Exhibit “1”

Washington
Office of the Secretary of State
Invalid if Removed

UNITED STATES OF AMERICA

The State of Washington

Secretary of State

APOSTILLE

(Convention de la Haye du 5 Octobre 1961)

1. Country: **United States of America**
2. This public document has been signed by: JESSICA A HEDLIN
3. acting in the capacity of: Notary Public, state of Washington
4. bears the seal/stamp of: JESSICA A HEDLIN

CERTIFIED

5. at: Olympia, Washington
6. the: 10 day of December, 2014
7. by: Kim Wyman, Secretary of State
8. No: 201419971
9. Seal/Stamp:

10. Signature:

Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

Kim Wyman, Secretary of State

LIMITED POWER OF ATTORNEY

Know now all men by these presents that I, KALE KEPEKAIO GUMAPAC, the undersigned, do hereby make, constitute, and appoint DAVID KEANU SAI, Ph.D. my true and lawful attorney in fact for me and in my name, place, and stead, on my behalf, and for my use and benefit and for the specific purpose hereinafter described.

To represent me in connection with the allegations of war crimes committed against me in the Hawaiian Islands. This Limited Power of Attorney includes, in particular, representation before the Office of the Attorney General of Switzerland as well as all Swiss administrative, judicial and criminal authorities for the investigation and prosecution of war crimes.

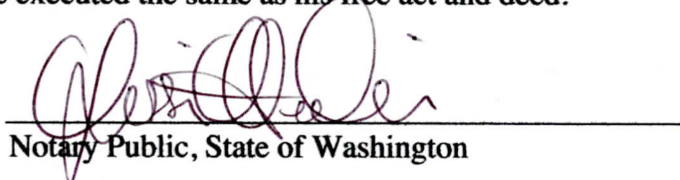
I grant to said attorney in fact full power and authority to do, take and perform all and every act and things whatsoever requisite, proper, or necessary to be done, in the exercise of any of the rights and powers herein granted about the specific and limited purpose, as fully to all intent and purposes as I might or could do if personally present, with full power of substitution of revocation, hereby ratify and confirming all that said attorney in fact, of his substitutes, shall lawfully do or cause to be done by virtue of this power of attorney and rights and powers herein granted.

Witness my hand this 10th day of December, 2014.

KALE KEPEKAIO GUMAPAC

State of Washington)
) ss.
Pierce County)

On this 10th day of December, 2014, before me personally appeared KALE KEPEKAIO GUMAPAC, to be known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.



Notary Public, State of Washington

My Commission Expires: 11/01/2016

JESSICA A. HEDLIN
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
11-01-16

Exhibit “2”

ALTA Loan Policy (6-17-06) as modified by TIRBOP (4-1-07)

LOAN POLICY OF TITLE INSURANCE
ISSUED BY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
   (a) A defect in the Title caused by
      (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
      (ii) failure of any person or Entity to have authorized a transfer or conveyance;
      (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
      (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
      (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
      (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
      (vii) a defective judicial or administrative proceeding.
   (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (a) the occupancy, use, or enjoyment of the Land;
   (b) the character, dimensions, or location of any improvement erected on the Land;
   (c) the subdivision of land; or
   (d) environmental protection

Countersigned:

Senior Chairman of the Board

____
Authorized Countersignature

____
Company Name

Chairman of the Board

____
City, State

President

File No.:

 Serial No.: M-5441-___________

If you want information about coverage or need assistance to resolve complaints, please call our toll free number: 1-800-729-1902. If you make a claim under your policy, you must furnish written notice in accordance with Section 3 of the Conditions. Visit our Word-Wide Web site at http://www.stewart.com

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage:
- (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
- (b) failure of any person or Entity to have authorized a transfer or conveyance;
- (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
- (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
- (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;
- (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
- (g) a defective judicial or administrative proceeding.

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.

11. The lack of priority of the lien of the Insured Mortgage upon the Title
- (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either:
  - (i) contracted for or commenced on or before Date of Policy; or
  - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
- (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.

13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
- (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
- (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
  - i) to be timely, or
  - ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Exclusions from Coverage

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   - (i) the occupancy, use, or enjoyment of the Land;
   - (ii) the character, dimensions, or location of any improvement erected on the Land;
   - (iii) the subdivision of land; or
   - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   - (c) resulting in no loss or damage to the Insured Claimant;
   - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
   - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is:
   - (a) a fraudulent conveyance or fraudulent transfer, or
   - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of

- i) the amount of the principal disbursed as of Date of Policy;
- ii) the amount of the principal disbursed subsequent to Date of Policy;
- iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;
- iv) interest on the loan;
- v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;
- vi) the expenses of foreclosure and any other costs of enforcement;
- vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
- viii) the amounts to pay taxes and insurance; and
- ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) "Insured": The Insured named in Schedule A.

- (i) The term "Insured" also includes
  - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;
  - (B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
  - (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
  - (D) successors to an Insured by its conversion to another kind of Entity;
  - (E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
    - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
    - (2) if the grantee wholly owns the named Insured, or
    - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;
  - (F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;
- (ii) With regard to (A), (B), (C), (D) , and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

(f) "Insured Claimant": An Insured claiming loss or damage.

(g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.

(h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(l) "Title": The estate or interest described in Schedule A.

(m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,

(ii) the Indebtedness,

(iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or

(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) n the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

11. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) The Company's Right to Recover.

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Insured's Rights and Limitations.

(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(c) The Company's Rights Against Noninsured Obligors

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

13. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is $2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of $2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

CONDITIONS – Continued

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

15. SEVERABILITY.

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

16. CHOICE OF LAW; FORUM.

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

17. NOTICES, WHERE SENT.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Claims Department at P.O. Box 2029, Houston, TX 77252-2029.

Stewart Title Guaranty Company

SCHEDULE A

Order No.: **25050126** Policy No.: **M-9994-8370850**

Liability: **$290,000.00** Premium Amount.: **$1,050.00**

Date of Policy: **December 19, 2005 at 8:02 a. m.**

1. Name of Insured:

   ARGENT MORTGAGE COMPANY, LLC, a Limited Liability Company, organized and existing under the laws Delaware

2. The estate or interest referred to herein is at Date of Policy vested in:

   KALE KEPEKAIO GUMAPAC and **DIANNE DEE GUMAPAC,** husband and wife, as Tenants by the Entirety

3. The estate or interest in the land described in Schedule "C" and which is encumbered by the insured mortgage is:

   FEE SIMPLE ESTATE

4. The mortgage, herein referred to as the insured mortgage, and the assignments thereof, if any, are described as follows:

   MORTGAGE

Mortgagor:	Kale Kepekaio Gumapac and Dianne Dee Gumapac, husband and wife, as Tenants by the Entirety
Mortgagee:	Argent Mortgage Company, LLC, a Limited Liability Company, organized and existing under the laws Delaware
Dated:	December 12, 2005
Recorded:	December 19, 2005
Document No.	3368985
To Secure:	$290,000.00

5. The land referred to in this policy is described as follows:

SEE SCHEDULE C ATTACHED HERETO

Exhibit "3"

Kale Gumapac

HC2 BOX 9607
Kea'au, HI 96749
Phone: 808-896-7420
E-Mail: kgumapac@gmail.com

November 22, 2011

Deutsche Bank National Trust Company
C/O American Home Mortgage Servicing, Inc., 6591 Irvine Center Drive, Mail-Stop DA-AM
Irvine, CA 92618

To Whom It May Concern:

When my former wife, Dianne Dee Gumapac, and I mortgaged our property at 15-1716 Second Ave., Keaau, HI 96749, to Argent Mortgage Company, LLC, whom I borrowed $290,000.00, we were required by Argent Mortgage Company, LLC, as a condition of the loan, to go to escrow, being Title Guaranty of Hawai`i, Inc., to purchase a loan policy in the amount of $290,000.00 for the benefit of Argent Mortgage Company, LLC, should there be defect in title. According to the loan policy we purchased from escrow, we paid a premium of $1,050.00 for a loan policy dated December 19, 2005 with Argent Mortgage Company, LLC, as the named insured, which I'm attaching as Exhibit "1." My wife and I have since divorced and I am the owner of the property as a tenant in severalty.

According to Black's Law Dictionary, 6th ed., 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 its search against claims of title defects**." It is an indemnity contract that does not guarantee the state of the title but covers loss incurred from a defect in land titles that would arise from an inaccurate title report. The loan title insurance policy, which we purchased from Title Guaranty and which I've attached as Exhibit "2," states:

> SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured [the Lender] by reason of:
>
> 1. Title being vested other than as stated in Schedule A.
>
> 2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
>
>   a. A defect in the Title caused by
>
>   i. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
>
>   ii. failure of any person or Entity to have authorized a transfer or conveyance;
>
>   iii. a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, **notarized**, or delivered;

iv. failure to perform those acts necessary to create a document by electronic means authorized by law;

v. a document executed under a falsified, expired, or otherwise invalid power of attorney;

vi. a **<u>document not properly filed, recorded, or indexed in the Public Records</u>** including failure to perform those acts by electronic means authorized by law; or

vii. a defective judicial or administrative proceeding.

On January 21, 2011, my company Laulima Title Search and Claims, LLC, formerly Hawaiian Alliance, LLC, investigated the status of my fee-simple title that was acquired from Linda Vivian Little and Alice Evelyn Little, on April 17, 2002, under document no. 2895104, on certificate no. 505,052, issuance of certificate no. 637,651 in the Hawaiʻi Bureau of Conveyances. Laulima provides claims packages to be filed with title insurance companies under a lender's and owner's policy.

Laullima investigation identified defects in my fee-simple title that should have been disclosed in the title report done by Title Guaranty of Hawai`i, Inc., which I paid for and which also formed the basis of the lender's title insurance policy I purchased. Laulima's processor's report is based on the expert memorandum of Dr. Keanu Sai, who has a Ph.D. in political science specializing in international relations and public law. The executive agreements cited by Dr. Sai in Laulima's package was also the topic of Dr. Sai's doctoral dissertation and law journal article published by the University of San Francisco School of Law's *Journal of Law and Social Challenges*, vol. 10 (Fall 2008). Both dissertation and law journal article can be downloaded from Dr. Sai's University of Hawai`i website at www2.hawaii.edu/~anu/publications, as well as other publications by Dr. Sai. Attached as Exhibit "3" is the report of Laulima. The report summarized the defect by stating:

> "This claim involves a defect of title by virtue of an executive agreement entered into between President Grover Cleveland of the United States and Queen Lili`uokalani of the Hawaiian Kingdom, whereby the President and his successors in office were and continue to be bound to faithfully execute Hawaiian Kingdom law by assignment of the Queen under threat of war on January 17th 1893. The notaries public in the Hawaiian Islands and the registrar of the Bureau of Conveyances were not lawful since January 17th 1893, and therefore title to the estate in fee-simple described as Lot 2787, area 1.00 acre, more or less, Block 7, as shown on Map 58 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawai`i with Land Court Application no. 1053 (amended) of W.H. Shipman, Limited, under document no. 2895104 & certificate no. 505052, filed with the Registrar of the Bureau of Conveyances on February 24th 2003, is vested other than Kale Kepekaio Gumapac and Dianne Dee Gumapac, now divorced, because the aforementioned deed of conveyance was not lawfully executed in compliance with Hawaiian Kingdom law."

The defective notary and registrar of the Hawaiʻi Bureau of Conveyances are covered risks under section 2(a)(iii) and 2(a)(vi) of the lender's title insurance policy I purchased for Deutsche Bank National Trust Company, as the assignee of Argent Mortgage Company, LLC. Your lawfirm that you hired, RCO Hawaiʻi, LLLC, foreclosed on my property under the power of sale and on February 9, 2011, filed a complaint for ejectment in the District Court of the Third Circuit, Puna Division. On April 29, 2011, a Motion to Dismiss was filed by my former wife Dianne Dee Gumapac, and after the motion was heard the complaint for ejectment and foreclosure was dismissed because there is exists a title dispute. Attached as

Exhibit "4" is the court order and transcript. On October 3, 2011, RCO filed a motion for relief from the judgment, and after the hearing, RCO's motion was denied because the issue is a title dispute.

This letter is giving notice of the defect in title and for Deutsche Bank National Trust Company to file an insurance claim with Stewart Title Guaranty Company. Deutsche Bank National Trust Company is being notified pursuant to section 3 of the title insurance policy that specifically states:

> "The Insured shall notify the Company promptly in writing…in case Knowledge shall come to an insured of any claim of title or interest that is adverse to the Title or the lien of the insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy… If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice."

As the person who purchased the lender's policy for the benefit of Deutsche Bank National Trust Company, I am the one who contracted the title insurance company to protect their interest, not by choice, but rather as a condition of the loan. Hawai'i is a lien theory state, which means that I'm still the owner of the property and that Deutsche Bank National Trust Company only has a lien on my property. As a result of the defect in title, this has affected my claim to "legal" title, but I do maintain "equitable" title because I did pay valuable consideration to Linda Vivian Little and Alice Evelyn Little, on April 17, 2002, as aforementioned, as well as maintaining "actual possession."

If I have a defect in "legal" title, the mortgage lien is not enforceable and therefore invalid. To protect the lender in case of this type of situation, I was required by the original lender, Argent Mortgage Company, LLC, to purchase a loan title insurance policy in escrow or I wouldn't get the loan. The policy covered the amount I borrowed, which was $290,000.00. When Deutsche Bank National Trust Company purchased the loan it also included the title insurance policy I purchased for the protection of Argent Mortgage Company, LLC. If there is a defect in title, which is a covered risk under the lender's policy, it pays off the balance of the loan owed to Deutsche Bank National Trust Company, being the assignee of Argent Mortgage Company, LLC. Under Section 5 of "Defense and Prosecution of Actions," the lender's policy states:

> 5(b). The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured.

This letter is sent to Deutsche Bank National Trust Company, assignee of Argent Mortgage Company, LLC, pursuant to section 5, 15 and 20 of the "Uniform Covenants" in the aforementioned mortgage agreement (security instrument).

> 5. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender.
>
> 15. All notices given by a Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail.

> 20. Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to the Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action.

Therefore, any judicial action taken by Deutsche Bank National Trust Company without first addressing the notice and taking corrective action pursuant to the "Uniform Covenants" of the mortgage agreement by filing a title insurance claim under the Lender's title insurance policy I purchased for the protection of the same is a direct violation and breach and I reserve the right to file a lawsuit for damages.

According to *Foehrenbach v. German-American Title & Trust Company*, 217 Pa. 331, 337 (1907), title insurance insures "against defects, unmarketability, liens and incumbrances as of that date. [The insurance company says], you are in our judgment the owner in fee of the entire interest in this property, and we will back our opinion by agreeing to hold you harmless, up to the amount of the policy, in case for any reason our judgment in this respect should prove to be mistaken." And in *Falmouth National Bank v. Ticor Title Insurance Company*, 920 F.2d 1058, 1064 (1990), the Court stated:

> "The title insurance policy…provided that when presented with a claim of an adverse interest to the insured property, the insurer had the option of pursuing a quiet title action without unreasonable delay, or of paying any loss resulting from the defect. Regarding the timing of payment of the loss, the policy contained precisely the same language as Ticor's policy, namely, that 'when liability has been definitely fixed . . . the loss or damage shall be payable within 30 days thereafter.' In a lengthy opinion, the court held that the liability of the insurer was definitely fixed when it refused to take any action to quiet title. Thus, the court held that an offer of payment of the loss was due thirty days thereafter."

Deutsche Bank National Trust Company has provided me no evidence that it has filed the title insurance claim, and that the insurance company has refuted the evidence provided by Laulima Title Search and Claims, LLC, in particular:

1. providing evidence that the 1893 executive agreements entered into between President Grover Cleveland and Queen Liliʻuokalani mandating the President and his successors in office to first administer Hawaiian Kingdom law (*Liliʻuokalani assignment*) and second to restore the Hawaiian Kingdom government and thereafter the Queen to grant amnesty to certain insurgents (*Restoration agreement*) do not exist;

2. providing evidence that the Hawaiian Islands was annexed by a treaty which would have superseded the aforementioned executive agreements;

3. or providing evidence that the U.S. Congress has any constitutional authority to not only annex a foreign state in 1898 by a so-called joint resolution, but also enact legislation creating the so-called Territory of Hawaiʻi in 1900 or the so-called State of Hawaiʻi in 1959, since Congressional laws have no extra-territorial effect.

Therefore, any judicial action taken against me regarding my property after you have been notified of the defect constitutes a breach of contract under the "Uniform Covenants" and liable to a lawsuit for damages. And please don't give me your "unqualified opinion" regarding Laulima's title

report, because the insurance policy I was required to purchase to protect Argent Mortgage Company, LLC, and their assigns, insured the accuracy of Title Guaranty's title report and not any other individual or company's opinion, who would by definition be a third party to the contract. Because if your opinion would suffice, then why was I required to purchase the insurance policy in the first place.

THIS LETTER WILL BE USED AS EVIDENCE OF A BREACH OF CONTRACT LAWSUIT IF YOU FAIL TO FILE THE TITLE INSURANCE CLAIM UNDER THE LENDER'S TITLE INSURANCE POLICY.

Sincerely,

Kale Gumapac

cc: RCO Hawaiʻi, LLLC
900 Fort Street Mall, Suite 800
Honolulu, HI 9681

Exhibit “4”

Bundesstrafgericht

Tribunal pénal fédéral

Tribunale penale federale

Tribunal penal federal

Geschäftsnummer: BB.2015.36+37

Beschluss vom 28. April 2015
Beschwerdekammer

Besetzung	Bundesstrafrichter Stephan Blättler, Vorsitz, Andreas J. Keller und Cornelia Cova, Gerichtsschreiberin Chantal Blättler Grivet Fojaja
Parteien	**1. Kale Kepekaio GUMAPAC,** 15-1939, 20th Avenue, HI 96749, US-Kea'au **2.** [redacted] beide vertreten durch David Keanu Sai, HI 96805-2194, US-Honolulu, Zustelladresse: c/o [redacted] Beschwerdeführer 1+2 **gegen** **BUNDESANWALTSCHAFT,** Taubenstrasse 16, 3003 Bern, Beschwerdegegnerin
Gegenstand	Nichtanhandnahmeverfügung (Art. 310 i.V.m. Art. 322 Abs. 2 StPO)

Die Beschwerdekammer hält fest, dass:

- am 22. Dezember 2014 [redacted], mit einem Bericht von David Keanu Sai (nachfolgend "Sai") vom 7. Dezember 2014 an die Bundesanwaltschaft gelangte und geltend machte, auf Hawaii seien Kriegsverbrechen begangen worden;

- gemäss diesem Bericht Sai die US-amerikanischen Behörden der Begehung des Kriegsverbrechens und der Plünderung durch ungerechtfertigte Erhebung von Steuern verdächtigt, da sämtliche vor Ort errichteten Behörden nach dem Recht des Hawaiischen Königreichs verfassungswidrig seien;

- mit Schreiben vom 21. Januar 2015 [redacted] (nachfolgend [redacted]) und dessen Vertreter Sai Strafanzeige bei der Bundesanwaltschaft erhoben und geltend machten, [redacted] sei Geschädigter eines Kriegsverbrechens im Sinne von Art. 115 StPO, weil er in den Jahren 2006-2007 und 2011-2013 ungerechtfertigterweise Steuerabgaben an die US-amerikanischen Behörden auf Hawaii geleistet habe; [redacted] zudem Opfer eines Betrugs, begangen durch den Staat Hawaii, sei, indem er gemeinsam mit seiner Ehefrau eine Immobilie habe erwerben wollen, was aber aufgrund der fehlenden Legitimität der staatlichen Behörden Hawaiis zur Übertragung des Eigentumstitels nicht möglich sei; daher der Gouverneur des Staates von Hawaii, Neil Abercrombie (nachfolgend "Abercrombie"), Leutnant Shan Tsutsui (nachfolgend "Tsutsui"), der Direktor der Steuerbehörde Frederik Pablo (nachfolgend "Pablo") und dessen Stellvertreter Joshua Wisch (nachfolgend "Wisch") wegen Plünderung des privaten Eigentums von [redacted] und wegen Betrugs strafrechtlich zur Verantwortung zu ziehen seien;

- mit Schreiben vom 22. Januar 2015 zudem Sai namens Kale Kepekaio Gumapac (nachfolgend "Gumapac") an die Bundesanwaltschaft gelangte und diese aufforderte, ein Strafverfahren gegen Josef Ackermann (nachfolgend "Ackermann"), ehemaliger Vorsitzender der Deutschen Bank National Trust Company (nachfolgend "Deutsche Bank"), zu eröffnen und dabei Rechte aus Art. 1 des ungekündigten Freundschaftsvertrages zwischen der Schweizerischen Eidgenossenschaft und dem damaligen Hawaiischen König vom 20. Juli 1864 geltend machte; diese Anschuldigung aus einer zivilrechtlichen Streitigkeit zwischen Gumapac und der Deutschen Bank herrühren würde; Gumapac Eigentümer eines Grundstücks auf Hawaii und Hypothekarkreditschuldner der Deutschen Bank gewesen sei; der Eigentumserwerbstitel infolge der illegalen Annexion des Königreichs Hawaii jedoch nichtig sei, da die örtlichen US-amerikanischen Notare gar nicht zur Eigentumsübertragung legitimiert gewesen seien; die Deutsche Bank diesen Umstand

nicht erkannt habe und das Haus Gumapacs zur Deckung der Hypothekarforderung liquidiert hätte, anstatt ihre Rechte aus einer "title insurance" geltend zu machen; die Bank daher das Haus Gumapacs geplündert habe im Sinne des Kriegsvölkerrechts (Verfahrensakten Ordner Lasche 3 und 5);

- die Bundesanwaltschaft am 3. Februar 2015 die Nichtanhandnahme der Strafanzeigen und Privatklagen gegen Ackermann, Abercrombie, Tsutsui, Pablo und Wisch wegen Kriegsverbrechen, angeblich begangen auf Hawaii zwischen 2006 und 2013, verfügte (Verfahrensakten Ordner Lasche 3 = act. 1.1);

- dagegen Gumapac und [redacted] mit Beschwerde vom 31. März 2015 an die Beschwerdekammer des Bundesstrafgerichts gelangten und sinngemäss die Aufhebung der Nichtannahmeverfügung und die Durchführung eines Strafverfahrens gegen die von ihnen Angezeigten verlangen (act. 1).

Die Beschwerdekammer zieht in Erwägung, dass:

- gegen eine Nichtanhandnahmeverfügung der Bundesanwaltschaft die Beschwerde nach den Vorschriften der Art. 393 ff. StPO an die Beschwerdekammer des Bundesstrafgerichts zulässig ist (Art. 310 Abs. 2 i.V.m. Art. 322 Abs. 2 StPO und Art. 37 Abs. 1 StBOG);

- die Beschwerde innert 10 Tagen schriftlich und begründet bei der Beschwerdeinstanz einzureichen ist (Art. 396 Abs. 1 StPO);

- die Beschwerdefrist bei Beschlüssen oder Verfügungen mit deren Zustellung an den Adressaten zu laufen beginnt (Art. 384 lit. b StPO);

- die angefochtene Verfügung am 23. März 2015 an den von den Beschwerdeführern genannten Zustellempfänger zugestellt worden ist (Verfahrensakten Ordner Lasche 3), was von den Beschwerdeführern selbst geltend gemacht wird (act. 1 S. 2);

- die zehntägige Frist zur Beschwerdeerhebung mithin am 2. April 2015 abgelaufen ist;

- die Frist gewahrt ist, wenn die Beschwerde spätestens am letzten Tag der Frist der Beschwerdeinstanz, der Schweizerischen Post, einer schweizerischen diplomatischen oder konsularischen Vertretung oder im Falle von inhaftierten Personen der Anstaltsleitung übergeben worden ist (Art. 91 Abs. 2 StPO);

- bei Benutzung eines privaten Post- oder Kurierdienstes der Zeitpunkt massgebend ist, in dem dieser die Eingabe der Beschwerdeinstanz abgibt (Entscheid des Bundesstrafgerichts BB.2012.155-156 vom 31. Oktober 2012);

- die Zustellung der Beschwerde vorliegend von Honolulu an die Beschwerdekammer mit dem privaten Kurierdienst FedEx erfolgte; diese dem Gericht am 8. April 2015 und somit nach Ablauf der zehntägigen Beschwerdefrist übergeben worden ist (act. 4);

- die Beschwerde daher verspätet eingereicht worden ist, weshalb darauf nicht einzutreten ist;

- aus diesem Grund auf die Durchführung eines Schriftenwechsels verzichtet worden ist (Art. 390 Abs. 2 StPO e contrario);

- bei diesem Ausgang die Beschwerdeführer unter solidarischer Haftung die Gerichtskosten zu tragen haben (Art. 428 Abs. 1 StPO), wobei die Gerichtsgebühr auf Fr. 500.-- festzusetzen ist (Art. 73 StBOG i.V.m. Art. 5 und 8 Abs. 1 BStKR).

Demnach erkennt die Beschwerdekammer:

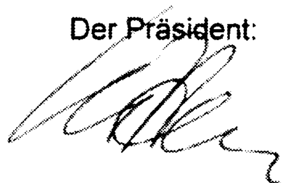
1. Auf die Beschwerde wird nicht eingetreten.

2. Die Gerichtsgebühr von Fr. 500.-- wird den Beschwerdeführern unter solidarischer Haftung auferlegt.

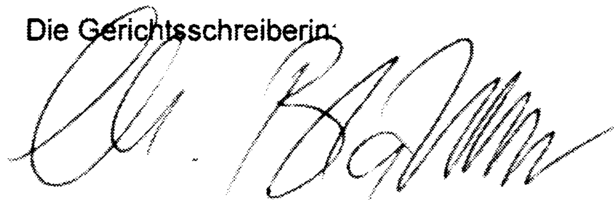
Bellinzona, 28. April 2015

Im Namen der Beschwerdekammer
des Bundesstrafgerichts

Der Präsident:



Die Gerichtsschreiberin:



Zustellung an

- David Keanu Sai, Zustelladresse: c/o [redacted], [redacted] [redacted]
- Bundesanwaltschaft, Andreas Müller, Staatsanwalt des Bundes, Taubenstrasse 16, 3003 Bern (SV.15.01010-MUA)

1 Exemplar:

Tribunale penale federale
28 APR. 2015
VERSAND / EXPEDITION / SPEDIZIONE

Rechtsmittelbelehrung

Gegen diesen Entscheid ist kein ordentliches Rechtsmittel gegeben.

2 Exemplar gemäss Schreiben vom 7.5.2015

Tribunale penale federale
- 7 MAG. 2015
VERSAND / EXPEDITION /

English (Translation)

Federal Criminal Court

Reference number BB 2015.36+37

Decision of April 28, 2015
Objections Chamber

Composition	Federal Criminal Judge Stephan Blättler, Chair, Andreas J. Keller and Cornelia Cova, Court clerk Chantal Blättler Grivet Fojaja
Parties	**1. Kale Kepekaio GUMAPAC**, 15-1939, 20th Avenue, HI 96749, US-Kea'au, **2.** [redacted], Both represented by David Keanu Sai, HI 96805-2194, US-Honolulu, delivery address c/o [redacted] Grand-Lancy Objectors 1+2 **vs.** **OFFICE OF THE FEDERAL ATTORNEY GENERAL**, Taubenstrasse 16, 3003 Berne, Defendant of the Objection
Subject	Decision of Non-Acceptance (Art. 310 in connection with Art 322 par. 2 StPO)

The Objections Chamber states:

- that on December 22, 2014 [redacted] [redacted], 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, [redacted] (henceforth [redacted]) and his representative Sai made a criminal complaint with the Office of the Federal Attorney General, stating that [redacted] 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 [redacted], 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 [redacted]'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 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 [redacted] 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).

The Objections Chamber considers:

- that an objection against a decision of non-acceptance by the office of the Federal Attorney General according to the regulations of Art. 393 ff. StPO to the Objections Chamber of the Federal Criminal Court is admissible (Art. 310 par. 2. in connection with Art. 322. par. 2 StPO and Art. 37 par. 1 StBOG);

- that the objection is to be submitted in writing and by providing cause to the objections authority within 10 days (Art. 396, par. 1, StPO);

- that the deadline of objections in connection with decisions or administrative decrees begins to be counted with their delivery to the addressee (Art. 384 lit. b StPO);

- that the decision objected had been delivered on March 23, 2015 to the addressee named by the objectioners (case files, box section 3), a fact which was mentioned by the objectioners themselves (act. 1 S. 2);

- that the time limit of 10 days to object therefore terminated on April 2, 2015;

- that the time limit is adhered to if the objection is handed at the latest on the last day of the time limit to the objections authority, to the Swiss postal service, to a Swiss diplomatic or consular office, or in case of incarcerated persons, to the administration of the institution (Art. 91 par. 2 StPO);

- that, when a private mail or courier service is used, the relevant moment of time takes place when the submission is delivered to the objections authority (decision of the Federal Criminal Court, BB.2012. 155-156 of October 31, 2012);

- that the delivery of the objection at hand from Honolulu to the Objections Chamber was executed by the private courier service FedEx; that the objection was handed to the court on April 8, 2015, and therefore after the expiration of the ten-day time limit for an objection (act. 4);

- that the objection, therefore, was submitted late, for which reason it is not to be accepted;

- that for this reason the execution of an exchange of correspondence has been declined (Art. 390 par. 2 StPO e contrario);

- that with this decision the objectioners are responsible, in solidarity, for the court costs (Art. 428 par. 1 StPO), whereby the court fee is to be fixed at 500 Francs (Art 73 StBOG in connection with Art. 5 and 8 par. 1 BStKR).

Therefore the Objections Chamber decides:

1. The objection will not be pursued.
2. The court fees of 500 Francs are placed on the objectioners in solidarity.

Bellinzona, April 28, 2015

In the name of the Objections Chamber
of the Federal Criminal Court

The President:	The Court Clerk:
[Signature]	[Signature]

Delivery to

- David Keanu Sai. Delivery address: c/o [redacted], [redacted] [redacted] Grand-Lancy
- Office of the Federal Attorney General, Andreras Müller, Federal Prosecutor, Taubenstrasse 16, 3003 Berne (SV.15.0101-MUA)

Instructions concerning the right to appeal
Against this decision there is no due legal recourse

[rectangular stamp: FEDERAL CRIMINAL COURT
April 28, 2015
FOR DISPATCH]

Exhibit “5”

DR. DAVID KEANU SAI
POLITICAL SCIENTIST
AV. EUGENE LANCE 44, CH-1212 GRAND LANCY/GE • PHONE: +001-808-383-6100 • E-MAIL: KEANU.SAI@GMAIL.COM

August 18, 2015

Andreas Müller
Prosecuting Attorney
Office of the Attorney General
Center of Competence of International Crimes
Taubenstrasse 16
CH-3003 Berne

Re: Re-filing of Complaints under Articles 118 and 119 of the Swiss Criminal Procedure Code arising from war crimes committed in the Hawaiian Islands

Dear Prosecuting Attorney Müller,

As you are well aware, my clients, Mr. Kale Kepekaio Gumapac, a Hawaiian subject, and Mr. [redacted] have attempted to have the Federal Criminal Court Objections Chamber reverse your decision to abandon the criminal investigation against the alleged perpetrators who committed the war crimes of pillaging, unfair trial, and unlawful confinement, but were unable to do so because of a procedural deficiency.

This procedural deficiency has not diminished or absolved, in the least, the criminal liability of these perpetrators of war crimes. My clients have and continue to suffer grave harm through the inaction of the Swiss authorities. According to Switzerland's Basic Military Manual, "Violations of the laws and customs of war must be punished," and Switzerland "is bound to search for and prosecute in its own courts persons who have committed grave breaches of the provisions of the law of nations in time of war."[1] Furthermore, as a contracting party to the 1949 Geneva Convention, IV, Switzerland is obligated under Article 146 "to search for persons alleged to have committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts."

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[1] Switzerland, *Lois et coutumes de la guerre (Extrait et commentaire)*, Règlement 51.7ll f, Armée Suisse, 1987, Article 198.

In its recent decision by the Objections Chamber of June 19, 2015, responding to my clients' application for a new time table because of default, the Court not only confirmed the allegations of the war crimes of pillaging and fraud, but it also acknowledged that the Swiss consulate in the Hawaiian Islands is unlawful. The Court stated, "infolge Abwesenheit einer Schweizerischen Poststelle und/oder einer rechtmässigen konsularischen Vertretung der Schweiz auf den Hawaiischen Inseln die Gesuchsteller zwingend einen privaten Kurierdienst hätten beauftragen müssen, welchem sie die Beschwerde in guten Treuen am 1. April 2015, mithin einen Tag vor Ablauf der Beschwerdefrist, übergeben hätten." The acknowledgment by the Objections Chamber that the Swiss Consulate in the Hawaiian Islands is unlawful undermines your previous position taken in your report dated February 3, 2015, that states, "Die Schweiz unterhält diplomatische Beziehungen zu den USA und sogar ein Konsulat in Honolulu."

It is true that Switzerland maintains diplomatic relations with the United States, but it is limited to the 1850 United States-Swiss Treaty and not the 1864 Hawaiian-Swiss Treaty, which, you admit in your report, has not been cancelled. To admit otherwise is also to admit to violating the Hawaiian-Swiss Treaty and international law. My clients are not asking the Swiss authorities for a reappraisal of the annexation of the Hawaiian Islands as stated in your report, but rather are requesting that the Swiss authorities investigate and prosecute the commission of war crimes as a matter of international law. The fact that the Swiss authorities did not know that the Hawaiian Kingdom had been under an illegal and prolonged occupation should speak to the egregious nature of the serious violation of international law by the United States and the effect of the fraud and denationalization that occurred in the Hawaiian Islands since the occupation began.

As you have correctly concluded in your report of February 3, 2015, and which the Objection Chamber affirmed in both its decisions of April 28, 2015 and June 19, 2015, the 1864 Hawaiian-Swiss Treaty was not cancelled. Your report stated, "Am 22. Januar 2015 bekräftigte Kale Kepekaio GUMAPAC schriftlich die Vorwürfe gegen Joseph ACKERMANN und machte zudem Rechte aus Art. 1 des ungekündigten Freundschaftsvertrags zwischen der Schweizerischen Eidgenossenschaft und dem damaligen Hawaiischen Konig vom 20. Juli 1864 geltend."

The Objections Chamber affirmed the allegations of pillaging by Deutsche Bank who refused to use its title insurance that was purchased by my client, Mr. Gumapac, as a condition of his loan should their be a defect in title in order to cover his debt owed,[2] as well as acknowledging that the Hawaiian-Swiss Treaty was not cancelled and that Hawai'i was illegally annexed. The Court stated in its June 30, 2015 decision, "mit

[2] David Keanu Sai, *War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands*, para. 15.8-15.10 (Dec. 7, 2014).

Schreiben vom 22. Januar 2015 zudem Sai namens Kale Kepekaio Gumapac (nachfolgend 'Gumapac', 'Beschwerdeführer' oder 'Gesuchsteller') an die Bundesanwaltschaft gelangte und diese aufforderte, ein Strafverfahren gegen Josef Ackermann (nachfolgend 'Ackermann'), ehemaliger Vorsitzender der Deutschen Bank National Trust Company (nachfolgend 'Deutsche Bank'), zu eröffnen und dabei Rechte aus Art. 1 des ungekündigten Freundschaftsvertrages zwischen der Schweizerischen Eidgenossenschaft und dem damaligen Hawaiischen König vom 20. Juli 1864 geltend machte; diese Anschuldigung aus einer zivilrechtlichen Streitigkeit zwischen Gumapac und der Deutschen Bank herrühren würde; Gumapac Eigentümer eines Grundstücks auf Hawaii und Hypothekarkreditschuldner der Deutschen Bank gewesen sei; der Eigentumserwerbstitel infolge der illegalen Annexion des Königreichs Hawaii jedoch nichtig sei, da die örtlichen US-amerikanischen Notare gar nicht zur Eigentumsubertragung legitimiert gewesen seien; die Deutsche Bank diesen Umstand nicht erkannt habe und das Haus Gumapacs zur Deckung der Hypothekarforderung liquidiert hätte, anstatt ihre Rechte aus einer 'title insurance' geltend zu machen; die Bank daher das Haus Gumapacs geplündert habe im Sinne des Kriegsvülkerrechts."

The initial decision taken by your office that a domestic law of the United States, being a joint resolution of annexation, annexed Hawai'i contradicts your conclusion that the Hawaiian-Swiss Treaty was not cancelled.[3] All "treaties concluded between two States become void through the extinction of one of the contracting parties."[4] 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."[5] Therefore, by acknowledging that the Hawaiian-Swiss treaty was not canceled is also acknowledging the continuity of the Hawaiian Kingdom as a state and treaty partner; and that the Swiss Consulate in the Hawaiian Islands cannot be considered lawful because it was established by virtue of Article VII of the 1850 United States-Swiss Treaty and not Article VII of the 1864 Hawaiian-Swiss Treaty.

While the State of Hawai'i cannot claim to be a government *de jure* or *de facto,* customary international law defines the entity as an armed force for the occupying state—the United States of America. Military manuals define armed forces as "organized armed groups which are under a command responsible to that party for the conduct of its subordinates."[6] According to Henckaerts and Doswald-Beck, "this definition of armed

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[3] *See* Beschwerde (31. März 2015), at para. 19-22.
[4] L. OPPENHEIM, INTERNATIONAL LAW, vol. 1, 851 (7th ed. 1948).
[5] 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).
[6] JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, vol. I, 14 (2009).

forces covers all persons…who subordinate themselves to its command,"[7] 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."[8] 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 effective control 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."[9] According to Ferraro, "occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts."[10] 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, despite the territorial limitation of congressional action.

As an armed force, the State of Hawai'i established effective control over 137 islands,[11] "together with their appurtenant reefs and territorial and archipelagic waters."[12] 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.

Elements defining the State of Hawai'i as an armed force under the laws and customs of war are as follows:

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[7] *Id*., at 15.
[8] *Id*.
[9] 1907 Hague Convention, IV, Article 42.
[10] 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).
[11] "Hawai'i Facts and Figures" (December 2014), State of Hawai'i Department of Business, Economic Development & Tourism.
[12] State of Hawai'i Constitution, Article XV, section 1, *available at* http://lrbhawaii.org/con/.

- *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;”[13]

- *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.”[14] The Governor’s subordinates include all “executive and administrative offices, departments and instrumentalities of the state government;”[15]

- *Fixed Distinctive Emblem Recognizable at a Distance*—According to its constitution, “The Hawaiian flag shall be the flag of the State;”[16]

- *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 Department of Defense’s Army National Guard and Air National Guard who openly carry arms while in tactical training;

- *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. The State of Hawai‘i Department of Defense’s Army National Guard and Air National Guard are trained in the laws and customs of war, and has been deployed to international armed conflicts throughout the world, *i.e*. Iraq war, Afghanistan war, Vietnam war, Korean war, World War II, and World War I;[17]

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[13] *Id*., Article XVI, sec. 4.
[14] *Id*., Article V, sec. 5.
[15] *Id*., sec. 6.
[16] *Id*., Article XV, sec. 3.
[17] State of Hawai‘i Department of Defense, *available at* http://dod.hawaii.gov/.

The State of Hawai‘i is not a Military government established under the laws and customs of war, and therefore cannot claim to be vested with police powers of a government for the collection of revenues through taxation, the registration of businesses, trials by courts, and the incarceration of prisoners for the violation of laws. The authority to levy taxes is a fiscal and property right of a state. Taxes constitute a portion of the property of the state and consist of obligatory contributions, which the state 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 State of Hawai‘i cannot claim this inherent right because it is not a government.

The public law of the Hawaiian Kingdom provides a list of obligatory contributions, which along with taxes,[18] includes customs and duties on foreign trade,[19] health insurance for visiting tourists,[20] land sales,[21] and bonds.[22] Since January 17, 1893, there has been no government over the Hawaiian Islands, but rather only armed forces illegally created by the United States through intervention and in violation of international laws, which include 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 pretending to be governments, they were really armed forces, and the collection of revenues were not for the benefit of a government, either *de jure* or *de facto*, in the exercise of its police power, but rather for the maintenance of the armed force. The United States admitted that the Provisional Government "was neither a government *de facto* nor *de jure*,"[23] and that its successor, the Republic of Hawai‘i, was also "self-declared."[24] And as a result of the territorial limits of United States domestic law that renamed the self-declared Republic of Hawai‘i to be the Territory of Hawai‘i in 1900, and then renamed to be the State of Hawai‘i in 1959, these armed forces could not be vested with United States sovereignty because they were situated in the territory of another state, which was not subject to the plenary power of the United States Congress.[25]

Articles 46-54 of Hague Convention, IV, contain the rules governing the treatment of both personal and real property belonging to inhabitants of occupied territory. Under Article 47, "pillag[ing] is formally forbidden." In light of the "absolute character of the

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[18] *See* Hawaiian Civil Code, at 117-136.
[19] *Id*., at 137-150.
[20] *Id*., at 666.
[21] *Id*., at 10.
[22] *Id*., at 523, 565, 582, 599, 609, 627, 681.
[23] *See* Sai, *War Crimes Report*, para. 4.2.
[24] *Id*., at para. 9.5.
[25] *Id*., at para. 12.2.

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."[26] An armed force must not plunder for the private use and purpose of maintaining itself.

The State of Hawai'i is an armed force comprised of private individuals under the guise of being a 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,"[27] which, according to the Elements of Crimes of the International Criminal Court, must be seized "for private or personal use."[28] As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.[29]

Currently the State of Hawai'i, to include its four Counties, derive their revenues through the collection of fourteen 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 three taxes by the four 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 what it calls 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.

Your February 3, 2015 report concluded that fraud committed by State of Hawai'i officials was not covered under the Swiss Criminal Code. Your report stated, "Für die Verfolgung des gleichzeitig zur Anzeige gebrachten Betrugs, angeblich begangen durch die sich auf Hawaii befindlichen Beamten Neil ABERCROMBIE, Leutnant Shan TSUTSUI, Frederik PABLO und Joshua WISCH ist die Schweiz auch nicht zuständig. Weder Art. 4, 5, 6 noch 7 des StGB begründen Schweizer Gerichtsbarkeit." This is a grave mistake because war crimes include "omissions" and not just "acts," and, as such,

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[26] ERNST H. FEILCHENFELD, THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION 30 (1958).
[27] *See* BLACK'S LAW, at 1148.
[28] Elements of Crimes, International Criminal Court, Pillage as a war crime (ICC Statute, Article 8(2)(b)(xvi) and (e)(v)).
[29] *See* HENCKAERTS AND DOSWALD-BECK, at 185.

"acts" that conceal the "omission" must be considered fraud, which by definition is "a false representation of a matter of fact, whether by words or by conduct."[30]

The International Criminal Court defines war crimes as "serious violations of the laws and customs applicable in international armed conflict."[31] 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."[32] War crimes include "acts or omissions,"[33] which the latter includes the failure to administer the laws of the occupied state (Article 43, 1907 Hague Convention, IV).

According to the United States Army Field Manual 27-5, a Military government "derives its authority from the customs of war, and not the municipal law."[34] A 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…previous government. The right of control passes to the occupying force limited only by the rules of international law and established customs of war."[35] Section 28 of FM-27-5 provides for an armed force to proclaim itself into a Military government. While it is true that the State of Hawai'i "has substituted its authority for that of the…previous government," it did not proclaim itself to be a Military government in accordance with section 28, and, therefore, has committed fraud by omission for not administering the laws of the occupied State, being the Hawaiian Kingdom. The State of Hawai'i is an armed force pretending to be a government.

The Objections Chamber confirmed that the State of Hawai'i is committing fraud as well as committing the war crime of pillaging. The Court stated in its June 19, 2015 decision, "mit Schreiben vom 21. Januar 2015 [redacted] (nachfolgend '[redacted]', 'Beschwerdeführer' oder 'Gesuchsteller') und dessen Vertreter David Keanu Sai (nachfolgend 'Sai') Strafanzeige bei der Bundesanwaltschaft erhoben und geltend machten, [redacted] sei Geschädigter eines Kriegsverbrechens im Sinne von Art. 115 StPO, weil er in den Jahren 2006-2007 und 2011-2013 ungerechtfertigterweise Steuerabgaben an die US-amerikanischen Behörden auf Hawaii geleistet habe; [redacted] zudem Opfer eines Betrugs, begangen durch den Staat Hawaii, sei, indem er gemeinsam mit seiner Ehefrau eine Immobilie habe erwerben wollen, was aber aufgrund der fehlenden

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[30] BLACK'S LAW, 4th ed., at 788 (1968).
[31] International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).
[32] U.S. Army Field Manual 27-10, sec. 499 (July 1956).
[33] *See* HENCKAERTS AND LOUISE DOSWALD-BECK, at 573.
[34] WILLIAM E. BIRKHIMER, MILITARY GOVERNMENT AND MARTIAL LAW 53 (3rd ed. 1914).
[35] *See* FM 27-5, at 3.

Legitimität der staatlichen Behörden Hawaiis zur Übertragung des Eigentumstitels nicht möglich sei; daher der Gouverneur des Staates von Hawaii, Neil Abercrombie (nachfolgend 'Abercrombie'), Leutnant Shan Tsutsui (nachfolgend 'Tsutsui'), der Direktor der Steuerbehorde Frederik Pablo (nachfolgend 'Pablo') und dessen Stellvertreter Joshua Wisch (nachfolgend 'Wisch') wegen Plünderung des privaten Eigentums von und wegen Betrugs strafrechtlich zur Verantwortung zu ziehen seien."

Unlike the State of Hawai'i, the United States is a government but it's exercising of authority in the Hawaiian Islands stands in direct violation of international laws. Therefore, the United States cannot be construed to have committed the act of pillaging since it is a government, but has, instead, appropriated private property through unlawful contributions, *e.g.* federal taxation and the collection of tariffs on goods destined to the Hawaiian Islands, 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 administration of the territory in question." The United States' collection of its federal taxes from the residents of the Hawaiian Islands, which include both my clients, 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 administration of the territory."

In light of the aforementioned, my clients Mr. Gumapac and Mr. are re-filing the complaint for war crimes in accordance with Articles 118 and 119 of the Swiss Criminal Procedure Code (S-CPC). Both Mr. Gumapac and Mr. are expressly declaring that they have and continue to suffer grave harm and respectfully demands that your office re-initiate the previous investigation into the war crime of unfair trial, unlawful confinement, pillaging, and fraud for the State of Hawai'i's omission of administering Hawaiian Kingdom law. Both Mr. Gumapac and Mr. also declare that they wish to participate in the proceedings as both criminal and civil claimants pursuant to Article 118, Swiss Criminal Code (S-CC). Both men are seeking restitution. Therefore, I am incorporating, as though fully set forth in the re-filing of this complaint, the information and evidence your office already has in its possession, which includes my *War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands* (Dec. 7, 2014), Mr. complaint (January 21, 2015), Mr. Gumapac's amended complaint (January 22, 2015), and the information provided in my clients' Objection pursuant to Art. 393 ff. StPPO filed the Federal Criminal Court Objections Chamber (March 31, 2015), which is enclosed herein as Appendix "A."

I requested Mr. Gumapac's attorney at law to also provide me additional information regarding the criminal proceedings that have been instituted against Mr. Gumapac by the armed force State of Hawai'i stemming from his unlawful arrest, detainment and extrajudicial proceedings, which I have attached herein as Appendix "B." Mr. Gumapac herein alleges that the following named individuals committed the war crimes of denial of a fair and regular trial (Article 147, Geneva Convention, IV), the pillaging of his home (Article 33, Geneva Convention, IV), and unlawful arrest and detention by omission in the administration of Hawaiian Kingdom law in accordance with the laws and customs of war on land (Article 43, Hague Convention, IV), the majority of which have already been identified in my *War Crimes Report*, p. 64-65 (Dec. 7, 2014). All of the alleged perpetrators cannot claim they were unaware of Hawai'i's occupation, and therefore the alleged crimes were "committed with intent and knowledge."[36]

1. **Greg K. Nakamura**—Judge, Circuit Court of the Third Circuit, State of Hawai'i, whose address is Hale Kaulike, 777 Kilauea Avenue, Hilo, HI 96720-4212,
    - Alleged War crime—*Principal perpetrator of denial of a fair and regular trial*;

2. **Josef Ackermann**, former Chief Executive Officer, Deutsch Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Gottfried Keller-Strasse 7, 8001 Zurich, Switzerland,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

3. **Jürgen Fitschen**, Co-Chief Executive Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

4. **Anshu Jain**, Co-Chief Executive Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

[36] Rome Statute, Art. 30(1).

5. **Stefan Krause**, Chief Financial Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

6. **Stephan Leithner**, Chief Executive Officer Europe (except Germany and UK), Human Resources, Legal & Compliance, Government and Regulatory Affairs, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

7. **Stuart Lewis**, Chief Risk Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

8. **Rainer Neske**, Head of Private and Business Clients, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

9. **Henry Ritchotte**, Chief Operating Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

10. **Charles R. Prather**, attorney for Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, belonging to the law firm RCO Hawaii, LLLC, whose address is 900 Fort Street Mall, Suite 800, Honolulu, HI 96813,

- Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

11. **Sofia M. Hirosone**, attorney for Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, belonging to the law firm RCO Hawaii, LLLC, whose address is 900 Fort Street Mall, Suite 800, Honolulu, HI 96813,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;*

12. **Michael G.K. Wong**, attorney for Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, belonging to the law firm RCO Hawaii, LLLC, whose address is 900 Fort Street Mall, Suite 800, Honolulu, HI 96813,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;* and

13. **Glenn Swanson**, realtor belonging to the real estate firm Savio Realty, whose address is 15-2911 Pahoa Village Rd, Pahoa, HI 96778,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice unlawful arrest and detention;* and

14. **Sandra Hegerfeldt**, realtor belonging to the real estate firm Savio Realty, whose address is 15-2911 Pahoa Village Rd, Pahoa, HI 96778,
    - Alleged War Crimes—*Accomplice to pillaging and unlawful arrest and detention;* and

15. **Jessica Hall**, realtor belonging to the real estate firm Savio Realty, whose address is 15-2911 Pahoa Village Rd, Pahoa, HI 96778,
    - Alleged War Crimes—*Accomplice to pillaging and unlawful arrest and detention;* and

16. **Dana Kenny**, realtor belonging to the real estate firm Savio Realty, whose address is 15-2911 Pahoa Village Rd, Pahoa, HI 96778,
    - Alleged War Crimes—*Accomplice to pillaging and unlawful arrest and detention;* and

17. **Shawn H. Tsuha**, at the time of the pillaging, unfair trial and unlawful arrest, Sheriff, State of Hawai‘i Department of Public Safety Sheriff’s Department, whose address is 919 Ala Moana Boulevard, 4th Floor, Honolulu, HI 96814,

- Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention;* and

18. **Patrick Kawai**, Lieutenant, State of Hawai'i Department of Public Safety Sheriff's Department, whose address is Hale Kaulike, 777 Kilauea Avenue, Hilo, HI 96720-4212,
    - Alleged War Crimes—*Principal perpetrator of pillaging and accomplice to denial of a fair and regular trial and unlawful arrest and detention.*

19. **Samuel Jelsma**, Captain, County of Hawai'i Police Department, State of Hawai'i, whose address is 15-2615 Kea'au-Pahoa Road, Hilo, HI 96778,
    - Alleged War Crimes—*Principal perpetrator of unlawful arrest and detention*;

20. **Reed Mahuna**, Lieutenant, County of Hawai'i Police Department, State of Hawai'i, whose address is 15-2615 Kea'au-Pahoa Road, Hilo, HI 96778,
    - Alleged War Crimes—*Principal perpetrator of unlawful arrest and detention*;

21. **Brian Hunt**, Patrolman, County of Hawai'i Police Department, State of Hawai'i, whose address is 15-2615 Kea'au-Pahoa Road, Hilo, HI 96778,
    - Alleged War Crimes—*Principal perpetrator of unlawful arrest and detention*;

22. **Glenn Hara**, Judge, Circuit Court of the Third Circuit, State of Hawai'i, whose address is Hale Kaulike, 777 Kilauea Avenue, Hilo, HI 96720-4212,
    - Alleged War Crimes—*Principal perpetrator of denial of a fair and regular trial*; and

23. **Mitch Roth**, Prosecuting Attorney, County of Hawai'i, whose address is Aupuni Center, 655 Kilauea Avenue, Hilo, HI 96820,
    - Alleged War Crimes—*Principal perpetrator of unlawful arrest and accomplice to denial of a fair and regular trial.*

Mr. [redacted] herein alleges that the following named individuals committed the war crime of p[redacted]g his personal property (Article 33, Geneva Convention, IV), fraud by omission in the administration of the Hawaiian Kingdom law in accordance with the laws and customs of war on land (Article 43, Hague Convention, IV), and unlawful appropriation of property (Article 14[redacted]eva Convention, IV), since the year 2006, which is based on the evidence Mr. [redacted] has already provided to the Office of the Attorney General:

1. **Barack Obama**, President of the United States, whose address is 1600 Pennsylvania Avenue NW, Washington, DC 20500,
    - War Crime—*Principal perpetrator of unlawful appropriation of property;*

2. **Jack Lew**, Secretary, United States Treasury, since February 28, 2013, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220,
    - War Crime—*Principal perpetrator of unlawful appropriation of property;*

3. **Neal Wolin**, former Secretary, United States Treasury, from January 25, 2013 to February 28, 2013, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220,
    - War Crime—*Principal perpetrator of unlawful appropriation of property;*

4. **Timothy F. Geithner**, former Secretary, United States Treasury, from January 26, 2009 to January 25, 2013, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220,
    - War Crime—*Principal perpetrator of unlawful appropriation of property;*

5. **Stuart A. Levey**, former Secretary, United States Treasury, from January 20, 2009 to January 26, 2009, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220,
    - War Crime—*Principal perpetrator of unlawful appropriation of property;*

6. **Henry M. Paulson**, former Secretary, United States Treasury, from July 10, 2006 to January 20, 2009, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220,
    - War Crime—*Principal perpetrator of unlawful appropriation of property;*

7. **Robert M. Kimmit**, former Secretary, United States Treasury, from June 30, 2006 to July 10, 2006, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220,
    - War Crime—*Principal perpetrator of unlawful appropriation of property;*

8. **John W. Snow**, former Secretary, United States Treasury, from February 3, 2003 to June 30, 2006, whose address 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220,
    - War Crime—*Principal perpetrator of unlawful appropriation of property;*

9. **Neal Abercrombie**, former Governor, State of Hawai‘i, from December 6, 2010 to December 1, 2014, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

10. **Linda Lingle**, former Governor, State of Hawai‘i, from December 2, 2002 to December 6, 2010, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

11. **Ben Cayetano**, former Governor, State of Hawai‘i, from December 2, 1994 to December 2, 2002, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

12. **Shan Tsutsui**, Lieutenant Governor, State of Hawai‘i, since December 27, 2012, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

13. **Brian Schatz**, former Lieutenant Governor, State of Hawai‘i, from December 6, 2010 to December 26, 2012, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

14. **Duke Aiona**, former Lieutenant Governor, State of Hawai‘i, from December 4, 2002 to December 6, 2010, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

15. **Mazie Hirono**, former Lieutenant Governor, State of Hawai‘i, from December 2, 1994 to December 2, 2002, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,

- War Crime—*Principal perpetrator of pillaging;*

16. **Frederik Pablo**, former Director of Taxation, State of Hawai‘i, from 2010 to 2014, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

17. **Stanley Shiraki**, former Director of Taxation, State of Hawai‘i, from 2009 to 2010, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

18. **Kurt Kawafuchi**, former Director of Taxation, State of Hawai‘i, from 2006 to 2009, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

19. **Joshua Wisch**, former Deputy Director of Taxation, State of Hawai‘i, from 2012 to 2013, and currently serving as Spokesman for the Attorney General's Office of the State of Hawai‘i, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

20. **Randolf L.M. Baldemor**, former Deputy Director of Taxation, State of Hawai‘i, from 2010 to 2012, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

21. **Ronald B. Randall**, former Deputy Director of Taxation, State of Hawai‘i, from 2009 to 2010, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

22. **Sandra Yahiro**, former Deputy Director of Taxation, State of Hawai‘i, from 2006 to 2009, whose address is State of Hawai‘i Executive Chambers, State Capital, Honolulu, HI 96813,
    - War Crime—*Principal perpetrator of pillaging;*

23. **Bernard Carvalho**, Mayor for Kaua'i County, State of Hawai'i, since December 1, 2008, whose address is 4444 Rice St., Suite 235, Lihue, HI 96766,
    - War Crime—*Principal perpetrator of pillaging;*

24. **Kaipo Asing**, former Mayor for Kaua'i County, State of Hawai'i, from July 17, 2008 to December 1, 2008, whose address is 4444 Rice St., Suite 235, Lihue, HI 96766,
    - War Crime—*Principal perpetrator of pillaging;* and

25. **Bryan Baptiste**, former Mayor for Kaua'i County, State of Hawai'i, from 2002 to July 17, 2008, 2008, who is deceased,
    - War Crime—*Principal perpetrator of pillaging;*

As a result of the unlawfulness of the Swiss Consulate in the Hawaiian Islands, I was compelled travel to the Swiss Consulate General in San Francisco, USA, to re-file this war crimes complaint. And it is on this very day of August 12, 2015, that the Hawaiian Kingdom was occupied 117 years ago, which makes it the longest occupation in the history of international law.

The re-filing of this complaint is filed with the *Center of Competence of International Crimes*, Office of the Attorney General, because your office already is in possession of the evidence of the alleged war crimes committed against my clients, and has the capacity of exercising *active personality jurisdiction*, *passive personality jurisdiction*, and *universal jurisdiction* in accordance with the Swiss Criminal Code. Accordingly, the Office of the Attorney General is under a duty and obligation to prosecute these cases in accordance with Swiss law and the laws and customs of war on land as aforementioned.

It is the hope of my clients that you and the respected office you represent expeditiously commence criminal proceedings in this matter and secure written charges for their prosecution because they have and continue to suffer pain and injury. Should you require further information or elaborations on the materials submitted, please do not hesitate to contact me by mail at Av. Eugene Lance 44, CH-1212 Grand Lancy/GE, by email at keanu.sai@gmail.com or by phone at +001 808 383 6100.

Sincerely,

Dr. David Keanu Sai
Attorney-in-fact for Mr. Kale Kepekaio Gumapac and Mr.

Appendix “A”

BESCHWERDEKAMMER DES BUNDESSTRAFGERICHTS

BESCHWERDE

Dr. David Keanu Sai
c/o [redacted]
[redacted]
[redacted] Grand Lancy/GE

Bevollmächtigter der Beschwerdeführer

Beschwerdekammer des Bundesstrafgerichts
Posstfach 2720
6501 Bellinzona/TI

BESCHWERDE
(Enstprechend Art. 393 ff. StPO)

Die Beschwerdeführer Kale Kepekaio Gumapac und [redacted] (hiernach kollektiv als BESCHWERDEFÜHRER bezeichnet), erheben hiermit durch ihren Bevollmächtigten höflich Beschwerde gegen die Entscheidung der Schweizerischen Bundesanwaltschaft (hiernach als BUNDESANWALTSCHAFT bezeichnet) vom 3. Februar 2015 betreffens der Strafanzeige wegen Kriegsverbrechen durch BESCHWERDEFÜHRER Gumapac, einen hawaiischen Untertanen, und BESCHWERDEFÜHRER [redacted] entprechend Art. 264c, Abs. 1 Bst. d und 264g Abs. 1 Bst. c StGB; Art. 108 und 109 aMStG.

I. DARSTELLUNG DER TATSACHEN:

1. Am 3. Februar 2015 verfügte die BUNDESANWALTSCHAFT, dass die Schweizer Behörden auf die Strafanzeigen, die infolge der von Professor Niklaus Schweizer im Sinne von Art. 301 StOPO eingebrachten Hinweise wegen des Begehens von Kriegsverbrechen gestellt wurden, entsprechend Art. 310 StPO i.V. m. Art. 319 StPO nicht eintreten werden.
2. Die Nichtanhandnahmeverfügung wurde per Einschreiben an Dr. Keanu Sai, Bevollmächtigter der BESCHWERDEFÜHRER, c/o [redacted] [redacted] Grand Lancy/GE, zugestellt.
3. Im Auftrag von Dr. Sai bestätigte Frau Testini den Eingang der Verfügung am 23 März 2015.
4. Gegen diesen Entscheid kann entsprechend Art. 393 ff StPO innert 10 Tagen seit der Zustellung oder Eröffnung schriftlich und begründet bei der Beschwerdekammer des Bundesstrafgerichts, Postfach 2720, 6501 Bellinzona/TI, Beschwerde erhoben werden.

II. DARLEGUNG DER STREITPUNKTE UND KLAGEBEGEHREN

A. Darlegung der Streitpunkte

1. Die BUNDESANWALTSCHAFT rechtfertigte die Entscheidung, keine Ermittlungen betreffs der mutmaßlichen Kriegsverbrechen einzuleiten mit der Begründung, Straftatbestände entsprechend Art. 310, Abs. 1, Bst. a StPO seien nicht erfüllt.
2. Der Hauptgrund für die Nichteinleitung von Ermittlungen ist, dass die Vereinigten Staaten die Republik Hawai‘i im Jahr 1898 angeblich

annektierten, wobei behauptet wird, dass genannte Republik das vormalige Königreich Hawai'i repräsentierte. Die BUNDESANWALTSCHAFT erklärte: „Die der Annexion zugrunde liegende Resolution übertrug sämtliche Souveränitätsrechte in und über die hawaiischen Inseln und die von Hawaii abhängigen Gebiete mit Zustimmung der Regierung der Republik Hawaii den Vereinigten Staaten von Amerika und machte diese zu amerikanischem Territorium (vgl. *55th Congress of the united* [sic] *States of America, Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States vom 7. Juli 1898*). Am 21. August 1959 wurde Hawaii als 50. Bundesstaat in die Union der Vereinigten Staaten aufgenommen."

3. Des Weiteren stellte die BUNDESANWALTSCHAFT fest: „Hawai'i wird demnach von der offiziellen Schweiz als Teil der USA anerkannt und war im relevanten Tatzeitraum von 2006-2013 aus schweizerischer Sicht weder vollständig noch teilweise von den Vereinigten Staaten besetzt, was eine Anwendung der Genfer Konvention und die sich darauf abstützenden Art. 108 und 109 aMStG bzw. Art. 264b ff. StGB von vornherein ausschliesst."
4. Die BESCHWERDEFÜHRER, durch ihren Bevollmächtigten, schliessen die in dem Bericht vom 7. Dezember 2014 mit dem Titel „War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands (hiernach „War Crime Report")" enthaltenen und von der BUNDESANWALTSCHAFT in ihrem Bericht zur Kenntnis genommenen Informationen, als wie hier vollständig dargelegt, ein. Der „War Crimes Report" kommt zu drei hauptsächlichen Schlüssen, die die rechtliche und historische Basis für die Strafanzeige der BESCHWERDEFÜHRER darstellen: (a) Das Hawaiische Königreich existierte als unabhängiger Staat; (b) das Hawaiische Königreich existiert weiterhin als unabhängiger Staat trotz des illegalen Sturzes seiner Regierung durch die Vereinigten Staaten; und (c) unter Verletzung des humanitären Völkerrechts werden Kriegsverbrechen begangen.
5. Die Abstützung der BUNDESANWALTSCHAFT auf die Gemeinsame Resolution zur Annexion der Hawaiischen Inseln durch die Vereinigten Staaten vom 7. Juli 1898 ist klar fehlerhaft, und zwar in vier grundsätzlichen Punkten. *Erstens*, Gesetze des Kongresses der Vereinigten Staaten sind keine Quelle des Völkerrechts; *zweitens*, es gibt keine Vereinbarung zwischen den Vereinigten Staaten und der selbst-erklärten Republik Hawai'i, die nach dem Recht der USA oder nach dem Völkerrecht erkenntlich wäre; *drittens*, die Vereinigten Staaten sind kraft der Doktrin der Inneren Rechtskraftwirkung [‚Collateral Estoppel'] daran gehindert, die Existenz des Hawaiischen Königreiches als Staat zu leugnen; und *viertens*, die BUNDESANWALTSCHAFT anerkennt in ihrem Bericht die Kontinuität des

Hawaiischen Königreichs entsprechend dem Hawaiisch-Schweizerischen Vertrag von 1864.

a. Gesetze des Kongresses der Vereinigten Staaten sind keine Quelle des Völkerrechts.

6. Quellen des Völkerrechts sind, in Rangfolge: Internationale Übereinkünfte, internationales Gewohnheitsrecht, allgemeine Rechtsgrundsätze wie sie von den Kulturvölkern anerkannt werden, und richterliche Entscheidungen sowie die Lehrmeinungen der fähigsten Völkerrechtler der verschiedenen Nationen (Artikel 38, Statut des Internationalen Gerichtshofs). Die Gesetzgebung eines jeden unabhängigen Staates, einschliesslich der Vereinigten Staaten von Amerika und ihres Kongresses, ist keine Quelle des Völkerechts, sondern stattdessen eine Quelle nationalen Rechts des Staates, dessen Legislative solche Gesetze beschlossen hat. In *The Lotus* hat der internationale Gerichtshof folgendes festgestellt: “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 (*Lotus*, PCIJ ser. A no. 10 (1927) 18).” J. Crawford zufolge kann eine Beeinträchtigung dieses Prinzips nicht vermutet werden, was er als Lotus-Vermutung bezeichnet (Crawford, *The Creation of States in International Law* 41-42 (2nd ed. 2006)).
7. Da Gesetzgebung des Kongresses, ob aufgrund eines Statuts oder einer Gemeinsamen Resolution, keine extraterritoriale Wirkung ausübt, ist dies keine Quelle des Völkerrechts, welche “Beziehungen zwischen unabhängigen Staaten reguliert (“which ‘governs relations between independent States’ (*Lotus*, 18)).” Der Oberste Gerichtshof der Vereinigten Staaten hat dieses Prinzip immer beherzigt. In *United States v. Curtiss Wright Export Corp*., 299 U.S. 304, 318 (1936), erklärte der Oberste Gerichtshof der USA: “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 understanding and compacts, and the principles of international law.” In *The Apollon,* 22 U.S. 362, 370 (1824), befand der Oberste Gerichtshof: “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.”
8. Falls die Schweiz also behaupten sollte, nationales Recht hätte die Fähigkeit, einen fremden Staat zu annektieren, so käme dies einer Anerkennung der vorgeblichen Annexion Luxemburgs durch Deutschland während des 2.

Weltkriegs und der vorgeblichen Annexion Kuwaits durch Irak während des Golfkriegs gleich. Des weiteren sind die Vereinigten Staaten (ebenso wie die Schweiz) davon ausgeschlossen, von ihrer illegalen Handlung zu profitieren, getreu dem völkerrechtlichen Prinzip *ex iniuria jus non oritur*—,aus Unrecht entsteht kein Recht,' was heute als *jus cogens* anerkannt ist. I. Brownlie schreibt dazu: "When elements of certain strong norms (the *jus cogens*) are involved, it is less likely that recognition and acquiescence will offset the original illegality (Brownlie, *Principles of Public International Law* 80 (4th ed. 1990))."

b. Es existiert keine Übereinkunft zwischen den Vereinigten Staaten und der selbst-erklärten Republik Hawai'i.

9. In zwischenstaatlichen Beziehungen ist der Präsident das einzige Organ der Bundesregierung der Vereinigten Staaten, nicht der Kongress; und es ist der Präsident, der internationale rechtliche Übereinkommen abschliessst. "He makes treaties with the advice and consent of the Senate, but he alone negotiates. Into the field of negotiations the Senate cannot intrude, and Congress itself is powerless to invade it (*United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936))." Die Vereinigten Staaten anerkennen zwei Arten von internationalen Übereinkommen – Verträge und Exekutive Übereinkommen ['executive agreements']. Ein Vertrag bedeutet "a compact made between two or more independent nations with a view to the public welfare (*Altman & Co. v. United States*, 224 U.S. 583, 600 (1912)). "
10. Gemäss dem Recht der Vereinigten Staaten umfassen Verträge, wie sie in Artikel II, §2 der Bundesverfassung [Federal Constitution] definiert sind, auch Exekutive Übereinkommen, die keine Ratifizierung seitens des Senats oder eine Zustimmung seitens des Kongresses benötigen (*United States v. Belmont,* 301 U.S. 324, 330 (1937); *United States v. Pink*, 315 U.S. 203, 223 (1942); und *American Insurance Ass. v. Garamendi*, 539 U.S. 396, 415 (2003)). In *Weinberger v. Rossi*, 456 U.S. 25 (1982) definierte der Oberste Gerichthof gemäss der Verfassung sowohl Verträge als auch Exekutive Übereinkommen als Verträge, und in *Altman & Co. v. United States,* 224 U.S. 583 (1912) definierte der Oberste Gerichtshof Exekutive Übereinkommen als Verträge.
11. Die Behauptung der BUNDESANWALTSCHAFT, dass die sogenannte Republik Hawai'i der Gemeinsamen Resolution [Joint Resolution] bezüglich der Annexion zustimmte, impliziert die Existenz einer internationalen Übereinkunft, ob in Form eines Vertrags oder einer Exekutiven Übereinkunft. Es existiert kein solches Übereinkommen. Diese Behauptung einer Zustimmung der sogenannten Republik Hawai'i lässt sich vermutlich auf die Gemeinsame Resolution selbst zurückführen, wo es heisst: "Whereas the government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian islands and their dependencies (30

U.S. Stat. 750 (1898)).” Eine Gemeinsame Resolution stellt keinen Vertrag zwischen zwei Staaten dar, sonderen ist ein Übereinkommen zischen dem Repräsentantenhaus und dem Senat des Amerikanischen Kongresses.

12. Diese sogenannte Zustimmung bezog sich auf den Annexionsvertrag vom 16. Juni 1897, der in Washington, D.C., von der sogenannten Republik Hawai‘i und dem Präsidenten der Vereinigten Staaten William McKinley unterzeichnet wurde. Dieser Vertrag wurde aber vom Senat der Vereinigten Staaten nicht ratifiziert, und zwar auf Grund eines von Königin Lili‘uokalani eingereichten diplomatischen Protests und einer Petition von 21,269 Unterschriften hawaiischer Untertanen und Einwohner des Hawaiischen Königreichs, die sich gegen den Versuch einer Annexion durch Vertrag wandten, eine Tatsache, die Teil des Protokolls des Senats vom Dezember 1897 ist („War Crime Report,“ Abs. 5.10).
13. Die Gemeinsame Resolution wurde als Resolution des Repräsentantenhauses Nr. 259 am 4. Mai 1898 eingebracht, nachdem der Senat nicht genügend Stimmen zusammenbringen konnte, um den sogenannten Annexionsvertrag zu ratifizieren. Während der Debatte im Senat wandte sich eine Reihe von Senatoren gegen die Theorie, dass eine Gemeinsame Resolution es vermöge, eine Annexion von fremdem Territorium vorzunehmen. Senator Augustus Bacon erklärte: “The proposition which I propose to discuss is that a measure which provides for the annexation of foreign territory is necessarily, essentially, the subject matter of a treaty, and that the assumption of the House of Representatives in the passage of the bill and the proposition on the part of the Foreign Relations Committee that the Senate shall pass the bill, is utterly without warrant in the Constitution (31 Cong. Rec. 6145 (June 20, 1898)).” Senator William Allen erklärte: “A Joint Resolution if passed becomes a statue law. It has no other or greater force. It is the same as if it would be if it were entitled ‘an act’ instead of ‘A Joint Resolution.’ That is its legal classification. It is therefore impossible for the Government of the United States to reach across its boundary into the dominion of another government and annex that government or persons or property therein. But the United States may do so under the treaty making power (*Id.,* 6636 (July 4, 1898)).” Senator Thomas Turley erklärte: “The Joint Resolution itself, it is admitted, amounts to nothing so far as carrying any effective force is concerned. It does not bring that country within our boundaries. It does not consummate itself (*Id.,* 6339 (Juni 25, 1898)). “
14. In einer Rede im Senat, wobei die Senatoren wussten, dass der Vertrag von 1897 nicht ratifiziert worden war, erklärte Senator Stephen White: “Will anyone speak to me of a ‘treaty’ when we are confronted with a mere proposition negotiated between the plenipotentiaries of two countries and ungratified by a tribunal – this Senate – whose concurrence is necessary? There is no treaty; no one can reasonably aver that there is a treaty. No treaty can exist unless it has attached to it not merely acquiescence of those from whom it emanates as a proposal. It must be accepted – joined in by the other party. This has not been done. There is therefore, no treaty (*Id.,* Appendix, 591 (Juni 21, 1898)).” Senator Allen bemängelte auch, dass die Gemeinsame

Resolution ein Kontrakt oder ein Übereinkommen mit der sogenannten Republik Hawai'i war. Er erklärte: "Whenever it becomes necessary to enter into any sort of compact or agreement with a foreign power, we cannot proceed by legislation to make that contract (*Id.,* 6636 (July 4, 1898))."

15. Westel Willoughby, ein Verfassungsexperte der Vereinigten Staaten, äusserte sich folgendermassen: "The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act... Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force – confined in its operation to the territory of the State by whose legislature it is enacted ("War Crimes Report," Abs. 5.9)." Dies wäre analog zu der Vorstellung, die Vereinigten Staaten könnten durch den Beschluss einer Gemeinsamen Resolution einseitig die Schweiz annektieren. Des Weiteren hat 1988 der Bundesjustizminister ['Attorney General'] der Vereinigten Staaten diese Kongressprotokolle begutachtet und folgendes festgestellt: „Ungeachtet dieser verfassungsrechtlichen Beanstandungen verabschiedete 1898 der Kongress die Gemeinsame Resolution, und Präsident McKinley unterzeichnete die Massnahme. Dennoch ist es natürlich fragwürdig, ob diese Handlung das verfassungsmässige Recht des Kongresses demonstriert, Territorium zu erwerben ("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 (D. Kmiec, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, 12 Op. Off. Legal Counsel 238, 252 (1988))")." Der Justizminister [‚Attorney General'] kam dann zu folgendem Schluss: „Es ist daher unklar, welches verfassungsmässige Recht der Kongress ausübte, als er sich Hawai'i durch eine Gemeinsame Resolution aneignete ("It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution (Id.)")."
16. Die sogenannte Republik Hawai'i war die Nachfolgerin einer provisorischen Regierung, die sich illegalerweise am 17. Januar 1893 infolge einer Intervention der Vereinigten Staaten etablierte (*Id.,* Abs. 4.8). Eine Untersuchung des Präsidenten stellte fest, dass die Vereinigten Staaten die hawaiische Regierung illegalerweise gestürzt hatten und kam zu dem Schluss, dass die provisorische Regierung „weder eine Regierung *de facto* noch *de jure* ("neither a government *de facto* nor *de jure* (*Id.,* Abs. 4.2)")," sondern selbst-eklärt war.
17. Als die provisorische Regierung am 4. Juli 1894 ihren Namen in „Republik Hawai'i" umänderte, erwarb sie sich keine weitere Autorität und verblieb selbst-erklärt (*Id.,* Abs. 9.5). Dies wurde vom 103. Kongress in einer Gemeinsamen Resolution anerkannt: *Joint resolution to acknowledge the 100th anniversary of the January 17 overthrow of the Kingdom of Hawai'i, and to offer an apology to the Native Hawaiians on behalf of the United States*

for the overthrow of the Kingdom of Hawai'i (107 U.S. Stat. 1510 (1993)). Diese Gemeinsame Resolution erklärte: *"Whereas,* through the Newlands Resolution, the self-declared Republic of Hawai'i ceded sovereignty over the Hawaiian Islands to the United States (Id.)."

18. Selbst-erklärt oder 'self-declared', bedeutet "according to ones's own testimony or admission (*Collins English Dictionary*)." Selbst-erklärt bedeutet ebenfalls selbst-proklamiert ('self-proclaimed'), definiert als "giving yourself a particular name, title, etc., usually without any reason or proof that would cause other people to agree with you (*Merriam-Webster Dictionary*)." Ein selbst-deklariertes Gebilde ist keine Regierung eines vom Völkerrecht anerkannten Staats, ausgenommen dass es diesen Status entweder *de facto* oder *de jure* angenommen hat. Ein selbst-erklärtes Gebilde konnte infolgedessen nicht die Souveränität des hawaiischen Staates an die Vereinigten Staaten übergeben.

c. Die Schweiz anerkennt die Kontinuität des Hawaiischen Königreichs als Staat.

19. Am 22. Januar 2015 machte BESCHWERDEFÜHRER Gumapac seine Rechte als Hawaiischer Untertan geltend, entsprechend Art. 1 des Hawaiisch-Schweizerischen Vertrags von 1864, in welchem es heisst: „Die Hawaiianer werden in jedem Kanton der Schweizerischen Eidgenoßenschaft, in Beziehung auf ihre Personen und ihr Eigenthum, auf dem nämlichen Fuße und zu den gleichen Bedingungen aufgenommen, wie die Angehörigen der andern Kantone gegenwärtig zugelassen werden oder es in Zukunft werden könnten." Die BUNDESANWALTSCHAFT hielt dies in ihrem Bericht vom 3. Februar 2015 fest und kam ausserdem richtigerweise zu dem Schluss, dass der Hawaiisch-Schweizerische Vertrag von 1864 nicht gekündigt wurde.
20. Letztgenannter Vertrag ist eine internationale Übereinkunft zwischen zwei souveränen und unabhängigen Staaten durch deren Regierungen, nämlich das Hawaiische Königreich und die Schweizerische Eidgenossenschaft. Beide Staaten sind Völkerrechtssubjekte, und Crawford schreibt dazu: "There is a strong presumption that the State continues to exist, with its rights and obligations, despite revolutionary changes in government, or despite a period in which there is no, or no effective, government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State (Crawford, 34; vgl. hierzu auch "War Crime Report," Abs. 7.1-7.14)."
21. Die Schweizer Regierung, duch ihre BUNDESANWALTSCHAFT, anerkennt die Kontinuität des Hawaiische Königreichs in seiner Eigenschaft als Vertragspartner, ungeachtet des illegalen Sturzes seiner Regierung durch die Vereinigten Staaten am 17. Januar 1893. Diese Anerkennung seitens der BUNDESANWALTSCHAFT untergräbt seine Behauptung, dass ein 1898 vom Kongress erlassenes nationales Gesetz der Vereinigten Staaten Hawai'i, einen fremden Staat, hätte annektieren und amerikanische Souveränität über die Hawaiischen Inseln etablieren können. Im Weiteren muss die Erklärung

der BUNDESANWALTSCHAFT in ihrem Bericht, dass die Schweiz Hawai'i offiziell als Teil der Vereinigten Staaten anerkennt und ein Konsulat in Honolulu unterhält, als direkte Verletzung des Hawaiisch-Schweizerischen Vertrags von 1864 ausgelegt werden. Das schweizerische Konsulat wurde in Honolulu nicht gemäss des Artikels VII des Vertrags eingerichtet, der festhält: „Es steht den beiden kontrahirenden Staaten frei, Konsuln, Vize-Konsuln oder Konsularagenten zum Residiren auf den Gebieten des andern Staates zu ernennen. Bevor aber einer dieser Beamten als solcher handeln kann, muß derselbe in üblicher Form von der Regierung, bei welcher er bestellt ist, anerkannt und angenommen sein. Jeder der beiden kontrahirenden Theile kann, je nachdem er es für nöthig erachtet, bestimmte Pläze vorbehalten, welche zu Sizen für Konsularbeamte durch den andern Theil nicht bezeichnet werden dürfen."

22. Zusätzlich wurde das schweizerische Konsulat in Honolulu aufgrund des Vertrags zwischen den Vereinigten Staaten und der Schweiz etabliert, eine Tatsache, die den Hawaiisch-Schweizerischen Vertrag direkt verletzt und deswegen einen völkerrechtswidrigen Akt darstellt, wie er in den *Responsibilities of States for Internationally Wrongful Acts* (2001) der Vereinten Nationen definiert wird. Artikel 2 lautet: "There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State." Artikel 16 lautet: "A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstance of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State."

d. Die Vereinigten Staaten sind kraft der Doktrin der Inneren Rechtskraftwirkung [‚Collateral Estoppel'] daran gehindert, die Existenz des Hawaiischen Königreiches als Staat zu leugnen.

23. Am 5. März 2015, während einer Zeugenanhörung im ‚Second Circuit Court for Criminal Proceedings' [Bezirksgericht für Straffälle] im Prozess *State of Hawai'i v. English* (CR 14-1-0819) und *State of Hawai'i v. Dudoit* (CR 14-1-0820) nahm der Gerichtshof offizielle gerichtliche Notiz richterlicher Tatsachen ['judicial notice of adjudicative facts,' eine juristische Praxis im angelsächsischen Rechtssystem], die zum Schluss führen, dass das Hawaiische Königreich weiterhin existiert (*Hearing Transcript*, Exhibit „4" of Attachment „1"). Diese richterlichen Tatsachen sind enthalten in einer Kurzdarstellung [‚brief'], verfasst vom Bevollmächtigten der BESCHWERDEFÜHRER, betitelt „The Continuity of the Hawaiian Kingdom and the Legitimacy of the *acting* government of the Hawaiian Kingdom (Exhibit „1" of Attachment „1").
24. Im angelsächsichen Rechtssystem ist eine offizielle gerichtliche Notiz ['judicial notice'] ein "Vorgang, durch den ein Gericht... das Vorhandensein

und die Wahrheit bestimmter Fakten anerkennt, die aufgrund ihrer Natur nicht eigentlich Gegenstand von Zeugenaussagen sind..., z. B. Gesetze des Staates, das Völkerrecht und historische Ereignisse ("act by which a court… recognizes the existence and truth of certain facts, which from their nature, are not properly the subject of testimony,… e.g. the laws of the state, international law, historical events (*Black's Law Dictionary* 848 (6th ed. 1990)")."

25. Seit 1994 kennt der ‚Hawai'i Intermediate Court of Appeal' [Mittlerer Appelationsgerichtshof von Hawai'i] zwei Präzedenzfälle für diejenigen, die die Jurisdiktion der Vereinigten Staaten über Hawai'i im Zuge der Entschuldigung des Kongressses der Vereinigten Staaten von 1993 für den illegalen Sturz der Regierung des Hawaiischen Königreichs infrage stellen, nämlich *State of Hawai'i v. Lorenzo*, 77 Haw. 219 (1994) und *Nishitani v. Baker*, 82 Haw. 281 (1996). Diese beiden Gerichtsfälle hielten fest, dass es dem Beschuldigten obliegt, „die tatsächliche (oder gesetzliche) Grundlage vorzulegen, dass das Königreich als Staat existiert („[to provide] factual (or legal) basis that the Kingdom exists as a state")." Die Weigerung des Richters, die strafrechtlichen Anschuldigungen zurückzuweisen, nachdem er von der gerichtlichen Feststellung Notiz genommen hatte, stellt einen Irrtum dar, und ein ‚writ of mandamus' [gerichtlichen Befehl auf Vornahme einer Handlung] wurde beim Obersten Gerichtshof von Hawai'i am 27 März 2015 eingereicht, mit Aktenzeichen SCPW-15-0000236 (Attachment "1"). Obwohl das Gericht sich weigerte, die Anklage abzuweisen, wird durch die Tatsache, dass das Gericht offizielle gerichtliche Notiz der weiterbestehenden Existenz des Hawaiischen Königreichs als Staat nahm, dank der Doktrin der Inneren Rechtskraftwirkung [‚Collateral Estoppel'] verhindert, dass der sogenannte Bundesstaat Hawai'i und die Vereinigten Staaten das verleugnen, von dem das Gericht offiziell Notiz nahm.
26. Der sogenannte Staat Hawai'i ist selbst-erklärt und besitzt weder eine Autorität *de facto* noch eine solche *de jure* als Regierung (‚War Crimes Report,' Abs. 12.2). Er ist der Nachfolger der soganannten provisorischen Regierung, die durch die Intervention vom 17. Januar 1893 etabliert wurde und sich als Regierung ausgab. Die BUNDESANWALTSCHAFT liegt richtig in ihrer Feststellung, dass, wenn man einen Okkupationszustand annimmt, die Besatzungsmacht autorisiert ist, im völkerrechtlich vorgegebenen Rahmen Abgaben, Zölle und Gebühren zu erheben. Indessen kann eine solche Erhebung von Steuern und Abgaben nur durch eine von den Vereinigten Staaten gemäss ‚United States Army Field Manual 27-5' und ‚27-10' etablierte Militärregierung nach dem Steuerrecht des Hawaiischen Königreichs getätigt werden, und nicht durch den sogenannten Bundesstaat von Hawai'i und die Bundessteuerbehörde der USA [‚Internal Revenue Service'] nach amerikanischem Steuerrecht.
27. Die Behauptung der BUNDESANWALTSCHAFT, die gegen Herrn Ackermann als ehemaligen Vorsitzenden der Deutschen Bank gerichteten Vorwürfe des BESCHWERDEFÜHRERS Gumapac wegen der Verwertung eines pfandbelasteten Grundstücks seien rein zivilrechtlicher Natur ist falsch, denn ein pfandbelastetes Grundstück kann nicht verwertet werden, wenn es

Mängel im Eigentumserwerbstitel des Hypothekenschuldners gibt. Diese Mängel sind auf die Tatsache zurückzuführen, dass das öffentliche Notariat und Grundbuchregisteramt des sogenannten Bundesstaats Hawai'i, der weder de facto noch de jure existiert, nicht rechtmässig sind. Nach hawaiischem Recht muss die Ausführung eines Übergabevertrags, oder einer hypothekarischen Belastung zunächst von „der ausführenden Partei vor dem Grundbuchregisterführer, seinem Beauftragten, oder einem Richter eines Registergerichts oder einem öffentlichen Notar dieses Königreichs bescheinigt ("[acknowledged by] the party 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 (Hawaiian Kingdom Compiled Laws, §1255)," und dann im Grundbuchregisteramt ['Bureau of Conveyances'] erfasst werden, wo "alle Kaufverträge, Pachtverhältnisse von über einem Jahr Länge, oder andere Übertragungen von Immobilien innerhalb diese Königreiches erfasst werden müssen ("all deeds, leases for term of more than one year, or other conveyance of real estate within this Kingdom shall be recorded in the office of the Registrar of Conveyances (*Id.*, §1262)")."

28. Des Weiteren kann die Deutsche Bank in Hawai'i gar nicht geschäftlich tätig werden, denn sie ist nicht nach hawaiischem Recht als ausländisches Unternehmen registriert. Nach dem *Act Relating to Corporations and Incorporated Companies Organizing under the Laws of Foreign Countries and Carrying on Business in this Kingdom*, "[muss] jede nach ausländischem Recht gegründete Firma oder Kapitalgesellschaft, die bestrebt ist, in diesem Königreich gesschäftlich tätig zu werden und dazu hier Immobilien in Besitz zu nehmen, zu besitzen und zu verkaufen, im Inneministerium folgendes hinterlegen: 1. eine beglaubigte Kopie der Satzung oder Gründungsurkunde der fraglichen Firma oder Kapitalgesellschaft. 2. die Namen der leitenden Angestellten dieser. 3. den Namen einer Person, an die Rechtsnotizen oder Gerichtsentscheide dieses Königreichs zugestellt werden können. 4. einen Jahresbericht, fällig am 1. Juli jeden Jahres, in dem die Aktiven und Passiven des Unternehmens innerhalb dieses Königreichs aufgeführt sind. 5. eine beglaubigte Kopie der Geschäftsordnung der Firma oder Kapitalgesellschaft ("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 file in the office of the Minister of the Interior: 1. A certified copy of the charter or act of incorporation of such corporation or company. 2. The names of the officers thereof. 3. The name of some person upon whom legal notices and process from the courts of this Kingdom may be served. 4. An annual statement of the assets and liabilities of the corporation or company in this Kingdom on the first day of July in each year. 5. A certified copy of the by-laws of such corporation or company (Id., p. 473)")."
29. Die BESCHWERDEFÜHRER liefern hiermit den Beweis und die rechtlichen Folgerungen um die Nichthandnahmeverfügung der BUNDESANWALTSCHAFT zurückzuweisen, und beide BESCHWERDEFÜHRER erhalten ihren Anspruch aufrecht, dass gegen sie

Kriegsverbrechen begangen wurden und stützen sich dabei auf die Beweise für den Zeitraum von 2006-2012, die in ihren Strafanzeigen dargelegt wurden. Die Vereinigten Staaten haben keinerlei Anrecht oder Souveränität über die Hawaiischen Inseln. Die Hawaiischen Inseln stehen demnach unter einer illegalen und langwierigen Okkupation seit dem Spanisch-Amerikanischen Krieg von 1898, was eine erstaunliche Ähnlichkeit aufweist mit der deutschen Besetzung von Luxemburg während des Ersten Weltkriegs von 1914-1918, und während des Zweiten Weltkriegs von 1940-1945 (‚War Crime Report,' Abs. 15,19).

B. Klagebegehren

Die BESCHWERDEFÜHRER verlangen durch ihren Bevollmächtigten vom Ehrenwerten Gericht, dass ihrem Einspruch entsprochen wird und dass die BUNDESANWALTSCHAFT aufgefordert wird, die in der Strafanzeige von den BESCHWERDEFÜHRERN angeschuldigten mutmasslichen Straftäter gerichtlich zu belangen.

Datiert: Honolulu, Hawai'i, den ________2015

Dr. DAVID KEANU SAI
Bevollmächtigter der Beschwerdeführer

English (Translation)

THE FEDERAL CRIMINAL COURT OBJECTIONS CHAMBER

OBJECTION

Dav h.D.

y/GE

Attorney for Objectors

Federal Criminal Court Objections Chamber
P.O. Box 2720
CH-6501 Bellinzona/TI

OBJECTION
(Pursuant to Art. 393 ff. StPO)

The Appellants Mr. Kale Kepekaio Gumapac and Mr. [redacted] (hereafter collectively known as OBJECTORS), by and through their attorney-in-fact, respectfully appeals the February 3, 2015 decision of the Office of the Attorney General (hereafter ATTORNEY GENERAL) regarding the war crime complaints by OBJECTOR Gumapac, a Hawaiian subject, and OBJECTOR [redacted] according to Article 264C, paragraph 1, lit. d and 264g, paragraph 1, lit. c StGB [Swiss Criminal Code]; Art. 108 and 109 aMStG [Swiss Military Criminal Code].

I. STATEMENT OF FACTS:

1. On February 3, 2015, the ATTORNEY GENERAL concluded that Swiss authorities will not accept the war crime complaints according to Art. 310 StPO [Swiss Criminal Procedure] in connection with Art. 319 StPO that were reported by Professor Niklaus Schweizer in accordance with Art. 301 StPO.
2. The report was sent by certified mail to Dr. David Keanu Sai, attorney for APPELLANTS, c/o [redacted], Av. Eugene Lance 44, CH-1212 Grand Lancy/GE.
3. On behalf of Dr. Sai, [redacted] acknowledged receipt of the report on March 23, 2015.
4. This decision can be objected according to Art. 393 ff. StPO within 10 days after transmission or publication, in writing to the Federal Criminal Court Appeals Chamber, P.O. Box 2720, CH-6501 Bellinzona/TI.

II. ISSUES PRESENTED AND RELIEF SOUGHT

A. Issues Presented

1. The ATTORNEY GENERAL justified the decision to decline war crime investigations because the elements of the offense concerned have not been fulfilled according to Article 310, paragraph 1, lit. A StPO.
2. The primary reason for denying the investigation is that the United States annexed the Republic of Hawai‘i in the year 1898, which it alleges represented the former Kingdom of Hawai‘i. The ATTORNEY GENERAL explained, “The resolution providing the basis of the annexation transferred all rights of sovereignty in and over the Hawaiian Islands and the territories depending on Hawai‘i with the consent of the government of Republic of Hawai‘i to the United States of America and rendered this American territory

(compare 55th Congress of the United States of America, Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States of July 7, 1898). On August 21, 1959, Hawaiʻi was admitted as the 50th Federal State into the Union of the United States."

3. Furthermore, the ATTORNEY GENERAL concluded, "Hawaiʻi thus is recognized by official Switzerland as a part of the United States and in the relevant period from 2006 to 2013 in the view of Switzerland was neither completely nor partly occupied by the United States which right from the beginning excludes an application of the Geneva Conventions and Art. 108 and 109 aMSTG respectively Art. 264 b StGB based on them."
4. The OBJECTORS, by their attorney, incorporate, as though fully set forth herein, the information in the report dated December 7, 2014 entitled "War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands (hereafter "War Crimes Report")," which was acknowledged by the ATTORNEY GENERAL in his report. The War Crimes Report concluded three primary issues that form the legal and historical basis for the OBJECTORS' complaint: (a) the Hawaiian Kingdom existed as an independent State; (b) the Hawaiian Kingdom continues to exist as an independent State despite the illegal overthrow of its government by the United States, and (c) war crimes are being committed in violation of international humanitarian law.
5. The ATTORNEY GENERAL'S reliance on the joint resolution to provide annexing the Hawaiian Islands to the United States of July 7, 1898 is in plain error on four fundamental points. *First*, United States Congressional laws are not a source of international law; *second*, there is no agreement between the United States and the self-declared Republic of Hawaiʻi recognizable under both United States law and international law; *third*, the United States is precluded from denying the existence of the Hawaiian Kingdom as a State by the doctrine of estoppel; and, *fourth*, the ATTORNEY GENERAL, in its report, admits to the continuity of the Hawaiian Kingdom under the 1864 Hawaiian-Swiss Treaty.

a. United States Congressional laws are not a source of international law

6. 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 (Article 38, Statute of the International Court of Justice). Legislation of every independent 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 (*Lotus*, PCIJ ser. A no. 10 (1927) 18)." According to Crawford, derogation of this principle will not be presumed, which he refers to as the *Lotus* presumption (J. Crawford, *The Creation of States in International Law* 41-42 (2nd ed. 2006)).

7. 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 (*Lotus*, 18)." The United States Supreme Court has always adhered to this principle. In *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936), 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." In *The Apollon*, 22 U.S. 362, 370 (1824), the Supreme Court concluded, "The laws of no nation can justly extend beyond its own territories except so far as regards is own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."
8. For Switzerland to claim that domestic law has the power to annex a foreign State is tantamount to recognizing Germany's purported annexation of Luxembourg during World War II and Iraq's purported annexation of Kuwait during the Gulf War. Furthermore, the United States (as well as Switzerland) is precluded from benefiting from its illegal act under the international law principle *ex injuria jus non oritur*—law does not arise from injustice, which is recognized today as *jus cogens*. According to Brownlie, "when elements of certain strong norms (the *jus cogens*) are involved, it is less likely that recognition and acquiescence will offset the original illegality (I. Brownlie, *Principles of Public International Law* 80 (4th ed. 1990)."

b. There is no Agreement between the United States and the self-declared Republic of Hawai'i

9. In international relations, the President is the sole organ of the Federal Government, not the Congress; and it is the President that enters into international legal agreements. "He makes treaties with the advice and consent of the Senate, but he alone negotiates. Into the field of negotiation the Senate

cannot intrude, and Congress itself is powerless to invade it (*United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936)).” The United States recognizes two forms of international agreements—treaties and executive agreements. A treaty signifies “a compact made between two or more independent nations with a view to the public welfare (*Altman & Co. v. United States,* 224 U. S. 583, 600 (1912)).”

10. Under United States law, treaties, as defined under Article II, §2 of the Federal Constitution, also include executive agreements that do not require ratification by the Senate or approval of Congress (*United States v. Belmont*, 301 U.S. 324, 330 (1937); *United States v. Pink*, 315 U.S. 203, 223 (1942); and *American Insurance Ass. v. Garamendi*, 539 U.S. 396, 415 (2003)). In *Weinberger v. Rossi*, 456 U.S. 25 (1982), the Supreme Court referred to treaties as defined by the Constitution to include both treaties and executive agreements, and in *Altman & Co. v. United States*, 224 U.S. 583 (1912), the Supreme Court referred to executive agreements being treaties.
11. The ATTORNEY GENERAL’S claim that the so-called Republic of Hawai‘i consented to the joint resolution of annexation implies that there is an international agreement, whether by a treaty or an executive agreement. There is no such agreement. This claim of the so-called Republic of Hawai‘i’s consent was probably drawn from the joint resolution itself where it states, “Whereas the Government of the Republic of Hawai‘i having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies (30 U.S. Stat. 750 (1898)).” A joint resolution is not a contract between two States, but rather an agreement between the House of Representatives and the Senate of the United States Congress.
12. This so-called consent was referring to the Treaty of Annexation dated June 16, 1897 that was signed in Washington, D.C., by the so-called Republic of Hawai‘i and United States President William McKinley. This treaty, however, was not ratified by the United States Senate because of diplomatic protests filed by Queen Lili‘uokalani and a petition of 21,269 signatures of Hawaiian subjects and residents of the Hawaiian Kingdom protesting the annexation attempt by a treaty, which was made a part of the Senate records in December 1897 (War Crimes Report, para. 5.10).
13. The joint resolution was introduced as House Resolution no. 259 on May 4, 1898, after the Senate could not garner enough votes to ratify the so-called treaty of annexation. During the debate in the Senate, a list of Senators rebuked the theory that a joint resolution has the effect of annexing a foreign territory. Senator Augustus Bacon, stated, “The proposition which I propose

to discuss is that a measure which provides for the annexation of foreign territory is necessarily, essentially, the subject matter of a treaty, and that the assumption of the House of Representatives in the passage of the bill and the proposition on the part of the Foreign Relations Committee that the Senate shall pass the bill, is utterly without warrant in the Constitution (31 Cong. Rec. 6145 (June 20, 1898)).” Senator William Allen stated, “A Joint Resolution if passed becomes a statute law. It has no other or greater force. It is the same as if it would be if it were entitled ‘an act’ instead of ‘A Joint Resolution.’ That is its legal classification. It is therefore impossible for the Government of the United States to reach across its boundary into the dominion of another government and annex that government or persons or property therein. But the United States may do so under the treaty making power (*Id*., 6636 (July 4, 1898)).” Senator Thomas Turley stated, “The Joint Resolution itself, it is admitted, amounts to nothing so far as carrying any effective force is concerned. It does not bring that country within our boundaries. It does not consummate itself (*Id*., 6339 (June 25, 1898)).”

14. In a speech in the Senate where the Senators knew that the 1897 treaty was not ratified, Senator Stephen White stated, “Will anyone speak to me of a ‘treaty’ when we are confronted with a mere proposition negotiated between the plenipotentiaries of two countries and ungratified by a tribunal—this Senate—whose concurrence is necessary? There is no treaty; no one can reasonably aver that there is a treaty. No treaty can exist unless it has attached to it not merely acquiescence of those from whom it emanates as a proposal. It must be accepted—joined in by the other party. This has not been done. There is therefore, no treaty (*Id*., Appendix, 591 (June 21, 1898)).” Senator Allen also rebuked that the joint resolution was a contract or agreement with the so-called Republic of Hawai‘i. He stated, “Whenever it becomes necessary to enter into any sort of compact or agreement with a foreign power, we cannot proceed by legislation to make that contract (*Id*., 6636 (July 4, 1898)).”
15. According to Westel Willoughby, a United States constitutional scholar, “The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature it is enacted (War Crimes Report, para. 5.9).” This is analogous to the proposition that the United States could unilaterally annex Switzerland by enacting a joint resolution of annexation. Furthermore, in 1988, the United States Attorney General reviewed these Congressional records and

stated, “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 (D. Kmiec, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, 12 Op. Off. Legal Counsel 238, 252 (1988)).” The Attorney General then concluded, “It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution (*Id.*).”

16. The so-called Republic of Hawai‘i was the successor of a provisional government unlawfully established on January 17, 1893 through United States intervention (*Id.*, para. 4.8). A Presidential investigation found that the United States illegally overthrew the Hawaiian government, and concluded that the provisional government “was neither a government *de facto* nor *de jure* (*Id.*, para. 4.2),” but self-declared.
17. When the provisional government changed its name on July 4, 1894, to the Republic of Hawai‘i, it acquired no more authority and remained self-declared (*Id.*, para. 9.5). This was acknowledged by the 103rd Congress in its *Joint resolution to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawai‘i* (107 U.S. Stat. 1510 (1993)). This joint resolution stated, “*Whereas*, through the Newlands Resolution, the self-declared Republic of Hawai‘i ceded sovereignty over the Hawaiian Islands to the United States (*Id.*).”
18. Self-declared is defined as “according to one’s own testimony or admission (*Collins English Dictionary*).” Self-declared is also self-proclaimed, which is defined as “giving yourself a particular name, title, etc., usually without any reason or proof that would cause other people to agree with you (*Merriam-Webster Dictionary*). A self-declared entity is not a government of a State recognized by international law, unless it was either *de facto* or *de jure*. Therefore, a self-declared entity could not cede the sovereignty of the Hawaiian State to the United States.

c. Switzerland acknowledges the continuity of the Hawaiian Kingdom as a State

19. On January 22, 2015, OBJECTOR Gumapac invoked his rights as a Hawaiian subject under Article 1 of the 1864 Hawaiian-Swiss Treaty, which states, “Hawaiians shall be received and treated in every canton of the Swiss Confederation, as regards their persons and their properties, on the same footing and in the same manner now or may hereafter be treated, the citizens

of other cantons." The ATTORNEY GENERAL noted this in its report of February 3, 2015, and also correctly concluded the 1864 Hawaiian-Swiss Treaty was not cancelled.

20. This treaty is an international compact entered into between two sovereign and independent States through their governments, the Hawaiian Kingdom and the Swiss Confederation. Both States are subjects of international law, and according to Crawford, "There is a strong presumption that the State continues to exist, with its rights and obligations, despite revolutionary changes in government, or despite a period in which there is no, or no effective, government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State (Crawford, 34; also see War Crimes Report, para. 7.1-7.14)."
21. The Swiss government, by its ATTORNEY GENERAL, acknowledges the continuity of the Hawaiian Kingdom as an independent State, being a contracting party, despite the illegal overthrow of its government by the United States on January 17, 1893. This admittance by the ATTORNEY GENERAL undermines his claim that a domestic law of the United States enacted by its Congress in 1898 could have annexed Hawai‘i, a foreign State, and established United States sovereignty over the Hawaiian Islands. Furthermore, the ATTORNEY GENERAL'S statement in his report that Switzerland officially recognizes Hawai‘i as part of the United States and maintains a Consulate in Honolulu must be construed as a direct violation of the 1864 Hawaiian-Swiss Treaty. The Swiss Consulate was not established in Honolulu according to Article VII of the treaty, which states, "It shall be free for each of the two contracting parties to nominate Consuls, Vice-Consuls or Consular Agents, in the territories of the other. But before any of these officers can act as such, he must be acknowledged and admitted by the government to which he is sent, according to the ordinary usage, and either of the contracting parties may except from the residence of consular officers such particular places as it may deem fit."
22. Additionally, the Swiss Consulate in Honolulu was established by virtue of the United States-Swiss Treaty, which stands in direct violation of the Hawaiian-Swiss Treaty, and therefore is an international wrongful act as defined in the United Nations' *Responsibilities of States for Internationally Wrongful Acts* (2001). According to Article 2, "There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State." Article 16 states, "A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State

does so with knowledge of the circumstance of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State."

d. United States is precluded from denying the existence of the Hawaiian Kingdom as a State by the doctrine of collateral estoppel

23. On March 5, 2015, during an evidentiary hearing held at the Second Circuit Court for criminal proceedings in *State of Hawai'i v. English* (CR 14-1-0819) and *State of Hawai'i v. Dudoit* (CR 14-1-0820), the Court took judicial notice, being a common law doctrine, of adjudicative facts that concludes the Hawaiian Kingdom continues to exist (*Hearing Transcript*, Exhibit "4" of Attachment "1"). These adjudicative facts are embodied in a brief authored by the attorney for the OBJECTORS entitled "The Continuity of the Hawaiian Kingdom and the Legitimacy of the *acting* government of the Hawaiian Kingdom (Exhibit "1" of Attachment "1")."
24. Under the common law system, a judicial notice is the "act by which a court…recognizes the existence and truth of certain facts, which from their nature, are not properly the subject of testimony, … *e.g.* the laws of the state, international law, historical events (Black's Law 848 (6th ed. 1990))."
25. Since 1994, the Hawai'i Intermediate Court of Appeals (ICA) set two precedent cases for those challenging the jurisdiction of Hawai'i in the aftermath of the United States 1993 Congressional apology for the illegal overthrow of the Hawaiian Kingdom government, *State of Hawai'i v. Lorenzo*, 77 Haw. 219 (1994) and *Nishitani v. Baker,* 82 Haw. 281 (1996). These two cases stated that the defendants have a burden to provide a "factual (or legal) basis for concluding that the Kingdom exists as a state." The refusal of the judge to dismiss the criminal complaints after he took judicial notice was in error and a petition for writ of mandamus was filed with the Hawai'i Supreme Court on March 27, 2015, SCPW-15-0000236 (Attachment "1"). Despite the refusal to dismiss, the Court's taking judicial notice of the continued existence of the Hawaiian Kingdom as a State precludes the so-called State of Hawai'i and the United States from denying what was judicially noticed under the doctrine of collateral estoppel.
26. The so-called State of Hawai'i is self-declared and does not possess either *de facto* or *de jure* authority as a government (War Crimes Report, para. 12.2). It is a successor of the provisional government established through intervention on January 17, 1893, impersonating as a government. The ATTORNEY GENERAL is correct in his statement that, if one assumes a state of occupation, the occupying power is authorized within the framework provided

by international law, to levy taxes, customs duties and fees. However, such levying of taxes and fees could only be done by a military government established by the United States according to the United States Army Field Manual 27-5 and 27-10 observing the taxation laws of the Hawaiian Kingdom, and not by the so-called State of Hawai‘i and the Internal Revenue Service of the US Federal Government on the basis of US taxation law.

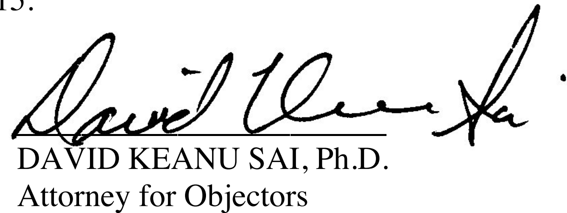
27. The PROSECUTOR'S claim that the accusation directed against Ackermann, as former Chief Executive Officer of Deutsche Bank, by OBJECTOR Gumapac is a purely civil matter regarding liquidation of mortgaged property is in error, because one cannot liquidate mortgaged property if there was a defect in the mortgagor's title. This defect is attributed to the fact that the notary public and registrar of conveyances of the State of Hawai‘i, which is neither *de facto* nor *de jure*, are not a lawful. Under Hawaiian law, the execution of a deed of conveyance or mortgage must first be acknowledged by "the party 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 (Hawaiian Kingdom Compiled Laws, §1255)," and then recorded in the Bureau of Conveyances, where "all deeds, leases for term of more than one year, or other conveyance of real estate within this Kingdom shall be recorded in the office of the Registrar of Conveyances (*Id*., §1262)."
28. Furthermore, Deutsche Bank cannot do business in the Hawaiian Kingdom because it is not registered as a foreign corporation under Hawaiian law. Under *An Act Relating to Corporations and Incorporated Companies Organizing under the Laws of Foreign Countries and Carrying on Business in this Kingdom*, "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 file in the office of the Minister of the Interior: 1. A certified copy of the charter or act of incorporation of such corporation or company. 2. The names of the officers thereof. 3. The name of some person upon whom legal notices and process from the courts of this Kingdom may be served. 4. An annual statement of the assets and liabilities of the corporation or company in this Kingdom on the first day of July in each year. 5. A certified copy of the by-laws of such corporation or company (*Id*., p. 473)."
29. The OBJECTORS herein provided the necessary evidence and conclusions of law in rebuttal to the decision made by the ATTORNEY GENERAL, and both OBJECTORS maintain that war crimes have been committed against themselves based on the evidence provided in their complaints between the years 2006 to 2013. The United States has no claim or sovereignty over the Hawaiian Islands. Therefore, the Hawaiian Islands have been under an illegal

and prolonged occupation since the Spanish-American War, 1898, which bears a striking resemblance to the German occupation of Luxembourg from 1914-1918 during World War I and from 1940-1945 during World War II (War Crimes Report, para. 15.19).

B. Relief Sought

1. The OBJECTORS, by their attorney, request that this Honorable Court in Chambers grant its appeal and direct the ATTORNEY GENERAL to prosecute those alleged perpetrators named in the complaints by the OBJECTORS.

DATED: Honolulu, Hawai‘i, March 31, 2015.



DAVID KEANU SAI, Ph.D.
Attorney for Objectors

Appendix “B”

Law Offices of Dexter K. Kaiama
111 Hekili Street, Suite A1607 — Tel No. (808) 284-5675
Kailua, Hawai'i 96734 — E-Mail: cdexk@hotmail.com

August 10, 2015

Hand-Delivered

David Keanu Sai, Ph.D.
P.O. Box 2194
Honolulu, Hawai'i 96805-2194

Re:		
	My Client:	**Kale Kepekaio Gumapac**
	Criminal Charge:	**Criminal Trespass in the First Degree**
	Date Alleged Incident:	**August 20, 2014**
	Prosecutor's Complaint Filed:	**October 14, 2014**
	Report No.:	**C14021935/PN**

Dear Dr. Sai,

I represent Kale Kepekaio Gumapac in connection with the above-referenced criminal charge of Criminal Trespass in the First Degree, a misdemeanor that is punishable by up to one year in jail and a fine of up to $2,000.00. An arraignment and plea took place before Judge Glenn Hara with the Circuit Court of the Third Circuit, State of Hawai'i. A jury trial has been set to begin on September 28, 2015. I also asked Mr. Gumapac to provide, in his words, a written testimony and chronology of events that centered on the pillaging of his home. Please see Exhibit "1."

As a matter of grave urgency, I have been authorized and instructed by Mr. Gumapac to:

(a) Notify you of additional war crime violations that are being perpetrated against him;

(b) Request you supplement your December 7, 2014 *"War Crimes Report: International Armed Conflict And The Commission Of War Crimes In The Hawaiian Islands"* (hereinafter *"War Crimes Report"*) and immediately apprise the Swiss Government of said further perpetrations of war crimes; and

(c) Demand, as the attorney-in-fact for Mr. Gumapac, that the Swiss Government begin immediate prosecution, and provide public notice of said prosecution, in order to protect Mr. Gumapac from being subjected to the further denial of a fair and regular trial and potential for unlawful confinement in violation of the Geneva Convention IV.

Notice of prior war crimes, perpetrated against Mr. Gumapac, has been well articulated in Sections 15.2 – 15.21 of your December 7, 2014 *War Crimes Report* to the Swiss Government. As legal counsel for Mr. Gumapac, I am instructed and it is my duty to report that the instant

Criminal Trespass in the First Degree charge is directly attributable to the prior war crimes (deprival of a fair and regular trial, pillaging, and unlawful confinement) as provided in said paragraphs (15.2 – 15.21) of your *War Crimes Report* to the Swiss Government.

As provided in paragraph 15.20, the pillaging of Mr. Gumapac's home also resulted in his arrest and unlawful confinement. In that instance, Mr. Gumapac was charged with Criminal Trespass in the Second Degree, a petty misdemeanor. Though Mr. Gumapac was unlawfully confined, as a result that initial arrest, the petty misdemeanor charges were eventually dropped by the Prosecutor's Office for the State of Hawai'i.

The instant matter that I bring to your attention occurred on or about August 20, 2014. Though the lawful occupant of his home, Mr. Gumapac was again arrested, removed from his home, and unlawfully confined. Please see attached Exhibit "2." The arresting officer was Hawai'i Police Officer Brian Hunt, badge no. 6225. Officer Hunt's commanding officer at the time was Captain Samuel Jelsma, and his deputy commander in charge was Lieutenant Reed Mahuna.

Mr. Gumapac now faces Criminal Trespass in the First Degree charges with the possibility of up to one (1) year in jail if convicted by an unlawfully constituted court. We assert that the increased severity of charge, by the Prosecutor's Office, was deliberately brought to intimidate Mr. Gumapac from asserting his rights as a protected citizen. The Hawai'i County Prosecuting Attorney is Mitch Roth.

Finally, I am obligated to notify you that Glenn Hara is the assigned Circuit Court Judge to preside over Mr. Gumapac's Criminal Trespass in the First Degree jury trial. Paragraph 15.5 of your December 7, 2014 *War Crime Report* provides the ruling of Judge Hara, on a similar motion to dismiss for lack of subject matter jurisdiction in another case before the Third Circuit Court of the State of Hawai'i, whereby Judge Hara stated as follows:

> "what you're asking the court to do is commit suicide, because once I adopt Your argument, I have no jurisdiction over anything. Not only these kinds of cases …, but jurisdiction of the courts evaporate. All the courts across the state from the supreme court down, and we have no judiciary. I can't do that."

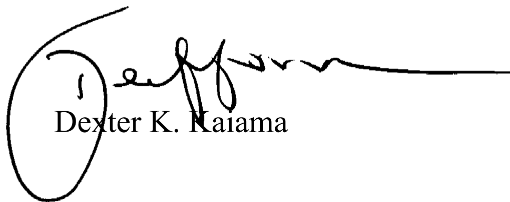
In light of Judge Hara's prior ruling, and the rationale expressed in his ruling, Mr. Gumapac's urgent concern that he will again be a victim of the war crime, the deprival of a fair and regular trial, is well founded. Furthermore, the unlawful retention of the court's jurisdiction, over the

criminal complaint, will likely lead to his unlawful confinement of up to one (1) year in prison.

Accordingly, on behalf of Mr. Kale Kepekaio Gumapac, and as a matter of grave urgency, I respectfully demand that you supplement your re-filing of the complaint and immediately apprise the Swiss Government of said further perpetrations of war crimes, and demand, the Swiss Government begin immediate prosecution, and provide public notice of said prosecution of the war crimes and against the alleged perpetrators of said war crimes as more fully set forth in your *War Crimes Report*. Additionally, I would also name as accomplices to the pillaging of Mr. Gumapac's home the following individuals: Glenn Swanson, Sandra Hegerfeldt, Jessica Hall and Dana Kenny of Savio Realty in the town of Pahoa, island of Hawai'i.

Thank you for your attention and immediate assistance on this matter. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Dexter K. Kaiama

pc: Kale Kepekaio Gumapac

Exhibit “1”

BAIL/BOND RECEIPT, ACKNOWLEDGMENT, AND NOTICE TO APPEAR

BBRA No. 30 0072640

Case No. C14021935

Arresting Agency: HCPD	State ID (SID)/Booking No. (if applicable):	Date: 08-20-2014

Charge(s)/Statutory Section(s):	Arrest Report/Citation No(s):	Amount	Charge(s)/Statutory Section(s):	Arrest Report/Citation No(s):	Amount
708-0814 (CRIM TRESS 2)	C14021935	$ 250			$
		$			$
		$			$
		$			$
		$			$

Release Based On: ☐ ROR ☐ CASH deposited by DEFENDANT ☒ CASH deposited by THIRD PARTY SURETY
☐ PAPER BOND posted by LICENSED SURETY INSURANCE COMPANY/AGENT (Attach Copy of Paper Bond and Copy of Agent's Power of Attorney)

(For Judiciary Use Only)

BAIL/BOND FOR (Defendant's Name) Kale K. Gumapac

DOB: 02-05-1951 LAST 4 DIGITS OF SSN: XXX-XX- 5 3 1 8 PHONE: (808) 896-7420

ADDRESS: 15-1716 2nd Avenue Keaau, HI 96749

AMOUNT RECEIVED: $ 250 ☐ ROR

CERTIFIED/CASHIER'S CHECK NO. OR POWER OF ATTORNEY NO.

APPEARANCE INFORMATION: YOU ARE TO APPEAR IN THE FOLLOWING COURT CHECKED BELOW (address on back):

☐ CIRCUIT - HILO ☐ CIRCUIT - KONA: at ☐ Div. 3 ☐ Div. 4 ☐ FAMILY - HILO

☐ FAMILY - KONA: at ☐ Keakealani Building ☐ Lenders Document Building ☐ FAMILY - SOUTH KOHALA

FOR DISTRICT COURT ONLY: ☐ HILO ☐ KONA ☐ SOUTH KOHALA ☐ NORTH KOHALA

☐ HAMAKUA ☒ PUNA ☐ KAU ☐ OTHER

COURT DATE AND TIME: 09-25-2014 ~~11:30~~ 13:30 AM/PM (circle one) (PM circled)

DEFENDANT'S ACKNOWLEDGMENT OF TERMS AND CONDITIONS FOR RELEASE ON BAIL OR RECOGNIZANCE

In order to be admitted to bail and released from custody or released on recognizance, I agree to comply with the terms and conditions of release on bail or recognizance set forth herein, all conditions imposed by law, and any additional conditions that a court may later impose on me. I specifically understand and agree that:

- I must appear in person for all court hearings, including the hearing set forth above. If I fail to appear, my release will be revoked, a bench warrant will be issued for my arrest, and I may be charged for bail jumping or contempt of court.
- I will remain in the State of Hawai'i unless I obtain court approval to leave the jurisdiction.
- I will not commit a federal, state or local offense during the period of release.
- The court may **REVOKE MY RELEASE** if any term or condition of release is violated.
- If, at any time, I fail to appear in court on the day and at the time indicated on this Receipt, Acknowledgment, and Notice to Appear Form or any other day and time ordered by the court, any cash or bond posted for my release **WILL BE FORFEITED** to the State and **NOT RETURNED**.
- Any cash I have deposited as security for this bond may be applied to pay any fines, restitution, costs and/or fees that I may be ordered to pay in this case.

Date 08-20-2014	Print Name of Defendant Kale Gumapac	Defendant's Signature [signature]

NOTIFICATION TO THIRD-PARTY SURETY OF BAIL BOND CONDITIONS/OBLIGATIONS

I have read and understand the terms and conditions of bail signed by defendant. I understand that this is a continuing bond that will remain in full force and effect, unless otherwise ordered by the court, until final determination of all proceedings in this case, including appeal. If I wish earlier discharge from liability on this bond, I must surrender Defendant to the custody of any sheriff, chief of police, or their authorized subordinates. I understand that if Defendant fails to appear in court on the day and at the time indicated on this Receipt, Acknowledgment, and Notice to Appear Form or any other day and time ordered by the court, judgment for the full amount of this bail bond shall be entered in favor of the State. Any request to show good cause why the court should vacate the judgment of forfeiture must be filed within thirty (30) days from the date notice of the entry of judgment in favor of the state is given via personal service or certified mail, return receipt requested.

☐ If cash was deposited as security for the full amount of this bond, the full amount will be forfeited to the State and not returned to me.

☐ If a paper bond was filed, surety is required to pay the full amount of the bond to the State in execution of the judgment unless a) the court sustains the surety's motion or application submitted pursuant to HRS § 804-51 and vacates the judgment based on a showing of good cause or b) defendant is surrendered to law enforcement officials pursuant to HRS §§ 804-14, 804-41, and 804-51.

Telephone No. 808-223-3359	Print Name of Third-Party Surety or Agent NANCI MUNROE	Driver License/Other ID No. H00053797
Date 8/20/14	Signature of Third-Party Surety or Agent [signature]	Preferred Mailing Address of Third-Party Surety PO Box 1302 Keaau, HI 96749

NOTE: COPY OF PAPER BOND AND COPY OF AGENT'S POWER OF ATTORNEY MUST BE ATTACHED IF PAPER BOND FILED.

LAW ENFORCEMENT OFFICER/CLERK

Date 8/20/14	Print Name/ID No. Brian HUNT 6225	Officer/Clerk's Signature [signature]	Agency HCPD

(BAR CODE)

Exhibit “2”

As per your request, I am submitting in writing the chronology of events that resulted in my unlawful incarceration and unfair trial. Pillaging and plundering of my home and land by enforcement officers and their accomplices with no jurisdiction took place.

I was unlawfully arrested for refusing to obey unlawful Judge Greg Nakamura's order to vacate my home at 7 am on November 21, 2013 by Lt. Patrick Kawai of the State of Hawaii Sheriff's Dept. Judge Greg Nakamura did not provide me a fair and regular due to lack of subject matter jurisdiction. I informed Lt. Kawai and the deputies from the Fugitive Task Force prior to my eviction that they were about to commit war crimes of pillaging and plundering by enforcing an unlawful order of an unfair and irregular trial. They ignored the warning and proceeded to take control of all my furniture, personal property, Laulima Title Search and Claims office equipment, computers and desks. The sheriffs then proceeded to search my home without my consent. Lt. Patrick Kawai arrested me for failing to vacate the property within 10 minutes thus committing another war crime of unlawful incarceration. I had no reason to vacate my home and property that was legally mine. I have video of many of the deputies involved but do not know their names.

I was handcuffed and transported to the Hilo jail where I was processed and incarcerated until my arraignment before an unlawful Judge Van de Car. I informed her that I did not recognize this court as it has no jurisdiction and she ordered that I be put in jail. I was bailed out later that night and began my search for a place to live. I was forced to live with people who offered me temporary shelter while I searched to rent a home that would be big enough to restore my business of Laulima Title Search and Claims.

Process server Bob Dukat of Pyramid Processing assisted the Sheriff's in my eviction by providing surveillance and arranging to have Big Island Moving and Storage to remove all my property from my home and holding it hostage until I paid the ransom to have it released from storage. Big Island Moving and Storage charged me $3109.40 to get my property and furniture out of hock.

I was forced to attend a hearing to enter my plea of not guilty with unlawful District Judge Freitas on December 3, 2013. My attorney Dexter Kaiama informed the unlawful court that he would be representing me. The pre-trial hearing was set for February 16, 2014.

Once again, I was forced to appear before unlawful Harry Freitas. At the pre-trial hearing my attorney Dexter Kaiama filed a motion to dismiss based on the court's lack subject matter jurisdiction. Freitas set a hearing for March 6, 2014 to hear arguments regarding our motion to dismiss.

On July 22, 2014 Judge Harry Freitas signed an order submitted by the prosecutor to dismiss the case “nolle prosecu”. I immediately made plans to move back into my vacant home.

Throughout this process and unbeknownst to me, I was not informed that my home had been auctioned and bought at auction by Deutsche Bank. Deutsche Bank was provided irrefutable evidence that the title to my property was defective and according to the mortgage contract that was signed by both parties, the bank and myself, there is a contractual remedy to pay my monetary obligation in full instead of foreclosing on my home.

Deutsche Bank ignored our notice regarding the defective title. To complicate matters for Deutsche Bank, their loan servicer, OCWEN, was caught for fraudulent foreclosures and settled with Attorney Generals from several states including Hawaii. My loan and foreclosure fell under this agreement. I received a settlement offer from Ocwen and if I choose to accept the settlement it would not hinder the right to proceed with any legal action against Ocwen and/or Deutsche Bank. My home was illegally foreclosed on by Deutsche Bank.

Deutsche Bank retained the services of Realtor Jessica Hall of Hawaii Life Realty to put my home on the market. I notified my attorney Dexter Kaiama and asked that he send a cease and desist letter to Jessica Hall and inform her that she was committing a war crime. She chose to ignore the warning and sold my home through another Realtor Glenn Swanson of Savio Realty in Pahoa. Realtor Glenn Swanson was also sent a cease and desist letter of which his Brokers in Charge Sandra Hegerfeldt and Dana Kenny got involved by defending their actions to sell my property that was taken away during an unfair and irregular court proceeding.

I moved back into my home and was confronted by Realtor Glenn Swanson and the potential buyer of my home as they were trying to break the lock on the door. I informed him that he was committing a war crime and he did not inform the potential buyer of all the legal problems that went with the home and he got in his car and left.

A few days later 6 police officers came to my home, 2 Sergeants and 4 patrol officers. I confronted them at the entry gate and provided them with Judge Harry Freitas’ signed order to dismiss first criminal trespass charge, the settlement offer letter from Ocwen as a result of fraudulently foreclosing on my home and informing the officer in charge that this was not a criminal matter but a civil matter. Upon verifying Judge Freitas’ order and Ocwen letter the Sargent said there was nothing they could do and ordered his officers to leave. Realtor Glenn Swanson was furious that they did not arrest me.

4 days later a group of 3 officers came to my home late at 9 pm, 1 Sergeant and 2 Patrol Officers. I proceeded to tell them the same thing that I told the previous group of

officers and showed them the same documents. The Sergeant reviewed the documents and declared there was nothing they could do about this and walked out to their cars. Realtor Glenn Swanson was waiting and questioned the officers as to why are they not arresting me? The Sergeant told Glenn that he was not going to stick his neck out on this arrest and left. Realtor Glenn Swanson was visibly upset.

The very next morning of August 20, 2014 at 7 am, 2 rookie police officers come to my home and proceed to question me. Again, I informed them like I did the previous officers of the unlawful foreclosure. They were confused as to what to do next so they called the Pahoa Police Station and were told that they have to arrest me on orders from Hawaii County Prosecutor Mitch Roth. Officer Brian Hunt unlawfully arrested me and took me to the Pahoa Police Station for processing. Prior to the arrest I informed both officers that they would be charged with a war crime for unlawful incarceration. The Police Captain in charge at the time of my arrest was Officer Samuel Jelsma, and second in command was his Lieutenant, Officer Reed Mahuna.

I was bailed out that morning and given an arraignment hearing on September 25, 2014. Realtor Glenn Swanson and Jessica Hall were at my home and took possession of my private and business property. They also took possession of my home and threatened that if I came on my own property again that I would be arrested and charged with a more serious crime. Realtor Glenn Swanson proceeded to rent my home out with all my property still there and allowing the renters full access to all my private and business property and files. I was given 2 weeks to remove my property before Realtor Glenn Swanson would remove it and destroy it. I hurriedly found another place to rent and got friends to help me move. Realtor Glenn Swanson would oversee everything.

This is my statement to the best of knowledge.

Kale Gumapac

Exhibit “6”

War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands

December 7, 2014

David Keanu Sai, Ph.D.*

1. Preliminary Statement

1.1. This report is provided at the request of Niklaus Schweizer, Ph.D., Swiss Consul *emeritus* to Hawai'i, in light of the recent news coverage of alleged war crimes being committed in the Hawaiian Islands by ABC Australia News[1] and Radio[2] and its affect on the estimated 600 Swiss expatriates residing in the Hawaiian Islands. ABC Australia's news coverage centered on Williamson Chang, a senior law professor at the University of Hawai'i William S. Richardson School of Law, who notified United States Attorney General Eric Holder of the alleged war crimes. Professor Chang relied on the contents of a memorandum commissioned by the Office of Hawaiian Affairs (OHA), being a government agency of the State of Hawai'i.[3] The author of this report is also the author of the OHA memorandum.

1.2. These matters arise out of the prolonged and illegal occupation of the entire territory of the Hawaiian Kingdom by the United States of America (United States) since the Spanish-American War on August 12, 1898, and the failure on the part of the United States to establish a direct system of administering the laws of the Hawaiian Kingdom in accordance with international humanitarian law. The United States disguised its occupation of the Hawaiian Kingdom as if a treaty of cession annexed the Hawaiian Islands. There is no treaty.

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* Dr. Sai has a Ph.D. in political science from the University of Hawai'i at Manoa. This report includes portions of a brief authored by Dr. Matthew Craven, July 12, 2002. Dr. Craven has a Ph.D. in law from the University of Nottingham. He is currently Professor of International Law, Dean of the Faculty of Law and Social Science, University of London, School of Oriental and African Studies. The author's curriculum vitae is attached herein as Appendix "I."

[1] *See* "Kingdom of Hawaii activists call on US attorney-general to investigate claims of war crimes," *ABC Australia News*, posted on September 24, 2014, http://mobile.abc.net.au/news/2014-09-24/us-accused-of-war-crimes-by-kingdom-of-hawaii-activists/5765832.

[2] *See* "Could the US be guilty of committing war crimes in Hawaii?," *ABC Australia Radio*, posted on September 24, 2014, http://www.radioaustralia.net.au/international/radio/program/pacific-beat/could-the-us-be-guilty-of-committing-war-crimes-in-hawaii/1371757.

[3] *See* "Senior Law Professor Reports War Crimes to U.S. Attorney General," Hawaiian Kingdom Blog, posted on September 20, 2014, http://hawaiiankingdom.org/blog/senior-law-professor-reports-war-crimes-to-u-s-attorney-general/. Professor Williamson Chang's press conference held at the William S. Richardson School of Law on YouTube, posted on September 22, 2014, https://www.youtube.com/watch?v=xl9LaY5fPSU&list=UUnpxtCNg1FpGZ84urTHvyeg.

1.3. For the past 121 years, the United States has committed a serious international wrongful act and deliberately misled the international community that the Hawaiian Islands had been incorporated into the territory of the United States. It has unlawfully imposed its internal laws over Hawaiian territory, which includes its territorial seas, its exclusive economic zone, and its airspace, in violation of its treaties with the Hawaiian Kingdom and international humanitarian law, which is provided in the 1907 Hague Conventions (HC IV), the 1949 Geneva Conventions (GC IV) and its 1977 Additional Protocols. Hawaiian Kingdom law is binding over all persons and property within its territorial jurisdiction.

> "The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws."[4]

1.4. On July 20, 1864, Switzerland entered into a treaty of friendship, establishment and commerce with the Hawaiian Kingdom, which is attached as Appendix "II". The treaty provides reciprocal rights to the citizens of both countries while residing on the territories of the contracting parties. Article III states:

> "The citizens of each of the contracting parties shall enjoy on the territory of the other the most perfect and complete protection for their persons and their properties. They shall in consequence have free and easy access to the tribunals of justice for their claims and the defence of their rights, in all cases and in every degree of jurisdiction established by the law. They shall be free to employ in all circumstances advocates, lawyers or agents of any class whom they may choose to act in their name, chosen among those admitted to exercise professions by the laws of the country. In fine they shall enjoy in this respect the same rights and privileges accorded to natives and be subject to the same condition. Anonymous commercial, industrial or financial societies, legally authorized in either of the two countries, shall be admitted to plead in justice in the other, and shall enjoy in this respect the same rights as individuals."

The treaty continues to be binding on the contracting parties as there has been no notice of its termination in accordance with Article XIII, which provides in "case neither of the contracting parties shall have notified twelve months before the end of the…period its termination to terminate the same, this treaty will continue obligatory."

[4] Hawaiian Kingdom Civil Code (Compiled Laws), §6. Civil Code *available at*: http://hawaiiankingdom.org/civilcode/index.shtml.

1.5. The first allegations of war crimes, being unfair trial and unlawful confinement, were made the subject of an arbitral dispute in *Lance Larsen vs. the Hawaiian Kingdom*[5] at the Permanent Court of Arbitration (PCA), The Hague, Netherlands. Oral hearings were held at the Peace Palace, The Hague, on December 7, 8, and 11, 2000. The author of the report served as lead agent for the Hawaiian Kingdom in these arbitral proceedings.

> "At the center of the PCA proceedings 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] municipals' through its political subdivision, the State of Hawai'i. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him."[6]

1.6. On July 5, 2001, the Hawaiian Council of Regency (*acting* Government) filed a Complaint with the United Nations Security Council in New York as a State not a member of the United Nations pursuant to Article 35(2) of the United Nations Charter as a non-member State of the United Nations.[7] The Complaint was accepted by China who served as President of the Security Council.[8]

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[5] *See Lance Larsen v. Hawaiian Kingdom*, 119 INT'L L. REP. 566 (2001), reprinted in 1 HAW. J. L. & POL. 299 (Summer 2004); see also Permanent Court of Arbitration website, Cases, *Larsen/Hawaiian Kingdom*, at http://www.pca-cpa.org/showpage.asp?pag_id=1159 (Permanent Ct. Arb. Trib. Feb. 5, 2001). The formation of the *acting* government of the Hawaiian Kingdom under the doctrine of necessity is attached herein as Appendix "III," being a portion of a legal brief by Dr. David Keanu Sai, *The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom* (August 4, 2013), available at: http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf.

[6] David Bederman & Kurt Hilbert, *Arbitration—UNCITRAL Rules—justiciability and indispensible third parties—legal status of Hawaii*, 95 AM. J. INT'L L. 927, 928 (2001).

[7] See the Charter of the United Nations:

CHAPTER VI: PACIFIC SETTLEMENT OF DISPUTES

Article 35

Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

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

The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

[8] 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, 671-672 (2002). The Hawaiian Complaint (July 5, 2001), available at: http://hawaiiankingdom.org/pdf/Hawaiian_UN_Complaint.pdf.

1.7. On August 10, 2012, the *acting* Government submitted a Protest and Demand with the President of the United Nations General Assembly in New York as a State not a member of the United Nations pursuant to Article 35(2) of the United Nations Charter as a non-member State of the United Nations. Ms. Hanifa Mizoui, Ph.D., Special Coordinator, Third Committee and Civil Society, Office of the President of the Sixty-Sixth Session of the General Assembly, received and acknowledged the complaint.[9]

1.8. On November 28, 2012, the *acting* Government signed its Instrument of Accession to the GC IV, and it was deposited with the General Secretariat of the Swiss Federal Department of Foreign Affairs in Berne, Switzerland, on January 14, 2013. The GC IV took immediate effect on the aforementioned date of deposit in accordance with Article 157 of the said Convention.[10]

1.9. This report along with its particulars are submitted to the Attorney General of Switzerland, Michael Lauber, for consideration regarding alleged war crimes committed in the Hawaiian Islands in accordance with the Swiss Criminal Code (SCC) and the Swiss Criminal Procedure Code (SCPC).

2. War Crimes Report

2.1. Since war crimes can only arise if there is an armed conflict between States—the United States and the Hawaiian Kingdom, it follows that the continuity of the Hawaiian Kingdom as an independent State and subject of international law is *condicio sine qua non*. It is therefore necessary to examine first the question of the Hawaiian Kingdom and State continuity, which will include the United States of America's claim as its successor State, then followed by an examination of international humanitarian law and the jurisdictional basis for the prosecution of war crimes by Swiss authorities under passive personality jurisdiction, which is based on the duty of a state to protect its nationals abroad,[11] and universal jurisdiction, which is based on the theory that certain crimes are so egregious that all nations have an interest in exercising jurisdiction to combat them.[12]

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[9] Hawaiian Kingdom Protest and Demand *available at*: http://www.hawaiiankingdom.org/UN_Protest_pressrelease.shtml.

[10] Hawaiian Instrument of Accession filed with the Swiss Foreign Ministry, January 14, 2013, *available at*: http://www.hawaiiankingdom.org/pdf/GC_Accession.pdf.

[11] *See The Lotus Case* (France v. Turkey), P.C.I.J. (ser. A) No. 10, at 55 (1923), 2 HUDSON, WORLD COURT REPORTS 20, 60 (1929) (Lord Finlay, dissenting); Beckett, *The Exercise of Criminal Jurisdiction Over Foreigners*, 6 BRIT. Y.B. INT'L L. 44, 57-58 (1925); Sarkar, *The Proper Law of Crime in International Law*, in INTERNATIONAL CRIMINAL LAW 50, 66 (G. Mueller & E. Wise eds. 1965). In *The Lotus Case*, Lord Finlay stated: "The passing of such laws to affect aliens is defended on the ground that they are necessary for the 'protection' of the national. Every country has the right and duty to protect its nationals when out of their own country. If crimes are committed against them when abroad, it may insist on the offender being brought to justice…" *The Lotus Case*, at 55, 2 HUDSON, WORLD COURT REPORTS at 60 (Lord Finlay, dissenting).

[12] *See* L. HENKIN, INTERNATIONAL LAW CASES AND MATERIALS 823 (1987); Randall, *Universal Jurisdiction Under International Law*, 66 TEXAS L. REV. 785, 788 (1988). Piracy, slave trading, attacks on

2.2. The report will answer three initial issues:

A. Whether the Hawaiian Kingdom existed as an independent State and a subject of international law.

B. Whether the Hawaiian Kingdom continues to exist as an independent State and a subject of International Law, despite the illegal overthrow of its government by the United States.

C. Whether war crimes have been committed in violation of international humanitarian law.

2.3. A fourth element of the report, which depends upon an affirmative answer to each of the above questions, is:

D. Whether the Swiss Federal Government is capable of investigating and prosecuting war crimes that occur outside of its territory.

2.4. The final element of the report are the allegations of crimes with evidence that have been committed against Mr. Kale Kepekaio Gumapac, a Hawaiian national, and a Swiss expatriate whose name will be kept confidential in this report for safety concerns, but will be provided only to the Office of the Attorney General in the attached exhibits that contain the evidence.

A. THE HAWAIIAN KINGDOM

3. *A SUBJECT OF INTERNATIONAL LAW*

3.1. When the United Kingdom and France formally recognized the Hawaiian Kingdom as an "independent state" at the Court of London on November 28, 1843,[13] and later formally recognized by the United States of America on July 6, 1844 by letter to the Hawaiian government from Secretary of State John C. Calhoun,[14] the Hawaiian State was admitted into the Family of Nations. Since its recognition, the Hawaiian Kingdom entered into extensive treaty relations with a variety of States establishing diplomatic relations and trade agreements.[15] To quote the *dictum* of the Permanent Court of Arbitration in 2001:

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or hijacking of aircraft, genocide, war crimes and drug trafficking are all considered "universal" crimes. McCredie, *Contemporary Use of Force Against Terrorism: The United States Response to Achille Lauro—Questions of Jurisdiction and its Exercise*, 16 GA. J. INT'L & COM. L. 435, 439 (1986).

[13] The Anglo-French Joint Declaration *available at*: http://hawaiiankingdom.org/pdf/Annex%202.pdf.

[14] U.S. Secretary of State Calhoun's letter *available at*: http://hawaiiankingdom.org/pdf/Annex%203.pdf.

[15] The Hawaiian Kingdom entered into treaties with Austria-Hungary, June 18, 1875; Belgium, October 4, 1862; Bremen (succeeded by Germany), March 27, 1854; Denmark, October 19, 1846; France, September 8, 1858; French Tahiti, November 24, 1853; Germany, March 25, 1879; New South Wales (now Australia), March 10, 1874; Hamburg (succeeded by Germany), January 8, 1848); Italy, July 22, 1863; Japan, August 19, 1871, January 28, 1886; Netherlands & Luxembourg, October 16, 1862 (Willliam III was also Grand

> "A perusal of the material discloses 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."[16]

Additionally, the Hawaiian Kingdom became a full member of the Universal Postal Union on January 1, 1882. Attached, as Appendix "IV," is a registry of the Hawaiian Kingdom for the year 1893.

3.2. As an independent State, the Hawaiian Kingdom, along with other independent States within the Family of Nations, obtained an "international personality." As such, all independent States "are regarded equal, and the rights of each not deemed to be dependent upon the possession of power to insure their enforcement."[17] According to Dickinson, the

> "principle of equality has an important legal significance in the modern law of nations. It is the expression of two important legal principles. The first of these may be called the equal protection of the law or equality before the law. …The second principle is usually described as equality of rights and obligations or more often as equality of rights."[18]

International personality is defined as "the capacity to be bearer of rights and duties under international law."[19] Crawford, however, distinguishes between "general" and "special" legal personality. The former "arises against the world (*erga omnes*)," and the latter "binds only consenting States."[20] As an independent State, the Hawaiian Kingdom, like the United States of America, has both "general" legal personality under international law as well as "special" legal personality under the 1893 executive agreements[21] that bind both the Hawaiian Kingdom and the United States to certain duties and obligations as hereinafter described.

Duke of Luxembourg); Portugal, May 5, 1882; Russia, June 19, 1869; Samoa, March 20, 1887; Spain, October 9, 1863; Sweden-Norway (now separate States), April 5, 1855; and Switzerland, July 20, 1864; the United Kingdom of Great Britain and Northern Ireland) March 26, 1846; and the United States of America, December 20, 1849, January 13, 1875, September 11, 1883, December 6, 1884. These treaties *available at*: http://hawaiiankingdom.org/UN_Protest_Annexes.shtml.

[16] *Larsen v. Hawaiian Kingdom*, 119 INT'L L. REP. 566, 581 (2001), *reprinted in* 1 HAW. J. L. & POL. 299 (Summer 2004).

[17] CHARLES CHENEY HYDE, INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED BY THE UNTIED STATES 20 (Vol. I, 1922).

[18] EDWIN DEWITT DICKINSON, THE EQUALITY OF STATES IN INTERNATIONAL LAW 335 (1920).

[19] SCHWARZENBERGER, A MANUAL OF INTERNATIONAL LAW 53 (6th ed., 1976).

[20] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 30 (2nd ed., 2006).

[21] David Keanu Sai, *A Slipperty 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 68, 119-121 (2008); *see* also *infra* para. 4.1–4.6.

3.3. The consequences of statehood at that time were several. States were deemed to be sovereign not only in a descriptive sense, but were also regarded as being "entitled" to sovereignty. This entailed, among other things, the rights to free choice of government, territorial inviolability, self-preservation, free development of natural resources, of acquisition and of absolute jurisdiction over all persons and things within the territory of the State.[22] It was, however, admitted that intervention by another State was permissible in certain prescribed circumstances such as for purposes of self-preservation, for purposes of fulfilling legal engagements, or of opposing wrongdoing. Although intervention was not absolutely prohibited in this regard, it was generally confined as regards the specified justifications. As Hall remarked, "The legality of an intervention must depend on the power of the intervening state to show that its action is sanctioned by some principle which can, and in the particular case does, take precedence of it."[23] A desire for simple aggrandizement of territory did not fall within these terms, and intervention for purposes of supporting one party in a civil war was often regarded as unlawful.[24] In any case, the right of independence was regarded as so fundamental that any action against it "must be looked upon with disfavor."[25]

4. *FIRST ARMED CONFLICT WITH UNITED STATES—JANUARY 16, 1893*

4.1. "Governmental authority," states Crawford, "is the basis for normal inter-State relations; what is an act of a State is defined primarily by reference to its organs of government, legislative, executive or judicial."[26] On January 17, 1893, Queen Lili'uokalani, who was constitutionally vested with the "executive power" under Article 31 of the Hawaiian constitution,[27] was unable to apprehend certain insurgents calling themselves the provisional government without armed conflict between United States troops, who were illegally landed by the United States Legation to protect the insurgents, and the Hawaiian police force headed by Marshal Charles Wilson. The Queen was forced to temporarily assign her police power to the President of the United States under threat of war calling for an investigation of its senior diplomat and military commanders who had intervened in the internal affairs of the Hawaiian Kingdom, and, thereafter, restore the government.[28] Upon receipt of

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[22] ROBERT PHILLIMORE, COMMENTARIES UPON INTERNATIONAL LAW, VOL. I, 216 (1879).
[23] WILLIAM EDWARD HALL, A TREATISE ON INTERNATIONAL LAW 298 (4th ed. 1895).
[24] THOMAS LAWRENCE, PRINCIPLES OF INTERNATIONAL LAW 134 (4th ed. 1913).
[25] *See* HALL, *supra* note 23, at 298.
[26] *See* CRAWFORD, *supra* note 20, at 56.
[27] Constitution of the Hawaiian Kingdom, 1864, art. 31: "The person of the King is inviolable and sacred. His Ministers are responsible. To the King belongs the executive power. All laws that have passed the Legislative Assembly, shall require His Majesty's signature in order to their validity," *available at*: http://hawaiiankingdom.org/pdf/Annex%204.pdf.
[28] The diplomatic protest stated, "I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom. That I yield to the superior force of the United States of

the Queen's diplomatic protest, United States President Cleveland initiated an investigation by first withdrawing a treaty, which provided for the cession of Hawaiian territory, from the United States Senate. To conduct the investigation, President Cleveland appointed a Special Commissioner, James Blount, to travel to the Hawaiian Islands in order to provide reports to the United States Secretary of State Walter Gresham. Blount reported that, "in pursuance of a prearranged plan [between the insurgents, claiming to be a government, and the U.S. Legation], the Government thus established hastened off commissioners to Washington to make a treaty for the purpose of annexing the Hawaiian Islands to the United States."[29]

4.2. The investigation concluded that the United States Legation accredited to the Hawaiian Kingdom, together with United States Marines and Naval personnel, were directly responsible for the illegal overthrow of the Hawaiian government with the ultimate goal of transferring the Hawaiian Islands to the United States from an installed puppet government.[30] The President acknowledged that the

> "military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawai'i or for the *bona fide* purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the *de facto* and the *de jure* government."[31]

> "When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in a manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*."[32]

4.3. The investigation also detailed the culpability of the United States government in violating international laws, as well as Hawaiian State territorial sovereignty and concluded it must provide *restitutio in integrum*—restoration to the original situation before the United States intervention occurred on

America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government. Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands."

[29] United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95, (Government Printing Office 1895), 587, [hereafter Executive Documents]. Reprinted at 1 HAW. J. L. & POL. 136 (Summer 2004). The Executive Documents are available at the University of Hawai'i at Manoa Library website at: http://libweb.hawaii.edu/digicoll/annexation/blount.html.

[30] *Id*. at 567.

[31] *Id*., at 451.

[32] *Id*., at 453.

January 16, 1893. According to Oppenheim, it "is obvious that there must be a pecuniary reparation for a material damage; and at least a formal apology on the part of the delinquent will in every case be necessary."[33] In the *Chorzow Factory* case, the Permanent Court of International Justice, stated:

> "The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral decisions—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear."[34]

4.4. Prior to his first of several meetings with the Queen at the United States Legation in Honolulu, the new United States Minister Plenipotentiary Albert Willis was instructed by Gresham to provide an apology on behalf of the President for the United States' illegal actions taken by its diplomat and troops. Gresham's instructions provided,

> "On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination, making known to her the President's sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.
>
> You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed."[35]

4.5. The first meeting with the Queen was held at the United States Legation on November 13, 1893, where Willis conveyed the apology and the condition of reinstatement as he was instructed.[36] The Queen, however, did not accept the President's condition of reinstatement.[37] Additional meetings were held on December 16th and 18th and through negotiations and *exchange of notes* between the Queen and Willis, settlement for the illegal overthrow of the

[33] LASSA OPPENHEIM, INTERNATIONAL LAW, VOL. I—PEACE 318-319 (7th ed. 1948).
[34] *The Factory at Chorzow* (Germany v. Poland), P.C.I.J. (series A) No. 17, at 47 (1927).
[35] *See* Executive Documents, *supra* note 29, at 464.
[36] *Id*., at 1242.
[37] *Id*., at 1243.

Hawaiian government was finally achieved by executive agreement on December 18, 1893.[38] On the part of the United States, the President committed to restore the government as it stood before the landing of United States troops on January 16, 1893, and, thereafter, on the part of the Hawaiian Kingdom, the Queen committed to grant amnesty to the insurgents and assume all obligations of the self-proclaimed provisional government. Myers explains, "*Exchange of notes* is the most flexible form of a treaty… The exchange consists of an offer and an acceptance… The offering instrument contains a text of the proposed agreement and the acceptance invariably repeats it verbatim, with assent."[39] According to Garner,

> "Agreements in the form of an *exchange of notes* between certain high officials acting on behalf of States, usually their Ministers of Foreign Affairs or diplomatic representatives are numerous… They are employed for a variety of purposes and, like instruments which are designated as 'treaties', they may deal with any matter which is a proper subject of international regulation. One of their most common objects is to record the understandings of the parties to a treaty which they have previously entered into; but they may record an entirely new agreement, sometimes one which has been reached as a result of negotiation. While the purpose of an agreement effected by any *exchange of notes* may not differ from that of instruments designated by other names, it is strikingly different in its form from a 'treaty' or a 'convention.' Unlike a treaty, the relations which it establishes or seeks to establish is recorded, not in a single highly formalized instrument, but in two or more letters usually called 'notes,' signed by Ministers or other officials."[40]

The first executive agreement, by *exchange of notes*, was the temporary and conditional assignment of executive power (police power) from the Queen to the President on January 17, 1893, and the acceptance of the assignment by the President on March 9, 1893 when he initiated the investigation. The second executive agreement, by *exchange of notes*, was the President's "offer" to restore the *de jure* government on condition that the Queen would commit to grant amnesty to the insurgents on November 13, 1893, and the "acceptance" by the Queen of this condition on December 18, 1893. The two executive agreements are referred to herein as the *Lili'uokalani assignment* and the *Agreement of restoration*, respectively.

4.6. By virtue of the *Lili'uokalani assignment*, police power[41] of the Hawaiian Kingdom is temporarily vested in the President of the United States to faithfully administer Hawaiian Kingdom law, until the Hawaiian Kingdom

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[38] *Id*., at 1269-1270.

[39] Denys P. Myers, *The Names and Scope of Treaties*, 51 AM. J. INT'L L. 590 (1957).

[40] 29 AM. J. INT'L L., Supplement, 698 (1935).

[41] Police power is the inherent power of government to exercise reasonable control over persons and property within its jurisdiction in the interest of the general security, health, safety, morals, and welfare except where legally prohibited.

government is restored pursuant to the *Agreement of restoration*, whereby the police power is reassigned and thereafter the Monarch, or its successor, to grant amnesty. The failure of Congress to authorize the President to use force in carrying out these agreements did not diminish the validity of the *Lili'uokalani assignment* and the *Agreement of restoration*. Despite over a century of non-compliance, these executive agreements remain binding upon the office of President of the United States to date. According to Wright, the President binds "himself and his successors in office by executive agreements."[42]

4.7. President Cleveland failed to follow through in his commitment to administer Hawaiian law and re-instate the *de jure* government as a result of partisan wrangling in the United States Congress. In a deliberate move to further isolate the Hawaiian Kingdom from any assistance by other States and treaty partners and to reinforce and protect the puppet regime installed by United States officials, the Senate and House of Representatives each passed similar resolutions in 1894 strongly warning other States "that any intervention in the political affairs of these islands by any other Government will be regarded as an act unfriendly to the United States."[43] Although the Hawaiian government was not restored and the country thrown into civil unrest as a result, the continuity of the Hawaiian State was nevertheless maintained.

4.8. Five years passed before Cleveland's presidential successor, William McKinley, entered into a second treaty of cession with the same individuals who participated in the illegal overthrow with the United States legation in 1893, and were now calling themselves the Republic of Hawai'i. This second treaty was signed on June 16, 1897 in Washington, D.C., but would "be taken up immediately upon the convening of Congress next December."[44]

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

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

[42] QUINCY WRIGHT, THE CONTROL OF FOREIGN RELATIONS, 235 (1922).
[43] 26 U.S. CONG. REC., 53rd Congress, 2nd Session, 5499.
[44] "Hawaiian Treaty to Wait—Senator Morgan Suggests that It Be Taken Up at This Session Without Result." *The New York Times*, 3 (July 25, 1897).

> 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."[45]

Hawaiian political organizations in the Islands filed additional protests with the Department of State in Washington, D.C. These organizations were the Men and Women's Hawaiian Patriotic League (Hui Aloha 'Aina), and the Hawaiian Political Association (Hui Kalai'aina).[46] In addition, a petition of 21,269 signatures of Hawaiian subjects and resident aliens protesting annexation was filed with the Senate when it convened in December 1897.[47] As a result of these protests, the Senate was unable to garner enough votes to ratify the so-called treaty.

5. *SECOND ARMED CONFLICT WITH THE UNITED STATES—1898 SPANISH-AMERICAN WAR*

5.1. On April 25, 1898, Congress declared war on Spain. Battles were fought in the Spanish colonies of Puerto Rico and Cuba in the Atlantic, as well as the Spanish colonies of the Philippines and Guam in the Pacific. After Commodore Dewey defeated the Spanish Fleet in the Philippines on May 1, 1898, the United States administration made active preparations for an expansion of the war into a general war of aggression by invading and occupying the territory of the Hawaiian Kingdom.[48] In accordance with those plans, they caused United States troops to violate Hawai'i's neutrality and eventually occupy the Hawaiian Kingdom in order to facilitate the carrying out of their military operations against the Spanish in the Pacific. The invasion and occupation of Hawaiian territory had been specifically planned in advance, in violation of the executive agreements of 1893.

5.2. On May 4, 1898, U.S. Congressman Francis Newlands, submitted a joint resolution for the annexation of the Hawaiian Islands to the House Committee on Foreign Affairs. Six days later, hearings were held on the Newlands resolution, and in testimony submitted to the committee, U.S. military leaders called for the immediate occupation of the Hawaiian Islands due to military necessity for both during the war with Spain and for any future wars that the United States would enter. U.S. Naval Captain Alfred Mahan stated to the committee:

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[45] LILI'UOKALANI, HAWAI'I'S STORY BY HAWAI'I'S QUEEN, 354 (1964); Protest *reprinted in* 1 HAW. J. L. & POL. 227 (Summer 2004).
[46] These protests *available at*: http://hawaiiankingdom.org/pdf/Annex%2018.pdf.
[47] The signature petition *available at*: http://hawaiiankingdom.org/pdf/Annex%2019.pdf.
[48] The United States Attorney General concluded in 1855, "It is a settled principle of the law of nations that no belligerent can rightfully make use of the territory of a neutral state for belligerent purposes without the consent of the neutral government." Caleb Cushing, "Foreign Enlistments in the United States," 7 OPP. ATT. GEN. 367 (1855).

"It is obvious that if we do not hold the islands ourselves we cannot expect the neutrals in the war to prevent the other belligerent from occupying them; nor can the inhabitants themselves prevent such occupation. The commercial value is not great enough to provoke neutral interposition. In short, in war we should need a larger Navy to defend the Pacific coast, because we should have not only to defend our own coast, but to prevent, by naval force, an enemy from occupying the islands; whereas, if we preoccupied them, fortifications could preserve them to us. In my opinion it is not practicable for any trans-Pacific country to invade our Pacific coast without occupying Hawaii as a base."[49]

5.3. While the debates ensued in both the U.S. House and Senate, the *U.S.S. Charleston*, a protected cruiser, was ordered to lead a convoy of 2,500 troops to reinforce U.S. troops in the Philippines and Guam. These troops were boarded on the transport ships of the *City of Peking*, the *City of Sidney* and the *Australia*. In a deliberate violation of Hawaiian neutrality during the war as well as of international law, the convoy, on May 21, set a course to the Hawaiian Islands for re-coaling purposes. The convoy arrived in Honolulu on June 1, and took on 1,943 tons of coal before it left the islands on June 4.[50]

5.4. As soon as it became apparent that the self-declared Republic of Hawai'i, a puppet regime of the United States since 1893, had welcomed the U.S. naval convoys and assisted in re-coaling their ships, H. Renjes, Spanish Vice-Consul in Honolulu, lodged a formal protest on June 1, 1898. Minister Harold Sewall, from the U.S. Legation in Honolulu, notified Secretary of State William R. Day of the Spanish protest in a dispatch dated June 8. Renjes declared, "In my capacity as Vice Consul for Spain, I have the honor today to enter a formal protest with the Hawaiian Government against the constant violations of Neutrality in this harbor, while actual war exists between Spain and the United States of America."[51] A second convoy of troops bound for the Philippines, on the transport ships the *China*, *Zelandia*, *Colon*, and the Senator, arrived in Honolulu on June 23, and took on 1,667 tons of coal.[52]

5.5. In a secret session of the U.S. Senate on May 31, 1898, Senator William Chandler warned of the consequences *Alabama claims* arbitration (Geneva award), whereby Great Britain was found guilty of violating its neutrality during the American Civil War and compensated the United States with 15.5 million dollars in gold.

Senator Chandler cautioned the Senate. "What I said was that if we destroyed the neutrality of Hawai'i Spain would have a claim against

[49] 31 U.S. CONG. REC., 55th Congress, 2nd Session, 5771.
[50] U.S. Minister to Hawai'i Harold Sewall to U.S. Secretary of State William R. Day, No. 167, (June 4, 1898), Hawai'i Archives.
[51] *Id.*, No. 168 (June 8, 1898).
[52] *Id.*, No. 175 (June 27, 1898).

> Hawai'i which she could enforce according to the principles of the Geneva Award and make Hawai'i, if she were able to do it, pay for every dollar's worth of damage done to the ships of property of Spain by the fleet that may go out of Hawai'i."[53]
>
> He later asked Senator Stephen White, "whether he is willing to have the Navy and Army of the U.S. violate the neutrality of Hawai'i?"[54]
>
> Senator White responded, "I am not, as everybody knows, a soldier, nor am I familiar with military affairs, but if I were conducting this Govt. and fighting Spain I would proceed so far as Spain was concerned just as I saw fit."[55]
>
> Senator Henry Cabot Lodge answered Senator White's question directly. "I should have argued then what has been argued ably since we came into secret legislative session, that at this moment the Administration was compelled to violate the neutrality of those islands, that protests from foreign representatives had already been received and complications with other powers were threatened, that the annexation or some action in regard to those islands had become a military necessity."[56]

5.6. The transcripts of the Senate's secret session were not made public until 1969, after the Senate passed a resolution authorizing the U.S. National Archives to open the records. The Associated Press in Washington, D.C., reported, that "the secrecy was clamped on during a debate over whether to seize the Hawaiian Islands—called the Sandwich Islands then—or merely developing leased areas of Pearl Harbor to reinforce the U.S. fleet at Manila Bay."[57] Concealed by the debating rhetoric of congressional authority to annex foreign territory, the true intent of the Senate, as divulged in these transcripts, was to have the joint resolution serve merely as consent, on the part of the Congress, for the President to utilize his war powers in the occupation and seizure of the Hawaiian Islands as a matter of military necessity.

5.7. Commenting on the United States flagrant violation of Hawaiian neutrality, T.A. Bailey stated,

> The position of the United States was all the more reprehensible in that she was compelling a weak nation to violate the international law that had to a large degree been formulated by her own stand on the Alabama claims. Furthermore, in line with the precedent established by the Geneva award, Hawai'i would be liable for every

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[53] "Transcript of the Senate Secret Session on Seizure of the Hawaiian Islands, May 31, 1898," 1 HAW. J. L. & POL. 278 (Summer 2004).
[54] *Id.*, 279.
[55] *Id.*
[56] *Id.*, 280.
[57] Associated Press, "Secret Debate on U.S. Seizure of Hawaii Revealed," *Honolulu Star-Bulletin*, A1 (February 1, 1969).

> cent of damage caused by her dereliction as a neutral, and for the United States to force her into this position was cowardly and ungrateful. At the end of the war, Spain or cooperating power would doubtless occupy Hawai'i, indefinitely if not permanently, to insure payment of damages, with the consequent jeopardizing of the defenses of the Pacific Coast."[58]

5.8. Unable to procure a treaty of cession acquiring the Hawaiian Islands as required by international law, Congress unilaterally enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War.[59] The territorial limitation of Congressional laws are indisputable, and to quote from the United States Supreme Court:

> "Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens…, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law. As a member of the family of nations, the right and power of the United States in that field are equal to the right and power of the other members of the international family. Otherwise, the United States is not completely sovereign."[60]

5.9. Many government officials and constitutional scholars were at a loss in explaining how a joint resolution could have extra-territorial force in annexing Hawai'i, a foreign and sovereign State, because during the 19th century, as Born states, "American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction."[61] During the debate in Congress, Representative Thomas H. Ball (D-Texas) characterized the annexation of the Hawaiian State by joint resolution as "a deliberate attempt to do unlawfully that which can not be lawfully done."[62] Westel Willoughby, a U.S. constitutional scholar at the time, explained the quandary.

> The constitutionality of the annexation of Hawai'i, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is

[58] T.A. Bailey, *The United States and Hawaii During the Spanish-American War,* 36(3) AM. HIST. REV. 557 (April 1931).
[59] 30 U.S. Stat. 750.
[60] *United States v. Curtiss Wright Export Corp*., 299 U.S. 304, 318 (1936).
[61] GARY BORN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 493 (3rd ed. 1996).
[62] 31 U.S. CONG. REC. 5975 (1898).

> necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature it is enacted.[63]

5.10. The citizenry and residents of the Hawaiian Kingdom also understood the illegality of the joint resolution. On October 20, 1900, the following editorial was published in the Maui News newspaper making reference to statements made by Thomas Clark who was formerly British, but acquired Hawaiian citizenship through naturalization in 1867. Clark was also a signatory to the 21,269 signature petition against the treaty of annexation that was before the United States Senate.

> Thomas Clark, a candidate for Territorial senator from Maui, holds that it was an unconstitutional proceeding on the part of the United States to annex the Islands without a treaty, and that as a matter of fact, the Island[s] are not annexed, and cannot be, and that if the democrats come in to power they will show the thing up in its true light and demonstrate that…the Islands are de facto independent at the present time.[64]

5.11. In 1988, the U.S. Department of Justice concurred with Willoughby in a legal opinion. "It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawai'i can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea."[65]

5.12. The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War, and the occupation was justified as a military necessity in order to reinforce and supply the troops that had been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. Following the close of the Spanish-American War by the Treaty of Paris,[66] United States troops remained in the Hawaiian Islands and continued its occupation to date in violation of international law and the 1893 *Lili'uokalani assignment* and the *Agreement of restoration*. The United States Supreme Court has also confirmed that military occupation, which is deemed provisional, does not transfer sovereignty of the occupied State to the occupant State even when the *de jure* sovereign is deprived of power to exercise its right within the occupied territory.[67] Hyde states, in "consequence

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[63] WESTEL WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES Westel Willoughby, (2nd ed. 1929), 427.
[64] The Maui News article *available at*: http://hawaiiankingdom.org/blog/?p=189.
[65] Douglas Kmiec, Department of Justice, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, *in* 12 OP. OFF. OF LEGAL COUNSEL 238, 252 (1988).
[66] 30 U.S. Stat. 1754.
[67] *Thirty Hogsheads of Sugar v. Boyle*, 13 U.S. 191 (1815); *United States v. Rice*, 17 U.S. 246 (1819); *Flemming v. Page*, 50 U.S. 603 (1850); *see* also United States Army Field Manual 27-10,

> *Section 358—Occupation Does Not Transfer Sovereignty*. Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply

of belligerent occupation, the inhabitants of the district find themselves subjected to a new and peculiar relationship to an alien ruler to whom obedience is due."[68]

5.13. In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i*,[69] which succeeded the so-called Republic of Hawai'i as a governing entity. Further usurping Hawaiian sovereignty in 1959, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union*, hereinafter "Statehood Act."[70] These laws, which have no extraterritorial effect, stand in direct violation of the *Lili'uokalani assignment* and *Agreement restoration*, being international compacts, the HC IV, and the GC IV. Therefore, these so-called governments were self-declared and cannot be construed to be public in nature, but rather are private entities.

5.14. In 1946, prior to the passage of the Statehood Act, the United States further misrepresented its relationship with Hawai'i when its permanent representative to the United Nations identified Hawai'i as a non-self-governing territory under the administration of the United States since 1898. In accordance with Article 73(e) of the U.N. Charter, the United States permanent representative erroneously reported Hawai'i as a non-self-governing territory that was acknowledged in a resolution by United Nations General Assembly.[71] On June 4, 1952, the Secretary General of the United Nations reported information submitted to him by the permanent representative of the United States regarding American Samoa, Hawai'i, Puerto Rico and the Virgin Islands. [72] In this report, the United States made no mention that the Hawaiian Islands were an independent State since 1843 and that its government was illegally overthrown by U.S. forces, which was later settled by an executive agreement through *exchange of notes*. The representative also fails to disclose diplomatic protests that succeeded in preventing the second attempt to annex the Islands by a treaty of cession in 1897. Instead, the representative provides a picture of Hawai'i as a non-State nation, by stating:

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the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensible both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress.

[68] CHARLES CHENEY HYDE, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 363 (Vol. II, 1922).

[69] 31 U.S. Stat. 141.

[70] 73 U.S. Stat. 4.

[71] *Transmission of Information under Article 73e of the Charter*, December 14, 1946, United Nations General Assembly Resolution 66(I).

[72] *Information from Non-self-governing Territories: Summary and Analysis of Information Transmitted Under Article 73 e of the Charter. Report of the Secretary General: Summary of Information transmitted by the Government of the United States of America*, 4 June 1952, United Nations, Document A/2135.

> "The Hawaiian Islands were discovered by James Cook in 1778. At that time divided into several petty chieftainships, they were soon afterwards united into one kingdom. The Islands became an important port and recruiting point for the early fur and sandalwood traders in the North Pacific, and the principal field base for the extensive whaling trade. When whaling declined after 1860, sugar became the foundation of the economy, and was stimulated by a reciprocity treaty with the United States (1876).
>
> American missionaries went to Hawaii in 1820; they reduced the Hawaiian language to written form, established a school system, and gained great influence among the ruling chiefs. In contact with foreigners and western culture, the aboriginal population steadily declined. To replace this loss and to furnish labourers for the expanding sugar plantations, large-scale immigration was established.
>
> When later Hawaiian monarchs showed a tendency to revert to absolutism, political discords and economic stresses produced a revolutionary movement headed by men of foreign birth and ancestry. The Native monarch was overthrown in 1893, and a republic government established. Annexation to the United States was one aim of the revolutionists. After a delay of five years, annexation was accomplished.
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> …The Hawaiian Islands, by virtue of the Joint Resolution of Annexation and the Hawaiian Organic Act, became an integral part of the United States and were given a territorial form of government which, in the United States political system, precedes statehood."[73]

5.15. In 1959, the Secretary General received a communication from the United States permanent representative that they will no longer transmit information regarding Hawai'i because it supposedly "became one of the United States under a new constitution taking affect on [August 21, 1959]."[74] This resulted in a General Assembly resolution stating it "Considers it appropriate that the transmission of information in respect of Alaska and Hawaii under Article 73e of the Charter should cease."[75] Evidence that the United Nations was not aware of Hawaiian independence since 1843 can be gleaned from the following statement by the United Nations.

> "Though the General Assembly considered that the manner in which Territories could become fully self-governing was primarily through the attainment of independence, it was observed in the Fourth Committee that the General Assembly had recognized in resolution 748 (VIII) that self-government could also be achieved by

[73] *Id*., at 16-17.
[74] *Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America*, United Nations, Document no. A/4226, at 99.
[75] *Cessation of the transmission of information under Article 73 e of the Charter in respect of Alaska and Hawaii*, December 12, 1959, United Nations General Assembly Resolution 1469 (XIV).

> association with another State or group of States if the association was freely chosen and was on a basis of absolute equality. There was unanimous agreement that Alaska and Hawaii had attained a full measure of self-government and equal to that enjoyed by all other self-governing constituent states of the United States. Moreover, the people of Alaska and Hawaii had fully exercised their right to choose their own form of government."[76]

5.16. Although the United Nations passed two resolutions acknowledging Hawai'i to be a non-self-governing territory that has been under the administration of the United States of America since 1898 and was granted self-governance in 1959, it did not affect the continuity of the Hawaiian State because, foremost, United Nations resolutions are not binding on member States of the United Nations,[77] let alone a non-member State—the Hawaiian Kingdom. Crawford explains, "Of course, the General Assembly is not a legislature. Mostly its resolutions are only recommendations, and it has no capacity to impose new legal obligations on States."[78] Secondly, the information provided to the General Assembly by the United States was distorted and flawed. In *East Timor*, Portugal argued that resolutions of both the General Assembly and the Security Council acknowledged the status of East Timor as a non-self-governing territory and Portugal as the administering power and should be treated as "givens."[79] The International Court of Justice, however, did not agree and found

> "that it cannot be inferred from the sole fact that the above-mentioned resolutions of the General Assembly and the Security Council refer to Portugal as the administrating Power of East Timor that they intended to establish an obligation on third States."[80]

Even more problematic is when the decisions embodied in the resolutions as "givens" are wrong. Acknowledging this possibility, Bowett states, "where a decision affects a State's legal rights or responsibilities, and can be shown to be unsupported by the facts, or based upon a quite erroneous view of the facts, or a clear error of law, the decision ought in principle to be set aside."[81] Öberg also concurs and acknowledges that resolutions "may have been made on the basis of partial information, where not all interested parties were heard, and/or too urgently for the facts to be objectively established."[82] As an example, Öberg cited Security Council Resolution 1530, March 11, 2004, that

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[76] *Repertory of Practice of United Nations Organs, Extracts relating to Article 73 of the Charter of the United Nations,* Supplement No. 1 (1955-1959), volume 3, at 200, para. 101.

[77] IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 14 (4th ed. 1990).

[78] *See* CRAWFORD, *supra* note 20, at 113.

[79] In *East Timor* (Portugal v. Australia) [1995] ICJ Rep. 90, at 103, para. 30.

[80] *Id*., at 104, para. 32.

[81] Derek Bowett, *The Impact of Security Council Decisions on Dispute Settlement Procedures*, 5 EUR. J. INT'L L. 89, 97 (1994).

[82] Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16(5) EUR. J. INT'L L. 879, 892 (2005).

"misidentified the perpetrator of the bomb attacks carried out in Madrid, Spain, on the same day."[83]

6. *MILITARIZATION OF THE HAWAIIAN KINGDOM*

6.1. For the past century, the Hawaiian Kingdom has served as a base of military operations for United States troops during World War I and World War II. In 1947, the United States Pacific Command (USPACOM), being a unified combatant command, was established as an outgrowth of the World War II command structure, with its headquarters on the Island of O'ahu. Since then, USPACOM has served as a base of military operations during the Korean War, the Vietnam War, the Gulf War, the Afghan War, the Iraq War, and the current war on terrorism. There are currently 118 U.S. military sites throughout the Hawaiian Kingdom that comprise 230,929 acres, which is 17% of Hawaiian territory.[84] The island of O'ahu has the majority of military sites at 94,250 acres, which is 25% of the island.

6.2. The United States Navy's Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise (RIMPAC) every other even numbered year, which is the largest international maritime warfare exercise. RIMPAC is a multinational, sea control and power projection exercise that collectively consists of activity by the U.S. Army, Air Force, Marine Corps, and Naval forces, as well as military forces from other foreign States. During the month long exercise, RIMPAC training events and live fire exercises occur in open-ocean and at the military training locations throughout the Hawaiian Islands. In 2014, Australia, Brunei, Canada, Chile, Colombia, France, India, Indonesia, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, People's Republic of China, Peru, Republic of Korea, Republic of the Philippines, Singapore, Tonga, and the United Kingdom participated in the RIMPAC exercises.

6.3. Since the belligerent occupation by the United States began on August 12, 1898 during the Spanish-American War, the Hawaiian Kingdom, as a neutral State, has been in a state of war for over a century. Although it is not a state of war in the technical sense that was produced by a declaration of war, it is, however, a war in the material sense that Dinstein says, is "generated by actual use of armed force, which must be comprehensive on the part of at least

[83] *Id*., at n. 82.
[84] U.S. military training locations on the Island of Kaua'i: Pacific Missile Range Facility, Barking Sands Tactical Underwater Range, and Barking Sands Underwater Range Expansion; the entire Islands of Ni'ihau and Ka'ula; on the Island of O'ahu: Pearl Harbor, Lima Landing, Pu'uloa Underwater Range—Pearl Harbor, Barbers Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawai'i, Marine Corps Training Area Bellows, Hickam Air Force Base, Kahuku Training Area, Makua Military Reservation, Dillingham Military Reservation, Wheeler Army Airfield, and Schofield Barracks on the Island of O'ahu; and on the Island of Hawai'i: Bradshaw Army Airfield and Pohakuloa Training Area.

one party to the conflict."[85] The military action by the United States on August 12, 1898 against the Hawaiian Kingdom triggered the change from a state of peace into a state of war—*jus in bello*, where the laws of war would apply.

6.4. When neutral territory is occupied, however, the laws of war are not applied in its entirety. According to Sakuye Takahashi, Japan limited its application of the Hague Convention to its occupation of Manchuria, being a province of a neutral China, in its war against Russia, to Article 42—on the elements and sphere of military occupation, Article 43—on the duty of the occupant to respect the laws in force in the country, Article 46—concerning family honour and rights, the lives of individuals and their private property as well as their religious conviction and the right of public worship, Article 47—on prohibiting pillage, Article 49—on collecting the taxes, Article 50—on collective penalty, pecuniary or otherwise, Article 51—on collecting contributions, Article 53—concerning properties belonging to the state or private individuals, which may be useful in military operations, Article 54—on material coming from neutral states, and Article 56—on the protection of establishments consecrated to religious, warship, charity, etc.[86]

6.5. Hawai'i's situation was anomalous and without precedent. The closest similarity to the Hawaiian situation would not take place until sixteen years later when Germany occupied the neutral States of Belgium and Luxembourg in its war against France from 1914-1919. The Allies considered Germany's actions against these neutral States to be acts of aggression. According to Garner, the "immunity of a neutral State from occupation by a belligerent is not dependent upon special treaties, but is guaranteed by the Hague convention as well as the customary law of nations."[87]

B. THE CONTINUITY OF THE HAWAIIAN KINGDOM

7. *GENERAL CONSIDERATIONS*

7.1. The issue of State continuity usually arises in cases in which some element of the State has undergone some significant transformation, such as changes in its territory or in its form of government. A claim as to State continuity is essentially a claim as to the continued independent existence of a State for purposes of international law in spite of such changes. It is predicated, in that regard, upon an insistence that the State's legal identity has remained intact. If the State concerned retains its identity it can be considered to "continue" and *vice versa*. Discontinuity, by contrast, supposes that the identity of the State has been lost or fundamentally altered in such a way that it has ceased to exist as an independent State and, as a consequence, rights of sovereignty in relation to territory and population have been assumed by another "successor"

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[85] YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENSE, 16 (2nd ed. 1994).
[86] SAKUYE TAKAHASHI, INTERNATIONAL LAW APPLIED TO THE RUSSO-JAPANESE WAR 251 (1908).
[87] JAMES WILFORD GARNER, INTERNATIONAL LAW AND THE WORLD WAR, 251 (Vol. II 1920).

State to the extent provided by the rules of succession. At its heart, therefore, the issue of State continuity is concerned with the parameters of a State's existence and demise, or extinction, in international law.

7.2. The claim of State continuity on the part of the Hawaiian Kingdom has to be opposed as against a claim by the United States as to its succession. It is apparent, however, that this opposition is not a strict one. Principles of succession may operate even in cases where continuity is not called into question, such as with the cession of a portion of territory from one State to another, or occasionally in case of unification. Continuity and succession are, in other words, not always mutually exclusive but might operate in tandem. It is evident, furthermore, that the principles of continuity and succession may not actually differ a great deal in terms of their effect.

7.3. Even if it is relatively clear as to when States may be said to come into being for purposes of international law, the converse is far from being the case. Beyond the theoretical circumstance in which a body politic has dissolved, *e.g.* by submergence of the territory or the dispersal of the population, it is apparent that all cases of putative extinction will arise in cases where certain changes of a material nature have occurred—such as a change in government and change in the territorial configuration of the State. The difficulty, however, is in determining when such changes are merely incidental, leaving intact the identity of the State, and when they are to be regarded as fundamental going to the heart of that identity. It is evident, moreover, that States are complex political communities possessing various attributes of an abstract nature which vary in space as well as time, and, as such, determining the point at which changes in those attributes are such as to affect the State's identity will inevitably call for very fine distinctions.

7.4. It is generally held, nevertheless, that there exist several uncontroversial principles that have some bearing upon the issue of continuity. These are essentially threefold, all of which assume an essentially negative form. First, that the continuity of the State is not affected by changes in government even if of a revolutionary nature. Secondly, that continuity is not affected by territorial acquisition or loss, and finally that it is not affected by military occupation. Crawford points out that,

> "There is a strong presumption that the State continues to exist, with its rights and obligations, despite revolutionary changes in government, or despite a period in which there is no, or no effective, government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[88]

[88] *See* CRAWFORD, *supra* note 20, at 34.

Furthermore, the dictum of the Permanent Court of Arbitration in *Larsen v. Hawaiian Kingdom* acknowledging the Hawaiian Kingdom to be an independent State in the nineteenth century is also *presumptive evidence*, "which must be received and treated as true and sufficient until and unless rebutted by other evidence,"[89] *i.e.* evidence of the Hawaiian State and its continuity shall be the presumption unless rebutted.

7.5. Each of these principles reflects upon one of the key incidents of statehood—territory, government (legal order) and independence—making clear that the issue of continuity is essentially one concerned with the existence of States: unless one or more of the key constituents of Statehood are entirely and permanently lost, State identity will be retained. Their negative formulation, furthermore, implies that there exists a general presumption of continuity. As Hall was to express the point, a State retains its identity

> "so long as the corporate person undergoes no change which essentially modifies it from the point of view of its international relations, and with reference to them it is evident that no change is essential which leaves untouched the capacity of the state to give effect to its general legal obligations or to carry out its special contracts."[90]

The only exception to this general principle is to be found in case of multiple changes of a less than total nature, such as where a revolutionary change in government is accompanied by a broad change in the territorial delimitation of the State.[91]

7.6. If one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains. It might be objected that formally speaking, the survival or otherwise of a State should be regarded as independent of the legitimacy of any claims to its territory on the part of other States. It is commonly recognized that a State does not cease to be such merely in virtue of the existence of legitimate claims over part or parts of its territory. Nevertheless, where those claims comprise the entirety of the territory of the State, as they do in case of Hawai'i, and when they are accompanied by effective governance to the exclusion of the Hawaiian Kingdom, it is difficult, if not impossible, to separate the two questions. The survival of the Hawaiian Kingdom is, it seems, premised upon the "legal" basis of present or past United States claims to sovereignty over the Islands.

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[89] BLACK'S LAW DICTIONARY 1186 (6th ed. 1990).

[90] *See* HALL, *supra* note 23, at 22.

[91] *See* generally, KRYSTYNA MAREK, IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW (2nd ed. 1968).

7.7. In light of such considerations, any claim to State continuity will be dependent upon the establishment of two legal facts: *first*, that the State in question existed as a recognized entity for purposes of international law at some relevant point in history; and, *secondly,* that intervening events have not been such as to deprive it of that status. It should be made very clear, however, that the issue is not simply one of "observable" or "tangible facts," but more specifically of "legally relevant facts." It is not a case, in other words, simply of observing how power or control has been exercised in relation to persons or territory, but of determining the scope of "authority," which is understood as "a legal entitlement to exercise power and control." Authority differs from mere control by not only being essentially rule-governed, but also in virtue of the fact that it is not always entirely dependent upon the exercise of that control. As Arbitrator Huber noted in the *Island of Palmas Case*:

> "Manifestations of sovereignty assume… different forms according to conditions of time and place. Although continuous in principle, sovereignty cannot be exercised in fact at every moment on every point of a territory. The intermittence and discontinuity compatible with the maintenance of the right necessarily differ according as inhabited or uninhabited regions are involved, or regions enclosed within territories in which sovereignty is incontestably displayed or again regions accessible from, for instance, the high seas."[92]

7.8. Thus, while "the continuous and peaceful display of territorial sovereignty" remains an important measure for determining entitlements in cases where title is disputed, or where "no conventional line of sufficient topographical precision exists," it is not always an indispensable prerequisite for legal title. This has become all the more apparent since the prohibition on the annexation of territory became firmly implanted in international law, and with it the acceptance that certain factual situations will not be accorded legal recognition, *ex inuria ius non oritur*.

7.9. In light of the evident existence of Hawai'i as a sovereign State for some period of time prior to 1898, it would seem that the issue of continuity turns upon the question whether Hawai'i can be said to have subsequently ceased to exist according to the terms of international law. Current international law recognizes that a State may cease to exist in one of two scenarios: *first*, by means of that State's integration with another State in some form of union; or, *second*, by its dismemberment, such as in the case of the Socialist Federal Republic of Yugoslavia or Czechoslovakia. As will be seen, events in Hawai'i in 1898 are capable of being construed in several ways, but it is evident that the most obvious characterization was one of cession by joint resolution of the Congress.

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[92] *Island of Palmas Case (Netherlands v. United States)* 2 R.I.A.A. 829.

7.10. Turning then to the law as it existed at the critical date of 1898, it was generally held that a State might cease to exist in one of three scenarios:

(a) By the destruction of its territory or by the extinction, dispersal or emigration of its population, which is a theoretical disposition.
(b) By the dissolution of the corpus of the State.[93]
(c) By the State's incorporation, union, or submission to another.[94]

7.11. Neither (a) nor (b) is applicable in the current scenario. In case of (c) commentators have often distinguished between two processes—one of which involved a voluntary act, *i.e.* union or incorporation, the other of which came about by non-consensual means, *i.e.* conquest and submission followed by annexation.[95] It is evident that annexation or "conquest" was regarded as a legitimate mode of acquiring title to territory,[96] and it would seem to follow that in case of total annexation—annexation of the entirety of the territory of a State, the defeated State would cease to exist.

7.12. Although annexation was regarded as a legitimate means of acquiring territory, it was recognized as taking a variety of forms.[97] It was apparent that a distinction was typically drawn between those cases in which the annexation was implemented by a Treaty of Peace, and those which resulted from an essentially unilateral public declaration on the part of the annexing power after the defeat of the opposing State, which the former was at war with. The former would be governed by the particular terms of the treaty in question, and give rise to a distinct type of title.[98] Since treaties were regarded as binding irrespective of the circumstances surrounding their conclusion and irrespective of the presence or absence of coercion,[99] title acquired in virtue of a peace treaty was considered to be essentially derivative, *i.e.* being transferred from one State to another. There was little, in other words, to distinguish title acquired by means of a treaty of peace backed by force, and a voluntary purchase of territory: in each case the extent of rights enjoyed by the successor were determined by the agreement itself. In case of conquest absent an agreed settlement, by contrast, title was thought to derive simply from the fact of military subjugation and was complete "from the time [the

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[93] Cases include the dissolution of the German Empire in 1805-6; the partition of the Pays-Bas in 1831 or of the Canton of Bale in 1833

[94] Cases include the incorporation of Cracow into Austria in 1846; the annexation of Nice and Savoy by France in 1860; the annexation of Hannover, Hesse, Nassau and Schleswig-Holstein and Frankfurt into Prussia in 1886.

[95] *See* J. Westlake, *The Nature and Extent of the Title by Conquest*, 17 L. Q. REV. 392 (1901).

[96] LASSA OPPENHEIM, INTERNATIONAL LAW, VOL. I, 288 (9th ed. 1996), Oppenheim remarks that "[a]s long as a Law of Nations has been in existence, the states as well as the vast majority of writers have recognized subjugation as a mode of acquiring territory."

[97] HENRY HALLECK, INTERNATIONAL LAW, 811 (1861); HENRY WHEATON, ELEMENTS OF INTERNATIONAL LAW II, c. iv, s. 165. (8th ed. 1866).

[98] See LAWRENCE, *supra* note 24, at 165-6 ("Title by conquest arises only when no formal international document transfers the territory to its new possessor.")

[99] Vienna Convention on the Law of Treaties, art. 52 (1969).

conqueror] proves his ability to maintain his sovereignty over his conquest, and manifests, by some authoritative act… his intention to retain it as part of his own territory."[100] What was required, in other words, was that the conflict be complete—acquisition of sovereignty *durante bello* being clearly excluded, and that the conqueror declare an intention to annex.[101]

7.13. What remained a matter of some dispute, however, was whether annexation by way of subjugation should be regarded as an original or derivative title to territory and, as such, whether it gave rise to rights in virtue of mere occupation, or rather more extensive rights in virtue of succession—a point of particular importance for possessions held in foreign territory.[102] Rivier, for example, took the view that conquest involved a three stage process: a) the extinction of the State in virtue of *debellatio* which b) rendered the territory *terra nullius* leading to c) the acquisition of title by means of occupation.[103] Title, in other words, was original, and rights of the occupants were limited to those which they possessed perhaps under the doctrine *uti possidetis de facto*. Others, by contrast, seemed to assume some form of "transfer of title" as taking place, *i.e*. that conquest gave rise to a derivative title,[104] and concluded in consequence that the conqueror "becomes, as it were, the heir or universal successor of the defunct or extinguished State."[105] Much depended, in such circumstances, as to how the successor came to acquire title.

7.14. It should be pointed out, however, that even if annexation/conquest was generally regarded as a mode of acquiring territory, United States policy during this period was far more skeptical of such practice. As early as 1823 the United States had explicitly opposed, in the form of the Monroe Doctrine, the practice of European colonization[106] and in the First Pan-American Conference of 1889 and 1890 it had proposed a resolution to the effect that "the principle of conquest shall not…be recognized as admissible under American public law."[107] It had, furthermore, later taken the lead in adopting a policy of non-recognition of "any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928"[108] which was confirmed as a legal obligation

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[100] HENRY HALLECK, INTERNATIONAL LAW, 468 (3rd ed. 1893).
[101] This point was of considerable importance following the Allied occupation of Germany in 1945.
[102] For an early version of this idea see EMERICH DE VATTEL, THE LAW OF NATIONS OR THE PRINCIPLES OF NATURAL LAW, BK. III, SEC. 193-201 (1758, trans. C. Fenwick, 1916). C. BYNKERSHOEK, QUAESTIONUM JURIS PUBLICI LIBRI DUO, BK. I, 32-46 (1737, trans. Frank T., 1930).
[103] RIVIER, PRINCIPES DU DROIT DES GENS, VOL. I, 182 (1896).
[104] *See* PHILLIMORE, *supra* note 22, I, at 328.
[105] *See* HALLECK, *supra* note 97, at 495.
[106] "The American continents, by the free and independent conditions which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European Powers." James Monroe, Message to Congress, December 2, 1823.
[107] JOHN BASSET MOORE, A DIGEST OF INTERNATIONAL LAW, VOL. 1, 292 (1906).
[108] J.W. WHEELER-BENNETT (ED.), DOCUMENTS ON INTERNATIONAL AFFAIRS 1932 23 (1933). See also David Turns, *The Stimson Doctrine of Non-Recognition: Its Historical Genesis and Influence on Contemporary International Law*, 2 CHINESE J. INT'L L. 105-143 (2003).

in a resolution of the Assembly of the League of Nations in 1932. Even if such a policy was not to amount to a legally binding commitment on the part of the United States not to acquire territory by use or threat of force during the latter stages of the 19th century, there is the doctrine of estoppel that would operate to prevent the United States subsequently relying upon forcible annexation as a basis for claiming title to the Hawaiian Islands. Furthermore, annexation by conquest clearly would not apply to the case at hand because the Hawaiian Kingdom was never at war with the United States thereby preventing *debellatio* from arising as a mode of acquisition.

8. *THE FUNCTION OF ESTOPPEL*

8.1. The principle that a State cannot benefit from its own wrongful act is a general principle of international law referred to as estoppel.[109] The rationale for this rule derives from the *maxim pacta sunt servanda*—every treaty in force is binding upon the parties and must be performed by them in good faith,[110] and "operates so as to preclude a party from denying the truth of a statement of fact made previously by that party to another whereby that other has acted to his detriment."[111] According to MacGibbon, underlying "most formulations of the doctrine of estoppel in international law is the requirement that a State ought to be consistent in its attitude to a given factual or legal situation."[112] In municipal jurisdictions there are three forms of estoppel—estoppel by judgment as in matters of court decisions; estoppel by deed as in matters of written agreement or contract; and estoppel by conduct as in matters of statements and actions. Bowett states that these forms of estoppel, whether treated as a rule of evidence or as substantive law, are as much part of international law as they are in municipal law, and due to the diplomatic nature of States relations, he expands the second form of estoppel to include estoppel by "Treaty, Compromise, Exchange of Notes, or other Undertaking in Writing."[113] Brownlie states that because estoppel in international law rests on principles of good faith and consistency, it is "shorn of the technical features to be found in municipal law."[114] Bowett enumerates the three essentials establishing estoppel in international law:

1. The statement of fact must be clear and unambiguous.
2. The statement of fact must be made voluntarily, unconditionally, and must be authorized.

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[109] WILLIAM EDWARD HALL, A TREATISE ON INTERNATIONAL LAW 383 (8th ed. 1924).
[110] *See* Vienna Convention, *supra* note 99, art. 26.
[111] D.W. Bowett, *Estoppel Before International Tribunals and its Relation to Acquiescence*, 33 BRIT. Y. B. INT'L L. 201 (1957).
[112] I.C. MacGibbon, *Estoppel in International Law*, 7 INT'L. & COMP. L. Q. 468 (1958).
[113] *See* Bowett, *supra* note 111, at 181.
[114] *See* BROWNLIE, *supra* note 77, at 641.

3. There must be reliance in good faith upon the statement either to the detriment of the party so relying on the statement or to the advantage of the party making the statement.[115]

8.2. To ensure consistency in State behavior, the Permanent Court of International Justice, in a number of cases, affirmed the principle "that a State cannot invoke its municipal law as a reason for failure to fulfill its international obligation."[116] This principle was later codified under Article 27 of the 1969 Vienna Convention on the Law of Treaties, whereby "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[117] It is self-evident that the 1893 *Lili'uokalani assignment* and the *Agreement of restoration* meets the requirements of the first two essentials establishing estoppel, and, as for the third, reliance in good faith was clearly displayed and evidence in a memorial to President Cleveland by the Hawaiian Patriotic League on December 27, 1893. As stated in the memorial:

> "And while waiting for the result of [the investigation], with full confidence in the American honor, the Queen requested all her loyal subjects to remain absolutely quiet and passive, and to submit with patience to all the insults that have been since heaped upon both the Queen and the people by the usurping Government. The necessity of this attitude of absolute inactivity on the part of the Hawaiian people was further indorsed and emphasized by Commissioner Blount, so that, if the Hawaiians have held their peace in a manner that will vindicate their character as law-abiding citizens, yet it can not and must not be construed as evidence that they are apathetic or indifferent, or ready to acquiesce in the wrong and bow to the usurpers."[118]

8.3. Continued reliance was also displayed by the formal protests of the Queen and Hawaiian political organizations regarding the aforementioned second treaty of cession signed in Washington, D.C., on June 16, 1897. These protests were received and filed in the office of Secretary of State John Sherman and continue to remain a record of both dissent and evidence of reliance upon the conclusion of the investigation by President Cleveland and his obligation and commitment to *restitutio in integrum*—restoration of the *de jure* Hawaiian government. A memorial of the Hawaiian Patriotic League that was filed with the United States Hawaiian Commission for the creation of the territorial government appears to be the last "public" act of reliance made by a large majority of the Hawaiian citizenry.[119] The Commission was established on July 8, 1898 after President McKinley signed the joint resolution of

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[115] See Bowett, *supra* note 111, at 202.
[116] Series A/B, No. 44 (1932) (*Polish Nationals in Danzig*), at 24; Series A, No. 24 1930), at 12, and Series A/B, No. 46 (1932), at 167 (*Free Zones*); Series B, No. 17 (1930) (*Greco-Bulgarian Communities*), at 32.
[117] *See* Vienna Convention, *supra* note 99, art. 27.
[118] *See* Executive Documents, *supra* note 29, at 1295, reprinted in 1 HAW. J. L. & POL. 217 (Summer 2004).
[119] Munroe Smith, Record of Political Events, 13(4) POL. SCI. Q. 745, 752 (Dec. 1898).

annexation on July 7, 1898, and held meetings in Honolulu from August through September of 1898. The memorial, which was also printed in two Honolulu newspapers, one in the Hawaiian language[120] and the other in English,[121] stated, in part:

> "WHEREAS: By memorial the people of Hawaii have protested against the consummation of an invasion of their political rights, and have fervently appealed to the President, the Congress and the People of the United States, to refrain from further participation in the wrongful annexation of Hawaii; and
>
> WHEREAS: The Declaration of American Independence expresses that Governments derive their just powers from the consent of the governed:
>
> THEREFORE, BE IT RESOLVED: That the representatives of a large and influential body of native Hawaiians, we solemnly pray that the constitutional government of the 16th day of January, A.D. 1893, be restored, under the protection of the United States of America."

This memorial clearly speaks to the people's understanding and reliance of the 1893 *Agreement of restoration* and the duties and obligations incurred by the United States even after the Islands were purportedly annexed.

8.4. There is no dispute between the United States and the Hawaiian Kingdom regarding the illegal overthrow of the *de jure* Hawaiian government, and the 1893 executive agreements—the *Lili'uokalani assignment* and the *Agreement of restoration*, constitutes evidence of final settlement. As such, the United States cannot benefit from its deliberate non-performance of its obligation of administering Hawaiian law and restoring the *de jure* government under the 1893 executive agreements over the reliance held by the Hawaiian Kingdom and its citizenry in good faith and to their detriment. Therefore, the United States is estopped from asserting any of the following claims:

1. Recognition of any pretended government other than the Hawaiian Kingdom as both the *de facto* and the *de jure* government of the Hawaiian Islands;
2. Annexation of the Hawaiian Islands by joint resolution in 1898;
3. Establishment of a territorial government in 1900;
4. Administration of the Hawaiian Islands as a non-self-governing territory since 1898 pursuant to Article 73(e) of the U.N. Charter; and
5. Establishment of a State government in 1959.

8.5. The failure of the United States to restore the *de jure* government is a "breach of an international obligation," and, therefore, an international wrongful act.

[120] *Memoriala A Ka Lahui* (Memorial of the Citizenry), KE ALOHA AINA, Sept. 17, 1898, at 3.
[121] *What Monarchists Want*, THE HAWAIIAN STAR, Sept. 15, 1898, at 3.

The severity of this breach has led to the unlawful seizure of Hawaiian independence, imposition of a foreign nationality upon the citizenry of an occupied State, mass migrations and settlement of foreign citizens, and the economic and military exploitation of Hawaiian territory—all stemming from the United States government's violation of international law and treaties. In a 1999 report for the United Nations Centennial of the First International Peace Conference, Greenwood states:

> "Accommodation of change in the case of prolonged occupation must be within the framework of the core principles laid down in the Regulations on the Laws and Customs of War on Land and the Fourth Convention, in particular, the principle underlying much of the Regulations on the Laws and Customs of War on Land, namely that the occupying power may not exploit the occupied territories for the benefit of its own population."[122]

Despite the egregious violations of Hawaiian State sovereignty by the United States since January 16, 1893, the principle of estoppel not only serves as a shield that bars the United States from asserting any legal claim of sovereignty over the Hawaiian Islands, but also a shield that protects the continued existence of the Hawaiian Kingdom, the nationality of its citizenry, and its territorial integrity as they existed in 1893. Additionally, the principle of *ex injuria jus non oritur*—unjust acts cannot create law, equally applies.

9. *ACQUISITIVE PRESCRIPTION*

9.1. As pointed out above, the continuity of the Hawaiian State may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, which is not strictly limited to annexation. The United States, in other words, would be entitled to maintain its claim over the Hawaiian Islands so long as it could show some basis for asserting that claim other than merely its original claim of annexation in 1898. The strongest type of claim in this respect is the "continuous and peaceful display of territorial sovereignty." The emphasis given to the "continuous and peaceful display of territorial sovereignty" in international law derives in its origin from the doctrine of occupation, which allowed states to acquire title to territory that was effectively *terra nullius*. Occupation, in this form, is distinct from military occupation of another State's territory. It is apparent, however, and in line with the approach of the International Court of Justice in the *Western Sahara Case*,[123] that the Hawaiian Islands cannot be regarded as *terra nullius* for purpose of acquiring title by mere occupation. According to some, nevertheless, effective occupation may give rise to title by way of what is

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[122] CHRISTOPHER GREENWOOD, INTERNATIONAL HUMANITARIAN LAW (LAWS OF WAR): REVISED REPORT PREPARED FOR THE CENTENNIAL OF THE FIRST INTERNATIONAL PEACE CONFERENCE, PURSUANT TO UNITED NATIONS GENERAL ASSEMBLY RESOLUTIONS A/RES/52/154 AND A/RES/53/99, 47 (1999).
[123] I.C.J. Rep. 1975.

known as "acquisitive prescription."[124] As Hall maintained, title or sovereignty "by prescription arises out of a long continued possession, where no original source of proprietary right can be shown to exist, or where possession in the first instance being wrongful, the legitimate proprietor has neglected to assert his right, or has been unable to do so."[125] Johnson explains in more detail:

> "Acquisitive Prescription is the means by which, under international law, legal recognition is given to the right of a state to exercise sovereignty over land or sea territory in cases where that state has, in fact, exercised its authority in a continuous, uninterrupted, and peaceful manner over the area concerned for a sufficient period of time, provided that all other interested and affected states (in the case of land territory the previous possessor, in the case of sea territory neighboring states and other states whose maritime interests are affected) have acquiesced in this exercise of authority. Such acquiescence is implied in cases where the interested and affected states have failed within a reasonable time to refer the matter to the appropriate international organization or international tribunal or—exceptionally in cases where no such action was possible—have failed to manifest their opposition in a sufficiently positive manner through the instrumentality of diplomatic protests."[126]

Although no case before an international court or tribunal has unequivocally affirmed the existence of acquisitive prescription as a mode of acquiring title to territory,[127] and although Judge Moreno Quintana in his dissenting opinion in the *Rights of Passage* case[128] found no place for the concept in international law, there is considerable evidence that points in that direction. For example, the continuous and peaceful display of sovereignty, or some variant thereof, was emphasized as the basis for title in the *Minquiers and Ecrehos Case* (France v. United Kingdom),[129] the *Anglo-Norwegian Fisheries Case* (United Kingdom v. Norway)[130] and in the *Island of Palmas Arbitration* (United States v. Netherlands).[131]

9.2. If a claim to acquisitive prescription is to be maintained in relation to the Hawaiian Islands, various *indica* have to be considered including, for example, the length of time of effective and peaceful occupation, the extent of opposition to or acquiescence in that occupation, and, perhaps, the degree of recognition provided by third States. However, "no general rule [can] be laid

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[124] For a discussion of the various approaches to this issue see OPPENHEIM, *supra* note 96, at 705-6.
[125] *See* HALL, *supra* note 109, at 143.
[126] D.H.N. Johnson, *Acquisitive Prescription in International Law*, 27 BRIT. Y. B. INT'L L. 332, 353 (1950).
[127] Prescription may be said to have been recognized in the *Chamizal Arbitration*, 5 AM. J. INT'L L. 782 (1911) 785; the *Grisbadana Arbitration* P.C.I.J. 1909; and the *Island of Palmas Arbitration*, *supra* note 92.
[128] I.C.J. Rep. 1960, at 6.
[129] I.C.J. Rep. 1953, at 47
[130] I.C.J. Rep. 1951, at 116.
[131] *See Palmas case*, *supra* note 92.

down as regards the length of time and other circumstances which are necessary to create such a title by prescription. Everything [depends] upon the merits of the individual case."[132] As regards the temporal element, the United States could claim to have peacefully and continuously exercised governmental authority in relation to Hawai'i for over a century. This is somewhat more than was required for purposes of prescription in the *British Guiana-Venezuela Boundary Arbitration,* for example,[133] but it is clear that time alone is certainly not determinative. Similarly, in terms of the attitude of third States, it is evident that apart from the initial protest of the Japanese Government in 1897, none has opposed the extension of United States jurisdiction to the Hawaiian Islands. Indeed the majority of States may be said to have acquiesced in its claim to sovereignty in virtue of acceding to its exercise of sovereign prerogatives in respect of the Islands, but this acquiescence by other States was based on misleading and false information that was presented to the United Nations by the United States as before mentioned. It could be surmised, as well, that the United States misled other States regarding Hawai'i even prior to the establishment of the United Nations in 1945. It is important, however, not to attach too much emphasis to third party recognition. As Jennings points out, in case of adverse possession "[r]ecognition or acquiescence on the part of third States… must strictly be irrelevant."[134]

9.3. More difficult, in this regard, is the issue of acquiescence or protest as between the Hawaiian Kingdom and the United States. In the *Chamizal* Arbitration it was held that the United States could not maintain a claim to the Chamizal tract by way of prescription in part because of the protests of the Mexican government.[135] The Mexican government, in the view of the Commission, had done "all that could be reasonably required of it by way of protest against the illegal encroachment."[136] Although it had not attempted to retrieve the land by force, the Commission pointed out that:

> "however much the Mexicans may have desired to take physical possession of the district, the result of any attempt to do so would have provoked scenes of violence and the Republic of Mexico can not be blamed for resorting to the milder forms of protest contained in its diplomatic correspondence."[137]

In other words, protesting in any way that might be "reasonably required" should effectively defeat a claim of acquisitive prescription.

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[132] *See* OPPENHEIM, *supra* note 96, at 706.
[133] The arbitrators were instructed by their treaty terms of reference to allow title if based upon "adverse holding or prescription during a period of fifty years." 28 R.I.A.A (1899) 335.
[134] *See* OPPENHEIM, *supra* note 96, at 39.
[135] *The Chamizal Arbitration Between the United States and Mexico*, 5 AM. J. INT'L L. 782 (1911).
[136] *Id*., at 807.
[137] *Id*.

9.4. Ultimately, a "claim" to prescription is not equal to a "title" by prescription, especially in light of the presumption of title being vested in the State the claim is made against. Johnson acknowledges this distinction when he states that the "length of time required for the establishment of a prescriptive title on the one hand, and the extent of the action required to prevent the establishment of a prescriptive title on the other hand, are invariably matters of fact to be decided by the international tribunal before which the matter is eventually brought for adjudication."[138] The United States has made no claim to acquisitive prescription before any international body, but, instead, has reported to the United Nations in 1952 the fraudulent claim that the "Hawaiian Islands, by virtue of the Joint Resolution of Annexation and the Hawaiian Organic Act, became an integral part of the United States and were given a territorial form of government which, in the United States political system, precedes statehood."[139]

9.5. When President Cleveland accepted, by *exchange of notes*, the police power from the Queen under threat of war, and by virtue of that assignment initiated a presidential investigation that concluded the Queen, as Head of State and Head of Government, was both the *de facto* and *de jure* government of the Hawaiian Islands, and subsequently entered into a second executive agreement to restore the government on condition that the Queen or her successor in office would grant amnesty to the insurgents, the United States admitted that title or sovereignty over the Hawaiian Islands remained vested in the Hawaiian Kingdom and no other. Thus, it is impossible for the United States to claim to have acquired title to the Hawaiian Islands in 1898 from the government of the so-called Republic of Hawai'i, because the Republic of Hawai'i, by the United States' own admission, was "self-declared."[140] Furthermore, by the terms of the 1893 executive agreements—the *Lili'uokalani assignment* and the *Agreement of restoration*, the United States recognized the continuing sovereignty of the Hawaiian Kingdom over the Hawaiian Islands despite its government having yet to be restored under the agreement. Therefore, the presumption may also be based on the general principle of international law, *pacta sunt servanda*, whereby an agreement in force is binding upon the parties and must be performed by them in good faith.

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[138] *See* Johnson, *supra* note 126, at 354.

[139] *See Communication from the United States of America*, *supra* note 74.

[140] *Joint Resolution To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawai'i* (Apology Resolution), 103d Cong., 107 U.S. Stat. 1510 (1993), *reprinted in* 1 HAW. J. L. & POL. 290 (Summer 2004). The resolution stated, in part, "*Whereas*, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States."

C. WAR CRIMES

10. *INTERNATIONAL ARMED CONFLICT*

10.1. Before war crimes can be alleged to have been committed there must be a state of war *sensu stricto*—an international armed conflict between States. Clapham, director of the Geneva Academy of International Humanitarian Law and Human Rights and professor in international law at the Graduate Institute, however, states, "The classification of an armed conflict under international law is an objective legal test and not a decision left to national governments or any international body, not even the UN Security Council."[141] As an international armed conflict is a question of fact, these facts must be objectively tested by the principles of international humanitarian law as provided in the 1907 Hague Conventions, the 1949 Geneva Conventions and its 1977 Additional Protocols.

10.2. 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 the GC 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."[142] According to Casey-Maslen, 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."[143] 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."[144]

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[141] Ellen Wallace, *"War Report": global report calls for caution with armed conflict label*, ELLEN'S SWISS NEWS WORLD (Dec. 10, 2013) at http://genevalunch.com/2013/12/10/war-report-global-report-calls-caution-armed-conflict-label/.
[142] JEAN S. PICTET, COMMENTARY ON THE IV GENEVA CONVENTION, RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR, 21 (1958).
[143] STUART CASEY-MASLEN, WAR REPORT 2012 (2013), at 7.
[144] *See* PICTET, *supra* note 142, at 20.

10.3. Although the Conventions apply to Contracting State Parties, it is universally understood that the Conventions reflect customary international law that bind all States. On this subject, the Commentary clarifies that "any Contracting Power in conflict with a non-Contracting Power will begin by complying with the provisions of the Convention pending the adverse Party's declaration."[145] Even if a State should denounce the Fourth Convention according to Article 158, the denouncing State "would nevertheless remain bound by the principles contained in [the Convention] in so far as they are the expression of the imprescriptible and universal rules of customary international law."[146]

10.4. "According to the Rules of Land Warfare of the United States Army," Hyde explains, "belligerent or so-called military occupation is a question of fact. It presupposes a hostile invasion as a result of which the invader has rendered the invaded Government incapable of publicly exercising its authority, and that the invader is in a position to substitute and has substituted his own authority for that of the legitimate government of the territory invaded."[147] The armed conflict arose out of the United States' belligerent occupation of Hawaiian territory in order to wage war against the Spanish in the Pacific without the consent from the lawful authorities of the Hawaiian Kingdom. Since the end of the Spanish-American War by the 1898 Treaty of Paris, the Hawaiian Kingdom has remained belligerently occupied and its territory was used as a base of military operations during World War I and II, the Korean War, the Vietnam War, the Gulf War, the Iraqi War, the United States war on terrorism, and currently the state of war declared by the Democratic People's Republic of Korea (DPRK) against the United States and the Republic of Korea on March 30, 2013.[148]

10.5. According to Oppenheim, a "declaration of war is a communication by one State to another that the condition of peace between them has come to an end, and a condition of war has taken its place;"[149] and war is "considered to have commenced from the date of its declaration, although actual hostilities may not have been commenced until much later."[150] While customary international law does not require a formal declaration of war to be made before international law recognizes a state of war, it does, however, provide notice to not only the opposing State of the intent of the declarant State, but also to all neutral States that a state of war has been established.

10.6. The Hawaiian Kingdom has again been drawn into another state of war as evidenced in DPRK's March 30, 2013 declaration of war, which stated, "It is

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[145] *Id*., at 24.
[146] *Id.,* at 625.
[147] CHARLES CHENEY HYDE, LAND WARFARE, 8 (1918).
[148] *See* "North-South Relations Have Been Put at State of War: Special Statement of DPRK," *Korean Central News Agency of DPRK*, posted on March 30, 2013, http://www.kcna.co.jp/index-e.htm.
[149] LASSA OPPENHEIM, INTERNATIONAL LAW, VOL. II, 293 (7th ed. 1952).
[150] *Id*., 295.

self-evident that any military conflict on the Korean Peninsula is bound to lead to an all-out war, a nuclear war now that even U.S. nuclear strategic bombers in its military bases in the Pacific including Hawaii and Guam and in its mainland are flying into the sky above south Korea to participate in the madcap DPRK-targeted nuclear war moves." The day before the declaration of war, DPRK's Korean Central News Agency reported, Supreme Commander of the Korean People's Army Marshal Kim Jong Un "signed the plan on technical preparations of strategic rockets of the KPA, ordering them to be standby for fire so that they may strike any time the U.S. mainland, its military bases in the operational theaters in the Pacific, including Hawaii and Guam, and those in south Korea."[151] In response to the declaration of war, the BBC reported, "The US Department of Defense said on Wednesday it would deploy the ballistic Terminal High Altitude Area Defense System (Thaad) to Guam in the coming weeks."[152]

10.7. In light of the DPRK's declaration of war, the Hawaiian Kingdom is situated in a region of war that places its civilian population, to include Swiss nationals, in perilous danger similar to Japan's attack of U.S. military forces situated in the Hawaiian Islands of December 7, 1941. According to Oppenheim, "The region of war is that part of the surface of the earth in which the belligerents may prepare and execute hostilities against each other."[153] While neutral States do not fall within the region of war, there are exceptional cases, such as when a belligerent invades a neutral State, *i.e.* Luxembourg by Germany during World War I. The United States invasion of the Hawaiian Kingdom occurred during the Spanish-American War and has since been prolonged.

10.8. Furthermore, should the DPRK invade and occupy a portion or the entire territory of the Hawaiian Kingdom during the state of war it would nevertheless be bound by the GC IV as is the United States. The DPRK, United States and the Hawaiian Kingdom, are High Contracting Parties to the GC IV. The DPRK ratified the Convention on August 27, 1957; the United States ratified the Convention on August 2, 1955; and the Hawaiian Kingdom acceded to the Convention on November 28, 2012, which was acknowledged and received by Ambassador Benno Bättig, General Secretariat of the Swiss Federal Department of Foreign Affairs, on January 14, 2013, at the city of Bern, Switzerland.[154]

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[151] *See* "Kim Jong Un Convenes Operation Meeting, Finally Examines and Ratifies Plan for Firepower Strike," *Korean Central News Agency of DPRK*, posted on March 29, 2013, http://www.kcna.co.jp/index-e.htm.

[152] See "North Korea threats: US to move missile defenses to Guam," *BBC News Asia*, posted on April 4, 2013, http://www.bbc.com/news/world-us-canada-22021832.

[153] *See* OPPENHEIM, VOL. II, *supra* note 149, at 237.

[154] The instrument of accession and acknowledgment of receipt can be accessed online at: http://hawaiiankingdom.org/pdf/GC_Accession.pdf. The *acting* government represented the Hawaiian Kingdom in arbitral proceedings, *Larsen v. Hawaiian Kingdom*, before the Permanent Court of Arbitration, The Hague, Netherlands, 119 INT'L L. REP. 566, 581 (2001), *reprinted in* 1 HAW. J. L. & POL. 299 (Summer 2004).

11. *War Crimes Committed in an Occupied Neutral State*

11.1. Under United States federal law, a *war crime* is a felony and defined as any conduct "defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949," and conduct "prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907."[155] 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."[156]

11.2. The SCC also considers a *war crime* as a felony and defined as "a serious violation of the Geneva Conventions of 12 August 1949 in connection with an international armed conflict by carrying out any of the following acts against persons or property protected under the Conventions: …intentional homicide; …hostage taking; …causing severe pain or suffering or serious injury, whether physical or mental, in particular by torture, inhuman treatment or biological experiments; …extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly; …compelling a person to serve in the forces of a hostile power; …unlawful deportation or transfer or unlawful confinement; …denying the right to a fair and regular trial before the imposition or execution of a severe penalty."[157] Additionally, Swiss law also defines a *war crime* as a violation of international humanitarian law "where such a violation is declared to be an offense under customary international law or an international treaty recognized as binding by Switzerland."[158]

12. *War Crimes: 1907 Hague Convention, IV*

Article 43—The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

12.1. When the United States began the occupation at 12 noon on August 12, 1898, it deliberately failed to administer the laws of the Hawaiian Kingdom as it stood prior to the unlawful overthrow of the Hawaiian Kingdom government by the United States on January 17, 1893. Instead, the United States unlawfully maintained the continued presence and administration of law of the self-declared Republic of Hawai‘i that was a puppet regime established through United States intervention on January 17, 1893. The puppet regime

[155] Title 18 U.S.C. §2441.
[156] U.S. Army Field Manual 27-10, section 499 (July 1956).
[157] Article 264*c*, Swiss Criminal Code.
[158] *Id*., Article 264*j*.

was originally called the provisional government, which was later changed to the Republic of Hawai'i on July 4, 1894. The provisional government was neither a government *de facto* nor *de jure*, but self-proclaimed as concluded by President Cleveland in his message to the Congress on December 18, 1893, and the Republic of Hawai'i was acknowledged as *self-declared* by the Congress in a joint resolution apologizing on the one hundredth anniversary of the illegal overthrow of the Hawaiian Kingdom government on November 23, 1993.

12.2. Since April 30, 1900, the United States imposed its national laws over the territory of the Hawaiian Kingdom in violation of international law and the laws of occupation. By virtue of congressional legislation, the so-called Republic of Hawai'i was subsumed. Through *An Act to provide a government for the Territory of Hawai'i*, "the phrase 'laws of Hawaii,' as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii in force on the twelfth day of August, eighteen hundred and ninety-eight."[159] When the Territory of Hawai'i was succeeded by the State of Hawai'i on March 18, 1959 through United States legislation, the Congressional Act provided that all "laws in force in the Territory of Hawaii at the time of admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii."[160] Furthermore:

> "the term 'Territorial law' includes (in addition to laws enacted by the Territorial Legislature of Hawaii) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Hawaii prior to its admission into the Union, and the term 'laws of the United States' includes all laws or parts thereof enacted by the Congress that (1) apply to or within Hawaii at the time of its admission into the Union, (2) are not 'Territorial laws' as defined in this paragraph, and (3) are not in conflict with any other provision of this Act."[161]

12.3. Article 43 does not transfer sovereignty to the occupying power.[162] Section 358, United States Army Field Manual 27-10, declares, "Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise

[159] 31 U.S. Stat. 141 (1896-1901).
[160] 73 U.S. Stat. 11 (1959).
[161] *Id*.
[162] See EYAL BENVENISTI, THE INTERNATIONAL LAW OF OCCUPATION 8 (1993); GERHARD VON GLAHN, THE OCCUPATION OF ENEMY TERRITORY—A COMMENTARY ON THE LAW AND PRACTICE OF BELLIGERENT OCCUPATION 95 (1957); Michael Bothe, *Occupation, Belligerent*, in Rudolf Bernhardt (dir.), ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, vol. 3, 765 (1997).

some of the rights of sovereignty." Sassòli further elaborates, "The occupant may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation."[163]

12.4. The United States' failure to comply with the 1893 executive agreements to reinstate the Queen and her cabinet, and its failure to comply with the law of occupation to administer Hawaiian Kingdom law as it stood prior to the unlawful overthrow of the Hawaiian government on January 17, 1893, when it occupied the Hawaiian Islands during the 1898 Spanish-American War, renders all administrative and legislative acts of the provisional government, the Republic of Hawai'i, the Territory of Hawai'i and currently the State of Hawai'i are all illegal and void because these acts stem from governments that are neither *de facto* nor *de jure*, but self-declared. As the United States is a government that is both *de facto* and *de jure*, its legislation, however, has no extraterritorial effect except under the principles of active and passive personality jurisdiction. In particular, this has rendered all conveyances of real property and mortgages to be defective since January 17, 1893, because of the absence of a competent notary public under Hawaiian Kingdom law. Since January 17, 1893, all notaries public stem from a self-declared government.

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

12.5. When the provisional government was established through the support and protection of U.S. troops on January 17, 1893, it proclaimed that it would provisionally "exist until terms of union with the United States of America have been negotiated and agreed upon." The provisional government was not a new government, but rather a small group of insurgents that usurped and seized the executive office of the Hawaiian Kingdom. With the backing of U.S. troops it further proclaimed, "All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named persons: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office." All government officials were coerced and forced to sign oaths of allegiance, "I…do solemnly swear in the presence of Almighty God, that I will support the Provisional Government of the Hawaiian Islands, promulgated and proclaimed on the 17th day of January, 1893. Not hereby renouncing, but expressly reserving all allegiance to any foreign country now owing by me."

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[163] Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, INTERNATIONAL HUMANITARIAN LAW RESEARCH INITIATIVE 5 (2004), available at: http://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf.

12.6. The compelling of inhabitants serving in the Hawaiian Kingdom government to swear allegiance to the occupying power, through its puppet regime, the provisional government, began on January 17, 1893 with oversight by United States troops until April 1, 1893, when they were ordered to depart Hawaiian territory by U.S. Special Commissioner, James Blount, who began the presidential investigation into the overthrow. When Special Commissioner Blount arrived in the Hawaiian Kingdom on March 29, 1893, he reported to U.S. Secretary of State Walter Gresham, "The troops from the *Boston* were doing military duty for the Provisional Government. The American flag was floating over the government building. Within it the Provisional Government conducted its business under an American protectorate, to be continued, according to the avowed purpose of the American minister, during negotiations with the United States for annexation."

12.7. Due to the deliberate failure of the United States to carry out the 1893 *executive agreements* to reinstate the Queen and her cabinet of officers, the insurgents were allowed to maintain their unlawful control of the government with the employment of American mercenaries. The provisional government was renamed the Republic of Hawai'i on July 4, 1894. The United States has directly compelled the inhabitants of the Hawaiian Kingdom to swear allegiance to the United States when serving in the so-called Territory of Hawai'i and State of Hawai'i governments in direct violation of Article 45 of the HC IV. Section 19 of the Territorial Act provides, "That every member of the legislature, and all officers of the government of the Territory of Hawaii, shall take the following oath: I do solemnly swear (or affirm), in the presence of Almighty God, that I will faithfully support the Constitution and laws of the United States, and conscientiously and impartially discharge my duties as a member of the legislature, or as an officer of the government of the Territory of Hawaii."[164] Section 4, Article XVI of the State of Hawai'i constitution provides, "All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: 'I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as … to best of my ability.'"

Article 46—Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.

12.8. Beginning on 20 July 1899, President McKinley began to set aside portions of lands by executive orders for "installation of shore batteries and the construction of forts and barracks."[165] The first executive order set aside 15,000 acres for two Army military posts on the Island of O'ahu called

[164] 31 U.S. Stat. 145 (1896-1901).
[165] *See* Robert H. Horwitz, Judith B. Finn, Louis A. Vargha, and James W. Ceaser, *Public Land Policy in Hawai'i: An Historical Analysis*, 20 (State of Hawai'i Legislative Reference Bureau Report No. 5, 1969).

Schofield Barracks and Fort Shafter. This soon followed the securing of lands for Pearl Harbor naval base in 1901 when the U.S. Congress appropriated funds for condemnation of seven hundred nineteen (719) acres of private lands surrounding Pearl River, which later came to be known as Pearl Harbor.[166] By 2012, the U.S. military has one hundred eighteen (118) military sites that span 230,929 acres of the Hawaiian Islands, which is 20% of the total acreage of Hawaiian territory.[167]

Article 47—Pillage is formally forbidden.

12.9. Since January 17, 1893, there has been no lawful government exercising its authority in the Hawaiian Islands, *e.g.* provisional government (1893-1894), Republic of Hawai'i (1894-1900), Territory of Hawai'i (1900-1959) and the State of Hawai'i (1959-present). As these entities were neither governments *de facto* nor *de jure*, but self-proclaimed, and their collection of tax revenues and non-tax revenues, *e.g.* rent and purchases derived from real estate, were not for the benefit of a *bona fide* government in the exercise of its police power, it can only be considered as benefitting private individuals who are employed by the State of Hawai'i.

12.10. Pillage or plunder is "the forcible taking of private property by an invading or conquering army,"[168] which, according to the Elements of Crimes of the International Criminal Court, must be seized "for private or personal use."[169] As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.[170] The residents of the Hawaiians Islands have been the subject of pillaging and plundering since the establishment of the provisional government by the United States on January 17, 1893 and continues to date by its successor, the State of Hawai'i.

Article 48—If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

12.11. Unlike the State of Hawai'i that claims to be a public entity, but in reality is private, the United States government is a public entity and not private, but its

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[166] *See* John D. VanBrackle, "Pearl Harbor from the First Mention of 'Pearl Lochs' to Its Present Day Usage," 21-26 (undated manuscript on file in Hawaiian-Pacific Collection, Hamilton Library, University of Hawai'i at Manoa).

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

[168] *See* BLACK'S LAW, *supra* note 89, at 1148.

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

[170] JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, INTERNATIONAL COMMITTEE OF THE RED CROSS—CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. 1, RULES 185 (2009).

exercising of authority in the Hawaiian Islands in violation of international laws is unlawful. Therefore, the United States cannot be construed to have committed the act of pillaging since it is public, but has appropriated private property through unlawful contributions, *e.g.* federal taxation, which is regulated by Article 48. And Article 49 provides, "If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question." The United States collection of federal taxes from the residents of the Hawaiian Islands is an unlawful contribution that is exacted for the sole purpose of supporting the United States federal government and not for "the needs of the army or of the administration of the territory." See also paragraphs 13.1 – 13.4 below.

Article 55—The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

12.12. With the backing of United States troops, the provisional government unlawfully seized control of all government property, both real and personal. In 1894, the provisional government's successor, the so-called Republic of Hawai'i, seized the private property of Her Majesty Queen Lili'uokalani, which was called Crown lands, and called it public lands. According to Hawaiian Kingdom law, the Crown lands were distinct from the public lands of the Hawaiian government since 1848, which comprised roughly 1 million acres, and the government lands comprised roughly 1.5 million acres. The total acreage of the Hawaiian Islands comprised 4 million acres.

12.13. In a case before the Hawaiian Kingdom Supreme Court in 1864 that centered on Crown lands, the court stated:

> "In our opinion, while it was clearly the intention of Kamehameha III to protect the lands which he reserved to himself out of the domain which had been acquired by his family through the prowess and skill of his father, the conqueror, from the danger of being treated as public domain or Government property, it was also his intention to provide that those lands should descend to his heirs and successors, the future wearers of the crown which the conqueror had won; and we understand the act of 7th June, 1848, as having secured both those objects. Under that act the lands descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property, in like manner as was done by Kamehameha III."[171]

[171] *See Estate of His Majesty Kamehameha IV*, 3 Haw. 715, 725 (1864).

12.14. In 1898, the United States seized control of all these lands and other property of the Hawaiian Kingdom government as evidenced by the joint resolution of annexation. The resolution stated, that the United States has acquired "the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining."[172]

Article 56—The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

12.15. In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i*,[173] and shortly thereafter, intentionally sought to "Americanize" the inhabitants of the Hawaiian Kingdom politically, culturally, socially, and economically. To accomplish this, a plan was instituted in 1906 by the Territorial government, titled "Programme for Patriotic Exercises in the Public Schools, Adopted by the Department of Public Instruction," which I'm attaching as Appendix "V." *Harper's Weekly*, attached as Appendix "VI," reported:

> "At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building. …Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet about their heads. …'Attention!' Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. 'Salute!' was the principal's next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: 'We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!'

12.16. The policy was to denationalize the children of the Hawaiian Islands on a massive scale, which included forbidding the children from speaking the Hawaiian national language, only English. Its intent was to obliterate any memory of the national character of the Hawaiian Kingdom that the children

[172] 30 U.S. Stat. 750 (1896-1898).
[173] 31 U.S. Stat. 141 (1896-1901).

may have had and replace it, through inculcation, with American patriotism. "Usurpation of sovereignty during military occupation" and "attempts to denationalize the inhabitants of occupied territory" was recognized as international crimes since 1919.[174]

12.17. At the close of the Second World War, the United Nations War Commission's Committee III was asked to provide a report on war crime charges against four Italians accused of denationalization in the occupied State of Yugoslavia. The charge stated that, "the Italians started a policy, on a vast scale, of denationalization. As a part of such policy, they started a system of 're-education' of Yugoslav children. This re-education consisted of forbidding children to use the Serbo-Croat language, to sing Yugoslav songs and forcing them to salute in a fascist way."[175] The question before Committee III was whether or not "denationalization" constituted a war crime that called for prosecution or merely a violation of international law. In concluding that denationalization is a war crime, the Committee reported:

> "It is the duty of belligerent occupants to respect, unless absolutely prevented, the laws in force in the country (Art. 43 of the Hague Regulations). Inter alia, family honour and rights and individual life must be respected (Art. 46). The right of a child to be educated in his own native language falls certainly within the rights protected by Article 46 ('individual life'). Under Art. 56, the property of institutions dedicated to education is privileged. If the Hague Regulations afford particular protection to school buildings, it is certainly not too much to say that they thereby also imply protection for what is going to be done within those protected buildings. It would certainly be a mistaken interpretation of the Hague Regulations to suppose that while the use of Yugoslav school buildings for Yugoslav children is safe-guarded, it should be left to the unfettered discretion of the occupant to replace Yugoslav education by Italian education."[176]

12.18. Denationalization through Germanization also took place during the Second World War. According to Nicholas,

> "Within weeks of the fall of France, Alsace-Lorraine was annexed and thousands of citizens deemed too loyal to France, not to mention all its 'alien-race' Jews and North African residents, were unceremoniously deported to Vichy France, the southeastern section of the country still under French control. This was done in the now

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

> all too familiar manner: the deportees were given half an hour to pack and were deprived of most of their assets. By the end of July 1940, Alsace and Lorraine had become Reich provinces. The French administration was replaced and the French language totally prohibited in the schools. By 1941, the wearing of berets had been forbidden, children had to sing 'Deutschland über Alles' instead of 'La Marseillaise' at school, and racial screening was in full swing."[177]

12.19. Under the heading "Germanization of Occupied Territories," Count III(j) of the Nuremburg Indictment, it provides:

> "In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported *de jure* annexation and enforced conscription into the German Armed Forces. This was carried out in most of the occupied countries including: Norway, France…Luxembourg, the Soviet Union, Denmark, Belgium, and Holland."[178]

13. *WAR CRIMES: 1949 GENEVA CONVENTION, IV*

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

13.1. In 2013, the United States Internal Revenue Service, hereinafter "IRS," illegally appropriated $7.1 million dollars from the residents of the Hawaiian Islands.[179] During this same year, the government of the State of Hawai'i additionally appropriated $6.5 billion dollars illegally.[180] The IRS is an agency of the United States and cannot appropriate money from the inhabitants of an occupied State without violating international law. The State of Hawai'i is a political subdivision of the United States established by an Act of Congress in 1959 and being an entity without any extraterritorial effect, it couldn't

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[177] LYNN H. NICHOLAS, CRUEL WORLD: THE CHILDREN OF EUROPE IN THE NAZI WEB 277 (2005).
[178] *See* Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, at 27, 63 (Nuremberg, Germany, 1947).
[179] *See* IRS, *Gross Collections, by Type of Tax and State and Fiscal Year, 1998-2012*, available at: http://www.irs.gov/uac/SOI-Tax-Stats-Gross-Collections,-by-Type-of-Tax-and-State,-Fiscal-Year-IRS-Data-Book-Table-5.
[180] *See* State of Hawai'i Department of Taxation Annual Reports, available at: http://files.hawaii.gov/tax/stats/stats/annual/13annrpt.pdf.

appropriate money from the inhabitants of an occupied State without violating the international laws of occupation.

13.2. According to the laws of the Hawaiian Kingdom, taxes upon the inhabitants of the Hawaiian Islands include: an annual poll tax of $1 dollar to be paid by every male inhabitant between the ages of seventeen and sixty years; an annual tax of $2 dollars for the support of public schools to be paid by every male inhabitant between the ages of twenty and sixty years; an annual tax of $1 dollar for every dog owned; an annual road tax of $2 dollars to be paid by every male inhabitant between the ages of seventeen and fifty; and an annual tax of ¾ of 1% upon the value of both real and personal property.[181]

13.3. The *Merchant Marine Act,* June 5, 1920 (41 U.S. Stat. 988), hereinafter referred to as the *Jones Act,* is a restraint of trade and commerce in violation of international law and treaties between the Hawaiian Kingdom and other foreign States. According to the *Jones Act*, all goods, which includes tourists on cruise ships, whether originating from Hawai'i or being shipped to Hawai'i must be shipped on vessels built in the United States that are wholly owned and crewed by United States citizens. And should a foreign flag ship attempt to unload foreign goods and merchandise in the Hawaiian Islands it will have to forfeit its cargo to the U.S. Government, or an amount equal to the value of the merchandise or cost of transportation from the person transporting the merchandise.

13.4. As a result of the *Jones Act,* there is no free trade in the Hawaiian Islands. 90% of Hawai'i's food is imported from the United States, which has created a dependency on outside food. The three major American ship carriers for the Hawaiian Islands are Matson, Horizon Lines, and Pasha Hawai'i Transport Services, as well as several low cost barge alternatives. Under the *Jones Act*, these American carriers travel 2,400 miles to ports on the west coast of the United States in order to reload goods and merchandise delivered from Pacific countries on foreign carriers, which would have otherwise come directly to Hawai'i ports. The cost of fuel and the lack of competition drive up the cost of shipping and contribute to Hawai'i's high cost of living, and according to the USDA Food Cost, Hawai'i residents in January 2012 pay an extra $417 per month for food on a thrifty plan than families who are on a thrifty plan in the United States.[182] Therefore, appropriating monies directly through taxation and appropriating monies indirectly as a result of the *Jones Act* to benefit American ship carriers and businesses are war crimes.

[181] See Civil Code of the Hawaiian Islands, *To Consolidate and Amend the Law Relating to Internal Taxes* (Act of 1882), at 117-120, available at: http://www.hawaiiankingdom.org/civilcode/pdf/CL_Title_2.pdf.
[182] *See* United States Department of Agriculture Center for Nutrition Policy and Promotion, *Cost of Food at Home*, available at: http://www.cnpp.usda.gov/USDAFoodCost-Home.htm#AK%20and%20HI.

Article 147—Compelling a…protected person to serve in the forces of an [Occupying] Power

13.5. The United States Selective Service System is an agency of the United States government that maintains information on those potentially subject to military conscription. Under the *Military Selective Service Act*, "it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder."[183] Conscription of the inhabitants of the Hawaiian Kingdom unlawfully inducted into the United States Armed Forces through the Selective Service System occurred during World War I (September 1917-November 1918), World War II (November 1940-October 1946), Korean War (June 1950-June 1953), and the Vietnam War (August 1964-February 1973). Andrew L. Pepper, Esq., heads the Selective Service System in the Hawaiian Islands headquartered on the Island of O'ahu.

13.6. Although induction into the United States Armed Forces has not taken place since February 1973, the requirements to have residents of the Hawaiian Island who reach the age of 18 to register with the Selective Service System for possible induction is a war crime.

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

13.7. Since 18 December 1893, there have been no lawfully constituted courts in the Hawaiian Islands whether Hawaiian Kingdom courts or military commissions established by order of the Commander of PACOM in conformity with the HC IV, GC IV, and the international laws of occupation. All Federal and State of Hawai'i Courts in the Hawaiian Islands derive their authority from the United States Constitution and the laws enacted in pursuance thereof. As such these Courts cannot claim to have any authority in the territory of a foreign State and therefore are not properly constituted to give defendant(s) a fair and regular trial.

Article 147—Unlawful deportation or transfer or unlawful confinement

13.8. According to the United States Department of Justice, the prison population in the Hawaiian Islands in 2009 was at 5,891.[184] Of this population there were

[183] *See* Title 50 U.S.C. App. 453, The Military Selective Service Act.
[184] *See* United States Department of Justice's Bureau of Justice Statistics, *Prisoners in 2011*, available at: http://www.bjs.gov/content/pub/pdf/p11.pdf.

286 aliens.[185] Two paramount issues arise—first, prisoners were sentenced by courts that were not properly constituted under Hawaiian Kingdom law and/or the international laws of occupation and therefore were unlawfully confined, which is a war crime under this court's jurisdiction; second, the alien prisoners were not advised of their rights in an occupied State by their State of nationality in accordance with the 1963 *Vienna Convention on Consular Relations*.[186] Compounding the violation of alien prisoners rights under the *Vienna Convention*, Consulates located in the Hawaiian Islands were granted exequaturs by the government of the United States by virtue of United States treaties and not treaties between the Hawaiian Kingdom and these foreign States.

13.9. In 2003, the State of Hawai'i Legislature allocated funding to transfer up to 1,500 prisoners to private corrections institutions in the United States.[187] By June of 2004, there were 1,579 Hawai'i inmates in these facilities. Although the transfer was justified as a result of overcrowding, the government of the State of Hawai'i did not possess authority to transfer, let alone to prosecute in the first place. Therefore, the unlawful confinement and transfer of inmates are war crimes.

Article 147—The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

13.10. Once a State is occupied, international law preserves the *status quo* of the occupied State as it was before the occupation began. To preserve the nationality of the occupied State from being manipulated by the occupying State to its advantage, international law only allows individuals born within the territory of the occupied State to acquire the nationality of their parents—*jus sanguinis*. To preserve the *status quo*, Article 49 of the GC IV mandates that the "Occupying Power shall not…transfer parts of its own civilian population into the territory it occupies." For individuals, who were born within Hawaiian territory, to be a Hawaiian subject, they must be a direct descendant of a person or persons who were Hawaiian subjects prior to the American occupation that began on 12 August 1898. All other individuals born after 12 August 1898 to the present are aliens who can only acquire the nationality of their parents.

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[185] *See* United States Government Accountability Office, *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs* (March 2011), available at: http://www.gao.gov/new.items/d11187.pdf.

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

[187] See State of Hawai'i, Department of Public Safety, *Response to Act 200, Part III, Section 58, Session Laws of Hawai'i 2003 As Amended by Act 41, Part II, Section 35, Session Laws of Hawai'i 2004*, (January 2005), available at: http://lrbhawaii.info/reports/legrpts/psd/2005/act200_58_slh03_05.pdf.

13.11. According to the 1890 government census, Hawaiian subjects numbered 48,107, with the aboriginal Hawaiian, both pure and part, numbering 40,622, being 84% of the national population, and the non-aboriginal Hawaiians numbering 7,485, being 16%. Despite the massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, which, according to the State of Hawai'i numbers 1,302,939 in 2009,[188] the *status quo* of the national population of the Hawaiian Kingdom is maintained. Therefore, under the international laws of occupation, the aboriginal Hawaiian population of 322,812 in 2009 would continue to be 84% of the Hawaiian national population, and the non-aboriginal Hawaiian population of 61,488 would continue to be 16%. The balance of the population in 2009, being 918,639, are aliens who were illegally transferred, either directly or indirectly, by the United States as the occupying Power, and therefore are war crimes.

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

13.12. On 12 August 1898, the United States seized approximately 1.8 million acres of land that belonged to the government of the Hawaiian Kingdom and to the office of the Monarch. These lands were called Government lands and Crown lands, respectively, whereby the former being public lands and the latter private lands.[189] These combined lands constituted nearly half of the entire territory of the Hawaiian Kingdom.

13.13. Military training locations include Pacific Missile Range Facility, Barking Sands Tactical Underwater Range, and Barking Sands Underwater Range Expansion on the Island of Kaua'i; the entire Islands of Ni'ihau and Ka'ula; Pearl Harbor, Lima Landing, Pu'uloa Underwater Range—Pearl Harbor, Barbers Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawai'i, Marine Corps Training Area Bellows, Hickam Air Force Base, Kahuku Training Area, Makua Military Reservation, Dillingham Military Reservation, Wheeler Army Airfield, and Schofield Barracks on the Island of O'ahu; and Bradshaw Army Airfield and Pohakuloa Training Area on the Island of Hawai'i.

[188] *See* State of Hawai'i. Department of Health, Hawai'i Health Survey (2009), available at: http://www.ohadatabook.com/F01-05-11u.pdf; *see* also David Keanu Sai, *American Occupation of the Hawaiian State: A Century Gone Unchecked*, 1 HAW. J. L. & POL. 63-65 (Summer 2004).

[189] Public lands were under the supervision of the Minister of the Interior under Article I, Chapter VII, Title 2—*Of The Administration of Government*, Civil Code, at §39-§48 (1884), and Crown lands were under the supervision of the Commissioners of Crown Lands under *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*, Civil Code, Appendix, at 523-525 (1884). Crown lands are private lands that "descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property," *In the Matter of the Estate of His Majesty Kamehameha IV., late deceased*, 2 Haw.715, 725 (1864), subject to *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*.

13.14. The United States Navy's Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise (RIMPAC) every other even numbered year, which is the largest international maritime warfare exercise. RIMPAC is a multinational, sea control and power projection exercise that collectively consists of activity by the U.S. Army, Air Force, Marine Corps, and Naval forces, as well as military forces from other foreign States. During the month long exercise, RIMPAC training events and live fire exercises occur in open-ocean and at the military training locations throughout the Hawaiian Islands.

13.15. In 2006, the United States Army disclosed to the public that depleted uranium (DU) was found on the firing ranges at Schofield Barracks on the Island of O'ahu.[190] It subsequently confirmed DU was also found at Pohakuloa Training Area on the Island of Hawai'i and suspect that DU is also at Makua Military Reservation on the Island of O'ahu.[191] The ranges have yet to be cleared of DU and the ranges are still used for live fire. This brings the inhabitants who live down wind from these ranges into harms way because when the DU ignites or explodes from the live fire, it creates tiny particles of aerosolized DU oxide that can travel by wind. And if the DU gets into the drinking water or oceans it would have a devastating effect across the islands.

13.16. The Hawaiian Kingdom has never consented to the establishment of military installations throughout its territory and these installations and war-gaming exercises stand in direct violation of Articles 1, 2, 3 and 4, 1907 Hague Convention, V, *Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land*, HC IV, and GC IV, and therefore are war crimes.

D. PROSECUTION OF WAR CRIMES BY SWISS AUTHORITIES

14. *WAR CRIMES COMMITTED ABROAD*

14.1. Swiss law provides for the prosecution of war crimes[192] or violations of international humanitarian law[193] committed abroad against a natural person(s) "whose rights have been directly violated by the offense [and who is] entitled to file a criminal complaint."[194] These crimes are felonies and the exercise of Swiss jurisdiction over these crimes, which is inherently linked to State sovereignty, can occur under *active personality* if the perpetrator is a Swiss national;[195] *passive personality* if the victim is a Swiss national;[196] or *universal*

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[190] *See* U.S. Army Garrison-Hawai'i, Depleted Uranium on Hawai'i's Army Ranges, available at: http://www.garrison.hawaii.army.mil/du/.
[191] *Id*.
[192] *See* Article 264c, Swiss Criminal Code.
[193] *Id*., Article 264*j*.
[194] *See* Article 115, Swiss Criminal Procedure Code.
[195] *See* Article 7, Swiss Criminal Code.
[196] *Id*.

jurisdiction if the perpetrator and/or victim are non-Swiss nationals.[197] A sentence of life imprisonment can be imposed "where the offense affects a number of persons or the offender acts in a cruel manner."[198] As such, Swiss law provides a statute of limitation of thirty years[199] to commence "on the day on which the offender committed the offense."[200]

14.2. By filing a criminal complaint the victim has declared, "that he or she wishes to participate in the criminal proceedings as a criminal or civil claimant."[201] The Swiss authorities "shall investigate *ex officio* all the circumstances relevant to the assessment of the criminal act and the accused,"[202] and are "obliged to commence and conduct proceedings that fall within their jurisdiction where they are aware of or have grounds for suspecting that an offence has been committed."[203] Swiss criminal proceedings allow for civil claims to be brought against the perpetrator, but the victim must declare his or her intention to include civil claims to the Swiss authorities.[204] This is especially important should the Swiss authorities conclude the perpetrator did not possess the criminal element of intent—*mens rea* (criminal intent),[205] in the commission of the crime—*actus reus* (the guilty act),[206] but a crime was nevertheless committed. Defenses to criminal liability include mistake of fact and mistake of law. Since Switzerland is a civil law system, the *mens rea* of the perpetrator must be present in relation to all the elements of the *actus reus*.[207] "In the civil law systems," according to Dörmann, "the actor incurs criminal liability only if (i) his acts correspond objectively to the behaviour prohibited by a particular crime, (ii) are illegal, and (iii) are also culpable, *i.e.* the actor has some individual fault in performing them."[208]

14.3. 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, the Prosecutor of the International Criminal Court will prosecute if there is a mental element that includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that "a

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[197] *Id*., Article 264*m*.
[198] *Id*., Article 264*c*(3).
[199] *Id*., Article 97(1)(a).
[200] *Id*., Article 98(a).
[201] *See* Article 118, Swiss Criminal Procedure Code.
[202] *Id*., Article 6.
[203] *Id*., Article 7.
[204] *Id*., Article 122(1).
[205] *See* BLACK'S LAW, *supra* note 89, at 984, which defines *mens rea* as "an element of criminal responsibility; a guilty mind; a guilty or wrongful purpose; a criminal intent."
[206] *Id*., at 36, which defines *actus reus* as a "wrongful deed which renders the actor criminally liable if combined with mens rea."
[207] *Id*., Article 19(1). "If the person concerned was unable at the time of the act to appreciate that his act was wrong or to act in accordance with this appreciation of the act, he is not liable to prosecution."
[208] KNUT DÖRMANN, ELEMENTS OF WAR CRIMES UNDER THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT 494 (2003).

person has intent where: (a) In relation to conduct, that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events."

14.4. With regard to knowledge, Article 30(3) of the Rome Statute provides that "'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events." "A mistake of fact," according Article 32(1), "shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime," and a "mistake of law," according to Article 32(2), "shall not be a ground for excluding criminal responsibility [unless] …it negates the mental element required by such a crime, or as provided for in article 33." Article 33 provides that a crime that "has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless: (a) the person was under a legal obligation to obey orders of the Government or the superior in question; (b) the person did not know that the order was unlawful; and (c) the order was not manifestly unlawful."

14.5. Is there a particular time or event that could serve as a definitive point of knowledge for the purpose of *mens rea* and the application of the principles of mistake of fact and mistake of law? 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. Through executive mediation and *exchange of notes*, an executive agreement was entered into with Queen Lili'uokalani to reinstate the Hawaiian government on that very same day the President notified the Congress, but it wasn't dispatched from Honolulu to Washington, D.C. until December 20. The United States Supreme Court considers these types of executive agreements by the President as sole-executive agreements, which do not rely on Senate ratification or approval of the Congress, and have the force and effect of a treaty.[209] The United States Supreme Court explained:

> "In addition to congressional acquiescence in the President's power to settle claims, prior cases of this Court have also recognized that the President does have some measure of power to enter into

[209] 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").

> executive agreements without obtaining the advice and consent of the Senate. In *United States v. Pink,* 315 U. S. 203 (1942), for example, the Court upheld the validity of the Litvinov Assignment, which was part of an Executive Agreement whereby the Soviet Union assigned to the United States amounts owed to it by American nationals so that outstanding claims of other American nationals could be paid."[210]

14.6. 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."[211] 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."[212] Despite the mistake of facts and law riddled throughout the apology resolution, whether by design or not, 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."[213] It is a presumption that everyone knows the law, which stems from the legal principle *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. Awareness and knowledge for members of the State of Hawai'i would have begun with the enactment of the Apology resolution in 1993.

14.7. In *State of Hawai'i v. Lorenzo* (1994),[214] 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 with a sovereign, Native Hawaiian entity, like the Kingdom of Hawaii [Hawai'i], such an entity does not preempt nor preclude jurisdiction of this court over the above-entitled matter."[215] After acknowledging that the "United States

[210] See *Dames & Moore v. Regan*, 453 U.S. 654, 682 (1981).
[211] *See* Apology Resolution, *supra* note 140.
[212] *Id.*
[213] *Id.*, at 1514.
[214] *State of Hawai'i v. Lorenzo*, 77 Haw. 219 (1994).
[215] *Id.*, at 220.

Government recently recognized the illegality of the overthrow of the Kingdom and the role of the United States in that event," the appellate court affirmed the lower court's decision. 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." However, the appellate court did admit its "rationale is open to question in light of international law."[216] This is clearly awareness, on the part of the appellate court, that its decision was subject to international law.

14.8. 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."[217] 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 illegal as a direct result of the illegal overthrow. 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.

14.9. While there exists under international law the duty to not intervene in the internal affairs of another State, international law, however, recognizes the State's duty to protect it's own citizens abroad. In the *Lotus case*, the Permanent Court of International Justice stated there is no "general prohibition to States to extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory."[218]

14.10. Swiss law provides Swiss authorities to exercise active and passive personality jurisdiction and universal jurisdiction over crimes committed abroad under Article 7 of the SCC, but this exercise is limited. First, the victim has to be Swiss; second, the perpetrator has to be in Switzerland or has to be extradited to Switzerland; and third, if the person needs to be extradited it must be determined by the *Mutual Assistance Act*.[219] While a request for extradition shall not be granted if the alleged act is of a predominantly political nature, it shall be granted "in cases of war crimes."[220] A bar to the exercise of Swiss jurisdiction is where the perpetrator "has been acquitted of the offense abroad in a legally binding judgment [or] the sentence that was imposed abroad has been served, waived, or has prescribed;"[221] or when

[216] *Id*., at 220-221.
[217] *See* ICC Elements of Crimes, *supra* note 169, Article 8 – Introduction.
[218] PCIJ Ser. A, no. 10, 10.
[219] *See Federal Act of International Mutual Assistance in Criminal Matters* (January 1, 2013).
[220] *Id*., Article 3b.
[221] *See* Article 7(4), Swiss Criminal Code.

"foreign authority or an international criminal court whose jurisdiction is recognized by Switzerland is prosecuting the offence and the suspected perpetrator is extradited or delivered to the court."[222]

14.11. Furthermore, Switzerland ratified the ICC Rome Statute on October 12, 2001, which entrusts national jurisdictions with primary responsibility for the prosecution and punishment of war crimes under the principle of complementarity. Article 1 of the Rome Statute provides, the International Criminal Court "shall be complementary to national criminal jurisdictions."[223] In other words, the jurisdiction of the ICC is secondary to the exercise of national jurisdiction by State parties to the Rome Statute, which includes Switzerland.

14.12. With over 600 Swiss expatriates residing in the Hawaiian Islands, there could be well over 600 victims of war crimes that should immediately draw the attention of the Swiss authorities. Furthermore, there is a population of 1.3 million people who could also be victims of war crimes. As to what degree or severity these crimes would entail can only be determined by a diligent investigation.

15. *ALLEGED WAR CRIMES AND EVIDENCE*

15.1. Provided herein are alleged war crimes committed by the United States government and by private individuals, which include members of the State of Hawaiʻi who believed they were operating as government officials. According to Swiss law, war crimes are prosecuted *ex officio* where the offenses are so serious they are prosecuted even if the victim(s) have not reported the war crimes themselves. The evidence of the war crimes addresses the *mens rea* of the perpetrator(s) in relation to all the elements of the *actus reus* committed against the victim(s).

War Crimes: Unfair Trial and Pillaging

15.2. 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 military commissions under United States law. As such, the so-called courts cannot provide a fair trial and therefore decisions and judgment are made extra-judicially. Since 2011, defendants in 128 civil cases, whose homes were being foreclosed judicially in circuit courts of the State of Hawaiʻi or being evicted as a result of non-judicial foreclosures in the district courts of the State of Hawaiʻi, were challenging the subject matter jurisdiction of these courts based upon evidence that the Hawaiian Kingdom, as an independent and sovereign State, continued to exist. As such, the controlling

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[222] *Id*., Article 264*m*.

[223] *See* Rome Statute, International Criminal Court, para. 10, preamble: "…the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions."

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. See paragraphs 12.1-12.4 of this report.

15.3. Common Article 3 of the GC IV 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 HC 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" of GC IV.[224]

15.4. After filing a motion to dismiss citing the evidential basis that the Hawaiian Kingdom continues to exist and its laws remain binding despite the prolonged occupation by the United States, a hearing would be held before these courts where most of the defendants retained legal counsel that provided special appearance to argue the motion. At no time did opposing counsel that represented the lending institutions refute the evidence, but appeared to consistently rely on the intervention of the presiding Judges to arbitrarily deny the motions. These judges provided no rebuttable evidence recognized by international law that the United States extinguished the legal status of the Hawaiian Kingdom as a sovereign State, except for citing State of Hawai'i laws and court decisions, in particular, the *Lorenzo case*.

15.5. The *Lorenzo case* was at the center of one of these civil cases that came before Judge Glenn S. Hara in the Circuit Court of the Third Circuit, State of Hawai'i, on June 15, 2012. Dexter Kaiama, *Esq*., provided special appearance for the defendant on a motion to dismiss for lack of subject matter jurisdiction based on the continued existence of the Hawaiian Kingdom and the two executive agreements entered into between U.S. President Grover Cleveland and the Hawaiian Kingdom's Queen Lili'uokalani in 1893.[225] After arguing the merits of the case, Mr. Kaiama states, "I have now been arguing, Your Honor, this motion before judges of the courts of the circuit court and district court throughout the State of Hawai'i, and nearly—and probably over 20 times, and in not one instance has the plaintiff in the cases challenged the

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[224] *Hamdan v. Rumsfeld*, 548 U.S. 557, 655 (2006).

[225] *See Wells Fargo Bank, N.A., vs. ****, et al*., civil no. 11-1-106, Circuit Court of the Third Circuit, State of Hawai'i, Transcripts (June 15, 2012), 12, attached as Appendix "VII."

merits of the executive agreement or that the executive agreements have been terminated. Because we believe, respectfully, again, Your Honor, they cannot."[226] He continues to argue that "it's irrefutable that these are executive agreements and preempt state law, …which is the state statute that plaintiff relies on in their complaint seeking to confer jurisdiction upon that court,"[227] and "once we have met our burden [of proof], the court cannot have no other, we believe, no other recourse but to dismiss the complaint."[228] Unable to deny the evidence, Judge Hara replies, "what you're asking the court to do is commit suicide, because once I adopt your argument, I have no jurisdiction over anything. Not only these kinds of cases…, but jurisdiction of the courts evaporate. All of the courts across the state from the supreme court down, and we have no judiciary. I can't do that."[229]

15.6. Two issues resonate from Judge Hara's statement: first, he's admitting to the veracity of the evidence—cognitive component of knowledge and awareness; and, secondly, he knowingly and deliberately denied the defendant a fair and regular trial—volitional component of intent, and allowed the plaintiff, Wells Fargo Bank, to proceed to pillage her home. Unfair trials can lead to other crimes under the court's jurisdiction that include appropriation of property, both real and personal, and unlawful confinement. Therefore, the deliberate denial of a person's right to a fair and regular trial, pillaging of property, and unlawful confinement are war crimes recognized under Swiss law.

15.7. In another case that came before Judge Peter Cahill in the Second Circuit Court, the defendant's motion stated the "evidence places the Court on notice of the ongoing violations of international law and 'war crimes' and that if this Court refuses to grant [Defendants'] Motion and dismiss [Plaintiff's] Complaint, [Defendants] will have no alternative but to file a complaint with the United Nations Human Rights Commission in Geneva and the International Criminal Court in The Hague." Judge Cahill, in response to the notice, stated to Mr. Kaima "I appreciate the fair warning, because I hope next year to visit family in Italy and when we get off the plane, if I'm arrested, I'm going to tell them that you didn't give me fair warning to address these issues. So that's why I want you to address these issues."[230] After a second hearing on the motion to dismiss, Cahill denied the motion without cause and the lender, American Savings Bank, eventually pillaged the defendant's home. Judge Cahill cannot deny that he was aware of the consequences of his action, despite his application of the wrong law.

[226] *Id*., at 9.
[227] *Id*., at 12.
[228] *Id*., at 13.
[229] *Id*.
[230] *See American Savings Bank, vs*. ****, *et al*., civil no. 13-1-0037, Circuit Court of the Second Circuit, State of Hawai'i, Transcripts (August 28, 2013), 5-6, attached as Appendix "VIII."

15.8. One of these victims, Mr. Kale Kepekaio Gumapac, has consented to making his name known to the public. Mr. Gumapac has also made the undersigned his *attorney-in-fact* authorized by the limited power of attorney enclosed herein.[231] As with all victims in the courts for foreclosure proceedings, Gumapac purchased title insurance that covers the debt owed to his lender Deutsche Bank National Trust Company (Deutsch Bank), being the assignee of Argent Mortgage Company, in the event there are defects in the title to the property. According to the loan policy purchased by Mr. Gumapac for the protection of the lender from Stewart Title Guaranty Company, a defect in title is defined, *inter alia*, as "a document affecting Title not properly…notarized," and "a document not properly filed, recorded or indexed in the Public Records." As a result of the illegal overthrow of the Hawaiian government, property ownership was not capable of being transferred because after January 17, 1893, all notaries public and the registrars of the Bureau of Conveyances that serves as the public registry of land titles in the Kingdom since 1845 stemmed from governments that were neither *de facto* nor *de jure*, but self-declared. As such, all mortgages are void. Mr. Gumapac was required to purchase title insurance for the lender as a condition of the loan.

15.9. On November 22, 2011, Mr. Gumapac notified his lender of the defect in his title and for his lender to file an insurance claim based on the evidence Mr. Gumapac provided. Mr. Gumapac stated in his letter to Deutsche Bank:

> "To protect the lender in case of this type of situation, I was required by the original lender, Argent Mortgage Company, LLC, to purchase a loan title insurance policy in escrow or I wouldn't get the loan. The policy covered the amount I borrowed, which was $290,000.00. When Deutsche Bank National Trust Company purchased the loan it also included the title insurance policy I purchased for the protection of Argent Mortgage Company, LLC. If there is a defect in title, which is a covered risk under the lender's policy, it pays off the balance of the loan owed to Deutsche Bank National Trust Company, being the assignee of Argent Mortgage Company, LLC."[232]

15.10. Deutsche Bank disregarded Mr. Gumapac's letter and maintained its unlawful proceedings in the court. In a move to compel Deutsche Bank to file the insurance claim under the policy Mr. Gumapac purchased from Stewart Title Guaranty Company, Mr. Gumapac retained counsel to file a lawsuit in the United States District Court for the Central District of California, Western Division, on March 13, 2012.[233] Deutsche Bank filed a motion to dismiss on

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[231] Gumapac Limited Power of Attorney attached as Appendix "IX."

[232] Gumapac to Deutsche Bank National Trust Company, November 22, 2011, enclosed in attached CD as Exhibit "1."

[233] *Gumapac v. Deutsche Bank National Trust Company, et al*., United States District Court for the Central District of California, Western Division, Case No. CV-2:11-10767 ODW (CWx). First Amended Complaint enclosed in attached CD as Exhibit "2."

March 29, 2012, arguing that the Court should grant the motion to dismiss because it has already determined that the Hawaiian Kingdom does not exist in previous cases. On April 13, 2012, Mr. Gumapac filed an opposition to the motion to dismiss in which he argued "The actual holdings in the case law on this issue is that the courts have not ever considered the issue, because no evidence has ever been presented to the for consideration of the continued existence of the Kingdom of Hawai'i."[234] Despite the evidence provided by Mr. Gumapac, the Court granted the motion to dismiss.

15.11. This rising toll of impunity prompted Mr. Kaima to file protests and demands with Admiral Locklear, United States Pacific Command Commander (USPACOM), in 2012, seeking intervention for some of his clients. On behalf of Mr. Gumapac, Mr. Kaiama filed a protest and demand on July 6, 2012, which stated:

> "As the Commander of the U.S. Pacific Command, your office is the direct extension of the United States President in the Hawaiian Islands through the Secretary of Defense. As the Hawaiian Kingdom continues to remain an independent and sovereign State, the Lili'uokalani assignment and Article 43 of the 1907 Hague Convention IV mandates your office to administer Hawaiian Kingdom law in accordance with international law and the laws of occupation. The violations of my client's right to a fair and regular trial are directly attributable to the President's failure, and by extension your office's failure, to comply with the Lili'uokalani assignment and Article 43 of the 1907 Hague Convention, IV, which makes this an international matter."[235]

15.12. Mr. Kaima also notified the Office of the United Nations High Commissioner for Human Rights in Geneva, Switzerland. In his letter dated August 20, 2012, Mr. Kaiama stated:

> "I am a practicing attorney and I represent Mr. Kale Kepekaio Gumapac, a Hawaiian national, who resides at 15-1716 Second Ave., Keaau, Hawaiian Islands, 96749. On behalf of my client, a Protest and Demand dated July 6, 2012 was communicated to Admiral Samuel Locklear, Commander of the United States Pacific Command, for war crimes committed by Judge Greg Nakamura against my client for not providing him a fair and regular trial by a competent tribunal. The Protest and Demand was sent to Admiral Locklear pursuant to Section 495(b), Department of the Army Field Manual 27-10; Hague Convention No. IV, *Respecting the Laws and Customs of War on Land*, 18 October 1907; the Geneva Convention *Relative to the Protection of Civilian Persons in Time of War*, 12

[234] *Id*., Plaintiff's Request for Judicial Notice in Support of Plaintiffs' Memorandum in Opposition to Defendant's Plaintiff's First Amended Complaint (without declaration and exhibits), enclosed in attached CD as Exhibit "3."
[235] Kaiama to Locklear, July 6, 2012, enclosed in attached CD as Exhibit "4."

August 1949; and Title 18 U.S.C. §2441(c)(1)—Definition of War Crime."

15.13. Leland Pa, a Hawai'i County police officer, obtained these complaints sent to the USPACOM and the UN High Commissioner for Human Rights by Kaiama, and inquired "to see how it would affect [himself] as a police officer for the County of Hawai'i and if it would pose potential problems for law enforcement and government officials."[236] Pa telephoned the Office of the United Nations High Commissioner for Human Rights on November 6, 2012. He stated that he "spoke with a male representative that confirmed the complaints but could not provide any more assistance except to advise [him] to contact U.S. departments that deal with war crime complaints."[237] On November 8, 2012, Officer Pa spoke with Ronald Winfrey, Principal Deputy Staff Judge Advocate, USPACOM, by telephone. When asked by Officer Pa if he was in receipt of the complaints by Mr. Kaima, Mr. Winfrey responded, "he knows those complaints because out of all the complaints he has read those are the most precise and clear."[238] Pa stated that as he "began discussing the basis of the complaints such as no treaty of annexation, Mr. Winfrey candidly and without hesitation said, 'Oh yes, there is no treaty.'"[239]

15.14. On February 18, 2013, Mr. Kaiama also submitted complaints with the Prosecutor of the International Criminal Court (ICC), which included a complaint for Mr. Gumapac,[240] but the ICC would not acquire jurisdiction over the Hawaiian Islands until March 4, 2013.[241] This is what prompted the victims to also file complaints with the County of Hawai'i Police Department on February 22, 2013. These criminal complaints were filed under Title 18 U.S.C. §2441—war crimes, and were received by Officer Pa while on duty at the police department in the city of Hilo and were assigned police report numbers C13004901, C13004904, C13004910, C13004911, C13004913, C13004915, and C13004916. Each of the victims provided a copy of their ICC complaints as the basis of the evidence of the war crimes committed against them by judges on the Island of Hawai'i. Officer Pa initiated an investigation and notified the judges and attorneys who were reported by the victims that criminal complaints have been filed and if they wanted to make a statement at the police station they could contact him to arrange it. On February 28, 2014, Officer Pa was served with an internal complaint alleging he was in violation of the Department's Standard of Conduct. He was

[236] Pa Declaration, December 15, 2012, para. 3, enclosed in attached CD as Exhibit "5."
[237] *Id.*, at para. 6.
[238] *Id.*, at para. 9.
[239] *Id.*, at para. 10.
[240] Gumapac ICC Complaint, February 18, 2013, enclosed in attached CD as Exhibit "6."
[241] When the Hawaiian Kingdom deposited its Instrument of Accession with the United Nations Secretary-General on December 10, 2012 in New York City, the International Criminal Court (ICC) would possess jurisdiction over Hawaiian territory beginning on March 4, 2013. According to Article 126 of the Rome Statute, the ICC will have jurisdiction "on the first day of the month after the 60th day following the date of the deposit of the…instrument of…accession."

immediately put on administrative leave without pay pending an internal investigation.

15.15. After being notified of Officer Pa's removal from duty, Mr. Kaiama filed a criminal complaint with Detective Derek Morimoto of the Hawai'i Police Department on April 14, 2013. Mr. Kaiama stated:

> "It has been brought to my attention that Officer Pa has been placed on leave without pay while under internal investigation for carrying out his duties in compliance with 18 U.S.C. §2441.
>
> Having obtained the HCPD/OPS Complaint (a true and correct copy of which I have been authorized to enclose for your records), and upon further information provided to me by Officer Pa when I spoke with him over the phone regarding the status of the investigation of my clients' complaints, I believe good cause exists which obliges me to report to your office and request your investigation into the possibility that a conspiracy, with the intention to intimidate and/or obstruct the fulfillment of Officer Pa's duty to complete his investigation into the criminal complaints that were reported by my clients and followed by his (Officer Pa's) routing of said complaints to the United States Pacific Command, has occurred. The HCPD/OPS complaint against Officer Pa presents evidence of the crimes of obstruction of justice and conspiracy and identifies the alleged perpetrators.
>
> Accordingly, pursuant to 18 U.S.C. §4 and the enclosed HCPD/OPS complaint, I am reporting the commission of secondary felonies committed by judges of the third circuit, court clerks of the third circuit and attorneys."[242]

The specific charges of secondary felonies included obstruction of justice (18 U.S.C. §1512(c)(2)), conspiracy to impede or injure officer (18 U.S.C. §372), and misuse of the prestige of judicial office (Rule 1.3, Haw. Revised Rules of Judicial Conduct).

15.16. On May 7, 2013, Mr. Kaiama held a press conference concerning the complaints of his victims and himself filed with the County of Hawai'i Police Department. The Department's Chief of Police, Harry S. Kubojiri, issued a media release on its website explicitly stating they are not investigating the alleged war crimes.

> "A May 7, 2013, "press release" sent by attorney Dexter Kaiama to local media sources claims that certain state judges, attorneys and others are under investigation by the Hawai'i Police Department for alleged war crimes based on their role in foreclosure proceedings. The Hawai'i Police Department recognizes Mr. Kaiama's First

[242] Kaiama criminal complaint enclosed in attached CD as Exhibit "7."

> Amendment right to express his beliefs regarding Hawaiian sovereignty; however, the representations as to the Hawai'i Police Department's involvement in the investigation of alleged war crimes are inaccurate. The Police Department is conducting no such investigation."[243]

The Department also fired Officer Pa who had 24 years in the police force. The callousness displayed by the police, who are supposed to serve and protect the public from crimes, judges and attorneys clearly indicates a conspiracy in the commission of war crimes and the shielding of the perpetrators.

15.17. As a matter of urgency because of the pending seizure of the victims' homes, Mr. Kaima sought intervention by German authorities in the case of Mr. Gumapac under German active personality jurisdiction for war crimes committed abroad under the German Code of Crimes against International Law (CCAIL). The alleged perpetrator is Deutsche Bank, being the parent company of Deutsche Bank National Trust Company. In his complaint of August 28, 2013, addressed to German Attorney General Harald Range, Kaiama stated:

> "DEUTSCHE BANK is a German financial institution headquartered in the city of Frankfurt that has and continues to commit violations of the CCAIL abroad in the Hawaiian Islands and its crimes of "deprivation of a fair and regular trial" and "pillaging" have affects both abroad and in Germany—utilizing fraud and violations of the CCAIL for the financial benefits of the perpetrator at home and to the extreme prejudice of my clients abroad here in the Hawaiian Islands. Evidence of the war crimes alleged herein is provided by the attachments hereto and the principal suspects are currently present or can reasonably be expected to be present in Germany and accessible to your office for questioning."[244]

The case was assigned to Dr. Helmut Kreicker, Federal Public Prosecutor General at the Federal Court.

15.18. In a letter to Mr. Kaiama dated September 10, 2013, Dr. Kreicker had mistakenly concluded that his office could not proceed with a criminal investigation because of the absence of an armed conflict. He stated:

> "I have reviewed your complaint but refrained from initiating prosecution according to title 152, section 2 of StPO [German Code of Criminal Procedure]. The alleged incidences described in your

[243] County of Hawai'i Police Department media release enclosed in attached CD as Exhibit "8;" also available at: http://hawaiitribune-herald.com/sections/news/local-news/officials-deny-%E2%80%98war-crimes%E2%80%99-investigation.html#.UYwdes-scCk.email.
[244] Mr. Kaiama letter to German Attorney General Range (August 28, 2013), enclosed in attached CD as part of Exhibit "9."

> criminal complaint did not take place in the context of an armed conflict; hence punishability for war crimes is out of the question from the outset. For any ulterior punishability within the jurisdiction of the Federal Prosecutor General no reasonable actual indications are at hand. In consequence, no follow-up could be given to your complaint."[245]

15.19. The German prosecutor's mistake was addressed by Mr. Kaiama in his response letter dated September 22, 2013. Mr. Kaima wrote:

> "The Federal Republic of Germany became a High Contracting Party to the Fourth Geneva Convention on September 3, 1954. The 1949 Geneva Conventions codified what was already considered customary international law. Article 2 of the Fourth Geneva Convention states, "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if said occupation meets with no armed resistance." In other words, there is no requirement for war crimes committed under the Fourth Geneva Convention to be limited to "armed conflicts," but can also take place in occupied territories."[246]

An armed conflict is a question of fact and not a question of law. The German occupations of Luxembourg from 1914-1918 during the First World War and from 1940-1945 during the Second World War occurred without resistance and were not wars in the technical sense, but, according to the Nuremburg trials, were wars of aggression against neutral States—*crimes against peace*.[247] The experience of both World Wars is what prompted international humanitarian law to replace the narrow term "war" with the more expansive term "armed conflict."[248] Armed conflicts include both hostilities between armed forces as well as occupations of a State's territory that occured without armed resistance, *i.e.* Luxembourg.

15.20. The German authorities did not respond to Mr. Kaiama's letter to Dr. Kreicker, and the pillaging of Mr. Gumapac's home was carried out. Mr. Gumapac was also arrested when he resisted the pillaging of his home and was unlawfully confined, which is a secondary war crime that has a direct nexus to the primary war crime of denial of a fair and regular trial.[249] Mr. Gumapac's case is but one of hundreds of cases that have been brought before the courts of the

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[245] Dr. Kreicker letter to Mr. Kaiama (September 10, 2013), enclosed in attached CD as part of Exhibit "9."
[246] Mr. Kaiama letter to Dr. Kreicker (September 22, 2013), enclosed in attached CD as part of Exhibit "9."
[247] Trial of the Major War Criminals before the International Military Tribunal, *Judgment*, vol. XXII, 452 (14 Nov. 1945-1 Oct. 1946). The tribunal decreed, "The invasion of Belgium, Holland, and Luxembourg was entirely without justification [and] was carried out in pursuance of policies long considered and prepared, and was plainly an act of aggressive war."
[248] BLACK'S LAW, *supra* note 89, at 1583, provides, "For there to be a 'war,' a sovereign or quasi-sovereign must engage in hostilities."
[249] Big Island News Video reported on Gumapac's case in a five part series available online at: http://www.bigislandvideonews.com/2013/12/17/video-series-testing-hawaiian-sovereignty/.

State of Hawai‘i since the awareness of the prolonged occupation of the Hawaiian Kingdom has surfaced. The author of this report has the evidence of these war crimes and will provide them to the Attorney General once the investigation has begun for Mr. Gumapac.

15.21. Mr. Gumapac herein alleges that the following named individuals committed the war crimes of denial of a fair and regular trial and the pillaging of his home:

1. *Judge Greg K. Nakamura*, Circuit Court of the Third Circuit, State of Hawai‘i, whose address is Hale Kaulike, 777 Kilauea Avenue, Hilo, HI 96720-4212;
2. *Jürgen Fitschen*, Co-Chief Executive Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany;
3. *Anshu Jain*, Co-Chief Executive Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany;
4. *Stefan Krause*, Chief Financial Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany;
5. *Stephan Leithner*, Chief Executive Officer Europe (except Germany and UK), Human Resources, Legal & Compliance, Government and Regulatory Affairs, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany;
6. *Stuart Lewis*, Chief Risk Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany;
7. *Rainer Neske*, Head of Private and Business Clients, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany;
8. *Henry Ritchotte*, Chief Operating Officer, Deutsche Bank Management Board, parent company of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, whose address is Taunusanlage 12, 60325 Frankfurt, Germany;
9. *Charles R. Prather*, attorney for Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, belonging to the law firm RCO Hawaii, LLLC, whose address is 900 Fort Street Mall, Suite 800, Honolulu, HI 96813;

10. *Sofia M. Hirosone*, attorney for Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, belonging to the law firm RCO Hawaii, LLLC, whose address is 900 Fort Street Mall, Suite 800, Honolulu, HI 96813;
11. *Michael G.K. Wong*, attorney for Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, belonging to the law firm RCO Hawaii, LLLC, whose address is 900 Fort Street Mall, Suite 800, Honolulu, HI 96813;
12. *Lieutenant Patrick Kawai*, State of Hawai‘i Department of Public Safety Sheriff’s Department, to include his superiors and deputies, whose address is Hale Kaulike, 777 Kilauea Avenue, Hilo, HI 96720-4212;
13. *Police Chief Harry S. Kubojiri*, County of Hawai‘i Police Department, whose address is 349 Kapi‘olani Street, Hilo, HI 96720;
14. *Detective Brian D. Prudencio*, Office of Professional Standards, County of Hawai‘i Police Department, whose address is 349 Kapi‘olani Street, Hilo, HI 96720;
15. *Captain Samuel Kawamoto*, County of Hawai‘i Police Department, whose address is 349 Kapi‘olani Street, Hilo, HI 96720; and
16. *Detective Derek Morimoto*, County of Hawai‘i Police Department, whose address is 349 Kapi‘olani Street, Hilo, HI 96720.

Mr. Gumapac expressly declares that he wishes to participate in the criminal proceedings as both a criminal and civil claimant in accordance with Articles 118 and 122 of the SCPC, and that he invokes his right to be heard through his *attorney-in-fact*, the undersigned, in accordance with Articles 107 and 127 of the SCPC. Mr. Gumapac, through his attorney-in-fact, the undersigned, calls upon the Attorney General and/or his prosecutors in the Centre of Competence for International Crimes at the Office of the Attorney General to “open the investigation by issuing a ruling in which it shall name the accused and the offence[s] that he or she [are] suspected of committing,” in accordance with 309(1)(a) and (3) of the SCPC.

15.22. It is also brought to the attention of the Attorney General that Swiss citizens have been made aware of the illegal occupation of the Hawaiian Kingdom and the violation of their rights secured under the Hawaiian-Swiss Treaty of 1864 and international humanitarian law while resident within the territory of the Hawaiian Kingdom. One of these citizens submitted a Petition for Redress of Grievances to the undersigned dated July 7, 2014. The name of the petitioner and his petition will be provided to the Attorney General in strict confidence with this report in accordance with Article 73 of the SCPC. The petitioner wrote:

> “Since 1988, I have been paying taxes to the United States Federal government and the State of Hawai‘i government. I didn’t know that these governments are illegal regimes until I learned of Hawai‘i’s illegal occupation by the United States since 1898 and the only taxes that I should have been paying are Hawaiian taxes collected by the

> Hawaiian Kingdom Minister of Finance. If I refused to pay these taxes these regimes would have instituted criminal proceedings against me. This unlawful collection of my property would constitute 'Robbery' under Chapter XV of the Hawaiian Kingdom Penal Code."

The petitioner concluded:

> "I also humbly request that you provide a copy of this petition to my government at your earliest convenience so that it may know the dire situation of five of its citizens and that I also intend to seek recovery of my stolen property with the help of my government from the United States of America. I am including in this petition a copy of my Swiss passport and payment stub for a land tax in Switzerland as evidence of my Swiss nationality."

16. *CONCLUSION*

16.1. The prolonged occupation of the Hawaiian Kingdom is such an egregious act that it could only have gone unnoticed by the international community because of the manipulation of the facts by the United States since the turn of the twentieth century. Through a very effective program of denationalization—*Americanization*, memory of the Hawaiian Kingdom was nearly obliterated from the minds of the people of the Hawaiian Islands in a span of three generations, which underline the severity of the Hawaiian situation and the quest toward justice and redress under international humanitarian law. In its commentary given to the General Assembly of the United Nations' Sixth Committee (Legal) regarding information and observations on the scope and application of the principle of universal jurisdiction, the Swiss delegation stated:

> "Switzerland understands universal jurisdiction as the customary principle whereby a court can exercise its jurisdiction even in the absence of a link between the case and the forum State, such as territory, nationality of the perpetrator or victim or infringement of the fundamental interests of the State. This principle is based on the idea that some crimes are so serious that they affect the international community as a whole and that, as a result, every State has the *right* to exercise its jurisdiction to prosecute the perpetrators. Examples of crimes for which universal jurisdiction can be exercised are…war crimes."[250]

The Swiss delegation also stated that exercising universal jurisdiction "may become an *obligation* as a result of the *aut dedere aut judicare* rule contained

[250] *Information and observations on the scope and application of the principle of universal jurisdiction* provided by Switzerland to the United Nations' Sixth Committee (translated from French), at 1, available at: http://www.un.org/en/ga/sixth/66/ScopeAppUniJuri_StatesComments/Switzerland%20%28F%20to%20E%29.pdf.

in a treaty to which the State is a party."[251] Switzerland is a party to the GC IV and therefore the exercise of universal jurisdiction has become an obligation. Furthermore, Article 148 of the GC IV provides to the effect that a State shall not be allowed to absolve itself or any other State of any liability incurred by itself or by another State with respect to the grave breaches in the Convention, which are war crimes recognized under Swiss law and considered felonies.

16.2. The United States has deliberately violated and continues to violate the neutrality of the Hawaiian Kingdom, guaranteed by customary international law, the 1862 Hawaiian-Spanish Treaty, the 1871 Treaty of Washington and the 1907 Hague Convention, V, Rights and Duties of Neutral States, which constitutes an act of aggression, and has not complied with the HC IV, and the GC IV, in its prolonged and illegal occupation of the Hawaiian Kingdom. As such, war crimes have and continue to take place in the Hawaiian Islands with impunity.

16.3. The gravity of the Hawaiian situation has been heightened by the DPRK's declaration of war against the United States and South Korea on March 30, 2013 and its specific mention of targeting Hawai'i, cannot be taken lightly.[252] The date of this report is also the very day Japan attacked the military installations of the United States on the island of O'ahu on December 7, 1941. What is rarely mentioned are civilian casualties, who numbered 55 to 68 deaths and approximately 35 wounded. According to Kelly, "It is not 100 percent clear, but it seems likely that most, if not all, of the casualties in civilian areas were inflicted by 'friendly fire,' our own anti-aircraft shells falling back to earth and exploding after missing attacking planes."[253] The advancement of modern weaponry, which includes cyber warfare,[254] far surpasses the conventional weapons used during the Japanese attack, and the Swiss authorities should be concerned for the safety of their expatriates that currently reside within the territory of the Hawaiian Kingdom who are afforded protection under the Hawaiian-Swiss Treaty of 1864.

David Keanu Sai, Ph.D.

[251] *Id.*

[252] Legally speaking, the armistice agreement of July 27, 1953 did not bring the state of war to an end between North Korea and South Korea because a peace treaty is still pending. The significance of the DPRK's declaration of war of March 30, 2013, however, has specifically drawn the Hawaiian Islands into the region of war because it has been targeted as a result of the United States prolonged occupation.

[253] Dr. Richard Kelly, *Pearl Harbor Attack Killed a Lot of Civilians Too* (Dec. 11, 2010), *available at*: http://saturdaybriefing.outrigger.com/featured-post/pearl-harbor-attack-killed-a-lot-of-civilians-too/.

[254] North Korea has been suspected of cyber warfare against South Korea, *available* at: http://www.theguardian.com/world/2013/mar/20/south-korea-under-cyber-attack.

Exhibit “7”

Bundesanwaltschaft
Ministère public de la Confédération
Ministero pubblico della Confederazione
Procura publica federala

Staatsanwalt des Bundes	Andreas Müller
Juristische Mitarbeiterin:	Stefanie Heinrich
Protokollführerin:	Silvia Kocabiyikyan
Verfahrensnummer:	SV.15.1333-MUA

Bern, 28. Januar 2016

Nichtanhandnahmeverfügung
Art. 310 StPO i.V.m. Art. 319 StPO

Beschuldigte Personen

Josef ACKERMANN, als ehemaliger Vorsitzender der Deutschen Bank, **Jürgen FITSCHEN**, **Anshu JAIN**, **Stefan KRAUSE**, **Stephan LEITHNER**, **Stuart LEWIS**, **Rainer NESKE** und **Henry RITCHOTTE**, als für die Deutsche Bank Tätige,

Greg NAKAMURA, Charles PRATHER, Sofia HIROSONE, Michael WONG, Glenn SWANSON, Sandra HEGERFELDT, Jessica HALL, Dana KENNY, Shawn TSUHA, Patrick KAWAI, Samuel JELSMA, Reed MAHUNA, Brian HUNT, Glenn HARA und **Mitch ROTH**, wohnhaft in den Vereinigten Staaten von Amerika,

Barack OBAMA, Jack LEW, Neal WOLIN, Timothy F. GEITHNER, Stuart A.LEVEY, Henry M. PAULSON, Robert M. KIMMIT, John W. SNOW, Neal ABERCROMBIE, Linda LINGLE, Ben CAYETANO, Shan TSUTSUI, Brian SCHATZ, Duke AIONA, Mazie HIRONO, Frederik PABLO, Stanley SHIRAKI, Kurt KAWAFUCHI, Joshua WISCH, Randolf L.M. BALDEMOR, Ronald B. RANDALL, Sandra YAHIRO, Bernard CARVALHO, Kaipo ASING und **†Bryan BAPTISTE,** wohnhaft in den Vereinigten Staaten von Amerika.

Straftatbestände

Anzeige wegen Betrugs gemäss Art. 146 StGB und Kriegsverbrechen gemäss Art. 264c Abs. 1 Bst. d und 264g Abs. 1 Bst. c StGB bzw. Art. 108 und 109 aMStG i.V.m. Art. 33 und 147 des Genfer Abkommens vom 12. August 1949 über den Schutz von Zivilpersonen in Kriegszeiten (GA IV; SR 0.518.51) sowie Art. 43 der Abkommen vom 29. Juli 1899 und 18. Oktober 1907 betreffend die Gesetze und Gebräuche des Landkriegs (Haager Landkriegsordnungen; SR 0.515.111 und 112).

Privatklägerschaft (Art. 118ff. StPO)

Kale Kepekaio GUMAPAC, 15-1939, 20th Avenue, Kea'au, HI 96749 und [redacted], [redacted], [redacted], HI [redacted], beide v.d. David Keanu SAI, [redacted] Grand-Lancy/GE.

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Sachverhalt/Tatvorwurf

a) Am 22. Dezember 2014 [redacted], Strafanzeige bei der Bundesanwaltschaft wegen angeblich auf Hawaii begangenen Kriegsverbrechen und übermittelte einen umfangreichen Bericht eines David Keanu SAI mit Privatklagen von Kale Kepekaio GUMAPAC und [redacted]. Mit Verfügung vom 3. Februar 2015 nahm die Bundesanwaltschaft die Strafanzeige nicht an Hand. Auf die von den Privatklägern gegen den Entscheid der Bundesanwaltschaft eingereichten Beschwerden trat das Bundesstrafgericht wegen Verspätung nicht ein (BB.2015.36-37).

b) Am 18. August 2015 gelangen die Privatkläger mit einer erneuten Strafanzeige an die Bundesanwaltschaft. Die Strafanzeige verweist inhaltlich auf den bereits der Bundesanwaltschaft im erledigten Verfahren eingereichten Bericht mit dem Titel „*War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands*", auf die dort eingereichten Privatklagen von [redacted] und GUMAPAC sowie die Eingaben im Beschwerdeverfahren vor Bundesstrafgericht. Beiden Anzeigen liegt im Grundsatz die Ansicht der Privatkläger zugrunde, das Königreich Hawaii sei durch die Vereinigten Staaten illegal besetzt und annektiert worden, was die Anwendbarkeit des Kriegsvölkerrechts nach sich ziehe.

In der neuen Strafanzeige wirft Kale Kepekaio GUMAPAC Josef ACKERMANN, Jürgen FITSCHEN, Anshu JAIN, Stefan KRAUSE, Stephan LEITHNER, Stuart LEWIS, Rainer NESKE, Henry RITCHOTTE, Greg NAKAMURA, Charles PRATHER, Sofia HIROSONE, Michael WONG, Glenn SWANSON, Sandra HEGERFELDT, Jessica HALL, Dana KENNY, Shawn TSUHA, Patrick KAWAI, Samuel JELSMA, Reed MAHUNA, Brian HUNT, Glenn HARA und Mitch ROTH vor, das Genfer Abkommen über den Schutz von Zivilpersonen in Kriegszeiten verletzt zu haben, indem sie ihm ein ordentliches und unparteiisches, den Vorschriften den Abkommens entsprechendes Gerichtsverfahren verweigert und sein Haus unter Verletzung von Art. 33 des Abkommens geplündert hätten. Den Vorwürfen liege eine Streitigkeit zwischen GUMAPAC und der *Deutsche Bank National Trust Company* zu Grunde. GUMAPAC, Eigentümer eines Grundstücks auf Hawaii und Hypothekarkreditschuldner der *Deutsche Bank National Trust Company*, habe von der *Stewart Title Company* eine sogenannte „*title insurance*" erworben, welche den Hypothekarkredit absichere, falls der Eigentumserwerbstitel seines grundpfandbelasteten Grundstücks mängelbehaftet sein sollte. Infolge der illegalen Annexion des Königreichs Hawaii seien die örtlichen US-amerikanischen Notariate gar nicht zur Eigentumsübertragung legitimiert gewesen und der entsprechende Erwerbstitel sei folglich nichtig. Die *Deutsche Bank National Trust Company* hätte ihre Ansprüche als Kreditgläubigerin in erster Linie mittels der „*title insurance*" geltend machen müssen. Die Bank habe diesen Umstand aber nicht anerkannt und stattdessen die ihr verpfändete Liegenschaft zur Deckung ihrer Kreditforderung liquidiert. Dadurch habe sie das Haus GUMAPACS geplün-

dert im Sinne des Kriegsvölkerrechts.

[redacted] seinerseits wirft Barack OBAMA, Jack LEW, Neal WOLIN, Timothy F. GEITHNER, Stuart A LEVEY, Henry M. PAULSON, Robert M. KIMMIT, John W. SNOW, Neal ABERCROMBIE, Linda LINGLE, Ben CAYETANO, Shan TSUTSUI, Brian SCHATZ, Duke AIONA, Mazie HIRONO, Frederik PABLO, Stanley SHIRAKI, Kurt KAWAFUCHI, Joshua WISCH, Randolf L.M. BALDEMOR, Ronald B. RANDALL, Sandra YAHIRO, Bernard CARVALHO, Kaipo ASING und †Bryan BAPTISTE Plünderung im Sinne von Art. 33 und unrechtmässige Aneignung gemäss Art. 147 des Genfer Abkommens über den Schutz von Zivilpersonen in Kriegszeiten sowie Betrug durch Unterlassung in Widerhandlung gegen Art. 43 der Haager Landkriegsordnungen vor. Die Taten seien in 2006-2007 und 2011-2013 durch die ungerechtfertigte Erhebung von US-Steuern begangen worden, da sämtliche staatlichen Behörden vor Ort nach dem Recht des hawaiischen Königreichs verfassungswidrig seien. [redacted] sieht sich ebenfalls als Opfer eines Betrugs, da er eine Liegenschaft habe erwerben wollen, bezüglich welcher der US-Bundesstaat Hawaii gar nicht zur Eigentumsübertragung legitimiert gewesen sei.

c) Am 25. November 2015 liessen die Privatkläger der Bundesanwaltschaft weitere Dokumente zukommen, die belegen sollen, dass das Königreich Hawaii ein Staat sei.

Begründung

d) Gemäss den Bestimmungen der Haager Landkriegsordnungen (SR 0.515.111 und 112) sowie dem allen vier Genfer Abkommen (SR 0.518.12, 23, 42 und 51) gemeinsamen Artikel 2 setzt die Anwendung des Kriegsvölkerrechts einen bewaffneten Konflikt bzw. die vollständige oder teilweise Besetzung des Gebietes einer Vertragspartei voraus. Dies ist nachfolgend zu prüfen.

Im Jahre 1898 annektierten die Vereinigten Staaten von Amerika die Republik Hawaii (1894 bis 1898) und damit auch das vormalige Königreich Hawaii. Die der Annexion zugrunde liegende Resolution übertrug sämtliche Souveränitätsrechte in und über die hawaiischen Inseln und die von Hawaii abhängigen Gebiete mit Zustimmung der Regierung der Republik Hawaii den Vereinigten Staaten von Amerika und machte diese zu amerikanischem Territorium (vgl. *55th Congress of the United States of America, Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States* vom 7. Juli 1898). Am 21. August 1959 wurde Hawaii als 50. Bundesstaat in die Union der Vereinigten Staaten aufgenommen. Gemäss offiziellen Angaben der Schweiz (vgl. Länderindex des Bundesamts für Justiz des Eidgenössischen Justiz- und Polizeidepartements) umfasst das Gebiet der Vereinigten Staaten von Amerika heute alle 50 Bundesstaaten sowie die Insel Guam, die Jungferninseln und die Nördlichen Marianen. Die Schweiz unterhält diplomatische Beziehungen zu den USA und sogar ein Konsulat in Honolulu. Hawaii wird demnach von der offiziellen Schweiz als Teil der USA anerkannt und war im gesamten Tatzeit-

raum aus Schweizer Sicht weder vollständig noch teilweise von den Vereinigten Staaten besetzt, was eine Anwendung der Genfer Abkommen bzw. der Haager Landkriegsordnungen und die sich darauf abstützenden Art. 108 und 109 aMStG bzw. Art. 264b ff. StGB von vornherein ausschliesst. Eine Plünderung oder eine unrechtmässige Aneignung im Sinne eines Kriegsverbrechens fand daher nicht statt. Gleiches gilt für den behaupteten Betrug, da die Schweiz die Legitimation der US-amerikanischen Behörden zur Eigentumsübertragung an Grundstücken auf Hawaii oder deren notarielle Beglaubigung nicht in Frage stellt.

e) Bezüglich der Anschuldigungen gegen Joseph ACKERMANN *et al.* ist zudem zu bemerken, dass es sich beim angezeigten Sachverhalt - soweit nachvollziehbar - um die Verwertung eines verpfändeten Grundstücks durch die Hypothekarkreditgläubigerin wegen Einstellung der Zinszahlungen durch den Schuldner handelt. Dies ist ein rein zivilrechtlicher Vorgang, der nicht durch Schweizer Strafverfolgungsbehörden zu beurteilen ist. Und was den von [redacted] angezeigten Betrug betrifft, würde es ohnehin an Schweizer Gerichtsbarkeit fehlen. Er mag zwar [redacted], weshalb sich die Frage der Zuständigkeit der Schweiz nach [redacted] stellen könnte. Es gibt aber keinerlei Hinweise auf die Anwesenheit eines Angezeigten in der Schweiz und es wäre auszuschliessen, dass die USA einen ihrer Staatsangehörigen der Schweiz auf Ersuchen einliefern würde.

f) Aus den Akten und den vorstehenden Erwägungen ergibt sich somit, dass die fraglichen Straftatbestände eindeutig nicht erfüllt sind und Prozessvoraussetzungen fehlen, weshalb die Nichtanhandnahme zu verfügen ist (Art. 310 Abs. 1 Bst. a StPO). Bereits die erste Anzeige vom 22. Dezember 2014 wurde mit identischer Begründung nicht an Hand genommen. Es liegen keine Gründe vor, von diesem Entscheid und den entsprechenden Erwägungen abzuweichen und es kann hier vollumfänglich darauf verwiesen werden.

g) Eingaben an die Bundesanwaltschaft sind in einer der Landessprachen einzureichen (Art. 3 Strafbehördenorganisationsgesetz, StBOG; SR 173.71). Da auf die vorliegende Anzeige nicht einzutreten ist, kann ausnahmsweise auf deren Übersetzung verzichtet werden.

h) Die Kosten dieser Verfügung gehen zu Lasten der Bundeskasse (Art. 423 StPO).

i) Diese Verfügung wird Josef ACKERMANN und den Privatklägern über deren Vertreter eröffnet. Die übrigen Angezeigten leben unbekannten Aufenthalts im Ausland, ohne ein der Bundesanwaltschaft bekanntes Zustelldomizil in der Schweiz bezeichnet zu haben. Auf die öffentliche Bekanntmachung der vorliegenden Verfügung wird daher verzichtet und sie gilt als rechtsgültig zugestellt (Art. 88 Abs. 4 StPO).

In Anwendung von Art. Art. 264c Abs. 1 Bst. d und 264g Abs. 1 Bst. c StGB; Art. 108 und 109 aMStG; Art. 310 Abs. 1 Bst. a und Abs. 2 i.V.m. Art. 319 ff. StPO; Art. 3 StBOG wird

<u>verfügt</u>:

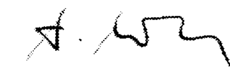
1. Die Strafanzeigen und Privatklagen von Kale Kepekaio GUMAPAC und [geschwärzt] gegen Josef ACKERMANN, Jürgen FITSCHEN, Anshu JAIN, Stefan KRAUSE, Stephan LEITHNER, Stuart LEWIS, Rainer NESKE, Henry RITCHOTTE, Greg NAKAMURA, Charles PRATHER, Sofia HIROSONE, Michael WONG, Glenn SWANSON, Sandra HEGERFELDT, Jessica HALL, Dana KENNY, Shawn TSUHA, Patrick KAWAI, Samuel JELSMA, Reed MAHUNA, Brian HUNT, Glenn HARA, Mitch ROTH, Barack OBAMA, Jack LEW, Neal WOLIN, Timothy F. GEITHNER, Stuart A.LEVEY, Henry M. PAULSON, Robert M. KIMMIT, John W. SNOW, Neal ABERCROMBIE, Linda LINGLE, Ben CAYETANO, Shan TSUTSUI, Brian SCHATZ, Duke AIONA, Mazie HIRONO, Frederik PABLO, Stanley SHIRAKI, Kurt KAWAFUCHI, Joshua WISCH, Randolf L.M. BALDEMOR, Ronald B. RANDALL, Sandra YAHIRO, Bernard CARVALHO, Kaipo ASING und †Bryan BAPTISTE wegen Kriegsverbrechen und wegen Betrugs, angeblich begangen auf Hawaii zwischen 2006-2007 und 2011-2013, werden nicht anhand genommen.

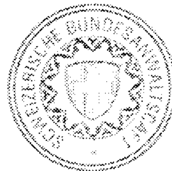
2. Die Kosten gehen zu Lasten des Staates.

3. Diese Verfügung wird per Einschreiben eröffnet an:
   - Josef ACKERMANN,
   - Kale Kepekaio GUMAPAC und [geschwärzt] über ihren Vertreter David Keanu SAI, [geschwärzt] Grand-Lancy/GE.

4. Eine Kopie dieser Verfügung geht nach Eintritt der Rechtskraft an den Rechtsdienst der Bundesanwaltschaft mit Angabe des Datums der Rechtskraft.

Bundesanwaltschaft





Andreas Müller
Staatsanwalt des Bundes

Rechtsmittel
Gegen diesen Entscheid kann nach Art. 393 ff. StPO innert 10 Tagen seit der Zustellung oder Eröffnung schriftlich und begründet Beschwerde bei der Beschwerdekammer des Bundesstrafgerichts, Postfach 2720, 6501 Bellinzona, erhoben werden.

English (Translation)

Federal Prosecutor: Andreas Müller
Legal Assistant: Stefanie Heinrich
Secretary: Silvia Kocabiyikyan
Case number: SV.15.1333-MUA
Berne, January 28, 2016

Decision of non-acceptance
according to Art. 310 StPO in connection with Art. 319 StPO

Accused persons

Josef ACKERMANN, as former CEO of Deutsche Bank, **Jürgen FITSCHEN**, **Anshu JAIN**, **Stefan KRAUSE**, **Stephan LEITHNER**, **Stuart LEWIS**, **Rainer NESKE** und **Henry RICHOTTE**, as operatives of Deutsche Bank,

Greg NAKAMURA, **Charles PRATHER**, **Sofia HIROSONE**, **Michael WONG**, **Glenn SWANSON**, **Sandra HEGERFELDT**, **Jessica HALL**, **Dana KENNY**, **Shawn TSUHA, Patrick KAWAI**, **Samuel JELSMA**, **Reed MAHUNA**, **Brian HUNT**, **Glenn HARA** and **Mitch ROTH**, resident in the United States of America,

Barack OBAMA, **Jack LEW**, **Neil WOLIN**, **Timothy F. GEITHNER**, **Stuart A. LEVEY**, **Henry M. PAULSON**, **Robert M. KIMMIT**, **John W. SNOW**, **Neal ABERCROMBIE**, **Linda LINGLE**, **Ben CAYETANO**, **Shan TSUTSUI**, **Brian SCHATZ**, **Duke AIONA**, **Mazie HIRONO**, **Frederik PABLO**, **Stanley SHIRAKI, Kurt KAWAFUCHI**, **Joshua WISCH**, **Randolf L.M. BALDEMOR**, **Ronald B. RANDALL**, **Sandra YAHIRO**, **Bernard CARVALHO**, **Kaipo ASING** and **+Bryan BAPTISTE**, resident in the United States of America.

Statutory Offense

Complaint for fraud according to Art. 146 StGB and war crimes according to Art. 264c, par. 1, lit. d and 264g, par. 1, lit. c StGB respectively Art. 108 and 109 aMStG in connection with Art. 33 and 147 of the Geneva Convention of August 12, 1949 relative to the Protection of Civilian Persons in Time of War (GA IV; SR 0.518.51) as well as Art. 43 of the Conventions of July 29, 1899 and October 18, 1907 with respect to the Laws and Customs of War on Land (Hague Land War Conventions; SR.0.515.111 and 112)

Private plaintiffs
(Art.118 ff. StPO)

Kale Kepekaio GUMAPAC, 15-1939, 20th Avenue, Kea'au, HI 96749 and [redacted],
both represented by David Keanu SAI, [redacted]
Grand-Lancy/GE.

Office of the Federal Attorney General BA
Silvia Kocabiyikyan
Taubenstrasse 16
3003 Bern
Telephone: +41 58 463 34 81, Fax +41 58 463 36 86
www.bundesanwaltschaft.ch

Facts of the case/ charges

a) On December 22, 2014 the former Swiss Honorary Consul in Honolulu, Niklaus SCHWEIZER, brought a criminal complaint for war crimes allegedly committed in Hawaii and transmitted a voluminous report by a David Keanu SAI with private complaints by Kale Kepekaio GUMAPAC and [redacted] [redacted]. By decision of February 3, 2015, the Office of the Federal Attorney General did not accept the complaint. An objection against this decision of the Office of the Federal Attorney General that was filed by the private plaintiffs was not accepted by the Federal Criminal Court because of lateness (BB.2015.36-37).

b) On August 18, 2015, the private plaintiffs addressed a fresh criminal complaint to the Office of the Federal Attorney General. The complaint substantially refers to the report already submitted in the completed proceedings, which is entitled "*War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands,*" to the then submitted private complaints by [redacted] and GUMAPAC as well as the submissions in the objection proceedings at the Federal Criminal Court. At the basis of both complaints lies the notion held by the private plaintiffs that the Kingdom of Hawaii was illegally occupied and annexed by the United States, which would entail the applicability of the international laws of war.

In the new criminal complaint, Kale Kepekaio GUMAPAC accuses Josef ACKERMANN, Jürgen FITSCHEN, Anshu JAIN, Stefan KRAUSE, Stephan LEITHNER, Stuart LEWIS, Rainer NESKE und Henry RICHOTTE, Greg NAKAMURA, Charles PRATHER, Sofia HIROSONE, Michael WONG, Glenn SWANSON, Sandra HEGERFELDT, Jessica HALL, Dana KENNY, Shawn TSUHA, Patrick KAWAI, Samuel JELSMA, Reed MAHUNA, Brian HUNT, Glenn HARA and Mitch ROTH of violating the Geneva Convention relative to the Protection of Civilian Persons in Time of War by depriving him of a fair and regular trial according to the provisions of the Convention and by pillaging his house in violation of art. 33 of the Convention. The accusations stem from a dispute between GUMAPAC and *Deutsche Bank National Trust Company*. GUMAPAC, owner of a property on Hawaii and holder of a mortgage loan of *Deutsche Bank National Trust Company*, is said to have acquired from *Stewart Title Company* a so-called "*title insurance*," which secures his mortgage loan in case the title of acquisition of his mortgaged property would be defective. It is said that based on the illegal annexation of the Kingdom of Hawaii, the local US-American notary offices were not at all authorized to transfer property and that the respective tittle of ownership was thus null and void. Therefore *Deutsche Bank National Trust Company* should have claimed its rights stemming from the "*title insurance*." However, it is said that the bank did not recognize this fact and

instead foreclosed the house in order to cover its claims stemming from the mortgage. It is alleged that by doing so GUMAPAC's House was pillaged according to the international laws of war.

[redacted], on his part, accuses Barack OBAMA, Jack LEW, Neil WOLIN, Timothy F. GEITHNER, Stuart A. LEVEY, Henry M. PAULSON, Robert M. KIMMIT, John W. SNOW, Neal ABERCROMBIE, Linda LINGLE, Ben CAYETANO, Shan TSUTSUI, Brian SCHATZ, Duke AIONA, Mazie HIRONO, Frederik PABLO, Stanley SHIRAKI, Kurt KAWAFUCHI, Joshua WISCH, Randolf L.M. BALDEMOR, Ronald B. RANDALL, Sandra YAHIRO, Bernard CARVALHO, Kaipo ASING and +Bryan BAPTISTE of pillaging within the meaning of art. 33 and of unjust appropriation of property according to art. 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War as well as of fraud by act of omission in contradiction to art. 43 of the Hague Conventions on War on Land. The offenses are alleged to have occurred in the years 2006-2007 and 2011-2013 through the levying of US taxes without legal cause, since all authorities locally established are said to be unconstitutional under the laws of the Hawaiian Kingdom. [redacted] also sees himself as the victim of a fraud, since he intended to acquire a real property, the transfer of which however the US Federal State of Hawaii was not legitimized to register.

c) On November 25, 2015 the private plaintiffs sent further documents to the Office of the Federal Attorney General, which are supposed to prove that the Kingdom of Hawaii was a state.

Justification

d) According to the Hague Conventions on War on Land (SR.0.515.111 and 112) as well as article 2 common to all four Geneva Conventions (SR 0.518.12, 23, 42 and 51), the application of the international laws of war postulates an armed conflict, or the complete or partial occupation of the territory of a contracting party of the Geneva Conventions. This is to be checked in the following.

In the year 1898 the United States of America annexed the Republic of Hawaii (1894 until 1898) and thereby also the former Kingdom of Hawaii. The resolution providing the basis for the annexation transferred all rights of sovereignty in and over the Hawaiian Islands and the territories dependent on Hawaii with the consent of the government of the Republic of Hawaii to the United States of America and rendered these American Territory (compare *55th Congress of the united States of America, Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States of July 7, 1898*). On August 21, 1959, Hawaii was admitted as the 50th Federal State into the Union of the United States. According to official statements of Switzerland (cf. the Country Index of the Federal Office of Justice of the Federal Department of Justice and Police), the territory of the

United States of America today comprises all 50 Federal States as well as the Island of Guam, the Virgin Islands and the Northern Marianas. Switzerland maintains diplomatic relations with the United States and even a consulate in Honolulu. Hawaii thus is recognized by official Switzerland as part of the USA and during the entire period the alleged offenses took place, in the view of Switzerland, was neither completely nor partially occupied by the United States, which *a priori* excludes an application of the Geneva Conventions respectively the Hague Conventions on War on Land and Art. 108 and 109 aMSTG as well as Art. 264 b ff. StGB based on them. Pillaging or unjust appropriation of property in the sense of a war crime did therefore not take place. The same pertains to the alleged fraud, since Switzerland does not question the legitimacy of US-American authorities to register or notarize transfers of real properties in Hawaii.

e) Concerning the accusations directed at Joseph ACKERMANN *et al.* it should be remarked that we are dealing here – as far can be understood – with the foreclosure of a mortgaged property by the mortgage creditor on account of the interest payments having been stopped by the debtor. This is a purely civil matter which is not to be assessed by Swiss prosecuting authorities. And as far as the fraud complained about by [redacted] is concerned, Switzerland would lack jurisdiction in any case. He may be a [redacted], which is why Swiss jurisdiction according to [redacted] could be established. However, there is no indication that any of the defendants is present in Switzerland and it can be ruled out that the USA would extradite anyone to Switzerland if so requested.

f) From the documents and the foregoing deliberations hence arises the conclusion that the statutory criminal offenses in question are clearly not fulfilled and the basis for prosecution is lacking, for which reason it is decided not to accept the matter (Art. 310, par. 1, lit. a StPO). Already the first complaint of December 22, 2014 was not accepted with identical justification. No reasons are on hand to diverge from that decision and the respective deliberations, and they can be completely spared here.

g) Submissions to the Office of the Federal Attorney General are to be deposited in one of the national languages (Art. 3 Law on the Organization of Prosecuting Authorities, StBOG; SR 173.71). Since we do not have to deal with the present complaint, a translation of submitted materials can exceptionally be waived.

h) The costs of this decision are borne by the Federal Exchequer (Art. 423 StPO).

i) This decision will be rendered to Josef ACKERMANN and to the private plaintiffs by way of their representative. The other accused persons live abroad without having indicated a postal address in Switzerland to the Office of the Attorney General. A public announcement of the decision at hand is therefore waived and it is considered to be legally rendered (Art. 88, paragraph 4 StPO).

Applying Art. Art.[sic] 264 c, par. 1, lit. d and 264 g, par. 1, lit. c StGB; Art. 108 and 109 aMStG; Art. 310, par. 1, lit. a and par. 2 in connection with Art. 319 ff StPO; Art. 3 StBOG

it is decided that:

1. The criminal complaints and the civil complaints by Kale Kepekaio GUMAPAC and [redacted] against Josef ACKERMANN, Jürgen FITSCHEN, Anshu JAIN, Stefan KRAUSE, Stephan LEITHNER, Stuart LEWIS, Rainer NESKE, Henry RICHOTTE, Greg NAKAMURA, Charles PRATHER, Sofia HIROSONE, Michael WONG, Glenn SWANSON, Sandra HEGERFELDT, Jessica HALL, Dana KENNY, Shawn TSUHA, Patrick KAWAI, Samuel JELSMA, Reed MAHUNA, Brian HUNT, Glenn HARA, Mitch ROTH, Barack OBAMA, Jack LEW, Neil WOLIN, Timothy F. GEITHNER, Stuart A. LEVEY, Henry M. PAULSON, Robert M. KIMMIT, John W. SNOW, Neal ABERCROMBIE, Linda LINGLE, Ben CAYETANO, Shan TSUTSUI, Brian SCHATZ, Duke AIONA, Mazie HIRONO, Frederik PABLO, Stanley SHIRAKI, Kurt KAWAFUCHI, Joshua WISCH, Randolf L.M. BALDEMOR, Ronald B. RANDALL, Sandra YAHIRO, Bernard CARVALHO, Kaipo ASING and +Bryan BAPTISTE, for war crimes and fraud, allegedly committed in Hawaii between 2006-2007 and 2011-2013 will not be pursued.

2. The costs will be borne by the State

3. This decision will be rendered by registered letter to
   - Josef ACKERMANN,
   - Kale Kepekaio GUMAPAC, and [redacted], through their representative David Keanu SAI, [redacted] Grand-ancy/GE.

4. A copy of this decision, upon it having obtained legal force, is furnished to the Legal Branch of the Office of the Federal Attorney General with an indication of the date of its having obtained legal force.

Office of the Federal Attorney General

[signature]

Andreas Müller
Federal Prosecutor

[seal: Office of the Swiss Federal Attorney General]

Right to object

This decision can be objected to according to Art. 393 ff. StPO within 10 days after delivery or disclosure, in writing and by providing cause, to the Appeals Chamber of the Federal Criminal Court, P.O. Box 2720, 6501 Bellinzona.

Exhibit “8”

Dr. David Keanu Sai
Politischer Wissenschafter
c/o Michiko Testini, Av. Eugène Lance 44, CH-1212 Grand Lancy/GE

17. Februar 2016

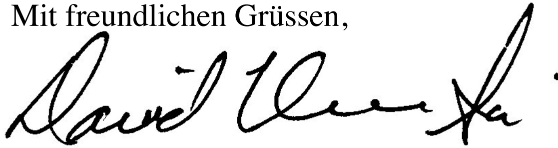
Beschwerdekammer des Bundesstrafgerichts
Postfach 2720
CH 6501 Bellinzona/TI

Betr.: Beschwerde gegen die Verfügug der Schweizerischen Bundesanwaltschaft vom 28. Januar 2016

Sehr geehrte Damen und Herren,

Beiliegend finden Sie eine Beschwerde gegen die Nichtanhandnahmeverfügung der Schweizerischen Bundesanwaltschaft vom 28. Januar 2016.

Mit freundlichen Grüssen,



Dr. David Keanu Sai

BESCHWERDEKAMMER DES BUNDESSTRAFGERICHTS

BESCHWERDE

Dr. ai

E

Bevollmächtigter der Beschwerdeführer

Beschwerdekammer des Bundesstrafgerichts
Postfach 2720
6501 Bellinzona/TI

BESCHWERDE
(Entsprechend Art. 393 ff. StPO)

Die Beschwerdeführer Kale Kepekaio Gumapac und [redacted] (hiernach kollektiv als BESCHWERDEFÜHRER bezeichnet), erheben hiermit durch ihren Bevollmächtigten höflich Beschwerde gegen die Entscheidung der Schweizerischen Bundesanwaltschaft (hiernach als BUNDESANWALTSCHAFT bezeichnet) vom 28. Januar 2016 betreffend der Strafanzeige wegen Kriegsverbrechen durch BESCHWERDEFÜHRER Gumapac, einen hawaiischen Untertanen, und BESCHWERDEFÜHRER [redacted] entprechend Art. 264c, Abs. 1 Bst. d und 264g Abs. 1 Bst. c StGB; Art. 108 und 109 aMStG.

I. DARSTELLUNG DER TATSACHEN:

1. Am 28. Januar 2016 verfügte die BUNDESANWALTSCHAFT, dass die Schweizer Behörden auf die Strafanzeigen wegen des Begehens von Kriegsverbrechen im Sinne von Art. 301 StPO, die am 25. August 2015 bei der BUNDESANWALTSCHAFT eingegangen waren, nicht eintreten werden.
2. Im Auftrag von Dr. Sai bestätigte Frau Testini den Eingang der Verfügung am 13. Februar 2016.
3. Gegen diesen Entscheid kann entsprechend Art. 393 ff StPO innert 10 Tagen seit der Zustellung oder Eröffnung schriftlich und begründet bei der Beschwerdekammer des Bundesstrafgerichts, Postfach 2720, 6501 Bellinzona/TI, Beschwerde erhoben werden.

II. DARLEGUNG DER STREITPUNKTE UND KLAGEBEGEHREN

A. Darlegung der Streitpunkte

1. Die BUNDESANWALTSCHAFT rechtfertigte die Entscheidung, keine Ermittlungen betreffs der mutmaßlichen Kriegsverbrechen einzuleiten mit der Begründung, Straftatbestände entsprechend Art. 310, Abs. 1, Bst. a StPO seien nicht erfüllt.

2. Der Hauptgrund für die Nichteinleitung von Ermittlungen ist, dass die Vereinigten Staaten die Republik Hawai'i im Jahr 1898 angeblich annektierten, wobei behauptet wird, dass genannte Republik das vormalige Königreich Hawai'i repräsentierte. Die BUNDESANWALTSCHAFT erklärte: „Die der Annexion zugrunde liegende Resolution übertrug sämtliche

Souveränitätsrechte in und über die hawaiischen Inseln und die von Hawaii abhängigen Gebiete mit Zustimmung der Regierung der Republik Hawaii den Vereinigten Staaten von Amerika und machte diese zu amerikanischem Territorium (vgl. *55th Congress of the United States of America, Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States vom 7. Juli 1898*). Am 21. August 1959 wurde Hawaii als 50. Bundesstaat in die Union der Vereinigten Staaten aufgenommen."

3. Des Weiteren stellte die BUNDESANWALTSCHAFT fest: „Hawaii wird demnach von der offiziellen Schweiz als Teil der USA anerkannt und war im gesamten Tatzeitraum aus Schweizer Sicht weder vollständig noch teilweise von den Vereinigten Staaten besetzt, was eine Anwendung der Genfer Abkommen bzw. der Haager Landkriegsordnungen und die sich darauf abstützenden Art. 108 und 109 aMStG bzw. Art. 264b ff. StGB von vornherein ausschliesst."

4. Die BESCHWERDEFÜHRER, durch ihren Bevollmächtigten, schliessen die in dem Bericht vom 7. Dezember 2014 mit dem Titel „War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands (hiernach „War Crimes Report")," der der oben genannten Strafanzeige beiliegt, als wie hier vollständig dargelegt, ein. Der „War Crimes Report" kommt zu drei hauptsächlichen Schlüssen, die die rechtliche und historische Basis für die Strafanzeige der BESCHWERDEFÜHRER darstellen: (a) Das Hawaiische Königreich existierte als unabhängiger Staat; (b) das Hawaiische Königreich existiert weiterhin als unabhängiger Staat trotz des illegalen Sturzes seiner Regierung durch die Vereinigten Staaten; und (c) unter Verletzung des humanitären Völkerrechts werden Kriegsverbrechen begangen.

5. Die Abstützung der BUNDESANWALTSCHAFT auf die Gemeinsame Resolution zur Annexion der Hawaiischen Inseln durch die Vereinigten Staaten vom 7. Juli 1898 ist klar fehlerhaft, und zwar in vier grundsätzlichen Punkten. *Erstens*, Gesetze des Kongresses der Vereinigten Staaten sind keine Quelle des Völkerrechts; *zweitens*, es gibt keine Vereinbarung zwischen den Vereinigten Staaten und der selbst-erklärten Republik Hawai'i, die nach dem Recht der USA oder nach dem Völkerrecht erkenntlich wäre; *drittens*, die Schweiz war sich der Kontinuität des Hawaiischen Königreichs als Staat bewusst, als ein internationales Schiedsgerichtsverfahren unter der Schirmherrschaft des Haager Ständigen Schiedshofes von 1999 bis 2001 stattfand; und *viertens*, die BUNDESANWALTSCHAFT ist präkludiert, die Existenz des Hawaiischen Königreiches als Staat zu verneinen.

a. Gesetze des Kongresses der Vereinigten Staaten sind keine Quelle des Völkerrechts.

6. Quellen des Völkerrechts sind, in Rangfolge: Internationale Übereinkünfte, internationales Gewohnheitsrecht, allgemeine Rechtsgrundsätze wie sie von den Kulturvölkern anerkannt werden, und richterliche Entscheidungen sowie die Lehrmeinungen der fähigsten Völkerrechtler der verschiedenen Nationen.[1] Die Gesetzgebung eines jeden unabhängigen Staates, einschliesslich der Vereinigten Staaten von Amerika und ihres Kongresses, ist keine Quelle des Völkerechts, sondern stattdessen eine Quelle nationalen Rechts des Staates, dessen Legislative solche Gesetze beschlossen hat. In *The Lotus* hat der internationale Gerichtshof folgendes festgestellt: "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."[2] Crawford zufolge kann eine Beeinträchtigung dieses Prinzips nicht vermutet werden, was er als *Lotus*-Rechtsvermutung [‚*Lotus* presumption'] bezeichnet.[3]

7. Da Gesetzgebung des Kongresses der Vereinigten Staaten, ob aufgrund eines Statuts oder einer Gemeinsamen Resolution, keine extraterritoriale Wirkung ausübt, ist dies keine Quelle des Völkerrechts, welche "Beziehungen zwischen unabhängigen Staaten reguliert ("which governs relations between independent States")."[4] Der Oberste Gerichtshof der Vereinigten Staaten hat dieses Prinzip immer beherzigt. In *United States v. Curtiss Wright Export Corp.* erklärte der Oberste Gerichtshof der USA: "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."[5] In *The Apollon* befand der Oberste Gerichtshof: "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."[6]

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[1] Artikel 38, Statut des Internationalen Gerichtshofs.
[2] *Lotus*, PCIJ ser. A no. 10 (1927) 18.
[3] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 41-42 (2nd ed. 2006).
[4] Cf. *Lotus*, 18.
[5] *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).
[6] *The Apollon*, 22 U.S. 362, 370 (1824).

8. Falls die Schweiz also behaupten sollte, nationales Recht hätte die Fähigkeit, einen fremden Staat zu annektieren, so käme dies einer Anerkennung der angeblichen Annexion Luxemburgs durch Deutschland während des 2. Weltkriegs und der angeblichen Annexion Kuwaits durch den Irak während des Golfkriegs gleich. Des weiteren sind die Vereinigten Staaten (ebenso wie die Schweiz) präkludiert, von ihrer illegalen Handlung zu profitieren, getreu dem völkerrechtlichen Prinzip *ex iniuria jus non oritur*—‚aus Unrecht entsteht kein Recht,' was heute als *jus cogens* anerkannt ist. Brownlie schreibt dazu: "When elements of certain strong norms (the *jus cogens*) are involved, it is less likely that recognition and acquiescence will offset the original illegality"[7]

b. Es existiert keine Übereinkunft zwischen den Vereinigten Staaten und der selbst-erklärten Republik Hawai'i.

9. In zwischenstaatlichen Beziehungen ist der Präsident das einzige Organ der Bundesregierung der Vereinigten Staaten, nicht der Kongress; und es ist der Präsident, der internationale rechtliche Übereinkommen abschliessst. "He makes treaties with the advice and consent of the Senate, but he alone negotiates. Into the field of negotiations the Senate cannot intrude, and Congress itself is powerless to invade it."[8] Die Vereinigten Staaten anerkennen zwei Arten von internationalen Übereinkommen – Verträge und Exekutive Übereinkommen ['executive agreements']. Ein Vertrag bedeutet "a compact made between two or more independent nations with a view to the public welfare."[9]

10. Gemäss dem Recht der Vereinigten Staaten umfassen Verträge, wie sie in Artikel II, §2 der Bundesverfassung [Federal Constitution] definiert sind, auch Exekutive Übereinkommen, die keine Ratifizierung seitens des Senats oder eine Zustimmung seitens des Kongresses benötigen.[10] In *Weinberger v. Rossi* bezog sich der Oberste Gerichthof auf Verträge im Sinne der Verfassung sowohl in Bezug auf Verträge im engeren Sinne als auch auf Exekutive Übereinkommen,[11] und in *Altman & Co. v. United States* definierte der Oberste Gerichtshof Exekutive Übereinkommen als Verträge.[12]

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[7] I. BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 80 (4th ed. 1990).
[8] *United States v. Curtiss Wright Export Corp*., at 318.
[9] *Altman & Co. v. United States*, 224 U.S. 583, 600 (1912).
[10] Cf. *United States v. Belmont*, 301 U.S. 324, 330 (1937); *United States v. Pink*, 315 U.S. 203, 223 (1942); und *American Insurance Ass. v. Garamendi*, 539 U.S. 396, 415 (2003).
[11] *Weinberger v. Rossi*, 456 U.S. 25 (1982).
[12] *Altman & Co. v. United States*, 224 U.S. 583 (1912).

11. Die Behauptung der BUNDESANWALTSCHAFT, dass die sogenannte Republik Hawai‘i der Gemeinsamen Resolution [Joint Resolution] bezüglich der Annexion zustimmte, impliziert die Existenz einer internationalen Übereinkunft, ob in Form eines Vertrags oder einer Exekutiven Übereinkunft. Es existiert kein solches Übereinkommen. Diese Behauptung einer Zustimmung der sogenannten Republik Hawai‘i lässt sich vermutlich auf die Gemeinsame Resolution selbst zurückführen, wo es heisst: “Whereas the government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian islands and their dependencies.”[13] Eine Gemeinsame Resolution stellt keinen Vertrag zwischen zwei Staaten dar, sonderen ist ein Übereinkommen zwischen dem Repräsentantenhaus und dem Senat des Amerikanischen Kongresses.

12. Diese sogenannte Zustimmung bezog sich auf den Annexionsvertrag vom 16. Juni 1897, der in Washington, D.C., von der sogenannten Republik Hawai‘i und dem Präsidenten der Vereinigten Staaten William McKinley unterzeichnet wurde. Dieser Vertrag wurde aber vom Senat der Vereinigten Staaten nicht ratifiziert, und zwar auf Grund eines von Königin Lili‘uokalani eingereichten diplomatischen Protests und einer Petition von 21,269 Unterschriften hawaiischer Untertanen und Einwohner des Hawaiischen Königreichs, die sich gegen den Versuch einer Annexion durch Vertrag wandten, eine Tatsache, die Teil des Protokolls des Senats vom Dezember 1897 ist.[14]

13. Die Gemeinsame Resolution wurde als Resolution des Repräsentantenhauses Nr. 259 am 4. Mai 1898 eingebracht, nachdem der Senat nicht genügend Stimmen zusammenbringen konnte, um den sogenannten Annexionsvertrag zu ratifizieren. Während der Debatte im Senat wandte sich eine Reihe von Senatoren gegen die Theorie, dass eine Gemeinsame Resolution es vermöge, eine Annexion von fremdem Territorium vorzunehmen. Senator Augustus Bacon erklärte: “The proposition which I propose to discuss is that a measure which provides for the annexation of foreign territory is necessarily, essentially, the subject matter of a treaty, and that the assumption of the House of Representatives in the passage of the bill and the proposition on the part of the Foreign Relations Committee that the Senate shall pass the bill, is utterly

[13] 30 U.S. Stat. 750 (1898).
[14] “War Crimes Report,” Abs. 5.10.

without warrant in the Constitution."[15] Senator William Allen erklärte: "A Joint Resolution if passed becomes a statue law. It has no other or greater force. It is the same as if it would be if it were entitled 'an act' instead of 'A Joint Resolution.' That is its legal classification. It is therefore impossible for the Government of the United States to reach across its boundary into the dominion of another government and annex that government or persons or property therein. But the United States may do so under the treaty making power."[16] Senator Thomas Turley erklärte: "The Joint Resolution itself, it is admitted, amounts to nothing so far as carrying any effective force is concerned. It does not bring that country within our boundaries. It does not consummate itself."[17]

14. In einer Rede im Senat, wobei die Senatoren wussten, dass der Vertrag von 1897 nicht ratifiziert worden war, erklärte Senator Stephen White: "Will anyone speak to me of a 'treaty' when we are confronted with a mere proposition negotiated between the plenipotentiaries of two countries and ungratified by a tribunal – this Senate – whose concurrence is necessary? There is no treaty; no one can reasonably aver that there is a treaty. No treaty can exist unless it has attached to it not merely acquiescence of those from whom it emanates as a proposal. It must be accepted – joined in by the other party. This has not been done. There is therefore, no treaty."[18] Senator Allen bemängelte auch, dass die Gemeinsame Resolution kein Kontrakt oder Übereinkommen mit der sogenannten Republik Hawai'i war. Er erklärte: "Whenever it becomes necessary to enter into any sort of compact or agreement with a foreign power, we cannot proceed by legislation to make that contract."[19]

15. Westel Willoughby, ein Verfassungsexperte der Vereinigten Staaten, äusserte sich folgendermassen: "The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act... Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force – confined in its operation to the territory of the State by whose legislature it is

[15] 31 Cong. Rec. 6145 (20. Juni 1898).
[16] Id., 6636 (4. Juli 1898).
[17] Id., 6339 (25. Juni 1898).
[18] Id., Appendix, 591 (21. Juni 1898).
[19] Id., 6636 (4. Juli 1898).

enacted."[20] Dies wäre analog zu der Vorstellung, die Vereinigten Staaten könnten durch den Beschluss einer Gemeinsamen Resolution einseitig die Schweiz annektieren. Des Weiteren hat 1988 der Bundesjustizminister ['Attorney General'] der Vereinigten Staaten diese Kongressprotokolle begutachtet und folgendes festgestellt: „Ungeachtet dieser verfassungsrechtlichen Beanstandungen verabschiedete 1898 der Kongress die Gemeinsame Resolution, und Präsident McKinley unterzeichnete die Massnahme. Dennoch ist es natürlich fragwürdig, ob diese Handlung das verfassungsmässige Recht des Kongresses demonstriert, Territorium zu erwerben ("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")." [21] Der Justizminister [‚Attorney General'] kam dann zu folgendem Schluss: „Es ist daher unklar, welches verfassungsmässige Recht der Kongress ausübte, als er sich Hawai'i durch eine Gemeinsame Resolution aneignete ("It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution")."[22]

16. Die sogenannte Republik Hawai'i war die Nachfolgerin einer provisorischen Regierung, die sich illegalerweise am 17. Januar 1893 infolge einer Intervention der Vereinigten Staaten etablierte.[23] Eine Untersuchung des Präsidenten stellte fest, dass die Vereinigten Staaten die hawaiische Regierung illegalerweise gestürzt hatten und kam zu dem Schluss, dass die provisorische Regierung „weder eine Regierung *de facto* noch *de jure* ("neither a government *de facto* nor *de jure*")."[24] sondern selbst-eklärt war.

17. Als die provisorische Regierung am 4. Juli 1894 ihren Namen in „Republik Hawai'i" umänderte, erwarb sie sich keine weitere Autorität und verblieb selbst-erklärt.[25] Dies wurde vom 103. Kongress in einer Gemeinsamen Resolution anerkannt: *Joint resolution to acknowledge the 100th anniversary of the January 17 overthrow of the Kingdom of Hawai'i, and to offer an apology to the Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawai'i.*[26] Diese Gemeinsame Resolution

[20] "War Crimes Report," Abs. 5.9.
[21] Douglas Kmiec, Department of Justice, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, in 12 OPINIONS OF THE OFFICE OF LEGAL COUNSEL, 238, 252 (1988).
[22] Id.
[23] Cf. "War Crimes Report," Abs. 4.8.
[24] Id., Abs. 4.2.
[25] Id., Abs. 9.5.
[26] 107 U.S. Stat. 1510 (1993).

erklärte: *"Whereas,* through the Newlands Resolution, the self-declared Republic of Hawai'i ceded sovereignty over the Hawaiian Islands to the United States."[27]

18. Selbst-erklärt ['self-declared'] bedeutet gemäss *Collins English Dictionary,* "according to ones's own testimony or admission." Selbst-erklärt bedeutet ebenfalls selbst-proklamiert ['self-proclaimed'], definiert als "giving yourself a particular name, title, etc., usually without any reason or proof that would cause other people to agree with you (*Merriam-Webster Dictionary*)." Ein selbst-deklariertes Gebilde ist keine Regierung eines vom Völkerrecht anerkannten Staats, ausgenommen dass es diesen Status entweder *de facto* oder *de jure* angenommen hat. Ein selbst-erklärtes Gebilde konnte infolgedessen nicht die Souveränität des hawaiischen Staates an die Vereinigten Staaten übergeben.

c. Die Schweiz war sich der Kontinuität des Hawaiischen Königreichs als Staat bewusst, als ein internationales Schiedsgerichtsverfahren unter der Schirmherrschaft des Haager Ständigen Schiedshofes von 1999 bis 2001 stattfand

19. Die Okkupation [‚belligerent occupation'] des Hawaiischen Königreichs durch die Vereinigten Staaten ist zwischenstaatlich präzedenzslos und dauert seit fast 118 Jahren an. Dennoch wird die Kontinuität des Hawaiischen Königreichs als Staat unter dem Völkerrecht aufrechterhalten, trotz des ungesetzlichen Sturzes der Hawaiischen Regierung durch die Vereinigten Staaten und der langwierigen Besetzung durch letztere seit dem Spanisch-Amerikanischen Krieg. Richter Crawford schreibt dazu: "There is a strong presumption that the State continues to exist, with its rights and obligations…despite a period in which there is no…government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[28]

20. Im Jahre1996 wurden im Rahmen der Notstandsdoktrin Abhilfemassnahmen getroffen, um die hawaiische Regierung, wie sie unter Ihrer Majestät Königin Lili'uokalani am 17. Januar 1893 bestand, wiedereinzusetzen.[29] Im Einklang mit der Hawaiischen Verfassung und dem Prinzip der Notwendigkeit wurde ein Regentschaftsrat eingesetzt, um in Abwesenheit eines Monarchen die

[27] Id.
[28] Cf. CRAWFORD, 34.
[29] Cf. "War Crimes Report," Appendix III—The *acting* Government of the Hawaiian Kingdom.

Exekutive zu leiten.[30] In *Madzimbamuto v. Lardner-Burke* stellt Lord Pearce fest, dass es gewisse Beschränkungen des Notwendigkeitsprinzips gibt, "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."[31] De Smith zufolge können Abweichungen von der verfassungsmässigen Ordnung eines Staates „aufgrund der Notwendigkeit gerechtfertigt sein" ("can be justified on grounds of necessity")."[32] Er (De Smith) erklärt des weiteren: "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."[33]

21. Kraft eines solchen Vorgehens wurde eine provisorische Regierung aufgestellt, bestehend aus *de facto* Handlungsbevollmächtigten—nicht zu verwechseln mit einer *de facto* Regierung, die seitdem das Hawaiische Königreich als Staat vertritt, was vom Sekretariat des Ständigen Schiedshofs (‚Permanent Court of Arbitration,' hiernach „PCA") in *Larsen v. Hawaiian Kingdom* explizit anerkannt wurde.[34] Vom 8. November 1999 bis zum 5. Februar 2001 wurde ein internationales Schiedsgerichtsverfahren abgehalten,

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[30] Die Einsetzung der Hawaiischen Regentschaft war analog zur Einsetzung der belgischen Regentschaft im Jahre 1940, nachdem der belgische König von deutschen Streitkräften gefangengenommen worden war. Oppenheimer schreibt dazu: "As far as Belgium is concerned, the capture of the king did not create any serious constitutional problems. According to Article 82 of the Constitution of February 7, 1821, as amended, the cabinet of ministers have to assume supreme executive power if the King is unable to govern. True, the ministers are bound to convene the House of Representatives and the Senate and to leave it to the decision of the united legislative chambers to provide for a regency; but in view of the belligerent occupation it is impossible for the two houses to function. While this emergency obtains, the powers of the King are vested in the Belgian Prime Minister and the other members of the cabinet." F.E. Oppenheimer, "Governments and Authorities in Exile," 36 AMERICAN JOURNAL OF INTERNATIONAL LAW 569 (1942).

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

[32] STANLEY A. DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, 80 (1986).

[33] Id. Das Prinzip der Notwendigkeit wird auch in Artikel 9 der *Draft articles on Responsibility of States for Internationally Wrongful Acts* (2001) behandelt—"The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements." Die Völkerrechtskommission schreibt dazu: "Article 9 establishes three conditions which must be met in order for conduct to be attributable to the State: first, the conduct must effectively relate to the exercise of elements of the governmental authority, secondly, the conduct must have been carried out in the absence or default of the official authorities, and thirdly, the circumstances must have been such as to call for the exercise of those elements of authority." *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001)*, Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10), p. 49.

[34] Permanent Court of Arbitration Case Repository, Case View, *Lance Paul Larsen v. The Hawaiian Kingdom* (1999-2001), einsehbar unter http://www.pcacases.com/web/view/35.

unter der institutionellen Zuständigkeit des PCA, welche eine Streitschlichtung zwischen einem „Staat“ und einer „Privatpartei“ vorsieht. Der Unterzeichnete kennt sich mit diesem Schiedsverfahren bestens aus, denn er diente als Bevollmächtigter für das Hawaiische Königreich.

22. Ursprünglich beschränkte sich die Zuständigkeit des PCA auf Dispute zwischen Staaten, aber der Gerichtshof hat seitdem seine institutionelle Zuständigkeit erweitert, so dass diese jetzt Streitigkeiten zwischen einem „Staat und einer internationalen Organisation (d.h. einer zwischenstaatlichen Organisation), zwei oder mehreren internationalen Organisationen, einem Staat und einer Privatpartei, oder einer internationalen Organisation und einer Privatpartei (“ [a] State and an international organization (i.e. an intergovernmental organization); Two or more international organizations; [a] State and a private party; and [an] international organization and a private party.”)“ [35] einschliesst.

23. Der Disput zwischen Larsen (Privatpartei) und dem Hawaiischen Königreich (Staat) konzentrierte sich auf den Vorwurf der Nachlässigkeit, wobei folgendermassen argumentiert wurde: “(a) Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is in continual violation of its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, and in violation of the principles of international law laid [down] in the Vienna Convention on the Law of Treaties, 1969, by allowing the unlawful imposition of American municipal laws over claimant’s person within the territorial jurisdiction of the Hawaiian Kingdom; (b) Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is also in continual violation of the principles of international comity by allowing the unlawful imposition of American municipal laws over the claimant’s person within the territorial jurisdiction of the Hawaiian Kingdom.” [36]

24. Im *American Journal of International Law* ist darüber zu lessen: “At the center of the PCA proceeding was…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’

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[35] United Nations Conference on Trade and Development, *Dispute Settlement—General Topics: 1.3 Permanent Court of Arbitration*, 15 (2003), einsehbar unter http://unctad.org/en/docs/edmmisc232add26_en.pdf.
[36] Id., siehe auch *Larsen v. Hawaiian Kingdom*, 569.

'unlawful imposition [over him] of [its] municipal laws' through its political subdivision, the State of Hawaii. As result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him."[37]

25. Folgende Schilderung der Ereignisse ist der als Anlage „1“ beigefügten Erklärung des Unterzeichneten entnommen:
    1. Ich habe von 1999 bis 2001 in einem unter der Schirmherrschaft des Ständigen Schiedshofs (‚Permanent Court of Arbitration,‘ hiernach „PCA“) abgehaltenen Schiedsverfahren, *Lance Paul Larsen v. The Hawaiian Kingdom*, als Bevollmächtigter für das Hawaiische Königreich gedient.
    2. Bevor das *ad hoc* Schiedsgericht eingesetzt wurde, ersuchte Generalsekretär van den Hout vom Internationalen Amt des PCA den Unterzeichneten, in seiner Eigenschaft als Bevollmächtigter des Hawaiischen Königreichs, eine formelle Einladung an die Vereinigten Staaten von Amerika zu richten, an dem Schiedsverfahren teilzunehmen. Der Generalsekretär ersuchte den Unterzeichneten darum, diese Einladung zu dokumentieren und beim Sekretariat des PCA einreichen zu lassen.
    3. Die Hawaiische Regierung sah diese Handlung als eine tatsächliche Kundmachung gegenüber den Vereinigten Staaten, dass das Hawaiische Königreich als Staat weiterbesteht und seine Regierung in einem internationalen Schiedsverfahren mit einem Hawaiischen Untertanen involviert ist. Die Hawaiische Regierung erkannte auch, dass diese Handlung entscheiden würde, ob der PCA institutionelle Zuständigkeit hat, bevor er die Einsetzung eines *ad hoc* Schiedsgerichts ermöglichen konnte.
    4. Am 3. März 2000 wurde in Washington, D.C., ein Konferenzgespräch zwischen John Crook, Assistierender Rechtsberater für Angelegenheiten der Vereinten Nationen [‚Assistant Legal Advisor for United Nations Affairs‘] im amerikanischen Aussenministerium [‚Department of State‘], dem Unterzeichneten als Bevollmächtigtem der Hawaiischen Regierung, und Frau Ninia Parks, *Esquire*, der Anwältin von Lance Paul Larsen, durchgeführt. Mit Zustimmung des Klägers lud dabei die Hawaiische Regierung formell die Vereingten Staaten ein, an dem Schiedsverfahren teilzunehmen.
    5. Nach dem Konferenzgespräch wurde am gleichen Tag Herrn Crook ein das Gespräch bestätigender Brief zugestellt, und eine

[37] Bederman & Hilbert, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii*, 95 AMERICAN JOURNAL OF INTERNATIONAL LAW 927, 928 (2001).

Kopie des Briefes wurde an das Sekretariat des PCA überstellt.[38] Später im gleichen Monat teilte die Botschaft der Vereinigten Staaten in Den Haag dem PCA mit, dass die Vereinigten Staaten an dem Schiedsverfahren nicht teilnehmen würden, aber die Hawaiischen Regierung und Larsen um Erlaubnis bitten würden, Zugang zu allen Prozessakten zu bekommen. Die Erlaubnis hierfür wurde erteilt, was als explizite Anerkennung der Kontinuität des Hawaiischen Königreichs als Staat und seiner Regierung duch die Vereinigten Staaten diente.

6. Nachdem das Sekretariat des PCA verifiziert hatte, dass es in Bezug auf das Weiterbestehen des Hawaiischen Königreichs als Staat seitens der Vereinigten Staaten keine Infragestellung gab, wurde das *ad hoc* Schiedsgericht im April 2000 eingesetzt, und darauffolgend Schriftsätze eingereicht, und im Dezember 2000 im Verhandlungssaal des PCA eine mündliche Verhandlung abgehalten.[39]
7. Das Schiedsgericht bestand aus Professor James Crawford, SC, als Vorsitzendem Richter, und Professor Christopher Greenwood, QC, und Gavan Griffith, QC, als beisitzenden Richtern. Professor Crawford und Professor Greenwood fungieren jetzt als Richter am Internationalen Gerichtshof [‚International Court of Justice‘].
8. Der Schiedsspruch wurde beim PCA am 5. Februar 2001 eingereicht. Darin wird festgestellt, dass Larsen, um seine Anschuldigung wegen Nachlässigkeit seitens der Hawaiischen Regierung aufrechtzuerhalten, die Teilanhme der Vereinigten Staaten an dem Schiedsverfahren als unentbehrliche dritte Partei benötigte, gemäss dem durch den Internationalen Gerichtshof [‚International Court of Justice‘] in den Fällen *the Case concerning Monetary Gold Removed from Rome, ICJ Reports 1954* (21 ILR 399), *the Case concerning Certain Phosphate Lands on Nauru, ICJ Reports 1992* (97 ILR 1), und *the Case concerning East Timor, ICJ Reports 1995* (105 ILR 226) formulierten Prinzip. Das Schiedsgericht kam zu dem Schluss, dass die Vereinigten Staaten eine notwendige dritte Partei sind, und deshalb das Schiedsverfahren nicht fortgeführt werden konnte.[40]

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[38] "Letter Confirming Telephone Conversation of March 3, 2000 Relating to Arbitral Proceedings at the Permanent Court of Arbitration, Lance Paul Larsen vs. The Hawaiian Kingdom," 1 HAWAIIAN JOURNAL OF LAW & POLITICS 296 (2004), einsehbar unter http://hawaiiankingdom.org/pdf/Ltr_to_State_Dept_3_3_2000.pdf. Cf. auch "War Crimes Report," Appendix III, Abs. 3.2.

[39] Die mündliche Verhandlung fand am 7., 8. und 11. Dezember 2000 im Verhandlungssaal des Ständigen Schiedshofs statt. Videoaufnahmen von Teilen der Verhandlung sind unter https://vimeo.com/17007826einsehbar.

[40] Cf. *Larsen v. Hawaiian Kingdom*, 598.

26. Die Schweizerische Eidgenossenschaft wurde am 29. August 1900 ein Mitgliedsstaat des PCA und bekräftigte ihre Mitgliedschaft am 11. Juli 1910, indem sie dem Haager Abkommen I von 1907 beitrat. Die Schweizerische Eidgenossenschaft hat diplomatische Vertreter, die bei den Niederlanden akkreditiert sind und ist somit ein Mitglied des Administrativen Rates [‚Administrative Council'] des PCA. In seinem jährlichen Bericht von 2001 stellte der Generalsekretär fest, dass das Schiedsverfahren *Larsen v. Hawaiian Kingdom* der vierunddreissigste Fall war, der vor den PCA gemäss Artikel 47 des Haager Abkommens I von 1907 (entspricht Artikel 26 des Haager Abkommens I von 1899) kam.[41] Artikel 47 des Haager Abkommens I von 1907 sieht vor: „Die Schiedsgerichtsbarkeit des Ständigen Schiedshofs kann unter den durch die allgemeinen Anordnungen festgesetzten Bedingungen auf Streitigkeiten zwischen anderen Mächten als Vertragsmächten oder zwischen Vertragsmächten und anderen Mächten erstreckt werden, wenn die Parteien übereingekommen sind, diese Schiedsgerichtsbarkeit anzurufen."

27. Gemäss Artikel 47 können nur vollständige souveräne Staaten kontrahierende oder nicht kontrahierende Parteien sein, weil das Haager Abkommen I von 1907 ein Vertrag gemäss dem Völkerrecht ist. Im Fall *Islands of Palmas,* der unter der Schirmherrschaft des PCA verhandelt wurde, erklärte der Richter des Schiedsgerichts: "As regards *contracts between a State*…and *native princes or chiefs of peoples* not recognized as members of the community of nations, they are not, in the international law sense, treaties or conventions capable of creating rights and obligations such as may, in international law, arise out of treaties."[42]

28. Als Migliedsstaat des PCA und seines Administrativen Rates ['Administrative Council'] war sich die Schweiz der Kontinuität des Hawaiischen Königreichs als Staat voll bewusst, spätestens seit 2001, als sie den Jahresbericht vom Generalsekretär des PCA erhielt. Des weiteren wird in der Auflistung aller verhandelten Fälle auf der Internetseite des PCA ['case view'] für den Fall *Larsen v. Hawaiian Kingdom* das Hawaiische Königreich klar als "Staat" ['state'] identifiziert, und Lance Paul Larsen als "Privatpartei" ['private entity']. Die BUNDESANWALTSCHAFT wurde auf diese Identifizierung durch den PCA in einem Brief des Unterzeichneten vom 22. November 2015 aufmerksam gemacht, was in der Verfügung vom 28. Januar 2016 bestätigt

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[41] *Annex 2—Cases Submitted to Arbitration before the Permanent Court of Arbitration, or Conducted with the Cooperation of the International Bureau*, PCA Annual Report (2001), 44, einsehbar unter https://pca-cpa.org/wp-content/uploads/sites/175/2015/12/PCA-annual-report-2001.pdf.

[42] *Island of Palmas* case (Netherlands/United States of America), Permanent Court of Arbitration, 2 UNITED NATIONS REPOSITORY OF INTERNATIONAL ARBITRAL AWARDS 829, 858 (1928).

wurde. Eine wahrheitsgetreue Kopie der Ansicht des Falls *Larsen v. Hawaiian Kingdom* in der Auflistung der verhandelten Fälle [‘case repository’] auf der Internetseite des PCA wurde dem Brief beigefügt und ist der hier beigefügten Erklärung des Unterzeichneten als Beilage “A” angehängt.

29. Das *de facto* Befugnis der *geschäftsführenden* Regierung des Hawaiischen Königreichs wurde seit dem Schiedsverfahren am PCA erworben durch stillschweigende Hinnahme in Abwesenheit jeglichen Protests, und in einigen Fällen durch direkte Honorierung seitens Staaten und internationalen Organisationen, d.h. seitens der Vereinigten Staaten, als sie im Jahr 2000 die geschäftsführende Regierung um Erlaubnis erwsuchten, die Prozessakten des Schiedsverfahrens einzusehen;[43] seitens Ruandas, als es im gleichen Jahr die *geschäftsführende* Regierung über seine Absicht informierte, die langwierige Besetzung des Hawaiischen Königreichs der Generalversammlung der Vereinten Nationen zu melden;[44] seitens Chinas, als es im Jahr 2001 von der *geschäftsführenden* Regierung die von dieser als Nichtmitgliedsstaat der Vereinten Nationen eingereichte Beschwerde entgegennahm, während es die Präsidentschaft des Sicherheitsrats der Vereinten Natiionen innehatte;[45] seitens Katars, als es im Jahr 2012 von der *geschäftsführenden Regierung* den von dieser als Nichtmitgliedsstaat der Vereinten Nationen eingereichten Protest und Anspruch [‚protest and demand‘] entgegennahm, während es die 66. Session der Generalversammlung der Vereinten Nationen präsidierte;[46] seitens der Schweiz, als sie im Jahr 2013 von der *geschäftsführenden* Regierung die Beitrittsurkunde zu den Genfer Konventionen von 1949 als Staat entgegennahm, während sie als Treuhänder für diese Konventionen fungierte;[47] und seitens des Weltpostvereins in Bern, der im gleichen Jahr von der *geschäftsführenden* Regierung eine Beweisführung der kontinuierlichen Mitgliedschaft des Hawaiischen Königreichs seit 1882 entgegennahm.

30. Des weiteren empfing die Völkerrechtsdirektion des Eidgenössischen Departements für Auswärtige Angelegenheiten in Bern am 26. März 2014 den ausserordentlichen Gesandten und bevollmächtigten Minister des Hawaiischen Königreichs und nahm sein an seine Exzellenz Didier Burkhalter, Präsident der Schweizerischen Eidgenossenschaft und Vorsteher des Eidgenössischen Departements für Auswärtige Angelegenheiten gerichtete Beglaubigungsschreiben gemeinsam mit einer Kopie seiner

[43] Cf. “War Crimes Report,” Appendix III, Abs. 3.4.
[44] Id., Abs. 3.5.
[45] Id., Abs. 3.6.
[46] Id.
[47] Id.

Ernennungurkunde und seinem Lebenslauf entgegen. Das Hawaiische Königreich steht seitdem in Verhandlungen mit der Schweizerischen Eidgenossenschaft bezüglich der langwierigen Besetzung und der Pflichten und Obliegenheiten der Schweiz als kontrahierende Partei der Genfer Konvention IV von 1949 und des Hawaiisch-Schweizerischen Vertrages von 1864.

d. Die BUNDESANWALTSCHAFT ist präkludiert, die Existenz des Hawaiischen Königreiches als Staat zu verneinen

31. Die Existenz des Hawaiischen Königreichs als „Staat" ist eine Faktenfrage, die durch Schlüsse aus Fakten und Beweisen beantwortet werden muss. Die Tatsache steht ausser Frage, dass, als das Hawaiische Königreich am 20. Juli 1864 mit der Schweiz einen Freundschafts-, Niederlassungs- und Handelsvertrag abschloss, beide kontrahierenden Parteien einander als unabhängige Staaten anerkannten, und dass gemäss des Ständigen Schiedshofes im berühmten *Lotus*-Fall Einschränkungen der Unabhängigkeit von Staaten nicht vorausgesetzt werden können.[48] Des weiteren gibt es die Rechtsvermutung der Kontinuität eines Staates trotz der Abwesenheit seiner Regierung, und die Rechtsvermutung, dass Okkupation [‚belligerent occupation'] den Staat nicht auslöscht.[49]

32. Mit anderen Worten kann die Kontinuität des Hawaiischen Königreichs als Staat nur in Verweis auf eine gültige Rechtfertigung eines legalen Eigentums- bzw. Souveränitätsrechts seitens der Vereinigten Staaten zurückgewiesen werden, und in deren Abwesenheit bleibt die Rechtsvermutung bestehen. Sich auf ein internes Gesetz der Vereinigten Staaten zu berufen, das vorgibt einen unabhängigen Staat annektiert zu haben, ist ein schwerwiegender Irrtum, besonders, wenn ausgerechnet das Amt des Justizministers [‚Attorney General's Office'] der Vereinigten Staaten im Jahre 1988 festellte, dass es „unklar ist, welches verfassungsmässige Recht der Kongress ausübte, als er sich Hawai'i durch eine Gemeinsame Resolution aneignete („it is...unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution")."[50] Im Übrigen sind Gesetze des Kongresses der Vereinigten Staaten keine Quellen des Völkerrechts und haben daher keinen Einfluss auf die Souveränität des Hawaiischen Königreichs als Staat, oder auf die sich aus dem Hawaiisch-Schweizerischen Vertrag ergebenden Pflichten und Obliegenheiten.

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[48] Cf. *Lotus*, 18.
[49] Cf. CRAWFORD, 34.
[50] Cf. Kmiec, 252.

33. In Anbetracht des Dargelegten ist die BUNDESANWALTSCHAFT präkludiert, die Existenz des Hawaiischen Königreiches als Staat zu verneinen, es sei denn ihr Amt kann einen unanfechtbaren Beweis des Gegenteils vorlegen, z. B. eine Verfügung eines internationalen Tribunals, das die hawaiische Souveränität durch die Souveränität der Vereinigten Staaten ersetzt, oder eines Abtretungsvertags, durch den der hawaiische Staat ausgelöscht wurde. Es existieren weder eine solche Verfügung noch ein Abtretungsvertrag. Sobald die BUNDESANWALTSCHAFT detaillierte Informationen und Beweise erhalten hat, dass Kriegsverbrechen begangen wurden, ist die formale Eröffnung einer strafrechtlichen Untersuchung nach Art. 309(1)(a) und (c), StPO vorgeschrieben.

B. Klagebegehren

Die BESCHWERDEFÜHRER verlangen durch ihren Bevollmächtigten vom Ehrenwerten Gericht, dass ihrer Beschwerde entsprochen wird und dass die BUNDESANWALTSCHAFT aufgefordert wird, die in der Strafanzeige von den BESCHWERDEFÜHRERN angeschuldigten mutmasslichen Straftäter gerichtlich zu belangen, gemäss des Prinzips, dass Kriegsverbrechen nicht straflos begangen werden können.

Datiert: Honolulu, Hawai‘i, den 17. Februar 2016

Dr. DAVID KEANU SAI
Bevollmächtigter der Beschwerdeführer

Anlage “1”

ERKLÄRUNG VON DR. DAVID KEANU SAI

Ich, Dr. David Keanu Sai, erkläre an Eides statt, dass folgendes wahr und korrekt ist:

1. Ich habe von 1999 bis 2001 in einem unter der Schirmherrschaft des Ständigen Schiedshofs (‚Permanent Court of Arbitration,' hiernach „PCA") abgehaltenen Schiedsverfahren, *Lance Paul Larsen v. The Hawaiian Kingdom*, als Bevollmächtigter für das Hawaiische Königreich gedient.
2. Bevor das *ad hoc* Schiedsgericht eingesetzt wurde, ersuchte Generalsekretär van den Hout vom Internationalen Amt des PCA den Unterzeichneten, in seiner Eigenschaft als Bevollmächtigter des Hawaiischen Königreichs, eine formelle Einladung an die Vereinigten Staaten von Amerika zu richten, an dem Schiedsverfahren teilzunehmen. Der Generalsekretär ersuchte den Unterzeichneten darum, diese Einladung zu dokumentieren und beim Sekretariat des PCA einreichen zu lassen.
3. Die Hawaiische Regierung sah diese Handlung als eine tatsächliche Kundmachung gegenüber den Vereinigten Staaten, dass das Hawaiische Königreich als Staat weiterbesteht und seine Regierung in einem internationalen Schiedsverfahren mit einem Hawaiischen Untertanen involviert ist. Die Hawaiische Regierung erkannte auch, dass diese Handlung entscheiden würde, ob der PCA institutionelle Zuständigkeit hat, bevor er die Einsetzung eines *ad hoc* Schiedsgerichts ermöglichen konnte.
4. Am 3. März 2000 wurde in Washington, D.C., ein Konferenzgespräch zwischen John Crook, Assistierender Rechtsberater für Angelegenheiten der Vereinten Nationen [‚Assistant Legal Advisor for United Nations Affairs'] im amerikanischen Aussenministerium [‚Department of State'], dem Unterzeichneten als Bevollmächtigtem der Hawaiischen Regierung, und Frau Ninia Parks, *Esquire*, der Anwältin von Lance Paul Larsen, durchgeführt. Mit Zustimmung des Klägers lud dabei die Hawaiische Regierung formell die Vereingten Staaten ein, an dem Schiedsverfahren teilzunehmen.
5. Nach dem Konferenzgespräch wurde am gleichen Tag Herrn Crook ein das Gespräch bestätigender Brief zugestellt, und eine Kopie des Briefes wurde an das Sekretariat des PCA überstellt.[1] Später im gleichen Monat teilte die Botschaft der Vereinigten Staaten in Den Haag dem PCA mit, dass die Vereinigten Staaten an dem Schiedsverfahren nicht teilnehmen würden, aber die Hawaiischen Regierung und Larsen um Erlaubnis bitten würden, Zugang zu allen Prozessakten zu bekommen. Die Erlaubnis hierfür wurde erteilt, was als explizite Anerkennung der Kontinuität des Hawaiischen

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[1] "Letter Confirming Telephone Conversation of March 3, 2000 Relating to Arbitral Proceedings at the Permanent Court of Arbitration, Lance Paul Larsen vs. The Hawaiian Kingdom," 1 HAWAIIAN JOURNAL OF LAW & POLITICS 296 (2004), einsehbar unter http://hawaiiankingdom.org/pdf/Ltr_to_State_Dept_3_3_2000.pdf. Cf. auch "War Crimes Report," Appendix III, Abs. 3.2.

Königreichs als Staat und seiner Regierung duch die Vereinigten Staaten diente.

6. Nachdem das Sekretariat des PCA verifiziert hatte, dass es in Bezug auf das Weiterbestehen des Hawaiischen Königreichs als Staat seitens der Vereinigten Staaten keine Infragestellung gab, wurde das *ad hoc* Schiedsgericht im April 2000 eingesetzt, und darauffolgend Schriftsätze eingereicht, und im Dezember 2000 im Verhandlungssaal des PCA eine mündliche Verhandlung abgehalten.[2]
7. Das Schiedsgericht bestand aus Professor James Crawford, SC, als Vorsitzendem Richter, und Professor Christopher Greenwood, QC, und Gavan Griffith, QC, als beisitzenden Richtern. Professor Crawford und Professor Greenwood fungieren jetzt als Richter am Internationalen Gerichtshof [‚International Court of Justice'].
8. Der Schiedsspruch wurde beim PCA am 5. Februar 2001 eingereicht. Darin wird festgestellt, dass Larsen, um seine Anschuldigung wegen Nachlässigkeit seitens der Hawaiischen Regierung aufrechtzuerhalten, die Teilanhme der Vereinigten Staaten an dem Schiedsverfahren als unentbehrliche dritte Partei benötigte, gemäss dem durch den Internationalen Gerichtshof [‚International Court of Justice'] in den Fällen *the Case concerning Monetary Gold Removed from Rome, ICJ Reports 1954* (21 ILR 399), *the Case concerning Certain Phosphate Lands on Nauru, ICJ Reports 1992* (97 ILR 1), und *the Case concerning East Timor, ICJ Reports 1995* (105 ILR 226) formulierten Prinzip. Das Schiedsgericht kam zu dem Schluss, dass die Vereinigten Staaten eine notwendige dritte Partei sind, und deshalb das Schiedsverfahren nicht fortgeführt werden konnte.[3]
9. Beigefügt als Beilage „A" ist eine wahre und korrekte Kopie der Ansicht des Falls *Larsen v. Hawaiian Kingdom* in der Auflistung der verhandelten Fälle ['case repository'] auf der Internetseite des PCA, die das Hawaiische Königreich explizit als "Staat" ['state'] identifiziert, und Lance Paul Larsen als "Privatpartei" ['private entity'].

ICH ERKLÄRE AN EIDES STATT, DASS DAS VORAUSGEHENDE WAHR UND KORREKT IST.

DATIERT: Honolulu, Hawai'i, den 15. Februar 2016

Dr. David Keanu Sai

[2] Die mündliche Verhandlung fand am 7., 8. und 11. Dezember 2000 im Verhandlungssaal des Ständigen Schiedshofs statt. Videoaufnahmen von Teilen der Verhandlung sind unter https://vimeo.com/17007826einsehbar.
[3] Cf. *Larsen v. Hawaiian Kingdom*, 598.

Beilage "A"

Permanent Court of Arbitration
PCA Case Repository

Larsen/Hawaiian Kingdom

Case name	Larsen/Hawaiian Kingdom
Case description	Dispute between Lance Paul Larsen (Claimant) and The Hawaiian Kingdom (Respondent) whereby a) Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is in continual violation of its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, and in violation of the principles of international law laid [down] in the Vienna Convention on the Law of Treaties, 1969, by allowing the unlawful imposition of American municipal laws over claimant's person within the territorial jurisdiction of the Hawaiian Kingdom. b) Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is also in continual violation of the principles of international comity by allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.
Name(s) of claimant(s)	Lance Paul Larsen (Private entity)
Name(s) of respondent(s)	The Hawaiian Kingdom (State)
Names of parties	
Case number	
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Other proceedings
Subject matter or economic sector	Treaty interpretation
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	Other The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America
Language of proceeding	English
Seat of arbitration (by country)	Netherlands
Arbitrator(s)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
Representatives of the claimant(s)	Ms. Ninia Parks, Counsel and Agent
Representatives of the respondent(s)	Mr. David Keanu Sai, Agent Mr. Peter Umialiloa Sai, First deputy agent Mr. Gary Victor Dubin, Second deputy agent and counsel
Representatives of the parties	

Number of arbitrators in case	3
Date of commencement of proceeding [dd-mm-yyyy]	08-11-1999
Date of issue of final award [dd-mm-yyyy]	05-02-2001
Length of proceedings	2-3 years
Additional notes	
Attachments	**- Other -**

- "Annex 1 - President Cleveland's Message to the Senate and the House of Representatives " - 18-12-1893 (English)
- "Joint Resolution - To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii. " - 23-11-1993 (English)
- "Case Cover Page" - 15-05-2014 (English)

Award or other decision

- "Arbitral Award" - 15-05-2014 (English)

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English (Translation)

DR. DAVID KEANU SAI, PH.D.
POLITICAL SCIENTIST
C/O MICHICO TESTINI, AV. EUGENE LANCE 44, CH-1212 GRAND LANCY/GE

February 17, 2016

The Federal Criminal Court Objections Chamber
P.O. Box 2720
CH-6501 Bellinzona/TI

Re: Objection to Decision by the Office of the Attorney General dated January 28, 2016

To whom it may concern,

Enclosed please find an objection to the decision of the Office of the Attorney General dated January 28, 2016.

Sincerely,

Dr. David Keanu Sai, Ph.D.

THE FEDERAL CRIMINAL COURT OBJECTIONS CHAMBER

OBJECTION

Dr. [redacted]ai, Ph.D.
[redacted]
[redacted]y/GE
Attorney for Objectors

Federal Criminal Court Objections Chamber
P.O. Box 2720
CH-6501 Bellinzona/TI

OBJECTION
(Pursuant to Art. 393 ff. StPO)

Mr. Kale Kepekaio Gumapac and Mr. [redacted] (hereafter collectively known as OBJECTORS), by and through their attorney-in-fact, respectfully objects to the January 28, 2016 decision of the Office of the Attorney General (hereafter ATTORNEY GENERAL) regarding the war crime complaints by OBJECTOR Gumapac, a Hawaiian subject, and OBJECTOR [redacted] according to Article 264C, paragraph 1, lit. d and 264g, paragraph 1, lit. c StGB [Swiss Criminal Code]; Art. 108 and 109 aMStG [Swiss Military Criminal Code].

I. STATEMENT OF FACTS:

1. On January 28, 2016, the ATTORNEY GENERAL concluded that Swiss authorities will not accept the war crime complaints according to Art. 310 StPO [Swiss Criminal Procedure] in connection with Art. 319 StPO that were received by the ATTORNEY GENERAL on August 25, 2015.
2. On behalf of the undersigned, [redacted] acknowledged receipt of the report on February 13, 2016.
3. This decision can be objected according to Art. 393 ff. StPO within 10 days after transmission or publication, in writing to the Federal Criminal Court Appeals Chamber, P.O. Box 2720, CH-6501 Bellinzona/TI. The tenth day falls on February 23, 2016.

II. ISSUES PRESENTED AND RELIEF SOUGHT

A. Issues Presented

1. The ATTORNEY GENERAL justified the decision to decline war crime investigations because the elements of the offense concerned have not been fulfilled according to Article 310, paragraph 1, lit. A StPO.

2. The primary reason for denying the investigation is that the United States annexed the Republic of Hawai‘i in the year 1898, which it alleges represented the former Kingdom of Hawai‘i. The ATTORNEY GENERAL explained, “The resolution providing the basis of the annexation transferred all rights of sovereignty in and over the Hawaiian Islands and the territories depending on Hawai‘i with the consent of the government of Republic of Hawai‘i to the United States of America and rendered this American territory (compare 55th Congress of the United States of America, Joint Resolution to

Provide for Annexing the Hawaiian Islands to the United States of July 7, 1898). On August 21, 1959, Hawai'i was admitted as the 50th Federal State into the Union of the United States."

3. Furthermore, the ATTORNEY GENERAL concluded, "Hawai'i thus is recognized by official Switzerland as a part of the United States and in the relevant period from 2006 to 2013 in the view of Switzerland was neither completely nor partly occupied by the United States which right from the beginning excludes an application of the Geneva Conventions and Art. 108 and 109 aMSTG respectively Art. 264 b StGB based on them."

4. The OBJECTORS, by their attorney, incorporate, as though fully set forth herein, the information in the report dated December 7, 2014 entitled "War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands (hereafter "War Crimes Report")," which accompanied the aforementioned complaints. The War Crimes Report concluded three primary issues that form the legal and historical basis for the OBJECTORS' complaint: (a) the Hawaiian Kingdom existed as an independent State; (b) the Hawaiian Kingdom continues to exist as an independent State despite the illegal overthrow of its government by the United States, and (c) war crimes are being committed in violation of international humanitarian law.

5. The ATTORNEY GENERAL'S reliance on the joint resolution to provide annexing the Hawaiian Islands to the United States on July 7, 1898 is in plain error on four fundamental points. *First*, United States Congressional laws are not a source of international law; *second*, there is no agreement between the United States and the self-declared Republic of Hawai'i recognizable under both United States law and international law; *third*, Switzerland was aware of the continuity of the Hawaiian Kingdom as a State when international arbitration proceedings took place under the auspices of the Permanent Court of Arbitration from 1999-2001; and, *fourth*, the ATTORNEY GENERAL is precluded from denying the existence of the Hawaiian Kingdom as a State.

a. United States Congressional laws are not a source of international law

6. 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.[1] Legislation of every independent 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."[2] According to Crawford, derogation of this principle will not be presumed, which he refers to as the *Lotus* presumption.[3]

7. 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."[4] The United States Supreme Court has always adhered to this principle. In *United States v. Curtiss Wright Export Corp.*, 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.[5] In *The Apollon*, the Supreme Court concluded, "The laws of no nation can justly extend beyond its own territories except so far as regards is own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."[6]

8. For Switzerland to claim that domestic law has the power to annex a foreign State is tantamount to recognizing Germany's purported annexation of Luxembourg during World War II and Iraq's purported annexation of Kuwait during the Gulf War. Furthermore, the United States (as well as Switzerland) is precluded from benefiting from its illegal act under the international law principle *ex injuria jus non oritur*—law does not arise from injustice, which is recognized today as *jus cogens*. According to Brownlie, "when elements of certain strong norms (the *jus cogens*) are involved, it is less likely that recognition and acquiescence will offset the original illegality."[7]

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[1] Article 38, Statute of the International Court of Justice.
[2] *Lotus*, PCIJ ser. A no. 10 (1927) 18.
[3] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 41-42 (2nd ed., 2006).
[4] *See Lotus*, 18.
[5] *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).
[6] *The Apollon*, 22 U.S. 362, 370 (1824).
[7] I. Brownlie, *Principles of Public International Law* 80 (4th ed. 1990).

b. There is no Agreement between the United States and the self-declared Republic of Hawai'i

9. In international relations, the President is the sole organ of the Federal Government, not the Congress; and it is the President that enters into international legal agreements. "He makes treaties with the advice and consent of the Senate, but he alone negotiates. Into the field of negotiation the Senate cannot intrude, and Congress itself is powerless to invade it."[8] The United States recognizes two forms of international agreements—treaties and executive agreements. A treaty signifies "a compact made between two or more independent nations with a view to the public welfare."[9]

10. Under United States law, treaties, as defined under Article II, §2 of the Federal Constitution, also include executive agreements that do not require ratification by the Senate or approval of Congress.[10] In *Weinberger v. Rossi*, the Supreme Court referred to treaties as defined by the Constitution to include both treaties and executive agreements,[11] and in *Altman & Co. v. United States*, the Supreme Court referred to executive agreements being treaties.[12]

11. The ATTORNEY GENERAL'S claim that the so-called Republic of Hawai'i consented to the joint resolution of annexation implies that there is an international agreement, whether by a treaty or an executive agreement. There is no such agreement. This claim of the so-called Republic of Hawai'i's consent was probably drawn from the joint resolution itself where it states, "Whereas the Government of the Republic of Hawai'i having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies."[13] A joint resolution is not a contract between two States, but rather an agreement between the House of Representatives and the Senate of the United States Congress.

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[8] *See United States v. Curtiss Wright Export Corp.*, at 318.
[9] *Altman & Co. v. United States,* 224 U. S. 583, 600 (1912).
[10] *See United States v. Belmont*, 301 U.S. 324, 330 (1937); *United States v. Pink*, 315 U.S. 203, 223 (1942); and *American Insurance Ass. v. Garamendi*, 539 U.S. 396, 415 (2003).
[11] *Weinberger v. Rossi*, 456 U.S. 25 (1982).
[12] *Altman & Co. v. United States*, 224 U.S. 583 (1912).
[13] 30 U.S. Stat. 750 (1898).

12. This so-called consent was referring to the Treaty of Annexation dated June 16, 1897 that was signed in Washington, D.C., by the so-called Republic of Hawaiʻi and United States President William McKinley. This treaty, however, was not ratified by the United States Senate because of diplomatic protests filed by Queen Liliʻuokalani and a petition of 21,269 signatures of Hawaiian subjects and residents of the Hawaiian Kingdom protesting the annexation attempt by a treaty, which was made a part of the Senate records in December 1897.[14]

13. The joint resolution was introduced as House Resolution no. 259 on May 4, 1898, after the Senate could not garner enough votes to ratify the so-called treaty of annexation. During the debate in the Senate, a list of Senators rebuked the theory that a joint resolution has the effect of annexing a foreign territory. Senator Augustus Bacon, stated, "The proposition which I propose to discuss is that a measure which provides for the annexation of foreign territory is necessarily, essentially, the subject matter of a treaty, and that the assumption of the House of Representatives in the passage of the bill and the proposition on the part of the Foreign Relations Committee that the Senate shall pass the bill, is utterly without warrant in the Constitution."[15] Senator William Allen stated, "A Joint Resolution if passed becomes a statute law. It has no other or greater force. It is the same as if it would be if it were entitled 'an act' instead of 'A Joint Resolution.' That is its legal classification. It is therefore impossible for the Government of the United States to reach across its boundary into the dominion of another government and annex that government or persons or property therein. But the United States may do so under the treaty making power."[16] Senator Thomas Turley stated, "The Joint Resolution itself, it is admitted, amounts to nothing so far as carrying any effective force is concerned. It does not bring that country within our boundaries. It does not consummate itself."[17]

14. In a speech in the Senate where the Senators knew that the 1897 treaty was not ratified, Senator Stephen White stated, "Will anyone speak to me of a 'treaty' when we are confronted with a mere proposition negotiated between the plenipotentiaries of two countries and ungratified by a tribunal—this Senate—whose concurrence is necessary? There is no treaty; no one can reasonably aver that there is a treaty. No treaty can exist unless it has attached

[14] David Keanu Sai, *War Crimes Report: International Armed Conflict and the Commission of War Crimes in the Hawaiian Islands*, para. 5.10 (Dec. 7, 2014).
[15] 31 Cong. Rec. 6145 (June 20, 1898).
[16] *Id*., 6636 (July 4, 1898).
[17] *Id*., 6339 (June 25, 1898).

to it not merely acquiescence of those from whom it emanates as a proposal. It must be accepted—joined in by the other party. This has not been done. There is therefore, no treaty."[18] Senator Allen also rebuked that the joint resolution was a contract or agreement with the so-called Republic of Hawai'i. He stated, "Whenever it becomes necessary to enter into any sort of compact or agreement with a foreign power, we cannot proceed by legislation to make that contract."[19]

15. According to Westel Willoughby, a United States constitutional scholar, "The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature it is enacted."[20] This is analogous to the proposition that the United States could unilaterally annex Switzerland by enacting a joint resolution of annexation. Furthermore, in 1988, the United States Attorney General reviewed these Congressional records and stated, "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."[21] The Attorney General then concluded, "It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution."[22]

16. The so-called Republic of Hawai'i was the successor of a provisional government unlawfully established on January 17, 1893 through United States intervention.[23] A Presidential investigation found that the United States illegally overthrew the Hawaiian government, and concluded that the provisional government "was neither a government *de facto* nor *de jure*,"[24] but self-declared.

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[18] *Id.*, Appendix, 591 (June 21, 1898).
[19] *Id.*, 6636 (July 4, 1898).
[20] *See* War Crimes Report, para. 5.9.
[21] Douglas Kmiec, Department of Justice, *Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea*, *in* 12 OPINIONS OF THE OFFICE OF LEGAL COUNSEL 238, 252 (1988).
[22] *Id.*
[23] *See* War Crimes Report, para. 4.8.
[24] *Id.*, para. 4.2.

17. When the provisional government changed its name on July 4, 1894, to the Republic of Hawaiʻi, it acquired no more authority and remained self-declared.[25] This was acknowledged by the 103rd Congress in its *Joint resolution to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaiʻi*.[26] This joint resolution stated, "*Whereas*, through the Newlands Resolution, the self-declared Republic of Hawaiʻi ceded sovereignty over the Hawaiian Islands to the United States."[27]

18. According to *Collins English Dictionary*, self-declared is defined as "according to one's own testimony or admission." Self-declared is also self-proclaimed, which, according to *Merriam-Webster Dictionary,* is defined as "giving yourself a particular name, title, etc., usually without any reason or proof that would cause other people to agree with you." A self-declared entity is not a government of a State recognized by international law, unless it was either *de facto* or *de jure*. Therefore, a self-declared entity could not cede the sovereignty of the Hawaiian State to the United States.

c. Switzerland was aware of the continuity of the Hawaiian Kingdom as a State when international arbitration proceedings took place under the auspices of the Permanent Court of Arbitration from 1999-2001

19. The belligerent occupation of the Hawaiian Kingdom by the United States is unprecedented in international relations, and has lasted nearly 118 years. However, notwithstanding the unlawful overthrow of the Hawaiian government by the United States and its prolonged occupation of the Hawaiian Kingdom since the Spanish-American War, the continuity of the Hawaiian Kingdom as a State has been maintained under international law. According to Judge Crawford, "There is a strong presumption that the State continues to exist, with its rights and obligations…despite a period in which there is no…government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[28]

[25] *Id*., para. 9.5.
[26] 107 U.S. Stat. 1510 (1993).
[27] *Id*.
[28] *See* CRAWFORD, at 34.

20. On In 1996, remedial steps were taken, under the doctrine of necessity, to reinstate the Hawaiian government as it stood under Her Majesty Queen Lili'uokalani on January 17, 1893.[29] In accordance with the Hawaiian constitution and the principle of necessity, a Council of Regency was established to serve in the absence of the executive monarch.[30] In *Madzimbamuto v. Lardner-Burke*, Lord Pearce states 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."[31] According to de Smith, deviations from a State's constitutional order "can be justified on grounds of necessity."[32] He also explains, "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."[33]

21. By virtue of this process, a provisional Government, comprised of officers *de facto*—not to be confused with a *de facto* government, was established and has since represented the Hawaiian Kingdom as a State, which was explicitly recognized by the Secretariat of the Permanent Court of Arbitration,

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[29] *See* War Crimes Report, Appendix III—The *acting* Government of the Hawaiian Kingdom.

[30] Establishing the Hawaiian Regency was analogous to the establishment of the Belgian Regency in 1940 after the Belgian King was captured by German forces. According to Oppenheimer, "As far as Belgium is concerned, the capture of the king did not create any serious constitutional problems. According to Article 82 of the Constitution of February 7, 1821, as amended, the cabinet of ministers have to assume supreme executive power if the King is unable to govern. True, the ministers are bound to convene the House of Representatives and the Senate and to leave it to the decision of the united legislative chambers to provide for a regency; but in view of the belligerent occupation it is impossible for the two houses to function. While this emergency obtains, the powers of the King are vested in the Belgian Prime Minister and the other members of the cabinet." F.E. Oppenheimer, "Governments and Authorities in Exile," 36 AM. J. INT'L L. 569 (1942).

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

[32] STANLEY A. DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, 80 (1986).

[33] *Id*. The principle of necessity is also covered under Article 9 of the *Draft articles on Responsibility of States for Internationally Wrongful Acts* (2001)—"The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements." According to the International Law Commission, "Article 9 establishes three conditions which must be met in order for conduct to be attributable to the State: first, the conduct must effectively relate to the exercise of elements of the governmental authority, secondly, the conduct must have been carried out in the absence or default of the official authorities, and thirdly, the circumstances must have been such as to call for the exercise of those elements of authority." *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001)*, Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10), p. 49.

hereinafter referred to as "PCA," in *Larsen v. The Hawaiian Kingdom*.[34] From November 8, 1999 through February 5, 2001, international arbitration proceedings were held under the PCA's institutional jurisdiction, which provided for dispute settlement between a "State" and a "private party." The undersigned is very familiar with these arbitral proceedings, because I served as Agent for the Hawaiian Kingdom.

22. Originally, the PCA's institutional jurisdiction was limited to disputes between States, but the Court has since expanded its institutional jurisdiction to include disputes between: a "State and an international organization (i.e. an intergovernmental organization); Two or more international organizations; [a] State and a private party; and [an] international organization and a private party."[35]

23. The dispute between Larsen (private party) and the Hawaiian Kingdom (State) centered on the allegation of negligence, whereby *"(a)* Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is in continual violation of its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, and in violation of the principles of international law laid [down] in the Vienna Convention on the Law of Treaties, 1969, by allowing the unlawful imposition of American municipal laws over claimant's person within the territorial jurisdiction of the Hawaiian Kingdom; *(b)* Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is also in continual violation of the principles of international comity by allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom."[36]

24. According to the *American Journal of International Law*, "At the center of the PCA proceeding was…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,

[34] Permanent Court of Arbitration Case Repository, Case View, *Lance Paul Larsen v. The Hawaiian Kingdom* (1999-2001), *available at* http://www.pcacases.com/web/view/35.
[35] United Nations Conference on Trade and Development, *Dispute Settlement—General Topics: 1.3 Permanent Court of Arbitration*, 15 (2003), *available at* http://unctad.org/en/docs/edmmisc232add26_en.pdf.
[36] *Id.*, *see* also *Larsen v. Hawaiian Kingdom*, at 569.

the State of Hawaii. As result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him."[37]

25. The following narrative of events is drawn from the undersign's Declaration attached hereto as "Appendix "1."

    1. I served as Agent for the Hawaiian Kingdom in arbitration proceedings held under the auspices of the Permanent Court of Arbitration (hereinafter referred to as "PCA"), in *Lance Paul Larsen v. The Hawaiian Kingdom*, from 1999-2001.
    2. Before establishing the *ad hoc* arbitral tribunal, Secretary General van den Hout, of the PCA's International Bureau, made a request of the declarant, as Agent for the Hawaiian government, in February 2000 to provide a formal invitation to the United States of America (hereinafter referred to as "United States") to join in the arbitration. The Secretary General requested from the declarant that the invitation be documented and filed with the PCA's Secretariat.
    3. The Hawaiian government saw this action as actual notice to be given to the United States of the Hawaiian Kingdom's continued existence as a State with its government in international arbitration with a Hawaiian subject. The Hawaiian government also understood that this action would also determine if the PCA had institutional jurisdiction before it could facilitate the establishment of the *ad hoc* arbitral tribunal.
    4. On March 3, 2000, a conference call meeting was held in Washington, D.C., between John Crook, Assistant Legal Advisor for United Nations Affairs, at the United States Department of State, and the declarant, as Agent for the Hawaiian government, with Ms. Ninia Parks, *Esquire*, counsel for Lance Paul Larsen. The Hawaiian government, with the consent of the claimant, formally invited the United States to join in the arbitration.
    5. Following the conference call on that same day, a letter confirming the meeting was sent to Mr. Crook, a copy of which was sent to the Secretary General of the PCA.[38] Later that month, the United States Embassy at The Hague notified the PCA that the United States would

[37] Bederman & Hilbert, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii*, 95 AM. J. INT'L L. 927, 928 (2001).
[38] "Letter Confirming Telephone Conversation of March 3, 2000 Relating to Arbitral Proceedings at the Permanent Court of Arbitration, Lance Paul Larsen vs. The Hawaiian Kingdom," 1 HAW. J.L. & POL. 296 (2004), *available at* http://hawaiiankingdom.org/pdf/Ltr_to_State_Dept_3_3_2000.pdf. *See* also War Crimes Report, Appendix III, at para. 3.2.

not be joining in the arbitration, but requested permission, from the Hawaiian government and from Larsen, to access all records of the case. Permission was granted, which served as explicit recognition by the United States of the continuity of the Hawaiian Kingdom as a State and its government.

6. After the PCA's Secretariat verified there was no challenge by the United States as to the continued existence of the Hawaiian Kingdom as a State, the *ad hoc* arbitral tribunal was constituted in April of 2000, after which, written pleadings were submitted, and oral hearings were held in the PCA's hearing room in December of 2000.[39]
7. The Tribunal was comprised of Professor James Crawford, SC, as the presiding arbitrator, and Professor Christopher Greenwood, QC, and Gavan Griffith, QC, as associate arbitrators. Professors Crawford and Greenwood now serve as Judges on the International Court of Justice.
8. The arbitration award was filed with the PCA on February 5, 2001, and concluded that in order for Larsen to maintain his allegation of negligence on the part of the Hawaiian government, he needed the participation of the United States in the arbitration, as a necessary third party, pursuant to the principle set by the International Court of Justice in *the Case concerning Monetary Gold Removed from Rome, ICJ Reports 1954* (21 ILR 399), *the Case concerning Certain Phosphate Lands on Nauru*, *ICJ Reports 1992* (97 ILR 1), and *the Case concerning East Timor*, *ICJ Reports 1995* (105 ILR 226). The Tribunal concluded the United States to be a necessary third party and therefore the arbitral proceedings could not be maintained.[40]

26. The Swiss Confederation became a member State of the PCA on August 29, 1900 and reaffirmed its membership on July 11, 1910 by acceding to the 1907 Hague Convention, I. The Swiss Confederation has diplomatic representatives accredited to the Netherlands, and, as such, is a member of the PCA's Administrative Council. In its 2001 annual report, the Secretary General reported the *Larsen v. Hawaiian Kingdom* arbitration was the thirty-fourth case to have come before the PCA pursuant to Article 47 of the 1907 Hague Convention, I (Article 26 of the 1899, Hague Convention, I).[41] Article 47 of the 1907 Hague Convention, I, provides, "The jurisdiction of the Permanent

[39] Oral hearings were held on December 7, 8, and 11, 2000 at the hearing room of the Permanent Court of Arbitration. Video of a portion of the oral hearings *available at* https://vimeo.com/17007826.
[40] *See Larsen v. Hawaiian Kingdom*, at 598.
[41] *Annex 2—Cases Submitted to Arbitration before the Permanent Court of Arbitration, or Conducted with the Cooperation of the International Bureau*, PCA Annual Report (2001), at 44, *available at* https://pca-cpa.org/wp-content/uploads/sites/175/2015/12/PCA-annual-report-2001.pdf.

Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal."

27. Under Article 47, only full sovereign States can be Contracting Powers or non-Contracting Powers because the 1907 Hague Convention, I, is a treaty under international law. In *Island of Palmas* case, which was held under the auspices of the PCA, the arbitrator stated, "As regards *contracts between a State*…and *native princes or chiefs of peoples* not recognized as members of the community of nations, they are not, in the international law sense, treaties or conventions capable of creating rights and obligations such as may, in international law, arise out of treaties."[42]

28. As a member State of the PCA and its Administrative Council, Switzerland was fully aware of the continuity of the Hawaiian Kingdom as a State since, at least, 2001, when it received the annual report from the PCA's Secretary General. Furthermore, the case view of the *Larsen v. Hawaiian Kingdom* in the PCA's case repository, clearly acknowledges the Hawaiian Kingdom as a "State" and Lance Paul Larsen as a "Private entity." The ATTORNEY GENERAL was made aware of the PCA's acknowledgment by letter from the undersigned dated November 22, 2015, which was acknowledged in the report dated January 28, 2016. A true and correct copy of the case view of *Larsen v. Hawaiian Kingdom* from the PCA's case repository was attached to the aforementioned letter, as well as attached herein to the Declaration of the undersigned as Exhibit "A."

29. The *de facto* authority of the *acting* government was acquired through time since the arbitral proceedings were held at the PCA, by acquiescence, in the absence of any protest, and, in some cases, by direct acknowledgment from States and international organizations, *i.e.* United States, when it requested permission from the *acting* government to access the arbitral records in 2000;[43] Rwanda, when it provided notice to the *acting* government of its intention to report the prolonged occupation of the Hawaiian Kingdom to the General Assembly in 2000;[44] China, when it accepted the Complaint as a non-member State of the United Nations from the *acting* government while it served as President of the United Nations Security Council in 2001;[45] Qatar,

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[42] *Island of Palmas* case (Netherlands/United States of America), Perm. Ct. of Arbitration, 2 U.N. REP. INT'L ARB. AWARDS 829, 858 (1928).
[43] *See* War Crimes Report, Appendix III, at para. 3.4.
[44] *Id*., at para. 3.5.
[45] *Id*., at para. 3.6.

when it accepted the Protest and Demand, as a non-member State of the United Nations, from the *acting* government, while it served as President of the General Assembly's 66th Session in 2012;[46] Switzerland, when it accepted the Instrument of Accession, from the *acting* government, as a State, while it served as the repository for the 1949 Geneva Conventions in 2013;[47] and the Universal Postal Union in Berne when it accepted a documentation of the continuing membership of the Hawaiian Kingdom from the *acting* government in 2013.

30. Furthermore, on March 26, 2014, the Directorate, International Law, Swiss Ministry of Foreign Affairs in Bern, Switzerland, received the Hawaiian Kingdom's Envoy Extraordinary and Minister Plenipotentiary, and accepted his letter of credence addressed to His Excellency Didier Burhalter, President of the Swiss Confederation and Head of the Federal Department of Foreign Affairs, together with the office copy of his commission and curriculum vitae. The Hawaiian Kingdom has since been in negotiations with the Swiss Confederation on matters of the prolonged occupation and the duties and obligations of Switzerland as a Contracting Power to the 1949 Geneva Convention, IV, and the 1864 Hawaiian-Swiss Treaty.

d. The ATTORNEY GENERAL is precluded from denying the existence of the Hawaiian Kingdom as a State

31. The existence of the Hawaiian Kingdom as a "State" is a question of fact, which must be answered by inferences arising from facts and evidence. There is no question of the fact that when the Hawaiian Kingdom entered into a Treaty of Friendship and Commerce with Switzerland on July 20, 1864, both Contracting Powers recognized each other as independent States, and according to the Permanent Court, in the celebrated *Lotus* case, restrictions upon the independence of States cannot be presumed.[48] Furthermore, there is a presumption of continuity of a State despite the absence of its government, and that belligerent occupation does not extinguish the State.[49]

32. The continuity of the Hawaiian Kingdom as a State, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains. To rely on a municipal law of the United States that purports to have annexed an

[46] *Id*.
[47] *Id*.
[48] *See Lotus*, 18.
[49] *See* CRAWFORD, at 34.

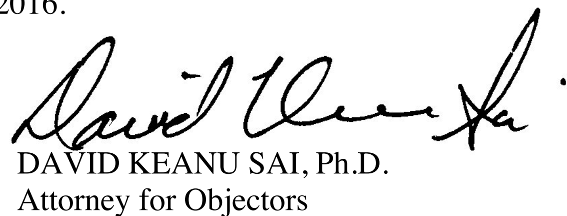
independent State, is in grave error, especially when the United States' very own Attorney General's Office in 1988, concluded it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution."[50] Moreover, United States Congressional laws are not a source of international law, and, therefore, have no effect on the sovereignty and independence of the Hawaiian Kingdom as a State, or upon the binding nature of the Hawaiian-Swiss Treaty together with its duties and obligations.

33. In light of the foregoing, the ATTORNEY GENERAL is precluded from denying the existence of the Hawaiian Kingdom as a State unless his office can provide rebuttable evidence to the contrary, *e.g.* a decree from an international tribunal replacing Hawaiian sovereignty with United States sovereignty, or a treaty of cession whereby the Hawaiian State was extinguished. Neither a decree nor a treaty of cession exists. Once the ATTORNEY GENERAL receives precise information and evidence that war crimes have been committed, the formal opening of a criminal investigation is mandatory in accordance with Article 309(1)(a) and (c), StPO.

B. Relief Sought

34. The OBJECTORS, by their attorney, request that this Honorable Court in Chambers grant its objection and direct the ATTORNEY GENERAL to prosecute those alleged perpetrators named in the complaints by the OBJECTORS pursuant to the principle that war crimes cannot be committed with impunity.

DATED: Honolulu, Hawai'i, February 17, 2016.



DAVID KEANU SAI, Ph.D.
Attorney for Objectors

[50] *See* Kmiec, at 252.

Attachment “1”

DECLARATION OF DAVID KEANU SAI, PH.D.

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

1. I served as Agent for the Hawaiian Kingdom in arbitration proceedings held under the auspices of the Permanent Court of Arbitration (hereinafter referred to as "PCA"), in *Lance Paul Larsen v. Hawaiian Kingdom*, from 1999-2001.
2. Before establishing the *ad hoc* arbitral tribunal, Secretary General van den Hout, of the PCA's International Bureau, made a request of the declarant, as Agent for the Hawaiian government, in February 2000 to provide a formal invitation to the United States of America (hereinafter referred to as "United States") to join in the arbitration. The Secretary General requested from the declarant that the invitation be documented and filed with the PCA's Secretariat.
3. The Hawaiian government saw this action as actual notice to be given to the United States of the Hawaiian Kingdom's continued existence as a State with its government in international arbitration with a Hawaiian subject. The Hawaiian government also understood that this action would also determine if the PCA had institutional jurisdiction before it could facilitate the establishment of the *ad hoc* arbitral tribunal.
4. On March 3, 2000, a conference call meeting was held in Washington, D.C., between John Crook, Assistant Legal Advisor for United Nations Affairs, at the United States Department of State, and the declarant, as Agent for the Hawaiian government, with Ms. Ninia Parks, *Esquire*, counsel for Lance Paul Larsen. The Hawaiian government, with the consent of the claimant, formally invited the United States to join in the arbitration.
5. Following the conference call on that same day, a letter confirming the meeting was sent to Mr. Crook, a copy of which was sent to the Secretary General of the PCA.[1] Later that month, the United States Embassy at The Hague notified the PCA that the United States would not be joining in the arbitration, but requested permission, from the Hawaiian government and from Larsen, to access all records of the case. Permission was granted, which served as explicit recognition by the United States of the continuity of the Hawaiian Kingdom as a State and its government.
6. After the PCA's Secretariat verified there was no challenge by the United States as to the continued existence of the Hawaiian Kingdom as a State, the

[1] "Letter Confirming Telephone Conversation of March 3, 2000 Relating to Arbitral Proceedings at the Permanent Court of Arbitration, Lance Paul Larsen vs. The Hawaiian Kingdom," 1 HAW. J.L. & POL. 296 (2004), *available at* http://hawaiiankingdom.org/pdf/Ltr_to_State_Dept_3_3_2000.pdf. *See* also War Crimes Report, Appendix III, at para. 3.2.

ad hoc arbitral tribunal was constituted in April of 2000, after which, written pleadings were submitted, and oral hearings were held in the PCA's hearing room in December of 2000.[2]

7. The Tribunal was comprised of Professor James Crawford, SC, as the presiding arbitrator, and Professor Christopher Greenwood, QC, and Gavan Griffith, QC, as associate arbitrators. Professors Crawford and Greenwood now serve as Judges on the International Court of Justice.
8. The arbitration award was filed with the PCA on February 5, 2001, and concluded that in order for Larsen to maintain his allegation of negligence on the part of the Hawaiian government, he needed the participation of the United States in the arbitration, as a necessary third party, pursuant to the principle set by the International Court of Justice in *the Case concerning Monetary Gold Removed from Rome, ICJ Reports 1954* (21 ILR 399), *the Case concerning Certain Phosphate Lands on Nauru*, *ICJ Reports 1992* (97 ILR 1), and *the Case concerning East Timor*, *ICJ Reports 1995* (105 ILR 226). The Tribunal concluded the United States to be a necessary third party and therefore the arbitral proceedings could not be maintained.[3]
9. Attached hereto as Exhibit "A" is a true and correct copy of the case view of *Lance Paul Larsen v. Hawaiian Kingdom* from the PCA's case repository that explicitly acknowledges the Hawaiian Kingdom as a "State" and Lance Paul Larsen as a "Private entity."

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

DATED: Honolulu, Hawai'i, February 15, 2016.

David Keanu Sai

[2] Oral hearings were held on December 7, 8, and 11, 2000 at the hearing room of the Permanent Court of Arbitration. Video of a portion of the oral hearings *available at* https://vimeo.com/17007826.

[3] *See Larsen v. Hawaiian Kingdom*, at 598.

Exhibit “A”

Permanent Court of Arbitration
PCA Case Repository

Larsen/Hawaiian Kingdom

Case name	Larsen/Hawaiian Kingdom
Case description	Dispute between Lance Paul Larsen (Claimant) and The Hawaiian Kingdom (Respondent) whereby a) Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is in continual violation of its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, and in violation of the principles of international law laid [down] in the Vienna Convention on the Law of Treaties, 1969, by allowing the unlawful imposition of American municipal laws over claimant's person within the territorial jurisdiction of the Hawaiian Kingdom. b) Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is also in continual violation of the principles of international comity by allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.
Name(s) of claimant(s)	Lance Paul Larsen (Private entity)
Name(s) of respondent(s)	The Hawaiian Kingdom (State)
Names of parties	
Case number	
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Other proceedings
Subject matter or economic sector	Treaty interpretation
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	Other The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America
Language of proceeding	English
Seat of arbitration (by country)	Netherlands
Arbitrator(s)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
Representatives of the claimant(s)	Ms. Ninia Parks, Counsel and Agent
Representatives of the respondent(s)	Mr. David Keanu Sai, Agent Mr. Peter Umialiloa Sai, First deputy agent Mr. Gary Victor Dubin, Second deputy agent and counsel
Representatives of the parties	

Number of arbitrators in case	3
Date of commencement of proceeding [dd-mm-yyyy]	08-11-1999
Date of issue of final award [dd-mm-yyyy]	05-02-2001
Length of proceedings	2-3 years
Additional notes	

Attachments

- Other -

- "Annex 1 - President Cleveland's Message to the Senate and the House of Representatives " - 18-12-1893 (English)
- "Joint Resolution - To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii. " - 23-11-1993 (English)
- "Case Cover Page" - 15-05-2014 (English)

Award or other decision

- "Arbitral Award" - 15-05-2014 (English)

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Exhibit “9”

Bundesstrafgericht
Tribunal pénal fédéral
Tribunale penale federale
Tribunal penal federal

Beschwerdekammer

Postfach 2720
CH-6501 Bellinzona
Tel. +41 91 822 62 62
Fax +41 91 822 62 52
info@bstger.ch

Geschäftsnummer: BB.2016.36-37
Verfahrensnummer BA: SV.15.1333-MUA

Einschreiben

Bundesanwaltschaft
Herrn Andreas Müller
Staatsanwalt des Bundes
Taubenstrasse 16
3003 Bern

Bellinzona, 22. Februar 2016/paa

Kale Kepekaio Gumapac und [redacted] gegen Bundesanwaltschaft
Nichtanhandnahmeverfügung (Art. 310 i.V.m. Art. 322 Abs. 2 StPO)

Sehr geehrter Herr Staatsanwalt

In der eingangs erwähnten Angelegenheit ist gegen Ihre Nichtanhandnahmeverfügung vom 28. Januar 2016 beim Bundesstrafgericht eine Beschwerde eingegangen.

Sie werden gebeten, dem Bundesstrafgericht die in der oben genannten Sache ergangenen Akten (inkl. Empfangsschein) mit einem Aktenverzeichnis umgehend einzureichen.

Alle Eingaben in dieser Sache sind unter Angabe der Geschäftsnummer an die Beschwerdekammer des Bundesstrafgerichts, Postfach 2720, CH-6501 Bellinzona, zu richten.

Mit freundlichen Grüssen

Im Auftrag des Präsidenten
der Beschwerdekammer

Chantal Blättler Grivet Fojaja
Gerichtsschreiberin

Kopie an
- Herrn David Keanu Sai, c/o [redacted] Grand-Lancy

English (Translation)

[English Translation]

COPY

Federal Criminal Court
Appeals Chamber
PO Box 2720
CH-6501 Bellinzona
Phone +41-91-822-62-62
Fax +41-91-822-62-52
info@bstger.ch

Reference number: BB.2016.36-37
Case number: BA: SV.15.1333-MUA

Registered Mail

Office of the Federal Attorney General
Mr. Andreas Müller
Federal Prosecutor
Taubenstraße 16
3003 Bern

Bellinzona, February 22, 2016/paa

Kale Kekepakio Gumapac and [redacted] vs. Office of the Federal Attorney General

Decision of non-acceptance (Art. 310 in connection with Art. 322, par. 2 StPO)

Dear Prosecutor

In the matter mentioned above, a complaint against your decision not to engage of January 28, 2016 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 above mentioned matter (including documents of receipt) with an index of the records.

All communication in this matter is to be directed to the Appeals Chamber of the Federal Criminal Court, PO Box 2720, CH-6501 Bellinzona, with an indication of the reference number.

With kind regards

By order of the President of the Appeals Chamber
[signed]

Chantal Blättler Grivet Fojaja
Clerk of the Court [stamp: Federal Criminal Court Bellinzona]

Copy to:
- David Keanu Sai, c/o [redacted] Grand-Lancy

Exhibit "10"

Bundesstrafgericht
Tribunal pénal fédéral
Tribunale penale federale
Tribunal penal federal

Beschwerdekammer

Postfach 2720
CH-6501 Bellinzona
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Fax +41 91 822 62 52
info@bstger.ch

Geschäftsnummer: BB 2016.36-37
Verfahrensnummer BA: SV.15.1333-MUA

Einschreiben

Herrn
David Keanu Sai
c/o [redacted]
[redacted]
[redacted] Grand-Lancy

Bellinzona, 2. März 2016/gie

Kale Kepekaio Gumapac und [redacted] gegen Bundesanwaltschaft
Nichtanhandnahmeverfügung (Art. 310 i.V.m. Art. 322 Abs. 2 StPO)
Kostenvorschuss, Originalunterschrift

Sehr geehrter Herr Sai

Sie werden eingeladen, bis **14. März 2016** einen Kostenvorschuss von **CHF 2'000.00** zu leisten.

Die Zahlung kann in bar, durch ungekreuzten Bankcheck oder durch Überweisung auf das Konto der Bundesstrafgerichtskasse erfolgen (**Bank:** Postfinance AG, 3003 Bern; **BIC:** POFICHBEXXX; **IBAN:** CH46 0900 0000 3075 6623 9; **Kontonummer:** 30-756623-9; **Empfänger:** Bundesstrafgericht, Viale Stefano Franscini 7, 6500 Bellinzona). Die Frist für die Zahlung des Vorschusses ist gewahrt, wenn der Betrag spätestens am letzten Tag der Frist zugunsten des Bundesstrafgerichts der Schweizerischen Post übergeben oder einem Post- oder Bankkonto in der Schweiz belastet worden ist (Art. 91 Abs. 5 StPO). Die Rechtzeitigkeit ist im Zweifelsfall vom Pflichtigen zu beweisen.

Innert gleicher Frist ist eine **Beschwerdeschrift mit Originalunterschrift (nicht fotokopierte oder faksimilierte Unterschrift)** einzureichen (Art. 379 i.V.m. 110 Abs. 1 StPO).

Bei Säumnis wird auf die Beschwerde nicht eingetreten (Art. 383 Abs. 2 StPO; Art. 396 Abs. 1 i.V.m. Art. 385 Abs. 2 StPO). Die Nichtbezahlung des Kostenvorschusses gilt nicht als Rückzug; dieser muss schriftlich erklärt werden.

Mit freundlichen Grüssen

Im Auftrag des Präsidenten
der Beschwerdekammer

Chantal Blättler Grivet Fojaja
Gerichtsschreiberin

Beilage
- 1 Einzahlungsschein

English (Translation)

Federal Criminal Court

[logo]

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Appeals Chamber
PO Box 2720
CH-6501 Bellinzona
Phone +41-91-822-62-62
Fax +41-91-822-62-52
info@bstger.ch

Reference number: BB.2016.36-37
Case number: BA: SV.15.1333-MUA

Registered Mail

Mr
David Keanu Sai
c/o [redacted]
[redacted]
[redacted] Grand-Lancy

Bellinzona, March 2, 2016/gie

Kale Kekepakio Gumapac and [redacted] vs. Office of the Federal Attorney General
Decision of non-acceptance (Art. 310 in connection with Art. 322, par. 2 StPO)
Advance on costs, Original signature

Dear Mr. Sai

You are invited to provide an advance on costs of **CHF 2,000.00** by **March 14, 2016**.

The payment can be made in cash, via uncrossed bank check or via transfer into the account of the Federal Criminal Court (**Bank**: Postfinance AG, 3003 Berne; **BIC**: POFICHBEXXX, **IBAN**: CH46 0900 0000 3075 6623 9; **Account number:** 30-756623-9; **Recipient**: Federal Criminal Court, Viale Stefano Franscini 7, 6500 Bellinzona). The time limit for making a payment of the cost advance is complied with if the amount due is handed to SwissPost or is debited from a postal or bank account in Switzerland in favor of the Federal Criminal Court on the day of expiry at the latest (Art. 91 par. 5 StPO). In case of doubt, timeliness of the payment is to be proven by the payer.

Within the same time limit, an **objection statement with an original signature (not a photocopied or facsimiled signature)** is to be filed (Art. 379 in connection with 110 par. 1 StPO).

In case of default, the objection will not be considered (Art. 383 par. 2 StPO; Art. 396 par. 1 in connection with Art. 385 par. 2 StPO). Non-payment of the advance of costs is not considered a withdrawal; the latter needs to be declared in writing.

With kind regards

By order of the President
of the Appeals Chamber

[signed in blue ink]

Chantal Blättler Grivet Fojaja
Clerk of the Court

[stamp in blue ink: Federal Criminal Court Bellinzona]

Attachment
- one payment slip

Exhibit “11”

Dr. David Keanu Sai
Politischer Wissenschafter
c/o ████ Grand Lancy/GE

9. Märzr 2016

Beschwerdekammer des Bundesstrafgerichts
Postfach 2720
CH 6501 Bellinzona/TI

Betr.: Beschwerde gegen die Verfügug der Schweizerischen Bundesanwaltschaft vom 28. Januar 2016; Ihr Schreiben von 2. März 2016.

Sehr geehrte Damen und Herren,

Entsprechend Ihres Schreibens vom 2. März 2016 finden Sie beiliegend ein Exemplar meiner Beschwerdeschrift vom 17. Februar 2008 mit meiner Originalunterschrift sowie eine Kopie des Zahlungebelegs des geforderten Kostenvorschusses von CHF 2.000,-.

Mit freundlichen Grüssen,

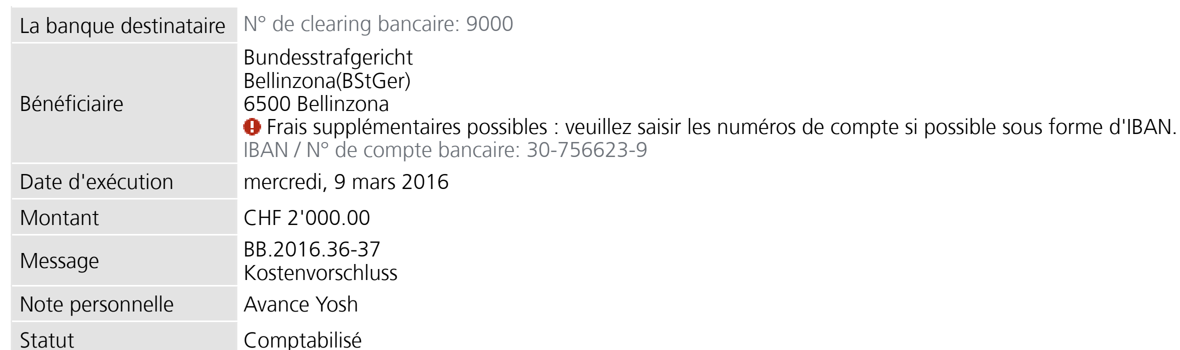
Dr. David Keanu Sai

RAIFFEISEN

Banque Raiffeisen
Franches-Montagnes

Contrat:	33203-0059 Titulaire:
Compte:	CH12 8005 9000 0304 6051 5 / CHF Compte privé Titulaire:

Ordre de paiement



La banque destinataire	N° de clearing bancaire: 9000
Bénéficiaire	Bundesstrafgericht Bellinzona(BStGer) 6500 Bellinzona Frais supplémentaires possibles : veuillez saisir les numéros de compte si possible sous forme d'IBAN. IBAN / N° de compte bancaire: 30-756623-9
Date d'exécution	mercredi, 9 mars 2016
Montant	CHF 2'000.00
Message	BB.2016.36-37 Kostenvorschluss
Note personnelle	Avance Yosh
Statut	Comptabilisé

Toutes les indications sont sans garantie. Les taux de change sont purement indicatifs. Date d'impression: 09.03.2016 18:31

Banque Raiffeisen Franches-Montagnes société coopérative

English (Translation)

DR. DAVID KEANU SAI, PH.D.
POLITICAL SCIENTIST
C/O [redacted] GRAND LANCY/GE

March 9, 2016

The Federal Criminal Court Objections Chamber
P.O. Box 2720
CH-6501 Bellinzona/TI

Re: Objection to Decision by the Office of the Attorney General dated January 28, 2016;
Your letter dated March 2, 2016

To whom it may concern,

In accordance with your letter dated March 2, 2016, please find enclosed a copy of my objection dated February 17, 2016, with my original signature, as well as a copy of the receipt of payment of the requested advance on costs of CHF 2,000.00.

Sincerely,

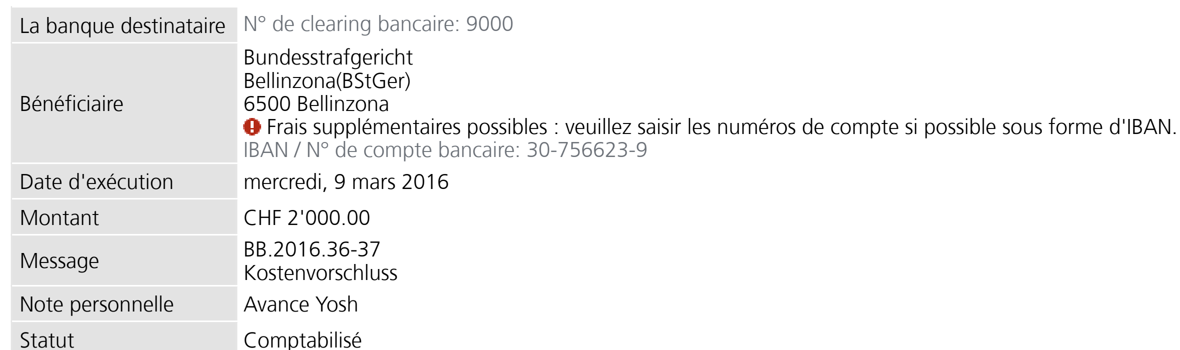
David Keanu Sai, Ph.D.

RAIFFEISEN

Banque Raiffeisen
Franches-Montagnes

Contrat:	33203-0059 Titulaire:
Compte:	CH12 8005 9000 0304 6051 5 / CHF Compte privé Titulaire:

Ordre de paiement



La banque destinataire	N° de clearing bancaire: 9000
Bénéficiaire	Bundesstrafgericht Bellinzona(BStGer) 6500 Bellinzona Frais supplémentaires possibles : veuillez saisir les numéros de compte si possible sous forme d'IBAN. IBAN / N° de compte bancaire: 30-756623-9
Date d'exécution	mercredi, 9 mars 2016
Montant	CHF 2'000.00
Message	BB.2016.36-37 Kostenvorschluss
Note personnelle	Avance Yosh
Statut	Comptabilisé

Toutes les indications sont sans garantie. Les taux de change sont purement indicatifs. Date d'impression: 09.03.2016 18:31

Exhibit “12”

Bundesstrafgericht
Tribunal pénal fédéral
Tribunale penale federale
Tribunal penal federal

Beschwerdekammer

Postfach 2720
CH-6501 Bellinzona
Tel. +41 91 822 62 62
Fax +41 91 822 62 52
info@bstger.ch

Geschäftsnummer: BB.2016.36-37
Verfahrensnummer BA SV.15.1333-MUA

SWISS CONSULATE GENERAL
SAN FRANCISCO

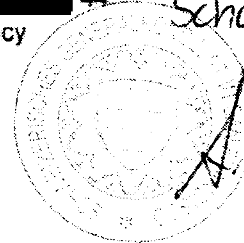
- 9. März 2016 aa

to						
date						
visa						

Einschreiben

Herrn
David Keanu Sai
c/o [redacted]
[redacted] 44
[redacted] Grand-Lancy

1 Umschlag am Schalter abgegeben für Kurier.
A. Koppel



Bellinzona, 2. März 2016/gie

Kale Kepekaio Gumapac und [redacted] gegen Bundesanwaltschaft
Nichtanhandnahmeverfügung (Art. 310 i.V.m. Art. 322 Abs. 2 StPO)
Kostenvorschuss, Originalunterschrift

Sehr geehrter Herr Sai

Sie werden eingeladen, bis **14. März 2016** einen Kostenvorschuss von **CHF 2'000.00** zu leisten.

Die Zahlung kann in bar, durch ungekreuzten Bankcheck oder durch Überweisung auf das Konto der Bundesstrafgerichtskasse erfolgen (**Bank:** Postfinance AG, 3003 Bern; **BIC:** POFICHBEXXX; **IBAN:** CH46 0900 0000 3075 6623 9; **Kontonummer:** 30-756623-9; **Empfänger:** Bundesstrafgericht, Viale Stefano Franscini 7, 6500 Bellinzona). Die Frist für die Zahlung des Vorschusses ist gewahrt, wenn der Betrag spätestens am letzten Tag der Frist zugunsten des Bundesstrafgerichts der Schweizerischen Post übergeben oder einem Post- oder Bankkonto in der Schweiz belastet worden ist (Art. 91 Abs. 5 StPO). Die Rechtzeitigkeit ist im Zweifelsfall vom Pflichtigen zu beweisen.

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