ILLEGAL STATE OF WAR BETWEEN THE HAWAIIAN KINGDOM AND THE UNITED STATES OF AMERICA SINCE JANUARY 16, 1893

April 17, 2017

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1. THE BRIEF

1.1. The first allegations of alleged war crimes committed in Hawai'i, being unfair trial and unlawful confinement,[1] were made the subject of an arbitral dispute in *Lance Larsen vs. the Hawaiian Kingdom* at the Permanent Court of Arbitration, hereafter PCA, The Hague, Netherlands.[2] Oral hearings were held at the Peace Palace, The Hague, on December 7, 8, and 11, 2000. In order to fulfill its institutional jurisdiction prior to the formation of the *ad hoc* Tribunal, the PCA explicitly acknowledged Larsen to be a "Private entity" and the Hawaiian Kingdom a "State." From the PCA's website:

> "Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom."[3]

1.2. The Government of the Hawaiian Kingdom was reestablished in 1995, *in situ* and not *in exile*, under the doctrine of necessity and operates within the limits of international humanitarian law and Hawaiian Kingdom law.[4] The author of this Brief served as Agent for the Hawaiian Kingdom in these arbitral proceedings as well as the current fact-finding proceedings that stemmed from the *Larsen* case. Professor Federico Lenzerini serves as Counsel and Advocate

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[1] Article 147, 1949 Geneva Convention, IV, provides, "Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: …unlawful confinement of a protected person…wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention;" see also International Criminal Court, *Elements of War Crimes* (2011) 16 (War crime of denying a fair trial), 17 (War Crime of unlawful confinement).

[2] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, available at https://pca-cpa.org/en/cases/35/.

[3] *Id.*

[4] David Keanu Sai, "Legal Brief," "The Continuity of the Hawaiian Kingdom and the Legitimacy of the acting Government of the Hawaiian Kingdom" 27-39 (August 4, 2013), available at http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf.

for the Hawaiian Kingdom in the fact-finding proceedings.[5] In the *American Journal of International Law* reporting of international proceedings in 2001:

> "At the center of the PCA proceedings 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] municipals' through its political subdivision, the State of Hawaii. 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]

1.3. The Tribunal concluded that it did not possess subject matter jurisdiction in the case because of the indispensible third party rule. The Tribunal explained:

> "It follows that the Tribunal cannot determine whether the respondent [Hawaiian Kingdom] has failed to discharge its obligations towards the claimant [Larsen] without ruling on the legality of the acts of the United States of America. Yet that is precisely what the *Monetary Gold* principle precludes the Tribunal from doing. As the International Court of Justice explained in the *East Timor* case, 'the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case.'"

1.4. The Tribunal, however, proposed that the parties to the arbitration could pursue fact-finding instead. The Tribunal stated, "At one stage of the proceedings the question was raised whether some of the issues which the parties wished to present might not be dealt with by way of a fact-finding process. In addition to its role as a facilitator of international arbitration and conciliation, the Permanent Court of Arbitration has various procedures for fact-finding, both as between States and otherwise."[7] The Tribunal noted "that the interstate fact-finding commissions so far held under the auspices of the Permanent Court of Arbitration have not confined themselves to pure questions of fact but have gone on, expressly or by clear implication, to deal with issues of responsibility for those facts."[8] The Tribunal pointed out, "Part III of each of the Hague Conventions of 1899 and 1907 provide for International Commissions of Inquiry. The PCA has also adopted Optional Rules for Fact-finding Commissions of Inquiry."[9]

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[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] *Larsen v. Hawaiian Kingdom,* 119 INT'L L. REP. 597 (2001), hereafter "*Larsen case*."
[8] *Id*.
[9] *Id*., at n. 28.

1.5. On January 19, 2017, the Hawaiian Kingdom Government and Lance Paul Larsen entered into a Special Agreement to form a Fact-finding Commission of Inquiry. As recommended by the Tribunal, both Parties agreed to the rules provided under Part III—*International Commissions of Inquiry* (Articles 9-36), 1907 Hague Convention, I. On March 3, 2017, the Parties designated Professor Francesco Francioni as the appointing authority whose function is to form the Commission.[10]

1.6. According to Article III of the Special Agreement, "The Commission is requested to determine: *First*, what is the function and role of the Government of the Hawaiian Kingdom in accordance with the basic norm and framework of international humanitarian law; and, *Second*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Lance Paul Larsen, and, by extension, toward all Hawaiian subjects domiciled in Hawaiian territory and abroad in accordance with the basic norm and framework of international humanitarian law."[11]

1.7. Since humanitarian law is a set of rules that seeks to limit the effects of a *state of war*—an international armed conflict, on persons who are not participating in the conflict, such as civilians of an occupied State, the *Larsen* case and the fact-finding proceedings must stem from an actual *state of war*—a war not in theory but a war in fact. More importantly, the application of the principle of *intertemporal law* is critical to understanding the arbitral dispute between Larsen and the Hawaiian Kingdom. The dispute between the parties stemmed from the legal *state of war* with the United States that occurred in 1893. In the *Island of Palmas* arbitration case at the PCA, Judge Huber famously stated, "a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled."[12]

2. THE HAWAIIAN KINGDOM AS A SUBJECT OF INTERNATIONAL LAW

2.1. 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

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[10] Supplemental Agreement (March 3, 2017), available at http://hawaiiankingdom.org/pdf/Supp_Agmt_3_3_17.pdf. Professor Francioni serves as a Judge *ad hoc* at the International Tribunal for the Law of the Sea, and member of the Arbitral Tribunal in *"Enrica Lexie" Incident* (Italy v. India) under the auspices of the Permanent Court of Arbitration, case no. 2015-28.
[11] Special Agreement (January 19, 2017), available at http://hawaiiankingdom.org/pdf/Special_Agmt_1_19_17.pdf.
[12] *Island of Palmas* arbitration case (Netherlands and the United States of America), R.I.A.A., vol. II, 829 (1949).
[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.

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:

> "[I]n 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]

According to Westlake in 1894, the *Family of Nations* comprised, "First, all European States […] Secondly, all American States […] Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State."[17]

2.2. In 1893, there were 44 independent and sovereign States in the *Family of Nations*: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chili, Colombia, Costa Rica, Denmark, Ecuador, France, Germany, Great Britain, Greece, Guatemala, Hawaiian Kingdom, Haiti, Honduras, Italy, Liberia, Liechtenstein, Luxembourg, Netherlands, Mexico, Monaco, Montenegro, Nicaragua, Orange Free State that was later annexed by Great Britain in 1900, Paraguay, Peru, Portugal, Romania, Russia, San Domingo, San Salvador, Serbia, Spain, Sweden-Norway, Switzerland, Turkey, United States of America, Uruguay, and Venezuela. In 1945, there were 45, and today there are 193.

2.3. It is important to note that the Hawaiian Kingdom ensured that its neutrality would be recognized before the breakout of armed conflicts. "A nation that wishes to secure her own peace," says Vattel, "cannot more successfully attain that object than by concluding treaties [of] neutrality."[18] The treaties concluded by the Hawaiian Kingdom with Sweden-Norway, Spain and Germany provide explicit recognition of Hawaiian neutrality.

> "ARTICLE XV. All vessels bearing the flag of Sweden or of Norway in time of war shall receive every possible protection, short of actual

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[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 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.

[16] *Larsen case,* at 581.

[17] JOHN WESTLAKE, CHAPTERS ON THE PRINCIPLES OF INTERNATIONAL LAW 81 (1894).

[18] EMERICH DE VATTEL, THE LAW OF NATIONS 333 (6th ed., 1844).

> hostility, within the ports and waters of His Majesty the King of the Hawaiian Islands; and His Majesty the King of Sweden and Norway engages to respect in time of war the neutral rights of the Hawaiian Kingdom and to use his good offices with all other powers, having treaties with His Majesty the King of the Hawaiian Islands, to induce them to adopt the same policy towards the Hawaiian Kingdom." 1852 Hawaiian-Swedish/Norwegian Treaty.
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> "ARTICLE XXVI. All vessels bearing the flag of Spain, shall, in time of war, receive every possible protection, short of active hostility, within the ports and waters of the Hawaiian Islands, and Her Majesty the Queen of Spain engages to respect, in time of war the neutrality of the Hawaiian Islands, and to use her good offices with all the other powers having treaties with the same, to induce them to adopt the same policy toward the said Islands." 1863 Hawaiian-Spanish Treaty.
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> "ARTICLE VIII. All vessels bearing the flag of Germany or Hawaii shall in times of war receive every possible protection, short of actual hostility, within the ports and waters of the two countries, and each of the Contracting Parties engages to respect under all circumstances the neutral rights of the flag and the dominions of the other." 1879 Hawaiian-German Treaty.

2.4. Under customary international law in force in the nineteenth century, the territory of a neutral State could not be violated. This principle was codified by Article 1 of the 1907 Hague Convention, V, hereafter HC V, stating that the "territory of neutral Powers is inviolable." According to Politis, "[t]he law of neutrality, fashioned as it had been by custom and a closely woven network of contractual agreements, was to a great extent codified by the beginning of the [20th] century."[19] As such, the Hawaiian Kingdom's territory could not be trespassed or dishonored, and its neutrality "constituted a guaranty of independence and peaceful existence."[20]

3. FROM A STATE OF PEACE TO AN ILLEGAL STATE OF WAR

3.1. "Traditional international law was based upon a rigid distinction between the state of peace and the state of war," states Judge Greenwood.[21] "Countries were either in a state of peace or a state of war; there was no intermediate state."[22] This is also reflected by the fact that the renowned jurist of international law, Lassa Oppenheim, separates his treatise on *International Law* into two volumes, Vol. I—*Peace,* and Vol. II—*War and Neutrality*. In the nineteenth century, war was recognized as lawful, but it had to be justified under *jus ad bellum*. War could only be waged to redress a State's injury. As

[19] NICOLAS POLITIS, NEUTRALITY AND PEACE 27 (1935).
[20] *Id.*, at 31.
[21] Christopher Greenwood, "Scope of Application of Humanitarian Law," DIETER FLECK (ED.), THE HANDBOOK OF THE INTERNATIONAL LAW OF MILITARY OPERATIONS 45 (2nd ed., 2008).
[22] *Id*.

Vattel stated, "Whatever strikes at [a sovereign state's] rights is an injury, and a just cause of war."[23]

3.2. The Hawaiian Kingdom enjoyed a *state of peace* with all States. This state of affairs, however, was violently interrupted by the United States when the *state of peace* was transformed to a *state of war* that began on January 16, 1893. On January 17, 1893, Queen Lili'uokalani, the Executive Monarch of the Hawaiian Kingdom, made the following protest and a conditional surrender of her authority to the President of the United States in response to military action taken against the Hawaiian government by order of the U.S. resident diplomat John Stevens. The Queen's 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 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."[24]

3.3. Under international law, the landing of United States troops without the consent of the Hawaiian government was an *act of war*. But in order for an *act of war* to transform the state of affairs to a *state of war*, the act must be unlawful under international law. In other words, an *act of war* would not change the status of affairs to a *state of war* from that of *peace* if the action were legal under international law. According to Wright, "An act of war is an invasion of territory…and so normally illegal. Such an act if not followed by war gives grounds for a claim which can be legally avoided only by proof of some special treaty or necessity justifying the act."[25]

3.4. According to Brownlie, "The right of war, as an aspect of sovereignty, which existed in the period before 1914, subject to the doctrine that war was a means of last resort in the enforcement of legal rights, was very rarely asserted either by statesmen or works of authority without some stereotyped plea to a right of self-preservation, and of self-defence, or to necessity or protection of vital

[23] VATTEL, at 301.
[24] *Larsen case*, Annexure 2, at 612.
[25] Quincy Wright, "Changes in the Concept of War," 18 AM. J. INT'L L. 756 (1924).

interests, or merely alleged injury to rights or national honour and dignity."[26] The United States had no dispute with the Hawaiian Kingdom that would have warranted the landing of United States troops to overthrow the Hawaiian government.

3.5. The conditional surrender by Queen Lili'uokalani that asserted United States troops unlawfully invaded the kingdom called upon the President to conduct an investigation. After which she explicitly called upon the President to "undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands." In international law, this is called *restitutio in integrum*—restoration to the original situation before the United States intervention occurred on January 16, 1893.

3.6. In 1993, the 100th anniversary of the United States unlawful overthrow of the Hawaiian Kingdom government, the United States Congress enacted a joint resolution offering an apology. Of significance in the resolution was a particular "whereas" clause, which stated "Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reportedly fully and accurately on the illegal acts of the conspirators, described such acts as an 'act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, and acknowledged that by such acts the government of a peaceful and friendly people was overthrown."[27]

3.7. At first read, it would appear that the "conspirators" were the subjects that committed the "act of war," but this is misleading. First, under international law, only a country can commit an "act of war", whether through its military and/or its diplomats; and, second, under municipal laws, which are the laws applicable to a particular country, conspirators within a country could only commit treason not "acts of war." These two concepts are reflected in the terms *coup de main* and *coup d'état*. The former is a successful invasion by a foreign State's military force, while the latter is a successful internal revolt, which was also referred to in the nineteenth century as a revolution. According to the United States Department of Defense, a *coup de main* is an "offensive operation that capitalizes on surprise and simultaneous execution of supporting operations to achieve success in one swift stroke."[28]

3.8. In a petition to President Cleveland on December 27, 1893, from the Hawaiian Patriotic League, its leadership, comprised of Hawaiian statesmen and lawyers, clearly articulated the difference between a "revolution" and a "*coup de main*," and, as such, an international crime was committed. The petition read:

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[26] IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 41 (1963).
[27] *Larsen case*, Annexure 2, at 612.
[28] U.S. DEPARTMENT OF DEFENSE, THE DICTIONARY OF MILITARY TERMS (2009).

> "Last January, a political crime was committed, not only against the legitimate Sovereign of the Hawaiian Kingdom, but also against the whole of the Hawaiian nation, a nation who, for the past sixty years, had enjoyed free and happy constitutional self-government. This was done by a *coup de main* of U.S. Minister Stevens, in collusion with a cabal of conspirators, mainly faithless sons of missionaries and local politicians angered by continuous political defeat, who, as revenge for being a hopeless minority in the country, resolved to 'rule or ruin' through foreign help. The facts of this 'revolution,' as it is improperly called, are now a matter of history."[29]

3.9. Whether by chance or design, the 1993 Congressional Apology Resolution did not accurately reflect what President Cleveland stated in his message to Congress on December 18, 1893. When Cleveland stated the "military demonstration upon the soil of Honolulu was of itself an act of war," he was referring to United States armed forces and not to any of the conspirators. Cleveland noted, "that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies."[30] Clearly the *act of war* was committed by the armed forces of the United States. The landing, however, was just the beginning stage of a *coup de main* with the ultimate goal of seizing control of the Hawaiian government.

3.10. As part of the plan, the U.S. diplomat, John Stevens, would prematurely recognize the small group of insurgents on January 17th as if they were a successful revolution thereby giving it *de facto* status. In a private note to Sanford Dole, head of the insurgency, and written under the letterhead of the United States Legation on January 17, 1893, Stevens wrote, "Judge Dole: I would advise not to make known of my recognition of the de facto Provisional Government until said Government is in possession of the police station'.[31] A government created through intervention is a puppet of the intervening State, and, as such, has no lawful authority. "Puppet governments," according to Marek, "are organs of the occupant and, as such form part of his legal order. The agreements concluded by them with the occupant are not genuine international agreements [because] such agreements are merely decrees of the occupant disguised as agreements which the occupant in fact concludes with himself. Their measures and laws are those of the occupant."[32]

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[29] United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95, (Government Printing Office 1895), 1295, [hereafter Executive Documents], available at http://hawaiiankingdom.org/pdf/HPL_Petition_12_27_1893.pdf.
[30] *Larsen case*, Annexure 1, at 604.
[31] *Id.*
[32] KRYSTYNA MAREK, IDENTITY AND CONTINUITY OF STATE IN PUBLIC INTERNATIONAL LAW 114 (2nd ed., 1968).

3.11. International law provides the parameters by which a revolution is deemed to have been successful. Foreign States would acknowledge success when an insurgency has secured complete control of all governmental machinery, no opposition by the lawful government, and has the acquiescence of the national population. According to Lauterpacht, "So long as the revolution has not been successful, and so long as the lawful government…remains within national territory and asserts its authority, it is presumed to represent the State as a whole."[33] With full knowledge of what constituted a successful revolution, Cleveland provided a blistering indictment:

> "When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety…declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister's recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge."[34]

3.12. "Premature recognition is a tortious act against the lawful government," explains Lauterpacht, which "is a breach of international law."[35] And according to Stowell, a "foreign state which intervenes in support of [insurgents] commits an act of war against the state to which it belongs, and steps outside the law of nations in time of peace."[36] Furthermore Stapleton, states, "Of all the principles in the code of international law, the most important—the one which the independent existence of all weaker States must depend—is this: no State has a right FORCIBLY to interfere in the internal concerns of another State."[37]

3.13. Cleveland then explained to the Congress the egregious effects these acts of war had upon the Hawaiian government that led to the Queen's conditional surrender to the United States.

> "Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military

[33] E. LAUTERPACHT, RECOGNITION IN INTERNATIONAL LAW 93 (1947).
[34] *Larsen case*, Annexure 1, at 605.
[35] LAUTERPACHT, at 95.
[36] ELLERY C. STOWELL, INTERVENTION IN INTERNATIONAL LAW 349, n. 75 (1921).
[37] AUGUSTUS GRANVILLE STAPLETON, INTERVENTION AND NON-INTERVENTION 6 (1866).

> force of her kingdom was on her side and at her disposal, while the Committee of Safety, by actual search, had discovered that there were but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice. Accordingly, some hours after the recognition of the provisional government by the United States Minister, the palace, the barracks, and the police station, with all the military resources of the country, were delivered up by the Queen upon the representation made to her that her cause would thereafter be reviewed at Washington, and while protesting that she surrendered to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support the provisional government, and that she yielded her authority to prevent collision of armed forces and loss of life and only until such time as the United States, upon the facts being presented to it, should undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands."[38]

3.14. Despite the President's admitted unlawfulness of the acts of war committed against the Hawaiian Kingdom not being in compliance with *jus ad bellum*—justifying war, the United States was still obligated to comply with *jus in bello*—the rules of war. In the *Hostages Trial* (the case of *Wilhelm List and Others*), the Tribunal rejected the prosecutor's view that since the German occupation arose out of an unlawful use of force, Germany could not invoke the laws of occupation. The Tribunal explained:

> "The Prosecution advances the contention that since Germany's war against Yugoslavia and Greece were aggressive wars, the German occupant troops were there unlawfully and gained no rights whatever as an occupant […] [W]e accept the statement as true that the wars against Yugoslavia and Greece were in direct violation of the Kellogg-Briand Pact and were therefore criminal in character. But it does not follow that every act by the German occupation forces against person or property is a crime […] At the outset, we desire to point out that international law makes no distinction between a lawful and unlawful occupant in dealing with the respective duties of occupant and population in the occupied territory."[39]

As such, the United States remained obligated to comply with the laws of occupation. As the Tribunal further stated, "whatever may be the cause of a

[38] *Larsen case*, Annexure 1, at 606.
[39] *USA v. William List et al*. (Case No. 7), Trials of War Criminals before the Nuremburg Military Tribunals, Vol. XI, 1247 (1950).

war that has broken out, and whether or not the cause be a so-called just cause, the same rules of international law are valid as to what must not be done, [and what] may be done."[40]

3.15. The United States unlawful overthrow of the Hawaiian government did not affect, in the least, the continuity of the Hawaiian State, being the subject of international law. Wright asserts that, "international law distinguishes between a government and the state it governs."[41] Cohen also posits, "The state must be distinguished from the government. The state, not the government, is the major player, the legal person, in international law."[42] As Crawford explains, "There is a presumption that the State continues to exist, with its rights and obligations […] despite a period in which there is […] no effective, government." He further states, "Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[43]

3.16. According to Wright, "War begins when any state of the world manifests its intention to make war by some overt act, which may take the form of an act of war."[44] In his review of customary international law in the nineteenth century, Brownlie concluded, "that in so far a 'state of war' had any generally accepted meaning it was a situation regarded by one or both parties to a conflict as constituting a 'state of war.'"[45] Cleveland concluded by an "act of war…the Government of a feeble but friendly and confiding people has been overthrown."[46] What is of particular significance is that Cleveland referred to the Hawaiian people as "friendly and confiding," not "hostile." This is a classical case of where the United States President admits an unjust war not justified by *jus ad bellum*, but a *state of war* nevertheless.

3.17. Furthermore, in a *state of war*, the principle of effectiveness that you would otherwise have during a *state of peace* is reversed. Marek explains:

> "A comparison of the scope of the two legal orders, of the occupied and the occupying State, co-existing in one and the same territory and limiting each other, throws an interesting light on one aspect of the principle of effectiveness in international law. In the first place: of these two legal orders, that of the occupied State is regular and 'normal', while that of the occupying power is exceptional and limited. At the same time, the legal order of the occupant is, as has been strictly

[40] *Id*.
[41] Quincy Wright, 'The Status of Germany and the Peace Proclamation,' 46(2) AM. J. INT'L L. 307 (Apr. 1952).
[42] SHELDON M. COHEN, ARMS AND JUDGMENT: LAW, MORALITY, AND THE CONDUCT OF WAR IN THE TWENTIETH CENTURY 17 (1989).
[43] CRAWFORD, at 34.
[44] Quincy Wright, "Changes in the Concept of War," 18 AM. J. INT'L L. 758 (1924).
[45] BROWNLIE, at 38.
[46] *Larsen case*, Annexure 1, at 608.

> subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness. It can produce legal effects outside the occupied territory and may even develop and expand, not by reason of its effectiveness, but solely on the basis of the positive international rule safeguarding its continuity. Thus, the relation between effectiveness and title seems to be one of inverse proportion: while a strong title can survive a period of non-effectiveness, a weak title must rely heavily, if not exclusively, on full and complete effectiveness. It is the latter which makes up for the weakness in title. Belligerent occupation presents an illuminating example of this relation of inverse proportion. Belligerent occupation is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned."[47]

3.18. Cleveland told the Congress that he initiated negotiations with the Queen "to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned."[48] What Cleveland did not know at the time of his message to the Congress was that the Queen, on the very same day in Honolulu, accepted the conditions for settlement in an attempt to return the state of affairs to a *state of peace*. The executive mediation began on November 13, 1893 between the Queen and U.S. diplomat Albert Willis.[49] The President was not aware of the agreement until the following month of January 1894.[50]

3.19. Despite being unaware of the agreement to settle, President Cleveland's political determination in his message to the Congress was nonetheless conclusive that the United States was in a *state of war* with the Hawaiian Kingdom and was directly responsible for the unlawful overthrow of its government. International law defines war as "a contention between States for the purpose of overpowering each other."[51] Once a *state of war* ensued between the Hawaiian Kingdom and the United States, "the law of peace ceased to apply between them and their relations with one another became subject to the laws of war, while their relations with other states not party to the conflict became governed by the law of neutrality."[52]

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[47] MAREK, at 102.
[48] *Larsen case*, Annexure 1, at 610.
[49] David Keanu Sai, "A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and Its Use and Practice Today," 10 J. L. & SOC. CHALLENGES 119-127 (2008).
[50] Executive Documents, at 1283. In a dispatch to U.S. Diplomat Albert Willis from Secretary of State Gresham on January 12, 1894, he stated, "Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President's decision. The matter now being in the hands of the Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you." The *state of war* ensued.
[51] L. OPPENHEIM, INTERNATIONAL LAW, VOL. II—WAR AND NEUTRALITY 74 (3rd ed., 1921).
[52] GREENWOOD, at 45.

3.20. This outbreak of a *state of war* between the Hawaiian Kingdom and the United States would "lead to many rules of the ordinary law of peace being superseded…by rules of humanitarian law."[53] A *state of war* "automatically brings about the full operation of all the rules of war and neutrality."[54] And according to Venturini, "If an armed conflict occurs, the law of armed conflict must be applied from the beginning until the end, when the law of peace resumes in full effect."[55] Only by a treaty or agreement between the Hawaiian Kingdom and the United States could a *state of peace* be restored, without which a *state of war* ensues. In order to transform the *state of war* to a *state of peace* an attempt was made by executive agreement entered into on December 18, 1893. Cleveland, however, was unable to carry out his duties and obligations under the agreement to restore the situation that existed before to the unlawful landing of American troops due to political wrangling in the Congress.[56] The *state of war* continued to date.

3.21. International law differentiates a "declaration of war" from a "state of war." According to McNair and Watts, "the absence of a declaration…will not of itself render the ensuing conflict any less a war."[57] In other words, since a *state of war* is based upon concrete facts of military action there is no requirement for a formal declaration of war to be made other than providing formal notice of a State's "intention either in relation to existing hostilities or as a warning of imminent hostilities."[58] In 1946, a United States Federal Court had to determine whether a United States naval captain's life insurance policy, which excluded coverage if death came about as a result of war, covered his demise during the Japanese attack of Pearl Harbor on December 7, 1945. It was argued that the United States was not at war at the time of his death because the Congress did not formally declare war against Japan until the following day. The Court denied the this argument and concluded, "that the formal declaration by the Congress on December 8th was not an essential prerequisite to a political determination of the existence of a state of war commencing with the attack on Pearl Harbor."[59]

3.22. Therefore, the conclusion reached by President Cleveland that an *act of war* had been committed by the United States was a "political determination of the existence of a state of war," and that a formal declaration of war by the Congress was not essential. The "political determination" by President Cleveland regarding the actions taken by the military forces of the United States since January 16, 1893, was the same as the "political determination"

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[53] *Id*., at 46.
[54] Myers S. McDougal, "The Initiation of Coercion: A Multi-temporal Analysis," 52 AM. J. INT'L L. 247 (1948).
[55] Gabriella Venturini, "The Temporal Scope of Application of the Conventions," in ANDREW CLAPHAM, PAOLA GAETA, AND MARCO SASSÒLI (EDS), THE 1949 GENEVA CONVENTIONS: A COMMENTARY 52 (2015).
[56] Sai, Slippery Path, at 125-127.
[57] LORD MCNAIR AND A.D. WATTS, THE LEGAL EFFECTS OF WAR 7 (1966).
[58] BROWNLIE, at 40.
[59] *New York Life Ins. Co. v. Bennion*, 158 F.2d 260 (C.C.A. 10th, 1946), 41 AM. J. INT'L L. 682 (1947).

by President Roosevelt regarding actions taken by the military forces of Japan on December 7, 1945. Both "political determinations" of *acts of war* by these Presidents, created a *state of war* for the United States. A declaration of war by the Congress was not essential in both situations for international law purposes.

4. THE DUTY OF NEUTRALITY BY THIRD STATES

4.1. When the President declared that a *state of war* existed by an *act of war*, all of the other 42 States were under a duty of neutrality. "Since neutrality is an attitude of impartiality, it excludes such assistance and succour to one of the belligerents as is detrimental to the other, and, further such injuries to the one as benefit the other."[60] The duty of a neutral State, not a party to the conflict, "obliges him, in the first instance, to prevent with the means at his disposal the belligerent concerned from committing such a violation," *e.g.* to deny recognition of a puppet government unlawfully created by an *act of war*.[61]

4.2. Twenty of these States violated their obligation of impartiality by recognizing the so-called Republic of Hawai'i, a United States puppet government created by an *act of war* committed by the United States on January 17, 1893. These States include: Austria-Hungary (January 1, 1895);[62] Belgium (October 17, 1894); [63] Brazil (September 29, 1894); [64] Chile (September 26, 1894); [65] China (October 22, 1894);[66] France (August 31, 1894);[67] Germany (October 4, 1894);[68] Guatemala (September 30, 1894);[69] Italy (September 23, 1894);[70] Japan (April 6, 1897);[71] Mexico (August 8, 1894);[72] Netherlands (November 2,

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[60] OPPENHEIM, at 401.
[61] *Id.*, at 496.
[62] Austria-Hungary's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-austro-hungary/.
[63] Belgium's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-belgium/.
[64] Brazil's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-brazil/.
[65] Chile's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-chile/.
[66] China's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-china/.
[67] France's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-france/.
[68] Germany's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-germanyprussia/.
[69] Guatemala's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-guatemala/.
[70] Italy's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-italy/.
[71] Japan's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/05/27/recognition-of-the-republic-of-hawaii-japan/.
[72] Mexico's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-mexico/.

1894); [73] Norway-Sweden (December 17, 1894); [74] Peru (September 10, 1894); [75] Portugal (December 17, 1894); [76] Russia (August 26, 1894); [77] Spain (November 26, 1894);[78] Switzerland (September 18, 1894);[79] and the United Kingdom (September 19, 1894).[80]

4.3. "If a neutral neglects this obligation, he himself thereby commits a violation of neutrality, for which he may be made responsible by a belligerent who has suffered through the violation of neutrality committed by the other belligerent and acquiesced in by him."[81] The recognition of the so-called Republic of Hawai'i did not create any legality or lawfulness of the puppet regime, but rather is the indisputable evidence that these States' violated their obligation to be neutral. Diplomatic recognition of governments occurs during a *state of peace* and not during a *state of war*, unless providing recognition of belligerent status. These recognitions were not recognizing the Republic as a belligerent in a civil war with the Hawaiian Kingdom, but rather under the false pretense that the Republic succeeded in a so-called revolution and therefore was the new government of Hawai'i during a *state of peace*.

5. WAR CRIMES COMMITTED IN THE HAWAIIAN KINGDOM

5.1. Article 8 of the Statute of the International Criminal Court defines a war crime as, *inter alia*, "serious violations of the laws and customs applicable in international armed conflict."[82] 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," hereafter GC IV, 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,"[83] hereafter HC IV. United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in

[73] The Netherlands' recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-netherlands/.
[74] Norway-Sweden's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-swedennorway/.
[75] Peru's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-peru/.
[76] Portugal's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-portugal/.
[77] Russia's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-russia/.
[78] Spain's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-spain/.
[79] Switzerland's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-switzerland/.
[80] The United Kingdom's recognition of the Republic of Hawai'i, available at https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-britain/.
[81] OPPENHEIM, at 497.
[82] International Criminal Court Statute, Article 8.
[83] Title 18 U.S.C. §2441.

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."[84]

6. *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.

6.1. The United States failed to administer the laws of the Hawaiian Kingdom as it stood prior to the unlawful overthrow of the Hawaiian Kingdom government on January 17, 1893. Instead, the United States unlawfully maintained the continued presence and administration of law through its puppet regime established through intervention. The puppet regime was originally called the provisional government, which was later changed in name only 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.

6.2. 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."[85] 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."[86] 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

[84] U.S. Army Field Manual 27-10, section 499 (July 1956).
[85] 31 U.S. Stat. 141 (1896-1901).
[86] 73 U.S. Stat. 11 (1959).

> 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."[87]

6.3. Article 43 does not transfer sovereignty to the occupying power.[88] 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 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."[89]

6.4. 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, rendered 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 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 stemmed from unlawful entities.

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

6.5. 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

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[87] *Id.*

[88] 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).

[89] 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.

a new government, but rather a small group of insurgents installed through intervention. 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."

6.6. 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."[90]

6.7. As a result of 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. In 1900, the Republic was renamed the Territory of Hawai'i, and the United States 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, beginning in 1959, to the State of Hawai'i in direct violation of Article 45 of the HC IV.

6.8. 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

[90] Executive Documents, 568.

member of the legislature, or as an officer of the government of the Territory of Hawaii."[91] 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.

6.9. Beginning on July 20, 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."[92] The first executive order set aside 15,000 acres for two Army military posts on the Island of O'ahu called 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.[93] By 2012, the U.S. military has one hundred eighteen (118) military sites that span 230,929 acres of the Hawaiian Islands.[94]

Article 47—Pillage is formally forbidden.

6.10. 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.

6.11. Pillage or plunder is "the forcible taking of private property by an invading or conquering army,"[95] which, according to the Elements of Crimes of the

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[91] 31 U.S. Stat. 145 (1896-1901).
[92] 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).
[93] 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).
[94] U.S. Department of Defense's Base Structure Report (2012), available at: http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf.
[95] HENRY CAMPBELL BLACK, BLACK'S LAW DICTIONARY 1148 (1990).

International Criminal Court, must be seized "for private or personal use."[96] As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.[97] 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.

6.12. 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 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."

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.

6.13. 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

[96] Elements of Crimes, International Criminal Court, Pillage as a war crime (ICC Statute, Article 8(2)(b)(xvi) and (e)(v)).
[97] JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, INTERNATIONAL COMMITTEE OF THE RED CROSS—CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. 1, RULES 185 (2009).

acres, and the government lands comprised roughly 1.5 million acres. The total acreage of the Hawaiian Islands comprised 4 million acres.

6.14. 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."[98]

6.15. 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."[99]

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.

6.16. In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i*,[100] 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."

> "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

[98] *Estate of His Majesty Kamehameha IV*, 3 Haw. 715, 725 (1864).
[99] 30 U.S. Stat. 750 (1896-1898).
[100] 31 U.S. Stat. 141 (1896-1901).

> 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!'"[101]

6.17. 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 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.[102]

6.18. 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."[103] 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

[101] William Inglis, *Hawaii's Lesson to Headstrong California*, HARPER'S WEEKLY, Feb. 16, 1907, at 228.
[102] 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).
[103] 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.

> 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."[104]

6.19. 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 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."[105]

6.20. 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."[106]

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[104] *Id*., at 6.
[105] LYNN H. NICHOLAS, CRUEL WORLD: THE CHILDREN OF EUROPE IN THE NAZI WEB 277 (2005).
[106] Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, at 27, 63 (Nuremberg, Germany, 1947).

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

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

7.1. In 2013, the United States Internal Revenue Service, hereafter IRS, illegally appropriated $7.1 million dollars from the residents of the Hawaiian Islands.[107] During this same year, the government of the State of Hawai'i additionally appropriated $6.5 billion dollars illegally.[108] 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 is precluded from appropriating money from the inhabitants of an occupied State without violating the international laws of occupation.

7.2. 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.[109]

7.3. The *Merchant Marine Act,* June 5, 1920,[110] 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.

7.4. 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

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[107] 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.

[108] State of Hawai'i Department of Taxation Annual Reports, available at: http://files.hawaii.gov/tax/stats/stats/annual/13annrpt.pdf.

[109] 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.

[110] 41 U.S. Stat. 988.

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.[111] 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.

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

7.5. 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."[112] 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).

7.6. 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

7.7. Since January 17, 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

[111] 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.
[112] Title 50 U.S.C. App. 453, The Military Selective Service Act.

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

7.8. According to the United States Department of Justice, the prison population in the Hawaiian Islands in 2009 was at 5,891.[113] Of this population there were 286 aliens.[114] 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*.[115] 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.

7.9. 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.[116] 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

7.10. 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

[113] United States Department of Justice's Bureau of Justice Statistics, *Prisoners in 2011*, available at: http://www.bjs.gov/content/pub/pdf/p11.pdf.
[114] 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.
[115] LaGrand (*Germany v. United States of America*), Judgment, I.C.J. Reports 2001, 466.
[116] 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.

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 January 17, 1893. All other individuals born after January 17th to the present are aliens who can only acquire the nationality of their parents. According to von Glahn, "children born in territory under enemy occupation possess the nationality of their parents."[117]

7.11. 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,[118] 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

7.12. On August 12, 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.[119] These combined lands constituted nearly half of the entire territory of the Hawaiian Kingdom.

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[117] VON GLAHN, at 780.

[118] 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).

[119] 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*.

7.13. 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.

7.14. 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.

7.15. In 2006, the United States Army disclosed to the public that depleted uranium, hereafter DU, was found on the firing ranges at Schofield Barracks on the Island of O‘ahu.[120] 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.[121] 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.

7.16. 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, of HC V, HC IV, and GC IV, and therefore are war crimes.

8. CONCLUSION

8.1. The gravity of the Hawaiian situation has been heightened by North Korea's declaration of war against the United States and South Korea on March 30, 2013, which specifically mentioned Hawai‘i as a target.[122] When Japan

[120] U.S. Army Garrison-Hawai‘i, Depleted Uranium on Hawai‘i's Army Ranges, available at: http://www.garrison.hawaii.army.mil/du/.
[121] *Id*.
[122] 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 North

attacked the military installations of the United States on the island of O'ahu on December 7, 1941, it unduly placed the civilian population in physical harm. 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."[123] The advancement of modern weaponry, which includes nuclear, biological, chemical and cyber warfare,[124] far surpasses the conventional weapons used during the Japanese attack.

8.2. The failure of the United States to comply with *jus in bello* for over a century has created a humanitarian crisis of unimaginable proportions where war crimes has since risen to a level of *jus cogens*—compelling law. As such, obligations deriving from *jus cogens* are presumed *erga omnes*—flowing to all. The international community's failure to intercede, as a matter of *obligatio erga omnes,* can only be explained by the United States deceptive portrayal that Hawai'i was incorporated into its territory.

8.3. Through a very effective program of denationalization—*Americanization*, the national consciousness 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. As Judge Greenwood stated, "Countries were either in a state of peace or a state of war; there was no intermediate state." The Hawaiian Kingdom has been in an illegal *state of war* with the United States of America for the past 124 years.

David Keanu Sai, Ph.D.

Korea'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.

[123] 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/.

[124] 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.