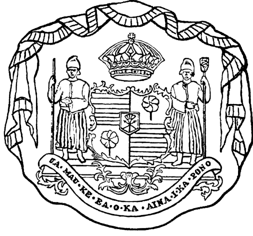

DAVID KEANU SAI, PH.D.
Acting Ambassador-at-large for the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194
Email: interior@hawaiiankingdom.org

Honolulu, 7 March 2016

Excellency:

Prompted by the imminent threat to my country by the Democratic People's Republic of Korea's declaration that the Hawaiian Islands is one of its military targets on 29 March 2015; its recent detonation of a hydrogen bomb on 6 January 2016; and its test firing of a missile that used ballistic missile technology that can transport a nuclear warhead on 7 February 2016, I have been instructed by my Government to formally submit the present letter and complaint to the United Nations Security Council under Article 35(2) of the Charter of the United Nations, together with my Government's Declaration accepting "the obligations of Pacific Settlement provided in the present Charter of the United Nations, except in cases where the parties have agreed or shall agree to have recourse to another procedure or to another method of pacific settlement."

The Hawaiian Kingdom has been under an illegal and prolonged occupation by the United States of America since the Spanish-American War, which stands in violation of International Humanitarian Law. The Hawaiian Islands continues to serve as headquarters for the United States Pacific Command, a unified combatant command, with 118 military bases throughout the islands, which caused the Democratic People's Republic of Korea's targeting of the Hawaiian Islands (see complaint).

Recalling Article 24(1) of the Charter of the United Nations, which confers upon the Security Council primary responsibility for the maintenance of international peace and security, the Government of the Hawaiian Kingdom has the honor to formally bring to the attention of the Security Council a "dispute" with the United States of America and "disputes" with Australia, Austria, Azerbaijan, Belgium, Brazil, Canada, Chile, China, the Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Italy, Japan, Kiribati, the Republic of Korea, Luxembourg, Malaysia, Marshall Islands, Mexico, Micronesia, Morocco, Nepal, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Portugal, Russia, Samoa, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tonga, and the United Kingdom.

Formal evidence of the "dispute" with the United States of America is clearly stated in the Arbitral Award (5 February 2001) by the Tribunal, in *Lance Paul Larsen v. The Hawaiian Kingdom*, held under the auspices of the Permanent Court of Arbitration, which I had the honor of serving as Agent for the Hawaiian Kingdom (see complaint).

Two of the arbitrators in the *Larsen* case now serve on as judges on the International Court of Justice—Judge Christopher Greenwood and Judge James Richard Crawford. Formal evidence of the "disputes" with the aforementioned States, with the exception of the United States of America, is a letter from the Registrar of the International Court of Justice acknowledging receipt of Applications Instituting Proceedings and Requests for Interim Measures of Protection (see complaint). I've attached, herein, a copy of the Arbitral Award and the letter from the Registrar of the International Court of Justice.

In view of the seriousness of the situation existing in the Hawaiian Islands, my Government requests the Security Council, as the organ responsible for the maintenance of international peace and security, to assume its full responsibilities and to:

(a) Direct all member-States of the United Nations to cease in the recognition of the United States' unlawful claim over the Hawaiian Islands, being an internationally wrongful act, under Article 30 of the *Draft articles on State Responsibility for Internationally Wrongful Acts* (2001), and to conform to the Vienna Convention on the Law of Treaties (1969);

(b) Direct the United States of America to immediately cease and desist from exercising authority in the Hawaiian Islands until it conforms to international law and international humanitarian law, that is, the Fourth Hague Convention (1907), the Fifth Hague Convention (1907), and the Fourth Geneva Convention (1949);

(c) Take all measures at its disposal to ensure that the United States of America complies with the Fourth Hague Convention (1907), the Fifth Hague Convention (1907), and the Fourth Geneva Convention (1949); and

(d) Direct Australia, Austria, Azerbaijan, Belgium, Brazil, Canada, Chile, China, the Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Italy, Japan, Kiribati, the Republic of Korea, Luxembourg, Malaysia, Marshall Islands, Mexico, Micronesia, Morocco, Nepal, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Portugal, Russia, Samoa, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tonga, and the United Kingdom to immediately comply with the Vienna Convention on Consular Relations (1963) and the provisions of consular functions in the Hawaiian-Austrian Treaty (18 June 1875), the Hawaiian-Belgian Treaty (4 October 1862), the Hawaiian-British (10 July 1851), the Hawaiian-Danish Treaty (19 October 1846), the Hawaiian-Dutch Treaty (16 October 1862), the Hawaiian-French Treaty (29 October 1857), the Hawaiian-German Treaty (25 March 1879), the Hawaiian-Hungarian Treaty (18 June 1875), the Hawaiian-Italian Treaty (22 July 1863), the Hawaiian-Japanese Treaty (19 August 1871), the Hawaiian-Luxembourgish Treaty (16 October 1862), Hawaiian-Norwegian Treaty (1 July 1852), the Hawaiian-Portuguese Treaty (5 May 1882), the Hawaiian-Russian Treaty (19 June 1869), the Hawaiian-Spanish Treaty (29 October 1863), Hawaiian-Swedish Treaty (1 July 1852), and the Hawaiian-Swiss Treaty (20 July 1864).

In light of the foregoing, and in accordance with Article 35(2) of the Charter of the United Nations and Rule 3 of the provisional rules of procedure of the Security Council, I kindly request that an urgent meeting of the Council be convened under agenda item "Non-proliferation/Democratic People's Republic of Korea." Furthermore, the Hawaiian Kingdom respectfully invokes Article 27 of the Charter where members of the Security Council to which the Hawaiian Kingdom has a dispute—*to wit*, China, France, Japan, Malaysia, New Zealand, Russia, Spain, the United Kingdom, and the United States of America, "shall abstain from voting." Additionally, the Hawaiian Kingdom respectfully invokes Article 32 of the Charter of the United Nations and Rule 37 of the provisional rules of the Security Council, whereby a State not a member of the United Nations "shall be invited to participate, without a vote, in the discussion relating to the dispute."

I shall be grateful if your Excellency would arrange to have the present letter, complaint and attachments made available to the members of the Security Council and to have it distributed as a document of the Council, in connection with the item entitled "Non-proliferation/Democratic People's Republic of Korea."

Please accept, Excellency, the expression of my highest consideration.

David Keanu Sai, Ph.D.
Agent of the Hawaiian Kingdom and
Ambassador-at-large and Minister of the
Interior of the Hawaiian Kingdom

His Excellency
Mr. Ismael Abraao Gaspar Martins
Ambassador Extraordinary and Plenipotentiary for Angola
President, Security Council

Enclosures

UNITED NATIONS SECURITY COUNCIL

DISPUTES WITH

THE UNITED STATES OF AMERICA

and

AUSTRALIA, AUSTRIA, AZERBAIJAN, BELGIUM, BRAZIL, CANADA, CHILE, CHINA, THE CZECH REPUBLIC, DENMARK, FINLAND, FRANCE, GERMANY, HUNGARY, INDIA, ITALY, JAPAN, KIRIBATI, THE REPUBLIC OF KOREA, LUXEMBOURG, MALAYSIA, MARSHALL ISLANDS, MEXICO, MICRONESIA, MOROCCO, NEPAL, NETHERLANDS, NEW ZEALAND, NORWAY, PERU, PHILIPPINES, POLAND, PORTUGAL, RUSSIA, SAMOA, SLOVENIA, SPAIN, SRI LANKA, SWEDEN, SWITZERLAND, THAILAND, TONGA, AND THE UNITED KINGDOM

filed with the President of the Security Council

under Article 35(2) of the Charter of the United Nations

BREACH OF INTERNATIONAL PEACE AND SECURITY AND CONSULAR FUNCTIONS

7 March 2016

TABLE OF CONTENTS

I. COMPLAINT OF THE HAWAIIAN KINGDOM 3
- A. The Hawaiian Kingdom 4
- B. The Hawaiian Government 6
- C. United States' Breach of International Peace and Security....................10
- D. Article 35(2)—Security Council Seized of Disputes 11
- E. War Crimes under the Fourth Hague Convention (1907) 13
- F. War Crimes under the Fourth Geneva Convention (1949)....................22

II. THE LAW..28
- A. The Hawaiian Civil Code..28
- B. Hawaiian Treaties..28
- C. The Fourth Hague Convention 28
- D. The Fifth Hague Convention..29
- E. The Fourth Geneva Convention 29
- F. The Vienna Convention on the Law of Treaties....................30
- G. Draft articles on Responsibility of State for Internationally Wrongful Acts 30

III. STATEMENT OF FACTS 31

IV. BREACH OF INTERNATIONAL LAW..33

V. NATURE OF THE HAWAIIAN KINGDOM'S CLAIM....................34

VI. ACTION REQUESTED 35

To the President, Security Council.

The Undersigned, being duly authorized by the Government of the Hawaiian Kingdom, states as follows:

I. COMPLAINT OF THE HAWAIIAN KINGDOM

Upon instruction of my Government, I have the honor to submit herewith Disputes of the Hawaiian Kingdom, a State not a member of the United Nations, with the United States of America, hereinafter referred to as "United States," and with Australia, Austria, Azerbaijan, Belgium, Brazil, Canada, Chile, China, the Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Italy, Japan, Kiribati, the Republic of Korea, Luxembourg, Malaysia, Marshall Islands, Mexico, Micronesia, Morocco, Nepal, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Portugal, Russia, Samoa, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tonga, and the United Kingdom, in accordance with Article 35(2) of the Charter of the United Nations for violations of the Hawaiian-Austrian Treaty (18 June 1875), the Hawaiian-Belgian Treaty (4 October 1862), the Hawaiian-British (10 July 1851), the Hawaiian-Danish Treaty (19 October 1846), the Hawaiian-Dutch Treaty (16 October 1862), the Hawaiian-French Treaty (29 October 1857), the Hawaiian-German Treaty (25 March 1879), the Hawaiian-Hungarian Treaty (18 June 1875), the Hawaiian-Italian Treaty (22 July 1863), the Hawaiian-Japanese Treaty (19 August 1871), the Hawaiian-Luxembourgish Treaty (16 October 1862), Hawaiian-Norwegian Treaty (1 July 1852), the Hawaiian-Portuguese Treaty (5 May 1882), the Hawaiian-Russian Treaty (19 June 1869), the Hawaiian-Spanish Treaty (29 October 1863), Hawaiian-Swedish Treaty (1 July 1852), the Hawaiian-Swiss Treaty (20 July 1864), the Hawaiian-United States Treaty (20 December 1849), the Fourth Hague Convention (18 October 1907), the Fifth Hague Convention (18 October 1907), the Fourth Geneva Convention (12 August 1949), the Vienna Convention on Consular Relations (24 April 1963), the Vienna Convention on the Law of Treaties (23 May 1969), and for violations of peremptory norms in international law and *jus cogens*.

The Council of Regency of the Hawaiian Kingdom has appointed the undersigned Ambassador-at-large and Minister of the Interior of the Hawaiian Kingdom, H.E. David Keanu Sai, Ph.D., as Agent, for these proceedings.

It is requested that all communications relating to this case be sent to P.O. Box 2194, Honolulu, HI 96805-2194.

A. THE HAWAIIAN KINGDOM

1. On 28 November 1843, the United Kingdom and France jointly recognized the Hawaiian Kingdom as an independent State. The United States formally recognized Hawaiian independence on 6 July 1844. In *Larsen v. The Hawaiian Kingdom* (2001), the Tribunal pronounced, "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."[1]

2. On 20 December 1849, the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation with the United States. Article 1 provides "There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors." Neither the Hawaiian Kingdom nor the United States have given notice, to the other, of its intention to terminate the treaty and therefore, the treaty remains binding upon both Contracting Powers. Along with the United States, the Hawaiian Kingdom also entered into treaties with Austria, Belgium, Denmark, France, Germany, Hungary, Italy, Japan, Luxembourg, Norway, Portugal, Russia, Spain, Switzerland, Sweden, and the United Kingdom of Great Britain and Northern Ireland. Neither the Hawaiian Kingdom nor any of these non-Contracting Powers have given notice to the other of their intention to terminate the treaties and therefore, the treaties remain binding upon all of the Contracting Powers. By 1893, the Hawaiian Kingdom maintained over 90 Legations and Consulates throughout the world.

3. While these treaties have not devolved upon the successor States of the Contracting Powers because "newly independent States…start life with a clean slate in the matter of treaty obligations,"[2] the law of treaties provides that new States succeed to the rules of international law, which include the rules contained in law-making treaties. Treaties are not the matter of successorship, but rather continuity. According to Lester, "The doctrine relating to acquiescence and estoppel in customary international law help to preserve continuity."[3] Therefore, successor States to the Contracting Powers to the Hawaiian treaties remain bound by the rules contained in the treaties that are "law-making." Furthermore, according to Article 24(1)(b), *Vienna Convention on Succession of States in respect of Treaties* (23 August 1978), "A bilateral treaty which at the date of a succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when…by reason of their conduct they are to be considered as having so agreed."

[1] *Larsen v. The Hawaiian Kingdom*, 119 INT'L L. REP. 566, 581 (2001).
[2] LORD MCNAIR, THE LAW OF TREATIES 601 (1961).
[3] A.P. Lester, *State Succession to Treaties in the Commonwealth*, 12 INT'L & COMP. L.Q. 475, 507 (1963).

Successor States to the Hawaiian treaties have provided no notice to the Hawaiian Kingdom of non-acceptance, and, therefore, the continuity of the treaties remains intact.

4. On 18 December 1893, United States President Grover Cleveland notified the Congress after a thorough investigation that the United States, through its resident Minister Plenipotentiary, who ordered the landing of United States troops on 16 January 1893, was responsible for the unlawful seizure of the Hawaiian government and the installation of insurgents in the place of the executive monarch who declared their loyalty to the United States on 17 January 1893.[4] Unbeknownst to the President, on the same day he gave his message to Congress, an executive agreement was reached in Honolulu through *exchange of notes* to reinstate Her Majesty Queen Lili'uokalani as the executive monarch.[5] The United States did not comply with the executive agreement to reinstate Queen Lili'uokalani as the executive monarch, and thereafter, on 12 August 1898, reoccupied the Hawaiian Kingdom, a neutral State, in order to conduct military campaigns in the Spanish colonies of Guam and Philippines, during the Spanish-American War. The United States' deliberate omission of complying with customary international law, that obliges the occupying State to administer the laws of the occupied State, which was later codified under Article 43 of the Second Hague Convention (1899),[6] and then superseded by Article 43 of the Fourth Hague Convention (1907),[7] is a violation of international law and an internationally wrongful act.

5. The belligerent occupation of the Hawaiian Kingdom by the United States is unprecedented in international relations, and has lasted nearly 118 years. However, notwithstanding the unlawful overthrow of the Hawaiian government by the United States and its prolonged occupation of the Hawaiian Kingdom since the Spanish-American War, the continuity of the Hawaiian Kingdom as a State has been maintained under international law.[8] According to Judge Crawford, "There is a strong presumption that the State continues to exist, with its rights and obligations…despite a period in which there is no…government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[9]

---

[4] *Id*., at 598-610, Annexure 1—President Cleveland's message to the Senate and House of Representatives dated 18 December 1893; see also David Keanu Sai, *A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai'i today*, 10 J. L. & SOC. CHALLENGES 69 (Fall 2008); and David Keanu Sai, "Hawaiian Neutrality: From the Crimean Conflict through the Spanish American War" (paper presented at the University of Cambridge, UK, Centre for Research in the Arts, Social Sciences and Humanities, Sovereignty and Imperialism: Non-European Powers in the Age of Empire, September 10-12, 2015), *available at* http://www2.hawaii.edu/~anu/pdf/Cambridge_Paper_Hawaiian_Neutrality.pdf.

[5] *See* Sai, *A Slippery Path*, at 119-121.

[6] Hague Convention, II, Respecting the Laws and Customs of War on Land, Article 43 (29 July 1899).

[7] Hague Convention, IV, Respecting the Laws and Customs of War on Land, Article 43 (18 October 1907).

[8] *Id*., at 76-96; see also Sai, *Hawaiian Neutrality*, at 37-41.

[9] JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 34 (2nd ed., 2006).

B. The Hawaiian Government

6. In 1996, remedial steps were taken, under the doctrine of necessity, to reinstate the Hawaiian government as it stood under Her Majesty Queen Lili'uokalani on 17 January 1893, the day of the unlawful overthrow of the Hawaiian government by the United States. In accordance with the Hawaiian constitution and the principle of necessity, a Council of Regency was established to serve in the absence of the executive monarch.[10] According to Professor Marek, "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 of the occupied State…is not one of delegation, but of co-existence."[11]

7. In *Madzimbamuto v. Lardner-Burke*, Lord Pearce states there are certain limitations to the principle of necessity, "namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful…Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign."[12] According to de Smith, deviations from a State's constitutional order "can be justified on grounds of necessity."[13] He also explains, "State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution."[14]

---

[10] David Keanu Sai, Ph.D., The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom 25-53 (Aug. 4, 2013), *available at* http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf. Establishing the Hawaiian Regency was analogous to the establishment of the Belgian Regency in 1940 after the Belgian King was captured by German forces. According to Oppenheimer, "As far as Belgium is concerned, the capture of the king did not create any serious constitutional problems. According to Article 82 of the Constitution of February 7, 1821, as amended, the cabinet of ministers have to assume supreme executive power if the King is unable to govern. True, the ministers are bound to convene the House of Representatives and the Senate and to leave it to the decision of the united legislative chambers to provide for a regency; but in view of the belligerent occupation it is impossible for the two houses to function. While this emergency obtains, the powers of the King are vested in the Belgian Prime Minister and the other members of the cabinet." F.E. Oppenheimer, "Governments and Authorities in Exile," 36 AM. J. INT'L L. 569 (1942).

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

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

[13] STANLEY A. DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, 80 (1986).

[14] *Id*. The principle of necessity is also covered under Article 9 of the *Draft articles on Responsibility of States for Internationally Wrongful Acts* (2001)—"The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements." According to the International Law

8. By virtue of this process, a provisional Government, comprised of officers *de facto*—not to be confused with a *de facto* government, was established and has since represented the Hawaiian Kingdom as a State, which was explicitly recognized by the Secretariat of the Permanent Court of Arbitration, hereinafter referred to as "PCA," in *Larsen v. The Hawaiian Kingdom*.[15] From 8 November 1999 through 5 February 2001, international arbitration proceedings were held under the PCA's institutional jurisdiction, which provided for dispute settlement between a "State" and a "Private entity."

9. The dispute between Larsen (Private entity) and the Hawaiian Kingdom (State) centered on the allegation of negligence, whereby "*(a)* Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is in continual violation of its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, and in violation of the principles of international law laid [down] in the Vienna Convention on the Law of Treaties, 1969, by allowing the unlawful imposition of American municipal laws over claimant's person within the territorial jurisdiction of the Hawaiian Kingdom; *(b)* Lance Paul Larsen, a Hawaiian subject, alleges that the Government of the Hawaiian Kingdom is also in continual violation of the principles of international comity by allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom."[16]

10. According to the *American Journal of International Law*, "At the center of the PCA proceeding was…that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States' 'unlawful imposition [over him] of [its] municipal laws' through its political subdivision, the State of Hawaii. As result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him."[17]

Commission, "Article 9 establishes three conditions which must be met in order for conduct to be attributable to the State: first, the conduct must effectively relate to the exercise of elements of the governmental authority, secondly, the conduct must have been carried out in the absence or default of the official authorities, and thirdly, the circumstances must have been such as to call for the exercise of those elements of authority." *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001)*, Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10), p. 49.

[15] Permanent Court of Arbitration Case Repository, Case View, *Lance Paul Larsen v. The Hawaiian Kingdom* (1999-2001), *available at* http://www.pcacases.com/web/view/35.

[16] *Id.*, *see* also *Larsen v. Hawaiian Kingdom*, at 569.

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

11. Before establishing the *ad hoc* arbitral tribunal, Secretary General van den Hout, of the PCA's International Bureau, made a request, over the phone, to the undersigned, being the Agent for the Hawaiian government, in February 2000 to provide a formal invitation to the United States to join in the arbitration. The Secretary General requested the invitation be documented and filed with the PCA's Secretariat. The United States is a member State of the PCA since it ratified the First Hague Convention (1899), on 4 September 1900 and reaffirmed its membership by acceding to the First Hague Convention, on 26 January 1910. The United States is also a member of the PCA's Administrative Council, which has diplomatic representatives accredited to the Netherlands. The United States maintains a diplomatic post in The Hague. The Hawaiian government saw this action as actual notice to be given to the United States of the Hawaiian Kingdom's continued existence as a State with its organ, the Hawaiian government, in international arbitration with one of its nationals.

12. On 3 March 2000, a conference call meeting was held in Washington, D.C., between Mr. John Crook, Assistant Legal Advisor for United Nations Affairs, at the United States Department of State, and the undersigned with Ms. Ninia Parks, *Esquire*, counsel for Larsen. The United States was formally invited by the Hawaiian government, with the consent of the claimant, to join in the arbitration. Following the conference call on that same day, a letter confirming the meeting was sent to Mr. Crook, a copy of which was sent to the Secretary General of the PCA.[18] Later that month, the United States Embassy at The Hague notified the PCA that the United States would not be joining in the arbitration, but requested permission, from the Hawaiian government and from Larsen, to access all records of the case. Permission was granted, which served as explicit recognition by the United States of the continuity of the Hawaiian Kingdom as a State, and its organ, the Hawaiian government.

13. After the PCA's Secretariat verified there was no challenge by the United States as to the continued existence of the Hawaiian Kingdom as a State, the *ad hoc* Arbitral Tribunal was constituted in April of 2000, after which, written pleadings were submitted, and oral hearings were held in the PCA's hearing room in December of 2000.[19] The Tribunal was comprised of Professor James Crawford, SC, as the presiding arbitrator, and Professor Christopher Greenwood, QC, and Gavan Griffith, QC, as associate arbitrators. Professors Crawford and Greenwood now serve as Judges on the International Court of Justice.

---

[18] "Letter Confirming Telephone Conversation of March 3, 2000 Relating to Arbitral Proceedings at the Permanent Court of Arbitration, Lance Paul Larsen vs. The Hawaiian Kingdom," 1 HAW. J.L. & POL. 296 (2004), *available at* http://hawaiiankingdom.org/pdf/Ltr_to_State_Dept_3_3_2000.pdf.

[19] Oral hearings were held on 7, 8 and 11 December 2000 at the hearing room of the Permanent Court of Arbitration. Video of a portion of the oral hearings *available at* https://vimeo.com/17007826.

14. The arbitration award was filed with the PCA on 5 February 2001, and concluded that in order for Larsen to maintain his allegation of negligence on the part of the Hawaiian government, he needed the participation of the United States in the arbitration, as a necessary third party, pursuant to the principle set by the International Court of Justice in *the Case concerning Monetary Gold Removed from Rome, ICJ Reports 1954* (21 ILR 399), *the Case concerning Certain Phosphate Lands on Nauru*, *ICJ Reports 1992* (97 ILR 1), and *the Case concerning East Timor*, *ICJ Reports 1995* (105 ILR 226). The Tribunal concluded the United States to be a necessary third party and therefore the arbitral proceedings could not be maintained.[20]

15. In its 2001 Annual Report to the PCA's Administrative Council, the Secretary General reported the *Larsen v. Hawaiian Kingdom* arbitration was the thirty-fourth case to have come before the PCA pursuant to Article 47 of the First Hague Convention (Article 26 of the 1899, First Hague Convention).[21] Article 47 of the First Hague Convention (1907) for the Pacific Settlement of International Disputes, provides, "The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal." Under Article 47, only full sovereign States can be Contracting Powers or non-Contracting Powers because the First Hague Convention (1907), is a treaty under international law. For jurisdictional purposes, the PCA explicitly recognized the Hawaiian Kingdom as a "State," which is reflected in the PCA's new case database—*Larsen v. Hawaiian Kingdom*.[22]

16. The *de facto* authority of the *acting* government was acquired through time since the arbitral proceedings were held at the PCA. Authority by acquiescence was acquired, in the absence of any protest, and, in some cases, by direct acknowledgment from States, *i.e.,* the United States, when it requested permission from the *acting* government to access the arbitral records in 2000;[23] Rwanda, when it provided notice to the *acting* government of its intention to report the prolonged occupation of the Hawaiian Kingdom to the United Nations General Assembly in 2000;[24] China, as President of the United Nations Security Council in 2001, when it accepted the Complaint of the *acting* Hawaiian Kingdom government, a non-member State of the United Nations;[25] Qatar, as President of the

---

[20] *See Larsen v. Hawaiian Kingdom*, at 598.
[21] *Annex 2—Cases Submitted to Arbitration before the Permanent Court of Arbitration, or Conducted with the Cooperation of the International Bureau*, PCA Annual Report (2001), at 44, *available at* http://www.pca-cpa.org/Annex%202(3)f4c4.pdf?fil_id=505.
[22] Permanent Court of Arbitration Case Repository, Case View, *Lance Paul Larsen v. The Hawaiian Kingdom* (1999-2001), *available at* http://www.pcacases.com/web/view/35.
[23] *See* Sai, Continuity of the Hawaiian State, at para. 9.4.
[24] *Id*., at para. 9.5.
[25] *Id*., at para. 9.6.

General Assembly's 66th Session in 2012, when it accepted the Protest and Demand of the *acting* Hawaiian Kingdom government, a non-member State of the United Nations;[26] and Switzerland, when it accepted the Instrument of Accession, from the *acting* Hawaiian Kingdom government, as a State, while Switzerland served as the repository for the 1949 Geneva Conventions in 2013.[27]

17. Furthermore, on 26 March 2014, the Directorate, International Law, Swiss Ministry of Foreign Affairs in Bern, Switzerland, received the Hawaiian Kingdom's Envoy Extraordinary and Minister Plenipotentiary, and accepted the Envoy's letter of credence addressed to His Excellency Didier Burhalter, President of the Swiss Confederation and Head of the Federal Department of Foreign Affairs, together with the office copy of the Envoy's commission and curriculum vitae. The Hawaiian Kingdom has since been in negotiations with the Swiss Confederation on matters of the prolonged occupation and on the duties and obligations of Switzerland as a Contracting Power to both the Fourth Geneva Convention and the Hawaiian-Swiss Treaty.

C. UNITED STATES' BREACH OF INTERNATIONAL PEACE AND SECURITY

18. According to Article 24 of the United Nations Charter, the Security Council's primary responsibility is for the maintenance of "international peace and security." Since the occupation began on 12 August 1898, the Hawaiian Kingdom, being a neutral State, 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), a unified combatant command, was established. USPACOM is an outgrowth of the World War II command structure, and is 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 or 6% of all Hawaiian territory.[28] The island of O'ahu has the majority of these military sites covering 94,250 acres or 25% of the island.

---

[26] *Id*.
[27] *Id*.
[28] 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.

19. The United States Navy's Pacific Fleet, headquartered at Pearl Harbor, hosts the Rim of the Pacific Exercise (RIMPAC) on every other even numbered year. RIMCPAC is the largest international maritime warfare exercise in the world. 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, China, Peru, Republic of Korea, Philippines, Singapore, Tonga, and the United Kingdom participated in these RIMPAC exercises.

20. Since the belligerent occupation by the United States began, on 12 August 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, not a state of war in the technical sense, that it was produced by a declaration of war, but this belligerent occupation is, however, a war in the material sense. As Dinstein says, is "generated by actual use of armed force, which must be comprehensive on the part of at least one party to the conflict."[29] 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.

21. When neutral territory is occupied, however, the laws of war are not applied in its entirety. According to Sakuye Takahashi, during the Russo-Japanese War, Japan limited its application of the Second Hague Convention (1899) to its occupation of Manchuria, a province of a neutral China. Japan's application centered on 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.[30]

22. Hawai'i's situation is anomalous and without precedent. The closest similarity to the American Occupation of the Hawaiian Kingdom during the Spanish-American War took

---

[29] YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENSE, 16 (2nd ed. 1994).
[30] SAKUYE TAKAHASHI, INTERNATIONAL LAW APPLIED TO THE RUSSO-JAPANESE WAR 251 (1908).

place sixteen years later when, from 1914-1918, Germany occupied the neutral States of Belgium and Luxembourg in its war against France. 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."[31]

D. Article 35(2)—Security Council Seized of the Disputes

23. Article 35(2) of the United Nations Charter provides for States who are not members of the United Nations to bring to the attention of the Security Council a dispute with another State or States. In the Advisory Opinion on Namibia, the International Court of Justice affirmed the mandatory nature of Article 32 that the Security Council must extend an invitation to a State not a member of the United Nation to participate, without a vote, if the Council determines that the matter is "in the nature of a dispute."[32] Furthermore, Article 27(3) provides that a member of the Security Council who is a "party to the dispute shall abstain from voting."

24. In the *Larsen* case, held under the auspices of the Permanent Court of Arbitration, the arbitral tribunal heard a dispute, between Lance Paul Larsen (Claimant) and the Hawaiian Kingdom (Respondent), alleging the Respondent was negligent for allowing the unlawful imposition of United States' laws within the territory of the Hawaiian Kingdom, which ultimately led to Claimant's unlawful confinement and monetary fine. According to the Tribunal, "If there is a dispute between the claimant and the respondent, it concerns whether the respondent has fulfilled what both parties maintain is its duty to protect the claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian Islands. Moreover, the United States' actions of which the claimant claims to be the victim would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. It follows that the Tribunal cannot determine whether the respondent has failed to discharge its obligations towards the claimant without ruling on the legality of the acts of the United States of America. Yet this is precisely what the *Monetary Gold* principle precludes the Tribunal from doing. As the International Court explained in the *East Timor* case, 'the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case.'"[33] Therefore, as stated by the Tribunal, "the gist of the dispute submitted to

---

[31] James Wilford Garner, International Law and the World War, 251 (Vol. II 1920).
[32] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276,* Advisory Opinion of 21 June 1971, ICJ Rep 1971, p. 10.
[33] *Larsen v. Hawaiian Kingdom* (Arbitration Tribunal) (5 February 2001) 119 ILR 566, p. 596, para. 12.14, 12.15.

the Tribunal was a dispute not between the parties to the arbitration but a dispute between each of them and a third party [the United States].” Hence, the Tribunal found the United States to be a necessary third party to the dispute, and without the participation of the United States, the tribunal could not maintain jurisdiction over the matter.[34]

25. Fourteen members of the Security Council, with the exception of Angola, are all member States of the Permanent Court of Arbitration and its Administrative Council. As members of the Administrative Council, these members are precluded from denying the existence of the Hawaiian Kingdom as a State, and the finding of the Tribunal that a dispute exists between the Hawaiian Kingdom and the United States since, at least, 2001 when they received the Annual Report from the Secretary General of the Permanent Court of Arbitration.

26. Connected to the dispute with the United States, the Hawaiian Kingdom also filed, on 25 January 2016, Applications Instituting Proceedings at the International Court of Justice under Articles 35(3), 36(1), 36(2) and 40(1) of the Statute of Court, and Article 38 of the Rules of the Court, against Australia, Austria, Azerbaijan, Belgium, Brazil, Canada, Chile, People’s Republic of China, the Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Italy, Japan, Kiribati, Republic of Korea, Luxembourg, Malaysia, the Marshall Islands, Mexico, Micronesia, Morocco, Nepal, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Portugal, Russia, Samoa, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tonga, and the United Kingdom for violation of Hawaiian treaties, the Vienna Convention on Consular Relations (24 April 1963), Fourth Geneva Convention (12 August 1949), the Vienna Convention on the Law of Treaties (23 May 1969), and for violations of peremptory norms in international law and *jus cogens*. On 26 January 2016, Philippe Couvreur, Registrar for the International Court of Justice at The Hague, acknowledged receipt of the Applications Instituting Proceedings under document no. 146496.

27. All five (5) of the permanent members of the Security Council, *to wit*, China, France, Russia, the United Kingdom and the United States, and four (4) of the non-permanent members, *to wit*, Japan, Malaysia, New Zealand and Spain, are also in dispute with the Hawaiian Kingdom. There is no question as to the dispute between the Hawaiian Kingdom and the United States, as pronounced by the Permanent Court of Arbitration’s *ad hoc* Tribunal in the *Larsen* case. And there can be no question as to the disputes with the other members of the Security Council evidenced by the Applications Instituting Proceedings at the International Court of Justice and acknowledged by its Registrar. Accordingly, the Security Council is seized of the disputes under Article 35(2) of the Charter.

---

[34] *Id.,* p. 594, para. 12.7.

E. WAR CRIMES COMMITTED UNDER THE FOURTH HAGUE CONVENTION (1907)

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.

28. When the United States began the occupation, at 12 noon on 12 August 1898, it deliberately failed to administer the laws of the Hawaiian Kingdom as the law stood prior to the unlawful overthrow of the Hawaiian Kingdom government by the United States on 17 January 1893. Instead, the United States unlawfully maintained a continued presence and administered the law of the self-declared Republic of Hawai'i, a puppet regime, established through United States intervention on 17 January 1893. The puppet regime was originally called the provisional government, which was later changed to the Republic of Hawai'i on 4 July 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 18 December 1893. The Republic of Hawai'i was acknowledged as *self-declared,* by the U.S. Congress, in a joint resolution apologizing for the illegal overthrow of the Hawaiian Kingdom government. This apology resolution was passed on, 23 November 1993, the one hundredth anniversary of the illegal overthrow.

29. Since 30 April 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."[35] When the Territory of Hawai'i was succeeded by the State of Hawai'i, on 18 March 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."[36] 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

---

[35] 31 U.S. Stat. 141 (1896-1901).

[36] 73 U.S. Stat. 11 (1959).

> 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."[37]

30. Article 43 does not transfer sovereignty to the occupying power.[38] Section 358, United States Army Field Manual 27-10, declares, "Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty." Sassòli further elaborates, "The occupant may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation."[39]

31. 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 17 January 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 the current State of Hawai'i, illegal and void. These acts stem from governments that are neither *de facto* nor *de jure*, but self-declared. Although the United States is a government that is both *de facto* and *de jure*, its legislation has no extraterritorial effect except under the principles of active and passive personality jurisdiction. Hence, all conveyances of real property and mortgages are defective since 17 January 1893 because there was no competent notary public, under Hawaiian Kingdom law, to convey them legally. All notary public, since 17 January 1893, illegally stem from a self-declared government.

---

[37] *Id*.

[38] 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).

[39] 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.

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

32. The provisional government was established through the support and protection of U.S. troops on 17 January 1893, and proclaimed that it would provisionally "exist until terms of union with the United States of America have been negotiated and agreed upon." This 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. Then, 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." Then, all government officials were coerced and forced to sign this oath 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."

33. 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 17 January 1893 with oversight by United States troops. This lasted until 1 April 1893, when the troops were ordered to depart Hawaiian territory by U.S. Special Commissioner, James Blount, who had begun the presidential investigation into the overthrow. When Special Commissioner Blount arrived in the Hawaiian Kingdom on 29 March 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."

34. 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 4 July 1894. From there, 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. This is in

direct violation of Article 45 of the Hague Convention 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."[40] 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.

35. 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."[41] The first executive order set aside 15,000 acres for two Army military posts on the Island of O'ahu called Schofield Barracks and Fort Shafter. This soon followed the securing of lands for Pearl Harbor naval base in 1901 when the U.S. Congress appropriated funds for condemnation of seven hundred nineteen (719) acres of private lands surrounding Pearl River, which later came to be known as Pearl Harbor.[42] By 2012, the U.S. military had one hundred eighteen (118) military sites, spanning 230,929 acres of the Hawaiian Islands or 6% of the entire Hawaiian territory.[43]

Article 47—Pillage is formally forbidden.

36. Since 17 January 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). These entities were neither governments *de facto* nor *de jure*, but armed militias holding allegiance to the United States, and their collection of tax revenues and non-tax revenues,

---

[40] 31 U.S. Stat. 145 (1896-1901).

[41] *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).

[42] *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).

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

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. Hence, these actions are considered as benefitting private individuals who are employed by the State of Hawaiʻi.

37. Pillage or plunder is "the forcible taking of private property by an invading or conquering army,"[44] which, according to the Elements of Crimes of the International Criminal Court, must be seized "for private or personal use."[45] As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.[46] The residents of the Hawaiians Islands have been the subjects of pillaging and plundering since the establishment of the provisional government by the United States on 17 January 1893, and these crimes, by the provisional government's successor, the State of Hawaiʻi, continue to the present.

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.

38. Unlike the State of Hawaiʻi, that claims to be a public entity, but in reality, is a private entity, the United States government is a public entity and not a private one, so its exercising of authority in the Hawaiian Islands is a violation of international laws and is unlawful. Therefore, the United States cannot be construed to have committed the act of pillaging since it is public, but has instead 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."

---

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

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

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

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.

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

40. 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."[47]

41. In 1898, the United States seized control of all these lands and other property of the Hawaiian Kingdom government as is 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."[48]

[47] *See Estate of His Majesty Kamehameha IV*, 3 Haw. 715, 725 (1864).
[48] 30 U.S. Stat. 750 (1896-1898).

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.

42. In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i*,[49] 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."[50] *Harper's Weekly* 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!'"[51]

43. This U.S. 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, and allowing only English to be spoken. The U.S. intent was to obliterate any memory of the national character of the Hawaiian Kingdom, which the children may have had, and to replace it, through inculcation, with American patriotism. This, "usurpation of sovereignty during military occupation" and "attempts to

---

[49] 31 U.S. Stat. 141 (1896-1901).

[50] Territory of Hawai'i, *Programme for Patriotic Exercises in the Public Schools, Adopted by the Department of Public Instruction*, *available at* http://hawaiiankingdom.org/pdf/1906_Patriotic_Exercises.pdf.

[51] WILLIAM INGLIS, *Hawai'i's Lesson to Headstrong California: How the Island Territory has solved the problem of dealing with its four thousand Japanese Public School children*, HARPER'S WEEKLY 227 (Feb. 16, 1907), *available at* http://hawaiiankingdom.org/pdf/1907_Harpers_Weekly.pdf.

denationalize the inhabitants of occupied territory", is recognized as international crimes since 1919.[52]

44. 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."[53] The question before Committee III was whether or not "denationalization" constituted a war crime that called for prosecution or was 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."[54]

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

> "Within weeks of the fall of France, Alsace-Lorraine was annexed and thousands of citizens deemed too loyal to France, not to mention all its 'alien-race' Jews and North African residents, were unceremoniously deported to Vichy France, the southeastern section of the country still under French control. This was done in the now all too familiar manner: the deportees were given half an hour to pack and were deprived of most of their assets. By the end of July 1940, Alsace and

[52] *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).
[53] E. Schwelb, *Note on the Criminality of "Attempts to Denationalize the Inhabitants of Occupied Territory" (Appendix to Doc, C, 1. No. XII) – Question Referred to Committee III by Committee I*, United Nations War Crime Commission, Doc. III/15 (September 10, 1945), at 1, *available at* http://hawaiiankingdom.org/pdf/Committee_III_Report_on_Denationalization.pdf.
[54] *Id.*, at 6.

> 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."[55]

45. Under the heading "Germanization of Occupied Territories," Count III(j) of the Nuremburg Indictment, provided:

> "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."[56]

F. War Crimes under the Fourth Geneva Convention (1949)

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

46. In 2013, the United States Internal Revenue Service, hereinafter "IRS," illegally appropriated $7.1 million dollars from the residents of the Hawaiian Islands.[57] During this same year, the government of the State of Hawai'i additionally appropriated $6.5 billion dollars illegally.[58] 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. Thus, as an entity without extraterritorial effect, the State of Hawai'i could not appropriate money from the inhabitants of an occupied State without violating the international laws of occupation.

---

[55] Lynn H. Nicholas, Cruel World: The Children of Europe in the Nazi Web 277 (2005).
[56] *See* Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, at 27, 63 (Nuremberg, Germany, 1947).
[57] *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.
[58] *See* State of Hawai'i Department of Taxation Annual Reports, *available at* http://files.hawaii.gov/tax/stats/stats/annual/13annrpt.pdf.

47. According to the laws of the Hawaiian Kingdom, taxes upon the inhabitants of the Hawaiian Islands include: an annual poll tax of $1 dollar to be paid by every male inhabitant between the ages of seventeen and sixty years; an annual tax of $2 dollars for the support of public schools to be paid by every male inhabitant between the ages of twenty and sixty years; an annual tax of $1 dollar for every dog owned; an annual road tax of $2 dollars to be paid by every male inhabitant between the ages of seventeen and fifty; and an annual tax of ¾ of 1% upon the value of both real and personal property.[59]

48. The *Merchant Marine Act,* 5 June 1920 (41 U.S. Stat. 988), hereinafter 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, either originating from Hawaiʻi or being shipped to Hawaiʻi, must be shipped on vessels built in the United States that are wholly owned and crewed by United States citizens. If a foreign flag ship attempts to unload foreign goods and merchandise in the Hawaiian Islands it will forfeit that cargo to the U.S. Government, or pay an amount equal to the value of that merchandise, or pay the cost of transportation.

49. As a result of the *Jones Act,* there is no free trade in the Hawaiian Islands. Ninety percent of Hawaiʻi's food is imported from the United States, which has created a dependency on outside food. There are three major American ship carriers for the Hawaiian Islands, Matson, Horizon Lines, and Pasha Hawaiʻi Transport Services, and 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 to reload goods and merchandise delivered there from Pacific countries on foreign carriers. This cargo would otherwise have come directly to Hawaiʻi ports. The cost of fuel and the lack of competition drive up the cost of shipping and contributes to Hawaiʻi's high cost of living. According to the USDA Food Cost, Hawaiʻi residents, in January 2012, paid an extra $417 per month more for food on a thrifty plan than did families who were on a thrifty plan in the United States.[60] 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.

[59] 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.
[60] *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

50. 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."[61] 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.

51. 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, 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

52. Since 18 December 1893, there have been no lawfully constituted courts in the Hawaiian Islands. Lawfully construed courts are either Hawaiian Kingdom courts or are military commissions established by order of the Commander of PACOM in conformity with the Hague Convention IV, the Geneva Convention IV, and the international laws of occupation. All Federal and State of Hawai'i Courts in the Hawaiian Islands are unlawful because they derive their authority from the United States Constitution and those laws enacted in pursuance thereof. As such, these Federal and State Courts cannot claim to have authority in the territory of a foreign State, the Hawaiian Kingdom, and therefore, are not properly constituted to give defendant(s) a fair and regular trial. This is a war crime.

[61] *See* Title 50 U.S.C. App. 453, The Military Selective Service Act.

Article 147—Unlawful deportation or transfer or unlawful confinement

53. According to the United States Department of Justice, the prison population in the Hawaiian Islands was 5,891 in 2009.[62] Of this population, 286 were aliens.[63] Two paramount issues arise here—first, these prisoners were sentenced by courts that were not properly constituted under Hawaiian Kingdom law nor under the international laws of occupation, and these prisoners were therefore, unlawfully confined, which is a war crime; 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*.[64] Compounding the violation of these alien prisoners' rights, under the *Vienna Convention*, is that their countries' Consulates, located in the Hawaiian Islands and granted exequaturs by the government of the United States by virtue of United States treaties, and not by treaties between the Hawaiian Kingdom and these foreign States, are illegal, and cannot therefore, protect the rights of these prisoners.

54. 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.[65] By June of 2004, there were 1,579 Hawai'i inmates in these facilities. The State of Hawai'i government tried to justify these transfers as the result of overcrowding, but in reality, the State did not possess the authority to transfer nor to prosecute these prisoners. Therefore, the unlawful confinement and transfer of these 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

55. Once a State is occupied, international law preserves the *status quo* of the occupied State as it was before the occupation began. A such, 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 Geneva Convention 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

[62] *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.
[63] *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.
[64] *See* LaGrand (*Germany v. United States of America*), Judgment, I.C.J. Reports 2001, 466.
[65] See State of Hawai'i, Department of Public Safety, *Response to Act 200, Part III, Section 58, Session Laws of Hawai'i 2003 As Amended by Act 41, Part II, Section 35, Session Laws of Hawai'i 2004*, (January 2005), *available at* http://lrbhawaii.info/reports/legrpts/psd/2005/act200_58_slh03_05.pdf.

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.

56. According to the 1890 government census, Hawaiian subjects numbered 48,107. The aboriginal Hawaiian, both pure and part, numbered 40,622, or 84% of the national population, and the non-aboriginal Hawaiians numbered 7,485, or 16% of the national population. Despite the massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, which, according to the State of Hawai'i numbers was 1,302,939 in 2009,[66] the pre-occupation *status quo* percentages of the national population of the Hawaiian Kingdom must be 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% of the national population. 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. These population transfers 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

57. 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, the former being public lands and the latter being private lands.[67] These combined lands constituted nearly half of the entire Hawaiian Kingdom territory.

58. Military training locations, throughout the Hawaiian Kingdom, 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

[66] *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).

[67] 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*.

Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawai'i, Marine Corps Training Area Bellows, Hickam Air Force Base, Kahuku Training Area, Makua Military Reservation, Dillingham Military Reservation, Wheeler Army Airfield, and Schofield Barracks on the Island of O'ahu; and Bradshaw Army Airfield and Pohakuloa Training Area on the Island of Hawai'i.

59. The United States Navy's Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise (RIMPAC) on every other even numbered year. RIMPAC is the largest international maritime warfare exercise in the world. RIMPAC is a multinational, sea control and power projection exercise. It 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.

60. In 2006, the United States Army disclosed to the public that depleted uranium, hereinafter referred to as "DU," was found on the firing ranges at Schofield Barracks on the Island of O'ahu.[68] The Army 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.[69] The ranges have yet to be cleared of DU and are still used for live fire. This situation places 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 toxic particles of aerosolized DU oxide that travel by wind. Hence, if the DU gets into the drinking water, the ocean, and/or the air, it would create devastating health and environmental effects across the islands.

61. The Hawaiian Kingdom has never consented to the establishment of military installations throughout its territory and these installations and war-gaming exercises stand in direct violation of Articles 1, 2, 3 and 4 of the Fifth Hague Convention, the Fourth Hague Convention, and the Fourth Geneva Convention, and are therefore, war crimes.

---

[68] *See* U.S. Army Garrison-Hawai'i, Depleted Uranium on Hawai'i's Army Ranges, *available at* http://www.garrison.hawaii.army.mil/du/.
[69] *Id*.

II. THE LAW

A. THE HAWAIIAN CIVIL CODE

62. Section 6 of the Hawaiian Civil Code states, “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.”

B. HAWAIIAN TREATIES

63. The Hawaiian-Austrian Treaty (18 June 1875), the Hawaiian-Belgian Treaty (4 October 1862), the Hawaiian-British (10 July 1851), the Hawaiian-Danish Treaty (19 October 1846), the Hawaiian-Dutch Treaty (16 October 1862), the Hawaiian-French Treaty (29 October 1857), the Hawaiian-German Treaty (25 March 1879), the Hawaiian-Hungarian Treaty (18 June 1875), the Hawaiian-Italian Treaty (22 July 1863), the Hawaiian-Japanese Treaty (19 August 1871), the Hawaiian-Luxembourgish Treaty (16 October 1862), Hawaiian-Norwegian Treaty (1 July 1852), the Hawaiian-Portuguese Treaty (5 May 1882), the Hawaiian-Russian Treaty (19 June 1869), the Hawaiian-Spanish Treaty (29 October 1863), Hawaiian-Swedish Treaty (1 July 1852), the Hawaiian-Swiss Treaty (20 July 1864), and the Hawaiian-United States Treaty (20 December 1849).

C. THE FOURTH HAGUE CONVENTION (1907)

64. On the face of the Fourth Hague Convention (1907), it appears to apply only to territory belonging to an enemy. However, Feilchenfeld explains, “it is nevertheless, usually 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.”[70] Although the law of occupation is applied with equal force and effect, the United States, however, is greatly shorn of its belligerent rights in Hawaiian territory as a result of the Hawaiian Kingdom’s neutrality. Therefore, the United States cannot impose its own domestic laws without violating international law.

65. This principle is clearly laid out in Article 43 of the Fourth Hague Convention, 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

[70] ERNST FEILCHENFELD, THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION 8 (1942).

laws in force in the country." Referring to the American occupation of Hawai'i, Dumberry asserts, "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 Fourth Hague Convention provides for the co-existence of two distinct legal orders, that of the occupier and the occupied."[71]

D. THE FIFTH HAGUE CONVENTION (1907)

66. According to Article 1, "The territory of neutral Powers is inviolable," and "Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power (Article 2)." According to Kent, "It is not lawful to make neutral territory the scene of hostility, or to attack an enemy while within it."[72] "The rights of war can be exercised only within the territory of the belligerent powers, upon the high seas, or in a territory belonging to no one," and "Hence it follows, that hostilities can not lawfully be exercised within the territorial jurisdiction of the neutral State, which is the common friend of both parties," explains Wheaton,[73]

E. THE FOURTH GENEVA CONVENTION (1949)

67. Since the 1949 Geneva Conventions, the expression "armed conflict" was substituted for 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, hereinafter referred to as "ICRC," Commentary of the Fourth Geneva Convention, the 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."[74] Both the Hawaiian Kingdom and the United States are Contracting Powers to the Fourth Geneva Convention.

68. The prohibition of the commission of war crimes is a peremptory norm under international law. According to the International Criminal Court for the Former

---

[71] 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).
[72] 2 JAMES KENT, COMMENTARIES ON AMERICAN LAW 124 (12th ed. 1873).
[73] HENRY WHEATON, ELEMENTS OF INTERNATIONAL LAW 520 (8th ed. 1866).
[74] JEAN S. PICTET, COMMENTARY ON THE IV GENEVA CONVENTION, RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 21 (1958).

Yugoslavia, "most norms of international humanitarian law, in particular those prohibiting war crimes, … are also peremptory norms of international law or *jus cogens*, i.e. of a non-derogable and overriding character."[75] The authoritative commentary of the Fourth Geneva Convention, by the ICRC, states, "As soon as a Contracting Party realizes that there is on its territory a person who has committed such a breach, its duty is to ensure that the person is arrested and prosecuted with all speed."[76]

F. The Vienna Convention on the Law of Treaties (1969)

69. The principle of "*pacta sunt servanda*" is enshrined under Article 26 of the Vienna Convention, whereby "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." Furthermore, Article 27 states: "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." Germany is a Contracting Power to the Vienna Convention on the Law of Treaties. Although the Hawaiian Kingdom and the United States are not a Contracting Powers, both consider the provisions of the Vienna Convention on the Law of Treaties as customary international law on the law of treaties.

G. Draft Articles on Responsibility of States for Internationally Wrongful Acts

70. Article 1 of the Draft articles on Responsibility of States for Internationally Wrongful Acts, hereinafter referred to as "Draft articles," provides, "Every internationally wrongful act of a State entails the international responsibility of that State." Article 2 of the Draft articles states "There is an internationally wrongful Act of a State when conduct consisting of an action or omission: *(a)* is attributable to the State under international law; and *(b)* constitutes a breach of an international obligation of the State." Hence, the conduct of the United States in its unlawful claim of sovereignty over the Hawaiian Islands is an internationally wrongful act. In *Phosphates in Morocco*, the Permanent Court of International Justice affirmed when a State commits an internationally wrongful act against another State international responsibility is established "immediately as between two States."[77]

---

[75] *Prosecutor v. Zoran Kupreškić* (Case IT-95-16), Trial Chamber II of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Judgment of 14 Jan. 2000, at para. 520, *available at* http://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf.

[76] *See* PICTET, COMMENTARY, at 593.

[77] *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 10, at p. 28. See also *S.S. "Wimbledon," 1923, P.C.I.J., Series A, No. 1*, p. 15, at p. 30; *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21; and *ibid, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 29.

71. Article 30 of the Draft articles provides, "The State responsible for the internationally wrongful act is under an obligation; *(a)* to cease that act, if it is continuing; *(b)* to offer appropriate assurances and guarantees of non-repetition, is circumstances so require." According to the International Law Commission, "The function of cessation is to put an end to a violation of international law and to safeguard the continuing validity and effectiveness of the underlying primary rule. The responsible State's obligation of cessation thus protects both the interests of the injured State or States and the interests of the international community as a whole in the preservation of, and reliance on, the rule of law."[78]

72. There is an obligation of the responsible State under Article 31 of the Draft articles "to make full reparation for the injury caused by the internationally wrongful act," and the injury "includes any damage, whether material or moral, caused by the internationally wrongful act of a State." In the *Factory at Chorzów,* the Permanent Court of Justice pronounced, "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 tribunals—is that reparation must, so 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; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law."[79]

III. STATEMENT OF FACTS

73. The United States is a member of the North Atlantic Treaty Organization, hereinafter referred to as "NATO," and, in violation of Articles 1 and 2 of the Fifth Hague Convention (1907), the Hawaiian Islands serves as headquarters for the United States Pacific Command, a Unified Combatant Command, with 118 military installations throughout Hawaiian territory.[80]

74. After the arbitral award was filed with the PCA on 5 February 2001, the Hawaiian Kingdom, by letter, dated 27 April 2001, notified the United Kingdom of Great Britain and Northern Ireland, as President of the United Nations Security Council, about the Hawaiian Kingdom arbitration. The United States is a Permanent Member of the Security

[78] *See* International Law Commission, *Draft articles,* p. 89.
[79] *See Chorzów, Merits, 1928, P.C.I.J., Series A, No. 17*, p. 47.
[80] U.S. Department of Defense, *Base Structure Report, Fiscal Year 2005 Baseline*, *available at* http://www.dod.mil/pubs/20050527_2005BSR.pdf.

Council. In this letter, the Hawaiian Kingdom pronounced, "The prolonged occupation of the independent State of the Hawaiian Kingdom by the United States of America, is a continual and flagrant violation of the 1907 Hague Conventions IV and V relative to the Laws of War and the rights of Neutral States, respectively, and the Fourth Geneva Convention relative to the protection of Civilian Persons in Time of War. The Acting Government of the Hawaiian Kingdom also affirms the rights accorded to Hawaiian subjects under international law and related international conventions."[81]

75. On 5 July 2001, the Hawaiian Kingdom filed a complaint with the United Nations Security Council against the United States in accordance with Article 35(2) of the United Nations Charter, which provides, "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 purpose of the dispute, the obligations of pacific settlement provided in the present Charter."[82] The Security Council took no action.

76. The Hawaiian Kingdom filed a Protest and Demand with the United Nations General Assembly against the United States and one hundred seventy-two member States of the United Nations, on 10 August 2012, in accordance with Article 35(2) of the United Nations Charter.[83] This Protest and Demand was acknowledged and received by the Office of the President of the Sixty-Sixth Session of the General Assembly. The General Assembly took no action.

77. On 29 March 2015, the Democratic People's Republic of Korea, hereinafter referred to as "North Korea," declared that Hawai'i was one of its military targets.[84] The following year, North Korea detonated a hydrogen bomb on 6 January 2016, and on 7 February 2016 launched a missile that used ballistic missile technology. The Security Council condemned these actions and on 2 March 2016 adopted Resolution 2270 imposing new sanctions on North Korea.

78. The United States' response to North Korea's hydrogen bomb detonation was to convert its Aegis Ashore Missile Defense Test Complex on the island of Kaua'i into a combat-ready facility to prepare for an incoming intercontinental missile with a nuclear

---

[81] *See* Dumberry, *The Hawaiian Kingdom Arbitration Case,* at 671. The Hawaiian Kingdom's letter to the United Nations Security Council (27 April 2001), *available at* http://www.alohaquest.com/arbitration/letter_010427.htm.

[82] *Id*.

[83] Hawaiian Kingdom Protest and Demand (9 August 2012), *available at* http://hawaiiankingdom.org/pdf/UN_Protest.pdf.

[84] Choe Sang-Hun, *North Korea Calls Hawaii and U.S. Mainland Targets,* N.Y. TIMES, and March 26, 2013, *available at* http://www.nytimes.com/2013/03/27/world/asia/north-korea-calls-hawaii-and-us-mainland-targets.html.

warhead.[85] This action is a clear indication that the United States is taking the North Korean threat seriously, and is therefore, intentionally placing the entire Hawaiian Kingdom, a neutral territory, into harm's way. Furthermore, Russia declared on 1 January 2016, that NATO is a threat to its security, and tensions with China have escalated over territorial disputes in the South China Seas. All these situations clearly place the Hawaiian Islands as a military target for Russia and China as well.

79. These recent military actions are a direct threat to the security of the Hawaiian Kingdom, a neutral State, which has been under an illegal and prolonged occupation since the Spanish-American War. These are similar situations that led to Japan's military attack of United States' forces at Pearl Harbor, in the Hawaiian Islands, on 7 December 1941. The Hawaiian Kingdom could face another military attack from North Korea, China or Russia—attacks that could employ nuclear, biological, or chemical weapons.

80. On 22 February 2016, the Swiss Federal Criminal Court Objections Chamber, in Bellinzona, is reviewing a case concerning war crimes committed in the Hawaiian Islands against a Hawaiian national and a Swiss national under reference number BB.2016.36-37, case number BA:SV.15.1333-MUA. The alleged war crimes include denial of a fair and regular trial, pillaging, unlawful confinement, and unlawful appropriation of property.

IV. BREACH OF INTERNATIONAL LAW

81. By omission of its duty and obligation to administer the laws of the Hawaiian Kingdom pursuant to Article 43 of the Fourth Hague Convention, the United States is in continual violation of international humanitarian law and has caused and allowed the commission of war crimes to have been committed and continue to be committed to date. Under international law, international responsibility is incurred by a State if there is a failure on the part of the State to carry out its international obligations.

82. Australia, Austria, Belgium, Brazil, Chile, Denmark, Finland, France, Germany, Hungary, India, Italy, Japan, Kiribati, the Republic of Korea, Luxembourg, Marshall Islands, Morocco, Nepal, Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, Samoa, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, and Tonga maintain Consulates in Hawaiian territory by exequatur from the United States and not from the Hawaiian Kingdom, which has not given its consent. A State's establishment of a consular post within the territory of another State, without its consent, is a violation of its political independence and territorial integrity under customary international law.

---

[85] Andrea Shalal, *Exclusive: U.S. weighs making Hawaii missile test site operational – sources*, REUTERS, Jan. 22, 2016, *available at* http://www.reuters.com/article/us-usa-missile-defense-hawaii-idUSKCN0V0008.

83. Azerbaijan, Canada, China, the Czech Republic, Malaysia, Mexico, Micronesia, Peru, Russia, and the United Kingdom exercise consular functions within Hawaiian territory, through its Consulate General in United States, without the consent of the Hawaiian Kingdom. A State's exercising of consular functions within the territory of another State, without its consent, is a violation of its political independence and territorial integrity under customary international law.

84. A breach by a State of an international obligation gives rise to reparations in accordance with Article 34 of the *Draft articles on State Responsibility for Internationally Wrongful Acts*, which states, "Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter." Furthermore, Article 39 states; "In the determination of reparation, account shall be taken of the contribution to the injury by willful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought." According to the International Law Commission, "Article 39 recognizes that the conduct of the injured State, or of any person or entity in relation to whom reparation is sought, should be taken into account in assessing the form and extent of reparation. This is consonant with the principle that full reparation is due for the injury—but nothing more—arising in consequence of the internationally wrongful act. It is also consistent with fairness as between the responsible State and the victim of the breach."[86] Hence, the injuries to the Hawaiian Kingdom and its nationals, under Article 39, give rise to reparations under Article 34.

V. NATURE OF THE HAWAIIAN KINGDOM'S CLAIM

85. Article 35(2) of the Charter of the United Nations 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 the pacific settlement provided in the present charter."

86. The Hawaiian Kingdom is a non-Member State of the United Nations, and has accepted in advance the obligations of pacific settlement provided in the present Charter, by Declaration, 6 March 2016, and attached herein.

---

[86] *See* International Law Commission, *Draft articles*, p. 110.

VI. ACTION REQUESTED

87. While reserving the right to supplement and amend this submission as appropriate in the course of further proceedings, the Hawaiian Kingdom requests the President of the Security Council, under Rule 3 of the Provisional Rules of Procedure of the Security Council, to convene an emergency meeting under agenda item "Non-proliferation/Democratic People's Republic of Korea." The Hawaiian Kingdom invokes Article 27 of the Charter where members of the Security Council to which the Hawaiian Kingdom has a dispute—*to wit*, China, France, Japan, Malaysia, New Zealand, Russia, Spain, the United Kingdom, and the United States, "shall abstain from voting." The Hawaiian Kingdom further invokes Article 32 of the Charter, whereby a State not a member of the United Nations "shall be invited to participate, without a vote, in the discussion relating to the dispute."

88. Furthermore, the Hawaiian Kingdom requests the Security Council, as the organ responsible for the maintenance of international peace and security, to assume its full responsibilities and to:

(a) Direct all member-States of the United Nations to cease in the recognition of the United States' unlawful claim over the Hawaiian Islands, being an internationally wrongful act, under Article 30 of the *Draft articles on State Responsibility for Internationally Wrongful Acts* (2001), and to conform to the Vienna Convention on the Law of Treaties (1969);

(b) Direct the United States of America to immediately cease and desist from exercising authority in the Hawaiian Islands until it conforms to international law and international humanitarian law, that is, the Fourth Hague Convention (1907), the Fifth Hague Convention (1907), and the Fourth Geneva Convention (1949);

(c) Take all measures at its disposal to ensure that the United States of America complies with the Fourth Hague Convention (1907), the Fifth Hague Convention (1907), and the Fourth Geneva Convention (1949); and

(d) Direct Australia, Austria, Azerbaijan, Belgium, Brazil, Canada, Chile, China, the Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Italy, Japan, Kiribati, the Republic of Korea, Luxembourg, Malaysia, Marshall Islands, Mexico, Micronesia, Morocco, Nepal, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Portugal, Russia, Samoa, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tonga, and the United Kingdom to immediately comply with the Vienna Convention on Consular Relations (1963) and the provisions of

consular functions in the Hawaiian-Austrian Treaty (18 June 1875), the Hawaiian-Belgian Treaty (4 October 1862), the Hawaiian-British (10 July 1851), the Hawaiian-Danish Treaty (19 October 1846), the Hawaiian-Dutch Treaty (16 October 1862), the Hawaiian-French Treaty (29 October 1857), the Hawaiian-German Treaty (25 March 1879), the Hawaiian-Hungarian Treaty (18 June 1875), the Hawaiian-Italian Treaty (22 July 1863), the Hawaiian-Japanese Treaty (19 August 1871), the Hawaiian-Luxembourgish Treaty (16 October 1862), Hawaiian-Norwegian Treaty (1 July 1852), the Hawaiian-Portuguese Treaty (5 May 1882), the Hawaiian-Russian Treaty (19 June 1869), the Hawaiian-Spanish Treaty (29 October 1863), Hawaiian-Swedish Treaty (1 July 1852), and the Hawaiian-Swiss Treaty (20 July 1864).

7 March 2016

David Keanu Sai, Ph.D.
Agent of the Hawaiian Kingdom and
Ambassador-at-large and Minister of the
Interior of the Hawaiian Kingdom