

HUMAN RIGHTS COUNCIL COMPLAINT

I. Information concerning the alleged victims if other than the author

Last name: Sai

First name: David Keanu

Nationality: Hawaiian

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Email: keanu.sai@gmail.com

The complainant, David Keanu Sai, Ph.D., is submitting this complaint on behalf of all Protect Persons, as defined by the 1949 Geneva Convention, IV, who have been victimized by the unlawful imposition of the domestic laws of the United States of America (United States) within the territory of the Hawaiian Kingdom. The complainant served as Agent for the Hawaiian Kingdom government in arbitral proceedings in *Lance Larsen v. Hawaiian Kingdom* held under the auspices of the Permanent Court of Arbitration, PCA Case No. 1999-01.¹ The basis of the dispute in the *Larsen* case was the unlawful imposition of United States domestic laws that led to the alleged commission of war crimes against Mr. Larsen. Accompanying this complaint is the addendum to the complaint, complainant's curriculum vitae, and appendices I through III.

In a complaint dated 23 May 2016 to the Human Rights Council and received by the Working Group on Communications of the Complaint Procedure for the Human Rights Council on 1 June 2016, the complainant, on behalf of Mr. Kale Gumapac, a Hawaiian national, brought to the attention of the Human Rights Council war crimes committed against Mr. Kale Gumapac by the State of Hawai'i, through its so-called court and enforcement arm, that failed to administer Hawaiian Kingdom laws, being the laws of the occupied State. Mr. Gumapac's case is similar to the *Larsen* case.

In a communication to complainant dated 7 July 2017, the Secretariat of the Complaint Procedure of the Human Rights Council stated, "we regret to inform you that the Working Group on Communications of the Complaint Procedure of the Human Rights Council is not in a position to assist in the matter you raise, for the reasons indicated on the back of this letter." The reason stated, "Your communication does not address consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms."²

The Independent Expert on the promotion of a democratic and equitable international order, Dr. Alfred M. deZayas, on 25 February 2018, provided a communication to the United States President Donald Trump,³ former Secretary of State Rex Tillerson,⁴ former

¹ See Appendix I, *Larsen/Hawaiian Kingdom*, Permanent Court of Arbitration, PCA Case Repository.

² See Appendix II, *Reasons for inadmissibility of communication* (7 July 2017).

³ Available at: [http://hawaiiankingdom.org/pdf/La_Poste_Tracking_\(US_Pres_Trump\).pdf](http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(US_Pres_Trump).pdf).

State of Hawai‘i Attorney General Douglas Chin,⁵ State of Hawai‘i Judge Gary W.B. Chang of the Land Court,⁶ and State of Hawai‘i Judge Jeanette H. Castagnette of the First Circuit,⁷ that the United States is in violation of international humanitarian law and calls upon the United States to comply with international law. In his communication, Dr. deZayas wrote:

As a professor of international law, the former Secretary of the UN Human Rights Committee, co-author of book, *The United Nations Human Rights Committee Case Law 1977-2008*, and currently serving as the UN Independent Expert on the promotion of a democratic and equitable international order, 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 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).

Based on that understanding, in paragraph 69(n) of my 2013 report (A/68/284) to the United Nations General Assembly I recommended that the people of the Hawaiian Islands—and other peoples and nations in similar situations—be provided access to UN procedures and mechanisms in order to exercise their rights protected under international law. The adjudication of land transactions in the Hawaiian Islands would likewise be a matter of Hawaiian Kingdom law and international law, not domestic U.S. law.

I have reviewed the complaint submitted in 2017 by Mme Routh Bolomet to the United Nations Office of the High Commissioner for Human Rights, pointing out historical and ongoing plundering of the Hawaiians’ lands, particularly of those heirs and descendants with land titles that originate from the distributions of land under the authority of the Hawaiian Kingdom. Pursuant to the U.S. Supreme Court judgment in the *Paquete Habana* Case (1900), U.S. courts have to take international law and customary international law into account in property disputes. The [S]tate of Hawaii courts should not lend themselves to a flagrant violation of the rights of the land title holders and in consequence of pertinent international norms. Therefore, the courts of the State of Hawaii must not enable or collude in the wrongful taking of private lands, bearing in mind that the right to property is recognized not only in U.S. law but also in Article 17 of the Universal Declaration of Human Rights, adopted under the leadership of Eleanor Roosevelt.⁸

Dr. deZayas confirms that the alleged violations of Mr. Gumapac’s rights as a Hawaiian

⁴ Available at: [http://hawaiiankingdom.org/pdf/La_Poste_Tracking_\(US_Sec_State_Tillerson\).pdf](http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(US_Sec_State_Tillerson).pdf).

⁵ Available at: [http://hawaiiankingdom.org/pdf/La_Poste_Tracking_\(SOH_AG_Chin\).pdf](http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(SOH_AG_Chin).pdf).

⁶ Available at: [http://hawaiiankingdom.org/pdf/La_Poste_Tracking_\(SOH_Judge_Chang\).pdf](http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(SOH_Judge_Chang).pdf).

⁷ Available at: [http://hawaiiankingdom.org/pdf/La_Poste_Tracking_\(SOH_Judge_Castagnetti\).pdf](http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(SOH_Judge_Castagnetti).pdf).

⁸ See Appendix III, *Communication by the Independent Expert on the promotion of a democratic and equitable international order* (25 Feb. 2018).

national by the extrajudicial proceedings of a State of Hawai‘i court constitutes a “pattern of gross violation.”⁹ That any and all persons who have been subjected to the power and control of the United States and the State of Hawai‘i within Hawaiian territory are victims as defined under the 1907 Hague Regulations and the 1949 Geneva Convention, IV. As such, this pattern of gross violations includes breaches of international humanitarian law.¹⁰

In its first resolution, the Tehran International Conference on Human Rights called upon Israel to apply both the Universal Declaration of Human Rights and the Geneva Conventions in the occupied Palestinian territories.¹¹ A follow up resolution by the International Conference entitled *Respect for Human Rights in Armed Conflict*, which was reaffirmed in United Nations General Assembly Resolution 2444 (19 Dec. 1968), called upon the Secretary General to “draft a report on measures to be adopted for the protection of all individuals in times of armed conflict.”¹² According to Droege, the “two reports of the Secretary-General conclude that human rights instruments, particularly the International Covenant on Civil and Political Rights (which had not even entered into force at that time) afforded a more comprehensive protection to persons in times of armed conflict than the Geneva Conventions only.”¹³

Dr. deZayas’ communication to the United States and the State of Hawai‘i conform to this view that the Hague and Geneva Conventions apply under the scope of the Human Rights Council and his mandate as the *Independent Expert on the promotion of a democratic and equitable international order*. Therefore, this renewed complaint conforms to the admissibility criteria set forth in the Human Rights Council resolution 5/1 of 18 June 2007 (paragraphs 85 to 87).

II. Information on the State concerned

Throughout the nineteenth century the Hawaiian Kingdom existed as a recognized independent and sovereign State with over ninety Legations and Consulates throughout the world. The United States of America (hereinafter “United States”) explicitly recognized Hawaiian independence on 6 July 1844 and entered into a treaty of friendship, commerce and navigation on 20 December 1849. The Hawaiian Kingdom maintained a Legation in Washington, D.C., and Consulates throughout the United States, while the United States maintained a Legation in Honolulu and Consulates throughout the Hawaiian Islands.¹⁴ According to Westlake in 1894, the *Family of Nations* comprised,

⁹ ECOSOC, Official Records, 11th Sess., (1950), Summary Record of the Hundred and Sixtieth Meeting of the Social Committee: UN doc. E/AC.7/SR.637.

¹⁰ *Id.*, E/AC.7/SR.638.

¹¹ Final Act of the International Conference on Human Rights, UN Doc. A/Conf.32/41 (Apr. 22-May 13, 1968).

¹² Cordula Droege, *The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict*, 40(2) *Isr. L. Rev.* 310, 315 (2007).

¹³ *Id.*

¹⁴ See Appendix IV, *Hawaiian Register and Directory for 1893*.

“First, all European States.... Secondly, all American States.... Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State.”¹⁵

After the United States admitted to have illegally installed an insurgency on 17 January 1893 for the purpose of acquiring the Hawaiian Islands by cession; after having entered into an executive agreement to reinstate Queen Lili‘uokalani as the executive monarch; after having failed to reinstate the executive monarch that allowed for the insurgency to continue; after failing to ratify a so-called treaty of cession signed on 16 June 1897 with the insurgency because of the political actions taken by Queen Lili‘uokalani and Hawaiian subjects; Hawaiian subjects have been under siege by an illegal regime that seized control of its governmental infrastructure. The Hawaiian Kingdom has been under an illegal and prolonged occupation by the United States whereby the United States willfully and deliberately failed to administer the laws of the Hawaiian Kingdom, as an occupied State, in violation of customary international law, which was later codified under Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Geneva Convention, IV.

Since the occupation began, the United States engaged in the criminal conduct of *genocide* under humanitarian law through *denationalization*. After local institutions of Hawaiian self-government were destroyed by the United States through its installed insurgency, a United States pattern of administration was imposed in 1900, whereby the former Hawaiian national character was obliterated. The United States interfered with the methods of education; compelled education in the English language; banned the use of Hawaiian, being the national language, in the schools; compulsory or automatic granting of United States citizenship upon Hawaiian nationals; imposed conscription of Hawaiian nationals into the armed forces of the United States; imposed the duty of swearing the oath of allegiance; confiscated and destroyed property of Hawaiian nationals for militarization; pillaged the property and estates of Hawaiian nationals; imposed American administrative and judicial systems; imposed American financial and economic administration; colonized Hawaiian territory with nationals of the United States; permeated the economic life through individuals whose nationality and/or allegiance was American; and denied Hawaiian nationals of aboriginal blood their vested right to health care at no charge at Queen’s Hospital, which was established by the Hawaiian government for that purpose.

The United States did precisely what the Bulgarians, Austrians and Germans did to Serbia when the Serbian State was occupied by Bulgaria during the First World War, and which the 1919 *Commission on Responsibility of the Authors of the War and on Enforcement of Penalties* labeled as the war crime of *usurpation of sovereignty during*

¹⁵ John Westlake, *Chapters on the Principles of International Law* 81 (1894). In 1893, there were 44 independent and sovereign States in the *Family of Nations*: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chili, Colombia, Costa Rica, Denmark, Ecuador, France, Germany, Great Britain, Greece, Guatemala, Hawaiian Kingdom, Haiti, Honduras, Italy, Liberia, Liechtenstein, Luxembourg, Netherlands, Mexico, Monaco, Montenegro, Nicaragua, Orange Free State that was later annexed by Great Britain in 1900, Paraguay, Peru, Portugal, Romania, Russia, San Domingo, San Salvador, Serbia, Spain, Sweden-Norway, Switzerland, Turkey, United States of America, Uruguay, and Venezuela.

military occupation, to wit: “Serbian law, courts, and administration ousted; taxes collected under Bulgarian fiscal regime; Serbian currency suppressed; Austrians suspended many Serbian laws and substituted their own, especially in penal matters, in procedure, [and] judicial organization,” and under the war crime of *attempts to denationalize the inhabitants of occupied territory, to wit:* “Efforts to impose their national characteristics on the population; Serbian language forbidden in private as well as official relations; ...Bulgarian schools and churches substituted—attendance at school made compulsory; population forced to be present at Bulgarian national solemnities; [and] Austrians and Germans...interfered with the use of the Serbian language.”

However, despite the illegal overthrow of the Hawaiian government in 1893 and the criminal conduct of *genocide* through *denationalization* that has obliterated the Hawaiian national consciousness, the continuity of the Hawaiian Kingdom as a State is maintained under international law. In international arbitration proceedings under the auspices of the Permanent Court of Arbitration (hereafter “PCA”), The Hague, Netherlands, in *Lance Paul Larsen v. Hawaiian Kingdom*, the Secretariat of the PCA explicitly recognized the continued existence of the Hawaiian Kingdom as a State for the purpose of fulfilling the PCA’s requirement that it has institutional jurisdiction before it could establish an *ad hoc* tribunal to address the dispute between a Hawaiian national and the Hawaiian government that was restored in 1995.¹⁶ Furthermore, the PCA designated the Hawaiian Kingdom in the arbitral proceedings as a Non-Contracting Power pursuant to Article 47 of the 1907 Hague Convention, I, for the Pacific Settlement of International Disputes.¹⁷ According to the *American Journal of International Law*,

At the center of the PCA proceedings was...that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States’ ‘unlawful imposition [over him] of [its] municipals’ through its political subdivision, the State of Hawai‘i. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him.¹⁸

After oral hearings were held at the PCA on 7, 8 and 11 December 2000, the Tribunal issued its Award on 5 February 2001. In concluding that it was a necessary third party and having received confirmation that the United States declined formal invitations to join in the arbitral proceedings, the Tribunal could not maintain its jurisdiction in the absence of the United States. The Tribunal did, however, conclude by *dictum*, “that in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States,

¹⁶ See Appendix I.

¹⁷ See PCA Annual Report, Annex 2 (2011), p. 51, n. 2. The PCA’s designation of the Hawaiian Kingdom as a Non-Contracting Power is also provided in the Annual Reports of 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010.

¹⁸ David Bederman & Kurt Hilbert, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii*, 95 Am. J. Int’l L. 927, 928 (2001).

including by exchanges of diplomatic or consular representatives and the conclusion of treaties.”¹⁹

This *dictum* is significant because as an independent State since the nineteenth century, the United States, the United Kingdom and various other States recognized that only Hawaiian laws could extend over Hawaiian territory independent of any other law of any State, specifically the laws of the United States. The independence of Hawai‘i and the United States is embodied in Article 8, 1849 Hawaiian-American Treaty, which provides, “each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively.”²⁰

The authorities responsible for the violation of international humanitarian law and human rights law after the Second World War, as principals, include the following Presidents of the United States who appointed Governors for the Territory of Hawai‘i from 1900 to 1959; and the Governors of the State of Hawai‘i, being the armed force of the United States since 1959.

Presidents: William McKinley (1897-1901), Theodore Roosevelt (1901-1909), William Howard Taft (1909-1913), Woodrow Wilson (1913-1921), Warren Harding (1921-1923), Calvin Coolidge (1923-1929), Herbert Hoover (1929-1933), Franklin Roosevelt (1933-1945), Harry Truman (1945-1953), Dwight Eisenhower (1953-1961), John Kennedy (1961-1963), Lyndon Johnson (1963-1969), Richard Nixon (1969-1974), Gerald Ford (1974-1977), James Carter, Jr. (1977-1981), Ronald Reagan (1981-1989), George H.W. Bush (1989-1993), William Clinton (1993-2001), George W. Bush (2001-2009), Barack Obama (2009-2017), and Donald Trump (2017-present).

Governors: William F. Quinn (1959-1962), John A. Burns (1962-1974), George Ariyoshi (1974-1986), John D. Waihe‘e III (1986-1994), Ben Cayetano (1994-2002), Linda Lingle (2002-2010), Neil Abercrombie (2010-2014), and David Ige (2014-present).

Currently, United States President Donald Trump, who represents officials of the United States, and Governor David Ige, who represents officials of the State of Hawai‘i have and continue to engage in criminal conduct and the commission of alleged war crimes as defined under international humanitarian law, as well as violations of international human rights law.

¹⁹ *Larsen v. Hawaiian Kingdom*, 119 Int’l L. Rep. 566, 581 (2001).

²⁰ *Hawaiian-American Treaty of Friendship, Commerce and Navigation* (Dec. 20, 1849), available at: <http://hawaiiankingdom.org/pdf/Annex%206.pdf>.

III. Facts of the complaint and nature of the alleged violations

The complainant herein incorporates the facts of the complaint dated 25 May 2016, on behalf of Mr. Kale Kepekaio Gumapac, in addition to the facts accompanied in the attached addendum to this complaint that provides a systemic and pattern of gross violations, which includes breaches of international humanitarian law and international human rights law.

In light of the communication by the Independent Expert on the promotion of a democratic and equitable international order, Dr. deZayas, on 25 February 2018, that notified the United States and its State of Hawai‘i of the alleged human rights violations, and who asked that the violations be stopped, the complainant respectfully requests that the Human Rights Council act upon this complaint without haste in accordance with the relevant measures under paragraph 109 of the annex to Human Rights Council resolution 5/1 and follow up by appointing a Special Rapporteur on the situation of human rights in the Hawaiian Islands occupied since 1893.

IV. Exhaustion of domestic remedies

The complainant can attest to the fact that all Protected Persons are unable to exhaust any domestic remedies on account of the unlawful and prolonged occupation of the entire territory of the Hawaiian Kingdom by an alien administrative system imposed by the United States since the illegal overthrow of the *de jure* Hawaiian government on 17 January 1893. Any seeking of a remedy through the courts in Hawai‘i would be ineffective because all the courts lack competent jurisdiction.

Dated: 24 May 2018.



David Keanu Sai, Ph.D.

Curriculum Vitae

DAVID KEANU SAI, PH.D.



EXPERTISE:

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

ACADEMIC QUALIFICATIONS:

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

GOVERNMENT SERVICE:

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

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

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

GENERAL DATA:

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

Appendix “I”



Larsen v. Hawaiian Kingdom

Case name	Larsen v. Hawaiian Kingdom
Case description	<p>Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency (“Hawaiian Kingdom”) on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant’s person within the territorial jurisdiction of the Hawaiian Kingdom.</p> <p>In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings.</p> <p>The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States’ actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.</p>
Name(s) of claimant(s)	Lance Paul Larsen (Private entity)
Name(s) of respondent(s)	The Hawaiian Kingdom (State)
Names of parties	
Case number	1999-01
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Other proceedings
Subject matter or economic sector	Treaty interpretation
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	Other The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America
Language of proceeding	English
Seat of arbitration (by country)	Netherlands
Arbitrator(s)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
Representatives of the claimant(s)	Ms. Ninia Parks, Counsel and Agent
Representatives of the respondent(s)	Mr. David Keanu Sai, Agent

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

Representatives of the parties

Number of arbitrators in case 3

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

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

Length of proceedings 1-2 years

Additional notes

Attachments **Award or other decision**

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

Other

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

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



Appendix “II”



Keanu Sai <keanu.sai@gmail.com>

letter concerning the outcome of your communication submitted to the Complaint Procedure of the Human Rights Council.

CP OHCHR <cp@ohchr.org>

Fri, Jul 7, 2017 at 3:03 AM

To: "keanu.sai" <keanu.sai@gmail.com>, anu@hawaii.edu

Dear Sir,

Please find the letter concerning the outcome of your communication submitted to the Complaint Procedure of the Human Rights Council.

Sincerely yours,

Secretariat of the Complaint Procedure

 **Mr. David Keanu Sai. doc.pdf**
64K



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • E-MAIL: cp@ohchr.org

REFERENCE: Communication received on 1 June 2016

7 July 2017

Dear Sir,

We acknowledge receipt of your communication received on 1 June 2016. After careful consideration of its contents, we regret having to inform you that the Working Group on Communications of the Complaint Procedure of the Human Rights Council is not in a position to assist in the matter you raise, for the reasons indicated on the back of this letter.

It may be useful to recall that the objective and scope of the complaint procedure is to address communications referring to consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances based on the admissibility criteria set forth in the Human Rights Council resolution 5/1 of 18 June 2007 (paragraphs 85 to 87).

For additional information about the complaint procedure of the Human Rights Council, please consult our website:
<http://ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>

Yours sincerely,

The Secretariat of the Complaint Procedure
of the Human Rights Council

David Keanu Sai
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+1 808 383 6100
keanu.sai@gmail.com
anu@hawaii.edu



Reasons for inadmissibility of communications

- 1. Your communication does not address consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.
- 2. Your communication does not provide sufficient factual description of alleged violations, including the rights which are alleged to be violated.
- 3. Your communication is exclusively based on reports disseminated by mass media.
- 4. Your communication is manifestly politically motivated.
- 5. Your communication is being dealt by/referred to:
 - A special procedure*
 - A treaty body*
 - Other United Nations complaints procedure in the field of human rights*
 - Other Regional complaints procedure in the field of human rights
- 6. Domestic judicial/administrative remedies do not appear to have been exhausted, and it has not been substantiated that the application of domestic remedies would be unreasonably prolonged or that the remedies would be otherwise ineffective.
- 7. Your communication is manifestly ill-founded.
- 8. The Complaint Procedure cannot generally examine disputes between private individuals or alleged violations of human rights that have been committed by non-state actors.

N.B. Please note that any communication or further correspondence should be provided in a UN official language: Arabic, Chinese, English, French, Russian or Spanish.

* Your communication or additional information has been transmitted to the appropriate UN body.

Appendix “III”



Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

MEMORANDUM

Date: 25 February 2018

From: Dr. Alfred M. deZayas
United Nations Independent Expert
Office of the High Commissioner for Human Rights

To: Honorable Gary W. B. Chang, and
Honorable Jeannette H. Castagnetti, and
Members of the Judiciary for the State of Hawaii

Re: The case of Mme Routh Bolomet

As a professor of international law, the former Secretary of the UN Human Rights Committee, co-author of book, *The United Nations Human Rights Committee Case Law 1977-2008*, and currently serving as the UN Independent Expert on the promotion of a democratic and equitable international order, 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).

Based on that understanding, in paragraph 69(n) of my 2013 report (A/68/284) to the United Nations General Assembly I recommended that the people of the Hawaiian Islands — and other peoples and nations in similar situations — be provided access to UN procedures and mechanisms in order to exercise their rights protected under international law. The adjudication of land transactions in the Hawaiian Islands would likewise be a matter of Hawaiian Kingdom law and international law, not domestic U.S. law.

I have reviewed the complaint submitted in 2017 by Mme Routh Bolomet to the United Nations Office of the High Commissioner for Human Rights, pointing out historical and ongoing plundering of the Hawaiians' lands, particularly of those heirs and descendants with land titles that originate from the distributions of lands under the authority of the Hawaiian Kingdom. Pursuant to the U.S. Supreme Court judgment in the *Paquete Habana Case* (1900),

U.S. courts have to take international law and customary international law into account in property disputes. The state of Hawaii courts should not lend themselves to a flagrant violation of the rights of the land title holders and in consequence of pertinent international norms. Therefore, the courts of the State of Hawaii must not enable or collude in the wrongful taking of private lands, bearing in mind that the right to property is recognized not only in U.S. law but also in Article 17 of the Universal Declaration of Human Rights, adopted under the leadership of Eleanor Roosevelt.

Respectfully,



Dr. Alfred M. deZayas
United Nations Independent Expert on the promotion of a
democratic and equitable international order
Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

Appendix “IV”

HAWAIIAN
ALMANAC AND ANNUAL
FOR
1893.

A HANDBOOK OF INFORMATION

ON MATTERS RELATING TO THE HAWAIIAN ISLANDS, ORIGINAL
AND SELECTED, OF VALUE TO MERCHANTS,
TOURISTS AND OTHERS.

THOS. G. THRUM, COMPILER AND PUBLISHER.

Nineteenth Year of Publication.

Hawaiian Copyright by THOS. G. THRUM, December 29, 1892.

HONOLULU, H. I.:
PRESS PUBLISHING CO. STEAM PRINT.
1892.

HAWAIIAN REGISTER AND DIRECTORY FOR 1893.

The Court.

HER MAJESTY, LILIUOKALANI, *b.* September 2, 1838; succeeded to the Throne January 29, 1891, on the death of her brother, King Kalakaua; *m.* to his late Royal Highness Jno. Owen Dominis, Prince Consort, who was *b.* March 10, 1832, and *d.* August 27, 1891. Daughter of Kapaakea and Keohokalole.

Her Majesty the Dowager Queen KAPIOLANI, *b.* December 31, 1835.

Her Royal Highness the Princess VICTORIA-KAWEKIU-KAIULANI-LUNALILO-KALANINUI-AHILAPALAPA, *b.* October 16, 1875, daughter of Her late K. H. Princess Likelike and His Ex A. S. Cleghorn, K. G. C., Member of the Privy Council of State. Proclaimed Heir Apparent, to the Throne, March 9, 1891.

His Excellency ARCHIBALD SCOTT CLEGHORN, K. G. C., Gover or of Oahu and member of Privy Council of State. Father of the Heir Apparent.

Her Royal Highness VIRGINIA KAPOOLOKU POOMAIKELANI, *b.* April 7, 1839. Sister to the Queen Dowager.

His Royal Highness Prince DAVID KAWANANAKOA, son of H. R. H. Princess Kekaulike, *b.* February 19, 1868.

His Royal Highness Prince JONAH KUHIO KALANIANAOLE, son of H. R. H. Princess Kekaulike, *b.* March 28, 1870.

Her Majesty's Chamberlain, MAJOR JAS. W. ROBERTSON.

Her Majesty's Staff.

Cols C. P. Iaukea, J H Boyd, R Hoapili Baker W. H. Cornwell, J D Holt, Jr, H F Bertelmann J. T. Baker and E K Lilikalani.

The Cabinet.

Her Majesty, THE QUEEN.

Minister of Foreign Affairs, His Ex M P Robinson; Minister of the Interior, His Ex G N Wilcox; Minister of Finance, His Ex P C Jones; Attorney-General, His Ex C Brown.

Governors.

His Ex A S Cleghorn, Governor of Oahu.
His Ex T W Everett, Governor of Maui.
His Ex J T Baker, Governor of Hawaii.
His Ex W H Rice, Governor of Kauai.

Governor of Oahu's Staff.

Majors J W Robertson, Sam'l Nowlein.

Privy Council of State.

Her Majesty, THE QUEEN.

Hons. C R Bishop, A S Cleghorn, A F Judd, H A Widemann, H M Whitney, J A Cummins, G Rhodes, J M Smith, J S Walker, W J Smith, W F Allen, D Kahanu, J E Bush, C P Iaukea, G W Macfarlane, P P Kanoa, W D Alexander, E K Lilikalani, P Neumann, S Parker, J T Baker, R H Baker, S M Damon, J K Kaunamano, A N Tripp, J G Hoapili, F H Hayselden, W G Irwin, D H Nahinu, A Rosa, J B Atherton, J T Waterhouse, Jr, J Ena., W H Cornwell, R F Bickerton, C B Wilson, F S

Pratt, J O Carter, H R H, D Kawanakoa, S B Dole, G C Beckley, A Fernandez, P. Isenberg, Jr, Jno Richardson, J W Robertson. C P Iaukea, Secretary.

Legislative Assemblage, Session of 1893.

OFFICERS.

President..... Hon J S Walker
Vice-President..... Hon J Kauhane
Secretary..... C J McCarthy
Interpreter..... W L Wilcox
Sergeant-at-Arms..... F J Testa
Chaplain..... Rev J Waia mau
The Cabinet Ministers hold seats in the House ex-officio.

HOUSE OF NOBLES.

OAHU:

Hons. D W Pua, A P Peterson, C L Hopkins. Term expires Feb 1894.
Hons. J S Walker, C O Berger, Jno Ena. Term expires Feb 1896.
Hons. J A Cummins, J N S Williams, C B Maile. Term expires Feb 1898.

MAUI:

Hons R D Walbridge, W H Cornwell. Term expires Feb 1894.
Hons. H P Baldwin, W Y Horner. Term expires Feb 1896.
Hons. Jas Anderson, L A Thurston. Term expires Feb 1898.

HAWAII:

Hons. R R Hind, J G Hoapili. Term expires Feb 1894.
Hons. J Kauhane, J M Horner. Term expires Feb 1896.
Hons. Alex Young, Jos Mardsen. Term expires Feb 1898.

KAUAI:

Hon. P P Kanoa. Term expires Feb 1894.
Hon. Alex McBryde. Term expires Feb 1896.
Hon. A Dreier. Term expires Feb 1898.

REPRESENTATIVES.

OAHU:

Honolulu:--Hons. W C Wilder, J W Bipi-kane, C W Ashford, S K Aki, S K Pua.
Ewa:--Hon A Kauh. Waialua:--Hon R W Wilcox. Koolau, J E Bush.

MAUI:

Lahaina:--Hon Wm White. Wailuku:--Hons W P Kanealii, W Edmonds. Makawao:--Hon J Kaluna. Hana:--Hon J K Iosepa. Molekai:--Hon T S Nahinu.

HAWAII:

Hilo:--Hons J Nawahi, K M Koahou, A Horner. Hamakua:--Hon J K Kaunamano. Kohala:--Hon G P Kama'oha. Kona:--Hon J H Waipuilani. Kau:--Hon J N Kapahu.

KAUAI:

Koloa:--Hon W O Smith. Waimea:--Hon J A Akina. Hanalei:--Hon A S Wilcox.

Department of Judiciary.

SUPREME COURT.

Chief Justice..... Hon A F Judd
First Associate Justice..... Hon R F Bickerton
Second Associate Justice..... Hon S B Dole

Clerk Judiciary Department..... Henry Smith

Circuit Judges.

First Judge 1st Circuit, Oahu.....
 Second Judge 1st Circuit, Oahu.....
 Second Circuit, Maui..... Hon A N Kepoikai
 3rd and 4th Circuits, Hawaii..... Hon S L Austin
 Fifth Circuit, Kauai..... Hon J Hardy

CLERKS OF SUPREME AND CIRCUIT COURTS:

H Smith..... ex officio
 1st clerk 1st Circuit, Oahu..... F. Wundenberg
 2nd clerk 1st Circuit, Oahu..... Geo Lucas
 Second Circuit, Maui..... Goodale Armstrong
 3rd and 4th Circuits, Hawaii..... Daniel Porter
 Fifth Circuit, Kauai..... R W T Purvis

INTERPRETERS, ETC.

Hawaiian..... W Luther Wilcox
 Chinese..... Li Cheung
 Portuguese..... J M Vivas
 Stenographer..... J W Jones

District Magistrates.

OAHU.

Wm Foster..... Honolulu
 Ewa
 J K Kupau..... Waianae
 J Kaluhi..... Koolauloa
 S H Kalamakee..... Waiialua
 F Pahia..... Koolaupoko

MAUI.

W H Daniels..... Wailuku
 D Kahaulelio..... Lahaina
 Chas Copp..... Makawao
 J H S Kaleo..... Hana
 J K Piimanu..... Kipahulu, Hana
 M Kealoha..... Honouaula
 D Kalaokalani..... Molokai
 S Kahoohalahala..... Lanai

KAUAI.

S R Hapuku..... Lihue
 J W Kala..... Koloa
 R Puuki..... Hanalei
 J K Kapaniaia..... Waimea
 J W Iota..... Kawaihau

HAWAII.

G W A Hapai..... 1st District, Hilo
 Jos Perisson..... 2nd District, Hilo
 R H Atkins..... North Kohala
 S H Mahuka..... South Kohala
 E W Barnard..... North Hilo
 Edwin Thomas..... Hamakua
 Jas M Kauwila..... Puna
 J H S Martin..... West Kau
 Kekani Pa..... East Kau
 S B Kaalawamaka..... North Kona
 S M Kekoa..... South Kona

Department of Foreign Affairs.

Minister of Foreign Affairs. His Ex M P Robinson
 Secretary of Department..... F P Hastings
 Clerks of Department, W H Wright, Ed Stiles,
 H R H D Kawanakoa.

Diplomatic Representatives Accredited to the Court of Hawaii.

United States—His Ex John L Stevens, Envoy
 Extraordinary and Minister Plenipotentiary;
 residence, Niuanu Avenue.
 Portugal—Senhor A de Souza Canavaro, Charge
 d'Affaires and Consul-General; residence, Bere-
 tania street.

Great Britain—His Ex J H Wodehouse, Minis-
 ter Resident; residence, Emma street.
 France—Mons G M G Bosseront d'Anglade, Con-
 sul Commissioner; residence, Beretania street.
 Chancellor, Mons A Vizzavona.
 Japan—Mons S Fugii, Diplomatic Agent and
 Consul General. Secretary, G Narita.

Foreign Consuls, Etc.

United States—Consul-General, H W Severance;
 Vice and Deputy Consul-General, W Porter
 Boyd.

Italy—F A Schaefer, (Dean of the Consular Corps)
 Chili..... F A Schaefer
 German Empire..... H F Glade
 Sweden and Norway..... H W Schmidt
 Denmark..... H R Macfarlane
 Peru..... Bruce Cartwright
 Belgium..... J F Hackfeld
 Netherlands..... J H Paty
 Spain—Vice-Consul..... H Kenjes
 Austro-Hungary..... H F Glade
 Russia, Acting Vice-Consul..... J F Hackfeld
 Great Britain, Vice-Consul..... T R Walker
 Mexico..... H Renjes
 (Attaches to Consulate: F Lanno, G Narita,
 H Ito.)

China—Commercial Agent, Goo Kim; Assistant
 Commercial Agent, Wong Kwai.

United States Cons'l'r Ag't, Hilo..... C Furneaux
 U S Consular Agent, Kahului..... A F Hopke
 U S Consular Agent, Mahukona..... C L Wight

Diplomatic and Consular Representatives of Hawaii Abroad.

In the United States.

United States—J Mott Smith, Envoy Extraordi-
 nary and Minister Plenipotentiary, Washington,
 D C.

New York—E H Allen, Consul-General.

San Francisco—F S Pratt, Consul-General for
 the Pacific States: California, Oregon and
 Nevada and Washington. J B Maholin, Vice
 Consul General.

Philadelphia..... Robert H Davis, Consul
 San Diego, Cal..... Jas W Girvin, Consul
 Boston..... Lawrence Bond, Consul
 Portland, Or..... J McCracken, Consul
 Port Townsend, Wash..... James G Swan, Consul
 Seattle..... G R Carter, Consul

Mexico, Central and South America.

U S of Mexico, Mexico—Col W J De Gress, Con-
 sul. R H Baker, Vice-Consul.
 Manzanillo..... Robert James Barney, Consul
 Guatemala..... Henry Tolke, Consul
 Peru, Lima—R H Beddy, Charge d'Affaires and
 Consul-General.

Callao, Peru..... S Crosby, Consul
 Chile—Valparaiso. D Thomas, Charge d'Affaires
 and Consul-General.

Monte Video, Uruguay: Conrad Hughes, Consul
 Philippine Islands, Iloilo—George Shelmerdine,
 Consul.

Manila..... Jasper M Wood, Consul

Great Britain.

London..... A Hoffnung, Charge d'Affaires
 Secretary of Legation, S B Francis Hoffnung,
 Manley Hopkins, Consul.

Liverpool..... Harold Janion, Consul
 Bristol..... Mark Whitwell, Consul
 Hull..... W Moran, Consul
 Newcastle on Tyne..... E Biesterfeld, Consul

Falmouth..... C R Broad, Consul
 Dover (and the Cinque Ports), Francis William Prescott, Consul.
 Cardiff and Swansea..... H Goldberg, Consul
 Edinburgh and Leith..... E G Buchanan, Consul
 Glasgow..... Jas Dunn, Consul
 Dundee..... J G Zoller, Consul
 Dublin..... R Jas Murphy, Vice-Consul
 Queenstown..... Geo B Dawson, Consul
 Belfast..... W A Ross, Consul
 Cebu..... George E A Cadell, Consul

British Colonies.

Toronto, Ontario, J E Thompson, Consul-General
 Geo A Shaw, Vice-Consul.
 Montreal..... Dickson Anderson, Consul
 Belleville, Ontario, Alex Robertson, Vice-Consul
 Kingston, Ontario, Geo Richardson, Vice-Consul
 Rimouski, Quebec, J N Pouliot Q C, Vice-Consul
 St John's, N B..... Allan O Crookshank, Consul
 Yarmouth, N S, ... Ed F Clements, Vice-Consul
 Victoria, B C..... R P Rithet, Consul
 Vancouver, B C..... G A Fraser, Consul
 Sydney, N S W..... E O Smith, Consul-General
 Melbourne, Victoria..... G N Oakley, Consul
 Brisbane, Queensland... Alex B Webster, Consul
 Hobart, Tasmania, Captain Hon. Audley Coote, Consul
 Launceston..... Geo Collins, Vice-Consul
 Newcastle, N S W..... W H Moulton, Consul
 Auckland, N Z..... D B Cruikshank, Consul
 Dunedin, N Z..... Henry Driver, Consul
 Hongkong, China..... Consul-General.
 Shanghai, China..... Hon J Johnstone Keswick.

France and Colonies.

Paris..... Alfred Houle, Charge d'Affaires and Consul-General; A N H Teyssier, Vice-Consul.
 Marseilles..... G du Cayla, Consul
 Bordeaux..... Ernest de Boisjac, Consul
 Dijon H..... Vielhouanne, Consul
 Libourne..... Charles Schoessier, Consul
 Tahiti, Papeete..... A F Bonet, Consul

Germany.

Bremen..... John F Muller, Consul
 Hamburg..... Edward F Weber, Consul
 Frankfort-on-Maine..... Joseph Kopp, Consul
 Dresden..... Augustus P Buss, Consul
 Karlsruhe..... H Muller, Consul

Austria.

Vienna..... V von Schonberger, Consul

Spain and Colonies.

Barcelona..... Enrique Minguez, Consul-General
 Cadiz..... James Shaw, Consul
 Valencia..... Vicente Chust, Consul
 Malaga—F T De Navarra, Consul; F Gimenez y Navarra, Vice-Consul.
 Cartagena..... J Paris, Consul
 Las Palmas, Gran Canaria, Luis Facony Quevedo, Consul; J Bravo de Laguna, Vice-Consul
 Santa Cruz..... B M y Baitalier, Vice-Consul
 Arcife de Lanzarote—E Morales y Rodriguez, Vice-Consul.

Portugal and Colonies.

Lisbon..... A Ferreira de Serpa, Consul-General
 Oporto..... Narciso M Ferro, Consul
 Madeira..... F Rodrigues, Consul
 St Michaels..... A de S Moreira, Consul
 St Vincent, Cape de Verde Islands—C Martins Vice-Consul.

Italy.

Rome.... James Clinton Hooker, Consul-General
 Genoa..... Raphael de Luchi, Consul
 Palermo..... Ar gelo Tagliavia, Consul

Netherlands.

Amsterdam..... D H Schnull, Consul-General
 Dordrecht..... P J Bowman Consul.

Belgium

Antwerp..... Victor Forge, Consul-General
 Ghent..... E Coppieiers, Consul
 Liege..... Jules Blanpain, Consul
 Bruges..... Emile Van den Brande, Consul

Sweden and Norway.

Stockholm... CA Engalls, Acting Consul-General
 Christiania..... L Samson, Consul
 Lyskil..... H Bergstrom, Vice-Consul
 Gothenburg..... Gustav Kraak, Vice-Consul

Denmark.

Copenhagen....., Consul-General

Japan.

Tokio, His Excellency R Walker Irwin, Minister Resident.
 Hiogo and Osaka..... Samuel Endicott, Consul

Interior Department.

Minister of Interior..... His Ex G N Wilcox
 Chief Clerk of Department..... J A Hassinger
 Clerks—J H Boyd, M K Keohokalole, J L Aholo, S Mahaulu, Geo Ross, Edwd S Boyd.
 Electoral Registrar..... Wray Taylor
 Registrar of Conveyances..... Thos G Thrum
 Deputy Registrar..... Malcolm Brown
 Supt Public Works and C E..... W E Rowell
 Superintendent Water Works..... J C White
 Clerk of Water Works..... A Lucas
 Supt Electric Lights..... Jno Cassidy
 Road Supervisor, Honolulu..... W H Cummins
 Commissioner of Patents..... C T Gulick
 Physician Insane Asylum..... Dr A McWayne

Government Surveying Corps.

W D Alexander..... Surveyor-General
 J F Brown..... Assistant in charge of gov't lands
 C J Lyons..... Assistant in charge of office
 F S Dodge..... Assistant

Board of Immigration.

His Ex Hon G N Wilcox..... President
 Members—His Ex A S Cleghorn, Hon M P Robinson, Hon Joseph B Atherton, Jas B Castle, Esq, Jas G Spencer, Esq.
 Wray Taylor..... Secretary
 G O Nacayama... Inspector-in-Chief of Japanese Immigrants.

Board of Health.

President..... D Dayton
 Members: Hon S Parker, J O Carter, J T Waterhouse, J F Colburn.
 Secretary..... Chas Wilcox
 Agents..... C B Reynolds, G W C Jones, S Ku

GOVERNMENT PHYSICIANS.

OAHU—Honolulu, Dr H G McGrew; Waialua, Dr L F Alvarez; Waianae, Dr N Russel.
 KAUAI—Waimea, Dr D Campbell; Hanalei, —, Puna, Dr St D G Waiters; Koloa, Dr Jared K Smith.

MAUI—Makawao, Dr C L Stow; Hana, Dr T Allen; Wailuku, Dr Geo Herbert; Lahaina, Dr C Davison.

HAWAII—Hamakua, Dr C B Greenfield; Hilo, Dr R B Williams; N Hilo, Dr L S Thompson; Kau, Dr C B Cooper; Kohala, Dr B D Bond; Kona, Dr H A Lindley.

ISLAND OF MOLOKAI, Dr A Mouritz. LEPER SETTLEMENT, Dr R Oliver.

Road Boards.

HAWAII.

Hilo.....J T Baker, J T Unea, W G Kaihenui.
North Hilo...A C Palfrey, L S Thompson, W S Walker.

Puna.....
Kau.....W K Moi, J Ikaika, K Kimokea
Hamakua.....A Lidgate, J H Kaumeleiau, C Williams.

N Kohala...E P Low, D H Kailau, D W Pue
S Kohala...W Hookuanui, W K Davis, J Maguire
N Kona...J Kaelemakule, J K Nahale, S B Kaalawamaka.
S Kona...D H Nahinu, K M M Hu, W Punikaia

MAUI.

Lahaina...R H Makekan, G Kauhi, S Kaluakini
Wailuku.....A Barnes, H Center, E B Friel
Hana.....D Center, J P Sylva, M H Reuter
Makawao.....J Kalama, L A Andrews
Molokai...S K Kupihea, S Kekahuna, J H Mahoe

OAHU.

Honolulu...C B Dwight, A Fernandez, S M Kaaukai.
Koolaupoko...F Pahia, J H Kealo, E P Aikue.
Koolauloa...L J Aylett, S Kapu, L K Naone.
Waialua...E S Timoteo, S H Kalamakee, B Naukana.
Ewa and Waianae...L P Halualani, Poe, J Pinao

KAUAI.

Koloa.....J K Smith, A Cropp.
Lihue.....S W Wilcox, S G D Walters, J H K Kaiwi.
Kauai.....S N Hundley, D Lovell, J W Lota
Hanalei.....S Kanewanui, G W Mahikoa, E Kuapuhi.
Waimea...J K Kapuniai, T Brandt, J Kamalinui
Niihau...M W Keale, J B Kaomea, A W Kawaiula

Commissioners of Crown Lands.

His Ex M P Robinson, His Ex C Brown, Col C P Iaukea.
Col C P Iaukea.....Agent

Commissioners of Boundaries.

Hawaii.....F S Lyman
Maui, Molokai and Lanai...S F Chillingworth
Oahu.....Wm Foster
Kauai.....J Hardy

Commissioners of Fences.

HAWAII.

Hilo.....B Brown.
Hamakua.....
North Kona...G McDougall, E Kahulanui, J K Nahale.
South Kona...M Barrett, J W Smith S Keku-
mano.
North Kohala...H L Holstein, R Hind, Jr.
South Kohala...S H Mahuka
Kau...D W Kaemoku, C Meinecke, N C Haley

MAUI.

Lahaina...K Nahaolelua, E S Kaiue, _____
Wailuku...W A McKay, N Kepoikai, W B Keanu.
Makawao.....R von Tempsky, E Hele-
kunihi.

Hana.....O Unna, J Nakila, P K Kaumakaole
Molokai...D Kailua, J Kaoo, J H Mahoe

OAHU.

Kona.....D Kahanu, P Jones, W S Wond
Ewa and Waianae...S Andrews, J Kekahuna, H Kapu.

Waialua...H Wharton, J Amara, J F Anderson.
Koolauloa...J Kaluhi, J L Naili, W C Lane
Koolaupoko...G Barenabe, M Rose

KAUAI.

Kauai.....J P Kaumualii, Napalehua, J M Kealoha.
Koloa and Lihue...S Kaniu, E Kopke, J Gandall

Agents to Grant Marriage Licences.

Hawaii—

Hilo...J Kanaeholo, B Naaikauna, L Severance,
D H Hitchcock, L Kaapa, W Nailima
E W Barnard, J M Kauhi, S K Pookalani.
Hamakua...J N Haena, S B Kaleo, M
Beniamina, W A Mio, J Kanakaoluna.
North Kohala...Jno Nalii, E de Harne, D S
Kahookano, J S Smithies, K Kaai.

South Kohala...James Bright
North Kona...J Kaelemakule
South Kona...Jos Kaeo, J W Maele, S W Kino,
W J Wright, Jno Nahinu.

Puna.....D Kapela
Kau.....T C Wills, C Meinecke

Maui—

Wailuku...Chas Wilcox, J Haole, A N Kepoi-
kai, P Pakualani, J Kealoalii.

Lahaina...D Kahaulelio
Makawao...H P Keliikipi, H Kawainaka, Jas
Anderson, M Naaieono.

Hana...P Momoa, S W Kaai, D Napihao, J
Nakila, Jr, C Andrews, P H Kaumakaole,
Kaanapali...S M Sylva
Molokai...R W Meyer, D Kalua, K Kainuwai,
J H Babcock.

Lanai.....

Oahu—

Kona...W J Smith, C T Gulick, J H Boyd, P
Jones, J H Thompson.

Koolaupoko...E P Aikue
Koolauloa...W C Lane, J L Naili, L B Nainoa
Ewa and Waianae...J Kahalualani, D Malo
Waialua...J F Anderson

Kauai—

Koloa...A W Maioho, J Kala
Lihue...J H K Kaiwi

Kauai...W H Williams
Hanalei...Naohenui, J Kakina, Kaumeheiva,
J H Barenaba, E Kuapuhi.

Waimea...S E Kaula, E L Kauai, D Kua.
Niihau...F Sinclair, G S Gay

Commissioners of Private Ways and Water Rights.

HAWAII.

Hilo.....J T Brown
Hamakua.....
North Kohala...E C Bond
South Kohala...Z Pakiki
Kau...J H S Martin
Puna...A W Maioho

MAUI.

Lahaina.....M Makalua
 Wailuku.....S E Kaiue
 Makawao.....E Helekunihi
 Hana.....S W Kaai
 Kaanapali.....J A Kaukau
 Molokai.....D Kailua

OAHU.

Kona.....Mrs E M Nakuina
 Koolaupoko.....G Barenaba
 Koolauloa.....J Kaluhi
 Waiialua.....J Amara
 Ewa and Waianae.....J Kekahuna

KAUAI.

Koloa and Lihue.....S R Hapuku
 Waimea.....E L Kauai
 Hanalei and Kawaihau.....S U Kaneole

Agents to Take Acknowledgments to Instruments.

ISLAND OF OAHU.

Honolulu..M Brown, F M Hatch, W A Whit-
 ing, A S Hartwell, V V Ashford, F W Mac-
 farlane, J M Vivas, P Jones, W L Wilcox,
 W L Holokahiki, J M Kaneakua, S M Kaau-
 kai, D Dayton, W C Parke, H Holmes.
 Ewa.....L K Halualani
 Waianae.....J K Kekahuna
 Waiialua.....S N Emerson, S K Mahoe
 Koolauloa..W C Lane, H Kauaihilo, E P Aikue
 Koolaupoko.....A Ku

ISLAND OF MAUI.

Lahaina.....H Dickenson.
 Kaanapali.....D M Kalama
 Honuaula.....S P Halama
 Wailuku..T W Everett, W S Maule, G P Wilder,
 A N Keipoikai.
 Makawao.....S F Chillingworth, J Kalama,
 J Kamakele.
 Hana.....J Grunwald, J Gardner, S W Kaai
 Kaupo.....J Kawaiiaea
 Koolau.....Jas Saunders
 Kipahulu.....J Nakila, Jr

MOLOKAI AND LANAI.

Molokai—Kala, R W Meyer, Pukoo, S P Ku-
 pihea; Halawa, M Kane; Kalaupapa, Ambrose
 Hutchinson, D H Pierce.
 Lanai.....

ISLAND OF HAWAII.

N Kohala..D S Kahookano, J W Moanau'i, C
 H Pulaa.
 S Kohala.....F Spencer, Geo Bell, Miss E W
 Lyons.
 Hamakua—J W Leonhart, T P Kaeeae, Chas
 Williams.
 Hilo..W C Borden, G W A Hapai, A B Loeben-
 stein, S W Pa, D I Wailani, J T Unea, Jas
 Mattoon.
 Puna.....J Kauwila
 Kau.....C Meinecke, W Kaaemoku, S Patten
 S Kona.....J W Maele
 N Kona.....D Alawa, J W H I Kihe

ISLAND OF KAUAI.

Koloa.....E Strehz
 Waimea.....L H Stolz, E L Kauai
 Lihue.....S W Wilcox, J B Hanaike
 Hanalei.....J C Long, J B Alexander, J Radway
 Kawaihau.....L K Kaumualii, J M Kealoha
 Niihau.....J B Kaomea

Inspectors of Animals.

Oahu.....W T Monsarratt, V S, P Isenberg Jr.
 Hawaii..W H Shipman, A Wall, C E Richardson
 Maui.....W Marshall, S F Chillingworth,
 Kauai.....S Hundley, L Kahlbaum

Notaries Public.

Hawaii..D Porter, E W Barnard, A E Hitch-
 cock, Thos Aiu, J Kaeo, W Kaaemoku, W J
 Wright S H Haaheo, J S Smithies, W L
 Eaton, S Haanio, Jr, Jas Bright, I K Kekaula,
 I H Sherwood, E E Richards, G P Tulloch,
 W P Fennel, C Williams, D H Nahinu, Z Paa-
 kiki, J K Naeole, S W Kekuwa.
 Maui.....J P Silva, C H Dickey, W F Moss-
 man, M Makalua, E Helekunihi, E Lililehua,
 J Richardson, P K Kauimakaole, W P Haia,
 S E Kaiue, E B Friel, P M Kaluna, F W
 Hardy, J H Babcock.
 Oahu..J H Paty, C T Gulick, S B Dole, Jas M
 Monsarratt, M Brown, T W Hobron, V V Ash-
 ford, W Foster, C L Carter, J L Kaulukou, N
 M Lowrey, J A Magoon, G K Wilder, W C
 Achi, J M Camara Jr, S K Ka-ne, C W Ash-
 ford, E Johnson, F J Testa, J A Hassinger, C
 F Peterson, D Lamb, C E Vida, H Lose, A
 Rosa, J H Thompson, J H Kahookano, N Fer-
 nandez, J H Paele, H Holmes, W L Peterson,
 J W Luning, J H Nakookoo, A M Brown, J
 K Kaupu, A Perry.
 Kauai..L H Stolz, J C Long, J A Akina, J H
 Kawelo, Jno M Kealoha.

Agents to Acknowledge Contracts for Labor.

Oahu—Honolulu, C T Gulick, J A Hassinger, J
 W Robertson, Samuel Kuula, Chas Phillips,
 Moses Keliiaa, John Lucas, W S Wond, W
 H Tell, F S Lyman Jr, J E Brown, T N
 Starkey, F Godfrey J H Thompson.
 Waiialua—C H Kalama, S N Emerson, S K
 Mahoe, H N Kahulu.
 Koolauloa—M Makuuau, W C Lane, M Ka-
 anuu.
 Koolaupoko.....G Barenaba, P E Aikue
 Ewa and Waianae..J D Holt, J K Kaanaana,
 J Kekahuna, J Kahoa.
 Hawaii..Hilo, L Severance, L E Swain, A B
 Loebenstein, D B Wahine.
 N Kona.....J G Hoapili, J W Smith
 S Kona.....J Nahinu, W J Wright
 Hamakua...J P Leiahi, Kimo, J Waiohinu, C
 Williams, J L Kanakaoluna.
 N Kohala..H Rickard, D S Kahookano, J W
 Moanau'i, W L Eaton, G P Tulloch, C J
 Falk, G H Kaailau.
 S Kohala.....Geo Bell, Jas Bright, J Jones
 Kau...W Kaaemoku, R Zeigler, J C Searle,
 C Thompson, T P Harris.
 Puna.....J N Kamoku
 Maui—Lahaina..K Nahaolelua, S L Kalaikini,
 J Kulailua, M Makalua, G Kaluakini, T C
 Forsyth.
 Wailuku..J Richardson, P S Kalama, W S
 Maule, S E Kaiue, C L Kookoo, S E Kalei-
 kau, J Haole, E R Biven.
 Makawao..J K Smyth, Keliikipi, P Keaupuni
 Hana..F Wittrock, P Kaiumakaole, Kaehe,
 Jr, B K Kaiwiae, J Murdock, J Hakila, J
 P Sylva.
 Molokai.....Geo Kekipi, S K Piiapoo

Kauai—Koloa, E Strehz, H C Norton, E Kaaloa
Lihue, J B Hanaïke, C H Willis, H K Kahale
Hanalei, J W Loka, J Kakina, J Kukuia, J H
Mahoe, J B Alexander.
Waimea, J H Kapukui, S E Kaula, I H
Kaaupwai.
Kawaihau, E Kaiu, J M Kealoha
Niihau, J B Kaomea

Department of Finance.

Minister of Finance, His Ex P C Jones
Registrar of Public Accounts, G E Smithies
Auditor General, Geo J Ross
Collector General of Customs, A S Cleghorn
Clerk of Registrar, C A Widemann
Tax Assr and Collr, Oahu, C N Spencer
" " Maui, C H Dickey
" " Hawaii, H C Austin
" " Kauai, J K Fariey
Collector Port of Hilo, J Stuppelbeen
Collector Port of Kahului, E Hoffmann
Collector Port of Lahaina (ex-officio) F H Hayselden.
Collector Port of Mahukona, J S Smithies
Collector Port of Kealahou, E Strehz
Collector Port of Kawaihau, E Strehz
Port Surveyor, Kahului, W S Maule
Port Surveyor, Hilo, G Nakapuahi

Customs Department, Honolulu.

Collector, A S Cleghorn
Deputy Collector, G E Boardman
Bookkeeper, O Stillman
Statistical Clerks, Wm Chamberlain, C K Stillman, C E Coville, J B Gibson.
Store Keeper, F B McStocker
Assistant Store Keeper, E Langley
Harbor Master, Capt A Fuller
Pilots—Captains A McIntyre, P P Shepherd, J C Lorenzen
Port Surveyor, C L Crabb
Guards—J Crowder, G Parminter, E Devauchelie
R W Holt, W H Aldrich, C H Clark.

Post Office Department.

Walter Hill, Postmaster-General
J G Rothwell, Book-keeper and Cashier
E Wodehouse, Savings Bank Department
F B Oat, Money Order Department
G E Thrum, General Delivery Department

Department of Attorney-General.

Attorney-General, His Ex C Brown
Deputy Attorney-General, G K Wilder
Marshal of the Hawaiian Islands, C B Wilson
Deputy Marshals, J A Mehrtens
Clerk to Marshal, H M Dow
Sheriff of Hawaii, E G Hitchcock
Sheriff of Maui, F H Hayselden
Sheriff of Kauai, S W Wilcox
Jailor of Oahu Prison, A N Tripp

Oahu—Deputy Sheriffs, Ewa, W S Wond; Waianaë, S K Hui; Waialua, J Amara; Koolauloa, H Kawaihilo; Koolaupoko, E P Aikue.

Kauai—Sheriff, S W Wilcox; Deputy Sheriffs: Lihue, C H Willis; Koloa, E Kaaloa; Waimea, L H Stolz; Hanalei, W E H Deverill, Kawaihau, S Kaiu.

Molokai—Deputy Sheriff, Pukoo, E Lililehua.

Maui—Sheriff, F H Hayselden; Deputy Sheriffs, Lahaina, R P Hose; Wailuku, S F Chillingworth; Makawao, Lorrin Andrews; Hana, M H Reuter.

Hawaii—Sheriff, E G Hitchcock; Deputy Sheriffs, North Hilo, L E Swain; Hamakua, J W Moanali; South Kohala, W Hookuanui; North Kohala, Chas Pulaa, North Kona, J K Nahale; South Kona, Lakalo; Kau, W J Yates; Puna, J E Eldarts.

Board of Prison Inspectors.

Jas G Spencer, J F Colburn, W A Whiting.

Board of Education.

President, Chas R Bishop
Members—W D Alexander, W W Hall, S M Damon, W Hill.
Inspector General of Schools, A T Atkinson
Secretary, W J Smith
Assistant, G C Potter

School Agents in Commission.

HAWAII.

Hilo, L Severance
Puna, J E Eldarts
Kau, C Meinecke
North and South Kona, J D Paris, Jr
South Kohala, Miss E W Lyons
North Kohala, Dr B D Bond
Hamakua, C Williams

MAUI.

Lahaina and Lanai, H Dickenson
Wailuku, A Barnes
Hana, F Wittrock
Makawao, C H Dickey
Molokai, R W Meyer

OAHU.

Honolulu, W J Smith
Ewa and Waianaë, W J Smith
Waialua, J F Anderson
Koolauloa, W C Lane
Koolaupoko, (acting) W J Smith

KAUAI.

Waimea and Niihau, T H Gibson
Koloa, Lihue, J K Burkett
Hanalei, W E H Deverill
Kawaihau, G H Fairchild

Chamber of Commerce.

President, C R Bishop
Vice-President, F A Schaefer
Secretary and Treasurer, J B Atherton

Board of Underwriters—Agencies.

Boston, C Brewer & Co
Philadelphia, C Brewer & Co
New York, A J Cartwright
Liverpool, T H Davies & Co
Lloyds, London, T H Davies & Co
San Francisco, H Hackfeld & Co
Bremen, Dresden, Vienna, F A Schaefer

Honolulu Board of Underwriters.

F A Schaefer, President
J H Paty, Vice-President
C O Berger, Secretary and Treasurer

Packet Agencies.

Boston Packets..... C Brewer & Co
 Planters' Line, San Francisco..... C Brewer & Co
 Pioneer, Liverpool..... T H Davies & Co
 Merchants' Line, San Francisco..... Castle & Cooke
 New York Line..... Castle & Cooke
 Oceanic S S Co's Line..... W G Irwin & Co
 Pacific Mail S S Company..... H Hackfeld & Co
 Oriental and Oceanic S S Co..... H Hackfeld & Co
 Bremen Packets..... H Hackfeld & Co
 Hawaiian Packet Line S F..... H Hackfeld & Co
 Glasgow and Honolulu..... F A Schaefer & Co

Honolulu Fire Department.

Organized 1851. Biennial Election of Engineers
 First Monday in December.

Officers for 1890-92:

Chief Engineer..... Julius Asch
 First Assistant Engineer..... Jas H Hunt
 Second Assistant Engineer..... D L Kalawaia
 Secretary and Treasurer..... Henry Smith
 Fire Marshal and Survey Engineer..... Jno Neil
 Honolulu Engine Company No 1 (steam) formed
 1850, organized July 18, 1855. Annual election
 of officers, first Wednesday in July.
 Mechanic Engine Company No 2 (steam) organ-
 ized December, 1850, admitted February 3,
 1850. Annual election of officers, first Wednes-
 day in February.
 Hawaii Engine Co No 4 (steam) organized
 February, 1861. Annual election of officers, first
 Tuesday in February.
 China Engine Company No 5 (steam), organized
 February, 1879.
 Protection Hook and Ladder Company No 1,
 re-organized September, 1857. Annual election
 of officers, first Monday in September.
 Fire Police, Captain T E Krouse.

Fire Wards of Honolulu.

No. 1—Bounded by School, Likelike, Judd and
 Punchbowl streets.
 No. 2—Bounded by Beretania, Liliha, School
 and Fort streets.
 No. 3—Bounded by King, Beretania and Fort
 streets.
 No. 4—Bounded by Water Front, King and Fort
 streets.
 No. 5—Bounded by Water Front, Fort, King
 and Richard streets.
 No. 6—Bounded by King, Fort, Beretania and
 Richard streets.
 No. 7—Bounded by Beretania, Fort, School and
 Punchbowl streets.
 No. 8—Bounded by Water Front, Richards,
 Beretania and Punchbowl streets.
 No. 9—Bounded by Water Front, Punchbowl
 and Victoria streets.
 No. 10—Bounded by King, Victoria and Piiko'
 streets.
 No. 11—Bounded by Piikoi, Wilder avenue and
 Punahou streets.
 No. 12—Beyond Punahou street.
 No. 13—The Harbor.

Queen's Hospital.
 ERECTED IN 1860.

President..... Her Majesty
 Vice-President..... C R Bishop
 Sec'y..... F A Schaefer | Treas..... J H Paty
 Auditor..... J S Walker
 Physicians..... G P Andrews, C B Wood
 Executive Committee—C R Bishop, J H Paty,
 F A Schaefer, A S Cleghorn.

Hawaiian Historical Society.

Organized Jan., 11, 1892.

President..... Hon C R Bishop
 Vice-President..... J S Emerson
 Recording Secretary..... Rev C M Hyde, D.D.
 Corresponding Secretary..... Prof W D Alexander
 Treasurer..... G P Castle
 Librarian..... Rev R R Hoes, U.S.N.

American Relief Fund.

Organized 1864. Meets annually February 22
 President.....
 Secretary and Treasurer..... C R Bishop

British Club.

Organized 1852. Premises on Alakea Street, two
 doors below Beretania.

President..... A S Cleghorn
 Sec'y..... F M Swanzy | Treas..... J G Spencer
 Managers—A S Cleghorn, W A Whiting, F M
 Swanzy, J G Spencer, A Jaeger, Dr Robt
 McKibbin, H Focke.

British Benevolent Society.

Organized 1860. Meets annually April 23.
 President..... J H Wodehouse
 Vice-President..... Rev A Mackintosh
 Sec'y..... F M Swanzy | Treas.....

German Benevolent Society.

Organized August 22, 1856.

President..... J F Hackfeld
 Secretary..... John F Eckart
 Treasurer..... F Klamp

Portuguese Ladies' Benevolent Society.

Organized December, 1886.

President.... Mrs Cannavaro, Mrs W G Irwin,
 Mrs C M Hyde
 Vice-Presidents.....
 Secretary..... Mrs Wm Foster
 Treasurer..... E Hutcheson

The St. Antonio Benevolent Society.

Organized 1876: Incorporated 1890.

President..... J M Camara, Jr
 Vice-President..... J B Vieira
 Secretary..... J S Ramos
 Treasurer..... C L Brito

**Portuguese Mutual Benefit Society of Ha-
 waii.**

Organized Jan. 1882: Incorporated 1887.

President..... J M Vivas
 Vice-President..... J G Silva
 Secretary..... M Gosmao Silva
 Treasurer..... A G Silva, Jr

Stranger's Friend Society.

Organized 1852. Annual Meeting in June.

President..... Mrs W F Allen
 Vice-Presidents..... Mrs A Mackintosh, Mrs T H
 Hobron.
 Secretary..... Mrs S M Damon
 Treasurer..... Mrs E W Jordan
 Directress..... Mrs S H Dowset,

Mission Children's Society.

Organized 1851. Annual Meeting in June.
 President..... W R Castle
 Vice-President..... Mrs S B Dole
 Recording Secretary..... W J Forbes
 Cor Secretary..... Mrs L B Coan
 Elective Members..... Mrs A S Hartwell, Dr N B
 Emerson.
 Treasurer..... W F Frear

Board of Hawaiian Evangelical Association.

Originally organized 1823.
 Constitution revised 1863. Annual meeting June
 President..... Hon A F Judd
 Vice-President..... H Waterhouse
 Corresponding Secretary..... Rev O P Emerson
 Recording Secretary..... Rev C M Hyde, D D
 Treasurer, W W Hall | Auditor, J B Atherton

Woman's Board of Missions.

Organized 1871.
 President..... Mrs C M Hyde
 Recording Secretary..... Mrs S E Bishop
 Home Cor Sec'y..... Mrs G P Castle
 Foreign Cor Sec'y..... Mrs E H McCully
 Treasurer..... Mrs B F Dillingham
 Auditor..... W W Hall

Sailors' Home Society.

Organized 1853. Meets annually in December.
 President..... C R Bishop
 Secretary, F A Schaefer | Treasurer, J H Pacy
 Ex Com, S M Damon, J B Atherton, C M Cooke

Missionary Gleaners—Branch of Woman's Board.

President..... Mrs E Jones
 Vice-President..... Miss C Gilman
 Rec Secretary..... Miss E R Hopper
 Cor Secretary..... Mrs E C Damon
 Treasurer..... Mrs T W Hobron
 Directress..... Miss H S Judd

Woman's Christian Temperance Union.

Organized Dec., 1884.
 President..... Mrs J M Whitney
 Vice-Presidents..... Mrs C M Hyde, Mrs E G
 Beckwith, Mrs E W Jordan.
 Recording Secretary..... Mrs R Jay Greene
 Corresponding Secretary..... Mrs E W Jordan
 Treasurer..... Mrs L B Coan
 Auditor..... W A Bowen

Young Men's Christian Association.

Organized 1869. Annual meeting in April.
 President..... Hon J B Atherton
 Vice-President..... C B Ripley
 Secretary..... W L Howard
 Treasurer..... H F Wichman
 General Secretary..... H W Peck

Library and Reading Room Association.

Organized March, Incorporated June 24, 1879.
 President..... A J Cartwright
 Vice-President..... M M Scott
 Secretar..... H A Parmelee
 Treasure..... Miss M A Burbank

Hawaiian Rifle Association.

Organized December, 1885.
 President..... J H Soper
 Vice-President..... Hon S B Dole
 Secretary and Treasurer..... Walter E Wall

Honolulu Cemetery Association.

President..... Hon J I Dowsett
 Vice-President..... Hon J T Waterhouse, Jr
 Secretary..... J H Pacy
 Treasurer..... B Cartwright

Oahu College.

Located at Punahou, two miles east of Honolulu.
 F A Hosmer, A M..... President
 Mental and Moral Sciences.
 A B Lyons, M D, F C S, Chemistry and Natur-
 al Sciences.
 Miss L F Dale, Vocal and Instrumental Music
 and French.
 A W Crockett, A B., Latin and English Liter-
 ature.
 Miss M R Wing..... Greek, Rhetoric, etc
 J Q Wood, A B..... Mathematics, History and
 English.
 P H Dodge..... Drawing and Painting

Punahou Preparatory.

Miss Margaret Brewer, Principal: First and
 Second Grades.
 Miss Helen M Sorenson. Third and Fourth Grades.
 Miss Ella B Snow..... Fifth and Sixth Grades
 Miss Carrie A Gilman..... Seventh and Eighth
 Grades.
 Miss M Birch Fanning..... Kindergarten

Kamehameha Schools.

Located at Kalihi, west of Honolulu.
 Rev W B Oleson..... Principal
 U Thompson, Asst..... Instructor in Carpentry
 G H Babb Asst..... Instructor in Wood-turning
 R P Anderson..... Supt. Manual Labor
 L C Lyman..... Drawing, Supt. Machine Shop
 Mr Ruetsky, Assist..... Instructor in Printing
 Miss C Pope, Asst..... Instructor in Sewing
 Mrs W B Oleson..... Assistant

Kamehameha Preparatory.

Miss Malone..... Principal
 Misses E Halstead, A E Knapp, R Hoppin
 Assistants.

Publications.

The *Hawaiian Gazette*, issued weekly by the
 Hawaiian Gazette Co. on Tuesdays. H M
 Whitney, Manager.
 The *Daily Pacific Commercial Advertiser*, is-
 sued by the Hawaiian Gazette Co. every morn-
 ing (except Sundays). H N Castle, Editor; H
 M Whitney, Manager.
 The *Daily Bulletin*, issued every evening (ex-
 cept Sundays), by the Daily Bulletin Co. D
 Logan, Editor. Weekly issue on Tuesdays.
 The *Friend*, issued on the first of each month.
 Rev. S. E. Bishop, Editor.
 The *Anglican Church Chronicle*, issued on the
 first Saturday of every month. Rev. A. Mack-
 intosh, Editor.
 The *Paradise of the Pacific*, issued monthly. F
 Godfrey, Editor, J J Williams, Manager.
 The *Planters' Monthly*, issued on the 15th of
 each month. H. M. Whitney, Editor.
 The *Honolulu Diocesan Magazine*, issued quar-
 terly. Rt Rev Bishop Willis, Editor.

The *Kuokoa* (native), issued every Saturday morning, by the Hawaiian Gazette Co. J U Kawainui, Editor.

A *Uniao Lusitana-Hawaiiiana*, amalgamation of the *Luso* and *Aurora*, (Portuguese) issued every Saturday, C Pereira, Editor.

The *Hawaiian-Chinese News*, issued weekly, Ho Fon, Editor.

Hawaii Holomua (native), issued daily and weekly. J G M Sheldon, Editor.

The *Ka Oiaio* (native), issued every Friday, J E Bush Editor. Issues also a daily, *Ka Leo o ka Lahui* for native, and *The Voice of the Nation* for English readers.

Chinese Times, issued weekly, Chang Tin Sang, Editor.

The *Japanese Weekly News*, issued Mondays in the Japanese language. B Onoma, Editor.

The Liberal, issued semi-weekly, part English and part Hawaiian. Hon R W Wilcox, Editor.

Handicraft, issued monthly during the school year at the Kamehameha School. Rev W B Oleson, Editor.

A *Sentinella* (Portuguese), issued weekly on Saturday. J M Vivas, Editor.

HAWAIIAN ALMANAC AND ANNUAL, issued the latter part of December for the following year. Thos G Thrum, Editor and Publisher.

Lodges.

LODGE LE PROGRES DE L'OCEANIE, No 124, A F & A M; meets on King St., on the last Monday in each month.

HAWAIIAN, No 21, F & A M; meets in its hall corner Queen and Fort Streets, on the first Monday in each month.

HONOLULU CHAPTER, No 1, R A M; meets in the hall of Le Progres de l'Oceanie on the third Thursday of each month.

HONOLULU COMMANDERY NO 1 KNIGHTS TEMPLAR meets at the Lodge Room of Le Progres de l'Oceanie second Thursday of each month.

KAMEHAMEHA LODGE OF PERFECTION, No. 1, A & A S R; meets in the hall of Le Progres de l'Oceanie on the fourth Thursday of each month.

NUUANU CHAPTER OF ROSE CROIX, No 1, A & A S R; meets at the hall of Le Progres de l'Oceanie, first Thursday in the month.

ALEXANDER LIHOLIHO COUNCIL No 1, OF KADOSH; meets on the third Monday of alternate months from February.

EXCELSIOR LODGE, No 1, I O O F; meets at the hall in Odd Fellows' Building, on Fort St. every Tuesday evening.

HARMONY LODGE, No 2, I O O F; meets each Monday evening in Harmony Hall.

POLYNESIA ENCAMPMENT, No 1, I O O F; meets in Odd Fellows' Building, Fort street, first and third Fridays of each month.

PACIFIC DEGREE LODGE, No 1, DAUGHTERS OF REBEKAH; meets at Excelsior Hall, Fort street, second and fourth Fridays of each month.

OAHU LODGE No 1, K of P; meets every Wednesday at hall on Fort Street.

MYSTIC LODGE, No 2, K of P; meets every Thursday evening, at Harmony Hall.

SECTION No 225—ENDOWMENT RANK, K of P; meets on the second Saturday of January, July and December in the hall of Oahu Lodge.

MAILE LODGE, No. 4, KNIGHTS OF PYTHIAS; meets every Saturday night in Lyceum Build-

ing, Honokaa, Hawaii. Visiting brothers always welcome.

HAWAIIAN COUNCIL No 689, AMERICAN LEGION OF HONOR; meets on second and fourth Friday evenings of each month in Harmony hall.

OCEANIC COUNCIL, No 777, AMERICAN LEGION OF HONOR; meets on the first and third Thursdays of each month, at the K of P hall.

HAWAIIAN TRIBE, No 1, IMP. O R M; meets at the hall of Oahu Lodge, K of P, every Friday evening.

COURT LUNALILO, No 6600; A O of FORESTERS meets at hall of Oahu Lodge, K of P, on second and fourth Tuesdays of each month.

GEO. W DE LONG POST, No 45, G A R; meets the second Tuesday of each month at Harmony hall.

CAPT. COOK LODGE No. 353, ORDER SONS OF ST. GEORGE; meets at the K of P Hall, Fort St., every Saturday evening.

Places of Worship.

CENTRAL UNION CHURCH (Congregational), corner of Beretania and Richards sts, Rev E G Beckwith, D.D., Pastor. Services every Sunday at 11 A M and 7:30 P M. Sunday School meets one hour before morning service. Prayer meeting Wednesday evenings at 7:30.

ROMAN CATHOLIC CHURCH, Fort Street, near Beretania; Rt Rev Gulstan F Ropert, Bishop of Panopolis; Revs Leonor and Clement, assisting. Services every Sunday at 10 A M, and at 4:30 P M. Low Mass every day at 6 and 7 A M. High Mass Sundays and Saints' days at 10 A M.

ST. ANDREW'S CATHEDRAL, Emma Square. First Congregation. Clergy: Rt Rev Bishop Willis, and Rev V H Kitcat. Services on Sunday: Holy Communion at 6:30 A M. Morning prayer, with sermon at 11 A M. Hawaiian Evensong 3:30 P M. Evening Prayer with sermon 7:30 P M. Holy Communion at 11 A M the last Sunday in each month. Sunday School 10 A M. Daily prayer at 7 A M.

Second Congregation, Rev A Mackintosh, Pastor. Services on Sunday: Morning prayer with sermon, 9:45 A M; Evening prayer with sermon 6:30 P M. Holy Communion first Sunday in month, 9:45 A M. Sunday School 10 A M. Evening prayer, with address every Friday, at 7:30 P M.

Chinese Congregation. Services on Sunday at 11 A M and 7:30 P M. Evening prayer every Wednesday, at 7:30 P M.

CHRISTIAN CHINESE CHURCH, Fort Street, F W Damon, acting Pastor. Services every Sunday at 10:30 A M and 7:30 P M. Prayer Meeting Wednesdays at 7:30 P M.

NATIVE CHURCHES.

KAWAIAHAO CHURCH (Congregational), corner of King and Punchbowl Streets, Rev H H Parker, Pastor. Services in Hawaiian every Sunday at 11 A M, and at 7:30 on Sunday evenings alternating with Kaumakapili. Sunday School at 10 A M. Prayer Meeting, Wednesday at 7:30 P M.

KAUMAKAPILI CHURCH (Congregational), Beretania street near Maunakea. Rev J Waiamau, Pastor. Services in Hawaiian every Sunday at 11 A M, and at 7:30 P M on Sunday evenings alternating with Kawaiahao. Sunday School at 10 A M. Prayer Meeting every Wednesday at 7:30 P M.

ADDENDUM TO THE COMPLAINT

(24 May 2018)

1. Fundamental to deciphering the Hawaiian situation is to discern between a state of peace and a state of war. This parting of the seas provides the proper context by which the application of certain rules of international law would or would not apply. The laws of war—*jus in bello*, otherwise known today as international humanitarian law, are not applicable in a state of peace. Inherent in the rules of *jus in bello* is the co-existence of two legal orders, being that of the occupying state and that of the occupied state. As an occupied state, the continuity of the Hawaiian Kingdom has been maintained for the past 125 years by the positive rules of international law, notwithstanding the absence of effectiveness that would otherwise be required during a state of peace.¹
2. The failure of the United States to comply with international humanitarian law for over a century has created a humanitarian crisis of unimaginable proportions where war crimes has since risen to a level of *jus cogens*. At the same time, the obligations, in point, have *erga omnes* characteristics. The international community's failure to intercede, as a matter of *obligatio erga omnes*, can only be explained by the United States deceptive portrayal of Hawai'i as an incorporated territory. As an international wrongful act, states have an obligation to not “recognize as lawful a situation created by a serious breach ... nor render aid or assistance in maintaining that situation,”² and states “shall cooperate to bring to an end through lawful means any serious breach [by a state of an obligation arising under a peremptory norm of general international law].”³
3. The gravity of the Hawaiian situation has been heightened by North Korea's announcement that “all of its strategic rocket and long range artillery units ‘are assigned to strike bases of the U.S. imperialist aggressor troops in the U.S. mainland and on Hawaii,” which is an existential threat.⁴ The United States crime of aggression since 1893 is in fact *a priori*, and underscores Judge Greenwood's statement, “[c]ountries were either in a state of peace or

¹ James Crawford, *The Creation of States in International Law* 34 (2nd ed., 2007); Krystyna Marek, *Identity and Continuity of States in Public International Law* 102 (2nd ed., 1968).

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

³ *Id.*, Article 41(1).

⁴ Choe Sang-Hun, North Korea Calls Hawaii and U.S. Mainland Targets, *New York Times* (26 March 2013), available at <http://www.nytimes.com/2013/03/27/world/asia/north-korea-calls-hawaii-and-us-mainland-targets.html> (last visited 16 May 2018). Legally speaking, the armistice agreement of 27 July 1953 did not bring the state of war to an end between North Korea and South Korea because a peace treaty is still pending. The significance of North Korea's declaration of war of March 30, 2013, however, has specifically drawn the Hawaiian Islands into the region of war because it has been targeted as a result of the United States prolonged occupation.

a state of war; there was no intermediate state.”⁵ The Hawaiian Kingdom, a neutral and independent state, has been in an illegal war with the United States for the past 124 years without a peace treaty, and must begin to comply with the rules of *jus in bello*.

INTRODUCTION

4. When the *South China Sea* Tribunal cited in its award on jurisdiction the *Larsen v. Hawaiian Kingdom* case held at the Permanent Court of Arbitration, it should have garnered international attention, especially after the Court acknowledged the Hawaiian Kingdom as a state and Larsen a private entity.⁶ The *Larsen* case was a dispute between a Hawaiian national and his government, who he alleged was negligent for allowing the unlawful imposition of American laws over Hawaiian territory that led to the alleged war crimes of unfair trial, unlawful confinement and pillaging. Larsen sought to have the Tribunal adjudge that the United States of America violated his rights, after which he sought the Tribunal to adjudge that the Hawaiian government was liable for those violations. Although the United States was formally invited it chose not to join in the arbitration thus raising the indispensable third party rule for Larsen to overcome. What is almost completely unknown today is Hawai‘i’s international status as an independent and sovereign state, called the Hawaiian Kingdom, that has been in an illegal state of war with the United States of America since 16 January 1893. The purpose of this article will be to make manifest, in the light of international law, the current illegal state of war that has gone on for well over a century and its profound impact on the international community today.
5. The first allegations of war crimes committed in Hawai‘i, being unfair trial, unlawful confinement and pillaging,⁷ were made the subject of an arbitral dispute in *Lance Larsen*

⁵ Christopher Greenwood, “Scope of Application of Humanitarian Law,” in Dieter Fleck (ed.), *The Handbook of the International Law of Military Operations* 45 (2nd ed., 2008).

⁶ *South China Sea* case (Philippines v. China), PCA Case No. 2013-19, Award on Jurisdiction and Admissibility, p. 71, para. 181 (2015), available at: <https://pcacases.com/web/sendAttach/1506> (last visited 16 May 2018).

⁷ Memorial of Lance Paul Larsen (May 22, 2000), *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration, at para. 62-64, “Despite Mr. Larsen’s efforts to assert his nationality and to protest the prolonged occupation of his nation, [on] 4 October 1999, Mr. Larsen was illegally imprisoned for his refusal to abide by the laws of the State of Hawaii by State of Hawaii. At this point, Mr. Larsen became a political prisoner, imprisoned for standing up for his rights as a Hawaiian subject against the United States of America, the occupying power in the prolonged occupation of the Hawaiian islands. ... While in prison, Mr. Larsen did continue to assert his nationality as a Hawaiian subject, and to protest the unlawful imposition of American laws over his person by filing a Writ of Habeas [sic] Corpus with the Circuit Court of the Third Circuit, Hilo Division, State of Hawaii.... Upon release from incarceration, Mr. Larsen was forced to pay additional fines to the State of Hawaii in order to avoid further imprisonment for asserting his rights as a Hawaiian subject,” available at http://www.alohaquest.com/arbitration/memorial_larsen.htm (last visited 16 May 2018).

Article 33, 1949 Geneva Convention, IV, “Pillage is prohibited. Reprisals against protected persons and their property are prohibited;” Article 147, 1949 Geneva Convention, IV, “Grave breaches [...] shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: ...unlawful confinement of a protected person,... wilfully depriving a protected person of the rights of fair and regular trial

vs. Hawaiian Kingdom at the Permanent Court of Arbitration (hereafter “PCA”).⁸ Oral hearings were held at the PCA on 7, 8 and 11 December 2000. As an intergovernmental organization, the PCA must possess institutional jurisdiction before it can form *ad hoc* tribunals. The jurisdiction of the PCA is distinguished from the subject-matter jurisdiction of the *ad hoc* tribunal over the dispute between the parties. Disputes capable of being accepted under the PCA’s institutional jurisdiction include disputes between: any two or more states; a state and an international organization (i.e. an intergovernmental organization); two or more international organizations; a state and a private party; and an international organization and a private entity.⁹ The PCA accepted the case as a dispute between a state and a private party, and acknowledged the Hawaiian Kingdom as a non-Contracting Power under Article 47 of the 1907 Hague Convention, I (hereafter “1907 HC I”).¹⁰ As stated on the PCA’s website:

Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency (“Hawaiian Kingdom”) on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant’s person within the territorial jurisdiction of the Hawaiian Kingdom.¹¹

RESTORATION OF THE HAWAIIAN KINGDOM GOVERNMENT

6. On 10 December 1995, David Keanu Sai (“Minister Sai”) and Donald A. Lewis, both being Hawaiian subjects, formed a general partnership in compliance with an Act to Provide for the Registration of Co-partnership Firms (1880).¹² This partnership was named the Perfect Title Company (hereafter referred to as “PTC”) and functioned as a land title abstracting company.¹³ According to Hawaiian law, co-partnerships were required to register their articles of agreement with the Interior Department’s Bureau of Conveyances, and for the

prescribed in the present Convention;” see also International Criminal Court, *Elements of War Crimes* (2011), at 16 (Article 8 (2) (a) (vi)—War crime of denying a fair trial), 17 (Article 8 (2) (a) (vii)-2—War Crime of unlawful confinement), and 26 (Article 8 (2) (b) (xvi)—War Crime of pillaging).

⁸ Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, available at <https://pca-cpa.org/en/cases/35/> (last visited 16 May 2018).

⁹ United Nations, United Nations Conference on Trade and Development: Dispute Settlement 15 (United Nations, 2003).

¹⁰ PCA Annual Report, Annex 2, 51, n. 2. (2011).

¹¹ *Larsen v. Hawaiian Kingdom*, Cases, Permanent Court of Arbitration, available at <https://pca-cpa.org/en/cases/35/> (last visited 16 May 2018).

¹² A true and correct copy of the act can be accessed online at: http://hawaiiankingdom.org/pdf/1880_Co-Partnership_Act.pdf (last visited 16 May 2018).

¹³ A true and correct copy of the PTC’s articles of agreement can be accessed online at: [http://hawaiiankingdom.org/pdf/PTC_\(12.10.1995\).pdf](http://hawaiiankingdom.org/pdf/PTC_(12.10.1995).pdf) (last visited 16 May 2018).

Minister of the Interior, it was his duty to ensure that co-partnerships maintain their compliance with the statute. However, due to the failure of the United States to administer Hawaiian Kingdom law, there was no government, whether established by the United States President or a restored Hawaiian Kingdom government *de jure*, to ensure the company's compliance to the co-partnership statute.

7. The partners of PTC intended to establish a legitimate co-partnership in accordance with Hawaiian Kingdom law and in order for the title company to exist as a legal co-partnership firm, the government had to be reestablished in an acting capacity. An acting official is “not an appointed incumbent, but merely a *locum tenens*, who is performing the duties of an office to which he himself does not claim title.”¹⁴ Hawaiian law did not assume that the entire Hawaiian government would be made vacant, and, consequently, the law did not formalize provisions for the reactivation of the government in extraordinary circumstances. Therefore, a deliberate course of action was taken to re-activate the Hawaiian government by and through its executive branch, as officers *de facto*, under the common law doctrine of necessity, notwithstanding the prolonged occupation of the Hawaiian Kingdom since 17 January 1893.

8. The 1880 Co-partnership Act requires members of co-partnerships to register their articles of agreement in the Bureau of Conveyances, which is within the Ministry of the Interior. This same Bureau of Conveyances is now under the State of Hawai‘i’s Department of Land and Natural Resources, which was formerly the Interior Department. The Minister of the Interior holds a seat of government as a member of the Cabinet Council, together with the other Cabinet Ministers. Article 43 of the 1864 Hawaiian constitution, as amended, provides that, “Each member of the King’s Cabinet shall keep an office at the seat of Government, and shall be accountable for the conduct of his deputies and clerks.” Necessity dictated that in the absence of any “deputies or clerks” of the Interior department, the partners of a registered co-partnership could assume the duty of the same because of the current state of affairs. Therefore, it was reasonable for the partners of this registered co-partnership to assume the office of the Registrar of the Bureau of Conveyances in the absence of the same; then assume the office of the Minister of Interior in the absence of the same; then assume the office of the Cabinet Council in the absence of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and, finally assume the office constitutionally vested in the Cabinet as a Regency, in accordance with Article 33 of the 1864 Hawaiian constitution, as amended.¹⁵ A regency is a person or body of persons “intrusted with the vicarious government of a kingdom during the minority, absence, insanity, or other disability of the [monarch].”¹⁶

¹⁴ Black’s Law Dictionary 26 (6th ed.,1990).

¹⁵ A true and correct copy of the 1864 constitution, as amended, can be accessed online at: http://hawaiiankingdom.org/pdf/1864_Constitution.pdf (last visited 16 May 2018).

¹⁶ Black’s Law, *supra* note 14, at 1282.

9. With the specific intent of assuming the “seat of Government,” the partners of PTC formed a second partnership called the Hawaiian Kingdom Trust Company (hereafter referred to as “HKTC”) on 15 December 1995.¹⁷ The partners intended that this registered partnership would serve as a provisional surrogate for the Council of Regency. Therefore, and in light of the ascension process explained in paragraph 87, HKTC would serve as officers *de facto* for the Registrar of the Bureau of Conveyances, the Minister of Interior, the Cabinet Council, and ultimately for the Council of Regency, in an acting capacity, by necessity.
10. The purpose of the HKTC was twofold; first, to ensure PTC complies with the co-partnership statute, and, second, to provisionally serve as an acting government of the Hawaiian Kingdom. What became apparent was the impression of a conflict of interest, whereby the duty to comply and the duty to ensure compliance was vested in the same two partners of those two companies. Therefore, in order to avoid this apparent conflict of interest, the partners of both PTC and HKTC, reasoned that an *acting* Regent, having no interests in either company, should be appointed to serve as a *de facto* officer of the Hawaiian government. Since HKTC assumed to represent the interests of the Hawaiian government in an acting capacity, the trustees would make the appointment.
11. The assumption by Hawaiian subjects, through the offices of constitutional authority in government, to the office of Regent, as enumerated under Article 33 of the Hawaiian Constitution, was a *de facto* process born out of necessity. Cooley defines an officer *de facto* “to be one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law,” but rather “comes in by claim and color of right.”¹⁸ In Carpenter v. Clark, the Court stated the “doctrine of a *de facto* officer is said to have originated as a rule of public necessity to prevent public mischief and protect the rights of innocent third parties who may be interested in the acts of an assumed officer apparently clothed with authority and the courts have sometimes gone far with delicate reasoning to sustain the rule where threatened rights of third parties were concerned.”¹⁹
12. In a meeting of the HKTC, it was agreed that Minister Sai would be appointed to serve as *acting* Regent but could not retain an interest in the two companies prior to the appointment because of a conflict of interest. In that meeting, it was also decided, and agreed upon, that Nai‘a-Ulumaimalu, a Hawaiian subject, would replace Minister Sai as trustee of HKTC and partner of PTC. This plan was to maintain the standing of the two partnerships under the 1880 Co-partnership Act, and not have either partnership lapse into sole-proprietorships. To accomplish this, Minister Sai would relinquish his entire one-half (50%) interest to Lewis, by deed of conveyance, in both companies, after which, Lewis

¹⁷ A true and correct copy of the HKTC articles of agreement can be accessed online at: [http://hawaiiankingdom.org/pdf/HKTC_\(12.15.1995\).pdf](http://hawaiiankingdom.org/pdf/HKTC_(12.15.1995).pdf) (last visited 16 May 2018).

¹⁸ Thomas Cooley, *A Treatise on the Law of Taxation* 185 (1876).

¹⁹ Carpenter v. Clark, 217 Michigan 63, 71 (1921).

would convey a redistribution of interest to Nai‘a-Ulumaimalu, then the former would hold a ninety-nine percent (99%) interest in the two companies and the latter a one percent (1%) interest in the same. In order to have these two transactions take place simultaneously, without affecting the standing of the two partnerships, both deeds of conveyance took place on the same day but did not take effect until the following day, on 28 February 1996.²⁰

13. On 1 March 1996, the Trustees of HKTC appointed Minister Sai as *acting* Regent.²¹ On the same day, Minister Sai, as *acting* Regent, proclaimed himself, as the successor of the HKTC to the aforementioned covenant of agreement, for carrying out the quieting of all land titles in the Hawaiian Islands.²² As a *de facto* officer, representing the original warrantor of all lands in fee-simple—the Hawaiian Kingdom government, the *acting* Regent was empowered, to remedy rejected claims to title that have been properly investigated by PTC, in accordance with the aforementioned covenant of agreement.
14. On 15 May 1996, the Trustees conveyed by deed, all of its right, title and interest acquired by thirty-eight deeds of trust, to the *acting* Regent and stipulated that the company would be dissolved in accordance with the provisions of its deed of general partnership on or about 30 June 1996.²³
15. On 28 February 1997, a Proclamation by the *acting* Regent, announcing the restoration of the provisional Hawaiian government, was printed in the Honolulu Sunday Advertiser, on 9 March 1997.²⁴ The international law of occupation allows for an occupied State’s government and the military government of an occupying State to co-exist within the same territory. According to Marek, “it is always the legal order of the State which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the delegation of the [occupying] State nor any rule of international law other than the one safeguarding the continuity of an occupied State. The relation between the legal order of the [occupying] State and that of the occupied State... is not one of delegation, but of co-existence.”²⁵

²⁰ A true and correct copy of Minister Sai’s deed can be accessed online at: http://hawaiiankingdom.org/pdf/Sai_to_Lewis_Deed.pdf, and a true and correct copy of Nai‘a-Ulumaimalu’s deed can be accessed online at: http://hawaiiankingdom.org/pdf/Nai%E2%80%98a_to_Lewis_Deed.pdf (last visited 16 May 2018).

²¹ A true and correct copy of the appointment can be accessed online at: http://hawaiiankingdom.org/pdf/HKTC_Appt_Regent.pdf (last visited 16 May 2018).

²² A true and correct copy of the proclamation can be accessed online at: [http://hawaiiankingdom.org/pdf/Proc_\(3.1.1996\).pdf](http://hawaiiankingdom.org/pdf/Proc_(3.1.1996).pdf) (last visited 16 May 2018).

²³ A true and correct copy of the deed can be accessed online at: http://hawaiiankingdom.org/pdf/HKTC_Deed_to_Regent.pdf (last visited 16 May 2018).

²⁴ A true and correct copy of the proclamation can be accessed online at: [http://hawaiiankingdom.org/pdf/Proc_\(2.28.1997\).pdf](http://hawaiiankingdom.org/pdf/Proc_(2.28.1997).pdf) (last visited 16 May 2018).

²⁵ Marek, *supra* note 1, at 91.

16. Notwithstanding the prolonged occupation of the Hawaiian Kingdom since 17 January 1893, the establishment of an *acting* Regent—an officer *de facto*, was a political act of self-preservation, not revolution, and was grounded upon the legal doctrine of limited necessity. Under British common law, deviations from a State’s constitutional order “can be justified on grounds of necessity.”²⁶ De Smith also states, that “State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution.”²⁷ According to Oppenheimer, “a temporary deviation from the wording of the constitution is justifiable if this is necessary to conserve the sovereignty and independence of the country.”²⁸ In Madzimbamuto v. Lardner-Burke, Lord Pearce stated that there are certain limitations to the principle of necessity, “namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful... Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign.”²⁹
17. On 7 September 1999, Minister Sai, then as *acting* Regent, commissions Mr. Peter Umialiloa Sai, a Hawaiian subject, as *acting* Minister of the Interior, and Mrs. Kau‘i P. Goodhue, later to be known as Mrs. Kau‘i P. Sai-Dudoit, a Hawaiian subject, as *acting* Minister of Finance.³⁰ On 9 September 1999, Minister Sai, then as *acting* Regent, commissions Mr. Gary Victor Dubin, Esquire, a Hawaiian denizen, as *acting* Attorney General.³¹
18. On September 1999, Minister Sai, then as *acting* Regent, the *acting* Minister of Foreign Affairs, the *acting* Minister of Finance, and the *acting* Attorney General, in Privy Council, passed a resolution establishing an *acting* Council of Regency, whereby the *acting* Regent would resume the office of *acting* Minister of the Interior.³²

²⁶ Stanley A. de Smith, *Constitutional and Administrative Law* 80 (1986).

²⁷ *Id.*

²⁸ F.W. Oppenheimer, *Governments and Authorities in Exile*, 36 Am. J. Int’l. L. 568, 581 (1942).

²⁹ See *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969). See also *Mitchell v. Director of Public Prosecutions*, L.R.C. (Const) 35, 88–89 (1986); and *Chandrika Persaud v. Republic of Fiji* (Nov. 16, 2000); and *Mokotso v. HM King Moshoeshoe II*, LRC (Const) 24, 132 (1989).

³⁰ A true and correct copy of the Minister of Foreign Affairs’ commission can be accessed online at: http://hawaiiankingdom.org/pdf/Umi_Sai_Min_Foreign_Affairs.pdf, and a true and correct copy of the Minister of Finance’s commission can be accessed online at: http://hawaiiankingdom.org/pdf/Kauai_Min_of_Finance.pdf (last visited 16 May 2018).

³¹ A true and correct copy of the Attorney General’s commission can be accessed online at: http://hawaiiankingdom.org/pdf/Dubin_Att_General.pdf (last visited 16 May 2018).

³² A true and correct copy of the resolution can be accessed online at: http://hawaiiankingdom.org/pdf/Council_of_Regency_Resolution.pdf (last visited 16 May 2018).

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

A provisional government is supposed to be a government *de facto* for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity.³³

20. Like other governments formed in exile during foreign occupations, the Hawaiian government did not receive its mandate from the Hawaiian citizenry, but rather by virtue of Hawaiian constitutional law, and therefore represents the Hawaiian State.³⁴ As in 2001, Bederman and Hilbert reported in the *American Journal of International Law*,

At the center of the PCA proceedings was ... that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States’ “unlawful imposition [over him] of [its] municipal laws” through its political subdivision, the State of Hawaii. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States had committed against him.³⁵

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

It follows that the Tribunal cannot determine whether the respondent [the Hawaiian Kingdom] has failed to discharge its obligations towards the claimant [Larsen] without ruling on the legality of the acts of the United States of America. Yet that

³³ Thomas M. Cooley, *Grave Obstacles to Hawaiian Annexation*, *The Forum*, 389, 390 (1893).

³⁴ The policy of the Hawaiian government is threefold: first, exposure of the prolonged occupation; second, ensure that the United States complies with international humanitarian law; and, third, prepare for an effective transition to a *de jure* government when the occupation ends. The Strategic Plan of the Hawaiian government is available at http://hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf (last visited 16 May 2018).

³⁵ , David Bederman & Kurt Hibert, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii*, 95 *Am. J. Int’l. L.* 927, 928 (2001).

is precisely what the *Monetary Gold* principle precludes the Tribunal from doing. As the International Court of Justice explained in the *East Timor* case, “the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case.”³⁶

22. The Tribunal, however, acknowledged that the parties to the arbitration could pursue fact-finding. The Tribunal stated, “[a]t one stage of the proceedings the question was raised whether some of the issues which the parties wished to present might not be dealt with by way of a fact-finding process. In addition to its role as a facilitator of international arbitration and conciliation, the Permanent Court of Arbitration has various procedures for fact-finding, both as between States and otherwise.”³⁷ The Tribunal noted “that the interstate fact-finding commissions so far held under the auspices of the Permanent Court of Arbitration have not confined themselves to pure questions of fact but have gone on, expressly or by clear implication, to deal with issues of responsibility for those facts.”³⁸ The Tribunal pointed out that “Part III of each of the Hague Conventions of 1899 and 1907 provide for International Commissions of Inquiry. The PCA has also adopted Optional Rules for Fact-finding Commissions of Inquiry.”³⁹
23. On 19 January 2017, the Hawaiian government and Lance Larsen entered into a Special Agreement to form an international commission of inquiry. As proposed by the Tribunal, both Parties agreed to the rules provided under Part III—*International Commissions of Inquiry* (Articles 9-36), 1907 HC I. After the Commission is formed they will select a Secretary General to serve as a registry and the location for its sitting.⁴⁰ According to Article III of the Special Agreement:

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

³⁶ Larsen v. Hawaiian Kingdom, 119 *International Law Reports* 566, 596 (2001) (hereafter “Larsen case”).

³⁷ *Id.*, at 597.

³⁸ *Id.*

³⁹ *Id.*, at n. 28.

⁴⁰ Amendment to Special Agreement (26 March 2017), available at http://hawaiiankingdom.org/pdf/Amend_Agmt_3_26_17.pdf (last visited 16 May 2018).

accordance with the basic norms and framework of international humanitarian law.⁴¹

24. Since humanitarian law is a set of rules that seek to limit the effects of war on persons who are not participating in the armed conflict, such as civilians of an occupied state, the *Larsen* case and the fact-finding proceedings must stem from an actual state of war—a war not in theory but a war in fact. More importantly, the application of the principle of *intertemporal law* is critical to understanding the arbitral dispute between Larsen and the Hawaiian Kingdom. The dispute stemmed from the illegal state of war with the United States that began in 1893. Judge Huber famously stated that “a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled.”⁴²

THE HAWAIIAN KINGDOM AS A SUBJECT OF INTERNATIONAL LAW

25. To quote the *dictum* of the *Larsen v. Hawaiian Kingdom* Tribunal, “in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.”⁴³ As an independent state, the Hawaiian Kingdom entered into extensive treaty relations with a variety of states establishing diplomatic relations and trade agreements.⁴⁴ According to Westlake in 1894, the *Family of Nations* comprised, “First, all European States.... Secondly, all American States.... Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State.”⁴⁵

⁴¹ Special Agreement (January 19, 2017), available at

[http://hawaiiankingdom.org/pdf/ICI_Agmt_1_19_17\(amended\).pdf](http://hawaiiankingdom.org/pdf/ICI_Agmt_1_19_17(amended).pdf) (last visited 16 May 2018).

⁴² *Island of Palmas* arbitration case (Netherlands and the United States of America), R.I.A.A., vol. II, 829 (1949).

⁴³ *Larsen* case, *supra* note 36, at 581.

⁴⁴ The Hawaiian Kingdom entered into treaties with Austria-Hungary (now separate states), 18 June 1875; Belgium, 4 October 1862; Bremen (succeeded by Germany), 27 March 1854; Denmark, 19 October 1846; France, 8 September 1858; French Tahiti, 24 November 1853; Germany, 25 March 1879; New South Wales (now Australia), 10 March 1874; Hamburg (succeeded by Germany), 8 January 1848; Italy, 22 July 1863; Japan, 19 August 1871, 28 January 1886; Netherlands & Luxembourg, 16 October 1862 (William III was also Grand Duke of Luxembourg); Portugal, 5 May 1882; Russia, 19 June 1869; Samoa, 20 March 1887; Spain, 9 October 1863; Sweden-Norway (now separate states), 5 April 1855; and Switzerland, 20 July 1864; the United Kingdom of Great Britain and Northern Ireland) 26 March 1846; and the United States of America, 20 December 1849, 13 January 1875, 11 September 1883, and 6 December 1884.

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

26. To preserve its political independence should there be war, the Hawaiian Kingdom sought to ensure that its neutrality would be recognized beforehand. Provisions recognizing Hawaiian neutrality were incorporated in the treaties with Sweden-Norway, Spain and Germany. “A nation that wishes to secure her own peace,” says Vattel, “cannot more successfully attain that object than by concluding treaties [of] neutrality.”⁴⁶
27. Under customary international law in force in the nineteenth century, the territory of a neutral State could not be violated. This principle was codified by Article 1 of the 1907 Hague Convention, V, stating that the “territory of neutral Powers is inviolable.” According to Politis, “[t]he law of neutrality, fashioned as it had been by custom and a closely woven network of contractual agreements, was to a great extent codified by the beginning of the [20th] century.”⁴⁷ As such, the Hawaiian Kingdom’s territory could not be trespassed or dishonored, and its neutrality “constituted a guaranty of independence and peaceful existence.”⁴⁸

FROM A STATE OF PEACE TO AN UNJUST STATE OF WAR

28. “Traditional international law was based upon a rigid distinction between the state of peace and the state of war,” says Judge Greenwood.⁴⁹ “Countries were either in a state of peace or a state of war; there was no intermediate state.”⁵⁰ This is also reflected by the fact that the renowned jurist of international law, Lassa Oppenheim, separated his treatise on *International Law* into two volumes, Vol. I—*Peace*, and Vol. II—*War and Neutrality*. In the nineteenth century, war was recognized as lawful, but it had to be justified under *jus ad bellum*. War could only be waged to redress a State’s injury. As Vattel stated, “[w]hatever strikes at [a sovereign state’s] rights is an injury, and a just cause of war.”⁵¹
29. The Hawaiian Kingdom enjoyed a state of peace with all states. This state of affairs, however, was violently interrupted by the United States when the state of peace was transformed to a state of war that began on 16 January 1893 when United States troops invaded the kingdom. The following day, Queen Lili‘uokalani, as the executive monarch of a constitutional government, made the following protest and a conditional surrender of her authority to the United States in response to military action taken against the Hawaiian government. The Queen’s protest stated:

⁴⁶ Emerich De Vattel, *The Law of Nations* 333 (6th ed., 1844).

⁴⁷ Nicolas Politis, *Neutrality and Peace* (1935), at 27.

⁴⁸ *Id.*, at 31.

⁴⁹ Greenwood, *supra* note 5, at 45.

⁵⁰ *Id.*

⁵¹ Vattel, *supra* note 46, at 301.

I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom. That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government. Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.⁵²

30. Under international law, the landing of United States troops without the consent of the Hawaiian government was an act of war. But in order for an act of war not to transform the state of affairs to a state of war, the act must be justified or lawful under international law, e.g. the necessity of landing troops to secure the protection of the lives and property of United States citizens in the Hawaiian Kingdom. According to Wright, “[a]n act of war is an invasion of territory . . . and so normally illegal. Such an act if not followed by war gives grounds for a claim which can be legally avoided only by proof of some special treaty or necessity justifying the act.”⁵³ The quintessential question is whether or not the United States troops were landed to protect American lives or were they landed to wage war against the Hawaiian Kingdom.
31. According to Brownlie, “[t]he right of war, as an aspect of sovereignty, which existed in the period before 1914, subject to the doctrine that war was a means of last resort in the enforcement of legal rights, was very rarely asserted either by statesmen or works of authority without some stereotyped plea to a right of self-preservation, and of self-defence, or to necessity or protection of vital interests, or merely alleged injury to rights or national honour and dignity.”⁵⁴ The United States had no dispute with the Hawaiian Kingdom that would have warranted an invasion and overthrow of the Hawaiian government of a neutral and independent state.
32. In 1993, the United States Congress enacted a joint resolution offering an apology for the overthrow.⁵⁵ Of significance in the resolution was a particular preamble clause, which stated: “[w]hereas, in a message to Congress on December 18, 1893, President Grover Cleveland reportedly fully and accurately on the illegal acts of the conspirators, described

⁵² Larsen case, Annexure 2, *supra* note 36, at 612.

⁵³ Quincy Wright, “Changes in the Concept of War,” 18 *Am. J. Int’l. L.* 755, 756 (1924).

⁵⁴ Ian Brownlie, *International Law and the Use of Force by States* (1963), at 41

⁵⁵ Larsen case, Annexure 2, *supra* note 36, at 611-15.

such acts as an ‘act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress,’ and acknowledged that by such acts the government of a peaceful and friendly people was overthrown.”⁵⁶ At first read, however, it would appear that the “conspirators” were the subjects that committed the “act of war,” but this is misleading. First, under international law, only a state can commit an “act of war,” whether through its military and/or its diplomat; and, second, conspirators within a country could only commit the high crime of treason, not “acts of war.” These two concepts are reflected in the terms *coup de main* and *coup d’état*. The former is a successful invasion by a foreign state’s military force, while the latter is a successful internal revolt, which was also referred to in the nineteenth century as a revolution.

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

Last January [1893], a political crime was committed, not only against the legitimate Sovereign of the Hawaiian Kingdom, but also against the whole of the Hawaiian nation, a nation who, for the past sixty years, had enjoyed free and happy constitutional self-government. This was done by a *coup de main* of U.S. Minister Stevens, in collusion with a cabal of conspirators, mainly faithless sons of missionaries and local politicians angered by continuous political defeat, who, as revenge for being a hopeless minority in the country, resolved to “rule or ruin” through foreign help. The facts of this “revolution,” as it is improperly called, are now a matter of history.⁵⁷

34. Whether by chance or design, the 1993 Congressional apology resolution did not accurately reflect what President Cleveland stated in his message to the Congress in 1893. When Cleveland stated the “military demonstration upon the soil of Honolulu was of itself an act of war,” he was referring to United States armed forces and not to any of the conspirators.⁵⁸ Cleveland noted “that on the 16th day of January, 1893, between four and five o’clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies.”⁵⁹ This *act of war* was the initial stage of a *coup de main*.

⁵⁶ *Id.*, at 612.

⁵⁷ United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai‘i: 1894-95, (Government Printing Office 1895), 1295 (hereafter “Executive Documents”), available at http://hawaiiankingdom.org/pdf/HPL_Petition_12_27_1893.pdf (last visited 16 May 2018).

⁵⁸ Larsen case, Annexure 1, *supra* note 36, at 604.

⁵⁹ *Id.*

35. As part of the plan, the U.S. diplomat, John Stevens, would prematurely recognize the small group of insurgents on January 17th as if they were successful revolutionaries thereby giving it a veil of *de facto* status. In a private note to Sanford Dole, head of the insurgency, and written under the letterhead of the United States legation on 17 January 1893, Stevens wrote: “Judge Dole: I would advise not to make known of my recognition of the *de facto* Provisional Government until said Government is in possession of the police station.”⁶⁰ A government created through intervention is a puppet regime of the intervening State, and, as such, has no lawful authority. “Puppet governments,” according to Marek, “are organs of the occupant and, as such form part of his legal order. The agreements concluded by them with the occupant are not genuine international agreements [because] such agreements are merely decrees of the occupant disguised as agreements which the occupant in fact concludes with himself. Their measures and laws are those of the occupant.”⁶¹
36. Customary international law recognizes a successful revolution when insurgents secure complete control of all governmental machinery and have the acquiescence of the population. U.S. Secretary of State Foster acknowledged this rule in a dispatch to Stevens on 28 January 1893: “[y]our course in recognizing an unopposed *de facto* government appears to have been discreet and in accordance with the facts. The rule of this government has uniformly been to recognize and enter into relation with any actual government in full possession of effective power with the assent of the people.”⁶² According to Lauterpacht, “[s]o long as the revolution has not been successful, and so long as the lawful government ... remains within national territory and asserts its authority, it is presumed to represent the State as a whole.”⁶³ With full knowledge of what constituted a successful revolution, Cleveland provided a blistering indictment in his message to the Congress:

When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety ... declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister’s recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large

⁶⁰ Letter from United States Minister, John L. Stevens, to Sanford B. Dole, 17 January 1893, W. O. Smith Collection, HEA Archives, HMCS, Honolulu, available at <http://hmha.missionhouses.org/items/show/889> (last visited 16 May 2018).

⁶¹ Marek, *supra* note 1, at 114.

⁶² Executive Documents, *supra* note 57, at 1179.

⁶³ E. Lauterpacht, *Recognition in International Law* 93 (1947).

number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge.⁶⁴

37. "Premature recognition is a tortious act against the lawful government," explains Lauterpacht, which "is a breach of international law."⁶⁵ And according to Stowell, a "foreign state which intervenes in support of [insurgents] commits an act of war against the state to which it belongs, and steps outside the law of nations in time of peace."⁶⁶ Furthermore, Stapleton concludes, "[o]f all the principles in the code of international law, the most important—the one which the independent existence of all weaker States must depend—is this: no State has a right FORCIBLY to interfere in the internal concerns of another State."⁶⁷

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

Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal.... In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice.⁶⁸

39. The President's finding that the United States embarked upon a war with the Hawaiian Kingdom in violation of the law unequivocally acknowledged a state of war in fact existed since 16 January 1893. According to Lauterpacht, an illegal war is "a war of aggression undertaken by one belligerent side in violation of a basic international obligation prohibiting recourse to war as an instrument of national policy."⁶⁹ However, despite the President's admittance that the acts of war were not in compliance with *jus ad bellum*—justifying war—the United States was still obligated to comply with *jus in bello*—the rules of war—when it occupied Hawaiian territory. In the *Hostages Trial* (the case of *Wilhelm*

⁶⁴ Larsen case, Annexure 1, *supra* note 36, at 605.

⁶⁵ E. Lauterpacht, *supra* note 63, at 95.

⁶⁶ Ellery C. Stowell, *Intervention in International Law* 349, n. 75 (1921).

⁶⁷ Augustus Granville Stapleton, *Intervention and Non-Intervention* 6 (1866). It appears that Stapleton uses all capitals in his use of the word 'forcibly' to draw attention to the reader.

⁶⁸ Larsen case, Annexure 1, *supra* note 36, at 606.

⁶⁹ H. Lauterpacht, *The Limits of the Operation of the Law of War*, 30 Brit. Y.B. Int'l L. 206 (1953).

List and Others), the Tribunal rejected the prosecutor's view that, since the German occupation arose out of an unlawful use of force, Germany could not invoke the rules of belligerent occupation. The Tribunal explained:

The Prosecution advances the contention that since Germany's war against Yugoslavia and Greece were aggressive wars, the German occupant troops were there unlawfully and gained no rights whatever as an occupant.... [W]e accept the statement as true that the wars against Yugoslavia and Greece were in direct violation of the Kellogg-Briand Pact and were therefore criminal in character. But it does not follow that every act by the German occupation forces against person or property is a crime.... At the outset, we desire to point out that international law makes no distinction between a lawful and unlawful occupant in dealing with the respective duties of occupant and population in the occupied territory.⁷⁰

40. As such, the United States remained obligated to comply with the laws of occupation despite it being an illegal war. As the Tribunal further stated, "whatever may be the cause of a war that has broken out, and whether or not the cause be a so-called just cause, the same rules of international law are valid as to what must not be done, [and what] may be done."⁷¹ According to Wright, "[w]ar begins when any state of the world manifests its intention to make war by some overt act, which may take the form of an act of war."⁷² In his review of customary international law in the nineteenth century, Brownlie found "that in so far a 'state of war' had any generally accepted meaning it was a situation regarded by one or both parties to a conflict as constituting a 'state of war'".⁷³ Cleveland's determination that by an "act of war ... the Government of a feeble but friendly and confiding people has been overthrown," the action was not justified.⁷⁴
41. What is of particular significance is that Cleveland referred to the Hawaiian people as "friendly and confiding," not "hostile." This is a classical case of where the United States President admits an unjust war not justified by *jus ad bellum*, but a state of war nevertheless for international law purposes. According to United States constitutional law, the President is the sole representative of the United States in foreign relations. In the words of U.S. Justice Marshall, "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign nations."⁷⁵ Therefore, the President's political determination that by an act of war the government of a friendly and confiding people was unlawfully overthrown would not have only produced resonance with the members of the

⁷⁰ *USA v. William List et al.* (Case No. 7), *Trials of War Criminals before the Nuremberg Military Tribunals* (hereafter 'Hostages Trial'), Vol. XI, p. 1247 (1950).

⁷¹ *Id.*

⁷² Quincy Wright, "Changes in the Concept of War," 18 *Am. J. Int'l. L.* 755, 758 (1924).

⁷³ Brownlie, *supra* note 54, p. 38.

⁷⁴ *Larsen case*, Annexure 1, *supra* note 36, at 608.

⁷⁵ 10 *Annals of Cong.* 613 (1800).

Congress, but to the international community as well, and the duty of third states to invoke neutrality.

42. Furthermore, in a state of war, the principle of effectiveness that you would otherwise have during a state of peace is reversed because of the existence of two legal orders in one and the same territory. Marek explains, “[i]n the first place: of these two legal orders, that of the occupied State is regular and ‘normal,’ while that of the occupying power is exceptional and limited. At the same time, the legal order of the occupant is, as has been strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness.”⁷⁶ Therefore, “[b]elligerent occupation is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned.”⁷⁷
43. Cleveland told the Congress that he initiated negotiations with the Queen “to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned.”⁷⁸ What Cleveland did not know at the time of his message to the Congress was that the Queen, on the very same day in Honolulu, accepted the conditions for settlement in an attempt to return the state of affairs to a state of peace. The executive mediation began on 13 November 1893 between the Queen and U.S. diplomat Albert Willis and an agreement was reached on 18 December.⁷⁹ The President was not aware of the agreement until after he delivered his message.⁸⁰ Despite being unaware, President Cleveland’s political determination in his message to the Congress was nonetheless conclusive that the United States was in a state of war with the Hawaiian Kingdom and was directly responsible for the unlawful overthrow of its government. Oppenheim defines war as “a contention between States for the purpose of overpowering each other.”⁸¹
44. Once a state of war ensued between the Hawaiian Kingdom and the United States, “the law of peace ceased to apply between them and their relations with one another became subject

⁷⁶ Marek, *supra* note 1, at 102.

⁷⁷ *Id.*

⁷⁸ Larsen case, Annexure 1, *supra* note 36, at 610.

⁷⁹ David Keanu Sai, “A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and Its Use and Practice Today,” 10 *J. L. & Soc. Challenges* 68, 119-127 (2008).

⁸⁰ Executive Documents, *supra* note 57, at 1283. In this dispatch to U.S. Diplomat Albert Willis from Secretary of State Gresham on January 12, 1894, he stated, “Your reports show that on further reflection the Queen gave her unqualified assent in writing to the conditions suggested, but that the Provisional Government refuses to acquiesce in the President’s decision. The matter now being in the hands of the Congress the President will keep that body fully advised of the situation, and will lay before it from time to time the reports received from you.” The state of war ensued.

⁸¹ L. Oppenheim, *International Law*, vol. II—War and Neutrality 74 (3rd ed., 1921).

to the laws of war, while their relations with other states not party to the conflict became governed by the law of neutrality.”⁸² This outbreak of a state of war between the Hawaiian Kingdom and the United States would “lead to many rules of the ordinary law of peace being superseded...by rules of humanitarian law,” e.g. acquisitive prescription.⁸³ A state of war “automatically brings about the full operation of all the rules of war and neutrality.”⁸⁴ And, according to Venturini, “[i]f an armed conflict occurs, the law of armed conflict must be applied from the beginning until the end, when the law of peace resumes in full effect.”⁸⁵ “For the laws of war ... continue to apply in the occupied territory even after the achievement of military victory, until either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant.”⁸⁶ In the *Tadić* case, the ICTY indicated that the laws of war—international humanitarian law—applies from “the initiation of ... armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached.”⁸⁷ Only by an agreement between the Hawaiian Kingdom and the United States could a state of peace be restored, without which a state of war ensues.⁸⁸ An attempt to transform the state of war to a state of peace was made by executive agreement on 18 December 1893. Cleveland, however, was unable to carry out his duties and obligations under the agreement to restore the situation that existed before the unlawful landing of American troops due to political wrangling in the Congress.⁸⁹ Hence, the state of war continued.

45. International law distinguishes between a “declaration of war” and a “state of war.” According to McNair and Watts, “the absence of a declaration ... will not of itself render the ensuing conflict any less a war.”⁹⁰ In other words, since a state of war is based upon

⁸² Greenwood, *supra* note 5, at 45.

⁸³ *Id.*, at 46. As opposed to belligerent occupation during a state of war, peaceful occupation during a state of peace over territory of another state could rise to a title of sovereignty under acquisitive prescription if there was a continuous and peaceful display of territorial sovereignty by the encroaching state without any objection by the encroached state. In this regard, effectiveness in the display of sovereign authority over territory of another state must be peaceful and not belligerent. *Jus in bello* proscribes acquisitive prescription.

⁸⁴ Myers S. McDougal and Florentino P. Feliciano, “The Initiation of Coercion: A Multi-temporal Analysis,” 52 *Am. J. Int’l. L.* 241, 247 (1958).

⁸⁵ “Gabiella Venturini, “The Temporal Scope of Application of the Conventions,” in Andrew Clapham, Paola Gaeta, and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* 52 (2015).

⁸⁶ Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* 224 (1996).

⁸⁷ ICTY, *Prosecutor v. Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), §70 (2 October 1995).

⁸⁸ Under United States municipal laws, there are two procedures by which an international agreement can bind the United States. The first is by a treaty whose entry into force can only take place after two-thirds of the United States Senate has given its advice and consent under Article II, section 2, Clause 2 of the U.S. Constitution. The second is by way of an executive agreement entered into by the President that does not require ratification by the Senate. See *United States v. Belmont*, 301 U.S. 324, 326 (1937); *United States v. Pink*, 315 U.S. 203, 223 (1942); *American Insurance Association v. Garamendi*, 539 U.S. 396, 415 (2003).

⁸⁹ Sai, Slippery Path, *supra* note 79, at 125-127.

⁹⁰ Lord McNair and A.D. Watts, *The Legal Effects of War* 7 (1966).

concrete facts of military action, there is no requirement for a formal declaration of war to be made other than providing formal notice of a State's "intention either in relation to existing hostilities or as a warning of imminent hostilities."⁹¹ In 1946, a United States Court had to determine whether a naval captain's life insurance policy, which excluded coverage if death came about as a result of war, covered his demise during the Japanese attack of Pearl Harbor on 7 December 1941. It was argued that the United States was not at war at the time of his death because the Congress did not formally declare war against Japan until the following day.

46. The Court denied this argument and explained that "the formal declaration by the Congress on December 8th was not an essential prerequisite to a political determination of the existence of a state of war commencing with the attack on Pearl Harbor."⁹² Therefore, the conclusion reached by President Cleveland that by "an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown,"⁹³ was a "political determination of the existence of a state of war," and that a formal declaration of war by the Congress was not essential. The "political determination" by President Cleveland, regarding the actions taken by the military forces of the United States since 16 January 1893, was the same as the "political determination" by President Roosevelt regarding actions taken by the military forces of Japan on 7 December 1945. Both political determinations of acts of war by these Presidents created a state of war for the United States under international law.
47. Foremost, the overthrow of the Hawaiian government did not affect, in the least, the continuity of the Hawaiian state, being the subject of international law. Wright asserts that "international law distinguishes between a government and the state it governs."⁹⁴ Cohen also posits that "[t]he state must be distinguished from the government. The state, not the government, is the major player, the legal person, in international law."⁹⁵ As Judge Crawford explains, "[t]here is a presumption that the State continues to exist, with its rights and obligations ... despite a period in which there is ... no effective, government."⁹⁶ He further concludes that "[b]elligerent occupation does not affect the continuity of the State,

⁹¹ Brownlie, *supra* note 54, at 40.

⁹² *New York Life Ins. Co. v. Bennion*, 158 F.2d 260 (C.C.A. 10th, 1946), 41(3) Am. J. Int'l L. 680, 682 (1947).

⁹³ Larsen case, Annexure 1, *supra* note 36, at 608.

⁹⁴ Quincy Wright, "The Status of Germany and the Peace Proclamation," 46(2) Am. J. Int'l L. 299, 307 (Apr. 1952).

⁹⁵ Sheldon M. Cohen, *Arms and Judgment: Law, Morality, and the Conduct of War in the Twentieth Century* 17 (1989).

⁹⁶ Crawford, *supra* note 1, at 34. If one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains.

even where there exists no government claiming to represent the occupied State.”⁹⁷ Commenting on the occupation of the Hawaiian Kingdom, Dumberry states,

[T]he 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.⁹⁸

THE BEGINNING OF THE PROLONGED OCCUPATION

48. What was the Hawaiian Kingdom’s status after the unlawful overthrow of its government for international law purposes? In the absence of an agreement that would have transformed the state of affairs back to a state of peace, the state of war prevails over what *jus in bello* would call belligerent occupation. Article 41 of the 1880 Institute of International Law’s *Manual on the Laws of War on Land* declared that a “territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there.” This definition was later codified under Article 42 of the 1899 Hague Convention, II, and then superseded by Article 42 of the 1907 Hague Convention, IV (hereafter “HC IV”), which provides that “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” Effectiveness is at the core of belligerent occupation.
49. The hostile army, in this case, included not only United States armed forces, but also its puppet regime that was disguising itself as a “provisional government.” As an entity created through intervention it existed as an armed militia that worked in tandem with the United States armed forces under the direction of the U.S. diplomat John Stevens. Under the rules of *jus in bello*, the occupant does not possess the sovereignty of the occupied state and therefore cannot compel allegiance.⁹⁹ To do so would imply that the occupied state, as

⁹⁷ *Id.* Crawford also stated, the “occupation of Iraq in 2003 illustrated the difference between ‘government’ and ‘State’; when Members of the Security Council, after adopting SC res 1511, 16 October 2003, called for the rapid ‘restoration of Iraq’s sovereignty’, they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restore.” *Id.*, n. 157.

⁹⁸ Patrick Dumberry, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom’s Claim to Continue as an Independent State under International Law*, 2(1) Chinese J. Int’l L. 655, 682 (2002).

⁹⁹ Article 45, 1899 Hague Convention, II, “Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited;” see also Article 45, 1907 Hague Convention, IV, “It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.” On 24 January 1895, the puppet regime calling itself the Republic of Hawai‘i coerced Queen Lili‘uokalani to abdicate the throne and to sign her allegiance

the subject of international law and whom allegiance is owed, was cancelled and its territory unilaterally annexed into the territory of the occupying state. International law would allow this under the doctrine of *debellatio*. *Debellatio*, however, could not apply to the Hawaiian situation as a result of the President's determination that the overthrow of the Hawaiian government was unlawful and, therefore, did not meet the test of *jus ad bellum*. As an unjust war, the doctrine of *debellatio* was precluded from arising. That is to say, *debellatio* is conditioned on a legal war. According to Schwarzenberger, "[i]f, as a result of legal, as distinct from illegal, war, the international personality of one of the belligerents is totally destroyed, victorious Powers may ... annex the territory of the defeated State or hand over portions of it to other States."¹⁰⁰

50. After United States troops were removed from Hawaiian territory on 1 April 1893, by order of President Cleveland's special investigator, James Blount, he was not aware that the provisional government was a puppet regime. As such, they remained in full power where, according to the Hawaiian Patriotic League, the "public funds have been outrageously squandered for the maintenance of an unnecessary large army, fed in luxury, and composed *entirely* of aliens, mainly recruited from the most disreputable classes of San Francisco."¹⁰¹ After the President determined the illegality of the situation and entered into an agreement to reinstate the executive monarch, the puppet regime refused to give up its power. Despite the President's failure to carry out the agreement of reinstatement and to ultimately transform the state of affairs to a state of peace, the situation remained a state of war and the rules of *jus in bello* continued to apply to the Hawaiian situation.
51. When the provisional government was formed through intervention, it merely replaced the executive monarch and her cabinet with insurgents calling themselves an executive and advisory councils. All Hawaiian government officials remained in place and were coerced into signing oaths of allegiance to the new regime with the oversight of United States troops.¹⁰² This continued when the American puppet changed its name to the so-called republic of Hawai'i on 4 July 1894 with alien mercenaries replacing American troops.

to the regime in order to "save many Royalists from being shot" (William Adam Russ, Jr., *The Hawaiian Republic (1894-98) And Its Struggle to Win Annexation* 71 (1992)). As the rule of *jus in bello* prohibits inhabitants of occupied territory to swear allegiance to the hostile Power, the Queen's oath of allegiance is therefore unlawful and void.

¹⁰⁰ Georg Schwarzenberger, *International Law as applied by International Courts and Tribunals*. Vol. II: The Law of Armed Conflict 167 (1968).

¹⁰¹ Executive Documents, *supra* note 57, at 1296.

¹⁰² *Id.*, at 211, "All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named person: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office. All Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils."

52. Under the guise of a Congressional joint resolution of annexation, United States armed forces physically reoccupied the Hawaiian Kingdom on 12 August 1898, during the Spanish-American War. According to the United States Supreme Court, “[t]hrough the [annexation] resolution was passed July 7, [1898] the formal transfer was not made until August 12, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States.”¹⁰³ Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and “they protested annexation occurring without the consent of the governed.”¹⁰⁴ Marek asserts that, “a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State.”¹⁰⁵ Even the U.S. Department of Justice in 1988, opined, it is “unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution.”¹⁰⁶
53. In 1900, the Congress renamed the republic of Hawai‘i to the Territory of Hawai‘i under *An Act To provide a government for the Territory of Hawai‘i*,¹⁰⁷ commonly known as the “Organic Act.” Shortly thereafter, the Territory of Hawai‘i intentionally sought to “Americanize” the school children throughout the Hawaiian Islands. To accomplish this, they instituted a policy of denationalization in 1906, titled “Programme for Patriotic Exercises in the Public Schools,” where the national language of Hawaiian was banned and replaced with the American language of English.¹⁰⁸ One of the leading newspapers for the insurgents, who were now officials in the territorial regime, printed a story on the plan of denationalization. The Hawaiian Gazette reported:

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

¹⁰³ Territory of Hawai‘i v. Mankichi, 190 U.S. 197, 212 (1903).

¹⁰⁴ Tom Coffman, *Nation Within: The History of the American Occupation of Hawai‘i* 322 (2016). Coffman initially published this book in 1998 titled *Nation Within: The Story of the American Annexation of the Nation of Hawai‘i*. Coffman explained, “In the book’s subtitle, the word *Annexation* has been replaced by the word *Occupation*, referring to America’s occupation of Hawai‘i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word *occupation*,” at xvi.

¹⁰⁵ Marek, *supra* note 1, at 110.

¹⁰⁶ Douglas Kmiec, Department of Justice, *Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea*, 12 Op. O.L.C. 238, 262 (1988).

¹⁰⁷ 31 U.S. Stat. 141.

¹⁰⁸ Programme for Patriotic Exercises in the Public Schools, Territory of Hawai‘i, adopted by the Department of Public (1906), available at http://hawaiiankingdom.org/pdf/1906_Patriotic_Exercises.pdf (last visited 16 May 2018).

patriotism in a school population that needed that kind of teaching, perhaps, more than the mainland children do [emphasis added].¹⁰⁹

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

At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building.... Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet above their heads.... “Attention!” Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. ‘Salute!’ was the principal’s next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: “We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!”¹¹⁰

55. Further usurping Hawaiian sovereignty, the Congress, in 1959, renamed the Territory of Hawai‘i to the State of Hawai‘i under *An Act To provide for the admission of the State of Hawai‘i into the Union*.¹¹¹ These Congressional laws, which have no extraterritorial effect, did not, in the least, transform the puppet regime into a military government recognizable under the rules of *jus in bello*. The maintenance of the puppet also stands in direct violation of the customary international law in 1893, the 1907 HC IV, and the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV (hereafter “1949 GC IV”). It is important to note for the purposes of *jus in bello* that the United States never made an international claim to the Hawaiian Islands through *debellatio*. Instead, the United States in 1959 reported to the United Nations Secretary General that “Hawaii has been administered by the United States since 1898. As early as 1900, Congress passed an Organic Act, establishing Hawaii as an incorporated territory in which the Constitution and laws of the United States, which were not locally inapplicable, would have full force and

¹⁰⁹ Patriotic Program for School Observance, *Hawaiian Gazette* 5 (3 Apr. 1906), available at http://hawaiiankingdom.org/pdf/Patriotic_Program_Article.pdf (last visited 16 May 2018).

¹¹⁰ William Inglis, *Hawai‘i’s Lesson to Headstrong California: How the Island Territory has solved the problem of dealing with its four thousand Japanese Public School children*, *Harper’s Weekly* 227 (16 Feb. 1907).

¹¹¹ 73 U.S. Stat. 4.

effect.”¹¹² This extraterritorial application of American laws are not only in violation of *The Lotus* case principle,¹¹³ but is prohibited by the rules of *jus in bello*.

56. As an occupying state, the United States was obligated to establish a military government, whose purpose would be to provisionally administer the laws of the occupied state—the Hawaiian Kingdom—until a treaty of peace or agreement to terminate the occupation has been done. “Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory.”¹¹⁴ The administration of occupied territory is set forth in the Hague Regulations, being Section III of the 1907 HC IV. According to Schwarzenberger, “Section III of the Hague Regulations ... was declaratory of international customary law.”¹¹⁵ Also, consistent with what was generally considered the international law of occupation in force at the time of the Spanish-American War, the “military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials.”¹¹⁶ Many other authorities also viewed the Hague Regulations as mere codification of customary international law, which was applicable at the time of the overthrow of the Hawaiian government and subsequent occupation.¹¹⁷
57. Since 1893, there was no military government established by the United States under the rules of *jus in bello* to administer the laws of the Hawaiian Kingdom as it stood prior to the overthrow. Instead, what occurred was the unlawful seizure of the apparatus of Hawaiian governance, its infrastructure, and its properties—both real and personal. It was a theft of an independent state’s self-government.

THE DUTY OF NEUTRALITY BY THIRD STATES

58. When the state of peace was transformed to a state of war, all other states were under a duty of neutrality. “Since neutrality is an attitude of impartiality, it excludes such assistance and succour to one of the belligerents as is detrimental to the other, and, further such

¹¹² United Nations, “Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America” (24 September 1959), Document no. A/4226, Annex 1, p. 2.

¹¹³ *Lotus*, 1927 PCIJ Series A, No. 10, p. 18.

¹¹⁴ United States Army Field Manual 27-10 (1956), sec. 362.

¹¹⁵ Georg Schwarzenberger, *The Law of Belligerent Occupation: Basic Issues*, 30 *Nordisk Tidsskrift Int’l Ret* 11 (1960).

¹¹⁶ Munroe Smith, *Record of Political Events*, 13(4) *Pol. Sci. Q.* 745, 748 (1898).

¹¹⁷ Gerhard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* 95 (1957); David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (2002), 57; Ludwig von Kohler, *The Administration of the Occupied Territories*, vol. I, 2 (1942); United States Judge Advocate General’s School Tex No. 11, *Law of Belligerent Occupation* 2 (1944), (stating that “Section III of the Hague Regulations is in substance a codification of customary law and its principles are binding signatories and non-signatories alike”).

injuries to the one as benefit the other.”¹¹⁸ The duty of a neutral state, not a party to the conflict, “obliges him, in the first instance, to prevent with the means at his disposal the belligerent concerned from committing such a violation,” e.g. to deny recognition of a puppet regime unlawfully created by an act of war.¹¹⁹

59. Twenty states violated their obligation of impartiality by recognizing the so-called republic of Hawai‘i and consequently became parties to the conflict.¹²⁰ These states include: Austria-Hungary (1 January 1895);¹²¹ Belgium (17 October 1894);¹²² Brazil (29 September 1894);¹²³ Chile (26 September 1894);¹²⁴ China (22 October 1894);¹²⁵ France (31 August 1894);¹²⁶ Germany (4 October 1894);¹²⁷ Guatemala (30 September 1894);¹²⁸ Italy (23 September 1894);¹²⁹ Japan (6 April 1897);¹³⁰ Mexico (8 August

¹¹⁸ L. Oppenheim, *supra* note 81, at 401.

¹¹⁹ *Id.*, at 496.

¹²⁰ Greenwood, *supra* note 5, at 45.

¹²¹ Austria-Hungary’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-austro-hungary/> (last visited 16 May 2018).

¹²² Belgium’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-belgium/> (last visited 16 May 2018).

¹²³ Brazil’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-brazil/> (last visited 16 May 2018).

¹²⁴ Chile’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-chile/> (last visited 16 May 2018).

¹²⁵ China’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-china/> (last visited 16 May 2018).

¹²⁶ France’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-france/> (last visited 16 May 2018).

¹²⁷ Germany’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-germanyprussia/> (last visited 16 May 2018).

¹²⁸ Guatemala’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-guatemala/> (last visited 16 May 2018).

¹²⁹ Italy’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-italy/> (last visited 16 May 2018).

¹³⁰ Japan’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/05/27/recognition-of-the-republic-of-hawaii-japan/> (last visited 16 May 2018).

1894);¹³¹ Netherlands (2 November 1894);¹³² Norway-Sweden (17 December 1894);¹³³ Peru (10 September 1894);¹³⁴ Portugal (17 December 1894);¹³⁵ Russia (26 August 1894);¹³⁶ Spain (26 November 1894);¹³⁷ Switzerland (18 September 1894);¹³⁸ and the United Kingdom (19 September 1894).¹³⁹

60. “If a neutral neglects this obligation,” states Oppenheim, “he himself thereby commits a violation of neutrality, for which he may be made responsible by a belligerent who has suffered through the violation of neutrality committed by the other belligerent and acquiesced in by him.”¹⁴⁰ The recognition of the so-called republic of Hawai‘i did not create any legality or lawfulness of the puppet regime, but rather is the indisputable evidence that these states’ violated their obligation to be neutral. Diplomatic recognition of governments occurs during a state of peace and not during a state of war, unless providing recognition of belligerent status. These recognitions were not recognizing the republic as a belligerent in a civil war with the Hawaiian Kingdom, but rather under the false pretense that the republic succeeded in a so-called revolution and therefore was the new government of Hawai‘i during a state of peace.

¹³¹ Mexico’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-mexico/> (last visited 16 May 2018).

¹³² The Netherlands’ recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-netherlands/> (last visited 16 May 2018).

¹³³ Norway-Sweden’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-swedenorway/> (last visited 16 May 2018).

¹³⁴ Peru’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-peru/> (last visited 16 May 2018).

¹³⁵ Portugal’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-portugal/> (last visited 16 May 2018).

¹³⁶ Russia’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-russia/> (last visited 16 May 2018).

¹³⁷ Spain’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-spain/> (last visited 16 May 2018).

¹³⁸ Switzerland’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/06/recognition-of-the-republic-of-hawaii-switzerland/> (last visited 16 May 2018).

¹³⁹ The United Kingdom’s recognition of the Republic of Hawai‘i, available at <https://historymystery.kenconklin.org/2008/04/05/recognition-of-the-republic-of-hawaii-britain/> (last visited 16 May 2018).

¹⁴⁰ L. Oppenheim, *supra* note 81, at 497.

THE STATE OF HAWAI‘I IS A PRIVATE ARMED FORCE

61. When the United States assumed control of its installed puppet regime under the new heading of Territory of Hawai‘i in 1900, and later the State of Hawai‘i in 1959, it surpassed “its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts.”¹⁴¹ The legislation of every state, including the United States of America and its Congress, are not sources of international law. In *The Lotus* case, the Permanent Court of International Justice stated that “[n]ow the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State.”¹⁴² According to Judge Crawford, derogation of this principle will not be presumed.¹⁴³
62. Since Congressional legislation has no extraterritorial effect, it cannot unilaterally establish governments in the territory of a foreign state. According to the U.S. Supreme Court, “[n]either the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.”¹⁴⁴ The Court also concluded that “[t]he laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction.”¹⁴⁵ Therefore, the State of Hawai‘i cannot claim to be a government as its only claim to authority derives from Congressional legislation that has no extraterritorial effect. As such, *jus in bello* defines it as an organized armed group.¹⁴⁶
63. “[O]rganized armed groups ... are under a command responsible to that party for the conduct of its subordinates.”¹⁴⁷ According to Henckaerts and Doswald-Beck, “this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,”¹⁴⁸ and that this “definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status.”¹⁴⁹ Article 1 of the 1907 HC IV, provides that

¹⁴¹ Eyal Benvenisti, *The International Law of Occupation* 19 (1993).

¹⁴² *Lotus*, *supra* note 113.

¹⁴³ Crawford, *supra* note 1, at 41.

¹⁴⁴ *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

¹⁴⁵ *The Apollon*, 22 U.S. 362, 370 (1824).

¹⁴⁶ Article 1, 1899 Hague Convention, II, and Article 1, 1907 Hague Convention, IV.

¹⁴⁷ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I, 14 (2009).

¹⁴⁸ *Id.*, at 15.

¹⁴⁹ *Id.*

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

64. Since the *Larsen* case, defendants that have come before courts of this armed group have begun to deny the courts' jurisdiction based on the narrative in this article. In a contemptible attempt to quash this defense, the Supreme Court of the State of Hawai'i in 2013 responded to a defendant who "contends that the courts of the State of Hawai'i lacked subject matter jurisdiction over his criminal prosecution because the defense proved the existence of the Hawaiian Kingdom and the illegitimacy of the State of Hawai'i government,¹⁵⁰ with "*whatever may be said regarding the lawfulness*" of its origins, "*the State of Hawai'i ... is now, a lawful government* [emphasis added]."¹⁵¹ Unable to rebut the factual evidence being presented by defendants, the highest so-called court of the State of Hawai'i could only resort to power and not legal reason, whose decision has been used to allow prosecutors and plaintiffs to dispense with these legal arguments. On this note, Marek explains that an occupier without title or sovereignty "must rely heavily, if not exclusively, on full and complete effectiveness."¹⁵²
65. The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier's military and/or an occupier's armed force such as the State of Hawai'i, and that the "occupation extends only to the territory where such authority has been established and can be exercised."¹⁵³ According to Ferraro, "occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts."¹⁵⁴

COMMISSION OF WAR CRIMES IN THE HAWAIIAN KINGDOM

66. The Rome Statute of the International Criminal Court defines war crimes as "serious violations of the laws and customs applicable in international armed conflict."¹⁵⁵ The United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in armed conflicts that involve United States troops, to be "the technical expression for a violation of the law of war by any person or persons, military or civilian. Every

¹⁵⁰ *State of Hawai'i v. Dennis Kaulia*, 128 Hawai'i 479, 486 (2013).

¹⁵¹ *Id.*, at 487.

¹⁵² Marek, *supra* note 1, at 102.

¹⁵³ 1907 Hague Convention, IV, Article 42.

¹⁵⁴ Tristan Ferraro, "Determining the beginning and end of an occupation under international humanitarian law," 94 (885) Int'l Rev. Red Cross 133, 134 (Spring 2012).

¹⁵⁵ International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).

violation of the law of war is a war crime.”¹⁵⁶ In the *Larsen* case, the alleged war crimes included deliberate acts as well as omissions. The latter include the failure to administer the laws of the occupied state (Article 43, 1907 HC IV), while the former were actions denying a fair and regular trial, unlawful confinement (Article 147, 1949 GC IV), and pillaging (Article 47, 1907 HC IV, and Article 33, 1907 GC IV).

67. International case law indicates that there must be a mental element of intent for the prosecution of war crimes, whereby war crimes must be committed willfully, either intentionally—*dolus directus*, or recklessly—*dolus eventualis*. According to Article 30(1) of the Rome Statute, an alleged war criminal is “criminally responsible and liable for punishment . . . only if the material elements [of the war crime] are committed with intent and knowledge.” Therefore, in order for prosecution of the responsible person(s) to be possible there must be a mental element that includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that “a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.” Furthermore, the International Criminal Court’s *Elements of a War Crime*, states that “[t]here is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict.”¹⁵⁷
68. Is there a particular time or event that could serve as a definitive point of knowledge for purposes of prosecution? In other words, where can there be “awareness that a circumstance exists or a consequence will occur in the ordinary course of events” stemming from the illegality of the overthrow of the Hawaiian government on 17 January 1893? For the United States and other foreign governments in existence in 1893, that definitive point would be 18 December 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian government.
69. For the private sector and foreign governments that were not in existence in 1893, however, the United States’ 1993 apology for the illegal overthrow of the Hawaiian government should be considered as serving as that definitive point of knowledge. In the form of a Congressional joint resolution enacted into United States law, the law specifically states that the Congress “on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai‘i on 17 January 1893 acknowledges the historical significance of this event.”¹⁵⁸ Additionally, the Congress urged “the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai‘i.”¹⁵⁹

¹⁵⁶ U.S. Army Field Manual 27-10, sec. 499 (July 1956).

¹⁵⁷ ICC Elements of a War Crime, Article 8.

¹⁵⁸ *Larsen* case, Annexure 2, *supra* note 36, at 614.

¹⁵⁹ *Id.*, at 615

70. Despite the mistake of facts and law riddled throughout the apology resolution, it nevertheless serves as a specific point of knowledge and the ramifications that stem from that knowledge. Evidence that the United States knew of such ramifications was clearly displayed in the apology law’s disclaimer, “[n]othing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.”¹⁶⁰ It is a presumption that everyone knows the law, which stems from the legal maxim *ignorantia legis neminem excusat*—ignorance of the law excuses no one. Unlike the United States government, being a public body, the State of Hawai‘i cannot claim to be a government at all, and therefore is merely a private organization. Therefore, awareness and knowledge for members of the State of Hawai‘i would have begun with the enactment of the apology resolution in 1993.
71. International law today criminalizes an unjust war as a “crime of aggression.” Under Article 8 *bis* of the Rome Statute, a war is criminal if a state aggressively utilizes its military force “against the sovereignty, territorial integrity or political independence of another State.”¹⁶¹ There can be no doubt that the American invasion and overthrow of the government of a “friendly and confiding people” was an aggressive war waged with malicious intent that violated the Hawaiian Kingdom’s right of self-determination—duty of non-intervention, its territorial integrity and political independence.
72. The installation of the puppet regime also violated the rights of the Hawaiian people. The installed puppet in 1893, together with their organs, according to the Hawaiian Patriotic League, “have repeatedly threatened murder, violence, and deportation against all those not in sympathy with the present state of things, and the police being in their control, intimidation is a common weapon, under various forms, even that of nocturnal searches in the residences of peaceful citizens.”¹⁶² These criminal acts would not have occurred if the United States complied with the law of occupation. Customary international law at the time mandated an occupying state to provisionally administer the laws of the occupied state. Article 43 of the 1907 HC IV provides that “[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” The “text of Article 43,” according to Benvenisti, “was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law.”¹⁶³ Graber also states, that “nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code.”¹⁶⁴

¹⁶⁰ *Id.*

¹⁶¹ Rome Statute, art. 8 *bis* (2).

¹⁶² Executive Documents, *supra* note 57, at 1297.

¹⁶³ Benvenisti, *supra* note 141, at 8.

¹⁶⁴ Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914* 143 (1949).

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

Other than the rights of occupation conferred by international law, no lawful authority could be exercised by the Germans. Hence, they had no legal right to create an independent sovereign state during the progress of the war. They could set up such a provisional [military] government as was necessary to accomplish the purposes of the occupation but further than that they could not legally go. We are of the view that Croatia was at all times here involved an occupied country and that all acts performed by it were those for which [Germany] the occupying power was responsible.¹⁶⁵

A. War Crimes: 1907 Hague Convention, IV

Article 43—The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

74. The United States failed in its duty to administer the laws of the Hawaiian Kingdom as it stood prior to the unlawful overthrow of the Hawaiian Kingdom government on 17 January 1893. Instead, the United States unlawfully maintained the continued presence and administration of law through its puppet regime established through intervention. The puppet regime was originally called the provisional government, which was later changed in name only to the Republic of Hawai‘i on 4 July 1894. The provisional government was neither a government *de facto* nor *de jure*, but self-proclaimed as concluded by President Cleveland in his message to the Congress on 18 December 1893, and the Republic of Hawai‘i was acknowledged as *self-declared* by the Congress in a joint resolution apologizing on the one hundredth anniversary of the illegal overthrow of the Hawaiian Kingdom government on 23 November 1993.
75. Since 30 April 1900, the United States imposed its national laws over the territory of the Hawaiian Kingdom in violation of international law and the laws of occupation. By virtue of congressional legislation, the so-called Republic of Hawai‘i was subsumed. Through *An Act to provide a government for the Territory of Hawai‘i*, “the phrase ‘laws of Hawaii,’ as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii in force on the twelfth day of August, eighteen hundred and ninety-

¹⁶⁵ Hostages Trial, *supra* note 70, at 1302.

eight.”¹⁶⁶ When the Territory of Hawai‘i was succeeded by the State of Hawai‘i on 18 March 1959 through United States legislation, the Congressional Act provided that all “laws in force in the Territory of Hawaii at the time of admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii.”¹⁶⁷ Furthermore:

[T]he term ‘Territorial law’ includes (in addition to laws enacted by the Territorial Legislature of Hawaii) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Hawaii prior to its admission into the Union, and the term ‘laws of the United States’ includes all laws or parts thereof enacted by the Congress that (1) apply to or within Hawaii at the time of its admission into the Union, (2) are not ‘Territorial laws’ as defined in this paragraph, and (3) are not in conflict with any other provision of this Act.¹⁶⁸

76. Article 43 does not transfer sovereignty to the occupying power.¹⁶⁹ Section 358, United States Army Field Manual 27-10, declares, “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.” Sassòli further elaborates, “The occupant 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.”¹⁷⁰
77. The United States’ failure to comply with the 1893 executive agreements to reinstate the Queen and her cabinet, and its failure to comply with the law of occupation to administer Hawaiian Kingdom law as it stood prior to the unlawful overthrow of the Hawaiian government on 17 January 1893, rendered all administrative and legislative acts of the provisional government, the Republic of Hawai‘i, the Territory of Hawai‘i and currently the State of Hawai‘i illegal and void because these acts stem from governments that are neither *de facto* nor *de jure*, but self-declared. As the United States is a government that is both *de facto* and *de jure*, its legislation, however, has no extraterritorial effect except under the principles of active and passive personality jurisdiction. In particular, this has rendered

¹⁶⁶ 31 U.S. Stat. 141 (1896-1901).

¹⁶⁷ 73 U.S. Stat. 11 (1959).

¹⁶⁸ *Id.*

¹⁶⁹ Benvenisti, *supra* note 141, at 8; von Glahn, *supra* note 117, at 95; Michael Bothe, “Occupation, Belligerent,” in Rudolf Bernhardt (dir.), *Encyclopedia of Public International Law*, vol. 3, 765 (1997).

¹⁷⁰ Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, International Humanitarian Law Research Initiative 5 (2004), available at: <http://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf> (last visited 16 May 2018).

all conveyances of real property and mortgages to be defective since 17 January 1893, because of the absence of a competent notary public under Hawaiian Kingdom law. Since 17 January 1893, all notaries public stemmed from unlawful entities.

Article 45—It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the [Occupying] Power.

78. When the provisional government was established through the support and protection of U.S. troops on 17 January 1893, it proclaimed that it would provisionally “exist until terms of union with the United States of America have been negotiated and agreed upon.”¹⁷¹ The provisional government was not a new government, but rather a small group of insurgents installed through intervention. With the backing of U.S. troops it further proclaimed, “All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named persons: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office.”¹⁷² All government officials were coerced and forced to sign oaths of allegiance,

I _____, aged _____, a native of _____, residing at _____, in said district, do solemnly swear, in the presence of Almighty God, that I will support and bear true allegiance to the Provisional Government of the Hawaiian Islands, and faithfully perform the duties appertaining to the office or employment of _____.¹⁷³

79. The compelling of inhabitants serving in the Hawaiian Kingdom government to swear allegiance to the occupying power, through its puppet regime, the provisional government, began on 17 January 1893 with oversight by United States troops until 1 April 1893, when they were ordered to depart Hawaiian territory by U.S. Special Commissioner, James Blount, who began the presidential investigation into the overthrow. When Special Commissioner Blount arrived in the Hawaiian Kingdom on 29 March 1893, he reported to U.S. Secretary of State Walter Gresham, “[t]he troops from the *Boston* were doing military duty for the Provisional Government. The American flag was floating over the government building. Within it the Provisional Government conducted its business under an American protectorate, to be continued, according to the avowed purpose of the American minister, during negotiations with the United States for annexation.”¹⁷⁴

¹⁷¹ Executive Documents, *supra* note 57, at 210.

¹⁷² *Id.*, at 211.

¹⁷³ *Id.*, at 1076.

¹⁷⁴ Executive Documents, *supra* note 57, at 568.

80. As a result of the deliberate failure of the United States to carry out the 1893 *executive agreements* to reinstate the Queen and her cabinet of officers, the insurgents were allowed to maintain their unlawful control of the government with the employment of American mercenaries. The provisional government was renamed the Republic of Hawai‘i on 4 July 1894. In 1900, the Republic was renamed the Territory of Hawai‘i, and the United States directly compelled the inhabitants of the Hawaiian Kingdom to swear allegiance to the United States when serving in the so-called Territory of Hawai‘i and, beginning in 1959, to the State of Hawai‘i in direct violation of Article 45 of the HC IV.
81. Section 19 of the Territorial Act provides, “That every member of the legislature, and all officers of the government of the Territory of Hawaii, shall take the following oath: I do solemnly swear (or affirm), in the presence of Almighty God, that I will faithfully support the Constitution and laws of the United States, and conscientiously and impartially discharge my duties as a member of the legislature, or as an officer of the government of the Territory of Hawaii.”¹⁷⁵ Section 4, Article XVI of the State of Hawai‘i constitution provides, “All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation: ‘I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as ... to best of my ability.’”

Article 46—Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.

82. Beginning on 20 July 1899, President McKinley began to set aside portions of lands by executive orders for “installation of shore batteries and the construction of forts and barracks.”¹⁷⁶ The first executive order set aside 15,000 acres for two Army military posts on the Island of O‘ahu called Schofield Barracks and Fort Shafter. This soon followed the securing of lands for Pearl Harbor naval base in 1901 when the U.S. Congress appropriated funds for condemnation of seven hundred nineteen (719) acres of private lands surrounding Pearl River, which later came to be known as Pearl Harbor.¹⁷⁷ By 2012, the U.S. military has one hundred eighteen (118) military sites that span 230,929 acres of the Hawaiian Islands.¹⁷⁸

¹⁷⁵ 31 Stat. 145 (1896-1901).

¹⁷⁶ Robert H. Horwitz, Judith B. Finn, Louis A. Vargha, and James W. Ceaser, *Public Land Policy in Hawai‘i: An Historical Analysis*, 20 (State of Hawai‘i Legislative Reference Bureau Report No. 5, 1969).

¹⁷⁷ John D. VanBrackle, “Pearl Harbor from the First Mention of ‘Pearl Lochs’ to Its Present Day Usage,” 21-26 (undated manuscript on file in Hawaiian-Pacific Collection, Hamilton Library, University of Hawai‘i at Manoa).

¹⁷⁸ U.S. Department of Defense’s Base Structure Report (2012), available at: <http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf> (last visited 16 May 2018).

Article 47—Pillage is formally forbidden.

83. Since 17 January 1893, there has been no lawful government exercising its authority in the Hawaiian Islands, *e.g.* provisional government (1893-1894), Republic of Hawai‘i (1894-1900), Territory of Hawai‘i (1900-1959) and the State of Hawai‘i (1959-present). As these entities were neither governments *de facto* nor *de jure*, but self-proclaimed, and their collection of tax revenues and non-tax revenues, *e.g.* rent and purchases derived from real estate, were not for the benefit of a *bona fide* government in the exercise of its police power, it can only be considered as benefitting private individuals who are employed by the State of Hawai‘i.
84. Pillage or plunder is “the forcible taking of private property by an invading or conquering army,”¹⁷⁹ which, according to the Elements of Crimes of the International Criminal Court, must be seized “for private or personal use.”¹⁸⁰ As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.¹⁸¹ The residents of the Hawaiian Islands have been the subject of pillaging and plundering since the establishment of the provisional government by the United States on 17 January 1893 and continues to date by its successor, the State of Hawai‘i.

Article 48—If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

85. Unlike the State of Hawai‘i that claims to be a public entity, but in reality is private, the United States government is a public entity and not private, but its exercising of authority in the Hawaiian Islands in violation of international laws is unlawful. Therefore, the United States cannot be construed to have committed the act of pillaging since it is public, but has appropriated private property through unlawful contributions, *e.g.* federal taxation, which is regulated by Article 48. And Article 49 provides, “If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.” The United States collection of federal taxes from the residents of the Hawaiian Islands is an unlawful contribution that is exacted for the sole purpose of supporting the United States federal government and not for “the needs of the army or of the administration of the territory.”

¹⁷⁹ Black’s Law, *supra* note 14, at 1148.

¹⁸⁰ Elements of Crimes, International Criminal Court, Pillage as a war crime (ICC Statute, Article 8(2)(b)(xvi) and (e)(v)).

¹⁸¹ Henckaerts & Doswald-Beck, *supra* note 147, at 185.

Article 55—The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

86. With the backing of United States troops, the provisional government unlawfully seized control of all government property, both real and personal. In 1894, the provisional government's successor, the so-called Republic of Hawai'i, seized the private property of Her Majesty Queen Lili'uokalani, which was called Crown lands, and called it public lands. According to Hawaiian Kingdom law, the Crown lands were distinct from the public lands of the Hawaiian government since 1848, which comprised roughly 1 million acres, and the government lands comprised roughly 1.5 million acres. The total acreage of the Hawaiian Islands comprised 4 million acres.

In a case before the Hawaiian Kingdom Supreme Court in 1864 that centered on Crown lands, the court stated:

In our opinion, while it was clearly the intention of Kamehameha III to protect the lands which he reserved to himself out of the domain which had been acquired by his family through the prowess and skill of his father, the conqueror, from the danger of being treated as public domain or Government property, it was also his intention to provide that those lands should descend to his heirs and successors, the future wearers of the crown which the conqueror had won; and we understand the act of 7th June, 1848, as having secured both those objects. Under that act the lands descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property, in like manner as was done by Kamehameha III.¹⁸²

87. In 1898, the United States seized control of all these lands and other property of the Hawaiian Kingdom government as evidenced by the joint resolution of annexation. The resolution stated, that the United States has acquired “the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining.”¹⁸³

¹⁸² Estate of His Majesty Kamehameha IV, 3 Haw. 715, 725 (1864).

¹⁸³ 30 Stat. 750 (1896-1898).

Article 56—The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

88. In 1906, a policy was instituted by the Territorial government, titled “Programme for Patriotic Exercises in the Public Schools, Adopted by the Department of Public Instruction.” The policy was to denationalize the children of the Hawaiian Islands on a massive scale, which included forbidding the children from speaking the Hawaiian national language, only English. Its intent was to obliterate any memory of the national character of the Hawaiian Kingdom that the children may have had and replace it, through inculcation, with American patriotism. “Usurpation of sovereignty during military occupation” and “attempts to denationalize the inhabitants of occupied territory” was recognized as international crimes since 1919.¹⁸⁴
89. At the close of the Second World War, the United Nations War Commission’s Committee III was asked to provide a report on war crime charges against four Italians accused of denationalization in the occupied State of Yugoslavia. The charge stated that, “the Italians started a policy, on a vast scale, of denationalization. As a part of such policy, they started a system of ‘re-education’ of Yugoslav children. This re-education consisted of forbidding children to use the Serbo-Croat language, to sing Yugoslav songs and forcing them to salute in a fascist way.”¹⁸⁵ The question before Committee III was whether or not “denationalization” constituted a war crime that called for prosecution or merely a violation of international law. In concluding that denationalization is a war crime, the Committee reported:

It is the duty of belligerent occupants to respect, unless absolutely prevented, the laws in force in the country (Art. 43 of the Hague Regulations). Inter alia, family honour and rights and individual life must be respected (Art. 46). The right of a child to be educated in his own native language falls certainly within the rights protected by Article 46 (‘individual life’). Under Art. 56, the property of institutions dedicated to education is privileged. If the Hague Regulations afford particular protection to school buildings, it is certainly not too much to say that they thereby also imply protection for what is going to be done within those protected buildings. It would certainly be a mistaken interpretation of the Hague

¹⁸⁴ Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, *Report Presented to the Preliminary Peace Conference, March 29, 1919*, 14 Am. J. Int’l L. 95 (1920).

¹⁸⁵ E. Schwelb, *Note on the Criminality of “Attempts to Denationalize the Inhabitants of Occupied Territory” (Appendix to Doc. C, I. No. XII) – Question Referred to Committee III by Committee I*, United Nations War Crime Commission, Doc. III/15, 1 (September 10, 1945), available at: http://hawaiiankingdom.org/pdf/Committee_III_Report_on_Denationalization.pdf. (last visited 16 May 2018).

Regulations to suppose that while the use of Yugoslav school buildings for Yugoslav children is safe-guarded, it should be left to the unfettered discretion of the occupant to replace Yugoslav education by Italian education.¹⁸⁶

90. Denationalization through Germanization also took place during the Second World War. According to Nicholas,

Within weeks of the fall of France, Alsace-Lorraine was annexed and thousands of citizens deemed too loyal to France, not to mention all its ‘alien-race’ Jews and North African residents, were unceremoniously deported to Vichy France, the southeastern section of the country still under French control. This was done in the now all too familiar manner: the deportees were given half an hour to pack and were deprived of most of their assets. By the end of July 1940, Alsace and Lorraine had become Reich provinces. The French administration was replaced and the French language totally prohibited in the schools. By 1941, the wearing of berets had been forbidden, children had to sing ‘Deutschland über Alles’ instead of ‘La Marseillaise’ at school, and racial screening was in full swing.¹⁸⁷

91. Under the heading “Germanization of Occupied Territories,” Count III (j) of the Nuremberg Indictment, it provides:

In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported *de jure* annexation and enforced conscription into the German Armed Forces. This was carried out in most of the occupied countries including: Norway, France [...] Luxembourg, the Soviet Union, Denmark, Belgium, and Holland.¹⁸⁸

¹⁸⁶ *Id.*, at 6.

¹⁸⁷ Lynn H. Nicholas, *Cruel World: The Children of Europe in the Nazi Web*, 277 (2005).

¹⁸⁸ Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, 27, 63 (Nuremberg, Germany, 1947).

B. War Crimes: 1949 Geneva Convention, IV

Article 147—Extensive [...] appropriation of property, not justified by military necessity and carried out unlawfully and wantonly

92. In 2013, the United States Internal Revenue Service, hereafter IRS, illegally appropriated \$7.1 million dollars from the residents of the Hawaiian Islands.¹⁸⁹ During this same year, the government of the State of Hawai‘i additionally appropriated \$6.5 billion dollars illegally.¹⁹⁰ The IRS is an agency of the United States and cannot appropriate money from the inhabitants of an occupied State without violating international law. The State of Hawai‘i is a political subdivision of the United States established by an Act of Congress in 1959 and being an entity without any extraterritorial effect, it is precluded from appropriating money from the inhabitants of an occupied State without violating the international laws of occupation.
93. According to the laws of the Hawaiian Kingdom, taxes upon the inhabitants of the Hawaiian Islands include: an annual poll tax of \$1 dollar to be paid by every male inhabitant between the ages of seventeen and sixty years; an annual tax of \$2 dollars for the support of public schools to be paid by every male inhabitant between the ages of twenty and sixty years; an annual tax of \$1 dollar for every dog owned; an annual road tax of \$2 dollars to be paid by every male inhabitant between the ages of seventeen and fifty; and an annual tax of $\frac{3}{4}$ of 1% upon the value of both real and personal property.¹⁹¹
94. The *Merchant Marine Act*, 5 June 1920,¹⁹² hereinafter referred to as the *Jones Act*, is a restraint of trade and commerce in violation of international law and treaties between the Hawaiian Kingdom and other foreign States. According to the *Jones Act*, all goods, which includes tourists on cruise ships, whether originating from Hawai‘i or being shipped to Hawai‘i must be shipped on vessels built in the United States that are wholly owned and crewed by United States citizens. And should a foreign flag ship attempt to unload foreign goods and merchandise in the Hawaiian Islands it will have to forfeit its cargo to the U.S. Government, or an amount equal to the value of the merchandise or cost of transportation from the person transporting the merchandise.

¹⁸⁹ IRS, *Gross Collections, by Type of Tax and State and Fiscal Year, 1998-2012*, available at: <http://www.irs.gov/uac/SOI-Tax-Stats-Gross-Collections,-by-Type-of-Tax-and-State,-Fiscal-Year-IRS-Data-Book-Table-5> (last visited 16 May 2018).

¹⁹⁰ State of Hawai‘i Department of Taxation Annual Reports, available at: <http://files.hawaii.gov/tax/stats/stats/annual/13annrpt.pdf> (last visited 16 May 2018).

¹⁹¹ Civil Code of the Hawaiian Islands, *To Consolidate and Amend the Law Relating to Internal Taxes* (Act of 1882), 117-120, available at: http://www.hawaiiankingdom.org/civilcode/pdf/CL_Title_2.pdf (last visited 16 May 2018).

¹⁹² 41 Stat. 988.

95. As a result of the *Jones Act*, there is no free trade in the Hawaiian Islands. 90% of Hawai‘i’s food is imported from the United States, which has created a dependency on outside food. The three major American ship carriers for the Hawaiian Islands are Matson, Horizon Lines, and Pasha Hawai‘i Transport Services, as well as several low cost barge alternatives. Under the *Jones Act*, these American carriers travel 2,400 miles to ports on the west coast of the United States in order to reload goods and merchandise delivered from Pacific countries on foreign carriers, which would have otherwise come directly to Hawai‘i ports. The cost of fuel and the lack of competition drive up the cost of shipping and contribute to Hawai‘i’s high cost of living, and according to the USDA Food Cost, Hawai‘i residents in January 2012 pay an extra \$417 per month for food on a thrifty plan than families who are on a thrifty plan in the United States.¹⁹³ Therefore, appropriating monies directly through taxation and appropriating monies indirectly as a result of the *Jones Act* to benefit American ship carriers and businesses are war crimes.

Article 147—Compelling a [...] protected person to serve in the forces of an [Occupying] Power

96. The United States Selective Service System is an agency of the United States government that maintains information on those potentially subject to military conscription. Under the *Military Selective Service Act*, “it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.”¹⁹⁴ Conscription of the inhabitants of the Hawaiian Kingdom unlawfully inducted into the United States Armed Forces through the Selective Service System occurred during World War I (September 1917-November 1918), World War II (November 1940-October 1946), Korean War (June 1950-June 1953), and the Vietnam War (August 1964-February 1973).
97. Although induction into the United States Armed Forces has not taken place since February 1973, the requirements to have residents of the Hawaiian Island who reach the age of 18 to register with the Selective Service System for possible induction is a war crime.

Article 147—Willfully depriving a [...] protected person of the rights of fair and regular trial

98. Since 17 January 1893, there have been no lawfully constituted courts in the Hawaiian Islands whether Hawaiian Kingdom courts or military commissions established by order

¹⁹³ United States Department of Agriculture Center for Nutrition Policy and Promotion, *Cost of Food at Home*, available at: <http://www.cnpp.usda.gov/USDAFoodCost-Home.htm#AK%20and%20HI> (last visited 16 May 2018).

¹⁹⁴ 50 U.S.C. App. 453, The Military Selective Service Act.

of the Commander of PACOM in conformity with the HC IV, GC IV, and the international laws of occupation. All Federal and State of Hawai‘i Courts in the Hawaiian Islands derive their authority from the United States Constitution and the laws enacted in pursuance thereof. As such these Courts cannot claim to have any authority in the territory of a foreign State and therefore are not properly constituted to give defendant(s) a fair and regular trial.

Article 147—Unlawful deportation or transfer or unlawful confinement

99. According to the United States Department of Justice, the prison population in the Hawaiian Islands in 2009 was at 5,891.¹⁹⁵ Of this population there were 286 aliens.¹⁹⁶ Two paramount issues arise—first, prisoners were sentenced by courts that were not properly constituted under Hawaiian Kingdom law and/or the international laws of occupation and therefore were unlawfully confined, which is a war crime under this court’s jurisdiction; second, the alien prisoners were not advised of their rights in an occupied State by their State of nationality in accordance with the 1963 *Vienna Convention on Consular Relations*.¹⁹⁷ Compounding the violation of alien prisoners rights under the *Vienna Convention*, Consulates located in the Hawaiian Islands were granted exequaturs by the government of the United States by virtue of United States treaties and not treaties between the Hawaiian Kingdom and these foreign States.
100. In 2003, the State of Hawai‘i Legislature allocated funding to transfer up to 1,500 prisoners to private corrections institutions in the United States.¹⁹⁸ By June of 2004, there were 1,579 Hawai‘i inmates in these facilities. Although the transfer was justified as a result of overcrowding, the government of the State of Hawai‘i did not possess authority to transfer, let alone to prosecute in the first place. Therefore, the unlawful confinement and transfer of inmates are war crimes.

Article 147—The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

101. Once a State is occupied, international law preserves the *status quo* of the occupied State as it was before the occupation began. To preserve the nationality of the occupied State

¹⁹⁵ United States Department of Justice’s Bureau of Justice Statistics, *Prisoners in 2011*, available at: <http://www.bjs.gov/content/pub/pdf/p11.pdf> (last visited 16 May 2018).

¹⁹⁶ United States Government Accountability Office, *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs* (March 2011), available at: <http://www.gao.gov/new.items/d11187.pdf> (last visited 16 May 2018).

¹⁹⁷ *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, p. 466.

¹⁹⁸ State of Hawai‘i, Department of Public Safety, Response to Act 200, Part III, Section 58, Session Laws of Hawai‘i 2003 As Amended by Act 41, Part II, Section 35, Session Laws of Hawai‘i 2004, (January 2005), available at: http://lrhawaii.info/reports/legrpts/psd/2005/act200_58_slh03_05.pdf (last visited 16 May 2018).

from being manipulated by the occupying State to its advantage, international law only allows individuals born within the territory of the occupied State to acquire the nationality of their parents—*jus sanguinis*. To preserve the *status quo*, Article 49 of the GC IV mandates that the “Occupying Power shall not [...] transfer parts of its own civilian population into the territory it occupies.” For individuals, who were born within Hawaiian territory, to be a Hawaiian subject, they must be a direct descendant of a person or persons who were Hawaiian subjects prior to 17 January 1893. All other individuals born after January 17th to the present are aliens who can only acquire the nationality of their parents. According to von Glahn, “children born in territory under enemy occupation possess the nationality of their parents.”¹⁹⁹

102. According to the 1890 government census, Hawaiian subjects numbered 48,107, with the aboriginal Hawaiian, both pure and part, numbering 40,622, being 84% of the national population, and the non-aboriginal Hawaiians numbering 7,485, being 16%. Despite the massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, which, according to the State of Hawai‘i numbers 1,302,939 in 2009,²⁰⁰ the *status quo* of the national population of the Hawaiian Kingdom is maintained. Therefore, under the international laws of occupation, the aboriginal Hawaiian population of 322,812 in 2009 would continue to be 84% of the Hawaiian national population, and the non-aboriginal Hawaiian population of 61,488 would continue to be 16%. The balance of the population in 2009, being 918,639, are aliens who were illegally transferred, either directly or indirectly, by the United States as the occupying Power, and therefore are war crimes.

Article 147—Destroying or seizing the [Occupied State’s] property unless such destruction or seizure be imperatively demanded by the necessities of war

103. On 12 August 1898, the United States seized approximately 1.8 million acres of land that belonged to the Government of the Hawaiian Kingdom and to the office of the Monarch. These lands were called Government lands and Crown lands, respectively, whereby the former being public lands and the latter private lands.²⁰¹ These combined lands constituted nearly half of the entire territory of the Hawaiian Kingdom.

¹⁹⁹ von Glahn, *supra* note 117, at 780.

²⁰⁰ State of Hawai‘i. Department of Health, Hawai‘i Health Survey (2009), available at: <http://www.ohadatabook.com/F01-05-11u.pdf> (last visited 16 May 2018); see also David Keanu Sai, *American Occupation of the Hawaiian State: A Century Gone Unchecked*, 1 Haw. J.L. & Pol. 46, 63-65 (Summer 2004).

²⁰¹ Public lands were under the supervision of the Minister of the Interior under Article I, Chapter VII, Title 2—*Of The Administration of Government*, Civil Code, §39-§48 (1884), and Crown lands were under the supervision of the Commissioners of Crown Lands under *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*, Civil Code, Appendix, pp. 523-525 (1884). Crown lands are private lands that “descend in fee, the inheritance being limited however to the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property,” *In the Matter of the Estate of His Majesty Kamehameha IV., late deceased*, 2 Haw. 715, 725 (1864), subject to *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*.

104. Military training locations include Pacific Missile Range Facility, Barking Sands Tactical Underwater Range, and Barking Sands Underwater Range Expansion on the Island of Kaua‘i; the entire Islands of Ni‘ihau and Ka‘ula; Pearl Harbor, Lima Landing, Pu‘uloa Underwater Range—Pearl Harbor, Barbers Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawai‘i, Marine Corps Training Area Bellows, Hickam Air Force Base, Kahuku Training Area, Makua Military Reservation, Dillingham Military Reservation, Wheeler Army Airfield, and Schofield Barracks on the Island of O‘ahu; and Bradshaw Army Airfield and Pohakuloa Training Area on the Island of Hawai‘i.
105. The United States Navy’s Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise (RIMPAC) every other even numbered year, which is the largest international maritime warfare exercise. RIMPAC is a multinational, sea control and power projection exercise that collectively consists of activity by the U.S. Army, Air Force, Marine Corps, and Naval forces, as well as military forces from other foreign States. During the month long exercise, RIMPAC training events and live fire exercises occur in open-ocean and at the military training locations throughout the Hawaiian Islands.
106. In 2006, the United States Army disclosed to the public that depleted uranium, hereafter DU, was found on the firing ranges at Schofield Barracks on the Island of O‘ahu.²⁰² It subsequently confirmed DU was also found at Pohakuloa Training Area on the Island of Hawai‘i and suspect that DU is also at Makua Military Reservation on the Island of O‘ahu.²⁰³ The ranges have yet to be cleared of DU and the ranges are still used for live fire. This brings the inhabitants who live down wind from these ranges into harms way because when the DU ignites or explodes from the live fire, it creates tiny particles of aerosolized DU oxide that can travel by wind. And if the DU gets into the drinking water or oceans it would have a devastating effect across the islands.
107. The Hawaiian Kingdom has never consented to the establishment of military installations throughout its territory and these installations and war-gaming exercises stand in direct violation of Articles 1, 2, 3 and 4, of HC V, HC IV, and GC IV, and therefore are war crimes.

²⁰² U.S. Army Garrison-Hawai‘i, Depleted Uranium on Hawai‘i’s Army Ranges, available at: <http://www.garrison.hawaii.army.mil/du/> (last visited 16 May 2018).

²⁰³ *Id.*

**ACCEPTANCE OF THE PERMANENT COURT OF ARBITRATION'S
DESIGNATION OF THE HAWAIIAN KINGDOM AS A STATE FOR
19 YEARS WAIVED ANY OBJECTION TO ITS CONTINUITY**

108. The United States together with all of the 122 Contracting Powers to the 1907 Hague Convention for the Pacific Settlement of International Disputes (“1907 Convention”) have remained silent with respect to the PCA’s designation of the Hawaiian Kingdom as a Non-Contracting Power (State) pursuant to Article 47 of the 1907 Hague Convention (Article 26 of the 1899 Convention), since arbitral proceedings were instituted on 8 November 1999. The legal consequence of such conduct is that these Contracting Powers, are precluded from raising any question as to the Hawaiian Kingdom’s status as a sovereign State and the *acting* Council of Regency as its provisional government.
109. As a matter of international law, the subsequent conduct of the Contracting Powers to the consensual or contractual obligations resulting from Article 47 of the 1907 Convention provides a basis for deciding both questions of interpretation and questions concerning Non-Contracting Powers.²⁰⁴ Furthermore, the cumulative effect of the PCA’s annual reports from 2002 through 2011 which were received by the Contracting Powers, have by their conduct accepted or recognized the continuity of the Hawaiian Kingdom as sovereign State and the *acting* Council of Regency as its provisional government independent of the law of treaties.
110. In the *Temple of Preah Vihear* case,²⁰⁵ the International Court of Justice placed considerable reliance on the conduct of Thailand that spanned a period of 50 years. The Court stated:

It has been contended on behalf of Thailand that this communication of the maps by the French authorities was, so to speak, *ex parte*, and that nor formal acknowledgment of it was either requested of, or given by, Thailand. In fact, as will be seen presently, an acknowledgment by conduct was undoubtedly made in a very definite way; but even if it were otherwise, it is clear that the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset.*²⁰⁶

²⁰⁴ Lord McNair, *The Law of Treaties*, 424-429 (1961).

²⁰⁵ *Temple of Preah Vihear*, Merits, I.C.J. Reports 1962, p. 6.

²⁰⁶ *Id.*, at 23.

The Court however considers that Thailand in 1908-1909 did accept the Annex I map as representing the outcome of the work of delimitation, and hence recognized the line on that map as being the frontier line, the effect of which is to situate Preah Vihear in Cambodian territory. The Court considers further that, looked as a whole, Thailand's subsequent conduct confirms and bears out her original acceptance, and that Thailand's acts on the ground do not suffice to negative this. Both Parties, by their conduct, recognized the line and thereby in effect agreed to regard it as being the frontier line.²⁰⁷

111. Similarly, in the present case, the failure of the United States, as well as the other Contracting Powers to the 1907 Hague Convention, which includes all of the Defendants with the exception of the Defendants State of Hawai'i, Antigua and Barbuda, Barbados, Grenada, Jamaica, Papua New Guinea, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Solomon Islands, and Tuvalu, precludes them from challenging the status of the continuity of the Hawaiian Kingdom as a sovereign State and the *acting* Council of Regency as its provisional government.

EXPRESS ADMISSIONS OF RESPONSIBILITY ON THE PART OF THE GOVERNMENT OF THE UNITED STATES

A. The Legal Basis of Admissibility of Evidence in the Form of Admissions of Government Officials

112. The basic concepts and principles of the law of evidence are part of the "derivation from general principles common to the major legal systems of the world" to which reference is made to § 102, Restatement Third of Foreign Relations Law of the United States (1987). The admissibility and relevance of express and implied admissions is widely recognized in common law countries. In *Pollack v. Metropolitan Life Insurance Co.*, the Court cited *Wigmore on Evidence* (1940) by stating, that "The statements made out of court by a party-opponent are universally deemed admissible, when offered against him."²⁰⁸ International jurisprudence also refer to the relevance of admissions.²⁰⁹
113. International tribunals have given evidential weight to the statements made by government officials.²¹⁰ In the *Nuclear Tests* cases (*Australia v. France*), the Court held that statements,

²⁰⁷ *Id.*, at 32-33.

²⁰⁸ *Pollack v. Metropolitan Life Insurance Co.*, 138 F.2d 123, 125 (3d Cir. 1943).

²⁰⁹ Bin Cheng, *General Principles of Law and Applied by International Courts and Tribunals*, 141-147 (1953); *Aerial Incident of 27 July 1955* (Israel v. Bulgaria; United States of America v. Bulgaria; United Kingdom v. Bulgaria), I.C.J. Pleadings 1959, Memorial of Israel, p. 45, at pp. 99-100, paras. 89-91.)

²¹⁰ *Corfu Channel* case (Merits), I.C.J. Reports 1949, p. 4, at pp. 18-19; *Minquiers and Ecrehos* case (France/United Kingdom), I.C.J. Reports 1953, p. 47, at pp. 71-72; *Fisheries Jurisdiction* case (United Kingdom v. Iceland) (Merits), I.C.J. Reports 1974, p. 3, at pp. 28-29, para. 65; *Case concerning United States Diplomatic and Consular Staff in Tehran* (United States v. Iran), I.C.J. Reports 1980, p. 3, at pp. 9-10, para. 12; p. 17, para. 27.

whether oral or written, made by the French President had the character of a legal undertaking.²¹¹ The Court stated:

49. Of the statements by the French Government now before the Court, the most essential are clearly those made by the President of the Republic. There can be no doubt, in view of his functions, that his public communications or statements, oral or written, as Head of State, are in international relations acts of the French State. His statements, and those of members of the French Government acting under his authority, up to the last statement made by the Minister of Defense (of 11 October 1974), constitute a whole. Thus, in whatever form these statements were expressed, they must be held to constitute an engagement of the State, having regard to their intention and to the circumstance in which they are made.

50. The unilateral statements of the French authorities were made outside the Court, publicly and *erga omnes*, even though the first of them was communicated to the Government of Australia. As was observed above, to have legal effect, there was no need for these statements to be addressed to a particular State, nor was acceptance by any other State required. The general nature and characteristics of these statements are decisive for the evaluation of the legal implications, and it is to the interpretation of the statements that the Court must now proceed. The is entitled to presume, at the outset, that these Statements were not made *in vacuo*, but in relation to the tests which constitute the very object of the present proceedings, although France has not appeared in the case.²¹²

114. In order to determine a pattern of conduct as proof of the State's attitude, the International Court of Justice has consistently relied on the contents of diplomatic exchanges, statements by government officials, as well as silence in the face of public events and the statements of other Parties, to include international organizations relative to the matter at hand. In the *Corfu Channel* case, the Court referenced "Albania's attitude before and after the disaster of October 22nd, 1946."²¹³ This is an instance of State responsibility and the evidence addressed was Albania's knowledge of the laying of mines in the subject area.
115. Another example of the Court's reliance upon the conduct of State that includes the statements of government officials is in the *Temple of Preah Vihear* case where the Court considered Thailand's course of conduct in accepting the "Annex I map" and the boundary it indicated.²¹⁴

²¹¹ *Nuclear Tests* cases (Australia v. France) (Judgment, I.C.J. Reports 1974, p. 253, at p. 267, para. 43.)

²¹² *Id.*, at 269-270.

²¹³ *Corfu Channel* case (Merits), pp. 18-20.

²¹⁴ *Case concerning the Temple of Preah Vihear* (Cambodia v. Thailand), Merits, I.C.J. Reports 1962, p. 6, at pp. 22-29, 32-33.

116. Now that the legal basis of the admissibility of evidence in the form of admissions made by government officials, statements of intention by officials and the significance of the attitude or conduct of a State has been established here follows the evidence itself.

B. Express Admissions Made by President Cleveland and Other Officials of the United States Government

117. On 11 March 1893 President Cleveland sent to Honolulu, as his Special Commissioner, James H. Blount, former chairman of the House Committee on Foreign Affairs. Commissioner Blount was tasked to “investigate and fully report to the President all the facts you can learn respecting the condition of affairs in the Hawaiian Islands, the causes of the revolution by which the Queen’s Government was overthrown, the sentiment of the people toward existing authority, and, in general, all that can fully enlighten the President touching the subjects of your mission.”²¹⁵
118. After Commissioner Blount arrived in Honolulu on 29 March 1893, he sent periodic reports to the Secretary of State. In his final report dated 17 July 1893, Commissioner Blount stated, “The foregoing pages are respectfully submitted as the connected report indicated in your instructions. It is based upon the statements of individuals and the examination of public documents.”²¹⁶ After careful consideration of the facts of the case provided by the Special Commissioner, Secretary of State Gresham, on 18 October 1893, relayed to the President:

The Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign, and the Provisional Government was created “to exist until terms of union with the United States of America have been negotiated and agreed upon.” A careful consideration of the facts will, I think, convince you that the treaty which was withdrawn from the Senate for further consideration should not be resubmitted for its action thereon.

Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice.

Can the United States consistently insist that other nations shall respect the independence of Hawaii while not respecting it themselves? Our Government was

²¹⁵ Executive Documents, *supra* note 57, at 1185, available at [http://hawaiiankingdom.org/pdf/Gresham_to_Blount_\(3.11.1893\).pdf](http://hawaiiankingdom.org/pdf/Gresham_to_Blount_(3.11.1893).pdf) (last visited 16 May 2018).

²¹⁶ *Id.*, at 604-605.

the first to recognize the independence of the Islands and it should be the last to acquire sovereignty over them by force and fraud.²¹⁷

119. The nature of the request to President Cleveland is important to note. First, Secretary of State Gresham admits to a state of war whereby an act of hostility, on the part of the United States, precipitated the overthrow of the Hawaiian Kingdom Government. Second, he discerns the Hawaiian State from its government, which he called for its restoration. Third, there is no indication of a justification for the actions taken by the United States, but rather a direct admittance of State responsibility.
120. As will be shown, President Cleveland's message to the Congress the following month on 18 December 1893 acknowledges the breaches of customary international law rules relating both to the use of force by States and the principle of non-intervention.

And so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawaii or for the bona fide purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at the time was undisputed and was both the *de facto* and the *de jure* government.²¹⁸

When our Minister recognized the provisional government [on 17 January 1893] the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*. ... Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal, while the [insurgents], by actual search, had discovered that there were but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of

²¹⁷ Executive Documents, *supra* note 57, at 463-564, available at [http://hawaiiankingdom.org/pdf/Gresham_Report_\(10.18.1893\).pdf](http://hawaiiankingdom.org/pdf/Gresham_Report_(10.18.1893).pdf) (last visited 16 May 2018).

²¹⁸ Executive Documents, *supra* note 57, at 451, available at [http://hawaiiankingdom.org/pdf/Cleveland's_Message_\(12.18.1893\).pdf](http://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf) (last visited 16 May 2018).

Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice.²¹⁹

By an act of war, committed with the participation of a diplomatic representative of the United States and without the authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown. A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair.²²⁰

The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement, and that obedience to its commands practically depends upon good faith, instead of upon the mandate of a superior tribunal, only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond a breach of which subjects him to legal liabilities; and the United States is aiming to maintain itself as one of the most enlightened of nations would do its citizens gross injustice if it applied to its international relations any other than a high standard of honor and morality. On that ground the United States can not properly be put in the position of countenancing a wrong after its commission any more than in that of consenting to it in advance. On that ground it can not allow itself to refuse to redress an injury inflicted through an abuse of power by officers clothed with its authority and wearing its uniform; and on the same ground, if a feeble but friendly state is in danger of being robbed of its independence and its sovereignty by a misuse of the name and power of the United States, the United States can not fail to vindicate its honor and its sense of justice by an earnest effort to make all possible reparation.²²¹

121. These passages are indeed, forceful, confirmation of the fact that the United States Government was the controlling agent behind the overthrow of the Hawaiian Kingdom Government. President Cleveland also acknowledges that the acts of war committed by the United States had no justification under international law or self-defense under the rules of *jus ad bellum*. A legal state of war has ensued since 16 January 1893 whereby the United States must comply with the rules of *jus in bello*.

²¹⁹ *Id.*, at 453.

²²⁰ *Id.*, at 456.

²²¹ *Id.*, at 456-457.

C. *The General Principle of State Responsibility*

122. The principle that responsibility attaches to every internationally wrongful act of the State is the starting point. Judge Ago authoritatively stated this in his Third Report as Special Rapporteur to the International Law Commission:

One of the principles most deeply rooted in the doctrine of international law and most strongly upheld by State practice and judicial decisions is the principle that any conduct of a State which international law classified as a wrongful act entails the responsibility of that State in international law. In other words, whenever a State is guilty of an internationally wrongful act against another State, international responsibility is established “immediately as between the two States,” as was held by the Permanent Court of International Justice in the *Phosphates in Morocco* case. (*Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74, p. 28.*) Moreover, as stated by the Italian-United States Conciliation Commission set up under Article 83 of the Treaty of Peace of 10 February 1947 (United Nations, *Treaty Series*, Vol. 49, p. 167), no State may “escape the responsibility arising out of the exercise of an illicit action from the viewpoint of the general principles of international law” (*Armstrong Cork Company case, 22 October 1953, United Nations, Reports of International Arbitral Awards, Vol. XIV (United Nations publication, Sales No. 65.V.4, p. 163).*)” (*Yearbook of the International Law Commission, 1971, II (Part One), p. 199, at p. 205, para. 30.*)

123. It is a recognized general principle that the commission of an act that is either contrary to customary international law or in breach of treaty obligations gives rise to responsibility for the damage and loss of life resulting from the illegal conduct. The application of this principle can be found in the Judgment of the *Corfu Channel* case:

The Court therefore reaches the conclusion that Albania is responsible under international law for the explosions which occurred on October 22nd, 1946, in Albanian waters, and for the damage and loss of human life which resulted from them, and that there is a duty upon Albania to pay compensation to the United Kingdom.²²²

124. The United States has also recognized this principle in its practice with other States. The following is a telegram from the United States Secretary of State to the Ambassador of Tokyo, for transmission to the Japanese Government:

The Government and people of the United States have been deeply shocked by the facts of the bombardment and sinking of the U.S.S. *Panay* and the sinking or

²²² Corfu Channel case, Merits, I.C.J. Reports 1949, p. 4, at p. 23.

burning of the American steamers Meiping, Meian and Meisian [Meihsia] by Japanese aircraft.

The essential facts are that these American vessels were in the Yangtze River by uncontested and in contestable right, that they were flying the American flag: that they were engaged in their legitimate and appropriate business, that they were, at the moment, conveying American official and private personnel away from points where danger had developed; that they had several times changed their position, moving upriver, in order to avoid danger, and that they were attacked by Japanese bombing planes. With regard to the attack, a responsible Japanese naval officer at Shanghai has informed the Commander-in-Chief of the American Asiatic Fleet that the four vessels were proceeding upriver: that a Japanese plane endeavoured to ascertain their nationality, flying at an altitude of three hundred meters, but was unable to distinguish the flags; that three Japanese bombing planes, six Japanese fighting planes, six Japanese bombing planes, in sequence, made attacks which resulted in the damaging of one of the American steamers, and the sinking of the U.S.S. Panay and the other steamers.

Since the beginning of the present unfortunate hostilities between Japan and China, the Japanese Government and various Japanese authorities at various points have repeatedly assured the Government and authorities of the United States that it is the intention and purpose of the Japanese Government and the Japanese armed forces to respect fully the rights and interests of other powers. On several occasions, however, acts of Japanese armed forces have violated the rights of the United States, have seriously endangered the lives of American nationals and have destroyed American property. In several instances, the Japanese Government has admitted the facts, has expressed regrets, and has given assurances that every precaution will be taken against recurrence of such incidents. In the present case, acts of Japanese armed forces have taken place in complete disregard of American rights, have taken American life, and have destroyed American property both public and private.

In these circumstances, the Government of the United States requests and expects of the Japanese Government a formally recorded expression of regret, an undertaking to make complete and comprehensive indemnifications, and an assurance that definite and specific steps have been taken which will ensure that hereafter American nationals, interests and property in China will not be subjected to attack by Japanese armed forces or unlawful interference by any Japanese authorities or forces whatsoever.²²³

125. In a similar note to the Bulgarian Government on 2 August 1955, the United States Government stated:

²²³ Foreign Relations of the United States, Japan, 1931-1941, vol. I, U.S.G.P.O., 523 (1943).

The United States Government protests emphatically against the brutal action of Bulgarian military personnel on July 27, 1955, in firing upon a commercial aircraft of the El Al Israel Airlines, which was lawfully engaged as an international carrier. This attack, which resulted in the destruction of the aircraft, and the death of all personnel aboard, including several United States citizens, constitutes a grave violation of accepted principles of international law. The Bulgarian Government has acknowledged responsibility for this action.

The United States Government demands that the Bulgarian Government (1) take all appropriate measures to prevent a recurrence of incidents of this nature and inform the United States Government concerning these measure; (2) punish all persons responsible for this incident; and (3) provide prompt and adequate compensation to the United States Government for the families of the United States citizens killed in this attack.²²⁴

126. Additional evidence of United States recognition of this principle can be retrieved from Marjorie M. Whiteman, *Digest of International Law*, Vol. 8, U.S.G.P.O., Dept. of State Publication 8290, p. 888-906; and Richard B. Lillich (ed.), *International Law of State Responsibility for Injuries to Aliens*, p. 221-224 (1983).

D. The Principle of Effective Reparation

127. The general principle governing reparations was laid down by the Permanent Court in the *Chorzów Factory* case:

The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which serve to determine the amount of compensation due for an act contrary to international law.²²⁵

128. The *Articles of Responsibility of States for Internationally Wrongful Acts* (2001), prepared by Judge Crawford, Special Rapporteur of the International Law Commission, who also served as presiding arbitrator in *Larsen v. Hawaiian Kingdom*, on *Reparation for injury* (Chapter II) include the following articles:

²²⁴ Margorie M. Whiteman, *Digest of International Law*, vol. 8, 891 (1967).

²²⁵ *Chorzów Factory case*, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 47.

Article 34
Forms of reparation

Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter.

Article 35
Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

- (a) Is not materially impossible;
- (b) Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.

Article 36
Compensation

- 1. The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.
- 2. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.

Article 37
Satisfaction

- 1. The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.
- 2. Satisfaction may consist in an acknowledgment of the breach, an expression of regret, and formal apology or another appropriate modality.
- 3. Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State.

Article 38

Interest

1. Interest on any principal sum due under this chapter shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.
2. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.

Article 39

Contribution to the injury

In the determination of reparation, account shall be taken of the contribution to the injury by wilful or negligent action or omission of the injured State or any person or entity in relation to whom reparation is sought.

129. It is apparent that the formulation for reparations in the Articles reflects the principle stated by the Permanent Court in the *Chorzów Factory* case. Furthermore, recent international decisions by international courts, tribunals and other bodies regard the Articles as a restatement of customary international law. In its 2007 award in the case of *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc., v. Mexico*, the Tribunal stated:

The Tribunal acknowledges the fact that the ILC Articles are the product of over five decades of ILC work. They represent in part the ‘progressive development’ of international law—pursuant to its UN mandate—and represent to a large extent a restatement of customary international law regarding secondary principles of state responsibility.²²⁶

130. In its 2008 Decision on Responsibility, the Tribunal in the case *Corn Products International Inc. v. Mexico* noted that it was “accepted” that the State responsibility articles constituted the “most authoritative statement” on the rules of State responsibility.²²⁷ In the 2008 *Bitwater Gauff (Tanzania) Ltd. v. Tanzania* case, the Tribunal referred to the Articles as “a codification of the rules of customary international law on the responsibility of States for their internationally wrongful acts.”²²⁸

²²⁶ ICSID, *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. the United Mexican States*, Case No. ARB(AF)/04/05, award, para. 116 (21 November 2007).

²²⁷ ICSID, *Corn Products International Inc., v. The United Mexican States*, Case No. ARB(AF)/04/01, decision on responsibility, para. 76 (15 January 2008).

²²⁸ ICSID, *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, Case No. ARB/05/22, award, paras. 773 and 774 (24 July 2008).

131. The United States, in practice, has accepted this principle of reparations from the *Chorzów Factory* case, which has been adopted and approved in the two modern authoritative *Digests* of international law published by the authority of the United States Government: see, Hackworth, *Digest of International Law*, vol. V, U.S.G.P.O., Washington, 1943, p. 719-720; and Whiteman, *Digest of International Law*, vol. 8, Department of State Publication 8290, Washington, 1967, p. 1137-1138, 1199. In the case before the International Court of Justice concerning *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, the United States Memorial quoted the *Chorzów Factory* case:

Reparation must, as far as possible, “wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed” (Factory at *Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47). Though the damage suffered by individuals may serve as a convenient scale for the calculation of the reparation due to the State, the damage suffered by the State itself must also be considered. (*Ibid.* at p. 28).

In the case before the Court, the United States asserts its right to full compensation for the injuries suffered both by the United States as a State and by its nationals as victims of Iran’s unlawful actions.²²⁹

132. Where there is a deliberate intention to harm, it is generally recognized that the seriousness of the breach of the legal obligation is relevant to the way in which compensation is to be assessed. Thus, calculation of reparations should not lean in favor of the Respondent State.²³⁰

WILLFUL AND DELIBERATE OMISSION OF ADMINISTERING HAWAIIAN KINGDOM LAW

133. Article 43, 1907 Hague Regulations (36 Stat. 2277; Treaty Series 539) states “[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”
134. Article 64, 1949 Geneva Convention, IV (6 U.S.T. 3516) states “[t]he penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or

²²⁹ Case concerning United States Diplomatic and Consular Staff in Tehran, Memorial of the Government of the United States of America, p. 78 (January 1980).

²³⁰ Ian Brownlie, *System of the Law of Nations: State Responsibility*, Part I, 224 (1983).

suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.”

135. Article 43, 1907 Hague Regulations, and Article 64, 1949 Geneva Convention, IV, prohibits the United States, as a Contracting Power, from administering its domestic laws within the territory of the Hawaiian Kingdom.
136. The United States’ willful and deliberate omission of administering Hawaiian Kingdom law is a breach of an international obligation and, therefore, an internationally wrongful act. Article 12 of the Responsibility of States for Internationally Wrongful Acts (2001) states “[t]here is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.”
137. The United States’ willful and deliberate omission of administering Hawaiian Kingdom law has led and is the cause of divers of alleged war crimes and violations of human rights law committed throughout Hawaiian territory on an unimaginable scale.