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12 August 2025

His Excellency Mr. Philemon Yang  
President of the United General Assembly—79th Session  
405 East 42nd Street  
New York, NY, 10017  
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Excellency:

On behalf of the Government of the Hawaiian Kingdom, I extend my Government's compliments to Your Excellency as President of the United Nations General Assembly for the 79th session. The purpose of this letter is two-fold: first, to explain the circumstances of the continued existence of the Hawaiian Kingdom under international law and its impact on Member States of the United Nations, who are successor States of Hawaiian Kingdom treaty partners; and second, for the Hawaiian Kingdom, as a Non-Member State of the United Nations, to submit a Complaint of the United States of America's unlawful and prolonged occupation of the Hawaiian Kingdom since 17 January 1893 and the commission of war crimes and human rights violations pursuant to Article 35(2) of the Charter of the United Nations. An electronic version of this Complaint can be downloaded at

[https://hawaiiankingdom.org/pdf/HK\\_Complaint\\_to\\_President\\_UN\\_General\\_Assembly\\_\(8.12.25\).pdf](https://hawaiiankingdom.org/pdf/HK_Complaint_to_President_UN_General_Assembly_(8.12.25).pdf).

To quote the dictum of the *Larsen v. Hawaiian Kingdom* arbitral tribunal's award in 2001 at the Permanent Court of Arbitration, "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.”<sup>1</sup> 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.”<sup>2</sup>

Hawaiian territory comprise the islands of Hawai‘i, Maui, Molokini, Kaho‘olawe, Molokai, Lāna‘i, O‘ahu, Kaua‘i, Lehua, Ni‘ihau, Ka‘ula, Nihoa, Necker, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan, Lisiansky, Pearl and Hermes Atoll, Kure Atoll, Palmyra Atoll, and Johnston Atoll.<sup>3</sup> According to the Hawaiian Kingdom Supreme Court, Hawaiian sovereignty included the territorial sea that extends “a distance of a marine league, or as far as a cannon shot will reach from the shore.”<sup>4</sup> Under current customary international law, the territorial sea is now twelve nautical miles from the shore.

Unlike other non-European States, the Hawaiian Kingdom, as a recognized neutral State, enjoyed equal treaties with European Powers and the United States, and had full independence of its laws throughout its territory. The Hawaiian Kingdom entered into treaties of amity with the Austro-Hungarian Kingdom,<sup>5</sup> Belgium,<sup>6</sup> Bremen,<sup>7</sup> Denmark,<sup>8</sup> France,<sup>9</sup> Germany,<sup>10</sup> Hamburg,<sup>11</sup> Italy,<sup>12</sup> Japan,<sup>13</sup> the Netherlands,<sup>14</sup> Portugal,<sup>15</sup> Russia,<sup>16</sup>

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<sup>1</sup> Larsen v. Hawaiian Kingdom, 119 *International Law Reports* 566, 581 (2001).

<sup>2</sup> John Westlake, *Chapters on the Principles of International Law* 81 (1894). In 1893, there were forty-four independent states in the Family of Nations: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, 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.

<sup>3</sup> David Keanu Sai, “Hawaiian Constitutional Governance,” in David Keanu Sai (ed.), *Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom 86-90* (2020) (online at

[https://hawaiiankingdom.org/pdf/Hawaiian\\_Royal\\_Commission\\_of\\_Inquiry\\_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

<sup>4</sup> *The King v. Parish et al.*, 1 Hawai‘i 58, 61 (1849).

<sup>5</sup> Royal Commission of Inquiry, “Treaties with Foreign States,” 237.

<sup>6</sup> *Id.*, 241.

<sup>7</sup> *Id.*, 247.

<sup>8</sup> *Id.*, 255.

<sup>9</sup> *Id.*, 257.

<sup>10</sup> *Id.*, 265.

<sup>11</sup> *Id.*, 273.

<sup>12</sup> *Id.*, 275.

<sup>13</sup> *Id.*, 281.

<sup>14</sup> *Id.*, 283.

<sup>15</sup> *Id.*, 285.

<sup>16</sup> *Id.*, 287.

Spain,<sup>17</sup> the United Kingdoms of Sweden and Norway,<sup>18</sup> Switzerland,<sup>19</sup> the United Kingdom,<sup>20</sup> and the United States.<sup>21</sup>

By 1893, the Hawaiian Kingdom maintained diplomatic representatives accredited to foreign States and consulates. Hawaiian Legations were established in Washington, D.C., London, Paris, and Tokyo, while diplomatic representatives, accredited to the Hawaiian Court in Honolulu, were 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.<sup>22</sup> Foreign Consulates in the Hawaiian Kingdom were 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.<sup>23</sup>

In his speech at the opening of the 1855 Hawaiian Legislative Assembly, King Kamehameha IV, reported:

It is gratifying to me, on commencing my reign, to be able to inform you, that my relations with all the great Powers, between whom and myself exist treaties of amity, are of the most satisfactory nature. I have received from all of them, assurances that leave no room to doubt that my rights and sovereignty will be respected.<sup>24</sup>

I am also enclosing my recent chapter titled “Hawai‘i’s Sovereignty and Survival in the Age of Empire,” in *Unconquered States: Non-European Powers in the Imperial Age*, published in December of 2024 by Oxford University Press (“OUP”).<sup>25</sup> In this chapter I cover: the legal and political history of my country—the Hawaiian Kingdom; the evolution of governance as a constitutional monarchy; the unlawful overthrow of the government by United States troops in 1893; the prolonged American occupation since 1893; the restoration of the government of the Hawaiian Kingdom in 1997; and the recognition, by the Permanent Court of Arbitration in 1999, of the continued existence of the Hawaiian

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<sup>17</sup> *Id.*, 290.

<sup>18</sup> *Id.*, 296.

<sup>19</sup> *Id.*, 301.

<sup>20</sup> *Id.*, 249.

<sup>21</sup> *Id.*, 305.

<sup>22</sup> Thomas Thrum, *Hawaiian Almanac and Annual for 1893* 140-141 (1892).

<sup>23</sup> *Id.*

<sup>24</sup> Robert C. Lydecker, *Roster Legislatures of Hawaii* 57 (1918).

<sup>25</sup> David Keanu Sai, “Hawai‘i’s Sovereignty and Survival in the Age of Empire,” in H.E. Chehabi and David Motadel (eds.) *Unconquered States: Non-European Powers in the Imperial Age* (2024) (online at [https://www2.hawaii.edu/~anu/pdf/Hawaii\\_Sovereignty\\_and\\_Survival\\_\(Sai\).pdf](https://www2.hawaii.edu/~anu/pdf/Hawaii_Sovereignty_and_Survival_(Sai).pdf)).

Kingdom as a State and the Council of Regency as its provisional government. Notwithstanding this prolonged occupation, OUP has made it official that the American occupation is now the longest in modern history. It was previously thought that the Israeli occupation of the West Bank and Eastern Jerusalem, that began in 1967, was the longest occupation in modern history.

### *Restoration of the Hawaiian Kingdom Government*

In 1996, under the doctrine of necessity, remedial steps were taken to reinstate the Hawaiian Kingdom government, as it stood under its legal order, prior to the U.S. invasion and unlawful overthrow of the Hawaiian government, on 17 January 1893.<sup>26</sup> In accordance with the Hawaiian Constitution and the doctrine of necessity, an *acting* Council of Regency was established to serve in the absence of the Executive Monarch. Following this process, an acting Government, comprised of officers *de facto*, was established as the successor to Queen Lili‘uokalani, Hawai‘i’s last Executive Monarch. The Queen died on 11 November 1917 without naming a successor, in accordance with Hawaiian constitutional law, leaving the office vacant.

There was no legal requirement for the Council of Regency, as the successor in office to Queen Lili‘uokalani under Hawaiian constitutional law, to obtain recognition from the United States as the government of the Hawaiian Kingdom. The United States’ recognition of the Hawaiian Kingdom, as an independent State, on July 6, 1844,<sup>27</sup> was also the recognition of the Hawaiian Kingdom government—a Constitutional Monarchy. Successors in office to King Kamehameha III, who at the time of international recognition was King of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen Lili‘uokalani in 1891, and the Council of Regency in 1997.

The legal doctrines of recognition of new governments only arise “with extra-legal changes in government” of an existing State.<sup>28</sup> Successors to King Kamehameha III were not established through “extra-legal changes,” but rather through the constitution and laws of the Hawaiian Kingdom. According to United States foreign relations law, “Where a new

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<sup>26</sup> David Keanu Sai, “Royal Commission of Inquiry,” in David Keanu Sai (ed.) *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 18-23 (2020) (online at

[https://hawaiiankingdom.org/pdf/Hawaiian\\_Royal\\_Commission\\_of\\_Inquiry\\_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

<sup>27</sup> U.S. Secretary of State Calhoun to Hawaiian Commissioners (6 July 1844) (online at: [https://hawaiiankingdom.org/pdf/US\\_Recognition.pdf](https://hawaiiankingdom.org/pdf/US_Recognition.pdf)).

<sup>28</sup> M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815-1995* 26 (1997).

administration succeeds to power in accordance with a state's constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed.”<sup>29</sup>

The Hawaiian Council of Regency was established in a similar fashion to the Belgian Council of Regency, which was formed after King Leopold was captured by the Germans, during the Second World War. Just as the Belgian Council of Regency was established, under Article 82 of its 1831 Constitution, as amended, *in exile*, so to was the Hawaiian Council of Regency formed under Article 33 of its 1864 Constitution, as amended, not *in exile* but *in situ*. As Professor Oppenheim explains the Belgian situation:

As far as Belgium is concerned, the capture of the king did not create any serious constitutional problems. According to Article 82 of the Constitution of February 7, 18[31], as amended, the cabinet of ministers have to assume supreme executive power if the King is unable to govern. True, the ministers are bound to convene the House of Representatives and the Senate and to leave it to their decision of the united legislative chambers to provide for a regency; but in view of the belligerent occupation it is impossible for the two houses to function. While this emergency obtains, the powers of the King are vested in the Belgian Prime Minister and the other members of the cabinet.<sup>30</sup>

#### *Successor States to Hawaiian Kingdom Treaties*

The successor States of the Hawaiian Kingdom's treaty partners, were not aware at the time of their independence, that the Hawaiian Kingdom continued to exist as a State, therefore, neither the newly independent States nor the Hawaiian Kingdom could declare “within a reasonable time after the attaining of independence, that the treaty is regarded as no longer in force between them.”<sup>31</sup> Until there is a clarification of the successor States' intentions, as to a common understanding with the Hawaiian Kingdom regarding the continuance in force of the Hawaiian treaty with their predecessor States, the Hawaiian Kingdom will presume the continuance in force of its treaties with the successor States. The majority of Member States of the United Nations are successor States to treaties with the Hawaiian Kingdom.

This position, taken by the Hawaiian Kingdom, is consistent with the 1978 Vienna Convention on Succession of States in respect of Treaties. Article 24 states:

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<sup>29</sup> *Restatement (Third)*, §203, comment c.

<sup>30</sup> F.E. Oppenheimer, “Governments and Authorities in Exile,” 36 *American Journal of International Law* 568, 569 (1942).

<sup>31</sup> *Second report on succession in respect of treaties*, by Sir Humphrey Waldock, *Special Rapporteur*, Document A/CN.4/214 and ADD.1\* AND 2, p. 48 (1969).

1. A bilateral treaty which at the date of the succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:
  - a. they expressly so agree; or
  - b. by reason of their conduct they are to be considered as having agreed.
2. A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and the other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.

Since successor States, which include Member States of the United Nations, were unaware of the existence of the Hawaiian Kingdom at the time of their independence, and its treaties with their predecessor States, Article 24(1)(a) and (b) could not arise. Therefore, under customary international law, in the absence of an express agreement or an agreement by conduct, the Hawaiian Kingdom will presume that its treaties continue in force, for two years from the receipt of this communication, with the successor States. Here follows the list of successor States to Hawaiian Kingdom treaties:

- 1875 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the Austro-Hungarian Empire—Austria and Hungary.
- 1862 Treaty of Amity, Commerce and Navigation between the Hawaiian Kingdom and Belgium—Burundi, Congo, Democratic Republic of the Congo, and Rwanda.
- 1857 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and France—Algeria, Benin, Burkina Faso, Cambodia, Cameroon, Central African Republic, Chad, Comoros, Côte d'Ivoire, Djibouti, Gabon, Guinea, Lao People's Democratic Republic, Lebanon, Madagascar, Mali, Mauritania, Morocco, Niger, Senegal, Syrian Arab Republic, Togo, Tunisia, Vanuatu, and Viet Nam.
- 1851 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and Great Britain—Afghanistan, Antigua and Barbuda, Australia, The Bahamas, Bahrain, Bangladesh, Barbados, Belize, Bhutan, Botswana, Brunei Darussalam, Cameroon, Canada, Cyprus, Egypt, Eswatini, Fiji, Gambia, Ghana, Grenada, Guyana, India, Iraq, Ireland, Israel, Jamaica, Jordan, Kenya, Kiribati, Kuwait, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Myanmar, Namibia, Nauru, Nepal, New Zealand, Nigeria, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, South Sudan, Sri Lanka, Sudan, Tonga,

Trinidad and Tobago, Tuvalu, Uganda, United Arab Emirates, United Republic of Tanzania, Vanuatu, Yemen, Zambia, and Zimbabwe.

- 1863 Treaty of Amity, Commerce and Navigation between the Hawaiian Kingdom and Italy—Libya and Somalia.
- 1871 Treaty of Amity and Commerce between the Hawaiian Kingdom and Japan—Democratic People's Republic of Korea and the Republic of Korea.
- 1862 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the Netherlands—Indonesia and Suriname.
- 1882 Treaty between the Hawaiian Kingdom and Portugal—Angola, Cabo Verde, Guinea-Bissau, Mozambique, Sao Tome and Principe, and Timor-Leste.
- 1869 Treaty of Commerce and Navigation between the Hawaiian Kingdom and Russia—Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Mongolia, Montenegro, North Macedonia, Republic of Moldova, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.
- 1863 Treaty of Peace and Friendship between the Hawaiian Kingdom and Spain—Cuba and Equatorial Guinea.
- 1852 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the Kingdoms of Sweden and Norway—Norway and Sweden.
- 1849 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the United States—Marshall Islands, Micronesia, Palau, Philippines.

The Hawaiian Kingdom has treaties with one hundred fifty-four Member States of the United Nations, of which fourteen treaties are with the original States, and one hundred forty treaties are with the successor States.

*Larsen v. Hawaiian Kingdom at the Permanent Court of Arbitration*

In the *Larsen v. Hawaiian Kingdom* at the Permanent Court of Arbitration (1999-2001), I served as Lead Agent for the Council of Regency representing the Hawaiian Kingdom. As such, I was in communication with the Permanent Court's Principal Legal Counsel, Ms. Bette Shifman, whose responsibility was to determine whether the Hawaiian Kingdom exists as a State in continuity since the nineteenth century. This determination was

necessary for the purpose of establishing the Permanent Court's institutional jurisdiction in accordance with Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes. Article 47 provides, "The jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal." State continuity of the Hawaiian Kingdom is determined by the rules of customary international law.

Prior to the Permanent Court's establishment of the arbitral tribunal on 9 June 2000, the Secretariat determined that the Hawaiian Kingdom had met the standing of a State and was thus, recognized as a non-Contracting Power. This fact is noted in Annex 2—*Cases Conducted under the Auspices of the PCA or with the Cooperation of the International Bureau* in the Permanent Court's Annual Reports from 2000 to 2011. The Permanent Court also recognized the Council of Regency as the Hawaiian Kingdom's government. I am enclosing a copy of Annex 2 from the 2011 Annual Report. It identifies *Larsen v. Hawaiian Kingdom* as the thirty-third case that came under the auspices of the Permanent Court. Since 2012, the Annual Reports no longer include Annex 2 because the Permanent Court's website provides the list of cases, which includes *Larsen v. Hawaiian Kingdom*, Case no. 1999-01.<sup>32</sup>

Under civilian law, the juridical fact, of the Hawaiian Kingdom's existence as a State, produced the legal effect for the Secretariat to perform the juridical act of accepting the dispute, under the auspices of the Permanent Court, by virtue of Article 47. According to Professor Lenzerini, this juridical act "may be compared—*mutatis mutandis*—to a juridical act of a domestic judge recognizing a juridical fact (e.g. filiation) which is productive of certain legal effects arising from it according to law."<sup>33</sup> Since State members of the Permanent Court's Administrative Council furnishes all Contracting States with an Annual Report, this represents "State practice [that] covers an act or statement by...State[s] from which views can be inferred about international law," and it "can also include omissions and silence on the part of States."<sup>34</sup>

Since the United States and all Contracting States did not object to the Secretariat's juridical act of acknowledging the Hawaiian Kingdom's existence as a non-Contracting State, this reflects the practice of States—*opinio juris*. Furthermore, the Secretariat and the Administrative Council are treaty-based components of an intergovernmental organization

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<sup>32</sup> Permanent Court of Arbitration website, Case Repository, PCA Case no. 1999-01, *Larsen v. Hawaiian Kingdom* (online at <https://pca-cpa.org/en/cases/35/>).

<sup>33</sup> Federico Lenzerini, "Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration," 3 (Dec. 5, 2021).

<sup>34</sup> Michael Akehurst, "Custom as a Source of International Law," 47(1) *British Yearbook of International Law*, 10 (1975).



comprised of representatives of States, and, therefore, “their practice is best regarded as the practice of States.”<sup>35</sup> According to Professor Lenzerini, “it may be convincingly held that the PCA contracting parties actually agreed with the recognition of the juridical fact of the Hawaiian Kingdom as a State carried out by the International Bureau.”<sup>36</sup>

Of the one hundred ninety-three Member States of the United Nations, one hundred twenty-three of these States are also Member States of the Permanent Court of Arbitration, to wit:

Albania, Argentina, Armenia, Australia, Austria, The Bahamas, Bahrain, Bangladesh, Belarus, Belgium, Belize, Benin, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Chile, Colombia, the Democratic Republic of the Congo, Costa Rica, Croatia, Cuba, Cyprus, Czechia, the Democratic Republic of São Tomé and Príncipe, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Eswatini, Ethiopia, Fiji, Finland, France, Georgia, Germany, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Lao People’s Democratic Republic, Latvia, Lebanon, Libya, Lithuania, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Malta, Mauritius, Mexico, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, North Macedonia, Norway, Pakistan, Panama, Paraguay, the People’s Republic of China, Peru, Philippines, the Plurinational State of Bolivia, Poland, Portugal, Qatar, Romania, Republic of Korea, Russian Federation, Rwanda, Saudi Arabia, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Thailand, Timor-Leste, Togo, Türkiye, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Vanuatu, Venezuela, Viet Nam, Zambia, and Zimbabwe. And Palestine, who is an Observer State, is also a Member State of the Permanent Court of Arbitration.

Hence, these States already recognized the Hawaiian Kingdom as a State and the Council of Regency as its Government by virtue of their membership, as Contracting States, of the Permanent Court of Arbitration. Of note Your Excellency, is that your country—Cameroon is not only a Successor State to the 1851 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and Great Britain but also recognized the Hawaiian Kingdom and its Council of Regency as a Member State of the Permanent Court.

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<sup>35</sup> *Id.*, 11.

<sup>36</sup> Lenzerini, 4.

*Support for the Council of Regency's Plan for the State of Hawai'i  
To Comply with the Law of Occupation*

The primary function of the occupant, once it is in effective control of the territory of the Occupied State, is to administer its laws. Here, under the law of occupation, there is a difference between the Occupying State, which, as a foreign State, is outside of the occupied territory, and the occupant of the Occupying State, which as a result of occupation, is within the occupied territory. "The occupant," according to Professor Sassòli, "may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation."<sup>37</sup> Professor Sassòli further explains that the "expression 'laws in force in the country' in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders."<sup>38</sup>

The State of Hawai'i's authority is by virtue of American laws, which constitutes war crimes. Consequently, because of the Hawaiian Kingdom's continuity as a State and since it is vested with sovereignty over the Hawaiian Islands, the authority claimed by the State of Hawai'i is invalid because it never legally existed. What remains valid, however, is the authority of the State of Hawai'i Department of Defense, which is its Army and Air National Guard. As members of the United States Armed Forces situated in an occupied territory, the authority of both branches of the military continues. Army doctrine does not allow civilians to establish a military government. The establishment of a military government is the function of the U.S. Army.

Since the State of Hawai'i is in effective control of most of the territory of the Hawaiian Kingdom at ten thousand nine hundred and thirty-one square miles, while the U.S. Indo-Pacific Combatant Command is only in effective control of less than five hundred square miles, the State of Hawai'i Army National Guard is vested with the authority to transform the State of Hawai'i into a Military Government of Hawai'i forthwith pursuant to Articles 42 and 43 of the 1907 Hague Regulations. Enforcement of the laws of an occupied State requires the occupant to be in effective control of territory so that the laws can be enforced. Hence, the Council of Regency's objective is to compel the transformation of the State of Hawai'i into a Military Government of Hawai'i.

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<sup>37</sup> Marco Sassòli, "Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century," *International Humanitarian Law Research Initiative* 5 (2004) (online at <https://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf>).

<sup>38</sup> *Id.*, 6.

In 2023, the Council of Regency published its *Operational Plan for Transitioning the State of Hawai‘i into a Military Government* in the law journal—*Hawaiian Journal of Law and Politics*.<sup>39</sup> The *Operational Plan*, with its essential and implied tasks, is designed to restore the *status quo ante* of the Hawaiian Kingdom as it existed prior to the American invasion on January 16, 1893—its territory, political institutions, population and laws. That same year the Council of Regency also published its the *Operational Plan for Transitioning the Military Government into the Hawaiian Kingdom* when the occupation comes to an end.<sup>40</sup>

In a letter dated 25 February 2018, United Nations Independent Expert, Dr. Alfred deZayas sent a communication from Geneva to Judge Gary W.B. Chang, Judge Jeannette H. Castagnetti, and members of the judiciary of the State of Hawai‘i, that stated:

I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).

Furthermore, in 2019, the U.S. National Lawyers Guild (“NLG”) adopted a resolution calling upon the United States to immediately comply with international humanitarian law regarding its long and illegal occupation of the Hawaiian Islands. Among its positions statement, the “NLG supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”

In a letter to Governor David Ige, dated 10 November 2020, the NLG called upon the governor to begin to comply with international humanitarian by administering the laws of the occupied State. The NLG letter concluded:

As an organization committed to the mission that human rights and the rights of ecosystems are more sacred than property interests, the NLG is deeply concerned

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<sup>39</sup> “Operational Plan for Transitioning the State of Hawai‘i into a Military Government,” *5 Hawaiian Journal of Law and Politics* 152 (2023) (online at [https://hawaiiankingdom.org/pdf/HK\\_Operational\\_Plan\\_of\\_Transition.pdf](https://hawaiiankingdom.org/pdf/HK_Operational_Plan_of_Transition.pdf)).

<sup>40</sup> “Operational Plan for Transitioning the Military Government into the Hawaiian Kingdom Government,” *5 Hawaiian Journal of Law and Politics* 269 (2023) (online at [https://hawaiiankingdom.org/pdf/Op\\_Plan\\_Trans\\_from\\_MG\\_to\\_HKG.pdf](https://hawaiiankingdom.org/pdf/Op_Plan_Trans_from_MG_to_HKG.pdf)).

that international humanitarian law continues to be flagrantly violated with apparent impunity by the State of Hawai‘i and its County governments. This has led to the commission of war crimes and human rights violations of a colossal scale throughout the Hawaiian Islands. International criminal law recognizes that the civilian inhabitants of the Hawaiian Islands are “protected persons” who are afforded protection under international humanitarian law and their rights are vested in international treaties. There are no statutes of limitation for war crimes, as you must be aware. We urge you, Governor Ige, to proclaim the transformation of the State of Hawai‘i and its Counties into an occupying government pursuant to the Council of Regency’s proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom. This would include carrying into effect the Council of Regency’s proclamation of October 10, 2014 that bring the laws of the Hawaiian Kingdom in the nineteenth century up to date. We further urge you and other officials of the State of Hawai‘i and its Counties to familiarize yourselves with the contents of the recent eBook published by the [Royal Commission of Inquiry] and its reports that comprehensively explains the current situation of the Hawaiian Islands and the impact that international humanitarian law and human rights law have on the State of Hawai‘i and its inhabitants.

In addition, on 7 February 2021, the International Association of Democratic Lawyers (“IADL”), a non-governmental organization (NGO) of human rights lawyers, which has special consultative status with the United Nations Economic and Social Council (“ECOSOC”), and which is accredited to participate in the Human Rights Council’s sessions as Observers, passed a resolution calling upon the United States to immediately comply with international humanitarian law regarding its prolonged occupation of the Hawaiian Islands—the Hawaiian Kingdom. In its resolution, the IADL also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”

Together with the IADL, the American Association of Jurists—Asociación Americana de Juristas (“AAJ”), an NGO with consultative status to the United Nations ECOSOC and which is an accredited observer in the Human Rights Council’s sessions, sent a joint letter, dated 3 March 2022, to all Member States of the United Nations regarding the status of the Hawaiian Kingdom and its prolonged occupation by the United States. In its joint letter, the IADL and the AAJ also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”

I am presently in communication with the Legal Counsel for the International Seabed Authority (“ISA”), an intergovernmental organization of one hundred sixty-nine States that have ratified or acceded to the 1982 United Nations Law of the Sea Convention. One hundred ten of these States are also Member States of the Permanent Court of Arbitration, an intergovernmental organization of one hundred twenty-five States. On 10 July 2025, the Secretary General of the ISA received our Special Envoy to participate in the ISA Assembly as an Observer State.

### *The Writings of Scholars as a Source of International Law*

Furthermore, the continuity of Hawaiian Statehood, under customary international law, was explained in two legal opinions, the first by Professor Matthew Craven from the University of London, SOAS,<sup>41</sup> and the second by Professor Federico Lenzerini from the University of Siena, Italy.<sup>42</sup> Moreover, war crimes are and have been committed by the imposition of American municipal laws over the territory of the Hawaiian Kingdom. This is also a matter of customary international law as explained by the legal opinion of Professor William Schabas from Middlesex University London.<sup>43</sup> Professor Schabas is a renowned expert in international criminal law, genocide, war crimes, human rights and crimes against humanity.

In addition, Professor Malcolm Shaw explains that because “of the lack of supreme authorities and institutions in the international legal order, the responsibility is all the greater upon publicists of the various nations to inject an element of coherence and order into the subject as well as to question the direction and purposes of the rules.”<sup>44</sup> Thus, “academic writings are regarded as law-determining agencies, dealing with the verification of alleged rules.”<sup>45</sup> The U.S. Supreme Court explained this in the *Paquette Habana* case:

[R]esort must be had [...] to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.<sup>46</sup>

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<sup>41</sup> Matthew Craven, “Continuity of the Hawaiian Kingdom,” 1 *Haw. J.L. & Pol.* 508 (2004) (online at [https://hawaiiankingdom.org/pdf/1HawJLPol508\\_\(Craven\).pdf](https://hawaiiankingdom.org/pdf/1HawJLPol508_(Craven).pdf)).

<sup>42</sup> Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Haw. J.L. & Pol.* 317 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol317\\_\(Lenzerini\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol317_(Lenzerini).pdf)).

<sup>43</sup> William Schabas, “Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893,” 3 *Haw. J.L. & Pol.* 334 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol334\\_\(Schabas\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol334_(Schabas).pdf)).

<sup>44</sup> Malcolm N. Shaw QC, *International Law*, 6th ed., 113 (2008).

<sup>45</sup> *Id.*, 71.

<sup>46</sup> *The Paquete Habana*, 175 U.S., 677, 700 (1900).

As a source of international law, these legal opinions establish a shift in the burden of proof. The presumption of State continuity shifts the burden, as to what is to be proven and by whom, to the refuting State to rebut this presumption. “If one were to speak about a presumption of continuity,” explains Professor Craven, “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.”<sup>47</sup>

Evidence of a valid demonstration of legal title or sovereignty by the United States would be an international treaty, notably a peace treaty, whereby the Hawaiian Kingdom would have ceded its territory and sovereignty to the United States. Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*<sup>48</sup> and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.<sup>49</sup>

Furthermore, there is no such treaty between the Hawaiian Kingdom and the United States. There exists only a congressional law called a joint resolution of annexation, purporting to have annexed a foreign State in 1898. This is an American municipal law limited in its effect to the territory of the United States. As the United States Department of Justice’s Office of Legal Counsel (“OLC”) concluded in its 1988 legal opinion, it “is unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution,”<sup>50</sup> and there “is a serious question whether Congress has the authority either to assert jurisdiction over an expanded territorial sea for purposes of international law or to assert the United States’s sovereignty over it,”<sup>51</sup> because only the President “has the authority to assert the United States’s sovereignty over the extended territorial sea.”<sup>52</sup> This legal opinion further stated that only “by means of treaties [...] can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature it is enacted.”<sup>53</sup>

Absent the evidence of a treaty, the Hawaiian Kingdom continues to exist, as an occupied State with its sovereignty and independence intact, despite the prolonged nature of the American occupation. Therefore, under customary international law, there is a

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<sup>47</sup> Craven, 512.

<sup>48</sup> 9 Stat. 922 (1848).

<sup>49</sup> 30 Stat. 1754 (1898).

<sup>50</sup> Douglas W. Kmiec, “Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea,” 12 *Office of Legal Counsel* 238, 252 (1988) (online at [https://hawaiiankingdom.org/pdf/1988\\_Opinion\\_OLC.pdf](https://hawaiiankingdom.org/pdf/1988_Opinion_OLC.pdf)).

<sup>51</sup> *Id.*, 238.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*, 252.

presumption of continuity of the Hawaiian Kingdom and that war crimes are being committed throughout Hawaiian territory. This is a continuous violation of peremptory norms.

### *Hawaiian Kingdom Invokes the State Responsibility Articles*

According to the *Articles on the Responsibility of States for Internationally Wrongful Acts* (“ARSIWA”), “every internationally wrongful act of a State entails the international responsibility of that State.” This act of the State qualifies as an ‘internationally wrongful act’ when two conditions are met. According to Article 2, ARSIWA, “There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.”

The condition is that the act must be attributable to a State. The United States has been violating this obligation, by exercising its power, through the unlawful imposition of American laws and administrative measures over Hawaiian territory, since 1898. According to Professor Schabas, the imposition of American municipal laws and administrative measures is the war crime of *usurpation of sovereignty during military occupation* under customary international law.<sup>54</sup> Hence, all acts exercised by the United States within the territory of the Hawaiian Kingdom are void and without legal effect. As the Permanent Court of International Justice stated:

Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.<sup>55</sup>

Member States of the United Nations were made aware of the ‘circumstances of the internationally wrongful act’ on 11 October 2021 by note verbale.<sup>56</sup> It was delivered by electronic mail to their Permanent Missions at the United Nations in New York City, which I am enclosing. The diplomatic note stated:

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<sup>54</sup> Schabas, 340.

<sup>55</sup> *The Case of the S.S. Lotus* (France v. Turkey), PCIJ Series A, No. 10, 18 (1927).

<sup>56</sup> Hawaiian Foreign Ministry, Note Verbale No. 2021-1-HI (11 October 2021) (online at [https://hawaiiankingdom.org/pdf/Note\\_Verbale\\_No.\\_2021-1-HI\\_from%20Hawn\\_Ministry\\_of\\_Foreign\\_Affairs\\_to\\_UN\\_Members.pdf](https://hawaiiankingdom.org/pdf/Note_Verbale_No._2021-1-HI_from%20Hawn_Ministry_of_Foreign_Affairs_to_UN_Members.pdf)).

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

*Hawaiian Kingdom Statement Given to the Human Rights Council*

In addition, on 22 March 2022, on behalf of two NGOs, the *International Association of Democratic Lawyers* and the *American Association of Jurists—Asociación Americana de Juristas*, I delivered an oral statement to the United Nations Human Rights Council (“HRC”) at its 49th session in Geneva. The oral statement read:

The International Association of Democratic Lawyers and the American Association of Jurists call the attention of the Council to human rights violations in the Hawaiian Islands. My name is Dr. David Keanu Sai, and I am the Minister of Foreign Affairs *ad interim* for the Hawaiian Kingdom. I also served as lead agent for the Hawaiian Kingdom at the Permanent Court of Arbitration from 1999-2001 where the Court acknowledged the continued existence of my country as a sovereign and independent State.

The Hawaiian Kingdom was invaded by the United States on 16 January 1893, which began its century long occupation to serve its military interests. Currently, there are 118 military sites throughout the islands and the city of Honolulu serves as the headquarters for the Indo-Pacific Combatant Command.

For the past century, the United States has and continues to commit the war crime of usurpation of sovereignty, under customary international law, by imposing its municipal laws over Hawaiian territory, which has denied Hawaiian subjects their right of internal self-determination by prohibiting them to freely access their own laws and administrative policies, which has led to the violations of their human rights, starting with the right to health, education and to choose their political leadership.<sup>57</sup>

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<sup>57</sup> International Association of Democratic Lawyers, *Video: Dr. Keanu Sai's oral statement to the UN Human Rights Council on the U.S. occupation of the Hawaiian Kingdom* (22 March 2022) (online at <https://iadllaw.org/2022/03/video-dr-keanu-sais-oral-statement-to-the-un-human-rights-council-on-the-u-s-occupation-of-the-hawaiian-kingdom/>).



None of the forty-seven HRC member States, including the United States, protested, or objected to this oral statement that war crimes were being committed in the Hawaiian Kingdom. Under international law, such acquiescence “concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State would be called for.”<sup>58</sup> Since these States “did not do so [they] thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset.*”<sup>59</sup> Thus, silence conveys consent.

### *The Royal Commission of Inquiry*

Determined to hold individuals accountable for having committed war crimes and human rights violations throughout the Hawaiian Kingdom, the Council of Regency, by proclamation on 17 April 2019,<sup>60</sup> established a Royal Commission of Inquiry (“RCI”). This was done in similar fashion to the United States proposal of establishing a Commission of Inquiry after the First World War “to consider generally the relative culpability of the authors of the war and also the question of their culpability as to the violations of the laws and customs of war committed during its course.”<sup>61</sup> I serve as Head of the RCI and Professor Federico Lenzerini, from the University of Siena, Italy, serves as its Deputy Head.<sup>62</sup> According to Article 1 of the proclamation:

The purpose of the Royal Commission of Inquiry shall be to investigate the consequences of the United States’ belligerent occupation, including with regard to international law, humanitarian law and human rights, and the allegations of war crimes committed in that context. The geographical scope and time span of the investigation will be sufficiently broad and be determined by the head of the Royal Commission.

Moreover, in Professor Schabas’ RCI legal opinion on war crimes under customary international law being committed in Hawai‘i, he states in his introduction:

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<sup>58</sup> Nuno Sérgio Marques Antunes, “Acquiescence”, in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* para. 2 (2006).

<sup>59</sup> See International Court of Justice, *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

<sup>60</sup> Proclamation: Establishment of the Royal Commission of Inquiry (17 April 2019) (online at [https://hawaiiankingdom.org/pdf/Proc\\_Royal\\_Commission\\_of\\_Inquiry.pdf](https://hawaiiankingdom.org/pdf/Proc_Royal_Commission_of_Inquiry.pdf)): see also “Proclamation” in Sai *The Royal Commission of Inquiry*, 8-9.

<sup>61</sup> International Law Commission, Historical Survey of the Question of International Criminal Jurisdiction—Memorandum submitted by the Secretary-General 54 (1949).

<sup>62</sup> David Keanu Sai, “All States have a Responsibility to Protect their Population from War Crimes—Usurpation of Sovereignty During Military Occupation of the Hawaiian Islands,” 6(3) *International Review of Contemporary Law* 72-81 (2024) (online at [https://hawaiiankingdom.org/pdf/IRCL\\_Article\\_\(Sai\).pdf](https://hawaiiankingdom.org/pdf/IRCL_Article_(Sai).pdf)).

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

In 2020, the RCI also published an eBook titled *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*.<sup>63</sup> In 2022, Anita Budziszewska, a professor of international law at the University of Warsaw, wrote a book review of the eBook *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* that was published in the *Polish Journal of Political Science*.<sup>64</sup> On the portion of the book that I authored, she stated:

Presented next is the genesis and history of the Commission’s activity described by its aforementioned Head—Dr. David Keanu Sai. He presents the Commission’s activity in detail, by reference to concrete examples; with this part going on to recreate the entire history of the Hawaiian-US relations, beginning with the first attempt at territorial annexation. This thread of the story is supplemented with examples and source texts relating to the recognition of the Hawaiian Kingdom by certain countries (e.g. the UK and France, and taken as evidence of international regard for the integrity of statehood). Particularly noteworthy here is the author’s exceptionally scrupulous analysis of the history of Hawaii and its state sovereignty. No obvious flaws are to be found in the analysis presented (emphasis added).

She concluded her review with the following:

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<sup>63</sup> David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian\\_Royal\\_Commission\\_of\\_Inquiry\\_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

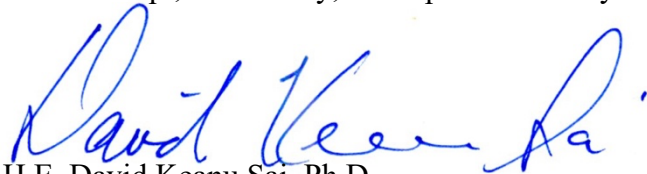
<sup>64</sup> Anita Budziszewska, “Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom,” review of *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, by David Keanu Sai (ed.), 8(2) *Polish Journal of Political Science* (2022) (online at <https://hawaiiankingdom.org/pdf/PJPS-Budziszewska.pdf>).

I regard this publication as an exceptionally valuable one that systematises matters of the legal status of the Hawaiian Kingdom, taking up the key issues surrounding the often ignored topic of a difficult historical context occurring between Hawaii and the United States. The issue at stake here has been regenerated synthetically, on multiple levels, with a penetrating analysis of the regulations and norms in international law applying to Hawaii—starting from potential occupied-territory status, and moving through to multi-dimensional issues relating to both war crimes and human rights. This is one of the few books—if not the only one—to describe its subject matter so comprehensively and completely. I therefore see this work as being of exceptional value and considerable scientific importance. It may serve not only as an academic source, but also a professional source of knowledge for both practicing lawyers and historians dealing with the matter on hand. The ambition of those who sought to take up this difficult topic can only be commended (emphasis added).

### *Conclusion*

Excellency, the Hawaiian Kingdom is a Non-Member State of the United Nations, and since 1 January 1882, is also a Member State of its specialized agency, the Universal Postal Union.<sup>65</sup> Therefore, as Minister of Foreign Affairs *ad interim*, I am providing you our government's Complaint of the United States of America's unlawful and prolonged occupation of the Hawaiian Kingdom since 17 January 1893 and the commission of war crimes and human rights violations pursuant to Article 35(2) of the Charter of the United Nations. I would be grateful if you could disseminate a copy of this letter, with its Complaint, to all Member States of the United Nations General Assembly, to include those States that have Observer status.

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



H.E. David Keanu Sai, Ph.D.

Minister of Foreign Affairs *ad interim*

Enclosures

Copied: His Excellency António Guterres  
Secretary General of the United Nations

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<sup>65</sup> Sai, *Hawai'i's Sovereignty and Survival in the Age of Empire*, 474.



**Enclosure “1”**





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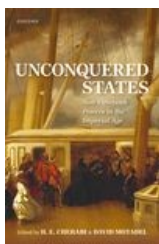


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ISBN 978-0-19-886329-8







## Unconquered States: Non-European Powers in the Imperial Age

H. E. Chehabi (ed.), David Motadel (ed.)

<https://doi.org/10.1093/oso/9780198863298.001.0001>

**Published online:** 19 December 2024 **Published in print:** 30 December 2024

**Online ISBN:**

9780191895722

**Print ISBN:** 9780198863298

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### FRONT MATTER

## Acknowledgments

**Published:** December 2024

**Subject:** [Political History](#), [Modern History \(1700 to 1945\)](#)

**Collection:** [Oxford Scholarship Online](#)

The idea for this book emerged during our walks from Cambridge to Grantchester in 2011–2012 while we were both at Gonville and Caius College, Cambridge. Some of the chapters of this volume were first discussed at a workshop at the University of Cambridge in the summer of 2015. We would like to thank the Centre for Research in the Arts, Social Sciences, and Humanities of the University of Cambridge and the Iran Heritage Foundation which funded the event.

We are much indebted to James Swarbrick for his thorough copy-editing of the final manuscript. We are also grateful to the anonymous readers at Oxford University Press who in their detailed reports made insightful suggestions which helped to improve the book. Our editor, Cathryn Steele, believed in the book from the outset, and it was a great pleasure to work with her. Oxford University Press's Nadine Kolz, Rachel Addison, and Jothi Aloysia Stephenson ensured its smooth production.

Finally, and most importantly, we would like to thank all the contributors for their patience and for providing the chapters that brought this book to life.



# Hawai'i's Sovereignty and Survival in the Age of Empire

David Keanu Sai

Three years after the tragic demise of Captain James Cook on the shores of the royal residence of Kalanipū'u, king of the Hawai'i Island kingdom, civil war broke out after the elderly king died in January of 1782. While the civil war lasted nine years, it set in motion a chain of events that would facilitate the rise of the celebrated chief Kamehameha to be King of Hawai'i in the summer of 1791 (Fig. 21.1). Just three years later, Kamehameha joined the British Empire under an agreement with Captain George Vancouver on 25 February 1794. According to Willy Kauai, "Kamehameha's foresight in forming strategic international relations helped to protect and maintain Hawaiian autonomy amidst the rise of European exploration in the Pacific."<sup>1</sup>

The agreement provided that the British government would not interfere with the kingdom's religion, government, and economy; "the chiefs and priests... were to continue as usual to officiate with the same authority as before in their respective stations."<sup>2</sup> Kamehameha and his chiefs acknowledged they were British subjects. Knowing that the religion would eventually have to conform to British custom, Kamehameha also "requested of Vancouver that on his return to England he would procure religious instructors to be sent to them from the country of which they now considered themselves subjects."<sup>3</sup> After the ceremony, the British ships fired a salute and delivered a copper plaque, which was placed at the royal residence of Kamehameha. The plaque read:

On the 25th of February, 1794, Tamaahmaah [Kamehameha], king of Owhyhee [Hawai'i], in council with the principal chiefs of the island assembled on board His Britannic Majesty's sloop Discovery in Karakakooa [Kealahakua] bay, and in the presence of George Vancouver, commander of the said sloop; Lieutenant

<sup>1</sup> Willy Daniel Kaipo Kauai, "The Color of Nationality: Continuities and Discontinuities of Citizenship in Hawai'i" (Ph.D. dissertation, University of Hawai'i at Manoa, 2014), 55.

<sup>2</sup> George Vancouver, *A Voyage of Discovery to the North Pacific Ocean and Round the World* (London: G. G. and J. Robinson, and J. Edwards, 1798), 3:56.

<sup>3</sup> Manley Hopkins, *Hawaii: The Past, Present and Future of Its Island Kingdom* (London: Longmans, Green, and Co., 1866), 133.

Peter Puget, commander of his said Majesty's armed tender the Chatham; and the other officers of the Discovery; after due consideration, and unanimously ceded the said island of Owhyhee [Hawai'i] to His Britannic Majesty, and acknowledged themselves to be subjects of Great Britain.<sup>4</sup>

In April of 1795, Kamehameha conquered the Kingdom of Maui and acquired the islands of Maui, Lana'i, Moloka'i, and O'ahu. By April of 1810, the Kingdom of Kaua'i capitulated and its ruler, Kaumuali'i, ceded his kingdom and its dependent island of Ni'ihau to Kamehameha, thereby becoming a vassal state, with the Kaua'i king paying an annual tribute to Kamehameha.<sup>5</sup> Thus, the entire archipelago had been consolidated by the Kingdom of Hawai'i, which was renamed the Kingdom of the Sandwich Islands, with Kamehameha as its king.

With the leeward islands under his rule, Kamehameha incorporated and modified aspects of English governance, including the establishment of a prime minister and governors over the former kingdoms of Hawai'i, Maui, and O'ahu.<sup>6</sup> The governors served as viceroys over the lands of the former kingdom "with legislative and other powers almost extensive as those kings whose places they took."<sup>7</sup> *Kālainimoku* (carver of lands) was the native term given to a king's chief counselor, and became the native equivalent to the title prime minister. Kamehameha appointed Kalanimoku as his prime minister, who thereafter adopted his title as his name—Kālainimoku.

Foreigners also commonly referred to Kālainimoku as Billy Pitt, the namesake of the younger William Pitt, who served as Britain's prime minister under King George III. The British Prime Minister was also the First Lord of the Treasury and Kālainimoku was also referred to as the chief treasurer. Kālainimoku's duty was to manage day-to-day operations of the royal government, as well as to be the commander-in-chief of all the military, and head of the kingdom's treasury. Samuel Kamakau, a Hawaiian historian, explained: the "laws determining life or death were in the hands of the treasurer; he had charge of everything. Kamehameha's brothers, the chiefs, the favorites, the lesser chiefs, the soldiers, and all who were fed by the chief, anyone to whom Kamehameha gave a gift, could secure it to himself only by informing the chief treasurer."<sup>8</sup>

After the death of Kamehameha I in 1819, the kingdom would continue its transformation as a self-governing member of the British realm. As Lorenz

<sup>4</sup> Vancouver, *A Voyage of Discovery*, 56–7.

<sup>5</sup> This vassalage, however, was terminated in 1821 by Kamehameha's successor and son, Kamehameha II, when he removed Kaumuali'i to the island of O'ahu and replaced him with a governor named Ke'eumoku.

<sup>6</sup> Walter Frear, "Hawaiian Statute Law," *Thirteenth Annual Report of the Hawaiian Historical Society* (Honolulu: Hawaiian Gazette Co., 1906), 15–61, at 18. Frear mistakenly states that Kamehameha established four earldoms that included the Kingdom of Kaua'i. Kaumuali'i was not a governor, but remained a king until 1821.

<sup>7</sup> Ibid.

<sup>8</sup> Samuel Kamakau, *Ruling Chiefs* (Honolulu: Kamehameha Schools Press, 1992), 175.



**Fig. 21.1** King Kamehameha I, progenitor of the Hawaiian Kingdom, 1795–1819. (Unknown Artist) (Public Domain)

Gonschor writes, “when Kamehameha [learned] of King George and styled his government a ‘kingdom’ on the British model, it was in fact merely a new designation and hybridization of the existing political system,”<sup>9</sup> and the “process of hybridization was further continued by Kamehameha’s sons Liholiho (Kamehameha II) and Kauikeaouli (Kamehameha III) throughout the 1820s, 1830s, and 1840s, culminating in the Constitution of 1840.”<sup>10</sup> In 1824, Protestantism became the national religion, and in 1829 Hawaiian authorities took steps to change the name from Sandwich Islands to Hawaiian Islands.<sup>11</sup> The country later came to be known as the Hawaiian Kingdom.

<sup>9</sup> Lorenz Gonschor, *A Power in the World: The Hawaiian Kingdom in Oceania* (Honolulu: University of Hawai‘i Press, 2019), 22.

<sup>10</sup> Lorenz Gonschor, “Ka Hoku o Osiania: Promoting the Hawaiian Kingdom as a Model for Political Transformation in Nineteenth-Century Oceania,” in Sebastian Jobs and Gesa Mackenthun, eds., *Agents of Transculturation: Border-Crossers, Mediators, Go-Betweens* (Münster: Waxmann, 2013), 157–86, at 161.

<sup>11</sup> “Capt. Finch’s Cruise in the U.S.S. Vincennes,” U.S. Navy Department Archives. “The Government and Natives generally have dropped or do not admit the designation of the Sandwich Islands as applied to their possessions; but adopt and use that of Hawaiian; in allusion to the fact of the whole Groupe having been subjugated by the first Tamehameha [Kamehameha], who was Chief of the principal Island of Owwhyhee, or more modernly Hawaii.”

On 8 October 1840, Kamehameha III approved the Hawaiian Kingdom's first constitution. Bernd Marquardt acknowledges that Hawai'i's transformation into a constitutional monarchy even precedes that of Prussia.<sup>12</sup> While other European monarchs instituted constitutional reforms before Prussia, what is remarkable is that Hawai'i was the first consolidated non-European constitutional monarchy. According to the Hawaiian Supreme Court:

King Kamehameha III originally possessed, in his own person, all the attributes of absolute sovereignty. Of his own free will he granted the Constitution of 1840, as a boon to his country and people, establishing his Government upon a declared plan or system, having reference not only to the permanency of his Throne and Dynasty, but to the Government of his country according to fixed laws and civilized usage, in lieu of what may be styled the feudal, but chaotic and uncertain system, which previously prevailed.<sup>13</sup>

After French troops temporarily occupied the Hawaiian Kingdom in 1839 under the command of Captain Laplace, Lord Talbot, a British member of parliament, called upon the Secretary of State for Foreign Affairs, Viscount Palmerston, to provide an official response. He also "desired to be informed whether those islands which, in the year 1794, and subsequently in 1824... had been declared to be under the protection of the British Government, were still considered... to remain in the same position."<sup>14</sup> Viscount Palmerston reported he knew very little of the French occupation, and with regard to the protectorate status of the islands "he was non-committal and seemed to indicate that he knew very little about the subject."<sup>15</sup>

In the eyes of the Hawaiian government, Palmerston's report quelled the notion of British dependency and acknowledged Hawaiian autonomy.<sup>16</sup> Two years later, a clearer British policy toward the Hawaiian Islands by Palmerston's successor, Lord Aberdeen, reinforced the position of the Hawaiian government. In a letter to the British Admiralty on 4 October 1842, Talbot Canning, on behalf of Lord Aberdeen, wrote:

Lord Aberdeen does not think it advantageous or politic, to seek to establish a paramount influence for Great Britain in those Islands, at the expense of that

<sup>12</sup> Bernd Marquardt, *Universalgeschichte des Staates: von der vorstaatlichen Gesellschaft zum Staat der Industriegesellschaft* (Zurich: LIT, 2009), 478.

<sup>13</sup> *Rex v. Joseph Booth*, 3 Hawai'i 616, 630 (1863).

<sup>14</sup> Ralph S. Kuykendall, *The Hawaiian Kingdom*, vol. 1, *Foundation and Transformation, 1778–1854* (Honolulu: University of Hawai'i Press, 1938), 185.

<sup>15</sup> *Ibid.*

<sup>16</sup> Robert C. Wyllie, *Report of the Minister of Foreign Affairs, 21 May 1845* (Honolulu: The Polynesian Press, 1845), 7.

enjoyed by other Powers. All that appears to his Lordship to be required, is, that no other Power should exercise a greater degree of influence than that possessed by Great Britain.<sup>17</sup>

In the summer of 1842, Kamehameha III moved forward to secure the position of the Hawaiian Kingdom as a recognized independent and sovereign state under international law, which was unprecedented for a country that had no historical ties to Europe. He sought the formal recognition of Hawaiian independence from the three naval powers in the Pacific at that time—Great Britain, France, and the United States. To accomplish this, Kamehameha III commissioned three envoys: Timoteo Ha'alilio; William Richards, who was at the time an American citizen; and Sir George Simpson, a British subject.

While the envoys were on their diplomatic mission, a British Naval ship, HBMS *Carysfort*, under the command of Lord Paulet, entered Honolulu harbor on 10 February 1843. Basing his actions on complaints in letters from British Consul Richard Charlton, who was absent from the kingdom at the time, that British subjects were being treated unfairly, Paulet seized control of the Hawaiian government on 25 February 1843, after threatening to level Honolulu with cannon fire.<sup>18</sup> Kamehameha III was forced to surrender the kingdom, but he did so under written protest, and pending the outcome of his diplomats' mission in Europe.

News of Paulet's action reached Admiral Richard Thomas of the British Admiralty, who then sailed from the Chilean port of Valparaiso, and arrived in the islands on 25 July 1843. After a meeting with Kamehameha III, Admiral Thomas concluded that Charlton's complaints did not warrant a British takeover and ordered the restoration of the Hawaiian government. The restoration took place in a grand ceremony on 31 July 1843.<sup>19</sup> At a thanksgiving service after the ceremony, Kamehameha III proclaimed before a large crowd, "*ua mau ke ea o ka 'āina i ka pono*" (the life of the land is perpetuated in righteousness). The king's statement later became the national motto for the country.

The Hawaiian envoys succeeded in obtaining a joint proclamation by Great Britain and France formally recognizing the Hawaiian Kingdom as a sovereign and "Independent State" on 28 November 1843 at the Court of London.<sup>20</sup> The United States followed on 6 July 1844 by a letter of Secretary of State John

<sup>17</sup> The Historical Commission, *Report of the Historical Commission of the Territory of Hawai'i for the Two Years Ending 31 Dec. 1924* (Honolulu: Star Bulletin, 1925), 36.

<sup>18</sup> Kuykendall, *The Hawaiian Kingdom*, 1:214.

<sup>19</sup> *Ibid.*, 220.

<sup>20</sup> United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894–1895* (Washington, DC: Government Printing Press, 1895), 120. "Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the French, taking into consideration the existence in the Sandwich Islands of a government capable of providing for the regularity of its relations with foreign nations, have thought it right to engage, reciprocally, to consider the Sandwich [Hawaiian] Islands as an Independent State, and never to take possession, neither directly or under the title of Protectorate, or under any other form, of any part of the territory of which they are composed."

C. Calhoun.<sup>21</sup> Thus the Hawaiian Islands became the first Pacific country to be recognized as an independent and sovereign state. According to the legal scholar John Westlake, 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."<sup>22</sup>

In 1845, the Hawaiian Kingdom organized its military under the command of the governors of the several islands of Hawai'i, Maui, O'ahu, and Kaua'i, but subordinate to the monarch. Hawaiian statute provided that "all male subjects of His Majesty, between the ages of eighteen and forty years, shall be liable to do military duty in the respective islands where they have their most usual domicile, whenever so required by proclamation of the governor thereof."<sup>23</sup> The legislature enacted in 1886 a statute "for the purpose of more complete military organization in any case requiring recourse to arms and to maintain and provide a sufficient force for the internal security and good order of the Kingdom, and being also in pursuance of Article 26 of the Constitution."<sup>24</sup> This military force was renamed the King's Royal Guard in 1890.<sup>25</sup> Augmenting the regular force was the call for duty of the civilian population under the 1845 statute.

Hawaiian Attorney General John Ricord established a diplomatic code for Kamehameha III and the Royal Court, which was based on the principles of the 1815 Congress of Vienna by virtue of the fact that Hawai'i was admitted as a monarchical member of the family of nations.<sup>26</sup> The first diplomatic post was established in London with the appointment of Archibald Barclay as Hawaiian Commissioner on 17 May 1845.<sup>27</sup> Within fifty years, the Hawaiian Kingdom maintained more than ninety legations and consulates throughout the world and entered into extensive diplomatic and treaty relations with other states, including Austria-Hungary, Belgium, Chile, China, Denmark, France, German states, Great Britain, Guatemala, Italy, Japan, Mexico, Netherlands, Peru, Portugal, Russia, Spain, Sweden-Norway, Switzerland, the United States, and Uruguay.<sup>28</sup> The Hawaiian

<sup>21</sup> Wyllie, 1845 Report, 4.

<sup>22</sup> John Westlake, *Chapters on the Principles of International Law* (Cambridge: University Press, 1894), 81.

<sup>23</sup> *Statute Laws of His Majesty Kamehameha III*, Hawaiian Kingdom (Honolulu: Government Press, 1846), 1:69.

<sup>24</sup> *An Act to Organize the Military Forces of the Kingdom*, Laws of His Majesty Kalakaua I (Honolulu: P. C. Advertiser Steam Print, 1886), 37.

<sup>25</sup> *An Act to Provide for a Military Force to be Designated as the "King's Royal Guard,"* Laws of His Majesty Kalakaua I (Honolulu: Gazette Publishing Company, 1890), 107.

<sup>26</sup> "Besides prescribing rank orders, the mode of applying for royal audience, and the appropriate dress code, the new court etiquette set the Hawaiian standard for practically everything that constituted the royal symbolism." Juri Mykkanen, *Inventing Politics: A New Political Anthropology of the Hawaiian Kingdom* (Honolulu: University of Hawai'i Press, 2003), 161.

<sup>27</sup> Robert C. Wyllie, "Report of the Minister of Foreign Affairs," in *Annual Reports read before His Majesty, to the Hawaiian Legislature, May 12, 1851* (Honolulu: Government Press, 1851), 39.

<sup>28</sup> Thos. G. Thrum, *Hawaiian Almanac and Annual for 1893* (Honolulu: Press Publishing Co., 1892), 140-1. For the treaties with Austria-Hungary, Belgium, Bremen, Britain, Denmark, France, Germany, Hamburg, Italy, Japan, the Netherlands and Luxembourg, Portugal, Russia, Samoa, Spain, Sweden-Norway,



Kingdom also became a member state of the Universal Postal Union on 1 January 1882.

On 16 March 1854, Robert Wyllie, Hawaiian Minister of Foreign Affairs, announced to the resident foreign diplomats that the Hawaiian domain included twelve islands.<sup>29</sup> In its search for guano, the Hawaiian Kingdom annexed four additional islands, under the doctrine of discovery, north-west of the main islands. Laysan Island was annexed by discovery of Captain John Paty on 1 May 1857.<sup>30</sup> Lisiansky Island also was annexed by discovery of Captain Paty on 10 May 1857.<sup>31</sup> Palmyra Island, a cluster of low islets, was taken possession of by Captain Zenas Bent on 15 April 1862 and proclaimed as Hawaiian territory.<sup>32</sup> Ocean Island, also called Kure Atoll, was subsequently acquired on 20 September 1886, by proclamation of Colonel J. H. Boyd.<sup>33</sup> In all cases, the acquisitions were effected according to the rules of international law.

The Hawaiian Kingdom continued to evolve as a constitutional monarchy as it kept up with rapidly changing political, social, and economic conditions. Under the 1864 constitution, the office of prime minister was repealed, which effectively established an executive monarch, and the separation of powers doctrine was fully adopted.<sup>34</sup> It was also a progressive country when compared to the other European states and their successor states on the American continent in the nineteenth century. Its political economy was not based on Smith's capitalism of *The Wealth of Nations*, but rather on Francis Wayland's approach of cooperative capitalism. According to Juri Mykkanen, Wayland was interested in "defining the limits of government by developing a theory of contractual enactment of political society, which would be morally and logically binding and acceptable to all its members."<sup>35</sup>

Wayland's book *Elements of Political Economy* became the fundamental basis of Hawaiian economic policy-making when translated into the Hawaiian language and adjusted to apply to Hawaiian society accordingly. The book was titled *No Ke Kālai'āina*, which theorized "governance from a foundation of *natural rights* within an agrarian society based upon capitalism that was not only cooperative

Switzerland, and the United States, see "Treaties with Foreign States," in David Keanu Sai, ed., *Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (Honolulu: Ministry of the Interior, 2020), 237–310.

<sup>29</sup> A. P. Taylor, "Islands of the Hawaiian Domain," unpublished report, 10 January 1931, 5. "I have the honor to make known to you that the following islands, &c., are within the domain of the Hawaiian Crown, viz: Hawai'i, containing about, 4,000 square miles; Maui, 600 square miles; Oahu, 520 square miles; Kauai, 520 square miles; Molokai, 170 square miles; Lanai, 100 square miles; Niuhau, 80 square miles; Kahoolawe, 60 square miles; Nihoa, known as Bird Island, Molokini, Lehua, Kaula, Islets, little more than barren rocks; and all Reefs, Banks and Rocks contiguous to either of the above, or within the compass of the whole."

<sup>30</sup> Ibid., 7.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid., 8.

<sup>34</sup> Article 20 of the 1864 Constitution provides that the "Supreme Power of the Kingdom in its exercise, is divided into the Executive, Legislative, and Judicial; these shall always be preserved distinct."

<sup>35</sup> Mykkanen, *Inventing Politics*, 154.

in nature, but also morally grounded in Christian values.”<sup>36</sup> The national motto “*ua mau ke ea o ka ‘āina i ka pono*” (the life of the land is perpetuated in righteousness) reflects this national discourse and was adopted by the Hawaiian Kingdom Supreme Court as a legal maxim in 1847. In the words of Chief Justice William Lee:

For I trust that the maxim of this Court ever has been, and ever will be, that which is so beautifully expressed in the Hawaiian coat of arms, namely, “The life of the land is preserved by righteousness.” We know of no other rule to guide us in the decision of questions of this kind, than the supreme law of the land, and to this we bow with reverence and veneration, even though the stroke fall on our own head. In the language of another, “Let justice be done though the heavens fall.” Let the laws be obeyed, though it ruin every judicial and executive officer in the Kingdom. Courts may err. Clerks may err. Marshals may err—they do err in every land daily; but when they err let them correct their errors without consulting pride, expediency, or any other consequence.<sup>37</sup>

Education was through the medium of the native language. On 7 January 1822, the first printing of an eight-page Hawaiian spelling book was carried out, and all “the leading chiefs, including the king, now eagerly applied themselves to learn the arts of reading and writing, and soon began to use them in business and correspondence.”<sup>38</sup> By 1839, the success of the schools was at its highest point, and literacy was “estimated as greater than in any other country in the world, except Scotland and New England.”<sup>39</sup> English immersion schools, both public and private, soon became the preferred schools by the Hawaiian population.

The Privy Council in 1840 established a system of universal education under the leadership of what came to be known as the minister of public instruction. A Board of Education later replaced the office of the minister in 1855 and was named the Department of Public Instruction. This department was under the supervision of the minister of the interior and the monarch served on the board as its president. The president and board administered the educational system through school agents stationed in twenty-four school districts throughout the country. And in 1865, the office of inspector general of schools was formed in order to improve the quality of education.

<sup>36</sup> David Keanu Sai, “Hawaiian Constitutional Governance,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (Honolulu: Hawaiian Kingdom, 2020), 57–94, at 60.

<sup>37</sup> *Shillaber v. Waldo et al.*, 1 Hawai‘i 31, 32 (1847).

<sup>38</sup> W. D. Alexander, *A Brief History of the Hawaiian People* (New York: American Book Company, 1891), 179.

<sup>39</sup> Laura Fish Judd, *Honolulu: Sketches of Life, Social, Political, and Religious, in the Hawaiian Islands* (New York: Anson D. F. Randolph & Company, 1880), 79.

The Hawaiian Kingdom became the fifth country in the world to provide compulsory education for all youth in 1841, which predated compulsory education in the United States by seventy-seven years. The previous four countries were Prussia in 1763, Denmark in 1814, Greece in 1834, and Spain in 1838. Education was a hallowed word in the halls of the Hawaiian government, “and there [was] no official title more envied or respected in the islands than that of a member of the board of public instruction.”<sup>40</sup> Charles de Varigny explained:

This is because there is no civic question more debated, or studied with greater concern, than that of education. In all the annals of the Hawaiian Legislature one can find not one example of the legislative houses refusing—or even reducing—an appropriation requested by the government for public education. It is as if this magic word alone seems to possess the prerogative of loosening the public purse strings.<sup>41</sup>

Secondary education was carried out through the medium of English in English immersion schools. At Lahainaluna Seminary, a government-run secondary education school, the subjects of mathematics (algebra, geometry, calculus, and trigonometry), English grammar, geography, Hawaiian constitutional history, political economy, science, and world history were taught. Secondary schools were predominantly attended by aboriginal Hawaiians after completing their common school education.<sup>42</sup> The Hawaiian Kingdom also had a study abroad program in the 1880s through which seventeen young Hawaiian men and one woman “attended schools in six countries where they studied engineering, law, foreign language, medicine, military science, engraving, sculpture, and music.”<sup>43</sup>

As Gonschor points out, Hawaiian governance also had an impact on other states in Oceania and Asia.<sup>44</sup> In particular, Dr. Sun Yat-sen, who received his secondary education in the Hawaiian Kingdom at Iolani College and Punahou College between 1879 and 1883, told a reporter when he returned to the country in 1910: “This is my Hawaii. Here I was brought up and educated; and it was here that I came to know what modern, civilized governments are like and what they mean.”<sup>45</sup> Sun Yat-sen would not have learned “what modern, civilized governments are like” in

<sup>40</sup> Charles De Varigny, *Fourteen Years in the Sandwich Islands, 1855–1868* (Honolulu: University of Hawai‘i Press, 1981), 151.

<sup>41</sup> Ibid.

<sup>42</sup> Annual Examination of the Lahainaluna Seminary (12, 13, and 14 July 1882), website of the Hawaiian Kingdom, online. Lahainaluna’s 1882 annual exams reflect the breadth of Hawaiian national consciousness.

<sup>43</sup> Agnes Quigg, “Kalākaua’s Hawaiian Studies Abroad Program,” *The Hawaiian Journal of History* 22 (1988): 170–208, at 170.

<sup>44</sup> Gonschor, “Ka Hoku o Osiania”; and Gonschor, *A Power in the World*.

<sup>45</sup> Albert Pierce Taylor, “Sun Yat Sen in Honolulu,” *Paradise of the Pacific* 38:8 (1928): 8–11, at 8; see also Yansheng Ma Lum and Raymon Mun Kong Lum, *Sun Yat-sen in Hawai‘i: Activities and Supporters* (Honolulu: University of Hawai‘i Press, 1999), 5.

the United States but only in the Hawaiian Kingdom, where racism was, at the time, unthinkable.

Virginia Dominguez has found that before the United States' seizure of Hawai'i in 1898 there was "very little overlap with Anglo-American" race relations.<sup>46</sup> She found that there were no "institutional practices [that] promoted social, reproductive, or civic exclusivity on anything resembling racial terms before the American period."<sup>47</sup> In comparing the two countries she stated that unlike "the extensive differentiating and disempowering laws put in place throughout the nineteenth century in numerous parts of the U.S. mainland, no parallels—customary or legislated—seem to have existed in the [Hawaiian Kingdom]."<sup>48</sup> She admits that with "all the recent, welcomed publishing flurry on the social construction of whiteness and blackness and the sociohistorical shaping of racial categories... there are usually at best only hints of the possible—but very real—unthinkability of 'race.'"<sup>49</sup> According to Kauai, the "multi-ethnic dimensions of the Hawaiian citizenry coupled by the strong voice and participation of the aboriginal population in government played a prominent role in constraining racial hierarchy and the emergence of a legal system that promoted white supremacy."<sup>50</sup>

Hawaiian society was not based on race or gender, but rather class, rank, and education. Hawaiian women in the nineteenth century served as monarchs—Victoria Kamāmalu (1863) and Lili'uokalani (1891–1917); regents—Ka'ahumanu (1823–1825) and Lili'uokalani (1881, 1891); and prime ministers—Ka'ahumanu (1819–1823, 1825–1832), Elizabeth Kina'u (1832–1839), Miriam Kekāuluohi (1839–1845), and Victoria Kamāmalu (1855–1863) (Fig. 21.2).

In 1859, universal healthcare was provided at no charge for aboriginal Hawaiians through hospitals regulated and funded by the Hawaiian government.<sup>51</sup> Even tourists visiting the country were provided health coverage during their sojourn under *An Act Relating to the Hospital Tax levied upon Passengers* (1882).<sup>52</sup> As part of Hawai'i's mixed economy, the Hawaiian government appropriated funding for the maintenance of its quasi-public hospital, the Queen's Hospital, where the monarch served as head of the Board of Trustees, comprised of ten appointed government

<sup>46</sup> Virginia R. Dominguez, "Exporting U.S. Concepts of Race: Are There Limits to the U.S. Model?" *Social Research* 65:2 (1988): 369–99, at 372.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid., 371–2.

<sup>50</sup> Kauai, "The Color of Nationality," 31.

<sup>51</sup> Jeffrey J. Kamakahi, "A Socio-Historical Analysis of the Crown-based Health Ensembles (CBHEs) in Hawaii: A Satrean Approach" (Ph.D. dissertation, University of Hawai'i at Mānoa, 1991), 49–125. As to the dismantling of the universal health care during the American occupation, David Keanu Sai, "United States Belligerent Occupation of the Hawaiian Kingdom," in Sai, ed., *The Royal Commission of Inquiry*, 97–121, at 115–6.

<sup>52</sup> *Compiled Laws of the Hawaiian Kingdom* (Honolulu: Printed at the Hawaiian Gazette Office, 1884), 666. Section 1 provides that "the Trustees of the Queen's Hospital are hereby authorized and directed to reserve and apply to uses hereinafter mentioned the sum of two thousand and five hundred dollars per annum out of all moneys received by them as and for hospital tax levied upon and received from passengers arriving at the several ports of this Kingdom."



Fig. 21.2 Queen Lili'okalani, Constitutional Executive Monarch, 1891–1917.  
(Unknown Artist) (Public Domain)

officials and ten persons elected by the corporation's shareholders. According to Henry Witney: "Native Hawaiians are admitted free of charge, while foreigners pay from seventy-five cents to two dollars a day, according to accommodations and attendance."<sup>53</sup> It wasn't until the mid-twentieth century that the Nordic countries did what the Hawaiian Kingdom had done with universal health care.

Kamehameha III sought to secure the independent status of Hawai'i by ensuring international recognition of the kingdom's neutrality. "A nation that wishes to secure her own peace," said Emmerich de Vattel, "cannot more successfully attain that object than by concluding treaties [of] neutrality."<sup>54</sup> Unlike states that were neutralized by agreement of third states, such as Switzerland, Belgium, and Luxembourg, the Hawaiian Kingdom took a proactive approach to secure its neutrality through diplomacy and treaty provisions. The country made full use of its global location and became a beneficial asylum for all states who found

<sup>53</sup> Henry Witney, *The Tourists' Guide through the Hawaiian Islands Descriptive of Their Scenes and Scenery* (Honolulu: Hawaiian Gazette Company's Press, 1895), 21.

<sup>54</sup> Emmerich de Vattel, *The Law of Nations; Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, 6th ed. (Philadelphia, PA: T. & J. W. Johnson, 1844), 333.

themselves at war in the Pacific. Hawaiian Minister of Foreign Affairs Robert Wyllie secured equal and Most Favored Nation treaties for the Hawaiian Kingdom, and, wherever possible, included in the treaties the recognition of Hawaiian neutrality.<sup>55</sup> When he opened the Legislative Assembly on 7 April 1855, Kamehameha IV stated in his speech:

My policy, as regards all foreign nations, being that of peace, impartiality and neutrality, in the spirit of the Proclamation by the late King, of the 16th May last, and of the Resolutions of the Privy Council of the 15th June and 17th July. I have given to the President of the United States, at his request, my solemn adhesion to the rule, and to the principles establishing the rights of neutrals during war, contained in the Convention between his Majesty the Emperor of all the Russians, and the United States, concluded in Washington on the 22nd July last.<sup>56</sup>

Since 1858, Japan had been forced to recognize the extraterritoriality of foreign law operating within Japanese territory. Under Article VI of the American-Japanese treaty, it provided that "Americans committing offences against Japanese shall be tried in American consular courts, and when guilty shall be punished according to American law."<sup>57</sup> The Hawaiian Kingdom's 1871 treaty with Japan provided for Hawaiian extraterritoriality of Hawaiian law under Article II, which stated that Hawaiian subjects in Japan would enjoy "at all times the same privileges as may have been, or may hereafter be granted to the citizens or subjects of any other nation."<sup>58</sup> This was a sore point for Japanese authorities, who felt Japan's sovereignty should be fully recognized by these states.

During a meeting of the cabinet council on 11 January 1881, a decision was made for King Kalākaua to undertake a world tour, which was unprecedented at the time for any monarch. His objectives were, "first, to recuperate his own health and second, to find means for recuperating his people, the latter... by the introduction of foreign immigrants."<sup>59</sup> The royal party departed Honolulu harbor on 20 January 1881 on the steamer *City of Sydney* headed for San Francisco. From San Francisco, they embarked for Japan on 8 February. The world tour would last

<sup>55</sup> Provisions of neutrality can be found in the treaties with Sweden/Norway (1852), under Article XV; Spain (1863), under Article XXVI; Germany (1879), under Article VIII; and Italy (1869), under its additional article.

<sup>56</sup> Robert C. Lydecker, comp., *Roster Legislatures of Hawaii, 1841-1918* (Honolulu: Hawaiian Gazette Co., 1918), 57.

<sup>57</sup> *Treaty of Amity between the United States and Japan* (29 July 1858) U.S. Treaty Series 185, 365.

<sup>58</sup> "Treaty with Japan," 19 August 1871, in *Treaties and Conventions Concluded between the Hawaiian Kingdom and Other Powers since 1825* (Honolulu: Elele, 1887), 115.

<sup>59</sup> Ralph S. Kuykendall, *The Hawaiian Kingdom*, vol. 3, *The Kalakaua Dynasty, 1874-1893* (Honolulu: University of Hawai'i Press, 1967), 228. Kalākaua's motto was "ho'oulu lāhui" (increase the race). The native population was decimated by foreign diseases of which they had no immunity, and Hawaiian leaders sought a resolution by introducing foreigners to intermarry.



Fig. 21.3 King Kalākaua with officials of the Empire of Japan, 1881. (Top row L–R) Hawaiian Colonel Charles Hastings Judd, Japanese state official Tokunō Ryōsuke, and William N. Armstrong, Kalākaua’s aide; (bottom row L–R) Prince Komatsu Akihito, King Kalākaua, and Japanese Minister of Finance Sano Tsunetami. (Public Domain)

ten months and take the Hawaiian king to Japan, China, Hong Kong, Siam (Thailand), Singapore, Johor (now in Malaysia), India, the Suez Canal, Egypt, Italy, France, Great Britain, Scotland, Belgium, Germany, Austria, Spain, and Portugal (Fig. 21.3). All graciously received the King and he exchanged royal orders with these countries.<sup>60</sup> After he returned home, Kalākaua also exchanged royal orders with Naser al-Din Shah of Persia.<sup>61</sup>

When Kalākaua visited Japan, the Meiji Emperor “asked for Hawai‘i to grant full recognition to Japan and thereby create a precedent for the Western powers to

<sup>60</sup> Gonschor, *A Power in the World*, 76–87.

<sup>61</sup> Persian Foreign Minister to Hawaiian Foreign Minister, F. O. Ex. 1886 Misc. Foreign, July–September, Hawai‘i Archives.



follow.”<sup>62</sup> Hawaiian recognition of Japan's full sovereignty and repeal of the Hawaiian Kingdom's consular jurisdiction in Japan provided in the Hawaiian-Japanese Treaty of 1871 would not take place, however, until 1893, by executive agreement through exchange of notes. By direction of Queen Lili'uokalani, successor to King Kalākaua, R. W. Irwin, Hawaiian minister to the court of Japan in Tokyo, sent a diplomatic note to the Japanese Minister of Foreign Affairs, in which he stated: “I now have the honour formally to announce, that the Hawaiian Government do fully, completely, and finally abandon and relinquish the jurisdiction acquired by them in respect of Hawaiian subjects and property in Japan, under the Treaty of the 19th August, 1871.”<sup>63</sup>

On 10 April 1894, the Japanese Foreign Minister responded: “The sentiments of goodwill and friendship which inspired the act of abandonment are highly appreciated by the Imperial Government, but circumstances which it is now unnecessary to recapitulate have prevented an earlier acknowledgment of your Excellency's note.”<sup>64</sup> This dispels the commonly held belief among historians that Great Britain was the first to abandon its extraterritorial jurisdiction in Japan under the 1854 Anglo-Japanese Treaty of Commerce and Navigation. This action taken by the Hawaiian Kingdom, being a non-European power, ushered in Japan's full and complete independence of its laws over Japanese territory.

Japan's request also serves as an acknowledgment of Hawai'i's international standing as a fully sovereign and independent state. This would not go unnoticed by Polynesian kings such as King George Tupou I of Tonga, King Cakobau of Fiji, and King Malietoa of Samoa. In 1892, Scottish author Robert Louis Stevenson wrote: “it is here alone that men of their race enjoy most of the advantages and all the pomp of independence.”<sup>65</sup>

The population of the Hawaiian Kingdom consisted of aboriginal Hawaiians, naturalized immigrants, native-born non-aboriginals, as well as resident foreigners. In 1890, the majority of Hawaiian subjects were aboriginal Hawaiians, both pure and part, at forty thousand six hundred and twenty-two, and non-aboriginal Hawaiians subjects at seven thousand four hundred and ninety-five.<sup>66</sup> Of the alien population, Americans were at one thousand nine hundred and twenty-eight, Chinese at fifteen thousand three hundred and one, Japanese at twelve thousand three hundred and sixty, Norwegians at two hundred and twenty-seven, British at one thousand three hundred and forty-four, Portuguese at eight thousand six

<sup>62</sup> Gonschor, “Ka Hoku o Osiania,” 163.

<sup>63</sup> Mr. Irwin to the Japanese Minister for Foreign Affairs, 18 January 1893, in *British and Foreign State Papers*, vol. 86, 1893–1894, ed. Augustus H. Oakes and Willoughby Maycock (London: Her Majesty's Stationery Office, 1899), 1186.

<sup>64</sup> The Japanese Minister for Foreign Affairs to Mr. Irwin, in *ibid.*, 1186–7.

<sup>65</sup> Robert Louis Stevenson, *A Footnote to History: Eight Years of Trouble in Samoa* (New York: Charles Scribner's Sons, 1895), 59.

<sup>66</sup> Thos. G. Thrum, *Hawaiian Almanac and Annual for 1892* (Honolulu: Press Publishing Co., 1891), 11.



hundred and two, Germans at one thousand and thirty-four, French at seventy, Polynesians at five hundred and eighty-eight, and other foreigners at four hundred and nineteen.<sup>67</sup> The total population of the Hawaiian Kingdom in 1890 was eighty-nine thousand nine hundred and ninety. The country's primary trading partners were the United States, Great Britain, Germany, British Columbia, Australia and New Zealand, China and Japan, and France.<sup>68</sup>

While preparing to celebrate the 50th anniversary of Hawaiian independence, the Hawaiian Kingdom was invaded, without just cause, by American troops on 16 January 1893. Under orders of US minister John Stevens, "a detachment of marines from the United States steamer *Boston*, with two pieces of artillery, landed at Honolulu."<sup>69</sup> This invasion force coerced Queen Lili'uokalani to conditionally surrender to the superior power of the United States military, on which she stated: "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."<sup>70</sup>

President Cleveland initiated an investigation on 11 March 1893 by appointing Special Commissioner James Blount to travel to the Hawaiian Islands and to provide periodic reports to Secretary of State Walter Gresham. After receiving the final report from Special Commissioner Blount, Gresham, on 18 October 1893, notified the president:

The Government of Hawaii surrendered its authority under threat of war, until such time as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign ... Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice. Can the United States consistently insist that other nations shall respect the independence of Hawaii while not respecting it themselves? Our Government was the first to recognize the independence of the Islands and it should be the last to acquire sovereignty over them by force and fraud.<sup>71</sup>

"Traditional international law was based upon a rigid distinction between the state of peace and the state of war," says Judge Greenwood.<sup>72</sup> "Countries were either in a state of peace or a state of war; there was no intermediate state."<sup>73</sup> This

<sup>67</sup> Ibid.      <sup>68</sup> Ibid., 33.

<sup>69</sup> United States House of Representatives, *Executive Documents*, 451.

<sup>70</sup> Ibid., 586.

<sup>71</sup> Ibid., 462–3.

<sup>72</sup> Christopher Greenwood, "Scope of Application of Humanitarian Law," in Dieter Fleck, ed., *The Handbook of Humanitarian Law in Armed Conflict* (New York: Oxford University Press, 1995), 39–63, at 39.

<sup>73</sup> United States House of Representatives, *Executive Documents*, 586.

distinction is also reflected by the renowned jurist of international law Lassa Oppenheim, who separated his treatise on *International Law* into two volumes: *Peace* (volume 1) and *War and Neutrality* (volume 2).<sup>74</sup> In the nineteenth century, war was recognized as lawful if justified under *jus ad bellum*.

International law distinguishes the state, being the subject of international law, from its government, being the subject of the state's municipal law.<sup>75</sup> In *Texas v. White*, the United States Supreme Court stated that "a plain distinction is made between a State and the government of a State."<sup>76</sup> Therefore, the military overthrow of the government of a state by another state's military in a state of war does not equate to an overthrow of the state itself. Its sovereignty and legal order continue to exist under international law, and the occupying state, when it is in effective control of the occupied state's territory, is obligated to administer the laws of the occupied state until a treaty of peace.

An example of this principle was the overthrow of Spanish governance in Santiago de Cuba in July 1898. The military overthrow did not transfer Spanish sovereignty to the United States but triggered the customary international laws of occupation later codified under the 1899 Hague Convention (III) and the 1907 Hague Convention (IV), whereby the occupying state has a duty to administer the laws of the occupied state over territory of which it is in effective control. This customary law was the basis for General Orders no. 101, issued by President McKinley to the War Department on 13 July 1898:

Though the powers of the military occupant are absolute and supreme and immediately operate upon the political condition of the inhabitants, the municipal laws of the conquered territory, such as affect private rights of person and property and provide for the punishment of crime, are considered as continuing in force.<sup>77</sup>

An armistice was eventually signed by the Spanish government on 12 August 1898, after its territorial possessions of the Philippines, Guam, Puerto Rico, and Cuba were under the effective occupation of US troops. This led to a treaty of peace that was signed in Paris on 10 December 1898 ceding Spanish territories of Philippines, Guam, and Puerto Rico to the United States.<sup>78</sup> It was after 11 April 1899 that Spanish title and sovereignty was transferred to the United States and American municipal laws replaced Spanish municipal laws that previously applied over the territories of the Philippines, Guam, and Puerto Rico. Unlike Spain, there is no treaty where the Hawaiian Kingdom ceded its territory to the United States.

<sup>74</sup> L. Oppenheim, *International Law: A Treatise*, vol. 1, *Peace* (London: Longmans, Green & Co., 1905) and vol. 2, *War and Neutrality* (London: Longmans, Green & Co., 1906).

<sup>75</sup> David Keanu Sai, "The Royal Commission of Inquiry," in Sai, ed., *The Royal Commission of Inquiry*, 11–52, at 11, 13–4.

<sup>76</sup> *Texas v. White*, 74 U.S. 700, 721 (1868).

<sup>77</sup> *Ochoa v. Hernandez*, 230 U.S. 139, 155 (1913).

<sup>78</sup> 30 Stat. 1754 (1899).

On 18 December 1893, President Cleveland notified Congress that the “military demonstration upon the soil of Honolulu was of itself an act of war,”<sup>79</sup> and that “Hawaii was taken possession of by the United States forces without the consent or wish of the government of the islands . . . except the United States Minister.” He also determined “that the provisional government owes its existence to an armed invasion by the United States.”<sup>80</sup> And, finally, the president admitted that by “an act of war . . . the Government of a feeble but friendly and confiding people has been overthrown.” Customary international law at the time obligated the United States, as an occupying state, to provisionally administer the laws of the Hawaiian Kingdom, being the occupied state, until “either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant.”<sup>81</sup>

Through executive mediation an agreement of restoration was reached on 18 December 1893.<sup>82</sup> Political wrangling in the Congress, however, blocked the president from carrying out his obligation under the agreement. Five years later, at the height of the Spanish-American War, President William McKinley, Cleveland’s successor, unilaterally annexed the Hawaiian Islands by congressional legislation on 8 July 1898, in violation of international law at the time. Senator William Allen clearly stated the limitations of United States laws when the resolution of annexation was debated on the floor of the Senate on 4 July 1898. Allen argued:

The Constitution and the statutes are territorial in their operation; that is, they can not have any binding force or operation beyond the territorial limits of the government in which they are promulgated. In other words, the Constitution and statutes can not reach across the territorial boundaries of the United States into the territorial domain of another government and affect that government or persons or property therein.<sup>83</sup>

Two years later, when the Senate was considering the formation of a territorial government for Hawai‘i, Allen reiterated, “I utterly repudiate the power of Congress to annex the Hawaiian Islands by a joint resolution such as passed the Senate. It is ipso facto null and void.”<sup>84</sup> Krystyna 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.”<sup>85</sup> Only by way of a treaty can one state acquire the territory of another state.

<sup>79</sup> United States House of Representatives, *Executive Documents*, 451.

<sup>80</sup> *Ibid.*, 454.

<sup>81</sup> Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford: Clarendon Press, 1996), 224.

<sup>82</sup> United States House of Representatives, *Executive Documents*, 1269–70, 1283–4.

<sup>83</sup> 31 Cong. Rec. 6635 (1898).

<sup>84</sup> 33 Cong. Rec. 2391 (1900).

<sup>85</sup> Krystyna Marek, *Identity and Continuity of State in Public International Law*, 2nd ed. (Geneva: Librairie Droz, 1968), 110.

Without a treaty between the Hawaiian Kingdom and the United States whereby Hawaiian territory had been ceded, strictly speaking congressional laws have no effect within Hawaiian territory. This is what prompted the US Department of Justice in 1988 to admit it is “unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution.”<sup>86</sup> The conclusion by the Justice Department is in line with the United States Supreme Court, which stated in a 1824 decision that the “laws of no nation can justly extend beyond its own territories [and they] can have no force to control the sovereignty or rights of any other nation within its own jurisdiction.”<sup>87</sup> Furthermore, under international law, the Permanent Court of International Justice stated:

Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.<sup>88</sup>

On 28 February 1997, a group of Hawaiian subjects set up a restored government of the Hawaiian Kingdom under a Regency in accordance with the kingdom's constitutional law.<sup>89</sup> There was no legal requirement for the Council of Regency, being the successor in office to Queen Lili'uokalani under Hawaiian constitutional law, to get recognition from the United States as the government of the Hawaiian Kingdom. The United States' recognition of the Hawaiian Kingdom as an independent State on 6 July 1844 was also the recognition of its government—a constitutional monarchy. Successors in office to King Kamehameha III, who at the time of international recognition was king of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen Lili'uokalani in 1891, and the Council of Regency in 1997.

The legal doctrines of recognition of new governments only arise “with extra-legal changes in government” of an existing state.<sup>90</sup> Successors to King Kamehameha III were not established through “extra-legal changes,” but rather

<sup>86</sup> Douglas W. Kmiec, “Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea,” *Opinions of the Office of Legal Counsel of the United States Department of Justice*, vol. 12 (Washington, D.C.: Government Printing Press, 1996), 238–63, at 238, 252.

<sup>87</sup> *The Apollon*, 22 U.S. 362, 370 (1824).

<sup>88</sup> *Lotus case* (France v. Turkey), PCIJ Series A, No. 10, 18 (1927).

<sup>89</sup> Sai, “The Royal Commission of Inquiry,” 18–23; Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” *The Hawaiian Kingdom*, 24 May 2020, online; and Royal Commission of Inquiry, “Preliminary Report: The Authority of the Council of Regency of the Hawaiian Kingdom,” *The Hawaiian Kingdom*, 27 May 2020, online.

<sup>90</sup> M. J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815–1995* (New York: St. Martin's Press, 1997), 26.

under the constitution and laws of the Hawaiian Kingdom. According to United States foreign relations law, “Where a new administration succeeds to power in accordance with a state’s constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed.”<sup>91</sup>

Two years later, the restored government found itself in a dispute with one of its nationals, Lance Larsen, who alleged that the Regency was liable “for allowing the unlawful imposition of American municipal laws over [his] person within the territorial jurisdiction of the Hawaiian Kingdom.” On 8 November 1999, the dispute was submitted to binding arbitration at the Permanent Court of Arbitration, The Hague, Netherlands, whereby the Secretariat acknowledged the continued existence of the Hawaiian Kingdom as a state in *Larsen v. Hawaiian Kingdom*, and the Council of Regency as its government.<sup>92</sup>

This awareness of Hawai‘i’s prolonged occupation brought about by the *Larsen* case also caught the attention of United Nations Independent Expert Alfred-Maurice de Zayas, in Geneva, Switzerland. In a letter to members of the judiciary of the State of Hawai‘i dated 25 February 2018, de Zayas concluded:

I have come to understand that the lawful political status of the Hawaiian Islands is that of sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).<sup>93</sup>

Despite over a century of revisionist history, “the continuity of the Hawaiian Kingdom as a sovereign State is grounded in the very same principles that the United States and every other State have relied on for their own legal existence.”<sup>94</sup> The Hawaiian Kingdom is a magnificent story of perseverance and continuity.<sup>95</sup>

<sup>91</sup> American Law Institute, *The Restatement Third of the Foreign Relations Law of the United States* (St. Paul, MN: American Law Institute Publishers, 1987), §203, comment c.

<sup>92</sup> Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, online; also David Bederman and Kurt Hilbert, “Arbitration—UNCITRAL Rules—Justiciability and Indispensable Third Parties—Legal Status of Hawaii,” *American Journal of International Law* 95:4 (2001): 927–33; and *Larsen v. Hawaiian Kingdom*, 119 Int’l L. Rep. 566 (2001).

<sup>93</sup> Sai, “The Royal Commission of Inquiry,” 33.

<sup>94</sup> 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,” *Journal of Law and Social Challenges* 10 (2008): 68–133, at 132.

<sup>95</sup> Sai, ed., *The Royal Commission of Inquiry*.



**Enclosure “2”**





## CASES CONDUCTED UNDER THE AUSPICES OF THE PCA OR WITH THE COOPERATION OF THE INTERNATIONAL BUREAU

For summaries of the arbitral awards in many of these cases, see P. Hamilton, et al., *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution – Summaries of Awards, Settlement Agreements and Reports* (Kluwer Law International 1999) pp. 29-281, and B. Macmahon and F. Smith, *Permanent Court of Arbitration Summaries of Awards 1999-2009* (TMC Asser Press 2010) pp. 39-312.

	<b>Parties</b>	<b>Case</b>	<b>Date Initiated</b>	<b>Date of Award</b>	<b>Arbitrators<sup>1</sup></b>
1.	United States of America – Republic of Mexico	Pious Fund of the Californias	22 - 05 - 1902	14 - 10 - 1902	<b>Matzen</b> Sir Fry de Martens Asser de Savornin Lohman
2.	Great Britain, Germany and Italy – Venezuela	Preferential Treat- ment of Claims of Blockading Powers Against Venezuela	07 - 05 - 1903	22 - 02 - 1904	<b>Mourawieff</b> Lammasch de Martens
3.	Japan – Germany, France and Great Britain	Japanese House Tax leases held in perpetuity	28 - 08 - 1902	22 - 05 - 1905	<b>Gram</b> Renault Motono
4.	France – Great Britain	Muscat Dhows fishing boats of Muscat	13 - 10 - 1904	08 - 08 - 1905	<b>Lammasch</b> Fuller de Savornin Lohman
5.	France – Germany	Deserters of Casablanca	10/24 - 11 - 1908	22 - 05 - 1909	<b>Hammar skjöld</b> Sir Fry Fusinato Kriege Renault
6.	Norway – Sweden <sup>2</sup>	Maritime Boundary Grisbådarna Case	14 - 03 - 1908	23 - 10 - 1909	<b>Loeff<sup>3</sup></b> Beichmann Hammar skjöld
7.	United States of America – Great Britain	North Atlantic Coast Fisheries	27 - 01 - 1909	07 - 09 - 1910	<b>Lammasch</b> de Savornin Lohman Gray Sir Fitzpatrick Drago
8.	United States of Venezuela – United States of America	Orinoco Steamship Company	13 - 02 - 1909	25 - 10 - 1910	<b>Lammasch</b> Beernaert de Quesada
9.	France – Great Britain	Arrest and Restoration of Savarkar	25 - 10 - 1910	24 - 02 - 1911	<b>Beernaert</b> Ce de Desart Renault Gram de Savornin Lohman

1. The names of the presidents are typeset in bold.

2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).

3. Not a Member of the Permanent Court of Arbitration.

4. The proceedings of this case were conducted in writing exclusively.

5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	<b>Parties</b>	<b>Case</b>	<b>Date Initiated</b>	<b>Date of Award</b>	<b>Arbitrators<sup>1</sup></b>
10.	Italy – Peru	Canevaro Claim	25 - 04 - 1910	03 - 05 - 1912	<b>Renault</b> Fusinato Alvarez Calderón
11.	Russia – Turkey <sup>2</sup>	Russian Claim for Indemnities damages claimed by Russia for delay in payment of compensation owed to Russians injured in the war of 1877-1878	22 - 07 - 1910/ 04 - 08 - 1910	11 - 11 - 1912	<b>Lardy</b> Bon de Taube Mandelstam <sup>3</sup> H.A. Bey <sup>3</sup> A.R. Bey <sup>3</sup>
12.	France – Italy	French Postal Vessel “Manouba”	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	<b>Hammarskjöld</b> Fusinato Kriege Renault Bon de Taube
13.	France – Italy	The “Carthage”	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	<b>Hammarskjöld</b> Fusinato Kriege Renault Bon de Taube
14.	France – Italy	The “Tavignano,” “Camouna” and “Gaulois” Incident	08 - 11 - 1912	Settled by agreement of parties	<b>Hammarskjöld</b> Fusinato Kriege Renault Bon de Taube
15.	The Netherlands – Portugal <sup>4</sup>	Dutch-Portuguese Boundaries on the Island of Timor	03 - 04 - 1913	25 - 06 - 1914	<b>Lardy</b>
16.	Great Britain, Spain and France – Portugal <sup>5</sup>	Expropriated Religious Properties	31 - 07 - 1913	02/04 - 09 - 1920	<b>Root</b> de Savornin Lohman Lardy
17.	France – Peru <sup>2</sup>	French claims against Peru	02 - 02 - 1914	11 - 10 - 1921	<b>Ostertag<sup>3</sup></b> Sarrut <sup>3</sup> Elguera
18.	United States of America – Norway <sup>2</sup>	Norwegian shipowners’ claims	30 - 06 - 1921	13 - 10 - 1922	<b>Vallotton<sup>3</sup></b> Anderson <sup>3</sup> Vogt <sup>3</sup>
19.	United States of America – The Netherlands <sup>4</sup>	The Island of Palmas case (or Miangas)	23 - 01 - 1925	04 - 04 - 1928	<b>Huber</b>
20.	Great Britain – France <sup>2</sup>	Chevreau claims	04 - 03 - 1930	09 - 06 - 1931	<b>Beichmann</b>
21.	Sweden – United States of America <sup>2</sup>	Claims of the Nordstjernan company	17 - 12 - 1930	18 - 07 - 1932	<b>Borel</b>
22.	Radio Corporation of America – China <sup>2</sup>	Interpretation of a contract of radio-telegraphic traffic	10 - 11 - 1928	13 - 04 - 1935	<b>van Hamel<sup>3</sup></b> Hubert <sup>3</sup> Furrer <sup>3</sup>
23.	States of Levant under French Mandate – Egypt <sup>2</sup>	Radio-Orient	11 - 11 - 1938	02 - 04 - 1940	<b>van Lanschot<sup>3</sup></b> Raestad Mondrup <sup>3</sup>

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	<b>Parties</b>	<b>Case</b>	<b>Date Initiated</b>	<b>Date of Award</b>	<b>Arbitrators<sup>1</sup></b>
24.	France – Greece <sup>2</sup>	Administration of lighthouses	15 - 07 - 1931	24 - 07 - 1956	<b>Verzijl</b> <sup>3</sup> Mestre Charbouris <sup>3</sup>
25.	Turriff Construction (Sudan) Limited – Sudan <sup>2</sup>	Interpretation of a construction contract	21 - 10 - 1966	23 - 04 - 1970	<b>Erades</b> <sup>3</sup> Parker <sup>3</sup> Bentsi-Enchill <sup>3</sup>
26.	United States of America – United Kingdom of Great Britain and Northern Ireland <sup>2</sup>	Heathrow Airport user charges treaty obligations; amount of damages	16 - 12 - 1988	30 - 11 - 1992 02 - 05 - 1994 Settlement on amount of damages	<b>Foighel</b> <sup>3</sup> Fielding <sup>3</sup> Lever <sup>3</sup>
27.	Moiz Goh Pte. Ltd – State Timber Corporation of Sri Lanka <sup>2</sup>	Contract dispute	14 - 12 - 1989	05 - 05 - 1997	<b>Pinto</b> <sup>3</sup>
28.	African State – two foreign nationals <sup>2</sup>	Investment dispute	-	30 - 09 - 1997 Settled by agreement of parties	-
29.	Technosystem SpA – Taraba State Government and the Federal Government of Nigeria <sup>2</sup>	Contract dispute	21 - 02 - 1996	25 - 11 - 1996 Lack of jurisdiction	<b>Ajibola</b>
30.	Asian State-owned enterprise – three European enterprises <sup>2</sup>	Contract dispute	-	02 - 10 - 1996 Award on agreed terms	-
31.	State of Eritrea – Republic of Yemen <sup>2</sup>	Eritrea/Yemen: Sovereignty of various Red Sea Islands sovereignty; maritime delimitation	03 - 10 - 1996	09 - 10 - 1998 Award on sovereignty  17 - 12 - 1999 Award on maritime delimitation	<b>Jennings</b> Schwebel <sup>3</sup> El-Kosheri <sup>3</sup> Highet <sup>3</sup> Higgins
32.	Italy – Costa Rica <sup>2</sup>	Loan agreement between Italy and Costa Rica dispute arising under financing agreement	11 - 09 - 1997	26 - 06 - 1998	<b>Lalive</b> <sup>3</sup> Ferrari Bravo Hernandez Valle <sup>3</sup>
33.	Larsen – Hawaiian Kingdom <sup>2</sup>	Treaty interpretation	30 - 10 - 1999	05 - 02 - 2001	<b>Crawford</b> <sup>3</sup> Greenwood <sup>3</sup> Griffith <sup>3</sup>
34.	The Netherlands – France <sup>2</sup>	Treaty interpretation	21 - 10 - /17 - 12 - 1999	12 - 03 - 2004	<b>Skubiszewski</b> Guillaume Kooijmans <sup>3</sup>
35.	European corporation – African government	Contract dispute	04 - 08 - 2000	18 - 02 - 2003 Settled by agreement of parties	-
36.	Eritrea-Ethiopia Boundary Commission <sup>2</sup>	Boundary dispute	12 - 12 - 2000	13 - 04 - 2002	<b>Lauterpacht</b> Ajibola Reisman <sup>3</sup> Schwebel <sup>3</sup> Watts

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	<b>Parties</b>	<b>Case</b>	<b>Date Initiated</b>	<b>Date of Award</b>	<b>Arbitrators<sup>1</sup></b>
37.	Eritrea-Ethiopia Claims Commission <sup>2</sup>	Settlement of claims arising from armed conflict	12 - 12 - 2000	01 - 07 - 2003 Partial Awards for prisoner of war claims 28 - 04 - 2004 Partial Awards for Central Front claims 17 - 12 - 2004 Partial Awards for civilians claims 19 - 12 - 2005 Partial Awards for remaining liability claims 17 - 08 - 2009 Final Award for damages	<b>van Houtte</b> <sup>3</sup> Aldrich <sup>3</sup> Crook <sup>3</sup> Paul <sup>3</sup> Reed <sup>3</sup>
38.	Dr. Horst Reinneccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu – Bank for International Settlements <sup>2</sup>	Dispute with former private shareholders	07 - 03 - 2001 31 - 08 - 2001 24 - 10 - 2001	22 - 11 - 2002 Partial Award 19 - 09 - 2003 Final Award	<b>Reisman</b> <sup>3</sup> van den Berg <sup>3</sup> Frowein <sup>3</sup> Krafft <sup>3</sup> Lagarde <sup>3</sup>
39.	Ireland – United Kingdom <sup>2</sup>	Proceedings pursuant to the OSPAR Convention	15 - 06 - 2001	02 - 07 - 2003	<b>Reisman</b> <sup>3</sup> Griffith <sup>3</sup> Mustill <sup>3</sup>
40.	Saluka Investments B.V. – Czech Republic <sup>2</sup>	Investment treaty dispute	18 - 06 - 2001	17 - 03 - 2006 Partial Award	<b>Watts</b> Behrens <sup>3</sup> Fortier <sup>3</sup>
41.	Ireland – United Kingdom <sup>2</sup>	Proceedings pursuant to the Law of the Sea Convention (UNCLOS) “MOX Plant Case”	25 - 10 - 2001	06 - 06 - 2008 Termination order following withdrawal of claim	<b>Mensah</b> <sup>3</sup> Fortier <sup>3</sup> Hafner Crawford <sup>3</sup> Watts
42.	European government – European corporation <sup>2</sup>	Investment treaty dispute	30 - 04 - 2002	24 - 05 - 2004 Settled by agreement of parties	–
43.	Two corporations – Asian government <sup>2</sup>	Contract dispute	16 - 08 - 2002	12 - 10 - 2004 Partial Award	–
44.	Telekom Malaysia Berhad – Government of Ghana <sup>2</sup>	Investment treaty dispute	10 - 02 - 2003	01 - 11 - 2005 Award on agreed terms	<b>Van den Berg</b> <sup>3</sup> Gaillard <sup>3</sup> Layton <sup>3</sup>
45.	Belgium – The Netherlands <sup>2</sup>	Dispute regarding the use and modernization of the “IJzeren Rijn” on the territory of The Netherlands	22/23 - 07 - 2003	24 - 05 - 2005	<b>Higgins</b> Schrans <sup>3</sup> Simma <sup>3</sup> Soons <sup>3</sup> Tomka
46.	Barbados – Trinidad and Tobago <sup>2</sup>	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	16 - 02 - 2004	11 - 04 - 2006	<b>Schwebel</b> <sup>3</sup> Brownlie <sup>3</sup> Orrego Vicuña <sup>3</sup> Lowe <sup>3</sup> Watts
47.	Guyana – Suriname <sup>2</sup>	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	24 - 02 - 2004	17 - 09 - 2007	<b>Nelson</b> <sup>3</sup> Hossain <sup>3</sup> Franck <sup>3</sup> Shearer Smit <sup>3</sup>

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2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).

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4. The proceedings of this case were conducted in writing exclusively.

5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

<b>Parties</b>	<b>Case</b>	<b>Date Initiated</b>	<b>Date of Award</b>	<b>Arbitrators<sup>1</sup></b>
48. Malaysia – Singapore <sup>2</sup>	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	04 - 07 - 2003	01 - 09 - 2005 Award on agreed terms	<b>Pinto</b> <sup>3</sup> Hossain <sup>3</sup> Shearer Oxman <sup>3</sup> Watts
49. 1. The Channel Tunnel Group Limited 2. France-Mache S.A. – 1. United Kingdom 2. France <sup>2</sup>	Proceedings pursuant to the Treaty of Canterbury Concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link (Eurotunnel)	17 - 12 - 2003	30 - 01 - 2007 Partial Award  2010 Termination order	<b>Crawford</b> <sup>3</sup> Fortier <sup>3</sup> Guillaume Millett <sup>3</sup> Paulsson
50. Chemtura Corporation (formerly Crompton Corporation) – Government of Canada <sup>2</sup>	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	17 - 10 - 2002/ 17 - 02 - 2005	02 - 08 - 2010	<b>Kaufmann-Kohler</b> <sup>3</sup> Brower <sup>3</sup> Crawford <sup>3</sup>
51. Vito G. Gallo – Government of Canada <sup>2</sup>	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	30 - 03 - 2007	15 - 9 - 2011	<b>Fernández-Armesto</b> <sup>3</sup> Castel <sup>3</sup> Lévy <sup>3</sup>
52. Romak S.A. - The Republic of Uzbekistan <sup>2</sup>	Proceedings pursuant to the Agreement between the Swiss Confederation and the Republic of Uzbekistan on the Promotion and the Reciprocal Protection of Investments	06 - 09 - 2007	26 - 11 - 2009	<b>Mantilla-Serrano</b> <sup>3</sup> Rubins <sup>3</sup> Molfessis <sup>3</sup>
53. The Government of Sudan – The Sudan People's Liberation Movement/Army <sup>2</sup>	Delimitation of the Abyei area	11 - 07 - 2008	22 - 07 - 2009	<b>Dupuy</b> <sup>3</sup> Al-Khasawneh Hafner Reisman <sup>3</sup> Schwebel
54. Centerra Gold Inc. & Kumtor Gold Co. – Kyrgyz Republic <sup>2</sup>	Investment agreement dispute	08 - 03 - 2006	29 - 06 - 2009 Termination order	<b>Van den Berg</b> <sup>3</sup>
55. TCW Group & Dominican Energy Holdings – Dominican Republic <sup>2</sup>	Proceedings conducted under the Central America-DR-USA Free Trade Agreement (CAFTA-DR)	21 - 12 - 2007	16 - 07 - 2009 Consent Award	<b>Böckstiegel</b> <sup>3</sup> Fernández-Armesto <sup>3</sup> Kantor <sup>3</sup>
56. Bilcon of Delaware <i>et al.</i> – Government of Canada <sup>2</sup>	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	26-05-2008	-	<b>Simma</b> <sup>3</sup> McRae Schwartz <sup>3</sup>

1. The names of the presidents are typeset in bold.

2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).

3. Not a Member of the Permanent Court of Arbitration.

4. The proceedings of this case were conducted in writing exclusively.

5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	<b>Parties</b>	<b>Case</b>	<b>Date Initiated</b>	<b>Date of Award</b>	<b>Arbitrators<sup>1</sup></b>
57.	HICEE B.V. – The Slovak Republic <sup>2</sup>	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	17 - 12 - 2008	23 - 05 - 2011 Partial Award 17 - 10 - 2011 Supplementary and Final Award	<b>Berman</b> Tomka Brower <sup>3</sup>
58.	Polis Fundi Immobiliare di Banche Popolare S.G.R.p.A – International Fund for Agricultural Development (IFAD) <sup>2</sup>	Contract dispute	10 - 11 - 2009	17 - 12 - 2010	<b>Reinisch</b> <sup>3</sup> Canu <sup>3</sup> Stern <sup>3</sup>
59.	European American Investment Bank AG – The Slovak Republic <sup>2</sup>	Proceedings pursuant to the Agreement Between the Republic of Austria and the Czech and Slovak Federal Republic Concerning the Promotion and Protection of Investments	23 - 11 - 2009	–	<b>Greenwood</b> Petsche <sup>3</sup> Stern <sup>3</sup>
60.	Bangladesh – India <sup>2</sup>	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	08 - 10 - 2009	–	<b>Wolfrum</b> <sup>3</sup> Mensah <sup>3</sup> Rao <sup>3</sup> Shearer Treves <sup>3</sup>
61.	China Heilongjiang International Economic & Technical Cooperative Corporation <i>et al.</i> – Mongolia <sup>2</sup>	Proceedings pursuant to the Agreement between the Government of the Mongolian People's Republic and the Government of the People's Republic of China concerning the Encouragement and Reciprocal Protection of Investments dated August 26, 1991	12 - 02 - 2010	–	<b>Donovan</b> <sup>3</sup> Banifatemi <sup>3</sup> Clodfelter <sup>3</sup>
62.	Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	22 - 05 - 2007	31 - 08 - 2011	<b>Böckstiegel</b> <sup>3</sup> Brower <sup>3</sup> Van den Berg <sup>3</sup>

1. The names of the presidents are typeset in bold.

2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).

3. Not a Member of the Permanent Court of Arbitration.

4. The proceedings of this case were conducted in writing exclusively.

5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	<b>Parties</b>	<b>Case</b>	<b>Date Initiated</b>	<b>Date of Award</b>	<b>Arbitrators<sup>1</sup></b>
63.	Achmea B.V. (formerly known as Eureko B.V.) – The Slovak Republic	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments Between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	01 - 10 - 2008		<b>Lowe<sup>3</sup></b> Van den Berg <sup>3</sup> Veeder <sup>3</sup>
64.	Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	23 - 09 - 2009		<b>Veeder<sup>3</sup></b> Grigera Naón <sup>3</sup> Lowe <sup>3</sup>
65.	Pakistan – India	Indus Waters Treaty Arbitration	17 - 05 - 2010		<b>Schwebel</b> Berman Wheater <sup>3</sup> Caflisch Paulsson Simma <sup>3</sup> Tomka
66.	Guaracachi America, Inc. & Rurelec PLC – The Plurinational State of Bolivia	Proceedings pursuant to the Treaty between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Bolivia for the Promotion and Protection of Investments	10 - 11 - 2010		<b>Júdice<sup>3</sup></b> Conthe <sup>3</sup> Vinesa
67.	The Republic of Mauritius – The United Kingdom of Great Britain and Northern Ireland	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	20 - 12 - 2010		<b>Shearer</b> Greenwood Hoffmann <sup>3</sup> Kateka <sup>3</sup> Wolfrum <sup>3</sup>

1. The names of the presidents are typeset in bold.

2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).

3. Not a Member of the Permanent Court of Arbitration.

4. The proceedings of this case were conducted in writing exclusively.

5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.





**Enclosure “3”**



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

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

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Niger <nigermission@gmail.com>, Nigeria <permny@nigeriaunmission.org>, North  
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leste@un.int>, Togo <togo.mission@yahoo.fr>, Tonga <tongaunmission@gmail.com>,  
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delegation.newyork@mfa.gov.tr>, Turkmenistan <turkmenistan@un.int>, Tuvalu  
<tuvalumission.un@gmail.com>, Uganda <admin@ugandaunny.com>, Ukraine  
<uno\_us@mfa.gov.ua>, United Arab Emirates <nyunprm@mofaic.gov.ae>, United Kingdom  
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States <usun.newyork@state.gov>, Uruguay <urudeleg@mrree.gub.uy>, Uzbekistan <uzbekistan.un@gmail.com>, Vanuatu <vanunmis@aol.com>, Venezuela <misionvenezuelaonu@gmail.com>, Viet Nam <info@vietnam-un.org>, Yemen <yemenmissionny@gmail.com>, Zambia <zambia@un.int>, Zimbabwe <zimnewyork@gmail.com>

Excellency,

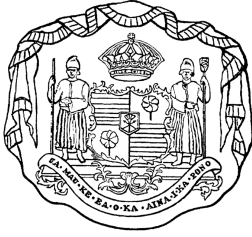
Attached hereto is a Note Verbale from the Hawaiian Foreign Ministry to serve as a notice of claim by an injured State, pursuant to Article 43 of the International Law Commission's Articles on *State Responsibility for Internationally Wrongful Acts*, invoking the responsibility of all Member States of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

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

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 **Note Verbale UN (No. 2021-1-HI).pdf**  
442K





## MINISTRY OF FOREIGN AFFAIRS

P.O. Box 2194

Honolulu, HI 96805-2194

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### NOTE VERBALE

No. 2021-1-HI

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

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

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

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

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

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

Honolulu, 11 October 2021



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



**Enclosure “4”**



# Declaration

**Whereas** Article 11, paragraph 2, of the Charter of the United Nations provides, “The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it...by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2”;

**And Whereas** Article 35, paragraph 2, provides, “A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter”;

**Now Therefore**, the Hawaiian Kingdom accepts in advance, for the purposes of its complaint of the United States of America’s unlawful and prolonged occupation of the Hawaiian Kingdom since 17 January 1893 and the commission of war crimes and human rights violations, the obligations of pacific settlement provided in the present Charter.



**In Witness Whereof**, I have hereunto set my hand,  
and caused the Great Seal of the Kingdom to be affixed  
this 30th day of July A.D. 2025.

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

By the Council

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



COMPLAINT OF THE UNITED STATES OF AMERICA'S UNLAWFUL AND  
PROLONGED OCCUPATION OF THE HAWAIIAN KINGDOM SINCE 1893  
AND THE COMMISSION OF WAR CRIMES AND HUMAN RIGHTS VIOLATIONS

To the President of the United Nations General Assembly—79th session.

I. LEGAL GROUNDS

- 1.1 On behalf of the *acting* Government of the Hawaiian Kingdom, I have the honor to refer you to Articles 11(2) and 35(2) of the Charter of the United Nations; and to the Declaration of the Hawaiian Kingdom accepting the obligations of Pacific Settlement under the United Nations Charter for the purpose of these proceedings attached herein.
- 1.2 Under the authority conferred upon the General Assembly by the Charter of the United Nations, I hereby submit, on behalf of the *acting* Government of the Hawaiian Kingdom, a Complaint of the United States of America's unlawful and prolonged occupation of the Hawaiian Kingdom since 17 January 1893 and the commission of war crimes and human rights violations.

II. NATURE OF THE CLAIM

- 2.1 This case arises out of the prolonged and unlawful occupation of the entire territory of the Hawaiian Kingdom by the United States of America ("United States") since its military forces overthrew the Government of the Hawaiian Kingdom on 17 January 1893, and the United States of America's failure to establish a direct system of administering the laws of the Hawaiian Kingdom until a treaty of peace comes into effect. As will be described below, this action constitutes a fundamental breach of Hawaiian State sovereignty and international humanitarian law including the law of occupation, and, therefore, is an internationally wrongful act.
- 2.2 The United States disguised its occupation of the Hawaiian Kingdom as if a treaty of cession annexed the Hawaiian Islands. There is no treaty. For the past 132 years, the United States of America has committed a serious internationally wrongful act and deliberately misled the international community that the Hawaiian Islands were incorporated into the territory of the United States in 1898. The United States has unlawfully imposed its municipal laws and administrative measures over Hawaiian territory, which includes its territorial seas, its exclusive economic zone under customary international law, and its airspace, all in violation of its treaties with the Hawaiian Kingdom, the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international law.

2.3 The Hawaiian Kingdom herein files this Complaint as a Non-Member State, pursuant to Article 35(2) of the United Nations Charter, for the violation of treaties and international law and calls upon the United Nations General Assembly:

1. To ensure the United States of America complies with international humanitarian law and the law of occupation;
2. To ensure that the United States of America establishes a military government, by its State of Hawai‘i, to administer the laws of the Hawaiian Kingdom as it stood before the American invasion and unlawful seizure of the Hawaiian Government on 17 January 1893, and the provisional laws, proclaimed by the Council of Regency on 10 October 1944, that bring Hawaiian Kingdom laws to the current state; and
3. To ensure that all Member States of the United Nations shall not recognize as lawful the United States of America’s presence and authority within the territory of the Hawaiian Kingdom, except for its temporary and limited authority vested under the law of occupation.

### III. PRELIMINARY STATEMENTS

To assist the General Assembly in its evaluation of the merits of this submission, the *acting* Government of the Hawaiian Kingdom will preface this Complaint with the following preliminary statements and then a statement of the facts:

- 3.1 To quote the dictum in the 2001 arbitral award in *Larsen v. Hawaiian Kingdom* at the Permanent Court of Arbitration, “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.”<sup>1</sup>
- 3.2 Since 25 February 1794 the Hawaiian Kingdom joined the British Empire as a Protectorate. On 28 November 1843, both Great Britain and France jointly recognized the Hawaiian Kingdom as an independent State making the Hawaiian Kingdom the first country in Oceania to join the international community of States. As a progressive constitutional monarchy, the Hawaiian Kingdom had compulsory education, universal health care, land reform, and a representative democracy.<sup>2</sup> The Hawaiian Kingdom treaty partners include

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<sup>1</sup> *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports* 566, 581 (2001).

<sup>2</sup> David Keanu Sai, “Hawai‘i’s Sovereignty and Survival in the Age of Empire,” in H.E. Chehabi and David Motadel, eds., *Unconquered States: Non-European Powers in the Imperial Age* (Oxford: Oxford University Press, 2024) (online at [https://www2.hawaii.edu/~anu/pdf/Hawaii\\_Sovereignty\\_and\\_Survival\\_\(Sai\).pdf](https://www2.hawaii.edu/~anu/pdf/Hawaii_Sovereignty_and_Survival_(Sai).pdf)); see also David Keanu Sai, “Hawaiian Constitutional Governance,” in David Keanu Sai, ed., *The Royal Commission of Inquiry*:

Austria and Hungary, Belgium, Bremen, Denmark, France, Germany, Hamburg, Italy, Japan, Luxembourg, Netherlands, Portugal, Russia, Spain, Switzerland, Sweden and Norway, the United Kingdom and the United States.<sup>3</sup> By 1893, the Hawaiian Kingdom maintained over ninety Legations and Consulates worldwide. According to Professor Oppenheim, once recognition of a State is granted, it “is incapable of withdrawal”<sup>4</sup> by the recognizing State, and that “recognition estops the State which has recognized the title from contesting its validity at any future time.”<sup>5</sup> And the “duty to treat a qualified entity as a state also implies that so long as the entity continues to meet those qualifications its statehood may not be ‘derecognized.’”<sup>6</sup>

- 3.3 Driven to attain naval superiority in the Pacific, U.S. troops, without cause, invaded the Hawaiian Kingdom on 16 January 1893 and unlawfully overthrew its Hawaiian government the following day and replaced it with their puppet the following day with the prospect of militarizing the islands. Today, the State of Hawai‘i is the successor to this puppet government. However, despite the unlawful overthrow of its government, the Hawaiian Kingdom as a State continues to exist as a subject of international law and comes under the regime of international humanitarian law and the law of occupation. The military occupation is now at one hundred and thirty-two years.

#### *Restoration of the Government of the Hawaiian Kingdom*

- 3.4 In 1906, the United States implemented a policy of denationalization through Americanization in the schools throughout the Hawaiian Islands, and within three generations, the national consciousness of the Hawaiian Kingdom was obliterated.<sup>7</sup> Notwithstanding the devastating effects that erased the Hawaiian Kingdom in the minds of its nationals, the Hawaiian government, in 1997, was restored *in situ* by an *acting* Council of Regency under Hawaiian constitutional law and the doctrine of necessity.<sup>8</sup> Under Hawaiian law, the *acting* Council of Regency serves in the absence of the Executive

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*Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 58-94 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian\\_Royal\\_Commission\\_of\\_Inquiry\\_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

<sup>3</sup> “Treaties with Foreign States,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 237-310 (2020).

<sup>4</sup> Lassa Oppenheim, *International Law* 137 (3rd ed. 1920).

<sup>5</sup> Georg Schwarzenberger, “Title to Territory: Response to a Challenge,” 51(2) *American Journal of International Law* 308, 316 (1957).

<sup>6</sup> Restatement (Third) of the Foreign Relations Law of the United States, §202, comment g.

<sup>7</sup> David Keanu Sai, “United States Belligerent Occupation of the Hawaiian Kingdom,” in David Keanu Sai’s (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 114 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian\\_Royal\\_Commission\\_of\\_Inquiry\\_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

<sup>8</sup> David Keanu Sai, *The Royal Commission of Inquiry*, 18-23; see also Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Hawaiian Journal of Law and Politics* 317-333 (2021).

Monarch. The last Executive Monarch was Queen Lili‘uokalani who died on 11 November 1917.

- 3.5 There was no legal requirement for the *acting* Council of Regency, as the government of the Hawaiian Kingdom, being the successor in office to Queen Lili‘uokalani under Hawaiian constitutional law, to obtain recognition from the United States or any other State. The United States’ recognition of the Hawaiian Kingdom as an independent State on 6 July 1844,<sup>9</sup> was also the recognition of its government—a Constitutional Monarchy. Successors in office to King Kamehameha III, who at the time of the international recognition was King of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen Lili‘uokalani in 1891, and the *acting* Council of Regency in 1997. The legal doctrines of recognition of new governments only arise “with extra-legal changes in government” of an existing State.<sup>10</sup> Successors to King Kamehameha III were not established through “extra-legal changes,” but rather under the constitution and laws of the Hawaiian Kingdom. According to United States foreign relations law, “Where a new administration succeeds to power in accordance with a state’s constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed.”<sup>11</sup>
- 3.6 On 8 November 1999, arbitral proceedings were instituted at the Permanent Court of Arbitration (“Permanent Court”) in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, where Larsen, a Hawaiian subject, claimed that the government of the Hawaiian Kingdom, by its *acting* Council of Regency, should be liable for allowing the unlawful imposition of American municipal laws because it denied him a fair trial and led to his incarceration.<sup>12</sup> Prior to the establishment of an *ad hoc* tribunal, the Permanent Court acknowledged the Hawaiian Kingdom as a non-Contracting State under Article 47 of the 1907 Hague Convention on the Pacific Settlement of International Disputes. This brought the dispute under the auspices of the Permanent Court.
- 3.7 In determining the continued existence of the Hawaiian Kingdom as a non-Contracting State, the relevant rules of international law, that apply to established States, must be considered, and not those rules of international law that apply to new States, as in the case of Palestine. Professor Lenzerini concluded that “according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of

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<sup>9</sup> U.S. Secretary of State Calhoun to Hawaiian Commissioners (6 July 1844) (online at: [https://hawaiiankingdom.org/pdf/US\\_Recognition.pdf](https://hawaiiankingdom.org/pdf/US_Recognition.pdf)).

<sup>10</sup> M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice*, 1815-1995 26 (1997).

<sup>11</sup> *Restatement (Third)*, §203, comment c.

<sup>12</sup> *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

international law. In fact, in the event of illegal annexation, ‘the legal existence of [...] States [is] preserved from extinction,’ since ‘illegal occupation cannot of itself terminate statehood.’”<sup>13</sup>

- 3.8 Since the State is a juristic person, it requires a government to speak on its behalf, otherwise the State is silent, and, thus, there could be no arbitral tribunal to be established by the Permanent Court. On the contrary, on 9 June 2000, the Permanent Court did form a tribunal after confirming the existence of the Hawaiian State and its government, the Council of Regency, pursuant to Article 47. In international intercourse, which includes arbitration at the Permanent Court, the Permanent Court of International Justice, in *German Settlers in Poland*, explained that “States can act only by and through their agents and representatives.”<sup>14</sup> As Professor Talmon states, the “government, consequently, possesses the *jus repraesentationis omnimodae*, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. [He submits] that this is the case irrespective of whether the government is *in situ* or in exile.”<sup>15</sup>
- 3.9 After the Permanent Court verified the continued existence of the Hawaiian State, as a juristic person, it simultaneously determined that the Hawaiian State was represented by its government—the Council of Regency. In its case repository on the Permanent Court’s website, the Permanent Court identified the international dispute in *Larsen* as between a “State” and a “Private entity.”<sup>16</sup> Furthermore, the Permanent Court described the dispute between the Council of Regency and Larsen as between a government and a resident of Hawai‘i.

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.<sup>17</sup>

In addition, the United States, though its embassy in The Hague, entered into an agreement with the Hawaiian Kingdom to have access to the pleadings and records of the arbitration.

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<sup>13</sup> Lenzerini, 322.

<sup>14</sup> *German Settlers in Poland*, 1923, PCIJ, Series B, No. 6, 22.

<sup>15</sup> Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* 115 (1998).

<sup>16</sup> Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

<sup>17</sup> *Id.*

This agreement was brokered by Deputy Secretary General Phyllis Hamilton, of the Permanent Court, prior to the formation of the arbitral tribunal.<sup>18</sup>

*The Sweeping Effect of State Sovereignty During a Prolonged Occupation*

- 3.10 The bedrock of international law is the sovereignty of an independent State. In the *Island of Palmas* case, the arbitrator explained that “Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State.”<sup>19</sup> And in the *S.S. Lotus* case, the Permanent Court of International Justice stated:

Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention [treaty].<sup>20</sup>

- 3.11 The permissive rule under international humanitarian law that allows one State to exercise authority over the territory of another State is Article 43 of the 1907 Hague Regulations and Article 64 of the Fourth Geneva Convention. These provisions mandate the occupant to establish a military government to provisionally administer the laws of the occupied State until there is a treaty of peace. For the past one hundred and thirty-two years, there has been no permissive rule of international law that allows the United States to exercise any authority in the Hawaiian Kingdom. This makes the United States’ prolonged occupation illegal under international law.
- 3.12 The scope of Hawaiian sovereignty can be gleaned from the Hawaiian Civil Code. §6 states:

The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.

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<sup>18</sup> Sai, The Royal Commission of Inquiry, 25-26.

<sup>19</sup> *Island of Palmas Case* (Netherlands v. United States) 2 R.I.A.A. 838 (1928).

<sup>20</sup> *The Case of the S.S. “Lotus,” judgment, Publications of the Permanent Court of International Justice, Collection of Judgments*, Series A, No. 70, 18 (7 Sep. 1927). Generally, on this issue see Arthur Lenhoff, “International Law and Rules on International Jurisdiction,” 50 *Cornell Law Quarterly* 5 (1964).



3.13 Property within the territorial jurisdiction of the Hawaiian Kingdom includes both real and personal. Hawaiian sovereignty over the population, whether Hawaiian subjects or citizens or subjects of any foreign State, is expressed in the Hawaiian Kingdom's Penal Code. Under Chapter VI—Treason, the statute, which is in line with international law, states:

1. Treason is hereby defined to be any plotting or attempt to dethrone or destroy the King, or the levying of war against the King's government, or the adhering to the enemies thereof, giving them aid and comfort, the same being done by a person owing allegiance to this kingdom.
2. Allegiance is the obedience and fidelity due to the kingdom from those under its protection.
3. An alien, whether his native country be at war or at peace with this kingdom, owes allegiance to this kingdom during his residence therein, and during such residence, is capable of committing treason against this kingdom.
4. Ambassadors and other ministers of foreign states, and their alien secretaries, servants and members of their families, do not owe allegiance to this kingdom, though resident therein, and are not capable of committing treason against this kingdom.

3.14 When the Hawaiian Kingdom Government conditionally surrendered to the United States forces on 17 January 1893, this action did not transfer Hawaiian sovereignty but merely relinquished control of Hawaiian sovereignty. This was due to the American invasion and occupation. According to Professor Benvenisti:

The foundation upon which the entire law of occupation is based is the principle of inalienability of sovereignty through unilateral action of a foreign power, whether through the actual or the threatened use of force, or in any way unauthorized by the sovereign. Effective control by foreign military force can never bring about by itself a valid transfer of sovereignty. Because occupation does not transfer sovereignty over the territory to the occupying power, international law must regulate the inter-relationships between the occupying force, the ousted government, and the local inhabitants for the duration of the occupation. [...] Because occupation does not amount to sovereignty, the occupation is also limited in time and the occupant has only temporary managerial powers, for the period until a peaceful solution is reached. During that limited period, the occupant administers the territory on behalf of the sovereign. Thus the occupant's status is conceived to be that of a trustee (emphasis added).<sup>21</sup>

3.15 The occupant's 'managerial powers' is exercised by a military government over the territory of the occupied State which the occupant is in effective control of. The military government would need to be in effective control of the territory to effectively enforce the

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<sup>21</sup> Eyal Benvenisti, *The International Law of Occupation* 6 (2nd ed. 2012).

laws of the occupied State. Without effective control there can be no enforcement of the laws. The Hawaiian government's conditional surrender on 17 January 1893, that transferred effective control over the territory of the Hawaiian Kingdom to the American military, did not transfer Hawaiian sovereignty. U.S. Army regulations on this subject state, being "an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty (emphasis added)."<sup>22</sup>

- 3.16 When the Queen surrendered, Hawaiian authority was provisionally transferred to the American military. The government apparatus also came under the control of the American military where the office of the Monarch would be replaced by the theater commander of U.S. forces who would be referred to as the military governor. All members of the executive and judicial branches of government would remain in place except for the legislative branch because the military governor "has supreme legislative, executive, and judicial authority, limited only by the laws and customs of war and by directives from higher authority."<sup>23</sup>

*United States Practice during Military Occupation of Foreign States*

- 3.17 In a decisive naval battle off the coast of the Cuban city of Santiago de Cuba on 3 July 1898, the United States North Atlantic Squadron, under the command of Rear Admiral William Sampson and Commodore Winfield Schley, defeated the Spanish Caribbean Squadron under the command of Admiral Pascual Cervera y Topete. After the surrender, the United States placed the city of Santiago de Cuba under military occupation and began to administer Spanish laws. The practice of the United States military occupying foreign territory prior to a treaty of peace can be gleaned from General Orders no. 101 issued by President William McKinley to the War Department on 13 July 1898. General Orders no. 101 stated:

The first effect of the military occupation of the enemy's territory is the severance of the former political relations of the inhabitants and the establishment of a new political power. ... Though the powers of the military occupant are absolute and supreme and immediately operate upon the political condition of the inhabitants, the municipal laws of the conquered territory, such as affect private rights of person and property and provide for the punishment of crime, are considered as continuing in force, so far as they are compatible with the new order of things, until they are suspended or superseded by the occupying belligerent and in practice they are not

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<sup>22</sup> U.S. Department of the Army, Field Manual 27-10, *The Law of Land Warfare* (1956), para. 358.

<sup>23</sup> U.S. Department of the Army, Field Manual 27-5, *Civil Affairs Military Government* (1947), para. 3.

usually abrogated, but are allowed to remain in force and to be administered by the ordinary tribunals, substantially as they were before the occupation.<sup>24</sup>

- 3.18 When Japanese forces surrendered to the United States on 2 September 1945, Army General Douglas MacArthur transformed the Japanese civilian government into a military government with General MacArthur serving as the military governor. General MacArthur was ensuring the terms of the surrender were being met and he continued to administer Japanese law over the population. When the treaty of peace, called the Treaty of San Francisco, came into effect on 28 April 1952, the military occupation came to an end.
- 3.19 In July of 1945, after the defeat of the Nazi regime, Germany was divided into four zones of military occupation by the United States, the Soviet Union, France and Great Britain. In the American sector, Army General Dwight D. Eisenhower took over the German civilian government, as its military governor, by proclaiming the establishment of the Office of Military Government United States (“OMGUS”). The United States, French, and British zones of occupation were joined together under one authority in 1949 and the OMGUS was succeeded by the Allied High Commission (“AHC”). The AHC lasted until 1955 after the Federal Republic of Germany joined the North Atlantic Treaty Organization. The American zone of occupation of West Berlin, however, lasted until 2 October 1990, after the Treaty on the Final Settlement with Respect to Germany was signed on 12 September 1990. This treaty was signed by both East and West Germany, the United States, France, Great Britain and the Soviet Union.
- 3.20 In all three military occupations, the sovereignty of Spain, Japan, and Germany was not affected. However, Spanish sovereignty over Cuba ended by the Treaty of Paris, but Japanese sovereignty was uninterrupted by the Treaty of San Francisco, and German sovereignty was uninterrupted by the Treaty on the Final Settlement with Respect to Germany.
- 3.21 According to Birkhimer, from “a belligerent point of view, therefore, the theatre of military government is necessarily foreign territory. Moreover, military government may be exercised not only during the time that war is flagrant, but down to the period when it comports with the policy of the dominant power to establish civil jurisdiction.”<sup>25</sup> The 1907 Hague Regulations assumed that after the occupant gains effective control it would establish its authority by establishing a system of direct administration. Since the Second World War, the United States’ practice of direct administration is having the Army establish a military government to administer the laws of the occupied State. This practice is pursuant to Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention. This was acknowledged by letter from U.S. President Roosevelt to

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<sup>24</sup> *Ochoa v. Hernandez*, 230 U.S. 139, 156 (1913).

<sup>25</sup> William E. Birkhimer, *Military Government and Martial Law* 21 (3rd ed. 1914).

Secretary of War Henry Stimson, dated 10 November 1943, where the President stated, although “other agencies are preparing themselves for the work that must be done in connection with relief and rehabilitation of liberated areas, it is quite apparent that if prompt results are to be obtained the Army will have to assume initial burden.”<sup>26</sup> Military governors that preside over a military government are general officers of the Army. Solidifying the role of the Army, U.S. Department of Defense Directive 5100.01 states that it is the function of the Army in “[occupied] territories abroad [to] provide for the establishment of a military government pending transfer of this responsibility to other authority.”

- 3.22 Under Article 43, the authority to establish a military government is not with the Occupying State, but rather with the occupant that is physically on the ground—colloquially referred to in the Army as “boots on the ground.” Professor Benvenisti explains, this “is not a coincidence. The *travaux préparatoire* of the Brussels Declaration reveal that the initial proposition for Article 2 (upon which Hague 43 is partly based) referred to the ‘occupying State’ as the authority in power, but the delegates preferred to change the reference to ‘the occupant.’ This insistence on the distinct character of the occupation administration should also be kept in practice.”<sup>27</sup> This authority is triggered by Article 42 that states, territory “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.” Only an “occupant,” and not the Occupying State, can meet the criteria of Article 42 and establish a military government.
- 3.23 After the 1907 Hague Conference, the U.S. Army took steps to prepare for military occupations by publishing two field manuals—FM 27-10, *The Law of Land Warfare*, and FM 27-5, *Civil Affairs Military Government*. Chapter 6 of FM 27-10 covers military occupation. Section 355 of FM 27-10 states, military “occupation is a question of fact. It presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded.”
- 3.24 According to the U.S. Manual for Court-Martial United States, the duty to establish a military government may be imposed by treaty, statute, regulation, lawful order, standard operating procedure, or custom of the service.<sup>28</sup> A military government is the civilian government of the Occupied State. It is not a government comprised of the military. The practice of the United States is to establish a military government after the surrender by the government of the Occupied State. Since the Second World War, it is the sole function of the Army to establish a military government to administer the laws of the occupied State

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<sup>26</sup> Earl F. Ziemke, *The U.S. Army in the Occupation of Germany 1944-1946* 22 (1975).

<sup>27</sup> Benvenisti, 5.

<sup>28</sup> U.S. Department of Defense, *Manual for Courts-Martial United States* IV-28 (2024 ed.).

until there is a treaty of peace, which will bring the military occupation to an end. Here follows the treaties and regulations to establish a military government in occupied territory:

- U.S. Department of Defense Directive 5100.01 states that it is the function of the Army in “[occupied] territories abroad [to] provide for the establishment of a military government pending transfer of this responsibility to other authority.”
- U.S. Department of Defense Directive 2000.13 states that “Civil affairs operations include...[e]stablish and conduct military government until civilian authority or government can be restored.”
- Para. 11.4, Department of Defense Law of War Manual states that “Military occupation of enemy territory involves a complicated, trilateral set of legal relations between the Occupying Power, the temporarily ousted sovereign authority, and the inhabitants of occupied territory. The fact of occupation gives the Occupying Power the right to govern enemy territory temporarily, but does not transfer sovereignty over occupied territory to the Occupying Power.”
- Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Conventions obliges the occupant to administer the laws of the occupied State, after securing effective control of the territory according to Article 42 of the 1907 Hague Regulations.
- Para. 2-37, Army Field Manual 41-10, states that all “commanders are under the legal obligations imposed by international law, including the Geneva Conventions of 1949.”
- Para. 3, Army Field Manual 27-5, stating the “theater command bears full responsibility for [military government]; therefore, he is usually designated as military governor [...], but has authority to delegate authority and title, in whole or in part, to a subordinate commander. In occupied territory the commander, by virtue of his position, has supreme legislative, executive, and judicial authority, limited only by the laws and customs of war and by directives from higher authority.”
- Para. 62, Army Field Manual 27-10, states that “[m]ilitary government is the form of administration by which an occupying power exercises governmental authority over occupied territory.”
- Para. 2-18, Army Field Manual 3-57, states that “DODD 5100.01 directs the Army to establish military government when occupying enemy territory, and DODD 2000.13 identifies military government as a directed requirement under [Civil Affairs Operations].”

#### *Hawaiian State Sovereignty Unaffected by the American Occupation*

- 3.25 By orders of the U.S. resident Minister John Stevens, on 16 January 1893, a “detachment of marines from the United States steamer *Boston*, with two pieces of artillery, landed at

Honolulu. The men upwards of 160, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies.”<sup>29</sup> President Grover Cleveland determined, after a Presidential investigation, that this “military demonstration upon the soil of Honolulu was of itself an act of war.”<sup>30</sup> He also concluded that the overthrow of the Hawaiian Government the following day, on January 17th, was also an “act of war.”<sup>31</sup> President Cleveland concluded:

Thus it appears that Hawaii was taken possession of by the United States forces without the consent or wish of the government of the islands, or of anybody else so far as shown, except the United States Minister. Therefore the military occupation of Honolulu by the United States on the day mentioned was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property.<sup>32</sup>

- 3.26 Since international law provides for the presumption of State continuity in the absence of its government, the burden of proof shifts as to what must be proven and by whom. According to Judge Crawford, there “is a presumption that the State continues to exist, with its rights and obligations...despite a period in which there is no, or no effective, government,”<sup>33</sup> and belligerent occupation “does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”<sup>34</sup> Addressing the presumption of the German State’s continued existence, despite the military overthrow of the German Reich, Professor Brownlie explains:

Thus, after the defeat of Nazi Germany in the Second World War the four major Allied powers assumed supreme power in Germany. The legal competence of the German state did not, however, disappear. What occurred is akin to legal representation or agency of necessity. The German state continued to exist, and, indeed, the legal basis of the occupation depended on its continued existence. The very considerable derogation of sovereignty involved in the assumption of powers of government by foreign states, without the consent of Germany, did not constitute a transfer of sovereignty. A similar case, recognized by the customary law for a very long time, is that of the belligerent occupation of enemy territory in time of war. The important features of “sovereignty” in such cases are the

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<sup>29</sup> United States, House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai‘i: 1894–1895* 451 (1895).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, 456.

<sup>32</sup> *Id.*, 452.

<sup>33</sup> James Crawford, *The Creation of States in International Law* 34 (2nd ed. 2007).

<sup>34</sup> *Id.*

continued legal existence of a legal personality and the attribution of territory to that legal person and not to holders for the time being.<sup>35</sup>

- 3.27 “If one were to speak about a presumption of continuity,” explains Professor Craven, “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.”<sup>36</sup> Evidence of ‘a valid demonstration of legal title, or sovereignty, on the part of the United States’ would be an international treaty, specifically a peace treaty, whereby the Hawaiian Kingdom would have ceded its territory and sovereignty to the United States. Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*<sup>37</sup> and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.<sup>38</sup> There is no treaty of peace between the Hawaiian Kingdom and the United States, and, thus, sovereignty remains vested in the Hawaiian Kingdom even as an Occupied State.
- 3.28 Since 1893, the United States has been exercising its authority over Hawaiian territory without any ‘permissive rule derived from international custom or from a convention (treaty).’ The actions taken by the provisional government and by the Republic of Hawai‘i are unlawful because they were puppet governments established by the United States. President Cleveland confirmed this fact when he informed the Congress on 18 December 1893, that the “provisional government owes its existence to an armed invasion by the United States.”<sup>39</sup> This status did not change when the insurgents changed their name to the Republic of Hawai‘i on 4 July 1894. According to Professor Marek:

From the status of the puppet governments as organs of the occupying power the conclusion has been drawn that their acts should be subject to the limitation of the Hague Regulations. The suggestion, supported by writers as well as by decisions of municipal courts, seems at first both logical and convincing. For it is true that puppet governments are organs of the occupying power, and it is equally true that the occupying power is subject to the limitations of the Hague Regulations. But the direct actions of the occupant himself are included in the inherent legality of belligerent occupation, whilst the very creation of a puppet government or State is itself an illegal act, creating an illegal situation. Were the occupant to remain within the strict limits laid down by international law, he would never have recourse to

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<sup>35</sup> Ian Brownlie, *Principles of Public International Law* 109 (4th ed. 1990).

<sup>36</sup> Matthew Craven, “Continuity of the Hawaiian Kingdom as a State under International Law,” in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 128 (2020).

<sup>37</sup> 9 Stat. 922 (1848).

<sup>38</sup> 30 Stat. 1754 (1898).

<sup>39</sup> Executive Documents, 454.

the formation of puppet governments or States. It is therefore not to be assumed that puppet governments will conform to the Hague Regulations; this the occupant can do himself; for this he does not need a puppet. The very aim of the latter, as has already been seen, is to enable the occupant to act in *fraudem legis*, to commit violations of the international regime of occupation in a disguised and indirect form, in other words, to disregard the firmly established principle of the identity and continuity of the occupied State. Herein lies the original illegality of puppet creations.<sup>40</sup>

- 3.29 From 17 January 1893 to 7 July 1898, the United States, through its puppet governments, has been unlawfully and indirectly exercising its power over the territory of the Hawaiian State. From the purported annexation of the Hawaiian Islands by a congressional joint resolution on 7 July 1898, to the present, the United States has been directly exercising unlawful authority over the territory of the Hawaiian State. How does international law and the law of occupation see this unlawful exercise of authority? If the United States, to include the State of Hawai‘i, has no lawful authority to exercise its power in Hawaiian territory, then everything that derives from its unlawful authority is invalid in the eyes of international law. This comes from the rule of international law *ex injuria jus non oritur*, which is Latin for “law (or right) does not arise from injustice.” This international rule’s “coming of age” is traced to the latter part of the nineteenth century,<sup>41</sup> and was acknowledged by President Cleveland in his message to the Congress on 18 December 1893, where he stated:

As I apprehend the situation, we are brought face to face with the following conditions:

The lawful Government of Hawaii was overthrown without a drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.

But for the notorious predilections of the United States Minister for annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed.

But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen’s Government.

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<sup>40</sup> Krystyna Marek, *Identity and Continuity of States in Public International Law* 115(1968).

<sup>41</sup> Christopher R. Rossi, *Equity and International Law: A Legal Realist Approach to International Decisionmaking* 43-45 (1993).



But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the provisional government from the steps of the Government building.

And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Steven's recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the sole purpose of submitting her case to the enlightened justice of the United States.

Believing, therefore, that the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods, I shall not again submit the treaty of annexation to the Senate for its consideration, and in the instructions to Minister Willis, a copy of which accompanies this message, I have directed him to so inform the provisional government.<sup>42</sup>

- 3.30 From this international rule—*ex injuria jus non oritur*, when applied to an Occupied State, springs forth another rule of international law called *postliminium*, where all unlawful acts that an Occupying State may have been done in an occupied territory, are invalid and cannot be enforced when the occupation comes to an end. According to Professor Oppenheim, if “the occupant has performed acts which are not legitimate acts [allowable under the law of occupation], postliminium makes their invalidity apparent.”<sup>43</sup> Professor Marek explains:

Thus, the territory of the occupied State remains exactly the same and no territorial changes, undertaken by the occupant, can have any validity. In other words, frontiers remain exactly as they were before the occupation. The same applies to the personal sphere of validity of the occupied State; in other words, occupation does not affect the nationality of the population, who continues to owe allegiance to the occupied State. There can hardly be a more serious breach of international law than forcing the occupant's nationality on citizens of the occupied State.<sup>44</sup>

- 3.31 This rule of international law renders everything stemming from American laws and administrative measures null and void, *e.g.* land titles, business registrations, court decisions, incarcerations, and taxation. Regarding land titles, there were no lawful notaries after 17 January 17, 1893, to notarize transfers of title throughout the Hawaiian Islands. This renders all titles, that were acquired after 17 January 1893, void.<sup>45</sup>

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<sup>42</sup> Executive Documents, 455-456.

<sup>43</sup> L. Oppenheim, *International Law—A Treatise*, vol. II, War and Neutrality §283 (2nd ed. 1912).

<sup>44</sup> Marek, 83.

<sup>45</sup> See David Keanu Sai, “Setting the Record Straight on Hawaiian Indigeneity,” 3 *Hawaiian Journal of Law and Politics* 14-16 (2021) (online at [https://www2.hawaii.edu/~anu/pdf/Indigeneity\\_Sai\\_\(HJLP\)\\_Vol\\_3.pdf](https://www2.hawaii.edu/~anu/pdf/Indigeneity_Sai_(HJLP)_Vol_3.pdf)).

*International Humanitarian Law Prohibits Annexation of the Occupied State*

- 3.32 The United States purportedly annexed the Hawaiian Islands in 1898 by unilaterally enacting a municipal law called the *joint resolution to provide for annexing the Hawaiian Islands to the United States*.<sup>46</sup> As a municipal law of the United States, it is without extraterritorial effect. It is not an international treaty. Under international law, to annex territory of another State is a unilateral act, as opposed to cession, which is a bilateral act between States. Under international law, annexation of an occupied State is unlawful. According to Professor Roberts, even where a “whole country is occupied, and the legitimate government goes into exile and does not participate actively in military operations, the occupant does not have any right of annexation.”<sup>47</sup> Therefore, because the Hawaiian Kingdom retained the sovereignty of the State, despite being occupied, only the Hawaiian Kingdom could cede its sovereignty and territory to the United States through a treaty of cession. According to *The Handbook of Humanitarian Law in Armed Conflicts*:

The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control over foreign territory. The legal situation of the territory can be altered only through a peace treaty or *debellatio*.<sup>48</sup> International law does not permit annexation of territory of another state.<sup>49</sup>

- 3.33 Furthermore, in 1988, the U.S. Department of Justice’s Office of Legal Counsel (“OLC”) published a legal opinion that addressed, *inter alia*, the annexation of Hawai‘i. The OLC’s memorandum opinion was written for the Legal Advisor of the Department of State regarding the legal issues raised by the proposed Presidential proclamation to extend the territorial sea from a three-mile limit to twelve.<sup>50</sup> The OLC concluded that only the President, and not the Congress, possesses “the constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States.”<sup>51</sup>
- 3.34 The OLC further opined, “we doubt that Congress has constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international

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<sup>46</sup> 30 Stat. 750 (1898).

<sup>47</sup> Adam Roberts, “Transformative Military Occupation: Applying the Laws of War and Human Rights,” 100(3) *American Journal of International Law* 580, 583 (2006).

<sup>48</sup> There was no extinction of the Hawaiian State by *debellatio* because the Permanent Court of Arbitration acknowledged the continued existence of the Hawaiian Kingdom as a State in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01.

<sup>49</sup> Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts* Section 525, 242 (1995).

<sup>50</sup> Douglas Kmiec, “Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea,” 12 *Opinions of the Office of Legal Counsel* 238 (1988).

<sup>51</sup> *Id.*, 242.

law on behalf of the United States.”<sup>52</sup> Therefore, the OLC concluded it is “unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.”<sup>53</sup>

- 3.35 That the territorial sea was to be extended from three to twelve miles, under the United Nations Law of the Sea Convention, and since the United States is not a Contracting State, the OLC needed to investigate whether this could be accomplished by the President’s proclamation. In other words, the Congress could not extend the territorial sea an additional 9 miles by statute because its authority was limited up to the 3-mile limit. This is not rebuttable evidence as to the presumption of the continuity of the Hawaiian State. Furthermore, the United States Supreme Court, in *The Apollon*, concluded that the “laws of no nation can justly extend beyond its own territories.”<sup>54</sup>
- 3.36 Arriving at this conclusion, the OLC cited constitutional scholar Professor Willoughby who stated the “constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. ... Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature enacted it.”<sup>55</sup> Professor Willoughby also stated that the “incorporation of one sovereign State, such as was Hawaii prior to annexation, in the territory of another, is... essentially a matter falling within the domain of international relations, and, therefore, beyond the reach of legislative acts.”<sup>56</sup> According to Professor Lenzerini:

[I]ntertemporal-law-based perspective confirms the illegality—under international law—of the annexation of the Hawaiian Islands by the US. In fact, as regards in particular the topic of military occupation, the affirmation of the *ex injuria jus non oritur* rule predated the Stimson doctrine, because it was already consolidated as a principle of general international law since the XVIII Century. In fact, “[i]n the course of the nineteenth century, the concept of occupation as conquest was gradually abandoned in favour of a model of occupation based on the temporary control and administration of the occupied territory, the fate of which could be determined only by a peace treaty”; in other words, “the fundamental principle of

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*, 262.

<sup>54</sup> *The Apollon*, 22 U.S. 362, 370 (1824).

<sup>55</sup> Kmiec, 252.

<sup>56</sup> Westel Woodbury Willoughby, *The Constitutional Law of the United States*, vol. 1, 345 (1910).

occupation law accepted by mid-to-late 19th-century publicists was that an occupant could not alter the political order of territory.”<sup>57</sup>

- 3.37 Therefore, despite the prolonged nature of the American occupation, the Hawaiian Kingdom’s legal status under international law remained undisturbed. Under customary international law, the Hawaiian Kingdom continues to exist as a State despite its government being unlawfully overthrown by the United States on 17 January 1893.

*United States Misrepresents Hawai‘i before the United Nations General Assembly*

- 3.38 In 1946, prior to the passage of the 1959 Hawai‘i Statehood Act, the United States further misrepresented its relationship with Hawai‘i when its Ambassador to the United Nations identified Hawai‘i as a non-self-governing territory under the administration of the United States since 1898. Under Article 73(e) of the United Nations Charter, Hawai‘i was falsely reported as a non-self-governing territory.<sup>58</sup> This fundamental flaw means that Hawai‘i should have never been placed on this list in the first place because Hawai‘i already achieved self-governance as a sovereign independent State beginning in 1843 and was acknowledged by the Permanent Court of Arbitration’s Arbitral Tribunal in its 2001 Award in *Larsen v. Hawaiian Kingdom*.<sup>59</sup>
- 3.39 Furthermore, this was also noted by Professor Craven, who stated, “An initial point in question here is whether Hawai‘i should have been listed as a Non-Self-Governing Territory at all for such purposes. Article 73 of the Charter refers to peoples ‘who have not yet attained a full measure of self-government’—a point which is curiously inapplicable in case of Hawai‘i.”<sup>60</sup> Judge Crawford also noted this in his seminal book *The Creation of States in International Law*, where he stated, “Craven offers a critical view on the plebiscite affirming the integration of Hawaii into the United States.”<sup>61</sup>
- 3.40 To conceal the United States’ prolonged occupation of a sovereign and independent State for military purposes, Hawai‘i was deliberately treated as a non-self-governing territory or colonial possession. The reporting of Hawai‘i as a non-self-governing territory also coincided with the United States establishment of the military headquarters for the Pacific Command on the Island of O‘ahu. Thus, if the United Nations had been aware of Hawai‘i’s

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<sup>57</sup> Federico Lenzerini, “Military Occupation, Sovereignty, and the ex injuria jus non oritur Principle. Complying with the Supreme Imperative of Suppressing ‘Acts of Aggression or other Breaches of the Peace’ à la carte?,” 6(2) *International Review of Contemporary Law* 64 (June 2024) (online at [https://hawaiiankingdom.org/pdf/IRCL\\_Article\\_\(Lenzerini\).pdf](https://hawaiiankingdom.org/pdf/IRCL_Article_(Lenzerini).pdf)).

<sup>58</sup> *Transmission of Information under Article 73e of the Charter, December 14, 1946*, United Nations General Assembly Resolution 66(I).

<sup>59</sup> *Larsen v. Hawaiian Kingdom*, 581.

<sup>60</sup> Craven, 144.

<sup>61</sup> Crawford, 623, n. 83.

continued legal status as an occupied and neutral State, member States of the United Nations would have prevented the United States from maintaining their military presence.

- 3.41 The initial Article 73(e) list is comprised of non-sovereign territories, under the control of sovereign States, such as Australia, Belgium, Denmark, France, Netherlands, New Zealand, United Kingdom and the United States. In addition to Hawai'i, the United States also reported its territories of Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico and the Virgin Islands as non-self-governing territories. The U.N. General Assembly, in a resolution entitled "Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter," defined self-governance in three forms: a sovereign independent State; free association with an independent State; or integration with an independent State.<sup>62</sup> As such, none of the territories on the list of non-self-governing territories, with the exception of Hawai'i, were recognized sovereign States.
- 3.42 To erase the history of the United States' unlawful overthrow of the Hawaiian government in 1893 and the occupation that followed, the United States reported to the United Nations Secretary General that "Hawaii has been administered by the United States since 1898. As early as 1900, Congress passed an Organic Act, establishing Hawaii as an incorporated territory in which the Constitution and laws of the United States, which were not locally inapplicable, would have full force and effect."<sup>63</sup> This extraterritorial application of American municipal laws is not only in violation of The *Lotus* case principle, but is also prohibited by the rules of *jus in bello*. The imposition of American laws in Hawai'i as an Occupied State is also a war crime.
- 3.43 Despite these past misrepresentations of Hawai'i, before the United Nations by the United States, two facts that remain. First, inclusion of Hawai'i on the United Nations list of non-self-governing territories was an inaccurate depiction of an independent State whose rights had been violated; and, second, Hawai'i remains a sovereign and independent State despite the illegal overthrow of its government in 1893 and the prolonged occupation of its territory for military purposes.

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<sup>62</sup> *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter*, December 15, 1960, United Nations Resolution 1541 (XV).

<sup>63</sup> *Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America*, Document no. A/4226, Annex 1, 2 (24 Sep. 1959).

*State of Hawai‘i v. Lorenzo*

- 3.44 One year after the United States Congress passed the joint resolution, in 1993, apologizing for the United States overthrow of the Hawaiian Kingdom government,<sup>64</sup> an appeal was heard by the State of Hawai‘i Intermediate Court of Appeals that centered on a claim that the Hawaiian Kingdom continues to exist. In *State of Hawai‘i v. Lorenzo*, the appellate court stated:

Lorenzo appeals, arguing that the lower court erred in denying his pretrial motion (Motion) to dismiss the indictment. The essence of the Motion is that the [Hawaiian Kingdom] (Kingdom) was recognized as an independent sovereign nation by the United States in numerous bilateral treaties; the Kingdom was illegally overthrown in 1893 with the assistance of the United States; the Kingdom still exists as a sovereign nation; he is a citizen of the Kingdom; therefore, the courts of the State of Hawai‘i have no jurisdiction over him. Lorenzo makes the same argument on appeal. For the reasons set forth below, we conclude that the lower court correctly denied the Motion.<sup>65</sup>

- 3.45 Although the appellate court affirmed the trial court’s judgment, it admitted “the court’s rationale is open to question in light of international law.”<sup>66</sup> The court did not apply international law, yet it concluded that the trial court’s decision was correct because Lorenzo “presented no factual (or legal) basis for concluding that the Kingdom [continues to exist] as a state in accordance with recognized attributes of a state’s sovereign nature.” Since 1994, the *Lorenzo* case has been the precedent case and the basis for denying a defendant’s motion to dismiss claiming the Hawaiian Kingdom continues to exist. In *State of Hawai‘i v. Fergerstrom*, the appellate court stated, “We affirm that relevant precedent [in *State of Hawai‘i v. Lorenzo*],”<sup>67</sup> and that defendants have an evidentiary burden to show that the Hawaiian Kingdom continues to exist as a State.
- 3.46 The Supreme Court, in *State of Hawai‘i v. Armitage*, clarified the evidentiary burden that Lorenzo placed upon defendants. The court stated:

Lorenzo held that, for jurisdictional purposes, should a defendant demonstrate a factual or legal basis that the Kingdom of Hawai‘i “exists as a state in accordance with recognized attributes of a state’s sovereign nature[,]” and that he or she is a citizen of that sovereign state, a defendant may be able to argue that the courts of the State of Hawai‘i lack jurisdiction over him or her.<sup>68</sup>

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<sup>64</sup> 107 Stat. 1510 (1993).

<sup>65</sup> *State of Hawai‘i v. Lorenzo*, 77 Haw. 219, 220; 883 P.2d 641, 642 (1994).

<sup>66</sup> *Id.*, 221, 643.

<sup>67</sup> *State of Hawai‘i v. Fergerstrom*, 106 Haw. 43, 55; 101 P.3d 652, 664 (2004).

<sup>68</sup> *State of Hawai‘i v. Armitage*, 132 Haw. 36, 57; 319 P.3d 1044, 1065 (2014).

- 3.47 Profoundly, if the appellate court did apply international law in its decision, it would have confirmed the continued existence of the Hawaiian Kingdom as a State and ruled in favor of Lorenzo. As stated before, international law recognizes the difference between the State and its government, and a presumption of continuity, as Judge Crawford previously explained, that the State continues to exist despite its government being overthrown. In other words, Lorenzo needed to provide evidence that the Hawaiian Kingdom “did” exist as a State, which would then shift the burden to prosecution to provide rebuttable evidence, that the United States extinguished the Hawaiian State, in accordance with recognized modes of extinction under international law.
- 3.48 The appellate court did acknowledge that defendant Lorenzo, did in fact, provide evidence in his motion to dismiss “that the [Hawaiian Kingdom] was recognized as an independent sovereign nation by the United States in numerous bilateral treaties.”<sup>69</sup> In other words, the “bilateral treaties” were the evidence of Hawaiian Statehood. Therefore, the appellate court erred, in placing the burden on the defendant to provide evidence of the Kingdom’s continued existence, when it should have determined, from the trial records, that the prosecution provided no evidence refuting the presumption of the Kingdom’s continued existence as a State. The Hawaiian Kingdom’s existence as a State in the nineteenth century was evidenced by the “bilateral treaties.” The prosecution provided no such evidence to refute this.
- 3.49 If, for argument sake, the State of Hawai‘i had argued before the trial court that the 1898 joint resolution of annexation extinguished Hawaiian Statehood, it would be precluded from doing so under the rules of evidence because the United States Department of Justice’s Office of Legal Counsel already concluded in 1988 that it is ‘unclear which constitutional power Congress exercised when it acquired Hawaii by a joint resolution.’<sup>70</sup> This opinion is an admission against interest, which is an out-of-court statement made by the federal government, prior to the date of Lorenzo’s trial, that would have precluded the State of Hawai‘i from claiming otherwise. Furthermore, a congressional joint resolution is not a source of international law, and as such, could not have affected Hawaiian statehood. According to the American Law Institute, a “rule of international law is one that has been accepted as such by the international community of states (a) in the form of customary law; (b) by international agreement; or by derivation from general principles common to the major legal systems of the world.”<sup>71</sup>
- 3.50 The significance of the *Lorenzo* case is the appellate court, when applying international law, answered its own question in the negative as to “whether the present governance

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<sup>69</sup> *Lorenzo* case, 220, 642.

<sup>70</sup> Kmiec, 252.

<sup>71</sup> American Law Institute, Restatement of the Law Third, The Foreign Relations Law of the United States, §102 (1987).

system should be recognized,”<sup>72</sup> and that a “state has an obligation not to recognize or treat as a state an entity that has attained the qualifications for statehood as a result of a threat or use of armed force.”<sup>73</sup> In other words, the State of Hawai‘i cannot be recognized as a State of the United States, which arose “as a result of a...use of armed force.” As stated before, President Cleveland concluded that the provisional government, which is the predecessor of the State of Hawai‘i, “owes its existence to an armed invasion by the United States.”<sup>74</sup> Therefore, a proper interpretation of *State of Hawai‘i v. Lorenzo* proves that all courts of the State of Hawai‘i are not regularly constituted, and every judgment, order and decree, that emanating from any court of the State of Hawai‘i, is void.

- 3.51 As such, these decisions are subject to collateral attack, which occurs when a defendant has the right to impeach a decision previously made against him because the “court that rendered judgment lacked jurisdiction of the subject matter.”<sup>75</sup> While these decisions are subject to collateral attacks, there is the problem, as to what court is competent to receive a motion to set aside judgment, because all courts of the State of Hawai‘i are not regularly constituted pursuant to *Lorenzo*. “If a person or body assumes to act as a court without any semblance of legal authority so to act and gives a purported judgment,” explains the American Law Institute, “the judgment is, of course, wholly void.”<sup>76</sup> And according to Judge Moore, “Courts that act beyond...constraints act without power; judgments of courts lacking subject matter jurisdiction are void—not deserving of respect by other judicial bodies or by the litigants.”<sup>77</sup> Furthermore, courts, who were aware of the American occupation prior to their decisions, would have met the constituent elements of the war crime of depriving a protected person of a fair and regular trial.

#### *Successor States to Hawaiian Kingdom Treaties*

- 3.52 Despite the government of the Hawaiian Kingdom being unlawfully overthrown by United States troops on 17 January 1893, under customary international law, the treaties between the Hawaiian Kingdom and predecessor States are still binding on their successor States. The Hawaiian Kingdom is open to negotiate a treaty with these successor States, or for these States to declare that the treaty is no longer in force between them.
- 3.53 The successor States, of the Hawaiian Kingdom’s treaty partners, were not aware, at the time of their independence, that the Hawaiian Kingdom continued to exist as a State. Therefore, neither the newly independent States nor the Hawaiian Kingdom could declare

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<sup>72</sup> *Lorenzo* case, fn. 2.

<sup>73</sup> *Id.*

<sup>74</sup> Executive Documents, 454.

<sup>75</sup> Black’s Law Dictionary 1574 (1990).

<sup>76</sup> American Law Institute, *Restatement of the Law Second, Judgments*, §7, comment f, 45 (1942).

<sup>77</sup> Karen Nelson Moore, “Collateral Attack on Subject Matter Jurisdiction: A Critique of the Restatement (Second) of Judgments,” 66 *Cornell Law Review* 534, 537 (1981).



“within a reasonable time after the attaining of independence, that the treaty is regarded as no longer in force between them.”<sup>78</sup> Until there is clarification of the successor States’ intentions, as to a common understanding with the Hawaiian Kingdom regarding the continuance in force of the Hawaiian treaty with their predecessor State, the Hawaiian Kingdom will presume the continuance in force of its treaties with the successor States. Here follows the list of successor States to Hawaiian Kingdom treaties:

- 1875 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the Austro-Hungarian Empire—Austria and Hungary.
- 1862 Treaty of Amity, Commerce and Navigation between the Hawaiian Kingdom and Belgium—Burundi, Congo, Democratic Republic of the Congo, and Rwanda.
- 1857 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and France—Algeria, Benin, Burkina Faso, Cambodia, Cameroon, Central African Republic, Chad, Comoros, Côte d'Ivoire, Djibouti, Gabon, Guinea, Lao People's Democratic Republic, Lebanon, Madagascar, Mali, Mauritania, Morocco, Niger, Senegal, Syrian Arab Republic, Togo, Tunisia, Vanuatu, and Viet Nam.
- 1851 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and Great Britain—Afghanistan, Antigua and Barbuda, Australia, The Bahamas, Bahrain, Bangladesh, Barbados, Belize, Bhutan, Botswana, Brunei Darussalam, Cameroon, Canada, Cyprus, Egypt, Eswatini, Fiji, Gambia, Ghana, Grenada, Guyana, India, Iraq, Ireland, Israel, Jamaica, Jordan, Kenya, Kiribati, Kuwait, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Myanmar, Namibia, Nauru, Nepal, New Zealand, Nigeria, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, South Sudan, Sri Lanka, Sudan, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Arab Emirates, United Republic of Tanzania, Vanuatu, Yemen, Zambia, and Zimbabwe.
- 1863 Treaty of Amity, Commerce and Navigation between the Hawaiian Kingdom and Italy—Libya and Somalia.
- 1871 Treaty of Amity and Commerce between the Hawaiian Kingdom and Japan—Democratic People's Republic of Korea and the Republic of Korea.

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<sup>78</sup> Second report on succession in respect of treaties, by Sir Humphrey Waldock, Special Rapporteur, Document A/CN.4/214 and ADD.1\* AND 2, p. 48 (1969).

- 1862 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the Netherlands—Indonesia and Suriname.
- 1882 Treaty between the Hawaiian Kingdom and Portugal—Angola, Cabo Verde, Guinea-Bissau, Mozambique, Sao Tome and Principe, and Timor-Leste.
- 1869 Treaty of Commerce and Navigation between the Hawaiian Kingdom and Russia—Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Mongolia, Montenegro, North Macedonia, Republic of Moldova, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.
- 1863 Treaty of Peace and Friendship between the Hawaiian Kingdom and Spain—Cuba and Equatorial Guinea.
- 1852 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the Kingdoms of Sweden and Norway—Norway and Sweden.
- 1849 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the United States—Marshall Islands, Micronesia, Palau, Philippines.

The Hawaiian Kingdom has treaties with 154 Member States of the United Nations, of which 14 treaties are with original States and 140 treaties are with Successor States.

3.54 This position, taken by the Hawaiian Kingdom, is consistent with the 1978 Vienna Convention on Succession of States in respect of Treaties. Article 24 states:

1. A bilateral treaty which at the date of the succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:
  - a. they expressly so agree; or
  - b. by reason of their conduct they are to be considered as having agreed.
2. A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and the other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.

3.55 Since successor States, at the time of their independence, were unaware of the existence of the Hawaiian Kingdom and its treaties with their predecessor States, Article 24(1)(a) and (b) could not arise. Therefore, in the absence of an express agreement or an agreement by

conduct, under customary international law, it will be presumed that the treaties continue in force for two years with the successor States of the Hawaiian Kingdom treaty partners. This Complaint serves as notice to the successor States and thus, triggers the two-year period for existence of the treaties.

*The Role of the Adjutant General to Transform the  
State of Hawai‘i into a Military Government*

- 3.56 The military force of the provisional government was not an organized unit or militia but rather armed insurgents under the command of John Harris Soper. On the evening of January 16, 1893, Soper attended a meeting of the leadership of the insurgents, who called themselves the Committee of Safety, where Soper was asked to command the armed wing of the insurgency. Although Soper served as Marshal of the Hawaiian Kingdom under King Kalākaua, he admitted in an interview with U.S. Special Commissioner James Blount, on 17 June 1893, who was investigating the overthrow of the Hawaiian Kingdom government by direction of U.S. President Grover Cleveland, that he “was not a trained military man, and was rather adverse to accepting the position [he] was not especially trained for, under the circumstances, and that [he] would give them an answer on the following day; that is, in the morning.”<sup>79</sup> Soper told Special Commissioner Blount that he accepted the offer after learning that “Judge Sanford Dole [agreed] to accept the position as the head of the [provisional] Government.”<sup>80</sup> On January 27, 1893, by *An Act to Authorize the Formation of a National Guard*, the insurgency renamed the Hawaiian Kingdom’s Royal Guard to the National Guard.<sup>81</sup> Thereafter, Soper was commissioned by the insurgents as Colonel to command the National Guard and was called the Adjutant General.
- 3.57 Under international law, after the departure of U.S. troops, the provisional government was an armed force of the United States in effective control of Hawaiian territory since 1 April 1893. As an armed proxy of the United States, the provisional government was obliged to temporarily administer the laws of the Hawaiian Kingdom until a peace treaty was negotiated and agreed upon between the United States and the Hawaiian Kingdom. As a matter of fact and law, after President Cleveland completed his investigation of the overthrow of the Hawaiian Kingdom government and notified the Congress on 18 December 1893, it would have been Soper’s duty to head the military government as its military governor. A military government was not established under international law but rather the insurgency maintained the facade that they were a *de jure* government.

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<sup>79</sup> Executive Documents, 972.

<sup>80</sup> *Id.*

<sup>81</sup> *An Act to Authorize the Formation of a National Guard*, Laws of the Provisional Government of the Hawaiian Islands (1893), 8.

- 3.58 On 4 July 1894, the insurgency changed its name to the Republic of Hawai‘i. Under *An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard* of 13 August 1895, the National Guard was reorganized and commanded by the Adjutant General who headed a regiment of battalions with companies who were comprised of American citizens.<sup>82</sup>
- 3.59 Under *An Act To provide a government for the Territory of Hawaii* enacted by the U.S. Congress on 30 April 1900,<sup>83</sup> the Act of 1895 continued in force. According to section 6 of the Act of 1900, “the laws not inconsistent with the Constitution or laws of the United States or the provisions of this Act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States.” Soper continued to command the National Guard as Adjutant General until 2 April 1907, when he retired. The Hawai‘i National Guard continued in force under *An Act To provide for the admission of the State of Hawaii into the Union* enacted by the U.S. Congress on 18 March 1959.<sup>84</sup> The State of Hawai‘i governmental infrastructure is the civilian government of the Hawaiian Kingdom.
- 3.60 Article V of the State of Hawai‘i Constitution provides that the Governor is the Chief Executive of the State of Hawai‘i. He is also the Commander-in-Chief of the Army and Air National Guard and appoints the Adjutant General who “shall be the executive head of the department of defense and commanding general of the militia of the State.”<sup>85</sup> Accordingly, the “adjutant general shall perform such duties as are prescribed by law and such other military duties consistent with the regulations and customs of the armed forces of the United States [...]”<sup>86</sup> In other words, the Adjutant General operates under two regimes of law, that of the State of Hawai‘i and that of the United States Department of Defense.
- 3.61 The State of Hawai‘i Constitution is an American municipal law that was approved by the Territorial Legislature of Hawai‘i on 20 May 1949 under *An Act to provide for a constitutional convention, the adoption of a State constitution, and appropriating money therefor*. The Congress established the Territory of Hawai‘i, under *An Act To provide a government for the Territory of Hawaii*, on 30 April 1900.<sup>87</sup> On 7 November 1950, in the election throughout the Hawaiian Islands, the constitution was adopted by a vote of American citizens, including those Hawaiian subjects that believed they were American

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<sup>82</sup> *An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard*, Laws of the Republic of Hawaii (1895), 29.

<sup>83</sup> *An Act To provide a government for the Territory of Hawaii*, 31 Stat. 141 (1900).

<sup>84</sup> *An Act To provide for the admission of the State of Hawaii into the Union*, 73 Stat. 4 (1959).

<sup>85</sup> Hawai‘i Revised Statutes, §121-7.

<sup>86</sup> *Id.*, §121-9.

<sup>87</sup> 31 Stat. 141 (1900).

citizens. This was the result of the war crime of denationalization. This State of Hawai‘i Constitution came into effect, by *An Act To provide for the admission of the State of Hawaii into the Union* passed by the Congress, on 18 March 1959.<sup>88</sup>

- 3.62 In *United States v. Curtiss Wright Corp.*, the U.S. Supreme Court stated, “Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.”<sup>89</sup> The Court also concluded, in *The Apollon*, that the “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.”<sup>90</sup> Therefore, the State of Hawai‘i cannot claim to be a *de jure*—lawful government because its only claim to authority derives from American legislation that has no extraterritorial effect in the Hawaiian Islands. And under international law, the United States “may not exercise its power in any form in the territory of another State.”<sup>91</sup> To do so, according to Professor Schabas, is the war crime of usurpation of sovereignty during occupation.<sup>92</sup>
- 3.63 “The occupant,” according to Professor Sassòli, “may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation.”<sup>93</sup> Professor Sassòli further explains that the “expression ‘laws in force in the country’ in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders.”<sup>94</sup>
- 3.64 All State of Hawai‘i authority derives from American laws, which constitutes war crimes. Consequently, because of the continuity of the Hawaiian Kingdom as a State and since it is vested with sovereignty over the Hawaiian Islands, the authority, claimed by the State of Hawai‘i, is invalid because it never legally existed. What remains valid, however, is the authority of the State of Hawai‘i Department of Defense, which is its Army and Air National Guard. The authority of both branches of the military continues as members of

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<sup>88</sup> 73 Stat. 4 (1959).

<sup>89</sup> *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

<sup>90</sup> *The Apollon*, 22 U.S. 362, 370 (1824).

<sup>91</sup> *Lotus case*, 18.

<sup>92</sup> William Schabas, “Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893,” 3 *Hawaiian Journal of Law and Politics* 340 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol334\\_\(Schabas\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol334_(Schabas).pdf)).

<sup>93</sup> Marco Sassòli, “Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century,” *International Humanitarian Law Research Initiative* 5 (2004) (online at <https://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf>).

<sup>94</sup> *Id.*, 6.

the United States Armed Forces that are situated in occupied territory. Army doctrine does not allow for civilians to establish a military government. The establishment of a military government is the function of the U.S. Army.

- 3.65 Since the State of Hawai‘i is in effective control of most of the territory of the Hawaiian Kingdom at ten thousand nine hundred and thirty-one square miles, while the U.S. Indo-Pacific Combatant Command is only in effective control of less than five hundred square miles, the State of Hawai‘i Army National Guard is vested with the authority to transform the State of Hawai‘i into a Military Government of Hawai‘i forthwith pursuant to Articles 42 and 43 of the 1907 Hague Regulations. Enforcement of the laws of an occupied State requires the occupant to be in effective control of territory so that the laws can be enforced. Hence, the Council of Regency’s objective is to compel the transformation of the State of Hawai‘i into a Military Government of Hawai‘i.

#### IV. STATEMENT OF FACTS

##### *Preparing for the Administration of Hawaiian Kingdom Laws*

- 4.1 To prepare for the administration of the laws of the Occupied State and to bring the laws of the Hawaiian Kingdom, as they existed prior to the American invasion and takeover the Hawaiian Government on 17 January 1893, up to the current time, the Council of Regency, in the exercise of its legislative authority, announced, by proclamation on 10 October 2014, the provisional laws of the Hawaiian Kingdom.<sup>95</sup> The proclamation provided:

And, We do hereby proclaim that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international law of occupation and international humanitarian law, and if it be the case they shall be regarded as invalid and void.

To determine the provisional laws of the Realm, a memorandum, on the formula to determine provisional laws, was published on 22 March 2023.<sup>96</sup>

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<sup>95</sup> Proclamation: Provisional Laws (14 October 2014) (online at [https://hawaiiankingdom.org/pdf/Proc\\_Provisional\\_Laws.pdf](https://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf)).

<sup>96</sup> Council of Regency, *Memorandum on the Formula to Determine Provisional Laws* (22 March 2023) (online at [https://hawaiiankingdom.org/pdf/HK\\_Memo\\_Provisional\\_Laws\\_Formula.pdf](https://hawaiiankingdom.org/pdf/HK_Memo_Provisional_Laws_Formula.pdf)).

- 4.2 To secure compliance with international humanitarian law, by the State of Hawai‘i and its County governments, and to recognize their effective control of Hawaiian territory in accordance with Article 42 of the 1907 Hague Regulations, the Council of Regency proclaimed and recognized their existence as the administration of the occupying State on 3 June 2019. The proclamation read:

Whereas in order to account for the present circumstances of the prolonged illegal occupation of the Hawaiian Kingdom and to provide a temporary measure of protection for its territory and the population residing therein, the public safety requires action to be taken in order for the State of Hawai‘i and its Counties to begin to comply with the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law:

Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Powers of the Kingdom, do hereby recognize the State of Hawai‘i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law;

And, We do hereby further proclaim that the State of Hawai‘i and its Counties shall preserve the sovereign rights of the Hawaiian Kingdom government, and to protect the local population from exploitation of their persons and property, both real and personal, as well as their civil and political rights under Hawaiian Kingdom law

The State of Hawai‘i and its Counties, under the laws and customs of war during occupation, can now serve as the administrator of the “laws in force in the country.”<sup>97</sup> Prior to this proclamation, the State of Hawai‘i and its Counties were established unlawfully by U.S. Congressional legislation imposed within Hawaiian territory. This is the war crime of usurpation of sovereignty during military occupation. To comply with the law of occupation, the State of Hawai‘i must transform itself into a Military Government and begin administering the laws of the occupied State—the Hawaiian Kingdom.

*State Responsibility to Protect its Population from War Crimes*

- 4.3 Under the first pillar of *Responsibility to Protect*, “every State has the Responsibility to Protect its populations from four mass atrocity crimes—genocide, war crimes, crimes against humanity and ethnic cleansing,” the Council of Regency, by proclamation on 17 April 2019,<sup>98</sup> established a Royal Commission of Inquiry (“RCI”). This was done in a

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<sup>97</sup> Article 43, 1907 Hague Regulations.

<sup>98</sup> Proclamation: Establishment of the Royal Commission of Inquiry (17 April 2019) (online at [https://hawaiiankingdom.org/pdf/Proc\\_Royal\\_Commission\\_of\\_Inquiry.pdf](https://hawaiiankingdom.org/pdf/Proc_Royal_Commission_of_Inquiry.pdf)).

similar fashion to the United States’ proposal of establishing a Commission of Inquiry after the First World War “to consider generally the relative culpability of the authors of the war and also the question of their culpability as to the violations of the laws and customs of war committed during its course.”<sup>99</sup> The undersigned serves as Head of the RCI and Professor Lenzerini, from the University of Siena, Italy, as its Deputy Head.

- 4.4 At the request of the RCI, Professor William Schabas, a renowned scholar on international criminal law and war crimes, authored a legal opinion titled “Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893.”<sup>100</sup> Professor Schabas identified the following war crimes, under customary international law, and the requisite elements for criminal prosecution. These are the war crimes being committed in the Hawaiian Kingdom since 1893: the war crime of usurpation of sovereignty during occupation; the war crime of compulsory enlistment; the war crime of pillage; the war crime of confiscation or destruction of property; the war crime of deprivation of fair and regular trial; the war crime of deporting civilians of the occupied territory; and the war crime of transferring populations into an occupied territory.
- 4.5 In 2020, the RCI published *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*.<sup>101</sup> Professor Schabas was the author of chapter 4 titled “War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom.” In his chapter, he explains:

In the situation of Hawai‘i, the usurpation of sovereignty would appear to have been total since the beginning of the twentieth century. It might be argued that usurpation of sovereignty is a continuous offence, committed as long as the usurpation of sovereignty persists. Alternatively, a plausible understanding of the crime is that it consists of discrete acts. Once these acts occur, the crime has been completed. In other words, the *actus reus* of the crime is the conduct that usurps sovereignty rather than the ongoing situation involving the status of a lack of sovereignty.<sup>102</sup>

- 4.6 The discrete acts Professor Schabas refers to are the specific legislation, administrative measures, and court decisions enacted by the Occupying State. In the case of Hawai‘i, these specific acts include laws enacted by the Congress, the State of Hawai‘i Legislature, and

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<sup>99</sup> International Law Commission, *Historical Survey of the Question of International Criminal Jurisdiction Memorandum submitted by the Secretary-General* 54 (1949).

<sup>100</sup> William Schabas, “Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893,” 3 *Haw. J.L. & Pol.* 334 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol334\\_\(Schabas\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol334_(Schabas).pdf)).

<sup>101</sup> David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2022) (online at [https://hawaiiankingdom.org/pdf/Hawaiian\\_Royal\\_Commission\\_of\\_Inquiry\\_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

<sup>102</sup> Schabas, 342.



the County Councils; those administrative measures, *e.g.* executive orders and policies, made by the U.S. President and the departments of the executive branch, by the Governor and its departments, by the Mayors and their departments, by U.S. Courts decisions imposed in Hawai‘i and by decisions of the State of Hawai‘i Courts.

- 4.7 In 2022, Anita Budziszewska, a professor of international law at the University of Warsaw, wrote a book review on *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, which was published in the *Polish Journal of Political Science*.<sup>103</sup> On the portion of the book that the undersigned authored, she stated:

Presented next is the genesis and history of the Commission’s activity described by its aforementioned Head—Dr. David Keanu Sai. He presents the Commission’s activity in detail, by reference to concrete examples; with this part going on to recreate the entire history of the Hawaiian-US relations, beginning with the first attempt at territorial annexation. This thread of the story is supplemented with examples and source texts relating to the recognition of the Hawaiian Kingdom by certain countries (*e.g.* the UK and France, and taken as evidence of international regard for the integrity of statehood). Particularly noteworthy here is the author’s exceptionally scrupulous analysis of the history of Hawaii and its state sovereignty. No obvious flaws are to be found in the analysis presented (emphasis added).

- 4.8 She concluded her review with the following:

I regard this publication as an exceptionally valuable one that systematises matters of the legal status of the Hawaiian Kingdom, taking up the key issues surrounding the often ignored topic of a difficult historical context occurring between Hawaii and the United States. The issue at stake here has been regenerated synthetically, on multiple levels, with a penetrating analysis of the regulations and norms in international law applying to Hawaii—starting from potential occupied-territory status, and moving through to multi-dimensional issues relating to both war crimes and human rights. This is one of the few books—if not the only one—to describe its subject matter so comprehensively and completely. I therefore see this work as being of exceptional value and considerable scientific importance. It may serve not only as an academic source, but also a professional source of knowledge for both practicing lawyers and historians dealing with the matter on hand. The ambition of those who sought to take up this difficult topic can only be commended (emphasis added).

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<sup>103</sup> Anita Budziszewska, “Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom,” review of *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*, by David Keanu Sai (ed.), 8(2) *Polish Journal of Political Science* (2022) (online at <https://hawaiiankingdom.org/pdf/PJPS-Budziszewska.pdf>).

- 4.9 The war crime of usurpation of sovereignty during occupation is the imposition of United States laws, administrative measures, and policies over the territory of the Hawaiian Kingdom. This imposition of United States municipal laws was the subject of the dispute in the *Larsen* case at the Permanent Court. Larsen alleged that the Council of Regency was liable for “allowing the unlawful imposition of American municipal laws over the claimant’s person within the territorial jurisdiction of the Hawaiian Kingdom,” which led to the secondary war crimes of deprivation of fair and regular trial and unlawful confinement.
- 4.10 The war crime of usurpation of sovereignty during occupation was referred to, by Judge Blair of the American Military Commission in a separate opinion, in the *Justice Case*, holding that this “rule is incident to military occupation and was clearly intended to protect the inhabitants of any occupied territory against the unnecessary exercise of sovereignty by a military occupant.”<sup>104</sup> Australia, Netherlands and China enacted laws making usurpation of sovereignty during occupation a war crime. In 1945, the Australian Parliament enacted the *Australian War Crimes Act* that included the war crime of usurpation of sovereignty during occupation.
- 4.11 The war crime of usurpation of sovereignty during occupation has not been included in more recent codifications of war crimes, casting some doubt on its status as a crime under customary international law. According to Professor Schabas, “there do not appear to have been any prosecutions for that crime by international criminal tribunals.”<sup>105</sup> However, the war crime of usurpation of sovereignty during occupation is a war crime under “particular” customary international law. According to the International Law Commission, “A rule of particular customary international law, whether regional, local or other, is a rule of customary international law that applies only among a limited number of States.”<sup>106</sup> In the 1919 report of the Commission, the United States, as a member of the commission, did not contest the listing of the war crime of usurpation of sovereignty during occupation, but it did disagree, *inter alia*, with the Commission’s position on the means of prosecuting Heads of State for the listed war crimes by conduct or omission.
- 4.12 The RCI views usurpation of sovereignty during occupation as a war crime under particular customary international law and binding upon the Allied and Associated Powers of the First World War—United States of America, Great Britain, France, Italy, Japan—the principal Allied Powers, and Associated Powers that include Australia, Belgium, Bolivia, Brazil, Canada, China, Cuba, Czech Republic, formerly known as Czechoslovakia,

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<sup>104</sup> *United States v. Alstötter et al.*, Opinion of Mallory B. Blair, Judge of Military Tribunal III, III TWC 1178, 1181 (1951).

<sup>105</sup> Schabas, 344.

<sup>106</sup> Conclusion 16—Particular customary international law, International Law Commission’s Draft conclusions on identification of customary international law, with commentaries (2018) (A/73/10).

Ecuador, Greece, Guatemala, Haiti, Honduras, Liberia, New Zealand, Nicaragua, Panama, Peru, Poland, Portugal, Romania, South Africa, Thailand, and Uruguay.

- 4.13 In the Hawaiian situation, usurpation of sovereignty during occupation is the source for the commission of secondary war crimes within the territory of an occupied State, *i.e.* compulsory enlistment, denationalization, pillage, destruction of property, deprivation of fair and regular trial, deporting civilians of the occupied territory, and transferring populations into an occupied territory. The reasoning for the prohibition of imposing extraterritorial prescriptions or measures of the occupying State is addressed by Professor Eyal Benvenisti:

The occupant may not surpass its limits under international law through extra-territorial prescriptions emanating from its national institutions: the legislature, government, and courts. The reason for this rule is, of course, the functional symmetry, with respect to the occupied territory, among the various lawmaking authorities of the occupying state. Without this symmetry, Article 43 could become meaningless as a constraint upon the occupant, since the occupation administration would then choose to operate through extraterritorial prescription of its national institutions.<sup>107</sup>

- 4.14 For Hawai‘i, the usurpation of sovereignty during occupation has to have been total since the beginning of the twentieth century. This is an ongoing crime, where the criminal act would consist of the imposition of legislation or administrative measures by the occupying power, that goes beyond what is required necessary for military purposes of the occupation. Since 1898, when the United States Congress enacted an American municipal law purporting to have annexed the Hawaiian Islands, the United States has been imposing its legislation and administrative measures in violation of the laws of occupation. Since this is essentially a crime involving government action or policy or the action or policies of an occupying State’s proxies, such as the State of Hawai‘i and its Counties, a perpetrator participating in the act would be required to do so intentionally and with knowledge that the act went beyond what was required for military purposes or the protection of fundamental human rights. Usurpation of sovereignty during occupation has not only victimized the civilian population in the Hawaiian Islands for over a century, but also the civilians of other countries that have visited the islands since 1898 and were unlawfully subjected to American municipal laws and administrative measures.

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<sup>107</sup> Eyal Benvenisti, *The International Law of Occupation* 19 (1993).

*United Nations Independent Expert Dr. Alfred deZayas*

- 4.15 In a letter dated 25 February 2018, United Nations Independent Expert, Dr. Alfred deZayas sent a communication from Geneva to Judge Gary W.B. Chang, Judge Jeannette H. Castagnetti, and members of the judiciary of the State of Hawai‘i.<sup>108</sup> In it, Dr. deZayas stated:

I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).

*United States National Lawyers Guild*

- 4.16 In 2019, the U.S. National Lawyers Guild (“NLG”) adopted a resolution calling upon the United States of America to immediately comply with international humanitarian law in its long and illegal occupation of the Hawaiian Islands.<sup>109</sup> Among its positions statement, the “NLG supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”<sup>110</sup>
- 4.17 In a letter to State of Hawai‘i Governor David Ige, dated 10 November 2020, the NLG called upon the governor to comply with international humanitarian law by administering the laws of the occupied State. The NLG letter concluded:

As an organization committed to the mission that human rights and the rights of ecosystems are more sacred than property interests, the NLG is deeply concerned that international humanitarian law continues to be flagrantly violated with apparent impunity by the State of Hawai‘i and its County governments. This has

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<sup>108</sup> Letter of Dr. Alfred deZayas to Judge Gary W.B. Chang, Judge Jeannette H. Castagnetti, and Members of the Judiciary of the State of Hawai‘i (25 February 2018) (online at [https://hawaiiankingdom.org/pdf/Dr\\_deZayas\\_Memo\\_2\\_25\\_2018.pdf](https://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf)).

<sup>109</sup> Resolution of the National Lawyers Guild Against the Illegal Occupation of the Hawaiian Islands (2019) (online at <https://www.nlg.org/wp-content/uploads/2019/08/Hawaiian-Subcommittee-Resolution-Final.pdf>).

<sup>110</sup> National Lawyers Guild, *NLG Calls Upon US to Immediately Comply with International Humanitarian Law in its Illegal Occupation of the Hawaiian Islands* (13 January 2020) (online at <https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/>).

led to the commission of war crimes and human rights violations of a colossal scale throughout the Hawaiian Islands. International criminal law recognizes that the civilian inhabitants of the Hawaiian Islands are “protected persons” who are afforded protection under international humanitarian law and their rights are vested in international treaties. There are no statutes of limitation for war crimes, as you must be aware. We urge you, Governor Ige, to proclaim the transformation of the State of Hawai‘i and its Counties into an occupying government pursuant to the Council of Regency’s proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom. This would include carrying into effect the Council of Regency’s proclamation of October 10, 2014 that bring the laws of the Hawaiian Kingdom in the nineteenth century up to date. We further urge you and other officials of the State of Hawai‘i and its Counties to familiarize yourselves with the contents of the recent eBook published by the RCI and its reports that comprehensively explains the current situation of the Hawaiian Islands and the impact that international humanitarian law and human rights law have on the State of Hawai‘i and its inhabitants.

*International Association of Democratic Lawyers and the  
American Association of Jurists—Asociación Americana de Juristas*

- 4.18 On 7 February 2021, the International Association of Democratic Lawyers (“IADL”), a non-governmental organization (NGO) of human rights lawyers, that has special consultative status with the United Nations Economic and Social Council (“ECOSOC”) and is accredited to participate in the Human Rights Council’s sessions as Observers, passed a resolution calling upon the United States to immediately comply with international humanitarian law in its prolonged occupation of the Hawaiian Islands—the Hawaiian Kingdom.<sup>111</sup> In its resolution, the IADL also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”

*The Hawaiian Kingdom’s Invocation of Responsibility by an Injured State*

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

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<sup>111</sup> International Association of Democratic Lawyers, *IADL Resolution on the US Occupation of the Hawaiian Kingdom* (7 February 2021) (online at <https://iadllaw.org/2021/03/iadl-resolution-on-the-us-occupation-of-the-hawaiian-kingdom/>).

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

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

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

As regards the factual circumstances of the United States of America's invasion of the Hawaiian Kingdom, an internationally recognized State since the nineteenth century, the unlawful overthrow of the Government of the Hawaiian Kingdom, and the prolonged belligerent occupation of the Hawaiian Kingdom since 17 January 1893, the Hawaiian Foreign Ministry directs the attention of the Diplomatic Missions to the Royal Commission of Inquiry's publication—*Investigating War*

*Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020). The ebook can be downloaded online at [https://hawaiiankingdom.org/pdf/Hawaiian\\_Royal\\_Commission\\_of\\_Inquiry\\_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf). Authors include H.E. Dr. David Keanu Sai, Ph.D., Hawaiian Minister of Foreign Affairs *ad interim*, Professor Matthew Craven, University of London, SOAS, Professor William Schabas, Middlesex University London, and Professor Federico Lenzerini, University of Sienna, Italy. Reports of the Royal Commission of Inquiry and treaties can be accessed online at <https://hawaiiankingdom.org/royal-commission.shtml>.

- 4.20 In its judgment on preliminary objections raised by Armenia in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia)*, the Court noted that, according to the customary rules on State responsibility as reflected in article 42, “when a State seeks to invoke the responsibility of another State, it must show that the responsible State owes the obligation allegedly breached to the claimant State.”<sup>112</sup>

*Two NGOs Notify Permanent Missions to the United Nations of the American Occupation*

- 4.21 Together with the IADL, the American Association of Jurists—Asociación Americana de Juristas (“AAJ”), who is also an NGO with consultative status with the United Nations ECOSOC and accredited as an observer in the Human Rights Council’s sessions, sent a joint letter, dated 3 March 2022, to Member States of the United Nations on the status of the Hawaiian Kingdom and its prolonged occupation by the United States.<sup>113</sup> In its joint letter, the IADL and the AAJ also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”

*United Nations Human Rights Council*

- 4.22 On 22 March 2022, the undersigned delivered an oral statement, on behalf of the IADL and AAJ, to the United Nations Human Rights Council (“HRC”) at its 49th session in Geneva. The oral statement read:

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<sup>112</sup> Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Azerbaijan v. Armenia*), Judgment on preliminary objections raised by Armenia, 12 November 2024, para. 52.

<sup>113</sup> International Association of Democratic Lawyers, *IADL and AAJ deliver joint letter on Hawaiian Kingdom to UN ambassadors* (3 March 2022) (online at <https://iadllaw.org/2022/03/iadl-and-aaj-deliver-joint-letter-on-hawaiian-kingdom-to-un-ambassadors/>).

The International Association of Democratic Lawyers and the American Association of Jurists call the attention of the Council to human rights violations in the Hawaiian Islands. My name is Dr. David Keanu Sai, and I am the Minister of Foreign Affairs *ad interim* for the Hawaiian Kingdom. I also served as lead agent for the Hawaiian Kingdom at the Permanent Court of Arbitration from 1999-2001 where the Court acknowledged the continued existence of my country as a sovereign and independent State. The Hawaiian Kingdom was invaded by the United States on 16 January 1893, which began its century long occupation to serve its military interests. Currently, there are 118 military sites throughout the islands and the city of Honolulu serves as the headquarters for the Indo-Pacific Combatant Command. For the past century, the United States has and continues to commit the war crime of usurpation of sovereignty, under customary international law, by imposing its municipal laws over Hawaiian territory, which has denied Hawaiian subjects their right of internal self-determination by prohibiting them to freely access their own laws and administrative policies, which has led to the violations of their human rights, starting with the right to health, education and to choose their political leadership.

- 4.23 Remarkably, none of the forty-seven Member States of the HRC, including the United States, protested, or objected to the oral statement of war crimes being committed in the Hawaiian Kingdom by the United States. Under international law, acquiescence “concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State would be called for.”<sup>114</sup> Silence conveys consent. Since they “did not do so [they] thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset*.”<sup>115</sup>

*Hawaiian Kingdom v. Biden et al.*

- 4.24 Intending to compel the United States and the State of Hawai‘i to begin compliance with the law of occupation, the Council Regency initiated a lawsuit in the U.S. District Court for the District of Hawai‘i—*Hawaiian Kingdom v. Biden et al.*, civil no. 1:21:cv-00243-LEK-RT.<sup>116</sup> United States and State of Hawai‘i officials were sued in their official capacities as State actors because the war crime of usurpation of sovereignty during military occupation involves State action or policy or the action or policies of an occupying State’s proxies, and are not the private actions of individuals. The complaint sought to:

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<sup>114</sup> Nuno Sérgio Marques Antunes, “Acquiescence”, in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* para. 2 (2006).

<sup>115</sup> See International Court of Justice, *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

<sup>116</sup> *Hawaiian Kingdom v. Biden et al.*, Amended Complaint for Declaratory and Injunctive Relief (11 August 2021) (online at [https://hawaiiankingdom.org/pdf/Amended\\_Complaint\\_and\\_Exhibits\\_1\\_&\\_2%20\(Filed\\_2021-08-11\).pdf](https://hawaiiankingdom.org/pdf/Amended_Complaint_and_Exhibits_1_&_2%20(Filed_2021-08-11).pdf)).



Enjoin Defendants from implementing or enforcing all laws of the Defendants UNITED STATES OF AMERICA and the STATE OF HAWAI‘I and its Counties, to include the United States constitution, State of Hawai‘i constitution, Federal and State of Hawai‘i statutes, County ordinances, common law, case law, administrative law, and the maintenance of Defendant UNITED STATES OF AMERICA’s military installations across the territory of the HAWAIIAN KINGDOM, to include its territorial sea.

- 4.25 However, the Council of Regency was mindful that it could not obtain relief from this court unless it transformed itself into an Article II occupation court because the court is situated in occupied territory and not within the territory of the United States. Likewise, on 30 July 2021, the National Lawyers Guild, the International Association of Democratic Lawyers, and the Water Protectors Legal Collective filed a motion for leave to file *amicus curiae* brief on behalf of nongovernmental organizations with expertise in international law and human rights law.<sup>117</sup> The request for leave was granted.<sup>118</sup> The movants stated:

While the issue of Hawaiian sovereignty may be familiar to this Court, this matter is undoubtedly a case of first impression. However, there are exigent circumstances that necessitate this court’s assuming jurisdiction as an Article II occupation court.

This court can sit as an Article II court because the United States controls Hawai‘i not as a sovereign but as an occupying power and there has been no peace treaty between states to end the occupation.<sup>39</sup> Article II courts can extend their jurisdiction to maintain orderly control of an occupied territory. Exercising Article II jurisdiction and granting the requested injunctive relief complies with public international law. In this manner, this Court could apply local law as required of an occupying power by the laws of war.

Article II courts can extend their jurisdiction to maintain orderly control of an occupied territory. For example, the Provisional Court of Louisiana held Article II jurisdiction over the sections of Louisiana under the control of Union forces. The Provisional Court (as provost courts established by military criminal matters in the occupied territory. Concurrently, Union military commanders revived the local parish courts in occupied territory. These parish courts directed their judgments to the Louisiana Supreme Court for appellate review. One problem: the Louisiana Supreme Court sat in Baton Rouge, which the Confederacy still controlled. Judge Peabody, the chief judge of the Provisional Court, remedied this problem by transferring all cases pending before the Louisiana Supreme Court to his tribunal.

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<sup>117</sup> Motion for Leave to File *Amicus Curiae* Brief (30 July 2021) (online at [https://hawaiiankingdom.org/pdf/\[ECF\] 45 Motion for Leave to File Amicus \(Filed%202021-07-30\).pdf](https://hawaiiankingdom.org/pdf/[ECF] 45 Motion for Leave to File Amicus (Filed%202021-07-30).pdf)).

<sup>118</sup> Order Granting Motion for Leave to File Amended Amicus Brief (30 September 2021) (online at [https://hawaiiankingdom.org/pdf/\[ECF%2090\] Order Granting Motion for Leave to File Amicus Brief \(Filed%202021-09-30\).pdf](https://hawaiiankingdom.org/pdf/[ECF%2090] Order Granting Motion for Leave to File Amicus Brief (Filed%202021-09-30).pdf)).

By extending his jurisdiction Judge Peabody was able to maintain orderly control of an occupied territory. Louisianans could have their cases heard in local courts applying local law without giving up their right to appellate review. This Court could do the same by assuming jurisdiction as an Article II court and allow Hawaiians to have their cases heard by an occupying court applying local law, as required by the laws of war.

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

The Court refused to transform itself into an Article II occupation court, thereby, committing the war crime of usurpation of sovereignty during occupation. As such, the Hawaiian Kingdom could not obtain relief from a court that lacked subject matter jurisdiction, and, therefore, withdrew its complaint on 9 December 2022.<sup>119</sup>

#### *Royal Commission of Inquiry's Published War Criminal Reports*

4.26 Beginning mid-November of 2022, the RCI published war criminal reports of senior leadership of the United States and the State of Hawai'i,<sup>120</sup> to wit:

1. War Criminal Report no. 22-0001 *re Usurpation Sovereignty during Military Occupation*—Derek Kawakami & Arryl Kaneshiro (17 November 2022);
2. War Criminal Report no. 22-0002-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Matthew M. Bracken & Mark L. Bradbury (20 November 2022);
3. War Criminal Report no. 22-0003 *re Usurpation Sovereignty during Military Occupation*—Mitchell Roth & Maile David (17 November 2022);
4. War Criminal Report no. 22-0003-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Elizabeth A. Strance, Mark D. Disher & Dakota K. Frenz (20 November 2022);
5. War Criminal Report no. 22-0004 *re Usurpation of Sovereignty during Military Occupation*—Michael Victorino & Alice Lee (17 November 2022);
6. War Criminal Report no. 22-0004-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Moana M. Lutey, Caleb P. Rowe & Iwalani Mountcastle (20 November 2022);

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<sup>119</sup> Order; Hawaiian Kingdom's Notice of Voluntary Dismissal of Amended Complaint [ECF 55] Consistent with Rule 41(a)(1)(A)(i) (13 December 2022) (online at [https://www.hawaiiankingdom.org/pdf/%5bECF\\_267%5d\\_HK\\_Notice\\_of\\_VD\\_\(Filed\\_2022-12-13\).pdf](https://www.hawaiiankingdom.org/pdf/%5bECF_267%5d_HK_Notice_of_VD_(Filed_2022-12-13).pdf)).

<sup>120</sup> Website of the Royal Commission of Inquiry, *War Criminal Reports* (online at <https://hawaiiankingdom.org/royal-commission.shtml>).

7. War Criminal Report no. 22-0005 *re Usurpation of Sovereignty during Military Occupation*—David Yutake Ige, Ty Nohara, & Isaac W. Choy (18 November 2022);
8. War Criminal Report no. 22-0005-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Holly T. Shikada & Amanda J. Weston (20 November 2022);
9. War Criminal Report no. 22-0006 *re Usurpation of Sovereignty during Military Occupation*—Anders G.O. Nervell (18 November 2022);
10. War Criminal Report no. 22-0006-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Scott I. Batterman (20 November 2022);
11. War Criminal Report no. 22-0007 *re Usurpation of Sovereignty during Military Occupation*—Joseph Robinette Biden Jr., Kamala Harris, Admiral John Aquilino, Charles P. Rettig, Charles E. Schumer & Nancy Pelosi (18 November 2022);
12. Amended War Criminal Report no. 22-0007—Withdrawal of Admiral John Aquilino (23 February 2024);
13. War Criminal Report no. 22-0007-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Brian M. Boynton, Anthony J. Coppelino & Michael J. Gerardi (20 November 2022);
14. War Criminal Report no. 22-0008 *re Usurpation of Sovereignty during Military Occupation & Deprivation of Fair and Regular Trial*—Leslie E. Kobayashi & Rom A. Trader (23 November 2022);
15. War Criminal Report no. 22-0009 *re Usurpation of Sovereignty during Military Occupation, Deprivation of Fair and Regular Trial & Pillage*—Mark E. Recktenwald, Paula A. Nakayama, Sabrina S. McKenna, Richard W. Pollack, Michale D. Wilson, Todd W. Eddins, Glenn S. Hara, Greg K. Nakamura, Charles Prather, Sofia M. Hirosane, Daryl Y. Dobayashi, James E. Evers, Josiah K. Sewell, Clifford L. Nakea, Bradley R. Tamm & Alana L. Bryant (28 December 2022);
16. War Criminal Report no. 22-0009-1 *re Usurpation of Sovereignty during Military Occupation, Deprivation of Fair and Regular Trial*—Derrick K. Watson, J. Michael Seabright, Leslie E. Kobayashi & Jill A. Otake (28 February 2023);
17. War Criminal Report no. 23-0001 *re Usurpation of Sovereignty during Military Occupation*—Anne E. Lopez, Craig Y. Iha, Ryan K.P. Kanaka‘ole, Alyssa-Marie Y. Kau, Peter Kahana Albinio, Jr. & Joseph Kualī‘i Lindsey Camara (29 March 2023);
18. War Criminal Report no. 24-0001 *re Omission for Willful Failure to Establish a Military Government*—Kenneth Hara (5 August 2024);
19. War Criminal Report no. 24-0002 *re Omission for Willful Failure to Establish a Military Government*—Stephen F. Logan (12 August 2024);
20. War Criminal Report no. 24-0003 *re Omission for Willful Failure to Establish a Military Government*—Wesley Kawakami (19 August 2024);

21. War Criminal Report no. 24-0004 *re Omission for Willful Failure to Establish a Military Government*—Fredrick Werner (26 August 2024);
22. War Criminal Report no. 24-0005 *re Omission for Willful Failure to Establish a Military Government*—Bingham Tuisamatatele, Jr. (2 September 2024);
23. War Criminal Report no. 24-0006 *re Omission for Willful Failure to Establish a Military Government*—Joshua Jacobs (9 September 2024);
24. War Criminal Report no. 24-0007 *re Omission for Willful Failure to Establish a Military Government*—Dale Balsis (16 September 2024);
25. War Criminal Report no. 25-0001 *re Omission for Willful Failure to Establish a Military Government*—Tyson Tahara (1 January 2025).

4.27 These perpetrators were guilty of the war crime of usurpation of sovereignty during occupation, and all of the named perpetrators have met the requisite element of *mens rea*. In these reports, the RCI has concluded that these perpetrators have met the requisite elements of the war crime and are guilty *dolus directus* of the first degree. “It is generally assumed that an offender acts with *dolus directus* of the first degree if he desires to bring about the result. In this type of intent, the actor’s ‘will’ is directed finally towards the accomplishment of that result.”<sup>121</sup> The perpetrators are subject to prosecution as there is no statute of limitation for war crimes.<sup>122</sup>

4.28 Professor Schabas states three elements of the war crime of usurpation of sovereignty during occupation are:

1. The perpetrators imposed or applied legislative or administrative measures of the occupying power going beyond those required by what is necessary for military purposes of the occupation.
2. The perpetrators were aware that the measures went beyond what was required for military purposes or the protection of fundamental human rights.
3. Their conduct took place in the context of and was associated with a military occupation.
4. The perpetrators were aware of factual circumstances that established the existence of the military occupation.<sup>123</sup>

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

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<sup>121</sup> Mohamed Elewa Badar, *The Concept of Mens Rea in International Criminal Law: The Case for a Unified Approach* 535 (2013).

<sup>122</sup> United Nations General Assembly Res. 3 (I); United Nations General Assembly Res. 170 (II); United Nations General Assembly Res. 2583 (XXIV); United Nations General Assembly Res. 2712 (XXV); United Nations General Assembly Res. 2840 (XXVI); United Nations General Assembly Res. 3020 (XXVII); United Nations General Assembly Res. 3074 (XXVIII).

<sup>123</sup> Schabas, 358.

1. There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international;
2. In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non-international;
3. There is only a requirement for the awareness of the factual circumstance that established the existence of an armed conflict that is implicit in the terms “took place in the context of and was associated with.”<sup>124</sup>

The perpetrators were aware of the factual circumstances that established the existence of the military occupation. This knowledge met the requisite element of *mens rea*.

#### *Complementary Jurisdiction under the Rome Statute*

- 4.30 The one hundred twenty-three countries, who are State Parties to the Rome Statute of the International Criminal Court (“ICC”), have primary responsibility to prosecute war criminals under universal jurisdiction, but the perpetrator would have to enter the territory of the State Party to be apprehended and prosecuted. Under the principle of complementary jurisdiction under the Rome Statute, State Parties have the first responsibility to prosecute individuals for international crimes, to include the war crime of usurpation of sovereignty during military occupation, without regard to the place the war crime was committed or the nationality of the perpetrator. The ICC is a court of last resort. With the exception of the United States, China, Cuba, Haiti, Nicaragua, and Thailand, the Allied Powers and Associated Powers of the First World War are State Parties to the Rome Statute.
- 4.31 In the situation where the citizens of these countries have become victims of the war crime of usurpation of sovereignty during occupation and its secondary war crimes such as *pillage*, these citizens can seek extradition warrants in their national courts for their governments to prosecute these perpetrators under the passive personality jurisdiction and not universal jurisdiction. The passive personality jurisdiction provides States with jurisdiction for crimes committed against their nationals while they were abroad in the Hawaiian Islands.

#### *State of Hawai‘i Army National Guard’s Willful Failure to Transition the State of Hawai‘i into a Military Government*

- 4.32 On 13 April 2023, the undersigned had a meeting with Major General Kenneth Hara at the Grand Naniloa Hotel in Hilo. MG Hara was the senior Army officer of the Hawai‘i National Guard. The undersigned explained to MG Hara the circumstances of the current situation,

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<sup>124</sup> *Id.*, 357.

and his corresponding duty, as the theater commander of occupied territory, to transform the State of Hawai‘i into a military government. The undersigned provided him the necessary documentation as well.<sup>125</sup> MG Hara tasked his Staff Judge Advocate, Lieutenant Colonel Lloyd Phelps, to review this information. LTC Phelps could not provide evidence rebutting the continuity of the Hawaiian Kingdom, which prompted MG Hara to acknowledge, on 27 July 2023, that Hawai‘i is an occupied State.<sup>126</sup>

- 4.33 On 21 August 2023, the undersigned provided MG Hara the Council of Regency’s *Operational Plan for Transitioning the State of Hawai‘i into a Military Government* with essential and implied tasks, which was published by the law journal—*Hawaiian Journal of Law and Politics*.<sup>127</sup> The *Operational Plan*, with its essential and implied tasks, was made to restore the *status quo ante* of the Hawaiian Kingdom as it existed prior to the American invasion on 16 January 1893—its territory, political institutions, population and laws. Also published that year was the *Operational Plan for Transitioning the Military Government into the Hawaiian Kingdom* when the occupation comes to an end.<sup>128</sup>
- 4.34 After numerous attempts to work with MG Hara and his refusals to meet, the undersigned was informed that MG Hara was instructed by State of Hawai‘i Attorney General, Anne E. Lopez, to ignore the calls for the establishment of the military government. MG Hara’s conduct here, as the Adjutant General, was unbecoming of an officer. His failure to perform his duty of establishing a military government has made him the subject of War Criminal Report no. 24-0001, for the war crime by omission, that was published on the RCI’s website. His failure to perform his duty has led the chain of command in the Hawai‘i Army National Guard to be implicated in the performance of this duty.
- 4.35 After War Criminal Report no. 24-0001 was published, the RCI notified Brigadier Stephen Logan, by letter dated 5 August 2024, of the consequences to him after MG Hara willfully disobeyed an Army regulation and was willfully derelict in his duty to establish a military government.<sup>129</sup> The RCI stated:

Consequently, as the Deputy Adjutant General and Commander of the Army National Guard, you are now the theater commander. You should assume the chain

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<sup>125</sup> Royal Commission of Inquiry letter to Major General Kenneth Hara (May 11, 2023) (online at [https://hawaiiankingdom.org/pdf/RCI\\_Ltr\\_to\\_SOH\\_TAG\\_\(5.11.23\).pdf](https://hawaiiankingdom.org/pdf/RCI_Ltr_to_SOH_TAG_(5.11.23).pdf)).

<sup>126</sup> Council of Regency letter to Major General Kenneth Hara (1 August 2023) (online at [https://hawaiiankingdom.org/pdf/Regency\\_Ltr\\_to\\_SOH\\_TAG\\_\(8.1.23\).pdf](https://hawaiiankingdom.org/pdf/Regency_Ltr_to_SOH_TAG_(8.1.23).pdf)).

<sup>127</sup> “Operational Plan for Transitioning the State of Hawai‘i into a Military Government,” 5 *Hawaiian Journal of Law and Politics* 152 (2023) (online at [https://hawaiiankingdom.org/pdf/HK\\_Operational\\_Plan\\_of\\_Transition.pdf](https://hawaiiankingdom.org/pdf/HK_Operational_Plan_of_Transition.pdf)).

<sup>128</sup> “Operational Plan for Transitioning the Military Government into the Hawaiian Kingdom Government,” 5 *Hawaiian Journal of Law and Politics* 269 (2023) (online at [https://hawaiiankingdom.org/pdf/Op\\_Plan\\_Trans\\_from\\_MG\\_to\\_HKG.pdf](https://hawaiiankingdom.org/pdf/Op_Plan_Trans_from_MG_to_HKG.pdf)).

<sup>129</sup> Royal Commission of Inquiry letter to Brigadier General Stephen Logan (5 August 2024) (online at [https://hawaiiankingdom.org/pdf/RCI\\_Ltr\\_to\\_SOH\\_Dep\\_TAG\\_\(8.5.24\).pdf](https://hawaiiankingdom.org/pdf/RCI_Ltr_to_SOH_Dep_TAG_(8.5.24).pdf)).

of command, as the theater commander of the occupied State of Hawaiian Kingdom, and perform your duty of establishing a military government by 12 noon on August 12, 2024. If you are derelict in the performance of your duty to establish a military government, then you would be the subject of an RCI war criminal report for the war crime by omission. From the date of the publication of your war criminal report on the RCI's website, Colonel Wesley K. Kawakami, Commander of the 29th Infantry Brigade, who is next in the chain of command below you, shall assume command of the Army National Guard. Colonel Kawakami will have one week to transform the State of Hawai'i into a military government.

- 4.36 On 6 August 2024, by letter, the RCI notified the Commander of the 29th Infantry Brigade, who is next in the chain of command under BG Logan, and the Commanders of its component units, 1st Squadron, 299th Cavalry Regiment, 1st Battalion, 487th Field Artillery Regiment, and the 227th Brigade Engineer Battalion, of the circumstances for the Army National Guard to establish a military government of Hawai'i.<sup>130</sup> The RCI stated:

As a war criminal, subject to prosecution by a competent tribunal, and where there is no statute of limitations, MG Hara is unfit to serve as Commander of the Hawai'i National Guard. As such, Brigadier General Stephen Logan, as the Deputy Adjutant General and Commander of the Army National Guard, must assume the chain of command, and he has until 1200 hours on August 12, 2024, to transform the State of Hawai'i into a military government. To escape criminal culpability, BG Logan must demand a legal opinion from the Attorney General or from LTC Phelps that shows, with irrefutable evidence and law, that the Hawaiian Kingdom ceases to exist a State under international law.

If BG Logan does not obtain a legal opinion, and fails to perform his military duty, he will then be the subject of a war criminal report by the RCI for the war crime by omission. After the publication of this war criminal report, Colonel Wesley K. Kawakami, Commander, 29th Infantry Brigade, will assume the chain of command and demand a similar legal opinion. If Colonel Kawakami receives no such legal opinion, he will have one week to perform his duty as the theater commander.

To speak to the severity of the situation, I am enclosing a letter to MG Hara, dated May 29, 2024, from police officers, both active and retired, from across the islands, that called upon him to perform his duties because "This failure of transition places current police officers on duty that they may be held accountable for unlawfully enforcing American laws." These police officers also stated:

We also acknowledge that the Council of Regency is our government that was lawfully established under extraordinary circumstance, and we

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<sup>130</sup> Royal Commission of Inquiry letter to Commanders of the Army National Guard (6 August 2024) (online at [https://hawaiiankingdom.org/pdf/RCI\\_Ltr\\_to\\_Army\\_Commanders\\_\(8.6.24\).pdf](https://hawaiiankingdom.org/pdf/RCI_Ltr_to_Army_Commanders_(8.6.24).pdf)).

support its effort to bring compliance with the law of occupation by the State of Hawai‘i, on behalf of the United States, which will eventually bring the American occupation to a close. When this happens, our Legislative Assembly will be brought into session so that Hawaiian subjects can elect a Regency of our choosing. The Council of Regency is currently operating in an acting capacity that is allowed under Hawaiian law.

As senior Commanders in the chain of command of the Army National Guard, I implore you all to take this matter seriously and to demand, from the Attorney General or the JAG, a legal opinion that concludes there is no duty on you to establish a military government because the Hawaiian Kingdom does not continue to exist, and that this is the territory of the United States and the State of Hawai‘i under international law. With the legal opinion in hand, there is no duty to perform. Without it, there is the military duty to perform, and failure to perform would constitute the war crime by omission.

- 4.37 On 7 August 2024, to further urge BG Logan to perform his military duty, the RCI notified him that he had until 12 noon on 12 August 2024, to do so period. That letter to BG Logan stated:

As you are aware, yesterday, I notified the Commander of the 29th Infantry Brigade and the Commanders of its component battalions apprising them as to the circumstances of their possible implication, of performing the duty to establish a military government of Hawai‘i, should you fail to perform your duty. I closed the letter with:

As senior Commanders in the chain of command of the Army National Guard, I implore you all to take this matter seriously and to demand, from the Attorney General or the JAG, a legal opinion that concludes there is no duty on you to establish a military government because the Hawaiian Kingdom does not continue to exist, and that this is the territory of the United States and the State of Hawai‘i under international law. With the legal opinion in hand, there is no duty to perform. Without it, there is the military duty to perform, and failure to perform would constitute the war crime by omission.

The demand for a legal opinion, by you, of the Attorney General, Anne E. Lopez, or of the JAG, LTC Lloyd Phelps, is not outside your duties as a military officer. Your duty is to adhere to the rule of law. According to section 4-106, FM 3-07: The rule of law is fundamental to peace and stability. A safe and secure environment maintained by a civilian law enforcement system must exist and operate in accordance with internationally recognized standards and with respect for internationally recognized human rights and freedoms. Civilian organizations are responsible for civil law and order. However, Army forces may need to provide limited support.



According to the *Handbook for Military Support to Rule of Law and Security Sector Reform* (2016), the most frequently used definition of the rule of law “in the US government is one put forth by the UN.”<sup>131</sup>

- 4.38 BG Logan was willfully derelict in his obligation and duty to establish a military government and, therefore, became the subject of War Criminal Report no. 24-0002. The following senior Army officers of the State of Hawai‘i National Guard were also willfully derelict in their obligation and duty to assume emergency command and establish a military government, to wit—Brigadier General Tyson Tahara, Colonel Wesley Kawakami, Lieutenant Colonel Fredrick Werner, Lieutenant Colonel Bingham Tuisamatatele, Jr., Lieutenant Colonel Joshua Jacobs, and Lieutenant Colonel Dale Balsis. These officers became the subjects of War Criminal Reports no. 24-0003, 24-0004, 24-0005, 24-0006, 24-0007 and 25-0001. The most senior Army officer at present is Lieutenant Colonel Michael Rosner who is the Executive Officer of the 29th Infantry Brigade.

*Police Detective Demands Legal Opinion from State of Hawai‘i Attorney General  
Assuring He is Not Committing War Crimes by Enforcing American Laws*

- 4.39 On 3 June 2025, on behalf of his client, Mr. Edward Halealoha Ayau, on behalf of his client Maui County Police Detective, gave Attorney General Lopez until 11 June to make public a legal opinion, as requested by former Senator Crabbe, that the State of Hawai‘i is within the territory of the United States and that war crimes are not being committed.<sup>132</sup> Mr. Ayau stated:

[O]n behalf of my client, I am respectfully submitting to you a deadline by June 11, 2025, for you to make public the legal opinion, as formally requested by former Senator Crabbe, that clearly states, by citing sources of international law, i.e. treaties, custom, general principles of law, and judicial decisions and scholarly writings, that the State of Hawai‘i is within the territory of the United States and not within the territory of the Hawaiian Kingdom. June 11th is Kamehameha Day proclaimed as a national holiday for the kingdom by King Kamehameha V in 1872. This day was meant to honor the grandfather of Kamehameha V who is the progenitor of the country—the Hawaiian Kingdom.

If you do not make public your legal opinion by this day, my client will be forced to comply with the law of occupation whereby the Maui Police Department will continue to exist under the provisional laws of the Hawaiian Kingdom that was proclaimed by the Council of Regency in 2014 because it does “not run contrary

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<sup>131</sup> Royal Commission of Inquiry letter to Brigadier General Stephen Logan (7 August 2024) (online at [https://hawaiiankingdom.org/pdf/RCI\\_Ltr\\_to\\_SOH\\_Dep\\_TAG\\_\(8.7.24\).pdf](https://hawaiiankingdom.org/pdf/RCI_Ltr_to_SOH_Dep_TAG_(8.7.24).pdf)).

<sup>132</sup> Ayau Letter to Attorney General Lopez (3 June 2025) (online at [https://hawaiiankingdom.org/pdf/Ltr\\_to\\_AG\\_for\\_Legal\\_Opinion\\_URLs.pdf](https://hawaiiankingdom.org/pdf/Ltr_to_AG_for_Legal_Opinion_URLs.pdf)).

to the express, reason and spirit of the laws of the Hawaiian Kingdom,” which is explained on page 222 of the Council of Regency’s operational plan to transition the State of Hawai‘i into a Military Government, which I have attached.

Subsequently, *Maui Now* news picked up the story with the heading “Maui police detective asks AG if he is liable for war crimes by enforcing American laws.”<sup>133</sup>

4.40 Since 11 June 2025, the Attorney General has failed to provide an answer by a legal opinion. The Attorney General has been ignoring this formal request for over eight months, which, by her silence, is an acknowledgment of the Hawaiian Kingdom’s continued existence as an occupied State and that war crimes are being committed, by the imposition of American laws and administrative measures, within the territory of the Hawaiian Kingdom. Consequently, her failure forced Detective Mawae to begin compliance with the law of occupation whereby the Maui Police Department will continue to exist under the provisional laws of the Hawaiian Kingdom, that was proclaimed by the Council of Regency in 2014, because it does ‘not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom.’

4.41 On 7 July 2025, Mr. Ayau, on behalf of Detective Mawae, called upon LTC Rosner to perform his military duty to transition the State of Hawai‘i into a Military Government.<sup>134</sup> Mr. Ayau stated:

The Attorney General’s dereliction of her duty to protect all officials and employees of the State of Hawai‘i and the Counties, to include my client, has now compelled him to not only continue to perform his duties as a police officer under the laws of 1893 and the provisional laws of the Hawaiian Kingdom, but to also call for the lawful transformation of the State of Hawai‘i into a Military Government according to the Council of Regency’s Operational Plan. It is your military duty, as the most senior commander in the Hawai‘i Army National Guard, to immediately transform the State of Hawai‘i into a Military Government in accordance with international humanitarian law, the law of occupation, U.S. Department of Defense Directive 5100.01, and Army regulations, so that the war crime of usurpation of sovereignty during military occupation would cease and that Hawaiian Kingdom laws, together with the provisional laws, will be administered. I am also aware that Lieutenant Colonel Lloyd Phelps is the Army National Guard’s Staff Judge Advocate to advise you as to your military duties as the theater commander of the Occupied State of the Hawaiian Kingdom.

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<sup>133</sup> Maui Now, *Maui police detective asks AG if he is liable for war crimes by enforcing American laws* (9 June 2025) (online at <https://mauinow.com/2025/06/09/maui-police-detective-asks-ag-if-he-is-liable-for-war-crimes-by-enforcing-american-laws/>).

<sup>134</sup> Ayau Letter to Attorney General Lopez (7 July 2025) (online at [https://hawaiiankingdom.org/pdf/EHA\\_Ltr\\_to\\_Rosner\\_\(7.7.25\).pdf](https://hawaiiankingdom.org/pdf/EHA_Ltr_to_Rosner_(7.7.25).pdf)).

This matter has nothing to do with politics, but rather it is a matter of black letter law and indisputable facts. As the Hawaiian Kingdom Supreme Court stated in *Shillaber v. Waldo et al.*:

For I trust that the maxim of this Court ever has been, and ever will be, that which is so beautifully expressed in the Hawaiian coat of arms, namely, “The life of the land is preserved by righteousness.” We know of no other rule to guide us in the decision of questions of this kind, than the supreme law of the land, and to this we bow with reverence and veneration, even though the stroke fall on our own head. In the language of another, “Let justice be done though the heavens fall.” Let the laws be obeyed, though it ruin every judicial and executive officer in the Kingdom. Courts may err. Clerks may err. Marshals may err—they do err in every land daily; but when they err let them correct their errors without consulting pride, expediency, or any other consequence.

- 4.42 The provisional laws, however, can only take effect when the State of Hawai‘i has transformed itself into a Military Government, and its Military Governor proclaims the provisional laws, as proclaimed by the Council of Regency in 2014, is in full effect across the territory of the Occupied State of the Hawaiian Kingdom. Thus, under the law of occupation, the supreme decision-making power belongs to the occupying power and not with the government of the Occupied State—the Council of Regency. According to Professor Lenzerini from the University of Siena, Italy:

[O]ccupation law would allow for a vertical, but not a horizontal, sharing of authority [...] [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory.” This vertical sharing of authority would reflect “the hierarchical relationship between the occupying power and the local authorities, the former maintaining a form of control over the latter through a top-down approach in the allocation of responsibilities.”<sup>135</sup>

- 4.43 The law of occupation also states that the occupant must work together with the government of the Occupied State.<sup>136</sup> According to U.S. Army Field Manual 67-10:

6-24. Military occupation of [a State’s] territory involves a complex, trilateral set of legal relations between the Occupying Power, the temporarily ousted sovereign authority, and the inhabitants of the occupied territory. Military occupation does

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<sup>135</sup> Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Hawaiian Journal of Law and Politics* 331 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol317\\_\(Lenzerini\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol317_(Lenzerini).pdf)).

<sup>136</sup> *Id.*, 330.

not transfer sovereignty to the Occupying Power, but simply gives the Occupying Power the right to govern the [occupied] territory temporarily.

6-25. The fact of a military occupation does not authorize the Occupying Power to take certain actions. For example, the Occupying Power is not authorized by the fact of a military occupation to annex occupied territory or create a new State. Nor may the Occupying Power compel the inhabitants of occupied territory to become its nationals or otherwise swear allegiance to it (HR art. 45).

- 4.44 The commission of the war crime of usurpation of sovereignty during occupation can cease when the United States, the State of Hawai‘i and the Counties begin to comply with Article 43 of the 1907 Hague Regulations and administer the laws of the Occupied State—the Hawaiian Kingdom. At present, this is not the case, and the Hawaiian Kingdom has now entered 132 years of occupation. This is the longest occupation in modern history.



H.E. David Keanu Sai, Ph.D.

Minister of Foreign Affairs *ad interim*

12 August 2025