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The Relationship between the Hawaiian Kingdom and the United States of America

by David Keanu Sai

The United States of America was the first to recognize Hawaiian independence on December 19th, 1842. Seven years later on December 20th, a Treaty of Friendship, Commerce and Navigation was signed and ratified by both countries. The treaty came into effect on August 24th, 1850. Since then, four conventions were entered into concerning trade and commerce, money orders and postal agreements.

The 1849 treaty provides the initial recognition between the two states of the characteristics of its sovereignty and equality. Professor Ian Brownlie, QC, an expert on public international law, states these characteristics to be (1) jurisdiction, *prima facie* exclusive, over a territory and the permanent population living there;

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(2) a duty of non-intervention in the area of exclusive jurisdiction of other states; and (3) the dependence of obligations arising from customary law and treaties on the consent of the obligor.

(1) *Jurisdiction, prima facie exclusive, over a territory and the permanent population living there.*

(a) "There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors." Article I, 1849 Treaty.

(b) "...and each of the two contracting parties engage that the citizens or subjects of the other residing in their respective States shall enjoy their property and personal security, in as full and ample manner of their own citizens or subjects, of the subjects or citizens of the most favoured nation, but subject always, to the laws and statutes of the two countries respectively." Article VIII, 1849 Treaty.

(2) *A duty of non-intervention in the area of exclusive jurisdiction of other states.*

(a) "The contracting parties engage, in regard to the personal privileges, that the citizens of the United States of America shall enjoy in the dominion of His Majesty the King of the Hawaiian Islands, and the subjects of his said Majesty in the United States of America, that they shall have free

and undoubted right to travel and to reside in the states of the two high contracting parties, subject to the same precaution a police which are practiced towards the subjects or citizens of the most favoured nations...and each of the two contracting parties engage that the citizens or subjects of the other residing in their respective States shall enjoy their property and personal security, in as full and ample manner of their own citizens or subjects, of the subjects or citizens of the most favoured nation, but subject always to the laws and statutes of the two countries respectively." (emphasis added). Article VIII, 1849 Treaty.

(3) *The dependence of obligations arising from customary law and treaties on the consent of the obligor.*

(a) "Any citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender or sanction such violation." Article XVI, 1849 Treaty.

The Hawaiian Kingdom also had consular relations with the United States by having a diplomatic legation at Washington, D.C., and Consul-Generals in New York and San Francisco. The United States, in turn, also had a diplomatic legation at Honolulu as well as a Consul General.

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On January 16, 1893, United States diplomatic and military personnel conspired with a small group of individuals to overthrow the constitutional government of the Hawaiian Kingdom and prepared to provide for annexation of the Hawaiian Islands to the United States of America, under a treaty of annexation submitted to the United States Senate on February 15, 1893. Newly elected U.S. President Grover Cleveland, having received notice that the cause of the so-called

revolution derived from intervention by U.S. diplomatic and military personnel, withdrew the treaty of annexation and appointed James H. Blount, as Special Commissioner, to investigate the terms of the so-called revolution and to report his findings.

On July 17, 1893, Special Commissioner James Blount reported accurately and fully upon the circumstances of the so-called revolution to U.S. Secretary of State Walter Gresham. Secretary of State Gresham then advised President Cleveland that

“The provisional government was established by the action of the American minister and the presence of the troops landed from the Boston, and its continued existence is due to the belief of the Hawaiians that if they made an effort to overthrow it, they would encounter the armed forces of the United States.

The Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign, and the Provisional Government was created “to exist until terms of union with the United States of America have been negotiated and

agreed upon.” A careful consideration of the fact will, I think, convince you that the treaty which was withdrawn from the Senate for further consideration should not be resubmitted for its action thereon.

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.”

From this advise the President deemed it proper not to resubmit the so-called treaty of annexation to the U.S. Senate and initiated certain steps to reinstate the Hawaiian Kingdom government. In a diplomatic

correspondence dated October 18th, 1893, to newly commissioned U.S. Minister Albert Willis, assigned to the U.S. Legation in the Hawaiian Islands, Secretary of State Gresham gave the following directive.

“On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination, making known to her the President’s sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong.

You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course by granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed.

Having secured the Queen’s agreement to pursue this wise and humane policy, which it is believed you will speedily obtain, you will then advise the executive of the Provisional Government and his ministers of the President’s determination of the question which their action and that of the Queen devolved upon him, and that they are expected to promptly relinquish to her constitutional authority.”

On December 20, 1893, U.S. Minister Albert Willis notified Secretary of State Gresham of the Queen’s acquiescence to the conditions of reinstatement dated December 18, 1893, which read, in part,

“I, Lili’uokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by

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those setting up or supporting the Provisional Government.”

For more political reasons than legal obligations, the United States fails to follow through in its commitment to assist in reinstating the constitutional government of the Hawaiian Kingdom. Instead, the United States allows five years to lapse and a new United States President, William McKinley, enters into a second treaty of annexation with the same individuals who participated in the so-called 1893 revolution on June 16, 1897. On the following day in Washington, D.C., Queen Lili’uokalani filed a diplomatic protest clearly relying upon the obligations of customary international law by stating, in part,

“I declare such a treaty to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me.

Because the official protests made by me on the seventeenth day of January, 1893, to the so-called Provisional Government was signed by me, and received by said government with the assurance that the case was referred to the United States of America for arbitration.

Because that protest and my communications to the

“...said treaty ignores, not only all professions of perpetual amity and good faith made by the United States in former treaties with the sovereigns representing the Hawaiian people, but all treaties made by those sovereigns with other and friendly powers, and it is thereby in violation of international law.” Protest of Queen Lili’uokalani against the 1897 treaty of annexation.

United States Government immediately thereafter expressly declare that I yielded my authority to the forces of the United States in order to avoid bloodshed, and because I recognized the futility of a conflict with so formidable a power.

Because the President of the United States, the Secretary of State, and an envoy commissioned by them reported in official documents that my government was unlawfully coerced by the forces, diplomatic and naval, of the United States; that I was at the date of their

investigations the constitutional ruler of my people...

Because said treaty ignores, not only all professions of perpetual amity and good faith made by the United States in former treaties with the sovereigns

representing the Hawaiian people, but all treaties made by those sovereigns with other and friendly powers, and it is thereby in violation of international law.

Because, by treating with the parties claiming at this time the right to cede said territory of Hawaii, the Government of the United States receives such territory from the hands of those whom its own magistrates (legally elected by the people of the United States, and in office in 1893) pronounced fraudulently in power and unconstitutionally ruling Hawaii.”

In addition, political organizations comprising of Hawaiian nationals also relied upon the obligations incurred and accepted by the United States government gave notice of their sentiment to the U.S. State Department in July of 1897, as well as presenting a petition of 21,169 signatures the U.S. Senate protesting the annexation attempt by treaty. As a result of these protests the Senate was not able to get the required two-thirds vote to ratify the so-called treaty.

In spite of the failure to ratify the treaty of annexation, the United States opted to unilaterally annex the Hawaiian Islands by a joint resolution that relied solely on its congressional authority, in defiance of its obligations under customary international law to the Hawaiian Kingdom, in order to establish a U.S. military outpost in the Pacific.

On August 6th, 1898, the political organizations who were responsible for the 1897 signature petitions protesting the treaty of annexation made a final protest to the United States government over the joint resolution of annexation. The protest stated, in part,

“WHEREAS: The so-called Republic of Hawaii by its Executive and Senate formulated a treaty to secure the annexation of Hawaii to the United States, and said treaty having failed of ratification by the Senate of the United States, and by such failure to ratify having become void and of no effect as to Hawaii, because of the terms Article 32 of the Constitution of the Republic of Hawaii, which read: ‘The President, with the approval of the Cabinet, is hereby expressly authorized and empowered to make a Treaty of Political or Commercial Union between the Republic of Hawaii and the United States of America, subject to the ratification of the Senate;’ and

WHEREAS: The Senate and House of Representatives of the United States have passed a joint resolution for the annexation of the Hawaiian Islands, and such joint resolution has not been passed upon by the people of Hawaii nor by their Representatives in Legislature assembled; and

WHEREAS: By memorial the people of Hawaii have protested against the consummation of an inva-

sion of their political rights, and have fervently appealed to the President, the Congress and the People of the United States to refrain from further participating in the wrongful annexation of Hawaii; and

WHEREAS: The Declaration of American Independence expresses that Governments derive their just powers from the consent of the governed; Therefore, Be it

RESOLVED: That as the representatives of a large and influential body of native Hawaiians, we solemnly protest against annexation in the manner proposed and without reference to or obtaining the consent of the people of the Hawaiian Islands.”

Westel W. Willoughby, a U.S. Constitutional scholar and author of *The Constitutional Law of the United States* (1929), made the following comment concerning the annexation of the Hawaiian Islands.

"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 it is enacted."

For the next century, the United States would rely exclusively on its Congressional authority to govern the Hawaiian Islands, and would make no effort to extinguish the Hawaiian Kingdom before any international tribunal.

The fundamental question herein lies whether the obligations incurred upon the United States as a matter of customary international law to the Hawaiian Kingdom can be removed. J.L.Brierly, author of the *Law of Nations*, states,

"...what is sought for [in customary law] is a general recognition among States of a certain practice as obligatory."

This practice by the Hawaiian Kingdom and the United States, coupled with objective norms of international law, the *jus cogens**, forms the basis of international rights and duties to each State as both are the subjects of international law and the obligations that arise through custom. Judge Huber, in an international arbitration case, *Spanish Zone of Morocco Claims*, said:

"Responsibility is the necessary corollary of a right. All rights of an international character involve international responsibility. If the obligation in question is not met, responsibility entails the duty to make reparation."

These scholars do not imply or even entertain the

notion that State obligations can be unilaterally withdrawn. Rather it is the withdrawal that serves as evidence of the violation of obligations incurred by the unfaithful State.

It has been seen that the United States and the Hawaiian Kingdom have clearly created a uniform and consistent practice of a bi-lateral relationship as evidenced by the multiple treaties and conventions as well as the diplomatic correspondences; in particular, referring to the investigation of the so-called revolution of 1893 and the agreements that followed between Queen Lili'uokalani and President Cleveland.

The events that occurred since January 16th, 1893 and leading to the so-called annexation of 1898 must be emphatically categorized in its proper context as fraud and not conquest. Therefore, in the absence of cession, conquest or a proven claim of prescription extinguishing Hawaiian statehood, the national character of the Hawaiian Kingdom cannot be legally changed without its consent. As such, the legal status of the Hawaiian Kingdom is an illegally occupied State by a nation that can claim no international right or title, except by its Congressional legislation. On this note Professor Brownlie explains that:

"...illegal occupation cannot of itself terminate statehood. Elsewhere the general question of balancing effectiveness and the principle *ex injuria non oritur jus*** is considered. Here it must suffice to point out that, when elements of certain strong norms (the *jus cogens*) are involved, it is less likely that recognition and acquiescence will offset the original illegality."

* *jus cogens* are authoritative rules of general international law

***ex injuria non oritur jus* is the principle that no benefit can be received from an illegal act

**"...illegal occupation cannot of itself terminate statehood.",
Professor Ian Brownlie,
QC, expert on Public
International Law.**

David Keanu Sai is presently serving as acting Minister of the Interior and Chairman of the Council of Regency. He served as lead Agent for the acting government of the Hawaiian Kingdom in arbitration proceedings before the Permanent Court of Arbitration at The Hague, Netherlands, from November 1999-February 2001. He is also serving as Agent in a Complaint against the United States of America concerning the prolonged occupation of the Hawaiian Kingdom, which was filed with the United Nations Security Council on July 5, 2001. For more information and updates visit our website at: