

WAR CRIMES REPORT: INTERNATIONAL ARMED CONFLICT AND THE COMMISSION OF WAR CRIMES IN THE HAWAIIAN ISLANDS

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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 News¹ and Radio² 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.

* 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=xI9LaY5fPSU&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

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 indispensable 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

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:

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 (William 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 agreements²¹ 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 UNITED 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 Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai’i today*, 10 J. L. & SOC. CHALLENGES 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

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 power⁴¹ of the Hawaiian Kingdom is temporarily vested in the President of the United States to faithfully administer Hawaiian Kingdom law, until the Hawaiian Kingdom

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:

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://hawaiiakingdom.org/pdf/Annex%2018.pdf>.

⁴⁷ The signature petition *available at*: <http://hawaiiakingdom.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

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

⁶³ WESTEL WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES Westel Willoughby, (2nd ed. 1929), 427.

⁶⁴ The Maui News article available at: <http://hawaiiakingdom.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:

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, indispensable 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.

...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 administering 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

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”

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.

⁸⁹ BLACK’S LAW DICTIONARY 1186 (6th ed. 1990).

⁹⁰ See HALL, *supra* note 23, at 22.

⁹¹ See generally, KRYSZYNA 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.

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

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 colonization¹⁰⁶ 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

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.

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

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 language¹²⁰ 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

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* case¹²⁸ 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

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.

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.

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

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

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

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 264c, Swiss Criminal Code.

¹⁵⁸ *Id.*, Article 264j.

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.”

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 Hawaiian 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

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, I. 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 Nuremberg 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

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 $\frac{3}{4}$ 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.

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://lrhawaii.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/Kalaheo 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 crimes¹⁹² or violations of international humanitarian law¹⁹³ 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*

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 264j.

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 years¹⁹⁹ 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

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 Hawai‘i 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 Hawai‘i or being evicted as a result of non-judicial foreclosures in the district courts of the State of Hawai‘i, were challenging the subject matter jurisdiction of these courts based upon evidence that the Hawaiian Kingdom, as an independent and sovereign State, continued to exist. As such, the controlling

²²² *Id.*, Article 264m.

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

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

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 Nuremberg 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 occurred 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

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, LLC, whose address is 900 Fort Street Mall, Suite 800, Honolulu, HI 96813;

10. *Sofia M. Hirostone*, 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.outtrigger.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>.

Appendix “I”

Curriculum Vitae

DAVID KEANU SAI, PH.D.



EXPERTISE:

International relations, state sovereignty, international laws of occupation, United States constitutional law, Hawaiian constitutional law, and Hawaiian land titles.

ACADEMIC QUALIFICATIONS:

- Dec. 2008: Ph.D. in Political Science specializing in international law, state sovereignty, international laws of occupation, United States constitutional law, and Hawaiian constitutional law, University of Hawai`i, Manoa, H.I.
- Doctoral dissertation titled, “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State.”
- May 2004: M.A. in Political Science specializing in International Relations, University of Hawai`i, Manoa, H.I.
- May 1987: B.A. in Sociology, University of Hawai`i, Manoa, H.I.
- May 1984: A.A. in Pre-Business, New Mexico Military Institute, Roswell, N.M., U.S.
- May 1982: Diploma, Kamehameha Schools, Honolulu, H.I.

PUBLICATIONS:

Legal Brief, “The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom,” August 4, 2013, available at:

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Book, “Ua Mau Ke Ea-Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands.” (Pu‘a Foundation, Honolulu, 2011).

Article, “1893 Cleveland-Lili‘uokalani Executive Agreements.” November 28, 2009, unpublished, available at <http://www2.hawaii.edu/~anu/publications.html>.

Article, “Establishing an Acting Regency: A Countermeasure Necessitated to Preserve the Hawaiian State.” November 28, 2009, unpublished, available at <http://www2.hawaii.edu/~anu/publications.html>.

Book, “Land Titles in the Hawaiian Islands: From Origins to the Present (forthcoming).” Contract signed with University of Hawai‘i Press, May 7, 2009.

Article, “The Myth of Ceded Lands and the State’s Claim to Perfect Title.” *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, April 2009.

Dissertation, “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State,” University of Hawai‘i at Manoa, Political Science, December 2008, available at <http://www2.hawaii.edu/~anu/publications.html>.

Article, “A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its Use and Practice in Hawai‘i Today,” *Journal of Law and Social Challenges* (San Francisco School of Law), Vol. 10 (Fall 2008), available at <http://www2.hawaii.edu/~anu/publications.html>.

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- “Revisiting the Fake Revolution of January 17, 1893”
- “What does TWA Flight 800 and the Hawaiian Kingdom have in Common”

- “American Migration to the Hawaiian Kingdom and the Push for State into the American Union”
- “Hawaiian Nationality: Who Comprises the Hawaiian Citizenry?”
- “The Vision of the *acting* Council of Regency”

VIDEO/RADIO:

Video: “Ka‘apuni Honua, KS Song Contest Preshow,” *Kamehameha Schools Song Contest*, KGMB television, March 21, 2014.

Video: “Hawai‘i and the Law of Occupation.” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, March 11, 2009.

Video: “Title Insurance and Land Ownership in Hawai‘i.” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, February 4, 2009.

Video: “What are Ceded Lands?” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, December 22, 2009.

Video: “Hawaiian Kingdom Law and Succession.” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, November 16, 2008.

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Internet Radio: “The Gary Baumgarten Report News Talk Online: Hawaii ‘Kingdom’ Proponent Makes Case For An Independent Hawai‘i.” Guest on a daily talk internet radio show, <http://garybaumgarten.blogspot.com/2008/04/hawaii-kingdom-proponent-makes-case-for.html>, April 11, 2008.

Radio: “Talk Story with Uncle Charlie.” Guest on a weekly talk radio show. *KNUI AM 900*, Kahului, January 23, 2004.

Radio: “Perspective,” co-host with Keaumiki Akui for a weekly talk radio show concerning Hawaiian political history. *KCCN AM 1420*, Honolulu, 1999-2001.

Video: “Hawaiian Kingdom Law a Presentation.” *Na Maka o ka Aina*, 1999.

Video: Segments of *Aloha Quest* (six-hour broadcast), KFVE television, Honolulu, December 19, 1999.

- “The Hawaiian Kingdom”
- “What is a Hawaiian subject”
- “Attempted Overthrow of 1893”
- “The Annexation that Never Was”
- “Internal Laws of the United States”
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- “U.S. Senate debate: Apology resolution, Oct. 1993”

MILITARY:

- Aug. 1994: Honourably Discharged
- Dec. 1990: Diploma, *U.S. Army Field Artillery Officer Advanced Course*, Fort Sill, OK
- May 1990: Promoted to Captain (O-3)
- Apr. 1990: Diploma, *U.S. Air Force Air Ground Operations School*, Hurlbert Field, FL
- May 1987: Promoted to 1st Lieutenant (O-2)
- Sep. 1987: Diploma, *U.S. Army Field Artillery Officer Basic Course*, Fort Sill, OK
- Sep. 1984: Assigned to *1st Battalion, 487th Field Artillery*, Hawai`i Army National Guard, Honolulu, H.I.
- May 1984: Army Reserve Commission, 2nd Lieutenant (O-1), Early Commissioning Program (ECP) from the New Mexico Military Institute, Roswell, NM

GOVERNMENT SERVICE:

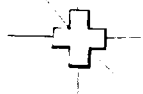
- March 1996: Appointed Regent, *pro tempore*, by the Trustees of the Hawaiian Kingdom Trust Company
- Sep. 1999: Named *acting* Minister of the Interior and Chairman of the *acting* Council of Regency by resolution of the Privy Council
- Nov. 1999: Agent for the *acting* Government in arbitral proceedings before the Permanent Court of Arbitration, The Hague, Netherlands (*Larsen v. Hawaiian Kingdom*)
- July 2001: Agent for the *acting* Government in order to file a Complaint against the United States of America with the United Nations Security Council on July 5, 2001
- Aug. 2012: Commissioned Ambassador-at-large for the Hawaiian Kingdom by the *acting* Minister of Foreign Affairs
- Aug. 2012: Agent for the *acting* Government in order to file a Protest and Demand with the United Nations General Assembly, August 10, 2012
- June 2013: Agent for the *acting* Government in order to file a State Referral with the International Criminal Court, June 11, 2013
- Sept. 2013: Agent for the *acting* Government in order to file an Application Instituting Proceedings before the International Court of Justice, September 27, 2013

GENERAL DATA:

Nationality: Hawaiian

Born: July 13, 1964, Honolulu, H.I.

Appendix “II”



LE CONSEIL FEDERAL

de la Confédération Suisse

après avoir vu et examiné le Traité d'amitié, de commerce et d'établissement réciproques, conclu sous réserve de ratification à Berne, le 20. Juillet 1864, entre les fondés de pouvoir du Conseil fédéral et de Sa Majesté le Roi des Îles Hawaïennes, ainsi que les décisions du Conseil des États suisse, datée du 24. Septembre 1864 et du Conseil National suisse, datée du 28. Septembre 1864 qui approuvent le dit Traité dont la teneur suit.

Traité d'amitié, d'établissement
et de commerce
entre
la Confédération Suisse
et
Sa Majesté le Roi Hawaïen.

Treaty of friendship, establishment
and commerce
between
the Swiss Confederation
and
His Majesty the King of the
Hawaiian Islands.

La Confédération Suisse
et
Sa Majesté le Roi Hawaïen,
animés du désir d'établir et de renforcer
des liens d'amitié entre les deux pays et

The Swiss Confederation
and His Majesty
the King of the Hawaiian Islands
animated by the desire to establish and
to strengthen the ties of friendship between



et d'accroître par tous les moyens à leur disposition, les relations commerciales de leurs citoyens respectifs, ont résolu de conclure un Traité d'amitié, d'établissement et de commerce réciproque, et ont à cet effet nommé pour leurs Plénipotentiaires, savoir:

Le Conseil fédéral suisse:

le sieur **Frederic Frey-Herosée**, Colonel fédéral, Membre du Conseil fédéral suisse, Chef du Département du Commerce et des Liages, et

Sa Majesté le Roi Kawaïien:

le sieur **John Bowring**, Chevalier, Bachelier de la Grande-Bretagne, Commandeur de l'Ordre de Léopold de Belgique, Son Envoyé Extraordinaire et Ministre Plénipotentiaire, lesquels après s'être communiqué leurs pleins-pouvoirs respectifs trouvés en bonne et due forme, ont arrêté et signé les articles suivants:

Article I

Il y aura entre la Suisse et les Iles Kawaïiennes paix perpétuelle et liberté réciproque d'établissement et de commerce.

Les Kawaïiens seront reçus et traités dans chaque Canton de la Confédération suisse, relativement à leurs personnes et à leurs propriétés

the two countries and to promote by every means in their power the commercial relations between their respective citizens, have resolved to conclude a Treaty of friendship and commerce and reciprocal establishment and have for that purpose named as their Plenipotentiaries that is to say:

The Swiss federal Council:

M^r. Frederic Frey-Herosée, federal Colonel, Member of the swiss federal Council, head of the Department of Commerce and Customs, and

His Majesty the Kawaïian King:

Sir John Bowring, Knight Bachelor of Great Britain, Commander of the Order of Leopold of Belgium &c. &c. His Envoy Extraordinary and Minister Plenipotentiary, who, after having communicated to each other their respective full powers found in good and due form, have agreed upon and signed the following articles:

Article I

There shall be between Switzerland and the Kawaïian Islands perpetual peace and reciprocal liberty of establishment and commerce.

Kawaïians shall be received and treated in every Canton of the Swiss Confederation, as regards their persons and their properties, on the

sur le même pied et de la même manière
qu'ils sont ou pourraient l'être, à l'avenir,
les ressortissants des autres Cantons. Les
Suisses jouiront dans les Îles Hawaïennes
des mêmes droits et avantages que les Ha-
waiiens en Suisse. Conformément à ce
principe et en dedans de ces limites, les cito-
yens de chacune des deux parties contractan-
tes pourront ~~exercer~~ dans les territoires respec-
tifs et en se conformant aux lois du pays,
voyager ou séjourner, commercer tant en
gros qu'en détail, exercer toute profession
ou industrie, louer et occuper les maisons, ma-
gasins, boutiques et établissements qui leur
seront nécessaires, effectuer des transports de
marchandises et d'argent et recevoir des con-
signations tant de l'intérieur que des pays
étrangers, sans que pour toutes ou quelques
unes de ces opérations les dits citoyens soient as-
ujettis à d'autres obligations que celles qui pé-
sent sur les nationaux, sauf les précautions de
police qui sont employées à l'égard des na-
tions les plus favorisées. Ils seront, les uns et
les autres, sur un pied de parfaite égalité libre,
dans tous leurs achats comme dans toutes leurs
ventes, d'établir et de fixer le prix des effets, mar-
chandises et objets quelconques tant importés

same footing and in the same manner as
now are or may hereafter be treated the ci-
tizens of other Cantons. The Swiss shall
enjoy in the Hawaiian Islands all the
same rights as Hawaiians in Switzerland.
Conformably with this principle and with-
in these limits the citizens of each of the
contracting parties may freely in their res-
pective territories and conforming themselves
to the laws of the country, travel and sojourn,
trade wholesale and retail, exercise every pro-
fession or industry, hire and occupy houses,
warehouses, shops or other establishments ne-
cessary to them, effect transports of merchan-
dise and money, receive consignments both
from the interior and from foreign countries
and for all or any of these operations the said
citizens shall be subject to no other obligations
than those which rest upon national subjects
excepting those police arrangements which are
employed towards the most favored nations.
They shall both be placed on a footing of perfect
equality, free in all their purchases as in all
their sales and to establish and to fix the price
of articles, merchandises and all objects imported
as well as national, whether sold for home con-
sumption or intended for exportation or the

que nationaux, qu'ils les vendent à l'intérieur, ou qu'ils les destinent à l'exportation, sauf à se conformer expressément aux lois et réglemens du pays.

Ils jouiront de la même liberté pour faire leurs affaires eux-mêmes, présenter en douane leurs propres déclarations ou se faire suppléer par qui bon leur semblera, fondés de pouvoirs, facteurs, agents, consignataires ou interprètes, dans l'achat ou dans la vente de leurs biens, leurs effets ou marchandises, ils auront également le droit de remplir toutes les fonctions qui leur seront confiées par leurs propres compatriotes, par des étrangers ou par des nationaux, en qualité de fondés de pouvoirs, facteurs, agents, consignataires ou interprètes.

Enfin, ils ne paieront point, à raison de leur commerce ou de leur industrie dans les villes ou lieux quelconques des deux États, soit qu'ils s'y établissent, soit qu'ils y résident temporairement, des droits, taxes ou impôts, sous quelque dénomination que ce soit, autres ou plus élevés que ceux qui se percevront sur les nationaux ou sur les citoyens de la nation la plus favorisée et les privilèges, immunités et autres faveurs quelconques dont jouissent, en matière de commerce et d'industrie, les citoyens de l'un des deux États con-

condition of expressly conforming to the laws and regulations of the country.

They shall enjoy the same freedom for carrying on their own affairs, of presenting in the customhouse their own declarations or of replacing them by whom they please as attorneys, factors, agents, consignees or interpreters in the purchase or sale of their goods, properties or merchandises. They shall enjoy the right of exercising all the functions confided to them by their own countrymen, by foreigners or natives, as attorneys, factors, agents, consignees or interpreters.

In fine they shall not pay on account of their commerce or industry in any of the towns or places of the said states, whether they be there established or temporarily residing, any duties, taxes or imports of whatever denomination they may be, other or higher than those paid by natives or the citizens of the most favored nation and the privileges, immunities or other favors whatever, which are enjoyed in matters of commerce or industry by the citizens of either of

contractants, seront communs à ceux de l'autre.

Article II.

Les citoyens d'une des deux parties contractantes, résidant ou établis dans les territoires de l'autre qui voudront retourner dans leur pays ou qui y seront renvoyés par sentence judiciaire, par mesure de police légalement adoptée et exécutée, ou d'après les lois sur la mendicité et les mœurs, seront reçus en tout temps et en toute circonstance, eux et leurs familles, dans le pays dont ils sont originaires et où ils auront conservé leurs droits conformément aux lois.

Article III.

Les citoyens de chacune des deux parties contractantes jouiront, sur le territoire de l'autre partie, de la plus constante et complète protection pour leurs personnes et leurs propriétés. Ils auront, en conséquence, un libre et facile accès auprès des Tribunaux de justice pour la poursuite et la défense de leurs droits, en toute instance et dans tous les degrés de juridiction établis par les lois. Ils seront libres d'employer, dans toutes les circonstances, les avocats, avoués ou agents de

the contracting states shall be common to those of the other.

Article II.

The citizens of one of the contracting parties residing or established in the territories of the other, who may desire to return to their country or who shall be sent away by a judicial sentence, by a police measure regularly adopted and executed or according to the laws of mendicancy and public morals shall be received at all times and under all circumstances, they and their families in the country of their origin and in which they may have preserved their legal rights.

Article III.

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

toute classe qu'ils jugeraient à propos de faire agir en leur nom, choisis parmi les personnes admises à l'exercice de ces professions, d'après les lois du pays. Enfin, ils jouiront, sous ce rapport, des mêmes droits et privilèges que ceux qui sont accordés aux nationaux, et ils seront soumis aux mêmes conditions.

Les sociétés anonymes, commerciales, industrielles ou financières, légalement autorisées dans l'un des deux ^{pays} seront admises à ester en Justice dans l'autre, et jouiront, sous ce rapport, des mêmes droits que les particuliers.

Article IV.

Les citoyens de chacune des deux parties contractantes auront, sur les territoires de l'autre, liberté pleine et entière d'acquies, de posséder par achat, vente, donation, échange, mariage, testament, succession ab intestat ou de toute autre manière, toute espèce de propriété mobilière ou immobilière dont les lois du pays permettent la possession aux nationaux, et d'en disposer.

Leurs héritiers et représentants peuvent leur succéder et prendre possession par eux-mêmes ou par des fondés de pouvoirs, agis-

to act in their name, chosen among those admitted to exercise these 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 conditions.

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.

Article IV.

The citizens of each of the contracting parties shall on the territories of the other enjoy full and entire liberty to acquire, to possess by purchase, sale, donation, exchange, marriage, testament, succession ab intestat or in any other way, every sort of real or personal property which the laws of the country allow a native of the country to dispose of or to possess.

Their heirs and representatives may succeed them and take possession by themselves or by their attorneys acting in their names.

sant en leur nom d'après les formes ordinaires de la loi à l'instar des citoyens du pays.

Dans l'absence des héritiers ou des représentants, la propriété sera traitée de la même manière que celle d'un citoyen du pays serait traitée dans des circonstances semblables.

Et sous ces égards, ils ne paieront de la valeur d'une telle propriété aucune imposition, contribution ou charge autre ou plus forte que celle auxquelles sont soumis les citoyens du pays.

Dans tous les cas il sera permis aux citoyens des deux parties contractantes d'exporter leurs biens, savoir:

les citoyens suisses du territoire hawaïen et les citoyens hawaïens du territoire suisse, librement et sans être assujettis lors de l'exportation à payer un droit quelconque en qualité d'étrangers et sans devoir acquitter des droits autres ou plus forts que ceux auxquels les propres citoyens du pays seront eux-mêmes tenus.

Article V.

Les citoyens de chacune des deux parties

according to the ordinary forms of law applicable to native citizens.

In the absence of such heirs or representatives, the property shall be treated in the same manner as that of a native citizen under similar circumstances.

And in no case shall they pay on the value of such property any impost, contribution or charge other or greater than that to which natives are subject.

In all cases it shall be allowed to the citizens of the two contracting parties to export their property that is to say Swiss citizens on Hawaiian territory and Hawaiian citizens on Swiss territory shall freely and without being subjected on exportation to pay any duty whatever as stranger or being called on to pay other or heavier duties than those to which native citizens are themselves subject.

Article V.

The citizens of each of the contracting

contractantes qui se trouvent dans les ter-
ritoires de l'autre, seront affranchis de tout
service militaire obligatoire, tant dans
l'armée et la flotte que dans la garde natio-
nale ou civique ou les milices, ils seront
également exempts de toute prestation pé-
cuniaire ou matérielle imposée par com-
pensation pour le service personnel, tout
comme des réquisitions militaires, excep-
té pour les logements et les fournitures
pour le militaire en passage, selon l'usage
du pays et à demander également aux
citoyens et aux étrangers.

Article VI.

En temps de paix comme en temps
de guerre il ne pourra dans aucune circon-
stance être imposé ou exigé pour les biens
d'un citoyen de l'une des deux parties
contractantes dans les territoires de l'autre,
des taxes, droits, contributions ou charges
plus forts qu'il n'en serait imposé ou exigé
pour la même propriété, si elle appartenait
à un citoyen du pays ou à un citoyen
ou un sujet de la nation la plus favorisée.

Il est d'ailleurs entendu qu'il ne sera
perçu ni demandé d'un citoyen de l'une
des deux parties contractantes qui se

parties who may be in the territories of
the other, shall be freed from all obligato-
ry military service either in the army
or the navy, the national or civic guard
or militia. They shall be free from the
payment of all exemption money or
contribution imposed for personal service,
as from all military requisitions except
for lodgings or supplies for soldiers on
their route, according to the usage of the
country, to be required equally from na-
tives and from foreigners.

Article VI.

Neither in time of peace nor in time of war
shall there under any circumstances be im-
posed ^{or exacted} on the property of a citizen of either
of the contracting parties in the territories of
the other taxes, duties, contributions or char-
ges higher than are imposed or exacted
on the same properties belonging to a
native of the country or a subject of the
most favored nation.

It is further understood that there
shall be neither received nor demanded from
a citizen of either of the contracting parties

trouve dans le territoire de l'autre partie, aucun impôt que ce soit, autre ou plus fort que celui qui sont ou qui pourront être imposés ou levés d'un citoyen du pays ou d'un citoyen ou sujet de la nation la plus favorisée.

Article VII.

Il sera loisible aux deux parties contractantes de nommer des Consuls, Vice-Consuls ou Agents consulaires pour résider dans les territoires de l'autre. Mais avant qu'un de ces officiers puisse agir en cette qualité, il devra être reconnu et admis dans la forme ordinaire par le Gouvernement auquel il est délégué, et chacune des deux parties contractantes pourra excepter de la résidence d'officiers consulaires des places spéciales, selon qu'elle le jugera nécessaire.

Les officiers consulaires de chacune des deux parties contractantes jouiront sur les territoires de l'autre de tous les privilèges, exemptions et immunités qui sont ou qui pourront être accordés aux officiers du même rang de la nation la plus favorisée.

Article VIII.

Les deux parties contractantes s'engagent à traiter les citoyens respectifs dans tout ce qui

in the territory of the other, any impost be it what it may, other or greater, than what is or may be demanded of a native or a citizen or subject of the most favored nation.

Article VII.

It shall be free for each of the two contracting parties to nominate consuls, viceconsuls 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.

The consular authorities of each of the contracting parties shall enjoy on the territories of the other all the privileges, exemptions and immunities accorded to officers of the same rank of the most favored nation.

Article VIII.

The two contracting parties promise to place the respective citizens in every thing

toucher l'importation, l'entrepôt, le transit et l'exportation de tout article de commerce légal, sur le même pied que les citoyens du pays, ou que les citoyens ou sujets de la nation la plus favorisée, dans tous les cas où ces derniers jouiraient d'un avantage exceptionnel non accordé aux nationaux.

Article IX.

Chacune des deux parties contractantes ne pourra exiger pour l'importation, l'entrepôt, le transit ou l'exportation des produits du sol ou des manufactures de l'autre, des droits plus élevés que ceux qui sont ou peuvent être imposés sur les mêmes articles, étant les produits du sol ou des manufactures de tout autre pays étranger.

Les droits d'entrée payés dans les Îles Kermadec sur les produits d'origine ou de manufacture suive seront donc, dès l'entrée en vigueur du Traité actuel, réduits au taux accordé à la nation la plus favorisée et perçus d'après les mêmes règles et sous les mêmes conditions.

Article X.

Les deux parties contractantes s'engagent pour le cas où l'une d'elles accorderait

which concerns the importation, warehousing, transit and exportation of every article of legal commerce, on the same footing as native citizens or the citizens or subjects of the most favored nation wherever these enjoy an exceptional advantage not granted to natives.

Article IX.

Neither of the contracting parties shall exact on the importation, warehousing, transit or exportation of the products of the soil or manufactures of the other, higher duties than those, which are or may be imposed on the same articles, being the produce of the soil or the manufactures of any other country.

The import duties to be paid in the Kermadec Islands on the products of foreign origin or manufacture shall therefore be, as soon as this present treaty becomes in force, reduced to the rate accorded to the most favored nation and levied by the same rule and under the same conditions.

Article X.

The two contracting parties promise that in case either of them shall grant to a third

navant à une troisième Puissance quel que
faveur en matière de commerce ou de douane,
à être en même temps et de plein droit
cette faveur à l'autre partie contractante.

Article VI.

Les objets passibles d'un droit d'entrée
qui servent d'échantillons et qui sont impor-
tés dans les Îles Hawaïennes par des com-
mis-royageurs de maisons suisses ou im-
portés en Suisse par des commis-royageurs
de maisons hawaïennes, seront, de part et
d'autre, admis en franchise temporaire, moyennant
les formalités de douane nécessaires
pour en assurer la réexportation ou la réinte-
gration en entrepôt.

Article VII.

Dans le cas où un différend s'élèverait entre
les deux pays contractants, qui ne pourrait
pas être arrangé amicalement, par corres-
pondance diplomatique entre les deux Gouver-
nements, ces derniers désigneraient d'un com-
mun accord, pour arbitre une puissance tierce,
neutre et amie et dont l'arbitrage serait ad-
mis par les deux parties.

Article VIII.

Les stipulations du présent Traité seront
exécutées dans les deux États dès le centième

[Signature]

power any favor in commercial or cu-
stomhouse matters, that favor shall be ex-
tended at the same time and in full right
to the other of the contracting parties.

Article VI.

Articles subject to duty on entry but ser-
ving as patterns and which are imported in-
to the Hawaiian Islands by commercial
travellers of Swiss houses or imported into
Switzerland by the commercial travellers
of Hawaiian houses, shall on both sides be
admitted without charge subject to the custom-
house regulations necessary to insure their
reexportation or transfer to the bonded
warehouse.

Article VII.

Should any question arise between the con-
tracting countries which cannot be amicably
settled by the diplomatic correspondence
of the two Governments, these shall by com-
mon accord designate a third friendly
and neutral power as arbitrator, whose deci-
sion shall be recognised by both parties.

Article VIII.

The stipulations of the present Treaty shall
take effect in the two countries from the

[Signature]

jour après l'échange des ratifications. Le
Traité restera en vigueur pendant dix
ans, à dater du jour de l'échange des ra-
tifications. Dans le cas où aucune des
deux parties contractantes n'aurait noti-
fié douze mois avant la fin de la dite pé-
riode, son intention d'en faire cesser les effets,
le Traité demeurera obligatoire jusqu'à
l'expiration d'une année à partir du jour
où l'une ou l'autre des parties contractan-
tes l'aura dénoncé.

Les parties contractantes se réservent la
faculté d'introduire d'un commun accord
dans ce traité toutes modifications qui ne
seraient pas en opposition avec son esprit ou
ses principes et dont l'utilité serait dé-
montrée par l'expérience.

Article XIV.

Le présent Traité sera soumis à l'as-
sentiment des Chambres législatives de la
Suisse et du Consentement de Sa Majesté
Kavaienne, et les ratifications en se-
ront échangées à Paris dans les dix-
huit mois à dater de la signature ou
plus tôt si faire se peut.

En foi

hundredth day after the exchange of these
ratifications. - The treaty shall remain in
vigour for ten years dating from the day
of the said exchange. - In case neither of
the contracting parties shall have notified
twelve months before the end of the said
period its intention to terminate the same,
this treaty will continue obligatory till
the expiration of a year, reckoning from the
day on which either of the contracting par-
ties shall give notice of its termination.

The contracting parties reserve to them-
selves the right of introducing by common
consent into this treaty any modifications
which are not opposed to its spirit or its
principles and of which experience shall have
demonstrated the utility.

Article XIV.

The present treaty shall be subjected
to the approval of the Legislative Cham-
bers of Switzerland and of the Privy
Council of His Hawaiian Majesty, and
the ratifications shall be exchanged in
Paris within eighteen months of the date
of the signature or earlier if may be.

In faith

En foi de quoi les Plénipotentiaires respectifs ont signé le Traité et y ont apposé leurs sceaux.

C ainsi fait par duplicata à Berne, le vingtième jour de Juillet, Mil huit cent soixante-quatre.

Le Plénipotentiaire Suisse :

(L.S.) / sig. / F. Frey-Kerozée.

Le Plénipotentiaire Kawaïien :

(L.S.) / sig. / John Bowring.

dicte que ce Traité est ratifié et aura force de loi, promettant au nom de la Confédération Suisse de le faire observer pour autant qu'il dépend de cette-ci.

En foi de quoi la présente ratification a été signée par le Président et le Chancelier de la Confédération Suisse et munie du sceau fédéral.

C ainsi fait à Berne, le dix Octobre, Mil huit cent soixante-quatre.

Au nom du Conseil fédéral suisse,

Le Président de la Confédération

A. J. & Coles

Le Chancelier de la Confédération

Stieff

In faith of which the respective Plenipotentiaries have signed the treaty and hereunto affixed their seals.

Done by duplicate in Berne the twentieth day of July one thousand eight hundred and sixty four.

The Kawaïian Plenipotentiary:

(L.S.) / sig. / John Bowring.

The Swiss Plenipotentiary:

(L.S.) / sig. / F. Frey-Kerozée.

Procès-Verbal.

Le Conseil fédéral ayant fait parvenir au Gouvernement de Sa
Majesté Karvaïenne son acte de ratification du
Traité d'Amitié, d'Établissement et de Commerce
conclu

entre la Confédération Suisse et le Royaume des Îles Karvaïennes
et signé à Berne le 20 Juillet 1864,

La Majesté le Roi Kamehameha V. a chargé Monsieur
Charles Crosnier de Varigny, Ministre des Affaires Étran-
gères du Royaume des Îles Karvaïennes, Son Envoyé Extraordi-
naire et Ministre Plénipotentiaire près la Confédération Suisse,
de remettre au Conseil fédéral l'acte constatant la ratifica-
tion du dit Traité de la part de Sa Majesté.

Monsieur Crosnier de Varigny a, en conséquence, remis
cet acte à Monsieur le Président de la Confédération, acte qui,
après collation avec l'original déposé aux archives fédérales, a été
trouvé en bonne et due forme.

En foi de quoi les Soussignés ont dressé le présent Procès-Verbal
qu'ils ont signé en double expédition et revêtu de leurs cachets.

Fait à Berne, le dix-huit Novembre Mil huit cent soixante-huit.

Le Plénipotentiaire Karvaïen: Le Plénipotentiaire Suisse:

Ch. Crosnier de Varigny

J. Dubs

(17) TREATY WITH THE SWISS CONFEDERATION,

JULY 20TH, 1864.

TREATY of Friendship, Establishment and Commerce between His Majesty the King of the Hawaiian Islands and the Swiss Confederation.

His Majesty the King of the Hawaiian Islands and the Swiss Confederation, animated by the desire to establish and to strengthen the ties of Friendship between the two countries, and to promote by every means in their power the commercial relations between their respective citizens, have resolved to conclude a Treaty of Friendship and Commerce and reciprocal establishment, and have for that purpose named as their Plenipotentiaries, that is to say:

His Majesty the Hawaiian King, Sir John Bowring, Knight Bachelor of Great Britain, Commander of the Order of Leopold of Belgium, etc., etc., His Envoy Extraordinary and Minister Plenipotentiary, and the Swiss Federal Council, Mr. Frederic Frey Flerosce, Federal Colonel, Member of the Swiss Federal Council, head of the Department of Commerce and Customs, who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and signed the following articles:

ARTICLE I. There shall be, between the Hawaiian Islands and Switzerland, perpetual peace and reciprocal liberty of establishment and commerce; 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 as now are or may hereafter be treated, the citizens of other cantons. The Swiss shall enjoy in the Hawaiian Islands all the same rights as Hawaiians in Switzerland. Conformably with this principle and within these limits, the citizens of each of the contracting parties may freely, in their respective territories, and conforming themselves to the laws of the country, travel and sojourn, trade wholesale and retail, exercise every profession or industry, hire and occupy houses, warehouses, shops or other establishments necessary to them, effect transport of merchandise and money, receive consignments both from the interior and from foreign countries, and for all or any of these operations the said citizens shall be subject to no other obligations than those which rest upon national subjects, excepting those police arrangements which are employed towards

the most favored nations. They shall both be placed on a footing of perfect equality, free in all their purchases as in all their sales, and to establish and to fix the price of articles, merchandise and all objects imported, as well as national, whether sold for home consumption or intended for exportation, on the condition of expressly conforming to the laws and regulations of the country.

They shall enjoy the same freedom for carrying on their own affairs, of presenting in the custom-house their own declarations, or of replacing them by whom they please as attornies, factors, agents, consignees or interpreters in the purchase or sale of their goods, properties or merchandise. They shall enjoy the right of exercising all the functions confided to them by their own countrymen, by foreigners or natives as attornies, factors, agents consignees or interpreters.

In fine they shall not pay on account of their commerce or industry in any of the towns, or places of the said States, whether they be there established or temporarily residing, any duties, taxes or imposts of whatever denomination they may be, other or higher than those paid by natives or citizens of the most favored nations and the privileges, immunities or other favors whatever, which are enjoyed in the matters of commerce or industry by the citizens of either of the contracting States shall be common to those of the other.

ARTICLE II. The citizens of one of the contracting parties residing or established in the territories of the other, who may desire to return to their country or who shall be sent away by a judicial sentence, by a police measure regularly adopted and executed or according to the laws of mendicancy and public morals, shall be received at all times and under all circumstances, they and their families in the country of their origin and in which they may have preserved their legal rights.

ARTICLE III. 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 these 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 conditions.

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.

ARTICLE IV. The citizens of each of the contracting parties shall, on the territories of the other, enjoy full and entire liberty to acquire, to possess by purchase, sale, donation, exchange, marriage, testament, succession *ab intestato*, or in any other way, every sort of real or personal property which the laws of the country allow a native of the country to dispose of or to possess.

Their heirs and representatives may succeed them and take possession by themselves, or by their attorneys, acting in their names, according to the ordinary forms of law applicable to native citizens.

In the absence of such heirs or representatives, the property shall be treated in the same manner as that of a native citizen under similar circumstances.

And in no case shall they pay on the value of such property any impost, contribution or charge, other or greater than that to which natives are subject.

In all cases it shall be allowed to the citizens of the two contracting parties to export their property, that is to say: Hawaiian citizens on Swiss territory, and Swiss citizens on Hawaiian territory, shall freely and without being subjected on exportation to pay any duty whatever as strangers, or being called on to pay other or heavier duties than those to which native citizens are themselves subject.

ARTICLE V. The citizens of each of the contracting parties who may be in the territories of the other, shall be freed from all obligatory military service, either in the army or the navy, the national or civic guard or militia. They shall be free from the payment of all exemption money or contributions imposed for personal service, as from all military requisitions, except for lodgings or supplies for soldiers on their route, according to the usage of the country, to be required equally from natives and from foreigners.

ARTICLE VI. Neither in time of peace nor in time of war shall there, under any circumstances, be imposed or exacted on the property of a citizen of either of the contracting par-

ties in the territories of the other taxes, duties, contributions or charges higher than are imposed or exacted on the same properties belonging to a native of the country, or a subject of the most favored nation.

It is further understood that there shall be neither received nor demanded from a citizen of either of the contracting parties in the territory of the other, any impost, be it what it may, other or greater than what is or may be demanded of a native or a citizen, or subject of the most favored nation.

ARTICLE VII. 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.

The Consular authorities of each of the contracting parties shall enjoy on the territories of the other all the privileges, exemptions and immunities accorded to officers of the same rank of the most favored nation.

ARTICLE VIII. The two contracting parties promise to place the respective citizens in everything which concerns the importation, warehousing, transit and exportation of every article of legal commerce on the same footing as native citizens, or the citizens or subjects of the most favored nation, wherever these enjoy an exceptional advantage not granted to natives.

ARTICLE IX. Neither of the contracting parties shall exact on the importation, warehousing, transit or exportation of the products of the soil, or manufactures of the other, higher duties than those which are or may be imposed on the same articles, being the produce of the soil, or the manufactures of any other country. The import duties to be paid in the Hawaiian Islands on the products of Swiss origin or manufacture shall, therefore, be, as soon as this present treaty becomes in force, reduced to the rate accorded to the most favored nation, and levied by the same rule and under the same conditions.

ARTICLE X. The two contracting parties promise that in case either of them shall grant to a third power any favor in commercial or custom house matters, that favor shall be extended at the same time and in full right to the other of the contracting parties.

ARTICLE XI. Articles subject to duty on entry, but serving as patterns, and which are imported into the Hawaiian Islands by commercial travelers of Swiss houses, or imported into Switzerland by the commercial travelers of Hawaiian houses shall, on both sides, be admitted without charge, subject to the custom house regulations necessary to insure their re-exportation or transfer to the bonded warehouse.

ARTICLE XII. Should any question arise between the contracting countries which cannot be amicably settled by the diplomatic correspondence of the two governments, these shall by common accord designate a third friendly and neutral power as arbiter, whose decision shall be recognized by both parties.

ARTICLE XIII. The stipulations of the present treaty shall take effect in the two countries from the hundredth day after the exchange of the ratifications. The treaty shall remain in vigor for ten years, dating from the day of the said exchange. In case neither of the contracting parties shall have notified twelve months before the end of the said period its intention to terminate the same, this treaty will continue obligatory till the expiry of a year, reckoning from the day on which either of the contracting parties shall give notice of its termination.

The contracting parties reserve to themselves the right of introducing by common consent into this treaty any modifications which are not opposed to its spirit or its principles, and of which experience shall have demonstrated the utility.

ARTICLE XIV. The present treaty shall be subjected to the approval of the Privy Council of His Hawaiian Majesty, and of the Legislative Chambers of Switzerland, and the ratifications shall be exchanged in Paris within eighteen months of the date of the signature, or earlier if may be.

In faith of which the respective Plenipotentiaries have signed the treaty and hereunto affixed their seals.

Done by duplicate in Berne the twentieth day of July, one thousand eight hundred and sixty-four.

By the Hawaiian Plenipotentiary,

[L. s.] JOHN BOWRING,

By the Swiss Plenipotentiary,

[L. s.] FREDERIC FREY FLEROSEE.

Appendix ‘III’

THE *ACTING* GOVERNMENT OF THE HAWAIIAN KINGDOM

August 4, 2013

By David Keanu Sai, Ph.D.*

1. *GENERAL CONSIDERATIONS*

1.1. The presumption that the Hawaiian Kingdom continues to exist as a State under occupation is not entirely unrelated to the existence of an entity claiming to be the effective and legitimate government. A State is a “body of people occupying a definite territory and politically organized”¹ under one government, being the “agency of the state,”² that exercises sovereignty, which is the “supreme, absolute and uncontrollable power by which an independent state is governed.”³ In other words, sovereignty, both internal and external, is an attribute of an independent State, while the government exercising sovereignty is the State’s physical agent. Hoffman emphasizes that a government “is not a State any more than man’s words are the man himself,” but “is simply an expression of the State, an agent for putting into execution the will of the State.”⁴ Wright also concluded, “international law distinguishes between a government and the state it governs.”⁵ Therefore, a sovereign State would continue to exist despite its government being overthrown by military force. Crawford explains this distinction with regard to Iraq. He states,

“The occupation of Iraq in 2003 illustrated the difference between ‘government’ and ‘State’; when Members of the Security Council, after adopting SC res 1511, 16 October 2003, called for the rapid ‘restoration of Iraq’s sovereignty,’ they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restored.”⁶

1.2. With regard to the recognition of external sovereignty, there are two aspects—recognition of sovereignty and the recognition of government. External sovereignty cannot be recognized with the initial recognition of the government representing the State, and once recognition of sovereignty is granted, Oppenheim asserts that it “is incapable of withdrawal”⁷ by the

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¹ BLACK’S LAW DICTIONARY 1407 (6th ed. 1990).

² *Id.* at 695.

³ *Id.* at 1396.

⁴ FRANK SARGENT HOFFMAN, THE SPHERE OF THE STATE OR THE PEOPLE AS A BODY-POLITIC 19 (1894).

⁵ Quincy Wright, *The Status of Germany and the Peace Proclamation*, 46(2) AM. J. INT’L L. 299, 307 (Apr. 1952).

⁶ See CRAWFORD, *supra* note 1, at 34, n. 157.

⁷ LASSA OPPENHEIM, INTERNATIONAL LAW 137 (3rd ed. 1920).

recognizing States. Schwarzenberger also asserts, that “recognition estops [precludes] the State which has recognized the title from contesting its validity at any future time.”⁸ According to Wheaton:

“The recognition of any State by other States, and its admission into the general society of nations, may depend...upon its internal constitution or form of government, or the choice it may make of its rulers. But whatever be its internal constitution, or form of government, or whoever be its ruler, or even if it be distracted with anarchy, through a violent contest for the government between different parties among the people, the State still subsists in contemplation of law, until its sovereignty is completely extinguished by the final dissolution of the social tie, or by some other cause which puts an end to the being of the State.”⁹

Therefore, recognition of a sovereign State is a political act with legal consequences.¹⁰ The recognition of governments, however, which could change form through constitutional or revolutionary means subsequent to the recognition of State sovereignty, is a purely political act and can be retracted by another government for strictly political reasons. Cuba is a clear example of this principle, where the United States withdrew the recognition of Cuba’s government under President Fidel Castro, but at the same time this political act did not mean Cuba ceased to exist as a sovereign State. In other words, sovereignty of an independent State, once established, is not dependent upon the political will of other governments, but rather the objective rules of international law and successorship.

2. *THE FORMATION OF THE ACTING GOVERNMENT OF THE HAWAIIAN KINGDOM*

- 2.1. On December 10, 1995, a general partnership was formed in compliance with an *Act to Provide for the Registration of Co-partnership Firms*, 1880.¹¹ The partnership was named the Perfect Title Company, hereinafter PTC, and functioned as a land title abstracting company.¹² Since the enactment of the 1880 Co-partnership Act, members of co-partnership firms within the Kingdom registered their articles of agreements in the Bureau of Conveyances, being a part of the Interior department of the Hawaiian Kingdom. This same Bureau of Conveyances continues to exist and is presently administered by the United States, by its political subdivision, the State of Hawai’i. The law requires a notary public to acknowledge all documents before being registered with the Bureau,¹³ but there have been no lawful notaries public in the Islands

⁸ Georg Schwarzenberger, *Title to Territory: Response to a Challenge*, 51(2) AM. J. INT’L L. 308, 316 (1957).

⁹ See WHEATON, *supra* note 64, at 32.

¹⁰ GERHARD VON GLAHN, *LAW AMONG NATIONS* 85 (6th ed. 1992).

¹¹ The partnership act can be accessed online at: <http://hawaiiakingdom.org/pdf/Annex%2025.pdf>.

¹² PTC partnership agreement can be accessed online at: <http://hawaiiakingdom.org/pdf/Annex%2026.pdf>.

¹³ Hawai’i Revised Statutes, §502-41.

since 1893. All State of Hawai'i notaries public are commissioned under and by virtue of United States law. Therefore, in order for the partners of PTC to get their articles of agreement registered in the Bureau of Conveyances in compliance with the 1880 co-partnership statute, the following protest was incorporated and made a part of PTC's articles of agreement, which stated:

“Each partner also agrees that the business is to be operated in strict compliance to the business laws of the Hawaiian Kingdom as noted in the “Compiled Laws of 1884” and the “session laws of 1884 and 1886.” Both partners are native Hawaiian subjects by birth and therefore are bound and subject to the laws above mentioned. And it is further agreed by both partners that due to the filing requirements of the Bureau of Conveyances to go before a foreign notary public within the Hawaiian Kingdom, they do this involuntarily and against their will.”¹⁴

- 2.2. PTC commenced on December 10, 1995, but there was no *military* government to ensure PTC's compliance with the co-partnership statute from that date. The registration of co-partnerships creates a contract between co-partnerships on the one hand, and the Minister of the Interior, representing the *de jure* government, on the other. It is obligatory for co-partnerships to register their articles of agreement with the Minister of the Interior, and for the Minister of the Interior, it is his duty to ensure that co-partnerships maintain their compliance with the statute. This is a contractual relationship, whereby:

“there must be a promise binding the person[s] subject to the obligation; and in order to give a binding force to the promise the obligation must come within the sphere of Agreement. There must be an acceptance of the promise by the person to whom it is made, so that by their mutual consent the one is bound to the other. A Contract then springs from the offer of a promise and its acceptance.”¹⁵

The registration of co-partnerships is the offer of the promise by its members to abide by the obligation imposed by the statute, and the acceptance of this offer by the Interior department creates a contractual relationship whereby “one is bound to the other.” Section 7 of the 1880 Co-partnership Act clearly outlines the obligation imposed upon the members of co-partnerships in the Kingdom, which states:

The members of every co-partnership who shall neglect or fail to comply with the provisions of this law, shall severally and individually be liable for all the debts and liabilities of such co-partnership and may be severally sued therefore, without the necessity of joining the other members of the co-partnership in any action or suit, and shall also be severally liable upon conviction, to a

¹⁴ Co-partnership Agreement establishing Perfect Title Company, December 10, 1995, document no. 95-153346, Hawai'i Bureau of Conveyances.

¹⁵ WILLIAM R. ANSON, PRINCIPLES OF THE LAW OF CONTRACT 11 (1880).

penalty not exceeding five dollars for each and every day while such default shall continue; which penalties may be recovered in any Police or District Court.¹⁶

The partners of PTC desired to establish a legitimate co-partnership pursuant to Hawaiian Kingdom law and in order for the title company to exist as a legal co-partnership firm, the *de jure* government had to be reestablished in an *acting* capacity in order to serve as a necessary party to the contractual relationship created under and by virtue of the statute. An acting official is “not an appointed incumbent, but merely a *locum tenens*, who is performing the duties of an office to which he himself does not claim title.”¹⁷ It is an official that temporarily assumes the duties and authority of government.

- 2.3. The last legitimate Hawaiian Legislative Assembly of 1886 was prevented from reconvening as a result of the 1887 rebellion. The subsequent Legislative Assembly of 1887 was based on an illegal constitution, which altered existing voting rights, and led to the illegal election of the 1887 Legislature. As a result, there existed no legitimate Nobles in the Legislative Assembly when Queen Lili’uokalani ascended to the Office of Monarch in 1891, and therefore, the Queen was unable to obtain confirmation for her named successors from those Nobles of the 1886 Legislative Assembly as required by the 1864 Constitution. Tragically, when the Queen died on November 11, 1917, there were no lawful successors to the Throne. In the absence of a confirmed successor to the Throne by the Nobles of the Legislative Assembly, Article 33 of the Constitution of 1864 provides:

“should a Sovereign decease...and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King.”

Hawaiian law did not assume that the whole of the Hawaiian government would be made vacant, and, consequently, the law did not formalize provisions for the reactivation of the government in extraordinary circumstances. Therefore, a deliberate course of action was taken to re-activate the Hawaiian government by and through its executive branch as officers *de facto*. In view of such an extreme emergency, Oppenheimer states that, “a temporary deviation from the wording of the constitution is justifiable

¹⁶ HAWAIIAN KINGDOM, COMPILED LAWS (CIVIL CODE) 649 (1884). The Compiled Laws can be accessed online at: <http://hawaiiankingdom.org/civilcode/index.shtml>.

¹⁷ See BLACK’S LAW, *supra* note 107, at 26.

if this is necessary to conserve the sovereignty and independence of the country.”¹⁸

When properly interpreted, the 1864 Constitution provides that the Cabinet Council shall be a Council of Regency until a proper Legislative Assembly can be convened to “elect by ballot some native Ali’i [Chief] of the Kingdom as Successor to the Throne.” It further provides that the Regent or Council of Regency “shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King.”¹⁹ The Constitution also provides that the Cabinet Council “shall consist of the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance, and the Attorney General of the Kingdom, and these shall be His Majesty’s Special Advisers in the Executive affairs of the Kingdom.” Interpretation of these constitutional provisions allows for the Minister of Interior to assume the powers vested in the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General, and consequently serve as Regent. This is a similar scenario that took place in 1940 when German forces invaded Belgium and captured King Leopold. As a result, the Belgian cabinet became a government in exile and, as a council of Regency, assumed all powers constitutionally vested in the King. Oppenheimer explains:

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.²⁰

¹⁸ F.E. Oppenheimer, “Governments and Authorities in Exile,” 36 AM. J. INT’L L. 581 (1942).

¹⁹ Hawaiian constitution, art. 33, provides: It shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a Regent or Council of Regency, who shall administer the Government in His name; and likewise the King may, by His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne: and should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign.”

²⁰ *Id.*, at 569.

- 2.4. The 1880 Co-partnership Act requires members of co-partnerships to register their articles of agreement in the Bureau of Conveyances, which is within the Interior department.²¹ The Minister of the Interior holds a seat of government as a member of the Cabinet Council, together with the other Ministers. Article 43 of the Constitution provides that, “Each member of the King’s Cabinet shall keep an office at the seat of Government, and shall be accountable for the conduct of his deputies and clerks.” Necessity dictated that in the absence of any “deputies or clerks” of the Interior department, the partners of a registered co-partnership could assume the duty of the same because of the current state of affairs. Therefore, it was reasonable that partners of a registered co-partnership could assume the powers vested in the Registrar of the Bureau of Conveyances in the absence of the same; then assume the powers vested in the Minister of Interior in the absence of the same; then assume the powers constitutionally vested in the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and, finally assume the power constitutionally vested in the Cabinet as a Regency. A regency is defined as “the man or body of men intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the [monarch].”²²
- 2.5. With the specific intent of assuming the “seat of Government,” the partners of PTC formed a second partnership called the Hawaiian Kingdom Trust Company, hereinafter HKTC, on December 15, 1995.²³ The partners intended that this registered partnership would serve as a provisional surrogate for the Council of Regency. Therefore, and in light of the ascension process explained above, HKTC could then serve as officers *de facto* for the Registrar of the Bureau of Conveyances, the Minister of Interior, the Cabinet Council, and ultimately as the Council of Regency. Article 1 of HKTC 's deed of general partnership provided:

“The above mentioned parties have agreed to form a general partnership under the firm name of Hawaiian Kingdom Trust Company in the business of administering, investigating, determining and the issuing of land titles, whether in fee, or for life, or for years, in such manner as Hawaiian law prescribes... The company will serve in the capacity of *acting* for and on behalf of the Hawaiian Kingdom government. The company has adopted the Hawaiian Constitution of 1864 and the laws lawfully established in the administration of the same. The company is to commence on the 15th day of December, A.D. 1995, and shall remain in existence until the absentee government is re-established and fully operational, upon which all records and monies of the same will be transferred and

²¹ See COMPILED LAWS, *supra* note 122, at §1249.

²² See BLACK’S LAW, *supra* note 107, at 1282.

²³ HKTC partnership agreement can be accessed online at:
<http://hawaiiankingdom.org/pdf/Annex%2027.pdf>.

conveyed over to the office of the Minister of Interior, to have and to hold under the authority and jurisdiction of the Hawaiian Kingdom.”

Thirty-eight deeds of trusts conveyed by Hawaiian subjects to HKTC acknowledged the trust as a company “acting for and on behalf of the Hawaiian Kingdom government” and outlined the role of the trust company and its fiduciary duty it had to its beneficiaries.²⁴ HKTC was not only competent to serve as the *acting* Cabinet Council, but also possessed a fiduciary duty toward its beneficiaries to serve in that capacity until the government is re-established *de jure* in accordance with the terms of the 1893 *Restoration agreement*. According to Pomeroy:

“Active or special trusts are those in which, either from the express direction of the language creating the trust, or from the very nature of the trust itself, the trustees are charged with the performance of active and substantial duties with respect to the control, management, and disposition of the trust property for the benefit of the *cestui que trustent* [beneficiary of a trust]. They may, except when restricted by statute, be created for every purpose not unlawful, and, as a general rule, may extend to every kind of property, real and personal.”²⁵

The purpose of HKTC was two fold; first, to ensure PTC complies with the co-partnership statute, and, second, provisionally serve as the government of the Hawaiian Kingdom. What became apparent was the seeming impression of a conflict of interest, whereby the duty to comply and the duty to ensure compliance was vested in the same two partners of the two companies. Therefore, in order to avoid this apparent conflict of interest, the partners of both PTC and HKTC, reasoned that an *acting* Regent, having no interests in either company, should be appointed to serve as representative of the Hawaiian government. Since HKTC assumed to represent the interests of the Hawaiian government in an acting capacity, the trustees would therefore make the appointment. The trustees looked to Article XXXI, Chapter XI, Title 3 of the Hawaiian Civil Code, whereby the *acting* Regency would be constitutionally authorized to direct the executive branch of the government in the formation and execution of the reconvening of the Legislative Assembly, so that the government could procedurally move from provisional to *de jure*.²⁶

²⁴ See Deeds of Trust to the Hawaiian Kingdom Trust Company, a general partnership, Doc. no.'s 96-004246, 96-006277, 96-014116, 96-026387, 96-026388, 96-028714, 96-024845, 96-032930, 96-044551, 96-044550, 96-047382, 96-047380, 96-047379, 96-047381, 96-056981, 96-052727, 96-060519, 96-032728, 96-057667, 96-057668, 96-060520, 96-061209, 96-061207, 96-056980, 96-052729, 96-063384, 96-063385, 96-063382, 96-057664, 96-019923, 96-046712, 96-063386, 96-063382, 96-063383, 96-066996, 96-061208 and 96-046711, State of Hawai'i Bureau of Conveyances. One the deeds of trust (document no. 96-014116) can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2028.pdf>.

²⁵ JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE AS ADMINISTERED IN THE UNITED STATES OF AMERICA, 553 (1907).

²⁶ See COMPILED LAWS, *supra* note 122, 214-234.

- 2.6. It was agreed that David Keanu Sai, now the present Ambassador-at-large of the *acting* government and author of this Brief, would be appointed to serve as *acting* Regent, but could not retain an interest in the two companies prior to the appointment. In that meeting, it was agreed upon and decided that Ms. Nai'a-Ulumaimalu would replace the author as trustee of HKTC and partner of PTC. The plan was to maintain the standing of the two partnerships under the co-partnership statute, and not have them lapse into sole-proprietorships. To accomplish this, the author would relinquish his entire fifty percent (50%) interest by deed of conveyance in both companies to Lewis;²⁷ after which Lewis would convey a redistribution of interest to Ms. Nai'a-Ulumaimalu,²⁸ whereby the former would hold a ninety-nine percent (99%) interest in the two companies and the latter a one percent (1%) interest in the same. In order to have these two transactions take place simultaneously without affecting the standing of the two partnerships, both deeds of conveyance would happen on the same day but won't take effect until the following day, February 28, 1996. These conveyances were registered in the Bureau of Conveyances in conformity with the 1880 Co-partnership Act. With the transactions completed, the Trustees then appointed the author as *acting* Regent on March 1, 1996, and thereafter filed a notice of this appointment with the Bureau of Conveyances.²⁹ Thereafter, HKTC resumed its role as a general partnership within the meaning of the 1880 Co-partnership Act, and no longer served as "a company *acting* for and on behalf of the Hawaiian Kingdom government" and prepared for the dissolution of the company. On May 15, 1996, the Trustees conveyed by deed all of its right, title and interest acquired by thirty-eight deeds of trust to the *acting* Regent, and stipulated that the company would be dissolved in accordance with the provisions of its deed of general partnership on June 30, 1996.³⁰
- 2.7. The transfer and subsequent dissolution, was made in accordance with section 3 of the 1880 Co-partnership Act, which provides that "whenever any change shall take place in the constitution of any such firm...a statement of such change or dissolution shall also be filed in the said office of the Minister of the Interior, within one month from such...dissolution."³¹ On February 28, 1997, a Proclamation by the *acting* Regent announcing the restoration of the Hawaiian government was printed in the March 9, 1997 issue of the Honolulu Sunday Advertiser newspaper. The proclamation stated, in part, that the:

"Hawaiian Monarchical system of Government is hereby re-established, [and the] Civil Code of the Hawaiian Islands as noted in

²⁷ The Sai to Lewis deed can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2030.pdf>.

²⁸ The Lewis to Nai'a-Ulumaimalu deed can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2031.pdf>.

²⁹ HKTC's notice of appointment can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2032.pdf>.

³⁰ HKTC's deed to acting Regent can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2033.pdf>.

³¹ See Partnership Act, *supra* note 117.

the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code are in full force. All Hawaiian Laws and Constitutional principles not consistent herewith are void and without effect.”³²

Since the appointment of the *acting* Regent, there have been twenty-six commissions that filled vacancies of the executive and judicial departments. These governmental positions, as statutorily provided, comprise officers *de facto* of the Hawaiian government while under American occupation. Governmental positions that are necessary for the reconvening of the Legislative Assembly in accordance with Title III of the Civil Code would be filled by commissioned officers *de facto*.³³

- 2.8. The Hawaiian government did not foresee the possibility of its territory subjected to an illegal and prolonged occupation, where indoctrination and the manipulation of its political history affected the psyche of its national population. Therefore, it did not provide a process for reinstating the government, being the organ of the State, either in exile or within its own territory. But at the same time, it did not place any constitutional or statutory limitations upon the restoration of its government that could serve as a bar to its reinstatement—save for the legal parameters of *necessity*. The legal basis for the reassertion of Hawaiian governance, by and through a Hawaiian general partnership statute, is clearly extraordinary, but the exigencies of the time demanded it. In the absence of any Hawaiian subjects adhering to the statutory laws of the country as provided for by the country’s constitutional limitations, the abovementioned process was established for the establishment of an *acting* Regency, pending the reconvening of the Legislative Assembly to elect by ballot a Regent or Regency *de jure* as provided for under Article 22 of the Constitution. Wolff states, “in so far as conditions provided for in the constitutional law cannot be complied with owing to the occupation of the country by the enemy, a dispossessed government can act without being compelled to fulfill those conditions.”³⁴ Also commenting on exiled governments, Marek explains that, “while the requirement of internal legality must in principle be fulfilled for an exiled government to possess the character of a State organ, minor flaws in such legality are easily cured by the

³² Proclamation of *Acting* Regent declaring the Hawaiian Monarchical form of Government is re-established, February 28, 1997, published in the March 9, 1997 issue of the Honolulu Sunday Advertiser. Also recorded in its entirety in the Bureau of Conveyances as document no. 97-027541.

³³ In September 1999, the *acting* Regent commissioned Peter Umialiloa Sai as *acting* Minister of Foreign Affairs, Kau‘i P. Sai-Dudoit, formerly known as Kau‘i P. Goodhue, as *acting* Minister of Finance, and Gary V. Dubin, Esquire, as *acting* Attorney General. At a meeting of the Cabinet Council on 10 September 1999, it was determined by resolution “that the office of the Minister of Interior shall be resumed by David Keanu Sai, thereby absolving the office of the Regent, *pro tempore*, and the same to be replaced by the Cabinet Council as a Council of Regency, *pro tempore*, within the meaning of Article 33 of the Constitution of the Country.” The Agent serves as Prime Minister and chairman of the *acting* Council of Regency.

³⁴ Ernst Wolff, *The International Position of Dispossessed Governments at Present in England*, 6 MOD. L. REV. 215 (1942-1943).

overriding principle of its actual uninterrupted continuity.”³⁵ Oppenheimer also explains “such government is the only *de jure* sovereign power of the country the territory of which is under belligerent occupation.”³⁶ It follows, *a fortiori*, that when an “occupant fails to share power with the lawful government under the auspices of international law, the latter is not precluded from taking whatever countermeasures it can in order to protect its interests during and after the occupation.”³⁷ Bateman states the “duty correlative of the right of political existence, is obviously that of political self-preservation; a duty the performance of which consists in constant efforts to preserve the principles of the political constitution.”³⁸ Political self-preservation is adherence to the legal order of the State, whereas national self-preservation is where the principles of the constitution are no longer acknowledged, *i.e.* revolution.³⁹

2.9. The establishment of an *acting* Regent—an officer *de facto*, would be a political act of self-preservation, not revolution, and be grounded upon the legal doctrine of “limited necessity.” According to de Smith, deviations from a State’s constitutional order “can be justified on grounds of necessity.”⁴⁰ He continues to explain, “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.”⁴¹ Lord Pearce also states that there are certain limitations to the principle of necessity, “namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful... Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign.”⁴² Judge Gates took up the matter of the legal doctrine of necessity in *Chandrika Persaud v. Republic of Fiji*, and drew from the decision in the *Mitchell case*,⁴³ which provided that the requisite conditions for the principle of necessity consists of:

1. An imperative necessity must arise because of the existence of exceptional circumstances not provided for in the Constitution, for immediate action to be taken to protect or preserve some vital function of the State;
2. There must be no other course of action reasonably available;

³⁵ See MAREK, *supra* note 3, at 98.

³⁶ See Oppenheimer, *supra* note 124, at 568.

³⁷ EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 212 (1993).

³⁸ William O. Bateman, *Political and Constitutional Law of the United States of America* (G.I. Jones and Company, 1876), 22.

³⁹ *Id.*

⁴⁰ STANLEY A. DE SMITH, *CONSTITUTIONAL AND ADMINISTRATIVE LAW*, 80 (1986).

⁴¹ *Id.*

⁴² *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969).

⁴³ *Mitchell v. Director of Public Prosecutions*, L.R.C. (Const.) 35, 88–89 (1986).

3. Any such action must be reasonably necessary in the interest of peace, order, and good government; but it must not do more than is necessary or legislate beyond that;
4. It must not impair the just rights of citizens under the Constitution; and,
5. It must not be one the sole effect and intention of which is to consolidate or strengthen the revolution as such.

Brookfield summarized the principle of necessity as the “power of a Head of State under a written Constitution extends by implication to executive acts, and also legislative acts taken temporarily (that is, until confirmed, varied or disallowed by the lawful Legislature) to preserve or restore the Constitution, even though the Constitution itself contains no express warrant for them.”⁴⁴ Brookfield also explains “such powers are not dependent on the words of a particular Constitution, except in so far as that Constitution designates the authority in whom the implied powers would be found to reside.”⁴⁵

2.10. The assumption by private citizens up the chain of constitutional authority in government to the office of Regent, as enumerated under Article 33 of the Constitution, is a *de facto* process born out of necessity. Judge Cooley defines an officer *de facto* “to be one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law,” but rather “comes in by claim and color of right.”⁴⁶ According to Chief Justice Steere, the “doctrine of a *de facto* officer is said to have originated as a rule of public necessity to prevent public mischief and protect the rights of innocent third parties who may be interested in the acts of an assumed officer apparently clothed with authority and the courts have sometimes gone far with delicate reasoning to sustain the rule where threatened rights of third parties were concerned.”⁴⁷ “Officers *de facto*” are distinguished from a “*de facto* government.” The former is born out of a *de jure* government under and by virtue of the principle of necessity, while the latter is born out of revolution.

2.11. As a result of the continuity of the Hawaiian State under the terms of international law, it would normally be supposed that a government established in accordance with its constitution and laws would be competent to represent it internationally. Marek emphasizes that:

“it is always the legal order of the State which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the delegation of the territorial State nor any rule of international law other than the one safeguarding the continuity of an occupied State. The relation between the legal order of the territorial State and that

⁴⁴ F.M. Brookefield, *The Fiji Revolutions of 1987*, NEW ZEALAND L. J. 250, 251 (July 1988).

⁴⁵ *Id.*

⁴⁶ THOMAS M. COOLEY, *A TREATISE ON THE LAW OF TAXATION*, 185 (1876).

⁴⁷ *Carpenter v. Clark*, 217 Michigan 63, 71 (1921).

of the occupied State...is not one of delegation, but of co-existence.”⁴⁸

The actual exercise of that competence, however, will depend upon other States agreeing to enter into diplomatic relations with such a government. This was, in the past at least, conditioned upon recognition, but many states in recent years have moved away from the practice of recognizing governments, preferring any such recognition to be inferred from their acts. The normal conditions for recognition are that the government concerned should be either legitimately constituted under the laws of the State concerned, or that it should be in effective control of the territory. Ideally, it should possess both attributes. Ineffective, but, lawful, governments normally only maintain their status as recognized entities during military occupation, or while there remains the possibility of their returning to power.

- 2.12. While Hawai‘i was not at war with the United States, but rather a neutral State since the Spanish-American War, the international laws of occupation would still apply. With specific regard to occupying neutral territory, the Arbitral Tribunal, in its 1927 case, *Coenca Brothers vs. Germany*, concluded that “the occupation of Salonika by the armed forces of the Allies constitutes a violation of the neutrality of that country.”⁴⁹ Later, in the 1931 case, *In the matter of the Claim Madame Chevreau against the United Kingdom*, the Arbitrator concluded that the status of the British forces while occupying Persia (Iran)—a neutral State in the First World War—was analogous to “belligerent forces occupying enemy territory.”⁵⁰ Oppenheim observes that an occupant State on neutral territory “does not possess such a wide range of rights with regard to the occupied country and its inhabitants as he possesses in occupied enemy territory.”⁵¹ Article 2 of the Fourth Geneva Convention (1949) states:

“The Convention shall also 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. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

- 2.13. On the face of the Hague Regulations it appears to apply only to territory belonging to an enemy, but Feilchenfeld states, “it is nevertheless, usually

⁴⁸ See MAREK, *supra* note 3, at 91.

⁴⁹ *Coenca Brothers v. Germany*, Greco-German Mixed Arbitral Tribunal, Case No. 389 (1927), reprinted in ANN. DIG. PUB. INT’L. L. CASES, YEARS 1927 AND 1928 570, 571 (1931).

⁵⁰ *In the Matter of the Claim Madame Chevreau Against the United Kingdom*, 27 AM. J. INT’L. L. 153, 160 (1933).

⁵¹ LASSA OPPENHEIM, INTERNATIONAL LAW 241 (7th ed. 1948-52).

held that the rules of belligerent occupation will also apply where a belligerent, in the course of the war, occupied neutral territory, even if the neutral power should have failed to protest against the occupation.”⁵² The law of occupation is not only applied with equal force and effect, but the occupier is also greatly shorn of its belligerent rights in Hawaiian territory as a result of the Islands’ neutrality. Therefore, the United States cannot impose its own domestic laws without violating international law. This principle is clearly laid out in Article 43 of the Hague Regulations, which states, “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 civil life, while respecting, unless absolutely prevented, the laws in force in the country.” Referring to the American occupation of Hawai‘i, Dumberry states:

“...the 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.”⁵³

- 2.14. According to Glahn, there are three distinct systems of law that exist in an occupied territory: “the indigenous law of the legitimate sovereign, to the extent that it has not been necessary to suspend it; the laws (legislation, orders, decrees, proclamations, and regulations) of the occupant, which are gradually introduced; and the applicable rules of customary and conventional international law.”⁵⁴ Hawai‘i’s sovereignty is maintained and protected as a subject of international law, in spite of the absence of an effective government since 1893. In other words, the United States should have administered Hawaiian Kingdom law as defined by its constitution and statutory laws, similar to the U.S. military’s administration of Iraqi law in Iraq with portions of the law suspended due to military necessity.⁵⁵ A United States Army regulation on the law of occupation recognizes not only the sovereignty of the occupied State, but also bars annexation of the territory during hostilities because of the continuity of the invaded State’s sovereignty. In fact, United States Army regulations on the laws of occupation not only recognize the continued existence of the sovereignty of the occupied State, but,

“...confers upon the invading force the means of exercising control for the period of occupation. It does not transfer sovereignty to the

⁵² ERNST FEILCHENFELD, *THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION* 8 (1942).

⁵³ Patrick Dumberry, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom’s Claim to Continue as an Independent State under International Law*, 2(1) *CHINESE J. INT’L L.* 655, 682 (2002).

⁵⁴ See VON GLAHN, *supra* note 116, at 774.

⁵⁵ David J. Scheffer, *Beyond Occupation Law*, 97(4) *AM. J. INT’L L.* 842-860 (Oct. 2003).

occupant, but simply 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, indispensable 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.”⁵⁶

- 2.15. It is abundantly clear that the United States occupied the Hawaiian Islands for the purpose of waging the war against Spain, as well as fortifying the Islands as a military outpost for the defense of the United States in future conflicts with the convenience of the puppet government it installed on January 17, 1893. According to the United States Supreme Court, “Though the [annexation] resolution was passed July 7, [1898] the formal transfer was not made until August 12, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States.”⁵⁷ Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and “they protested annexation occurring without the consent of the governed.”⁵⁸ The “power exercising effective control within another’s sovereign territory has only temporary managerial powers,” and, during “that limited period, the occupant administers the territory on behalf of the sovereign.”⁵⁹ The actions taken by the McKinley administration, with the consent of the Congress by joint resolution, clearly intended to mask the violation of international law as if the annexation took place by a voluntary treaty thereby giving the appearance of cession. As Marek states, “a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State.”⁶⁰ Although the United States signed and ratified both the 1899 and the 1907 Hague Regulations, which

⁵⁶ “The Law of Land Warfare,” *U.S. Army Field Manual 27-10* §358 (July 1956).

⁵⁷ *Territory of Hawai‘i v. Mankichi*, 190 U.S. 197, 212 (1903).

⁵⁸ TOM COFFMAN, *NATION WITHIN: THE HISTORY OF THE AMERICAN OCCUPATION OF HAWAI‘I* 322 (2nd ed. 2009). Coffman initially published this book in 1998 titled *Nation Within: The Story of the American Annexation of the Nation of Hawai‘i*. In his second edition published in 2009 he explains the change. Coffman explains:

“I am compelled to add the continued relevance of this book reflects a far-reaching political, moral and intellectual failure of the United States to recognize and deal with its takeover of Hawai‘i. In the book’s subtitle, the word *Annexation* has been replaced by the word *Occupation*, referring to America’s occupation of Hawai‘i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word *occupation*. In making this change, I have embraced the logical conclusion of my research into the events of 1893 to 1898 in Honolulu and Washington, D.C. I am prompted to take this step by a growing body of historical work by a new generation of Native Hawaiian scholars. Dr. Keanu Sai writes, ‘The challenge for...the fields of political science, history, and law is to distinguish between the rule of law and the politics of power.’ In the history of Hawai‘i, the might of the United States does not make it right.”

⁵⁹ See BENVENISTI, *supra* note 143, at 6.

⁶⁰ See MAREK, *supra* note 3, at 110.

post-date the occupation of the Hawaiian Islands, the “text of Article 43,” according to Benvenisti, “was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law.”⁶¹ Graber also states, that “nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code.”⁶² Consistent with this understanding of the international law of occupation during the Spanish-American War, Smith reported that the “military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials.”⁶³ In light of this instruction to apply the local laws of the occupied State, the disguised annexation during the Spanish-American War, together with its ceremony on August 12, 1898 on the grounds of ‘Iolani Palace, would appear to show clear intent to conceal an illegal occupation.

2.16. The case of the *acting* government is unique in several respects. While it claims to be regarded as the “legitimate” government of Hawai’i, its existence is not only dependent upon the issue of State continuity, but also its existence is dependent upon exercising governmental control. Governmental control, however, is nearly non-existent within the Hawaiian Islands as a result of a prolonged and illegal occupation, but governmental control can be effectively exercised outside of the Hawaiian Islands. After all, the nature of belligerent occupation is such as to preserve the original competence of indigenous institutions in occupied territories. The *acting* government, as officers *de facto*, is an extension of the original *de jure* government of the Hawaiian Kingdom as it stood in 1893. Therefore, in such circumstances, recognition of the authority of the *acting* government could be achieved by other States through *de facto* recognition under the “doctrine of acquiescence,” and not *de facto* recognition of a “new” government or State that comes about through a successful revolution. Recognition of a *de facto* government is political and acts of pure policy by States, because they attempt to change or alter the legal order of an already established and recognized personality—whereas, recognition of *de facto* officers does not affect the legal order of a State that has been the subject of prolonged occupation. It is within these parameters that the *acting* government, as *de facto* officers by necessity, cannot claim to represent the people *de jure*, but only, at this time, represent the legal order of the Hawaiian State as a result of the limitations imposed upon it by the laws of occupation and the duality of two legal orders existing in one in the same territory—that of the occupier and the occupied.

2.17. The *acting* government has restored the executive and the judicial branches of government. Heading the executive branch of the *acting* government is the Council of Regency, which is comprised of the author of this Brief, as *acting*

⁶¹ See BENVENISTI, *supra* note 143, at 8.

⁶² DORIS GRABER, THE DEVELOPMENT OF THE LAW OF BELLIGERENT OCCUPATION: 1863-1914, 143 (1949).

⁶³ Munroe Smith, *Record of Political Events*, 13(4) POL. SCI. Q. 745, 748 (Dec. 1898).

Minister of the Interior and Chairman of the Council, as well as *acting* Ambassador-at-large, His Excellency Peter Umialiloa Sai as *acting* Minister of Foreign Affairs and Vice-Chairman of the Council, Her Excellency Kau‘i P. Sai-Dudoit as *acting* Minister of Finance, and His Excellency Dexter Ke‘eaumoku Ka‘iama, *Esq.*, as *acting* Attorney General. Heading the Judicial branch of the *acting* government is the Supreme Court, which is comprised of Alvin K. Nishimura, *Esq.*, as *acting* Chief Justice and Chancellor of the Kingdom, and Allen K. Hoe, *Esq.*, as *acting* First Associate Justice.

3. *DE FACTO RECOGNITION OF THE ACTING GOVERNMENT*

- 3.1. Under international law, MacGibbon states the “function of acquiescence may be equated with that of consent,” whereby “it constitutes a procedure for enabling the seal of legality to be set upon rules which were formerly in process of development and upon rights which were formerly in process of consolidation.”⁶⁴ He explains the “primary purpose of acquiescence is evidential; but its value lies mainly in the fact that it serves as a form of recognition of legality and condonation of illegality and provides a criterion which is both objective and practical.”⁶⁵ According to Brownlie, “There is a tendency among writers to refer to any representation or conduct having legal significance as creating estoppel, precluding the author from denying the ‘truth’ of the representation, express or implied.”⁶⁶ State practice has also acknowledged not only the function of acquiescence, but also the consequence of acquiescence. Lauterpacht explains:

“The absence of protest, may, in addition, in itself become a source of legal right inasmuch as it is related to—or forms a constituent element of—estoppel or prescription. Like these two generally recognized legal principles, the far-reaching effect of the failure to protest is not a mere artificiality of the law. It is an essential requirement of stability—a requirement even more important in the international than in other spheres; it is a precept of fair dealing inasmuch as it prevents states from playing fast and loose with situations affecting others; and it is in accordance with equity inasmuch as it protects a state from the contingency of incurring responsibilities and expense, in reliance on the apparent acquiescence of others, and being subsequently confronted with a challenge on the part of those very states.”⁶⁷

In a memorandum by Walter Murray, the United States Chief of the Division of Near Eastern Affairs, regarding the attitude of the United States toward Italy’s unilateral annexation of Ethiopia, Murray stated, “It may be argued,

⁶⁴ I.C. MacGibbon, *The Scope of Acquiescence in International Law*, 31 BRIT. Y. B. INT’L L. 143, 145 (1954).

⁶⁵ *Id.*

⁶⁶ See BROWNLIE, *supra* note 53, at 640.

⁶⁷ H. Lauterpacht, *Sovereignty Over Submarine Areas*, 27 BRIT. Y. B. INT’L L. 376, 395 (1950).

therefore, that our failure to protest the recent decree extending Italian jurisdiction over American nationals (and other foreigners in Ethiopia) or its application to American nationals would *not* constitute *de jure* recognition of the Italian annexation of Ethiopia. However, our failure to protest might be interpreted as a recognition of the *de facto* conditions in Ethiopia.”⁶⁸ In other words, the United States’ failure to protest provided *tacit* acquiescence, and, therefore, *de facto* recognition of the conditions in Ethiopia.

- 3.2. Between 1999 and 2001, the *acting* government represented the Hawaiian Kingdom in arbitral proceedings before the Permanent Court of Arbitration.⁶⁹ “In *Larsen v. the Hawaiian Kingdom*, Lance Paul Larsen, a resident of the state of Hawaii, sought redress from the Hawaiian Kingdom for its failure to protect him from the United States and the State of Hawai‘i.”⁷⁰ The Arbitral Tribunal comprised of Professor James Crawford, SC, Presiding Arbitrator, who at the time of the proceedings was a member of the United Nations International Law Commission and *Special Rapporteur* on State Responsibility (1997-2001); Professor Christopher Greenwood, QC, Associate Arbitrator, who now serves as a Judge on the International Court of Justice since February 6, 2009; and Gavan Griffith, QC, Associate Arbitrator, who served as former Solicitor General for Australia. Early in the proceedings, the *acting* government, by telephone conversation with Secretary-General van den Hout of the Permanent Court of Arbitration, was requested to provide a formal invitation to the United States to join in the arbitration. Here follows the letter documenting the formal invitation done in Washington, D.C., on March 3, 2000, and later filed with the registry of the Permanent Court of Arbitration.⁷¹

Mr. John Crook
Assistant Legal Adviser for United Nations Affairs
Office of the Legal Adviser
United States Department of State
2201 C Street,
N.W. Room 3422 NS
Washington, D.C. 20520

Re: 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

⁶⁸ United States Department of State, *Foreign Relations of the United States*, vol. III, 241 (1936).

⁶⁹ *Larsen v. Hawaiian Kingdom*, 119 International Law Reports 566 (2001); see also the website of the Permanent Court of Arbitration at: http://www.pca-cpa.org/showpage.asp?pag_id=1159.

⁷⁰ Bederman & Hilbert, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai‘i*, 95 AM. J. INT’L L. 927 (2001); see also David Keanu Sai, *American Occupation of the Hawaiian State: A Century Unchecked*, 1 HAW. J. L. & POL. 46 (Summer 2004); and Dumberry, *supra* note 159.

⁷¹ *Acting Government of the Hawaiian Kingdom, Letter confirming telephone conversation with U.S. State Department relating to arbitral proceedings at the Permanent Court of Arbitration, March 3, 2000*, 1 HAW. J. L. & POL. 241 (Summer 2004).

Sir,

This letter is to confirm our telephone conversation today at Washington, D.C. The day before our conversation Ms. Ninia Parks, esquire, Attorney for the Claimant, Mr. Lance Larsen, and myself, Agent for the Respondent, Hawaiian Kingdom, met with Sonia Lattimore, Office Assistant, L/EX, at 10:30 a.m. on the ground floor of the Department of State. I presented her with two (2) binders, the first comprised of an Arbitration Log Sheet, Lance Paul Larsen vs. The Hawaiian Kingdom, with accompanying documents on record before the Permanent Court of Arbitration at The Hague, Netherlands. The second binder comprised of divers documents of the Acting Council of Regency as well as diplomatic correspondence with treaty partners of the Hawaiian Kingdom.

I stated to Ms. Lattimore that the purpose of our visit was to provide these documents to the Legal Department of the U.S. Department of State in order for the U.S. Government to be apprised of the arbitral proceedings already in train and that the Hawaiian Kingdom, by consent of the Claimant, extends an opportunity for the United States to join in the arbitration as a party. She assured me that the package will be given to Mr. Bob McKenna for review and assignment to someone within the Legal Department. I told her that we will be in Washington, D.C., until close of business on Friday, and she assured me that she will give me a call on my cellular phone at (808) 383-6100 by the close of business that day with a status report.

At 4:45 p.m., Ms. Lattimore contacted myself by phone and stated that the package had been sent to yourself as the Assistant Legal Adviser for United Nations Affairs. She stated that you will be contacting myself on Friday (March 3, 2000), but I could give you a call in the morning if I desired.

Today, at 11:00 a.m., I telephoned you and inquired about the receipt of the package. You had stated that you did not have ample time to critically review the package, but will get to it. I stated that the reason for our visit was the offer by the Respondent Hawaiian Kingdom, by consent of the Claimant, by his attorney, Ms. Ninia Parks, for the United States Government to join in the arbitral proceedings presently instituted under the auspices of the Permanent Court of Arbitration at The Hague, Netherlands. You stated that litigation in the court system is handled by the Justice Department and not the State Department, and that you felt they (Justice Dept.) would be very reluctant to join in the present arbitral proceedings.

I responded by assuring that the State Department should review the package in detail and can get back to the Acting Council of Regency by phone for continued dialogue. I gave you our office's phone number at (808) 239-5347, of which you acknowledged. I assured you that we did not need an immediate answer, but out of international courtesy the offer is still open, notwithstanding arbitral

proceedings already in motion. I also advised you that Secretary-General van den Hout of the Permanent Court of Arbitration was aware of our travel to Washington, D.C. and the offer to join in the arbitration. As I stated in our conversation he requested that the dialogue be reduced to writing and filed with the International Bureau of the Permanent Court of Arbitration for the record, and you acknowledged. The conversation then came to a close.

I have taken the liberty of enclosing Hawaiian diplomatic protests lodged by my former countrymen and women in the U.S. Department of State in the summer of 1897, on record at your National Archives, in order for you to understand the gravity of the situation. I have also enclosed two (2) recent protests by myself as an officer of the Hawaiian Government against the State of Hawai'i for instituting unwarranted criminal proceedings against myself and other Hawaiian subjects and a resident of the Hawaiian Islands under the guise of American municipal laws within the territorial dominion of the Hawaiian Kingdom.

If after a thorough investigation into the facts presented to your office, and following zealous deliberations as to the considerations herein offered, the Government of the United States shall resolve to decline our offer to enter the arbitration as a Party, the present arbitral proceedings shall continue without affect pursuant to the Hague Conventions IV and V, 1907, and the UNCITRAL Rules of arbitration.

With Sentiments of the Highest Regard,
[signed] David Keanu Sai,
Acting Minister of Interior and Agent for the Hawaiian Kingdom

- 3.3. This action would elicit one of two responses that would be crucial to not only the proceedings regarding the continuity of the Hawaiian State, but also to the status of the *acting* government. Firstly, if the United States had legal sovereignty over the Hawaiian Islands, it could demand that the Permanent Court of Arbitration terminate these proceedings citing the Court is intervening in the internal affairs of the United States without its consent.⁷² This would have set in motion a separate hearing by the Permanent Court of Arbitration in order to decide upon the claim,⁷³ where the *acting* government

⁷² See Article 62 of the Statute of the International Court of Justice, which provides: "1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene. 2. It shall be for the Court to decide upon this request." The Permanent Court of Arbitration in the *Larsen case* relied upon decisions of the International Court of Justice to guide them concerning justiciability of third States, to wit, Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and the United States) (1953-1954), East Timor (Portugal v. Australia) (1991-1995), and Certain Phosphate Lands in Nauru (Nauru v. Australia). In the event that the United States chose to intervene to prevent the Larsen case from going further because it had an interest of a legal nature which may be affected by the decision," it is plausible that the Permanent Court of Arbitration would look to Article 62 of the Statute for guidance.

⁷³ *Id.*

would be able respond. Secondly, if the United States chose not to intervene, this non-action would indicate to the Court that it doesn't have a presumption of sovereignty or "interest of a legal nature" over the Hawaiian Islands, and, therefore, by its *tacit* acquiescence, would also acknowledge the *acting* government as legitimate in its claim to be the government of the Hawaiian Kingdom. In an article published in the *American Journal of International Law*, Bederman and Hilbert state:

"At the center of the PCA proceeding was the argument that Hawaiians never directly relinquished to the United States their claim of inherent sovereignty either as a people or over their national lands, and accordingly that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' 'unlawful imposition [over him] of [its] municipal laws' through its political subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States committed against him."⁷⁴

- 3.4. The *acting* government was notified by the Permanent Court of Arbitration's Deputy Secretary General Phyllis Hamilton, that the United States notified the Court that they will not join the arbitral proceedings nor intervene, but had requested permission from the arbitral parties to have access to the pleadings and transcripts of the case. Both the *acting* government and the claimant, Lance Larsen, through counsel, consented. The United States was fully aware of the circumstances of the arbitration whereby the dispute was premised upon the continuity of the Hawaiian State, with the *acting* government serving as its organ during a prolonged and illegal occupation by the United States. The United States did not protest nor did it intervene, and therefore under the doctrine of acquiescence, whose primary function is evidential, the United States recognized *de facto* the conditions of the international arbitration and the continuity of the Hawaiian State. In other words, the United States has provided, not only by acquiescence with full knowledge *de facto* recognition of the *acting* government and the continuity of the Hawaiian State during an illegal and prolonged occupation, but also by direct acknowledgment of the *de facto* authority of the *acting* government when it requested permission from the *acting* government to access the arbitration records.
- 3.5. On December 12, 2000, the day after oral hearings were held at the Permanent Court of Arbitration, a meeting took place in Brussels between Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium, and the author, who was Agent, and two Deputy Agents, Peter Umialiloa Sai, *acting* Minister of Foreign Affairs, and Mrs. Kau'i P. Sai-Dudoit, formerly

⁷⁴ See Bederman & Hilbert, *supra* note 176, at 928.

known as Kau‘i P. Goodhue, *acting* Minister of Finance, representing the *acting* government in the *Larsen case*.⁷⁵ Ambassador Bihozagara attended a hearing before the International Court of Justice on December 8, 2000, (*Democratic Republic of the Congo v. Belgium*),⁷⁶ where he was made aware of the Hawaiian arbitration case that was also taking place across the hall in the Peace Palace. After inquiring into the case, he called for the meeting and wished to convey that his government was prepared to bring to the attention of the United Nations General Assembly the prolonged occupation of the Hawaiian Kingdom by the United States. In that meeting, the *acting* government decided it could not, in good conscience, accept the offer and place Rwanda in a position of reintroducing Hawaiian State continuity before the United Nations, when Hawai‘i’s community, itself, remained ignorant of Hawai‘i’s profound legal position as a result of institutionalized indoctrination. The *acting* government thanked Ambassador Bihozagara for his government’s offer, but the timing was premature. The *acting* government conveyed to the Ambassador that it would need to first focus its attention on continued exposure and education regarding the American occupation both in the Islands and abroad. Although the Rwandan government took no action before the United Nations General Assembly, the offer itself, exhibited Rwanda’s *de facto* recognition of the *acting* government and the continuity of the Hawaiian State.

- 3.6. The *acting* government also filed a Complaint against the United States of America with the United Nations Security Council on July 5, 2001⁷⁷ and a Protest & Demand with United Nations General Assembly against 173 member States for violations of treaties with the Hawaiian Kingdom on August 12, 2012.⁷⁸ Both the Complaint and Protest & Demand were filed pursuant to Article 35(2) of the United Nations Charter, which provides that “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 Complaint was accepted by China, who served as the Security Council’s President for the month of July of 2001, and the Protest & Demand was accepted by Qatar, who served as the President of the General Assembly’s 66th Session. Following the filing of the Protest & Demand, the *acting* government also submitted its instrument of accession to the Rome Statute with the United

⁷⁵ David Keanu Sai, *A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai‘i today*, 10 J. L. & SOC. CHALLENGES 69, 130-131 (Fall 2008).

⁷⁶ *Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium), Provisional Measures, Order of 8 December 2000, I.C.J. Rep. 2000, at 182.

⁷⁷ The complaint and exhibits can be accessed online at: <http://hawaiiankingdom.org/united-nations.shtml>; see also Dumbery, *supra* note 159, at 671-672.

⁷⁸ The protest and demand can be accessed online at: http://hawaiiankingdom.org/pdf/UN_Protest.pdf.

Nations Secretary General on December 10, 2012 in New York City,⁷⁹ and its instrument of accession to the 1949 Fourth Geneva Convention with the General Secretariat of the Swiss Federal Department of Foreign Affairs in Berne.⁸⁰ At no time has any of the 173 States, whose permanent missions received the protest & demand, objected to the *acting* government's claim of treaty violations by the principal States that have treaties with the Hawaiian Kingdom or their successor States that are successors to those treaties. Article 28 of the *Vienna Convention on Succession of States in respect of Treaties*, provides:

“A bilateral treaty which at the date of a succession of States was in force or was being provisionally applied in respect of the territory to which the succession of States relates is considered as applying provisionally between the newly independent State and the other State concerned when: ... (b) by reason of their conduct they are to be considered as having so agreed.”

All 173 States have been made fully aware of the conditions of the Hawaiian Kingdom and by their silence have agreed, by acquiescence, like the United States, to the continuity of the Hawaiian State, the existence of the treaties with the principal States and their successor States, together with their corresponding duties and obligations, and the *de facto* authority of the *acting* government under those treaties.

- 3.7. The *acting* government, through time, established special prescriptive rights, by virtue of acquiescence and fully informed acknowledgment through action, as against the United States, and later as against other States, with regard to its exercising of governmental control in international affairs as officers *de facto* of the *de jure* government of the Hawaiian Kingdom as it stood in 1893. Furthermore, the *acting* government has based its actions as officers *de facto* on its interpretation of their treaties, to include the 1893 executive agreements—*Lili'uokalani assignment* and the *Agreement of restoration*, and the corresponding obligations and duties that stem from these treaties and agreements. The United States, as a party to the executive agreements and other treaties with the Hawaiian Kingdom, has not protested against acts taken by the *acting* government on these matters before the Permanent Court of Arbitration, and the United Nations' Security Council and General Assembly, and, therefore, has acquiesced with full knowledge as to the rights and duties of both the Hawaiian Kingdom and the United States under the agreements, which are treaties.

“Evidence of the subsequent actions of the parties to a treaty may be admissible in order to clarify the meaning of vague or ambiguous

⁷⁹ The ICC's instrument of accession can be accessed online at:
http://hawaiiankingdom.org/pdf/Inst_Accession.pdf.

⁸⁰ The Fourth Geneva Convention's instrument of accession can be accessed online at:
http://hawaiiankingdom.org/pdf/GC_Accession.pdf.

terms. Similarly, evidence of the inaction of a party, although not conclusive, may be of considerable probative value. It has been said that ‘[the] primary value of acquiescence is its value as a means of interpretation.’ The failure of one party to a treaty to protest against acts of the other party in which a particular interpretation of the terms of the treaty is clearly asserted affords cogent evidence of the understanding of the parties of their respective rights and obligations under the treaty.”⁸¹

According to Fitzmaurice, special rights, may be built up by a State “leading to the emergence of a usage or customary...right in favour of such State,” and “that the element of consent, that is to say, acquiescence with full knowledge, on the part of other States is not only present, but necessary to the formation of the right.”⁸² A State’s special right derives from customary rights and obligations under international law, and MacGibbon explains that as “with all types of customary rules, the process of formation is similar, namely, the assertion of a right, on the one hand, and consent to or acquiescence in that assertion, on the other.”⁸³ Specifically, the absence of protest on the part of the United States against the *acting* government’s claims as the legitimate government of the Hawaiian Kingdom signified the United States’ acceptance of the validity of such claims, and cannot now deny it. In the *Alaskan Boundary Dispute*, Counsel for the United States, Mr. Taylor, distinguished between “prescription” and “acquiescence.” He argued that the writings of Publicists, which is a source of international law, have “built up alongside of prescription a new doctrine which they called acquiescence, and the great cardinal characteristic of acquiescence is that it does not require any particular length of time to perfect it; it depends in each particular case upon all the circumstances of the case.”⁸⁴ Lauterpacht concludes, “The absence of protest may, in addition, in itself become a source of legal right inasmuch as it is related to—or forms a constituent element of—estoppel.”⁸⁵ Every action taken by the *acting* government under international law has directly challenged the United States claim to sovereignty over the Hawaiian Islands on substantive grounds and it has prevailed. It has, therefore, established a specific legal right, as against the United States, of its claim to be the legitimate government of the Hawaiian Kingdom exercising governmental control outside of the Hawaiian Islands while under an illegal and prolonged occupation. The United States and other States, therefore, are estopped from denying this specific legal right of the *acting* government by its own admission and acceptance of the right.

⁸¹ See MacGibbon, *supra* note 170, at 146.

⁸² Sir Gerald Fitzmaurice, *The Law and Procedure of the International Court of Justice, 1951-54: General Principles and Sources of Law*, 30 BRIT. Y. B. INT’L L. 68 (1953).

⁸³ I.C. MacGibbon, *Customary International Law and Acquiescence*, 33 BRIT. Y. B. INT’L L. 115, 117 (1957).

⁸⁴ United States Senate, 58th Cong., 2d Sess., Doc. no. 162, *Proceedings of the Alaskan Boundary Tribunal*, vol. vii, 619 (1904).

⁸⁵ See Lauterpacht, *supra* note 173, at 395.

4. TRANSITIONAL PLAN OF THE ACTING GOVERNMENT

- 4.1. A viable and practical legal strategy to impel compliance must be based on the legal personality of the Hawaiian State first, and from this premise expose the effect that this status has on the national and global economies—*e.g.* illegally assessed taxes, duties, contracts, licensing, real estate transactions, etc. This exposure will no doubt force States to intercede on behalf of their citizenry, but it will also force States to abide by the doctrine of non-recognition qualified by the *Namibia* case and codified in the *Articles of State Responsibility for International Wrongful Acts*. Parties who entered into contracts within the territorial jurisdiction of the Hawaiian Kingdom, cannot rely on United States Courts in the Islands to provide a remedy for breach of simple or sealed contracts, because the courts themselves cannot exercise jurisdiction without a lawful transfer of Hawaiian sovereignty. Therefore, all official acts performed by the provisional government and the Republic of Hawai‘i after the *Lili‘uokalani assignment* and the *Agreement of restoration*; and all actions done by the United States and its surrogates—the Territory of Hawai‘i and the State of Hawai‘i, for and on behalf of the Hawaiian Kingdom since the occupation began 12 noon on August 12, 1898, cannot be recognized as legal and valid without violating international law. The only exceptions, according to the *Namibia* case, are the registration of births, deaths and marriages.
- 4.2. A temporary remedy to this incredible quandary, which, no doubt, will create economic ruination for the United States, is for the Commander of the United States Pacific Command to establish a military government and exercise its legislative capacity, under the laws of occupation. By virtue of this authority, the commander of the military government can provisionally legislate and proclaim that all laws having been illegally exercised in the Hawaiian Islands since January 17, 1893 to the present, so long as they are consistent with Hawaiian Kingdom laws and the law of occupation, shall be the provisional laws of the occupier.⁸⁶ The military government will also have to reconstitute all State of Hawai‘i courts into Article II Courts in order for these contracts to be enforceable, as well as being accessible to private individuals, whether Hawaiian subjects or foreign citizens, in order to file claims in defense of their rights secured to them by Hawaiian law. All Article I Courts, *e.g.* Bankruptcy Court, and Article III courts, *e.g.* Federal District Court, that are currently operating in the Islands are devoid of authority as Congress and the Judicial power have no extraterritorial force, unless they too be converted into Article II Courts. The military government’s authority exists under and by virtue of the authority of the President, which is provided under Article II of the United States Constitution.

⁸⁶ See VON GLAHN, *supra* note 116, at 777.

- 4.3. The military government should also provisionally maintain, by decree, the executive branches of the Federal and State of Hawai'i governments in order to continue services to the community headed by the Mayors of Hawai'i island, Maui, O'ahu and Kaua'i, who should report directly to the commander of the military government. The Pacific Command Commander will replace the function of the State of Hawai'i Governor, and the legislative authority of the military governor would also replace the State of Hawai'i's legislative branch, *i.e.* the State Legislature and County Councils. The Legislative Assembly of the Hawaiian Kingdom can take up the lawfulness of these provisional laws when it reconvenes during the transitional stage of ending the occupation. At that point, it can determine whether or not to enact these laws into Hawaiian statute or replace them altogether with new statutes.⁸⁷
- 4.4. Without having its economic base spiral out of control, the United States is faced with no other alternative but to establish a military government. But another serious reason to establish a military government, aside from the economic factor, is to put an end to war crimes having been committed and are currently being committed against Hawaiian subjects by individuals within the Federal and State of Hawai'i governments. Their willful denial of Hawai'i's true status as an occupied State does not excuse them of criminal liability under laws of occupation, but ultimate responsibility, however, does lie with the United States President, Congress and the Supreme Court. "War crimes," states von Glahn, "played an important part of the deliberations of the Diplomatic Conference at Geneva in 1949. While the attending delegates studiously eschewed the inclusion of the terms 'war crimes' and 'Nuremberg principles' (apparently regarding the latter as at best representing particular and not general international law), violations of the rules of war had to be, and were, considered."⁸⁸
- 4.5. Article 146 of the Geneva Convention provides that the "High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article." According to Marschik, this article provides that "States have the obligation to suppress conduct contrary to these rules by administrative and penal sanctions."⁸⁹ "Grave breaches" enumerated in Article 147, that are relevant to the occupation of the Hawaiian Islands, include: "unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention...[and] extensive destruction and appropriation of

⁸⁷ See FEILCHENFELD, *supra* note 158, at 145.

⁸⁸ See VON GLAHN, *supra* note 116, at 248.

⁸⁹ Axel Marschik, *The Politics of Prosecution: European National Approaches to War Crimes*, (Timothy L. H. McCormack and Gerry J. Simpson, ed.s), THE LAW OF WAR CRIMES: NATIONAL AND INTERNATIONAL APPROACHES 72, note 33 (1997).

property, not justified by military necessity.”⁹⁰ Protected persons “are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”⁹¹ According to United States law, a war crime is “defined as a grave breach in any of the international conventions signed at Geneva August 12, 1949, or any protocol to such convention to which the United States is a party.”⁹² Establishing a military government will shore up these blatant abuses of protected persons under one central authority, that has not only the duty, but the obligation, of suppressing conduct contrary to the Hague and Geneva conventions taking place in an occupied State. The United States did ratify both Hague and Geneva Conventions, and is considered one of the “High Contracting Parties.”⁹³ On July 1, 2002, the International Criminal Court was established after the ratification of 60 States as a permanent, treaty based, independent court under the Rome Statute (1998) for the prosecution of individuals, not States, for war crimes.

Thus, the primary objective is to ensure the United States complies with its duties and obligations under international law, through his Commander of the United States Pacific Command, to establish a military government for the administration of Hawaiian Kingdom law. As explained hereinbefore, the United States military does not possess wide discretionary powers in the administration of Hawaiian Kingdom law, as it would otherwise have in the occupation of a State it is at war with. Hence, belligerent rights do not extend over territory of a neutral State, and the occupation of neutral territory for military purposes is an international wrongful act.⁹⁴ As a result, there exists a continued exploitation of Hawaiian territory for military purposes in willful disregard of the 1893 executive agreements of administering Hawaiian law and then restore the Hawaiian government *de jure*. In a neutral State, the Hague and Geneva conventions merely provide guidance for the establishment of a military government.

5. CONCLUSION

- 5.1. The continuity of the Hawaiian State is undisputed and for the past 13 years, the *acting* government has acquired a customary right to represent the Hawaiian State before international bodies by virtue of the doctrine of acquiescence, as well as explicit acknowledgment by States of the government’s *de facto* authority. Because the Hawaiian Kingdom was an

⁹⁰ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949), Article 147.

⁹¹ *Id.*, Article 4.

⁹² 18 U.S. Code §2441(c)(1).

⁹³ Hague Convention No. IV, October 18, 1907, Respecting the Laws and Customs of War on Land, 36 U.S. Stat. 2277; Treaty Series 539; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, Treaties and Other International Acts Series, 3365.

⁹⁴ Hague Convention VI (1907), *Rights and Duties of Neutral States*, Article I.

independent State in the nineteenth century, as acknowledged by the Permanent Court of Arbitration in 2001 by *dictum*,⁹⁵ international law provides for a presumption of the Hawaiian State's continuity, which "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."⁹⁶ Therefore, any United States government agency operating within the territory of the Hawaiian State that was established by the Congress, *i.e.* Federal agencies, the State of Hawai'i, and County governments, is "illegal" because Congressional authority is limited to the territory of the United States.⁹⁷

- 5.2. After firmly establishing there is no "valid demonstration of legal title, or sovereignty," on the part of the United States over the Hawaiian Islands, and therefore the Hawaiian State continues to exist, it next became necessary to ascertain the legitimacy of the *acting* government to represent the Hawaiian State before international bodies. The first international body to be accessed by the *acting* government was the Permanent Court of Arbitration in 1999, followed by the United Nations Security Council in 2001, the United Nations General Assembly in 2012, the United Nations Secretary General as the depository for the International Criminal Court in 2012, and the Swiss Government as the depository for the 1949 Geneva Conventions in 2013. Access to these international bodies was accomplished as a State, which is not a member of the United Nations. The *de facto* authority of the *acting* government was acquired through time since the arbitral proceedings were held at the Permanent Court of Arbitration, by acquiescence, in the absence of any protest, and, in some cases, by direct acknowledgment from States, *i.e.* United States, when it requested permission from the *acting* government to access the arbitral records;⁹⁸ 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;⁹⁹ 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;¹⁰⁰ Qatar, 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;¹⁰¹ and 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.¹⁰²

⁹⁵ *Supra*, para. 3.1. The Court acknowledged: "...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."

⁹⁶ *Supra*, para. 2.6.

⁹⁷ *Supra*, para. 3.11.

⁹⁸ *Supra*, para. 9.4.

⁹⁹ *Supra*, para. 9.5.

¹⁰⁰ *Supra*, para. 9.6.

¹⁰¹ *Id.*

¹⁰² *Id.*

- 5.3. The *acting* government, as nationals of an occupied State, took the necessary and extraordinary steps, by necessity and according to the laws of our country and international law, to reestablish the Hawaiian government in an *acting* capacity in order to exercise our country's preeminent right to "self-preservation" that was deprived through fraud and deceit; and for the past 13 years the *acting* government has acquired a customary right under international law in representing the Hawaiian State during this prolonged and illegal occupation.

A handwritten signature in black ink, appearing to read "David Keanu Sai". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping underline.

David Keanu Sai, Ph.D.

Appendix “IV”

HAWAIIAN REGISTER AND DIRECTORY FOR 1893.

The Court.

HER MAJESTY, LILIUOKALANI, *δ* September 2, 1838; succeeded to the Throne January 29, 1891, on the death of her brother, King Kalakaua; *m.* to his late Royal Highness Jno. Owen Dominis, Prince Consort, who was *δ*. March 10, 1832, and *d.* August 27, 1891. Daughter of Kapaakea and Keohokalole.

Her Majesty the Dowager Queen KAPIOLANI, *δ*. December 31, 1835.

Her Royal Highness the Princess VICTORIA-KAWEKIU-KAIULANI-LUNALILO-KALANINUI-AHILAPALAPA, *δ*. October 16, 1875, daughter of Her late K. H. Princess Likelike and His Ex A. S. Cleghorn, K. G. C., Member of the Privy Council of State. Proclaimed Heir Apparent, to the Throne. March 9, 1891.

His Excellency ARCHIBALD SCOTT CLEGHORN, K. G. C., Governor of Oahu and member of Privy Council of State. Father of the Heir Apparent.

Her Royal Highness VIRGINIA KAPOOLOKU POOMAIKELANI, *δ*. April 7, 1839. Sister to the Queen Dowager.

His Royal Highness Prince DAVID KAWANAKOHA, son of H. R. H. Princess Kekaulike, *δ*. February 19, 1868.

His Royal Highness Prince JONAH KUHIO KALANIANA'OLE, son of H. R. H. Princess Kekaulike, *δ*. March 28, 1870.

Her Majesty's Chamberlain, MAJOR JAS. W. ROBERTSON.

Her Majesty's Staff.

Cols C. P. Iaukea, J H Boyd, R Hoapili Baker W. H. Cornwell, J D Holt, Jr, H F Bertelmann J. T. Baker and E K Lilikalani.

The Cabinet.

Her Majesty, THE QUEEN.

Minister of Foreign Affairs, His Ex M P Robinson; Minister of the Interior, His Ex G N Wilcox; Minister of Finance, His Ex P C Jones; Attorney-General, His Ex C Brown.

Governors.

His Ex A S Cleghorn, Governor of Oahu.
His Ex T W Everett, Governor of Maui.
His Ex J T Baker, Governor of Hawaii.
His Ex W H Rice, Governor of Kauai.

Governor of Oahu's Staff.

Majors J W Robertson, Sam'l Nowlein.

Privy Council of State.

Her Majesty, THE QUEEN.

Hons. C R Bishop, A S Cleghorn, A F Judd, H A Widemann, H M Whitney, J A Cummins, G Rhodes, J M Smith, J S Walker, W J Smith, W F Allen, D Kahanu, J E Bush, C P Iaukea, G W Macfarlane, P P Kanoa, W D Alexander, E K Lilikalani, P Neumann, S Parker, J T Baker, R H Baker, S M Damon, J K Kaunamano, A N Tripp, J G Hoapili, F H Hayselden, W G Irwin, D H Nahinu, A Rosa, J B Atherton, J T Waterhouse, Jr, J Ena, W H Cornwell, R F Bickerton, C B Wilson, F S

Pratt, J O Carter, H R H, D Kawanakoa, S B Dole, G C Beckley, A Fernandez, P. Kenberg, Jr, Jno Richardson, J W Robertson. C P Iaukea, Secretary.

Legislative Assemblage, Session of 1893.

OFFICERS.

President.....Hon J S Walker
Vice-President.....Hon J Kauhane
Secretary.....C J McCarthy
Interpreter.....W L Wilcox
Sergeant-at-Arms.....F J Testa
Chaplain.....Rev J Waiamau

The Cabinet Ministers hold seats in the House ex-officio.

HOUSE OF NOBLES.

OAHU:

Hons D W Pua, A P Peterson, C L Hopkins. Term expires Feb 1894.
Hons. J S Walker, C O Berger, Jno Ena. Term expires Feb 1896.
Hons. J A Cummins, J N S Williams, C B Maile. Term expires Feb 1898.

MAUI:

Hons R D Walbridge, W H Cornwell. Term expires Feb 1894.
Hons. H P Baldwin, W Y Horner. Term expires Feb 1896.
Hons. Jas Anderson, L A Thurston. Term expires Feb 1898.

HAWAII:

Hons. R R Hind, J G Hoapili. Term expires Feb 1894.
Hons. J Kauhane, J M Horner. Term expires Feb 1896.
Hons. Alex Young, Jos Mardsen. Term expires Feb 1898.

KAUAI:

Hon. P P Kanoa. Term expires Feb 1894.
Hon. Alex McBryde. Term expires Feb 1896.
Hon. A Dreier. Term expires Feb 1898.

REPRESENTATIVES.

OAHU:

Honolulu:—Hons. W C Wilder, J W Bipikane, C W Ashford, S K Aki, S K Pua.
Ewa:—Hon A Kauh. Waia'ua:—Hon R W Wilcox. Koolau, J E Bush.

MAUI:

Lahaina:—Hon Wm White. Wailuku:—Hons W P Kanealii, W Edmonds. Makawao:—Hon J Kaluna. Hana:—Hon J K Iosepa. Molokai:—Hon T S Nahinu.

HAWAII:

Hilo:—Hons J Nawahi, K M Koahou, A Horner. Hamakua:—Hon J K Kaunamano. Kohala:—Hon G P Kamaooha. Kona:—Hon J H Waipuilani. Kau:—Hon J N Kapahu.

KAUAI:

Koia:—Hon W O Smith. Waimea:—Hon J A Akina. Hanalei:—Hon A S Wilcox.

Department of Judiciary.

SUPREME COURT.

Chief Justice.....Hon A F Judd
First Associate Justice.....Hon R F
Second Associate Justice.....Hon

Clerk Judiciary Department.....F

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President. C R Eishop
 Vice-President. F A Schaefer
 Secretary and Treasurer. J B Atherton

Board of Underwriters—Agencies.

Boston. C Brewer & Co
 Philadelphia. C Brewer & Co
 New York. A J Cartwright
 Liverpool. T H Davies & Co
 Lloyds, London. T H Davies & Co
 San Francisco. H Hackfeld & Co
 Bremen, Dresden, Vienna. F A Schaefer

Honolulu Board of Underwriters.

F A Schaefer. President
 J H Paty. Vice-President
 C O Berger. Secretary and Treasurer

Packet Agencies.

Boston Packets..... C Brewer & Co
 Planters' Line, San Francisco.... C Brewer & Co
 Pioneer, Liverpool..... T H Davies & Co
 Merchants' Line, San Francisco.. Castle & Cooke
 New York Line..... Castle & Cooke
 Oceanic S S Co's Line..... W G Irwin & Co
 Pacific Mail S S Company.... H Hackfeld & Co
 Oriental and Oceanic S S Co.... H Hackfeld & Co
 Bremen Packets..... H Hackfeld & Co
 Hawaiian Packet Line S F.... H Hackfeld & Co
 Glasgow and Honolulu..... F A Schaefer & Co

Honolulu Fire Department.

Organized 1851. Biennial Election of Engineers
 First Monday in December.

Officers for 1890-92:

Chief Engineer..... Julius Asch
 First Assistant Engineer..... Jas H Hunt
 Second Assistant Engineer..... D L Kalawala
 Secretary and Treasurer..... Henry Smith
 Fire Marshal and Survey Engineer..... Jno Neil
 Honolulu Engine Company No 1 (steam) formed
 1850, organized July 18, 1855. Annual election
 of officers, first Wednesday in July.
 Mechanic Engine Company No 2, (steam) organized
 December, 1850, admitted February 3,
 1850. Annual election of officers, first Wednes-
 day in February.
 Hawaii Engine Co No 4, (steam) organized
 February, 1861. Annual election of officers, first
 Tuesday in February.
 China Engine Company No 5 (steam), organized
 February, 1879.
 Protection Hook and Ladder Company No 1,
 re-organized September, 1857. Annual election
 of officers, first Monday in September.
 Fire Police, Captain T E Krouse.

Fire Wards of Honolulu.

No. 1—Bounded by School, Likelike, Judd and
 Punchbowl streets.
 No. 2—Bounded by Beretania, Liliha, School
 and Fort streets.
 No. 3—Bounded by King, Beretania and Fort
 streets.
 No. 4—Bounded by Water Front, King and Fort
 streets.
 No. 5—Bounded by Water Front, Fort, King
 and Richard streets.
 No. 6—Bounded by King, Fort, Beretania and
 Richard streets.
 No. 7—Bounded by Beretania, Fort, School and
 Punchbowl streets.
 No. 8—Bounded by Water Front, Richards,
 Beretania and Punchbowl streets.
 No. 9—Bounded by Water Front Punchbowl
 and Victoria streets.
 No. 10—Bounded by King, Victoria and Piikoi
 streets.
 No. 11—Bounded by Piikoi, Wilder avenue and
 Punahou streets.
 No. 12—Beyond Punahou street.
 No. 13—The Harbor.

Queen's Hospital.

ERECTED IN 1860.

President..... Her Majesty
 Vice-President..... C R Bishop
 Sec'y..... F A Schaefer | Treas..... J H Paty
 Auditor..... J S Walker
 Physicians..... G P Andrews, C B Wood
 Executive Committee—C R Bishop, J H Paty,
 F A Schaefer, A S Cleghorn.

Hawaiian Historical Society.

Organized Jan., 11, 1892.

President..... Hon C R Bishop
 Vice-President..... J S Emerson
 Recording Secretary..... Rev C M Hyde, D.D.
 Corresponding Secretary... Prof W D Alexander
 Treasurer..... G P Castle
 Librarian..... Rev R R Hoes, U.S.N.

American Relief Fund.

Organized 1864. Meets annually February 22

President.....
 Secretary and Treasurer..... C R Bishop

British Club.

Organized 1852. Premises on Alakea Street, two
 doors below Beretania.

President..... A S Cleghorn
 Sec'y..... F M Swanzy | Treas..... J G Spencer
 Managers—A S Cleghorn, W A Whiting, F M
 Swanzy, J G Spencer, A Jaeger, Dr Kobb
 McKibbin, H Focke.

British Benevolent Society.

Organized 1860. Meets annually April 23.

President..... J H Wodehouse
 Vice-President..... Rev A Mackintosh
 Sec'y..... F M Swanzy | Treas.....

German Benevolent Society.

Organized August 22, 1836.

President..... J F Hackfeld
 Secretary..... John F Eckart
 Treasurer..... F Klamp

Portuguese Ladies' Benevolent Society.

Organized December, 1886.

President..... Mrs Cannavaro, Mrs W G Irwin,
 Mrs C M Hyde
 Vice-Presidents.....
 Secretary..... Mrs Wm Foster
 Treasurer..... E Hutchinson

The St. Antonio Benevolent Society.

Organized 1876: Incorporated 1890.

President..... J M Camara, Jr
 Vice-President..... J B Vieira
 Secretary..... J S Ramos
 Treasurer..... C L Brito

**Portuguese Mutual Benefit Society of Ha-
 wail.**

Organized Jan. 1882: Incorporated 1887.

President..... J M Vivas
 Vice-President..... J G Silva
 Secretary..... M Gozmao Silva
 Treasurer..... A G Silva, Jr

Stranger's Friend Society.

Organized 1852. Annual Meeting in June.

President..... Mrs W F Allen
 Vice-Presidents. Mrs A Mackintosh, Mrs T H
 Hobron.
 Secretary..... Mrs S M Damon
 Treasurer..... Mrs E W Jordan
 Directress..... Mrs S H Dowsett

Mission Children's Society.

Organized 1851. Annual Meeting in June.
 President..... W R Castle
 Vice-President..... Mrs S B Dole
 Recording Secretary..... W J Forbes
 Cor Secretary..... Mrs L B Coan
 Elective Members..... Mrs A S Hartwell, Dr N B Emerson.
 Treasurer..... W F Frear

Board of Hawaiian Evangelical Association.

Originally organized 1823.
 Constitution revised 1863. Annual meeting June
 President..... Hon A F Judd
 Vice-President..... H Waterhouse
 Corresponding Secretary..... Rev O P Emerson
 Recording Secretary..... Rev C M Hyde, D D
 Treasurer, W W Hall | Auditor, J B Atherton

Woman's Board of Missions.

Organized 1871.

President..... Mrs C M Hyde
 Recording Secretary..... Mrs S E Bishop
 Home Cor Sec'y..... Mrs G P Castle
 Foreign Cor Sec'y..... Mrs E H McCully
 Treasurer..... Mrs B F Dillingham
 Auditor..... W W Hall

Sailors' Home Society.

Organized 1853. Meets annually in December.
 President..... C R Bishop
 Secretary, F A Schaefer | Treasurer, J H Paty
 Ex Com, S M Damon, J B Atherton, C M Cooke

Missionary Gleaners—Branch of Woman's Board.

President..... Mrs E Jones
 Vice-President..... Miss C Gilman
 Rec Secretary..... Miss E R Hopper
 Cor Secretary..... Mrs E C Damon
 Treasurer..... Mrs T W Hobron
 Directress..... Miss H S Judd

Woman's Christian Temperance Union.

Organized Dec., 1884.

President..... Mrs J M Whitney
 Vice-Presidents..... Mrs C M Hyde, Mrs E G Beckwith, Mrs E W Jordan.
 Recording Secretary..... Mrs R Jay Greene
 Corresponding Secretary..... Mrs E W Jordan
 Treasurer..... Mrs L B Coan
 Auditor..... W A Bowen

Young Men's Christian Association.

Organized 1869. Annual meeting in April.

President..... Hon J B Atherton
 Vice-President..... C B Ripley
 Secretary..... W L Howard
 Treasurer..... H F Wichman
 General Secretary..... H W Peck

Library and Reading Room Association.

Organized March, Incorporated June 24, 1879.

President..... A J Cartwright
 Vice-President..... M M Scott
 Secretary..... H A Parmelee
 Treasurer..... Miss M A Burbank

Hawaiian Rifle Association.

Organized December, 1885.

President..... J H Soper
 Vice-President..... Hon S B Dole
 Secretary and Treasurer..... Walter E Wall

Honolulu Cemetery Association.

President..... Hon J I Dowsett
 Vice-President..... Hon J T Waterhouse, Jr
 Secretary..... J H Paty
 Treasurer..... B Cartwright

Oahu College.

Located at Punahou, two miles east of Honolulu.
 F A Hosmer, A M..... President

Mental and Moral Sciences.
 A B Lyons, M D, F C S, Chemistry and Natural Sciences.
 Miss L F Dale, Vocal and Instrumental Music and French.

A W Crockett, A B., Latin and English Literature.

Miss M R Wing..... Greek, Rhetoric, etc
 J Q Wood, A B..... Mathematics, History and English.

P H Dodge..... Drawing and Painting

Punahou Preparatory.

Miss Margaret Brewer, Principal: First and Second Grades.

Miss Helen M Sorenson. Third and Fourth Grades.

Miss Ella B Snow..... Fifth and Sixth Grades

Miss Carrie A Gilman..... Seventh and Eighth Grades.

Miss M Birch Fanning..... Kindergarten

Kamehameha Schools.

Located at Kalihi, west of Honolulu.

Rev W B Oleson..... Principal
 U Thompson, Asst... Instructor in Carpentry
 G H Babb Asst... Instructor in Wood-turning
 R B Anderson..... Supt. Manual Labor
 L C Lyman..... Drawing, Supt. Machine Shop
 Mr Ruetsky, Assist... Instructor in Printing
 Miss C Pope, Asst... Instructor in Sewing
 Mrs W B Oleson..... Assistant

Kamehameha Preparatory.

Miss Malone..... Principal
 Misses E Halstead, A E Knapp, R Hoppin
 Assistants.

Publications.

The *Hawaiian Gazette*, issued weekly by the Hawaiian Gazette Co. on Tuesdays. H M Whitney, Manager.

The *Daily Pacific Commercial Advertiser*, issued by the Hawaiian Gazette Co. every morning (except Sundays). H N Castle, Editor; H M Whitney, Manager.

The *Daily Bulletin*, issued every evening (except Sundays), by the Daily Bulletin Co. D Logan, Editor. Weekly issue on Tuesdays.

The *Friend*, issued on the first of each month. Rev. S. E. Bishop, Editor.

The *Anglican Church Chronicle*, issued on the first Saturday of every month. Rev. A. Mackintosh, Editor.

The *Paradise of the Pacific*, issued monthly. F Godfrey, Editor, J J Williams, Manager.

The *Planters' Monthly*, issued on the 15th of each month. H. M. Whitney, Editor.

The *Honolulu Diocesan Magazine*, issued quarterly. Rt Rev Bishop Willis, Editor.

The *Kuokoa* (native), issued every Saturday morning, by the Hawaiian Gazette Co. J U Kawainui, Editor.

A *Uniao Lusitana-Hawaiiana*, amalgamation of the *Luso* and *Aurora*, (Portuguese) issued every Saturday, C Pereira, Editor.

The *Hawaiian-Chinese News*, issued weekly, Ho Fon, Editor.

Hawaii Holomua (native), issued daily and weekly. J G M Sheldon, Editor.

The *Ka Oiaio* (na'ive), issued every Friday, J E Bush Editor. Issues also a daily, *Ka Leo o ka Lahui* for native, and *The Voice of the Nation* for English readers.

Chinese Times, issued weekly, Chang Tin Sang, Editor.

The *Japanese Weekly News*, issued Mondays in the Japanese language. B Onoma, Editor.

The Liberal, issued semi-weekly, part English and part Hawaiian. Hon R W Wilcox, Editor

Handicraft, issued monthly during the school year at the Kamehameha School. Rev W B Oleson, Editor.

A *Sentinella* (Portuguese), issued weekly on Saturday. J M Vivas, Editor.

HAWAIIAN ALMANAC AND ANNUAL, issued the latter part of December for the following year. Thos G Thrum, Editor and Publisher.

Lodges.

LODGE LE PROGRES DE L'OCEANIE, No 124, A F & A M; meets on King St., on the last Monday in each month.

HAWAIIAN, No 21, F & A M; meets in its hall corner Queen and Fort Streets, on the first Monday in each month.

HONOLULU CHAPTER, No 1, R A M; meets in the hall of Le Progres de l'Oceanie on the third Thursday of each month.

HONOLULU COMMANDERY NO 1 KNIGHTS TEMPLAR meets at the Lodge Room of Le Progres de l'Oceanie second Thursday of each month.

KAMEHAMEHA LODGE OF PERFECTION. No. 1. A & A S R; meets in the hall of Le Progres de l'Oceanie on the fourth Thursday of each month.

NUUANU CHAPTER OF ROSE CROIX, No 1, A & A S R; meets at the hall of Le Progres de l'Oceanie, first Thursday in the month.

ALEXANDER LIHOLIHO COUNCIL No 1, of KADOSH; meets on the third Monday of alternate months from February.

EXCELSIOR LODGE, No 1, I O O F; meets at the hall in Odd Fellows' Building, on Fort St, every Tuesday evening.

HARMONY LODGE, No 2, I O O F; meets each Monday evening in Harmony Hall.

POLYNESIA ENCAMPMENT, No 1, I O O F; meets in Odd Fellows' Building, Fort street, first and third Fridays of each month.

PACIFIC DEGREE LODGE, No 1, DAUGHTERS OF REBBKAH; meets at Excelsior Hall, Fort street, second and fourth Fridays of each month.

OAHU LODGE No 1, K of P; meets every Wednesday at hall on Fort Street.

MYSTIC LODGE, No 2, K of P; meets every Thursday evening, at Harmony Hall.

SECTION NO 225—ENDOWMENT RANK, K of P; meets on the second Saturday of January, July and December in the hall of Oahu Lodge.

MAILE LODGE, No. 4, KNIGHTS OF PYTHIAS; meets every Saturday night in Lyceum Build-

ing, Honokaa, Hawaii. Visiting brothers always welcome.

HAWAIIAN COUNCIL No 689, AMERICAN LEGION OF HONOR; meets on second and fourth Friday evenings of each month in Harmony hall.

OCEANIC COUNCIL, No 777, AMERICAN LEGION OF HONOR; meets on the first and third Thursdays of each month, at the K of P hall.

HAWAIIAN TRIBE, No 1, IMP. O R M; meets at the hall of Oahu Lodge, K of P, every Friday evening.

COURT LUNALILO, No 6600; A O of FORESTERS meets at hall of Oahu Lodge, K of P, on second and fourth Tuesdays of each month.

GEO. W DE LONG POST, No 45, G A R; meets the second Tuesday of each month at Harmony hall.

CAPT. COOK LODGE No. 353, ORDER SONS OF ST. GEORGE; meets at the K of P Hall, Fort st., every Saturday evening.

Places of Worship.

CENTRAL UNION CHURCH (Congregational), corner of Beretania and Richards sts, Rev E G Beckwith, D.D., Pastor. Services every Sunday at 11 A M and 7:30 P M. Sunday School meets one hour before morning service. Prayer meeting Wednesday evenings at 7:30.

ROMAN CATHOLIC CHURCH, Fort Street, near Beretania; Rt Rev Gulstan F Ropert, Bishop of Panopolis; Revs Leonor and Clement, assisting. Services every Sunday at 10 A M, and at 4:30 P M. Low Mass every day at 6 and 7 A M. High Mass Sundays and Saints' days at 10 A M.

ST. ANDREW'S CATHEDRAL, Emma Square. First Congregation. Clergy: Rt Rev Bishop Willis, and Rev V H Kitcat. Services on Sunday: Holy Communion at 6:30 A M. Morning prayer, with sermon at 11 A M. Hawaiian Evensong 3:30 P M. Evening Prayer with sermon 7:30 P M. Holy Communion at 11 A M the last Sunday in each month. Sunday School 10 A M. Daily prayer at 7 A M.

Second Congregation, Rev A Mackintosh, Pastor. Services on Sunday: Morning prayer with sermon, 9:45 A M; Evening prayer with sermon 6:30 P M. Holy Communion first Sunday in month, 9:45 A M. Sunday School 10 A M. Evening prayer, with address, every Friday, at 7:30 P M.

Chinese Congregation. Services on Sunday at 11 A M and 7:30 P M. Evening prayer every Wednesday, at 7:30 P M.

CHRISTIAN CHINESE CHURCH, Fort Street, F W Damon, acting Pastor. Services every Sunday at 10:30 A M and 7:30 P M. Prayer Meeting Wednesdays at 7:30 P M.

NATIVE CHURCHES.

KAWAIAHAO CHURCH (Congregational), corner of King and Punchbowl Streets, Rev H H Parker, Pastor. Services in Hawaiian every Sunday at 11 A M, and at 7:30 on Sunday evenings alternating with Kaumakapili. Sunday School at 10 A M. Prayer Meeting, Wednesday at 7:30 P M.

KAUMAKAPILI CHURCH (Congregational), Beretania street near Maunakea. Rev J Waiamau, Pastor. Servi es in Hawaiian every Sunday at 11 A M, and at 7:30 P M on Sunday evenings alternating with Kawaiahao. Sunday School at 10 A M. Prayer Meeting every Wednesday at 7:30 P M.

Appendix “V”

LB 3531

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PROGRAMME

for

Patriotic Exercises in the Public Schools

Territory of Hawaii,

Adopted by the Department of Public Instruction.

1906

PROGRAMME FOR PATRIOTIC EXERCISES

I.

Formation and Salute to Flag.

- (a) At three minutes to nine o'clock the children assemble in front of the school, the classes forming a circle (or circles) about the flag pole or facing the building over which the stars and stripes are to float. The principal gives the order, "Attention!" or "Face!" The boys remove hats and the teachers, and pupils watch the flag hoisted by two of the older boys. When it reaches the top of the flag-pole, the principal gives the order, "Salute!" or three cheers may be given for the flag as it is being raised.

At nine o'clock the pupils march to their class rooms to the beating of a drum or to some march played by the pianist or school band.

On reaching their class rooms, the children may stand by their seats and repeat in concert the following salutation:

"We give our heads and our hearts to God and our Country! *One Country! One Language! One Flag!*"

(NOTE: The flag is dipped while the children raise the right hand, forefinger extended, and repeat the pledge. When they salute, the flag is raised to an upright position.)

- (b) All the children to be drawn up in line before the school building.

A boy and a girl each holding a medium-sized American flag, stand one on the right and one on the left of the school steps. Boy on the right and girl on the left. The flags should be held military style.

The children at a given signal by the principal or teacher in charge, file past the flags, saluting in correct military manner. The boys to the right and the girls to the left, entering and taking their positions in the school. The flag bearers enter last, and take their positions right and left of the principal, remaining in that position during the salutation, "We give our heads and our hearts to God and our Country! *One Country! One Language! One Flag!*"

The flag bearers place the flags in position at the head of the school. The boy and girl who carry the flags should be chosen from among the pupils for good conduct during the hours of school.

- (c) Pupils attention! at chord on piano or organ, or stroke of drum or bell.

The teacher will call one of the pupils to come forward and stand at one side of desk while the teacher stands at the other. The pupil shall hold an American flag in military style.

At second signal all children shall rise, stand erect and salute the flag, concluding with the salutation, "We give our heads and our hearts to God and our Country! *One Country! One Language! One Flag!*"

II.

Morning Prayer (in unison).

- (a) THE LORD'S PRAYER;

Or

- (b) Dear Lord we thank thee for the night
That brought us peaceful rest,
We thank thee for the pleasant light
With which our day is blessed;
We thank thee for our native land,
The dearest in the world;
We thank thee for our starry flag
For freedom's sake unfurled.

O, make us worthy, God, to be
The children of this land,
Give us the truth and purity
For which our colors stand,
May there be in us greater love
That by our lives we'll show
We're children true of God above
And our country here below.

Or

- (c) "Hawaii's land is fair,
Rich are the gifts we share.
This is our earnest prayer
 O Lord of Light,
That as a noble band
We may join heart and hand
Till all Hawaii's land
 Stands for the right."

P. H. DODGE.

III.
Patriotic Song.

Any one of following :

AMERICA ;

STAR SPANGLED BANNER ;

THE RED, WHITE AND BLUE ;

BATTLE HYMN OF THE REPUBLIC ;

RALLY ROUND THE FLAG ;

YANKEE DOODLE ;

HAIL COLUMBIA ;

HOME, SWEET HOME ;

COLUMBIA, THE GEM OF THE OCEAN ;

GLORY—GLORY—HALLELUJAH ;

MY OWN UNITED STATES ;

JOHN BROWN'S BODY.

IV.

Patriotic Topics for Day.

(a) FORMAL TALK BY THE TEACHERS ON—

- 1.—Presidents and Famous Men ;
- 2.—Great Events in History and Science ;
- 3.—Current Events in United States ;
- 4.—Vivid descriptions (illustrated whenever possible) of Great Industries, Cities, Famous Localities, Physical and Climatic Conditions.

(b) QUOTATIONS OR RECITATIONS.

It is the idea that on each Monday morning a new text be introduced in a brief talk by the teacher, written on the board, and during the week repeated by the pupils each day.

QUOTATIONS.

Our parents are dear to us ; our children, our kinsmen, our friends are dear to us, but our country comprehends alone all the endearments of all.—*Cicero*.

"I was summoned by my country, whose voice I never hear but with veneration and love."—*George Washington*.

The union of hearts, the union of hands,
And the flag of our Union forever.

—*G. P. Morris*.

And never shall the sons of Columbia be slaves,
While the earth bears a plant, or the sea rolls its waves.

—*Joseph Thrumbull*.

One flag, one land, one heart, one hand,
One nation ever more!

—*Holmes.*

Our fathers brought forth upon this continent a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.—*Abraham Lincoln.*

Liberty and Union, now and forever, one and inseparable.—*Daniel Webster.*

Let our object be our country, our whole country, and nothing but our country.—*Daniel Webster.*

Our Country—to be cherished in all our hearts, to be defended by all our hands.—*Robt. C. Winthrop.* (Given as a toast in Faneuil Hall.)

Lose then the sense of your private sorrows and lay hold of the common good.—*Demosthenes.*

In peace there's nothing so becomes a man as modest stillness and humility; But when the blast of war blows in our ears, then imitate the action of the tiger.—*Shakespeare.*

You cannot, my lords, you *cannot* conquer America.—*Wm. Pitt, Earl of Chatham.*

If I were an American as I am an Englishman, while a foreign troop was landed in my country, I would never lay down my arms—never, never, never.—*Wm. Pitt, Earl of Chatham.*

What is the individual man, with all the good or evil that may betide him, in comparison with the good or evil which may befall a great country?—*Daniel Webster.*

I advise you not to believe in the destruction of the American nation. (Time of Civil War.)—*John Bright.*

I believe there is no permanent greatness to a nation except it be based on morality.—*John Bright.*

Our business is like men to fight. And hero-like to die.—*Wm. Motherwell.*

A star for every state and a state for every star.—*Robt. C. Winthrop.*

I call upon yonder stars which shine above us to bear witness—that liberty can never die.—*Victor Hugo.*

Four years ago, O Illinois, we took from your midst an untried man, and from among the people. We return him to you a mighty conqueror; not thine any more, but the nation's; not ours, but the world's.—*Henry Ward Beecher.* (On Lincoln).

If it be the pleasure of Heaven that my country shall require the poor offering of my life, the victim shall be ready at the appointed hour of sacrifice, come when that hour may.—
By *Daniel Webster.*

There's freedom at thy gates, and rest
For earth's downtrodden and opprest,
And shelter for the hunted head;
For the starved laborer, toil and bread.

(America).

By *Wm. Cullen Bryant.*

We mutually pledge to each other our lives, our fortunes, and our sacred honor. (Declaration of Independence.)—
Thomas Jefferson.

Let us have peace.—*U. S. Grant.*

Fondly do we hope, fervently do we pray, that this mighty scourge of war may soon pass away.—*Abraham Lincoln.*

I was born an American; I live an American; I shall die an American; and I intend to perform the duties incumbent upon me in that character to the end of my career.—*Daniel Webster.*

Seek the forests where shone the sword of Washington.
What do you find? A place of tombs? No, A World.
Washington has left the United States as a trophy on his
battlefield.—*Chateaubriand*.

The man who loves home best and loves it most unselfishly,
loves his country best.—*J. G. Holland*.

I know not what course others may take; but, as for me,
give me liberty or give me death.—*Patrick Henry*.

Breathes there a man with soul so dead
Who never to himself hath said,
"This is my own, my native land!"
Whose heart hath ne'er within him burned
As home his footsteps he hath turned,
When wandering on a foreign strand?—*Sir Walter Scott*.

Ye people, behold, a martyr whose blood—pleads for
fidelity, for law, and for liberty.—*Henry Ward Beecher*.
(On Lincoln.)

Stand by the flag, all doubt and treason scorning,
Believe with courage firm and faith sublime,
That it will float until the eternal morning
Pales in its glories all the lights of time.

John Nicholas Wilder.

There is the national flag. He must be cold indeed who
can look upon its folds rippling in the breeze without pride
of country.—*Charles Sumner*.

We cannot honor our country with too deep a reverence; we
cannot love her with an affection too fervent; we cannot serve
her with faithfulness of zeal too steadfast and ardent.—
Thos. Smith Grimke.

My angel—his name is Freedom,
Choose him to be your king;
He shall cut pathways east and west
And fend you with his wing.

Let us animate and encourage each other, and show the whole world that a freeman contending for liberty on his own ground is superior to any slavish mercenary on earth.—*George Washington*. (In a speech to his troops before the battle of Long Island.)

—— that the nation shall, under God, have a new birth of freedom, and that government of the people, by the people, and for the people shall not perish from the earth.—*Abraham Lincoln*.

Proclaim liberty throughout the land to all the inhabitants thereof.—Inscription on Liberty Bell.

A man's country is not a certain area of land, but a principle, and patriotism is loyalty to that principle.—*Geo. Wm. Curtis*.

Through all history a noble army of martyrs has fought fiercely and fallen bravely for that unseen mistress, their country.—*Geo. Wm. Curtis*.

With malice towards none, with charity for all, with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in: to bind up the nation's wound; to care for him who shall have borne the battle, and for his widow and orphans; to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.—*Abraham Lincoln*.

The ends I aim at shall be my country's, my God's and truth's.—*Daniel Webster*.

I love my country's good, with a respect more tender, more holy and profound, than my whole life.—*Shakespeare*.

Be just, and fear not; let the ends thou aim'st at, be thy country's, thy God's and truth's.—*Shakespeare*.

"Then conquer we must, for our cause it is just,
And this be our motto,
In God is our trust."

RECITATIONS.

"The Eagle flew; the flag unfurled."

"Speed on our Republic."

"Landing of the Pilgrims."

"Our Chieftain, Washington."

"The Ballot Box."

"Old Liberty Bell."

"Paul Revere's Ride."

"Barbara Fritche."

"Liberty Hall."

"The Union," by Daniel Webster.

Liberty of the Press, by Col. E. D. Baker.

Bunker Hill Monument, by Webster.

Fourth of July, by Daniel Webster.

"Washington's Birthday."

In Favor Liberty, by Patrick Henry.

The Constitution and the Union, by Webster.

"God Wants the Boys and Girls."

"The Boy for Me."

"The Man with the Musket."

"Native Land."

Declaration of Independence.

Preamble of the Constitution.

(c) SPECIAL ANNIVERSARY DATE.

Following are suggestive dates. Have picture hung up before the pupils or sketched on the blackboard and as much said of his life and deeds as the time will allow.

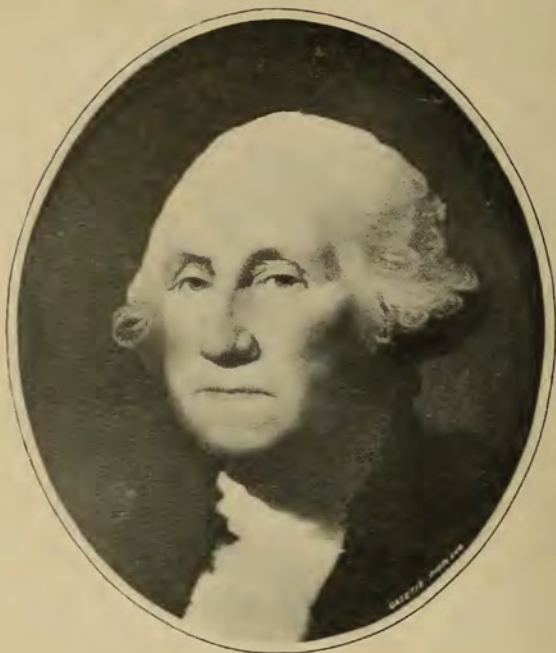
| DATES. | SUBJECT. | REMARKS. |
|--|----------|--|
| Jan. 18—Daniel Webster | | Born Jan. 18, 1782. Recite Bunker Hill Monument. |
| Jan. 29—McKinley | | Born Jan. 29, 1843. Sing "Lead Kindly Light." |
| Feb. 1—Slavery abolished | | Feb. 1, 1865. Sing "Battle Hymn of the Republic." Recite "Battle of Gettysburg." |
| Feb. 12—Lincoln | | Born Feb. 12, 1809. Tell anecdotes and recite "Battle of Gettysburg." |
| Feb. 21—American Flag made from American Bunting | | Tell about our great industries. Sing "Star Spangled Banner." Recite "Speed on the Ship." |
| Feb. 22—Washington | | Born Feb. 22, 1732. Tell stories. Recite "Our Chieftain, Washington." |
| March 4—Presidents | | Inauguration Day. Show pictures of the Presidents or sketch them on blackboards. |
| March 9—Monitor and Merrimac | | Battle March 9, 1862, when the men of the Monitor sang in the midst of the fight, "Yankee Doodle Dandy." |
| May 9—John Brown | | Born May 9, 1800. Sing "John Brown's Body." Tell the story of his life. |

| DATES. | SUBJECT. | REMARKS. |
|---------------|-----------------------------|--|
| April 10— | “Home, Sweet Home” | The author, John Howard Payne, was born April 10, 1792. Sing the song. Tell stories of his life. |
| May 20 to 25— | The Flag | Joseph R. Drake wrote “America’s Flag.” Sing this song. |
| May 30— | Memorial Day | Sing “The Battle Hymn of the Republic.” Recite “Gettysburg.” |
| June 14— | Flag Day | Flag adopted June 14, 1777. Sing “Red, White and Blue” and “Star Spangled Banner.” |
| July 4— | Declaration of Independence | Read part of the Declaration of Independence. |
| Sept. 14— | “Star Spangled Banner” | Written by Francis Scott Key, Sept. 14, 1818. Sing this song. Recite “Barbara Fritche.” |
| Sept. 27— | Samuel Adams | Born Sept. 27, 1722. Read part of Declaration of Independence, as Adams was the chief man in securing the D. of I. |
| Oct. 12— | Discovery of America | Sing “O Columbia.” Recite “Native Land.” |
| Oct. 21— | “America” | Dr. Smith, the author, was born Oct. 21, 1808. Sing “America.” |
| Dec. 22— | Pilgrim Land | Recite “Landing of the Pilgrims,” Dec. 22, 1620. |

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Appendix “VI”

HARPER'S WEEKLY

VOL. LI.

New York, Saturday, February 16, 1907

NO. 2617

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"THEY'LL DO"

HAWAII'S LESSON TO HEADSTRONG CALIFORNIA

HOW THE ISLAND TERRITORY HAS SOLVED THE PROBLEM OF DEALING WITH ITS FOUR THOUSAND JAPANESE PUBLIC-SCHOOL CHILDREN

By WILLIAM INGLIS

SPECIAL CORRESPONDENT FOR "HARPER'S WEEKLY"

HONOLULU, TERRITORY OF HAWAII, January 15, 1907.

THE American government in Hawaii has no trouble whatever in dealing with the Japanese pupils in the public schools. Nothing can be more startling to the observer who comes from the bubbling volcano of San Francisco school-politics than the ease with which the annoying race question is handled by intelligent Americans in this garden-spot of the Pacific. There are more than 4000 Japanese pupils here, as against a meagre ninety-three in San Francisco, yet there is no vexation.

There would be nothing to wonder at in the situation if most of the Japanese residents of Hawaii were people of culture and wealth, not competing with American labor. It is the status of the Mikado's subjects in these islands that forces one to admire the diplomacy with which an awkward problem has been handled. For the Japanese in Hawaii are nearly all of the coolie type. They are cheap workers, whether as laborers in the cane-fields or mechanics or artisans of any class. There is bitter strife between them and American labor. Strenuous efforts have been made to exclude Japanese laborers, to prevent Japs from working as mechanics, cabmen, or farriers; to prohibit them from owning drinking-saloons. The Palama, as the Japanese quarter in Honolulu is called, contains six times as many Asiatics as the Chinese quarter of New York, and the Japanese is very fond of driving dull care away with a glass; yet a most determined effort has been made to oust the little brown men from the profitable business of liquor-selling. An attempt was made, too, to compel the Japanese doctors who attend their countrymen here to take medical examinations in the English language, under penalty of not being allowed to practise in this Territory.

All of these anti-Japanese campaigns failed of success because the Territorial courts held that their basis was illegal, inasmuch as it was an invasion of treaty rights. I mention them merely to show how bitter and uncompromising has been the economic warfare upon the Japanese in these islands.

The great difference between the situation here and in California is that the Hawaiian-Americans have fought the Japanese bitterly but according to law and the treaty rights of the foreigners, while the San-Franciscans, with far less provocation, have airily disregarded both law and treaty in order to inflict upon Japan a gratuitous affront.

There are more than sixty thousand Japanese in the Hawaiian Islands. Nearly all of them are laborers on the sugar-plantations.

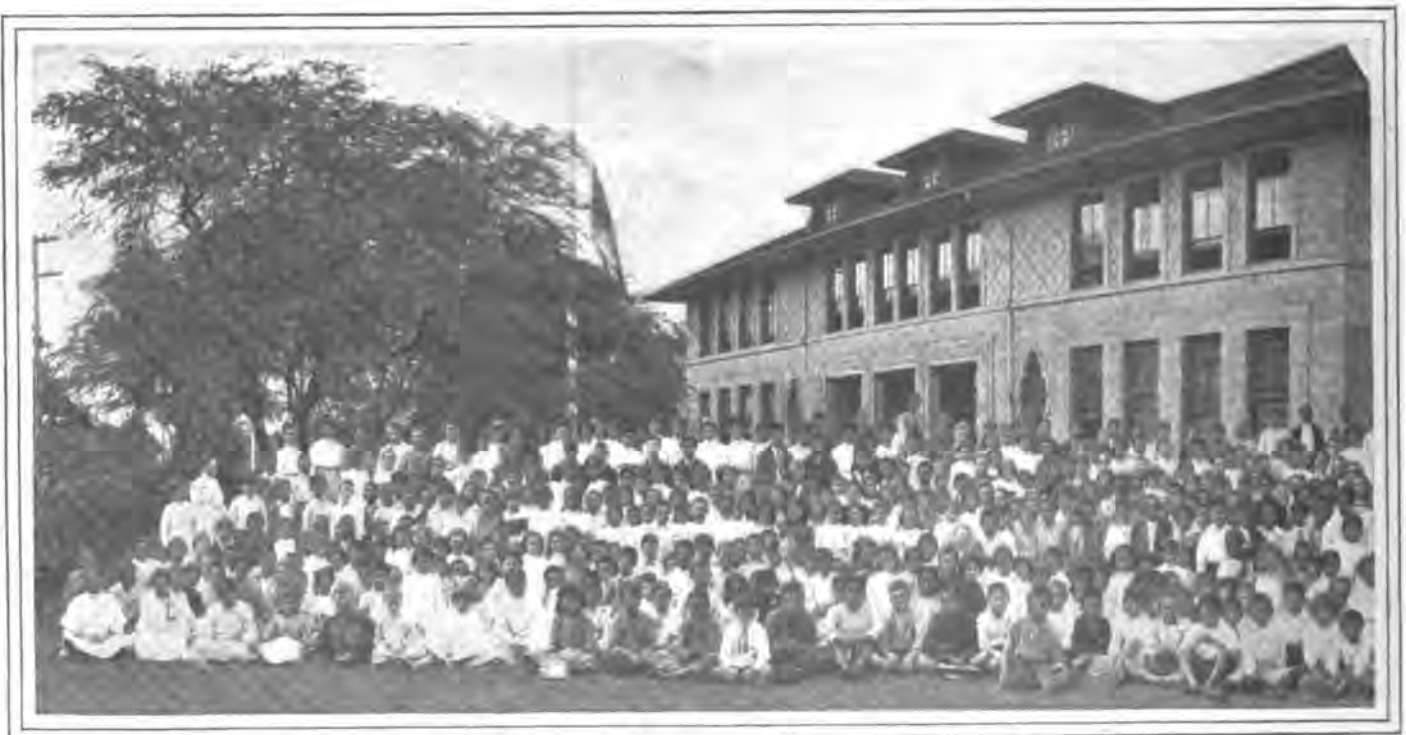
Many of them are married, and on every plantation you will find a quaint reproduction of a Japanese village, the houses very like those of the Orient, Japanese women in kimonos going about their daily tasks, and chubby-cheeked, brown-eyed little boys and girls very gravely beginning the solemn business of life.

Whether in town or country, these little folks work with an energy that amazes an American. Their parents want them to learn as much as possible about the history and literature of the land of their fathers; so all the Japanese boys and girls go to a Japanese school from seven o'clock until nine in the morning. Then they attend an American public school from nine o'clock until two in the afternoon. The moment they are free they hurry back to Japanese school and work there until five or six o'clock in the evening. Imagine a school day that lasts from seven in the morning until dark! Yet these brown children thrive on that system. It has been going on for ten years now, and it is impossible to find any record of shattered health or injured eyes as a result of this tremendous industry.

Down in old Mulberry Bend, New-Yorkers have a public school of which they are very proud, because in it the teachers receive young Italians, Greeks, Syrians, Arabs, Japanese, Chinese, Scandinavians, Turks, etc., as raw material and turn them out as a finished product of excellent American citizens. The school is unique in its mixture of races, and for that reason attracts a great deal of attention. In Honolulu that school would pass unnoticed, for in every school you will find little folk of a dozen races working amicably side by side. Such a thing as race prejudice is unknown.

Observe the remarkable mixture shown by the latest census of the schools of Hawaii, taken at the end of last June:

| | Public. | Private. | Totals. |
|------------------------|---------|----------|---------|
| Hawaiian | 4,045 | 800 | 4,845 |
| Part Hawaiian | 2,382 | 1,040 | 3,422 |
| American | 457 | 502 | 959 |
| British | 142 | 81 | 223 |
| German | 144 | 119 | 263 |
| Portuguese | 3,239 | 1,233 | 4,472 |
| Scandinavian | 63 | 38 | 101 |
| Japanese | 3,578 | 719 | 4,297 |
| Chinese | 1,489 | 603 | 2,092 |
| Porto-Rican | 338 | | 338 |
| Other Foreigners | 242 | 104 | 346 |
| Totals | 18,119 | 5,239 | 21,358 |



The Pupils of the Kaahumanu Elementary Grades Public School at Honolulu

THIS PHOTOGRAPH, THE CONTINUATION OF WHICH WILL BE FOUND ON THE OPPOSITE PAGE, GIVES A COMPREHENSIVE IDEA OF THE MANY NATIONALITIES HAWAII HAS PEACEFULLY ACCOMMODATED IN THE CLASS-ROOMS OF HER SCHOOLS, AND HOW SHE HAS SET A LESSON FOR CALIFORNIA'S SCHOOL BOARD

Was there ever such a heterogeneous company since Babel? Yet they are all fused in the great retort of our American schools, and they are coming out good American citizens. Incidentally it may be remarked that the people of Hawaii are prouder of their schools than of anything else in their marvellously rich and beautiful islands. There are 154 public schools, with 435 teachers, and 58 private schools, with 261 teachers. The high schools send pupils to the leading colleges in the United States, and of these many have achieved distinction in letters and science.

In the Kaahumanu and Kaiulani public schools one finds the jumble of races hard at work. There is every hue of skin known to the human species except the black of the negro, which is conspicuously absent. At the same desk in the Kaiulani school a dainty little girl with pink cheeks, blue eyes, and hair of spun gold—the only native American in the school—was sitting beside a girl whose father was a white man and whose mother was Hawaiian. The half-caste child was dark as an Indian and her hair was long, straight, black and coarse as an Indian's. At the desk before these two sat two Japanese girls, about ten years old. They were demure little things in American clothes, very solemn and full of dignity. Their sparkling black eyes shone with keen speculation. A few feet away sat a Portuguese girl beside a Chinese girl who wore the loose silk jacket and flowing trousers of her native land.

The boys were a sturdy lot, and, in spite of the wide divergence of race types, one saw a great resemblance among them, the resemblance that comes of working at the same tasks, thinking the same thoughts, having the same duties, aims, ambitions, and rewards. This resemblance was much more marked among the boys than among the girls. The costumes were as various as the leaves in the forest, and very few of the children wore shoes. Every boy and every girl was scrupulously clean. Order in the schoolroom was perfect. There was no giggling or whispering nor any evidence of self-consciousness. The children regarded the visitor with a curiosity that was frank but well bred.

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



A Group at the Honolulu High School

THREE PER CENT. OF THE PUPILS HERE ARE JAPANESE, THE IMPERATIVE REQUISITE FOR ADMISSION BEING A THOROUGH WORKING KNOWLEDGE OF ENGLISH

surrounds the building. Hawaii differs from all our other tropical neighbors in the fact that grass will grow here. To see beautiful, velvety turf amid groves of palms and banana-trees and banks of gorgeous scarlet flowers gives a feeling of sumptuousness one cannot find elsewhere.

Out upon the lawn marched the children, two by two, just as precise and orderly as you can 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 above their heads. Surely this was the most curious, most diverse regiment ever drawn up under that banner—tiny Hawaiians, Americans, Britons, Germans, Portuguese, Scandinavians, Japanese, Chinese, Porto-Ricans, and Heaven knows what else.

"Attention!" Mrs. Fraser commanded.

The little regiment stood fast, arms at sides, shoulders back, chests out, heads up, and every eye fixed upon the red, white, and blue emblem that waved protectingly over them.

"Salute!" was the principal's next command.

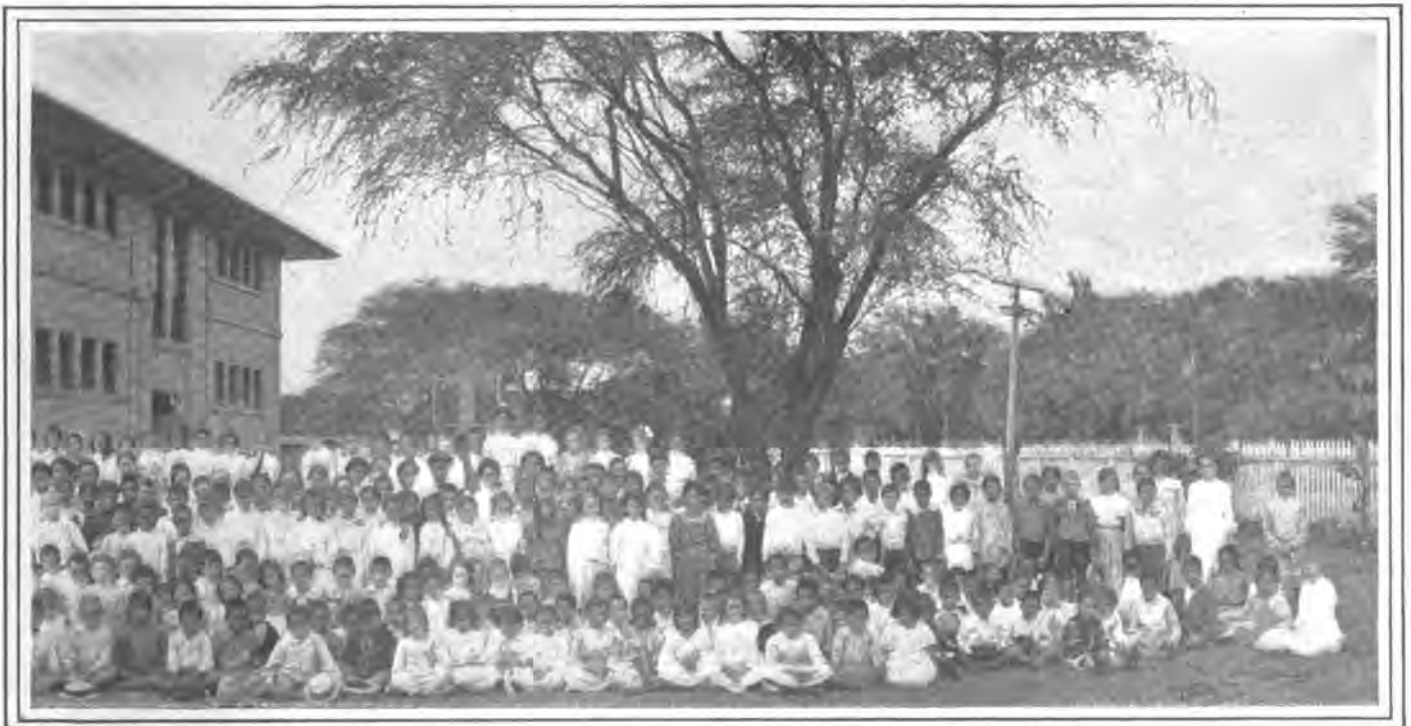
Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice:

"We give our heads and our hearts to God and our

Country! One Country! One Language! One Flag!"

The last six words were shot out with a force that was explosive. The tone, the gesture, the gaze fixed reverently upon the flag, told their story of loyal fervor. And it was apparent that the salute was given as spontaneously and enthusiastically by the Japanese as by any of the other children. There were hundreds of them in the throng, and their voices rang out as clearly as any others, their hands were raised in unison. The coldest clod of a man who sees the children perform this act of reverence must feel a tightening at the throat, and it is even more affecting to see these young atoms from all the world actually being fused in the crucible from which they shall issue presently as good American citizens.

So much for the Japanese in the lower-grade schools. Everybody agrees that no children can be more polite and agreeable than they are. The principal burden of the complaint in San Francisco



In this Group may be found Representatives of at least Ten Nationalities

THE NUMEROUS JAPANESE CHILDREN IN THIS SCHOOL ATTEND IT FROM NINE O'CLOCK UNTIL TWO, AFTER HAVING BEEN IN THEIR NATIVE SCHOOL FROM SEVEN UNTIL NINE. AFTERWARD, FROM TWO O'CLOCK UNTIL FIVE OR SIX, THEY RETURN FOR INSTRUCTION IN THEIR OWN JAPANESE SCHOOL



"We give our heads and our hearts to God and our country! One country, one language, one flag!"

THIS SCENE SHOWS THE SALUTE TO THE AMERICAN FLAG WHICH FLIES IN THE GROUNDS OF THE KAUAI LANI PUBLIC SCHOOL WHICH HAS MANY JAPANESE PUPILS. THE DRILL IS CONSTANTLY HELD AS A MEANS OF INCULCATING PATRIOTISM IN THE HEARTS OF THE CHILDREN

is that parents cannot endure to have their girls exposed to contamination by adult Asiatics, whose moral code is far different from our own. Whether or not there is reason for this complaint is not the question here. That there is such a feeling of apprehension among parents is readily found by any one who inquires, and it exists in Hawaii no less than in California. The Hawaiian school authorities long ago took steps to prevent the mingling of grown Japanese boys in classes with American girls.

In the Honolulu high school there are 143 pupils, including a few more boys than girls. Most of them are above fifteen years of age. There is now, as there has been for the last six years, only five per cent. of Asiatics among these pupils—three per cent. Japanese, and two per cent. Chinese. The boys are well behaved.

Professor M. M. Scott, the principal of the high school, was kind enough to call all the pupils, who were not taking examinations, out on the front steps of the building, where the visitor could inspect them in the sunshine. The change in the color scheme from that of the schools below was astounding. Below were all the hues of the human spectrum, with brown and yellow predominating; here the tone was clearly white.

What had made the change? Practically the Asiatics had been eliminated. But how? By building separate schools and brusquely ordering the Japanese to attend them in company with Chinese and Koreans, whom they despise? Not at all. The Hawaiian Commissioners of Public Instruction long ago made a regulation that no pupil may attend a school of the higher grade unless he has a thorough working knowledge of the English language.

"That rule," said Commissioner Wallace Farrington, "rids us of all individuals whose presence could possibly be objectionable. We have not now, and we never have had, any trouble over the presence of Japanese or any other Asiatics in our public schools. I do not think the question will ever cause us any annoyance."

"The rule under which the exclusion is accomplished is based on simple common sense, and no one can object to it. The speed of any fleet is the speed of the slowest ship in the fleet. It would be most unjust for us to delay the progress of our advanced pupils by putting in their classes foreigners who do not clearly understand English; for their presence would make it necessary to waste

time in long explanations. The fairness of that rule is so evident that we have never had any complaint from Japanese nor anybody else. It is—perhaps—a mere coincidence that the operation of the rule rids the classes of certain individuals whose presence may not be desired. We make no comparison with any other way of handling the problem; but we know that in Hawaii the Americans, the Japanese, and all the others, are satisfied with the plan on which we are working."

Mr. Miki Saito, His Imperial Japanese Majesty's Consul-General at Hawaii, has just returned from a three weeks' tour of inspection of the public schools throughout the islands, begun soon after the San Francisco incident was made public. He is, of course, devoted to the welfare of all the Mikado's subjects, and during his three weeks' tour he questioned children and parents everywhere.

"You will be glad to know," said Mr. Miki to me, "that the Japanese people here are entirely satisfied with the treatment of their children in the public schools. I have not heard one word of complaint anywhere; but on the other hand I have heard our people express satisfaction at the kindness and cooperation of the Americans."

In the public schools our children have the same opportunities as the rest. On the plantations American employers have kindly put up buildings in which the Japanese teachers can hold school in our native tongue. I can find in the Hawaiian schools nothing to criticise and much to praise."

It is difficult for the unprejudiced observer to understand why the impetuous San-Franciscans did not adopt the Hawaiian plan of dealing with the Japanese in the schools. Surely they must have known of the easy success of the scheme, for in community of interests Honolulu is as near to San Francisco as Philadelphia is to New York.

The more one studies the subject, the harder it is to understand why the Californians took so much pains to affront the Japanese. The warlike spirit in a nation fresh from great victories may well be compared to a sleeping dog on the porch of a home he has just defended. The hasty Californians seem to have acted on the principle laid down by an American philosopher whose thoughts outstripped his words, so that he airily exclaimed, "Oh, let sleeping dogs bark!"

A MOTOR-BOAT WHICH HAS RUN A MILE IN 2:21 1-5



IN THE MOTOR-BOAT RACES AT PALM BEACH, FLORIDA. THE "DIXIE" RECENTLY MADE A NEW MILE RECORD AGAINST THE TIDE OF 2:21 1-5, WINNING BY THIS FEAT THE DEWAR TROPHY. RUNNING WITH THE TIDE HER TIME WAS ONE AND A FIFTH SECONDS LESS

Appendix “VII”

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

WELLS FARGO BANK, N.A.,)
)
 Plaintiff,)
)
 vs.) CIVIL NO. 11-1-106
)
 [REDACTED] [REDACTED] et al.,)
)
 Defendant.)
)

TRANSCRIPT OF PROCEEDINGS

before the HONORABLE, GLENN S. HARA, Judge presiding, Second
Division, on Friday, June 15, 2012.

HEARING ON MOTION TO DISMISS COMPLAINT

APPEARANCES:

For the plaintiff: SOFIA M. HIROSANE, ESQ.
RCO HAWAII LLLC
900 Fort Street Mall
Suite 800
Honolulu, Hawaii 96813

For Defendant [REDACTED] [REDACTED] (Special Appearance):
DEXTER K. KAIAMA, ESQ.
AGARD & KAIAMA
500 Ala Moana Boulevard
Suite 400
Honolulu, Hawaii 96813

Reported by: JENNIFER WHETSTONE, CSR 421, RMR
Official Court Reporter
Third Circuit Court, State of Hawaii

1 Friday, June 15, 2012

9:13 A.M.

2 --oOo--

3 THE CLERK: Civil number 11-1-106, Wells Fargo
4 Bank versus [REDACTED] Defendant [REDACTED] [REDACTED]
5 motion to dismiss complaint pursuant to HRCP 12(b)(1).

6 MS. HIROSANE: Good morning, Your Honor; Sofia
7 Hirosane on behalf of the plaintiff.

8 MR. KAIAMA: Good morning, Your Honor; Dexter
9 Kaiama making a special appearance on behalf of
10 Ms. [REDACTED] Ms. [REDACTED] is present in the courtroom.

11 THE COURT: Okay, what's the scope of your
12 special appearance?

13 MR. KAIAMA: The scope of my special appearance,
14 Your Honor, is to make argument and presentation with
15 respect to Ms. [REDACTED]'s 12(b)(1) motion to dismiss
16 challenging the subject matter jurisdiction of this court,
17 Your Honor.

18 THE COURT: And how far does that extend?

19 MR. KAIAMA: If I understand your question
20 correctly, Your Honor, I'm making argument today, um, and
21 after I make argument I -- my appearance would -- that --
22 that terminates my appearance at the end of argument. So if
23 the court were, for example, to deny the motion to dismiss
24 an order from Ms. Hirosane to go directly to Ms. [REDACTED]
25 for her review, or if Ms. Hirosane were to submit it

1 pursuant to rule 23, correspondence would go directly to
2 Ms. [REDACTED]

3 THE COURT: Okay, so it's just for today, and
4 then your -- your engagement ends.

5 MR. KAIAMA: That is correct, Your Honor.

6 THE COURT: And Mister -- I just want,
7 Mr. Kaiama, I just wanna make that clear, because it may, as
8 you indicated, I mean there are other things that's going to
9 fall out of this hearing that may require, you know, counsel
10 to act on it, if you were still counsel. And I wanna make
11 sure that it's clear, after today, after you leave the
12 courtroom today, you're not counsel of record.

13 MR. KAIAMA: That is correct, Your Honor. Now,
14 if Ms. [REDACTED] wishes to engage me for additional services
15 then she would engage me at that time. But my term, my --
16 my appearance and my representation as counsel ends as I
17 walk out of the courtroom.

18 THE COURT: Okay. Well, that kind of
19 representation makes it very difficult for the court
20 sometimes to --

21 MR. KAIAMA: I can only speak to my
22 representation today, I cannot speculate as to what might
23 happen tomorrow or the next day as to whether she wishes to
24 engage my services or not, Your Honor.

25 THE COURT: Yeah. But that kind of unbundling,

1 if you will, makes it very difficult for the court to
 2 determine, sometimes, whether an attorney is still
 3 responsible for receiving material for noticing purposes.
 4 So I'm gonna make it clear that, after today, unless you put
 5 in a appearance of counsel, that your -- your status as
 6 counsel in this case terminates.

7 MR. KAIAMA: Thank you, Your Honor. That is
 8 fine.

9 THE COURT: All right.

10 MR. KAIAMA: Okay.

11 THE COURT: Okay.

12 MR. KAIAMA: Shall I begin, Your Honor?

13 THE COURT: Hold on. Let me -- so the court
 14 does have Ms. [REDACTED] motion to dismiss pursuant to civil
 15 rules 12(b)(1). I have plaintiff's memorandum in
 16 opposition, and Ms. [REDACTED] reply that was filed on June
 17 12th. Do you have the reply?

18 MS. HIROSANE: Yes, I do, Your Honor.

19 THE COURT: So was there anything else that was
 20 submitted in the meantime?

21 MR. KAIAMA: My only understanding, I think the
 22 court is aware, but with respect to this motion, no, she did
 23 file an ex parte motion for a stay of the enforcement of the
 24 writ pending the outcome of the motion.

25 THE COURT: Okay. I think I granted the

1 ex parte motion, at least until today's hearing.

2 MR. KAIAMA: That is my understanding, Your
3 Honor.

4 THE COURT: Okay.

5 MS. HIROSANE: That's my understanding. And,
6 Your Honor, just for the record, we were only served with a
7 copy of, uh, Ms. [REDACTED] ex parte motion yesterday.

8 THE COURT: Okay. I think the court instructed
9 the staff to call your firm to let 'em know that I did sign
10 the ex parte motion, 'cause it didn't look like you had been
11 provided a copy.

12 MS. HIROSANE: That's correct, Your Honor. We
13 -- we did appreciate that.

14 THE COURT: Okay. So here's the court's
15 inclination, Mr. Kaiama. And in answer to the plaintiff's
16 comment that maybe the motion may be delayed, it looks like
17 the motion is one that challenges the subject matter
18 jurisdiction. At least on its face. But -- and any time
19 there is a jurisdictional challenge, it can be made at any
20 time. That's my understanding. Because if the court has no
21 jurisdiction then whatever the court does is void. Um, so
22 I'm treating this as a motion to dismiss for the court's
23 lack of subject matter jurisdiction for the reasons stated.
24 And that is that the argument is that the Kingdom of Hawaii
25 still exists, and therefore, in essence, this court has no

1 jurisdiction, it's the courts of the Kingdom of Hawaii.

2 That's how I'm taking the motion. Mr. Kaiama?

3 MR. KAIAMA: And that is essentially
4 Ms. [REDACTED] motion and our argument.

5 THE COURT: Okay. So the court would -- is
6 inclined to deny the motion. I think the Hawaii case law is
7 pretty clear that, um, the jury is still out as to whether
8 or not the Kingdom of Hawaii still exists. That's number
9 one.

10 Number two, even if it existed, there has been
11 no definitive ruling that says that the existence of the
12 kingdom itself would divest the court's of this state of
13 jurisdiction.

14 And it is also clear -- I don't think that
15 Ms. [REDACTED] claims to be a citizen of the Kingdom of
16 Hawaii? I didn't see that alleged in her, um, memorandum.
17 And there have been at least three or four cases, either at
18 the supreme court or the intermediate court of appeals, that
19 have held that even if you claim to be a king -- subject of
20 the Kingdom of Hawaii, if you violate laws within the
21 territorial jurisdiction of the State of Hawaii, the
22 criminal laws would still apply to you.

23 I would assume that that same principle would
24 apply even if you don't claim to be a subject of the Kingdom
25 of Hawaii. And if the kingdom did exist, um, that the civil

1 laws, as well, within the jurisdiction of the state court
2 would also be still applicable.

3 And I think the most recent ICA summary
4 disposition order touching on this was Burgo, B-U-R-G-O,
5 versus State of Hawaii. The court of appeals number was
6 CAAP-10-33. And it was decided May 3, 2012. And basically
7 it cited the cases that I think are fairly familiar by now,
8 State versus Fergerstrom, 106 Hawaii 43; State versus
9 Lorenzo, 77 Hawaii, 219; State versus Jim, 80 Hawaii, 168,
10 all for the proposition that being a -- or claiming to be a
11 citizen of the Kingdom of Hawaii would not remove you from
12 being subject to the laws of the State of Hawaii, including
13 the statutes providing for the jurisdiction of the circuit
14 courts.

15 Okay. So, Mr. Kaiama, given that inclination,
16 I'll let you argue further.

17 MR. KAIAMA: Thank you, Your Honor. What
18 continues to be controlling with the courts, Your Honor, is
19 State of Hawaii versus Lorenzo. Even the most recent case
20 that Your Honor cited stands, uh, follows the State of
21 Hawaii versus Lorenzo.

22 Now, in State of Hawaii versus Lorenzo, the
23 ruling of the court was, essentially, that the defendant in
24 that case, Lorenzo, lost its claim that the State of Hawaii
25 did not have jurisdiction, subject matter jurisdiction over

1 him, because Mr. Lorenzo failed to provide the court with a
2 factual legal basis that the Kingdom of Hawaii continues to
3 exist with the state's -- in accordance with the state's
4 sovereign nature.

5 What we're doing here, Your Honor, and recently,
6 and really for the first time, is we are presenting the
7 court with that evidence. And those evidence are the
8 executive agreements. That is the Liliuokulani Assignment,
9 which mandates the President of the United States, or the
10 office of the President of the United States to administer
11 Hawaiian Kingdom law. And the agreement of the res -- and
12 the agreement of restoration, which is an executive
13 agreement which mandates the President of the United States
14 and the office of the President to restore the Kingdom of
15 Hawaii. That is attached as Ms. [REDACTED] -- I believe
16 it's exhibit 4A and 4B, which is attached to the expert
17 memorandum of Dr. Keanu Sai.

18 Your Honor, in the -- essentially the argument
19 or -- or the court's inclination is undeniably intertwined
20 with the presumption that -- that if the Kingdom of Hawaii
21 continues to exist, this state court does not have
22 jurisdiction, or no state court has jurisdiction. And there
23 is a presumption that allows the court and the -- and the
24 plaintiff to argue that there is state statute which confers
25 jurisdiction upon this court.

1 Now, it's a rebuttable presumption which
2 requires us, the defendant, to provide the court with the
3 evidence. Once that evidence is provided, that requires the
4 court to acknowledge the nonexistence of that presumption.
5 The court must weigh the evidence provided and make a
6 determination solely based on that evidence and not with any
7 presumption involved.

8 Again, Your Honor, those are the executive
9 agreements. Ms., um, [REDACTED] memorandum on the motion to
10 dismiss, as well as the memorandum on her reply brief,
11 provides the court with the authorities to confirm that
12 these exchange of notes are, in fact, executive agreements.

13 Furthermore, Your Honor, there has been no
14 dispute or no opposition that -- that disputes the argument
15 that we made that these are executive agreements. Because
16 they cannot, we believe, respectfully.

17 I have now been arguing, Your Honor, this motion
18 before judges of the courts of the circuit court and
19 district court throughout the State of Hawaii, and nearly --
20 and probably over 20 times, and in not one instance has the
21 plaintiff in the cases challenged the merits of the
22 executive agreements to show that either it's not an
23 executive agreement or that the executive agreements have
24 been terminated. Because we believe, respectfully, again,
25 Your Honor, they cannot.

1 Page four of Ms. [REDACTED] reply memorandum
2 speaks to the Restatement, Third, Foreign Relation Laws of
3 the United States. Essentially, Your Honor, what those
4 foreign relation laws of the United States says is that an
5 international agreement, which an executive agreement is, is
6 an agreement between two or more states. And we're talking
7 states in terms of their international relations. The
8 executive agreements could not have occurred between
9 President Grover Cleveland and Queen Liliuokulani unless
10 they were states. Those agreements --

11 THE COURT: Mr. Kaiama, let me just interrupt
12 for a minute. Which of the decisions is the one that I
13 think, um, was an ICA decision? I'm trying to think of the
14 judge who wrote it.

15 MR. KAIAMA: Judge Walter Heen?

16 THE COURT: Judge Heen's decision.

17 MR. KAIAMA: In State of Hawaii versus Lorenzo.

18 THE COURT: Lorenzo.

19 MR. KAIAMA: Yes.

20 THE COURT: And he makes the comment basically
21 that, um, you know, what -- the -- in essence, I mean, it
22 kinda left the door open by saying something to the effect
23 that, you know, there may be other facts or laws out there
24 in the future that might change this.

25 Now, I take his comments to mean -- and all a

1 these things were in existence at that time -- that what
2 he's saying is, going forward, if there are any changes, if
3 there are any new laws, if there are any, you know, uh, acts
4 of congress, if there are any other kinds of acts of
5 judicial bodies that the court needs to -- and -- and the
6 other political entities need to respect and follow as law,
7 um, then at that point we'll revisit what the effects are of
8 being a citizen of the Kingdom of Hawaii is. So I'm taking
9 all of what's happening right now and what you're arguing is
10 kind of like res judicata. It's already been looked at.
11 It's already been decided. And, based on that, they're
12 saying that was not enough.

13 MR. KAIAMA: Your Honor, if I may respectfully
14 disagree.

15 THE COURT: Yeah, go ahead.

16 MR. KAIAMA: And I respectfully disagree in this
17 sense: That the executive agreements that we are bringing
18 before the courts at this time was not available to Judge
19 Heen at the time that motion was decided. These executive
20 documents, while -- while official documents of the United
21 States, were in -- little known to the public and not known
22 to the courts at the time, so they were never presented as
23 evidence to the court. And that's why Judge Heen says until
24 a factual or legal basis is provided, that the Kingdom of
25 Hawaii continues to exist. And he says until that happens

1 then people claiming, whether citizenship or otherwise,
2 would be subject to the laws of the State of Hawaii.

3 Now, we are now meeting the requirements under
4 Lorenzo and presenting essentially, for the first time, to
5 the courts, the evidence that was asked for in Lorenzo. And
6 that evidence are the executive agreements.

7 Now, I think the court is well aware -- and
8 that's part of our argument -- executive agreements are the
9 supreme law of the United States. By Article 6 of the U.S.
10 Constitution, the supremacy clause. And part of our
11 argument as well is that any state statute which runs
12 contrary to the executive agreements are preempted.

13 So along the -- along the line of your -- our
14 arguments, Your Honor, not only are we addressing what the
15 court is requiring in State of Hawaii versus Lorenzo and
16 presenting the evidence, the evidence we present, Your
17 Honor, is irrefutably -- it's irrefutable that these are
18 executive agreements and preempts state law, which is the
19 state constitu -- I mean, excuse me, which is the state
20 statute that plaintiff relies on in their complaint seeking
21 to confer jurisdiction upon that court.

22 That state statute, Your Honor, runs contrary to
23 the executive agreement, which calls for the administering
24 of Hawaiian Kingdom law until the President of the United
25 States can re -- restores the Kingdom of Hawaii, places the

1 queen back into its position, and the queen grants amnesty.
2 Those are in the papers.

3 Now, Your Honor, what we're asking the court to
4 do is not make a determination in its ruling that the
5 Kingdom of Hawaii is to be restored, but what we're asking
6 is what Lorenzo says, is that once we have met our burden,
7 the court cannot have no other, we believe, no other
8 recourse but to dismiss the complaint.

9 THE COURT: No, but, Mr. Kaiama, I think you
10 failed -- in my mind, what you're asking the court to do is
11 commit suicide, because once I adopt your argument, I have
12 no jurisdiction over anything. Not only these kinds of
13 cases where you may claim either being part of -- being the
14 Hawaii, um, a citizen of the kingdom, but jurisdiction of
15 the courts evaporate. All of the courts across the state,
16 from the supreme court down, and we have no judiciary. I
17 can't do that.

18 MR. KAIAMA: Your Honor --

19 THE COURT: I can't make that kind of a finding
20 that basically it's, you know, like the atomic bomb for the
21 judiciary.

22 MR. KAIAMA: I understand the contemplation of
23 the consequences of the court's ruling. However, the
24 contemplation of the consequences of the court's ruling is
25 beyond the authority of the courts. What is in -- within

1 the authority of the courts is to make a determination that
2 jurisdiction does not exist. That is within the court's
3 authority.

4 Now, the actual restoration of the Kingdom of
5 Hawaii belongs to the -- to the President of the United
6 States and the office of the president, not to the courts.
7 What I'm asking the court to do and what we believe is
8 entirely correct is that the court acknowledge, which the
9 president did in 1898, acknowledge that these are executive
10 agreements, which binds him and his office to faithfully
11 administer Hawaiian Kingdom law until the President of the
12 United States is able to restore the Kingdom of Hawaii. So
13 what we're asking the court to do is, essentially it is the,
14 in the time being, it is the military courts, under article
15 two, that would administer Hawaiian Kingdom law until the
16 kingdom is restored.

17 THE COURT: Okay.

18 MR. KAIAMA: So -- so, Your Honor, um, I know
19 Your Honor also made an inclination concerning my client's
20 not asserting a citizenship position.

21 THE COURT: No, I'm saying I didn't perceive
22 one.

23 MR. KAIAMA: Right, you didn't perceive -- and
24 actually one was not made. The reason one is not made is
25 Ms. [REDACTED] does not claim to be a citizen of the Kingdom

1 of Hawaii. At least not now. But what's occurring here is
2 that the plaintiff is seeking to get writ of possession or
3 to get an order concerning land which is part of the Kingdom
4 of Hawaii. And judgments concerning land, including
5 evictions and writ of possessions, belongs to the courts of
6 the Kingdom of Hawaii, respectfully, not the circuit courts
7 of the State of Hawaii, because of the arguments we've set
8 forth.

9 Also, in the reply memorandum, Your Honor, we --
10 Miss [REDACTED] has provided the courts and sought to evoke
11 estoppel with respect to the defendant's arguments. Because
12 the court -- because the pres -- excuse me, it is a little
13 bit difficult to talk about. Because the United States have
14 already acknowledged -- already acknowledged, through the
15 President of the United States, that being Grover Cleveland,
16 that the Kingdom of Hawaii is, in fact, the de jure and
17 de facto government, and that the provisional government was
18 never de jure or never de facto, plaintiffs at this point
19 are estopped from making any argument, which runs contrary
20 to the acknowledgment of the United States. And therefore
21 they're estopped from making the argument -- the arguments
22 that they've made that this court can confer juris -- that
23 this court has jurisdiction pursuant to state statute.

24 Essentially, Your Honor, Ms. [REDACTED] is asking
25 the court to strike defendant's arguments in its entire --

1 excuse me, plaintiff's arguments in its entirety, because of
2 the principles of judicial -- principles estoppel.

3 Ms. [REDACTED] has provided, again, the authorities concerning
4 estoppel, including, um, authority of estoppel recognized
5 under international law.

6 Your Honor, what we're presenting to the courts
7 is the evidence. What we're presenting to the courts are
8 legal arguments that have not been refuted or cannot be
9 refuted, we respectfully submit. Miss [REDACTED] in her
10 motion to dismiss, asked the court to take judicial notice
11 of documents. And it's set forth in, and just for the
12 court's convenience --

13 THE COURT: Okay, let me address that right now.

14 MR. KAIAMA: Yes.

15 THE COURT: As for the request for judicial
16 notice, I think I can go ahead and do that with respect to
17 the, um, exhibit one, the Hawaii Kingdom Constitution. The
18 only question I have is, was the original in English or
19 Hawaiian, and is this a translation?

20 MR. KAIAMA: You know, I'm -- I'm sorry, Your
21 Honor, I'm not able to answer this question at this time,
22 but if the court wishes, I can clearly provide that pursuant
23 to a declaration.

24 THE COURT: Well, in --

25 MR. KAIAMA: A supplemental --

1 THE COURT: -- any event, I'm -- I think we have
2 a copy of this in our library, so I'm taking judicial notice
3 of it and, um, also chapter four of the penal code of the
4 kingdom. Was there a -- a date on that?

5 MR. KAIAMA: Okay, hold on one second, Your
6 Honor.

7 THE COURT: I'm just -- reason I'm saying that
8 is I'm looking at the list that's in the memorandum, not at
9 the exhibit itself.

10 MR. KAIAMA: I'm trying to see if I can help
11 find that for you, Your Honor.

12 THE COURT: Part of the problem, it wasn't
13 tabbed.

14 MR. KAIAMA: Um, yeah, Penal Code of the Kingdom
15 of Hawaii from the Penal Code of 1850. It was printed at
16 the Government Press, Honolulu, Oahu, 1869.

17 THE COURT: Okay, I have it now. So we'll take
18 judicial notice of that, also chapter seven, the portion of
19 the Compiled Laws of Hawaii Kingdom relating to the
20 department of foreign affairs.

21 MR. KAIAMA: Thank you. Chapter eight, Your
22 Honor.

23 THE COURT: All right.

24 MR. KAIAMA: Okay.

25 THE COURT: So the court will take judicial

1 notice of that. With respect to Dr. David Sai's expert
2 memorandum, the court's not gonna take judicial notice of
3 that. However, I'm just gonna treat that as a treatise the
4 that the court can consider for information with respect to
5 reaching its decision, much like a law review article. Same
6 as the memorandum of Doctor -- there are several, but all of
7 the Dr. Sai memorandums, that's how I'm treating it.

8 MR. KAIAMA: Thank you, Your Honor.

9 THE COURT: The other matters are treaties and
10 if they're treaties and if they're -- and they appear to be
11 published in the authorized publications of the United
12 States, court would also take judicial notice of the four
13 treaties and conventions. And all of the other matters are
14 -- appear to be reported cases, so I don't think I need to
15 take judicial notice of that. I mean, courts are allowed to
16 refer to other court's opinions. Okay, so I think I've
17 addressed all of those.

18 MR. KAIAMA: Yes, Your Honor. If I may -- yes,
19 Your Honor. Thank you very much. Again, and I don't know
20 if it makes a difference to the court, of course State of
21 Hawaii versus Lorenzo is a ICA Hawaii court decision, United
22 States versus Belmont, versus Pink and American Association
23 -- Insurance Association versus Garamendi, Your Honor, is a
24 U.S. Supreme Court case, and I'm not sure if that makes a
25 difference into whether the court will take judicial notice

1 of that or -- again, um, or not.

2 Um, my question, Your Honor, is with respect to
3 the expert memorandum of Dr. Keanu Sai. He does, within his
4 expert memorandum, provide four exhibits, exhibits A, B, C,
5 and D. Again, 4A is the, uh, what we refer to as the
6 Liliuokulani Assignment. 4B is the Grover Cleveland
7 Agreement of Restoration. Essentially, Your Honor, those
8 are the executive agreements. Um, exhibits C and D, Your
9 Honor, are statements made on the floor of congress by
10 representative Thomas Ball and Senator Augustus Bacon in
11 1898. Your Honor, and just for --

12 THE COURT: Mr. Kaiama, to the extent of the
13 materials that represent analysis or opinions by Dr. Sai,
14 again, I'm taking that as a treatise or a -- like a law
15 review article. As to those matters that are apparently
16 reported as part of the, uh, federal compendium of
17 documents, and so forth, I'll take judicial notice of it,
18 'cause they're readily available, I think, not only through
19 these exhibits but also through other sources.

20 MR. KAIAMA: Yes, Your Honor. They are official
21 government publications.

22 THE COURT: All right.

23 MR. KAIAMA: Thank you, Your Honor.

24 THE COURT: Just because, well, my concern was,
25 you know, just because Dr. Sai's memorandum may have a

1 government printing office number doesn't make it official
2 federal document. It's -- all it means it's cataloged.

3 MR. KAIAMA: Okay.

4 THE COURT: All right?

5 MR. KAIAMA: And just so that I understand, Your
6 Honor, and forgive me for asking, my understanding was that
7 the court would take judicial notice of that 4A, B, C, and
8 D.

9 THE COURT: If it -- those are exhibits of other
10 -- of matters, which they appear to be, that are reported,
11 for example, in a congressional record or some other kind
12 of, um --

13 MR. KAIAMA: And they are, Your Honor.

14 THE COURT: -- yeah, source that's easily --
15 it's easily retrievable and to determine them, yeah, I'm
16 taking judicial notice of it.

17 MR. KAIAMA: Thank you, Your Honor.

18 THE COURT: Okay?

19 MR. KAIAMA: And I am happy to answer any
20 additional inclinations of the court, but I believe that
21 provides us -- provide -- outlines our argument, Your Honor.

22 Again, U.S. versus Pink, Garamendi -- American
23 Association versus Garamendi, and U.S. versus Belmont
24 support the arguments that I made earlier, Your Honor, that
25 executive agreements are treaties under the United States

1 Constitution and under article six of the supreme law of the
2 land. And those cases, Your Honor, supreme court cases,
3 stand for the proposition that any state law which is
4 contrary to the executive agreements are preempted.

5 Also in the, um, Foreign Relations Restatement
6 of Third that I presented to the court, Your Honor, again,
7 as international agreements, these international agreements
8 are binding on the United States to faithful execution.
9 And, again, any municipal or state law to the contrary would
10 be preempted as well.

11 THE COURT: Okay, thank you. Ms. Hirosane, any
12 arguments?

13 MS. HIROSANE: Your Honor, just -- just really
14 briefly. Just to add to what we've already briefed, uh,
15 Ms. [REDACTED] admittedly is not claiming that she's a citizen
16 of this -- of the Kingdom of Hawaii, if it does exist. And
17 as you stated from the outset of this hearing, we're still
18 in -- it's an evolving issue within the court system. But
19 our position remains if Ms. [REDACTED] is admittedly not a
20 citizen then how can she raise these arguments to defeat
21 this court's subject matter jurisdiction in these
22 proceedings?

23 THE COURT: I think what he's saying is that if
24 -- the argument is that if, in fact, I buy into his
25 arguments then this court has no jurisdiction over any

1 matter, because it's illegal. That's his analysis, I think.

2 MS. HIROSANE: And that's -- that's my
3 understanding of it too, Your Honor.

4 THE COURT: Okay. So the court will deny the
5 motion to dismiss the complaint pursuant to Hawaii Rules of
6 Civil Procedure 12(b)(1) for lack of subject matter
7 jurisdiction.

8 Having reviewed the matters and the prior court
9 decisions, the court is of the opinion and decides that the
10 court does have subject jurisdiction over the matter of the
11 ejectment case and that the arguments raised by Mr. Kaiama,
12 in essence, have been resolved by the prior appellate court
13 decisions, and the raising of the executive agreements, in
14 my mind, is not persuasive. Those matters were in existence
15 at the time of the prior court decisions, they were
16 available to the court, they were available to attorneys,
17 and I'm not convinced that it's now something new or
18 provides new law or new facts that would cause the prior
19 appellate decisions to be overturned. Okay? So --

20 MR. KAIAMA: Your Honor, thank you. I know
21 she's to prepare the order. Your Honor, respectfully, I
22 would just preserve Ms. [REDACTED] right to take exception
23 to the court's decision today.

24 THE COURT: Yeah, that's not necessary.

25 MR. KAIAMA: And reserve her rights to file an

1 appeal. Your Honor, I have been asked by Ms. [REDACTED]
2 'cause this is an issue concerning the stay matter, she does
3 intend to file an appeal from the court's decision
4 concerning the motion to dismiss as soon as the order is
5 filed, and I know that's gonna take a short period a time.
6 I've been asked by Ms. [REDACTED] to make a request to
7 continue the stay while she files -- while she appeals the
8 matter to the appellate courts.

9 THE COURT: Mr. Kaiama, I'm going to deny the
10 request. I think once, you know, the whole thing about
11 what's the final order and what you appeal from, um, it's
12 such an art now. And I -- I hate to even venture a guess.
13 Um, it seems to me that the -- you might have two appealable
14 orders here. I'm not sure if this decision may be a
15 separate appealable order as a collateral matter, because it
16 attacks jurisdiction after the other judgment. But I'm just
17 stating that because it may be, uh, things that counsel need
18 to talk to Ms. [REDACTED] about in terms of preserving her
19 rights to appeal, in terms of filing notices for appeal.
20 Uh, but, again, it's pretty clear, if you don't file your
21 written notice of appeal timely then you're out.

22 MR. KAIAMA: (Nodding head.)

23 THE COURT: So I guess, Ms. Hirose, you're
24 sending the proposed order directly to Ms. [REDACTED] is that
25 correct?

1 MR. KAIAMA: That is correct, Your Honor.

2 MS. HIROSANE: Your Honor, may I clarify this?
3 Am I to include language with regard to Mr. Kaiama's oral
4 motion to stay pending appeal?

5 THE COURT: I'm sorry? No, I don't --

6 MS. HIROSANE: Am I to include --

7 THE COURT: Yeah, there is an order, motion for
8 staying the appeal, but this is the nature of I -- I -- of a
9 writ of possession, right?

10 MS. HIROSANE: That's correct, Your Honor.

11 THE COURT: Okay, so is this like an injunction.
12 I mean, they have separate provisions with respect to the
13 stays on injunctive kind of relief, so is that the provision
14 that applies with respect to a stay? Or is it now, what?
15 She has to post a supersedeas bond for a stay?

16 MS. HIROSANE: That would be our position, Your
17 Honor.

18 THE COURT: And what's the amount of the bond?

19 MS. HIROSANE: Well, we have been --

20 THE COURT: There's no judgment other than the
21 judgment for the writ.

22 MR. KAIAMA: And, Your Honor, my understanding
23 is that she is still -- she still has the option to provide
24 the court with a written motion for stay. I am aware of
25 case law which says that the issuance of a supersedeas bond

1 is really discretionary upon the court, and the court can
2 decide the amount of the bond if it decides to require a
3 supersedeas bond.

4 THE COURT: Okay, but that's why I'm saying I
5 don't want to rule on the stay now.

6 MR. KAIAMA: Okay.

7 THE COURT: I think the judgment should issue,
8 you file your notice of appeal and a motion for a stay, I
9 think. And that way the, hopefully, the issues will be
10 clearer as to what the requirements are for a stay, if any,
11 and, you know, what the court needs to decide with respect
12 to any issues concerning the stay. Okay?

13 MR. KAIAMA: Thank you, Your Honor.

14 THE COURT: So the oral motion for a stay is
15 denied.

16 MR. KAIAMA: Thank you, Your Honor.

17 MS. HIROSANE: Thank you, Your Honor.

18 THE DEFENDANT, MS. [REDACTED] Excuse me, Your
19 Honor. Could I have a transcript of today's --

20 MR. KAIAMA: Oh, you go down there and apply.

21 MS. [REDACTED] Oh, okay. Thank you.

22 THE COURT: Okay. Thank you. Next case.

23 MS. [REDACTED] Thank you.


24 (Whereupon the proceedings were concluded.)

25 --oOo--

Appendix “VIII”

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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

| | | | |
|--|--|---|---------------------|
| _____ | |) | |
| AMERICAN SAVINGS BANK, F.S.B. | |) | |
| | |) | |
| Plaintiff, | |) | Civil No. 13-1-0037 |
| | |) | TRANSCRIPT OF |
| vs. | |) | PROCEEDINGS |
| | |) | |
|  et al. | |) | |
| | |) | |
| Defendant. | |) | |
| _____ | |) | |

TRANSCRIPT OF PROCEEDINGS

before the HONORABLE PETER CAHILL, Circuit Court Judge
presiding Wednesday, August 28, 2013. Further Hearing On
Motion To Dismiss Complaint Pursuant To HRCP 12(b)(1).

APPEARANCES:

TREVOR OZAWA, Esq. Attorney for the Plaintiff
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TRANSCRIBED BY:
Beth Kelly, RPR, CSR #235
Court Reporter

1 WEDNESDAY, AUGUST 28, 2013

2 THE CLERK: Calling Civil Number 13-1-0037,
3 American Savings Bank, FSB versus [REDACTED] [REDACTED] et al.,
4 for further hearing on motion to dismiss complaint
5 pursuant to HRCP 12(b)(1).

6 MR. KAIAMA: Good morning, your Honor, Dexter
7 Kaiama making a special appearance on behalf of Mr. and
8 Mrs. [REDACTED] Mr. [REDACTED] is present in the
9 courtroom.

10 MR. OZAWA: Trevor Ozawa here for the
11 plaintiff.

12 MR. APO: And, your Honor, Jan Apo
13 court-appointed commissioner. I'm here to observe and
14 figure out what to do next.

15 THE COURT: Okay. Have a seat. Gentlemen,
16 just remain sitting for a minute. I left some papers on
17 this matter on my desk. I'll be right back.

18 Okay. Mr. Kaiama, I have good news and bad
19 news.

20 MR. KAIAMA: Okay, your Honor. I want the
21 bad news first.

22 THE COURT: I'm not sure it's really that
23 bad. Well, the bad news is that I'm going to continue
24 this and the other motion that's on for today --

25 MR. KAIAMA: Okay.

1 THE COURT: -- and your two motions that are
2 on Friday. I don't know if Mr. (inaudible) firm it is
3 that's on those, but what I suggest you do is call them as
4 well and tell them. We'll give you a date for everything.

5 MR. KAIAMA: Okay.

6 THE COURT: The reason is because I want some
7 more information and some more issues addressed. I'm not
8 going to -- I'm not going to -- I'm not going to mislead
9 you, but from the standpoint that, as you know, the Court
10 will likely deny these motions, but as you also know, I
11 think every time one comes in front of me I spend even
12 more time reading it.

13 And for one of the other ones and I know the
14 exact same documents were filed, I've gone through every
15 single page and made little notes and questions.

16 I'm not going to have you address all of
17 them, but in Dr. Sai's -- I'm not sure if it's the
18 declaration or what it is at this point -- he attaches
19 what he calls annexes, 1 through 56 -- or 1 through 55. I
20 don't think it's fair for -- I don't think it's fair for
21 anybody where something says it's attached and it's not
22 attached. So I want to see those, because I want to check
23 them.

24 Secondly, let me go through some of my
25 questions here and you can address -- whoever's going to

1 address these by way of a supplemental memorandum.

2 On page five, and I better check to see this.

3 MR. KAIAMA: And this is of the memorandum in
4 support?

5 THE COURT: Correct. Correct. Down in the
6 bottom paragraph there of the second to the bottom, it
7 says, if the Hawaiian Islands were an unin -- were an
8 incorporated territory of the United States, and indeed
9 the State of Hawaii did lawfully exist, that paragraph
10 there, that's a conclusory statement that has no support.
11 So I want to know what's the basis for that.

12 Next page, on page six where the paragraph
13 begins, pursuant to Article 157, the (inaudible) took
14 immediate effect from the date of the deposit because
15 Hawaii is currently under occupation.

16 Again, I think that's a conclusory statement.
17 So I want the back-up support factually or legally,
18 whatever.

19 Paragraph -- the next page, paragraph seven,
20 under War Crimes. The paragraph beginning Article 6 --

21 MR. KAIAMA: Excuse me, your Honor, is that
22 page seven?

23 THE COURT: Yeah, page seven.

24 MR. KAIAMA: And paragraph --

25 THE COURT: It says under War Crimes,

1 subparagraph two, Article -- and the paragraph begins,
2 Article 6, 1863, the sixth line down it says, Article 43
3 of the 1907 paid convention for reinforces the 1893
4 Liliuokalani assignment.

5 And my question there is how? There's no
6 explanation. Again, it's just one of those statements
7 that's made, but there's no discussion of it.

8 Last paragraph there says neither the
9 constitution, nor the laws passed of pursuance, have any
10 force in foreign territory. My note to myself says --
11 well, I'm not sure why I said what I said there, so let's
12 skip over that.

13 MR. KAIAMA: Yeah, because I think that was
14 citing Curtis v. Wright. So I think it was citing --

15 THE COURT: You're right.

16 MR. KAIAMA: -- the Supreme Court decision.

17 THE COURT: You're right. You're right. And
18 I guess if they say it --

19 MR. KAIAMA: Okay. So I don't need to worry
20 about that paragraph?

21 THE COURT: Yeah, don't worry about that one.

22 (Inaudible) declaration, okay. I'm totally
23 confused by it. Because he just says I called these
24 people and this is what they told me. Who are these
25 people and what's their authority to make binding

1 statements that this Court must take into account?

2 Probably the most important thing for me is
3 in para -- page 11 you say, (inaudible), (inaudible), the
4 papers say -- moving papers say, defendant's evidence
5 places the Court on notice of the ongoing violations of
6 international law and War Crimes and that if this Court
7 refuses to grant defendant's motion and plaintiffs -- and
8 dismiss plaintiff's complaint, defendant will have no
9 alternative but to file a criminal complaint with the Maui
10 Police Department for violating Title 18, U.S.C. 62441 of
11 the War Crimes Act.

12 So --

13 MR. KAIAMA: Where is that, your Honor,
14 sorry?

15 THE COURT: Page 11, I believe.

16 MR. KAIAMA: Okay, page 11. Okay. Thanks.
17 Well, 12. Page 12.

18 THE COURT: Yeah, that particular paragraph,
19 what does that have to do with this motion? What does
20 that have to do -- I mean that's -- that's what you're
21 telling me is going to happen if I don't accede to your
22 demands.

23 I appreciate the fair warning, because I hope
24 next year to visit family in Italy and when we get off the
25 plane, if I'm arrested, I'm going to tell them that you

1 didn't give me fair warning to address these issues. So
2 that's why I want you to address these issues.

3 MR. KAIAMA: Okay.

4 THE COURT: The thing is this, is that you've
5 been here a couple of times and this whole fit fascinates
6 me, and I have to make a decision, but when I see
7 something like that, I also think that you owe it to me to
8 be fair, because I'm trying to be fair to you.

9 Even if I deny your motion, as I likely
10 shall, I still want these issues addressed.

11 The thing is this, is that all of the
12 arguments that are being made about international order,
13 but there's no statement or anything at all that provides
14 me with a frame of reference over what the International
15 Criminal Court of Justice, or whatever it's called, deems
16 to be due process. There's nothing.

17 You're -- the plaintiff's -- the -- the
18 defendant's argument is that, well, if you don't do what I
19 demand, that's a denial of due process. That's as far as
20 your argument goes. There's no indication at all anywhere
21 in here that a governmental entity that complies with
22 fundamental fairness and due process, meaning notice and
23 an opportunity to be heard is fundamentally unfair under
24 international law.

25 You've given me no frame of reference for

1 that. You're just saying, you don't do what we want,
2 you're (inaudible). And given what's happening in the
3 news today in Syria about issues and about War Crimes,
4 that context, and what we know happened in World War II
5 and how during the summer of 1944 the Germans took 438,000
6 Hungarian Jews, and in a two month period or three month
7 period sent those folks to the gas chambers in Auschwitz,
8 that's my frame of reference.

9 I'm not trying to be cute about it either.
10 It's just that when this has been coming up now
11 repeatedly, and it's the same thing, I think you need to
12 explain those things to me and to say, how is this
13 defendant being deprived of due process, other than the
14 fact that the Kingdom of Hawaii continues to exist.
15 That's essentially it.

16 And I understand the argument that under that
17 theory then Article 2 takes over and there has to be these
18 other things, but I'm not sure that what you've said in
19 your moving papers states that, or sets that forth.

20 The other thing is is what authority does
21 the -- what legal authority does the -- what you call it,
22 the military handbook?

23 MR. KAIAMA: Oh, yes, (inaudible) 27-10.

24 THE COURT: That's a handbook.

25 MR. KAIAMA: (Inaudible) handbook, yes.

1 THE COURT: So, we have probate handbooks.
2 We have LLC handbooks in Hawaii. What kind of legal
3 authority is that? That's just a handbook. Oh, no, I'm
4 sorry, it's a field manual.

5 MR. KAIAMA: Right.

6 THE COURT: It's a field manual. What kind
7 of legal authority is that binding upon -- upon any
8 civilian?

9 MR. KAIAMA: Okay.

10 THE COURT: Okay, hold on. I got a whole
11 bunch more, but I think if we -- if we address these --
12 now, the other thing is when you were here the last time,
13 I went down to the public library, okay. And I went to
14 the Hawaiian island section to the Kahului library. And I
15 went down to get books so I could further educate myself
16 historically.

17 And one of the discussions we had the last
18 time you were here for another client was the issue of the
19 overthrow, and you and I were talking about it. And I
20 found the book down there. And I will tell you, I think
21 the premise is erroneous in my lay opinion, not my opinion
22 as a Judge, I think the historical precedent or the
23 historical underlying facts are also not something that I
24 personally accept.

25 But there is an alternative view on it and I

1 think you have to accept that there is an alternative
2 view. And the alternative view is that the overthrow was
3 not an illegal act. I can't remember who wrote the book,
4 but, you know, there's a whole group of people out there
5 who totally deny that.

6 And, in fact, that book said that the
7 overthrow was of the monarchy, but not of the system,
8 essentially. I think those kind of things should be
9 addressed, and you need to have a full and fair record.

10 Now, the last thing, and, Mr. Ozawa, this is
11 the only thing you have to address, the legislature has
12 now twice come up with the resolutions. You know which
13 ones I'm referring to Mr. Kaiama?

14 MR. KAIAMA: The State legislature.

15 THE COURT: The State legislature. There was
16 the one this February. You know, where they make specific
17 statements?

18 MR. KAIAMA: You know, I may have some idea,
19 but I'm not specifically aware of that.

20 THE COURT: There are two resolutions. And I
21 believe one was enacted in 2012 and another one in 2013.
22 I'd ask both parties to see if they could find those. I'm
23 sorry I don't have it in front of me, but --

24 MR. KAIAMA: Do you know essentially what
25 those resolutions stood for?

1 THE COURT: Yeah, essentially the resolu --
2 they're only resolutions. But, number one, I believe
3 there's a resolution twice from the legislature that says
4 the overthrow was illegal, the Kingdom of Hawaii continues
5 to exist. That the -- please forgive me if I don't
6 pronounce this correctly -- but the Kanaka Maoli --

7 MR. KAIAMA: Okay, that's good.

8 THE COURT: -- had continuing (inaudible).
9 And it's only a resolution, and I think the legislature
10 wasn't intending to do anything more than just say these
11 things, but they do say something like to the effect that
12 and the Kanaka Maoli do have the right to --

13 MR. KAIAMA: Self determination.

14 THE COURT: They don't use those words, but I
15 think that's it essentially. Now, it's a resolution.
16 It's not the law, but it's --

17 MR. KAIAMA: I think it may being the role
18 commission -- you may be referring to the unrelinquished
19 rights of the Kanaka Maoli and their rights -- something
20 to that effect.

21 THE COURT: Well, it's just -- my thing is
22 this, is I'm sitting here as the judge, and the
23 legislature for two years comes out with these
24 pronouncements, but doesn't give the judges any guidance,
25 other than to say, we recognize your right to

1 self-determination. Well, honestly, what does that mean?
2 How does that impact us as judges, we're supposed to do
3 when the legislature has recognized these things.

4 I don't know that the legislature can -- can
5 recognize such legislatively enact what is history. The
6 history is the history, but it isn't my judgment
7 (inaudible).

8 So I'm not trying to overburden you or make
9 things difficult, but -- well, maybe I'm not trying to,
10 but I know that I am.

11 But, nonetheless, you know, I think
12 everyone -- I need a little bit of fairness for what you
13 intend to do with that.

14 MR. KAIAMA: And, your Honor, actually I do
15 appreciate the opportunity to address some of the Court's
16 questions and concerns and just would like reasonable time
17 to do it.

18 THE COURT: Oh, what I'm going to do is I
19 don't want you to have to keep coming back. There's two
20 today and then there's two on Friday.

21 MR. KAIAMA: Right.

22 THE COURT: And what my proposal is is to
23 give you 90 days. Continue your motion for 90 days. And
24 on -- what's the other case?

25 MR. KAIAMA: Your Honor, if I may ask that

1 the Court -- if it does do that, and I'm perfectly fine
2 with that, but we continue all the motions to the same day
3 so that I might kind of spread the cost of my return among
4 all those.

5 THE COURT: That's what I want to do.
6 Because like I said, it's a lot of work, but I'm trying to
7 cost people. What I want to do then is we'll get this for
8 90 days. I thought there was another one on today. No,
9 there isn't?

10 THE CLERK: No.

11 MR. KAIAMA: No.

12 THE COURT: Oh, okay, maybe it's on for
13 Friday.

14 We'll give you the date for this one. What
15 I'd ask you to do for the motions that are pending on
16 Friday's calendar, please contact opposing counsel. Tell
17 them what I'm suggesting --

18 MR. KAIAMA: Okay.

19 THE COURT: -- and if -- since it's your
20 motion, get them to agree to move it to that date and
21 we'll have all of them heard at the same time.

22 So we'll give you the date for this motion,
23 and then on Friday's motion, contact opposing counsel and
24 let them know that I want to have the hearing on that
25 date. Got it?

1 MR. KAIAMA: Okay. Yes, yes, your Honor.

2 THE COURT: Okay.

3 MR. KAIAMA: I have a little bit of a dilemma
4 on one of the cases on Friday.

5 THE COURT: Okay.

6 MR. KAIAMA: And if I may just explain it to
7 the Court.

8 Actually that client, and I think it's the
9 John Santos case, Bank of America, I believe, against John
10 Santos. Mr. Santos actually had called me and expressed a
11 desire not to proceed with that motion. And so I wouldn't
12 be making an appearance on his behalf and he would just be
13 asking the Court for a reasonable amount of time to file
14 the answer to the complaint. So he was going to ask the
15 Court to withdraw it without prejudice.

16 THE COURT: That's fine. Then that won't --
17 that's not part of this. Although I do have to tell you
18 that that's where all my notes are --

19 MR. KAIAMA: Okay, yeah.

20 THE COURT: -- because that one came up
21 first. So that's fine. But on the other matters that are
22 pending, please follow that procedure.

23 We'll give you a date and so it's mostly
24 around your schedule. Because Mr. Ozawa's firm is here
25 all the time. RCO is here all the time.

1 MR. KAIAMA: Okay.

2 THE CLERK: November 22nd okay? That's a
3 Friday.

4 MR. KAIAMA: That should be fine, your Honor.

5 THE COURT: Mr. Ozawa? Actually, you know
6 what, let's make this in December because I want my papers
7 30 days.

8 MR. KAIAMA: December --

9 THE CLERK: 13th, at 8:30.

10 THE COURT: Okay, and if you would have
11 the -- whatever it is you wish to submit, Mr. Kaiama, and
12 also with respect to those additional documents, annexes 1
13 through 55, if you would have them to me by, let's make it
14 two weeks before December 2nd.

15 And in the meantime though, for Mr. Apo's
16 (inaudible) there is no stay in effect, so manage to
17 proceed in due course.

18 MR. OZAWA: So, theoretically we can have the
19 sale, I mean, before December 13?

20 THE COURT: We'll probably schedule it for
21 that date or after that. Oh, this go through? Has this
22 already been -- it's already been on auction?

23 MR. APO: No, no, your Honor. I've been
24 appointed and contacted Mr. [REDACTED] Your Honor, I'm
25 thinking it may be better just to hold off --

1 THE COURT: You know what, you're right.
2 That's the --

3 MR. OZAWA: Well, that may be everybody
4 else's opinion, but the bank's opinion is that this is
5 taking way too long and that we would like to continue to
6 move on.

7 I don't disagree with your Honor about all
8 the questions that you have in the defendant's motion,
9 repeated motion, but -- and I definitely would like to
10 know those answers as well.

11 However, we've stated in our motion that, you
12 know, we broadly -- broadly gather all of that -- all of
13 those questions as inadmissible evidence for the Court to
14 use and their motion to dismiss is different from a motion
15 for summary judgment.

16 So, notwithstanding that, we do think that
17 there's a lot of hearsay. There's a lot of inadmissible,
18 irrelevant type of information. However, my client is
19 just trying to save on costs at this point and get the
20 property back and get it back on the market.

21 So, if there's anyway that we can not hold
22 off, like you suggested initially. I don't think that
23 it's a burden to the commissioner in any way. I think
24 that he'd be doing the same job regardless of this motion
25 to dismiss being continued. And I think December 13th is

1 a reasonable time for the auction to take place at this
2 point.

3 We've already filed findings of fact,
4 conclusions of law, and have moved forward. So I think
5 December 13th, if that's when the Court wants to set the
6 auction for, or the commissioner would like to do that,
7 that would be fine. We'd prefer earlier, but -- and I
8 have to note that because our client is -- you know this
9 was continued several times --

10 THE COURT: I agree.

11 MR. OZAWA: -- and --

12 THE COURT: Well, what I'm going to do is
13 this though. Is I understand the situation, and given the
14 fact who the plaintiff is in this particular instance, Mr.
15 Apo, you can proceed. You're authorized by the Court to
16 proceed with the sale without open houses. This is
17 Molokai property.

18 And if the defendant wants to persist with
19 respect to this particular motion, I'm not going to delay
20 the matters given the Court's prior rulings in the law.

21 I want to make sure there's a full record for
22 not only the defendant, Mr. Kaiama's continuing arguments
23 in this matter, but also in fairness to myself, since I've
24 been branded a war criminal. I want to make sure that I
25 have a record so that if some day I'm brought before the

1 Hague I can say that I did afford the defendant full and
2 complete due process, and afforded the defendant far more
3 due process than many other people who have been
4 subjected.

5 That doesn't though in any way reflect upon
6 the legitimacy of Mr. Kaiama's arguments or, not only
7 their theories, but the issues, especially given these two
8 resolutions that the legislature now keeps stating, but
9 doesn't give people guidance. They make recognizes of
10 things that occurred in the past and say, you can do
11 something about it, but it's kind of like -- it's well
12 meaning, but I'm not sure --

13 MR. KAIAMA: Yeah.

14 THE COURT: -- so I'm going to -- the sale
15 will proceed. The commissioner's authorized to proceed
16 without open houses. It's Molokai property, and but we
17 will not have a confirmation hearing. So in the event at
18 that time you want to schedule it for that day, ready to
19 proceed --

20 MR. KAIAMA: Right.

21 THE COURT: -- we'll proceed. And if I grant
22 their motion for lack of subject matter jurisdiction, then
23 you're just going to have to pay Mr. Apo's commission.

24 MR. OZAWA: Right, that's fine.

25 MR. KAIAMA: And, your Honor, thank you. I

1 appreciate the Court's ruling on this matter.

2 And if I may just note my objection for the
3 record, that of course our argument, your Honor, is that
4 the Court is unlawfully constituted, and as such, if our
5 agreement -- our argument is agreed, then the Court would
6 have no authority to issue the order for the foreclosure
7 sale. But I just want to note that for the record.

8 THE COURT: No, I understand. And that's --
9 that's my other -- I'm still struggling in my own mind
10 because that's not really what your argument is.

11 Your argument is that this Court, although it
12 exists, it doesn't, because the State of Hawaii shouldn't
13 be here to begin with. So, therefore, nothing this Court
14 does has any effect under your argument, so how could you
15 be being deprived of something if nothing has yet occurred
16 from an entity.

17 You're applying under two different theories.
18 One under international law and one under Article 2 of the
19 Constitution. That's two different theories and I'm not
20 satisfied that that's the (inaudible).

21 MR. KAIAMA: And, your Honor, although I
22 think it has been addressed, I will answer your questions.
23 Make every effort to answer your questions so that
24 hopefully it does address every question, your Honor.

25 THE COURT: I know what's going to happen is

1 you'll address those questions and every other judge is
2 going to have the answers to my questions.

3 MR. OZAWA: When are the supplemental -- when
4 is the supplemental memorandum?

5 THE COURT: December 2nd. Monday, December
6 2nd.

7 MR. OZAWA: Okay.

8 MR. KAIAMA: That's my supplemental.

9 MR. OZAWA: His.

10 THE COURT: Oh, you know what, make yours the
11 Monday before.

12 MR. KAIAMA: Okay.

13 THE COURT: And, Mr. Ozawa, you can do yours
14 three days before if you choose.

15 MR. KAIAMA: I'm sorry if you might help me,
16 I don't have a calendar, so what would the Monday before
17 December 2nd be?

18 THE COURT: November 25.

19 MR. KAIAMA: Okay, November 25.

20 THE COURT: Is that okay with you, Mr. Ozawa?

21 MR. OZAWA: Yes, your Honor. And then we --
22 we would just file our memo in opp eight days before;
23 right?

24 THE COURT: Well, I gave you three days for
25 the supplemental if you feel you need it. All right?

1 MR. OZAWA: Okay.

2 THE COURT: Mr. Apo, do you have any
3 questions?

4 MR. APO: No, I think I understand. At this
5 point I won't need to impose on Mr. [REDACTED] with open
6 houses or inspections and the schedule.

7 THE COURT: Unless -- unless he wants to let
8 you do it. It is to your benefit, Mr. [REDACTED]
9 (inaudible), but I know Mr. [REDACTED] has been here for
10 every hearing. This is like the fourth time I've seen
11 him, or the fifth time he comes --

12 I don't know, do you come over on the ferry
13 in the morning?

14 MR. [REDACTED] No, I fly over.

15 THE COURT: Oh, you fly. Oh, okay. All
16 right. Very well. Thank you, though.

17 MR. KAIAMA: Thank you.

18 MR. OZAWA: Thank you, your Honor.

19 THE CLERK: All rise, court stands in recess.

20 (At which time the above-entitled proceedings
21 were concluded.)

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C E R T I F I C A T E

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I, BETH KELLY, a Court Reporter do hereby
certify that the foregoing pages 1 through 22 inclusive
comprise a full, true and correct transcript of the
proceedings had in connection with the above-entitled
cause.

Dated this 12th day of September, 2013.

BETH KELLY, RPR, CSR #235
Court Reporter

Beth Kelly, CSR #235
Court Reporter

Appendix “IX”



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.

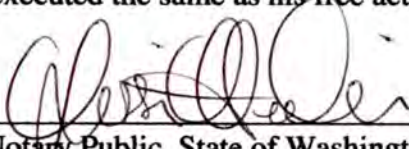
I grant to said attorney in fact full power and authority to do, take and perform all and every act and things whatsoever requisite, proper, or necessary to be done, in the exercise of any of the rights and powers herein granted about the specific and limited purpose, as fully to all intent and purposes 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