
Application by the Hawaiian Kingdom National Olympic Committee for membership of the IOC

LENZERINI FEDERICO <federico.lenzerini@unisi.it>

Sat, Mar 10, 2018 at 9:53 AM

To: emilia.schiliuk@olympic.org

Cc: "Keanu Sai, Ph.D." <keanu.sai@gmail.com>, Alik Desha <aliked@elitesecurityhawaii.com>, Isaiah Walker <isaiah.walker@byuh.edu>

Dear Ms. Schiliuk,

I hope this email finds you well.

As agreed by telephone two days ago, I am submitting to your attention the Application by the Hawaiian Kingdom National Olympic Committee for membership of the IOC, together with the documents in support of the application. I would be grateful if you might transmit the attached documentation to the body competent to evaluate the application. Needless to say that I remain at your disposal in case you need any further document and/or clarification.

Please also consider that - in case you would deem it appropriate - I would be willing to travel to Lausanne to meet the persons competent to evaluate the request by the Hawaiian Kingdom National Olympic Committee, in order to personally present the application. In case this would be practicable, I would be glad to fix an appointment for a day that would work for the competent officials of the IOC.

Finally, I would really appreciate if you might acknowledge receipt of this email as well as of the attached documentation.

Thank you very much in advance for your kind cooperation!

With my best regards,

Federico Lenzerini

Professor Federico Lenzerini
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Professor of International Law and Human Rights
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3 attachments

 **HKNOC Ltr to IOC.pdf**
116K

 **HKNOC_Application _reviewed.pdf**
3714K

 **Ltr of Support of HKNOC.pdf**
2655K

HAWAIIAN KINGDOM NATIONAL OLYMPIC COMMITTEE

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March 9, 2018

Thomas Bach, President
International Olympic Committee
Lausanne, Switzerland

Dear Mr. Bach:

Please find attached the Hawaiian Kingdom National Olympic Committee's application to be recognized by the International Olympic Committee and a letter of support from the Provisional Government of the Hawaiian Kingdom, H.E. Dr. David Keanu Sai, Ambassador-at-large.

We respectfully request to expedite our recognition in light of surfing qualifications scheduled for 2019.

Sincerely,



Alika Desha

President



Isaiah Walker, Ph.D.

Secretary-General

**Executive Board of the
International Olympic Committee**

Lausanne, Switzerland

**APPLICATION BY THE HAWAIIAN KINGDOM
NATIONAL OLYMPIC COMMITTEE**

26 January 2018

Hawaiian Kingdom National Olympic Committee
c/o Alik Desha—President
73-1270 B Ilau Street
Kailua-Kona, HI 96740
Email: alikad@elitesecurityhawaii.com

APPLICATION BY THE HAWAIIAN KINGDOM NATIONAL OLYMPIC COMMITTEE

1. According to the Olympic Charter, a “national sports organization applying for recognition as an NOC [National Olympic Committee] shall file an application with the IOC [International Olympic Committee] demonstrating that the applicant fulfills all conditions prescribed by the Olympic Charter.”¹ Further, “proof must be adduced that the national federations which are members of the NOC exercise a specific and real on-going sports activity in their country and internationally.”² The term “country” in the Olympic Charter “means and independent State recognized by the international community.”³

2. Foundational to the IOC’s recognition of the Hawaiian Kingdom National Olympic Committee (HKNOCC), is for the Hawaiian Kingdom to be an independent State and recognized by the international community. The starting point of the Hawaiian Kingdom being an internationally recognized independent State is evidenced in the *Larsen v. Hawaiian Kingdom* arbitration case held at the Permanent Court of Arbitration (PCA) from 1999-2001.⁴ The PCA recognized the continued existence of the Hawaiian Kingdom as an independent State, and that the Provisional Government (Council of Regency) represented the Hawaiian State in these proceedings. If the Hawaiian Kingdom did not continue to exist as a State and the Council of Regency as its Provisional Government, the international arbitration would not have taken place. The PCA allowed the arbitration to proceed to judgment because both conditions were met.

The Hawaiian Kingdom as an Internationally Recognized Independent State

3. In the *Larsen* case arbitration award, the international tribunal stated, that “in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.”⁵ As an independent State, the Hawaiian Kingdom entered into extensive treaty relations with a variety of States including establishing diplomatic relations and trade agreements.⁶ According to

¹ Olympic Charter (August 2, 2015), at 65.

² *Ibid.*

³ *Ibid.*, 68.

⁴ *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, at: <https://pca-cpa.org/en/cases/35/>.

⁵ *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports* (2001) 566, at 581 (hereafter “Larsen case”).

⁶ The Hawaiian Kingdom entered into treaties with Austria-Hungary (now separate states), June 18, 1875; Belgium, October 4, 1862; Bremen (succeeded by Germany), March 27, 1854; Denmark, October 19, 1846; France, September 8, 1858; French Tahiti, November 24, 1853; Germany, March 25, 1879; New South Wales (now Australia), March 10, 1874; Hamburg (succeeded by Germany), January 8, 1848; Italy, July 22, 1863; Japan, August 19, 1871, January 28, 1886; Netherlands & Luxembourg, October 16, 1862 (William III was also Grand Duke of Luxembourg); Portugal, May 5, 1882; Russia, June 19, 1869; Samoa, March 20, 1887; Spain, October 9, 1863; Sweden-Norway (now separate states), April 5, 1855; and Switzerland, July 20, 1864; the United Kingdom of Great

Westlake, in his 1894 treatise, the *Family of Nations* comprised, “First, all European States.... Secondly, all American States.... Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State.”⁷ On January 1, 1882, the Hawaiian Kingdom became a member of the Universal Postal Union, which, today, is a specialized agency of the United Nations.

4. By 1893, the Hawaiian Kingdom maintained over ninety Legations and Consulates throughout the world. Hawaiian Legations were established in Washington, D.C., London, Paris, and Tokyo. There were diplomatic representatives accredited to the Hawaiian Court in Honolulu from the United States, Portugal, Great Britain, France and Japan. There were thirty-three Hawaiian Consulates in Great Britain and her colonies; five in France and her colonies; five in Germany; one in Austria; eight in Spain and her colonies; five in Portugal and her colonies; three in Italy; two in the Netherlands; four in Belgium; four in Sweden and Norway; one in Denmark; and two in Japan.⁸ There were foreign consulates in the Hawaiian Kingdom from the United States, Italy, Chile, Germany, Sweden and Norway, Denmark, Peru, Belgium, the Netherlands, Spain, Austria and Hungary, Russia, Great Britain, Mexico, Japan, and China.⁹
5. Despite the fact that the territory of the Hawaiian Kingdom has been militarily occupied by the United States troops since January 16, 1893, and unilaterally annexed by the United States of America in 1898, the Hawaiian Kingdom remains today an independent State recognized by the international community, as—according to international law—the American occupation has never been legal and has never produced the effect of terminating the status of the Hawaiian Kingdom as a “State.”
6. It is indeed indisputable that the Hawaiian Kingdom was an independent State and recognized by the international community before the U.S. invasion, and, in light of the illegality of the American invasion and occupation, it has never lost such a status. The official acts of recognition of the Hawaiian Kingdom as an independent State expressed by numerous States before the U.S. invasion are “incapable of withdrawal,”¹⁰ and in no way can they be considered

Britain and Northern Ireland, March 26, 1846; and the United States of America, December 20, 1849, January 13, 1875, September 11, 1883, December 6, 1884.

⁷ John Westlake, *Chapters on the Principles of International Law* (1894), at 81. In 1893, there were 44 independent and sovereign states in the *Family of Nations*: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chili, Colombia, Costa Rica, Denmark, Ecuador, France, Germany, Great Britain, Greece, Guatemala, Hawaiian Kingdom, Haiti, Honduras, Italy, Liberia, Liechtenstein, Luxembourg, Netherlands, Mexico, Monaco, Montenegro, Nicaragua, Orange Free State (that was later annexed by Great Britain in 1900), Paraguay, Peru, Portugal, Romania, Russia, San Domingo, San Salvador, Serbia, Spain, Sweden-Norway, Switzerland, Turkey, United States of America, Uruguay, and Venezuela. In 1945, there were 45 independent and sovereign states, and today there are 193.

⁸ Thomas Thrum, *Hawaiian Register and Directory for 1893*, in *Hawaiian Almanac and Annual* (1892), at 140-141.

⁹ *Id.*

¹⁰ Lassa Oppenheim, *International Law* (3rd ed. 1920). See also Georg Schwarzenberger, *Title to Territory: Response to a Challenge*, 51(2) *American Journal of International Law* (1957) 308, 316, who states that “recognition estops [precludes] the State which has recognized the title from contesting its validity at any future time.”

as having extinguished the Hawaiian State in accordance with applicable rules of international law. Therefore, it is unquestionable that the Hawaiian Kingdom continues to exist today as an independent State recognized by the international community, despite its territory being illegally occupied by the United States on January 17, 1893.

7. The Hawaiian Kingdom is the same today as it was in the nineteenth century. The *Larsen v. Hawaiian Kingdom* case at the PCA reinforces this continuity and international recognition. On its website, the PCA specifically acknowledged the Hawaiian Kingdom as a “State,” and in its 2011 Annual Report, the PCA also recognized the Hawaiian Kingdom as a “Non-Contracting Power” to the 1907 Hague Convention, I, that established the PCA.¹¹ In the 1907 Hague Convention, I, it provides that the PCA, is open to both “Contracting Powers” that have approved the Convention and “Non-Contracting Powers” that have not approved the Convention. The term “Power” is an international term for an independent State.
8. The Government of the Hawaiian Kingdom, as it stood on January 17, 1893, was restored in 1995, and represented the Hawaiian Kingdom at the PCA.¹² This government was formed as the legal successor of the last recognized government in situ, in an acting capacity, and does not require diplomatic recognition, but rather it operates as the successor to the diplomatic recognition already afforded to the last recognized government before the 1893 invasion. An acting Council of Regency, comprised of four Ministers—Interior, Foreign Affairs, Finance and the Attorney General—was established, in accordance with the Hawaiian constitution.¹³ As noted in 2001, by Bederman and Hilbert, in the *American Journal of International Law*: “the Hawaiian Kingdom continues to exist and [...] the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects.”¹⁴
9. Another contemporary piece of evidence, that the Hawaiian Kingdom continues to exist, is its current membership in the Universal Postal Union (UPU). The only way to cancel the Hawaiian Kingdom’s membership in the UPU, would be for the Hawaiian government, on behalf of the Hawaiian State, to explicitly state that it no longer recognizes the UPU Convention and its Regulations. The illegal overthrow of the Hawaiian Government in 1893 did not, in itself, result in this cancelation. In other words, lacking a government to withdraw from membership, the Hawaiian Kingdom’s membership in the UPU persists, is intact and has not changed to date.

¹¹ PCA Annual Report, Annex 2 (2011), at 51, n. 2.

¹² David Bederman & Kurt Hilbert, “Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii,” 95 *American Journal of International Law* (2001) 927, at 928.

¹³ David Keanu Sai, Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom, 25-51 (4 August 2013), available at http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf (last visited 15 October 2017).

¹⁴ Bederman & Hilbert, at 928.

10. For a detailed analysis of the continuity of the Hawaiian State under international law, we have attached, as Enclosure #1, a brief authored by Dr. David Keanu Sai, Hawaiian Ambassador-at-large, titled “The *Larsen v. Hawaiian Kingdom* Case at the Permanent Court of Arbitration and Why There Is An Ongoing Illegal State of War with the United States of America Since 16 January 1893.” Ambassador Sai also served as Agent for the Hawaiian Government at the Permanent Court of Arbitration in *Larsen v. Hawaiian Kingdom*,¹⁵ and is an *ex officio* member of the HKNOC.

Formation of the Hawaiian Kingdom National Olympic Committee

11. On December 21, 2017, Hawaiian subjects organized themselves into the HKNOC in accordance with the provisions of the Olympic Charter (August 2, 2015). The meeting was held at the University of Hawai‘i at Manoa, Office of Native Hawaiian Student Services. HKNOC Executive Officers are: Mr. Alika Desha, President; Mr. Willy Kauai, Ph.D., Vice-President; Mr. Isaiah Walker, Ph.D., Secretary General; and Ms. Nalani Balutski, Secretary-Treasurer. See HKNOC Constitution and minutes as Enclosure #2.

12. The HKNOC Executive Committee decided, at this stage, to have only one Hawaiian National Federation as a member of HKNOC. This National Federation is for the sport of surfing. Once the HKNOC is recognized by the International Olympic Committee (IOC), we will, in earnest, begin to facilitate the acceptance of other National Federations of sports to be members of HKNOC.

13. On January 18, 2018, the Hawaiian Surfing Federation (HSF) and the Hawaiian Surfing Club (HSC) was formed at a meeting held at the exclusive Volcom surf house on the North Shore of the Island of O‘ahu’s Pipeline Beach. HSF Executive Officers are: Mr. Brian Keaulana, President; Mr. James Kimo Leong, Secretary; Ms. Haunani Kane, Treasurer. See HSF Constitution and minutes as Enclosure #3.

14. HSC Executive Officers are: Mr. Rainos Hayes, President; Mr. Jason Shibata, Secretary; and Ms. Geodee Clark, Treasurer. See HSC Constitution and minutes as Enclosure #4. HSC is a recognized member of HSF, and HSF is a recognized member of HKNOC. HSF will seek membership with the International Surfing Association (ISA).

15. The Hawaiian Surfing Federation (HSF) is officially recognized by the Hawaiian Kingdom National Olympic Committee (HKNOC) for the sport of surfing in the Hawaiian Islands. HSF is responsible for holding the annual Hawaiian Surfing Championships and for selecting the official Hawaiian Kingdom Surf Team to compete internationally at the ISA Championships,

¹⁵ Larsen Case, at 566, n. 1.

Pacific and Olympic Games.

16. Pending a final decision on the complete process for eligibility for Olympic participation by the Executive Board of the IOC, HSF understands, in principle, that up to 18 of the 40 places at the Olympics reserved for WSL Championship Tour surfers (10 men and 8 women), with the remaining 22 places determined at the 2019 and 2020 ISA World Surfing Games, the 2019 Pan American Games in Lima, and 1 slot (each for men and women) for the host nation of Japan.
17. Prior to the formation of the HKNOC, HSF, and the Hawaiian Surfing Club (HSC), Hawaiian surfers came under the Hawaiian Surfing Association (HSA) that fed their top surfers into the annual USA Surfing Championship. These Hawaiian surfers also competed at the ISA Championships, Pan-American and Olympic Games. As the Hawaiian Kingdom is not in the Americas, but rather in the Pacific Ocean, Hawaiian surfers will be competing in the Pacific Games and not the Pan-American Games.
18. Prior to the formation of HSF, HSA was the recognized governing body by the ISA in Hawai‘i for American surfing competition. After the formation of the HSF, at least one HSA board member, Vice President James Kimo Leong, as well as HSA coaches Rainos Hayes and Jason Shibata, joined HSF. Hawai‘i’s top athletes also joined HSF through their membership in HSC, which is the only surf club recognized by the HSF.
19. The mission of HSF is to cultivate the sport of surfing which originated in our country and to promote its prosperity among the people of the Hawaiian Kingdom. Surfing also comprises body boarding, wind and kite surfing, and stand-up paddle boarding. It also includes water safety issues and fosters capacity building in skills such as lifeguarding.

Hawaiian Surfing Athletes

20. Only one member organization presently feeds its top athletes into the HSF’s Championships. This organization is known as HSC. Hawaiian surfers who are members of HSC include:

- a. **CARISSA MOORE** is a three-time World Surfing League (WSL) Women’s World Champion (2011, 2013, 2015). Today, Moore is revered internationally as the top female surfer in the world. Competing professionally for Hawai‘i in international competition since she was 13, Moore is an international champion who represents Hawai‘i with pride and dignity. Her career



accomplishments include: (a) Three-time WSL Women's World Champion, (b) Youngest surfer (age 16) to win a Triple Crown Championship, (c) Youngest surfer (age 18) to win a World Championship (2011), (d) 20 professional event wins (WSL formerly Association of Surfing Professionals).

- b. EZEKIEL LAU is currently ranked internationally as a top athlete on the WSL Championship tour. He qualified for the elite WSL Championship Tour in both 2016 and 2017. In 2017 he won the WSL Billabong Pro in Cascais, Portugal and the HIC Pro, Sunset Beach. His accolades include: (a) Vans World Cup of Surfing Champion, 2013, (b) two-time HIC Pro Champion (2012, 2017), (c) WSL 10,000 Billabong Pro Cascais, Champion 2017.



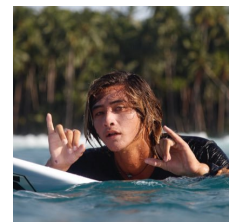
- c. COCO HAPAIKEKOA HO has been in the top ranks of the WSL Championship Tour since 2009, when she won the Rookie of the Year award. She ended the 2017 season ranked 5th on the WSL Qualifying Series. Her other top accomplishments are: (a) Oceano Santa Catarina Pro Champion, 2014, (b) Los Cabos Open Of Surf Champion, 2014, (c) WSL Qualifying Series Champion, 2011, (d) WSL Ripcurl Search Portugal Champion, 2009.



- d. KEANU ASING is ranked internationally as a top athlete on the WSL Championship tour. At the end of 2017, Asing ranked 9th on the WSL Qualifying Tour and 45th on the CT. He qualified for the elite WSL Championship Tour in both 2015 and 2017. In 2016 he won the WSL Quiksilver Pro in France and the HIC Pro, Sunset Beach. His accolades include: (a) WSL Quiksilver Pro France Champion, 2016, (b) Vans Pro, Virginia Beach Champion, 2017, (c) Barbados Pro Champion, 2017.



- e. IMAIKALANI DEVAULT is a former NSSA Men's High School National Champion who recently broke into the top 100 on the World Qualifying series. Although he is currently ranked 82nd on the WSL World Qualifying Series, he is anticipated to make headway in the next competitive surfing season.



21. As a duly constituted National Olympic Committee for the Hawaiian Kingdom with its

membership of HSF, HKNOC requests the Executive Board of the IOC to recognize its constitution in order for Hawaiian athletes to compete in surfing at the 2020 Olympics in Japan. HKNOC bases its request upon the following propositions:

- a. Competitive surfing was invented in Hawai‘i over 1000 years ago. Hawaiians have continued surfing since that time and today rank internationally as surfing’s top competitive athletes. For example, in both the Women’s and Men’s professional World Surf League (WSL, formerly ASP), Hawai‘i surfers have recently dominated the world championship titles (Carissa Moore World Champion 2011, 2013, 2015, and John John Florence 2016, 2017). These professional athletes are considered Hawaiian nationals, not Americans, by surfing competitive governing bodies.¹⁶
 - b. Surfing has always been recognized internationally as a Hawaiian sport and Hawai‘i as its own nation by the surfing community. Hawaiian athletes surf under the Hawaiian Kingdom flag in all professional and amateur events, including the WSL and the International Surfing Association (ISA). Hawai‘i has had a national team in ISA since 1964. Since then, Hawaiians have won several individual and team gold medals in the ISA international surfing events.
 - c. Hawai‘i’s top professional surfers and their coaches are anxious to have a Hawaiian national team in the 2020 Olympics. For them, representing Hawai‘i means representing their culture, their identity, and their people. A Hawaiian national team in the Olympics will also help perpetuate and celebrate the historical origins of surfing.
22. HKNOC has retained Dr. Federico Lenzerini, Ph.D., Professor of International Law at the University of Siena Department of Political and International Sciences at Siena, Italy, as its attorney-in-fact to represent its interest before the International Olympic Committee and its affiliated agencies. Professor Lenzerini’s limited power of attorney is attached herein as Enclosure #5.

¹⁶ For more on this topic see Walker, Isaiah, “Kai Ea: Rising Waves of National and Ethnic Identity” in *Critical Surf Studies Reader* (2017); and Walker, Isaiah, *Waves of Resistance: Surfing and History in 20th Century Hawai‘i* (2011).

Respectfully submitted,

A handwritten signature in blue ink that reads "Alika Desha". The signature is written in a cursive style with a large initial 'A'.

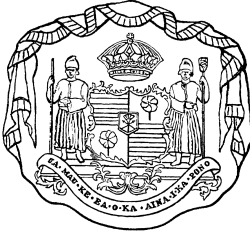
Alika Desha
President

A handwritten signature in blue ink that reads "Isaiah Walker". The signature is written in a cursive style with a large initial 'I'.

Isaiah Walker, Ph.D.
Secretary-General

Enclosures

Enclosure #1



OFFICE OF THE
HAWAIIAN AMBASSADOR-AT-LARGE

The *Larsen v. Hawaiian Kingdom* Case at the
Permanent Court of Arbitration and Why There Is An
Ongoing Illegal State of War with the United States
of America Since 16 January 1893

David Keanu Sai, Ph.D.
Ambassador-at-Large

16 October 2017

Office of the Hawaiian Ambassador-at-Large
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Abstract

When the *South China Sea* Tribunal cited in its award on jurisdiction the *Larsen v. Hawaiian Kingdom* case held at the Permanent Court of Arbitration, it should have garnered international attention, especially after the Court acknowledged the Hawaiian Kingdom as a state and Larsen a private entity. The *Larsen* case was a dispute between a Hawaiian national and his government, who he alleged was negligent for allowing the unlawful imposition of American laws over Hawaiian territory that led to the alleged war crimes of unfair trial, unlawful confinement and pillaging. Larsen sought to have the Tribunal adjudge that the United States of America violated his rights, after which he sought the Tribunal to adjudge that the Hawaiian government was liable for those violations. Although the United States was formally invited it chose not to join in the arbitration thus raising the indispensable third party rule for Larsen to overcome. What is almost completely unknown today is Hawai'i's international status as an independent and sovereign state, called the Hawaiian Kingdom, that has been in an illegal state of war with the United States of America since 16 January 1893. The purpose of this article will be to make manifest, in the light of international law, the current illegal state of war that has gone on for well over a century and its profound impact on the international community today.

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Introduction—The emergence of the case of the United States illegal occupation of Hawai‘i in the Permanent Court of Arbitration

The first allegations of war crimes committed in Hawai‘i, being unfair trial, unlawful confinement and pillaging,¹ were made the subject of an arbitral dispute in *Lance Larsen vs. Hawaiian Kingdom* at the Permanent Court of Arbitration (hereafter “PCA”).² Oral hearings were held at the PCA on 7, 8 and 11 December 2000. As an intergovernmental organization, the PCA must possess institutional jurisdiction before it can form *ad hoc* tribunals. The jurisdiction of the PCA is distinguished from the subject-matter jurisdiction of the *ad hoc* tribunal over the dispute between the parties. Disputes capable of being accepted under the PCA’s institutional jurisdiction include disputes between: any two or more states; a state and an international organization (i.e. an intergovernmental organization); two or more international organizations; a state and a private party; and an international organization and a private entity.³ The PCA accepted the case as a dispute between a state and a private party, and acknowledged the Hawaiian Kingdom as a non-Contracting Power under Article 47 of the 1907 Hague Convention, I (hereafter “1907 HC I”).⁴ As stated on the PCA’s website:

“Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency (“Hawaiian Kingdom”) on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of

¹ Memorial of Lance Paul Larsen (May 22, 2000), *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, at para. 62-64, “Despite Mr. Larsen’s efforts to assert his nationality and to protest the prolonged occupation of his nation, [on] 4 October 1999, Mr. Larsen was illegally imprisoned for his refusal to abide by the laws of the State of Hawaii by State of Hawaii. At this point, Mr. Larsen became a political prisoner, imprisoned for standing up for his rights as a Hawaiian subject against the United States of America, the occupying power in the prolonged occupation of the Hawaiian islands.... While in prison, Mr. Larsen did continue to assert his nationality as a Hawaiian subject, and to protest the unlawful imposition of American laws over his person by filing a Writ of Habeas [sic] Corpus with the Circuit Court of the Third Circuit, Hilo Division, State of Hawaii.... Upon release from incarceration, Mr. Larsen was forced to pay additional fines to the State of Hawaii in order to avoid further imprisonment for asserting his rights as a Hawaiian subject,” available at http://www.alohaquest.com/arbitration/memorial_larsen.htm. Article 33, 1949 Geneva Convention, IV, “Pillage is prohibited. Reprisals against protected persons and their property are prohibited;” Article 147, 1949 Geneva Convention, IV, “Grave breaches [...] shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: ...unlawful confinement of a protected person,... wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention;” see also International Criminal Court, *Elements of War Crimes* (2011), at 16 (Article 8 (2) (a) (vi)—War crime of denying a fair trial), 17 (Article 8 (2) (a) (vii)-2—War Crime of unlawful confinement), and 26 (Article 8 (2) (b) (xvi)—War Crime of pillaging).

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

³ United Nations, *United Nations Conference on Trade and Development: Dispute Settlement* (United Nations New York and Geneva, 2003), at 15.

⁴ PCA Annual Report, Annex 2 (2011), at 51, n. 2.

American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom."⁵

The Government of the Hawaiian Kingdom, as it stood on 17 January 1893, was restored in 1995, *in situ* and not *in exile*.⁶ An *acting* Council of Regency comprised of four Ministers—Interior, Foreign Affairs, Finance and the Attorney General—was established in accordance with the Hawaiian constitution and the doctrine of necessity to serve in the absence of the executive monarch. By virtue of this process a provisional government, (hereafter “Hawaiian government”), comprised of officers *de facto*, was established.⁷ According to U.S. constitutional scholar Thomas Cooley,

“A provisional government is supposed to be a government *de facto* for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity.”⁸

Like other governments formed in exile during foreign occupations, the Hawaiian government did not receive its mandate from the Hawaiian citizenry, but rather by virtue of Hawaiian constitutional law, and therefore represents the Hawaiian state.⁹ As in 2001, Bederman and Hilbert reported in the *American Journal of International Law*,

“[a]t the center of the PCA proceedings was ... that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States’ “unlawful imposition [over him] of [its] municipal laws” through its political subdivision, the State of Hawaii. As a result of this

⁵ *Larsen v. Hawaiian Kingdom*, Cases, Permanent Court of Arbitration, available at <https://pca-cpa.org/en/cases/35/> (last visited 16 October 2017).

⁶ David Keanu Sai, *Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*, 25-51 (4 August 2013), available at http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf (last visited 16 October 2017).

⁷ *Id.*, at 40-48. On 3 April 2014, the Directorate of International Law, Swiss Federal Department of Foreign Affairs, in Bern, accepted the *acting* Government’s letter of credence for its Envoy whose mission was to initiate negotiations with the Swiss Confederation to serve as a Protecting Power in accordance with the 1949 Geneva Convention, IV. The negotiations are ongoing.

⁸ Thomas M. Cooley, “Grave Obstacles to Hawaiian Annexation,” *The Forum* (1893), 389, at 390.

⁹ The policy of the Hawaiian government is 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. The Strategic Plan of the Hawaiian government is available at http://hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf (last visited 16 October 2017).

responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him.”¹⁰

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

“[i]t follows that the Tribunal cannot determine whether the respondent [the Hawaiian Kingdom] has failed to discharge its obligations towards the claimant [Larsen] without ruling on the legality of the acts of the United States of America. Yet that is precisely what the *Monetary Gold* principle precludes the Tribunal from doing. As the International Court of Justice explained in the *East Timor* case, “the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case.””¹¹

The Tribunal, however, acknowledged that the parties to the arbitration could pursue fact-finding. The Tribunal stated, “[a]t one stage of the proceedings the question was raised whether some of the issues which the parties wished to present might not be dealt with by way of a fact-finding process. In addition to its role as a facilitator of international arbitration and conciliation, the Permanent Court of Arbitration has various procedures for fact-finding, both as between States and otherwise.”¹² The Tribunal noted “that the interstate fact-finding commissions so far held under the auspices of the Permanent Court of Arbitration have not confined themselves to pure questions of fact but have gone on, expressly or by clear implication, to deal with issues of responsibility for those facts.”¹³ The Tribunal pointed out that “Part III of each of the Hague Conventions of 1899 and 1907 provide for International Commissions of Inquiry. The PCA has also adopted Optional Rules for Fact-finding Commissions of Inquiry.”¹⁴

To date, there have only been five international commissions of inquiry held under the auspices of the PCA—the first in 1905, *The Dogger Bank Case* (Great Britain – Russia), and the last in 1962, “*Red Crusader*” *Incident* (Great Britain – Denmark). These commissions of inquiry have been employed in cases “in which ‘honor’ and ‘essential interests’ were unquestionably involved, for the determination of legal as well as factual issues, and by tribunals whose composition and proceedings more closely resembled courts than commission of inquiry as originally conceived [under the 1907 HC I].”¹⁵

¹⁰ David Bederman & Kurt Hilbert, “Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii,” 95 *American Journal of International Law* (2001) 927, at 928.

¹¹ *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports* (2001) 566, at 596 (hereafter “Larsen case”).

¹² *Id.*, at 597.

¹³ *Id.*

¹⁴ *Id.*, at n. 28.

¹⁵ J.G. Merrills, *International Dispute Settlement* (4th ed., 2005), at 59.

On 19 January 2017, the Hawaiian government and Lance Larsen entered into a Special Agreement to form an international commission of inquiry. As proposed by the Tribunal, both Parties agreed to the rules provided under Part III—*International Commissions of Inquiry* (Articles 9-36), 1907 HC I. After the Commission is formed they will select a Secretary General to serve as a registry and the location for its sitting.¹⁶ According to Article III of the Special Agreement:

“[t]he Commission is requested to determine: *First*, what is the function and role of the Government of the Hawaiian Kingdom in accordance with the basic norms and framework of international humanitarian law; *Second*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Lance Paul Larsen, and, by extension, toward all Hawaiian subjects domiciled in Hawaiian territory and abroad in accordance with the basic norms and framework of international humanitarian law; and, *Third*, what are the duties and obligations of the Government of the Hawaiian Kingdom toward Protected Persons who are domiciled in Hawaiian territory and those Protected Persons who are transient in accordance with the basic norms and framework of international humanitarian law.”¹⁷

Since humanitarian law is a set of rules that seek to limit the effects of war on persons who are not participating in the armed conflict, such as civilians of an occupied state, the *Larsen* case and the fact-finding proceedings must stem from an actual state of war—a war not in theory but a war in fact. More importantly, the application of the principle of *intertemporal law* is critical to understanding the arbitral dispute between Larsen and the Hawaiian Kingdom. The dispute stemmed from the illegal state of war with the United States that began in 1893. Judge Huber famously stated that “a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled.”¹⁸

The Hawaiian Kingdom as a Subject of International Law

To quote the *dictum* of the *Larsen v. Hawaiian Kingdom* Tribunal, “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.”¹⁹ As an independent state, the Hawaiian Kingdom entered into extensive treaty relations with a variety of states establishing diplomatic

¹⁶ Amendment to Special Agreement (26 March 2017), available at http://hawaiiankingdom.org/pdf/Amend_Agmt_3_26_17.pdf (last visited 16 October 2017).

¹⁷ Special Agreement (January 19, 2017), available at [http://hawaiiankingdom.org/pdf/ICI_Agmt_1_19_17\(amended\).pdf](http://hawaiiankingdom.org/pdf/ICI_Agmt_1_19_17(amended).pdf) (last visited 16 October 2017).

¹⁸ *Island of Palmas* arbitration case (Netherlands and the United States of America), R.I.A.A., vol. II, 829 (1949).

¹⁹ *Larsen* case, *supra* note 11, at 581.

relations and trade agreements.²⁰ According to Westlake in 1894, the *Family of Nations* comprised, “First, all European States.... Secondly, all American States.... Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State.”²¹

To preserve its political independence should there be war, the Hawaiian Kingdom sought to ensure that its neutrality would be recognized beforehand. Provisions recognizing Hawaiian neutrality were incorporated in the treaties with Sweden-Norway, Spain and Germany. “A nation that wishes to secure her own peace,” says Vattel, “cannot more successfully attain that object than by concluding treaties [of] neutrality.”²²

Under customary international law in force in the nineteenth century, the territory of a neutral State could not be violated. This principle was codified by Article 1 of the 1907 Hague Convention, V, stating that the “territory of neutral Powers is inviolable.” According to Politis, “[t]he law of neutrality, fashioned as it had been by custom and a closely woven network of contractual agreements, was to a great extent codified by the beginning of the [20th] century.”²³ As such, the Hawaiian Kingdom’s territory could not be trespassed or dishonored, and its neutrality “constituted a guaranty of independence and peaceful existence.”²⁴

From a State of Peace to an Unjust State of War

“Traditional international law was based upon a rigid distinction between the state of peace and the state of war,” says Judge Greenwood.²⁵ “Countries were either in a state of peace or a state of

²⁰ The Hawaiian Kingdom entered into treaties with Austria-Hungary (now separate states), 18 June 1875; Belgium, 4 October 1862; Bremen (succeeded by Germany), 27 March 1854; Denmark, 19 October 1846; France, 8 September 1858; French Tahiti, 24 November 1853; Germany, 25 March 1879; New South Wales (now Australia), 10 March 1874; Hamburg (succeeded by Germany), 8 January 1848; Italy, 22 July 1863; Japan, 19 August 1871, 28 January 1886; Netherlands & Luxembourg, 16 October 1862 (William III was also Grand Duke of Luxembourg); Portugal, 5 May 1882; Russia, 19 June 1869; Samoa, 20 March 1887; Spain, 9 October 1863; Sweden-Norway (now separate states), 5 April 1855; and Switzerland, 20 July 1864; the United Kingdom of Great Britain and Northern Ireland) 26 March 1846; and the United States of America, 20 December 1849, 13 January 1875, 11 September 1883, and 6 December 1884.

²¹ John Westlake, *Chapters on the Principles of International Law* (1894), at 81. In 1893, there were 44 other independent and sovereign states in the *Family of Nations*: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chili, Colombia, Costa Rica, Denmark, Ecuador, France, Germany, Great Britain, Greece, Guatemala, Hawaiian Kingdom, Haiti, Honduras, Italy, Liberia, Liechtenstein, Luxembourg, Netherlands, Mexico, Monaco, Montenegro, Nicaragua, Orange Free State that was later annexed by Great Britain in 1900, Paraguay, Peru, Portugal, Romania, Russia, San Domingo, San Salvador, Serbia, Spain, Sweden-Norway, Switzerland, Turkey, United States of America, Uruguay, and Venezuela. In 1945, there were 45, and today there are 193.

²² Emerich De Vattel, *The Law of Nations* (6th ed., 1844), at 333.

²³ Nicolas Politis, *Neutrality and Peace* (1935), at 27.

²⁴ *Id.*, at 31.

²⁵ Christopher Greenwood, “Scope of Application of Humanitarian Law,” in Dieter Fleck (ed.), *The Handbook of the International Law of Military Operations* (2nd ed., 2008), at 45.

war; there was no intermediate state.”²⁶ This is also reflected by the fact that the renowned jurist of international law, Lassa Oppenheim, separated his treatise on *International Law* into two volumes, Vol. I—*Peace*, and Vol. II—*War and Neutrality*. In the nineteenth century, war was recognized as lawful, but it had to be justified under *jus ad bellum*. War could only be waged to redress a State’s injury. As Vattel stated, “[w]hatever strikes at [a sovereign state’s] rights is an injury, and a just cause of war.”²⁷

The Hawaiian Kingdom enjoyed a state of peace with all states. This state of affairs, however, was violently interrupted by the United States when the state of peace was transformed to a state of war that began on 16 January 1893 when United States troops invaded the kingdom. The following day, Queen Lili‘uokalani, as the executive monarch of a constitutional government, made the following protest and a conditional surrender of her authority to the United States in response to military action taken against the Hawaiian government. The Queen’s protest stated:

“I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom. That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government. Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.”²⁸

Under international law, the landing of United States troops without the consent of the Hawaiian government was an act of war. But in order for an act of war not to transform the state of affairs to a state of war, the act must be justified or lawful under international law, e.g. the necessity of landing troops to secure the protection of the lives and property of United States citizens in the Hawaiian Kingdom. According to Wright, “[a]n act of war is an invasion of territory ... and so normally illegal. Such an act if not followed by war gives grounds for a claim which can be legally avoided only by proof of some special treaty or necessity justifying the act.”²⁹ The quintessential question is whether or not the United States troops were landed to protect American lives or were they landed to wage war against the Hawaiian Kingdom.

²⁶ *Id.*

²⁷ Vattel, *supra* note 22, at 301.

²⁸ Larsen case, Annexure 2, *supra* note 10, at 612.

²⁹ Quincy Wright, “Changes in the Concept of War,” 18 *American Journal of International Law* (1924) 755, at 756.

According to Brownlie, “[t]he right of war, as an aspect of sovereignty, which existed in the period before 1914, subject to the doctrine that war was a means of last resort in the enforcement of legal rights, was very rarely asserted either by statesmen or works of authority without some stereotyped plea to a right of self-preservation, and of self-defence, or to necessity or protection of vital interests, or merely alleged injury to rights or national honour and dignity.”³⁰ The United States had no dispute with the Hawaiian Kingdom that would have warranted an invasion and overthrow of the Hawaiian government of a neutral and independent state.

In 1993, the United States Congress enacted a joint resolution offering an apology for the overthrow.³¹ Of significance in the resolution was a particular preamble clause, which stated: “[w]hereas, in a message to Congress on December 18, 1893, President Grover Cleveland reportedly fully and accurately on the illegal acts of the conspirators, described such acts as an ‘act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress,’ and acknowledged that by such acts the government of a peaceful and friendly people was overthrown.”³² At first read, however, it would appear that the “conspirators” were the subjects that committed the “act of war,” but this is misleading. First, under international law, only a state can commit an “act of war,” whether through its military and/or its diplomat; and, second, conspirators within a country could only commit the high crime of treason, not “acts of war.” These two concepts are reflected in the terms *coup de main* and *coup d’état*. The former is a successful invasion by a foreign state’s military force, while the latter is a successful internal revolt, which was also referred to in the nineteenth century as a revolution.

In a petition to President Cleveland from the Hawaiian Patriotic League, its leadership, comprised of Hawaiian statesmen and lawyers, clearly articulated the difference between a “*coup de main*” and a “revolution.” The petition read:

“[I]ast January [1893], a political crime was committed, not only against the legitimate Sovereign of the Hawaiian Kingdom, but also against the whole of the Hawaiian nation, a nation who, for the past sixty years, had enjoyed free and happy constitutional self-government. This was done by a *coup de main* of U.S. Minister Stevens, in collusion with a cabal of conspirators, mainly faithless sons of missionaries and local politicians angered by continuous political defeat, who, as revenge for being a hopeless minority in the country, resolved to “rule or ruin” through foreign help. The facts of this “revolution,” as it is improperly called, are now a matter of history.”³³

³⁰ Ian Brownlie, *International Law and the Use of Force by States* (1963), at 41.

³¹ Larsen case, Annexure 2, *supra* note 11, at 611-15.

³² *Id.*, at 612.

³³ United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai‘i: 1894-95, (Government Printing Office 1895), 1295, (hereafter “Executive Documents”), available at http://hawaiiankingdom.org/pdf/HPL_Petition_12_27_1893.pdf (last visited 16 October 2017).

Whether by chance or design, the 1993 Congressional apology resolution did not accurately reflect what President Cleveland stated in his message to the Congress in 1893. When Cleveland stated the “military demonstration upon the soil of Honolulu was of itself an act of war,” he was referring to United States armed forces and not to any of the conspirators.³⁴ Cleveland noted “that on the 16th day of January, 1893, between four and five o’clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies.”³⁵ This *act of war* was the initial stage of a *coup de main*.

As part of the plan, the U.S. diplomat, John Stevens, would prematurely recognize the small group of insurgents on January 17th as if they were successful revolutionaries thereby giving it a veil of *de facto* status. In a private note to Sanford Dole, head of the insurgency, and written under the letterhead of the United States legation on 17 January 1893, Stevens wrote: “Judge Dole: I would advise not to make known of my recognition of the *de facto* Provisional Government until said Government is in possession of the police station.”³⁶ A government created through intervention is a puppet regime of the intervening State, and, as such, has no lawful authority. “Puppet governments,” according to Marek, “are organs of the occupant and, as such form part of his legal order. The agreements concluded by them with the occupant are not genuine international agreements [because] such agreements are merely decrees of the occupant disguised as agreements which the occupant in fact concludes with himself. Their measures and laws are those of the occupant.”³⁷

Customary international law recognizes a successful revolution when insurgents secure complete control of all governmental machinery and have the acquiescence of the population. U.S. Secretary of State Foster acknowledged this rule in a dispatch to Stevens on 28 January 1893: “[y]our course in recognizing an unopposed *de facto* government appears to have been discreet and in accordance with the facts. The rule of this government has uniformly been to recognize and enter into relation with any actual government in full possession of effective power with the assent of the people.”³⁸ According to Lauterpacht, “[s]o long as the revolution has not been successful, and so long as the lawful government ... remains within national territory and asserts its authority, it is presumed to represent the State as a whole.”³⁹ With full knowledge of what constituted a successful revolution, Cleveland provided a blistering indictment in his message to the Congress:

³⁴ Larsen case, Annexure 1, *supra* note 11, at 604.

³⁵ *Id.*

³⁶ Letter from United States Minister, John L. Stevens, to Sanford B. Dole, 17 January 1893, W. O. Smith Collection, HEA Archives, HMCS, Honolulu, available at <http://hmha.missionhouses.org/items/show/889>.

³⁷ Krystyna Marek, *Identity and Continuity of States in Public International Law* (2nd ed., 1968), at 114.

³⁸ Executive Documents, *supra* note 33, at 1179.

³⁹ E. Lauterpacht, *Recognition in International Law* (1947), at 93.

“[w]hen our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety ... declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister’s recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen’s troops were quartered), though the same had been demanded of the Queen’s officers in charge.”⁴⁰

“Premature recognition is a tortious act against the lawful government,” explains Lauterpacht, which “is a breach of international law.”⁴¹ And according to Stowell, a “foreign state which intervenes in support of [insurgents] commits an act of war against the state to which it belongs, and steps outside the law of nations in time of peace.”⁴² Furthermore, Stapleton concludes, “[o]f all the principles in the code of international law, the most important—the one which the independent existence of all weaker States must depend—is this: no State has a right FORCIBLY to interfere in the internal concerns of another State.”⁴³

Cleveland then explained to the Congress the egregious effects of war that led to the Queen’s conditional surrender to the United States:

“[n]evertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal.... In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice.”⁴⁴

The President’s finding that the United States embarked upon a war with the Hawaiian Kingdom in violation of the law unequivocally acknowledged a state of war in fact existed since 16

⁴⁰ Larsen case, Annexure 1, *supra* note 11, at 605.

⁴¹ E. Lauterpacht, *supra* note 39, at 95.

⁴² Ellery C. Stowell, *Intervention in International Law* (1921) at 349, n. 75.

⁴³ Augustus Granville Stapleton, *Intervention and Non-Intervention* (1866), at 6. It appears that Stapleton uses all capitals in his use of the word ‘forcibly’ to draw attention to the reader.

⁴⁴ Larsen case, Annexure 1, *supra* note 11, at 606.

January 1893. According to Lauterpacht, an illegal war is “a war of aggression undertaken by one belligerent side in violation of a basic international obligation prohibiting recourse to war as an instrument of national policy.”⁴⁵ However, despite the President’s admittance that the acts of war were not in compliance with *jus ad bellum*—justifying war—the United States was still obligated to comply with *jus in bello*—the rules of war—when it occupied Hawaiian territory. In the *Hostages Trial* (the case of *Wilhelm List and Others*), the Tribunal rejected the prosecutor’s view that, since the German occupation arose out of an unlawful use of force, Germany could not invoke the rules of belligerent occupation. The Tribunal explained:

“[t]he Prosecution advances the contention that since Germany’s war against Yugoslavia and Greece were aggressive wars, the German occupant troops were there unlawfully and gained no rights whatever as an occupant.... [W]e accept the statement as true that the wars against Yugoslavia and Greece were in direct violation of the Kellogg-Briand Pact and were therefore criminal in character. But it does not follow that every act by the German occupation forces against person or property is a crime.... At the outset, we desire to point out that international law makes no distinction between a lawful and unlawful occupant in dealing with the respective duties of occupant and population in the occupied territory.”⁴⁶

As such, the United States remained obligated to comply with the laws of occupation despite it being an illegal war. As the Tribunal further stated, “whatever may be the cause of a war that has broken out, and whether or not the cause be a so-called just cause, the same rules of international law are valid as to what must not be done, [and what] may be done.”⁴⁷ According to Wright, “[w]ar begins when any state of the world manifests its intention to make war by some overt act, which may take the form of an act of war.”⁴⁸ In his review of customary international law in the nineteenth century, Brownlie found “that in so far a ‘state of war’ had any generally accepted meaning it was a situation regarded by one or both parties to a conflict as constituting a ‘state of war’”.⁴⁹ Cleveland’s determination that by an “act of war ... the Government of a feeble but friendly and confiding people has been overthrown,” the action was not justified.⁵⁰

What is of particular significance is that Cleveland referred to the Hawaiian people as “friendly and confiding,” not “hostile.” This is a classical case of where the United States President admits an unjust war not justified by *jus ad bellum*, but a state of war nevertheless for international law purposes. According to United States constitutional law, the President is the sole representative of the United States in foreign relations. In the words of U.S. Justice Marshall, “[t]he President is

⁴⁵ H. Lauterpacht, “The Limits of the Operation of the Law of War,” 30 *British Yearbook of International Law* (1953) 206.

⁴⁶ *USA v. William List et al.* (Case No. 7), *Trials of War Criminals before the Nuremburg Military Tribunals* (hereafter ‘Hostages Trial’), Vol. XI (1950), 1247.

⁴⁷ *Id.*

⁴⁸ Quincy Wright, “Changes in the Concept of War,” 18 *American Journal of International Law* (1924) 755, at 758.

⁴⁹ Brownlie, *supra* note 30, at 38.

⁵⁰ Larsen case, Annexure 1, *supra* note 11, at 608.

the sole organ of the nation in its external relations, and its sole representative with foreign nations.”⁵¹ Therefore, the President’s political determination that by an act of war the government of a friendly and confiding people was unlawfully overthrown would not have only produced resonance with the members of the Congress, but to the international community as well, and the duty of third states to invoke neutrality.

Furthermore, in a state of war, the principle of effectiveness that you would otherwise have during a state of peace is reversed because of the existence of two legal orders in one and the same territory. Marek explains, “[i]n the first place: of these two legal orders, that of the occupied State is regular and ‘normal,’ while that of the occupying power is exceptional and limited. At the same time, the legal order of the occupant is, as has been strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness.”⁵² Therefore, “[b]elligerent occupation is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned.”⁵³

Cleveland told the Congress that he initiated negotiations with the Queen “to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned.”⁵⁴ What Cleveland did not know at the time of his message to the Congress was that the Queen, on the very same day in Honolulu, accepted the conditions for settlement in an attempt to return the state of affairs to a state of peace. The executive mediation began on 13 November 1893 between the Queen and U.S. diplomat Albert Willis and an agreement was reached on 18 December.⁵⁵ The President was not aware of the agreement until after he delivered his message.⁵⁶ Despite being unaware, President Cleveland’s political determination in his message to the Congress was nonetheless conclusive that the United States was in a state of war with the Hawaiian Kingdom and was directly responsible for the unlawful overthrow of its government. Oppenheim defines war as “a contention between States for the purpose of overpowering each other.”⁵⁷

⁵¹ 10 Annals of Cong. 613 (1800).

⁵² Marek, *supra* note 37, at 102.

⁵³ *Id.*

⁵⁴ Larsen case, Annexure 1, *supra* note 11, at 610.

⁵⁵ David Keanu Sai, “A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and Its Use and Practice Today,” 10 *Journal of Law & Social Challenges* (2008) 68, at 119-127.

⁵⁶ Executive Documents, *supra* note 33, at 1283. In this dispatch to U.S. Diplomat Albert Willis from Secretary of State Gresham on January 12, 1894, he stated, “Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President’s decision. The matter now being in the hands of the Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you.” The state of war ensued.

⁵⁷ L. Oppenheim, *International Law*, vol. II—War and Neutrality (3rd ed., 1921), at 74.

Once a state of war ensued between the Hawaiian Kingdom and the United States, “the law of peace ceased to apply between them and their relations with one another became subject to the laws of war, while their relations with other states not party to the conflict became governed by the law of neutrality.”⁵⁸ This outbreak of a state of war between the Hawaiian Kingdom and the United States would “lead to many rules of the ordinary law of peace being superseded...by rules of humanitarian law,” e.g. acquisitive prescription.⁵⁹ A state of war “automatically brings about the full operation of all the rules of war and neutrality.”⁶⁰ And, according to Venturini, “[i]f an armed conflict occurs, the law of armed conflict must be applied from the beginning until the end, when the law of peace resumes in full effect.”⁶¹ “For the laws of war ... continue to apply in the occupied territory even after the achievement of military victory, until either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant.”⁶² In the *Tadić* case, the ICTY indicated that the laws of war—international humanitarian law—applies from “the initiation of ... armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached.”⁶³ Only by an agreement between the Hawaiian Kingdom and the United States could a state of peace be restored, without which a state of war ensues.⁶⁴ An attempt to transform the state of war to a state of peace was made by executive agreement on 18 December 1893. Cleveland, however, was unable to carry out his duties and obligations under the agreement to restore the situation that existed before the unlawful landing of American troops due to political wrangling in the Congress.⁶⁵ Hence, the state of war continued.

International law distinguishes between a “declaration of war” and a “state of war.” According to McNair and Watts, “the absence of a declaration ... will not of itself render the ensuing conflict

⁵⁸ Greenwood, *supra* note 25, at 45.

⁵⁹ *Id.*, at 46. As opposed to belligerent occupation during a state of war, peaceful occupation during a state of peace over territory of another state could rise to a title of sovereignty under acquisitive prescription if there was a continuous and peaceful display of territorial sovereignty by the encroaching state without any objection by the encroached state. In this regard, effectiveness in the display of sovereign authority over territory of another state must be peaceful and not belligerent. *Jus in bello* proscribes acquisitive prescription.

⁶⁰ Myers S. McDougal and Florentino P. Feliciano, “The Initiation of Coercion: A Multi-temporal Analysis,” 52 *American Journal of International Law* (1958) 241, at 247.

⁶¹ Gabriella Venturini, “The Temporal Scope of Application of the Conventions,” in Andrew Clapham, Paola Gaeta, and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (2015), at 52.

⁶² Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (1996), at 224.

⁶³ ICTY, *Prosecutor v. Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), 2 October 1995, at §70.

⁶⁴ Under United States municipal laws, there are two procedures by which an international agreement can bind the United States. The first is by a treaty whose entry into force can only take place after two-thirds of the United States Senate has given its advice and consent under Article II, section 2, Clause 2 of the U.S. Constitution. The second is by way of an executive agreement entered into by the President that does not require ratification by the Senate. See *United States v. Belmont*, 301 U.S. 324, 326 (1937); *United States v. Pink*, 315 U.S. 203, 223 (1942); *American Insurance Association v. Garamendi*, 539 U.S. 396, 415 (2003).

⁶⁵ Sai, Slippery Path, *supra* note 55, at 125-127.

any less a war.”⁶⁶ In other words, since a state of war is based upon concrete facts of military action, there is no requirement for a formal declaration of war to be made other than providing formal notice of a State’s “intention either in relation to existing hostilities or as a warning of imminent hostilities.”⁶⁷ In 1946, a United States Court had to determine whether a naval captain’s life insurance policy, which excluded coverage if death came about as a result of war, covered his demise during the Japanese attack of Pearl Harbor on 7 December 1945. It was argued that the United States was not at war at the time of his death because the Congress did not formally declare war against Japan until the following day.

The Court denied this argument and explained that “the formal declaration by the Congress on December 8th was not an essential prerequisite to a political determination of the existence of a state of war commencing with the attack on Pearl Harbor.”⁶⁸ Therefore, the conclusion reached by President Cleveland that by “an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown,”⁶⁹ was a “political determination of the existence of a state of war,” and that a formal declaration of war by the Congress was not essential. The “political determination” by President Cleveland, regarding the actions taken by the military forces of the United States since 16 January 1893, was the same as the “political determination” by President Roosevelt regarding actions taken by the military forces of Japan on 7 December 1945. Both political determinations of acts of war by these Presidents created a state of war for the United States under international law.

Foremost, the overthrow of the Hawaiian government did not affect, in the least, the continuity of the Hawaiian state, being the subject of international law. Wright asserts that “international law distinguishes between a government and the state it governs.”⁷⁰ Cohen also posits that “[t]he state must be distinguished from the government. The state, not the government, is the major player, the legal person, in international law.”⁷¹ As Judge Crawford explains, “[t]here is a presumption that the State continues to exist, with its rights and obligations ... despite a period in which there is ... no effective, government.”⁷² He further concludes that “[b]elligerent

⁶⁶ Lord McNair and A.D. Watts, *The Legal Effects of War* (1966), at 7.

⁶⁷ Brownlie, *supra* note 30, at 40.

⁶⁸ *New York Life Ins. Co. v. Bennion*, 158 F.2d 260 (C.C.A. 10th, 1946), 41(3) *American Journal of International Law* (1947) 680, at 682.

⁶⁹ Larsen case, Annexure 1, *supra* note 11, at 608.

⁷⁰ Quincy Wright, “The Status of Germany and the Peace Proclamation,” 46(2) *American Journal of International Law* (Apr. 1952) 299, at 307.

⁷¹ Sheldon M. Cohen, *Arms and Judgment: Law, Morality, and the Conduct of War in the Twentieth Century* (1989), at 17.

⁷² James Crawford, *The Creation of States in International Law* (2nd ed., 2006), at 34. If one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains.

occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”⁷³ Commenting on the occupation of the Hawaiian Kingdom, Dumberry states,

“the 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.”⁷⁴

The Beginning of the Prolonged Occupation

What was the Hawaiian Kingdom’s status after the unlawful overthrow of its government for international law purposes? In the absence of an agreement that would have transformed the state of affairs back to a state of peace, the state of war prevails over what *jus in bello* would call belligerent occupation. Article 41 of the 1880 Institute of International Law’s *Manual on the Laws of War on Land* declared that a “territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there.” This definition was later codified under Article 42 of the 1899 Hague Convention, II, and then superseded by Article 42 of the 1907 Hague Convention, IV (hereafter “HC IV”), which provides that “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” Effectiveness is at the core of belligerent occupation.

The hostile army, in this case, included not only United States armed forces, but also its puppet regime that was disguising itself as a “provisional government.” As an entity created through intervention it existed as an armed militia that worked in tandem with the United States armed forces under the direction of the U.S. diplomat John Stevens. Under the rules of *jus in bello*, the occupant does not possess the sovereignty of the occupied state and therefore cannot compel allegiance.⁷⁵ To do so would imply that the occupied state, as the subject of international law and

⁷³ *Ibid.* Crawford also stated, 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 restore.” *Ibid.*, n. 157.

⁷⁴ 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 (2002) 655, at 682.

⁷⁵ Article 45, 1899 Hague Convention, II, “Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited;” see also Article 45, 1907 Hague Convention, IV, “It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.” On 24 January 1895, the puppet regime calling itself the Republic of Hawai‘i coerced Queen Lili‘uokalani to abdicate the throne and to sign her allegiance to the regime in order to “save many Royalists from being shot” (William Adam Russ, Jr., *The Hawaiian Republic*

whom allegiance is owed, was cancelled and its territory unilaterally annexed into the territory of the occupying state. International law would allow this under the doctrine of *debellatio*. *Debellatio*, however, could not apply to the Hawaiian situation as a result of the President's determination that the overthrow of the Hawaiian government was unlawful and, therefore, did not meet the test of *jus ad bellum*. As an unjust war, the doctrine of *debellatio* was precluded from arising. That is to say, *debellatio* is conditioned on a legal war. According to Schwarzenberger, "[i]f, as a result of legal, as distinct from illegal, war, the international personality of one of the belligerents is totally destroyed, victorious Powers may ... annex the territory of the defeated State or hand over portions of it to other States."⁷⁶

After United States troops were removed from Hawaiian territory on 1 April 1893, by order of President Cleveland's special investigator, James Blount, he was not aware that the provisional government was a puppet regime. As such, they remained in full power where, according to the Hawaiian Patriotic League, the "public funds have been outrageously squandered for the maintenance of an unnecessary large army, fed in luxury, and composed *entirely* of aliens, mainly recruited from the most disreputable classes of San Francisco."⁷⁷ After the President determined the illegality of the situation and entered into an agreement to reinstate the executive monarch, the puppet regime refused to give up its power. Despite the President's failure to carry out the agreement of reinstatement and to ultimately transform the state of affairs to a state of peace, the situation remained a state of war and the rules of *jus in bello* continued to apply to the Hawaiian situation.

When the provisional government was formed through intervention, it merely replaced the executive monarch and her cabinet with insurgents calling themselves an executive and advisory councils. All Hawaiian government officials remained in place and were coerced into signing oaths of allegiance to the new regime with the oversight of United States troops.⁷⁸ This continued when the American puppet changed its name to the so-called republic of Hawai'i on 4 July 1894 with alien mercenaries replacing American troops.

Under the guise of a Congressional joint resolution of annexation, United States armed forces physically reoccupied the Hawaiian Kingdom on 12 August 1898, during the Spanish-American

(1894-98) *And Its Struggle to Win Annexation* (1992), at 71). As the rule of *jus in bello* prohibits inhabitants of occupied territory to swear allegiance to the hostile Power, the Queen's oath of allegiance is therefore unlawful and void.

⁷⁶ Georg Schwarzenberger, *International Law as applied by International Courts and Tribunals*. Vol. II: The Law of Armed Conflict (1968), at 167.

⁷⁷ Executive Documents, *supra* note 33, at 1296.

⁷⁸ *Ibid*, at 211, "All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named person: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office. All Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils."

War. According to the United States Supreme Court, “[t]hough the [annexation] resolution was passed July 7, [1898] the formal transfer was not made until August 12, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States.”⁷⁹ Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and “they protested annexation occurring without the consent of the governed.”⁸⁰ 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.”⁸¹ Even the U.S. Department of Justice in 1988, opined, it is “unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution.”⁸²

In 1900, the Congress renamed the republic of Hawai‘i to the Territory of Hawai‘i under *An Act To provide a government for the Territory of Hawai‘i*,⁸³ commonly known as the “Organic Act.” Shortly thereafter, the Territory of Hawai‘i intentionally sought to “Americanize” the school children throughout the Hawaiian Islands. To accomplish this, they instituted a policy of denationalization in 1906, titled “Programme for Patriotic Exercises in the Public Schools,” where the national language of Hawaiian was banned and replaced with the American language of English.⁸⁴ One of the leading newspapers for the insurgents, who were now officials in the territorial regime, printed a story on the plan of denationalization. The Hawaiian Gazette reported:

“[a]s a means of *inculcating* patriotism in the schools, the Board of Education [of the territorial government] has agreed upon a plan of patriotic observance to be followed in the celebration of notable days in American history, this plan being a composite drawn from the several submitted by teachers in the department for the consideration of the Board. It will be remembered that at the time of the celebration of the birthday of Benjamin Franklin, an agitation was begun looking to a better observance of these notable national days in the schools, as tending to inculcate patriotism in a school

⁷⁹ *Territory of Hawai‘i v. Mankichi*, 190 U.S. 197, 212 (1903).

⁸⁰ Tom Coffman, *Nation Within: The History of the American Occupation of Hawai‘i* (2016), at 322. 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.

⁸¹ Marek, *supra* note 37, at 110.

⁸² 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* (1988) 238, at 262.

⁸³ 31 U.S. Stat. 141.

⁸⁴ Programme for Patriotic Exercises in the Public Schools, Territory of Hawai‘i, adopted by the Department of Public (1906), available at http://hawaiiankingdom.org/pdf/1906_Patriotic_Exercises.pdf (last visited 16 October 2017).

population that needed that kind of teaching, perhaps, more than the mainland children do [emphasis added].”⁸⁵

It is important here to draw attention to the use of the word “inculcate.” As a verb, the term imports force such as to convince, implant, and indoctrinate. Brainwashing is its colloquial term. When a reporter from the American news magazine, *Harper’s Weekly*, visited the Ka’iulani Public School in Honolulu, he reported:

“[a]t the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building.... Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet above their heads.... ‘Attention!’ Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. ‘Salute!’ was the principal’s next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: ‘We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!’”⁸⁶

Further usurping Hawaiian 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 Hawai‘i into the Union*.⁸⁷ These Congressional laws, which have no extraterritorial effect, did not, in the least, 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 the customary international law in 1893, the 1907 HC IV, and the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV (hereafter “1949 GC IV”). It is important to note for the purposes of *jus in bello* that the United States never made an international claim to the Hawaiian Islands through *debellatio*. Instead, the United States in 1959 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.”⁸⁸ This extraterritorial application of American

⁸⁵ Patriotic Program for School Observance, *Hawaiian Gazette* (3 Apr. 1906), at 5, available at http://hawaiiankingdom.org/pdf/Patriotic_Program_Article.pdf (last visited 16 October 2017).

⁸⁶ William Inglis, *Hawai‘i’s Lesson to Headstrong California: How the Island Territory has solved the problem of dealing with its four thousand Japanese Public School children*, *Harper’s Weekly* (16 Feb. 1907), at 227.

⁸⁷ 73 U.S. Stat. 4.

⁸⁸ United Nations, “Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America” (24 September 1959), Document no. A/4226, Annex 1, at 2.

laws are not only in violation of *The Lotus* case principle,⁸⁹ but is prohibited by the rules of *jus in bello*.

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 agreement to terminate the occupation has been done. “Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory.”⁹⁰ The administration of occupied territory is set forth in the Hague Regulations, being Section III of the 1907 HC IV. According to Schwarzenberger, “Section III of the Hague Regulations ... was declaratory of international customary law.”⁹¹ Also, consistent with what was generally considered the international law of occupation in force at the time of the Spanish-American War, the “military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials.”⁹² Many other authorities also viewed the Hague Regulations as mere codification of customary international law, which was applicable at the time of the overthrow of the Hawaiian government and subsequent occupation.⁹³

Since 1893, there was 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. Instead, what occurred was the unlawful seizure of the apparatus of Hawaiian governance, its infrastructure, and its properties—both real and personal. It was a theft of an independent state’s self-government.

The Duty of Neutrality by Third States

When the state of peace was transformed to a state of war, all other states were under a duty of neutrality. “Since neutrality is an attitude of impartiality, it excludes such assistance and succour to one of the belligerents as is detrimental to the other, and, further such injuries to the one as benefit the other.”⁹⁴ The duty of a neutral state, not a party to the conflict, “obliges him, in the first instance, to prevent with the means at his disposal the belligerent concerned from

⁸⁹ *Lotus*, 1927 PCIJ Series A, No. 10, at 18.

⁹⁰ United States Army Field Manual 27-10 (1956), at sec. 362.

⁹¹ Georg Schwarzenberger, “The Law of Belligerent Occupation: Basic Issues,” 30 *Nordisk Tidsskrift Int'l Ret* (1960), 11.

⁹² Munroe Smith, “Record of Political Events,” 13(4) *Political Science Quarterly* (1898), 745, at 748.

⁹³ Gerhard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (1957), 95; David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (2002), 57; Ludwig von Kohler, *The Administration of the Occupied Territories*, vol. I, (1942) 2; United States Judge Advocate General’s School Tex No. 11, *Law of Belligerent Occupation* (1944), 2 (stating that “Section III of the Hague Regulations is in substance a codification of customary law and its principles are binding signatories and non-signatories alike”).

⁹⁴ Oppenheim, *supra* note 57, at 401.

committing such a violation,” e.g. to deny recognition of a puppet regime unlawfully created by an act of war.⁹⁵

Twenty states violated their obligation of impartiality by recognizing the so-called republic of Hawai‘i and consequently became parties to the conflict.⁹⁶ These states include: Austria-Hungary (1 January 1895);⁹⁷ Belgium (17 October 1894);⁹⁸ Brazil (29 September 1894);⁹⁹ Chile (26 September 1894);¹⁰⁰ China (22 October 1894);¹⁰¹ France (31 August 1894);¹⁰² Germany (4 October 1894);¹⁰³ Guatemala (30 September 1894);¹⁰⁴ Italy (23 September 1894);¹⁰⁵ Japan (6 April 1897);¹⁰⁶ Mexico (8 August 1894);¹⁰⁷ Netherlands (2 November 1894);¹⁰⁸ Norway-Sweden (17 December 1894);¹⁰⁹ Peru (10 September 1894);¹¹⁰ Portugal (17 December

⁹⁵ *Id.*, at 496.

⁹⁶ Greenwood, *supra* note 25, at 45.

⁹⁷ Austria-Hungary’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-austro-hungary/> (last visited 16 October 2017).

⁹⁸ Belgium’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-belgium/> (last visited 16 October 2017).

⁹⁹ Brazil’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-brazil/> (last visited 16 October 2017).

¹⁰⁰ Chile’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-chile/> (last visited 16 October 2017).

¹⁰¹ China’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-china/> (last visited 16 October 2017).

¹⁰² France’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-france/> (last visited 16 October 2017).

¹⁰³ Germany’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-germanyprussia/> (last visited 16 October 2017).

¹⁰⁴ Guatemala’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-guatemala/> (last visited 16 October 2017).

¹⁰⁵ Italy’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-italy/> (last visited 16 October 2017).

¹⁰⁶ Japan’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/05/27/recognition-of-the-republic-of-hawaii-japan/> (last visited 16 October 2017).

¹⁰⁷ Mexico’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-mexico/> (last visited 16 October 2017).

¹⁰⁸ The Netherlands’ recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-netherlands/> (last visited 16 October 2017).

¹⁰⁹ Norway-Sweden’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-swedennorway/> (last visited 16 October 2017).

1894);¹¹¹ Russia (26 August 1894);¹¹² Spain (26 November 1894);¹¹³ Switzerland (18 September 1894);¹¹⁴ and the United Kingdom (19 September 1894).¹¹⁵

“If a neutral neglects this obligation,” states Oppenheim, “he himself thereby commits a violation of neutrality, for which he may be made responsible by a belligerent who has suffered through the violation of neutrality committed by the other belligerent and acquiesced in by him.”¹¹⁶ The recognition of the so-called republic of Hawai‘i did not create any legality or lawfulness of the puppet regime, but rather is the indisputable evidence that these states’ violated their obligation to be neutral. Diplomatic recognition of governments occurs during a state of peace and not during a state of war, unless providing recognition of belligerent status. These recognitions were not recognizing the republic as a belligerent in a civil war with the Hawaiian Kingdom, but rather under the false pretense that the republic succeeded in a so-called revolution and therefore was the new government of Hawai‘i during a state of peace.

The State of Hawai‘i: Not a Government but a Private Armed Force

When the United States assumed control of its installed puppet regime under the new heading of Territory of Hawai‘i in 1900, and later the State of Hawai‘i in 1959, it surpassed “its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts.”¹¹⁷ The legislation of every state, including the United States of America and its Congress, are not sources of international law. In *The Lotus* case, the Permanent Court of International Justice stated that “[n]ow the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to

¹¹⁰ Peru’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-peru/> (last visited 16 October 2017).

¹¹¹ Portugal’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-portugal/> (last visited 16 October 2017).

¹¹² Russia’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-russia/> (last visited 16 October 2017).

¹¹³ Spain’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-spain/> (last visited 16 October 2017).

¹¹⁴ Switzerland’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-switzerland/> (last visited 16 October 2017).

¹¹⁵ The United Kingdom’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-britain/> (last visited 16 October 2017).

¹¹⁶ Oppenheim, *supra* note 57, at 497.

¹¹⁷ Eyal Benvenisti, *The International Law of Occupation* (1993), at 19.

the contrary—it may not exercise its power in any form in the territory of another State.”¹¹⁸ According to Judge Crawford, derogation of this principle will not be presumed.¹¹⁹

Since Congressional legislation has no extraterritorial effect, it cannot unilaterally establish governments in the territory of a foreign state. According to the U.S. Supreme Court, “[n]either the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.”¹²⁰ The Court also concluded that “[t]he laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction.”¹²¹ Therefore, the State of Hawai‘i cannot claim to be a government as its only claim to authority derives from Congressional legislation that has no extraterritorial effect. As such, *jus in bello* defines it as an organized armed group.¹²²

“[O]rganized armed groups ... are under a command responsible to that party for the conduct of its subordinates.”¹²³ According to Henckaerts and Doswald-Beck, “this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,”¹²⁴ and that this “definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status.”¹²⁵ Article 1 of the 1907 HC IV, provides that

“[t]he laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: (1) To be commanded by a person responsible for his subordinates; (2) To have a fixed distinctive emblem recognizable at a distance; (3) To carry arms openly; and (4) To conduct their operations in accordance with the laws and customs of war.”

Since the *Larsen* case, defendants that have come before courts of this armed group have begun to deny the courts’ jurisdiction based on the narrative in this article. In a contemptible attempt to quash this defense, the Supreme Court of the State of Hawai‘i in 2013 responded to a defendant who “contends that the courts of the State of Hawai‘i lacked subject matter jurisdiction over his

¹¹⁸ *Lotus*, *supra* note 89.

¹¹⁹ Crawford, *supra* note 72, at 41.

¹²⁰ *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

¹²¹ *The Apollon*, 22 U.S. 362, 370 (1824).

¹²² Article 1, 1899 Hague Convention, II, and Article 1, 1907 Hague Convention, IV.

¹²³ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I (2009), at 14.

¹²⁴ *Id.*, at 15.

¹²⁵ *Id.*

criminal prosecution because the defense proved the existence of the Hawaiian Kingdom and the illegitimacy of the State of Hawai‘i government,¹²⁶ with “whatever may be said regarding the lawfulness” of its origins, “the State of Hawai‘i ... is now, a lawful government [emphasis added].”¹²⁷ Unable to rebut the factual evidence being presented by defendants, the highest so-called court of the State of Hawai‘i could only resort to power and not legal reason, whose decision has been used to allow prosecutors and plaintiffs to dispense with these legal arguments. On this note, Marek explains that an occupier without title or sovereignty “must rely heavily, if not exclusively, on full and complete effectiveness.”¹²⁸

The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier’s military and/or an occupier’s armed force such as the State of Hawai‘i, and that the “occupation extends only to the territory where such authority has been established and can be exercised.”¹²⁹ According to Ferraro, “occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts.”¹³⁰

Commission of War Crimes in the Hawaiian Kingdom

The Rome Statute of the International Criminal Court defines war crimes as “serious violations of the laws and customs applicable in international armed conflict.”¹³¹ The United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in armed conflicts that involve United States troops, to be “the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime.”¹³² In the *Larsen* case, the alleged war crimes included deliberate acts as well as omissions. The latter include the failure to administer the laws of the occupied state (Article 43, 1907 HC IV), while the former were actions denying a fair and regular trial, unlawful confinement (Article 147, 1949 GC IV), and pillaging (Article 47, 1907 HC IV, and Article 33, 1907 GC IV).

International case law indicates that there must be a mental element of intent for the prosecution of war crimes, whereby war crimes must be committed willfully, either intentionally—*dolus directus*, or recklessly—*dolus eventualis*. According to Article 30(1) of the Rome Statute, an alleged war criminal is “criminally responsible and liable for punishment ... only if the material elements [of the war crime] are committed with intent and knowledge.” Therefore, in order for prosecution of the responsible person(s) to be possible there must be a mental element that

¹²⁶ *State of Hawai‘i v. Dennis Kaulia*, 128 Hawai‘i 479, 486 (2013).

¹²⁷ *Id.*, at 487.

¹²⁸ Marek, *supra* note 37, at 102.

¹²⁹ 1907 Hague Convention, IV, Article 42.

¹³⁰ Tristan Ferraro, “Determining the beginning and end of an occupation under international humanitarian law,” 94 (885) *International Review of the Red Cross* (Spring 2012) 133, at 134.

¹³¹ International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).

¹³² U.S. Army Field Manual 27-10, sec. 499 (July 1956).

includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that “a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.” Furthermore, the International Criminal Court’s *Elements of a War Crime*, states that “[t]here is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict.”¹³³

Is there a particular time or event that could serve as a definitive point of knowledge for purposes of prosecution? In other words, where can there be “awareness that a circumstance exists or a consequence will occur in the ordinary course of events” stemming from the illegality of the overthrow of the Hawaiian government on 17 January 1893? For the United States and other foreign governments in existence in 1893, that definitive point would be 18 December 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian government.

For the private sector and foreign governments that were not in existence in 1893, however, the United States’ 1993 apology for the illegal overthrow of the Hawaiian government should be considered as serving as that definitive point of knowledge. In the form of a Congressional joint resolution enacted into United States law, the law specifically states that the Congress “on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai‘i on January 17, 1893 acknowledges the historical significance of this event.”¹³⁴ Additionally, the Congress urged “the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai‘i.”¹³⁵

Despite the mistake of facts and law riddled throughout the apology resolution, it nevertheless serves as a specific point of knowledge and the ramifications that stem from that knowledge. Evidence that the United States knew of such ramifications was clearly displayed in the apology law’s disclaimer, “[n]othing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.”¹³⁶ It is a presumption that everyone knows the law, which stems from the legal maxim *ignorantia legis neminem excusat*—ignorance of the law excuses no one. Unlike the United States government, being a public body, the State of Hawai‘i cannot claim to be a government at all, and therefore is merely a private organization. Therefore, awareness and knowledge for members of the State of Hawai‘i would have begun with the enactment of the apology resolution in 1993.

¹³³ ICC Elements of a War Crime, Article 8.

¹³⁴ Larsen case, Annexure 2, *supra* note 11, at 614.

¹³⁵ *Id.*, at 615

¹³⁶ *Id.*

International law today criminalizes an unjust war as a “crime of aggression.” Under Article 8 *bis* of the Rome Statute, a war is criminal if a state aggressively utilizes its military force “against the sovereignty, territorial integrity or political independence of another State.”¹³⁷ There can be no doubt that the American invasion and overthrow of the government of a “friendly and confiding people” was an aggressive war waged with malicious intent that violated the Hawaiian Kingdom’s right of self-determination—duty of non-intervention, its territorial integrity and political independence.

The installation of the puppet regime also violated the rights of the Hawaiian people. The installed puppet in 1893, together with their organs, according to the Hawaiian Patriotic League, “have repeatedly threatened murder, violence, and deportation against all those not in sympathy with the present state of things, and the police being in their control, intimidation is a common weapon, under various forms, even that of nocturnal searches in the residences of peaceful citizens.”¹³⁸ These criminal acts would not have occurred if the United States complied with the law of occupation. Customary international law at the time mandated an occupying state to provisionally administer the laws of the occupied state. Article 43 of the 1907 HC IV provides that “[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” The “text of Article 43,” according to Benvenisti, “was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law.”¹³⁹ Graber also states, that “nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code.”¹⁴⁰

In similar fashion to the Hawaiian situation, Germany, when it occupied Croatia during the Second World War, established a puppet regime in violation of international law to serve as its surrogate. On this matter, the Nuremberg Tribunal, in the *Hostages Trial*, pronounced:

“[o]ther than the rights of occupation conferred by international law, no lawful authority could be exercised by the Germans. Hence, they had no legal right to create an independent sovereign state during the progress of the war. They could set up such a provisional [military] government as was necessary to accomplish the purposes of the occupation but further than that they could not legally go. We are of the view that Croatia was at all times here involved an occupied country and that all acts performed by it were those for which [Germany] the occupying power was responsible.”¹⁴¹

¹³⁷ Rome Statute, art. 8 *bis* (2).

¹³⁸ Executive Documents, *supra* note 33, at 1297.

¹³⁹ Benvenisti, *supra* note 117, at 8.

¹⁴⁰ Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914* (1949), at 143.

¹⁴¹ Hostages Trial, *supra* note 46, at 1302.

The United States failure to form a military government throughout the duration of the prolonged occupation since 17 January 1893 has rendered all acts by the puppet regimes—provisional government (1893 – 94), republic of Hawai‘i (1894 – 1900), Territory of Hawai‘i (1900 – 1959), and the State of Hawai‘i (1959 – present)—which would have otherwise emanated from a *bona fide* military government, unlawful and void. As the occupying power, the United States is responsible for the acts of the State of Hawai‘i just as the Germans were responsible for the acts of the so-called State of Croatia during the Second World War, which, in these proceedings of an international commission of inquiry, includes the alleged war crimes committed against Lance Larsen.¹⁴²

Conclusion

Fundamental to deciphering the Hawaiian situation is to discern between a state of peace and a state of war. This parting of the seas provides the proper context by which the application of certain rules of international law would or would not apply. The laws of war—*jus in bello*, otherwise known today as international humanitarian law, are not applicable in a state of peace. Inherent in the rules of *jus in bello* is the co-existence of two legal orders, being that of the occupying state and that of the occupied state. As an occupied state, the continuity of the Hawaiian Kingdom has been maintained for the past 124 years by the positive rules of international law, notwithstanding the absence of effectiveness that would otherwise be required during a state of peace.¹⁴³

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 has since risen to a level of *jus cogens*—compelling law. At the same time, the obligations, in point, have *erga omnes* characteristics—flowing to all states. The international community’s failure to intercede, as a matter of *obligatio erga omnes*, can only be 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,”¹⁴⁴ 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].”¹⁴⁵

The gravity of the Hawaiian situation has been heightened by North Korea’s announcement that “all of its strategic rocket and long range artillery units ‘are assigned to strike bases of the U.S. imperialist aggressor troops in the U.S. mainland and on Hawaii,” which is an existential

¹⁴² Memorial of Lance Paul Larsen, *supra* note 1.

¹⁴³ Crawford, *supra* note 72, at 34; Marek, *supra* note 37, at 102.

¹⁴⁴ Responsibility of States for International Wrongful Acts (2001), Article 41(2).

¹⁴⁵ *Id.*, Article 41(1).

threat.¹⁴⁶ The United States crime of aggression since 1893 is in fact *a priori*, and underscores Judge Greenwood's statement, "[c]ountries were either in a state of peace or a state of war; there was no intermediate state."¹⁴⁷ The Hawaiian Kingdom, a neutral and independent state, has been in an illegal war with the United States for the past 124 years without a peace treaty, and must begin to comply with the rules of *jus in bello*.

¹⁴⁶ Choe Sang-Hun, North Korea Calls Hawaii and U.S. Mainland Targets, New York Times (26 March 2013), available at <http://www.nytimes.com/2013/03/27/world/asia/north-korea-calls-hawaii-and-us-mainland-targets.html> (last visited 16 October 2017). Legally speaking, the armistice agreement of 27 July 1953 did not bring the state of war to an end between North Korea and South Korea because a peace treaty is still pending. The significance of North Korea's declaration of war of March 30, 2013, however, has specifically drawn the Hawaiian Islands into the region of war because it has been targeted as a result of the United States prolonged occupation.

¹⁴⁷ Greenwood, *supra* note 25.

Enclosure #2

**CONSTITUTION OF THE HAWAIIAN KINGDOM
NATIONAL OLYMPIC COMMITTEE
(HKNOC)**

PREAMBLE

We, the Hawaiian Kingdom National Olympic Committee (HKNOC), an organization belonging to the Olympic Movement, duly represented by the undersigned, hereby undertake to respect the provisions of the Olympic Charter and the World Anti-Doping Code and to abide by the decisions of the International Olympic Committee.

We undertake, in accordance with our mission and role at the national level, to participate in actions to promote peace and to promote women in sport. We also undertake to support and encourage the promotion of sports ethics, to fight against doping and to demonstrate a responsible concern for environmental issues.

1. LEGAL STATUS

HKNOC shall be a body corporate with perpetual succession.

2. POWERS

The HKNOC shall have all the powers of an individual including but not limited to the power to –

- (a) enter into contracts;
- (b) purchase, sell, lease, rent and acquire or grant legal or equitable interests of any kind in real and personal property;
- (c) borrow money;
- (d) mortgage, assign, pledge, grant security interests in and deal in any manner permitted by law with its property;
- (e) give guarantees of the debt or liabilities of any person;
- (f) make by-laws and regulations;
- (g) engage and terminate temporary or permanent staff, consultants, advisors and agent of any kind; and
- (h) operate bank accounts.

3. INTERPRETATION

3.1 In this Constitution, unless the context otherwise requires:

- (a) “By-laws” means by-laws of the HKNOC from time to time in force;
- (b) “Commission” means the Athletes’ Commission of the HKNOC;
- (c) “IFs” means the international non-governmental organizations administering one or several sports at the world level recognized as such by the International Olympic Committee;
- (d) “IOC” means the International Olympic Committee;
- (e) “Member” means a member of the HKNOC;
- (f) “Member organization” means a sporting organization, which is a Member;
- (g) “NFs” means Olympic Sports Federations and other national sporting organizations administering sports, which are Olympic sports;
- (h) “NOCs” means the National Olympic Committees;
- (i) “Olympic Charter” means the Olympic Charter of the IOC;
- (j) “Olympic Games” means the Games of the Olympiad and/or the Olympic Winter Games;
- (k) “Olympic Sports Federations” means national federations affiliated to IFs recognized by the IOC in respect of Olympic Sports;
- (l) “Regulations” means any regulations of the HKNOC in force from time to time; and
- (m) “HKNOC” means the Hawaiian Kingdom National Olympic Committee recognized as such by the IOC.

3.2 Should there be any doubt concerning the interpretation of this Constitution or the By-Laws or omissions or discrepancies between them and the provisions of the Olympic Charter, the latter shall prevail; and

3.3 The singular includes the plural and the plural includes the singular; the masculine gender includes the feminine and neuter genders; the word “person” includes bodies corporate, companies, partnerships, syndicates, trusts and any association of persons; and the word “individual” means a natural person.

4. HEADQUARTERS

4.1 The Headquarters of the HKNOC shall be in Honolulu at such address as the Executive Committee may fix from time to time by resolution.

5. SEAL

5.1 The common seal approved by the Executive Committee an impression of which is made in the Executive Committee Minute Book, shall be the common seal of the HKNOC.

6. OBJECTIVES

6.1 The HKNOC shall have the following aims *inter alia*:

- (a) to ensure the development and protection of the Olympic Movement and sports in general in the Hawaiian Kingdom;
- (b) to affiliate with the IOC and to comply with, observe, and enforce the Olympic Charter in the Hawaiian Kingdom;
- (c) to enforce all the Rules and Regulations of the IOC;
- (d) to ensure the observance of the Olympic Charter in the Hawaiian Kingdom, and expressly undertake to comply with the Olympic Charter;
- (e) to participate in the Games of the Olympiad by sending athletes, coaches, and officials;
- (f) to promote the fundamental principles of Olympism at the national level within the framework of sports activity and otherwise contribute to the diffusion of Olympism in the teaching programs of physical education and sport in schools and university establishments;
- (g) to encourage the creation of institutions which devote themselves to Olympic education, in particular National Olympic Academies, Olympic Museums and cultural programs related to the Olympic Movement;
- (h) to encourage the development of high performance sport as well as sport for all;
- (i) to help in the training of sports administrators by organizing courses and to ensure that such courses contribute to the propagation of the fundamental principles of Olympism;
- (j) to preserve its absolute autonomy and resist all pressures of any kind, including those of a political, religious or economic nature, that may prevent the HKNOC from complying with the Olympic Charter;
- (k) to commit itself to taking action against any form of discrimination and violence in sport;

- (l) to disseminate among young people an interest in sport and a sporting spirit;
- (m) to assist and cooperate in the provision of better facilities for the people's recreation;
- (n) to strengthen friendship between sportsmen in the Hawaiian Kingdom without racial, political, religious or other discrimination;
- (o) to adopt and implement the World Anti Doping Code, thereby ensuring that the HKNOC anti-doping policies and rules, membership and/or funding requirements and results management procedures conform with the World Anti Doping Code and respect all the roles and responsibilities for NOCs that are listed within the World Anti Doping Code;
- (p) to organize, together with the respective national sporting organizations, the preparation and selection of athletes, by providing financial assistance to affiliated members towards development and preparation of competitors, thereby ensuring that the Hawaiian Kingdom is represented at the Olympic Games and all other games having patronage of the IOC;
- (q) to exercise exclusive jurisdiction directly through its constituent members or committees over all matters pertaining to the participation of the Hawaiian Kingdom in the Olympic Games and any other Games or events sanctioned by the IOC including the selection of teams to represent the Hawaiian Kingdom in such Games, and to the designation of a city to host any such Games in the Hawaiian Kingdom;
- (r) to raise funds for the purpose of sending teams to the Olympic, and any other Games sanctioned by the IOC and for such purpose to borrow monies on security or otherwise as may be deemed advisable from time to time, and to repay such monies as and when arrangements may be made therefor;
- (s) to affiliate with all other governing bodies of games having patronage of the IOC. It shall, wherever necessary or expedient, collaborate or enter into association with kindred Olympic Associations or Committees particularly in the Western Hemisphere;
- (t) to submit proposals to the IOC with regard to the Olympic Charter, the Olympic Movement in general and, the organization and conduct of the Olympic games;

- (u) to cooperate with government or non-governmental bodies concerning the promotion of a sound sports policy and in order to fulfill its objectives; and
- (v) to do such things that in the opinion of the HKNOC are incidental and conducive to its carrying out these objectives.

7. PRINCIPLES

7.1 The principles of the HKNOC shall be:

- (a) respect for the independence of the national sporting organizations;
- (b) respect for the sovereignty of all national sporting organizations over their various forms of sport; and
- (c) mutual respect between national sporting organizations affiliated to their respective international sporting organizations in their dealings with one another.

8. RIGHTS GRANTED BY IOC

8.1 The HKNOC:

- (a) has the exclusive powers for the representation of the Hawaiian Kingdom at the Olympic Games and at the regional, continental or world multi-sports competitions patronized by the IOC;
- (b) constitutes, organizes and leads its delegation at the Olympic Games and at the regional, continental or world multi-sport competitions patronized by the IOC. It decides upon the entry of athletes proposed by its respective NFs. These rights are set forth in further detail in the Olympic Charter;
- (c) has the authority to designate the city which may apply to organize Olympic Games in the Hawaiian Kingdom;
- (d) may formulate proposals to the IOC concerning the Olympic Charter and the Olympic Movement in general, including the organizing and holding of the Olympic Games;
- (e) may give its opinions concerning the candidatures for the organization of the Olympic Games;
- (f) may collaborate in the preparation of Olympic Congresses; and
- (g) participates, at the request of the IOC, in the activities of the IOC Commissions.

9. TASKS

9.1 HKNOC shall endeavor to:

- (a) regularly organize (if possible each year) an Olympic Day or Week intended to promote the Olympic Movement;
- (b) include in its activities the promotion of culture and the arts in the fields of sport and Olympism; and
- (c) participate in the programs of Olympic Solidarity.

10. MEMBERS

10.1 Subject to Article 10.4 the HKNOC shall be comprised of:

- (a) the member(s) of the IOC in the country, if any. They are ex officio Members and have the right to attend and vote at both the General Assembly and Executive Committee meetings;
- (b) the members of the Executive Committee;
- (c) all NFs affiliated to the IFs governing sports included in the program of the Olympic Games. These NFs exercise a specific and real sports activity in their country and internationally, in particular by organizing and participating in competitions and implementing training programs for athletes. The HKNOC shall not recognize more than one NF for each sport governed by such IF, and that organization must be affiliated to the relevant IOC-recognized International Federation;
- (d) active athletes and retired athletes who have taken part in the Olympic Games. The membership of a retired athlete terminates automatically at the end of the third Olympiad after the last Olympic games in which he took part; and
- (e) one member of the Athletes Commission.

10.2 The HKNOC may admit to membership:

- (a) national sporting organizations administering non-Olympic sports and other sports-oriented organizations;
- (b) individual membership shall be open to distinguished persons, who may enable the HKNOC to perform its tasks more effectively, or who have rendered eminent services to the cause of sport and Olympism, and who do not already hold any other form of

- membership of the HKNOC or represent a Member organization;
and
- (c) an honorary member shall not be entitled to hold any office or to vote at any meeting of the HKNOC.

10.3 Qualification of Members

- (a) Membership may be granted pursuant to Article 10.2 to individuals and organizations recommended by the Executive Committee and confirmed by an affirmative vote of two-thirds of the Members present and voting at a General Assembly to which such recommendation is submitted.
- (b) Individual members of the HKNOC must be subjects or denizens of the Hawaiian Kingdom, of age and full possession of their civil and political rights.
- (c) Neither Governments nor any other public authorities shall designate any members of the HKNOC. However, the HKNOC may decide, at its discretion, to elect as members representatives of such authorities.

10.4 Olympic Sports Federations Majority

The voting majority of the General Assembly shall consist of the votes cast by Olympic Sports Federations or their representatives. For this purpose members of the Executive Committee appointed by Olympic Sports Federations shall be regarded as representing their respective federations.

10.5 Remuneration

The members of the HKNOC, with the exception of those who are employed in the administration of sport, shall accept no salary or bonus of any kind in consideration of the performance of their functions. They shall perform their duties for the HKNOC on a voluntary basis. They may, however, be reimbursed for their traveling and accommodation costs and other justified expenses incurred in the carrying out of their functions. Furthermore, they shall not use their position for commercial purposes.

11. APPLICATION FOR ADMISSION TO MEMBERSHIP

11.1 This Article shall apply only to individuals and sporting organizations which wish to be admitted to membership pursuant to Articles 10.2(a) and (b).

- (a) application for membership in the HKNOC shall be made in writing addressed to the Secretary-General. If the application is by a sporting organization a copy of such organization's Constitution and Rules and Regulations shall accompany such application, which shall be signed by its President and its Secretary. Application by an individual must be signed by him;
- (b) the General Assembly may from time to time determine particulars to accompany membership applications;
- (c) the Secretary-General shall present membership applications before the General Assembly. No such application shall be considered by the General Assembly, unless at least (7) seven days prior to the meeting convened to consider such application, notice of such said application has been given to Members of the HKNOC entitled to vote at such meeting; and
- (d) a successful applicant shall within (21) twenty-one days of being notified of his election to membership, pay the affiliation fee stipulated by the General Assembly, and on payment thereof, he shall be duly enrolled as a member of the HKNOC. Failure to pay the affiliation fee within the time aforesaid shall nullify his election to membership. On being enrolled as such, a member shall be furnished with a copy of the Constitution and By-laws of the HKNOC and any By-laws and Regulations in force.

12. CESSATION OF MEMBERSHIP

12.1 Membership of the HKNOC shall cease:

- (a) with respect to the NFs, upon disbandment;
- (b) with respect to the member(s) of the IOC in the Hawaiian Kingdom, upon the loss of such position;
- (c) with respect to the retired athletes, by the end of the third Olympiad after the last Olympic Games in which they took part;
- (d) upon resignation or death;

- (e) upon expulsion by the Executive Committee following a hearing given to the Member concerned, for any or all of the following reasons:
 - (i) non-payment of annual subscription, if such Member's subscription is in arrears on the 30th day of September of the current year; provided that such arrears shall be reported by the Secretary-General to the General Assembly which may direct that a final notice be given to such member in arrears, that unless the arrears are paid within seven (7) days from the date of sending such notice, his membership shall cease and if such Member shall fail to pay such arrears in accordance with such said notice, his name shall be removed with effect from the seventh day from the date of such notice from the list of members of the Association;
 - (ii) infringement of the Constitution and By-laws or of the Olympic Charter;
 - (iii) loss of Hawaiian nationality or of civil and political rights;
- (f) if at a special general meeting of the General Assembly a resolution is passed by two-thirds of the Members present at the meeting that he be removed from membership for conduct inimical to the interests of the HKNOC. Expulsion shall follow a hearing at which the Member may appear and make representation on his own behalf.

12.2 The General Assembly may for the reason and in like manner set out in Article 12.1(f) suspend the membership of any Member for a period fixed by the meeting.

12.3 Any individual Member or Member organization may withdraw from membership of the HKNOC provided that he has fulfilled his obligations to the HKNOC.

12.4 Any individual Member of Member organization wishing to withdraw from membership of the HKNOC shall be required to give at least (6) six months' notice in writing stating reasons for so doing to the Secretary-General of the HKNOC.

12.5 Any Member whose name has been removed from the list of Members for non-payment of subscription may on payment of the full amount due

apply to be restored to such list, and the Executive Committee may thereupon restore such Member's name subject to any terms and conditions imposed by the General Assembly.

13. ORGANIZATION

13.1 The organs of the HKNOC shall be:

- (a) Executive Committee; and
- (b) General Assembly.

14. THE EXECUTIVE COMMITTEE

14.1 The administration and management of the HKNOC shall be entrusted to its Executive Committee.

14.2 The Executive Committee shall be comprised of the following persons:

- (a) President;
- (b) Vice President;
- (c) any member(s) of the IOC in the Hawaiian Kingdom;
- (d) Secretary General;
- (e) Treasurer-Secretary;
- (f) (4) four persons representing Olympic Sports Federations; and
- (g) (1) person appointed by the Minister of the Interior who is an *ex officio* member of the Executive Committee.

14.3 Subject to Article 20 the term of each member of the Executive Committee, with the exception of the representative of the Ministry of the Interior, shall be (4) four years.

14.4 The voting majority of the Executive Committee shall consist of the votes cast by the Olympic Sports Federations or their representatives.

15. DUTIES OF THE EXECUTIVE COMMITTEE

15.1 The Executive Committee shall:

- (a) manage and control the affairs of the HKNOC;
- (b) raise funds to finance the activities of the HKNOC;

- (c) control expenditure;
- (d) appoint and/or dismiss permanent employees, consultants, advisors and agents and fix their terms of appointment;
- (e) appoint committees and sub-committees necessary for the smooth running of the HKNOC and receive reports therefrom;
- (f) draw up from time to time By-laws, Rules and Regulations for submission to the General Assembly;
- (g) consider applications for membership and recommend for final approval by the General Assembly;
- (h) propose the amount to be paid in annual subscription by members of the HKNOC;
- (i) select representative teams;
- (j) fill all vacancies (including that of auditors) as they arise;
- (k) appoint from among its members suitable tribunals to consider and adjudicate on disputes/conflicts within Member organizations;
- (l) carry on the general routine work of the HKNOC;
- (m) recommend to the HKNOC General Assembly the removal from office of any Officer who refuses to carry out any of the functions of that office after being requested to do so or whose performance is unsatisfactory or inimical to the interest of the HKNOC or who has been absent from (3) three meetings of the Executive without permission and/or reasonable explanation during (1) one calendar year;
- (n) report on its activities to the General Assembly; and
- (o) do all other things that are incidental and conducive to its carrying out of these duties.

15.2 The Executive Committee shall direct and cause proper books of account to be kept with respect to:

- (a) the assets and liabilities of the HKNOC; and
- (b) all sums of money received and expended by the HKNOC and the purpose of such income or expenditure.

15.3 The books of the HKNOC shall at all times be open to inspection by any member of the Executive Committee.

15.4 (a) the Executive Committee may from time to time prescribe reasonable conditions as to time and manner when and in which the books of the HKNOC or any of them may be inspected by

Members and subject to such conditions such books shall be open to inspection by Members of the HKNOC.

- (b) In case of a Member organization such inspection may be made on its behalf by any officer of such organization duly authorized in that behalf by writing signed by the President and Secretary of that organization.

16. OFFICERS

16.1 President:

- (a) the President shall preside over all activities of the HKNOC and represent the HKNOC in all matters;
- (b) he shall lead discussions and shall preside at all General Assembly Meetings and at all meetings of the Executive Committee;
- (c) the President shall be an “ex office” member of every committee of the HKNOC, but shall not preside at meetings of committees other than the Executive Committee unless specifically appointed to do so; and
- (d) the President shall submit a written report to each Annual General Meeting.

16.2 Vice President:

- (a) the Vice President shall be of general assistance to the President, and shall perform such duties as may be assigned by the President;
- (b) he shall deputize for the President when the latter is absent; and
- (c) he shall act for the President at the discretion of the Executive Committee.

16.3 Secretary-General:

- (a) the Secretary-General shall be responsible to the Executive Committee;
- (b) he shall be in charge of correspondence;
- (c) he shall forthwith hand over to the Treasurer-Secretary any fees or other monies that may be sent to him for the account of the HKNOC.

- (d) he shall be responsible for the convening of meetings and his duties shall also include the keeping of:
 - (i) the register of members of the HKNOC, showing each class of membership and the members in each class separately from the rest;
 - (ii) the register of members of the Executive Committee and all committees that may be appointed; and
 - (iii) true and proper Minutes of all proceedings at any General Assembly Meeting, meetings of the Executive Committee and meetings of all committees;
- (e) he shall perform such additional duties as may be assigned to him by the Executive Committee; and
- (f) he shall submit a written report to each Annual General Meeting.

16.4 Treasurer-Secretary:

- 16.4.1 (a) all long-term financial commitments shall be made by the Executive Committee or (where provision is made in the HKNOC Annual Budget for such commitment) by the President and Treasurer-Secretary; and
- (b) the Treasurer-Secretary shall place all commitments made by the President and him pursuant to Article 19.5.1(a) on the agenda of the first Executive Committee meeting thereafter.

16.4.2 All monies of the HKNOC shall be placed in its bank account, and no money shall be withdrawn from any such account except by check signed by any (2) two of the following: President, Vice-President, Secretary-General, Treasurer-Secretary and any other member of the Executive Committee designated by the Executive Committee, provided however, without prejudice to the foregoing, the Executive Committee may authorize the Treasurer-Secretary to retain a stated amount of monies at any one time to pay out such petty disbursements as may be required to be paid.

16.4.3 It shall be the duty of the Treasurer-Secretary to:

- (a) keep up to date such books of account as may be necessary, or as the Executive Committee shall from time to time direct;

- (b) receive all monies payable and paid to the HKNOC and issue receipts therefor;
- (c) deposit all such monies (save so much as the Executive Committee may authorize him to retain) in the bank to the credit of the account of the HKNOC;
- (d) make such payments as may be duly authorized by the Executive Committee;
- (e) be one of the persons to operate the banking account of the HKNOC;
- (f) prepare and submit for audit, with all proper vouchers, a financial statement for the period ending 30th day of September in every year, such statement to be so prepared and submitted not later than the 7th day of November of the year;
- (g) present to the Secretary-General the financial statement as soon as the same shall have been duly audited so that the copies thereof may be issued to the members with the notice convening the Annual General Meeting;
- (h) take, prepare, and present minutes of the meetings of the Executive Committee.

16.4.4 Should the Treasurer-Secretary resign he shall surrender to his successor, within a maximum of 30 days, all funds, books and documents kept by him properly brought up to date. A report on this act of surrender shall be prepared and signed by the outgoing and incoming Treasurer-Secretary.

16.4.5 Records must be kept of all monies expended by Members of the HKNOC on behalf of the HKNOC. Refunds of such expenditure shall not be made where there are no records of such payments.

17. ELECTION OF EXECUTIVE COMMITTEE

This Article does not apply to members of the IOC in the Hawaiian Kingdom who are entitled *ex officio* to sit on the Executive Committee.

17.1 The Executive Committee of the HKNOC serving at the date of this Constitution shall remain in office until the 31st day of December 2008.

17.2 Election of the Executive Committee shall take place in the month of November 2008 and in the month of November in each fourth year thereafter.

- 17.3 The Executive Committee so elected shall take office on the 1st day of the year following their election and shall serve a term of four (4) years.
- 17.4 Elections shall be held at an Annual General Meeting of the General Assembly or at an extraordinary General Meeting expressly convened for this purpose.
- 17.5 Members of the Executive Committee shall be duly nominated by a proposer Member and a seconder Member. If there are two or more nominations for any office, the election shall be by secret ballot.
- 17.6 Members of the Executive Committee shall be eligible for re-election.
- 17.7 Nominations for the Executive Committee, shall be submitted to the Secretary-General of the HSKNOC at least fourteen (14) days prior to the date of the General Assembly Meeting for election of the Executive Committee.
- 17.8 Vacancies on the Executive Committee shall be filled at a meeting of the General Assembly convened for that purpose within sixty (60) days of such vacancy arising. The replacement shall hold office until the end of the current term but shall be eligible for re-election.
- 17.9 Any member of the HKNOC's Executive Committee may be removed before the expiration of his term by a two-thirds (2/3) majority vote of no confidence duly passed by the General Assembly.

18. PROTECTION OF OFFICERS

- 18.1 No officer of the HKNOC shall be liable to the HKNOC for:
- (a) the acts, receipts, neglects or defaults of any other officer, or employee;
 - (b) any loss, damage or expense incurred by the HKNOC through insufficiency or deficiency of title to any property acquired by the HKNOC or for or on behalf of the HKNOC;
 - (c) the insufficiency or deficiency of any security in or upon which any of the moneys of or belonging to the HKNOC shall be placed out or invested;

- (d) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, including any person with whom any moneys, securities or effects shall be lodged or deposited;
- (e) any loss, conversion, misapplication or misappropriation of or any damage resulting from any dealings with any moneys, securities, or other assets belonging to the HKNOC; and
- (f) any other loss, damage or misfortune whatever which may happen in the execution of the duties of his office or trust or in relation thereto, unless the same happens by or through his failure to exercise the powers and to discharge the duties of his office honestly and in good faith with a view to the best interests of the HKNOC and in connection therewith to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

18.2 Nothing herein contained shall relieve an officer from the duty to act in accordance with this Constitution and the By-laws or relieve him from liability for breach thereof.

18.3 If any Officer of the HKNOC is employed by or performs services for the HKNOC otherwise than as an Officer or is a member of a firm or a shareholder, director or officer of a body corporate which is employed or performs services for the HKNOC, the fact of his being an officer of the HKNOC shall not disentitle him or such firm or body corporate, as the case may be, from receiving proper remuneration for such services, provided that the Officer shall have previously disclosed to the Executive Committee his interest in the contract for such services.

19. MEETINGS OF THE EXECUTIVE COMMITTEE

- (a) the Executive Committee shall meet not less than once per quarter.
- (b) it shall also meet, either at the request of the President or at the written request of no less than (5) five members of the Executive Committee when circumstances require. In such cases the President shall decide time and place for the meeting to be held provided that if it is convened on the aforesaid request of Members it must be held within 14 days of receipt by the Secretary General of the request.
- (c) (2/3) two-thirds of the members of the Executive Committee shall constitute a quorum.

- (d) The voting majority of the Executive Committee shall consist of votes cast by the Olympic Sports Federations or their representatives.
- (c) notice of any Executive Committee meeting shall be given at least (7) seven days before the date of the said meeting and shall be accompanied by the agenda. In an emergency, the President acting in his sole discretion may convene a meeting on shorter notice.
- (d) The minutes of meetings of the Executive Committee shall be signed by the President and the Secretary-General and shall thereupon be, in the absence of manifest error, binding on the Committee;
- (e) Executive Committee members shall be jointly and severally bound by decisions properly taken by the Committee on items appearing on the agenda of a General Assembly Meeting. They may not therefore defend any other point of view during discussions at a General Assembly Meeting; and
- (f) Members of the Executive Committee may not appoint alternates.

20. RESPONSIBILITY OF MEMBERS OF THE EXECUTIVE ON RESIGNATION OR TERMINATION

Any member of the Executive Committee who for any reason ceases to be a member of the Committee shall promptly deliver up to the Secretary General or the President all records and other property of the HKNOG held by or entrusted to him and shall promptly report in writing to the Secretary General or the President on all matters of the HKNOG for which he was responsible at the time he ceases to be a member of the Executive Committee.

21. FINANCIAL MATTERS

21.1 The HKNOG shall seek sources of financing that will enable it to maintain its autonomy in all respects. The collection of funds must, however, be accomplished in accordance with the Olympic Charter and in such a manner that the dignity and independence of the HKNOG are not harmed.

21.2 The income of the HKNOG shall be derived from:

- (a) membership subscriptions as fixed;
- (b) subsidies from the State, public entities and other bodies;

- (c) subsidies from the IOC Olympic Solidarity and other subsidies from the IOC which shall appear distinctly in the accounts of the financial year;
- (d) gifts and bequests that the General Assembly may accept;
- (e) marketing revenues;
- (f) the proceeds of events like Olympic Day, from stamp issues, the sale of emblems approved by the IOC for use for commercial purposes, the publication and sale of printed material, the licenses to third parties for the use of the HKNOC official emblem in strict accordance with the Olympic Charter;
- (g) fees for services rendered; and
- (h) any other source that the Executive Committee may accept.

22. THE GENERAL ASSEMBLY

- 22.1 The Executive Committee shall be the highest organ within the HKNOC. The HKNOC shall operate under the supreme direction of the Executive Committee, which shall exercise all policy and supervisory powers except those explicitly attributed to the General Assembly.
- 22.2 The General Assembly shall be comprised of all Members referred to in Article 10.
- 22.3 The General Assembly shall hold an Annual General Meeting at least once in every year in order to:
- (a) hear the President's Report;
 - (b) examine and approve the report on the activities of the Executive Committee, presented by the Secretary General;
 - (c) examine and approve the accounts of the previous financial year, as presented by the Treasurer-Secretary;
 - (d) approve a budget for the following year;
 - (e) appoint auditors for the HKNOC;
 - (f) draw up and/or amend By-laws or Regulations;
 - (g) ensure that the By-laws or Regulations are respected;
 - (h) where required by Article 20, elect officers and members of the Executive Committee of the HKNOC;
 - (i) approve new Members of the HKNOC; and
 - (j) other business properly included in the agenda.

23. MEETINGS OF THE GENERAL ASSEMBLY

- 23.1 (a) Meeting of the General Assembly shall be convened by written notice signed by the Secretary General. A copy of the agenda shall accompany the notice;
- (b) At least (21) twenty-one days notice of the Annual General Meeting must be given to all Members. Extraordinary general meetings shall be convened by at least (7) seven days notice or where the agenda includes a proposal to amend the Articles, by at least (21) twenty-one days notice;
- (c) All meetings of the General Assembly shall be held in the Hawaiian Kingdom.
- 23.2 An extraordinary general meeting of the General Assembly may be convened at any time by the Executive Committee and shall be convened at the written request of at least two-thirds of the Members of the HKNOC.
- 23.3 The President of the HKNOC, or, in his absence, the Vice President, or in the absence of the President, and the Vice President, one of the Members of the Executive Committee, shall chair the General Assembly.
- 23.4 One-third of the Members in good standing shall constitute a quorum for meetings of the General Assembly. If a quorum is not present within an hour of the time fixed in the notice for commencement of the meeting the meeting shall stand adjourned to the date (14) fourteen days after the date of and at the same time as was fixed for commencement of the aborted meeting. If at such adjourned meeting a quorum is not present within one hour of the time set for commencement of the same the Members present shall constitute a quorum and the meeting shall be held;
- 23.5 Subject to Article 15.9 decisions shall be made by a simply majority of votes cast except for decisions regarding amendments to the By-laws which shall be made at least two-thirds of the votes cast. In the event of a tie, the chair of the General Assembly shall have the casting vote.
- 23.6 The agenda of the Annual General Meeting shall consist of all items set out in Article 14.3 or added pursuant to Article 15.8. The Executive Committee, or any Member by notice reaching the Secretary General not

less than (28) twenty-eight days prior to the date of the meeting, may propose a matter for inclusion under Article 14.3(j).

- 23.7 The agenda of any extraordinary general meeting shall consist of any matter proposed by the Executive Committee, and, if the meeting is called pursuant to Article 15.2, any matter proposed by the Members requesting the meeting, and any matter added pursuant to Article 15.8.
 - 23.8 Except for amendments to this Constitution or the By-laws an item may be added to the agenda by a vote of (75%) seventy-five per cent of the Members present and voting.
 - 23.9 When dealing with questions relating to the Olympic Games only the votes cast by the Executive Committee and by the NFs affiliated to IFs governing sports included in the program of the Olympic Games shall be counted.
 - 23.10 Inadvertent omission by the Secretary General to give to any Member notice of any meeting of the General Assembly shall not invalidate its proceedings or any decisions taken at the meeting.
 - 23.11 Voting at meetings of the General Assembly. Without derogating from the requirement of Article 10.4:
 - (a) each NF shall have (2) two votes;
 - (b) other Members shall each have (1) one vote;
 - (c) only Members in good standing shall be eligible to vote;
 - (d) individual Members shall vote in person; and
 - (e) votes shall be taken by show of hands save in respect of the election of the Executive Committee and any other matter in respect of which (3) three Members present may require a secret ballot.
24. DELEGATES OF MEMBER ORGANIZATIONS
- 24.1 (a) each Member organization shall appoint a head delegate and an alternate to the HKNOC. The head delegate shall be considered as the voting delegate and official spokesman of his organization but he may cede his position to his alternate;

- (b) delegates and their alternates must be nationals of the Hawaiian Kingdom and should be of good standing, upright character, sound judgment and independent mind with a knowledge of, and belief in, Olympic principles;
- (c) the names of the delegates shall be communicated in writing to the Secretary-General of the HKNOC and such delegates shall continue to be delegates at the pleasure of the organization they represent. Any organization shall be entitled at any time to withdraw in writing the name of any delegate and to nominate in writing a delegate or delegates in place of or in succession to the former delegate or delegates;
- (d) if any delegate is appointed or elected as an Officer of the HKNOC such delegate shall immediately cease to represent his organization which shall be entitled to appoint another delegate in his place.

24.2. The names and addresses of the delegates shall be sent to the Secretary-General in writing within 30 days after their selection by a Member organization. A delegate cannot represent more than (1) one Member organization.

24.3 Only delegates whose names have been submitted in writing shall be allowed to take their places and vote on behalf of their Member organization.

25. THE FINANCIAL YEAR

25.1 The financial year of the HKNOC shall commence on the 1st of October of one year and end on the 30th of September, of the following year.

26. AUDITORS

26.1 Once in every year the accounts of the HKNOC made up to the previous 30th day of September shall be audited by the auditors duly appointed in that behalf.

26.2 The auditors shall subject to Article 26.3 hereof be appointed at the Annual General Meeting.

- 26.3 The auditors shall serve until the next Annual General Meeting or such earlier time as may be determined by the General Assembly at a General Meeting.
- 26.4 The auditors may receive an honorarium from the HKNOC.
- 26.5 The auditors shall be eligible for re-appointment.
- 26.6 A Member of the Executive Committee shall not be eligible for appointment as auditor.

27. APPLICATION OF INCOME AND PROPERTY

The income and property of the HKNOC whenever derived shall be applied solely towards the promotion of the objectives of the HKNOC as set out in this Constitution, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend or otherwise by way of profit to any Member of the HKNOC. Provided, however, that if in the opinion of the General Assembly, any officer or member shall at any time or from time to time render any special services deserving of recognition, nothing herein contained shall prevent the payment to him in good faith of an honorarium in respect of such services.

28. EXECUTION OF INSTRUMENTS

The Executive Committee shall have power from time to time by resolution to appoint any Officer or person on behalf of the HKNOC to affix the common seal of the HKNOC and/or to sign contracts, documents, and/or instruments in writing generally or to sign specific contracts, documents or instruments in writing.

29. FLAG, EMBLEM AND ANTHEM

- (a) The HKNOC may have its own emblem, flag and anthem. The emblem, the flag and the anthem adopted by the HKNOC for use in relation to its activities, including the Olympic Games, must be submitted to the IOC for approval.
- (b) The emblem may be used, if the HKNOC so wishes, for commercial purposes in accordance with the Olympic Charter. Should the HKNOC prefer not to use the official emblem on a commercial basis, a second emblem may be designed for this purpose and shall be forwarded to the IOC for approval.

- (c) The HKNOC must take steps to protect the Olympic marks of the IOC and those of the HKNOC, in the territory of the HKNOC, as set forth in further detail in the Olympic Charter.

30. LANGUAGES

The official language of the HKNOC is English.

31. AMENDMENT OF CONSTITUTION, BY-LAWS AND REGULATIONS

- (a) Subject always to approval by the IOC of any changes or amendments to this Constitution, this Constitution and any By-laws may be amended by a two-thirds majority vote of the Members at an Annual General Meeting or at an extraordinary general meeting of the General Assembly convened for that purpose by at least (21) twenty-one days notice. The agenda shall state the specific amendments proposed. A quorum for such meeting shall be (2/3) two-thirds of the Members.
- (b) Regulations passed by the General Assembly may be amended by a majority vote of the Members at any meeting of the General Assembly provided that the agenda includes as a separate and specific item the proposal for such amendment.

32. DISSOLUTION

The HKNOC may not be dissolved except with the written consent of all members of the HKNOC in good standing. All income and property shall then be distributed to charitable organizations as decided by the Executive Committee, after all debts incurred by the HKNOC have been paid.

33. ARBITRATION

Any decision made by the HKNOC disciplinary committee or any decisions made by the General Assembly or the Executive Committee with regard to the expulsion or termination of the membership of any Member may be submitted exclusively by way of appeal to the Court of Arbitration for Sport in Lausanne, Switzerland, which will resolve the dispute definitively in accordance with the Code of Sports-Related Arbitration. The time limit for appeal is (21) twenty-one days after receipt by the party affected of the decision concerning the appeal.

Dated 21st day of December 2017.

Handwritten signature of Alika Desha in cursive script, underlined.

Alika Desha
President

Handwritten signature of Isaiah Walker in cursive script, underlined.

Isaiah Walker
Secretary-General

The International Olympic Committee approved this Constitution on the ____ day of
_____ 20__.

EXTRACT MINUTES

Of the 1st Session of the Hawaiian Kingdom National Olympic Committee (HKNOC)
Honolulu (University of Hawai'i at Mānoa)
December 21, 2017

Committee Members Present: Alika Desha, Dr. Isaiah Walker, Dr. Willy Kauai, Dr. Keanu Sai, Nalani Balutski

The meeting was convened at 1:00 PM.

SELECTION OF COMMITTEE MEMBERS, POSITIONS & DRAFT CONSTITUTION OF THE HAWAIIAN KINGDOM NATIONAL OLYMPIC COMMITTEE

Proposed committee members introduce themselves.

Alika Desha is a retired police officer

Isaiah Walker, raised on the Big Island, went to Kekaukaha Elementary. Professor of History at Brigham Young University in Hauula. My proposed position is the Secretary General. I have been working with the surfing leadership for the surfing committee and been a surf coach at Kamehameha Schools for seven years. I have a good relationship with the athletes that I hope to committee in Japan in 2020.

Nalani Balutski, work at the University of Hawaii at Manoa doing research and assessment, but have been working with student programs and raising funds.

Willy Kauai from Maui, currently the Director of Native Hawaiian Student Services at the University of Hawaii at Manoa. I have a PhD in Political Science. My capacity for this committee perhaps is Vice President.

Keanu Sai, ex officio member from the Interior Ministry which under the Olympic Committee charter, you cannot have government officials appointing members.

Keanu motions for all of us to accept our positions and the draft constitution that was sent out via email to all members.

All members accept their positions and the draft constitution.

COMMITTEE BUSINESS

Meeting is turned over to Alika Desha, as President, to conduct the remaining committee business.

Alika is honored to serve the Hawaiian Kingdom. Alika would like the committee to consider a resolution that is read out loud to other members. The motion is as follows:

Motion No. 1 #: Motion For Resolution To Seek International Olympic Committee Recognition Of The Hawaiian Kingdom National Olympic Committee (HKNOC)

With the intent to encourage and support the organization, development and coordination of sport and sports competitions in the Hawaiian Kingdom; and further to ensure the regular celebration of the Olympic Games by and within the Hawaiian Kingdom, I respectfully move that the Hawaiian Kingdom National Committee seek formal recognition from the International Olympic Committee in accordance with Rule 28 and By-law to Rules 27 and 28 of the Olympic Charter.

Dr. Isaiah Walker seconds the motion.

There is discussion on the motion as follows:

Dr. Keanu Sai has a small discussion and point of clarification. According to the Rule 28 of the Charter, it lays out the specific aspects that we need to fulfill, and that is what we need to do. In particular, it says “proof must be adduced that the members of the NOC, in the near future, the surfing federation, that it must exercise specific and real and ongoing sport activity in their country by organizing and participating in competitions and implementing training programs for athletes.” That is what we will have to put together when we apply?

According to the HKNOC, there are national federations, which are sports-affiliated. These national federations compete with an international federation recognized by the IOC. The national federation is a collection of clubs of that particular sport. Dr. Walker and Dr. Sai met with representatives from Volcolm, with Jason and Raynos and Kimo and spoke to them about forming a Hawaiian Surfing Association, a national federation. Once that is formed, members or clubs below that. Once that is organized and laid out, we will seek formal recognition by the IOC. This motion is to begin that process. Isaiah and Keanu will continue working on this process to make sure we have everything in place before we apply. We are starting here because it is a Hawaiian sport, that is our selling point. We want everything in place before we apply. We need to make sure we are seeking clear and strict compliance so there is no excuse, to have a package ready to go before the National Olympic Committee.

Dr. Willy Kauai asked what is the reaction of the surfing community and the representatives they spoke to.

Dr. Isaiah Walker said they are very supportive. Fernando Aguiar from Argentina who actually got surfing into the Olympics. His whole mission is founded on Duke Kahanamoku and his desire to get surfing into the Olympics 100 years ago.

Dr. Keanu talked about Raynos having a relationship with Fernando, which may help this process move more quickly. Did not realize the extent of Fernando’s connection with the International Federation of Surfing. The IOC’s board that recognizes new NOCs. Fernando can be a facilitator to speed up that process to get Hawaii in to meet our timeline for the

next Olympic gathering in 2020. We need to get Hawaiian Kingdom recognized with enough time for qualifications for the next one. Our priority is just surfing right now. Once we are in, additional sport certifications for boxing, volleyball, and others.

Alika Desha wraps up the discussion and re-announces that there is a motion on the floor. Any other further discussion or clarification needed? No further discussion and Alika Desha asks the committee to take a vote at this time. All those in favor for seeking recognition under the guidelines and rules of the Olympic Charter, say aye.

Aye, motion approved.

Alika Desha respectfully adds another motion to the floor for consideration by the committee.

Motion No. 2. Motion To Appoint Professor Federico Lenzerini As Attorney-In Fact To Act In The Stead Of The Hawaiian Kingdom National Olympic Committee

I respectfully move for the appointment of Professor Federico Lenzerini as the attorney-in-fact, by a limited power of attorney, to act for and on behalf of the Hawaiian Kingdom National Olympic Committee in its efforts to seek formal recognition by the International Olympic Committee. Professor Lenzerini's authority shall include without limitation, the powers and authority to exercise or perform any act, power, duty, right or obligation whatsoever that the Hawaiian Kingdom National Olympic Committee now has, or may hereafter acquire, toward the end of International Olympic Committee recognition.

Dr. Willy Kauai seconds the motion.

There is discussion on the motion as follows:

Dr. Keanu Sai will put together a draft of a limited power of attorney that will be reflective of the motion, and will need to be signed off on the two leaders for the HKNOC, which is Alika Desha and Dr. Isaiah Walker.

The Provisional government of the Hawaiian Kingdom will provide the pay or the remuneration of Federico's work which will include travel and lodging, because it is considered part of the national interest of the country. I do not want to initiate the process until we have everything ready (in reference to the first motion). Dr. Sai will follow up on the power of attorney and contacting these individuals at a future time when the process is further along.

Motion on the floor. Any more discussion? No. Vote all those in favor. All in favor.

Motion has been accepted.

WRAP UP & OTHER DISCUSSION

Alika asks whether there is any other business to add or consider. The purpose of this meeting was to get things moving as soon as possible.

Dr. Keanu Sai wraps up with reference to Dr. Isaiah Walker's connections with individuals from the Fijian Surfing Association and their constitution as a template. It is a great template that the Hawaiian Surfing Association (Kimo and others) to adopt. We recommend one club with a team.

Alika asks if there are any other discussions? None required by committee.

Call for adjournment of meeting at 1:21 PM.

EXTRACT MINUTES

Of the 2nd Session of the Hawaiian Kingdom National Olympic Committee (HKNOC)
Honolulu (University of Hawai'i at Mānoa)
January 25, 2018

Committee Members Present: Alika Desha, Dr. Isaiah Walker, Dr. Willy Kauai, Dr. Keanu Sai, Nalani Balutski

The meeting was convened at 2:00 PM.

Review and accept the minutes from the last meeting on December 21, 2017

Willy Kauai motioned to approve the minutes.

All approved the minutes from the December 21, 2017 meeting.

REVIEW OF THE REQUEST AND CONSTITUTION BY THE HAWAIIAN SURFING FEDERATION

Alika introduces a request by the Hawaiian Surfing Federation to be accepted by our organization.

There was a meeting with Keanu Sai and Isaiah Walker with said organization last week. Isaiah reports that there was excitement of the athletes, along with Brian Keaulana who was at the meeting on January 18 on the North Shore of O'ahu.

We need to address their request by the Hawaiian Surfing Federation to be accepted by the Hawaiian Kingdom National Olympic Committee

Alika asks if there is any discussion needed on the topic. No discussion needed.

Willy motion to approve the request.

All approved the request to accept the Hawaiian Surfing Federation under the Hawaiian Kingdom National Olympic Committee.

OTHER DISCUSSION

Alika sought clarification on the relationship between a Hawaiian Surfing Club and Hawaiian Surfing Federation, and if they work together or are the same entity?

It was clarified that the Hawaiian Surfing Club is the hands-on club with the coaches interacting with the players. They are separate entities.

Keanu clarified that the Hawaiian Surfing Federation, in the future, will be managing all clubs and other sports. They will also set up the surfing teams that represent the Hawaiian Kingdom. We are sticking with one club at this point, just to get recognized. But there is an opportunity in the future to have more clubs. In the constitution of the surfing federation, the president or head of the different clubs also sits on the federation. All federation sports, their heads sit as a member of the national olympic committee. We needed to have a record of the NOC to accept the federation to be a member.

Isaiah clarifies that this would mean that Brian Keaulana will be on the HKNOC in the future

Keanu will prepare packet to include our application, our meeting minutes, the federation constitution and its minutes, and the surf club constitution and its minutes to send off to Switzerland for Federico to represent us and turn in our completed application.

Alika asks what the timeline is for this process moving forward.

Keanu clarifies that it is the IOC Executive Board to recognize, but they do not review, that belongs to a sub-committee, National Olympic Committee Relations Department. Federico will formally submit this in Switzerland. He will be requesting it for expedited review in time for the 2019 qualifications for 2020 Olympics in Japan.

Alika asks the group if there are any other questions.

Willy seeks confirmation that whether word from Federico will dictate our next meeting.

Keanu confirms that we will await word from Federico on next steps and our next meeting, including any feedback received from him. We also need to prepare a Power of Attorney to authorize Federico to represent the Hawaiian Kingdom National Olympic Committee, in line with our conversation at the last meeting.

Alika motions for our meeting to adjourn. All agree.

Meeting adjourned at 2:15 pm.

Enclosure #3

**CONSTITUTION OF THE HAWAIIAN
SURFING FEDERATION
(HSF)**

January 18, 2018

Article 1. Name

This organization shall be called the Hawaiian Surfing Federation (hereafter referred to as “HSF”). Its jurisdiction shall extend to and be acknowledged by all affiliated Clubs. HSF is an umbrella body comprised of local clubs, which represent its principles.

Article 2. Definitions

1. Hawaiian Surfing Association (HSF)
2. National Federation (NF)
3. Regional Recognized Club (Club)
4. International Surfing Association (ISA)
5. International Federation (IF)
6. Hawaiian Kingdom National Olympic Committee (HKNOOC)
7. World Surfing League (WSL)
8. World Championship Tournament (WCT)
9. Annual General Meeting (AGM)
10. Special General Meeting (SGM)
11. Executive Board also known as Board of Directors – Meaning the Executive Board of the National Federation, the governing institution responsible for the administration and management of the NF
12. Constitution – meaning this constitution of the Association
13. Intellectual Property – meaning all rights subsisting in copyright, business names, names, trademarks, logos, designs, equipment including computer software.

Article 3. Mission Statement

To cultivate the sport of surfing which originated in our islands and to promote its prosperity among the people of the Hawaiian Kingdom. Surfing also comprises body boarding, wind and kite surfing, and stand-up paddle boarding. It also includes water safety issues and fosters capacity building in skills such as lifeguarding.

A principal goal of HSF is to train and foster the talents of members through national and international competition such as the Pacific Games and to compete in the World Championship Tournament (WCT) World Surfing League (WSL) of surfing professionals. HSF also promotes awareness about best practice within the sport, which includes the importance of the environment, and to ensure that the natural resources of the Hawaiian Islands, such as beach and surf access, are maintained for the future generations.

Article 4. Objectives

1. To provide representation for the sport and acts as the National Governing Body in all matters that pertains to advancing surfing in the Hawaiian Kingdom.
2. To assist the Clubs in their activities by providing coordination for grant proposals and an interface as the National representatives for the Club's sport to the National Bodies such as the HKNOC, ISA, and any other international bodies.
3. To provide a medium of exchange for information among surfers throughout the Hawaiian Kingdom, and to enhance the enjoyment of surfing.
4. To promote, organize, and develop surfing in the Hawaiian Kingdom, and to contribute towards the advancement and enjoyment of the sport throughout the Hawaiian Kingdom.
5. Such other functions as are considered appropriate in relation to the promotion and encouragement of surfing in the Hawaiian Kingdom.
6. Creating opportunities for surfers and other participants (e.g. administrators/officials) to reach their potential.
7. Encouraging elite performance.
8. Encouraging/enabling mass participation.
9. Encouraging international competition and international representation.
10. Making, maintaining, upholding, and enforcing rules and regulations and such powers as are necessary to the efficient and effective operation of the organization and the management of the sport.

Article 5. Membership

Membership of the HSF is comprised of registered Clubs who manage their own membership categories. One delegate from each Club will be required to hold a seat on the Executive Committee of HSF.

Section 6.1. Club Recognition Guidelines

1. Board of Directors
2. AGM minutes
3. Bank account
4. Calendar
5. Social media page
6. Clubs must host one or more competitions each year
7. Clubs must hold regular meetings with minutes being submitted to the Association.
8. Annual report is to be submitted to the HSF 14 days prior to the Association's AGM.

Clubs interested in membership within the HSF should apply in writing to the Association Secretary providing details as specified in the above criteria. The Clubs must be current in the above categories to have voting rights at the HSF's AGM.

Section 6.2. Club membership categories

1. Associate membership—open to people who have an active interest in surfing in the Hawaiian Kingdom but are not residents.
2. Club membership—open to all persons who have both an active interest in the sport of surfing and reside in the Hawaiian Kingdom.
3. Life membership—the board may recommend to the AGM that any person who has rendered distinguish service to a club / association be appointed as a life member.
4. Honorary membership—conveyed upon a person by a vote of the local membership.
5. Corporate membership—open to corporate citizens that wish to support and be involved with programs and events sanctioned by the Association.
6. Additional Club membership categories may exist at the discretion of the clubs.

Section 6.3. Privileges of Membership

1. All clubs may attend HSF meetings, annual or otherwise. Only Club delegates have the right to vote.
2. All Clubs will receive correspondence relevant to the Association activities and relevant topics concerning surfing generally.
3. All members may present items for consideration at Association meetings.

Section 6.4. Discontinuance of Membership

1. Membership of HSF may be discontinued by the Board upon breach of any clause of this constitution including but are not limited to the failure to pay any monies or fees owed or any resolution or determination made or passed by the Board.
2. The Board shall not discontinue membership without the board first giving the accused member/club the opportunity to explain the breach and/or remedy the breach.
3. Where the accused fails to provide adequate explanation of the breach the member/clubs membership will be discontinued.
4. Membership, which has been discontinued, may be reinstated at the discretion of the Board.

Section 6.5. Discipline

The Board may commence or cause to be commenced disciplinary proceedings against a member/club who has allegedly:

1. Breached, failed, refused or neglected to comply with a provision of this constitution. Any resolution or determination of the Board or any duly authorized committee.
2. Acted in a manner unbecoming of a member or prejudicial to the proposed and interests of the member/club.
3. Brought HSF or the Club into disrepute.

The Board may appoint a judiciary committee to deal with any disciplinary matters referred to it.

Article 7. Affiliations

HSF provides National representation for the sport of surfing. It is comprised of affiliated Clubs or organizations, which embrace the Mission Statement and Objectives of HSF.

All clubs directly associated with surfing may apply for affiliation with the Association, subject to agreeing to abide by the Constitution and Rules of the Association. The HSF shall retain the right to reject any application for affiliation, or to withdraw affiliation, on any grounds, which to them appear reasonable.

All applications for affiliation shall be made in writing to the Secretary.

Each affiliated Club or organization shall submit to the HSF Secretary a copy of its Constitution and Rules and shall submit yearly, the names and addresses of its Office Bearers. A simple report is required of their annual activities including the latest financial bank statement.

Article 8. Executive Board

The Executive Committee shall consist of the Officers of HSF, and shall be responsible for controlling and managing the business and affairs of HSF in accordance with the rules of, and in conformity with, the general policies laid down by HSF. Other duties may, from time to time, be allocated to particular local or associate members by a vote of the Executive Committee.

Section 8.1. Elected Directors

The officers of HSF shall consist of a President, Secretary and Treasurer. The option of a Vice President exists at the discretion of the existing Officers. The Executive Committee can appoint other positions such as a media officer, events organizer or National sports organization liaison officer.

Section 8.2. Appointment of Directors

Officers shall be elected for an annual term at the Annual General Meeting and shall be eligible for re-election at the end of their term.

Section 8.3. Powers of the Board

Subject to this constitution the Board of Directors shall exercise the powers of HSF. The Board of Directors shall act in accordance with the objective of HSF and operate with the best interest of HSF and members at heart.

Section 8.4. Election and Appointment of the Board

Nominations for elected director positions shall be called for fourteen (14) days prior to the Annual General Meeting to allow the Clubs time to canvas their membership for their preference. When calling for nominations job description for the position can be provided.

If the number of the nominations received are equal to the number of vacancies to be filled or there are insufficient nomination received to fill all vacancies on the board then those nominated shall be declared elected only if approved by the majority of the club delegates. If the number of nominations exceeds the number of vacancies to be filled, voting papers shall be prepared containing the names of the candidates in alphabetical order for each vacancy. Voting shall be conducted in such a manner and by such a method as determined by the board from time to time.

Section 8.5. Nomination of Board Members

Nominations must be:

1. In writing or on prescribed form (if any) provided for that purpose.
2. Signed by two individual members.
3. Certified by the nominee expressing their willingness to accept the position for which they are nominated.
4. Delivery to HSF fourteen (14) days prior to the AGM.

Section 8.6. Terms elected

Board of Directors shall be elected for a term of two (2) years with Board members retiring from the position after a maximum of four (4) years. Subject to provisions in this constitution relating to early retirement or removal of Directors, elected Directors shall remain in office from the conclusion of the Annual General Meeting at which the election occurred until the conclusion of the second Annual General Meeting following.

Section 8.7. Vacancies of Board members

Any casual vacancy occurring in the position of Director may be filled by the remaining Directors or from among appropriately qualified persons. Any casual vacancy may only be filled for the remainder of the Director's term under this Constitution.

Section 8.8. Conflict of Interest

A Director shall declare their interest in any contractual, selection, disciplinary, or financial matter in which a conflict of interest arises or may arise. They shall,

unless otherwise determined by the Board, absent their self from discussions of such matters and shall not be entitled to vote in respect of such matters. If the Director casts a vote, the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Director to absent themselves from discussions and refrain from voting, the issue should be immediately determined by vote of the Board. If this is not possible, the matter shall be adjourned or deferred.

Section 8.9. Ground for Termination of Director

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

1. Dies.
2. Becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health.
3. Resigns his office in writing to HSF.
4. Misses 3 meetings in a year will be deemed to be no longer an office bearer.
5. Is absent without the consent of the Board from meetings of the Board.
6. Is directly or indirectly interested in any contract or proposed contract with a Club and fails to declare the nature of that interest.
7. Has acted in a manner unbecoming or prejudicial to the objects and interests of a Club.
8. Has brought a Club into disrepute.

Article 9. Meetings

Section 9.1. Annual General Meeting

The Annual General Meeting of HSF shall be held between March and May of each year on such a day and time as the Officers determine. The annual budget and the notice of motion or resolution to be proposed at the Annual General Meeting shall be sent to the Secretary at least thirty (30) days before the said meeting. The finalized accounts need to be sent to the Club Presidents fourteen (14) days prior to the AGM. HSF's General Meeting shall be held in accordance with this Constitution. It should be held on a date and at a venue determined by the Board. All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

The business to be transacted at the Annual General Meeting includes the consideration of:

1. Financial accounts.
2. Reports of the Board and auditors.
3. Election of Directors under this Constitution.
4. Appointment of the auditors.

Section 9.2. Special General Meeting

The Board may, whenever it thinks fit, convene a Special General Meeting. When, but for this clause, more than fifteen months elapses between Annual General Meetings, the Board shall convene a Special General Meeting before the expiration of that period.

Section 9.3. Voting

1. Each Club has two votes when considering AGM and Club level issues.
2. At all meetings the Chairperson shall have a deciding vote in the event of equality in votes.
3. A quorum is established for the AGM.
4. Voting at all meetings may employ one of the following methods as approved by the meeting:
 - a. By a show of hands; or
 - b. By secret ballot.
5. The election of office bearers shall be by secret ballot.
6. Proxy Voting—Each Club may assign one of their allocated 2 votes by written proxy to be presented by the other delegate at that meeting.

Section 9.4. Quorum

No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings of HSF shall be 3 members present. An AGM quorum shall consist of 50% of clubs represented with 75% of the board of directors present.

Section 9.5. Adjournment of Meeting

If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be adjourned until the same day in the next week at the

same time and place or to a date, time or place determined by the chairperson. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will lapse.

Article 10. Financials

All checks, promissory notes, bankers, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Club, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two duly authorized Directors or in such other manner as the Board determines. The Board shall submit the Club's statements of account to the Delegates at the Annual General Meeting in accordance with this Constitution.

Section 10.1. Auditor

A properly qualified auditor or auditors shall be appointed by the Board of Directors. The accounts of HSF shall be examined and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each calendar year.

Section 10.2. Income and Expenses

The Executive Officers shall ensure that a proper book of accounts be kept for income and expenditure and shall present to the Annual General Meeting in each year, a balance sheet and recommendation for profits and losses for the ensuing year. Funds shall be banked in an account with access requiring signatures of two members of the Executive.

HSF's financial year shall be a calendar year and audited account submitted at the AGM to the members.

Article 11. Constitution

This Constitution shall not be altered except by Special Resolution.

Section 11.1. Alterations

Notice of any new amendments or alterations to the Constitution by any member shall be given to the Secretary thirty (30) days before a General Meeting.

Any proposed amendments or addition to the rules should be put to the vote by HSF Executive and Club delegates at a SGM or AGM.

Article 12. Indemnity

Every Director and employee of HSF will be indemnified out of the property and assets of HSF against any liability incurred by them in their capacity as director or employee in defending any proceedings, civil or criminal, in which judgment is given in their favor or in which they are acquitted or connected with any application in relation to any such proceedings in which relief is granted by the Court.

Article 13. Dissolution

HSF shall not be dissolved unless all liabilities have been discharged and a motion has been passed by a majority of the votes recorded at a General Meeting convened for the purpose.

Any sum remaining after the satisfaction of all liabilities shall be given or transferred to such Club or Clubs, Association, or other organization to be determined by a majority of members present at such meeting.

MINUTES OF THE HAWAIIAN SURFING FEDERATION
January 18, 2018

A meeting of the Hawaiian Surfing Federation was convened on the North Shore of O'ahu, Hawai'i at the Volcom House on January 18, 2018.

Invitees: Brian Keaulana (President), James Kimo Leong (secretary), Haunani Kane (treasurer), David Keanu Sai, Isaiah Walker, Rainos Hayes, Jason Shibata, Ezekiel Lau, Geodee Clark, and Imaikalani DeVault. All invitees were in attendance.

1. WELCOME AND ESTABLISHING HSF LEADERSHIP AND CONSTITUTION

Brian Keaulana called the meeting to order and initiated the process to accept the HSF constitution and HSF leadership positions. Keaulana proposed that he serve as President of the Hawaiian Surfing Federation, Kimo Leong as Secretary and Haunani Kane as Treasurer. Brian Keaulana, Kimo Leong, and Haunani Kane all accepted their positions.

President Brian Keaulana asked if everyone had received a copy of and had the opportunity to review the proposed HSF Constitution. Each committee member verified that yes they had. He then proposed that they accept the constitution of the Hawaiian Surfing Federation. All three accepted the constitution of the Hawaiian Surfing Federation.

2. RECOGNITION

President Keaulana then explained that with the intent to promote and preserve the Hawaiian sport of surfing by participating in the Olympic games, "I move that the Hawaiian Surfing Federation be recognized by the Hawaiian Kingdom National Olympic Committee." After James Kimo Leong seconded the motion. President Keaulana said, "With this motion on the floor, do we have any discussion on the matter?"

There was an open discussion about the need to establish a new Federation. It was explained that upon application for HKNOC NGB status, in order to fully comply with HKNOC requirements, that a new organization, Hawaiian Surfing Federation be created to function as the NGB. Hawaiian Surfing Federation would be the HKNOC-recognized NGB in the Hawaiian Kingdom. Prior to the formation of the HSF, Hawai'i Surfing Association (HSA) was the recognized governing body by the ISA in Hawai'i. However, at least one HSA board member, Vice President James Kimo Leong, is now in HSF leader, as Secretary. Also HSA coaches Rainos Hayes and Jason Shibata, who coached Team Hawai'i at the ISA world championships for years, will be working under the HSF. The inclusion of these key individuals reflects a continuity between the two organizations.

There was also a discussion about the mission of HSF, which is to cultivate the sport of surfing which originated in our islands and to promote its prosperity among the people of the Hawaiian

Kingdom. Surfing also comprises body boarding, wind and kite surfing, and stand-up paddle boarding. It also includes water safety issues and fosters capacity building in skills such as lifeguarding.

After asking if there was anymore discussion, President Keaulana stated, “since is no more discussion, I ask that we take a vote at this time. All those in favor of seeking recognition for the Hawaiian Surfing Federation under the Hawaiian Kingdom National Olympic Committee, say aye.” All said aye.

3. ACCEPTING HAWAIIAN SURFING CLUB and ATHLETES

Next item of business was to discuss the structure in place to coach, train, and prepare athletes for Olympic Competition. Because the Hawaiian Surfing Club was comprised of Hawaii’s top coaches and athletes, HSF was glad to consider the HSC members of the HSF.

There was a discussion on how the HSC would be the only member organization that feeds their top athletes into the HSF’s Championships. Hawaiian surfers who are members of HSC include: three-time WSL World Champion Carissa Moore, and other top ranked professional surfers, Ezekiel Lau, Coco Ho, Keanu Asing, Imaikalani DeVault, and possibly John John Florence (waiting for confirmation). These top athletes will be part of HSF through their membership in the HSC, which is the only surf club recognized by the HSF.

President Keaulana stated, “It is proposed that the Hawaiian Surfing Federation accepts the Hawaiian Surfing Club as a member. If you accept, please say “I accept.” All accepted the Hawaiian Surfing Club as a member of the Hawaiian Surfing Federation.

4. CLOSING

President Keaulana explained that there were no more motions or items to discuss. He called to adjourn the meeting at 5:47 pm. James Kimo Leong Seconded the motion.

Enclosure #4

CONSTITUTION OF HAWAIIAN SURF CLUB

January 18, 2018

ARTICLE 1. Name

The name of this organization is the Hawaiian Surf Club (hereafter referred to as “HSC”).

ARTICLE 2. Purpose Statement

The purpose of HSC is to promote the sport of surfing in a positive manner and encourage its members to participate and compete at a high level.

ARTICLE 3. Membership

Membership of HSC is open to all Hawaiian nationals who reside in the Hawaiian Kingdom.

ARTICLE 4. Officers

The officers of HSC shall consist of a President, Secretary and Treasurer and shall be known as the Executive Board.

1. The President shall preside at all meetings of the organization and shall coordinate the work of the officers and committees.
2. The Secretary shall record the minutes of all meetings of HSC and shall perform other duties as may be delegated.
3. The Treasurer shall receive all monies HSC; shall keep an accurate record of receipts and expenditures; shall pay out local funds in accordance with the approved budget as authorized by the organization. The Treasurer shall present a financial statement at every HSC meeting and at other times when requested by the President.
4. Officers shall assume their official duties at the close of the last general meeting of the year and shall serve for a term of two years and/or until their successors are elected/appointed.

5. Any HSC officer may be removed from office through the following process:
 - a. A written request by at least three voting members of the organization shall be submitted to the President, Secretary or Treasurer. Written notification shall be sent to the officer in question asking that officer to be present at the next meeting and prepared to respond to the removal request.
 - b. A two-thirds majority vote of members present is necessary to remove the officer.
 - c. In the event of the removal of an officer, a special provision may be granted to the remaining officers to appoint an interim replacement until an election may be held. A member of HSC who is willing and able to perform the duties of their position will fill this vacancy, and the current members of the Executive Board will determine nomination and placement of said member.
 - d. If an officer decides to resign for any reason, the aforementioned process will take place to fill the vacant position. Any officer that decides to leave will still be considered a member of HSC unless they specify a desire to no longer be involved at all.

ARTICLE 5. Elections

Nominations for all officers will take place annually from the members at the last general meeting. Eligibility to become an officer includes being an active member of HSC who is willing and able to contribute to the administration of HSC. Any member may nominate any other voting member, including him or herself. Nominations may also be made during the election meeting prior to closing of nominations. Officers will be elected in the month of May by a blind ballot, which will be distributed at the election meeting held in May. A simple majority will nominate the new officers. In the event of a tie, the current officers will cast a vote amongst themselves for a tie breaker. The newly elected officers need to take on their duties in the month of August following the May elections.

ARTICLE 6. Finance

HSC will not require membership dues, however, it will raise funds through fundraisers and similar activities for uniforms, travel and other events.

ARTICLE 7. Dissolution

In the event this organization dissolves, all monies left in the treasury, after outstanding debts and claims have been paid, shall be donated to the Hawaiian Surfing Federation.

ARTICLE 8. Amendments to the Constitution

This constitution may be amended at any regular meeting of HSC by a two thirds vote of the members present and voting, provided that notice of the proposed amendment was given at the previous meeting.

MINUTES OF THE HAWAIIAN SURFING CLUB
January 18, 2018

A meeting of the Hawaiian Surf Club was held on January 18, 2018 at the Volcom house on the North Shore of O'ahu, Hawai'i.

Invitees: Rainos Hayes (President), Jason Shibata (Secretary), Geodee Clark (Treasurer), Brian Keaulana, James Kimo Leong, Haunani Kane, David Keanu Sai, Isaiah Walker, Ezekiel Lau, Geodee Clark, and Imaikalani DeVault. All invitees were in attendance.

I. WELCOME AND FIRST ITEMS OF BUSINESS

Rainos Hayes called the meeting to order and asked that Jason, Geodee and himself first accept their HSC leadership positions. Hayes proposed that he serve as President of the Hawaiian Surfing Club, Jason Shibata as Secretary and Geodee Clark as Treasurer. They all accepted their positions.

After discussing the proposed HSC constitution, everyone confirmed that they all received a copy of the constitution and had read it prior to the meeting. President Hayes then proposed that they accept the constitution of the Hawaiian Surfing Club. All three accepted the constitution of the Hawaiian Surfing Club.

II. RECOGNITION BY HAWAIIAN SURFING FEDERATION

With the intent to promote and preserve the Hawaiian sport of surfing by participating in the Olympic games, President Hayes respectfully moved that the Hawaiian Surfing Club be recognized by the Hawaiian Surfing Federation. Treasurer Geodee Clark seconded the motion.

Rainos Hayes then asked, "With this motion on the floor, do we have any discussion of the matter?"

There was discussion that HSC would be the only organization to feed athletes into the HSF's Championships. There was also a discussion about which specific athletes would participate with the HSC. These athletes include:

1. CARISSA MOORE is 3x WSL Women's World Champion (2011, 2013, 2015) and has agreed to participate under the Hawaiian flag at the 2020 Olympics through the HSC. Her career accomplishments include: a) Three-time WSL Women's World Champion, b) Youngest surfer (16) to win a Triple Crown Championship, c) Youngest surfer (18) to win a World Championship (2011), c) 20 professional event wins (WSL formerly ASP).

2. EZEKIEL LAU is currently ranked internationally as a top athlete on the WSL Championship tour. He qualified for the elite WSL Championship Tour in both 2016 and 2017. In 2017 he won the WSL Billabong Pro in Cascais, Portugal and the HIC Pro, Sunset Beach. His accolades include: a) Vans World Cup of Surfing Champion, 2013, b) two-time HIC Pro Champion (2012, 2017), c) WSL 10,000 Billabong Pro Cascais, Champion 2017.
3. COCO HAPAIKEKOA HO has been in the top ranks of the WSL Championship Tour since 2009, when she won the Rookie of the Year award. She ended the 2017 season ranked 5th on the WSL Qualifying Series. Her other top accomplishments are: a) Oceano Santa Catarina Pro Champion, 2014, b) Los Cabos Open Of Surf Champion, 2014, c) WSL Qualifying Series Champion, 2011, d) WSL Ripcurl Search Portugal Champion, 2009
4. KEANU ASING is ranked internationally as a top athlete on the WSL Championship tour. At the end of 2017, Asing ranked 9th on the WSL Qualifying Tour and 45th on the CT. He qualified for the elite WSL Championship Tour in both 2015 and 2017. In 2016 he won the WSL Quicksilver Pro in France and the HIC Pro, Sunset Beach. His accolades include: a) WSL Quicksilver Pro France Champion, 2016, b) Vans Pro, Virginia Beach Champion, 2017, c) Barbados Pro Champion, 2017.
5. IMAIKALANI DEVAULT is a former NSSA Men's High School National Champion who recently broke into the top 100 on the World Qualifying series. Although he is currently ranked 82nd on the WSL World Qualifying Series, he is anticipated to make headway in the next competitive surfing season.

WAITING FOR CONFIRMATION ON THE FOLLOWING ATHLETES:

1. JOHN "JOHN" ALEXANDER FLORENCE is a two-time WSL Men's World Champion. Today, Florence is revered internationally as the best male surfer in the world. Competing professionally in international competition since he was 13 years old, Florence is an international superstar who represents Hawai'i well. His career accomplishments include: a) Back-to-back World Championship Titles (2016, 2017), b) Over 12 career professional event wins (international), c) Four-time winner of prestigious Surfer Poll Award
2. MALIA MANUEL has consistently ranked in the top 12 on the WSL Women's Championship Tour over the last 5 years, with her best ranking at 5th place in 2014. She won the WSL rookie of the year award in 2012 and has won many prestigious events over her career. Among her top accomplishments include: a) Youngest winner (14) of Vans US Open, 2008, b) Runner-up, WSL Maui Women's Pro, 2017, c) Runner-up, Vans US Open, 2016, d) WQS Mereweather Surf Fest Champion, Australia, 2014.

After discussion of these athletes, there was a consensus that since HSC athletes are considered among the World's best surfers their participation would help legitimize our team and our application to the IOC.

Then, there was a discussion about the ISA process of selecting athletes to compete in the Olympic games. Hayes and Shibata explained that up to 18 of the 40 places at the Olympics reserved for World Surfing League (WSL) Championship Tour (CT) surfers (10 men and 8 women), with the remaining 22 places determined at the 2019 and 2020 ISA World Surfing Games, the 2019 Pan American Games in Lima, and 1 slot (each for men and women) for the host nation of Japan. Since several of our Hawaiian athletes occupy those top spots on the WSL Championship Tour, all were confident that Hawai'i would have several qualifying athletes.

Once these discussions were finished, President Hayes then stated "If there is no more discussion, I ask that we take a vote at this time. All those in favor of seeking recognition under the Hawaiian Surfing Federation, say aye." All said aye.

He then called to adjourn our meeting. Jason Shibata seconded the motion.

Meeting adjourned at 5:25pm.

Enclosure #5

LIMITED POWER OF ATTORNEY

Know now all men by these presents that We, on behalf of the Hawaiian Kingdom National Olympic Committee, the undersigned, do hereby make, constitute, and appoint Professor Federico Lenzerini, Ph.D., our true and lawful attorney in fact for the Hawaiian Kingdom National Olympic Committee (HKNO) and in its name, place, and stead, on ourselves, and for our use and benefit and for the specific purpose hereinafter described.

To represent the HKNO in connection with its seeking recognition by the International Olympic Committee (IOC) as a National Olympic Committee in accordance with the Olympic Charter. This Limited Power of Attorney includes, in particular, representation before the IOC as well as all IOC administrative authorities for the recognition of the HKNO by the IOC.

We grant to said attorney in fact full power and authority to do, take and perform all and every act and things whatsoever requisite, proper, or necessary to be done, in the exercise of any of the rights and powers herein granted about the specific and limited purpose, as fully to all intent and purposes as I might or could do if personally present, with full power of substitution of revocation, hereby ratify and confirming all that said attorney in fact, of his substitutes, shall lawfully do or cause to be done by virtue of this power of attorney and rights and powers herein granted.

Witness our hand this 25th day of January, 2018.




Alika Desha
President



Isaiah Walker, Ph.D.
Secretary-General

Hawaiian Islands,)
) ss.
Island of Hawai'i)

On this 25th day of January A.D. 2018, personally appeared before me Alike Desha and Isaiah Walker, Ph.D., Executive Officers of the Hawaiian Kingdom National Olympic Committee, known to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein set forth.


David Keanu Sai, Ph.D.
Minister of the Interior



DR. DAVID KEANU SAI

Ambassador-at-large for the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194
Email: interior@hawaiiankingdom.org

6 March 2018

Greetings:

This letter is in support of the Hawaiian Kingdom National Olympic Committee's (hereafter "HKNOC") application for recognition by the International Olympic Committee (hereafter "IOC"). The undersigned is an *ex officio* member of the HKNOC Executive Committee in accordance with Article 14.2(g) of the HKNOC's Constitution.

In 2001, the Permanent Court of Arbitration in The Hague acknowledged that "in the nineteenth century the Hawaiian Kingdom "existed as an independent State recognized as such by the United States of America, the United Kingdom, and various other States."¹ In 1993, the Congress enacted a Joint Resolution acknowledging the illegality of the overthrow of the Hawaiian Kingdom government, being distinct from the Hawaiian State, and to offer an apology to Native Hawaiians.² The joint resolution stated, "[w]hereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts..., described such as acts as an 'act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress', and acknowledged that by such acts the government of a peaceful and friendly people was overthrown."³ The Hawaiian Kingdom has, since 17 January 1893, been under a belligerent occupation.

Since the nineteenth century, international law distinguishes between the State and its government. A State is a "body of people occupying a definite territory and politically organized"⁴ under one government, being the "agency of the [S]tate,"⁵ that exercises sovereignty, which is the "supreme, absolute and uncontrollable power by which an independent [S]tate is governed."⁶ In other words, sovereignty, both internal and external, is an attribute of an independent State, while the government exercising sovereignty is the State's physical agent. Hoffman emphasizes that a government "is

¹ *Larsen v. Hawaiian Kingdom*, 119 Int'l L. Reports 566, 581 (2001), hereafter "*Larsen case*."

² P.L. 103-150, 107 Stat. 1510, (1993).

³ *Id.*, 1511.

⁴ Black's Law 1407 (6th ed. 1990)

⁵ *Id.* at 695.

⁶ *Id.* at 1396.

not a State any more than man's words are the man himself," but "is simply an expression of the State, an agent for putting into execution the will of the State."⁷ Wright also concluded, "international law distinguishes between a government and the [S]tate it governs."⁸

Therefore, the Hawaiian Kingdom, as a sovereign State, would continue to exist despite its government being illegally overthrown by military force of the United States. Crawford explains this distinction with regard to Iraq.

"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."⁹

Crawford further points out that, "[t]here is a strong presumption that the State continues to exist, with its rights and obligations, despite...a period in which there is no...effective[] government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."¹⁰

The Government of the Hawaiian Kingdom, as it stood on 17 January 1893, was restored in 1995, *in situ* and not *in exile*.¹¹ An *acting* Council of Regency comprised of four Ministers—Interior, Foreign Affairs, Finance and the Attorney General—was established in accordance with the Hawaiian constitution and the doctrine of necessity to serve in the absence of the Executive Monarch. By virtue of this process a provisional government, (hereafter "Hawaiian government"), comprised of officers *de facto*, was established.¹² According to constitutional scholar Thomas Cooley,

"A provisional government is supposed to be a government *de facto* for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity."¹³

⁷ Frank Sargent Hoffman, *The Sphere of the State or the People as a Body-Politic*, 19 (1894).

⁸ Quincy Wright, *The Status of Germany and the Peace Proclamation*, 46(2) *Am. J. Int'l L.* 299, 307 (Apr. 1952).

⁹ James Crawford, *The Creation of States in International Law*, 34 (2nd ed., 2006).

¹⁰ *Id.*

¹¹ David Keanu Sai, *Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*, 25-51 (4 August 2013), available at http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf.

¹² *Id.*, at 40-48.

¹³ Thomas M. Cooley, "Grave Obstacles to Hawaiian Annexation," *The Forum* (1893), 389, at 390.

Like other governments formed under the principle of necessity in exile during foreign occupations in the Second World War, the Hawaiian government did not receive its mandate from the Hawaiian citizenry, but rather by virtue of the principle of necessity and Hawaiian constitutional law. Therefore, the Hawaiian government provisionally represents the Hawaiian State.¹⁴

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

“it is always the legal order of the State which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the delegation of the territorial State nor any rule of international law other than the one safeguarding the continuity of an occupied State. The relation between the legal order of the territorial State and that of the occupied State...is not one of delegation, but of co-existence.”¹⁵

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

In 1999, a dispute arose between Lance Larsen, a Hawaiian subject, and the Hawaiian government, where Larsen alleged that the Hawaiian government is in violation of international law for allowing American laws to be imposed in the territory of the Hawaiian Kingdom. This led to his unfair trial in the Third Circuit Court, Puna Division,¹⁶ and subsequent incarceration on 4 October 1999. After both parties entered into an arbitration agreement, Larsen filed a notice of arbitration on 8 November 1999 with the Permanent Court of Arbitration (hereafter “PCA”), The Hague, Netherlands. *Lance Larsen v. Hawaiian Kingdom* was entered into the docket as case no. 1999-01. (Enclosure “1”).

¹⁴ See Sai Brief, at para. 8.1 – 8.17.

¹⁵ Krystyna Marek, *Identity and Continuity of States in Public International Law* (2nd ed., 1968), at 91.

¹⁶ *State of Hawai‘i v. Lance Larsen*, case no. 1655984MH (1999)

As an intergovernmental organization, the PCA must possess institutional jurisdiction before it can form *ad hoc* tribunals. The jurisdiction of the PCA is distinguished from the subject-matter jurisdiction of the *ad hoc* tribunal over the dispute between the parties. Disputes capable of being accepted under the PCA’s institutional jurisdiction include disputes between: any two or more States—i.e., *The Republic of Ecuador v. The United States of America* (Enclosure “2”); a State and an international organization—i.e., *District Municipality of La Punta (Peru) v. United Nations Office for Project Services* (Enclosure “3”); or a State and a private party—i.e., *Romak S.A. (Switzerland) v. The Republic of Uzbekistan* (Enclosure “4”).¹⁷ The PCA accepted the Larsen case as a dispute between a “State” and a “private party,” and acknowledged the Hawaiian Kingdom as a non-Contracting Power under Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes.¹⁸ In 2001, Bederman and Hilbert reported in the *American Journal of International Law*,

“[a]t the center of the PCA proceedings was ... that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States’ “unlawful imposition [over him] of [its] municipal laws” through its political subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him.”¹⁹

Before the tribunal was formed, the United States was provided an invitation to join in the arbitration. On 3 March 2000, the undersigned, Agent for the Hawaiian Kingdom, and Larsen’s counsel, Ms. Ninia Parks, held a conference call meeting in Washington, D.C., with Mr. John Crook from the U.S. Department of State. The meeting was reduced to writing and submitted by the Hawaiian government to the PCA Registry for record that the United States was invited to join in the arbitral proceedings.²⁰

The Hawaiian government was contacted by the PCA’s Deputy Secretary General, Ms. Phyllis Hamilton, that the United States notified the PCA that they would not accept the invitation to join the arbitral proceedings but did request permission from the Hawaiian government and Lance Larsen, through counsel, to have access to the pleadings and transcripts of the case. Both parties consented, after which the PCA formed the arbitral tribunal in April of 2000.

¹⁷ United Nations, *United Nations Conference on Trade and Development: Dispute Settlement* (United Nations New York and Geneva, 2003), at 15.

¹⁸ PCA Annual Report, Annex 2 (2011), at 51, n. 2.

¹⁹ David Bederman & Kurt Hilbert, “Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii,” 95 *American Journal of International Law* (2001) 927, at 928.

²⁰ See Sai Brief, at p. 40-44, para. 9.2.

The United States was fully aware of the circumstances of the arbitration whereby the dispute was premised upon the continuity of the Hawaiian State, with the Hawaiian government serving as its organ during a prolonged and illegal occupation by the United States. The United States did not protest, nor did it intervene, and therefore under the doctrine of acquiescence, whose primary function is evidential, the United States recognized *de facto* the conditions of the international arbitration and the continuity of the Hawaiian State. In other words, the United States has provided, not only by acquiescence with full knowledge *de facto* recognition of the Hawaiian government and the continuity of the Hawaiian State during an illegal and prolonged occupation, but also by direct acknowledgment of the *de facto* authority of the Hawaiian government when it requested permission from the Hawaiian government to access the arbitration records at the PCA.

In these proceedings, the Tribunal determined that the United States was an indispensable third-party (*Monetary Gold* principle) because Larsen alleged that the Hawaiian government was liable for the violation of his rights committed by the United States during his trial and incarceration. The Tribunal concluded:

“It follows that the Tribunal cannot determine whether the respondent [Hawaiian government] has failed to discharge its obligation towards the claimant [Larsen] without ruling on the legality of the acts of the United States of America. Yet that is precisely what the *Monetary Gold* principle precludes the Tribunal from doing. As the International Court explained in the *East Timor* case, ‘the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case’. (ICJ Reports 1995, p. 90, para. 20).”²¹

The Hawaiian government prevailed in these international proceedings because Larsen was bound by the indispensable third-party rule (*Monetary Gold* principle), and, therefore, was precluded from maintaining his suit against the Hawaiian government without the participation of the United States in these proceedings.

On 12 December 2000, the day after oral hearings were held at the PCA, a meeting took place in Brussels, Belgium, between Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium, and the undersigned, who was serving as Agent, Hawaiian Minister of the Interior, and two Deputy Agents, Mr. Peter Umialiloa Sai, Hawaiian Minister of Foreign Affairs, and Mrs. Kau‘i P. Sai-Dudoit, formerly known as Kau‘i P. Goodhue, Hawaiian Minister of Finance, representing the Hawaiian government in the *Larsen case*.²² Ambassador Bihozagara attended a hearing before the International Court of Justice on 8 December 2000, (*Democratic*

²¹ *Larsen case*, at 596, para. 12.15.

²² David Keanu Sai, *A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai‘i today*, 10 J. L. & Soc. Challenges 69, 130-131 (Fall 2008).

Republic of the Congo v. Belgium),²³ where he was made aware of the Hawaiian arbitration case that was also taking place across the hall in the Peace Palace.

After inquiring into the case, Ambassador Bihozagara called for the meeting and wished to convey to the Hawaiian government that his government was prepared to bring to the attention of the United Nations General Assembly the prolonged occupation of the Hawaiian Kingdom. After careful consideration, the Hawaiian government decided it could not, in good conscience, accept the offer, and place Rwanda in a position of reintroducing Hawaiian State continuity before the United Nations, when Hawai‘i’s community, itself, remained ignorant of Hawai‘i’s profound legal status due to over a century of denationalization—*Americanization*.

On behalf of the Hawaiian government, the undersigned thanked Ambassador Bihozagara for his government’s offer, but stated the timing was premature. The undersigned conveyed to the Ambassador that the Hawaiian government would need to first focus its attention on continued exposure and education regarding the American occupation both in the Islands and abroad. Although the Rwandan government took no action before the United Nations General Assembly at the Hawaiian government’s request, the meeting itself, exhibited Rwanda’s *de facto* recognition of the Hawaiian government and the continuity of the Hawaiian State.

After returning to the Islands from the Netherlands, the Hawaiian government focused its attention on education, and it was decided that the undersigned would enter the University of Hawai‘i at Manoa to pursue a political science M.A. degree, specializing in international relations, and a Ph.D. degree on the subject of the continued existence of the Hawaiian Kingdom as a State. The undersigned received his M.A. degree in 2004 and his Ph.D. in 2008.

On 1 August 2012, the undersigned was commissioned as Hawaiian Ambassador-at-large. (Enclosure “5”). Later that year, on 10 October 2012, after a meeting with Mr. Peter Thomson, Fiji’s Permanent Representative and Ambassador to the United Nations in New York City, the undersigned was called to an interview with the United Nations South-South News regarding Hawai‘i’s prolonged and illegal occupation by the United States.²⁴ South-South News is an initiative launched in February 2010 during the sixteenth session of the United Nation General Assembly High-level Committee on South-South Cooperation (SSC). South-South News disseminates news about Africa, Asia and the Pacific, Middle East, Eastern Europe, Latin America, and the Caribbean.

²³ *Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium), Provisional Measures, Order of 8 December 2000, I.C.J. Rep. 2000, at 182.

²⁴ South-South News interview with Dr. David Keanu Sai, New York City (October 10, 2012), available at: <http://southsouthnews.com/south-south-news/ssn-development-talks/player/45/517>.

The following year, the undersigned was invited by the SwissDiplomats—ZurichNetwork to present to its organization on the illegal and prolonged occupation of the Hawaiian Kingdom by the United States. The presentation was held at the University of Zurich on 11 November 2013. (Enclosure “6”). SwissDiplomats—ZurichNetwork is comprised of Swiss diplomats whose mission is to promote the relationship between diplomats who are in the “greater Zurich area.” It intends to be a “potential source of inspiration in Swiss foreign politics as well as in Swiss foreign trade policy.”²⁵

On 3 November 2017, the Hawaiian Minister of Foreign Affairs provided the undersigned a letter of credence for diplomatic missions abroad. (Enclosure “7”). In a communication to the Cuban Embassy, the undersigned requested an urgent meeting with the Cuban Embassy to the Kingdom of the Netherlands, in The Hague. On November 10, 2017 at 10:00am the undersigned was received at the Cuban Embassy to discuss highly sensitive matters regarding the Hawaiian Kingdom. This information has been redacted in the enclosed communications. (Enclosure “8”). The Cuban government’s receiving of the undersigned, as the Hawaiian Ambassador-at-large is an explicit acknowledgment of the continuity of the Hawaiian Kingdom, as a State, and recognition of the Hawaiian government.

From 19-24 February 2018, the undersigned was in Switzerland on a diplomatic mission to the Universal Postal Union (hereafter “UPU”). (Enclosure “9”). The UPU was established by a multi-lateral treaty in 1874 whose function is to set “rules for international mail exchanges and makes recommendations to stimulate growth in mail, parcel and financial services volumes and improve quality of service for customers.” The UPU is currently comprised of 193-member countries who meet in Congress every 4 years. Similar to the UN General Assembly, the UPU Congress, which is made up of delegates from the member countries, pass regulations for postal services as well as resolutions. Today, the UPU today is a specialized agency of the UN.

On 1 January 1882, the Hawaiian Kingdom joined the UPU as a member country, and participated in the UPU Congresses in Lisbon, Portugal, in 1885, and in Vienna, Austria, in 1891. As a result of the United States illegal overthrow of the Hawaiian government on 17 January 1893, the Hawaiian Kingdom could not attend the Congresses thereafter, which included the latest UPU Congress that was convened in Istanbul, Turkey, in 2016. Despite the illegal overthrow of its government, the Hawaiian Kingdom, as a State, continues to be a member of the UPU.

Removal from UPU membership can only occur by the member country itself. This is provided under Article 22 of the 1878 Convention whereby the member country “has the right to withdraw from the Union by means of a notice given, one year in advance,

²⁵ SwissDiplomats—ZurichNetwork, available at: <http://swissdiplomats.net/>.

by its Government to the Government of the Swiss Confederation.” The only other ways for removal of a member country occurs when the State is no longer a subject of international law because it merged into another State, by cession, or because it was dismembered into multiple States.

As the Hawaiian Kingdom was not dismembered, it can only be a question of merger through cession. Merger, however, must be recognizable under international law. According to Oppenheim, the cession of “State territory is the transfer of sovereignty over State territory by the owner State to another State.”²⁶ Oppenheim further states that the “only form in which a cession can be effected is an agreement embodied in a treaty between the ceding and the acquiring State.”²⁷ According to Crawford, although international law “distinguishes States from their governments, normally only the government of a State can bind that State, for example by treaty.”²⁸ By consent of the ceding State, the acquiring State becomes the successor State to all treaties and international organizations that the ceding State was a contracting Power to. In other words, if a bona fide merger took place between the Hawaiian Kingdom and the United States of America, then the Hawaiian Kingdom would have ceased to exist as a subject of international law and the United States would become its successor State.

When the United States Congress enacted a joint resolution purporting to have annexed the Hawaiian Islands in 1898, at the height of the Spanish-American War, that resolution did not have any effect on the Hawaiian Kingdom as a State, and thus, the Hawaiian Kingdom’s UPU membership and its treaties with other States remained intact. This included the UPU Convention, which is a multilateral treaty. As Marek states, “a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State.”²⁹

A State’s domestic legislation is not a source of international law but rather a source of domestic law that is limited in operation to the territory of the enacting State. The territorial limitation of U.S. Congressional laws is indisputable, and to quote from the United States Supreme Court in *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936):

“Neither the [Federal] Constitution nor the [Congressional] laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens..., and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law. As a member of the family of nations, the

²⁶ L. Oppenheim, *International Law*, vol. 1 (1905), 268.

²⁷ *Ibid.*, 270.

²⁸ James Crawford, *The Creation of States in International Law* (2006), 60.

²⁹ See Marek, at 110.

right and power of the United States in that field are equal to the right and power of the other members of the international family. Otherwise, the United States is not completely sovereign.”

Therefore, in order to bring the Hawaiian Kingdom current with its obligations as a member country of the UPU, the restored Hawaiian government proclaimed on 30 December 2017 (Enclosure “10”):

“Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby adopt and adhere to any and all the rules and regulations now adopted, and in force or that hereafter may be adopted by the Universal Postal Union, whether or not the said rules and regulations shall or may cause an increase or decrease in either the income or expenditure of the post office.”

Furthermore, in the *South China Sea* case (Philippines v. China) held at the Permanent Court of Arbitration, the Tribunal cited the *Larsen v. Hawaiian Kingdom* in its 2015 Award on jurisdiction as one of three precedent cases regarding the indispensable third-party rule. (Enclosure “11”). In its Award on jurisdiction, the Tribunal stated:

“The present situation is different from the few cases in which an international court or tribunal has declined to proceed due to the absence of an indispensable third party, namely in *Monetary Gold Removed from Rome in 1943* and *East Timor* before the International Court of Justice and in the *Larsen v. Hawaiian Kingdom* arbitration. In all of those cases, the rights of third States (respectively Albania, Indonesia, and the United States of America) would not only have been affected by a decision in the case, but would have ‘form[ed] the very subject-matter of the decision.’”³⁰

By citing the *Larsen* case, the *South China Sea* Tribunal also recognized the Hawaiian Kingdom’s continued existence as a State, which was in a dispute with Mr. Larsen, one of its nationals, over the United States prolonged occupation and the alleged violations of his rights.

It is clear that the Hawaiian Kingdom continues to exist as an independent and sovereign State and therefore should warrant the IOC’s recognition of the HKNOC. We are excited that surfing is now an Olympic sport, and it is only fitting that Hawaiian surfers be able to compete in the 2020 Olympic games in Japan because it is in Hawai‘i that the sport of surfing originated.

³⁰ *South China Sea* case (Philippines v. China), Award on Jurisdiction and Admissibility (2015), para. 181.

Please accept the expression of my highest consideration.

A handwritten signature in blue ink that reads "David Keanu Sai". The signature is fluid and cursive, with the first name "David" being the most prominent.

David Keanu Sai, Ph.D.

Ambassador-at-large for the Hawaiian Kingdom

International Olympic Committee
Executive Board
Lausanne, Switzerland

Enclosures

Enclosure #1



Larsen v. Hawaiian Kingdom

| | |
|---|---|
| Case name | Larsen v. Hawaiian Kingdom |
| Case description | <p>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.</p> <p>In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings.</p> <p>The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States’ actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.</p> |
| Name(s) of claimant(s) | Lance Paul Larsen (Private entity) |
| Name(s) of respondent(s) | The Hawaiian Kingdom (State) |
| Names of parties | |
| Case number | 1999-01 |
| Administering institution | Permanent Court of Arbitration (PCA) |
| Case status | Concluded |
| Type of case | Other proceedings |
| Subject matter or economic sector | Treaty interpretation |
| Rules used in arbitral proceedings | UNCITRAL Arbitration Rules 1976 |
| Treaty or contract under which proceedings were commenced | Other The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America |
| Language of proceeding | English |
| Seat of arbitration (by country) | Netherlands |
| Arbitrator(s) | Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal) |
| Representatives of the claimant(s) | Ms. Ninia Parks, Counsel and Agent |
| Representatives of the respondent(s) | Mr. David Keanu Sai, Agent |

Mr. Peter Umialiloa Sai, First deputy agent
Mr. Gary Victor Dubin, Second deputy agent and counsel

Representatives of the parties

Number of arbitrators in case 3

Date of commencement of proceeding [dd-mm-yyyy] 08-11-1999

Date of issue of final award [dd-mm-yyyy] 05-02-2001

Length of proceedings 1-2 years

Additional notes

Attachments **Award or other decision**

> [Arbitral Award](#) 15-05-2014 English

Other

> [Annex 1 - President Cleveland's Message to the Senate and the House of Representatives](#) 18-12-1893 English

> [Joint Resolution - To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.](#) 23-11-1993 English



Enclosure #2



The Republic of Ecuador v. The United States of America

| | |
|---|---|
| Case name | The Republic of Ecuador v. The United States of America |
| Case description | On June 28, 2011, the Republic of Ecuador instituted arbitral proceedings concerning the interpretation and application of Article II(7) of the Treaty between the United States of America and the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment, 27 August 1993 (US-Ecuador BIT), pursuant to Article VII of the US-Ecuador BIT. The Permanent Court of Arbitration acted as Registry in this arbitration. |
| Name(s) of claimant(s) | The Republic of Ecuador (State) |
| Name(s) of respondent(s) | The United States of America (State) |
| Names of parties | |
| Case number | 2012-05 |
| Administering institution | Permanent Court of Arbitration (PCA) |
| Case status | Concluded |
| Type of case | Inter-state arbitration |
| Subject matter or economic sector | International investment law |
| Rules used in arbitral proceedings | UNCITRAL Arbitration Rules 1976 |
| Treaty or contract under which proceedings were commenced | Bilateral treaty Treaty between the United States of America and the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment Country A: United States Country B: Ecuador |
| Language of proceeding | English Spanish |
| Seat of arbitration (by country) | |
| Arbitrator(s) | Professor Luiz Olavo Baptista (Presiding Arbitrator) Professor Donald McRae Professor Raúl Emilio Vinuesa |
| Representatives of the claimant(s) | Dr. Diego García Carrión, Procurador General del Estado Ms. Christel Gaibor, Directora de Asuntos Internacionales y Arbitraje, Encargada Ms. Cristina Viteri PROCURADURÍA GENERAL DEL ESTADO Mr. Paul S. Reichler Mr. Mark A. Clodfelter Mr. Andrew B. Loewenstein FOLEY HOAG LLP Mr. Bruno Leurent FOLEY HOAG AARPI |
| Representatives of the respondent(s) | Mr. Harold Hongju Koh, Legal Adviser Mr. Jeffrey D. Kovar, Assistant Legal Adviser Ms. Lisa J. Grosh, Deputy Assistant Legal Adviser Mr. Jeremy K. Sharpe, Chief of Investment Arbitration Mr. Lee M. Caplan, Attorney Adviser |

Representatives of the parties

Number of arbitrators in case 3

Date of commencement of proceeding [dd-mm-yyyy] 28-06-2011

Date of issue of final award [dd-mm-yyyy]

Length of proceedings 1-2 years

Additional notes

Attachments **Notice of Arbitration**

- > Request for Arbitration and Statement of Claim 28-06-2011 English
- > Request for Arbitration and Statement of Claim 28-06-2011 Spanish

Written submission

- > Statement of Defense 29-03-2012 English
- > Statement of Defense 29-03-2012 Spanish
- > Respondent's Memorial on Jurisdiction 25-04-2012 English
- > Respondent's Memorial on Jurisdiction 25-04-2012 Spanish
- > Expert Opinion of Prof. W. Michael Reisman - Respondent's Memorial on Jurisdiction 24-04-2012 English
- > Expert Opinion of Prof. W. Michael Reisman - Respondent's Memorial on Jurisdiction 24-04-2012 Spanish
- > Expert Opinion of Prof. Christian Tomuschat - Respondent's Memorial on Jurisdiction 24-04-2012 English
- > Expert Opinion of Prof. Christian Tomuschat - Respondent's Memorial on Jurisdiction 24-04-2012 Spanish
- > Claimant's Counter-Memorial on Jurisdiction 23-05-2012 English
- > Claimant's Counter-Memorial on Jurisdiction 23-05-2012 Spanish
- > Expert Opinion of Prof. Alain Pellet - Claimant's Counter-Memorial on Jurisdiction 23-05-2012 English
- > Expert Opinion of Prof. Alain Pellet - Claimant's Counter-Memorial on Jurisdiction 23-05-2012 Spanish
- > Expert Opinion of Prof. Stephen McCaffrey - Claimant's Counter-Memorial on Jurisdiction 23-05-2012 English
- > Expert Opinion of Prof. Stephen McCaffrey - Claimant's Counter-Memorial on Jurisdiction 23-05-2012 Spanish
- > Expert Opinion of Prof. C.F. Amerasinghe - Claimant's Counter-Memorial on Jurisdiction 23-05-2012 English

- | | | |
|--|------------|---------|
| > Expert Opinion of Prof. C.F. Amerasinghe - Claimant's Counter-Memorial on Jurisdiction | 23-05-2012 | Spanish |
| > Witness Statement of Mr. Luis Benigno Gallegos - Claimant's Counter-Memorial on Jurisdiction | 23-05-2012 | Spanish |
| > Witness Statement of Mr. Luis Benigno Gallegos - Claimant's Counter-Memorial on Jurisdiction | 23-05-2012 | English |



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Enclosure #3



District Municipality of La Punta (Peru) v. United Nations Office for Project Services (UNOPS)

| | |
|---|---|
| Case name | District Municipality of La Punta (Peru) v. United Nations Office for Project Services (UNOPS) |
| Case description | The PCA provided administrative support in this arbitration, which was conducted under the UNCITRAL Arbitration Rules (1976). |
| Name(s) of claimant(s) | District Municipality of La Punta (Peru) (State) |
| Name(s) of respondent(s) | United Nations Office for Project Services (UNOPS) (International organization) |
| Names of parties | |
| Case number | 2014-38 |
| Administering institution | Permanent Court of Arbitration (PCA) |
| Case status | Concluded |
| Type of case | Contract-based or other arbitration |
| Subject matter or economic sector | - Other - |
| Rules used in arbitral proceedings | UNCITRAL Arbitration Rules 1976 |
| Treaty or contract under which proceedings were commenced | |
| Language of proceeding | Spanish |
| Seat of arbitration (by country) | |
| Arbitrator(s) | Dr. Felipe Ossa Guzmán (Presiding Arbitrator) Dr. Pablo Solarí Barboza Dr. Francisco González de Cossío |
| Representatives of the claimant(s) | Mr. Alberto Tocunaga Ortiz (Municipal Public Prosecutor) Ms. Lucy Vidal Zamora Mr. Víctor Ceballos Gargurevich DISTRICT MUNICIPALITY OF LA PUNTA |
| Representatives of the respondent(s) | Mr. Fernando Cotrim Barbieri (Director of the Operations Centre in Peru – Legal Expert for Latin America and the Caribbean) Mr. Alberto Quintana Sánchez (Legal Advisor) UNITED NATIONS OFFICE FOR PROJECT SERVICES (UNOPS) |
| Representatives of the parties | |
| Number of arbitrators in case | 3 |
| Date of commencement of proceeding [dd-mm-yyyy] | 2014 |
| Date of issue of final award [dd-mm-yyyy] | |
| Length of proceedings | Less than one year |
| Additional notes | |



Enclosure #4



Romak S.A. (Switzerland) v. The Republic of Uzbekistan

| | |
|---|---|
| Case name | Romak S.A. (Switzerland) v. The Republic of Uzbekistan |
| Case description | The PCA provided administrative support in this arbitration, which was conducted under the UNCITRAL Arbitration Rules, pursuant to the Agreement between the Swiss Confederation and the Republic of Uzbekistan on the Promotion and the Reciprocal Protection of Investments, signed on 16 April 1993. |
| Name(s) of claimant(s) | Romak S.A. (Private entity) |
| Name(s) of respondent(s) | The Republic of Uzbekistan (State) |
| Names of parties | |
| Case number | 2007-07/AA280 |
| Administering institution | Permanent Court of Arbitration (PCA) |
| Case status | Concluded |
| Type of case | Investment arbitration |
| Subject matter or economic sector | Agriculture, forestry and fishing |
| Rules used in arbitral proceedings | UNCITRAL Arbitration Rules 1976 |
| Treaty or contract under which proceedings were commenced | Bilateral treaty Agreement between the Swiss Confederation and the Republic of Uzbekistan on the Promotion and the Reciprocal Protection of Investments Country A: Switzerland Country B: Uzbekistan |
| Language of proceeding | English |
| Seat of arbitration (by country) | France |
| Arbitrator(s) | Mr. Fernando Mantilla-Serrano, Chairman Mr. Noah Rubins Mr. Nicolas Molfessis |
| Representatives of the claimant(s) | Messrs Christophe Ayela and Renaud Semerdjian of Ayela, Semerdjian & Associés, Paris, France; and Dr. Walid Ben Hamida. |
| Representatives of the respondent(s) | H.E. Mr. Ravshanbek Alimov, Ambassador of the Republic of Uzbekistan in France, Agent for Uzbekistan; Messrs. Jean-Pierre Harb, David Fraser and Christophe Lobier of Baker & McKenzie, Paris, France. |
| Representatives of the parties | |
| Number of arbitrators in case | 3 |
| Date of commencement of proceeding [dd-mm-yyyy] | 20-03-2006 |
| Date of issue of final award [dd-mm-yyyy] | 26-11-2009 |

Length of proceedings 3-4 years

Additional notes

Attachments **Award or other decision**

> [Award](#) 26-11-2009 English



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Enclosure #5

Council of Regency,

Acting Cabinet Council of the Hawaiian Islands:

To Dr. David Keonu Sai, Ph.D. Greeting:

Know ye, that this Executive Office, reposing special trust and confidence in your wisdom, integrity and fidelity, have constituted and appointed you *Ambassador-at-large*, to faithfully discharge and perform all the duties pertaining to said Office, under the Constitution and Laws of the Kingdom, and to hold office as such during this Office's pleasure: And all persons are hereby ordered to respect this your authority.



In Witness Whereof, I have hereunto set my hand, and caused the Great Seal of the Kingdom to be affixed this 1 day of August A.D. 2012.

Peter Umialiloa Sai,
Vice-Chairman of the Council of Regency,
Acting Minister of Foreign Affairs

By the Council

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

Enclosure #6

Hawaii – US State or Pacific Kingdom?

Place: University of Zurich, Rämistrasse 69, Saal SOC-1-106

Date: Mo, 11.11.2013

PROGRAM

18.00 Uhr Opening

18.30 Uhr **Welcome**

Max Schweizer, ret. Minister, Executive Director *SwissDiplomats – ZurichNetwork*

and

Maximilian Stern, Executive Director *foraus*

18.40 Uhr **Introduction, historical background**

Prof. Dr. Niklaus Schweizer, Professor at College of Languages, Linguistics and Literature at University of Hawai'i, Manoa, Honolulu

18.55 Uhr **The situation today – and the future**

“Hawai'i - An American State or a State under American Occupation?”

David Keanu Sai Ph.D. Ambassador-at-large Honolulu, Hawaii

19.40 Uhr **Panel Discussion: What are the options for the future?**

David Keansu Sai Ph.D., Ambassador-at-large Honolulu Hawaii

Dr. Christian Blickenstorfer, ret. Botschafter (USA)

Prof. Dr. Niklaus Schweizer, Professor at College of Languages, Linguistics and Literature at University of Hawai'i, Manoa, Honolulu

Moderation: Max Schweizer, ret. Minister, Executive Director *SwissDiplomats – ZurichNetwork*

20.30 Uhr **Apéro**



Speaker and Panelist: Dr. David Keanu SAI

EXPERTISE:

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

ACADEMIC QUALIFICATIONS:

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

PUBLICATIONS:

- Brief, “The Continuity of the Hawaiian State and the Legitimacy of the *acting* Government of the Hawaiian Kingdom,” August 4, 2013.
- Book, "Ua Mau Ke Ea-Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands." (Pu‘a Foundation, Honolulu, 2011).
- Article, "1893 Cleveland-Lili‘uokalani Executive Agreements." November 28, 2009, unpublished.
- Article, "Establishing an Acting Regency: A Countermeasure Necessitated to Preserve the Hawaiian State." November 28, 2009, unpublished.
- Book, “Land Titles in the Hawaiian Islands: From Origins to the Present (forthcoming).” Contract signed with University of Hawai‘i Press, May 7, 2009.
- Doctoral Dissertation, “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State,” University of Hawai‘i at Manoa, Political Science, December 2008.
- Article, “A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its Use and Practice in Hawai‘i Today,” *Journal of Law and Social Challenges* (San Francisco School of Law), Vol. 10 (Fall 2008).
- Book Review for “Kahana: How the Land was Lost,” *The Contemporary Pacific: A Journal of Island Affairs*, Vol. 15, No. 1 (2005).
- “American Occupation of the Hawaiian State: A Century Unchecked,” *Hawaiian Journal of Law and Politics*, vol. 1 (Summer 2004).
- Article, "Hawaiian Neutrality and the Iraqi Conflict," May 9, 2003 (unpublished).

“Unpublished Short Essays”

- “The Hawaiian Kingdom: A Constitutional Monarchy”
- “The Relationship between the Hawaiian Kingdom and the United States”
- “Revisiting the Fake Revolution of January 17, 1893”

- “What does TWA Flight 800 and the Hawaiian Kingdom have in Common”
- “American Migration to the Hawaiian Kingdom and the Push for State into the American Union”
- “Hawaiian Nationality: Who Comprises the Hawaiian Citizenry?”
- “The Vision of the *acting* Council of Regency”

MILITARY SERVICE:

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

GOVERNMENT SERVICE:

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

GENERAL DATA:

Nationality: Hawaiian
 Born: July 13, 1964, Honolulu, H.I.
 Address: P.O. Box 2194, Honolulu, HI 96805-2194
 Tel, E-Mail: (808) 383-6100, interior@hawaiiankingdom.org

Panelists

Professor Niklaus SCHWEIZER

Niklaus Schweizer studied four years at the University of Zurich and then earned his PhD. at the University of California in Davis. Now he is professor at the University of Hawai'i at Mānoa. Before, Professor Schweizer served 37 years as of Honorary Consul of Switzerland in Honolulu and still is the official Historian of the Consular Corps of Hawai'i. Furthermore, he has been honored with the 2011 Robert W. Clopton Award for Distinguished Community Service. Professor Schweizer has been teaching and researching for more than 40 years in the field of German language and literature. Eight of his published books focus on the interaction of Europeans in the Pacific with the Hawaiian people, and a future publication will focus on individual Caucasians in support of the Hawaiian monarch at the end of the 19th century.

Dr. Christian BLICKENSTORFER, Ambassador ret.

Former Swiss Ambassador to the Kingdom of Saudi Arabia, USA and Germany, Switzerland

Ambassador Blickenstorfer earned his Ph.D. in modern history and international law at the University of Zurich in 1972. He joined the Swiss Foreign Service in 1974. His assignments included Cairo, Bangkok, Teheran and Washington D.C. From 1993 to 1997, he served as Ambassador of Switzerland to the Kingdom of Saudi Arabia, the United Arab Emirates, the Sultanate of Oman and the Republic of Yemen. From 1997 to 2000, he was Head of the Political Division II in the Ministry of Foreign Affairs, responsible for relations with Africa, the Middle East, Asia, Oceania and Latin America. In 2000, he was appointed Political Director in the Federal Department for Foreign Affairs. From 2001 to 2006 he served as Ambassador to the United States of America and until his retirement in 2010 as Ambassador to Germany.

Dr. Max SCHWEIZER, Minister ret.

Max Schweizer, born in 1950, served as a diplomat for the EDA (Federal Department of Foreign Affairs) from 1980 until 2012. He was working in the Baltic States, Finland, Saudi Arabia, Spain, South Africa and Turkey. Furthermore, he was serving in the headquarters in Berne twice; once, for the EDA and once, for the BAWI (today seco: State Secretariat for Economic Affairs). From 2007 until 2011, he acted as Deputy Head at the Swiss Economic Mission for the WTO and EFTA etc. in Geneva with the diplomatic title of Minister. – Since June 2012 he is Senior Lecturer at the Zurich University of Applied Sciences (ZHAW) – School of Management and Law. He leads the newly established Competence Center “Foreign Affairs & Applied Diplomacy”. His most recent publications are “Diplomatenleben: Akteure, Schauplätze, Zwischenrufe” (2013) and „Zwischen Ankara und Lausanne. Die Türkei unterwegs nach Europa“ (2004); both published by Chronos, Zurich.

Enclosure #7



PETER UMIALILOA SAI

Acting Minister of Foreign Affairs for the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194

3 November 2017

Excellency:

I have the honor to inform you that the Provisional Government of the Hawaiian Kingdom, through its Council of Regency, appointed David Keanu Sai, Ph.D., whose curriculum vitae is enclosed herewith, as Ambassador-at-large. My knowledge of his high character and ability gives me entire confidence that he will constantly endeavor to advance the interests and prosperity of both Governments and so render himself acceptable to Your Excellency.

In communicating the foregoing information, I have the honor to request Your Excellency to receive him favorably, and to give full confidence to what he shall say on behalf of the Hawaiian Kingdom, more especially to the assurances, which I have charged him to convey to Your Excellency of the request of this Government.

I avail myself of this occasion to convey to Your Excellency the assurances of my most distinguished consideration.

A handwritten signature in black ink, appearing to read 'Peter Umialiloa Sai'.

Peter Umialiloa Sai
Acting Minister of Foreign Affairs

Curriculum Vitae

DAVID KEANU SAI, PH.D.



EXPERTISE:

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

ACADEMIC QUALIFICATIONS:

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

GOVERNMENT SERVICE:

- March 1996: Appointed Regent, *pro tempore*, by the Trustees of the Hawaiian Kingdom Trust Company

P.O. Box 2194
Honolulu, HI 96805
Tel: (808) 383-6100
interior@hawaiiankingdom.org

- Sep. 1999: Named *acting* Minister of the Interior and Chairman of the *acting* Council of Regency by resolution of the Privy Council
- Nov. 1999: Agent for the Provisional Government of the Hawaiian Kingdom in arbitral proceedings before the Permanent Court of Arbitration, The Hague, Netherlands (*Larsen v. Hawaiian Kingdom*)
- July 2001: Agent for the Provisional Government of the Hawaiian Kingdom in order to file a Complaint against the United States of America with the United Nations Security Council on July 5, 2001
- Aug. 2012: Commissioned Ambassador-at-large for the Hawaiian Kingdom by the *acting* Minister of Foreign Affairs
- Aug. 2012: Agent for the Provisional Government of the Hawaiian Kingdom in order to file a Protest and Demand with the United Nations General Assembly, August 10, 2012
- June 2013: Agent for the Provisional Government of the Hawaiian Kingdom in order to file a State Referral with the International Criminal Court, June 11, 2013
- Sept. 2013: Agent for the Provisional Government of the Hawaiian Kingdom in order to file an Application Instituting Proceedings before the International Court of Justice, September 27, 2013
- Jan. 2017: Agent for the Provisional Government of the Hawaiian Kingdom in Hawaiian Kingdom – Lance Larsen International Commission of Inquiry proceedings under the auspices of the Permanent Court of Arbitration

GENERAL DATA:

Nobility confirmed by the Board of Genealogy of Hawaiian Chiefs, established by *An Act to Perpetuate the Genealogy of the Chiefs of Hawai‘i*, 1880 (see attached genealogies).

Maternal: Nobility through great grandfather—William Kuakini Simerson, son of Chiefess Lua‘apana Simerson

Paternal: Nobility through great-great grandmother—Julia Kapapakuiali‘i Kalaninuipoaimoku Doiron, daughter of Chiefess Lucy Pohaiali‘i Ko‘i‘i

Nationality: Hawaiian

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

Enclosure #8



Keanu Sai <keanu.sai@gmail.com>

Hawaiian Kingdom - Lance Larsen Int. Commission of Inquiry at the PCA

Keanu Sai, Ph.D. <keanu.sai@gmail.com>
To: embacuba@xs4all.nl

Thu, Nov 2, 2017 at 3:20 PM

To the kind attention of Her Excellency
Ms. Soraya Elena Alvarez Nuñez, Ambassador
Embassy of Cuba
The Hague, Netherlands

Excellency,

Please find attached a letter of correspondence requesting an urgent meeting for next week in The Hague with legal representatives of the Hawaiian Kingdom regarding the Hawaiian Kingdom - Lance Larsen International Commission of Inquiry proceedings that stem from the *Larsen v. Hawaiian Kingdom* arbitration held under the auspices of the Permanent Court of Arbitration from 1999-2001.

Sincerely,

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

--

David Keanu Sai, Ph.D.
P.O. Box 4146
Hilo, HI 96720
Website <http://www2.hawaii.edu/~anu/>

 **HK to Cuban Ambassador (11-1-17).pdf**
6234K

Hawaiian Kingdom - Lance Larsen Int. Commission of Inquiry at the PCA

Secretaria Embacuba Países Bajos <embacuba@xs4all.nl>
To: "Keanu Sai, Ph.D." <keanu.sai@gmail.com>

Tue, Nov 7, 2017 at 3:25 AM

Dear Mr. Keanu,

Thank you very much for your message. It is my pleasure to announce you that our Third Secretary Katia Aruca Chaple will meet you on November 10 at 10:00 am.

Kind regards,

Deyanira Rodríguez Hernández

Secretary to the Ambassador

Embassy of the Republic of Cuba to the

Kingdom of [the Netherlands](#)

[Scheveningseweg 9, 2517KS The Hague](#)

T: 070 360 6061

<http://misiones.minrex.gob.cu/en/netherlands>



De: Keanu Sai, Ph.D. [mailto:keanu.sai@gmail.com]

Enviado el: viernes, 03 de noviembre de 2017 2:20

Para: embacuba@xs4all.nl

Asunto: Hawaiian Kingdom - Lance Larsen Int. Commission of Inquiry at the PCA

[Quoted text hidden]



Keanu Sai <keanu.sai@gmail.com>

From Katia

Oficina de Cultura Embacuba Países Bajos <cultcu@xs4all.nl>
To: interior@hawaiiankingdom.org
Cc: bbissen@gmail.com

Fri, Nov 10, 2017 at 11:34 AM

Your excellency Davis Keanu Sai,

Thank you so much for your visit and for all the information that you provide us. I really appreciated if you can keep our meeting in a bilateral level, which mean not to mention it in other stage or meetings regarding with your request and situation. I also kindly request to keep it by your own records, as well, the pictures that you took of our courtesy meeting, which means that it will not be published or distributed.

Thank you so much again.

Best regards,

Katia

Ms. Katia Aruca Chaple

Third Secretary

Embassy of Cuba

Kingdom of [the Netherlands](#)

Scheveningsweg 9, 2517 KS

The Hague

Telephone: 070 360 60 61

<http://misiones.minrex.gob.cu/es/paisesbajos>



Keanu Sai <keanu.sai@gmail.com>

From Katia

Council of Regency <interior@hawaiiankingdom.org>
To: Oficina de Cultura Embacuba Países Bajos <cultcu@xs4all.nl>
Cc: Blaise Bissen <bbissen@gmail.com>

Fri, Nov 10, 2017 at 1:24 AM

Dear Ms. Chaple,

On behalf of the Provisional Government of the Hawaiian Kingdom, I acknowledge and concur with your recommendations. Rest assured these matters remain bi-lateral and the pictures will be kept in confidence. We look forward to your government's thoughts on these matters regarding our request to [REDACTED] and our second request to [REDACTED].

Sincerely,

David Keanu Sai, Ph.D.
Hawaiian Ambassador-at-large

[Quoted text hidden]

--

David Keanu Sai, Ph.D.
P.O. Box 2194
Honolulu, HI 96805-2194
Website: <http://hawaiiankingdom.org/>

Enclosure #9

Letter to UPU Deputy Director General

Hawaiian Ambassador-at-large <interior@hawaiiankingdom.org>

Wed, Feb 28, 2018 at 12:44 PM

To: RAKOTONDRAJAO brigitte <brigitte.RAKOTONDRAJAO@upu.int>

Cc: "Dr. Max Schweizer" <mail@drmaxschweizer.ch>, Niklaus Schweizer <niklaus@hawaii.edu>, Blaise Bissen <bbissen@gmail.com>

Dear Madam.

Please find attached a letter to the honorable Deputy Director General regarding our meeting with you on the ground floor of the UPU headquarters on 23 February 2018.

Furthermore, any further communication with you will be through my attaché, Mr. Blaise Bissen, whose email is bbissen@gmail.com.

Thank you so much and I sincerely hope that you enjoyed the Hawaiian chocolates.

Also my very best regards to Mr. Clivaz, Deputy Director General, and that he had a speedy recovery.

D.K.S.

--

David Keanu Sai, Ph.D.

Hawaiian Ambassador-at-large

P.O. Box 2194

Honolulu, HI 96805-2194

Website <http://hawaiiankingdom.org/>



HK to UPU Deputy Director (28-2-18).pdf

1753K

Fwd: URGENT

Drmasschweizer <mail@drmasschweizer.ch>
To: "Keanu Sai Ph.D." <keanu.sai@gmail.com>

Thu, Feb 22, 2018 at 5:35 PM

Von meinem iPhone gesendet

Anfang der weitergeleiteten E-Mail:

Von: RAKOTONDRAJAO brigitte <brigitte.RAKOTONDRAJAO@upu.int>
Datum: 21. Februar 2018 um 09:29:12 MEZ
An: "Dr. Max Schweizer" <mail@drmasschweizer.ch>
Betreff: URGENT

Dear Dr Schweizer,

Please be informed that Mr Clivaz is sick, he will be staying at home, and will not be able to receive you and the Hawaii delegation at 2 pm today.

We are very sorry for this last minute inconvenience that goes beyond our control.

Please contact me in order to fix another appointment, if it's still possible for the Hawaii delegation.

With apologies and best regards,

Brigitte Rakotondrajao

Secrétariat du Vice-Directeur général



Bureau international

Weltpoststrasse 4

Case postale

3000 BERNE 15

SUISSE

T +41 31 350 33 01

F +41 31 350 35 55

www.upu.int

De : RAKOTONDRAJAO brigitte

Envoyé : vendredi, 2 février 2018 09:37

À : 'Dr. Max Schweizer' <mail@drmaxschweizer.ch>

Objet : RE: Hawai'i: Delegation - the forthcoming visit

Dear Dr Schweizer

Thank you very much for the list of visitors for 21 February.

With my best regards,

Brigitte Rakotondrajao

Secrétariat du Vice-Directeur général



Bureau international

Weltpoststrasse 4

Case postale

3000 BERNE 15

SUISSE

T +41 31 350 33 01

F +41 31 350 35 55

www.upu.int

De : Dr. Max Schweizer [<mailto:mail@drmaxschweizer.ch>]

Envoyé : jeudi, 1 février 2018 08:11

À : RAKOTONDRAJAO brigitte <brigitte.RAKOTONDRAJAO@upu.int>

Cc : Niklaus Schweizer <niklaus@hawaii.edu>

Objet : Hawai'i: Delegation - the forthcoming visit

Dear Madam

Please find below the discussed delegation for the meeting with the honorable Deputy Director General:

Dr. David Keanu Sai, Ambassador-at-large, Provisional Government of the Hawaiian Kingdom

Mr. Blaise Bissen, Attache to the Ambassador

Professor. Niklaus R. Schweizer, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Federal Council

Furthermore:

Dr., Dr. h. c. Max Schweizer, former Diplomat, President of SwissDiplomats - ZuerichNetwork

Any further information will be directly sent to you via Prof. Niklaus Schweizer: we both have the same name and we both are from Zuerich, but we are not from the same family...! (...)

Thank you very much! - With my very best regards, also to Mr. Clivaz, Deputy Director General.

Max Schweizer

DR. MAX SCHWEIZER

FOREIGN & ECONOMIC AFFAIRS
Advisory - Lectures - Research

www.maxundmax.ch

Susenbergrasse 174
CH-8044 ZÜRICH
Mobile +41 79 248 59 32

mail@drmaxschweizer.ch

www.drmaxschweizer.ch

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UNION
POSTALE
UNIVERSELLE

image001.jpg
3K

Enclosure #10

Proclamation

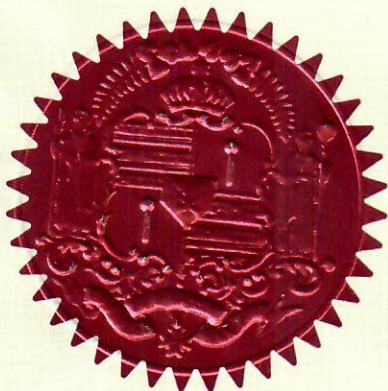
Whereas, the Hawaiian Kingdom became a member of the Universal Postal Union on January 1, 1882; and

Whereas, despite the unlawful overthrow of its government by the United States of America, which President Grover Cleveland admitted was done by an act of war, the Hawaiian Kingdom remained an independent and sovereign State and a subject of international law; and

Whereas, the Hawaiian Kingdom has not withdrawn its membership to the Universal Postal Union in accordance with Article 12 of the Constitution of the Universal Postal Union, and therefore remains a member State; and

Whereas, §415, Article VI, Chapter VII, Title 2, Civil Code of the Hawaiian Islands, provides: “The Postmaster-General by and with the advice and consent of His Majesty the King in Privy Council, is hereby authorized to adopt and adhere to any and all the rules and regulations now adopted, and in force or that hereafter may be adopted by the Universal Postal Union, whether or not the said rules and regulations shall or may cause an increase or decrease in either the income or expenditure of the post office.”

Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby adopt and adhere to any and all the rules and regulations now adopted, and in force or that hereafter may be adopted by the Universal Postal Union, whether or not the said rules and regulations shall or may cause an increase or decrease in either the income or expenditure of the post office.



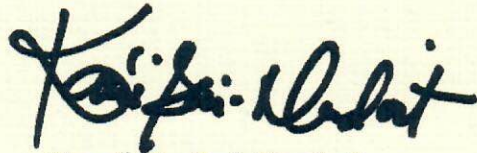
In Witness Whereof, We have hereunto set our hand, and caused the Great Seal of the Kingdom to be affixed this 30th day of December A.D. 2017.

A handwritten signature in black ink, appearing to read "David Keanu Sai".

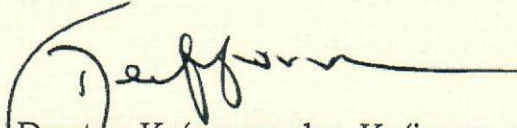
David Keanu Sai, Ph.D.
Chairman of the *acting* Council of Regency
Acting Minister of the Interior

A handwritten signature in black ink, appearing to read "Peter Umialiloa Sai".

Peter Umialiloa Sai,
Acting Minister of Foreign Affairs



Kau'i P. Sai-Dudoit,
Acting Minister of Finance



Dexter Ke'eaumoku Ka'iama, *Esq.*,
Acting Attorney General

Enclosure #11

PCA Case N° 2013-19

IN THE MATTER OF AN ARBITRATION

- before -

**AN ARBITRAL TRIBUNAL CONSTITUTED UNDER ANNEX VII TO THE
1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

- between -

THE REPUBLIC OF THE PHILIPPINES

- and -

THE PEOPLE'S REPUBLIC OF CHINA

AWARD ON JURISDICTION AND ADMISSIBILITY

Arbitral Tribunal:

Judge Thomas A. Mensah (Presiding Arbitrator)
Judge Jean-Pierre Cot
Judge Stanislaw Pawlak
Professor Alfred H.A. Soons
Judge Rüdiger Wolfrum

Registry:

Permanent Court of Arbitration

29 October 2015

VI. WHETHER ANY THIRD PARTIES ARE INDISPENSABLE TO THE PROCEEDINGS

179. In this arbitration, the Tribunal has been asked to rule on the status of, and maritime entitlements generated by, a number of features in the South China Sea over which sovereignty is claimed not only by the Philippines and China, but also by Viet Nam and/or others. China has not argued in its Position Paper or elsewhere that Viet Nam's absence as a party in the present arbitration is a factor that would bar jurisdiction.¹⁵⁰ Nonetheless, the Tribunal considers it appropriate to dispose of the issue, which has been addressed by the Philippines and was the subject of correspondence between the Tribunal and the Parties.¹⁵¹
180. As concluded above at Paragraphs 152 to 154, the determination of the nature of and entitlements generated by the maritime features in the South China Sea does not require a decision on issues of territorial sovereignty. The legal rights and obligations of Viet Nam therefore do not need to be determined as a prerequisite to the determination of the merits of the case.
181. The present situation is different from the few cases in which an international court or tribunal has declined to proceed due to the absence of an indispensable third party, namely in *Monetary Gold Removed from Rome in 1943* and *East Timor* before the International Court of Justice and in the *Larsen v. Hawaiian Kingdom* arbitration.¹⁵² In all of those cases, the rights of the third States (respectively Albania, Indonesia, and the United States of America) would not only have been affected by a decision in the case, but would have "form[ed] the very subject-matter of the decision."¹⁵³ Additionally, in those cases the lawfulness of activities by the third States was in question, whereas here none of the Philippines' claims entail allegations of unlawful conduct by Viet Nam or other third States.

¹⁵⁰ In its Position Paper, China simply pointed out that "[t]he South China Sea issue involves a number of countries, and it is no easy task to solve it." China's Position Paper, para. 47. China also refers to its negotiated boundaries with Viet Nam as an example of successful peaceful negotiations between China and its neighbours.

¹⁵¹ Memorial, paras. 5.115-5.137; Letter from the Philippines to the Tribunal (26 January 2015); Supplemental Written Submission, paras. 25.1-25.4; Jurisdictional Hearing Tr. (Day 3), pp. 120-25.

¹⁵² *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom, and United States)*, Preliminary Question, Judgment, ICJ Reports 1954, p. 19 at p. 32 (**Annex LA-3**); *East Timor (Portugal v. Australia)*, Judgment, ICJ Reports 1995, p. 90 (**Annex LA-22**); *Larsen v. Hawaiian Kingdom*, Award of 5 February 2001, 119 ILR p. 566 (**Annex LA-52**).

¹⁵³ *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom, and United States)*, Preliminary Question, Judgment, ICJ Reports 1954, p. 19 at p. 32 (**Annex LA-3**); *East Timor (Portugal v. Australia)*, Judgment, ICJ Reports 1995, p. 90 at p. 104-105, para. 34 (**Annex LA-22**); *Larsen v. Hawaiian Kingdom*, Award of 5 February 2001, 119 ILR p. 566 at pp. 588, 596-97, paras. 11.8, 12.17 (**Annex LA-52**).