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MEMORANDUM ON THE LEGAL STANDING OF THE HAWAIIAN KINGDOM AS A STATE SINCE THE NINETEENTH CENTURY

The question as to whether the Hawaiian Kingdom continues to exist since the nineteenth century and that the Council of Regency is its government has been answered in the affirmative as a matter of international law by the Permanent Court of Arbitration Secretariat's recognition in 1999 in *Larsen v. Hawaiian Kingdom*, the United States recognition under the 2000 Sai-Clinton agreement, the 127 Contracting States which have acceded to the Permanent Court's founding conventions by *opinio juris*, and the recognition by the Secretariat of the International Seabed Authority on 3 March 2026. This memorandum addresses the legal standing of the Hawaiian Kingdom, as a State under international law, since the nineteenth century despite the unlawful overthrow of the Government of the Hawaiian Kingdom by the United States of America on 17 January 1893 and the prolonged occupation that ensued thereafter to date.

To quote the dictum of the *Larsen v. Hawaiian Kingdom* arbitral tribunal's award in 2001 at the Permanent Court of Arbitration, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."¹ According to Westlake, in 1894, the Family of Nations comprised, "First, all European States [...] Secondly, all American States [...] Thirdly, a few Christian States in other parts of the world, as the Hawaiian Islands, Liberia and the Orange Free State."²

¹ *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports* 566, 581 (2001).

² John Westlake, *Chapters on the Principles of International Law* 81 (1894). In 1893, there were 44 independent States in the Family of Nations: Argentina, Austria-Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, 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.

The Hawaiian territory is comprised of the islands of Hawai‘i, Maui, Molokini, Kaho‘olawe, Molokai, Lāna‘i, O‘ahu, Kaua‘i, Lehua, Ni‘ihau, Ka‘ula, Nihoa, Necker, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan, Lisiansky, Pearl and Hermes Atoll, Kure Atoll, Palmyra Atoll, and Johnston Atoll.³ According to the Hawaiian Kingdom Supreme Court, Hawaiian sovereignty included the territorial sea that extends “a distance of a marine league, or as far as a cannon shot will reach from the shore.”⁴ Under current customary international law, the territorial sea is now 12 nautical miles from the shore.

Unlike other non-European States, the Hawaiian Kingdom, as a recognized neutral State, enjoyed equal treaties with European Powers and with the United States. It also had full independence of its laws throughout its territory. The Hawaiian Kingdom entered into treaties of amity with the Austro-Hungarian Kingdom,⁵ Belgium,⁶ Bremen,⁷ Denmark,⁸ France,⁹ Germany,¹⁰ Hamburg,¹¹ Italy,¹² Japan,¹³ the Netherlands,¹⁴ Portugal,¹⁵ Russia,¹⁶ Spain,¹⁷ the United Kingdoms of Sweden and Norway,¹⁸ Switzerland,¹⁹ the United Kingdom,²⁰ and the United States.²¹

By 1893, the Hawaiian Kingdom maintained diplomatic representatives accredited to foreign States and consulates. Hawaiian Legations were established in Washington, D.C., London, Paris, and Tokyo, while diplomatic representatives, accredited to the Hawaiian Court in Honolulu, were from the United States, Portugal, Great Britain, France, and Japan. There were 33 Hawaiian consulates in Great Britain and her colonies; 5 in France and her colonies; 5 in Germany; 1 in Austria; 8 in Spain and her colonies; 5 in Portugal and her

³ David Keanu Sai, “Hawaiian Constitutional Governance,” in David Keanu Sai (ed.), *Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 86-90 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

⁴ *The King v. Parish et al.*, 1 Hawai‘i 58, 61 (1849).

⁵ Royal Commission of Inquiry, “Treaties with Foreign States,” 237.

⁶ *Id.*, 241.

⁷ *Id.*, 247.

⁸ *Id.*, 255.

⁹ *Id.*, 257.

¹⁰ *Id.*, 265.

¹¹ *Id.*, 273.

¹² *Id.*, 275.

¹³ *Id.*, 281.

¹⁴ *Id.*, 283.

¹⁵ *Id.*, 285.

¹⁶ *Id.*, 287.

¹⁷ *Id.*, 290.

¹⁸ *Id.*, 296.

¹⁹ *Id.*, 301.

²⁰ *Id.*, 249.

²¹ *Id.*, 305.

colonies; 3 in Italy; 2 in the Netherlands; 4 in Belgium; 4 in Sweden and Norway; 1 in Denmark; and 2 in Japan.²² Foreign Consulates in the Hawaiian Kingdom were from the United States, Italy, Chile, Germany, Sweden and Norway, Denmark, Peru, Belgium, the Netherlands, Spain, Austria and Hungary, Russia, Great Britain, Mexico, Japan, and China.²³

In his speech, at the opening of the 1855 Hawaiian Legislative Assembly, King Kamehameha IV, reported:

It is gratifying to me, on commencing my reign, to be able to inform you, that my relations with all the great Powers, between whom and myself exist treaties of amity, are of the most satisfactory nature. I have received from all of them, assurances that leave no room to doubt that my rights and sovereignty will be respected.²⁴

United States Invasion and Unlawful Overthrow of the Hawaiian Kingdom Government

On 16 January 1893, under orders by U.S. Minister John Stevens, the city of Honolulu was invaded by a detachment of U.S. troops “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.”²⁵ This invasion coerced Queen Lili‘uokalani, executive monarch of the Hawaiian Kingdom, to conditionally surrender to the superior power of the United States military, whereby she stated:

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.²⁶

President Cleveland initiated a presidential investigation on 11 March 1893, by appointing Special Commissioner James Blount to travel to the Hawaiian Islands and provide periodic reports to the U.S. Secretary of State Walter Gresham. Commissioner Blount arrived in the Islands on 29 March, after which he “directed the removal of the flag of the United States from the government building and the return of the American troops to their vessels.”²⁷ His

²² Thomas Thrum, *Hawaiian Almanac and Annual for 1893* 140-141 (1892).

²³ *Id.*

²⁴ Robert C. Lydecker, *Roster Legislatures of Hawaii* 57 (1918).

²⁵ United States *House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai‘i: 1894-95*, 451 (1895).

²⁶ *Id.*, 1039.

²⁷ *Id.*, 568.

last report was dated 17 July 1893, and on 18 October 1893, Secretary of State Gresham notified the President:

The Provisional Government was established by the action of the American minister and the presence of the troops landed from the Boston, and its continued existence is due to the belief of the Hawaiians that if they made an effort to overthrow it, they would encounter the armed forces of the United States.²⁸

The earnest appeals to the American minister for military protection by the officers of that Government, after it had been recognized, show the utter absurdity of the claim that it was established by a successful revolution of the people of the Islands. Those appeals were a confession by the men who made them of their weakness and timidity. Courageous men, conscious of their strength and the justice of their cause, do not thus act.²⁹

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.³⁰

Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice.³¹

On 18 December 1893, President Cleveland delivered a *manifesto* to the Congress on his investigation into the overthrow of the Hawaiian Kingdom Government. The President concluded that the “military occupation of Honolulu by the United States [...] was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property.”³² He also determined that the provisional government was “neither a government *de facto* nor *de jure*,”³³ because “the provisional government owes its existence to an armed invasion by the United States.”³⁴

Through executive mediation between the Queen and the new U.S. Minister to the Hawaiian Islands, Albert Willis, that lasted from 13 November through 18 December, an agreement of peace was reached.³⁵ According to the executive agreement, by exchange of

²⁸ *Id.*, 462.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*, 463.

³² *Id.*, 452.

³³ *Id.*, 453.

³⁴ *Id.*, 454.

³⁵ *Id.*, 1269.

notes, the President committed to restoring the Queen as the constitutional sovereign, and the Queen agreed, after being restored, to grant a full pardon to the insurgents. Political wrangling in the Congress, however, blocked President Cleveland from carrying out his obligation of restoration of the Queen and the insurgents were not granted a full pardon.

Five years later, at the height of the Spanish-American War, President Cleveland's successor, William McKinley, signed a congressional joint resolution of annexation on 7 July 1898, unilaterally seizing the Hawaiian Islands.³⁶ On 30 April 1900, the Congress established the Territory of Hawai'i, under *An Act To provide a government for the Territory of Hawaii*.³⁷ On 18 March 1959, the Congress transformed the Territory of Hawai'i into the State of Hawai'i by *An Act To provide for the admission of the State of Hawaii into the Union*.³⁸ These congressional acts have no extraterritorial effect beyond the territorial borders of the United States.

In *United States v. Curtiss Wright Corp.*, the U.S. Supreme Court stated, “[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.”³⁹ The U.S. Supreme Court also concluded, in *The Apollon*, that the “laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction.”⁴⁰ Therefore, the State of Hawai'i cannot claim to be a *de jure*—lawful government because its only claim to authority derives from American legislation that has no legal effect in the territory of the Hawaiian Kingdom. According to Professor Schabas, the imposition of the laws of the occupying State within the territory of the occupied State is the war crime of usurpation of sovereignty during occupation.⁴¹

The legislation of every State, including the United States of America and its Congress, are not sources of international law. In *The Lotus* case, the Permanent Court of International Justice stated that “the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State.”⁴² According to Judge James

³⁶ 30 Stat. 750 (1898).

³⁷ 31 Stat. 141 (1900).

³⁸ 73 Stat. 4 (1959).

³⁹ *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

⁴⁰ *The Apollon*, 22 U.S. 362, 370 (1824).

⁴¹ William Schabas, “Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893,” 3 *Hawaiian Journal of Law and Politics* 340 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol334_\(Schabas\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol334_(Schabas).pdf)).

⁴² *Lotus*, PCIJ Series A, No. 10, 18 (1927)

Crawford, derogation of this principle will not be presumed.⁴³ Furthermore, as long as occupation continues, the United States cannot “annex the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts.”⁴⁴

As the United States Department of Justice’s Office of Legal Counsel (“OLC”) concluded in its 1988 legal opinion, it “is unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution,”⁴⁵ and there “is a serious question whether Congress has the authority either to assert jurisdiction over an expanded territorial sea for purposes of international law or to assert the United States’s sovereignty over it,”⁴⁶ because only the President “has the authority to assert the United States’s sovereignty over the extended territorial sea.”⁴⁷ This legal opinion further stated that only “by means of treaties [...] can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature it is enacted.”⁴⁸ There is no treaty of cession of Hawaiian territory.

Restoration of the Hawaiian Kingdom Government

In 1996, under the doctrine of necessity, remedial steps were taken to reinstate the Hawaiian Kingdom government, as it stood under its legal order, prior to the U.S. invasion and unlawful overthrow of the Hawaiian government, on 17 January 1893.⁴⁹ In accordance with the Hawaiian Constitution and the doctrine of necessity, an *acting* Council of Regency was established to serve in the absence of the Executive Monarch. Following this process, an *acting* Government, comprised of officers *de facto*, was established as the successor to Queen Lili‘uokalani, Hawai‘i’s last Executive Monarch. The Queen died on 11 November 1917, without naming a successor, in accordance with Hawaiian constitutional law, leaving the office vacant.

There was no legal requirement for the Council of Regency, as the successor in office to Queen Lili‘uokalani under Hawaiian constitutional law, to obtain recognition from the

⁴³ James Crawford, *The Creation of States in International Law* 41 (2nd ed., 2006).

⁴⁴ Jean S. Pictet, *Commentary—The Geneva Conventions of 12 August 1949* 275 (1958).

⁴⁵ Douglas W. Kmiec, “Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea,” 12 *Office of Legal Counsel* 238, 252 (1988) (online at https://hawaiiankingdom.org/pdf/1988_Opinion_OLC.pdf).

⁴⁶ *Id.*, 238.

⁴⁷ *Id.*

⁴⁸ *Id.*, 252.

⁴⁹ David Keanu Sai, “Royal Commission of Inquiry,” in David Keanu Sai (ed.) *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 18-23 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

United States as the government of the Hawaiian Kingdom. The United States' recognition of the Hawaiian Kingdom, as an independent State, on 6 July 1844,⁵⁰ was also the recognition of the Hawaiian Kingdom government—a Constitutional Monarchy. Successors in office to King Kamehameha III, who at the time of international recognition was King of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen Lili'uokalani in 1891, and the Council of Regency in 1997.

The legal doctrines of recognition of new governments only arise “with extra-legal changes in government” of an existing State.⁵¹ Successors to King Kamehameha III were not established through “extra-legal changes,” but rather through the constitution and laws of the Hawaiian Kingdom. According to United States foreign relations law, “[w]here a new administration succeeds to power in accordance with a state’s constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed.”⁵²

The Hawaiian Council of Regency was established in a similar fashion to the Belgian Council of Regency, which was formed, after King Leopold was captured by the Germans, during the Second World War. Just as the Belgian Council of Regency was established under Article 82 of its 1831 Constitution, as amended, *in exile*, so to was the Hawaiian Council of Regency formed under Article 33 of its 1864 Constitution, as amended, not *in exile* but *in situ*. As Professor Oppenheim explains the Belgian situation:

As far as Belgium is concerned, the capture of the king did not create any serious constitutional problems. According to Article 82 of the Constitution of February 7, 18[31], as amended, the cabinet of ministers have to assume supreme executive power if the King is unable to govern. True, the ministers are bound to convene the House of Representatives and the Senate and to leave it to their decision of the united legislative chambers to provide for a regency; but in view of the belligerent occupation it is impossible for the two houses to function. While this emergency obtains, the powers of the King are vested in the Belgian Prime Minister and the other members of the cabinet.⁵³

Professor Lenzerini, who wrote a legal opinion on the authority of the Council of Regency, stated:

⁵⁰ U.S. Secretary of State Calhoun to Hawaiian Commissioners (6 July 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).

⁵¹ M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815-1995* 26 (1997).

⁵² *Restatement (Third)*, §203, comment c.

⁵³ F.E. Oppenheimer, “Governments and Authorities in Exile,” 36 *American Journal of International Law* 568, 569 (1942).

In light of the foregoing—particularly in consideration of the fact that, under international law, the Hawaiian Kingdom continues to exist as an independent State, although subjected to a foreign occupation, and that the Council of Regency has been established consistently with the constitutional principles of the Hawaiian Kingdom and, consequently, possesses the legitimacy of temporarily exercising the functions of the Monarch of the Kingdom—it is possible to conclude that the Regency actually has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level.”⁵⁴

Successor States to Hawaiian Kingdom Treaties

The successor States of the Hawaiian Kingdom’s treaty partners were not aware at the time of their independence that the Hawaiian Kingdom continued to exist as a State, therefore, neither the newly independent States nor the Hawaiian Kingdom could declare “within a reasonable time after the attaining of independence, that the treaty is regarded as no longer in force between them.”⁵⁵ Until there is a clarification of the successor States’ intentions, as to a common understanding with the Hawaiian Kingdom, regarding the continuance in force of the Hawaiian treaty with their predecessor States, the Hawaiian Kingdom will presume the continuance in force of its treaties with the successor States. The majority of Member States of the United Nations are successor States to treaties with the Hawaiian Kingdom.

This position, taken by the Hawaiian Kingdom, is consistent with the 1978 Vienna Convention on Succession of States in respect of Treaties. Article 24 states:

1. A bilateral treaty which at the date of the succession of States was in force in respect of the territory to which the succession of States relates is considered as being in force between a newly independent State and the other State party when:
 - a. they expressly so agree; or
 - b. by reason of their conduct they are to be considered as having agreed.
2. A treaty considered as being in force under paragraph 1 applies in the relations between the newly independent State and the other State party from the date of the succession of States, unless a different intention appears from their agreement or is otherwise established.

⁵⁴ Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 2 *Haw. J.L. & Pol.* 317, 325 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol317_\(Lenzerini\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol317_(Lenzerini).pdf)).

⁵⁵ *Second report on succession in respect of treaties, by Sir Humphrey Waldock, Special Rapporteur*, Document A/CN.4/214 and ADD.1* AND 2, p. 48 (1969).

Since successor States, which include Member States of the United Nations, were unaware of the existence of the Hawaiian Kingdom at the time of their independence, and of its treaties with their predecessor States, Article 24(1)(a) and (b) could not arise. Therefore, under customary international law, in the absence of an express agreement or an agreement by conduct, the Hawaiian Kingdom will presume that its treaties continue in force, for two years from the receipt of this communication, with the successor States. Here follows the list of successor States to Hawaiian Kingdom treaties:

- *1875 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the Austro-Hungarian Empire*—Austria and Hungary.
- *1862 Treaty of Amity, Commerce and Navigation between the Hawaiian Kingdom and Belgium*—Burundi, Congo, Democratic Republic of the Congo, and Rwanda.
- *1846 Treaty of Amity and Peace between the Hawaiian Kingdom and the Kingdom of Denmark*—Iceland.
- *1857 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and France*—Algeria, Benin, Burkina Faso, Cambodia, Cameroon, Central African Republic, Chad, Comoros, Côte d'Ivoire, Djibouti, Gabon, Guinea, Lao People's Democratic Republic, Lebanon, Madagascar, Mali, Mauritania, Morocco, Niger, Senegal, Syrian Arab Republic, Togo, Tunisia, Vanuatu, and Viet Nam.
- *1851 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and Great Britain*—Afghanistan, Antigua and Barbuda, Australia, The Bahamas, Bahrain, Bangladesh, Barbados, Belize, Bhutan, Botswana, Brunei Darussalam, Cameroon, Canada, Cyprus, Egypt, Eswatini, Fiji, Gambia, Ghana, Grenada, Guyana, India, Iraq, Ireland, Israel, Jamaica, Jordan, Kenya, Kiribati, Kuwait, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Myanmar, Namibia, Nauru, Nepal, New Zealand, Nigeria, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, South Sudan, Sri Lanka, Sudan, Tonga, Trinidad and Tobago, Tuvalu, Uganda, United Arab Emirates, United Republic of Tanzania, Vanuatu, Yemen, Zambia, and Zimbabwe.
- *1863 Treaty of Amity, Commerce and Navigation between the Hawaiian Kingdom and Italy*—Libya and Somalia.
- *1871 Treaty of Amity and Commerce between the Hawaiian Kingdom and Japan*—Democratic People's Republic of Korea and the Republic of Korea.

- *1862 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the Netherlands*—Indonesia and Suriname.
- *1882 Treaty between the Hawaiian Kingdom and Portugal*—Angola, Cabo Verde, Guinea-Bissau, Mozambique, Sao Tome and Principe, and Timor-Leste.
- *1869 Treaty of Commerce and Navigation between the Hawaiian Kingdom and Russia*—Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Mongolia, Montenegro, North Macedonia, Republic of Moldova, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.
- *1863 Treaty of Peace and Friendship between the Hawaiian Kingdom and Spain*—Cuba and Equatorial Guinea.
- *1852 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the Kingdoms of Sweden and Norway*—Norway and Sweden.
- *1849 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the United States*—Marshall Islands, Micronesia, Palau, Philippines.

The Hawaiian Kingdom has treaties with 154 Member States of the United Nations, of which 14 treaties are with the original States, and 140 treaties are with the successor States.

Effective Member of the Universal Postal Union since 1 January 1882

These are the official documents concerning the path to which the Hawaiian Kingdom used to become an effective Member State of the UPU on 1 January 1882, and, as such, the Hawaiian Kingdom remains an effective Member State of the UPU today, despite the American occupation that began on 17 January 1893. In this regard, the 1878 Paris Congress decreed that any State could accede to the UPU by a unilateral declaration, without consulting the existing Member States beforehand, as laid down in the 1874 UPU Convention.

On 30 June 1881, the Honorable William Martin, who was serving, at the time, as the Hawaiian Kingdom’s Chargés d’Affaires and Consul General in Paris, was commissioned as the Hawaiian Kingdom’s Plenipotentiary “with full power and authority to meet and confer with any person or persons duly authorized as the Government of the Swiss Confederation in Berne or elsewhere to ask for the admission of the Kingdom of Hawaii into the said General or Universal Postal Union and to sign and execute any and all

documents in the name of the Kingdom of Hawaii which may be necessary to enable this Kingdom to join in the said Postal Union Convention or Conventions.”⁵⁶

In a letter to the Hawaiian Kingdom’s Minister of Foreign Affairs, dated 13 October 1881, the Honorable William Martin provided a copy of the Hawaiian Kingdom’s Declaration in French that was submitted to the International Bureau of the UPU.⁵⁷ The Declaration, having been translated into English, stated:

The undersigned, by virtue of the full powers given to him by the Hawaiian Government, has the honor to declare to the Government of the Helvetian Confederation that he adheres in the name of the Government just mentioned to the Convention signed in Paris on June 1st, 1878, by joining the Universal Postal Union, as well as the Regulations of carrying out the Said Convention, and this according to the following observations:

1. the entry of the Hawaiian Government into the Universal Postal Union will take place on January 1st, 1882,
2. concerning the monetary equivalency mentioned in paragraph 4 of the Executive Regulations of the Convention of Paris, 1 Hawaiian cent equals 5 centimes;
3. as to exceptions concerning the weight stipulated in paragraph 26 of the same Regulations, ½ Hawaiian ounce is equivalent to 15 grams and 2 ounces, to 50 grams.

In a letter to the Hawaiian Kingdom’s Postmaster General, dated 20 September 1881, the Swiss Postal Administration stated, “having informed the International Bureau, that it will be necessary from the 1st of January 1882, to consider the Hawaiian Kingdom as an effective member of the Universal Postal Union.”⁵⁸

As an effective Member State, the Hawaiian Kingdom commissioned Eugene Borel, on 30 June 1884, a Swiss citizen, who would later lead the UPU, to be the Hawaiian Kingdom’s “Delegate and Commissioner to the Congress of the Universal Postal Union to be held at Lisbon.”⁵⁹ The Honorable Eugene Borel was the signatory for the Hawaiian Kingdom to the 1885 Lisbon UPU Convention.

⁵⁶ Commission of William Martin (June 30, 1881) (online at [https://hawaiiankingdom.org/pdf/Commission-William-Martin-UPU-\(1881\).pdf](https://hawaiiankingdom.org/pdf/Commission-William-Martin-UPU-(1881).pdf)).

⁵⁷ William Martin to Hawaiian Minister of Foreign Affairs (Oct. 31, 1881) (online at [https://hawaiiankingdom.org/pdf/HK-Declaration-to-UPU-\(1881\).pdf](https://hawaiiankingdom.org/pdf/HK-Declaration-to-UPU-(1881).pdf)).

⁵⁸ Swiss Postal Administration to Hawaiian Postmaster General (Sep. 20, 1881) (online at [https://hawaiiankingdom.org/pdf/HK-Effective-Member-UPU-\(Jan.1.1882\).pdf](https://hawaiiankingdom.org/pdf/HK-Effective-Member-UPU-(Jan.1.1882).pdf)).

⁵⁹ Commission of Eugene Borel (June 30, 1884) (online at [https://hawaiiankingdom.org/pdf/Commissions-Eugene-Borel-UPU-\(1884\).pdf](https://hawaiiankingdom.org/pdf/Commissions-Eugene-Borel-UPU-(1884).pdf)).

Prior to the Congress of the UPU being convened at Vienna in 1891, the Honorable Eugene Borel was again commissioned by the Hawaiian Kingdom, on 20 March 1891, as its “Delegate and Commissioner to the Congress of the Universal Postal Union to be held in the City of Vienna.”⁶⁰ The Honorable Eugene Borel was the signatory for the Hawaiian Kingdom to the 1891 Vienna UPU Convention.

The Hawaiian Kingdom was prevented from participating as an effective Member State of the UPU Congresses, Executive Council, and the Consultative Council for Postal Studies because of the unlawful overthrow of its government on 17 January 1893, and the prolonged nature of the American occupation that ensued. Notwithstanding, the Hawaiian Kingdom remains an effective Member State of the UPU to date, being a specialized agency of the United Nations.

Larsen v. Hawaiian Kingdom at the Permanent Court of Arbitration

In the *Larsen v. Hawaiian Kingdom* at the Permanent Court (1999-2001), I served as Lead Agent for the Council of Regency representing the Hawaiian Kingdom. As such, I was in communication with the Permanent Court’s Principal Legal Counsel, Ms. Bette Shifman, whose responsibility was to determine whether the Hawaiian Kingdom exists, as a State in continuity, since the nineteenth century. This determination was necessary for establishing the Permanent Court’s institutional jurisdiction in accordance with Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes. Article 47 provides, “[t]he jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal.” State continuity of the Hawaiian Kingdom is determined by the rules of customary international law.

By March of 2000, the Secretariat determined that the Hawaiian Kingdom had met the standing of a State and was thus, recognized as a non-Contracting Power. This fact is noted in Annex 2—*Cases Conducted under the Auspices of the PCA or with the Cooperation of the International Bureau* in the Permanent Court’s Annual Reports from 2000 to 2011.⁶¹ The Permanent Court also recognized the Council of Regency as the Hawaiian Kingdom’s government. It identifies *Larsen v. Hawaiian Kingdom* as the thirty-third case that came under the auspices of the Permanent Court. Since 2012, the Annual Reports no longer include Annex 2 because the Permanent Court’s website provides the list of cases, which

⁶⁰ Commission of Eugene Borel (March 20, 1891) (online at [https://hawaiiankingdom.org/pdf/Commissions-Eugene-Borel-UPU-\(1891\)pdf.pdf](https://hawaiiankingdom.org/pdf/Commissions-Eugene-Borel-UPU-(1891)pdf.pdf)).

⁶¹ Permanent Court of Arbitration, Annex 2 from the 2011 Annual Report (online at <https://docs.pca-cpa.org/2015/12/PCA-annual-report-2011.pdf>).

includes *Larsen v. Hawaiian Kingdom*, Case no. 1999-01.⁶² On its website, the Permanent Court described the dispute as:

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 (emphasis added).⁶³

Before the arbitral tribunal was formed on 9 June 2000, Mr. Tjaco T. van den Hout, Secretary General of the Permanent Court, spoke with me, as the Lead Agent for the Hawaiian Kingdom. During our telephone conversation in February of 2000, the Secretary General recommended that the Hawaiian Government provide an invitation to the United States to join in the arbitration. The Hawaiian Government agreed with this recommendation, which resulted in a conference call meeting on 3 March 2000, in Washington, D.C., between myself, Larsen’s counsel, Ms. Ninia Parks, and John Crook from the U.S. Department of State.

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 Council of Regency to the Permanent Court’s Secretariat for a record that the United States was invited to join in the arbitral proceedings.⁶⁴ The note was signed by me as “Acting Minister of Interior and Agent for the Hawaiian Kingdom.” Under international law, this note served as an offering instrument that contained the following text:

[T]he reason for our visit was the offer by the [...] Hawaiian Kingdom, by consent of the Claimant [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 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

⁶² Permanent Court of Arbitration website, Case Repository, PCA Case no. 1999-01, *Larsen v. Hawaiian Kingdom* (online at <https://pca-cpa.org/en/cases/35/>).

⁶³ *Id.*

⁶⁴ Letter confirming telephone conversation with U.S. State Department relating to arbitral proceedings at the Permanent Court of Arbitration, 3 Mar. 2000, (online at [http://hawaiiankingdom.org/pdf/State_Dpt_Ltr_\(3.3.2000\).pdf](http://hawaiiankingdom.org/pdf/State_Dpt_Ltr_(3.3.2000).pdf)).

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.⁶⁵

Thereafter, the Permanent Court's Deputy Secretary General, Phyllis Hamilton, informed me that the United States, through its embassy in The Hague, notified the Permanent Court, by note verbale, that the United States declined the invitation to join the arbitral proceedings. Instead, the United States requested permission from the Hawaiian government to have access to the pleadings and records of the case. The Hawaiian government consented to this request. The Permanent Court, represented by the Deputy Secretary General, served as an intermediary to secure an agreement between the Hawaiian Kingdom and the United States. This executive agreement, by exchange of notes, is known as the 2000 Sai-Clinton agreement.

The United States' request to have access to the arbitral records, in lieu of the invitation to join in the arbitration, and the Hawaiian government's consent to that request, constitutes an international agreement by exchange of notes. According to Assche, "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."⁶⁶ Together, the exchange of notes on this subject matter, between the Hawaiian Kingdom, the Permanent Court, and the United States of America, constitutes a multilateral agreement of the *de facto* recognition of the restored Hawaiian Government.

According to Wilmanns, "[I]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."⁶⁷ And 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."⁶⁸

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

⁶⁵ *Id.*

⁶⁶ Cendric van Assche, "1969 Vienna Convention," *The Vienna Conventions on the Law of Treaties, A Commentary*, Vol. I, Corten & Klein, eds., vol. 1 261 (2011).

⁶⁷ Johst Wilmanns, "Note," 9 *Encyclopedia of Public International Law* 287 (1986).

⁶⁸ *Id.*

acceptance of this offer, also constitutes as an international agreement by an exchange of notes between the Permanent Court and the Hawaiian Kingdom. This executive agreement, by exchange of notes is known as the 2000 Sai-van den Hout agreement. According to Johst Wilmanns, “the 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.”⁶⁹

Under civilian law, the juridical fact of the Hawaiian Kingdom’s existence as a State, produced the legal effect for the Secretariat, under the auspices of the Permanent Court, by virtue of Article 47, to perform the juridical act of accepting the dispute. According to Professor Lenzerini, this juridical act “may be compared—mutatis mutandis—to a juridical act of a domestic judge recognizing a juridical fact (e.g. filiation) which is productive of certain legal effects arising from it according to law.”⁷⁰ Since State members of the Permanent Court’s Administrative Council furnishes all Contracting States with an Annual Report, this represents “State practice [that] covers an act or statement by...State[s] from which views can be inferred about international law,” and it “can also include omissions and silence on the part of States.”⁷¹

Since the United States, and all Contracting States, did not object to the Secretariat’s juridical act of acknowledging the Hawaiian Kingdom’s existence as a non-Contracting State, this reflects the practice of States—*opinio juris*. Furthermore, the Secretariat and the Administrative Council are treaty-based components of an intergovernmental organization comprised of representatives of States, and, therefore, “their practice is best regarded as the practice of States.”⁷² According to Professor Lenzerini, “it may be convincingly held that the PCA contracting parties actually agreed with the recognition of the juridical fact of the Hawaiian Kingdom as a State carried out by the International Bureau.”⁷³

Of the 193 Member States of the United Nations, 124 of these States are also Member States of the Permanent Court, to wit:

Albania, Argentina, Armenia, Australia, Austria, The Bahamas, Bahrain, Bangladesh, Belarus, Belgium, Belize, Benin, Brazil, Bulgaria, Burkina Faso, Cambodia, Cameroon, Canada, Chile, Colombia, the Democratic Republic of the Congo, Costa Rica, Croatia, Cuba, Cyprus, Czechia, the Democratic Republic of

⁶⁹ J.L. Weinstein, “Exchange of Notes,” 20 *British Yearbook of International Law* 205, 207 (1952).

⁷⁰ Federico Lenzerini, “Civil Law on Juridical Fact of the Hawaiian State and the Consequential Juridical Act by the Permanent Court of Arbitration,” 3 (Dec. 5, 2021) (online at https://hawaiiankingdom.org/pdf/Lenzerini_Juridical_Fact_of_HK_and_Juridical_Act_of_PCA.pdf).

⁷¹ Michael Akehurst, “Custom as a Source of International Law,” 47(1) *British Yearbook of International Law*, 10 (1975).

⁷² *Id.*, 11.

⁷³ Lenzerini, 4.

São Tomé and Príncipe, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Eswatini, Ethiopia, Fiji, Finland, France, Georgia, Germany, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Libya, Lithuania, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Malta, Mauritius, Mexico, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, North Macedonia, Norway, Pakistan, Panama, Paraguay, the People's Republic of China, Peru, Philippines, the Plurinational State of Bolivia, Poland, Portugal, Qatar, Romania, Republic of Korea, Russian Federation, Rwanda, Saudi Arabia, Senegal, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Thailand, Timor-Leste, Togo, Türkiye, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Vanuatu, Venezuela, Viet Nam, Zambia, and Zimbabwe. And Palestine, who is an Observer State, is also a Member State of the Permanent Court.

Hence, by virtue of their membership, as Contracting States of the Permanent Court, these States already recognized the Hawaiian Kingdom as a State and the Council of Regency as its Government.

International Seabed Authority Recognizes the Hawaiian Kingdom

Since 30 June 2025, I have been in communication with the Secretariat of the International Seabed Authority (“ISA”) regarding the continued existence of the Hawaiian Kingdom, as a State under international law. The purpose of this communication was to provide notice to the Secretariat of the Hawaiian Kingdom’s intent to accede to the 1982 United Nations Convention on the Law of the Sea. In a follow up letter to Secretary-General Letitia Carvalho, dated 2 September 2025, I stated:

On behalf of the Government of the Hawaiian Kingdom, I have the honor to refer to my letter to you, dated 30 June 2025, of our intent to accede to the 1982 United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (with annex), and my letter to Ms. Mariana Durney, Director-Legal Counsel of the Office of Legal Affairs, dated 28 July 2025, who acknowledged receipt of my letter on 30 July 2025 by electronic mail.

Pending the Government of the Hawaiian Kingdom accession to these international agreements and, thereby, becomes a Member State of the International Seabed Authority, we request observer status as a State in accordance with Article 305(1)(a) of the United Nations Convention on the Law of the Sea, and Rule 82(1)(a) of the Rules of Procedure of the Assembly of the International

Seabed Authority. If there are any questions regarding this request please do not hesitate to contact me.

In her official letter to me, dated 3 March 2026, in my official capacity as the Hawaiian Kingdom’s Minister of Foreign Affairs *ad interim*, Secretary-General Carvalho stated, “I wish to thank you for this opportunity to clarify the matter. In this regard, I respectfully draw your attention to the Decision of the Assembly relating to the credentials of representatives at the thirtieth session of the International Seabed Authority (ISBA/30/A/12), by which the Assembly approved the report of the Credentials Committee (ISBA/30/A/10). I further refer you to the official list of participants at the thirtieth session of the Assembly (ISBA/30/A/INF/14).”⁷⁴

The acknowledgment of the Hawaiian Kingdom, and myself as its Minister of Foreign Affairs *ad interim*, was inferred because of the 3 March 2026 *formal letter* from the Secretary-General of the Authority to me as Minister of Foreign Affairs *ad interim*. According to the *United Nations Correspondence Manual* (2000), “Letters to heads of State, heads of Government and ministers for foreign affairs are normally signed by the Secretary-General.”⁷⁵ Furthermore, the *Correspondence Manual* states to use “formal letters for communications to heads of State or heads of Government, ministers for foreign affairs, permanent representatives and observers, on such subjects as: (a) Official statements of policy by the Secretary-General.”⁷⁶ Secretary-General Carvalho’s letter explained the rules and procedure of the Authority to become an accredited Observer State.

While this *Correspondence Manual* applies to the drafting, processing and dispatch of official United Nations communications, and not to official communications of the Authority, it does reflect the practice of official communications by an intergovernmental organization under international law. As the Hawaiian Kingdom is a member State of the Universal Postal Union (“UPU”) since 1 January 1882, being a specialized agency of the United Nations, since 1948, it is guided by the *United Nations Correspondence Manual*.

On 5 March 2026, I sent a formal letter to Secretary-General Carvalho that stated:

This letter acknowledges your email, of 3 March 2026, which enclosed your letter of the same date, and the email from Ms. Mariana Durney, Legal Counsel and Director of the Office of Legal Counsel, of 3 March 2026, which enclosed her

⁷⁴ Secretary-General of the International Seabed Authority letter to Minister of Foreign Affairs *ad interim* (March 3, 2026) (online at [https://hawaiiankingdom.org/pdf/ISA_Letter_to_Hon_David_Keanu_Sai_Minister_of_Foreign_Affairs_ad_interim_\(3.3.26\).pdf](https://hawaiiankingdom.org/pdf/ISA_Letter_to_Hon_David_Keanu_Sai_Minister_of_Foreign_Affairs_ad_interim_(3.3.26).pdf)).

⁷⁵ United Nations, *Correspondence Manual: A guide to the drafting, processing and dispatch of official United Nations communications* 10 (2000).

⁷⁶ *Id.*, 17.

letter of the same date. I wish to thank you for Your Excellency's recognition of the Hawaiian Kingdom as a State, under customary international law, since the nineteenth century, despite the prolonged nature of the belligerent occupation, by the United States of America, that began on 17 January 1893.

The International Seabed Authority's recognition is consistent with the recognitions of the Hawaiian Kingdom by the Permanent Court of Arbitration during arbitral proceedings in *Larsen v. Hawaiian Kingdom* from 1999 to 2001, by the United States' recognition of the Hawaiian Kingdom under the 2000 Saito-Clinton agreement, a treaty under international law, and by the 127 Contracting States to the 1907 Hague Convention, I, for the Pacific Settlement of International Disputes that established the Permanent Court, under *opinio juris*.

Of the 169 Member States of the International Seabed Authority, 111 of these States are also Member States of the Permanent Court, to wit: Albania, Argentina, Armenia, Australia, Austria, Bahamas, Bahrain, Bangladesh, Belarus, Belgium, Belize, Benin, Bolivia (Plurinational State of), Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Congo, Costa Rica, Croatia, Cuba, Cyprus, Czechia, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, Estonia, Eswatini, Fiji, Finland, France, Georgia, Germany, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Italy, Japan, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Latvia, Lebanon, Lithuania, Luxembourg, Madagascar, Malaysia, Malta, Mauritius, Mexico, Mongolia, Montenegro, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, North Macedonia, Norway, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Rwanda, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, State of Palestine, Sudan, Suriname, Sweden, Switzerland, Thailand, Timor-Leste, Togo, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uruguay, Vanuatu, Viet Nam, Zambia, and Zimbabwe. And there are 15 Observer States that are also Member States of the Permanent Court of Arbitration, to wit: Cambodia, Colombia, El Salvador, Eritrea, Ethiopia, Iran (Islamic Republic of), Israel, Kyrgyzstan, Libya, Liechtenstein, Peru, Turkey, United Arab Emirates, United States of America, and Venezuela.

My communication of 28 July 2025 to Ms. Durney, provided her the factual and legal basis of the Hawaiian Kingdom's continued existence as a State, under customary international law, and the restoration of the government by a Council of Regency under Hawaiian constitutional law and the legal doctrine of necessity, so that it can pursue Observer State status under rule 82 of the Rules of Procedure of the Assembly of the International Seabed Authority.

I wish to thank you for your clarification of the rules and practices of the International Seabed Authority regarding observer status. The Hawaiian Kingdom intends to pursue its observer status accordingly so that its Special Envoy can be accredited to participate in meetings of the Assembly or the Council under Rule 82 of the Rules of Procedure of the Assembly.⁷⁷

*Support for the Council of Regency's Plan for the State of Hawai'i
To Comply with the Law of Occupation*

The primary function of the occupant, once it is in effective control of the territory of the Occupied State, is to administer its laws. Here, under the law of occupation, there is a difference between the Occupying State, which, as a foreign State, is outside of the occupied territory, and the occupant of the Occupying State, which, as a result of occupation, is within the occupied territory. “The occupant,” according to Professor Sassòli, “may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation.”⁷⁸ Professor Sassòli further explains that the “expression ‘laws in force in the country’ in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders.”⁷⁹

The State of Hawai‘i’s authority is by virtue of American laws, which constitutes war crimes. Consequently, because of the Hawaiian Kingdom’s continuity as a State and since it is vested with sovereignty over the Hawaiian Islands, the authority, claimed by the State of Hawai‘i, is invalid because it does not legally exist. What remains valid, however, is the authority of the State of Hawai‘i Department of Defense, which is its Army and Air National Guard. As members of the United States Armed Forces, situated in an occupied territory, the authority of both branches of the military continues. Army doctrine does not allow civilians to establish a military government. The establishment of a military government is the function of the U.S. Army. U.S. Department of Defense Directive 5100.01, states the Army “[occupies] territories abroad and provide for the initial establishment of a military government pending transfer of this responsibility to other authority.”⁸⁰

⁷⁷ Minister of Foreign Affairs *ad interim* letter to Secretary-General of the International Seabed Authority (March 5, 2026) (online at [https://hawaiiankingdom.org/pdf/HK_Ltr_to_Sec_General_ISA_\(3.5.26\).pdf](https://hawaiiankingdom.org/pdf/HK_Ltr_to_Sec_General_ISA_(3.5.26).pdf)).

⁷⁸ Marco Sassòli, “Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century,” *International Humanitarian Law Research Initiative* 5 (2004) (online at <https://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf>).

⁷⁹ *Id.*, 6.

⁸⁰ United States, *Department of Defense Directive Number 5100.01, enclosure 6—Functions of the Military Departments*, 35 (2010).

Since the State of Hawai‘i is in effective control of 10,931 square miles of the territory of the Hawaiian Kingdom, and because the U.S. Indo-Pacific Combatant Command is only in effective control of less than 500 square miles, the State of Hawai‘i Army National Guard is vested with the authority to transform the State of Hawai‘i into a Military Government of Hawai‘i pursuant to Articles 42 and 43 of the 1907 Hague Regulations. Enforcement of the laws of an occupied State requires the occupant to be in effective control of territory so that the laws can be enforced. Hence, the Council of Regency’s objective is to compel the transformation of the State of Hawai‘i into a Military Government of Hawai‘i.

In 2023, the Council of Regency published its *Operational Plan for Transitioning the State of Hawai‘i into a Military Government*.⁸¹ The *Operational Plan*, with its essential and implied tasks, is designed to restore the *status quo ante* of the Hawaiian Kingdom as it existed prior to the American invasion on 16 January 1893—its territory, political institutions, population and laws. That same year, the Council of Regency also published its *Operational Plan for Transitioning the Military Government into the Hawaiian Kingdom* when the occupation comes to an end.⁸²

In a letter dated 25 February 2018, United Nations Independent Expert, Dr. Alfred deZayas, sent a communication from Geneva to Judge Gary W.B. Chang, Judge Jeannette H. Castagnetti, and members of the judiciary of the State of Hawai‘i. 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).⁸³

Furthermore, in 2019, the U.S. National Lawyers Guild (“NLG”) adopted a resolution calling upon the United States to immediately comply with international humanitarian law regarding its long and illegal occupation of the Hawaiian Islands. Among its positions statement, the “NLG supports the Hawaiian Council of Regency, who represented the

⁸¹ “Operational Plan for Transitioning the State of Hawai‘i into a Military Government,” *5 Haw. J.L. & Pol.* 152 (2023) (online at https://hawaiiankingdom.org/pdf/HK_Operational_Plan_of_Transition.pdf).

⁸² “Operational Plan for Transitioning the Military Government into the Hawaiian Kingdom Government,” *5 Haw. J.L. & Pol.* 269 (2023) (online at https://hawaiiankingdom.org/pdf/Op_Plan_Trans_from_MG_to_HKG.pdf).

⁸³ Letter of Dr. Alfred deZayas to members of the State of Hawai‘i Judiciary (25 Feb. 2018) (online at https://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf).

Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”⁸⁴

In a letter to Governor David Ige, dated 10 November 2020, the NLG called upon the governor to begin complying with international humanitarian law by administering the laws of the occupied State. The NLG letter concluded:

As an organization committed to the mission that human rights and the rights of ecosystems are more sacred than property interests, the NLG is deeply concerned that international humanitarian law continues to be flagrantly violated with apparent impunity by the State of Hawai‘i and its County governments. This has led to the commission of war crimes and human rights violations of a colossal scale throughout the Hawaiian Islands. International criminal law recognizes that the civilian inhabitants of the Hawaiian Islands are “protected persons” who are afforded protection under international humanitarian law and their rights are vested in international treaties. There are no statutes of limitation for war crimes, as you must be aware. We urge you, Governor Ige, to proclaim the transformation of the State of Hawai‘i and its Counties into an occupying government pursuant to the Council of Regency’s proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom. This would include carrying into effect the Council of Regency’s proclamation of October 10, 2014 that bring the laws of the Hawaiian Kingdom in the nineteenth century up to date. We further urge you and other officials of the State of Hawai‘i and its Counties to familiarize yourselves with the contents of the recent eBook published by the [Royal Commission of Inquiry] and its reports that comprehensively explains the current situation of the Hawaiian Islands and the impact that international humanitarian law and human rights law have on the State of Hawai‘i and its inhabitants.

In addition, on 7 February 2021, the International Association of Democratic Lawyers (“IADL”), a non-governmental organization (“NGO”) of human rights lawyers, which has special consultative status with the United Nations Economic and Social Council (“ECOSOC”), and which is accredited to participate in the Human Rights Council’s sessions as Observers, passed a resolution, calling upon the United States to immediately comply with international humanitarian law regarding its prolonged occupation of the Hawaiian Islands—the Hawaiian Kingdom. In its resolution, the IADL also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent

⁸⁴ National Lawyers Guild, *NLG Calls Upon US to Immediately Comply with International Humanitarian Law in its Illegal Occupation of the Hawaiian Islands* (13 January 2020) (online at <https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/>).

Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”

Together with the IADL, the American Association of Jurists—Asociación Americana de Juristas (“AAJ”), an NGO with consultative status to the United Nations ECOSOC and which is an accredited observer in the Human Rights Council’s sessions, sent a joint letter, dated 3 March 2022, to all Member States of the United Nations regarding the status of the Hawaiian Kingdom and its prolonged occupation by the United States. In its joint letter, the IADL and the AAJ also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”

On 22 March 2022, the undersigned delivered an oral statement, on behalf of the IADL and AAJ, to the United Nations Human Rights Council at its 49th session in Geneva. The oral statement read:

The International Association of Democratic Lawyers and the American Association of Jurists call the attention of the Council to human rights violations in the Hawaiian Islands. My name is Dr. David Keanu Sai, and I am the Minister of Foreign Affairs ad interim for the Hawaiian Kingdom. I also served as lead agent for the Hawaiian Kingdom at the Permanent Court of Arbitration from 1999-2001 where the Court acknowledged the continued existence of my country as a sovereign and independent State. The Hawaiian Kingdom was invaded by the United States on 16 January 1893, which began its century long occupation to serve its military interests. Currently, there are 118 military sites throughout the islands and the city of Honolulu serves as the headquarters for the Indo-Pacific Combatant Command. For the past century, the United States has and continues to commit the war crime of usurpation of sovereignty, under customary international law, by imposing its municipal laws over Hawaiian territory, which has denied Hawaiian subjects their right of internal self-determination by prohibiting them to freely access their own laws and administrative policies, which has led to the violations of their human rights, starting with the right to health, education and to choose their political leadership.⁸⁵

⁸⁵ International Association of Democratic Lawyers, *Video: Dr. Keanu Sai’s oral statement to the UN Human Rights Council on the U.S. occupation of the Hawaiian Kingdom* (22 March 2022) (online at <https://iadllaw.org/2022/03/video-dr-keanu-sais-oral-statement-to-the-un-human-rights-council-on-the-u-s-occupation-of-the-hawaiian-kingdom/>).

Significantly, none of the forty-seven Member States of the Human Rights Council, including the United States, protested, or objected to the oral statement of war crimes being committed in the Hawaiian Kingdom by the United States. Under international law, acquiescence “concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State would be called for.”⁸⁶ Silence conveys consent. Since they “did not do so [they] thereby must be held to have acquiesced. Qui tacet consentire videtur si loqui debuisset ac potuisset.”⁸⁷

The Writings of Scholars as a Source of International Law

Furthermore, the continuity of Hawaiian Statehood, under customary international law, was explained in two legal opinions, the first, by Professor Matthew Craven from the University of London, SOAS,⁸⁸ and the second, by Professor Federico Lenzerini from the University of Siena, Italy.⁸⁹ Moreover, war crimes are and have been committed by the imposition of American municipal laws over the territory of the Hawaiian Kingdom. This is also a matter of customary international law as explained by the legal opinion of Professor William Schabas from Middlesex University London.⁹⁰ Professor Schabas is a renowned expert in international criminal law, genocide, war crimes, human rights and crimes against humanity. Added to this are my publications, “Hawai‘i’s Sovereignty and Survival in the Age of Empire,”⁹¹ and *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*.⁹²

⁸⁶ Nuno Sérgio Marques Antunes, “Acquiescence”, in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* para. 2 (2006).

⁸⁷ See International Court of Justice, *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

⁸⁸ Matthew Craven, “Continuity of the Hawaiian Kingdom,” 1 *Haw. J.L. & Pol.* 508 (2004) (online at [https://hawaiiankingdom.org/pdf/1HawJLPol508_\(Craven\).pdf](https://hawaiiankingdom.org/pdf/1HawJLPol508_(Craven).pdf)).

⁸⁹ Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Haw. J.L. & Pol.* 317 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol317_\(Lenzerini\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol317_(Lenzerini).pdf)).

⁹⁰ William Schabas, “Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893,” 3 *Haw. J.L. & Pol.* 334 (2021) (online at [https://hawaiiankingdom.org/pdf/3HawJLPol334_\(Schabas\).pdf](https://hawaiiankingdom.org/pdf/3HawJLPol334_(Schabas).pdf)).

⁹¹ David Keanu Sai, “Hawai‘i’s Sovereignty and Survival in the Age of Empire,” in H.E. Houchang and David Motadel (eds.) *Unconquered States: Non-European Powers in the Imperial Age* (Oxford University Press 2024) (online at [https://www2.hawaii.edu/~anu/pdf/Hawaii_Sovereignty_and_Survival_\(Sai\).pdf](https://www2.hawaii.edu/~anu/pdf/Hawaii_Sovereignty_and_Survival_(Sai).pdf)).

⁹² David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)); see also Anita Budziszewska, book review “Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom edited by Dr. David Keanu Sai, Head of the Hawaiian Royal Commission of Inquiry,” 8(2) *Polish Journal of Political Science* 68-73 (2022) (online at <https://hawaiiankingdom.org/pdf/PJPS-Budziszewska.pdf>).

Professor Shaw explains that because “of the lack of supreme authorities and institutions in the international legal order, the responsibility is all the greater upon publicists of the various nations to inject an element of coherence and order into the subject as well as to question the direction and purposes of the rules.”⁹³ Thus, “academic writings are regarded as law-determining agencies, dealing with the verification of alleged rules.”⁹⁴ The U.S. Supreme Court explained this in the *Paquette Habana* case:

[R]esort must be had [...] to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.⁹⁵

As a source of international law, these legal opinions establish a shift in the burden of proof. The presumption of State continuity shifts the burden, as to what is to be proven and by whom, to the refuting State to rebut this presumption. “If one were to speak about a presumption of continuity,” explains Professor Craven, “one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains.”⁹⁶

Evidence of a valid demonstration of legal title or sovereignty by the United States would be an international treaty, notably a peace treaty, whereby the Hawaiian Kingdom would have ceded its territory and sovereignty to the United States. Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*⁹⁷ and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.⁹⁸ Furthermore, there is no such treaty between the Hawaiian Kingdom and the United States. There only exists a congressional law, called a joint resolution of annexation, purporting to have annexed a foreign State in 1898. This is an American municipal law limited in its effect to the territory of the United States.

⁹³ Malcolm N. Shaw QC, *International Law*, 6th ed., 113 (2008).

⁹⁴ *Id.*, 71.

⁹⁵ *The Paquette Habana*, 175 U.S., 677, 700 (1900).

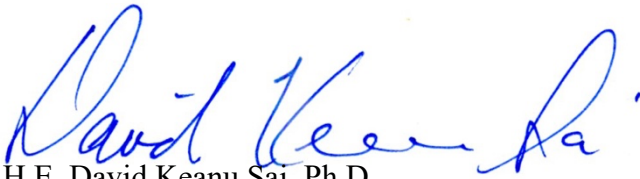
⁹⁶ Craven, 512.

⁹⁷ 9 Stat. 922 (1848).

⁹⁸ 30 Stat. 1754 (1898).

Conclusion

Notwithstanding the prolonged and unlawful occupation by the United States since 17 January 1893, the Hawaiian Kingdom continues to exist along with its sovereignty and rights, as a State, under international law. The United States has no sovereignty over the Hawaiian Islands, and, therefore, the State of Hawai‘i has no legal basis for its existence. Until the United States begins to comply with international humanitarian law and the law of occupation, it continues to commit internationally wrongful acts against the Hawaiian Kingdom and its national population and is subject to reparations in accordance with the *Articles of State Responsibility for Internationally Wrongful Acts* (2001).⁹⁹



H.E. David Keanu Sai, Ph.D.

Minister of Foreign Affairs *ad interim*

⁹⁹ GAOR 56th Sess., Suppl. 10, Doc. A/56/10 (2001).