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His Excellency Mr. António Guterres
Secretary-General of the United Nations
405 East, 42nd Street
New York, NY, 10017

Excellency:

I received an email dated 27 March 2024 from Mr. David Nanopoulos, your Chief of the Treaty Section, Office of Legal Affairs, which I am enclosing, responding to the Hawaiian Kingdom's instrument of accession to the Rome Statute received by your office on 10 December 2012. In that email, Mr. Nanopoulos stated, "Please note that the Secretary-General, in discharging his functions as depositary of a convention with an 'all States' clause, must follow the practice of the General Assembly in implementing such a clause. Absent such a decision, the deposit of the instrument submitted will remain pending."

I responded to Mr. Nanopoulos, via electronic mail, with a letter, that I am enclosing, dated 28 March 2024. After providing the history of Hawaiian Kingdom Statehood since the nineteenth century and the recognition of its continuity by the Permanent Court of Arbitration in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01,¹ I concluded:

In light of the aforementioned information, it is clear that the *any State* formula is precluded from applying to the Hawaiian Kingdom as a Contracting State to the Rome Statute because it has been a Member State of the UPU since 1882. Furthermore, the United Nations is precluded from interfering with the sovereign rights of the Hawaiian Kingdom to accede to multilateral treaties of its choosing. It has now been 12 years since 10 December 2012 that the Secretariat of the United Nations received the Hawaiian Kingdom's instrument of accession to the Rome Statute. Therefore, without further delay, my Government renews its request for the Secretary-General to provide, to the International Criminal Court, a depositary notification of accession to the Rome Statute by the Hawaiian Kingdom, dated 28 November 2012.

¹ Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom* Case Repository, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

On 4 April 2024, I emailed Mr. Nanopoulos my letter to you dated 25 March 2024, which I am enclosing, regarding the delivery the previous day of my government's instrument of accession to the Agreement on the Privileges and Immunities of the International Criminal Court. As of this date, I have not heard back from Your Excellency or Mr. Nanopoulos.

The continuity of Hawaiian Statehood is a matter of customary international law, and is evidenced by two legal opinions, one by Professor Matthew Craven² and the other by Professor Federico Lenzerini.³ Furthermore, war crimes that are being committed, by the imposition of American municipal laws over the territory of the Hawaiian Kingdom, is also a matter of customary international law as evidenced by the legal opinion of Professor William Schabas.⁴ These writings are considered “the most highly qualified publicists,” and as such, a source of customary international law. Thus, Your Excellency, as the Depositary for the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court, must accept, under customary international law, the presumption of continuity of the Hawaiian Kingdom and that war crimes are being committed in the Hawaiian Kingdom.

According to Professor Shaw, “[b]ecause of the lack of supreme authorities and institutions in the international legal order, the responsibility is all the greater upon publicists of the various nations to inject an element of coherence and order into the subject as well as to question the direction and purposes of the rules.”⁵ Therefore, “academic writings are regarded as law-determining agencies, dealing with the verification of alleged rules.”⁶ As the U.S. Supreme Court explained in the *Paquette Habana* case:

International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. *Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is* (emphasis added).⁷

As a source of international law, the legal opinions establish a shift in the burden of proof. The presumption of State continuity shifts the burden of proof as to what is to be proven

² Matthew Craven, “Continuity of the Hawaiian Kingdom,” 1 *Haw. J.L. & Pol.* 508 (2004) (online at [https://hawaiiankingdom.org/pdf/1HawJLPol508_\(Craven\).pdf](https://hawaiiankingdom.org/pdf/1HawJLPol508_(Craven).pdf)).

³ Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Haw. J.L. & Pol.* 317 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol317_\(Lenzerini\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol317_(Lenzerini).pdf)).

⁴ William Schabas, “Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893,” 3 *Haw. J.L. & Pol.* 334 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol334_\(Schabas\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol334_(Schabas).pdf)).

⁵ Malcolm N. Shaw QC, *International Law*, 6th ed., 113 (2008).

⁶ *Id.*, 71.

⁷ *The Paquette Habana*, 175 U.S., 677, 700 (1900).

and by whom to rebut this presumption. Like the presumption of innocence, the accused does not prove their innocence, but rather the prosecution must prove, beyond a reasonable doubt, that person's guilt. Likewise, the Hawaiian Kingdom need not prove its continued existence, but rather, the Foreign Ministry must prove, beyond a reasonable doubt, that the Hawaiian Kingdom had been extinguished as a State under international law. Unless the Foreign Ministry can provide rebuttable evidence to the contrary, the presumption of Hawaiian State continuity remains.

In other words, Your Excellency need not prove the State of Hawai'i lawfully exists, but rather, you must prove, beyond any reasonable doubt, that the Hawaiian Kingdom does not exist, as a State, under the rules of international law as evidenced by the legal opinions of Professor Craven and Professor Lenzerini. Evidence of a valid demonstration of legal title, or sovereignty, on the part of the United States would be an international treaty, particularly a peace treaty, whereby the Hawaiian Kingdom would have ceded its territory and sovereignty to the United States. Examples of foreign States ceding sovereign territory to the United States, by a peace treaty, include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*⁸ and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.⁹

In this case, there is no such treaty. There only exists a congressional joint resolution of annexation, purporting to have annexed a foreign State in 1898. This is an American municipal law limited in its effect to the territory of the United States. As the Department of Justice's Office of Legal Counsel ("OLC"), concluded in its 1988 legal opinion, "[i]t is unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution,"¹⁰ and "[t]here is a serious question whether Congress has the authority either to assert jurisdiction over an expanded territorial sea for purposes of international law or to assert the United States's sovereignty over it,"¹¹ because only the President "has the authority to assert the United States's sovereignty over the extended territorial sea."¹² This legal opinion also stated that "[o]nly by means of treaties [...] can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature it is enacted."¹³

Absent the evidence of a treaty, the Hawaiian Kingdom continues to exist, as an occupied State with its sovereignty intact, despite the prolonged nature of the American occupation. Therefore, to restate paragraph 358, U.S. Army Field Manual 27-10, "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* (emphasis added)."

⁸ 9 Stat. 922 (1848).

⁹ 30 Stat. 1754 (1898).

¹⁰ Douglas W. Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," 12 *Office of Legal Counsel* 238, 252 (1988) (online at https://hawaiiankingdom.org/pdf/1988_Opinion_OLC.pdf).

¹¹ *Id.*, 238.


¹² *Id.*

¹³ *Id.*, 252.

The purpose for the Hawaiian Kingdom's accession to the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court is because of war crimes being committed with impunity by the imposition of American municipal laws and administrative measures, which, according to Professor Schabas, is the war crime of *usurpation of sovereignty during military occupation* under customary international law. As of this date, I have not received a response from your Legal Affairs Department. This conduct of denying my government's instruments of accession is not only an internationally wrongful act, but also constitutes complicity, by your office, to war crimes being committed in the Hawaiian Kingdom.

I urge Your Excellency, as a matter of customary international law, to accept my government's instruments of accession forthwith in order to force the hand of the United States to protest with rebuttable evidence that Hawaiian Statehood had been extinguished under international law. Otherwise, it would appear *prima facie* that your office, as the depository for the Rome Statute, is bias in favor of the United States, and, consequently, complicit to war crimes being committed in the Hawaiian Kingdom. I am enclosing a copy of my *curriculum vitae*.

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



H.E. David Keanu Sai, Ph.D.
Minister of Foreign Affairs *ad interim*

Mr. David Nanopoulos
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Enclosure