To be published by Bloomsbury London in 2027 in Pascal Lottaz, Hillary Briffa, Eric Golson, and Naman Karl-Thomas (eds.) "Neutral Actors in History: Global Case Studies from the 19th and 20th Centuries"

Hawaiian Neutrality from the Nineteenth Century to the Present

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Summary

The chapter discusses the historical context and efforts of the Hawaiian Kingdom to establish and maintain its neutrality and sovereignty from the nineteenth century to the present, particularly in relation to international law and diplomatic treaties. The Hawaiian Kingdom was recognized as an independent state and it maintained diplomatic relations and treaties with various nations, including the United States and European powers. This recognition established its territorial sovereignty over the islands and surrounding seas, which were crucial for its neutrality during armed conflicts. Hawaiian authorities, failing to convince foreign states to neutralize the Hawaiian Kingdom like in the case of Switzerland, sought a novel approach toward securing their neutral status by self-neutralization through bilateral treaties and the consequential effect of the most favored nation clause, despite self-neutralization not being recognized under customary international law until 1907.

The 1893 American invasion of the Hawaiian Kingdom marked a significant turning point, transforming the state of peace into a state of war and leading to the unlawful overthrow of the Hawaiian government and the American military occupation that followed. The law of neutrality upon third states came into play because the Hawaiian Kingdom became a belligerent state as a result of the armed invasion by the United States (U.S.). Despite the unilateral annexation by U.S. legislative action, and not by a treaty, in 1898, and the subsequent imposition of American laws since then to the present, international humanitarian law, not the law of neutrality, provided the legal basis for the Hawaiian Kingdom's continued existence as an occupied state. As a result, the government of the Hawaiian Kingdom was restored in 1997, which led to a case that came before the Permanent Court of Arbitration in The Hague in 1999. Since the hearing, Hawaiian authorities have been implementing a plan to bring compliance with the law of occupation so that the occupation will eventually come to an end by a treaty of peace.

Literature Situating

This chapter on Hawaiian neutrality contributes to several bodies of scholarship. The most fundamental context is the historical and legal literature on what Abbenhuis (2014) has characterized as "an age of neutrals" — the long nineteenth century in which neutral status became both a practical diplomatic instrument and an increasingly codified element of international law. Abbenhuis traces how the European Concert system after 1815 created conditions under which neutral status offered various benefits to large and small states alike, leading to a historical and legal trajectory culminating in the Declaration of Paris of 1856 and

the Hague Conventions of 1899 and 1907. The latter was early on examined in authoritative detail by scholars like Oppenheim (1921) and assessed time and again in the legal context, also more contemporarily, for instance, by Vagts (1998), Gavouneli (2012), and Upcher (2020).

The chapter also connects to research on maritime neutrality, as recently explored for instance by Müller (2019), who situates some of the milestones of maritime neutrality law within the nexus of trade and warfare, identifying the Alabama Claims arbitration of 1872 as a landmark in codifying neutral state responsibility. Further aspects of this development are treated systematically by Neff (2000, 2005), whose general histories of neutral rights and of the laws of war provide a very important framework within which the chapter's reconstruction of Hawaiian diplomacy must be read. Also Chadwick (2002) examines the Geneva Arbitration specifically, while Wani (2017) analyses the theoretical basis for neutrality obligations as they developed through to 1945.

Against this background, this chapter poses a question the existing literature addresses only obliquely: what occurred when non-European states actively pursued neutral status, rather than having it imposed or withheld by competing powers? Miskovic et al. (2014) have shown that the positivist "standard of civilization" doctrine confined most non-European polities to partial membership in international society, and Maass (2017) demonstrates that smaller states in the concert era typically survived by exploiting great-power jealousies rather than through legal agency.

The comparative literature on Asia provides instructive parallels: both Larsen (2016) and Jin (2021) trace the efforts of the Korean Kingdom in the 1880s and 1890s to employ permanent neutralization — the concept defined rigorously by Black et al. (1968) and Hwang (1999) as the conferral of perpetual neutral status through international treaty or recognized self-declaration — as a means of navigating competing imperial pressures. While the Korean Kingdom was not a recognized independent state in the nineteenth century (Larsen, 2024, 502) that would have given it most favored nation status, the Hawaiian Kingdom was, which gave it complete use of its legal agency under customary international law.

This chapter argues that the Hawaiian Kingdom succeeded where Korea ultimately could not, constructing through bilateral treaty commitments a form of genuine self-neutralization. The author’s earlier study (Sai 2015) of Hawaiian neutrality from the Crimean War through the Spanish-American War supplies the diplomatic record on which the present chapter’s legal reconstruction rests.

Introduction

To quote the dictum of the Larsen v. Hawaiian Kingdom arbitral tribunal at the Permanent Court of Arbitration in its 2001 arbitral award, "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" (Larsen v. Hawaiian Kingdom, 581). According to Westlake (1894, 81) 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".

Hawaiian territory is comprised of twenty-two islands that span approximately 1323 nautical miles from its Eastern-most island of Hawai'i to its Western-most island of Kure Atoll. The island of Palmyra Atoll is its Southern-most island (Sai 2020, 87). The island of O'ahu is roughly the size of Luxembourg. In the nineteenth century, Hawaiian territorial sovereignty extended not only to the land but also the territorial sea that extends "a distance of a marine league, or as far as a cannon shot will reach from the shore" (The King v. Parish 1849, 61). Under current customary international law, the territorial sea is now twelve nautical miles from the shore.

Unlike other non-European states, the Hawaiian Kingdom enjoyed equal treaties with European powers, including the United States, and full independence of its laws over its territory. The Hawaiian Kingdom entered into treaties of amity with all the major powers of Europe, the United States, and Japan. By 1893, the Hawaiian Kingdom maintained diplomatic representatives accredited to the states of Europe, the Americas, and the Pacific. Hawaiian Legations were established in Washington, D.C., London, Paris, and Tokyo, while diplomatic representatives were accredited to the Hawaiian Court in Honolulu from the United States, Portugal, Great Britain, France, and Japan. In his speech at the opening of the 1855 Hawaiian Legislative Assembly, King Kamehameha IV, reported:

> *It is gratifying to me, on commencing my reign, to be able to inform you, that my relations with all the great Powers, between whom and myself exist treaties of amity, are of the most satisfactory nature. I have received from all of them, assurances that leave no room to doubt that my rights and sovereignty will be respected (Lydecker 1918, 57).*

This chapter chronicles the path toward permanent neutrality through self-neutralization by Hawaiian authorities in the age of empire and expansion. By charting a path toward permanent neutrality on its terms, Hawaiian authorities created an exception to the doctrine of neutralization that relied on third states to recognize a state's neutrality by treaty whereby Hawaiian neutrality would be achieved through bilateral treaties.

Methodology

This chapter will review nineteenth century international law and the emergence of the law of neutrality. The methodology applied will be a historical analysis of events, actions, and communications by Hawaiian authorities within the framework of these regimes of law. By this method, an understanding will be provided of the intent of Hawaiian authorities as they grappled with ways to protect Hawaiian state sovereignty through neutrality, eventually leading to the development of self-neutralization through bilateral treaties and the consequential effect of the most favored nation clause. This was not a departure from the law of neutrality and neutralization by third states but rather an evolution of neutrality that was based on the independence and sovereignty of the state to choose for itself the legal status as a permanent neutral state. By 1907, the protection of self-neutralized states was codified under the Hague Convention V respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land and the Hague Convention (XIII) Respecting the Rights and Duties of Neutral Powers in case of Naval War, which eventually became customary international law.

Charting a path for Hawaiian neutrality in the nineteenth century

The concept of neutrality in the nineteenth century centered on maintaining the balance of power among belligerent states so that the theater of war could be contained. It was not a state act to permanently neutralize itself but an act by third states to neutralize a state. When the great European powers of Austria, France, Great Britain, Portugal, Russia, and Prussia met at the Congress of Vienna in 1815 after the Napoleonic wars, they sought to secure a balance of power among them by declaring the neutralization of Switzerland in the 1815 Treaty of Paris—Act of Acknowledgment and Guarantee of the perpetual Neutrality of Switzerland, and of the inviolability of its Territory. The neutralizing of the City of Cracow followed by declaration of Russia, Austria, and Prussia. Other neutralized States in the nineteenth century included Belgium in 1839 and Luxembourg in 1867. (see also Kettmann, Chapter 5 in this volume, on the Treaty of London of 1867 that imposed Luxembourg's neutrality and the fragility of great-power guarantees)

The obligations of non-neutralized states and their neutrality toward the belligerents only arise during a state of war between two or more states. States that have been neutralized, however, are “obliged in peace time to avoid every engagement that might compromise [their] neutrality during a situation of armed conflict or war. A permanently neutral State is forbidden from entering into alliances or treaties of guarantee that may involve it in war not involving defense of its own territory” (Upcher 2020, 4).

Prior to becoming an independent state, the Hawaiian Kingdom was a British protectorate by agreement between Captain George Vancouver and King Kamehameha I of the island Kingdom of Hawai‘i, dated 25 February 1794 (Sai 2024, 468). Having been made aware of the Napoleonic wars that Great Britain was engaging in, Kamehameha I sought to have his ports

neutralized by King George III. In a letter to George III dated 3 March 1810, Kamehameha wrote:

> *Am sorry to hear your being at War with so many powers and I so far off cannot assist you. Should any of the powers which you are at War with molest me I shall expect your protection, and beg you will order your Ships of War & Privateer not to Capture any vessel whilst laying at Anchor in our Harbours, as I would thank you to make ours a neutral port as I have not the means of defence (Hackler 1986, 7).*

In a communication from London dated 30 April 1812, Secretary of State for Foreign Affairs, the Earl of Liverpool, notified Kamehameha I of the change in government. The Secretary of State assured the Hawaiian King that the Prince Regent, the *de facto* head of state and eventual successor to George III, would "promote the Welfare of the [Hawaiian] Islands, and that He will give positive Orders to the Commanders of His Ships to treat with proper respect, all Trading Vessels belonging to [him], or to [his] subjects" (Foreign Ministry 1812). He also stated that the Prince Regent was "confident that the Complete Success which He has gained over His Enemies in every Quarter of the Globe, will have the Effect of securing [Kamehameha's] Dominions from any attack or Molestation on their part" (Foreign Ministry 1812). Thus, there was no need, at the time, to have Hawaiian ports neutralized.

Hawaiian neutrality by its own terms

"A nation that wishes to secure her own peace," the eminent eighteenth jurist Emmerich de Vattel argued, "cannot more successfully attain that object than by concluding treaties [of] neutrality" (Vattel 1844, 333). The Hawaiian Kingdom took a proactive approach to secure its neutrality through diplomacy and treaty provisions. Like the Swiss delegates at the Congress of Vienna, Hawaiian authorities wanted permanent neutrality.



Figure 2.1: Robert C. Wyllie, Hawaiian Minister of Foreign Affairs.

Source: Public domain.

Once independence was recognized, King Kamehameha III sought to secure neutrality under international law. Hawaiian Minister of Foreign Affairs, Robert C. Wyllie, was responsible for carrying out this policy since his appointment in March 1845. After failing to get a tripartite treaty between Great Britain, France, and the United States neutralizing the Hawaiian Kingdom, Wyllie pursued the course of bilateral treaties with provisions of Hawaiian neutrality.

On 19 October 1846, Wyllie signed a treaty with the Kingdom of Denmark in Honolulu that included a provision of Hawaiian neutrality during war. Article III provides, “The protection of the King of the Hawaiian Islands shall be extended to all Danish vessels, their officers and crews, within the harbors and roads of his dominions. In time of war, they shall receive all possible protection against the enemies of the King of Denmark” (Sai 2020, 255). On 8 January

1848, Wyllie, in Honolulu, signed a treaty with Hamburg, and on 7 August 1851, with Bremen, both of which included an identical provision in Article III.

A state's neutrality was a status given by belligerent states where neutrality "spring[s] from and depend[s] on recognition" (Lorimer 1884, 130). According to Upcher (2020, 13), "since the ability to initiate war had primacy over any claim to territorial inviolability, the neutral State could become a belligerent through a declaration of war issued against it, or through invasion of its territory by a belligerent. Absent a treaty relationship, a State possessed neither the right nor the duty to remain neutral". This weighed heavily on Hawaiian authorities.

After the Crimean War broke out in 1853 between Russia and the Ottoman Empire, both Great Britain and France formed an alliance with the Ottomans in the spring of 1854 and entered the war against Russia with the prospect of naval battles taking place in the north Pacific. This greatly concerned Hawaiian authorities under Kamehameha III that Hawaiian independence could be threatened. What it also prompted was for the Hawaiian Kingdom to take deliberate steps to establish its position of permanent neutrality.

Knowing of British and French naval forces engaging Russia's naval forces in the Pacific, on 16 May 1854 Kamehameha III proclaimed the Hawaiian Kingdom's neutrality in the war. This neutrality extended one marine league, meaning three nautical miles, from the coasts of each of its islands. The proclamation stated:

> *Be it known, to all whom it may concern, that We, Kamehameha III, King of the Hawaiian Islands, hereby proclaim Our entire Neutrality in the War now impending between the Great Maritime Powers of Europe; that Our neutrality is to be respected by all Belligerents, to the full extent of Our Jurisdiction… that all captures and seizures made within Our said jurisdiction are unlawful; and that the protection and hospitality of Our Ports, Harbors and Roads, shall be equally extended to all the Belligerents, so long as they respect Our Neutrality.*
>
> *And be it further known, to all whom it may concern, that We hereby strictly prohibit all Our subjects, and all who reside within Our Jurisdiction, from engaging either directly or indirectly in Privateering against the shipping or commerce of any of the Belligerents, under the penalty of being treated and punished as Pirates (Proclamation 1854, 7).*

Absent treaties recognizing Hawaiian neutrality by the belligerent states of this war, the declaration merely proclaimed Hawaiian intent to be impartial and neutral toward the belligerents. Under the customary international law of neutrality at the time, the prevailing practice was for powers collectively to neutralise a country through agreement as a means of containing future warfare. The Hawaiian Kingdom was not neutralized by third states, but rather, through policy and administrative measures, Hawaiian authorities made known of its permanent neutrality whether war should occur or not.

On 15 June 1854, during a meeting of the Privy Council in Honolulu, the Hawaiian Committee on the National Rights delivered its report on "prizes." Wyllie presented the committee report that led to a resolution extending the privilege of asylum "to the armed national vessels and prizes made by such vessels of all the belligerents, but no authority can be delegated by any of the Belligerents to try and declare lawful and transfer the property of such prizes within the King's Jurisdiction" (Privy Council 1854). The resolution was made known to those countries engaged in the Crimean War.

A second Privy Council resolution was adopted on 17th July that explained the words "armed national vessels and prizes" to mean only "vessels regularly organized and commissioned on National Account, and what prizes they may make" (Kuykendall 1953, 58). The resolution then stated, "all privateers and prizes made by them are hereby prohibited from entering the ports of this Kingdom, unless in such circumstances of distress that their exclusion would involve a sacrifice of life, and then, only under special permission from the king" (Kuykendall 1953, 58).

Prior to their impending involvement in the Crimean War, Great Britain and France each issued a formal Declaration, on 28 March 1854, and on 29 March 1854 respectively, that declared neutral ships and goods would not be captured. Prior to this, international law did not afford protection for neutral ships carrying goods headed for the ports of countries that were at war. Under international law at the time, these ships could be seized by either country's naval vessels, or by private ships, commissioned by a country at war, called 'privateering,' and such goods seized were called 'prizes.' The British and French diplomats that were posted in the Hawaiian Kingdom delivered both Declarations to Hawaiian authorities.

To broaden the scope and protection of neutral goods under international law, the United States approached Russia on the matter and entered into a Convention on 22 July 1854, in Washington, D.C., whereby both agreed to "recognize as permanent and immutable" the principles, "1st. That Free ships make free goods—that is to say, that the effects of goods belonging to subjects or citizens of a Power or State at war are free from capture and confiscation when found on board of neutral vessels, with the exception of articles contraband of war. 2nd. That the property of neutrals on board an enemy's vessel is not subject to confiscation, unless the same be contraband of war" (United States Treaties 1968, 1214).

On 6 December 1854, the U.S. diplomat accredited to the Hawaiian Kingdom, David L. Gregg, sent the following dispatch to the Hawaiian government regarding the recognition of neutral goods. By its actions, the United States recognized and respected Hawaiian neutrality. Gregg stated:

> *I have the honor to transmit to you a project of a declaration in relation to neutral rights which my Government has instructed me to submit to the consideration of the Government of Hawaii, and respectfully to request its approval and adoption.*

> *As you will perceive it affirms the principles that free ships make free goods, and that the property of neutrals, not contraband of war, found on board of Enemies ships, is not confiscable. These two principles have been adopted by Great Britain and France as rules of conduct towards all neutrals in the present European war; and it is pronounced that neither nation will refuse to recognize them as rules of international law, and to conform to them in all time to come. (Foreign Ministry 1854).*

On 12 January 1855, Gregg sent another dispatch to the Hawaiian government that contained a copy of the 22nd July Convention between the United States and Russia. This dispatch embraced certain principles regarding neutral rights. After careful review of the U.S. President's request, Kamehameha IV, in Privy Council, passed the following resolution on 26 March 1855:

> *Resolved: That the Declaration of accession to the principles of neutrality to which the President of the United States invites the King, is approved, and Mr. Wyllie is authorized to sign and seal the same and pass it officially to the Commissioner of the United States in reply to his dispatches of the 6th December and 12th January last (Privy Council 1855).*

Following the Privy Council meeting on that same day, Wyllie signed the Declaration of Accession to the Principles of Neutrality, as requested by the United States President, and delivered it to Gregg. The Declaration reaffirmed "the peaceful and strictly neutral policy of this Kingdom as proclaimed by His late Majesty King Kamehameha III on the 11th May 1854, amplified and explained by Resolutions of His Privy Council of State of the 15th June and 17th July same year," and that "His Majesty accedes to the humane principles of the foregoing convention, in the sense of its III Article" (Foreign Ministry 1855).



Figure 2.2: King Kamehameha IV.

Source: Public domain.

On 7 April 1855, Kamehameha IV opened the Legislative Assembly. In his speech, he reiterated the Kingdom's neutrality by stating "my solemn adhesion to the rule, and to the principles establishing the rights of neutrals during war, contained in the Convention between

his Majesty the Emperor of all the Russias, and the United States, concluded in Washington on the 22nd July last" (Lydecker, 57).

The actions taken by the governments of the Hawaiian Kingdom, Great Britain, France, Russia, and the United States of America relating to the development of the principles of international law on neutrality provided the necessary pretext for the leading European maritime powers to meet in Paris, after the Crimean War. There in Paris, on 16 April 1856, Austria, France, Great Britain, Prussia, Russia, Sardinia, and Turkey (Piggott 1919, 121) entered into a joint Declaration that provided the following four principles:

> *1. Privateering is, and remains, abolished.*
>
> *2. The neutral flag covers enemyy''s goods, with the exception of contraband of war.*
>
> *3. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.*
>
> *4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.*

The United States, however, refrained from acceding to the Declaration of Paris because it still relied on 'privateering' through the issuing of letters of marque and reprisal (a government license authorizing private citizens to arm ships, attack foreign merchant vessels, and seize enemy property during wartime) in order to augment its limited and small naval force at the time. The Hawaiian Kingdom, as a self-neutralized state, acceded to the Declaration of Paris by virtue of an additional article to its treaty with Italy of 27 February 1869; as a permanent neutral state, the four principles would be incorporated into Hawaiian laws by treaty. The additional article was "considered as an integral part of the Treaty of Commerce and Navigation, concluded between the Kingdom of Italy and the Hawaiian Kingdom, at Paris, the 22nd July, 1863" (Sai 2020, 280). The Declarations, Accessions, and the 1854 Russo-American Convention represented the first recognition of the right of neutral States to conduct free trade without any hindrance from war. Stricter guidelines for neutrality were later established in the 1871 Anglo-American Treaty (Bevans 1974, 173).

At the end of June 1861, just three months into the American Civil War, a report was being circulated in Honolulu that a Confederate privateer was in the Pacific (Kuykendall 1953, 65). Hawaiian authorities concluded that another proclamation of neutrality was in order, but Kamehameha IV, in consultation with one of his ministers, delayed the proclamation until 26 August 1861. This proclamation was published in two Honolulu newspapers—*The Polynesian*, on 14 September 1861, and *The Pacific Commercial Advertiser*, on 19 September 1861, and repeated the same text embodied in the 1854 Proclamation and Privy Council resolutions passed during the Crimean War.

Unlike the wars in Europe that saw the strategic importance of the Alpine passes of Switzerland that could be controlled by a rival Power such as Austria or France, the Pacific had no major naval battles where the Hawaiian Kingdom's geographical location could have become a strategic necessity to establish a buffer zone. In the nineteenth century, the Naval Powers in the Pacific were France, Germany, Great Britain, and the United States.

The primary function of these Naval Powers in the Pacific was for the protection of trade routes and colonial ventures. It was not for war. This can be gleaned from the policy of British Foreign Secretary, Lord Aberdeen, as stated by Under Secretary of State for Foreign Affairs, Viscount Canning, regarding the Hawaiian Kingdom and the Society Islands in 1842. In his letter to Sir John Barrow, Second Secretary of the Admiralty, Viscount Canning stated, "Lord Aberdeen is of opinion that such an increase of trade alone would fully justify the more frequent appearance of British ships of war in those parts. It would also tend to maintain the just influence of Great Britain, and to counter balance the efforts which are now making by other Powers, to establish a dominant authority in the islands of the Pacific" (The Historical Commission, 35).

While the Hawaiian authorities saw this as an opening to pursue Hawaiian independence, which was achieved on 28 November 1843, it became an obstacle for the Naval Powers of the Pacific to be incentivized to neutralize the Hawaiian Kingdom to create a buffer zone in the event of war. Major naval battles would not occur in the Pacific until the Second World War. This political situation forced Hawaiian authorities to pursue self-neutralization on its terms through legal agency as a state.

Since the end of the Crimean War, Wyllie took an unprecedented approach to guarantee the respect of Hawaiian neutrality. In his letter to Count A. de Medem on 7 February 1857, Wyllie wrote, "There are two grand principles that we aspire to; the first is that all nations should agree to respect our Independence and consider the Archipelago strictly neutral in all wars that may arise—and the second is, to have one identical Treaty with all nations" (Kuykendall 1953, 54). There was no precedent for the prospect of "one identical Treaty with all nations." Like the Swiss, Wyllie was seeking for the Hawaiian Kingdom to be neutralized by treaty because he was mindful of the Kingdom's "own weakness and inability to keep up an adequate military and naval force" to effectively enforce its neutrality if violated by a belligerent state (Foreign Ministry 1857). To account for this, Wyllie sought to have the powerful states all sign a single treaty, but it was uncertain if Hawaiian authorities could succeed. To do this, Wyllie commissioned Sir John Bowring, a British subject, as Envoy Extraordinary and Minister Plenipotentiary to Great Britain, France, Russia, Belgium, the United States, Spain and several other countries (Kuykendall 1953, 56). Bowring was a well-known diplomat throughout the courts of Europe.

A first ever approach for Hawaiian neutrality through self-neutralization

By 1863, the Hawaiian Kingdom's attempt to secure a single treaty guaranteeing both its independence and respect for its neutrality had failed. Although it was unable to obtain a formal multilateral guarantee of independence, it did succeed in securing recognition of its neutrality from individual treaty partners. Hawaiian authorities therefore pursued a strategy of self-neutralisation through bilateral treaties, relying in part on the operation of most-favoured-nation clauses to extend these benefits more widely. According to Oppenheim, the most-favoured-nation clause was understood "to have the effect of causing all favours granted to any one State at once and unconditionally to accrue to all other States having most-favored-nation treaties with the grantor" (Oppenheim 1912, §580). In its treaties with Germany, Spain, and Sweden-Norway, the Hawaiian Kingdom inserted provisions granting the armed vessels of those states access to Hawaiian ports in wartime for repair and resupply. Other states whose treaties did not expressly include this provision could still benefit from it, because the most-favoured-nation clause extended to them any equivalent advantage granted to another treaty partner.

In the 1852 treaty with Sweden-Norway, Article XV provides, "All vessels bearing the flag of Sweden and Norway in time of war shall receive every possible protection, short of actual hostility, within the ports and waters of His Majesty the King of the Hawaiian Islands; and His Majesty the King of Sweden and Norway engages to respect in time of war the neutral rights of the Hawaiian Kingdom, and to use his good offices with all other powers, having treaties with His Majesty the King of the Hawaiian Islands, to induce them to adopt the same policy towards the Hawaiian Kingdom" (Sai 2020, 299). Article XXVI of the 1863 Spanish Treaty has similar wording. And the 1879 German Treaty, article VIII provides, "All vessels bearing the flag of Germany or Hawaii shall in times of war receive every possible protection, short of actual hostility, within the ports and waters of the two countries, and each of the High Contracting Parties engages to respect under all circumstances the neutral rights of the flag and the dominions of the other" (Sai 2020, 267).

These articles reflect two separate issues pertaining to Hawaiian neutrality. The first is granting these States' warships, in time of war, entry into Hawaiian ports that would be subject to Hawaiian law on neutrality and prizes. The second are these states' respect of Hawaiian neutrality. The former would apply to all warships of states that have the most favored nation clause in treaties with the Hawaiian Kingdom because a grant to one state is a grant to all states of the most favored nations. The latter would not oblige the other states because it was not a grant by the Hawaiian Kingdom. The most favored nation clause applying to warships was specifically inserted in Article VII of the British treaty (Sai 2020, 251), Article VII of the American treaty (Sai 2020, 306), Article VII of the Swedish-Norwegian treaty (Sai 2020, 297), Article XIII of the Italian treaty (Sai 2020, 277), Article XIII of the Belgian treaty (Sai 2020, 243), Article XV of the French treaty (Sai 2020, 262), and Article XII of the Spanish treaty (Sai 2020, 292).

With the exception of Sweden-Norway, Germany, and Spain, states of the most favored nations, under the law of neutrality at the time, were not bound to respect Hawaiian neutrality but their access to Hawaiian ports, should they find themselves at war, would only occur by virtue of Hawaiian neutrality. Theoretically, these states could disregard Hawaiian self-neutralization and wage war against the Hawaiian Kingdom, thereby making the country a belligerent state that could lead to the ceding of Hawaiian sovereignty by a treaty with the invading state. In this case, the conduct and actions by the belligerents would be measured, not by the laws of neutrality that protected neutralized States, but rather by the laws of war—international humanitarian law and the law of occupation. The law of neutrality in the nineteenth century did not protect a self-neutralized state like the Hawaiian Kingdom but the laws of war—*jus ad bellum* and *jus in bello*—could protect Hawaiian state sovereignty should the war be unlawful under customary international law.

State of war between the Hawaiian Kingdom and the United States

"Traditional international law was based upon a rigid distinction between the state of peace and the state of war," says Judge Greenwood (1995, 39), and "countries were either in a state of peace or a state of war; there was no intermediate state" (Greenwood 1995, 39). This distinction is also reflected by the renowned jurist of international law, Lassa Oppenheim, who 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 if justified under *jus ad bellum*. War, however, could only be waged to redress a state's injury. As de Vattel (1844, 301) stated, "Whatever strikes at [a sovereign state's] rights is an injury, and a just cause of war".



Figure 2.3: Queen Lili‘uokalani.

Source: Public domain.

The Hawaiian Kingdom enjoyed a state of peace with all states. This state of peace, however, was violently interrupted on 16 January 1893, when American troops invaded Honolulu. This invasion transformed the state of peace into a state of war, thus bringing into play the laws of war. The day after the invasion, Queen Lili'uokalani, as the executive monarch of a constitutional government, made the following protest in response to military action taken against the Hawaiian government and a conditional surrender of her authority to the United States:

> *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 (House of Representatives 1895, 586).*

Under international law, the landing of United States troops, without the consent of the Hawaiian government, was an act of war. For an act of war not to transform the state of affairs to a state of war, that 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 kingdom. According to Wright, an "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" (Wright 1924, 756). The quintessential question is whether United States troops were landed to protect American lives or whether they landed to wage war against the Hawaiian Kingdom?

"The 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," according to renowned scholar, Ian Brownlie (1963, 41), "was very rarely asserted either by statesmen or works of authority without some stereotyped plea to a right of self-preservation, and of self-defense, or to necessity or protection of vital interests, or merely alleged injury to rights or national honour and dignity". The United States had no dispute or injury inflicted by

the Hawaiian Kingdom that would have warranted an invasion and overthrow of its government.

U.S. President Cleveland's manifesto of a state of war with the Hawaiian Kingdom

At the behest of the Queen in her conditional surrender, President Grover Cleveland initiated a presidential investigation on 11 March 1893 by appointing Special Commissioner James Blount to travel to the Hawaiian Islands to provide periodic reports to Secretary of State Walter Gresham (House of Representatives 1895, 1185). After receiving Blount's final report, dated 17 July 1893, Gresham, on 18 October 1893, notified the President:

> *The Government of Hawaii surrendered its authority under threat of war, until such time as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign . . . Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice. Can the United States consistently insist that other nations shall respect the independence of Hawaii while not respecting it themselves? Our Government was the first to recognize the independence of the Islands and it should be the last to acquire sovereignty over them by force and fraud (House of Representatives 1895, 462).*

On 18 December 1893, President Cleveland, in a manifesto, notified the Congress that the "military demonstration upon the soil of Honolulu was of itself an act of war," and that "Hawaii was taken possession of by the United States forces without the consent or wish of the government of the islands ... except the United States Minister" (House of Representatives 1895, 451). He also determined "that the provisional government owes its existence to an armed invasion by the United States," thus branding it a product of intervention and not revolution (House of Representatives 1895, 454). And, finally, the President admitted that by "an act of war ... the Government of a feeble but friendly and confiding people has been overthrown" (House of Representatives 1895, 456). Customary international law at the time obligated the United States, as an occupying state, to provisionally administer the laws of the Hawaiian Kingdom, being the occupied state, until "either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant" (Koman 1996, 224).

A government created through intervention is a puppet regime of the intervening state and, as such, has no lawful authority. According to Marek (1968, 114), "Puppet governments 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".

Cleveland explained to Congress the egregious effects of war that led to the Queen's conditional surrender to the United States. He stated, "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" (House of Representatives 1895, 453). He told 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" (House of Representatives 1895, 458). What Cleveland did not know at the time of his manifesto to Congress was that the Queen, on the very same day in Honolulu, had accepted the conditions for settlement in order to return the state of affairs to a state of peace.

The executive mediation began in Honolulu at the U.S. Legation on 13 November 1893, between the Queen and U.S. Minister Albert Willis (Sai 2008, 119). The executive agreement, by exchange of notes, provided the duty of the President to restore the Queen as the constitutional executive monarch, and the Queen, thereafter, to grant a general amnesty to the insurgents. Political wrangling in Congress, however, prevented the President from restoring the Queen. Thus, the state of war ensued, and the law of occupation continued to apply.

President Cleveland's manifesto was nonetheless conclusive that the United States was in a state of war with the Hawaiian Kingdom since 16 January 1893, and the United States was responsible for the unlawful overthrow of the Hawaiian government and the creation of a puppet regime. A synopsis of the President's manifesto was published on the front page of *The Alexandria Gazette and Virginia Advertiser* on 18 December 1893 (The President on Hawaii 1893). *The Alexandria Gazette* was the daily newspaper in Washington, D.C., and all foreign legations were aware of the United States' acts of war committed against the Hawaiian Kingdom.

The duty of neutrality by third states

In the nineteenth century, when a state of peace was transformed into a state of war, all other states were under a duty of neutrality. As Oppenheim (1921, §294) explains, since "neutrality is an attitude of impartiality, it excludes such assistance and succour to one of the belligerents as is detrimental to the other, and, further such injuries to the one as benefit the other". By the invasion of U.S. troops on 16 January 1893, the Hawaiian Kingdom was transformed into a belligerent state not by choice but rather by circumstance. The law of neutrality, however, would apply to all other states.

On 4 July 1894, the provisional government, which President Cleveland stated, "owes its existence to an armed invasion by the United States" changed its name to the so-called Republic of Hawai'i. Thereafter, twenty states violated their obligation of neutrality by

recognizing the American puppet and consequently became parties to the war on the side of the United States (The Mystery of Hawaiian History). These states spanned Europe, the Americas, and Asia. Customary international law in the nineteenth century required that states had to have been made aware that a state of war existed between the United States and the Hawaiian Kingdom in order to trigger their obligation to be neutral or to become co-belligerents with the United States.

The publication of the President's manifesto in *The Alexandria Gazette* would have satisfied awareness of the state of war by the Legations in Washington, D.C. "If a neutral neglects this obligation," explains Oppenheim (1921, §360), "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". The recognition by these states was an attempt to provide *de facto* or diplomatic recognition of the American puppet in a state of war that the U.S. initiated. Of these states, Austria-Hungary, Brazil, Chile, China, France, Japan, Mexico, Netherlands, Peru, Russia, and Spain maintained Legations accredited to the United States in Washington, D.C. in 1893, and, therefore, cannot claim they were unaware of the circumstances of the invasion and overthrow of the Hawaiian government. Under the law of neutrality, states must refrain from siding with one belligerent to the detriment of the other belligerent.

The recognition of the so-called Republic did not alter the status of the puppet regime but rather serves as the indisputable evidence that these states violated their obligation to be neutral during a state of war and instead chose to become co-belligerents with the United States against the Hawaiian Kingdom. Diplomatic recognition of governments does not occur during a state of war between states but rather only in a situation where revolutionaries within a state succeed in replacing the former government, thus becoming a *de facto* government by recognition of other states.

These recognitions were made under the false pretense that the Republic, being an American puppet, succeeded in a revolution and therefore was the new government of Hawai'i. This narrative was refuted by the President's manifesto, where he stated that the provisional government "was neither a government de facto nor de jure [because] it was not in such possession of the Government property and agencies as entitled it to recognition" (House of Representatives 1895, 453). The insurgents' control was by virtue of state intervention and not revolution. The co-belligerent states cannot deny this legal reality, notwithstanding their belligerent acts of recognizing the so-called Republic.

Five years later, at the height of the Spanish-American War, President Cleveland's successor, William McKinley, signed a Congressional joint resolution of annexation on 7 July 1898, unilaterally seizing the Hawaiian Islands justified by military necessity during its war with Spain. In the absence of a treaty where the Hawaiian Kingdom ceded its territory and sovereignty to the United States, the legislation of the United States is limited to its own territory (Sai 2024, 485). In the Lotus case, the Permanent Court of International Justice stated

that “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” (Lotus case 1927, 18). According to Judge Crawford, derogation of this principle will not be presumed (Crawford 2006, 41).

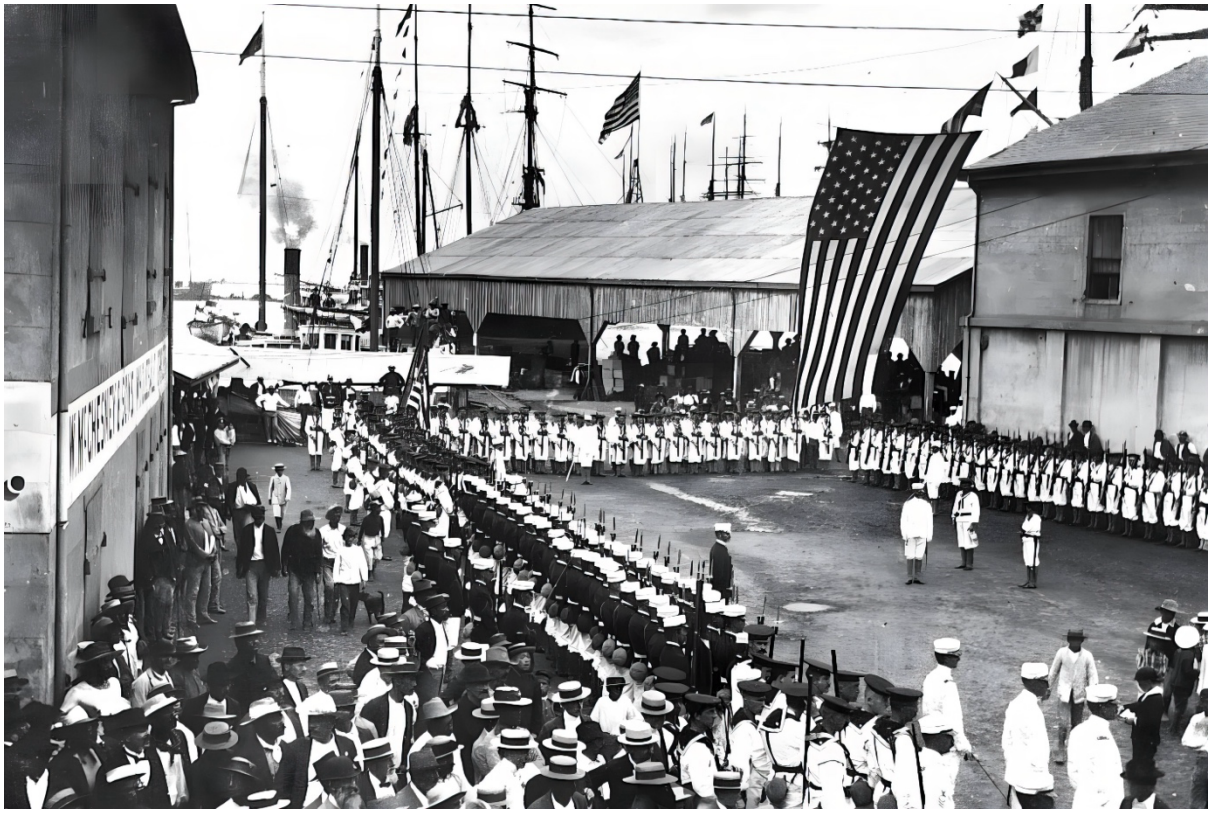


Figure 2.4: U.S. troops at Honolulu harbor, 1898.

Source: Public domain.

Furthermore, so long as occupation continues, the United States is proscribed from “annex[ing] the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts” (Pictet 1958, 275). In his legal opinion, Lenzerini (2021, 322) concluded that “according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of international law. In fact, in the event of illegal annexation, ‘the legal existence of [a state is] preserved from extinction, since illegal occupation cannot of itself terminate statehood’”. Since 1898, the United States has been unlawfully imposing American laws and administrative measures throughout the territory of the Hawaiian Kingdom, which, under customary international law, is the war crime of usurpation of sovereignty during military occupation (Schabas 2021, 340).

To conceal the American occupation, U.S. officials, in 1906, implemented a formal policy of denationalization called Americanization in the public and private schools throughout the Hawaiian Islands (Sai 2020, 114; Sai 2018). The purpose of the policy was to have the school children believe they were American and that Hawai'i became an incorporated territory of the United States. By weaponizing education, denationalization was completed by the third generation. Any memory of the Hawaiian national consciousness had been effectively erased and replaced with an American national consciousness.

Since the First World War, the United States and the other Allied Powers recognized as a war crime attempts to denationalize the inhabitants of occupied territory committed by Germans, Austrians and Bulgarians against Serbians (Schabas 2021, 345). Renowned scholar on war crimes, William Schabas, also concluded, in his legal opinion, that war crimes are being committed in the occupied state of the Hawaiian Kingdom. Notwithstanding the lasting effects of denationalization and the prolonged nature of the American occupation, the Hawaiian Kingdom continues to exist, as an occupied state, under the rules of customary international law.

In order to address the violations of international law for over a century, the Hawaiian government was restored on 28 February 1997, under a regency (Sai 2020, 18; Lenzerini 2021). This led to a dispute between the Hawaiian Kingdom and one of its nationals that came before the Permanent Court of Arbitration in The Hague in 1999—Larsen v. Hawaiian Kingdom. At the center of the Larsen case was the unlawful imposition of American laws. The significance of these proceedings is that not only the Permanent Court of Arbitration recognized the continued existence of the Hawaiian Kingdom as a state, under customary international law, and the regency as its government (Sai 2020, 24; Lenzerini 2021; Sai 2024, 486), but also the United States, by an executive agreement, through exchange of notes, called the 2000 Sai-Clinton agreement (Sai 2020, 25-26), and the current 127 Contracting States which have acceded to the Permanent Court of Arbitration's founding conventions by *opinio juris* (Lenzerini, Dec. 2021).

What followed these proceedings was the exposure of Hawaiian statehood and the movement toward compliance with the law of occupation so that the occupation would eventually come to an end by a treaty of peace (Royal Commission of Inquiry 2024; Council of Regency 2023). This exposure would directly face over a century of disinformation by the United States that Hawai'i is a lawfully incorporated territory since 1898. Given this daunting task and the Council of Regency's limitation of resources and manpower, it did, however, understand the "price to develop a high-performance [information warfare] capability is low and is available to a wide range of participants" (Molander, Riddlile, and Wison, 15). "Information warfare," according to Libicki, "admits of the concept of superiority. One side in a conflict may have better access to information than the other" (Libicki, 94). On its side, the Hawaiian Kingdom's superiority is that it has access to accurate historical information and relevant laws. Under customary international law, an injured belligerent state may legally

resort to “Publication of the facts, with a view to influencing public opinion against the offending belligerent (United States, FM 27-10, para. 495(a))”. By employing information warfare, through academic research and ‘publication of the facts’, the exposure of the Hawaiian Kingdom as an occupied state countervails the false narrative that Hawai‘i is the 50th state of the American union.

The negotiations for a treaty of peace will not only need to include the United States, but also the co-belligerent states of Austria, Belgium, Brazil, Chile, China, France, Germany, Guatemala, Hungary, Italy, Japan, Mexico, Netherlands, Norway, Peru, Portugal, Russia, Spain, Sweden, Switzerland, and the United Kingdom. Until a military government is established, the unlawful American occupation of the Hawaiian Kingdom, a permanent neutral state, continues in similar fashion to the unlawful German occupation of the permanent neutral state of Luxembourg during the Second World War. (see also Kettmann, Chapter 5 in this volume, on Luxembourg's experience of imposed and then violated neutrality from 1867 to 1948, which offers the closest historical parallel to the Hawaiian case)

Conclusion

Despite the prolonged American occupation and the silence of Hawaiian authorities until 1997, the law of neutrality continued to evolve. By 1907, the Hawaiian Kingdom’s permanent neutrality, pursued through self-neutralization, had effectively come to fruition, as all states were by then bound by treaty to respect Hawaiian neutrality, not merely Sweden, Norway, Spain, and Germany. Article 1 of the 1907 Hague Convention XIII provides, “Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality.” Of note is that the U.S. Senate ratified the convention on 17 April 1908, and it was proclaimed by the President on 28 February 1910.

Today, the 1907 Hague Convention XIII is a part of customary international law, which applies to all states even if those states did not ratify the treaty, which includes the Hawaiian Kingdom. As a part of customary international law, the Hawaiian Kingdom is bound by its provisions, despite not ratifying or acceding to the convention. As such, it is obliged to adhere to its provisions, which broaden Hawaiian laws and administrative measures on neutrality enacted in the mid-nineteenth century. More importantly, Convention XIII transformed the Hawaiian Kingdom’s permanent neutrality from policy to law. Like human rights law, the law of neutrality under customary international law is superseded by international humanitarian law and the law of occupation when a state is under military occupation. When the American occupation comes to an end through a treaty of peace, the law of neutrality will once again apply in full to the Hawaiian Kingdom’s permanent neutrality.

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