DR. DAVID KEANU SAI
Chairman of the Council of Regency of the Hawaiian Kingdom
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Honolulu, HI 96805-2194
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5 July 2018

Excellency:

I had the honor to have been the Agent for the Hawaiian Kingdom in arbitral proceedings held under the auspices of the Permanent Court of Arbitration in *Lance Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, where the Hawaiian Kingdom was recognized by the International Bureau as a Non-Contracting Power to the 1907 Hague Convention, Article 47, and the 1899 Hague Convention, Article 26. See PCA 2002-2011 Annual Reports enclosed herewith.

After 17 years of continuous education and exposure led by the Hawaiian Kingdom after returning from The Hague, I have the honor to now state with confidence that a considerable segment of the Hawaiian people is now aware of the prolonged occupation and the continuity of their country—the Hawaiian Kingdom—under customary international law.

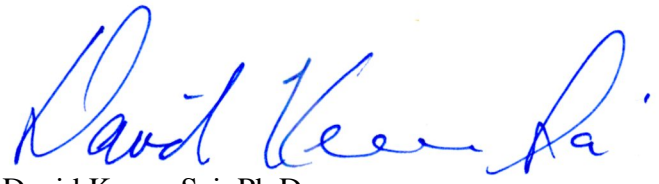
This education and exposure has prompted the United Nations Independent Expert, Office of the High Commissioner for Human Rights, Dr. Alfred M. deZayas, to send a communication dated 25 February 2018 to the Members of the Judiciary for the State of Hawai'i. Dr. deZayas stated,

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

I have the honor to enclose herewith the text of the memorandum issued on 25 February 2018 by the Independent Expert acknowledging the illegal occupation by the United States of the Hawaiian Islands (Hawaiian Kingdom). As an internationally wrongful act, all States shall not "recognize as lawful a situation created by a serious breach within the meaning of Article 40, nor render aid or assistance in maintaining that situation (*Responsibility of States for Internationally Wrongful Acts, 2001*)." Article 40 provides that a "breach of such an obligation is serious if it involves a gross or systemic failure by the responsible State to fulfil the obligation."

Impelled by the threat of North Korea announcing the targeting of the Hawaiian Islands for nuclear attack as a result of United States military installations unlawfully established throughout the islands, and due to war crimes, as defined under the Hague and Geneva Conventions, that have and continue to be committed with impunity as a result of the United States failure to comply with international humanitarian law, the Hawaiian Kingdom has filed a Petition for Writ of Mandamus with the United States District Court for the District of Columbia on 25 June 2018. As a nominal Respondent named in the Petition for Mandamus enclosed herewith, a summons will be forthcoming.

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



David Keanu Sai, Ph.D.
Chairman of the Council of Regency of the Hawaiian Kingdom

His Excellency
Dean Barrow
Prime Minister of Belize

Annexures

Annexure 1 to the note dated 5 July 2018 from the Chairman of the Council of Regency of the Hawaiian Kingdom to the Prime Minister of the Belize

Permanent Court of Arbitration Case Repository of *Lance Larsen v. Hawaiian Kingdom*, PCA Case No. 1999-01

Larsen v. Hawaiian Kingdom

Case name	Larsen v. Hawaiian Kingdom
Case description	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. 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. 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.
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

Annexure 2 to the note dated 5 July 2018 from the Chairman of the Council of Regency of the Hawaiian Kingdom to the Prime Minister of the Belize

Permanent Court of Arbitration Annual Reports 2002-2011, Annex 2, identifying the Hawaiian Kingdom as a Non-Contracting Power in accordance with Article 47, 1907 Hague Convention, I, for the Pacific Settlement of International Disputes

Annex 2

Cases Submitted to Arbitration before the Permanent Court of Arbitration, or Conducted with the Cooperation of the International Bureau

	Parties	Case	Date of the "compromis"	First session	Closing session	Number of sessions[1]	Date of the award	Arbitrators[2]
I.	United States of America – Republic of Mexico	Pious Fund of the Californias	22 May 1902	15 Sep. 1902	1 Oct. 1902	11	14 Oct. 1902	**Matzen** Sir Fry de Martens Asser de Savornin Lohman
II.	Great Britain, Germany and Italy – Venezuela	Preferential Treatment of Claims of Blockading Powers Against Venezuela	7 May 1903	1 Oct. 1903	13 Nov. 1903	14	22 Feb. 1904	**Mourawieff** Lammasch de Martens
III.	Japan – Germany, France and Great Britain	Japanese House Tax (leases held in perpetuity)	28 Aug. 1902	21 Nov. 1904	15 May 1905	4	22 May 1905	**Gram** Renault Motono
IV.	France – Great Britain	Muscat Dhows (fishing boats of Muscat)	13 Oct. 1904	25 July 1905	2 Aug. 1905	4	8 Aug. 1905	**Lammasch** Fuller de Savornin Lohman
V.	France – Germany	Deserters of Casablanca	10/24 Nov. 1908	1 May 1909	17 May 1909	6	22 May 1909	**Hammarskjöld** Sir Fry Fusinato Kriege Renault
VI.	Norway – Sweden[3]	Maritime Boundary Norway-Sweden (The Grisbådarna Case)	14 Mar. 1908	28 Aug. 1909	18 Oct. 1909	13[4]	23 Oct. 1909	**Loeff**[5] Beichmann Hammarskjöld
VII.	United States of America – Great Britain	North Atlantic Coast Fisheries	27 Jan. 1909	1 July 1910	12 Aug. 1910	41	7 Sep. 1910	**Lammasch** de Savornin Lohman Gray Sir Fitzpatrick Drago
VIII.	United States of Venezuela – United States of America	Orinoco Steamship Company	13 Feb. 1909	28 Sept. 1910	19 Oct. 1910	8	25 Oct. 1910	**Lammasch** de Quesada Beernaert
IX.	France – Great Britain	Arrest and Restoration of Savarkar	25 Oct. 1910	14 Feb. 1911	17 Feb. 1911	4	24 Feb. 1911	**Beernaert** Ce de Desart Renault Gram de Savornin Lohman
X.	Italy – Peru	Canevaro Claim	25 Apr. 1910	20 Apr. 1912	22 Apr. 1912	3	3 May 1912	**Renault** Fusinato Alvarez Calderón

For summaries of the arbitral awards in most of these cases, see P. Hamilton, et al., *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution – Summaries of Awards, Settlement Agreements and Reports* (Kluwer Law International 1999) pp. 29-281.

1. Including the opening session and the session where the award was read.
2. The names in bold type are those of the Presidents.
3. Pursuant to article 47 of the 1907 Convention (art. 26 of the 1899 Convention).
4. Excluding visits to sites from July 14 to 20, 1909.
5. Not a Member of the Permanent Court of Arbitration.

	Parties	Case	Date of the "compromis"	First session	Closing session	Number of sessions	Date of the award	Arbitrators
XXVIII.	Moiz Goh Pte. Ltd – State Timber Corporation of Sri Lanka[1]	Moiz Goh Pte. Ltd v. State Timber Corporation of Sri Lanka (contract dispute)	14 Dec. 1989	17 Oct. 1994	28 July 1995	4	5 May 1997	**Pinto**[2]
XXIX.	African State – two foreign nationals[1]	Investment dispute	–	–	–	–	30 Sep. 1997 Dispute settled by agreement of Parties	**Jennings** Wallace[2] Hossain[2]
XXX.	Technosystem SpA – Taraba State Government and the Federal Government of Nigeria[1]	Technosystem SpA v. Taraba State and Federal Government of Nigeria (contract dispute)	21 Feb. 1996	18 Mar. 1996	10 Sep. 1996	4	25 Nov. 1996 Lack of jurisdiction	**Ajibola**
XXXI.	Asian State-owned enterprise – three European enterprises[1]	Contract dispute	–	16 Sep. 1996	–	1	2 Oct. 1996 Award on agreed terms	**Jennings** Parker[2] Hossain[2]
XXXII.	State of Eritrea – Republic of Yemen[1]	Eritrea/Yemen – Sovereignty of Various Red Sea Islands (sovereignty; maritime delimination)	3 Oct. 1996	26 Jan. 1998	–	–	9 Oct. 1998 Award in the first stage	**Jennings** Schwebel[2] El-Kosheri[2] Highet[2] Higgins
		(maritime delimination)	3 Oct. 1996	5-16 July 1999		1	17 Dec. 1999 Award in the second stage	
XXXIII.	Italy – Costa Rica[1]	Loan Agreement between Italy and Costa Rica (dispute arising under financing agreement)	11 Sep. 1997	14 and 15 Apr. 1998	–	–	26 June 1998	**Lalive**[2] Ferrari Bravo Hernandez Valle[2]
XXXIV.	Larsen – Hawaiian Kingdom[1]	Interpretation of an international treaty	30 Oct. 1999	8-11 Dec. 2000	–	–	5 Feb. 2001	**Crawford**[2] Greenwood[2] Griffith[2]
XXXV.	The Netherlands – France[1]	Interpretation of an additional protocol to an international treaty	21 Oct./ 17 Dec. 1999	3 Oct. 2002	–	1	–	**Skubiszewski** Guillaume Kooijmans[2]

1. Pursuant to article 47 of the 1907 Convention (art. 26 of the 1899 Convention).
2. Not a Member of the Permanent Court of Arbitration.

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II.	Great Britain, Germany and Italy – Venezuela	Preferential Treatment of Claims of Blockading Powers Against Venezuela	7 May 1903	22 February 1904	**Mourawieff** Lammasch de Martens
III.	Japan – Germany, France and Great Britain	Japanese House Tax (leases held in perpetuity)	28 August 1902	22 May 1905	**Gram** Renault Motono
IV.	France – Great Britain	Muscat Dhows (fishing boats of Muscat)	13 October 1904	8 August 1905	**Lammasch** Fuller de Savornin Lohman
V.	France – Germany	Deserters of Casablanca	10/24 November 1908	22 May 1909	**Hammarskjöld** Sir Fry Fusinato Kriege Renault
VI.	Norway – Sweden[2]	Maritime Boundary (Grisbådarna Case)	14 March 1908	23 October 1909	**Loeff**[3] Beichmann Hammarskjöld
VII.	United States of America – Great Britain	North Atlantic Coast Fisheries	27 January 1909	7 September 1910	**Lammasch** de Savornin Lohman Gray Sir Fitzpatrick Drago
VIII.	United States of Venezuela – United States of America	Orinoco Steamship Company	13 February 1909	25 October 1910	**Lammasch** Beernaert de Quesada
IX.	France – Great Britain	Arrest and Restoration of Savarkar	25 October 1910	24 February 1911	**Beernaert** Ce de Desart Renault Gram de Savornin Lohman
X.	Italy – Peru	Canevaro Claim	25 April 1910	3 May 1912	**Renault** Fusinato Alvarez Calderón
XI.	Russia – Turkey[2]	Russian Claim for Indemnities (damages claimed by Russia for delay in payment of compensation owed to Russians injured in the war of 1877-1878)	22 July/4 August 1910	11 November 1912	**Lardy** Bon de Taube Mandelstam[3] H.A. Bey[3] A.R. Bey[3]
XII.	France – Italy	French Postal Vessel "Manouba"	26 January/6 March 1912	6 May 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube

For summaries of the arbitral awards in most of these cases, see P. Hamilton, et al., *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution – Summaries of Awards, Settlement Agreements and Reports* (Kluwer Law International 1999) pp. 29-281.

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XXVII.	United States of America – United Kingdom of Great Britain and Northern Ireland[1]	Heathrow Airport User Charges (treaty obligations; amount of damages)	16 December 1988	30 November 1992 2 May 1994 Settlement on amount of damages	**Foighel**[2] Fielding[2] Lever[2]
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XXIX.	African State – two foreign nationals[1]	Investment dispute	–	30 September 1997 Settled by agreement of parties	**Jennings** Wallace[2] Hossain[2]
XXX.	Technosystem SpA – Taraba State Government and the Federal Government of Nigeria[1]	Contract dispute	21 February 1996	25 November 1996 Lack of jurisdiction	**Ajibola**
XXXI.	Asian State-owned enterprise – three European enterprises[1]	Contract dispute	–	2 October 1996 Award on agreed terms	**Jennings** Parker[2] Hossain[2]
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XXXVI.	European corporation – African government	Contract dispute	4 August 2000	Settled by agreement of parties	**Kuckenberg**[2] De Moor[2] Desta[2]
XXXVII.	Eritrea-Ethiopia Boundary Commission[1]	Boundary dispute	12 December 2000	13 April 2002	**Lauterpacht**[2] Ajibola Reisman[2] Schwebel[2] Watts[2]
XXXVIII	Eritrea-Ethiopia Claims Commission[1]	Settlement of claims arising from armed conflict	12 December 2000	1 July 2003 Partial Awards for prisoner of war claims 28 April 2004 Partial Awards for central front claims	**van Houtte**[2] Aldrich[2] Crook[2] Paul[2] Reed[2]
XXXIX.	Dr. Horst Reineccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu – Bank for International Settlements[1]	Dispute with former private shareholders	7 March 2001; 31 August 2001; 24 October 2001	22 November 2002 Partial Award 19 September 2003 Final Award	**Reisman**[2] van den Berg[2] Frowein[2] Krafft[2] Lagarde[2]

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XXXIX.	Dr. Horst Reineccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu – Bank for International Settlements[1]	Dispute with former private shareholders	7 March 2001; 31 August 2001; 24 October 2001	22 November 2002 Partial Award 19 September 2003 Final Award	**Reisman**[2] van den Berg[2] Frowein[2] Krafft[2] Lagarde[2]

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

Cases Conducted Under the Auspices of the Permanent Court of Arbitration or Conducted with the Cooperation of the International Bureau

	Parties	Case	Date Arbitration Initiated	Date of Award	Arbitrators[1]
I.	United States of America – Republic of Mexico	Pious Fund of the Californias	22 May 1902	14 October 1902	**Matzen** Sir Fry de Martens Asser de Savornin Lohman
II.	Great Britain, Germany and Italy – Venezuela	Preferential Treatment of Claims of Blockading Powers Against Venezuela	7 May 1903	22 February 1904	**Mourawieff** Lammasch de Martens
III.	Japan – Germany, France and Great Britain	Japanese House Tax (leases held in perpetuity)	28 August 1902	22 May 1905*	**Gram** Renault Motono
IV.	France – Great Britain	Muscat Dhows (fishing boats of Muscat)	13 October 1904	8 August 1905*	**Lammasch** Fuller de Savornin Lohman
V.	France – Germany	Deserters of Casablanca	10/24 November 1908	22 May 1909*	**Hammarskjöld** Sir Fry Fusinato Kriege Renault
VI.	Norway – Sweden[2]	Maritime Boundary (Grisbådarna Case)	14 March 1908	23 October 1909*	**Loeff**[3] Beichmann Hammarskjöld
VII.	United States of America – Great Britain	North Atlantic Coast Fisheries	27 January 1909	7 September 1910*	**Lammasch** de Savornin Lohman Gray Sir Fitzpatrick Drago
VIII.	United States of Venezuela – United States of America	Orinoco Steamship Company	13 February 1909	25 October 1910	**Lammasch** Beernaert de Quesada
IX.	France – Great Britain	Arrest and Restoration of Savarkar	25 October 1910	24 February 1911	**Beernaert** Ce de Desart Renault Gram de Savornin Lohman
X.	Italy – Peru	Canevaro Claim	25 April 1910	3 May 1912	**Renault** Fusinato Alvarez Calderón
XI.	Russia – Turkey[2]	Russian Claim for Indemnities (damages claimed by Russia for delay in payment of compensation owed to Russians injured in the war of 1877-1878)	22 July/4 August 1910	11 November 1912	**Lardy** Bon de Taube Mandelstam[3] H.A. Bey[3] A.R. Bey[3]
XII.	France – Italy	French Postal Vessel "Manouba"	26 January/6 March 1912	6 May 1913	**Hammarskjöld** Fusinato Kriege Renault Bon de Taube

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	Parties	Case	Date Arbitration Initiated	Date of Award	Arbitrators
XXVII.	United States of America – United Kingdom of Great Britain and Northern Ireland[1]	Heathrow Airport User Charges (treaty obligations; amount of damages)	16 December 1988	30 November 1992 2 May 1994 Settlement on amount of damages	**Foighel**[2] Fielding[2] Lever[2]
XXVIII.	Moiz Goh Pte. Ltd – State Timber Corporation of Sri Lanka[1]	Contract dispute	14 December 1989	5 May 1997	**Pinto**[2]
XXIX.	African State – two foreign nationals[1]	Investment dispute	–	30 September 1997 Settled by agreement of parties	**Jennings** Wallace[2] Hossain[2]
XXX.	Technosystem SpA – Taraba State Government and the Federal Government of Nigeria[1]	Contract dispute	21 February 1996	25 November 1996 Lack of jurisdiction	**Ajibola**
XXXI.	Asian State-owned enterprise – three European enterprises[1]	Contract dispute	–	2 October 1996 Award on agreed terms	**Jennings** Parker[2] Hossain[2]
XXXII.	State of Eritrea – Republic of Yemen[1]	Eritrea/Yemen – Sovereignty of Various Red Sea Islands (sovereignty; maritime delimitation)	3 October 1996	9 October 1998 Award on sovereignty 17 December 1999 Award on maritime delimitation	**Jennings** Schwebel[2] El-Kosheri[2] Highet[2] Higgins
XXXIII.	Italy – Costa Rica[1]	Loan Agreement between Italy and Costa Rica (dispute arising under financing agreement)	11 September 1997	26 June 1998	**Lalive**[2] Ferrari Bravo Hernandez Valle[2]
XXXIV.	Larsen – Hawaiian Kingdom[1]	Treaty interpretation	30 October 1999	5 February 2001	**Crawford**[2] Greenwood[2] Griffith[2]
XXXV.	The Netherlands – France[1]	Treaty interpretation	21 October/17 December 1999	12 March 2004	**Skubiszewski** Guillaume Kooijmans[2]
XXXVI.	European corporation – African government	Contract dispute	4 August 2000	Settled by agreement of parties	**Kuckenberg**[2] De Moor[2] Desta[2]
XXXVII.	Eritrea-Ethiopia Boundary Commission[1]	Boundary dispute	12 December 2000	13 April 2002	**Lauterpacht** Ajibola Reisman[2] Schwebel[2] Watts
XXXVIII	Eritrea-Ethiopia Claims Commission[1]	Settlement of claims arising from armed conflict	12 December 2000	1 July 2003 Partial Awards for Prisoner of War claims 28 April 2004 Partial Awards for Central Front claims 17 December 2004 Partial Awards for Civilians Claims 19 December 2005 Partial Awards for Remaining Liability Claims	**van Houtte**[2] Aldrich[2] Crook[2] Paul[2] Reed[2]
XXXIX.	Dr. Horst Reineccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu – Bank for International Settlements[1]	Dispute with former private shareholders	7 March 2001; 31 August 2001; 24 October 2001	22 November 2002 Partial Award 19 September 2003 Final Award	**Reisman**[2] van den Berg[2] Frowein[2] Krafft[2] Lagarde[2]

1. Pursuant to article 47 of the 1907 Convention (art. 26 of the 1899 Convention).
2. Not a Member of the Permanent Court of Arbitration.

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

For summaries of the arbitral awards in many of these cases, see P. Hamilton, et al., *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution – Summaries of Awards, Settlement Agreements and Reports* (Kluwer Law International 1999) pp. 29-281.

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

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3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively .
5. In this case the summary procedure provided for in Chapter IV of the Convention of October 18, 1907 was applied.
6. Pursuant to the Arbitration Agreement the award was rendered in writing.

	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
33.	Italy – Costa Rica[2]	Loan Agreement between Italy and Costa Rica dispute arising under financing agreement	11 - 09 - 1997	26 - 06 - 1998	**Lalive**[3] Ferrari Bravo Hernandez Valle[3]
34.	Larsen – Hawaiian Kingdom[2]	Treaty interpretation	30 - 10 - 1999	05 - 02 - 2001	**Crawford**[3] Greenwood[3] Griffith[3]
35.	The Netherlands – France[2]	Treaty interpretation	21 - 10 -/17 - 12 - 1999	12 - 03 - 2004	**Skubiszewski** Guillaume Kooijmans[3]
36.	European corporation – African government	Contract dispute	04 - 08 - 2000	Settled by agreement of parties	**Kuckenberg**[3] De Moor[3] Desta[3]
37.	Eritrea-Ethiopia Boundary Commission[2]	Boundary dispute	12 - 12 - 2000	13 - 04 - 2002	**Lauterpacht** Ajibola Reisman[3] Schwebel[3] Watts
38.	Eritrea-Ethiopia Claims Commission[2]	Settlement of claims arising from armed conflict	12 - 12 - 2000	01 - 07 - 2003 Partial Awards for Prisoner of War claims 28 - 04 - 2004 Partial Awards for Central Front claims 17 - 12 - 2004 Partial Awards for Civilians Claims 19 - 12 - 2005 Partial Awards for Remaining Liability Claims	**van Houtte**[3] Aldrich[3] Crook[3] Paul[3] Reed[3]
39.	Dr. Horst Reineccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu – Bank for International Settlements[2]	Dispute with former private shareholders	07 - 03 - 2001 31 - 08 - 2001 24 - 10 - 2001	22 - 11 - 2002 Partial Award 19 - 09 - 2003 Final Award	**Reisman**[3] van den Berg[3] Frowein[3] Krafft[3] Lagarde[3]
40.	Ireland – United Kingdom[2]	Proceedings pursuant to the OSPAR Convention	15 - 06 - 2001	2 - 07 - 2003	**Reisman**[3] Griffith[3] Mustill[3]
41.	Saluka Investments B.V. – Czech Republic[2]	Investment treaty dispute	18 - 06 - 2001	17 - 03 - 2006 Partial Award	**Watts** Behrens[3] Fortier[3]
42.	Ireland – United Kingdom[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	25 - 10 - 2001	–	**Mensah**[3] Fortier[3] Hafner Crawford[3] Watts
43.	European government – European corporation[2]	Investment treaty dispute	30 - 04 - 2002	24 - 05 - 2004 Settled by agreement of parties	**Hanotiau**[3] Schneider[3] Jarvin[3]
44.	Two corporations – Asian government[2]	Contract dispute	16 - 08 - 2002	12 - 10 - 2004 Partial Award	
45.	Malaysian company – African government[2]	Investment treaty dispute	10 - 02 - 2003	–	**Van den Berg**[3] Gaillard[3] Layton[3]

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5. In this case the summary procedure provided for in Chapter IV of the Convention of October 18, 1907 was applied.
6. Pursuant to the Arbitration Agreement the award was rendered in writing.

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

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

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	Parties	Case	Date Initiated	Date of Award	Arbitrators[1]
32.	Italy – Costa Rica[2]	Loan Agreement between Italy and Costa Rica dispute arising under financing agreement	11 - 09 - 1997	26 - 06 - 1998	**Lalive**[3] Ferrari Bravo Hernandez Valle[3]
33.	Larsen – Hawaiian Kingdom[2]	Treaty interpretation	30 - 10 - 1999	05 - 02 - 2001	**Crawford**[3] Greenwood[3] Griffith[3]
34.	The Netherlands – France[2]	Treaty interpretation	21 - 10 -/17 - 12 - 1999	12 - 03 - 2004	**Skubiszewski** Guillaume Kooijmans[3]
35.	European corporation – African government	Contract dispute	04 - 08 - 2000	Settled by agreement of parties	**Kuckenberg**[3] De Moor[3] Desta[3]
36.	Eritrea-Ethiopia Boundary Commission[2]	Boundary dispute	12 - 12 - 2000	13 - 04 - 2002	**Lauterpacht** Ajibola Reisman[3] Schwebel Watts
37.	Eritrea-Ethiopia Claims Commission[2]	Settlement of claims arising from armed conflict	12 - 12 - 2000	01 - 07 - 2003 Partial Awards for Prisoner of War claims 28 - 04 - 2004 Partial Awards for Central Front claims 17 - 12 - 2004 Partial Awards for Civilians Claims 19 - 12 - 2005 Partial Awards for Remaining Liability Claims	**van Houtte**[3] Aldrich[3] Crook[3] Paul[3] Reed[3]
38.	Dr. Horst Reineccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu – Bank for International Settlements[2]	Dispute with former private shareholders	07 - 03 - 2001 31 - 08 - 2001 24 - 10 - 2001	22 - 11 - 2002 Partial Award 19 - 09 - 2003 Final Award	**Reisman**[3] van den Berg[3] Frowein[3] Krafft[3] Lagarde[3]
39.	Ireland – United Kingdom[2]	Proceedings pursuant to the OSPAR Convention	15 - 06 - 2001	02 - 07 - 2003	**Reisman**[3] Griffith[3] Mustill[3]
40.	Saluka Investments B.V. – Czech Republic[2]	Investment treaty dispute	18 - 06 - 2001	17 - 03 - 2006 Partial Award	**Watts** Behrens[3] Fortier[3]
41.	Ireland – United Kingdom[2]	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	25 - 10 - 2001	06 - 06 - 2008 Termination order following withdrawal of claim	**Mensah**[3] Fortier[3] Hafner Crawford[3] Watts
42.	European government – European corporation[2]	Investment treaty dispute	30 - 04 - 2002	24 - 05 - 2004 Settled by agreement of parties	**Hanotiau**[3] Schneider[3] Jarvin[3]

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

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

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

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2.	Great Britain, Germany and Italy – Venezuela	Preferential Treatment of Claims of Blockading Powers Against Venezuela	07 - 05 - 1903	22 - 02 - 1904	**Mourawieff** Lammasch de Martens
3.	Japan – Germany, France and Great Britain	Japanese House Tax leases held in perpetuity	28 - 08 - 1902	22 - 05 - 1905	**Gram** Renault Motono
4.	France – Great Britain	Muscat Dhows fishing boats of Muscat	13 - 10 - 1904	08 - 08 - 1905	**Lammasch** Fuller de Savornin Lohman
5.	France – Germany	Deserters of Casablanca	10/24 - 11 - 1908	22 - 05 - 1909	**Hammarskjöld** Sir Fry Fusinato Kriege Renault
6.	Norway – Sweden[2]	Maritime Boundary Grisbådarna Case	14 - 03 - 1908	23 - 10 - 1909	**Loeff**[3] Beichmann Hammarskjöld
7.	United States of America – Great Britain	North Atlantic Coast Fisheries	27 - 01 - 1909	07 - 09 - 1910	**Lammasch** de Savornin Lohman Gray Sir Fitzpatrick Drago
8.	United States of Venezuela – United States of America	Orinoco Steamship Company	13 - 02 - 1909	25 - 10 - 1910	**Lammasch** Beernaert de Quesada
9.	France – Great Britain	Arrest and Restoration of Savarkar	25 - 10 - 1910	24 - 02 - 1911	**Beernaert** Ce de Desart Renault Gram de Savornin Lohman

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

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

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

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

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

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

1. The names of the presidents are typeset in bold.
2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
3. Not a Member of the Permanent Court of Arbitration.
4. The proceedings of this case were conducted in writing exclusively.
5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

Annexure 3 to the note dated 5 July 2018 from the Chairman of the Council of Regency of the Hawaiian Kingdom to the Prime Minister of the Belize

Memorandum dated 25 February 2018 from the Dr. Alfred M. deZayas, United Nations Independent Expert, Office of the High Commissioner for Human Rights, to Honorable Gary W.B. Chang, and Honorable Jeanette H. Castagnetti, and Members of the Judiciary for the State of Hawai‘i

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

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

Annexure 4 to the note dated 5 July 2018 from the Chairman of the Council of Regency of the Hawaiian Kingdom to the Prime Minister of the Belize

Petition for Writ of Mandamus filed 25 June 2018 with the United States District Court for the District of Columbia by David Keanu Sai, Chairman of the Council of Regency for the Hawaiian Kingdom, against Donald John Trump, President of the United States; Philip S. Davidson, Admiral, U.S. Navy; David Ige, Governor of the State of Hawai'i; Malcolm Turnbull, Prime Minister of Australia; Christian Kern, Chancellor of Austria; Hubert Minnis, Prime Minister of the Bahamas; Charles Michel, Prime Minister of Belgium; Dean Barrow, Prime Minister of Belize; Dilma Vana Rousseff, President of Brazil; Justin Trudeau, Prime Minister of Canada; Miguel Díaz-Canel, President of Cuba; Michelle Bachelet, President of Chile; Xi Jinping, President of China; Emmanuel Macron, President of France; Angela Merkel, Chancellor of Germany; Jimmy Morales, President of Guatemala; Viktor Orbán, Prime Minister of Hungary; Giuseppe Conte, Prime Minister of Italy; Shinzō Abe, Prime Minister of Japan; Xavier Bettel, Prime Minister of Luxembourg; Enrique Peña Nieto, President of Mexico; Mark Rutte, Prime Minister of the Netherlands; Jacinda Ardern, Prime Minister of New Zealand; Erna Solberg, Prime Minister of Norway; Martín Vizcarra, President of Peru; António Costa, Prime Minister of Portugal; Vladimir Putin, President of Russia; Pedro Sanchez, President of Spain; Stefan Löfven, Prime Minister of Sweden; Alain Berset, President of Switzerland; Theresa May, Prime Minister of the United Kingdom; António Guterres, Secretary-General of the United Nations; Miroslav Lajčák, President of the United Nations General Assembly; Nebenzia Vassily Alekseevich, President of the United Nations Security Council; Vojislav Šuc, President of the United Nations Human Rights Council; Stef Blok, Netherlands Minister of Foreign Affairs

DAVID KEANU SAI, Ph.D., *pro se*
Chairman of the *acting* Council of Regency
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UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

DAVID KEANU SAI, Ph.D., *pro se*
Chairman of the *acting* Council of Regency
of the Hawaiian Kingdom
P.O. Box 2194
Honolulu, HI 96805-2194

Petitioner,

vs.

DONALD JOHN TRUMP,
President of the United States of America
The White House
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001;

PHILIP S. DAVIDSON,
Admiral, U.S. Navy
Commander, U.S. Indo Pacific Command
HQ USINDOPACOM
Attn JOO
Box 64028
Camp H.M. Smith, HI 96861-4031;

DAVID IGE,
Governor of the State of Hawai'i
Executive Chambers
415 Beretania Street
Honolulu, HI 96813;

Respondents,

MALCOLM TURNBULL,
Prime Minister of Australia

Case: 1:18-cv-01500 (F Deck)
Assigned To : Chutkan, Tanya S.
Assign. Date : 6/25/2018
Description: Pro Se Gen. Civil

Embassy of Australia)
1601 Massachusetts Avenue, NW)
Washington, D.C. 20036;)
)
CHRISTIAN KERN,)
Chancellor of Austria)
Embassy of Austria)
3524 International Court, NW)
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)
HUBERT MINNIS,)
Prime Minister of the Bahamas)
Embassy of the Bahamas)
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)
CHARLES MICHEL,)
Prime Minister of Belgium)
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DEAN BARROW,)
Prime Minister of Belize)
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)
DILMA VANA ROUSSEFF,)
President of Brazil)
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JUSTIN TRUDEAU,)
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MIGUEL DÍAZ-CANEL)
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MICHELLE BACHELET,)
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Embassy of Chile)
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XI JINPING,)
President of China)
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EMMANUEL MACRON,)
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JIMMY MORALES,)
President of Guatemala)
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VIKTOR ORBÁN,)
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Prime Minister of the Netherlands)
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Prime Minister of New Zealand)
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)
ERNA SOLBERG,)
Prime Minister of Norway)
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2720 34th Street, NW)
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MARTÍN VIZCARRA,)
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ANTÓNIO COSTA,)
Prime Minister of Portugal)
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VLADIMIR PUTIN,)
President of Russia)

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PEDRO SANCHEZ,)
President of Spain)
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2375 Pennsylvania Avenue, NW)
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STEFAN LÖFVEN,)
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THERESA MAY,)
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MIROSLAV LAJČÁK)
President of the General Assembly)
Office of the President of the General)
Assembly of the United Nations)
UN Headquarters)
New York, N.Y. 10017;)
)
NEBENZIA VASSILY ALEKSEEVICH)
President of the Security Council of the)
United Nations)
UN Headquarters)
New York, N.Y. 10017;)

VOJISLAV ŠUC
President of the United Nations Human Rights Council
OHCHR in New York
UN Headquarters
New York, N.Y. 10017; and

STEF BLOK
Netherlands Minister of Foreign Affairs
Chairman of the Administrative Council of the Permanent Court of Arbitration
Embassy of the Netherlands
4200 Linnean Drive, NW
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Nominal Respondents.

EMERGENCY PETITION FOR A WRIT OF MANDAMUS UNDER THE ALL WRITS ACT AND THE ADMINISTRATIVE PROCEDURE ACT

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT

1. 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 ("PCA"),[1] that should have garnered international attention, especially after the PCA acknowledged the Hawaiian Kingdom as an independent state and not the fiftieth State of the United States of America.[2] The *Larsen* case was a dispute between a Hawaiian national and his government, who he claimed 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.

2. Larsen sought to have the Tribunal adjudge that the United States had 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 by the Hawaiian government to join in the arbitration, it chose not to thus raising the indispensable third-party rule for Larsen to overcome. A common misunderstanding was that the Tribunal was formed to determine the existence of the Hawaiian Kingdom. It was not. The Tribunal was formed to settle a dispute between a Hawaiian national and his government, who, he alleged, did not protect him from the United States.

3. Since the Hawaiian government returned from oral hearings held at the PCA in The Hague on 7, 8 and 11 December 2000, it has focused attention on education and exposure of the Hawaiian Kingdom's prolonged occupation and its legal status as an independent and sovereign state. This education has since been institutionalized at the University of Hawai'i

[1] *South China Sea* case (Philippines v. China), PCA Case No. 2013-19, Award on Jurisdiction and Admissibility (29 Oct. 2015), p. 71, para. 181, available at: https://pcacases.com/web/sendAttach/1506 (last visited 16 May 2018).
[2] *Larsen v. Hawaiian Kingdom*, PCA Case No. 1999-01, available at: https://pca-cpa.org/en/cases/35/ (last visited 16 May 2018).

and at High Schools throughout Hawai‘i, and has been the subject of academic research and publications in both law and peer review journals.[3]

4. The culmination of this exposure and education prompted the largest labor union of public school teachers and administrators throughout the United States, the National Education

[3] See, e.g., David J. Bederman & Kurt R. Hilbert, Arbitration—UNCITRAL Rules—justiciability and indispensable third parties-legal status of Hawaii, 95 Am. J. Int'l. L. 927-933 (2001); Patrick Dumberry, The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continuity as an Independent State under International Law, 1 Chinese J. Int'l L. 655-684 (2002); Anne Keala Kelly, A kingdom inside: the future of Hawaiian political identity, 35 Futures 999-1009 (2003); Matthew Craven, Hawai‘i, History and International Law, 1 Haw. J.L. & Pol. 6-22 (2004); Kanalu Young, An Interdisciplinary Study of the Term "Hawaiian," 1 Haw. J.L. & Pol. 23-45 (2004); David Keanu Sai, American Occupation of the Hawaiian State: A Century Unchecked, 1 Haw. J.L. & Pol. 46-81 (2004); Jonathan Kamakawiwo‘ole Osorio, Ku‘e and Ku‘oko‘a (Resistance and Independence): History, Law, and Other Faiths, 1 Haw. J.L. & Pol. 92-113 (2004); Kanalu Young, Kuleana: Toward a Historiography of Hawaiian National Consciousness, 1780-2001, 2 Haw. J.L. & Pol. 1-33 (2006); Kamanamaikalani Beamer and T. Ka‘eo Duarte, Mapping the Hawaiian Kingdom: A Colonial Venture?, 2 Haw. J.L. & Pol. 34-52 (2006); Umi Perkins, Teaching Land and Sovereignty—A Revised View, 2 Haw. J.L. & Pol. 97-111 (2006); Brenton Kamanamaikalani Beamer, Na Wai Ka Mana?: ‘Oiwi Agency and European Imperialism in the Hawaiian Kingdom (2008) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); David Keanu Sai, "A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai‘i today," 10 J. L. & Soc. Challenges 68-133 (2008); David Keanu Sai, The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State (2008) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Sydney Iaukea, E Pa‘a ‘Oukou: Holding and Remembering Hawaiian Understandings of Place and Politics (2008) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Peter Kalawai‘a Moore, He Hawai‘i Kakou: Conflicts and Continuities of History, Culture and Identity in Hawai‘i (2010) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Donovan C. Preza, The Emperical Writes Back: Re-examining Hawaiian Dispossession Resulting from the Mahele of 1848 (2010) (unpublished M.A. thesis, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i at Manoa Library); David Keanu Sai, Ua Mau Ke Ea—Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands (2011); Sydney Iaukea, The Queen and I: A Story of Dispossessions and Reconnections in Hawai‘i (2011); Lorenz Gonschor, "Ka Hoku o Osiania: Promoting the Hawaiian Kingdom as a Model for Political Transformation in Nineteenth-Century Oceania," Agents of Transculturation: Border-Crossers, Mediators, Go-Betweens (Jobs and Mackenthun, eds.) 157-186 (2013); Kalani Makekau-Whittaker, Lahui Na‘auao: Contemporary Implications of Kanaka Maoli Agency and Educational Advocacy During the Kingdom Period (2013) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Ronald C. Williams Jr., Claiming Christianity: The Struggle Over God and Nation in Hawai‘i, 1880-1900 (2013) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Kamanamaikalani Beamer, No Makou Ka Mana: Liberating the Nation (2014); Noelani Goodyear-Ka‘opua, Hawai‘i: An Occupied Country, Harvard Int'l Rev. 58-62 (2014); Willy Daniel Kaipo Kauai, The Color of Nationality: Continuities and Discontinuities of Citizenship in Hawai‘i (Dec. 2014) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Lorenz Rudolf Gonschor, "A Power in the World": The Hawaiian Kingdom as a Model of Hybrid Statecraft in Oceania and a Progenitor of Pan-Oceanism (2016) (unpublished Ph.D. dissertation, University of Hawai‘i at Manoa) (on file with the University of Hawai‘i Hamilton Library); Dennis Riches, This is not America: The Acting Government of the Hawaiian Kingdom Goes Global with Legal Challenges to End Occupation, Center for Glocal Studies—Seijo University (2016); Alessandro Pulvirenti, The Overthrow of the Hawaiian Kingdom: Did International Law Permit the Threat of the Use of Force in 1893, 26(4) Swiss. Rev. Int'l & Eur. L. 581 (2016).

Association ("NEA"), to pass a resolution on 4 July 2017 at its Annual Meeting and Representative Assembly in Boston, Massachusetts. The resolution titled New Business Item 37 stated,

> The NEA will publish an article that documents the illegal overthrow of the Hawaiian Monarchy in 1893, the prolonged occupation of the United States in the Hawaiian Kingdom and the harmful effects that this occupation has had on the Hawaiian people and resources of the land.[4]

5. The following year on 25 February 2018, the United Nations Independent Expert on the promotion of a democratic and equitable international order, Dr. Alfred M. deZayas, Office of the High Commissioner for Human Rights, sent a communication to United States President Donald Trump,[5] former Secretary of State Rex Tillerson,[6] former State of Hawai'i Attorney General Douglas Chin,[7] State of Hawai'i Judge Gary W.B. Chang of the Land Court,[8] and State of Hawai'i Judge Jeanette H. Castagnette of the First Circuit,[9] that the United States is in violation of international humanitarian law. The Independent Expert called upon the United States to comply with international law.

6. Dr. deZayas' communications were in response to a complaint, filed with the United Nations Office of the High Commissioner for Human Rights in 2017, by Mrs. Routh Bolomet, a Hawaiian-Swiss citizen residing on the Island of O'ahu, regarding extra-judicial

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[4] See "American National Teachers Union Recognizes the Illegal Occupation of the Hawaiian Kingdom," available at: http://hawaiiankingdom.org/blog/american-national-teachers-union-recognizes-the-illegal-occupation-of-the-hawaiian-kingdom/ (last visited 16 May 2018).
[5] Available at: http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(US_Pres_Trump).pdf (last visited 16 May 2018).
[6] Available at: http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(US_Sec_State_Tillerson).pdf (last visited 16 May 2018).
[7] Available at: http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(SOH_AG_Chin).pdf (last visited 16 May 2018).
[8] Available at: http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(SOH_Judge_Chang).pdf (last visited 16 May 2018).
[9] Available at: http://hawaiiankingdom.org/pdf/La_Poste_Tracking_(SOH_Judge_Castagnetti).pdf (last visited 16 May 2018).

proceedings by two separate State of Hawai‘i courts involving real property. In his communication to State of Hawai‘i judges Gary W.B. Chang and to Jeanette H. Castagnetti. Dr. deZayas stated:

> 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 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.[10]

7. Dr. deZayas acknowledges that extrajudicial proceedings by United States and State of Hawai‘i courts, situated within Hawaiian territory, are not in compliance with international humanitarian law, and, therefore, constitutes a "pattern of gross violations."[11]

8. The failure of the United States to administer Hawaiian Kingdom law is in violation of the 1907 Hague Convention, IV, *Respecting the Laws and Customs of War on Land* (36 Stat. 2199) ("HC IV") and the 1949 Geneva Convention, IV, *Relative to the Protection of Civilian Persons in Time of War* (6 U.S.T. 3516) ("GC IV") and constitutes breaches of international humanitarian law,[12] which has been codified under 18 U.S.C. § 2441—War Crimes. As a norm of customary international law, there are no statutes of limitations for war crimes.[13]

9. This case concerns 125 years of an illegal and prolonged occupation of the Hawaiian Kingdom by the United States, and for violations of international human rights law and international humanitarian law. For over a century, the United States has unlawfully imposed United States domestic laws within the territory of the Hawaiian Kingdom, being an independent state, without the consent of the Hawaiian Kingdom government or under any permissive rule of customary international law.

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[10] *Communication by the Independent Expert on the promotion of a democratic and equitable international order* (25 Feb. 2018), available at: http://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf (last visited 16 May 2018).
[11] 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.
[12] *Id*., E/AC.7/SR.638.
[13] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law: Rule 160* (2005), *available at*: http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule160 (last visited 16 May 2018).

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Treaties, international agreements and customary international law are principle sources of international law utilized by United States courts.[14]

11. Petitioner requests that this Court invoke its jurisdiction, under the All Writs Act, 28 U.S.C. § 1651(a), to grant immediate mandamus relief enjoining a federal officer, from acting in derogation of the HC IV and the GC IV, for failing to administer the laws of the Hawaiian Kingdom. The All Writs Act permits this Court to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a).

12. Judicial review of this action is authorized under the Administrative Procedure Act, 5 U.S.C. § 702 whereby an "action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party."

13. 5 U.S.C. § 702 allows suit to be brought against the United States or any of its agencies or officers. The sovereign immunity defense has been withdrawn with respect to actions seeking relief other than money damages, such as a writ of mandamus. *Bowen v. Massachusetts*, 487 U.S. 879 (1988).

[14] Restatement Third of Foreign Relations Law of the United States § 102 (1987). See also Statute of the International Court of Justice, 26 June 1945, art. 38(1) (59 Stat. 1055, T.I.A.S. No. 993); *The Paquete Habana*, 175 U.S. 677, 700 (1900).

14. Nominal Respondents are parties to this action not "because any specific relief is demanded as against [them], but because [their] connection with the subject-matter is such that the [petitioner's] action would be defective…if [they] were not joined."[15]

15. The United States District Court for the District of Columbia is a proper venue for this action under 28 U.S.C. § 1391(b) because the majority of the Respondents' offices are in the District of Columbia.

III. THE PARTIES

Petitioner David Keanu Sai, Ph.D.

16. The Petitioner is Chairman of the *acting* Council of Regency and represents the Hawaiian Kingdom as a sovereign and body politic whose principal office is at P.O. Box 2194, Honolulu, HI 96805-2194. On 20 December 1849, the Hawaiian Kingdom entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom. The Hawaiian Kingdom is also a Contracting Power to the 1893 Executive Agreement, by *exchange of notes*; the GC IV; Additional Protocol (I) to the 1949 Geneva Conventions (11 December 2013); and the Statute of the International Criminal Court (12 December 2013).

Respondent Donald John Trump

17. Respondent Donald John Trump ("Respondent Trump") is President and represents the United States as a sovereign and body politic whose office is at 1600 Pennsylvania Avenue, NW, Washington, D.C. 20500. On 20 December 1849, the United States entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (9 Stat. 977). The United States is also a Contracting Power to the 1893 Executive Agreement, by

[15] Black's Law Dictionary 1049 (6th ed.,1990).

exchange of notes; the 1899 Hague Convention, II, with *Respect to the Laws and Customs of War on Land* (32 Stat. 1779); the HC IV; the GC IV; Additional Protocol (I) to the 1949 Geneva Conventions (12 December 1977); and the Additional Protocol (II) to the 1949 Geneva Conventions (12 December 1977). The United States is also a Contracting Power to the 1907 Hague Convention, I, *for the Pacific Settlement of International Disputes*, and a member of the Permanent Court of Arbitration (36 Stat. 2199) ("HC I").

18. In 1893, the United States maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency John L. Stevens, Envoy Extraordinary and Minister Plenipotentiary. The United States also maintained Consulates in Honolulu—H.W. Severance, Consul-General, and W. Porter Boyd, Deputy Consul-General; Hilo—C. Furneaux, Consular Agent; Kahului—A.F. Hopke, Consular Agent; and Mahukona—C.L. Wight, Consular Agent. The Hawaiian Kingdom maintained a diplomatic representative accredited to the United States in Washington, D.C.—His Excellency J. Mott Smith, Extraordinary and Minister Plenipotentiary. The Hawaiian Kingdom also maintained Consulates in New York—E.H. Allen, Consul General; San Francisco—F.S. Pratt, Consul General; Philadelphia—Robert H. Davis, Consul; San Diego—Jas. W. Girvin, Consul; Boston—Lawrence Bond, Consul; Portland—J. McCraken, Consul; Port Townsend—James G. Swan, Consul; and Seattle—G.R. Carter, Consul.

Respondent Philip S. Davidson

19. Respondent Philip S. Davidson is an Admiral in the United States Navy and Commander of United States Indo-Pacific Command, an armed force, whose office is at Box 64031, Camp H.M. Smith, Hawai‘i 96861-4031.

Respondent David Ige

20. Respondent David Ige is Governor of the State of Hawai‘i, a private armed force, whose office is at Executive Chambers, State Capital, Honolulu, Hawai‘i 96813.

Nominal Respondent Malcolm Turnbull

21. Nominal Respondent Malcolm Turnbull is Prime Minister and represents Australia as a sovereign and body politic with its principal place of business in the United States at 1601 Massachusetts Avenue, NW, Washington, D.C. 20036. Australia is a member State of the Commonwealth Realm with the British Crown, as its Head of State, who appoints its Prime Minister. The British Crown entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). Australia is a Contracting Power to the GC IV (14 October 1958); Additional Protocol (I) to the 1949 Geneva Conventions (21 June 1991); Additional Protocol (II) to the 1949 Geneva Conventions (21 June 1991); and Statute of the International Criminal Court (1 July 2002). Australia is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (21 February 1997).

22. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate in Honolulu—T.R. Walker, Vice-Consul. The Hawaiian Kingdom maintained Consulates in Sydney, New South Wales—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, Tasmania—Geo. Collins, Vice-Consul; Newcastle, and New South Wales—W.H. Moulton, Consul.

Nominal Respondent Christian Kern

23. Nominal Respondent Christian Kern is Chancellor and represents Austria as a sovereign and body politic with its principal place of business in the United States at 3524 International Court, NW, Washington, D.C. 20008. Austria is a successor State of the former Austro-Hungarian Empire, which entered into a Treaty of Friendship with the Hawaiian Kingdom (18 June 1875). The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of Hungary, until Austria denounces the treaty with the Hawaiian Kingdom.[16] Additionally, Austria is a Contracting Power to the HC IV (27 November 1909); GC IV (27 August 1953); Additional Protocol (I) to the 1949 Geneva Conventions (13 August 1982); Additional Protocol (II) to the 1949 Geneva Conventions (13 August 1982); and Statute of the International Criminal Court (28 December 2000). Austria is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (12 November 1918).

24. In 1893, Austria, formerly known as the Austro-Hungarian Empire, maintained a Consulate in Honolulu—H.F. Glade, Consul. The Hawaiian Kingdom maintained a Consulate in Vienna—V. von Schonberger, Consul.

Nominal Respondent Hubert Minnis

25. Nominal Respondent Hubert Minnis is Prime Minister and represents the Bahamas as a sovereign and body politic with its principal place of business in the United States at 2220

[16] "Huber...declares that it is necessary to admit succession as the principle, or the cases in which succession does not take place cannot be explained, yet…he admits (i.) that only the contracting powers can decide which of the treaties are *jura personalia*, whence it follows that, if A asserts and B denies that a treaty is of this class, it goes to the ground, unless B is prepared and able to force A to maintain it; (ii.) that the clause implicit in every treaty, *rebus sic stantibus*, holds in the case of even those treaties which are not *jura personalia*, so that evidently the other party can always denounce a treaty on that ground; (iii.) that if treaties which *jura personalia* do pass over, whether tacitly or by express arrangement, this is a case of a new treaty." Arthur Berriedale Keith, *The Theory of State Succession* 20 (1907).

Massachusetts Avenue, NW, Washington, D.C. 20008. The Bahamas is a member State of the Commonwealth Realm with the British Crown, as its Head of State, who appoints its Prime Minister. The British Crown entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). The Bahamas is a Contracting Power to the GC IV (11 July 1975); Additional Protocol (I) to the 1949 Geneva Conventions (10 April 1980); Additional Protocol (II) to the 1949 Geneva Conventions (10 April 1980); and Statute of the International Criminal Court (29 December 2000). The Bahamas is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (13 June 2016).

26. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate in Honolulu—T.R. Walker, Vice-Consul.

Nominal Respondent Charles Michel

27. Nominal Respondent Charles Michel is Prime Minister and represents Belgium as a sovereign and body politic with its principal place of business in the United States at 3330 Garfield Street, NW, Washington, D.C. 20008. Belgium entered into a Treaty of Amity, Commerce and Navigation with the Hawaiian Kingdom (4 October 1862). Additionally, Belgium is a Contracting Power to the HC IV (8 August 1910); GC IV (3 September 1952); Additional Protocol (I) to the 1949 Geneva Conventions (20 May 1986); Additional Protocol (II) to the 1949 Geneva Conventions (20 May 1986); and Statute of the International Criminal Court (28 June 2000). Belgium is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (7 October 1910).

28. In 1893, Belgium maintained a Consulate in Honolulu—J.F. Hackfeld, Consul. The Hawaiian Kingdom maintained Consulates in Antwerp—Victor Forge, Consul-General; Ghent—E. Coppieters, Consul; Liege—Jules Blanpain, Consul; and Bruges—Emile Van den Brande, Consul;

Nominal Respondent Dean Barrow

29. Nominal Respondent Dean Barrow is Prime Minister and represents Belize as a sovereign and body politic with its principal place of business in the United States at 2535 Massachusetts Avenue, NW, Washington, D.C. 20008. Belize is a member State of the Commonwealth Realm with the British Crown, as its Head of State, who appoints its Prime Minister. The British Crown entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). Belize is a Contracting Power to the GC IV (29 June 1984); Additional Protocol (I) to the 1949 Geneva Conventions (29 June 1984); Additional Protocol (II) to the 1949 Geneva Conventions (29 June 1984); and Statute of the International Criminal Court (5 April 2000). Belize is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (21 January 2003).

30. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate in Honolulu—T.R. Walker, Vice-Consul.

Nominal Respondent Dilma Vana Rousseff

31. Nominal Respondent Dilma Vana Rousseff is President and represents Brazil as a sovereign and body politic with its principal place of business in the United States at 3006 Massachusetts Avenue, NW, Washington, D.C. 20008. Brazil is also a Contracting Power to the HC IV (5 January 1914); GC IV (29 June 1957); Additional Protocol (I) to the 1949

Geneva Conventions (5 May 1992); Additional Protocol (II) to the 1949 Geneva Conventions (5 May 1992); and Statute of the International Criminal Court (7 May 2002). Brazil is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (6 March 1914).

Nominal Respondent Justin Trudeau

32. Nominal Respondent Justin Trudeau is Prime Minister and represents Canada as a sovereign and body politic with its principal place of business in the United States at 501 Pennsylvania Avenue, NW, Washington, D.C. 20001. Canada is a member State of the Commonwealth Realm with the British Crown, as its Head of State, who appoints its Prime Minister. The British Crown entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). Canada is a Contracting Power to the GC IV (14 May 1965); Additional Protocol (I) to the 1949 Geneva Conventions (20 November 1990); Additional Protocol (II) to the 1949 Geneva Conventions (20 November 1990); and Statute of the International Criminal Court (7 July 2000). Canada is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (9 July 1994).

33. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate—T.R. Walker, Vice-Consul. The Hawaiian Kingdom maintained Consulates in Toronto, Ontario—J.E. Thompson, Consul-General, Geo. A. Shaw, Vice-Consul; Belleville, Ontario—Alex Robertson, Vice-Consul; Kingston, Ontario—Geo. Richardson, Vice-Consul; Montreal, Quebec—Dickson Anderson, Consul; Rimouski, Quebec—J.N. Pouliot, QC, Vice-Consul; St. John’s, New Brunswick—Allan

Crookshank, Consul; Varmouth, Nova Scotia—Ed. F. Clements, Vice-Consul; and Victoria, British Columbia—G.A. Fraser, Consul.

Nominal Respondent Miguel Díaz-Canel

34. Nominal Respondent Miguel Díaz-Canel is President and represents Cuba as a sovereign and body politic with its principal place of business in the United States at 2630 16th Street NW, Washington, D.C. 20009. Cuba gained its independence from Spain in 1898 and, therefore, is a successor State to the Treaty of Amity, Commerce and Navigation (29 October 1863) entered into with the Hawaiian Kingdom. The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of Spain, until Cuba denounces the treaty with the Hawaiian Kingdom.[17] Additionally, Cuba is a Contracting Power to the GC IV (15 April 1954); Additional Protocol (I) to the 1949 Geneva Conventions (25 November 1982); Additional Protocol (II) to the 1949 Geneva Conventions (23 June 1999). Cuba is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (22 April 1912).

Nominal Respondent Michelle Bachelet

35. Nominal Respondent Michelle Bachelet is President and represents Chile as a sovereign and body politic with its principal place of business in the United States at 1736 Massachusetts Avenue, NW, Washington, D.C. 20008. Chile is a Contracting Power to the GC IV (12 October 1950); Additional Protocol (I) to the 1949 Geneva Conventions (24 April 1991); Additional Protocol (II) to the 1949 Geneva Conventions (24 April 1991); and Statute of the International Criminal Court (29 June 2009). Chile is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (18 January 1998).

[17] Keith, *supra* note 16.

36. In 1893, Chile maintained a Consulate in Honolulu—F.A. Schaefer, Consul. The Hawaiian Kingdom maintained a Consulate in Valparaiso—D. Thomas, Chargé d'affaires and Consul-General.

Nominal Respondent Xi Jinping

37. Nominal Respondent Xi Jinping is President and represents China as a sovereign and body politic with its principal place of business in the United States at 3505 International Place, NW, Washington, D.C. 20008. China is also a Contracting Power to the HC IV (10 May 1917); GC IV (28 December 1956); Additional Protocol (I) to the 1949 Geneva Conventions (14 September 1983); and Additional Protocol (II) to the 1949 Geneva Conventions (14 September 1983). China is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

38. In 1893, China maintained Commercial Agents in Honolulu—Goo Kim, Commercial Agent, and Wong Kwai, Assistant Commercial Agent. The Hawaiian Kingdom maintained Consulates in Hong Kong and Shanghai—J. Johnstone Keswick, Acting Consul-General.

Nominal Respondent Emmanuel Macron

39. Nominal Respondent Emmanuel Macron is President and represents France as a sovereign and body politic with its principal place of business in the United States at 4101 Reservoir Road, N.W., Washington, D.C. 20007. France entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (29 October 1857). Additionally, France is a Contracting Power to the HC IV (7 October 1910); GC IV (28 June 1951); Additional Protocol (I) to the 1949 Geneva Conventions (11 April 2001); Additional Protocol (II) to the 1949 Geneva Conventions (11 April 2001); and Statute of the

International Criminal Court (9 June 2000). France is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (6 December 1910).

40. In 1893, France maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—Mons. G.M.G. Bosseront d’Anglade, Commissioner and Consul General. The Hawaiian Kingdom maintained a diplomatic representative accredited to the French Court in Paris—Alfred Houle, Chargé d'affaires and Consul-General, and A.N.H. Teyssier, Vice-Consul. The Hawaiian Kingdom also maintained Consulates in Marseilles—G. du Cayla, Consul; Bordeaux—Ernest de Boissac, Consul; Dijon—Vielhounne, Consul; Libourne—Charles Schoessier, Consul; and Papeete, Tahiti—A.F. Bonet, Consul.

Nominal Respondent Angela Merkel

41. Nominal Respondent Angela Merkel is Chancellor and represents Germany as a sovereign and body politic with its principal place of business in the United States at 4645 Reservoir Road, N.W., Washington, D.C. 20007. Germany entered into a Treaty of Friendship, Commerce and Navigation and a Consular Convention with the Hawaiian Kingdom (25 March 1879). Additionally, Germany is a Contracting Power to the HC IV (27 November 1909); GC IV (3 September 1954); Additional Protocol (I) to the 1949 Geneva Conventions (14 February 1991); Additional Protocol (II) to the 1949 Geneva Conventions (14 February 1991); and Statute of the International Criminal Court (11 December 2000). Germany is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

42. In 1893, Germany maintained a Consulate in Honolulu—H.F. Glade. The Hawaiian Kingdom maintained Consulates in Bremen—John F. Muller, Consul; Hamburg—Edward

F. Weber, Consul; Frankfort-on-Maine—Joseph Kopp, Consul; Dresden—Augustus P. Russ, Consul; and Karlsruhe—H. Muller, Consul.

Nominal Respondent Jimmy Morales

43. Nominal Respondent Jimmy Morales is President and represents Guatemala as a sovereign and body politic with its principal place of business in the United States at 2220 R Street, NW, Washington, D.C. 20008. Guatemala is a Contracting Power to the HC IV (15 March 1911); GC IV (14 May 1952); Additional Protocol (I) to the 1949 Geneva Conventions (19 October 1987); Additional Protocol (II) to the 1949 Geneva Conventions (19 October 1987); and Statute of the International Criminal Court (2 April 2012). Guatemala is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (14 May 1952).

44. In 1893, the Hawaiian Kingdom maintained a Consulate in Guatemala—Henry Tolke, Consul.

Nominal Respondent Viktor Orbán

45. Nominal Respondent Viktor Orbán is Prime Minister and represents Hungary as a sovereign and body politic with its principal place of business in the United States at 3910 Shoemaker Street, NW, Washington, D.C. 20008. Hungary is a successor State of the former Austro-Hungarian Empire, which entered into a Treaty of Friendship with the Hawaiian Kingdom (18 June 1875). The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of Austria, until Hungary denounces the treaty with the Hawaiian Kingdom.[18] Additionally, Hungary is a Contracting Power to the HC IV (27 November 1909); GC IV (27 August 1953); Additional Protocol (I) to the

[18] Keith, *supra* note 16.

1949 Geneva Conventions (13 August 1982); Additional Protocol (II) to the 1949 Geneva Conventions (13 August 1982); and Statute of the International Criminal Court (28 December 2000). Hungary is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (16 November 1918).

46. In 1893, Hungary, formerly known as the Austro-Hungarian Empire, maintained a Consulate in Honolulu—H.F. Glade, Consul.

Nominal Respondent Giuseppe Conte

47. Nominal Respondent Giuseppe Conte is Prime Minister and represents Italy as a sovereign and body politic with its principal place of business in the United States at 3000 Whitehaven Street, N.W., Washington, D.C. 20008. Italy entered into a Treaty of Amity, Commerce and Navigation with the Hawaiian Kingdom (22 July 1863). Additionally, Italy is a Contracting Power to the 1899 Hague Convention, II, with Respect to the Laws and Customs of War on Land, (4 September 1900); GC IV (17 December 1951); Additional Protocol (I) to the 1949 Geneva Conventions (27 February 1986); Additional Protocol (II) to the 1949 Geneva Conventions (27 February 1986); and Statute of the International Criminal Court (26 July 1999). Italy is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (4 September 1900).

48. In 1893, Italy maintained a Consulate in Honolulu—F.A. Schaefer. The Hawaiian Kingdom maintained Consulates in Rome—James Clinton Hooker, Consul-General; Genoa—Raphael de Luchi, Consul; and Palermo—Angelo Tagliavia, Consul.

Nominal Respondent Shinzō Abe

49. Nominal Respondent Shinzō Abe is Prime Minister and represents Japan as a sovereign and body politic with its principal place of business in the United States at 2520

Massachusetts Avenue, N.W., Washington, D.C. 20008. Japan entered into a Treaty of Amity and Commerce with the Hawaiian Kingdom (19 August 1871). Additionally, Japan is a Contracting Power to the HC IV (13 December 1911); GC IV (28 June 1951); Additional Protocol (I) to the 1949 Geneva Conventions (11 April 2001); Additional Protocol (II) to the 1949 Geneva Conventions (11 April 2001); and Statute of the International Criminal Court (9 June 2000). Japan is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (11 February 1912).

50. In 1893, Japan maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—Mons. Taizo Masaki, Diplomatic Agent and Consul General. The Hawaiian Kingdom maintained a diplomatic representative accredited to the Japanese Court in Tokyo—His Excellency R. Walker Irwin, Minister Resident. The Hawaiian Kingdom also maintained Consulates in Hyōgo and Osaka—Samuel Endicott, Consul.

Nominal Respondent Xavier Bettel

51. Nominal Respondent Xavier Bettel is Prime Minister and represents Luxembourg as a sovereign and body politic with its principal place of business in the United States at 2200 Massachusetts Avenue, N.W., Washington, D.C. 20008. Luxembourg, formerly in personal union with the Netherlands, entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (16 October 1862). The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of the Netherlands, until Luxembourg denounces the treaty with the Hawaiian Kingdom.[19] Additionally, Luxembourg is a Contracting Power to the HC IV (5 September 1912); GC IV (1 July 1953); Additional Protocol (I) to the 1949 Geneva Conventions (29 August

[19] Keith, *supra* note 16.

1989); Additional Protocol (II) to the 1949 Geneva Conventions (29 August 1989); and Statute of the International Criminal Court (8 September 2000). Luxembourg is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (4 November 1912).

52. In 1893, Luxembourg, formerly in personal union with the Netherlands, maintained a Consulate in Honolulu—J.H. Paty, Consul.

Nominal Respondent Enrique Peña Nieto

53. Nominal Respondent Enrique Peña Nieto is President and represents Mexico as a sovereign and body politic with its principal place of business in the United States at 1911 Pennsylvania Avenue, NW, Washington, D.C. 20006. Mexico is a Contracting Power to the HC IV (27 November 1909); GC IV (29 October 1952); Additional Protocol (I) to the 1949 Geneva Conventions (10 September 1983); and Statute of the International Criminal Court (28 October 2005). Mexico is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

54. In 1893, Mexico maintained a Consulate in Honolulu—H. Renjes, Consul. The Hawaiian Kingdom maintained Consulates in Mexico City—Col. W.J. De Gress, Consul, and R.H. Baker, Vice-Consul; and Manzanillo—Robert James Barney, Consul.

Nominal Respondent Mark Rutte

55. Nominal Respondent Mark Rutte is Prime Minister and represents the Netherlands as a sovereign and body politic with its principal place of business in the United States at 4200 Linnean Drive, N.W., Washington, D.C. 20008. The Netherlands, formerly in personal union with Luxembourg, entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (16 October 1862). Additionally, the Netherlands is a

Contracting Power to the HC IV (27 November 1909); GC IV (3 August 1954); Additional Protocol (I) to the 1949 Geneva Conventions (26 June 1987); Additional Protocol (II) to the 1949 Geneva Conventions (26 June 1987); and Statute of the International Criminal Court (17 July 2001). The Netherlands is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

56. In 1893, the Netherlands, formerly in personal union with Luxembourg, maintained a Consulate in Honolulu—J.H. Paty, Consul. The Hawaiian Kingdom maintained Consultes in Amsterdam—D.H. Schmull, Consul-General; and Dordrecht—P.J. Bowman, Consul.

Nominal Respondent Jacinda Ardern

57. Nominal Respondent Jacinda Ardern is Prime Minister and represents New Zealand as a sovereign and body politic with its principal place of business in the United States at 37 Observatory Circle, NW, Washington, D.C. 20008. New Zealand is a member State of the Commonwealth Realm with the British Crown, as its Head of State, who appoints its Prime Minister. The British Crown entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). New Zealand is a Contracting Power to the GC IV (2 May 1959); Additional Protocol (I) to the 1949 Geneva Conventions (8 February 1988); Additional Protocol (II) to the 1949 Geneva Conventions (8 February 1988); and Statute of the International Criminal Court (7 September 2000). New Zealand is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (12 June 2010).

58. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate in Honolulu—T.R. Walker, Vice-Consul. The

Hawaiian Kingdom maintained Consulates in Auckland—D.B. Cruikshank, Consul; and Dunedin—Henry Driver, Consul.

Nominal Respondent Erna Solberg

59. Nominal Respondent Erna Solberg is Prime Minister and represents Norway as a sovereign and body politic with its principal place of business at 2720 34th Street, NW, Washington, D.C. 20008. Norway is a successor State of the formerly known United Kingdoms of Sweden and Norway, which entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (1 July 1852). The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of Sweden, until Norway denounces the treaty with the Hawaiian Kingdom.[20] Additionally, Norway is a Contracting Power to the HC IV (19 September 1910); GC IV (3 August 1951); Additional Protocol (I) to the 1949 Geneva Conventions (14 December 1981); Additional Protocol (II) to the 1949 Geneva Conventions (14 December 1981); and Statute of the International Criminal Court (16 February 2000). Norway is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (18 November 1910).

60. In 1893, Norway, formerly known as the United Kingdoms of Sweden and Norway, maintained a Consulate in Honolulu—H.W. Schmidt, Consul. The Hawaiian Kingdom maintained a Consulate in Oslo (formerly Christiania)—L. Samson, Consul.

Nominal Respondent Martín Vizcarra

61. Nominal Respondent Martín Vizcarra is President and represents Peru as a sovereign and body politic with its principal place of business in the United States at 1700 Massachusetts Avenue, NW, Washington, D.C. 20036. Peru is a Contracting Power to the GC IV (15

[20] Keith, *supra* note 16.

February 1956); Additional Protocol (I) to the 1949 Geneva Conventions (14 July 1989); Additional Protocol (II) to the 1949 Geneva Conventions (14 July 1989); and Statute of the International Criminal Court (10 November 2001). Peru is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (12 September 2010).

62. In 1893, Peru maintained a Consulate in Honolulu—Bruce Cartwright, Consul. The Hawaiian Kingdom maintained a diplomatic representative accredited to the Court of Peru and a Consulate in Lima—R.H. Beddy, Chargé d'affaires and Consul-General.

Nominal Respondent António Costa

63. Nominal Respondent António Costa is Prime Minister and represents Portugal as a sovereign and body politic with its principal place of business at 2012 Massachusetts Avenue, NW, Washington, D.C. 20036. Portugal entered into a Convention with the Hawaiian Kingdom (5 May 1882). Additionally, Portugal is a Contracting Power to the HC IV (13 April 1911); GC IV (14 March 1961); Additional Protocol (I) to the 1949 Geneva Conventions (27 May 1992); Additional Protocol (II) to the 1949 Geneva Conventions (27 May 1992); and Statute of the International Criminal Court (5 February 2002). Portugal is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (12 June 1911).

64. In 1893, Portugal maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—A. de Souza Canavarro, Chargé d’affaires and Consul General. The Hawaiian Kingdom also maintained Consulates in Lisbon—A. Ferreira de Serpa, Consul-General; Oporto—Narcisco T.M. Ferro, Consul; Madeira—F. Rodrigues, Consul; and São Miguel—A. de S. Moreira, Consul.

Nominal Respondent Vladimir Putin

65. Nominal Respondent Vladimir Putin is President and represents Russia as a sovereign and body politic with its principal place of business at 2650 Wisconsin Avenue, NW, Washington, D.C. 20007. Russia, formerly the Russian Empire, entered into a Convention of Commerce and Navigation with the Hawaiian Kingdom (19 June 1869). Additionally, Russia is a Contracting Power to the HC IV (27 November 1909); GC IV (10 May 1954); Additional Protocol (I) to the 1949 Geneva Conventions (29 September 1989); Additional Protocol (II) to the 1949 Geneva Conventions (29 September 1989); and Statute of the International Criminal Court (13 September 2000). Russia is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

66. In 1893, Russia, formerly the Russian Empire, maintained a Consulate in Honolulu—J.F. Hackfeld, Acting Vice-Consul.

Nominal Respondent Pedro Sanchez

67. Nominal Respondent Pedro Sanchez is President and represents Spain as a sovereign and body politic with its principal place of business at 2375 Pennsylvania Avenue, NW, Washington, D.C. 20037. Spain entered into a Treaty of Amity, Commerce and Navigation with the Hawaiian Kingdom (29 October 1863). Additionally, Spain is a Contracting Power to the 1899 Hague Convention, II, with Respect to the Laws and Customs of War on Land (4 September 1900); GC IV (4 August 1952); Additional Protocol (I) to the 1949 Geneva Conventions (21 April 1989); Additional Protocol (II) to the 1949 Geneva Conventions (21 April 1989); and Statute of the International Criminal Court (24 October 2000). Spain is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (17 May 1913).

68. In 1893, Spain maintained a Consulate in Honolulu—H. Renjes, Vice-Consul. The Hawaiian Kingdom also maintained Consulates in Barcelona—Enrique Minguez, Consul-General; Cadiz—James Shaw, Consul; Valencia—Vincent Chust, Consul; Malaga—F. T. De Navarra, Consul, F. Gimenez y Navarra, Vice-Consul; Cartegna—J. Paris, Consul; Las Palmas, Gran Canaria—Luis Falcony Quevedo, Consul, and J. Bravo de Laguna, Vice-Consul; and Arecife, Lanzarotte—E. Morales y Rodriguez, Vice-Consul.

Nominal Respondent Stefan Löfven

69. Nominal Respondent Stefan Löfven is Prime Minister and represents Sweden as a sovereign and body politic with its principal place of business at 2900 K Street, NW, Washington, D.C. 20007. Sweden is a successor State of the formerly known United Kingdoms of Sweden and Norway, which entered into a Treaty of Friendship, Commerce and Navigation with the Hawaiian Kingdom (1 July 1852). The Hawaiian government takes the position that the treaty is in effect, excepting matters of *jura personalia* of Norway, until Sweden denounces the treaty with the Hawaiian Kingdom.[21] Additionally, Sweden is a Contracting Power to the HC IV (27 November 1909); GC IV (28 December 1953); Additional Protocol (I) to the 1949 Geneva Conventions (31 August 1979); Additional Protocol (II) to the 1949 Geneva Conventions (31 August 1979); and Statute of the International Criminal Court (28 June 2001). Sweden is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (26 January 1910).

70. In 1893, Sweden, formerly known as the United Kingdoms of Sweden and Norway, maintained a Consulate in Honolulu—H.W. Schmidt, Consul. The Hawaiian Kingdom

[21] Keith, *supra* note 16.

maintained Consulates in Stockholm—C.A. Engalls, Acting Consul-General; Lyskil—H. Bergstrom, Vice-Consul; and Gothemburg—Gustav Kraak, Vice-Consul.

Nominal Respondent Alain Berset

71. Nominal Respondent Alain Berset is President and represents Switzerland as a sovereign and body politic with its principal place of business at 2900 Cathedral Avenue, NW, Washington, D.C. 20008. Switzerland entered into a Treaty of Friendship, Establishment and Commerce with the Hawaiian Kingdom (20 July 1864). Additionally, Switzerland is a Contracting Power to the HC IV (12 May 1910); GC IV (31 March 1950); Additional Protocol (I) to the 1949 Geneva Conventions (17 February 1982); Additional Protocol (II) to the 1949 Geneva Conventions (17 February 1982); and Statute of the International Criminal Court (12 October 2001). Switzerland is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (11 July 1910).

Nominal Respondent Theresa May

72. Nominal Respondent Theresa May is Prime Minister and represents the United Kingdom as a sovereign and body politic with its principal place of business in the United States at 3100 Massachusetts Avenue, NW, Washington, D.C. 20008. The United Kingdom entered into a Treaty Friendship, Commerce and Navigation with the Hawaiian Kingdom (10 July 1851). Additionally, the United Kingdom is a Contracting Power to the HC IV (27 November 1909); GC IV (23 September 1957); Additional Protocol (I) to the 1949 Geneva Conventions (28 January 1998); Additional Protocol (II) to the 1949 Geneva Conventions (28 January 1998); and Statute of the International Criminal Court (4 October 2001). The United Kingdom is also a Contracting Power to the HC I and member of the Permanent Court of Arbitration (12 October 1970).

73. In 1893, the British Crown maintained a diplomatic representative accredited to the Court of Hawai‘i in Honolulu—His Excellency J.H. Wodehouse, Minister Resident. The British Crown also maintained a Consulate in Honolulu—T.R. Walker, Vice-Consul. The Hawaiian Kingdom maintained a diplomatic representative accredited to the British Court in London—A. Hoffnung, Chargé d'affaires. The Hawaiian Kingdom also maintained Consulates in London—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 Prescot, 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.

Nominal Respondent António Guterres

74. Nominal Respondent António Guterres is Secretary-General of the United Nations that is an intergovernmental organization with its principal place of business in the United States at United Nations Secretariat Building, 405 East 42nd Street, New York, N.Y. 10017.

Nominal Respondent Miroslav Lajčák

75. Nominal Respondent Miroslav Lajčák is President of the General Assembly that is an inter-governmental body within the United Nations system with its principle place of business in the United States at UN Headquarters, New York, N.Y. 10017.

Nominal Respondent Nebenzia Vassily Alekseevich

76. Nominal Respondent Nebenzia Vassily Alekseevich is President of the Security Council that is an international body within the United Nations system with its principle place of business in the United States at UN Headquarters, New York, N.Y. 10017.

Nominal Respondent Vojislav Šuc

77. Nominal Respondent Vojislav Šuc is President of the United Nations Human Rights Council that is an inter-governmental body with the United Nations system with its place of business in the United States at OHCHR in New York, UN Headquarters, New York, N.Y. 10017.

Nominal Respondent Stef Blok

78. Nominal Respondent Stef Blok is the Netherlands Minister of Foreign Affairs and Chairman of the Administrative Council of the Permanent Court of Arbitration that is an inter-governmental organization with its place of business in the United States at the Embassy of the Netherlands, 4200 Linnean Drive, NW, Washington, D.C. 20008.

IV. FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED

79. Fundamental to deciphering the Hawaiian situation is to discern between a state of peace and a state of war. This bifurcation provides the proper context by which 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, which is required during a state of peace.[22]

80. 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 have since risen to a level of *jus cogens*—compelling law. At the same time, the obligations have *erga omnes* characteristics—flowing to all states. The international community's failure to intercede, as a matter of *obligatio erga omnes,* is 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,"[23] 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]."[24]

81. 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.[25] 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

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[22] 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).
[23] *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.
[24] *Id.*, Article 41(1).
[25] 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 October 2017). 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.

or a state of war; there was no intermediate state."[26] The Hawaiian Kingdom, a neutral and independent state, has been subject to an illegal war with the United States for the past 125 years without a peace treaty, and thus, the United States must begin to comply with the rules of *jus in bello*.

82. The first allegations of war crimes, committed in Hawai'i, being unfair trial, unlawful confinement and pillaging,[27] were made the subject of an arbitral dispute in *Lance Larsen vs. Hawaiian Kingdom* at the Permanent Court of Arbitration ("PCA").[28] 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, in order to ensure that the dispute is international. The jurisdiction of the PCA is distinguished from the subject-matter jurisdiction of the *ad hoc* tribunal presiding over the dispute between the parties. International 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

[26] 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).
[27] Memorial of Lance Paul Larsen (22 May 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 Habeus [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. 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 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).
[28] 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).

international organizations; a state and a private party; and an international organization and a private entity.[29] The PCA accepted the case as a dispute between a state and a private party, and acknowledged the Hawaiian Kingdom to be a non-Contracting Power under Article 47 of the HC I.[30] 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.[31]

A. From a State of Peace to a State of War

83. To quote the *dictum* of the *Larsen v. Hawaiian Kingdom* Tribunal, "in the nineteenth century the Hawaiian Kingdom existed as an independent [s]tate recognized as such by the United States of America, the United Kingdom and various other [s]tates, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."[32] As an independent state, the Hawaiian Kingdom entered into extensive treaty relations with a variety of states establishing diplomatic relations and trade agreements.[33] According to

[29] United Nations, *United Nations Conference on Trade and Development: Dispute Settlement* 15 (United Nations, 2003).
[30] PCA Annual Report, Annex 2, 51, n. 2. (2011).
[31] *Larsen v. Hawaiian Kingdom*, Cases, Permanent Court of Arbitration, available at https://pca-cpa.org/en/cases/35/ (last visited 16 May 2018).
[32] *Larsen v. Hawaiian Kingdom,* 119 Int'l L. Reports 566, 581 (2001) (hereafter "Larsen case").
[33] 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

Westlake, in 1894, the *Family of Nations* comprised, "First, all European [s]tates.… Secondly, all American [s]tates.… Thirdly, a few Christian [s]tates in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free [s]tate."[34]

84. To preserve its political independence, should war break out in the Pacific Ocean, the Hawaiian Kingdom sought to ensure that its neutrality would be recognized beforehand. Hence, provisions recognizing Hawaiian neutrality were incorporated in its treaties with Sweden-Norway (1852),[35] Spain (1863)[36] and Germany (1879).[37] "A nation that wishes to secure her own peace," says Vattel, "cannot more successfully attain that object than by concluding treaties [of] neutrality."[38]

85. 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 (36 Stat. 2310), stating that the "territory of neutral Powers is

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Ireland) 26 March 1846; and the United States of America, 20 December 1849, 13 January 1875, 11 September 1883, and 6 December 1884.

[34] 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.

[35] Article XV states, "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." *Available at*: http://hawaiiankingdom.org/pdf/Sweden_Norway_Treaty.pdf (last visited 16 May 2018).

[36] Article XXVI states, "All vessels bearing the flag of Spain shall, in time of war, receive every possible protection, short of active hostility, within the ports and waters of the Hawaiian Islands, and Her Majesty the Queen of Spain engages to respect, in time of war the neutrality of the Hawaiian Islands, and to use her good offices with all the other powers having treaties with the same, to induce them to adopt the same policy toward the said Islands." *Available at*: http://hawaiiankingdom.org/pdf/Spanish_Treaty.pdf (last visited 16 May 2018).

[37] Article VIII states, "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." *Available at*: http://hawaiiankingdom.org/pdf/German_Treaty.pdf (last visited 16 May 2018).

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

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."[39] As such, the Hawaiian Kingdom's territory could not be trespassed or dishonored, and its neutrality "constituted a guaranty of independence and peaceful existence."[40]

86. "Traditional international law was based upon a rigid distinction between the state of peace and the state of war," says Judge Greenwood.[41] "Countries were either in a state of peace or a state of war; there was no intermediate state."[42] 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 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."[43]

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

[39] Nicolas Politis, *Neutrality and Peace* 27 (1935).
[40] *Id.*, at 31.
[41] Greenwood, *supra* note 26, at 45.
[42] *Id*.
[43] Vattel, *supra* note 38, 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.[44]

88. 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 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."[45] The quintessential question then 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?

[44] United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai'i: 1894-95, 586 (1895) (hereafter "Executive Documents").
[45] Quincy Wright, "Changes in the Concept of War," 18 Am. J. Int'l. L. 755, 756 (1924).

89. 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-defense, or to necessity or protection of vital interests, or merely alleged injury to rights or national honour and dignity."[46] The United States had no dispute with the Hawaiian Kingdom, a neutral and independent state, that would have warranted an invasion and overthrow of the Hawaiian government.

90. In 1993, the United States Congress enacted a joint resolution offering an apology for the overthrow.[47] 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 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."[48] At first read of this preamble, it would appear that the "conspirators" were the subjects that committed the "act of war," but that is misleading because, 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 can 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

[46] Ian Brownlie, *International Law and the Use of Force by States* 41 (1963).
[47] 107 Stat. 1510 (1993).
[48] *Id.,* at 1511.

a surprise 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.

91. In a petition to President Cleveland from the Hawaiian Patriotic League dated 27 December 1893, 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.[49]

92. 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. This is actually what Cleveland stated to the Congress:

> 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* (emphasis added).[50]

93. As part of this plan, the U.S. diplomat, John Stevens, would prematurely recognize the small group of insurgents on 17 January 1893 as if the insurgents were successful

[49] Executive Documents, *supra* note 44, at 1295. Petition of the Hawaiian Patriotic League also available at http://hawaiiankingdom.org/pdf/HPL_Petition_12_27_1893.pdf (last visited 16 May 2018).
[50] *Id*., at 451. Cleveland's Message available at: http://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf (last visited 16 May 2018).

revolutionaries thereby giving them 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 penned, "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."[51] 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."[52]

94. 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: "Your 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."[53] 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

[51] 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).
[52] Marek, *supra* note 22, at 114.
[53] Executive Documents, *supra* note 44, at 1179.

[s]tate as a whole."[54] 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 number of the Queen's troops were quartered), though the same had been demanded of the Queen's officers in charge.[55]

95. "Premature recognition is a tortious act against the lawful government," explains Lauterpacht, which "is a breach of international law."[56] 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."[57] 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 [s]tates must depend—is this: no [s]tate has a right FORCIBLY to interfere in the internal concerns of another [s]tate."[58]

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

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[54] E. Lauterpacht, Recognition in International Law 93 (1947).
[55] Executive Documents, *supra* note 44, at 453.
[56] E. Lauterpacht, *supra* note 54, at 95.
[57] Ellery C. Stowell, *Intervention in International Law* 349, n. 75 (1921).
[58] 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.

> 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.[59]

97. The President's finding that the United States embarked upon a war with the Hawaiian Kingdom, in violation of international law, unequivocally acknowledged that a state of war in fact exists since 16 January 1893. According to Lauterpact, 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."[60] 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.

98. In the *Hostages Trial* (the case of *Wilhelm 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

[59] Executive Documents, *supra* note 44, at 453.
[60] H. Lauterpacht, "The Limits of the Operation of the Law of War," 30 Brit. Y.B. Int'l L. 206 (1953).

> 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.[61]

99. 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."[62] 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."[63] 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.'"[64] Thus, Cleveland's determination 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,"[65] means the action was not justified, but a state of war nevertheless ensued.

100. What is significant is that Cleveland referred to the Hawaiian people as "friendly and confiding," not "hostile." This is a clear case of where the United States President admits to an illegal war. According to United States constitutional law, the President is the sole representative of the United States in foreign relations—not the Congress or the courts. In

[61] *USA v. William List et al.* (Case No. 7), Trials of War Criminals before the Nuremburg Military Tribunals (hereafter "Hostages Trial"), Vol. XI, p. 1247 (1950).
[62] *Id*.
[63] Wright, *supra* note 45, at 758.
[64] Brownlie, *supra* note 46, at 38.
[65] Executive Documents, *supra* note 44, at 456.

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."[66] 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 Congress, but to the international community as well, and thus the duty of third states to invoke neutrality.

101. 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 [s]tate 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 [s]tate continues to exist notwithstanding the absence of effectiveness."[67] 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."[68]

102. 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."[69] 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, had accepted the conditions for settlement in order to return the state of

[66] 10 Annals of Cong. 613 (1800).
[67] Marek, *supra* note 22, at 102.
[68] *Id*.
[69] Executive Documents, *supra* note 44, at 458.

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 1893.[70] The President was not aware of this agreement until after he delivered his message.[71] 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 the Hawaiian Kingdom government.

103. 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 to the laws of war, while their relations with other states not party to the conflict became governed by the law of neutrality."[72] 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."[73] A state of war "automatically brings about the full operation of all the rules of war and neutrality."[74] 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."[75] "For the laws of war," according to Koman, "continue to apply in the occupied territory even after the

[70] Sai, A Slippery Path, *supra* note 3, at 119-127.
[71] Executive Documents, *supra* note 44, at 1283. In this dispatch to U.S. Diplomat Albert Willis from Secretary of State Gresham on 12 January 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.
[72] Greenwood, *supra* note 26, at 45.
[73] *Id.*, at 46.
[74] Myers S. McDougal and Florentino P. Feliciano, "The Initiation of Coercion: A Multi-temporal Analysis," 52 Am. J. Int'l. L. 241, 247 (1958).
[75] Gabriella 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).

achievement of military victory, until either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant."[76]

104. In the *Tadić* case, the International Criminal Tribunal for the former Yugoslavia 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."[77] 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.[78] An attempt to transform the state of war to a state of peace was made by executive agreement on 18 December 1893. President Cleveland, however, was unable to carry out his duties and obligations under this agreement to restore the situation, that existed before the unlawful landing of American troops, due to political wrangling in the Congress.[79] Hence, the state of war continued.

105. 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."[80] In other words, since a state of war is based upon 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

[76] Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* 224 (1996).
[77] ICTY, *Prosecutor v. Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), § 70 (2 October 1995).
[78] 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).
[79] Sai, A Slippery Path, *supra* note 3, at 125-127.
[80] Lord McNair and A.D. Watts, *The Legal Effects of War* 7 (1966).

existing hostilities or as a warning of imminent hostilities."[81] 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.

106. 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."[82] 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,"[83] 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 1941. Both political determinations of acts of war by these Presidents created a state of war for the United States under international law.

107. 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

[81] Brownlie, *supra* note 46, at 40.
[82] *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).
[83] Executive Documents, *supra* note 44, at 456.

"international law distinguishes between a government and the state it governs."[84] 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."[85] As Judge Crawford explains, "[t]here is a presumption that the [s]tate continues to exist, with its rights and obligations … despite a period in which there is … no effective, government."[86] Crawford further concludes that "[b]elligerent occupation does not affect the continuity of the [s]tate, even where there exists no government claiming to represent the occupied [s]tate."[87]

B. *The Duty of Neutrality by Third States*

108. 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 injuries to the one as benefit the other."[88] 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.[89]

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[84] Quincy Wright, "The Status of Germany and the Peace Proclamation," 46(2) Am. J. Int'l L. 299, 307 (Apr. 1952).
[85] Sheldon M. Cohen, *Arms and Judgment: Law, Morality, and the Conduct of War in the Twentieth Century* 17 (1989).
[86] Crawford, *supra* note 22, 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.
[87] *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.
[88] L. Oppenheim, *International Law*, vol. II—War and Neutrality 401 (3rd ed., 1921).
[89] *Id.*, at 496.

109. Twenty states violated their obligation of neutrality by recognizing the so-called Republic of Hawai‘i and consequently became parties to the war on the side of the United States.[90] These states include: Austria-Hungary (1 January 1895);[91] Belgium (17 October 1894);[92] Brazil (29 September 1894);[93] Chile (26 September 1894);[94] China (22 October 1894);[95] France (31 August 1894);[96] Germany (4 October 1894);[97] Guatemala (30 September 1894);[98] Italy (23 September 1894);[99] Japan (6 April 1897);[100] Mexico (8 August 1894);[101]

[90] Greenwood, *supra* note 26, at 45.
[91] 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).
[92] 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).
[93] 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).
[94] 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).
[95] 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).
[96] 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).
[97] 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 May 2018).
[98] 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).
[99] 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).
[100] 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).
[101] 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).

Netherlands (2 November 1894);[102] Norway-Sweden (17 December 1894);[103] Peru (10 September 1894);[104] Portugal (17 December 1894);[105] Russia (26 August 1894);[106] Spain (26 November 1894);[107] Switzerland (18 September 1894);[108] and the United Kingdom (19 September 1894).[109]

110. "If a neutral [state] 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."[110] The recognition of the so-called Republic of Hawai'i did not create any legality or lawfulness 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. Diplomatic recognition of governments occurs during a state of peace and not during a state of war, unless for providing recognition of belligerent status. These recognitions

[102] 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).
[103] 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-swedennorway/ (last visited 16 May 2018).
[104] 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).
[105] 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).
[106] 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).
[107] 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).
[108] 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).
[109] 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).
[110] Oppenheim, *supra* note 88, at 497.

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.

C. Obligation of the United States to Administer Hawaiian Kingdom laws

111. 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* calls 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 [s]tate to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading [s]tate 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 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." Thus, effectiveness is at the core of belligerent occupation.

112. 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."[111] Graber also states, that "nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code."[112] The United States government also recognizes that this principle is customary international law that predates the Hague Conventions.

> The Hague Convention clearly enunciated the principle that the laws applicable in an occupied territory remain in effect during the occupation, subject to change by the military authorities within the limits of the Convention. Article 43: … This declaration of the Hague Convention amounts only to a reaffirmation of the recognized international law prior to that time.[113]

113. The administration of occupied territory is set forth in the Hague Regulations, being Section III of the HC IV. According to Schwarzenberger, "Section III of the Hague Regulations … was declaratory of international customary law."[114] 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."[115] Many other authorities also viewed the Hague Regulations (HC IV) as mere codification of customary international law, which was applicable at the time of the overthrow of the

[111] Eyal Benvenisti, *The International Law of Occupation* 8 (1993).
[112] Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914* 143 (1949).
[113] Opinion on the Legality of the Issuance of AMG (Allied Military Government) Currency in Sicily, Sept. 23, 1943, reprinted in Occupation Currency Transactions: Hearings Before the Committees on Appropriations Armed Services and Banking and Currency, U.S. Senate, 80th Congress, First Session, 73, 75 (Jun. 17-18, 1947).
[114] Georg Schwarzenberger, "The Law of Belligerent Occupation: Basic Issues," 30 Nordisk Tidsskrift Int'l Ret 11 (1960).
[115] Munroe Smith, "Record of Political Events," 13(4) Pol. Sci. Q. 745, 748 (1898).

Hawaiian government and subsequent occupation.[116] Commenting on the occupation of the Hawaiian Kingdom, Dumberry states,

> [T]he 1907 Hague Convention protects the international personality of the occupied [s]tate, even in the absence of effectiveness. Furthermore, the legal order of the occupied [s]tate 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.[117]

114. 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, this puppet regime 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. Furthermore, under the rules of *jus in bello*, the occupant does not possess the sovereignty of the occupied state and therefore cannot compel allegiance.[118] To do so would imply that the occupied state, as 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*.

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[116] 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* 57 (2002); 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").

[117] Dumberry, *supra* note 3, at 682.

[118] 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 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.

115. *Debellatio* does not apply to the Hawaiian situation because President Cleveland determined that the overthrow of the Hawaiian government was unlawful and, therefore, this determination does not meet the test of *jus ad bellum*. As an illegal 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 [s]tate or hand over portions of it to other [s]tates."[119]

116. 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."[120]

117. After the President determined the illegality of the situation and entered into an agreement with Queen Lili'uokalani 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 Hawaiian situation remained a state of war and the rules of *jus in bello* continued to apply.

118. When the provisional government was formed, through intervention, it only replaced the executive monarch and her cabinet with insurgents calling themselves an executive and

[119] Georg Schwarzenberger, *International Law as applied by International Courts and Tribunals*. Vol. II: The Law of Armed Conflict 167 (1968).
[120] Executive Documents, *supra* note 44, at 1296.

advisory councils. With the oversight of United States troops, all Hawaiian government officials remained in place and were coerced into signing oaths of allegiance to the new regime.[121] 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.

119. During the Spanish-American War, under the guise of a Congressional joint resolution of annexation, United States armed forces physically reoccupied the Hawaiian Kingdom on 12 August 1898. According to the United States Supreme Court, "[t]hough 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."[122] Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and "they protested annexation occurring without the consent of the governed."[123]

120. Marek asserts that, "a disguised annexation aimed at destroying the independence of the occupied [s]tate, represents a clear violation of the rule preserving the continuity of the occupied [s]tate."[124] Even the U.S. Department of Justice in 1988, opined, it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint

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[121] *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."

[122] *Territory of Hawai'i v. Mankichi*, 190 U.S. 197, 212 (1903).

[123] 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.

[124] Marek, *supra* note 22, at 110.

resolution."[125] Then 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*."[126]

D. Denationalization through Americanization

121. In 1906, 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. Under the policy titled "Programme for Patriotic Exercises in the Public Schools," the national language of Hawaiian was banned and replaced with the American language of English.[127] Young students who spoke Hawaiian in school were beaten. 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 patriotism in a school population that needed that kind of teaching, perhaps, more than the mainland children do [emphasis added].[128]

122. It is important here to draw attention to the word "inculcate." As a verb, the term imports force such as to convince, implant, and indoctrinate. Brainwashing is its colloquial term.

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[125] 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).
[126] 31 Stat. 141 (1900).
[127] *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).
[128] *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).

When a reporter from the American news magazine, *Harper's Weekly,* visited the Ka'iulani Public School in Honolulu in 1907, 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!"[129]

123. 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*.[130] These Congressional laws, which have no extraterritorial effect, did not 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 customary international law in 1893, the 1907 HC IV, and the GC IV. It is also 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, falsely 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

[129] 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).
[130] 73 Stat. 4 (1959).

laws of the United States, which were not locally inapplicable, would have full force and effect."[131] This extraterritorial application of American laws is not only in violation of *The Lotus* case principle,[132] but is also prohibited by the rules of *jus in bello*.

124. 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 an 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."[133] "By military government," according to Winthrop, "is meant that dominion exercised in war by a belligerent power over territory of the enemy invaded and occupied by him and over the inhabitants thereof." In his dissenting opinion in Ex parte Miligan, U.S. Supreme Court Chief Justice Chase explained:

> There are under the Constitution three kinds of military jurisdiction: one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states or districts occupied by rebels treated as belligerents; and a third to be exercised in time of invasion or insurrection within the limits of the United States, or during a rebellion within the limits of states maintaining adhesion to the National Government, when the public danger requires its exercise. … the second may be distinguished as MILITARY GOVERNMENT, superseding, as far as may be deemed expedient, the local law, and exercised by the military commander under the direction of the President.[134]

125. Hence since 1893, there has been 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

[131] United Nations, *Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America*, Document no. A/4226, Annex 1, p. 2 (24 September 1959).
[132] *Lotus*, 1927 PCIJ Series A, No. 10, p. 18.
[133] United States Army Field Manual 27-10, sec. 362 (1956).
[134] *Ex parte Miligan*, 71 U.S. 2, 141-142 (1866).

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. This was a theft of an independent state's self-government.

E. The State of Hawai'i is a Private Armed Force

126. When the United States assumed control of its installed 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."[135] The legislation of every state, including the United States by 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 [s]tate 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 [s]tate."[136] According to Judge Crawford, derogation of this principle will not be presumed.[137]

127. 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."[138] The Court also concluded that "[t]he laws of no nation can justly

[135] Benvenisti, *supra* note 111, at 19.
[136] *Lotus, supra* note 132.
[137] Crawford, *supra* note 22, at 41.
[138] *United States v. Curtiss Wright Export Corp.,* 299 U.S. 304, 318 (1936).

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."[139] Therefore, the State of Hawai'i cannot claim to be a government because its only claim to authority derives from Congressional legislation that has no extraterritorial effect. As such, *jus in bello* defines the State of Hawai'i as an organized armed group acting for and on behalf of the United States.[140]

128. "[O]rganized armed groups … are under a command responsible to that party for the conduct of its subordinates."[141] 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,"[142] 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."[143] Article 1 of the 1907 HC IV, provides

> 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.

129. Since the *Larsen* case and based on the narrative in this petition, defendants, that have appeared before the courts of this armed group, have begun to deny the courts' jurisdiction. In a contemptible attempt to quash this defense, the Supreme Court of the State of Hawai'i

[139] *The Apollon*, 22 U.S. 362, 370 (1824).
[140] Article 1, 1899 Hague Convention, II, and Article 1, 1907 Hague Convention, IV.
[141] Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I, 14 (2009).
[142] *Id.*, at 5.
[143] *Id*.

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,[144] with "*whatever may be said regarding the lawfulness" of its origins, "the State of Hawai'i ... is now, a lawful government* [emphasis added]."[145] 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.

130. This opinion of the so-called highest court of the State of Hawai'i has since been continuously invoked by prosecutors (criminal) and plaintiffs (civil) to avoid the undisputed and insurmountable factual and legal conclusions as to the continued existence of the Hawaiian Kingdom, as a subject of international law, and the illegitimacy of the State of Hawai'i government. On this note, Marek explains that an occupier without title or sovereignty "must rely heavily, if not exclusively, on full and complete effectiveness."[146]

131. 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."[147] According to Ferraro, "occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts."[148]

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[144] *State of Hawai'i v. Dennis Kaulia*, 128 Hawai'i 479, 486 (2013).
[145] *Id.*, at 487.
[146] Marek, *supra* note 22, at 102.
[147] 1907 Hague Convention, IV, Article 42.
[148] 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).

F. The Restoration of the Hawaiian Kingdom Government

132. On 10 December 1995, the Petitioner 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).[149] This partnership was named the Perfect Title Company ("PTC") and functioned as a land title abstracting company.[150] 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 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.

133. 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 Hawaiian Kingdom 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."[151] 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, notwithstanding the prolonged occupation of

[149] 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).
[150] 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 (last visited 16 May 2018).
[151] Black's Law Dictionary 26 (1990).

the Hawaiian Kingdom since 17 January 1893, 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.

134. The Hawaiian Kingdom's 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 of the Hawaiian Kingdom. 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.[152]

[152] 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).

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]."[153]

135. On 15 December 1995, with the specific intent of assuming the "seat of Government," the partners of PTC formed a second partnership called the Hawaiian Kingdom Trust Company ("HKTC").[154] 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 134, HKTC would serve, by necessity, as officers *de facto,* in an acting capacity, for the Registrar of the Bureau of Conveyances, the Minister of Interior, the Cabinet Council, and ultimately for the Council of Regency.

136. 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.

137. 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*

[153] Black's Law, *supra* note 151, at 1282.
[154] 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 (last visited 16 May 2018).

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."[155] In *Carpenter v. Clark*, the Michigan 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."[156]

138. In a meeting of the HKTC, it was agreed that the Petitioner would be appointed to serve as *acting* Regent but could not retain an interest in either of 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 the Petitioner 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, Petitioner would relinquish, by a deed of conveyance in both companies, his entire one-half (50%) interest to Lewis, after which, Lewis 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.[157]

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[155] Thomas Cooley, *A Treatise on the Law of Taxation* 185 (1876).
[156] *Carpenter v. Clark*, 217 Michigan 63, 71 (1921).
[157] A true and correct copy of Petitioner'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

139. On 1 March 1996, the Trustees of HKTC appointed the Petitioner as *acting* Regent.[158] On the same day, the Petitioner, 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.[159] 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.

140. 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 Petitioner, then as *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.[160]

141. On 28 February 1997, a Proclamation by the Petitioner, then as *acting* Regent, announcing the restoration of the provisional Hawaiian government, was printed in the Honolulu Sunday Advertiser on 9 March 1997.[161] 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 [s]tate 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

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can be accessed online at: http://hawaiiankingdom.org/pdf/Nai%E2%80%98a_to_Lewis_Deed.pdf (last visited 16 May 2018).

[158] 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).

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

[160] 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).

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

delegation of the [occupying] [s]tate nor any rule of international law other than the one safeguarding the continuity of an occupied [s]tate. The relation between the legal order of the [occupying] [s]tate and that of the occupied [s]tate…is not one of delegation, but of co-existence."[162]

142. 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 [s]tate's constitutional order "can be justified on grounds of necessity."[163] De Smith also states, that "[s]tate 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."[164] 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."[165] 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 [s]tate, 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."[166]

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[162] Marek, *supra* note 22, at 91.
[163] Stanley A. de Smith, *Constitutional and Administrative Law* 80 (1986).
[164] *Id*.
[165] F.W. Oppenheimer, "Governments and Authorities in Exile," 36 Am. J. Int'l. L. 568, 581 (1942).
[166] See *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969). See also M*itchell v. Director of Public Prosecution*s, 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).

143. On 7 September 1999, the Petitioner, then as *acting* Regent, commissioned Mr. Peter Umialiloa Sai, a Hawaiian subject, as *acting* Minister of the Interior, and Mrs. Kauʻi P. Goodhue, later to be known as Mrs. Kauʻi P. Sai-Dudoit, a Hawaiian subject, as *acting* Minister of Finance.[167] On 9 September 1999, the Petitioner, then as *acting* Regent, commissione Mr. Gary Victor Dubin, Esquire, a Hawaiian denizen, as *acting* Attorney General.[168]

144. On September 1999, the Petitioner, 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.[169]

145. The *acting* Council of Regency ("Hawaiian government"), serving as the provisional government of the Hawaiian Kingdom, was established *in situ* and not *in exile*. The Hawaiian government 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 the Hawaiian government is comprised of officers *de facto*. 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

[167] 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/Kaui_Min_of_Finance.pdf (last visited 16 May 2018).
[168] 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).
[169] 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).

> a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity.[170]

146. During the Second World War, like other governments formed during foreign occupations of their territory, the Hawaiian government did not receive its mandate from the Hawaiian citizenry, but rather by virtue of Hawaiian constitutional law, and therefore, it represents the Hawaiian state.[171] 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.[172]

147. 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 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 [s]tate when its judgment would imply an

[170] Thomas M. Cooley, "Grave Obstacles to Hawaiian Annexation," The Forum, 389, 390 (1893).
[171] 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).
[172] Bederman & Hibert, *supra* note 3, at 928.

> evaluation of the lawfulness of the conduct of another [s]tate which is not a party to the case."[173]

148. 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 [s]tates and otherwise."[174] 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."[175] 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."[176]

149. 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. 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

[173] Larsen case, *supra* note 32, at 596.
[174] *Id.*, at 597.
[175] *Id*.
[176] *Id.*, at n. 28.

> 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 accordance with the basic norms and framework of international humanitarian law.[177]

150. In what appears to be obstruction by the PCA's Secretary General, at the behest of the United States to sabotage the fact-finding proceedings, on 10 November 2017, a complaint was filed by the Hawaiian government with one of the member states of the PCA's Administrative Council at its embassy in The Hague, Netherlands.[178] The name of the state is being kept confidential at its request.

151. 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. That dispute stemmed from an 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."[179]

[177] Special Agreement (January 19, 2017), available at http://hawaiiankingdom.org/pdf/ICI_Agmt_1_19_17(amended).pdf (last visited 16 May 2018).
[178] A true and correct copy of the complaint can be accessed online at: http://hawaiiankingdom.org/pdf/Hawaiian_Complaint_PCA_Admin_Council.pdf (last visited 16 May 2018).
[179] *Island of Palmas* arbitration case (Netherlands and the United States of America), R.I.A.A., vol. II, 829 (1949).

G. Recognition De Facto of the Restored Hawaiian Government

152. In March of 2000, the United States government, through its Department of State ("State Department"), explicitly recognized the Hawaiian government by exchange of *notes verbales*. This recognition stemmed from *Larsen v. Hawaiian Kingdom* international arbitration proceedings.[180] *Notes verbales* are official communications between governments of states and international organizations.

153. Before the *Larsen* ad hoc tribunal was formed in 9 June 2000, Mr. Tjaco T. van den Hout, Secretary General of the PCA, spoke with the Petitioner over the telephone and recommended that the Hawaiian government provide an invitation to the United States to join in the arbitration. The Hawaiian government consented, which resulted in a conference call meeting on 3 March 2000 in Washington, D.C., between the Petitioner, Larsen's counsel, Mrs. Ninia Parks, and Mr. John Crook from the State Department. The meeting was reduced to a formal note and mailed to Mr. Crook in his capacity as legal adviser to the State Department, and a copy of the note was submitted by the Hawaiian government to the PCA Registry for record that the United States was invited to join in the arbitral proceedings.[181] The note was signed off by the Petitioner as "Acting Minister of Interior and Agent for the Hawaiian Kingdom."

154. Under international law, this note served as an offering instrument that contained the text of the proposal, to wit:

> "[T]he reason for our visit was the offer by the…Hawaiian Kingdom, by consent of the Claimant [Mr. Larsen], by his attorney, Ms. Ninia Parks, for the United States Government to join in the arbitral proceedings presently instituted under the auspices of the Permanent Court of Arbitration at The

[180] Larsen case, *supra* note 173, at 581. The *notes verbales* are part of the arbitral records at the Registry of the Permanent Court of Arbitration.
[181] A true and correct copy of the note can be accessed online at: http://hawaiiankingdom.org/pdf/State_Dpt_Ltr_(3.3.2000).pdf (last visited 16 May 2018).

> Hague, Netherlands. … [T]he State Department should review the package in detail and can get back to the Acting Council of Regency by phone for continued dialogue. I gave you our office's phone number…, of which you acknowledged. I assured you that we did not need an immediate answer, but out of international courtesy the offer is still open, notwithstanding arbitral proceedings already in motion. I also advised you that Secretary-General van den Hout of the Permanent Court of Arbitration was aware of our travel to Washington, D.C. and the offer to join in the arbitration. As I stated in our conversation he requested that the dialogue be reduced to writing and filed with the International Bureau of the Permanent Court of Arbitration for the record, and you acknowledged."

155. Thereafter, the PCA's Deputy Secretary General, Mrs. Phyllis Hamilton, informed the Petitioner, as agent for the Hawaiian government, by telephone, that the United States, through its embassy in The Hague, notified the PCA, by *note verbale*, that the United States would not accept the invitation to join the arbitral proceedings. Instead, the United States, through its embassy in The Hague, requested permission from the Hawaiian government to have access to the pleadings and records of the case. The Hawaiian government consented to this request. Thus, the PCA, represented by Deputy Secretary General Hamilton, served as an intermediary to secure an agreement between the Hawaiian Kingdom and the United States.

> Legally there is no difference between a formal note, a *note verbale* and a memorandum. They are all communications which become legally operative upon the arrival at the addressee. The legal effects depend on the substance of the note, which may relate to any field of international relations.[182]
>
> As a rule, the recipient of a note answers in the same form. However, an acknowledgment of receipt or provisional answer can always be given in the shape of a *note verbale*, even if the initial note was of a formal nature.[183]

[182] Johst Wilmanns, "Note," in 9 *Encyclopedia of Public International Law* 287 (1986).
[183] *Id*.

156. The offer by the Secretary General to have the Hawaiian government provide the United States an invitation to join in the arbitral proceedings, and the Hawaiian government's acceptance of this offer, constitutes an international agreement by exchange of *notes verbales* between the PCA and the Hawaiian Kingdom. "[T]he growth of international organizations and the recognition of their legal personality has resulted in agreements being concluded by an exchange of notes between such organizations and states."[184] The United States' request to have access of the arbitral records, in lieu of declining the invitation to join in the arbitration, and the Hawaiian government's consent to that request constitutes an international agreement by exchange of *notes verbales*. According to Corten & Klein, "the exchange of two *notes verbales* constituting an agreement satisfies the definition of the term 'treaty' as provided by Article 2(1)(a) of the Vienna Convention."[185] Altogether, the exchange of *notes verbales* on this subject matter, between the Hawaiian Kingdom, the PCA, and the United States of America, constitutes a multilateral treaty of the *de facto* recognition of the restored Hawaiian government.

157. Moreover, the United States has entered into other treaties by exchange of *notes verbales*. In 1946, the United States and Italy entered into a treaty by exchange of *notes verbales* at Rome regarding an *Agreement relating to internment of American military personnel in Italy*.[186] In 1949, the United States and Italy entered into another treaty by exchange of *notes verbales* at Rome regarding an *Agreement between the United States of America and*

[184] J.L. Weinstein, "Exchange of Notes," 20 Brit. Y.B. Int'l L. 205, 207 (1952).
[185] *The Vienna Conventions on the Law of Treaties, A Commentary*, Vol. I, Corten & Klein, eds. (2011), p. 261.
[186] 61 Stat. 3750.

Italy, interpreting the agreement of August 14, 1947, respecting financial and economic relations.[187] Both of these bi-lateral treaties remain in force as of 1 January 2017.[188]

158. Since the United States' *de facto* recognition, the following states and an international organization have also provided *de facto* recognition of the Hawaiian government. On 12 December 2000, Rwanda recognized the Hawaiian government. This recognition occurred in a meeting in Brussels, called by His Excellency Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium, with the Petitioner, the Minister of Foreign Affairs, His Excellency Mr. Peter Umialiloa Sai, and the Minister of Finance, Her Excellency Mrs. Kauʻi Sai-Dudoit.[189]

159. On 5 July 2001, China, as President of the United Nations Security Council, recognized the Hawaiian government when China accepted the Hawaiian government's complaint submitted by the Petitioner, as agent for the Hawaiian Kingdom, in accordance with Article 35(2) of the United Nations Charter. Article 35(2) provides that a "[s]tate which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purpose of the dispute, the obligations of pacific settlement provided in the present Charter."[190]

160. By exchange of *notes*, through email, Cuba also recognized the Hawaiian government when on 10 November 2017, the Cuban government received the Petitioner at the Cuban embassy in The Hague, Netherlands.[191] Also, by exchange of *notes*, through email, the

[187] 63 Stat. 2415.
[188] United States Department of State, *Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 2017*, 218.
[189] Sai, A Slippery Path, *supra* note 3, at 130-131.
[190] Sai, American Occupation of the Hawaiian State, *supra* note 3, at 74.
[191] A true and correct copy of the notes can be accessed online at: http://hawaiiankingdom.org/pdf/Cuban_Embassy_Corresp.pdf (last visited 16 May 2018).

Universal Postal Union in Bern, Switzerland, recognized the Hawaiian government.[192] The Universal Postal Union is a specialized agency of the United Nations. The Hawaiian Kingdom has been a member state of the Universal Postal Union since January 1, 1882.

V. COMMISSION OF ALLEGED WAR CRIMES IN THE HAWAIIAN KINGDOM

161. The Rome Statute of the International Criminal Court defines war crimes as "serious violations of the laws and customs applicable in international armed conflict."[193] 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 violation of the law of war is a war crime."[194] 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).

162. International case law indicates that there must be a mental element of intent for the prosecution of war crimes, whereby a war crime 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, prosecution of the responsible person(s) must contain a mental

[192] A true and correct copy of the notes can be accessed online at: http://hawaiiankingdom.org/pdf/UPU_Communication.pdf (last visited 16 May 2018).
[193] International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).
[194] U.S. Army Field Manual 27-10, sec. 499 (July 1956).

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."[195]

163. Is there a particular time or event that would serve as the 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 is 18 December 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian government.

164. For the private sector and for foreign governments that were not in existence in 1893, the United States' 1993 apology for the illegal overthrow of the Hawaiian government is that definitive point of knowledge. The Congressional joint resolution, enacted into United States 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."[196] Additionally, the Congress urged "the President of

[195] ICC Elements of War Crimes, *supra* note 193, at Article 8.
[196] 107 Stat. 1513.

the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai‘i."[197]

165. Despite the mistake of facts and law riddled throughout the apology resolution, it still serves as a specific point of knowledge. Evidence that the United States knew of the ramifications of this knowledge 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."[198] It is presumed that everyone knows the law. This 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 is therefore a private organization. Therefore, awareness and knowledge for members of the State of Hawai‘i would have began with the enactment of the apology resolution in 1993.

166. Moreover, 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 [s]tate."[199] There is 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 its political independence.

167. The installation of the puppet regime also violated the rights of the Hawaiian people. According to the Hawaiian Patriotic League, the installed puppet in 1893, together with

[197] *Id.*
[198] *Id*., at 1514.
[199] Rome Statute, art. 8 *bis* (2).

their organs, "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."[200] These criminal acts would not have occurred if the United States complied with the law of occupation.

168. In a similar fashion to the Hawaiian situation, Germany violated international law when it occupied Croatia during the Second World War and established a puppet regime 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.[201]

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.

169. 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, through its puppet regime, the United States unlawfully maintained the

[200] Executive Documents, *supra* note 44, at 1297.
[201] Hostages Trial, *supra* note 61, at 1302.

continued presence and administration of law it 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.

170. Since 30 April 1900, the United States had 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-eight."[202] 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."[203] 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

[202] 31 Stat. 141.
[203] 73 Stat. 11.

> 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.[204]

171. In addition, Article 43 does not transfer sovereignty to the occupying power.[205] Section 358, United States Army Field Manual 27-10, declares, "[b]eing 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."[206]

172. Hence, 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 has no extraterritorial effect except under

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[204] *Id*.
[205] Benvenisti, *supra* note 111, at 8; von Glahn, *supra* note 116, at 95; Michael Bothe, "Occupation, Belligerent," in Rudolf Bernhardt (dir.), *Encyclopedia of Public International Law,* vol. 3, 765 (1997).
[206] 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).

the principles of active and passive personality jurisdiction. In particular, this fact has rendered 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.

173. 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."[207] 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 these insurgents further proclaimed, "[a]ll 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."[208] 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 ____.[209]

[207] Executive Documents, *supra* note 44, at 210.
[208] *Id*., at 211.
[209] *Id.,* at 1076.

174. The compelling of inhabitants, serving in the Hawaiian Kingdom government, to swear allegiance to the occupying power, through its puppet regime, began on 17 January 1893, with oversight by United States troops, until 1 April 1893, when the troops were ordered to depart Hawaiian territory by U.S. Special Commissioner, James Blount, who had begun 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."[210]

175. 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, and with the employment of American mercenaries, the insurgents were allowed to maintain their unlawful control of the government. 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. The United States then 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, allegiance to the State of Hawai‘i. All this was in direct violation of Article 45 of the HC IV.

176. Section 19 of the Territorial Act provides, "every member of the legislature, and all officers of the government of the Territory of Hawaii, shall take the following oath: I do solemnly

[210] *Id*., at 568.

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."[211] 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.

177. 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."[212] 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.[213] By 2012, the U.S. military

[211] 31 Stat. 145.
[212] 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).
[213] 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).

has one hundred eighteen (118) military sites that span 230,929 acres of the Hawaiian Islands. [214]

Article 47—Pillage is formally forbidden.

178. 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, these collections can only be considered as benefitting private individuals who are employed by the State of Hawai'i.

179. Pillage or plunder is "the forcible taking of private property by an invading or conquering army," [215] which, according to the Elements of Crimes of the International Criminal Court, must be seized "for private or personal use."[216] As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.[217] The residents of the Hawaiians 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.

[214] 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).
[215] Black's Law, *supra* note 151, at 1148.
[216] ICC Elements of War Crimes, *supra* note 193, at Article 8(2)(b)(xvi) and (e)(v)).
[217] Henckaerts & Doswald-Beck, *supra* note 141, at 185.

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.

180. 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, 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 a public entity, but it 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." Thus, 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."

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.

181. 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 they called it public

lands. According to Hawaiian Kingdom law, the Crown lands were distinct from the public lands of the Hawaiian government since 1848. Crown lands 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.

182. 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.[218]

183. 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."[219]

[218] *Estate of His Majesty Kamehameha IV*, 3 Haw. 715, 725 (1864).
[219] 30 Stat. 750.

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.

184. In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai'i*,[220] and shortly thereafter, intentionally sought to "Americanize" the inhabitants of the Hawaiian Kingdom politically, culturally, socially, and economically. To accomplish this, a plan was instituted in 1906 by the Territorial government, titled "Programme for Patriotic Exercises in the Public Schools, Adopted by the Department of Public Instruction."

185. The policy of this program was to denationalize the children of the Hawaiian Islands on a massive scale, which included forbidding the children from speaking the Hawaiian national language, and allowing only English to be spoken. Its intent was to obliterate any memory of the national character of the Hawaiian Kingdom that the children may have had and replace this, 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.[221]

186. 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

[220] 31 Stat. 141.
[221] 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).

children to use the Serbo-Croat language, to sing Yugoslav songs and forcing them to salute in a fascist way."[222] 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 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.[223]

187. 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

[222] E. Schwelb, Note on the Criminality of "Attempts to Denationalize the Inhabitants of Occupied Territory" (Appendix to Doc, C, 1. 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).
[223] *Id*., at 6.

> forbidden, children had to sing "Deutschland über Alles" instead of "La Marseillaise" at school, and racial screening was in full swing.[224]

188. Under the heading "Germanization of Occupied Territories," Count III (j) of the Nuremburg 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.[225]

B. War Crimes: 1949 Geneva Convention, IV

Article 64—The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or 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

189. The failure of the United States to administer the laws of the Hawaiian Kingdom has caused extrajudicial proceedings that have led to unlawful confinements, sentencing and executions.

[224] Lynn H. Nicholas, *Cruel World: The Children of Europe in the Nazi Web* 277 (2005).
[225] Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, p. 27, 63 (Nuremberg, Germany, 1947).

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

190. In 2013, the United States Internal Revenue Service ("IRS") illegally appropriated $7.1 million dollars from the residents of the Hawaiian Islands.[226] During this same year, the State of Hawai'i additionally appropriated $6.5 billion dollars illegally.[227] 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, so it is precluded from appropriating money from the inhabitants of an occupied state without violating the international laws of occupation.

191. 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 ¾ of 1% upon the value of both real and personal property.[228]

192. The *Merchant Marine Act* of 5 June 1920,[229] hereinafter referred to as the *Jones Act,* is a restraint of trade and commerce and is also a violation of international law and treaties

[226] 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).
[227] State of Hawai'i Department of Taxation Annual Reports (2013), available at: http://files.hawaii.gov/tax/stats/stats/annual/13annrpt.pdf (last visited 16 May 2018).
[228] 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).
[229] 41 Stat. 988.

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. Should a foreign flag ship attempt to unload foreign goods and merchandise in the Hawaiian Islands, the person transporting the merchandise would have to forfeit its cargo to the U.S. Government, or forfeit an amount equal to the value of the merchandise, or the cost of transportation.

193. As a result of the *Jones Act,* there is no free trade in the Hawaiian Islands. Ninety percent 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 contributes to Hawai‘i’s high cost of living, and according to the USDA Food Cost, Hawai‘i residents in January 2012 paid an extra $417 per month for food on a thrifty plan than families who are on a thrifty plan in the United States.[230] 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.

[230] 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).

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

194. 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."[231] 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).

195. 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

196. Since 17 January 1893, there have been no lawfully constituted courts in the Hawaiian Islands whether it be Hawaiian Kingdom courts or military commissions established by order of the Commander of the United States Indo-Pacific Command in conformity with the HC IV, GC IV, and the international laws of occupation. All Federal and State of

[231] 50 U.S.C. App. 453.

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 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

197. According to the United States Department of Justice, the prison population in the Hawaiian Islands in 2009 was at 5,891.[232] Of this population there were 286 aliens.[233] Thus, 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*.[234] Compounding the violation of alien prisoners rights under the *Vienna Convention*, Consulates located in the Hawaiian Islands were wrongly granted exequaturs by the government of the United States by virtue of United States treaties and not by treaties between the Hawaiian Kingdom and these foreign states.

198. 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.[235] By June of 2004, there were 1,579

[232] 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).
[233] 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).
[234] *LaGrand* (Germany v. United States of America), Judgment, I.C.J. Reports 2001, p. 466.
[235] 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://lrbhawaii.info/reports/legrpts/psd/2005/act200_58_slh03_05.pdf (last visited 16 May 2018).

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 these prisoners 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

199. Once a state is occupied, international law preserves the *status quo* of the occupied state to what it was before the occupation began. To preserve the nationality of the occupied state 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 during the occupation, 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 17 January 1893 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."[236]

200. 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

[236] Gerhard von Glahn, *Law Among Nations* 780 (6th ed., 1992).

massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, which, according to the State of Hawai‘i numbered 1,302,939 in 2009,[237] 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, would be aliens who were illegally transferred, either directly or indirectly, by the United States as the occupying Power, and therefore these transferes 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

201. 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.[238] These combined lands constituted nearly half of the entire territory of the Hawaiian Kingdom.

[237] 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 Sai, American Occupation of the Hawaiian State*, supra* note 3, at 63-65.

[238] 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*.

202. Military training locations include Pacific Missile Range Facility, Barking Sands Tactical Underwater Range, and Barking Sands Underwater Range Expansion on the Island of Kauaʻi; the entire Islands of Niʻihau and Kaʻula; Pearl Harbor, Lima Landing, Puʻuloa Underwater Range—Pearl Harbor, Barbers Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawaiʻi, 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 Oʻahu; and Bradshaw Army Airfield and Pohakuloa Training Area on the Island of Hawaiʻi.

203. The United States Navy's Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise ("RIMPAC"), every other even numbered year, and is the largest international maritime warfare exercise in the world. 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 the open-ocean and at the military training locations throughout the Hawaiian Islands.

204. Moreover, in 2006, the United States Army disclosed to the public that depleted uranium ("DU") was found on the firing ranges at Schofield Barracks on the Island of Oʻahu.[239] The army subsequently confirmed that DU was also found at Pohakuloa Training Area on the Island of Hawaiʻi and suspect that DU is also at Makua Military Reservation on the Island

[239] U.S. Army Garrison-Hawaiʻi, Depleted Uranium on Hawaiʻi's Army Ranges, available at: http://www.garrison.hawaii.army.mil/du/ (last visited 16 May 2018).

of O‘ahu.[240] These ranges have yet to be cleared of DU and 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 hazardous aerosolized DU oxide that can travel by wind. And if the DU gets into the drinking water or into oceans it would have a devastating effect across the islands.

205. 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.

VI. RESPONDENTS' WAIVER OF OBJECTION TO THE CONTINUITY OF THE HAWAIIAN KINGDOM AND ITS RESTORED GOVERNMENT

206. As hereinbefore stated, the United States together with all of the Respondents, who are Contracting Powers to the HC I, have remained silent since arbitral proceedings were instituted on 8 November 1999 with respect to the PCA's designation of the Hawaiian Kingdom as a Non-Contracting Power (state) pursuant to Article 47 of the HC I (Article 26 of the 1899 Hague Convention, I). The legal consequence of such conduct is that these Contracting Powers are precluded from raising any questions as to the Hawaiian Kingdom's status as a sovereign state and as to the *acting* Council of Regency serving as its government.

207. 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 HC I, provides a basis

[240] *Id*.

for deciding both questions of interpretation and questions concerning Non-Contracting Powers.[241] 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.

208. In the *Temple of Preah Vihear* case,[242] 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.[243]
>
> 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.[244]

[241] Lord McNair, *The Law of Treaties*, 424-429 (1961).
[242] *Temple of Preah Vihear*, Merits, I.C.J. Reports 1962, p. 6.
[243] *Id.*, at 23.
[244] *Id*., at 32-33.

209. Similarly, in the present case, the failure of the United States, as well as the other Contracting Powers to the HC I, which includes all of the Respondents, 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.

VII. EXPRESS ADMISSIONS OF RESPONSIBILITY BY THE UNITED STATES

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

210. 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."[245] International jurisprudence also refer to the relevance of admissions.[246]

211. International tribunals have given evidential weight to the statements made by government officials.[247] In the *Nuclear Tests* cases (*Australia v. France*), the Court held that statements,

[245] *Pollack v. Metropolitan Life Insurance Co.*, 138 F.2d 123, 125 (3d Cir. 1943).
[246] 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).
[247] *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.[248] 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 [s]tate. 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 [s]tate, 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 [s]tate, nor was acceptance by any other [s]tate 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.[249]

212. 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

[248] *Nuclear Tests* cases (Australia v. France) (Judgment, I.C.J. Reports 1974, p. 253, at p. 267, para. 43).
[249] *Id*., at 269-270.

of October 22nd, 1946."[250] This is an instance of state responsibility and the evidence addressed was Albania's knowledge of the laying of mines in the subject area.

213. 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.[251]

214. 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

215. 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."[252]

216. 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

[250] *Corfu Channel* case (Merits), pp. 18-20.
[251] *Case concerning the Temple of Preah Vihear* (Cambodia v. Thailand), Merits, I.C.J. Reports 1962, p. 6, at pp. 22-29, 32-33.
[252] Executive Documents, *supra* note 44, at 1185, available at http://hawaiiankingdom.org/pdf/Gresham_to_Blount_(3.11.1893).pdf (last visited 16 May 2018).

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."[253] After careful consideration of the facts of the case provided by the Special Commissioner, Secretary of State Gresham, on 18 October 1893, relayed the following 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 [s]tate 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.[254]

217. The nature of the request to President Cleveland is important for three reasons. 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, Gresham discerns the Hawaiian state from its government, which he called for its

[253] *Id*., at 604-605.
[254] Executive Documents, *supra* note 44, at 463-564, available at http://hawaiiankingdom.org/pdf/Gresham_Report_(10.18.1893).pdf (last visited 16 May 2018).

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.

218. 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.[255]

> 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 Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew

[255] Executive Documents, *supra* note 44, at 451, available at http://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf (last visited 16 May 2018).

> that she could not withstand the power of the United States, but she believed that she might safely trust to its justice.[256]
>
> 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.[257]
>
> 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.[258]

219. 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

[256] *Id*., at 453.
[257] *Id*., at 456.
[258] *Id*., at 456-457.

Government. President Cleveland also acknowledged 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*. Hence, a legal state of war has ensued since 16 January 1893 whereby the United States must comply with the rules of *jus in bello*.

C. The General Principle of State Responsibility

220. 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 [s]tate practice and judicial decisions is the principle that any conduct of a [s]tate which international law classified as a wrongful act entails the responsibility of that [s]tate in international law. In other words, whenever a [s]tate is guilty of an internationally wrongful act against another [s]tate, international responsibility is established "immediately as between the two [s]tates," 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 [s]tate 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.)

221. 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 this 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.[259]

222. 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 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

[259] *Corfu Channel case*, Merits, I.C.J. Reports 1949, p. 4, at p. 23.

> endangered the lives of America 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.[260]

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

> 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.[261]

[260] *Foreign Relations of the United States, Japan, 1931-1941*, vol. I, U.S.G.P.O., p. 523 (1943).
[261] Margorie M. Whiteman, *Digest of International Law*, vol. 8 891 (1967).

224. 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 from Richard B. Lillich (ed.), *International Law of State Responsibility for Injuries to Aliens*, p. 221-224 (1983).

VIII. UNITED STATES' MANDATE TO ADMINISTER HAWAIIAN KINGDOM LAW

225. Article 43 of the HC IV and Article 64 of the GC IV mandates Respondent Trump, as the President and executive officer of the occupying state, to administer the laws of the Hawaiian Kingdom, the occupied state, after it has secured effective control of the occupied state's territory in accordance with Article 42 of the HC IV.

226. "Article 43 does not confer on the occupying power any sovereignty over the occupied territory. The occupant may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator."[262] "The expression 'laws in force in the country' in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders, provided that the 'norms' in question are general and abstract."[263]

227. International law prohibits the administration of the domestic laws of the occupying state within the territory of the occupied state.

228. Both the HC IV and the GC IV have been duly ratified by the United States Senate and, therefore, constitute the Supreme Law of the Land and must be faithfully executed.

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[262] Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law, Cambridge, June 25-27 5 (2004).
[263] *Id*., at 6.

229. Misrepresentations and omissions of material fact constitute deceptive acts or practices prohibited by the HC IV and the GC IV.

IX. INJURIES TO PROTECTED PERSONS

230. Protected Persons throughout the Hawaiian Kingdom, to include Hawaiian subjects, have suffered and continue to suffer violations of their rights secured under international humanitarian laws as set forth above. Absent the granting of immediate mandamus relief by this Court, Respondent Trump will continue to injure Protected Persons whose rights are protected under the HC IV, the GC IV, international humanitarian laws, and customary international laws.

231. While this action is not seeking monetary damages or reparations for injuries attributed to the illegal occupation of the Hawaiian Kingdom, the Iraqi occupation of Kuwait in 1990 is very similar in circumstance, which speaks to the severity of when a state fails to comply with international humanitarian law. The Iraqi invasion of Kuwait is eerily analogous to the American invasion of the Hawaiian Kingdom coupled with similar titles and sequence of events: (1) Iraq invaded Kuwait on 2 August 1990; (2) a puppet government was set up by Iraq on 4 August 1990 called the "Provisional Free Kuwaiti Government"; (3) the "Provisional Government" declared itself to be the "Republic of Kuwait" on 7 August 1990; and (4) on 28 August 1990 Iraq annexed Kuwaiti territory renaming the "Republic of Kuwait" to the "Kuwait Governorate," Iraq's 19th province.[264] During the occupation, which ended on 25 February 1991, Iraq did not comply with the HC IV and the GC IV in

[264] Eyal Benvenisti, *The International Law of Occupation* 170 (2nd ed., 2012).

the administration of Kuwaiti law, but rather unlawfully imposed Iraqi law within Kuwaiti territory.

232. In response to Iraq's violations of international humanitarian law, the United Nations Security Council established the United Nations Compensation Commission ("UNCC") in 1991. The UNCC was created as a subsidiary organ of the Security Council under Security Council resolution 687 (1991).[265] The UNCC's mandate was to process claims and pay compensation for losses and damage incurred as a direct result of Iraq's unlawful invasion and occupation of Kuwait. The UNCC awarded $52.4 billion dollars to approximately 1.5 million successful claims. As the Iraqi invasion and occupation equaled 207 days, the total amount of reparations paid can be calculated at $254,368,932.04 per day.

233. If this sample of reparations calculations is taken and applied to the Hawaiian situation, that would be 45,770 days since the invasion on 16 January 1893 to 11 May 2018, which calculates to a total of $11,642,466,019,417.48. This amount is approximately $11.6 trillion dollars.

234. Hence, the severity of the Hawaiian situation warrants the intervention by this Court.

X. THE POLITICAL QUESTION DOCTRINE

235. "The principle that the court lacks jurisdiction over political questions that are by their nature 'committed to the political branches to the exclusion of the judiciary' is as old as the fundamental principle of judicial review." *Schneider v. Kissinger*, 412 F.3d 190, 193 (D.C. Cir. 2005) (quoting *Antolok v. United States*, 873 F.2d 369, 379 (D.C. Cir. 1989)

[265] United Nations Security Council resolution 687 (1991), available at: https://uncc.ch/sites/default/files/attachments/documents/res0687.pdf (last visited 16 May 2018).

(opinion of Sentelle, J.)). In *Jones v. United States*, 137 U.S. 202, 212 (1890), the Supreme Court stated:

> Who is the sovereign, *de jure* or *de facto*, of a territory, is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens, and subjects of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances.

236. In *Baker v. Carr*, 369 U.S. 186 (1962), the Supreme Court bifurcates the branches regarding the political question doctrine as to who determines "[w]ho is the sovereign, *de jure* or *de facto*." "[T]he judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory … Similarly, recognition of belligerency abroad is an executive responsibility." See id., at 212. Political questions for the Congress to determine, and not the Executive, include the status of Indian tribes and whether a government within United States territory is republican in form. "'It is for [Congress]…and not the courts, to determine when the true interests of the Indian require his release from [the] condition of tutelage.'" See id., at 216. And under Article IV, § 4 "of the Constitution, it rests with Congress to decide what government is the established one in a State. For, as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not." See id., at 220.

237. Petitioner's claims are justiciable and does not present a political question because Respondent Trump, as the successor President of the United States, acknowledged the continuity of the Hawaiian Kingdom as an independent and sovereign state, and provided recognition, *de facto*, of the Hawaiian government, by an exchange of *notes verbales,* in

2000 with the State Department. Furthermore, all Nominal Respondents who are member states of the PCA also acknowledged the Hawaiian Kingdom's continuity and the recognition, *de facto*, of the Hawaiian government through receipt of the PCA's annual reports from 2002 through 2011.

238. Federal courts in the past have mistakenly deferred to the Congress, and not the Executive, as the authority in determining who is the sovereign, *de jure* or *de facto*, over the Hawaiian Islands. See *United States v. Lorenzo*, 995 F.2d 1448, 1456 (9th Cir.1993); *Wang Foong v. United States*, 69 F.2d 681, 682 (9th Cir.1934); *Naehu v. Hawai'i*, Civil No. 01-00579 SOM/KSC, slip op. (D.Haw. Sept. 6, 2001); *Uy v. Wells Fargo*, 2011 WL 1235590 (D.Haw.2011); *Yellen v. U.S.*, 2014 WL 2532460 (D.Haw. June 5, 2014); *Algal Partners, L.P. v. Santos*, No. Civ. 13-00562 LEK, 2014 WL 1653084 (D.Haw. Apr. 23, 2014); *Sai v. Clinton*, 778 F.Supp.2d 1, 6 (D.D.C.), aff'd sub nom. *Sai v. Obama*, No. 11-5142, 2011 WL 4917030 (D.C.Cir. Sept. 26, 2011); *Waialele v. Offices of U.S. Magistrate(s)*, No. Civ. 11-00407 JMS/RL, 2011 WL 2534348 (D.Haw. June 24, 2011); and *Kupihea v. United States*, No. CIV. 09-00311SOMKSC, 2009 WL 2025316, at *2 (D.Haw. July 10, 2009). This mistake is plainly obvious in light of President Cleveland's Message to the Congress (18 Dec. 1893), the *Larsen v. Hawaiian Kingdom* (1999-2001), and the agreement, by exchange of *notes verbales*, between the Hawaiian government and the State Department in 2000.

239. In *Sai v. Clinton*, 778 F.Supp.2d 1, 6 (D.D.C.), the D.C. Court clearly relied on the Congress, not the Executive, when deciding that the case was non-justiciable because of the political question doctrine. The Court stated, "[i]n addition, the Constitution vests Congress with the 'Power to dispose of and make all needful Rules and Regulations

respecting the Territory or other Property belonging to the United States.' U.S. Const., Art. IV, § 3, cl. 2. Therefore, there is a textually demonstrable constitutional commitment of these issues to the [Congress]." The Court then attempted to justify its decision by concluding, "it would be impossible for this Court to grant the relief requested by Plaintiff without disturbing a judgment of the legislative and executive branches that has remained untouched by the federal courts for over a century. Since its annexation in 1898 and admission to the Union as a State in 1959, Hawaii has been firmly established as part of the United States. The passage of time and the significance of the issue of sovereignty present an unusual need for unquestioning adherence to a political decision already made."

240. In its decision, the *Sai v. Clinton* Court fundamentally erred on three points. First, the Court did not take into account the political determination of President Cleveland, as the chief executive, in his message to the Congress that "[b]y 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 as been overthrown,"[266] thus transforming the situation from a state of peace to a state of war. And in both 1893, by Presidential message, and in 1993, by joint resolution, the Congress expressly recognized the President's political determination that "acts of war" were committed against the Hawaiian Kingdom and cannot be claimed otherwise. See Public Law 103-150 (1993).

241. Second, the Court could not claim Congress could annex territory of a foreign state, let alone establish a government in that foreign state, by domestic legislation, without being in direct opposition with the Supreme Court in *The Apollon*, 22 U.S. 362, 370 (1824) ("[t]he

[266] Executive Documents, *supra* note 44, at 456.

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."); *U.S. v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936) ("[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 *U.S. v. Belmont*, 301 U.S. 324, 326 (1937) ("our Constitution, laws and policies have no extraterritorial operation unless in respect of our own citizens").

242. And, third, the "passage of time" or prescription is not a recognized principle of international law as between independent states, but it is, however, a recognized principle of United States law as between States of the Union. In *Louisiana v. Mississippi*, 202 U.S. 1, 53 (1906), the Supreme Court stated:

> The question is one of boundary, and this court has many times held that, as between the states of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it should be accepted as conclusive, whatever the international rule might be in respect of the acquisition by prescription of large tracts of country claimed by both.

243. In *The Chamizal Case* (Mexico, United States), 11 R.I.A.A., pp. 309-347 (15 June 1911), the United States claimed it acquired sovereignty over 600 acres of Mexican territory, called *El Chamizal*, by prescription. The United States was attempting to assert a domestic principle in international arbitration proceedings. The Tribunal responded:

> Without thinking it necessary to discuss the very controversial question as to whether the right of prescription invoked by the United States is an accepted principle of the law of nations, in the absence of any convention establishing a term of prescription, the commissioners are unanimous in coming to the conclusion that the possession of the United States was not of such a character as to found a prescriptive title.

244. Absent an international tribunal's decision that the United States has acquired sovereignty over the Hawaiian Islands, this Court must ensure that it discerns between what is international law and what is United States law, for "operations of the nation in [foreign] territory must be governed by treaties, international understandings and compacts, and the principles of international law." See *U.S. v. Belmont*, 301 U.S. 324, 326 (1937).

245. Moreover, "a Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared." *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547 (1924). Along similar lines, the Hawaiian Kingdom Supreme Court in *Schillaber v. Waldo et al.*, 1 Haw. 31, 32 (1847), stated:

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

XI. THE COURT SHOULD ISSUE A DECLARATORY JUDGMENT AND WRIT OF MANDAMUS

246. Respondent Trump represents, expressly or by implication, that he will continue to violate Article 43 of the HC IV and Article 64 of the GC IV in all instances.

247. In truth and in fact, Respondent Trump has not complied with international humanitarian law in all instances.

248. Therefore, representations that Hawai‘i is a State of the United States are false and misleading and constitute deceptive acts or practices in violation of the HC IV and GC IV, the principle of *pacta sunt servanda*, and the Supremacy Clause. “[T]he courts have the authority to construe treaties and executive agreements, and it goes without saying that interpreting congressional legislation is a recurring and accepted task for the federal courts.” *Japan Whaling Ass’n v. American Cetacean Soc’y*, 478 U.S. 221, 230, 106 S.Ct. 2860, 92 L.Ed.2d 166 (1986).

249. As President of the United States, Respondent Trump is precluded from claiming sovereign immunity pursuant to 5 U.S.C. § 702.

250. Nominal Respondents are named in this action because they are connected with the subject-matter of Petitioner’s action. Petitioner is not seeking any specific relief from them.

XII. PRAYER FOR RELIEF

251. Wherefore, Petitioner, pursuant to the All Writs Act, 28 U.S.C. § 1651(a), the Administrative Procedure Act, 5 U.S.C. § 702, and the Court’s own equitable powers, requests that this Court:

a. Grant immediate mandamus relief enjoining Respondent Trump from acting in derogation of the HC IV, the GC IV, international humanitarian laws, and customary international laws;

b. Award Petitioner such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of Protected Persons’ injuries during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions; and

c. Enter a permanent injunction to prevent future violations of the HC IV, the GC IV, international humanitarian laws, and customary international laws by Respondent Trump.

Dated: Honolulu, Hawai'i, 22 June 2018.

DAVID KEANU SAI, Ph.D., *pro se*

UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

DAVID KEANU SAI, Ph.D., *pro se* Chairman of the *acting* Council of Regency of the Hawaiian Kingdom P.O. Box 2194 Honolulu, HI 96805-2194 *Petitioner*, vs. DONALD JOHN TRUMP, President of the United States of America The White House 1600 Pennsylvania Avenue, NW Washington, D.C. 20500; PHILIP S. DAVIDSON, Admiral, U.S. Navy Commander, United States Indo-Pacific Command Box 64031 Camp H.M. Smith, Hawai‘i 96861-4031; DAVID IGE, Governor of the State of Hawai‘i Executive Chambers State Capitol Honolulu, Hawai‘i 96813; *Respondents*, MALCOLM TURNBULL, Prime Minister of Australia Embassy of Australia 1601 Massachusetts Avenue, NW Washington, D.C. 20036; CHRISTIAN KERN, Chancellor of Austria	Declaration of David Keanu Sai

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)
Nominal Respondents.)
)

DECLARATION OF DAVID KEANU SAI

I, DAVID KEANU SAI, Ph.D., declare under penalty that the following is true and correct:

1. My name is David Keanu Sai and I am the Petitioner.
2. I am capable of making this declaration, and the facts contained in this declaration are true and correct to the best of my knowledge and belief.
3. I have read the foregoing *Emergency Petition for a Writ of Mandamus under the All Writs Act and the Administrative Procedure Act*, and the facts stated therein are true and correct.

Dated: Honolulu, Hawai'i, 22 June 2018.

DAVID KEANU SAI, Ph.D., pro se

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 2018, I served the foregoing *Emergency Petition for a Writ of Mandamus under the All Writs Act and the Administrative Procedure Act* by placing a true copy in the United States mail, with certified delivery, to the following:

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President of the United States of America
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Commander, U.S. Indo Pacific Command
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