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

Kauʻi P. Sai-Dudoit,
Acting Minister of Finance

SITUATION 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—80th 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, an amendment to the *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*, that was received by both the President of the United Nations General Assembly of the 79th session and the Secretary-General on 14 August 2025 by courier. This amendment called *Situation 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* replaces, in its entirety, the Hawaiian Kingdom's Complaint.

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 2014, 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, pursuant to Article 41(2) of the International Law Commission's Articles of State Responsibility for Internationally Wrongful Acts ("ASR"). According to the International Law Commission, in its comments of the ASR, "[u]nder article 41, paragraph 2, no State shall recognize the situation created by the serious breach as lawful. This obligation applies to all States, including the responsible State."[1]

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."[2]

[1] International Law Commission, Draft articles of Responsibility of States for Internationally Wrongful Acts, with commentaries 115 (2001).
[2] Larsen v. Hawaiian Kingdom, 119 *International Law Reports* 566, 581 (2001).

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.[3] The Hawaiian Kingdom treaty partners include 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.[4] 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"[5] by the recognizing State, and that "recognition estops the State which has recognized the title from contesting its validity at any future time."[6] 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.'"[7]

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 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.[8]

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[3] 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); see also 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* 58-94 (2020) (online at https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf).

[4] "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).

[5] Lassa Oppenheim, *International Law* 137 (3rd ed. 1920).

[6] Georg Schwarzenberger, "Title to Territory: Response to a Challenge," 51(2) *American Journal of International Law* 308, 316 (1957).

[7] Restatement (Third) of the Foreign Relations Law of the United States, §202, comment g.

[8] 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*

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.[9] Under Hawaiian law, the *acting* Council of Regency serves in the absence of the Executive Monarch. The last Executive Monarch was Queen Lili'uokalani who died on 11 November 1917.

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,[10] 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.[11] 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."[12]

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.[13] 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

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Hawaiian Kingdom 114 (2020) (online at https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf).

[9] 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).

[10] U.S. Secretary of State Calhoun to Hawaiian Commissioners (6 July 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).

[11] M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815-1995* 26 (1997).

[12] *Restatement (Third)*, §203, comment c.

[13] *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at https://pca-cpa.org/en/cases/35/).

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 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.'"[14]

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."[15] 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."[16]

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."[17] 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

[14] Lenzerini, 322.
[15] *German Settlers in Poland*, 1923, PCIJ, Series B, No. 6, 22.
[16] Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* 115 (1998).
[17] Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at https://pca-cpa.org/en/cases/35/).

> 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.[18]

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. This agreement was brokered by Deputy Secretary General Phyllis Hamilton, of the Permanent Court, prior to the formation of the arbitral tribunal.[19]

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."[20] 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].[21]

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.

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[18] *Id*.
[19] Sai, The Royal Commission of Inquiry, 25-26.
[20] *Island of Palmas* Case (Netherlands v. United States) 2 R.I.A.A. 838 (1928).
[21] *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).

3.12 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.

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).[22]

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 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)."[23]

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."[24]

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:

[22] Eyal Benvenisti, *The International Law of Occupation* 6 (2nd ed. 2012).
[23] U.S. Department of the Army, Field Manual 27-10, *The Law of Land Warfare* (1956), para. 358.
[24] U.S. Department of the Army, Field Manual 27-5, *Civil Affairs Military Government* (1947), para. 3.

> 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 usually abrogated, but are allowed to remain in force and to be administered by the ordinary tribunals, substantially as they were before the occupation.[25]

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

[25] *Ochoa v. Hernandez*, 230 U.S. 139, 156 (1913).

comports with the policy of the dominant power to establish civil jurisdiction."[26] 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 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."[27] 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."[28] 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."

[26] William E. Birkhimer, *Military Government and Martial Law* 21 (3rd ed. 1914).
[27] Earl F. Ziemke, *The U.S. Army in the Occupation of Germany 1944-1946* 22 (1975).
[28] Benvenisti, 5.

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.[29] 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 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."

[29] U.S. Department of Defense, *Manual for Courts-Martial United States* IV-28 (2024 ed.).

- 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."[30] President Grover Cleveland determined, after a Presidential investigation, that this "military demonstration upon the soil of Honolulu was of itself an act of war."[31] He also concluded that the overthrow of the Hawaiian Government the following day, on January 17th, was also an "act of war."[32] 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.[33]

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,"[34] and belligerent occupation "does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[35] 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

[30] United States, House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894–1895* 451 (1895).
[31] *Id*.
[32] *Id*., 456.
[33] *Id*., 452.
[34] James Crawford, *The Creation of States in International Law* 34 (2nd ed. 2007).
[35] *Id*.

> 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 continued legal existence of a legal personality and the attribution of territory to that legal person and not to holders for the time being.[36]

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."[37] 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*[38] and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.[39] 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."[40] 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

[36] Ian Brownlie, *Principles of Public International* Law 109 (4th ed. 1990).
[37] 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).
[38] 9 Stat. 922 (1848).
[39] 30 Stat. 1754 (1898).
[40] Executive Documents, 454.

> 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 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.[41]

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,[42] 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.

[41] Krystyna Marek, *Identity and Continuity of States in Public International Law* 115(1968).
[42] Christopher R. Rossi, *Equity and International Law: A Legal Realist Approach to International Decisionmaking* 43-45 (1993).

> 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.
> 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.[43]

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."[44] 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.[45]

[43] Executive Documents, 455-456.
[44] L. Oppenheim, *International Law—A Treatise*, vol. II, War and Neutrality §283 (2nd ed. 1912).
[45] Marek, 83.

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.[46]

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*.[47] 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."[48] 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*.[49] International law does not permit annexation of territory of another state.[50]

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.[51] The OLC concluded that only the

[46] 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).
[47] 30 Stat. 750 (1898).
[48] Adam Roberts, "Transformative Military Occupation: Applying the Laws of War and Human Rights," 100(3) *American Journal of International Law* 580, 583 (2006).
[49] 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.
[50] Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts* Section 525, 242 (1995).
[51] Douglas Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea," 12 *Opinions of the Office of Legal Counsel* 238 (1988).

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."[52]

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 law on behalf of the United States."[53] 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."[54]

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."[55]

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."[56] 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."[57] 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

[52] *Id.*, 242.
[53] *Id.*
[54] *Id.*, 262.
[55] *The Apollon*, 22 U.S. 362, 370 (1824).
[56] Kmiec, 252.
[57] Westel Woodbury Willoughby, *The Constitutional Law of the United States*, vol. 1, 345 (1910).

> 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 occupation law accepted by mid-to-late 19th-century publicists was that an occupant could not alter the political order of territory."[58]

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.[59] This fundamental flaw means that Hawai'i should have never been place 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*.[60]

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."[61] 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."[62]

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[58] Federico Lenzerini, "Military Occupation, Sovereignty, and the ex injuria jus non oritur Principle. Complying wit 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).
[59] *Transmission of Information under Article 73e of the Charter, December 14, 1946,* United Nations General Assembly Resolution 66(I).
[60] *Larsen v. Hawaiian Kingdom*, 581.
[61] Craven, 144.
[62] Crawford, 623, n. 83.

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 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.[63] 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."[64] 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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[63] *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).

[64] *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).

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,[65] 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.[66]

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."[67] 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*]."[68] 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.[69]

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[65] 107 Stat. 1510 (1993).
[66] *State of Hawai'i v. Lorenzo*, 77 Haw. 219, 220; 883 P.2d 641, 642 (1994).
[67] *Id.,* 221, 643.
[68] *State of Hawai'i v. Fergerstrom*, 106 Haw. 43, 55; 101 P.3d 652, 664 (2004).
[69] *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."[70] 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.'[71] 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."[72]

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

[70] *Lorenzo* case, 220, 642.
[71] Kmiec, 252.
[72] American Law Institute, Restatement of the Law Third, The Foreign Relations Law of the United States, §102 (1987).

system should be recognized,"[73] 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."[74] 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.'[75] 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."[76] 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."[77] 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."[78] 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

[73] *Lorenzo* case, fn. 2.
[74] *Id*.
[75] Executive Documents, 454.
[76] Black's Law Dictionary 1574 (1990).
[77] American Law Institute, *Restatement of the Law Second, Judgments*, §7, comment f, 45 (1942).
[78] 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."[79] 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, Czech Republic, Hungary, Poland and Slovakia;

- 1862 Treaty of Amity, Commerce and Navigation between the Hawaiian Kingdom and Belgium—Burundi, 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, Congo, 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;

- 1879 Treaty of Peace and Friendship between the Hawaiian Kingdom and Germany—Poland;

[79] 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).

- 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, Luxemburg, 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, Estonia, Finland, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Mongolia, Poland, Republic of Moldova, 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 153 Member States of the United Nations, of which 14 treaties are with original States and 139 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."[80] 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."[81] 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.[82] 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

[80] Executive Documents, 972.
[81] *Id*.
[82] *An Act to Authorize the Formation of a National Guard,* Laws of the Provisional Government of the Hawaiian Islands (1893), 8.

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.

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.[83]

3.59 Under *An Act To provide a government for the Territory of Hawaii* enacted by the U.S. Congress on 30 April 1900,[84] 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.[85] 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."[86] 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 […]."[87] 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*

[83] *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.
[84] *An Act To provide a government for the Territory of Hawaii*, 31 Stat. 141 (1900).
[85] *An Act To provide for the admission of the State of Hawaii into the Union*, 73 Stat. 4 (1959).
[86] Hawai‘i Revised Statutes, §121-7.
[87] *Id*., §121-9.

government for the Territory of Hawaii, on 30 April 1900.[88] 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 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.[89]

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."[90] 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."[91] 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."[92] To do so, according to Professor Schabas, is the war crime of usurpation of sovereignty during occupation.[93]

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."[94] 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."[95]

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

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[88] 31 Stat. 141 (1900).
[89] 73 Stat. 4 (1959).
[90] *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).
[91] *The Apollon*, 22 U.S. 362, 370 (1824).
[92] *Lotus* case, 18.
[93] 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).
[94] 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).
[95] *Id*., 6.

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 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.[96] 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.

[96] Proclamation: Provisional Laws (14 October 2014) (online at https://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf).

To determine the provisional laws of the Realm, a memorandum, on the formula to determine provisional laws, was published on 22 March 2023.[97]

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."[98] 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.

[97] 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).
[98] Article 43, 1907 Hague Regulations.

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,[99] established a Royal Commission of Inquiry ("RCI"). This was done in a 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."[100] 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."[101] 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*.[102] 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

[99] Proclamation: Establishment of the Royal Commission of Inquiry (17 April 2019) (online at https://hawaiiankingdom.org/pdf/Proc_Royal_Commission_of_Inquiry.pdf).
[100] International Law Commission, *Historical Survey of the Question of International Criminal Jurisdiction Memorandum submitted by the Secretary-General* 54 (1949).
[101] 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).
[102] 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).

> 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.[103]

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 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*.[104] 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

[103] Schabas, 342.
[104] 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).

> 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).

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."[105] 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."[106] 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."[107] 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

[105] *United States v. Alstötter et al.*, Opinion of Mallory B. Blair, Judge of Military Tribunal III, III TWC 1178, 1181 (1951).
[106] Schabas, 344.
[107] Conclusion 16—Particular customary international law, International Law Commission's Draft conclusions on identification of customary international law, with commentaries (2018) (A/73/10).

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, 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.[108]

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

[108] Eyal Benvenisti, *The International Law of Occupation* 19 (1993).

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.

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.[109] 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.[110] 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."[111]

[109] 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).
[110] 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).
[111] 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/).

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 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.[112] 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."

[112] 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/).

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:

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

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

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."[113]

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.[114] 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."

[113] 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.
[114] 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/).

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:

> 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."[115] 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.*"[116]

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-

[115] Nuno Sérgio Marques Antunes, "Acquiescence", in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* para. 2 (2006).
[116] 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.

LEK-RT.[117] United States and State of Hawai'i officials were sued in their official capacities as State actors because the war crime of usurpation of sovereignty during military occupation involves State action or policy or the action or policies of an occupying State's proxies, and are not the private actions of individuals. The complaint sought to:

> Enjoin Defendants from implementing or enforcing all laws of the Defendants UNITED STATES OF AMERICA and the STATE OF HAWAI'I and its Counties, to include the United States constitution, State of Hawai'i constitution, Federal and State of Hawai'i 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.[118] The request for leave was granted.[119] The movants stated:

> While the issue of Hawaiian sovereignty may be familiar to this Court, this matter is undoubtedly a case of first impression. However, there are exigent circumstances that necessitate this court's assuming jurisdiction as an Article II occupation court.
>
> This court can sit as an Article II court because the United States controls Hawai'i not as a sovereign but as an occupying power and there has been no peace treaty between states to end the occupation.39 Article II courts can extend their jurisdiction to maintain orderly control of an occupied territory. Exercising Article II jurisdiction and granting the requested injunctive relief complies with public international law. In this manner, this Court could apply local law as required of an occupying power by the laws of war.
>
> Article II courts can extend their jurisdiction to maintain orderly control of an occupied territory. For example, the Provisional Court of Louisiana held Article II jurisdiction over the sections of Louisiana under the control of Union forces. The

[117] *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).
[118] 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).
[119] 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).

> Provisional Court (as provost courts established by military criminal matters in the occupied territory. Concurrently, Union military commanders revived the local parish courts in occupied territory. These parish courts directed their judgments to the Louisiana Supreme Court for appellate review. One problem: the Louisiana Supreme Court sat in Baton Rouge, which the Confederacy still controlled. Judge Peabody, the chief judge of the Provisional Court, remedied this problem by transferring all cases pending before the Louisiana Supreme Court to his tribunal. By extending his jurisdiction Judge Peabody was able to maintain orderly control of an occupied territory. Louisianans could have their cases heard in local courts applying local law without giving up their right to appellate review. This Court could do the same by assuming jurisdiction as an Article II court and allow Hawaiians to have their cases heard by an occupying court applying local law, as required by the laws of war.
>
> 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.[120]

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,[121] 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);

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

4. War Criminal Report no. 22-0003-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Elizabeth A. Strance, Mark D. Disher & Dakota K. Frenz (20 November 2022);
5. War Criminal Report no. 22-0004 *re Usurpation of Sovereignty during Military Occupation*—Michael Victorino & Alice Lee (17 November 2022);
6. War Criminal Report no. 22-0004-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Moana M. Lutey, Caleb P. Rowe & Iwalani Mountcastle (20 November 2022);
7. War Criminal Report no. 22-0005 *re Usurpation of Sovereignty during Military Occupation*—David Yutake Ige, Ty Nohara, & Isaac W. Choy (18 November 2022);
8. War Criminal Report no. 22-0005-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Holly T. Shikada & Amanda J. Weston (20 November 2022);
9. War Criminal Report no. 22-0006 *re Usurpation of Sovereignty during Military Occupation*—Anders G.O. Nervell (18 November 2022);
10. War Criminal Report no. 22-0006-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Scott I. Batterman (20 November 2022);
11. War Criminal Report no. 22-0007 *re Usurpation of Sovereignty during Military Occupation*—Joseph Robinette Biden Jr., Kamala Harris, Admiral John Aquilino, Charles P. Rettig, Charles E. Schumer & Nancy Pelosi (18 November 2022);
12. Amended War Criminal Report no. 22-0007—Withdrawal of Admiral John Aquilino (23 February 2024);
13. War Criminal Report no. 22-0007-1 *re Accomplice to Usurpation of Sovereignty during Military Occupation*—Brian M. Boynton, Anthony J. Coppolino & Michael J. Gerardi (20 November 2022);
14. War Criminal Report no. 22-0008 *re Usurpation of Sovereignty during Military Occupation & Deprivation of Fair and Regular Trial*—Leslie E. Kobayashi & Rom A. Trader (23 November 2022);
15. War Criminal Report no. 22-0009 *re Usurpation of Sovereignty during Military Occupation, Deprivation of Fair and Regular Trial & Pillage*—Mark E. Recktenwald, Paula A. Nakayama, Sabrina S. McKenna, Richard W. Pollack, Michale D. Wilson, Todd W. Eddins, Glenn S. Hara, Greg K. Nakamura, Charles Prather, Sofia M. Hirosane, Daryl Y. Dobayashi, James E. Evers, Josiah K. Sewell, Clifford L. Nakea, Bradley R. Tamm & Alana L. Bryant (28 December 2022);
16. War Criminal Report no. 22-0009-1 *re Usurpation of Sovereignty during Military Occupation, Deprivation of Fair and Regular Trial*—Derrick K. Watson, J. Michael Seabright, Leslie E. Kobayashi & Jill A. Otake (28 February 2023);
17. War Criminal Report no. 23-0001 *re Usurpation of Sovereignty during Military Occupation*—Anne E. Lopez, Craig Y. Iha, Ryan K.P. Kanakaʻole,

Alyssa-Marie Y. Kau, Peter Kahana Albinio, Jr. & Joseph Kuali'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."[122] The perpetrators are subject to prosecution as there is no statute of limitation for war crimes.[123]

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.

[122] Mohamed Elewa Badar, *The Concept of Mens Rea in International Criminal Law: The Case for a Unified Approach* 535 (2013).
[123] 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).

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.[124]

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

1. There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international;
2. In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non-international;
3. There is only a requirement for the awareness of the factual circumstance that established the existence of an armed conflict that is implicit in the terms "took place in the context of and was associated with."[125]

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

[124] Schabas, 358.
[125] *Id*., 357.

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, 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.[126] 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.[127]

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*.[128] 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.[129]

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.

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[126] 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).
[127] 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).
[128] "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).
[129] "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).

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.[130] 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 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.[131] 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.

[130] 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).
[131] 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).

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 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."[132]

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.[133] 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.

[132] 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).
[133] Ayau Letter to Attorney General Lopez (3 June 2025) (online at https://hawaiiankingdom.org/pdf/Ltr_to_AG_for_Legal_Opinion_URLs.pdf).

> 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 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."[134]

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.[135] 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

[134] 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/).
[135] Ayau Letter to Attorney General Lopez (7 July 2025) (online at https://hawaiiankingdom.org/pdf/EHA_Ltr_to_Rosner_(7.7.25).pdf).

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.

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."[136]

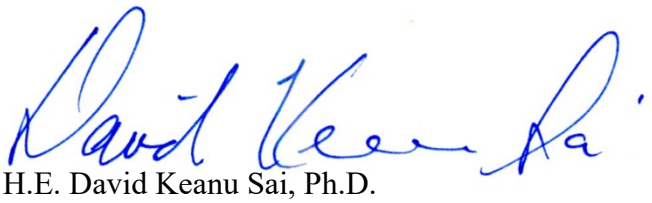
[136] Federico Lenzerini, "Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom," 3 *Hawaiian Journal of Law and Politics* 331 (2021) (online at https://hawaiiankingdom.org/pdf/3HawJLPol317_(Lenzerini).pdf).

4.43 The law of occupation also states that the occupant must work together with the government of the Occupied State.[137] 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 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 There is "a universally recognized principle of international law [that] states that the State is responsible for the violations of the law of nations committed by its agents."[138] Officials of the State of Hawai'i are agents of the United States, and, therefore, the United States is responsible for the violations of international humanitarian law and the law of occupation.

4.45 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.



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13 October 2025

[137] *Id*., 330.
[138] United Nations, *Reports of International Arbitral Awards*, vol. XV (United Nations publication, Sales no. 66.V.3), pp. 399, 401, 404, 407, 408, 409 and 411). (Translation by the United Nations Secretariat.)