the military

¹³⁶ WILLIAM E. BIRKHIMER, *MILITARY GOVERNMENT AND MARTIAL LAW* 53 (3rd ed. 1914).

¹³⁷ See FM 27-5, at 3.

governor, existing legislative bodies will usually be suspended.”¹³⁸ The Military Government will have to conform to the laws and customs of war during occupation, international humanitarian law, and FM 27-5—*United States Army and Navy Manual of Civil Affairs Military Government*.

The Proclamation, however, would not have the effect of absolving criminal responsibility by State of Hawai'i officials for war crimes, but it will mitigate them. The commission of war crimes prior to the Proclamation can be dealt with through restitution and reparations made to the victims. After the Proclamation, however, the Military Government has the duty to prevent and to prosecute war crimes under the laws and customs of war during occupation.

CONCLUSION

The root cause for putting the State of Hawai'i into this dire situation is the deliberate and intentional failure of the United States to establish a Military Government to administer the laws of the Hawaiian Kingdom in accordance with Article 43. The United States' creation and maintenance of Armed Forces since 1893, which included the Provisional Government (1893-1894), Republic of Hawai'i (1894-1900), Territory of Hawai'i (1900-1959), and presently the State of Hawai'i, has worsened the situation today and placed Hawai'i, and its residents, in a position of catastrophic proportions. Thus, this is a race against time. If the second war crimes complaint is filed with the Swiss authorities to reinstate the prosecution of war crimes committed by members of the State of Hawai'i then the world-at-large will naturally conclude what is already been stated in this report.

In this report, the author has laid out the overarching themes that warrant and compel the State of Hawai'i to transform itself into a Military Government, not only its own survival, but for the survival of Hawai'i. The first Armed Force created by the United States in 1893 was comprised of insurgents who set a course to commit the high crime of treason for self-gain and greed. The current Armed Force, the State of Hawai'i, however, is not comprised of insurgents, but rather people of Hawai'i who were led to believe, through *Americanization*, that they are an incorporated territory of the United States and that the State of Hawai'i is a *bona fide* government.

We are at a stage where no one can deny the true history of this country. People are becoming aware of their rights and the right to hold people accountable for the violation of these rights. These human rights cannot be dismissed without incurring criminal liability. The Governor of the State of Hawai'i has no choice but to establish a Military Government and begin to comply with the laws and customs of war during occupation. It is not only his duty, but it is his moral obligation to the people of Hawai'i.

¹³⁸ See FM 27-5, at 11.