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4 November 2025

Members of the Pacific Small Island Developing States

Excellencies:

I have the honor to thank Your Excellencies for receiving me at your monthly meeting of the Pacific Small Island Developing States ("PSIDS") on 31 October 2025. The purpose of this letter is to clarify the legal status of the Hawaiian Kingdom as a State under international law, and to elaborate on my answers to those questions of me by Ambassador Tōnē and Ambassador Tarakinikini.

To quote the *dictum* of the arbitral tribunal, in *Larsen v. Hawaiian Kingdom*, "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] The Hawaiian Kingdom was also recognized within the international community as a neutral State as expressly stated in treaties with the Kingdom of Spain in 1863, the Swedish-Norwegian Kingdom in 1852 , and Germany in 1879. Article XXVI of the 1863 Hawaiian Spanish treaty provides:

> All vessels bearing the flag of Spain, shall, in time of war, receive every possible protection, short of active hostility, within the ports and waters of the Hawaiian Islands, and Her Majesty the Queen of Spain engages to respect, in time of war the neutrality of the Hawaiian Islands, and to use her good offices with all the other powers having treaties with the same, to induce them to adopt the same policy toward the said Islands.

Despite the illegal overthrow of the Government of the Hawaiian Kingdom by U.S. troops on January 17, 1893, the Hawaiian Kingdom, as a State, continued to exist as a subject of

[1] *Larsen v. Hawaiian Kingdom*, 119 Int'l L. Reports 566, 581 (2001)

international law. Because international law provides for the presumption of the continuity of the State despite the overthrow of its government by another State, it shifts the burden of proof. As explained by Judge James Crawford, "[t]here is a presumption that the State continues to exist, with its rights and obligations […] despite a period in which there is no, or no effective, government."[2] Judge Crawford further concludes that "[b]elligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[3] He explains, that the "occupation of Iraq in 2003 illustrated the difference between 'government' and 'State'; when Members of the Security Council, after adopting SC res 1511, 16 October 2003, called for the rapid 'restoration of Iraq's sovereignty', they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restored."[4]

"If one were to speak about a presumption of continuity," explains Professor Matthew Craven, "one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts sustaining its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains."[5] Professor Craven's position is premised on the international rule that once recognition of a new State is granted it "is incapable of withdrawal"[6] by the recognizing States, and that "recognition estops the State which has recognized the title from contesting its validity at any future time."[7]

In 2002, Professor Craven, from the Law Department of the University of London SOAS, came to the same conclusion as the Secretariat of the Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom*, that the Hawaiian Kingdom continues to exist as a State under international law. In his legal opinion, Professor Craven interrogated modes of extinction by which, under international law, the United States could provide rebuttable evidence that the Hawaiian State was indeed extinguished. Notwithstanding the imposition of United States municipal laws for over a century, he found no such evidence under international law to support a claim that the United States extinguished Hawaiian Statehood. As such, Professor Craven cited implications regarding the continuity of the Hawaiian Kingdom.

a) That authority exercised by US over Hawai'i is not one of sovereignty i.e. that

[2] James Crawford, *The Creation of States in International Law* 34 (2nd ed., 2006).
[3] *Id*.
[4] *Id*., n. 157.
[5] Matthew Craven, "Continuity of the Hawaiian Kingdom," 1 *Haw. J.L. & Pol.* 508, 512 (2004) (online at https://hawaiiankingdom.org/pdf/1HawJLPol508_(Craven).pdf).
[6] Lassa Oppenheim, *International Law* 137 (3rd ed., 1920).
[7] Georg Schwarzenberger, "Title to Territory: Response to a Challenge," 51(2) *Am. J. Int'l L.* 308, 316 (1957).

the US has no legally protected 'right' to exercise that control and that it has no original claim to the territory of Hawai'i or right to obedience on the part of the Hawaiian population. Furthermore, the extension of US laws to Hawai'i, apart from those that may be justified by reference to the law of (belligerent) occupation would be contrary to the terms of international law.

b) That the Hawaiian people retain a right to self-determination in a manner prescribed by general international law. Such a right would entail, at the first instance, the removal of all attributes of foreign occupation, and a restoration of the sovereign rights of the dispossessed government.
c) That the treaties of the Hawaiian Kingdom remain in force as regards other States in the name of the Kingdom (as opposed to the US as a successor State) except as may be affected by the principle *rebus sic stantibu* or impossibility of performance.
d) That the Hawaiian Kingdom retains a right to all State property including that held in the territory of third states, and is liable for the debts of the Hawaiian Kingdom incurred prior to its occupation.[8]

Federico Lenzerini, a professor of international law at the University of Siena, Italy, also concluded, in a 2020 legal opinion, that the Hawaiian Kingdom continues to exist as a State under international law and the Council of Regency is its lawful government.[9] As scholars of international law, both Professor Craven's and Professor Lenzerini's legal opinions are a source of international law.[10] Professor Malcolm Shaw explains that because "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."[11] Thus, "academic writings are regarded as law-determining agencies, dealing with the verification of alleged rules."[12] The U.S. Supreme Court explained this in the *Paquette Habana* case:[13]

> [R]esort must be had […] 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.

Fundamental to deciphering the Hawaiian situation is to discern between a state of peace and a state of war. "Traditional international law," states Judge Christopher Greenwood,

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[8] Craven, 509.
[9] Federico Lenzerini, "Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom," 3 *Haw. J.L. & Pol.* 317 (2020) (online at https://hawaiiankingdom.org/pdf/3HawJLPol317_(Lenzerini).pdf).
[10] Statute of the International Court of Justice, Article 38(d).
[11] Malcolm N. Shaw QC, *International Law*, 6th ed., 113 (2008).
[12] *Id*., 71.
[13] 175 U.S., 677, 700 (1900).

"was based upon a rigid distinction between the state of peace and the state of war."[14] To transform the situation back to a state of peace is by a treaty of peace that brings the state of war to an end. The law of occupation is a part of the laws of war. This bifurcation provides the proper context by which certain rules of international law would or would not apply.

The principle of self-determination under international law applies differently over the national population of an existing State, the indigenous population within a State, and the population of people residing within a non-self-governing territory, a colonial situation. Regarding the citizenry of an established State, Article 1(2) of the U.N. Charter provides that one of the purposes of the United Nations is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination." Article 1 of both the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights states that "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

This type of self-determination is internal, not external, where the national population of the State shall "choose their legislators and political leaders free from any manipulation or undue influence from the domestic authorities themselves."[15] And only when the national population of an existing State "are afforded these rights can it be said that the whole people enjoys the right of internal self-determination."[16] In a memorial to President Grover Cleveland dated 27 December 1893 by the officers of the Hawaiian Patriotic League, they stated, the Hawaiian nation, "for the past sixty years, had enjoyed free and happy constitutional self-government."[17] This means that Hawaiian subjects were enjoying, what is understood today in international law, 'the right of internal self-determination' up to the American invasion and subsequent overthrow of their government on January 17, 1893.

When a State comes under the belligerent occupation by another State after its government has been overthrown, the national population of the occupied State is temporarily prevented from exercising its civil and political rights it previously enjoyed prior to the occupation. Therefore, as Professor Craven points out, 'the Hawaiian people retain a right to self-determination in a manner prescribed by general international law. Such a right would

[14] Christopher Greenwood, "Scope of Application of Humanitarian Law," in Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflict* 39-63, 39 (1995).
[15] Antonio Cassese, *Self-determination of peoples* (Cambridge, University Press, 1995), 53.
[16] *Id*.
[17] United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95* 1295 (1895).

entail, at the first instance, the removal of all attributes of foreign occupation, and restoration of the sovereign rights of the dispossessed government.'

When it comes to the application of the right of self-determination to indigenous peoples, it is still internal self-determination, but it applies within the State that indigenous populations reside in, *i.e.* the Cherokee Nation within the United States. This type of self-determination comes under Articles 3 and 4 of the U.N. Declaration on the Rights of Indigenous Peoples. Article 4 provides that "Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs." Indigenous peoples do not have a right to external self-determination—independence, because they are not States under international law but rather tribal nations of people that reside within the territory of the State not of their own creation. In stark contrast, Tongan nationals do not constitute a tribal nation within their own Tongan State, and Hawaiian nationals do not constitute a tribal nation within their own Hawaiian State precisely because the Kingdom of Tonga and the Hawaiian Kingdom are independent States under international law. The Kingdom of Tonga achieved its independence on 4 June 1970, and the Hawaiian Kingdom achieved its independence on 28 November 1843.

The third application of the right of self-determination applies to people that reside within territory that is considered non-self-governing and comes under the colonial or administering power of a State, *i.e.*, the Sahrawi people of Western Sahara and the colonial power of Morocco. In this instance, the right of self-determination is external, not internal, and is guided by U.N. resolution 1514 called decolonization.[18] The Special Committee on Decolonization facilitates the decolonization process. As a dependent people who have not exercised their right of external self-determination, resolution 1514 provides:

> Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.[19]

Resolution 1514 only applies to non-self-governing territories that have not achieved independence, or in other words were never an independent State. This resolution does not apply to the citizenry of existing States, whether occupied or not, or to Indigenous peoples.

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[18] GA Resolution 1514 (Dec. 14, 1960), *Declaration on the Granting of Independence to Colonial Countries and Peoples*.
[19] *Id*., section 5.

The legal personality of a non-State territory is distinct from an independent State as stated in the 1975 Friendly Relations Declaration, which provides:

> The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter.[20]

The Hawaiian Kingdom, as an independent State, did not lose its independence and become non-self-governing as a result of the United States illegal overthrow of its government and the ensuing occupation, just as the German and Japanese States did not lose their independence and became non-self-governing when their governments were defeated by the Allied Powers that brought the hostilities of the Second World War to an end. Furthermore, Germany and Japan were not de-colonized when the Allied Powers ended their occupation of both their territories in the mid-1950s. These States were de-occupied according to the rules of international humanitarian law, which apply with equal force to the Hawaiian Kingdom. There was never a case where an independent State was reported as a non-self-governing territory under Article 73(e), except for Hawai‘i.

Despite Mr. Leon Siu's misunderstanding and misapplication of this type of the right of self-determination as if Hawai‘i was a former colony of the United States, which he is neither the Minister of Foreign Affairs nor a scholar on the legal and political history of the Hawaiian Kingdom, U.N. resolution 1514 does not apply to the Hawaiian situation despite the United States deliberate attempt to conceal its prolonged occupation by reporting Hawai‘i as a non-self-governing territory in 1946 under Article 73(e).[21] The United States did not report Japan as a non-self-governing territory when it occupied Japanese territory from 1945 until 1952.

In 1959, the General Assembly passed resolution 1469 (XIV) that stated the General Assembly "*Expresses* the opinion, based on its examination of the documentation and the explanations provided, that the people of […] Hawaii have effectively exercised their right to self-determination and have freely chosen their present status" as the State of Hawai‘i.[22] This resolution is an opinion and non-binding that is based on the General Assembly's

[20] GA Resolution 26/25 (XXV) (Oct. 24, 1970), *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.*
[21] David Keanu Sai, "A Slippery Path Towards Hawaiian Indigeneity," *Journal of Law and Social Challenges* 10 (2008): 102-104.
[22] GA Resolution 1416 (XIV) (Dec. 12, 1959), *Cessation of the transmission of information under Article 73 e of the Charter in respect of Alaska and Hawaii*.

'examination of the documentation and the explanations provided' by the United States.[23] Unlike the legal opinions by Professor Craven and Professor Lenzerini, resolution 1469 is not a source of international law, and, therefore, has no effect as to the presumption of continuity of the Hawaiian Kingdom as an independent State.

According to Article 13 of the U.N. Charter, the "General Assembly shall initiate studies and make recommendations for the purpose of […] promoting international co-operation in the political field and encouraging the progressive development of international law and its codification." U.N. resolutions are not a source of international law but are merely recommendations that cannot impede or alter the obligations of the United States under the law of occupation. As Judge Crawford states, "[o]f course, the General Assembly is not a legislature. Mostly its resolutions are only recommendations, and it has no capacity to impose new legal obligations on States."[24]

This is why I explained to Ambassador Tarakinikini, that Hawai'i being incorporated into the United States is not a matter of international law because resolution 1469 is not a source of international law. The incorporation of Hawai'i into the United States is a matter of domestic or the internal law by the Occupying State and not by international law. To this point, Article 3 of the Articles of State Responsibility for Internationally Wrongful Acts ("ASR") provides, "[t]he characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law." Therefore, the Special Committee on Decolonization is precluded from characterizing the incorporation of Hawai'i as lawful by American laws.

Furthermore, the rules of international law regarding de-colonization do not apply to the Hawaiian situation despite the United States internationally wrongful acts of falsely reporting Hawai'i as a non-self-governing territory according to Article 73(e) of the U.N Charter, which falsely achieved integration into the United States as the so-called 50th State of the American Union in 1959 by a so-called plebiscite. According to Professor Craven, "there are strong arguments to suggest that the US cannot rely upon the fact of the plebiscite along for purposes of perfecting its title to the territory of Hawai'i." He explains:

> First, the plebiscite did not attempt to distinguish between [...] nationals of the Hawaiian Kingdom and their resident 'colonial' population who vastly outnumbered them. [...] By the same token, in some cases a failure to do so may

[23] GA Resolution 1416 (XIV) (Dec. 12, 1959), *Cessation of the transmission of information under Article 73 e of the Charter in respect of Alaska and Hawaii*.

[24] James Crawford, *The Creation of States in International Law*, 2nd ed., (Oxford, Clarendon Press, 2007), 113.

> well disqualify a vote where there is evidence that the administering state had encouraged settlement as a way of manipulating the subsequent result. This latter point seems to be even more clear in a case such as Hawai'i in which the holders of the entitlement to self-determination had presumptively been established in advance by the fact of its (prior or continued) existence as an independent State. In that case, one might suggest that it was only those who were entitled to regard themselves as nationals of the Kingdom of Hawai'i (in accordance with Hawaiian law prior to 1898), who were entitled to vote in exercise of the right of self-determination.[25]

All the Members of PSIDS emerged as independent States under Article 73. The Hawaiian Kingdom, however, does not come under Article 73 because it emerged as an independent State in the nineteenth century. As a State in continuity, the Hawaiian Kingdom comes under Article 35(2) because it is a Non-Member State of the United Nations and a Member State of the Universal Postal Union since 1 January 1882.

Regarding invoking the international responsibility of the United States for the violation of human rights of Hawaiian subjects and their right to exercise their internal self-determination, Professor Lenzerini states:

> Based on the postulation […] that the Hawaiian Kingdom was occupied by the United States in 1893 and that it has remained in the same condition since that time, it may be concluded that the potential implications on such a situation arising from the applicable international legal rules on human rights and self-determination are remarkable. [Therefore,] an adequate legal basis would exist for claiming in principle the international responsibility of the United States of America—as occupying Power—for violations of both internationally recognized human rights to the prejudice of individuals and of the right of the Hawaiian people to freely exercise self-determination.[26]

On 11 October 2021, the Hawaiian Foreign Ministry notified the permanent missions of the United Nations General Assembly, by note verbale, of the Hawaiian Kingdom's invocation of responsibility by an injured State, which I am enclosing. All Member States of the United Nations, to include Members of PSIDS, received the note verbale by email. The note verbale stated:

> The Foreign Ministry of the Hawaiian Kingdom presents its compliments to all the Diplomatic Missions accredited to the United Nations in New York City and has

[25] Craven, 538.
[26] Federico Lenzerini, "International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation," in David Keanu Sai (ed.) *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 215 (2020) (online at https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf). .

the honor to inform the latter that the Government of the Hawaiian Kingdom notifies all Member States of the United Nations that they have and continue to commit internationally wrongful acts against the Hawaiian Kingdom by continuing to recognize as lawful the United States of America's presence in the Hawaiian Islands, and not as a belligerent State that has not complied with international humanitarian law since 16 January 1893 when it unlawfully committed acts of war in the invasion and subsequent overthrow of the Government of the Hawaiian Kingdom. In addition to violating international humanitarian law, the Member States of Austria, Belgium, Denmark, France, Germany, Hungary, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Russia, Spain, Switzerland, Sweden, and the United States of America are in violation of their treaties with the Hawaiian Kingdom. The Government of the Hawaiian Kingdom calls upon the United States of America to immediately comply with international humanitarian law in its prolonged occupation of the Hawaiian Kingdom since 17 January 1893.

This Note Verbale serves as a notice of claim by an injured State, pursuant to Article 43 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (2001), invoking the responsibility of all Member States of the United Nations who are responsible for the internationally wrongful act of recognizing the United States presence in the Hawaiian Kingdom as lawful to cease that act pursuant Article 30(a), and to offer appropriate assurances and guarantees of non-repetition pursuant to Article 30(b). The form of reparation under Article 31 shall take place in accordance with the provisions of Part Two—Content of the International Responsibility of a State(s).

The Hawaiian Foreign Ministry wishes to point out that the Contracting States to the 1907 Hague Convention for the Pacific Settlement of International Disputes, who are also member States of the United Nations, with the exception of Palestine and Kosovo, were aware of the Larsen v. Hawaiian Kingdom arbitral proceedings instituted on 8 November 1999, PCA Case no. 1999-01, whereby the Hawaiian Kingdom was acknowledged as a non-Contracting State to the 1907 Convention pursuant to Article 47, and the Council of Regency as its restored government. At the center of the dispute was the unlawful imposition of American municipal laws in violation of international humanitarian law.

As regards the factual circumstances of the United States of America's invasion of the Hawaiian Kingdom, an internationally recognized State since the nineteenth century, the unlawful overthrow of the Government of the Hawaiian Kingdom, and the prolonged belligerent occupation of the Hawaiian Kingdom since 17 January 1893, the Hawaiian Foreign Ministry directs the attention of the Diplomatic Missions to the Royal Commission of Inquiry's publication—Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom (2020). The ebook can be downloaded online at

> https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf. Authors include H.E. Dr. David Keanu Sai, Ph.D., Hawaiian Minister of Foreign Affairs ad interim, Professor Matthew Craven, University of London, SOAS, Professor William Schabas, Middlesex University London, and Professor Federico Lenzerini, University of Sienna, Italy. Reports of the Royal Commission of Inquiry and treaties can be accessed online at https://hawaiiankingdom.org/royal-commission.shtml.

In its judgment on preliminary objections raised by Armenia in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, the Court noted that, according to the customary rules on State responsibility as reflected in Article 42 of the ASR, "when a State seeks to invoke the responsibility of another State, it must show that the responsible State owes the obligation allegedly breached to the claimant State." [27] According to the International Law Commission, in its comments of the ASR, "[u]nder article 41, paragraph 2, no State shall recognize the situation created by the serious breach as lawful. This obligation applies to all States, including the responsible State."[28]

Just as the Hawaiian Kingdom is utilizing the ASR to compel compliance with the law of occupation, Pacific Island States are utilizing the same to compel compliance with climate change treaties. According to Minister Maina Talia of Tuvalu, in his note published in the *Nature* journal on 4 September 2025, which I am enclosing, he states:

> The ICJ offered clarity on fossil fuels in particular: producing, licensing and subsidizing them could constitute an "internationally wrongful act" for which states can be held liable under international law. Nations have a duty to reduce greenhouse-gas emissions — and the court highlighted the legal liability that could arise from expanding fossil-fuel infrastructure in the face of clear scientific warnings.[29]

The Hawaiian Kingdom is not seeking the assistance of the Special Committee on Decolonization. Nor is it seeking recognition by the Members of PSIDS that it is an independent State. The Hawaiian Kingdom is asserting its right as a State under the ASR. The failure of the United States to comply with international humanitarian law, for over a century, has created a humanitarian crisis of unimaginable proportions where war crimes

[27] Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Judgment on preliminary objections raised by Armenia, 12 November 2024, para. 52.
[28] International Law Commission, Draft articles of Responsibility of States for Internationally Wrongful Acts, with commentaries 115 (2001).
[29] Maina Vakafua Talia, "Climate accountability—finally," 645 *Nature* 10 (2025).

have since risen to a level of *jus cogens*. At the same time, the obligations have *erga omnes* characteristics—flowing to all States, to include the Members of PSIDS.

The international community's failure to intercede, as a matter of *obligatio erga omnes*, is explained by the United States deceptive portrayal of Hawai'i as an incorporated territory. As an international wrongful act, States have an obligation to not "recognize as lawful a situation created by a serious breach […] nor render aid or assistance in maintaining that situation,"[30] and States "shall cooperate to bring to an end through lawful means any serious breach [by a State of an obligation arising under a peremptory norm of general international law]."[31] I am enclosing two memorandums that apply the ASR to the Hawaiian situation.

This is an urgent situation for PSIDS to intercede, as a matter of *obligatio erga omnes,* by ensuring that the Hawaiian situation is placed on the agenda as a supplementary item by either the President of the General Assembly or by PSIDS themselves. This is not a political act but rather procedural, and the Hawaiian Kingdom is not requesting of any State to speak on its behalf. As an independent State it alone speaks on its behalf. For PSIDS to not do so places its Members with potential violation of Article 41(2) of the ASR as an internationally wrongful act. Article 31(1) of the ASR states that the "responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act,"[32] and that "[i]njury includes any damage, whether material or moral, caused by the internationally wrongful act of a State" (Art. 31(2)).[33] To take affirmative steps to ensure that the Hawaiian situation is placed on the agenda would be considered by the Hawaiian Kingdom as a partial fulfillment of the obligation of Article 41(2).

The severity of the Hawaiian situation cannot be underestimated, and I came to Your Excellencies as a sister Pacific Island State with a specific request of assistance. I would like to draw Your Excellencies' attention to the Hawaiian Kingdom's foreign policy over the Pacific where European expansion, through conquest and colonization, began in earnest in the 1880s. In a protest to twenty-six countries against the colonial partition of the Pacific, dated 23 August 1883, His Excellency Walter M. Gibson, Hawaiian Minister of Foreign Affairs, wrote:

> Whereas His Hawaiian Majesty's Government, being informed that certain sovereign and colonial States propose to annex various islands and archipelagoes

[30] Articles of Responsibility of States for Internationally Wrongful Acts, Yearbook of the International Law Commission, 2001, vol. II, Article 41(2) (Part Two). Text reproduced as it appears in the annex to General Assembly resolution 56/83 of 12 December 2001 and corrected by document A/56/49(Vol. I)/Corr.4.
[31] *Id*., Article 41(1).
[32] *Id*., 91.
[33] *Id*.

of Polynesia, does hereby solemnly protest against such projects of annexation, as unjust to a simple and ignorant people, and subversive, in their case, of those conditions for favourable national development which have been so happily accorded to the Hawaiian nation.

The Hawaiian people, enjoying the blessings of national independence, confirmed by the joint action of great and magnanimous States, ever ready to afford favourable opportunities for self-government, cannot be silent about or indifferent to acts of intervention in contiguous and kindred groups, which menace their own situation.

The Hawaiian people, encouraged by favourable political conditions, have cultivated and entertained a strong national sentiment, which leads them not only to cherish their own political State, but also inspires them with a desire to have extended to kindred, yet less favoured, communities of Polynesia like favourable political opportunities for national development.

And whereas a Hawaiian Legislative Assembly, expressing unanimously the spirit of the nation, has declared that it was the duty of His Hawaiian Majesty's Government to proffer to kindred peoples and States of the Pacific an advising assistance to aid them in securing opportunities for improving their political and social condition: His Hawaiian Majesty's Government, responding to the national will, and to the especial appeals of several Polynesian Chiefs, has sent a Special Commissioner to several of the Polynesian Chieftains and States to advise them in their national affairs.

And His Hawaiian Majesty's Government, speaking for the Hawaiian people, so happily prospering through national independence, makes earnest, appeal to the Governments of great and enlightened States, that they will recognize the inalienable right of the several native communities of Polynesia to enjoy opportunities for progress and self-government, and will guarantee to them the same favourable political opportunities which have made Hawaii prosperous and happy, and which incite her national spirit to lift up a voice among the nations in behalf of sister islands and groups of Polynesia.

By order of His Majesty in Council.
Walter M. Gibson
Minister of Foreign Affairs

Iolani Palace,
Honolulu, August 23, 1883[34]

[34] Protest. *Appendix to Report of the Minister of Foreign Affairs to the Legislative Assembly of 1884* (1884). Hawaiian version printed in *Ke Koo o Hawaii* newspaper 6 (12 September 1883).

As explained by Dr. Lorenz Gonschor, Senior Lecturer at the University of the South Pacific in Suva, regarding Minister Gibson's protest, he wrote:

> In an explanatory letter to French Consul and Commissioner in Honolulu Henri Feer, Gibson provided a more detailed rationale for the Hawaiian protest by listing the multiple communications the Hawaiian government had received from Pacific Islands, viz. 1) the King of Tonga had declared his intent to sign a treaty with the Hawaiian Islands as he had done with Germany and Great Britain; 2) the King and Chiefs of Sāmoa had asked Hawai'i to expressly recognise their independence; 3) The Chiefs of the Stewart Is. [Sikaiana] had negotiated for the annexation of their island to Hawai'i; and 4) the kings or sovereign chiefs of Butaritari, Apaïung [Abaiang], Apemama [Abemama] and Torua [Tarawa] had in different circumstances addressed Hawai'i for help and advice. In an entry in his private diary sometime during this major Hawaiian foray into international power policy, Gibson ultimately linked the success of the Kingdom's pan-Oceania policy to the fate of Hawai'i itself: "May kind providence be with us in this new move. Only by protecting the freedom and independence of all Polynesia can we guarantee our own."[35]

Furthermore, according to Dr. Gonschor, the Hawaiian Kingdom had an influence on State-building processes throughout Polynesia and the eastern parts of Micronesia. Dr. Gonschor wrote:

> Even as the Hawaiian constitutional system was transferred directly to Tonga and Fiji, and the Samoan constitutional system imported important elements from it, the influence of the Hawaiian Kingdom as a model for political modernization and a partner for pan-Pacific alliances extended farther across the Pacific to the eastern parts of Micronesia. As noted, this influence was mainly disseminated through Hawaiian missionaries affiliated with the American Board of Commissioners for Foreign Missions (ABCFM) who were stationed on the Gilberts (Kiribati), the Marshalls, Kosrae and Pohnpei.[36]

While the Hawaiian Kingdom was not successful in stopping the colonial partitioning of the Pacific, it was also unable to prevent the American invasion and overthrow of my country's government in 1893 and the prolonged occupation that ensued thereafter. Notwithstanding, the positive rules of customary international law preserved and maintained the continued existence of the Hawaiian Kingdom because it was a recognized sovereign and independent State and a subject of international law despite the unlawful

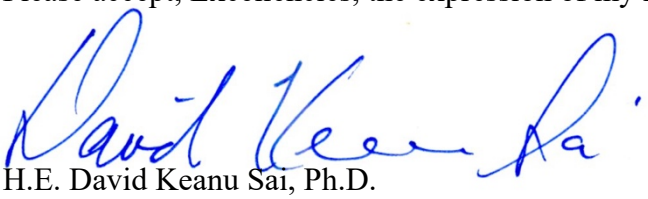
[35] Lorenz Rudolf Gonschor, *"A Power in the World": The Hawaiian Kingdom as a Modal of Hybrid Statecraft in Oceania and a Progenitor of Pan-Oceanism* 340 (Ph.D. dissertation, University of Hawai'i at Mānoa, 2016).
[36] Lorenz Gonschor, *A Power in the World—The Hawaiian Kingdom in Oceania* 138 (2019).

overthrow of its government. This was the basis for restoring the government, by a Council of Regency, in 1997,[37] under Hawaiian constitutional law and the common law doctrine of necessity.[38]

As our fisheries and landed resources continue to be exploited by the United States to the detriment of the Hawaiian Kingdom and its national population and that war crimes and human rights violations are being committed with impunity, we respectfully call upon Your Excellencies to incite your national spirit to lift your voice among the Member States of the General Assembly on behalf of their sister Pacific Island State—the Hawaiian Kingdom and its situation by ensuring the Hawaiian situation is on the agenda of the 80th session as a supplementary item.

We also respectfully call upon Your Excellencies to be mindful of the obligatory nature of Article 41(2) of the ASR, to not recognize as lawful the American presence in the Hawaiian Kingdom nor render aid or assistance in maintaining that situation. I implore Your Excellencies to have your legal advisers review the information I provided so that actions are in line with the rules of international law. As a person who firmly believes in the rule of law and not the politics of power, I am looking forward to more dialogue with Members of PSIDS on this very important subject and the urgency of our request. I avail myself to any questions Your Excellencies may have of me.

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



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

[37] David Keanu Sai, "The Royal Commission of Inquiry," in David Keanu Sai (ed.) *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 18-23 (2020).
[38] See *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969). See also *Chandrika Persaud v. Republic of Fiji* (Nov. 16, 2000); *Mokotso v. HM King Moshoeshoe II*, LRC (Const) 24, 132 (1989); and *Mitchell v. Director of Public Prosecutions*, L.R.C. (Const) 35, 88–89 (1986).

Enclosure “1”

Note Verbale No. 2021-1-HI of October 11, 2021, from the Hawaiian Ministry of Foreign Affairs

Minister of the Interior <interior@hawaiiankingdom.org> Mon, Oct 11, 2021 at 11:44 PM
Cc: Afghanistan <info@afghanistan-un.org>, Albania <mission.newyork@mfa.gov.al>, Algeria <algeria@un.int>, Andorra <contact@andorraun.org>, Angola <theangolamission@angolaun.org>, Antigua and Barbuda <unmission@ab.gov.org>, Argentina <enaun@mrecic.gov.ar>, Armenia <armenia@un.int>, Australia <australia@un.int>, Austria <new-york-ov@bmeia.gv.at>, Azerbaijan <azerbaijan@un.int>, Bahamas <mission@bahamasny.com>, Bahrain <bahrain1@un.int>, Bangladesh <bangladesh@un.int>, Barbados <prun@foreign.gov.bb>, Belarus <usaun@mfa.gov.by>, Belgium <newyorkun@diplobel.fed.be>, Belize <blzun@belizemission.com>, Benin <onu.newyork@gouv.bj>, Bhutan <bhutanmission@pmbny.bt>, Bolivia <missionboliviaun@gmail.com>, Bosnia and Herzegovina <bihun@mvp.gov.ba>, Botswana <botswana@un.int>, Brazil <distri.delbrasonu@itamaraty.gov.br>, Brunei Darussalam <brunei@un.int>, Bulgaria <bulgaria@un.int>, Burkina Faso <bfapm@un.int>, Burundi <ambabunewyork@yahoo.fr>, Cabo Verde <capeverde@un.int>, Cambodia <cambodia@un.int>, Cameroon <cameroon.mission@yahoo.com>, Canada <canada.un@international.gc.ca>, Central African Republic <repercaf.ny@gmail.com>, Chad <chadmission.un@gmail.com>, Chile <chile.un@minrel.gob.cl>, China <chinesemission@yahoo.com>, Colombia <colombia@colombiaun.org>, Comoros <comoros@un.int>, Congo <congo@un.int>, Costa Rica <contact@missioncrun.org>, Croatia <cromiss.un@mvep.hr>, Cuba <cuba_onu@cubanmission.com>, Cyprus <unmission@mfa.gov.cy>, Czech Republic <un.newyork@embassy.mzv.cz>, Côte d'Ivoire <cotedivoiremission@yahoo.com>, Democratic People's Republic of Korea <dprk.un@verizon.net>, Democratic Republic of the Congo <missiondrc@gmail.com>, Denmark <nycmis@um.dk>, Djibouti <djibouti@nyct.net>, Dominica <dominicaun@gmail.com>, Dominican Republic <drun@un.int>, Ecuador <ecuador@un.int>, Egypt <mission.egypt@un.int>, El Salvador <elsalvador@un.int>, Equatorial Guinea <info@equatorialguineaun.org>, Eritrea <general@eritreaun.org>, Estonia <mission.newyork@mfa.ee>, Eswatini <eswatini@un.int>, Ethiopia <ethiopia@un.int>, Fiji <mission@fijiprun.org>, Finland <sanomat.yke@formin.fi>, France <france@franceonu.org>, Gabon <info@gabonunmission.com>, Gambia <gambia_un@hotmail.com>, Georgia <geomission.un@mfa.gov.ge>, Germany <info@new-york-un.diplo.de>, Ghana <ghanaperm@aol.com>, Greece <grdel.un@mfa.gr>, Grenada <grenada@un.int>, Guatemala <onunewyork@minex.gob.gt>, Guinea <missionofguinea.un@gmail.com>, Guinea-Bissau <guinebissauonu@gmail.com>, Guyana <guyana@un.int>, Haiti <mphonu.newyork@diplomatie.ht>, Honduras <Ny.honduras@hnun.org>, Hungary <hungaryun.ny@mfa.gov.hu>, Iceland <unmission@mfa.is>, India <india.newyorkpmi@mea.gov.in>, Indonesia <ptri@indonesiamission-ny.org>, Iran <Iran@un.int>, Iraq <iraq.mission@un.int>, Ireland <newyorkpmun@dfa.ie>, Israel <uninfo@newyork.mfa.gov.il>, Italy <info.italyun@esteri.it>,

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Excellency,

Attached hereto is a Note Verbale from the Hawaiian Foreign Ministry to serve as a notice of claim by an injured State, pursuant to Article 43 of the International Law Commission's Articles on *State Responsibility for Internationally Wrongful Acts,* invoking the responsibility of all Member States of the United Nations who are responsible for the internationally wrongful act of recognizing the United States presence in the Hawaiian Kingdom as lawful to cease that act pursuant to Article 30(a), and to offer appropriate assurances and guarantees of non-repetition pursuant to Article 30(b).

The Government of the Hawaiian Kingdom, by its Council of Regency, represented the State of the Hawaiian Kingdom at the Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, from 1999 to 2001.

Note Verbale UN (No. 2021-1-HI).pdf
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MINISTRY OF FOREIGN AFFAIRS
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NOTE VERBALE

No. 2021-1-HI

The Foreign Ministry of the Hawaiian Kingdom presents its compliments to all the Diplomatic Missions accredited to the United Nations in New York City and has the honor to inform the latter that the Government of the Hawaiian Kingdom notifies all Member States of the United Nations that they have and continue to commit internationally wrongful acts against the Hawaiian Kingdom by continuing to recognize as lawful the United States of America's presence in the Hawaiian Islands, and not as a belligerent State that has not complied with international humanitarian law since 16 January 1893 when it unlawfully committed acts of war in the invasion and subsequent overthrow of the Government of the Hawaiian Kingdom. In addition to violating international humanitarian law, the Member States of Austria, Belgium, Denmark, France, Germany, Hungary, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Russia, Spain, Switzerland, Sweden, and the United States of America are in violation of their treaties with the Hawaiian Kingdom. The Government of the Hawaiian Kingdom calls upon the United States of America to immediately comply with international humanitarian law in its prolonged occupation of the Hawaiian Kingdom since 17 January 1893.

This Note Verbale serves as a notice of claim by an injured State, pursuant to Article 43 of the International Law Commission's Articles on *Responsibility of States for Internationally Wrongful Acts* (2001), invoking the responsibility of all Member States of the United Nations who are responsible for the internationally wrongful act of recognizing the United States presence in the Hawaiian Kingdom as lawful to cease that act pursuant Article 30(a), and to offer appropriate assurances and guarantees of non-repetition pursuant to Article 30(b). The form of reparation under Article 31 shall take place in accordance with the provisions of Part Two—*Content of the International Responsibility of a State(s)*.

The Hawaiian Foreign Ministry wishes to point out that the Contracting States to the 1907 *Hague Convention for the Pacific Settlement of International Disputes*, who are also member States of the United Nations, with the exception of Palestine and Kosovo, were aware of the *Larsen v. Hawaiian Kingdom* arbitral proceedings instituted on 8

November 1999, PCA Case no. 1999-01, whereby the Hawaiian Kingdom was acknowledged as a non-Contracting State to the 1907 Convention pursuant to Article 47, and the Council of Regency as its restored government. At the center of the dispute was the unlawful imposition of American municipal laws in violation of international humanitarian law.

As regards the factual circumstances of the United States of America's invasion of the Hawaiian Kingdom, an internationally recognized State since the nineteenth century, the unlawful overthrow of the Government of the Hawaiian Kingdom, and the prolonged belligerent occupation of the Hawaiian Kingdom since 17 January 1893, the Hawaiian Foreign Ministry directs the attention of the Diplomatic Missions to the Royal Commission of Inquiry's publication—*Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020). The ebook can be downloaded online at https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf. Authors include H.E. Dr. David Keanu Sai, Ph.D., Hawaiian Minister of Foreign Affairs *ad interim*, Professor Matthew Craven, University of London, SOAS, Professor William Schabas, Middlesex University London, and Professor Federico Lenzerini, University of Sienna, Italy. Reports of the Royal Commission of Inquiry and treaties can be accessed online at https://hawaiiankingdom.org/royal-commission.shtml.

The Hawaiian Foreign Ministry avails itself of this opportunity to renew to the Diplomatic Missions accredited to the United Nations the assurances of its highest consideration.

Honolulu, 11 October 2021

All Diplomatic Missions
Accredited to the United Nations,
New York, New York, U.S.A

Enclosure “2”

World view

By Maina Vakafua Talia

Climate accountability — finally

A July ruling from the International Court of Justice is clear: states have a legal duty to prevent climate harm, and can face consequences if they don't.

The salt spray of the Pacific Ocean is in my blood; I grew up watching the tides shape the shores of the islands of Tuvalu. But now, those tides are rising relentlessly, eroding lands, swallowing homes, decimating livelihoods and washing away the futures of communities. Entire islands are sinking. One-third of Tuvalu's citizens are seeking 'climate refuge' in Australia.

Climate change is not a distant threat; it is our daily reality.

But there is hope. At the end of July, in The Hague, the Netherlands, I bore witness to a historic moment. The International Court of Justice (ICJ) delivered the advisory opinion that states have a legal duty to prevent climate harm and, importantly, that they can be held accountable for the consequences of their actions, through financial compensation or other forms of restitution.

The ruling means that climate justice is no longer simply a moral obligation, but a matter of international law. This feels like a seismic shift. The relentless cries from front-line communities across the Pacific, who have long borne the brunt of a crisis we did not create, have been heard.

The ICJ offered clarity on fossil fuels in particular: producing, licensing and subsidizing them could constitute an "internationally wrongful act" for which states can be held liable under international law. Nations have a duty to reduce greenhouse-gas emissions — and the court highlighted the legal liability that could arise from expanding fossil-fuel infrastructure in the face of clear scientific warnings.

It is especially powerful that this legal breakthrough stems from the efforts of small island nations, launched by courageous Pacific youth in 2019, initially in Vanuatu then through cross-border collaborations. It is a reminder that those most affected by the climate crisis are also among the most determined in addressing it. Through efforts ranging from grassroots movements to international diplomacy, Pacific island nations have charted a path that places justice at the centre of climate governance. This is a powerful example of vulnerable voices driving transformative change at the highest levels of international law.

The ICJ also emphasized that cooperation between states is central to meaningful climate action, and identified treaties as a crucial tool for coordinated implementation. This gives wind to the sails of emerging legal instruments. A fossil-fuel non-proliferation treaty has been proposed, for example, that would provide legal grounding for states to pursue coordinated, binding action on a fossil-fuel phase-out and a just transition to renewable energy. It is currently supported by 17 nations, including Tuvalu, that are shaping the treaty proposal and discussing how to involve others and initiate a formal negotiation process. A high-level ministerial meeting in Belém, Brazil, in November, has been planned alongside the COP30 climate talks to move the process forward.

> "The real task ahead lies in applying the court's guidance and turning it into real action."

The shift towards using international law to hold states accountable is a welcome one. The ICJ's legal milestones follow other such advisory opinions. In May last year, the International Tribunal for the Law of the Sea confirmed that states have binding obligations, under United Nations Convention, to prevent marine pollution caused by climate change. Similarly, in July, the Inter-American Court of Human Rights clarified that parties to the American Convention on Human Rights must take more-ambitious measures to address the climate crisis. It also reminded states that, to fulfil their human-rights obligations, they have to take decisive action to deal with the main source of greenhouse-gas emissions: fossil fuels.

These legal efforts are part of a broader push led by vulnerable nations and civil-society groups to fast-track meaningful climate action and hold high-emitting states and industries accountable. For example, Vanuatu, Fiji and Samoa are calling on the International Criminal Court to recognize ecocide — extensive environmental destruction through deliberate and negligent human actions, such as overfishing, oil spills or plastic pollution — as a crime.

With the ICJ ruling, the groundwork has been laid: the path to climate justice is a non-negotiable duty. But we are far from the finish line.

The real task ahead lies in applying the court's guidance and turning it into real action: actual reductions, reparations and justice, not empty promises. This advisory opinion will be used at the UN General Assembly, in COP climate negotiations, to set up domestic legislation and in regional and international courts.

In line with the ICJ's calls for international cooperation, those already engaged in achieving a just, financed renewable-energy transition that centres the needs of communities urge other nations to join. Advancing a fossil-fuel non-proliferation treaty is one step.

For front-line communities around the globe, this advisory opinion is a lifeline. Climate justice is in reach. The world has entered an era in which those most responsible for the climate crisis will be held to account. This is more than just a legal victory; it is a call to translate these words into concrete change. The future of the Pacific, and the planet, depends on it.

Maina Vakafua Talia is Tuvalu's minister of home affairs, climate change and environment.
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GOVERNMENT OF TUVALU

Enclosure “3”

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18 August 2025

MEMORANDUM ON THE ARTICLES OF STATE RESPONSIBILITY FOR INTERNATIONALLY WRONGFUL ACTS AND THE UNLAWFUL AMERICAN OCCUPATION OF THE HAWAIIAN KINGDOM

The Articles of State Responsibility for Internationally Wrongful Acts ("ASR") was completed by the United Nations International Law Commission ("ILC") in 2001.[1] It was initially called Draft Articles of State Responsibility for Internationally Wrongful Acts, but as Mirka Möldner explains, "because of the wide acceptance that the ASR have met and their wide reflection of customary international law, it seems appropriate to no longer speak of Draft Articles on State Responsibility but solely of Articles on State Responsibility."[2]

The ILC began its work on the ASR in 1956 with more than thirty reports and the work of five Special Rapporteurs. The last Special Rapporteur to complete the ASR was James Crawford who also served as the President of the Arbitral Tribunal in *Larsen v. Hawaiian Kingdom* at the Permanent Court of Arbitration ("PCA") from 1999-2001. The ASR sets out certain general principles:

a) that every internationally wrongful act of a State entails its international responsibility (Article 1);
b) that an internationally wrongful act exists when conduct consisting of an act or omission is attributable to a State and constitutes a breach of an international obligation owed by that State (Article 2); and
c) that characterization of an internationally wrongful act is governed by international law and is not affected by its characterization as lawful by the responsible State's internal law (Article 3).

[1] GAOR 56th Sess., Suppl. 10, Doc. A/56/10 (2001).
[2] Mirka Möldner, "Responsibility of International Organizations—Introducing the ILC's DARIO," 16 *Max Planck Yearbook of United Nations* 281, 284, n. 1 (2012).

These principles are well established under customary international law. Article 3 goes back to the *Alabama claims* arbitration where a State cannot rely on its internal law as an excuse for not performing its international obligations.

Part Two of the ASR covers the core legal consequences of an internationally wrongful act that obliges the responsible State to immediately cease the wrongful conduct (Article 30), and to make full reparation for the injury caused by the internationally wrongful act (Article 31). When there is a serious breach of a peremptory norm by an internationally wrongful act, it may entail further consequences for both the responsible State and other States. The Permanent Court of International Justice, in the *Phosphates in Morocco* case, affirmed that when a State commits an internationally wrongful act against another State international responsibility is established "immediately as between the two States."[3] This immediate nature of international responsibility also applies to States who are made aware of a serious breach of a peremptory norm committed by another State whereby no "State shall recognize as lawful a situation created by a serious breach […] nor render aid or assistance in maintaining that situation" (Article 41(2)). The term 'shall' is a word of command that denotes an immediate obligation.

Chapter III Articles of the ASR apply to "the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law" (Article 40(1)). Only serious breaches, such as those involving "a gross or systematic failure by the responsible State to fulfil the obligation" (Article 40(2)) imposed by a peremptory norm are covered. Such breaches entail the additional consequences set out in Article 41 where States are obliged not to recognize as lawful a situation created by a serious breach of a peremptory norm (Article 41(2)). This obligation applies to all States, which includes the State responsible for the breach of a peremptory norm. The principle of the territorial integrity of a State is considered a peremptory norm in international law, which means that no State can violate or derogate from.

According to Crawford, in "international law, there are rules whose purpose is to prevent actual damage to the state or its nationals."[4] These rules are recognized as peremptory norms—*jus cogens*. One of these peremptory norms was clearly stated by the Permanent Court of International Justice, in *The Lotus* case, which is the principle of a State's territorial integrity. On this subject, the Court explained:

> Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it

[3] *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 *id*., Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29.
[4] James Crawford, "The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect," 96 *American Journal of International Law* 874, 878 (2002).

> cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.[5]

United States Violation of the Hawaiian Kingdom's Territorial Integrity

On 18 December 1893, President Cleveland delivered a *manifesto*[6] to the Congress on his investigation into the overthrow of the Hawaiian Kingdom Government by U.S. troops. He stated that by orders of the U.S. resident Minister John Stevens, on 16 January 1893, a "detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men upwards of 160, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies."[7]

President Grover Cleveland stated that this "military demonstration upon the soil of Honolulu was of itself an act of war."[8] He also stated that the overthrow of the Hawaiian Government the following day, on January 17th, was also by an "act of war," and that the insurgents calling themselves the provisional government, "owes its existence to an armed invasion by the United States."[9] Therefore, the insurgents were never a *de facto* government but rather a puppet government created by the United States. "Puppet governments," according to Krystyna Marek, "are organs of the occupant and, as such form part of his legal order."[10] President Cleveland concluded:

> Thus it appears that Hawaii was taken possession of by the United States forces without the consent or wish of the government of the islands, or of anybody else so far as shown, except the United States Minister. Therefore the military occupation of Honolulu by the United States on the day mentioned was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property.[11]

Through executive mediation between Queen Lili'uokalani and the new U.S. Minister to the Hawaiian Kingdom, Albert Willis, that lasted from 13 November through 18 December, an agreement of peace was reached at the U.S. Legation in Honolulu.[12] According to the executive

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[5] *The Case of the S.S. Lotus* (France v. Turkey), PCIJ Series A, No. 10, 18 (1927).
[6] *Manifesto* is defined as a "formal written declaration, promulgated by…the executive authority of a state or nation, proclaiming its reasons and motives for…important international action." Black's Law 963 (6th ed., 1990).
[7] United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 451 (1895) (hereafter "Executive Documents") (online at https://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf).
[8] *Id*.
[9] *Id*., 454.
[10] Krystyna Marek, Identity and Continuity of States in Public International Law 114 (1968).
[11] Executive Documents, 452.
[12] *Id*., 1269 (online at https://hawaiiankingdom.org/pdf/EA_2(HI%20Claim).pdf).

agreement, by exchange of notes, the President committed to restoring the Queen as the constitutional sovereign, and the Queen agreed, after being restored, to grant a full pardon to the insurgents. Political wrangling in the Congress, however, blocked President Cleveland from carrying out his obligation of restoration of the Queen. Consequently, the insurgents remained fugitives of Hawaiian Kingdom laws.

In 1894, the puppet government changed its name from the provisional government to the so-called Republic of Hawai'i that pursued annexation by the United States. Article 32 of its so-called constitution states, "[t]he President, with the approval of the Cabinet, is hereby expressly authorized and empowered to make a Treaty of Political or Commercial Union between the Republic of Hawaii and the United States of America, subject to ratification of the Senate." A treaty between the puppet government and the United States never came to fruition. Even if a treaty did come into fruition, according Marek, it is not a "genuine international agreement[] [because] such agreement[] [is] merely decrees of the occupant disguised as [an] agreement[] which the occupant in fact concludes with himself. Their measures and laws are those of the occupant."[13]

At the height of the Spanish-American War and under the guise of an internal law called a Congressional joint resolution of annexation, U.S. troops physically reoccupied the Hawaiian Kingdom on 12 August 1898. According to the U.S. Supreme Court, though "the resolution was passed July 7, the formal transfer was not made until August 12, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States."[14] Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and "they protested annexation occurring without the consent of the governed."[15] The Supreme Court's statement that 'the islands [were] ceded with appropriate ceremonies to a representative of the United States' is false and misleading. There was no treaty of cession whereby the Hawaiian Islands were ceded to the United States.

Marek asserts that, "a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State."[16] A disguised annexation is also a serious breach of a peremptory norm. In 1988, the U.S. Department of Justice's Office of Legal Counsel ("OLC"), opined, it is "unclear which constitutional power

[13] Marek, 114.
[14] Territory of Hawaii v. Mankichi, 190 U.S. 197, 212 (1903).
[15] Tom Coffman, Nation Within: The History of the American Occupation of Hawai'i 322 (2016). Coffman initially published this book in 1998 titled Nation Within: The Story of the American Annexation of the Nation of Hawai'i. Coffman explained, "In the book's subtitle, the word Annexation has been replaced by the word Occupation, referring to America's occupation of Hawai'i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word occupation," at xvi.
[16] Marek, 110.

Congress exercised when it acquired Hawaii by joint resolution."[17] The OLC concluded that only the President, and not the Congress, possesses "the constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States."[18]

The OLC further opined, "we doubt that Congress has constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States."[19] Therefore, the OLC concluded it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea."[20]

That the territorial sea was to be extended from three to twelve miles, under the United Nations Law of the Sea Convention, and since the United States is not a Contracting State, the OLC needed to investigate whether this could be accomplished by the President's proclamation. In other words, the Congress could not extend the territorial sea an additional nine miles by statute because its authority was limited up to the 3-mile limit. Furthermore, the United States Supreme Court, in *The Apollon*, concluded that the "laws of no nation can justly extend beyond its own territories."[21]

Arriving at this conclusion, the OLC cited constitutional scholar Professor Willoughby who stated the "constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. […] Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature enacted it."[22] Professor Willoughby also stated that the "incorporation of one sovereign State, such as was Hawaii prior to annexation, in the territory of another, is […] essentially a matter falling within the domain of international relations, and, therefore, beyond the reach of legislative acts."[23]

In 1900, the Congress renamed its puppet—the Republic of Hawai'i to the Territory of Hawai'i under *An Act To provide a government for the Territory of Hawaii*.[24] Further usurping Hawaiian

[17] Douglas Kmiec, "Department of Justice, Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea," 12 *Opinions of the Office of Legal Counsel* 238, 252 (1988) (online at https://hawaiiankingdom.org/pdf/1988_Opinion_OLC.pdf).
[18] *Id.*, 242.
[19] *Id.*
[20] *Id.*, 262.
[21] *The Apollon*, 22 U.S. 362, 370 (1824).
[22] Kmiec, 252.
[23] Westel Woodbury Willoughby, *The Constitutional Law of the United States*, vol. 1, 345 (1910).
[24] 31 Stat. 141 (1900).

sovereignty, the Congress, in 1959, renamed the Territory of Hawai‘i to the State of Hawai‘i under *An Act To provide for the admission of the State of Hawaii into the Union*.[25] These Congressional laws, which have no extraterritorial effect, did not transform the puppet regime into a military government recognizable under the rules of *jus in bello*. The maintenance of the puppet also stands in direct violation of customary international law in 1893, which were later codified under the 1907 Hague Regulations and the 1949 Fourth Geneva Convention. The governmental infrastructure of the Hawaiian Kingdom continued as the governmental infrastructure of the current State of Hawai‘i.

This extraterritorial application of American internal laws is not only in violation of a peremptory norm but is also prohibited by the rules of *jus in bello*. This subject is fully treated by Eyal Benvenisti, who explains:

> The occupant may not surpass its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts. The reason for this rule is, of course, the functional symmetry, with respect to the occupied territory, among the various lawmaking authorities of the occupying state. Without this symmetry, Article 43 [of the 1907 Hague Regulations] could become meaningless as a constraint upon the occupant, since the occupation administration would then choose to operate through extraterritorial prescription of its national institutions.[26]

As an occupying State, the United States was obligated to establish a military government, whose purpose would be to provisionally administer the laws of the occupied State—the Hawaiian Kingdom—until a treaty of peace, or an agreement to terminate the occupation, has been concluded. According to U.S. Army regulations, "[m]ilitary government is the form of administration by which an occupying power exercises governmental authority over occupied territory."[27] "By military government," according to William Winthrop, "is meant that dominion exercised in war by a belligerent power over territory of the [State] invaded and occupied by him and over the inhabitants thereof."[28] In his dissenting opinion in *Ex parte Miligan*, U.S. Supreme Court Chief Justice Chase explained:

> There are under the Constitution three kinds of military jurisdiction: one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states or districts occupied by rebels treated as belligerents; and a third to be exercised in time of invasion or insurrection within the limits of the United States, or during a rebellion within the limits of states maintaining adhesion to the National Government, when the public danger requires its exercise. […] the second may be distinguished as MILITARY GOVERNMENT,

[25] 73 Stat. 4 (1959).
[26] Eyal Benvenisti, The International Law of Occupation 19 (1993).
[27] United States Army Field Manual 27-10, sec. 362 (1956).
[28] William Winthrop, *Military Law and Precedents* 799 (1920).

> superseding, as far as may be deemed expedient, the local law, and exercised by the military commander under the direction of the President.[29]

Since 1893, there has been no military government, established by the United States under the rules of *jus in bello*, to administer the laws of the Hawaiian Kingdom as it stood prior to the overthrow of its government by an invasion of U.S. Marines.[30] Instead, what occurred was the unlawful seizure of the apparatus of Hawaiian governance, its infrastructure, and its properties—both real and personal. This was a theft of an independent State's self-government.

United States Misrepresents Hawai'i before the United Nations General Assembly

On 16 August 1946, the United States further misrepresented its relationship with Hawai'i when its *acting* Ambassador, Herschel Johnson, to the United Nations identified Hawai'i as a non-self-governing territory under the administration of the United States since 1898. Under Article 73(e) of the United Nations Charter, Hawai'i was falsely reported as a non-self-governing territory.[31] This fundamental flaw means that Hawai'i should have never been placed on this list in the first place because Hawai'i already achieved self-governance as a sovereign independent State beginning in 1843 and was acknowledged by the Permanent Court of Arbitration's Arbitral Tribunal in its 2001 Award in *Larsen v. Hawaiian Kingdom* where the arbitral tribunal stated, "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."[32]

Furthermore, this was also noted by Matthew Craven, who stated, "[a]n initial point in question here is whether Hawai'i should have been listed as a Non-Self-Governing Territory at all for such purposes. Article 73 of the Charter refers to peoples 'who have not yet attained a full measure of self-government'—a point which is curiously inapplicable in case of Hawai'i."[33] Judge Crawford also noted this in the second edition of his seminal book *The Creation of States in International Law*, where he stated, "Craven offers a critical view on the plebiscite affirming the integration of Hawaii into the United States."[34]

To conceal the United States' prolonged occupation of a sovereign and independent State for military purposes, Hawai'i was deliberately treated as a non-self-governing territory or colonial possession before the United Nations. The reporting of Hawai'i as a non-self-governing territory

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[29] *Ex parte Miligan*, 71 U.S. 2, 141-142 (1866).
[30] U.S. President Cleveland's Message to the Congress (December 18, 1893) (online at http://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf).
[31] Transmission of Information under Article 73e of the Charter, December 14, 1946, United Nations General Assembly Resolution 66(I).
[32] Larsen v. Hawaiian Kingdom, 581.
[33] Craven, 144.
[34] Crawford, 623, n. 83.

also coincided with the United States establishment of the military headquarters for the Pacific Command on the Island of O'ahu, which was renamed to the Indo-Pacific Combatant Command in 2018. Thus, if the United Nations had been aware of Hawai'i's continued legal status as an occupied State, Member States of the United Nations would have prevented the United States from maintaining their military presence in Hawai'i.

The initial Article 73(e) list was comprised of non-sovereign territories, under the control of sovereign States, such as Australia, Belgium, Denmark, France, Netherlands, New Zealand, United Kingdom and the United States. In addition to Hawai'i, the United States also reported its territories of Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico and the Virgin Islands as non-self-governing territories. The U.N. General Assembly, in a resolution entitled "Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter," defined self-governance in three forms: a sovereign independent State; free association with an independent State; or integration with an independent State.[35] As such, none of the territories on the list of non-self-governing territories, with the exception of Hawai'i, were recognized independent States.

To erase the history of the United States' unlawful overthrow of the Hawaiian government in 1893 and the occupation that followed, the United States reported to the United Nations Secretary General that "Hawaii has been administered by the United States since 1898. As early as 1900, Congress passed an Organic Act, establishing Hawaii as an incorporated territory in which the Constitution and laws of the United States, which were not locally inapplicable, would have full force and effect."[36] This extraterritorial application of American municipal laws is not only in violation of *The Lotus* case principle, but is also prohibited by the rules of *jus in bello*. The imposition of American laws in Hawai'i as an Occupied State is also the war crime of usurpation of sovereignty during occupation.[37]

Despite these past misrepresentations of Hawai'i, before the United Nations by the United States, two facts remain. First, inclusion of Hawai'i on the United Nations list of non-self-governing territories was an inaccurate depiction of an independent State whose rights had been violated; and, second, Hawai'i remains a sovereign and independent State despite the illegal overthrow of its government in 1893 and the prolonged occupation of its territory for military purposes that ensued thereafter.

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[35] Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter, December 15, 1960, United Nations Resolution 1541 (XV).
[36] Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America, Document no. A/4226, Annex 1, 2 (24 Sep. 1959).
[37] William Schabas, "Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893," 3 *Hawaiian Journal of Law and Politics* 334, 340 (2021) (online at https://hawaiiankingdom.org/pdf/3HawJLPol334_(Schabas).pdf).

Internationally Wrongful Acts Committed by the United States

There are four internationally wrongful acts committed by the United States against the Hawaiian Kingdom. The first is the act of violating the territorial integrity of the Hawaiian Kingdom since 1893, the second is the act—by omission—to establish a direct administration of the laws of the Hawaiian Kingdom by a military government in 1893, the third is the act of disguising the annexation in 1898 by an internal law, and the fourth is the act of falsely reporting to the United Nations in 1946 that Hawai'i was a non-self-governing territory. These acts are attributable to the United States and 'constitutes a breach of an obligation owed by that State' (Article 2). The 'characterization of an internationally wrongful act is governed by international law and is not affected by its characterization as lawful by a State's internal law (Article 3).' In other words, the United States is precluded from characterizing its acts as lawful under its internal laws.

Notwithstanding the absence of the Hawaiian Government from 1893 to 1997, States had an *erga omnes* obligation for the United States breach of peremptory norms. In the *Barcelona Traction* case, the International Court of Justice said that:

> an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*.[38]

Under Article 48(2) of the ASR, all States are entitled to "claim from the responsible State: (a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition […]; and (b) performance of the obligation of reparation." Furthermore, "[s]hould a widely acknowledged grave breach of an *erga omnes* obligation occur, all the States to which the obligation is owed: (a) shall endeavour to bring the breach to an end through lawful means in accordance with the Charter of the United Nations; (b) shall not recognize as lawful a situation created by the breach; [and] (c) are entitled to take non-forcible counter-measures under conditions analogous to those applying to a State specifically affected by the breach."[39] Article 48(2) of the ASR should have precluded the United States from reporting Hawai'i as a non-self-governing territory under Article 73(e) of the Charter of the United Nations.

What prevented Article 48(2) from arising was the deliberate concealment by the United States of the Hawaiian Kingdom's continued existence as a State, under customary international law, that

[38] *Barcelona Traction, Light and Power Company, Limited* (Belgium v. Spain) (1962-1970), Second Phase, Judgment, I.C.J Reports 1970, p. 32, para. 33; and see M. Ragazzi, *The Concept of International Obligations Erga Omnes* (1997).
[39] Institut de Droit International, Resolution, "Obligations *erga omnes* in international law," Article 5 (August 27, 2005) (online at https://www.idi-iil.org/app/uploads/2019/06/Annexe-1bis-Compilation-Resolutions-EN.pdf).

only lasted until arbitral proceedings were instituted on 8 November 1999 at the Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom* where the Secretariat recognized the continued existence of the Hawaiian Kingdom as a State since the nineteenth century for purposes of its institutional jurisdiction under Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes that the United States, being a Member State of the Permanent Court of Arbitration, did not object. Since the *Larsen* case and the recent publication in 2024 by Oxford University Press of *Unconquered States: Non-European Powers in the Imperial Age* with a chapter titled "Hawai'i's Sovereignty and Survival in the Age of Empire,"[40] it is now 'widely acknowledged [of the United States] grave breach of an *erga omnes* obligation occur[red]' that affects all States.

United States Acknowledges the Hawaiian Kingdom's Continued Existence

In 1906, the United States implemented a policy of denationalization through Americanization in the schools throughout the Hawaiian Islands, and within three generations, the national consciousness of the Hawaiian Kingdom was obliterated.[41] Notwithstanding the devastating effects that erased the Hawaiian Kingdom in the minds of its nationals, the Hawaiian government, in 1997, was restored in situ by an *acting* Council of Regency under Hawaiian constitutional law and the doctrine of necessity.[42] Under Hawaiian law, the *acting* Council of Regency serves in the absence of the Executive Monarch. The last Executive Monarch was Queen Lili'uokalani who died on 11 November 1917.

There was no legal requirement for the *acting* Council of Regency, as the government of the Hawaiian Kingdom, being the successor in office to Queen Lili'uokalani under Hawaiian constitutional law, to obtain recognition from the United States or any other State. The United States' recognition of the Hawaiian Kingdom as an independent State in the nineteenth century, was also the recognition of its government—a Constitutional Monarchy. Successors in office to King Kamehameha III, who at the time of the international recognition was King of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen Lili'uokalani in 1891, and the *acting* Council of Regency in 1997. The legal doctrines of recognition of new governments only arise "with extra-legal changes in government" of an existing

[40] David Keanu Sai, "Hawai'i's Sovereignty and Survival in the Age of Empire," in H.E. Chehabi and David Motadel (eds.) *Unconquered States: Non-European Powers in the Imperial Age* (2024) (online at https://www2.hawaii.edu/~anu/pdf/Hawaii_Sovereignty_and_Survival_(Sai).pdf).
[41] David Keanu Sai, "United States Belligerent Occupation of the Hawaiian Kingdom," in David Keanu Sai's (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 114 (2020) (online at https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf).
[42] David Keanu Sai, The Royal Commission of Inquiry, 18-23; see also Federico Lenzerini, "Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom," 3 *Hawaiian Journal of Law and Politics* 317-333 (2021).

State.[43] Successors to King Kamehameha III were not established through "extra-legal changes," but rather under the constitution and laws of the Hawaiian Kingdom. According to United States foreign relations law, "[w]here a new administration succeeds to power in accordance with a state's constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed."[44]

Before the arbitral tribunal, in *Larsen v. Hawaiian Kingdom*, was formed on 9 June 2000, Mr. Tjaco T. van den Hout, Secretary General of the PCA, spoke with the undersigned, as lead agent for the Hawaiian Kingdom, over the telephone and recommended that the Hawaiian government provide an invitation to the United States to join in the arbitration. The Hawaiian government agreed with the recommendation, which resulted in a conference call meeting on 3 March 2000 in Washington, D.C., between the undersigned, Larsen's counsel, Mrs. Ninia Parks, and John Crook from the U.S. Department of State.

The meeting was reduced to a formal note and mailed to Mr. Crook in his capacity as legal adviser to the State Department, and a copy of the note was submitted by the Council of Regency to the PCA Secretariat for record that the United States was invited to join in the arbitral proceedings.[45] The note was signed off by the undersigned as "Acting Minister of Interior and Agent for the Hawaiian Kingdom." Under international law, this note served as an offering instrument that contained the following text:

> [T]he reason for our visit was the offer by the […] Hawaiian Kingdom, by consent of the Claimant [Larsen], by his attorney, Ms. Ninia Parks, for the United States Government to join in the arbitral proceedings presently instituted under the auspices of the Permanent Court of Arbitration at The Hague, Netherlands. […] [T]he State Department should review the package in detail and can get back to the Acting Council of Regency by phone for continued dialogue. I gave you our office's phone number […], of which you acknowledged. I assured you that we did not need an immediate answer, but out of international courtesy the offer is still open, notwithstanding arbitral proceedings already in motion. I also advised you that Secretary-General van den Hout of the Permanent Court of Arbitration was aware of our travel to Washington, D.C. and the offer to join in the arbitration. As I stated in our conversation he requested that the dialogue be reduced to writing and filed with the International Bureau of the Permanent Court of Arbitration for the record, and you acknowledged.

Thereafter, the PCA's Deputy Secretary General, Phyllis Hamilton, informed the undersigned that the United States, through its embassy in The Hague, notified the PCA, by note verbale, that the

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[43] M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815-1995* 26 (1997).
[44] *Restatement (Third)*, §203, comment c.
[45] Letter confirming telephone conversation with U.S. State Department relating to arbitral proceedings at the Permanent Court of Arbitration, 3 Mar. 2000, (online at http://hawaiiankingdom.org/pdf/State_Dpt_Ltr_(3.3.2000).pdf).

United States declined the invitation to join the arbitral proceedings. Instead, the United States requested permission from the Hawaiian government to have access to the pleadings and records of the case. The Hawaiian government consented to this request. The PCA, represented by the Deputy Secretary General, served as an intermediary to secure an agreement between the Hawaiian Kingdom and the United States.

According to Wilmanns, "[l]egally there is no difference between a formal note, a note verbale and a memorandum. They are all communications which become legally operative upon the arrival at the addressee. The legal effects depend on the substance of the note, which may relate to any field of international relations."[46] And as "a rule, the recipient of a note answers in the same form. However, an acknowledgment of receipt or provisional answer can always be given in the shape of a note verbale, even if the initial note was of a formal nature."[47]

The offer by the Secretary General to have the Hawaiian government provide the United States an invitation to join in the arbitral proceedings, and the Hawaiian government's acceptance of this offer, also constitutes an international agreement by an exchange of notes between the PCA and the Hawaiian Kingdom. According to Johst Wilmanns, "the growth of international organizations and the recognition of their legal personality has resulted in agreements being concluded by an exchange of notes between such organizations and states."[48]

The United States' request to have access to the arbitral records, in lieu of the invitation to join in the arbitration, and the Hawaiian government's consent to that request constitutes an international agreement by exchange to notes. According to Assche, "the exchange of two notes verbales constituting an agreement satisfies the definition of the term 'treaty' as provided by Article 2(1)(a) of the Vienna Convention."[49] Altogether, the exchange of notes verbales on this subject matter, between the Hawaiian Kingdom, the PCA, and the United States of America, constitutes a multilateral agreement of the de facto recognition of the restored Hawaiian government.

The Hawaiian Kingdom's Invocation of Responsibility by an Injured State

On 11 October 2021, the Hawaiian Foreign Ministry notified the permanent missions of the United Nations General Assembly, by note verbale, of the Hawaiian Kingdom's invocation of responsibility by an injured State. The note verbale stated:

> The Foreign Ministry of the Hawaiian Kingdom presents its compliments to all the Diplomatic Missions accredited to the United Nations in New York City and has the honor

[46] Johst Wilmanns, "Note," 9 *Encyclopedia of Public International Law* 287 (1986).
[47] *Id*.
[48] J.L. Weinstein, "Exchange of Notes," 20 *British Yearbook of International Law* 205, 207 (1952).
[49] Cendric van Assche, "1969 Vienna Convention," *The Vienna Conventions on the Law of Treaties, A Commentary*, Vol. I, Corten & Klein, eds., vol. 1 261 (2011).

to inform the latter that the Government of the Hawaiian Kingdom notifies all Member States of the United Nations that they have and continue to commit internationally wrongful acts against the Hawaiian Kingdom by continuing to recognize as lawful the United States of America's presence in the Hawaiian Islands, and not as a belligerent State that has not complied with international humanitarian law since 16 January 1893 when it unlawfully committed acts of war in the invasion and subsequent overthrow of the Government of the Hawaiian Kingdom. In addition to violating international humanitarian law, the Member States of Austria, Belgium, Denmark, France, Germany, Hungary, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Russia, Spain, Switzerland, Sweden, and the United States of America are in violation of their treaties with the Hawaiian Kingdom. The Government of the Hawaiian Kingdom calls upon the United States of America to immediately comply with international humanitarian law in its prolonged occupation of the Hawaiian Kingdom since 17 January 1893.

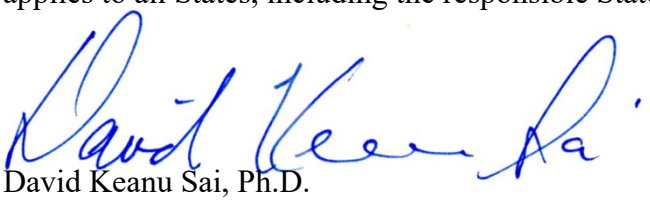
This Note Verbale serves as a notice of claim by an injured State, pursuant to Article 43 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (2001), invoking the responsibility of all Member States of the United Nations who are responsible for the internationally wrongful act of recognizing the United States presence in the Hawaiian Kingdom as lawful to cease that act pursuant Article 30(a), and to offer appropriate assurances and guarantees of non-repetition pursuant to Article 30(b). The form of reparation under Article 31 shall take place in accordance with the provisions of Part Two—Content of the International Responsibility of a State(s).

The Hawaiian Foreign Ministry wishes to point out that the Contracting States to the 1907 Hague Convention for the Pacific Settlement of International Disputes, who are also member States of the United Nations, with the exception of Palestine and Kosovo, were aware of the Larsen v. Hawaiian Kingdom arbitral proceedings instituted on 8 November 1999, PCA Case no. 1999-01, whereby the Hawaiian Kingdom was acknowledged as a non-Contracting State to the 1907 Convention pursuant to Article 47, and the Council of Regency as its restored government. At the center of the dispute was the unlawful imposition of American municipal laws in violation of international humanitarian law.

As regards the factual circumstances of the United States of America's invasion of the Hawaiian Kingdom, an internationally recognized State since the nineteenth century, the unlawful overthrow of the Government of the Hawaiian Kingdom, and the prolonged belligerent occupation of the Hawaiian Kingdom since 17 January 1893, the Hawaiian Foreign Ministry directs the attention of the Diplomatic Missions to the Royal Commission of Inquiry's publication—Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom (2020). The ebook can be downloaded online at https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf. Authors include H.E. Dr. David Keanu Sai, Ph.D., Hawaiian Minister of Foreign Affairs ad interim, Professor Matthew Craven, University of London, SOAS, Professor William Schabas, Middlesex University London, and Professor Federico Lenzerini, University of

Sienna, Italy. Reports of the Royal Commission of Inquiry and treaties can be accessed online at https://hawaiiankingdom.org/royal-commission.shtml.

In its judgment on preliminary objections raised by Armenia in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, the Court noted that, according to the customary rules on State responsibility as reflected in Article 42 of the ASR, "when a State seeks to invoke the responsibility of another State, it must show that the responsible State owes the obligation allegedly breached to the claimant State."[50] According to the International Law Commission, in its comments of the ASR, "[u]nder article 41, paragraph 2, no State shall recognize the situation created by the serious breach as lawful. This obligation applies to all States, including the responsible State."[51]



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

[50] Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia), Judgment on preliminary objections raised by Armenia, 12 November 2024, para. 52.
[51] International Law Commission, Draft articles of Responsibility of States for Internationally Wrongful Acts, with commentaries 115 (2001).

Enclosure “4”

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4 September 2025

SUPPLEMENTAL MEMORANDUM ON THE COUNTERMEASURES BY THE HAWAIIAN KINGDOM UNDER THE ARTICLES OF STATE RESPONSIBILITY FOR INTERNATIONALLY WRONGFUL ACTS AND REPARATIONS

This memorandum supplements the Ministry of Foreign Affairs' Memorandum on the Articles of State Responsibility for Internationally Wrongful Acts and the Unlawful American Occupation of the Hawaiian Kingdom, dated 18 August 2025, where it discusses the unlawful American occupation of the Hawaiian Kingdom and its implications under international law, particularly focusing on the Articles of State Responsibility for Internationally Wrongful Acts ("ASR"). This supplemental memorandum will address countermeasures and reparations under the ASR.

Article 49(1) of the ASR authorizes an injured State to take countermeasures "against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations."[1] These countermeasures "are limited to the non-performance for the time being of international obligation of the State taking measures towards the responsible State" (Art. 49(2)).[2] And that these countermeasures, "as far as possible, be taken in such a way as to permit the resumption of the obligations in question" (Art. 49(3)).[3] The function of Article 49 is to "induce a wrong doing State to comply with obligations of cessation and reparation towards the State taking the countermeasures."[4]

Article 31(1) of the ASR states that the "responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act,"[5] and that "[i]njury includes any damage, whether material or moral, caused by the internationally wrongful act of a State" (Art.

[1] International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 129 (2001).
[2] *Id*.
[3] *Id*.
[4] *Id*., 70.
[5] *Id*., 91.

31(2)).[6] The statement in Article 31 of 'full reparation' is in line with *Factory at Chorzów* case, where the Permanent Court of International Justice stated the responsible State must set out to "wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."[7] "The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this part" of the ASR (Art. 32).[8] According to the International Law Commission, "Article 32 is modelled on article 27 of the 1969 Vienna Convention, which provides that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[9]

Rwandan Government Aware of United States Internationally Wrongful Act

After the last day of the *Larsen* hearings were held at the Permanent Court of Arbitration ("PCA") on 11 December 2000,[10] the Council was called to an urgent meeting by His Excellency Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium. Ambassador Bihozagara had been attending a hearing before the International Court of Justice on 8 December 2000, (Democratic Republic of the Congo v. Belgium),[11] where he became aware of the Hawaiian arbitration case taking place in the hearing room of the PCA, and the internationally wrongful act committed by the United States of its "unlawful imposition of American municipal laws […] within the territorial jurisdiction of the Hawaiian Kingdom."[12] The imposition of American laws and administrative measures was at the core of the arbitral dispute. On its website, the case description by the PCA stated:

> Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.[13]

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[6] *Id*.
[7] *Id.*, 91.
[8] *Id*., 94.
[9] *Id*.
[10] Video of the oral hearings in *Larsen v. Hawaiian Kingdom* (7, 8, 11 Dec. 2000) (online at https://www.youtube.com/watch?v=tmpXy2okJIg&t=10s).
[11] *Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium), Provisional Measures, Order, I.C.J. Rep. 182 (8 Dec. 2000).
[12] *Larsen v. Hawaiian Kingdom*, PCA Case Repository, Case no. 1999-01 (online at https://pca-cpa.org/en/cases/35/).
[13] *Id*.

The principle of the territorial integrity of a State is considered a peremptory norm in international law, which means that no State can violate or derogate from. This extraterritorial application of American municipal laws is not only in violation of *The Lotus* case principle but is also prohibited by the rules of *jus in bello*. The imposition of American laws in Hawai'i as an Occupied State is also the war crime of usurpation of sovereignty during occupation.[14]

The following day, on 12 December, the Council, which included the undersigned as Agent, and two Deputy Agents, Peter Umialiloa Sai, *acting* Minister of Foreign Affairs, and Mrs. Kau'i P. Sai-Dudoit, formerly known as Kau'i P. Goodhue, *acting* Minister of Finance, met with Ambassador Bihozagara in Brussels.[15] In that meeting, the Ambassador explained that since he accessed the pleadings and records of the *Larsen* case on 8 December from the PCA's secretariat, he had been in communication with his government in Kigali. This prompted our meeting where the Ambassador conveyed to the undersigned, as Chairman of the Council and agent in the *Larsen* case, that his government was prepared to bring to the attention of the United Nations General Assembly the prolonged occupation of the Hawaiian Kingdom by the United States and to place our situation on the agenda. The author requested a short break from the meeting to consult with the other members of the Council who were present.

After careful deliberation, the Council of Regency decided that it could not, in good conscience, accept this offer. The Council of Regency felt the timing was premature because Hawai'i's population remained ignorant of Hawai'i's profound legal position due to institutionalized denationalization—*Americanization* by the United States since the early twentieth century. On behalf of the Council, the undersigned graciously thanked the Ambassador for his government's offer but stated that the Council first needed to address over a century of denationalization through *Americanization*. After exchanging salutations, the meeting ended, and the Council returned that afternoon to The Hague. The meeting also constituted recognition of the restored Hawaiian government.

Countermeasure of Publication of the Facts against the Offending Belligerent

As a form of countermeasure allowable under international humanitarian law, the Council was guided by section 495—Remedies of Injured Belligerent, United States Army FM-27-10, which states, "[i]n the event of violation of the law of war, the injured party may legally resort to remedial action of the following types: a. [p]ublication of the facts, with a view to influencing public opinion

[14] William Schabas, "Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893," 3 *Hawaiian Journal of Law and Politics* 334, 340 (2021) (online at https://hawaiiankingdom.org/pdf/3HawJLPol334_(Schabas).pdf).
[15] David Keanu Sai, "A Slippery Path towards Hawaiian Indigeneity," 10 *Journal of Law and Social Challenges* 69, 130-131 (2008).

against the offending belligerent."[16] After the *Larsen* case came to an end in 2001, the policy of the Council would be threefold: first, exposure of the prolonged occupation; second, ensure that the United States complies with international humanitarian law; and, third, prepare for an effective transition to a *de jure* government when the occupation ends by a treaty of peace.

In 2001, began the publication of facts through research at the University of Hawai'i at Mānoa, which led to a plethora of master's theses, doctoral dissertations, peer review articles, and publications.[17] The 'publication of the facts' regarding the American occupation culminated in

[16] "United States Basic Field Manual F.M. 27-10 (Rules of Land Warfare), though not a source of law like a statute, prerogative order or decision of a court, is a very authoritative publication." *Trial of Sergeant-Major Shigeru Ohashi and Six Others*, 5 Law Reports of Trials of Law Criminals (United Nations War Crime Commission) 27 (1949).

[17] Works on this topic include: David Bederman and Kurt Hilbert, "Arbitration UNCITRAL Rules-justiciability and indispensable third parties-legal status of Hawaii," 95 *American Journal of International Law* 927 (2001); 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 Journal of International Law* 655 (2002); Anne Keala Kelly, "A kingdom inside: the future of Hawaiian political identity," 35 *Futures* 999 (2003); David Keanu Sai, American Occupation of the Hawaiian State: A Century Gone Unchecked, 1 *Hawaiian Journal of Law and Politics* 46 (Summer 2004); Kanalu Young, "An Interdisciplinary Study of the term 'Hawaiian,'" 1 *Hawaiian Journal of Law and Politics* 23 (Summer 2004); Matthew Craven, "Hawai'i, History, and International Law," 1 *Hawaiian Journal of Law and Politics* 6 (Summer 2004); Jonathan Osorio, "Ku'e and Ku'oko'a: History, Law, And Other Faiths, in Sally Engle Merry and Donald Brenneis (eds.) *Law and Empire in the Pacific, Fiji, and Hawai'i* 213 (2003); Kanalu Young, "Kuleana: Toward a Historiography of Hawaiian National Consciousness, 1780-2001," 2 *Hawaiian Journal of Law and Politics* 1 (Summer 2006); Kamana Beamer, "Mapping the Hawaiian Kingdom: A Colonial Venture?," 2 *Hawaiian Journal of Law and Politics* 34 (Summer 2006); Umi Perkins, "Teaching Land and Sovereignty-A Revised View," 2 *Hawaiian Journal of Law and Politics* 97 (Summer 2006); W.D. Alexander, "A Brief History of Land Titles in the Hawaiian Kingdom," 2 *Hawaiian Journal of Law and Politics* 175 (2006); B. Kamanamaikalani Beamer, "Na wai ka mana? 'Ōiwi Agency and European Imperialism in the Hawaiian Kingdom" (Ph.D. dissertation, University of Hawai'i at Mānoa, 2008); David Keanu Sai, "The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State" (Ph.D. dissertation, University of Hawai'i at Mānoa, 2008); Donovan C. Preza, "The Emperical Writes Back: Re-examining Hawaiian Dispossession resulting from the Māhele of 1848" (Master's thesis, University of Hawai'i at Mānoa, 2010); Ronald Williams Jr., "To Raise a Voice in Praise: The Revivalist Mission of John Henry Wise, 1889-1896," 46 *The Hawaiian Journal of History* 1 (2012); Kalani Makekau-Whittaker, "Lāhui Na'auao: Contemporary Implications of Kanaka Maoli Agency and Educational Advocacy during the Kingdom Period" (Ph.D. dissertation, University of Hawai'i at Mānoa, 2013); Ronald C. Williams Jr., "Claiming Christianity: The Struggle Over God and Nation in Hawai'i, 1880-1900" (Ph.D. dissertation, University of Hawai'i at Mānoa, 2013); Lorenz Gonschor, "Ka Hoku Osiania: Promoting the Hawaiian Kingdom as a Model for Political Transformation in Nineteenth-Century Oceania" in Sebastian Jobs and Gesa Mackenthun (eds.) *Agents of Transculturation: Border-Crossers, Mediators, Go-Betweens* (2013); Willy Daniel Kaipo Kauai, "The Color of Nationality: Continuities and Discontinuities of Citizenship in Hawai'i" (Ph.D. dissertation, University of Hawai'i at Mānoa, 2014); Lorenz Rudolf Gonschor, "'A Power in the World': the Hawaiian Kingdom as a Model of Hybrid Statecraft in Oceania and a Progenitor of Pan-Oceanism" (Ph.D. dissertation, University of Hawai'i at Mānoa, 2016); Dennis Riches, "This is not America: The Acting Government of the Hawaiian Kingdom Goes Global with Legal Challenges to End Occupation," in *Center for Glocal Studies Seijo University* (2016); Alessandro Pulvirenti, "The Overthrow of the Hawaiian Kingdom: Did International Law Permit the Threat of the Use of Force in 1893?," 26 *Swiss Review of International Law and European Law* 581 (2016); David Keanu Sai, "The Illegal Overthrow of the Hawaiian Kingdom Government," *neaToday* (2018); David Keanu Sai, "The U.S. Occupation of the Hawaiian Kingdom," *neaToday* (2018); David Keanu Sai, "The Impact of the U.S. Occupation on the Hawaiian People," *neaToday* (2018); Thomas A. Woods, M. Puakea Nogelmeier, and David Keanu Sai, "Charting a New Course for the Ship of State: Hawai'i Becomes a Constitutional Monarchy," in Thomas A. Woods (ed.) *Kōkua Aku, Kōkua Mai: Chiefs, Missionaries, and Five Transformations of the Hawaiian Kingdom* (2018); Janetta Susan Corley, "Literacy, Statecraft and Sovereignty: Kamehameha III's Defense of the Hawaiian Kingdom in the 1840s" (Ph.D. dissertation, University of Hawai'i at Mānoa, 2019); David Keanu Sai, *The*

December of 2024, when Oxford University Press ("OUP") published the undersign's chapter "Hawai'i's Sovereignty and Survival in the Age of Empire," in H.E. Chehabi and David Motadel (eds.) *Unconquered States: Non-European Powers in the Imperial Age*.[18] The Hawaiian Kingdom chapter covers: the legal and political history of the Hawaiian Kingdom since the death of Captain James Cook in 1779; the evolution of governance from an absolute monarchy to a constitutional monarchy; the unlawful overthrow of the government by United States troops in 1893; the

Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom (2020); David Keanu Sai, "Setting the Record Straight on Hawaiian Indigeneity," 3 *Hawaiian Journal of Law and Politics* 6 (2021); P. Kalaiwai'a Moore, "American Hegemonic Discourse in Hawai'i: Rhetorical Strategies in Support of American Control of Hawai'i," 3 *Hawaiian Journal of Law and Politics* 73 (2021); Umi Perkins, "Negotiating Native Tenant Rights," 3 *Hawaiian Journal of Law and Politics* 117 (2021); Lorenz Gonschor, "The Subtleties of a Map and a Painting," 3 *Hawaiian Journal of Law and Politics* 141 (2021); R. Keao NeSmith, "Tutu's Hawaiian and the Emergence of a Neo Hawaiian Language," 3 *Hawaiian Journal of Law and Politics* 192 (2021); Sydney Lehua Iaukea, "The Queen and I: A Story of Dispossession and Reconnection in Hawai'i, 3 *Hawaiian Journal of Law and Politics* 221 (2021); David Keanu Sai, "The Royal Commission of Inquiry," 3 *Hawaiian Journal of Law and Politics* 258 (2021); Federico Lenzerini, "Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom," 3 *Hawaiian Journal of Law and Politics* 317 (2021); William Schabas, "Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom," 3 *Hawaiian Journal of Law and Politics* 334 (2021); Anita Budziszewska, "Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom," review of *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, by David Keanu Sai (ed.), 8(2) *Polish Journal of Political Science* (2022); Kau'i Sai-Dudoit and Blaine Namahana Tolentino, "Backstory Aloha 'Āina: From the Historical Record," 4 *Hawaiian Journal of Law and Politics* 5 (2022); Larson Ng, "Reaffirming Aboriginal Hawaiian Agency towards English Language Medium Schooling in the Hawaiian Kingdom," 4 *Hawaiian Journal of Law and Politics* 28 (2022); Lorenz Gonschor, "Reconnecting Polynesian Kingdoms during the Age of Empire: Kalākaua, Pomare V and the Plan to Create a Tahitian Royal Order," 4 *Hawaiian Journal of Law and Politics* 47 (2022); David Keanu Sai, "Synergy through Convergence: The Hawaiian State and Congregationalism," 5 *Hawaiian Journal of Law and Politics* 57 (2023); P. Kalawai'a Moore, "Native Hawaiian Indigenous Discourse: Contained Resistance to US Hegemony Rejection of the Hawaiian Kingdom Nation-State," 4 *Hawaiian Journal of Law and Politics* 76 (2022); David Keanu Sai, "Backstory—Larsen v. Hawaiian Kingdom at the Permanent Court of Arbitration (1999-2001)," 4 *Hawaiian Journal of Law and Politics* 133 (2022); J. Susan Corely, *Leveraging Sovereignty: Kauikeaouli's Global Strategy for the Hawaiian Nation, 1825-1854* (2022); J. Susan Corely, "Liholiho's Kaua'i Coup," 5 *Hawaiian Journal of Law and Politics* 8 (2023); Nalani Balutski, "'He Kaula Uila': Hawaiian Educational Policy in the 19th Century 'Ke A'o Palapala ma Nā Aloali'i a me Nā Kua'āina,'" 5 *Hawaiian Journal of Law and Politics* 26 (2023); Ronald Williams, "Apartheid Hawai'i: The California Colony at Wahiawa," 5 *Hawaiian Journal of Law and Politics* 82 (2023); Larsen Ng, "The Decline of Hawaiian Language Common Schools in the Hawaiian Kingdom from 1864 to 1893," 5 *Hawaiian Journal of Law and Politics* 101 (2023); Kalawai'a Moore, "Spectres of State: Illusory Reasoning and Misread of History and Politics in Opposition to the Hawaiian Kingdom," 5 *Hawaiian Journal of Law and Politics* 120 (2023); Brandi Jean Nalani Balutski, "The Educated Hawaiian State: 'Preserve the Hawaiian Kingdom Independent and Prosperous'" (Ph.D. dissertation, University of Hawai'i at Mānoa, 2024); Federico Lenzerini, "Military Occupation, Sovereignty, and the *ex injuria jus non oritur* Principle. Complying with the Supreme Imperative of Suppressing 'Acts of Aggression or Other Breaches of the Peace' à la carte?" 6(2) *International Review of Contemporary Law* 58 (2024); David Keanu Sai, "All States have a Responsibility to Protect their Population from War Crimes—Usurpation of Sovereignty During Military Occupation of the Hawaiian Islands," 6(2) *International Review of Contemporary Law* 72 (2024); Niklaus Schweizer, "The USS Boston and Hawai'i: A Bluejacket's Eyewitness Report," 6 *Hawaiian Journal of Law and Politics* 5 (2024); David Keanu Sai, "The Sweeping Effect of Hawaiian Sovereignty and the Necessity of Military Government to Curb the Chaos," 6 *Hawaiian Journal of Law and Politics* 23 (2024); Brandi Jean Nalani Balutski, "A'o Palapala to Ho'ona'auao: The Foundations of the Hawaiian National Educational System," 6 *Hawaiian Journal of Law and Politics* 55 (2024).

[18] David Keanu Sai, "Hawai'i's Sovereignty and Survival in the Age of Empire," in H.E. Chehabi and David Motadel (eds.) *Unconquered States: Non-European Powers in the Imperial Age* (2024).

prolonged American occupation since 1893; the restoration of the government of the Hawaiian Kingdom, by a Council of Regency, in 1997; and the recognition of the continued existence of the Hawaiian Kingdom as a State and the Council of Regency as its provisional government in 1999 by the PCA.

In all of its publications, OUP states, "Oxford University Press is a department of the University of Oxford. It furthers the University's objective of excellence in research, scholarship, and education by publishing worldwide." Reviewers of *Unconquered States* wrote:

> "This is an ingenious collection, a book on international history in the nineteenth and twentieth centuries that really does, for once, 'fill a gap.' By countering our simple assumption that the West's imperial and colonial drives swallowed up all of Africa and Asia in the post-1850 period, Chehabi and Motadel's fine collection of case studies of nations that managed to stay free—from Abyssinia to Siam, Japan to Persia—gives us a more rounded and complex view of the international Great-Power scene in those decades. This is really fine revisionist history."
> PAUL KENNEDY, Yale University
>
> "This is an excellent collection of scholars writing on an important set of states, which deserve to be considered together."
> KENNETH POMERANZ, University of Chicago
>
> "Carefully curated and with an excellent introduction that provides an analytical frame, this book offers a global history of 'unconquered' countries in the imperial age that is original in its perspective and composition."
> SEBASTIAN CONRAD, Free University of Berlin
>
> "The book offers an insightful comparative analysis of political forms and relationships in non-European countries from the eighteenth to the early twentieth centuries. The 'non-conquered states' of Asia and Africa are shown as sometimes resisting but often accommodating in innovative ways European political forms and military and diplomatic techniques. The particular appeal of the essays lies in their effort to bring to the surface and critically assess the indigenous histories and struggles that enabled these political formations, each in their own way, to respond to the challenges of modernization. This is global history at its kaleidoscopic best."
> MARTTI KOSKENNIEMI, University of Helsinki

Notwithstanding the prolonged American occupation, OUP has made it official that the American occupation is now the longest in modern history. It was previously thought that Israeli occupation of the West Bank and Eastern Jerusalem, that began in 1967, was the longest in modern history.

Hawaiian Kingdom Invokes Responsibility of the United States by Note Verbale

On 11 October 2021, the Hawaiian Kingdom invoked the responsibility of the United States, by a note verbale, in accordance with Article 41(a) of the ASR. The note verbale was emailed to the Permanent Missions to the United Nations in New York City on the same day at 11:44pm, Hawai'i time.[19] The note verbale stated:

> The Foreign Ministry of the Hawaiian Kingdom presents its compliments to all the Diplomatic Missions accredited to the United Nations in New York City and has the honor to inform the latter that the Government of the Hawaiian Kingdom notifies all Member States of the United Nations that they have and continue to commit internationally wrongful acts against the Hawaiian Kingdom by continuing to recognize as lawful the United States of America's presence in the Hawaiian Islands, and not as a belligerent State that has not complied with international humanitarian law since 16 January 1893 when it unlawfully committed acts of war in the invasion and subsequent overthrow of the Government of the Hawaiian Kingdom. In addition to violating international humanitarian law, the Member States of Austria, Belgium, Denmark, France, Germany, Hungary, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Russia, Spain, Switzerland, Sweden, and the United States of America are in violation of their treaties with the Hawaiian Kingdom. The Government of the Hawaiian Kingdom calls upon the United States of America to immediately comply with international humanitarian law in its prolonged occupation of the Hawaiian Kingdom since 17 January 1893.
>
> This Note Verbale serves as a notice of claim by an injured State, pursuant to Article 43 of the International Law Commission's Articles on *Responsibility of States for Internationally Wrongful Acts* (2001), invoking the responsibility of all Member States of the United Nations who are responsible for the internationally wrongful act of recognizing the United States presence in the Hawaiian Kingdom as lawful to cease that act pursuant Article 30(a), and to offer appropriate assurances and guarantees of non-repetition pursuant to Article 30(b). The form of reparation under Article 31 shall take place in accordance with the provisions of Part Two—*Content of the International Responsibility of a State(s)*.
>
> The Hawaiian Foreign Ministry wishes to point out that the Contracting States to the 1907 *Hague Convention for the Pacific Settlement of International Disputes*, who are also member States of the United Nations, with the exception of Palestine and Kosovo, were aware of the *Larsen v. Hawaiian Kingdom* arbitral proceedings instituted on 8 November 1999, PCA Case no. 1999-01, whereby the Hawaiian Kingdom was acknowledged as a non-Contracting State to the 1907 Convention pursuant to Article 47, and the Council of Regency as its restored government. At the center of the dispute was the unlawful imposition of American municipal laws in violation of international humanitarian law.

[19] Hawaiian Kingdom Foreign Ministry, Note Verbale no. 2021-1-HI (online at https://hawaiiankingdom.org/pdf/Note_Verbale_No._2021-1-HI_from%20_Hawn_Ministry_of_Foreign_Affairs_to_UN_Members.pdf).

> As regards the factual circumstances of the United States of America's invasion of the Hawaiian Kingdom, an internationally recognized State since the nineteenth century, the unlawful overthrow of the Government of the Hawaiian Kingdom, and the prolonged belligerent occupation of the Hawaiian Kingdom since 17 January 1893, the Hawaiian Foreign Ministry directs the attention of the Diplomatic Missions to the Royal Commission of Inquiry's publication—*Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020). The ebook can be downloaded online at https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf. Authors include H.E. Dr. David Keanu Sai, Ph.D., Hawaiian Minister of Foreign Affairs *ad interim*, Professor Matthew Craven, University of London, SOAS, Professor William Schabas, Middlesex University London, and Professor Federico Lenzerini, University of Sienna, Italy. Reports of the Royal Commission of Inquiry and treaties can be accessed online at https://hawaiiankingdom.org/royal-commission.shtml.

By this invocation, the Hawaiian Kingdom took "measures of a relatively formal character [by] the raising or presentation of a claim against another State."[20] The claim of the Hawaiian Kingdom is for the United States to cease its internationally wrongful act of imposing its municipal laws and administrative measures within the territory of the Hawaiian Kingdom and for the United States to 'make full reparation for the injury caused by the internationally wrongful act.'

Countermeasure of War Crimes Investigations and Reports

The United States' belligerent occupation rests squarely within the regime of the law of occupation in international humanitarian law. The application of the regime of occupation law "does not depend on a decision taken by an international authority,"[21] and "the existence of an armed conflict is an objective test and not a national 'decision.'"[22] According to Article 42 of the 1907 Hague Regulations, a State's territory is considered occupied when it is "actually placed under the authority of the hostile army."

Article 42 has three requisite elements: first, the presence of a foreign State's forces; second, the exercise of authority over the occupied territories by the foreign State or its proxy; and third, the non-consent by the occupied State. U.S. President Grover Cleveland's 1893 manifesto to the Congress, which is Annexure 1 in the *Larsen v. Hawaiian Kingdom* Award,[23] and the continued U.S. presence today, without a treaty of peace, firmly meets all three elements of Article 42. Hawai'i's people, however, have become denationalized through *Americanization* taught in the public and private schools since 1906, and the history of the Hawaiian Kingdom has been, for all intents and purposes, obliterated within three generations since the United States' takeover.

[20] International Law Commission, 117.
[21] C. Ryngaert and R. Fransen, "EU extraterritorial obligations with respect to trade with occupied territories: Reflections after the case of Front Polisario before EU courts," 2(1) *Europe and the World: A law Review* 8 (2018).
[22] Stuart Casey-Maslen, ed., *The War Report 2012* ix (2013).
[23] Larsen Award, 598-610.

At the United Nations World Summit in 2005, the *Responsibility to Protect* was unanimously adopted.[24] The principle of the *Responsibility to Protect* has three pillars: (1) every State has the Responsibility to Protect its populations from four mass atrocity crimes—genocide, war crimes, crimes against humanity and ethnic cleansing; (2) the wider international community has the responsibility to encourage and assist individual States in meeting that responsibility; and (3) if a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter. In 2009, the General Assembly reaffirmed the three pillars of a State's responsibility to protect their populations from war crimes and crimes against humanity.[25] And in 2021, the General Assembly passed a resolution on the "responsibility to protect and the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity."[26] The third pillar, however, which may call into action State intervention, can become controversial.[27]

Rule 158 of the International Committee of the Red Cross Study on Customary International Humanitarian Law specifies that "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects."[28] This "rule that States must investigate war crimes and prosecute the suspects is set forth in numerous military manuals, with respect to grave breaches, but also more broadly with respect to war crimes in general."[29]

Determined to hold to account individuals who have committed war crimes and human rights violations throughout the Hawaiian Islands, being the territory of the Hawaiian Kingdom, the Council of Regency, by proclamation on 17 April 2019,[30] established a Royal Commission of Inquiry ("RCI") in similar fashion to the United States proposal of establishing a Commission of Inquiry after the First World War "to consider generally the relative culpability of the authors of the war and also the question of their culpability as to the violations of the laws and customs of war committed during its course." The undersigned serves as Head of the RCI and Professor Federico Lenzerini from the University of Siena, Italy, as its Deputy Head.

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[24] 2005 World Summit Outcome A/60/L.1
[25] G.A. Resolution 63/308 The responsibility to protect, A/63/308.
[26] G.A. Resolution 75/277 The responsibility to protect and the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity, A/RES/75/277.
[27] Marjorie Cohn, "The Responsibility to Protect – the Cases of Libya and Ivory Coast," *Truthout* (16 May 2011) (online at https://truthout.org/articles/the-responsibility-to-protect-the-cases-of-libya-and-ivory-coast/).
[28] Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), *Customary International Humanitarian Law*, vol. I: Rules, 607 (2009).
[29] *Id*., 608.
[30] Proclamation: Establishment of the Royal Commission of Inquiry (17 April 2019) (online at https://hawaiiankingdom.org/pdf/Proc_Royal_Commission_of_Inquiry.pdf).

At the request of the RCI, Professor William Schabas, from Middlesex University London, authored a legal opinion identifying certain war crimes, under customary international law, being committed in the Hawaiian Kingdom. In his opening, Professor Schabas wrote:

> This legal opinion is made at the request of the head of the Hawaiian Royal Commission of Inquiry, Dr. David Keanu Sai, in his letter of 28 May 2019, requesting of me "a legal opinion addressing the applicable international law, main facts and their related assessment, allegations of war crimes, and defining the material elements of the war crimes in order to identify mens rea and actus reus". It is premised on the assumption that the Hawaiian Kingdom was occupied by the United States in 1893 and that it remained so since that time. Reference has been made to the expert report produced by Prof. Matthew Craven dealing with the legal status of Hawai'i and the view that it has been and remains in a situation of belligerent occupation resulting in application of the relevant rules of international law, particularly those set out in the Hague Conventions of 1899 and 1907 and the fourth Geneva Convention of 1949. This legal opinion is confined to the definitions and application of international criminal law to a situation of occupation.[31]

Of note, Professor Schabas identified the war crime of usurpation of sovereignty during occupation, which is the unlawful imposition of American municipal laws and administrative measures over Hawaiian territory.[32] This particular war crime was the basis of the dispute between Larsen and the Hawaiian Kingdom at the PCA where Larsen alleged that the Council of Regency was liable 'for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom.'

Hawaiian Kingdom v. Biden et al.

Intending to compel the United States and the State of Hawai'i to begin compliance with the law of occupation, the Council Regency initiated a lawsuit on 11 August 2021 in the U.S. District Court for the District of Hawai'i—*Hawaiian Kingdom v. Biden et al.*, civil no. 1:21:cv-00243-LEK-RT.[33] United States and State of Hawai'i officials were sued in their official capacities as State actors because the war crime of usurpation of sovereignty during military occupation involves State action or policy or the action or policies of an occupying State's proxies, and are not the private actions of individuals. The complaint sought to:

> Enjoin Defendants from implementing or enforcing all laws of the Defendants UNITED STATES OF AMERICA and the STATE OF HAWAI'I and its Counties, to include the United States constitution, State of Hawai'i constitution, Federal and State of Hawai'i

[31] Schabas, 335.
[32] *Id*., 340, 358.
[33] *Hawaiian Kingdom v. Biden et al.,* Amended Complaint for Declaratory and Injunctive Relief (11 August 2021) (online at https://hawaiiankingdom.org/pdf/Amended_Complaint_and_Exhibits_1_&_2%20_(Filed_2021-08-11).pdf).

> statutes, County ordinances, common law, case law, administrative law, and the maintenance of Defendant UNITED STATES OF AMERICA's military installations across the territory of the HAWAIIAN KINGDOM, to include its territorial sea.

However, the Council of Regency was mindful that it could not obtain relief from this court unless it transformed itself into an Article II occupation court because the court is situated in occupied territory and not within the territory of the United States. Likewise, on 30 July 2021, the National Lawyers Guild, the International Association of Democratic Lawyers, and the Water Protectors Legal Collective filed a motion for leave to file an *amicus curiae* brief on behalf of nongovernmental organizations with expertise in international law and human rights law.[34] The request for leave was granted.[35] The movants stated:

> While the issue of Hawaiian sovereignty may be familiar to this Court, this matter is undoubtedly a case of first impression. However, there are exigent circumstances that necessitate this court's assuming jurisdiction as an Article II occupation court.
>
> This court can sit as an Article II court because the United States controls Hawai'i not as a sovereign but as an occupying power and there has been no peace treaty between states to end the occupation.39 Article II courts can extend their jurisdiction to maintain orderly control of an occupied territory. Exercising Article II jurisdiction and granting the requested injunctive relief complies with public international law. In this manner, this Court could apply local law as required of an occupying power by the laws of war.
>
> Article II courts can extend their jurisdiction to maintain orderly control of an occupied territory. For example, the Provisional Court of Louisiana held Article II jurisdiction over the sections of Louisiana under the control of Union forces. The Provisional Court (as provost courts established by military criminal matters in the occupied territory. Concurrently, Union military commanders revived the local parish courts in occupied territory. These parish courts directed their judgments to the Louisiana Supreme Court for appellate review. One problem: the Louisiana Supreme Court sat in Baton Rouge, which the Confederacy still controlled. Judge Peabody, the chief judge of the Provisional Court, remedied this problem by transferring all cases pending before the Louisiana Supreme Court to his tribunal. By extending his jurisdiction Judge Peabody was able to maintain orderly control of an occupied territory. Louisianans could have their cases heard in local courts applying local law without giving up their right to appellate review. This Court could do the same by assuming jurisdiction as an Article II court and allow Hawaiians to have their cases heard by an occupying court applying local law, as required by the laws of war.

[34] Motion for Leave to File *Amicus Curiae* Brief (30 July 2021) (online at https://hawaiiankingdom.org/pdf/[ECF]_45_Motion_for_Leave_to_File_Amicus_(Filed%202021-07-30).pdf).
[35] Order Granting Motion for Leave to File Amended Amicus Brief (30 September 2021) (online at https://hawaiiankingdom.org/pdf/[ECF%2090]_Order_Granting_Motion_for_Leave_to_File_Amicus_Brief_(Filed%202021-09-30).pdf).

> Most importantly, functioning as an Article II court here would not undermine all this Court's past judgments; previous judgments and laws of the United States would remain in effect unless they are at odds with the laws of the occupied Hawaiian Kingdom.

The Court refused to transform itself into an Article II occupation court, thereby, committing the war crime of usurpation of sovereignty during occupation. As such, the Hawaiian Kingdom could not obtain relief from a court that lacked subject matter jurisdiction, and, therefore, withdrew its complaint on 9 December 2022.[36]

According to Professor Schabas, the elements of the war crime of usurpation of sovereignty during occupation are:

1. The perpetrators imposed or applied legislative or administrative measures of the occupying power going beyond those required by what is necessary for military purposes of the occupation.
2. The perpetrators were aware that the measures went beyond what was required for military purposes or the protection of fundamental human rights.
3. Their conduct took place in the context of and was associated with a military occupation.
4. The perpetrators were aware of factual circumstances that established the existence of the military occupation.[37]

With respect to the last two elements of war crimes, Professor Schabas explains:

1. There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non- international;
2. In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non- international;
3. There is only a requirement for the awareness of the factual circumstance that established the existence of an armed conflict that is implicit in the terms "took place in the context of and was associated with."[38]

By the Hawaiian Kingdom's Amended Complaint, the 'perpetrators were aware of the factual circumstances that established the existence of the military occupation.' Thus, their knowledge met the requisite element of *mens rea*.

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[36] Order; Hawaiian Kingdom's Notice of Voluntary Dismissal of Amended Complaint [ECF 55] Consistent with Rule 41(a)(1)(A)(i) (13 December 2022) (online at https://www.hawaiiankingdom.org/pdf/%5bECF_267%5d_HK_Notice_of_VD_(Filed_2022-12-13).pdf).
[37] Schabas, 358.
[38] *Id*., 357.

Royal Commission of Inquiry's Published War Criminal Reports

Beginning mid-November of 2022, the RCI published war criminal reports of senior leadership of the United States and the State of Hawai'i,[39] to wit:

1. War Criminal Report no. 22-0001 *re Usurpation Sovereignty during Military Occupation*—Derek Kawakami & Arryl Kaneshiro (17 November 2022);
2. War Criminal Report no. 22-0002-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Matthew M. Bracken & Mark L. Bradbury (20 November 2022);
3. War Criminal Report no. 22-0003 *re Usurpation Sovereignty during Military Occupation*—Mitchell Roth & Maile David (17 November 2022);
4. War Criminal Report no. 22-0003-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Elizabeth A. Strance, Mark D. Disher & Dakota K. Frenz (20 November 2022);
5. War Criminal Report no. 22-0004 *re Usurpation of Sovereignty during Military Occupation*—Michael Victorino & Alice Lee (17 November 2022);
6. War Criminal Report no. 22-0004-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Moana M. Lutey, Caleb P. Rowe & Iwalani Mountcastle (20 November 2022);
7. War Criminal Report no. 22-0005 *re Usurpation of Sovereignty during Military Occupation*—David Yutake Ige, Ty Nohara, & Isaac W. Choy (18 November 2022);
8. War Criminal Report no. 22-0005-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Holly T. Shikada & Amanda J. Weston (20 November 2022);
9. War Criminal Report no. 22-0006 *re Usurpation of Sovereignty during Military Occupation*—Anders G.O. Nervell (18 November 2022);
10. War Criminal Report no. 22-0006-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Scott I. Batterman (20 November 2022);
11. War Criminal Report no. 22-0007 *re Usurpation of Sovereignty during Military Occupation*—Joseph Robinette Biden Jr., Kamala Harris, Admiral John Aquilino, Charles P. Rettig, Charles E. Schumer & Nancy Pelosi (18 November 2022);
12. Amended War Criminal Report no. 22-0007—Withdrawal of Admiral John Aquilino (23 February 2024);
13. War Criminal Report no. 22-0007-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Brian M. Boynton, Anthony J. Coppolino & Michael J. Gerardi (20 November 2022);
14. War Criminal Report no. 22-0008 *re Usurpation of Sovereignty during Military Occupation & Deprivation of Fair and Regular Trial*—Leslie E. Kobayashi & Rom A. Trader (23 November 2022);

[39] Website of the Royal Commission of Inquiry, *War Criminal Reports* (online at https://hawaiiankingdom.org/royal-commission.shtml).

15. War Criminal Report no. 22-0009 *re Usurpation of Sovereignty during Military Occupation, Deprivation of Fair and Regular Trial & Pillage*—Mark E. Recktenwald, Paula A. Nakayama, Sabrina S. McKenna, Richard W. Pollack, Michale D. Wilson, Todd W. Eddins, Glenn S. Hara, Greg K. Nakamura, Charles Prather, Sofia M. Hirosane, Daryl Y. Dobayashi, James E. Evers, Josiah K. Sewell, Clifford L. Nakea, Bradley R. Tamm & Alana L. Bryant (28 December 2022);
16. War Criminal Report no. 22-0009-1 *re Usurpation of Sovereignty during Military Occupation, Deprivation of Fair and Regular Trial*—Derrick K. Watson, J. Michael Seabright, Leslie E. Kobayashi & Jill A. Otake (28 February 2023);
17. War Criminal Report no. 23-0001 *re Usurpation of Sovereignty during Military Occupation*—Anne E. Lopez, Craig Y. Iha, Ryan K.P. Kanakaʻole, Alyssa-Marie Y. Kau, Peter Kahana Albinio, Jr. & Joseph Kualiʻi Lindsey Camara (29 March 2023);
18. War Criminal Report no. 24-0001 *re Omission for Willful Failure to Establish a Military Government*—Kenneth Hara (5 August 2024);
19. War Criminal Report no. 24-0002 *re Omission for Willful Failure to Establish a Military Government*—Stephen F. Logan (12 August 2024);
20. War Criminal Report no. 24-0003 *re Omission for Willful Failure to Establish a Military Government*—Wesley Kawakami (19 August 2024);
21. War Criminal Report no. 24-0004 *re Omission for Willful Failure to Establish a Military Government*—Fredrick Werner (26 August 2024);
22. War Criminal Report no. 24-0005 *re Omission for Willful Failure to Establish a Military Government*—Bingham Tuisamatatele, Jr. (2 September 2024);
23. War Criminal Report no. 24-0006 *re Omission for Willful Failure to Establish a Military Government*—Joshua Jacobs (9 September 2024);
24. War Criminal Report no. 24-0007 *re Omission for Willful Failure to Establish a Military Government*—Dale Balsis (16 September 2024);
25. War Criminal Report no. 25-0001 *re Omission for Willful Failure to Establish a Military Government*—Tyson Tahara (1 January 2025).

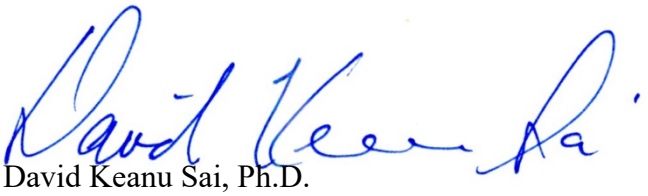
These perpetrators were guilty of the war crime of usurpation of sovereignty during occupation, and all of the named perpetrators have met the requisite element of *mens rea*. In these reports, the RCI has concluded that these perpetrators have met the requisite elements of the war crime and are guilty *dolus directus* of the first degree. "It is generally assumed that an offender acts with *dolus directus* of the first degree if he desires to bring about the result. In this type of intent, the actor's 'will' is directed finally towards the accomplishment of that result."[40] The perpetrators are subject to prosecution as there is no statute of limitation for war crimes.[41]

[40] Mohamed Elewa Badar, The Concept of Mens Rea in International Criminal Law: The Case for a Unified Approach 535 (2013).

[41] United Nations General Assembly Res. 3 (I); United Nations General Assembly Res. 170 (II); United Nations General Assembly Res. 2583 (XXIV); United Nations General Assembly Res. 2712 (XXV); United Nations General Assembly Res. 2840 (XXVI); United Nations General Assembly Res. 3020 (XXVII); United Nations General Assembly Res. 3074 (XXVIII).

This countermeasure of war crimes investigation not only fulfills the *Responsibility to Protect* the Hawaiian Kingdom's population from war crimes but to also induce the United States and its State of Hawai'i to cease the 'unlawful imposition of American municipal laws' and to comply with the law of occupation by having the State of Hawai'i transition into a Military Government in order to administer the laws of the Hawaiian Kingdom as it stood on 17 January 1893.[42] These laws include the provisional laws of the Hawaiian Kingdom proclaimed by the Council of Regency on 10 October 2014 to bring the laws of 1893 up to date.

Under the principle of the *Responsibility to Protect*, 'the wider international community has the responsibility to encourage and assist individual States in meeting that responsibility.' Furthermore, according to Article 41(2) of the ASR, once States have been made aware of a grave breach of a peremptory norm committed by another State they are obliged, *erga omnes*, to immediately not "recognize as lawful a situation created by a serious breach […] nor render aid or assistance in maintaining that situation." The internationally wrongful acts committed by the United States against the Hawaiian Kingdom since 1893 are serious breaches of peremptory norms, which includes a State's territorial integrity and the commission of war crimes with impunity.



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Minister of Foreign Affairs *ad interim*

[42] Council of Regency, "Operational Plan for Transitioning the State of Hawai'i into a Military Government," 5 *Hawaiian Journal of Law and Politics* 152 (2023) (online at https://hawaiiankingdom.org/pdf/HK_Operational_Plan_of_Transition.pdf).