EXECUTIVE SUMMARY TO INTERIOR MEMORANDUM DATED APRIL 26, 2024

This memorandum addresses the effects of an illegal occupation by the United States since January 17, 1893, the restoration of the Hawaiian Kingdom Government on February 28, 1997, the Permanent Court of Arbitration's recognition of the continuity of the Hawaiian Kingdom and the Council of Regency as its government on November 8, 1999, exposure of the continuity of Hawaiian Kingdom Statehood since 2001, transforming the State of Hawai'i into a Military Government, and the continuity of rights of Hawaiian subjects under Hawaiian Kingdom laws to land, healthcare, and fishing.

Circumstances have drastically changed since the government was overthrown by the United States. While the State of Hawai'i is the direct successor of the provisional government, it is not comprised of the insurgency of 1893. Through denationalization, that was instituted as a formal policy in 1906, the officials and employees of the State of Hawai'i have been led to believe that Hawai'i is the 50th State of American Union and that they are American citizens. The *Larsen v. Hawaiian Kingdom* international arbitration case at the Permanent Court of Arbitration ("PCA") (1999-2001) shattered this belief when the PCA recognized the continued existence of the Hawaiian Kingdom as a State and the Council of Regency as its government. The PCA was established in 1899 as an intergovernmental organization that provides a variety of dispute resolution services to the international community.

For the first time since 1893, the State of Hawai'i is in a legal position, under international law, to carry out its duty of establishing a governing entity recognized by international law so that the American occupation comes to an end. There is a two-stage process to bring compliance with the law of occupation in order to finally bring the occupation to an end. The first stage is an operational plan with essential and implied tasks to transform the State of Hawai'i into a military government, which is a requirement under the international law of occupation. The second stage is an operational plan with essential and implied tasks to transform the military government into the Hawaiian Kingdom government where the prolonged occupation will come to an end.

ILLEGAL OCCUPATION

International law distinguishes between a State and its legal order from its government. The legal order of the Hawaiian Kingdom, prior to the overthrow of its government on January 17, 1893, is framed by the 1864 Constitution, as amended, which provides for the "laws, regulations, court decisions, administrative guidelines, and even customs" to exist.

In his message to the Congress on December 18, 1893, President Cleveland concluded 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."[1] He also concluded that the "provisional government owes its existence to an armed invasion by the United States."[2] The overthrow of the government of the Hawaiian Kingdom

[1] United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawaii: 1894-95*, 456 (1895) (hereafter "Cleveland's Message") (online at https://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf).
[2] *Id*., 454.

by the United States on January 17, 1893, did not affect the sovereignty and legal order of the Hawaiian Kingdom as a State under international law. Instead, international law obligated the United States to establish a military government to provisionally administer the laws of the Hawaiian Kingdom until there is a peace treaty that brings the occupation to an end.

A military government would have been the civilian government of the Hawaiian Kingdom, headed by a Military Governor. All government officers and employees, except for the Queen and her Cabinet would continue in place. When Japan was occupied from 1945 to 1952, General Douglas MacArthur served as the Military Governor overseeing the Japanese civilian government. The function of a military government is to provisionally administer the laws of the occupied State until there is a treaty of peace where the occupation will come to an end. When the 1951 San Francisco Peace Treaty with Japan came into force on April 28, 1952, the United States occupation of Japan came to an end.

The United States did not establish a military government and it allowed their puppet governments, called the provisional government who later changed its name to the Republic of Hawai‘i on July 4, 1894, to impose its will on the population. After illegally annexing the Hawaiian Islands on July 7, 1898, the United unlawfully imposed its own laws over the territory of the Hawaiian Kingdom through its puppets the Territory of Hawai‘i from 1900 to 1959, and the State of Hawai‘i from 1959 to the present.

Under international law, all acts done by the United States are void and invalid because the United States does not have sovereignty over the Hawaiian Islands. Only the Hawaiian Kingdom has sovereignty over the Hawaiian Islands. This is affirmed by the *S.S. Lotus* case, which was a dispute between France and Turkey, where the Permanent Court of International Justice stated:

> Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention (treaty).[3]

The permissive rule under international law that allows one State to exercise authority over the territory of another State is Article 43 of the 1907 Hague Regulations, that mandates the occupant to establish a military government to provisionally administer the laws of the occupied State until there is a treaty of peace. For the past 131 years, there has been no permissive rule of international law that allows the United States to exercise any authority in the Hawaiian Kingdom. Instead, the United States committed the war crime of denationalization where the national consciousness of the Hawaiian Kingdom has been obliterated through classroom instruction and propaganda, which concealed the prolonged occupation.

[3] *The Case of the S.S. "Lotus," judgment, Publications of the Permanent Court of International Justice, Collection of Judgments*, Series A, No. 70, 18 (7 Sep. 1927). Generally on this issue see Arthur Lenhoff, "International Law and Rules on International Jurisdiction", 50 *Cornell Law Quarterly* 5 (1964).

RESTORING THE HAWAIIAN GOVERNMENT AS A REGENCY

When Queen Lili‘uokalani died on November 11, 1917, the office of the Monarch became vacant as there was no heir apparent. And while Prince Jonah Kūhiō Kalaniana‘ole was not an heir apparent confirmed by the Nobles in the Legislative Assembly in accordance with Article 22 of the 1864 Constitution, as amended, he was an heir presumptive of the *Kalākaua Dynasty*. When he died on January 7, 1922, the Kalākaua Dynasty, as royal stirpes, also came to an end. There were three separate royal stirpes in the nineteenth century, the *Kamehameha Dynasty* that ended with the death of King Kamehameha V on December 11, 1872, the *Lunalilo Dynasty* that ended with King Lunalilo on February 3, 1874, and the *Kalākaua Dynasty* that ended with the death of Prince Kūhiō.

According to Article 22 of the 1864 Constitution, in order to be a successor to the throne, “the successor shall be the person whom the Sovereign shall appoint with the consent of the Nobles, and publicly proclaim as such during the King’s life, [but] should there be no such appointment and proclamation, and the Throne should become vacant, then the Cabinet Council, immediately after the occurring of such vacancy, shall cause a meeting of the Legislative Assembly, who shall elect by ballot some native Alii of the Kingdom as Successor to the Throne; and the Successor so elected shall become a new *Stirps* for a Royal Family.” The last person the Nobles confirmed as an heir apparent was Lili‘uokalani on April 10, 1877. Filling the vacancy after the death of Prince Kūhiō would be the Cabinet Council that serves as a Council of Regency in accordance with Article 33 of the 1864 Constitution, as amended.

As the Hawaiian Kingdom has been subjected to a prolonged occupation by the United States for over a century, wherein the United States has not complied with the laws of occupation, awareness of the occupation by a few Hawaiian subjects prompted the restoration of the Hawaiian Kingdom Government under Hawaiian municipal laws. This was done to address the illegal nature of the occupation and to seek compliance with international law so that the American occupation will come to an end.

The legal basis for the restoration of the Hawaiian Kingdom government as a Regency was through the formation of two general partnerships under the 1880 *Act to Provide for the Registration of Co-partnership Firms*.[4] These two partnerships were the Hawaiian Kingdom Trust Company (“HKTC”) and the Perfect Title Company (“PTC”). The statute required all co-partnerships to be registered with the Bureau of Conveyances that continues to exist today. 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, despite the prolonged occupation of the Hawaiian Kingdom since January 17, 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.

In this extraordinary situation brought about by a prolonged occupation in violation of international laws, a legal registered co-partnership company under Hawaiian Kingdom law could assume the office of the Registrar of the Bureau of Conveyances in the absence of the same; then assume the

[4] *An Act to Provide for the Registration of Co-partnership Firms* (1880) (online at http://hawaiiankingdom.org/pdf/1880_Co-Partnership_Act.pdf).

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.[5] 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]."[6] In the Hawaiian situation it was in the absence of the Monarch.

On December 15, 1995, with the specific intent of assuming the office of the Minister of the Interior, the HKTC was established.[7] The partners intended that this registered partnership would serve as a provisional surrogate for the Hawaiian government by explicitly stating in its articles of agreement:

> The company will serve in the capacity of acting for and on behalf [of] the Hawaiian Kingdom government, hereinafter referred to as the absentee government, and also act as a repository for those who enter into the trust of the same. The company has adopted the Hawaiian constitution of 1864 and the laws lawfully established in the administration of the same.[8]

On March 1, 1996, the Trustees of the HKTC appointed myself as *acting* Regent, and on or about June 30, 1996, the HKTC was dissolved. On February 28, 1997, a proclamation by me announcing the restoration of the provisional Hawaiian government was printed in the Honolulu Sunday Advertiser on March 9, 1997.[9] 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.

On September 7, 1999, I commissioned 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.[10] On September 9, 1999, the *acting* Regent commissioned Gary Victor Dubin, Esquire, a Hawaiian denizen, as *acting* Attorney General.[11] Dubin resigned on July 21, 2013, and was replaced by Dexter Kaʻiama, Esquire, on August 11, 2013.[12] The *acting* Council of Regency was established on September 26, 1999, by resolution

---

[5] "Hawaiian Constitution" (1864) (online at http://hawaiiankingdom.org/pdf/1864_Constitution.pdf).
[6] Black's Law, 1282.
[7] Hawaiian Kingdom Trust Company articles of agreement (Dec. 15, 1995) (online at http://hawaiiankingdom.org/pdf/HKTC_(12.15.1995).pdf).
[8] *Id*.
[9] Proclamation by the Regent, Honolulu Advertiser newspaper (Feb. 28, 1997) (online at http://hawaiiankingdom.org/pdf/Proc_(2.28.1997).pdf).
[10] Hawaiian Minister of Foreign Affairs commission—Peter Umialiloa Sai (Sep. 5, 1999) (online at http://hawaiiankingdom.org/pdf/Umi_Sai_Min_Foreign_Affairs.pdf), and the Hawaiian Minister of Finance commission—Kauʻi P. Goodhue (Sep. 5, 1999) (online at http://hawaiiankingdom.org/pdf/Kaui_Min_of_Finance.pdf).
[11] Hawaiian Attorney General commission—Gary V. Dubin (Sep. 9, 1999) (online at http://hawaiiankingdom.org/pdf/Dubin_Att_General.pdf).
[12] Hawaiian Attorney General commission—Dexter Keʻeaumoku Kaʻiama (Aug. 11, 2013) (online at https://www.hawaiiankingdom.org/pdf/Kaiama_Att_General.pdf).

whereby I would resume the office of *acting* Minister of the Interior and serve as Chairman of the Council.[13]

Compliance with international humanitarian law and the law of occupation will bring the occupation to an end. Therefore, by all peaceful means, the objective for the Council of Regency is to compel the United States and the State of Hawai'i to comply with international humanitarian law and the law of occupation. To accomplish this, the Council of Regency established a three phase strategic plan.[14] Phase I—verification of the Hawaiian Kingdom as an independent State and a subject of international law. Phase II—exposure of Hawaiian Statehood within the framework of international law and the laws of occupation as it affects the realm of politics and economics at both the international and domestic levels. Phase III—restoration of the Hawaiian Kingdom as an independent State and a subject of international law. Phase III occurs when the American occupation comes to an end by a treaty of peace.

PERMANENT COURT OF ARBITRATION RECOGNIZES THE CONTINUED EXISTENCE OF THE HAWAIIAN KINGDOM AND THE COUNCIL OF REGENCY AS ITS GOVERNMENT

In *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration ("PCA") case no. 1999-01, Larsen, a Hawaiian subject, claimed that the government of the Hawaiian Kingdom, by its Council of Regency, should be liable for allowing the unlawful imposition of American laws. These laws denied him a fair trial and led to his incarceration. Prior to the establishment of an *ad hoc* tribunal, the PCA acknowledged the Hawaiian Kingdom as a non-Contracting State under Article 26 of the 1899 Hague Convention for the Pacific Settlement of International Disputes, and Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes ("1907 PCA Convention"). This was noted in the PCA Annual Reports of 2001 through 2011.[15]

After the PCA verified the continued existence of the Hawaiian State, it also simultaneously determined that the Hawaiian State was represented by its government—the Council of Regency. The PCA, in its case repository, identified the international dispute in *Larsen* as between a "State" and a "Private entity." Furthermore, the PCA described the dispute, between the Council of Regency and Larsen, as between the Government and a resident of Hawai'i.

> Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 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.[16]

[13] Privy Council Resolution establishing a Council of Regency (Sep. 26, 1999) (online at http://hawaiiankingdom.org/pdf/Council_of_Regency_Resolution.pdf).
[14] Strategic Plan of the Council of Regency (online at https://hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf).
[15] Permanent Court of Arbitration Annual Reports (online at https://pca-cpa.org/en/about/annual-reports/).
[16] Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at https://pca-cpa.org/en/cases/35/).

EXPOSURE OF THE CONTINUITY OF HAWAIIAN STATEHOOD

After returning from The Hague, implementation of phase II continued at the University of Hawai‘i at Mānoa when I entered the political science graduate program in 2001. In 2004, I received a master’s degree specializing in international relations and public law and in 2008, a Ph.D. on the subject of the continuity of Hawaiian Statehood while under an American prolonged belligerent occupation since January 17, 1893. This prompted other master’s theses, doctoral dissertations, peer review articles in law journals, and publications about the American occupation.

On February 25, 2018, as a result of the exposure, United Nations Independent Expert, Dr. Alfred deZayas, sent a communication from Geneva to State of Hawai‘i Judges Gary W.B. Chang and 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).[17]

The exposure also prompted the U.S. National Lawyers Guild (“NLG”) to adopt a resolution in 2019 calling upon the United States to immediately comply with international humanitarian law in its prolonged and illegal occupation of the Hawaiian Islands.[18] Among its positions statement, the “NLG supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”[19]

On February 7, 2021, the International Association of Democratic Lawyers (“IADL”), a non-governmental organization (“NGO”) of human rights lawyers that has special consultative status with the United Nations Economic and Social Council (“ECOSOC”) and is accredited to participate in the Human Rights Council’s sessions as Observers, passed a resolution calling upon the United States to immediately comply with international humanitarian law in its prolonged occupation of the Hawaiian Islands—the Hawaiian Kingdom.[20] In its resolution, the IADL also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international

---

[17] Letter of Dr. Alfred deZayas to Judge Gary W.B. Chang, Judge Jeannette H. Castagnetti, and Members of the Judiciary of the State of Hawai‘i (25 February 2018) (online at https://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf).

[18] Resolution of the National Lawyers Guild Against the Illegal Occupation of the Hawaiian Islands (2019) (online at https://www.nlg.org/wp-content/uploads/2019/08/Hawaiian-Subcommittee-Resolution-Final.pdf).

[19] 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/).

[20] International Association of Democratic Lawyers*, IADL Resolution on the US Occupation of the Hawaiian Kingdom* (7 February 2021) (online at https://iadllaw.org/2021/03/iadl-resolution-on-the-us-occupation-of-the-hawaiian-kingdom/).

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"), which is also an NGO with consultative status to the United Nations ECOSOC and is accredited as an observer in the Human Rights Council's sessions, sent a joint letter, dated March 3, 2022, to the Ambassadors of the Member States of the United Nations on the status of the Hawaiian Kingdom and its prolonged occupation by the United States.[21] On March 22, 2022, I delivered an oral statement, on behalf of the IADL and AAJ, to the United Nations Human Rights Council ("HRC") at its 49th session in Geneva where the Council was apprised of war crimes and human rights violations occurring in the Hawaiian Islands as a result of the American occupation.

TRANSFORMING THE STATE OF HAWAI‘I INTO A MILITARY GOVERNMENT

International law distinguishes between the occupying State and the Occupant because the determining factor that triggers the law of occupation and the establishment of a military government is the effective control of the territory of the occupied State. Effective control can only come about by the Occupant when it physically enforces its authority over the territory and its population. As a federated system, there are two occupants, that of the federal government and that of the State of Hawai‘i government. The latter is in effective control of 10,931 square miles of Hawaiian territory, while the former is in control of less than 500 square miles. As such, it is the State of Hawai‘i and not the federal government that has the duty to establish a Military Government. Of the leadership of the State of Hawai‘i, it is the Adjutant General, that heads the State of Hawai‘i Department of Defense, that has the duty and obligation to transform the State of Hawai‘i into a Military Government.

On April 17, 2023, I had a meeting with MG Kenneth Hara at the Grand Naniloa Hotel in Hilo. After providing him the information and resources of the American occupation and his duty to transform the State of Hawai‘i into a military government, I recommended that he task his Staff Judge Advocate, Lieutenant Colonel Lloyd Phelps, to do his due diligence on the continued existence of the Hawaiian Kingdom and whether this duty to transform exists under international law and Army regulations.[22] On July 27, 2023, I was apprised that MG Hara stated the Hawaiian Kingdom continues to exist despite the prolonged American occupation. I took this statement to mean that his due diligence was over, which prompted me to send him a letter dated August 1, 2023, acknowledging his affirmation.[23]

CONTINUITY OF RIGHTS OF HAWAIIAN SUBJECTS TO LAND, HEALTHCARE, AND FISHING

While the State of Hawai‘i has yet to transform itself into a Military Government and proclaim the provisional laws, as proclaimed by the Council of Regency, that brings Hawaiian Kingdom laws

---

[21] International Association of Democratic Lawyers, *IADL and AAJ deliver joint letter on Hawaiian Kingdom to UN ambassadors* (3 March 2022) (online at https://iadllaw.org/2022/03/iadl-and-aaj-deliver-joint-letter-on-hawaiian-kingdom-to-un-ambassadors/).

[22] The letters of communication I had with MG Hara can be accessed online at https://hawaiiankingdom.org/pdf/HK_Comm_with_MG_Hara.pdf).

[23] Council of Regency letter to Major General Kenneth Hara (August 1, 2023) (online at https://hawaiiankingdom.org/pdf/Regency_Ltr_to_SOH_TAG_(8.1.23).pdf).

up to date, Hawaiian Kingdom laws as they were prior to January 17, 1893, continue to exist. The greatest dilemma for aboriginal Hawaiians today is having a home and health care. Average cost of a home today is $820,000.00. And health care insurance for a family of 4 is at $1,500 a month. According to the Office of Hawaiian Affairs' *Native Hawaiian Health Fact Sheet 2017*, "Today, Native Hawaiians are perhaps the single racial group with the highest health risk in the State of Hawai'i. This risk stems from high economic and cultural stress, lifestyle and risk behaviors, and late or lack of access to health care."

Under Hawaiian Kingdom laws, aboriginal Hawaiian subjects are the recipients of free health care at Queen's Hospital and its outlets across the islands. In its budget, the Hawaiian Legislative Assembly would allocate money to the Queen's Hospital for the healthcare of aboriginal Hawaiian subjects. The United States stopped allocating moneys from its Territory of Hawai'i Legislature in 1909. Aboriginal Hawaiian subjects are also able to acquire up to 50 acres of public lands at $20.00 per acre under the 1850 Kuleana Act. With the current rate of construction costs, which includes building material and labor, an aboriginal Hawaiian subject can build 3-bedroom, 1-bath home for $100,000.00.

Hawaiian Kingdom laws also provide for fishing rights that extend out to the first reef or where there is no reef, out to 1 mile, exclusively for all Hawaiian subjects and lawfully resident aliens of the land divisions called ahupua'a or 'ili. From that point out to 12 nautical miles, all Hawaiian subjects and lawfully resident aliens have exclusive access to economic activity, such as mining underwater resources and fishing. Once the United Nations Convention on the Law of the Sea is acceded to by the Council of Regency, this exclusive access to economic activity will extend out to 200 miles called the Exclusive Economic Zone.

H.E. DAVID KEANU SAI, PH.D.
Acting Minister of the Interior
P.O. Box 4146
Hilo, HI 96720
Tel: +1 (808) 383-6100
E-mail: interior@hawaiiankingdom.org
Website: http://hawaiiankingdom.org

April 26, 2024

MEMORANDUM

This memorandum addresses the effects of an illegal occupation by the United States since January 17, 1893, the restoration of the Hawaiian Kingdom Government on February 28, 1997, transforming the State of Hawai'i into a Military Government, and the continuity of rights of Hawaiian subjects under Hawaiian Kingdom laws to land, healthcare, and fishing. According to Professor Benvenisti, the "public order and civil life are maintained through laws, regulations, court decisions, administrative guidelines, and even customs, all of which form an intricate and balanced system."[1] This description reflects the legal order of a State, where sovereignty is the authority exercised by the government of the State in maintaining the 'public order and civil live.' For the Hawaiian Kingdom, the legal order is framed by the 1864 Constitution, as amended, which provides for the 'laws, regulations, court decisions, administrative guidelines, and even customs' to exist.[2]

In his message to the Congress on December 18, 1893, President Cleveland concluded 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."[3] The overthrow of the government of the Hawaiian Kingdom did not affect the sovereignty and legal order of the Hawaiian Kingdom as a State. U.S. Army Field Manual 27-10 ("FM 27-10") regulates the actions taken by the Army during the military occupation of a foreign State.[4] Paragraph 358 states:

[1] Eyal Benvenisti, *The International Law of Occupation* 17 (1993).
[2] See David Keanu Sai, "Hawaiian Constitutional Governance," in David Keanu Sai's (ed.) *Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 57-94 (2020).
[3] United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawaii: 1894-95*, 456 (1895) (hereafter "Cleveland's Message") (online at https://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf).
[4] Department of the Army, Field Manual FM 27-10, *The Law of Land Warfare* (July 1956).
"United States Basic Field Manual F.M. 27-10 (Rules of Land Warfare), though not a source of law like a statute, prerogative order or decision of a court, is a very authoritative publication." *Trial of Sergeant-*

> Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress.

Hostilities continue though military occupation until there is a treaty of peace where the situation transforms from a state of war to a state of peace.[5] The 'authority or power to exercise some of the rights of sovereignty' is through a Military Government that provisionally administers the laws of the occupied State until there is a peace treaty that brings the occupation to an end. Paragraph 362 of FM 27-10 explains that "Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory." U.S. Army Field Manual 27-5 regulates military governments established in occupied territories.[6] Paragraph 1(b)(2) states:

> The term "military government" as used in this manual is limited to and defined as the supreme authority exercised by an armed occupying force over the lands, properties, and inhabitants of an enemy, allied, or domestic territory. Military government is exercised when an armed force has occupied such territory, whether by force or agreement, and has substituted its authority for that of the sovereign or previous government. The right of control passes to the occupying force limited only by the rules of international law and established customs of war.

A Military Government is the civilian government of the occupied State, headed by a Military Governor who is the Army theater commander. When Japan was occupied from 1945 to 1952, General Douglas MacArthur served as the Military Governor overseeing the Japanese civilian government. The function of a military government is to provisionally administer the laws of the occupied State until there is a treaty of peace where the occupation will come to an end. When the 1951 San Francisco Peace Treaty with Japan came into force on April 28, 1952, the United States occupation of Japan came to an end.

Because international law provides for the presumption of State continuity in the absence of its government, the burden of proof shifts as to what must be proven. According to Judge Crawford, there "is a presumption that the State continues to exist, with its rights and obligations […] despite a period in which there is no, or no effective, government,"[7] and belligerent occupation "does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."[8] Addressing the presumption of

---

Major Shigeru Ohashi and Six Others, 5 Law Reports of Trials of Law Criminals (United Nations War Crime Commission) 27 (1949).

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

[6] Department of the Army, Field Manual FM 27-5, *Civil Affairs Military Government* (October 1947).

[7] James Crawford, *The Creation of States in International Law* 34 (2nd ed. 2006).

[8] *Id*.

the German State's continued existence, despite the military overthrow of the German Reich, Professor Brownlie explains:

> Thus, after the defeat of Nazi Germany in the Second World War the four major Allied powers assumed supreme power in Germany. The legal competence of the German state did not, however, disappear. What occurred is akin to legal representation or agency of necessity. The German state continued to exist, and, indeed, the legal basis of the occupation depended on its continued existence. The very considerable derogation of sovereignty involved in the assumption of powers of government by foreign states, without the consent of Germany, did not constitute a transfer of sovereignty. A similar case, recognized by the customary law for a very long time, is that of the belligerent occupation of enemy territory in time of war. The important features of 'sovereignty' in such cases are the continued legal existence of a legal personality and the attribution of territory to that legal person and not to holders for the time being.[9]

"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."[10] Evidence of 'a valid demonstration of legal title, or sovereignty, on the part of the United States' would be an international treaty, particularly 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*[11] and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.[12] There is no treaty of peace between the Hawaiian Kingdom and the United States.

While Hawaiian State sovereignty is maintained during military occupation, international law restricts the exercise of power by a foreign State within the territory of the Hawaiian Kingdom. In the *Island of Palmas* arbitration, which was a dispute between the United States and the Netherlands, the arbitrator explained that "Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State."[13] And in the *S.S. Lotus* case, which was a dispute between France and Turkey, the Permanent Court of International Justice stated:

> Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not

[9] Ian Brownlie, *Principles of Public International Law* 109 (4th ed. 1990).
[10] Matthew Craven, "Continuity of the Hawaiian Kingdom as a State under International Law," in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 128 (2020) (online at https://hawaiiankingdom.org/royal-commission.shtml).
[11] 9 Stat. 922 (1848).
[12] 30 Stat. 1754 (1898).
[13] Island of Palmas Case (Netherlands v. United States) 2 R.I.A.A. 838 (1928).

> exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention (treaty).[14]

Since 1893, the United States has been exercising its authority over Hawaiian Kingdom territory without any 'permissive rule derived from international custom or from a convention (treaty).' The actions taken by the provisional government and the Republic of Hawai'i are unlawful because they were puppet governments established by the United States. President Cleveland sealed this fact when he informed the Congress on December 18, 1893, that the "provisional government owes its existence to an armed invasion by the United States."[15] This status did not change when the insurgents changed their name to the Republic of Hawai'i on July 4, 1894. According to Professor Marek:

> From the status of the puppet governments as organs of the occupying power the conclusion has been drawn that their acts should be subject to the limitation of the Hague Regulations. The suggestion, supported by writers as well as by decisions of municipal courts, seems at first both logical and convincing. For it is true that puppet governments are organs of the occupying power, and it is equally true that the occupying power is subject to the limitations of the Hague Regulations. But the direct actions of the occupant himself are included in the inherent legality of belligerent occupation, whilst the very creation of a puppet government or State is itself an illegal act, creating an illegal situation. Were the occupant to remain within the strict limits laid down by international law, he would never have recourse to the formation of puppet governments or States. It is therefore not to be assumed that puppet governments will conform to the Hague Regulations; this the occupant can do himself; for this he does not need a puppet. The very aim of the latter, as has already been seen, is to enable the occupant to act in *fraudem legis*, to commit violations of the international regime of occupation in a disguised and indirect form, in other words, to disregard the firmly established principle of the identity and continuity of the occupied State. Herein lies the original illegality of puppet creations.[16]

The permissive rule under international law that allows one State to exercise authority over the territory of another State is Article 43 of the 1907 Hague Regulations, that mandates the occupant to establish a military government to provisionally administer the laws of the occupied State until there is a treaty of peace. For the past 131 years, there has been no permissive rule of international law that allows the United States to exercise any authority in the Hawaiian Kingdom. Instead, the United States committed the war crime of denationalization where the national consciousness of the Hawaiian Kingdom has been obliterated through classroom instruction and propaganda, which concealed the prolonged occupation.

---

[14] *The Case of the S.S. "Lotus," judgment, Publications of the Permanent Court of International Justice, Collection of Judgments*, Series A, No. 70, 18 (7 Sep. 1927). Generally on this issue see Arthur Lenhoff, "International Law and Rules on International Jurisdiction", 50 *Cornell Law Quarterly* 5 (1964).
[15] Cleveland's Message, 454.
[16] Krystyna Marek, *Identity and Continuity of States in Public International Law* 115 (1968).

From January 17, 1893, to July 7, 1898, the United States has been unlawfully exercising its power, indirectly, over the territory of the Hawaiian State, through its puppet governments. From July 7, 1898, to the present, the United States has been directly exercising unlawful authority over the territory of the Hawaiian State. How does international law and the law of occupation see this unlawful exercise of authority? If the United States, to include the State of Hawai‘i, has no lawful authority to exercise its power in Hawaiian territory, then everything that derives from its unlawful authority is invalid in the eyes of international law. This comes from the rule of international law *ex injuria jus non oritur*, which is Latin for "law (or right) does not arise from injustice." This international rule's "coming of age" is traced to the latter part of the nineteenth century,[17] and was acknowledged by President Cleveland in his message to the Congress. President Cleveland stated:

> As I apprehend the situation, we are brought face to face with the following conditions:
>
> The lawful Government of Hawaii was overthrown without a drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives.
>
> But for the notorious predilections of the United States Minister for annexation, the Committee of Safety, which should be called the Committee of Annexation, would never have existed.
>
> But for the landing of the United States forces upon false pretexts respecting the danger to life and property the committee would never have exposed themselves to the pains and penalties of treason by undertaking the subversion of the Queen's Government.
>
> But for the presence of the United States forces in the immediate vicinity and in position to afford all needed protection and support the committee would not have proclaimed the provisional government from the steps of the Government building.
>
> And finally, but for the lawless occupation of Honolulu under false pretexts by the United States forces, and but for Minister Steven's recognition of the provisional government when the United States forces were its sole support and constituted its only military strength, the Queen and her Government would never have yielded to the provisional government, even for a time and for the sole purpose of submitting her case to the enlightened justice of the United States.
>
> Believing, therefore, that the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods, I shall not again submit the treaty of annexation to the Senate for its consideration, and in the instructions to Minister Willis, a copy

[17] See generally Christopher R. Rossi, *Equity and International Law: A Legal Realist Approach to International Decisionmaking* 43-45 (1993).

> of which accompanies this message, I have directed him to so inform the provisional government.[18]

From this international rule—*ex injuria jus non oritur*, when applied to an Occupied State, springs forth another rule of international law called *postliminium*, where all unlawful acts that an Occupying State may have been done in an occupied territory, are invalid and cannot be enforced when the occupation comes to an end. According to Professor Oppenheim, "[i]f the occupant has performed acts which are not legitimate acts [allowable under the law of occupation], postliminium makes their invalidity apparent."[19] Professor Marek explains:

> Thus, the territory of the occupied State remains exactly the same and no territorial changes, undertaken by the occupant, can have any validity. In other words, frontiers remain exactly as they were before the occupation. The same applies to the personal sphere of validity of the occupied State; in other words, occupation does not affect the nationality of the population, who continues to owe allegiance to the occupied State. There can hardly be a more serious breach of international law than forcing the occupant's nationality on citizens of the occupied State.[20]

Restoration of the Government of the Hawaiian Kingdom

Allegiance is the obligation of support and loyalty to one's country.[21] After becoming aware of the continued existence of the Hawaiian Kingdom as an occupied State and my newfound loyalty to my country, I was honorably discharged on August 1, 1994, as an Army Captain (03) from the 1st Battalion, 487th Field Artillery, Hawai'i Army National Guard. Since being discharged, I have been mindful of the Hawaiian statute on treason that informed me of my allegiance to the Hawaiian Kingdom. According to the penal statute:

1. Treason is hereby defined to be any plotting or attempt to dethrone or destroy the King, or the levying of war against the King's government, or the adhering to the enemies thereof, giving them aid and comfort, the same being done by a person owing allegiance to this kingdom.
2. Allegiance is the obedience and fidelity due to the kingdom from those under its protection.
3. An alien, whether his native country be at war or at peace with this kingdom, owes allegiance to this kingdom during his residence therein, and during such residence, is capable of committing treason against this kingdom.[22]

The gravity of the Hawaiian situation is 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.[23] As the Hawaiian Kingdom has been subjected to a prolonged

---

[18] Cleveland's Message, 455-456.
[19] L. Oppenheim, *International Law—A Treatise, vol. II, War and Neutrality* §283 (2nd ed. 1912).
[20] Marek, 83.
[21] David B. Guralnik (ed.), *Webster's New World Dictionary* 36 (2nd ed. 1986).
[22] Penal Code, Chapter VI—Treason 8 (1869).
[23] Choe Sang-Hun, *North Korea Calls Hawaii and U.S. Mainland Targets*, New York Times (March 26, 2013) (online at http://www.nytimes.com/2013/03/27/world/asia/north-korea-calls-hawaii-and-us-

occupation by the United States for the past 131 years, wherein the United States has not complied with the laws of occupation, awareness of the occupation by a few Hawaiian subjects prompted the restoration of the Hawaiian Kingdom Government under Hawaiian municipal laws. This was done to address the illegal nature of the occupation and to seek compliance with international law.

On December 10, 1995, Donald A. Lewis ("Lewis") and I, both being Hawaiian subjects, formed a general partnership in compliance with an *Act to Provide for the Registration of Co-partnership Firms* (1880).[24] This partnership was named the Perfect Title Company ("PTC") and functioned as a land title abstracting company.[25] 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 this statute. However, due to the failure of the United States to administer Hawaiian Kingdom law, there was no government, whether established as a Military Government or a restored Hawaiian Kingdom government *de jure*, to ensure the company's compliance to the co-partnership statute.

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."[26] 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, despite the prolonged occupation of the Hawaiian Kingdom since January 17, 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.

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 under the administration of 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—Minister of Foreign Relations, Minister of Finance and the Attorney

---

mainland-targets.html). 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.

[24] *An Act to Provide for the Registration of Co-partnership Firms* (1880) (online at http://hawaiiankingdom.org/pdf/1880_Co-Partnership_Act.pdf).

[25] Perfect Title Company's articles of agreement (Dec. 10, 1995) (online at http://hawaiiankingdom.org/pdf/PTC_(12.10.1995).pdf).

[26] Black's Law, 26.

General. Article 43 of the 1864 Hawaiian constitution, as amended, provides that, "[e]ach 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.[27] 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]."[28] In the Hawaiian situation it was in the absence of the monarch.

On December 15, 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").[29] The partners intended that this registered partnership would serve as a provisional surrogate for the Hawaiian government by explicitly stating in its articles of agreement:

> The company will serve in the capacity of acting for and on behalf [of] the Hawaiian Kingdom government, hereinafter referred to as the absentee government, and also act as a repository for those who enter into the trust of the same. The company has adopted the Hawaiian constitution of 1864 and the laws lawfully established in the administration of the same.[30]

Therefore, and in light of the aforementioned ascension process, 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. Article 33 of the 1864 Constitution, as amended, provides, "should a Sovereign decease […] and having made no last Will and Testament, the Cabinet Council […] shall be a Council of Regency." Queen Lili'uokalani's last will and testament could not be accepted into probate under Hawaiian law, since the government, which would include the probate courts, have not been restored since January 17, 1893.

Furthermore, the only heir to the throne after her death on November 11, 1917, was Prince Jonah Kūhiō Kalaniana'ole who died on January 7, 1922. According to Article 22 of the 1864 Constitution, in order to be a successor to the throne, "the successor shall be the person whom the Sovereign shall appoint with the consent of the Nobles, and publicly

---

[27] "Hawaiian Constitution" (1864) (online at http://hawaiiankingdom.org/pdf/1864_Constitution.pdf).
[28] Black's Law, 1282.
[29] Hawaiian Kingdom Trust Company articles of agreement (Dec. 15, 1995) (online at http://hawaiiankingdom.org/pdf/HKTC_(12.15.1995).pdf).
[30] *Id*.

proclaim as such during the King's life, [but] should there be no such appointment and proclamation, and the Throne should become vacant, then the Cabinet Council, immediately after the occurring of such vacancy, shall cause a meeting of the Legislative Assembly, who shall elect by ballot some native Alii of the Kingdom as Successor to the Throne; and the Successor so elected shall become a new *Stirps* for a Royal Family." Filling the vacancy after the death of Prince Jonah Kūhiō Kalaniana'ole would be the Cabinet Council that serves as a Council of Regency in accordance with Article 33 of the 1864 Constitution. When the occupation comes to an end, the Council of Regency 'shall cause a meeting of the Legislative Assembly.'

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 the HKTC assumed to represent the interests of the Hawaiian government in an acting capacity, the trustees would make the appointment.

The assumption by Hawaiian subjects, through the offices of constitutional authority in government, to the office of Regent, as enumerated under Article 33 of the Hawaiian Constitution, was a *de facto* process born out of necessity. Cooley defines an officer *de facto* "to be one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law," but rather "comes in by claim and color of right."[31] 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."[32] In *The King v. Ah Lin*, the Hawaiian Kingdom Supreme Court stated "the doctrine […] as to officers de facto is sustained by a long line of authorities in England and America, and we have found none questioning it."[33]

In a meeting of the HKTC, it was agreed that I 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 Ms. Nai'a-Ulumaimalu, a Hawaiian subject, would replace me 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.

[31] Thomas Cooley, *A Treatise on the Law of Taxation* 185 (1876).
[32] *Carpenter v. Clark*, 217 Michigan 63, 71 (1921).
[33] *The King v. Ah Lin*, 5 Haw. Reports 59, 61 (1883).

To accomplish this, I would relinquish, by a deed of conveyance in both companies, my entire one-half (50%) interest to Lewis, after which, Lewis would convey a redistribution of interest to Ms. 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 February 28, 1996.[34] On March 1, 1996, the Trustees of HKTC appointed me as *acting* Regent.[35]

On the same day, I, as *acting* Regent, proclaimed myself as the successor of the HKTC.[36] On May 15, 1996, the Trustees conveyed by deed, all of its right, title and interest acquired by thirty-eight deeds of trust, to me, 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 June 30, 1996.[37]

On February 28, 1997, a proclamation by the *acting* Regent announcing the restoration of the provisional Hawaiian government was printed in the Honolulu Sunday Advertiser on March 9, 1997.[38] The international law of occupation allows for an occupied State's government and the military government of an occupying State to co-exist within the same territory. According to Marek, "it is always the legal order of the State which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the delegation of the [occupying] State nor any rule of international law other than the one safeguarding the continuity of an occupied State. The relation between the legal order of the [occupying] State and that of the occupied State…is not one of delegation, but of co-existence."[39]

On September 7, 1999, the *acting* Regent, commissioned Peter Umialiloa Sai, a Hawaiian subject, as *acting* Minister of the Interior, and Mrs. Kau'i P. Goodhue, later to be known as Mrs. Kau'i P. Sai-Dudoit, a Hawaiian subject, as *acting* Minister of Finance.[40] On September 9, 1999, the *acting* Regent commissioned Mr. Gary Victor Dubin, Esquire, a

---

[34] Deed from David Keanu Sai to Donald A. Lewis (Feb. 27, 1996) (online at http://hawaiiankingdom.org/pdf/Sai_to_Lewis_Deed.pdf), Deed of Donald A. Lewis to Nai'a-Ulumaimalu's (Feb. 27, 1996) (online at http://hawaiiankingdom.org/pdf/Nai%E2%80%98a_to_Lewis_Deed.pdf).
[35] Notice of appointment of Regent by Hawaiian Kingdom Trust Company (Mar. 1, 1996) (online at http://hawaiiankingdom.org/pdf/HKTC_Appt_Regent.pdf).
[36] Hawaiian Kingdom Trust Company's notice of proclamation no. 1 by the Regent (Mar. 1, 1996) (online at http://hawaiiankingdom.org/pdf/Proc_(3.1.1996).pdf).
[37] Deed from Hawaiian Kingdom Trust Company to Regent (May 15, 1996) (online at http://hawaiiankingdom.org/pdf/HKTC_Deed_to_Regent.pdf).
[38] Proclamation by the Regent, Honolulu Advertiser newspaper (Feb. 28, 1997) (online at http://hawaiiankingdom.org/pdf/Proc_(2.28.1997).pdf).
[39] Marek, 91.
[40] Hawaiian Minister of Foreign Affairs commission—Peter Umialiloa Sai (Sep. 5, 1999) (online at http://hawaiiankingdom.org/pdf/Umi_Sai_Min_Foreign_Affairs.pdf), and the Hawaiian Minister of Finance commission—Kau'i P. Goodhue (Sep. 5, 1999) (online at http://hawaiiankingdom.org/pdf/Kaui_Min_of_Finance.pdf).

Hawaiian denizen, as *acting* Attorney General.[41] Dubin resigned on July 21, 2013, and was replaced by Mr. Dexter Ka‘iama, Esquire, on August 11, 2013.[42] The *acting* Council of Regency was established on September 26, 1999, by resolution whereby I would resume the office of *acting* Minister of the Interior and serve as Chairman of the Council.[43]

In her book review of the *Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020), which I serve as Head of the Royal Commission and where the aforementioned process, by which the government was restored, was included in the book, Professor Anita Budziszewska states:

> Presented next is the genesis and history of the Commission's activity described by its aforementioned Head—Dr. David Keanu Sai. He presents the Commission's activity in detail, by reference to concrete examples; with this part going on to recreate the entire history of the Hawaiian-US relations, beginning with the first attempt at territorial annexation. This thread of the story is supplemented with examples and source texts relating to the recognition of the Hawaiian Kingdom by certain countries (e.g. the UK and France, and taken as evidence of international regard for the integrity of statehood). Particularly noteworthy here is the author's exceptionally scrupulous analysis of the history of Hawaii and its state sovereignty. No obvious flaws are to be found in the analysis presented.[44]

His Excellency Peter Umialiloa Sai died on October 17, 2018, and, thereafter, by proclamation of the Council of Regency on November 11, 2019, I was designated "to be Minister of Foreign Affairs *ad interim* while remaining as Minister of the Interior and Chairman of the Council of Regency."[45] According to Justice Harris of the Hawaiian Kingdom Supreme Court, where there is "a vacancy occurring, by death or otherwise," the Council of Regency, serving in the absence of the Monarch, can "delegate the authority to act for the time being, to another Ministerial officer" as *ad interim*.[46] Justice Harris further explained that the ministers are "not subordinate to the other, nor do we see that the duties of one in any way interfere with the duties of the other," and, therefore, "one person [can hold] two appointments [because the] two offices are not declared by the Constitution or statute to be incompatible."[47]

---

[41] Hawaiian Attorney General commission—Gary V. Dubin (Sep. 9, 1999) (online at http://hawaiiankingdom.org/pdf/Dubin_Att_General.pdf).
[42] Hawaiian Attorney General commission—Dexter Ke‘eaumoku Ka‘iama (Aug. 11, 2013) (online at https://www.hawaiiankingdom.org/pdf/Kaiama_Att_General.pdf).
[43] Privy Council Resolution establishing a Council of Regency (Sep. 26, 1999) (online at http://hawaiiankingdom.org/pdf/Council_of_Regency_Resolution.pdf).
[44] Anita Budziszewska, "Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom," Review of *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* by David Keanu Sai (ed.), 8(2) *Pol. J. Political Sci.* 68-73 (2022) (online at https://hawaiiankingdom.org/pdf/Book_Review_RCI_book_(Budziszewska).pdf).
[45] Council of Regency, Proclamation of Minister of Foreign Affairs ad interim (Nov. 11, 2019) (online at https://www.hawaiiankingdom.org/pdf/Proc_Minister_Foreign_Affairs_Ad_interim.pdf).
[46] *Rex v. C.W. Kanaau*, 3 Haw. Reports 669, 670 (1876).
[47] *Id*., at 670-671.

According to Professor Rim, the State continues "to exist even in the factual absence of government so long as the people entitled to reconstruct the government remain."[48] While the Council of Regency was established in similar fashion to governments established in exile during the Second World War, the government was restored *in situ* under Hawaiian constitutional law and by the doctrine of necessity.[49] Through this process, the Hawaiian government is comprised of officers *de facto*, which is not a *de facto* government established by a successful revolution. According to U.S. constitutional scholar Thomas Cooley:

> A provisional government is supposed to be a government de facto for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity.[50]

Under Hawaiian law, the Council of Regency serves in the absence of the Executive Monarch. While the last Executive Monarch was Queen Lili'uokalani, who died on November 11, 1917, the office of the Executive Monarch remained vacant under Hawaiian constitutional law. There was no legal requirement for the Council of Regency, being the successor in office to Queen Lili'uokalani under Hawaiian constitutional law, to obtain recognition from the United States as the government of the Hawaiian Kingdom. The United States' recognition of the Hawaiian Kingdom, as an independent State on July 6, 1844,[51] was also a recognition of its 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.[52] Successors to King Kamehameha III were not established through "extra-legal changes," but rather under the constitution and laws of the Hawaiian Kingdom. According to United States foreign relations law, "[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."[53] The

---

[48] Yejoon Rim, "State Continuity in the Absence of Government: The Underlying Rationale in International Law," 20 (20) *European Journal of International Law* 1, 4 (2021).
[49] David Keanu Sai, "The Royal Commission of Inquiry," in David Keanu Sai's (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 18-23 (2020); see also Federico Lenzerini, "Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom," 3 *Hawaiian Journal of Law and Politics* 317-333 (2021) (online at https://hawaiiankingdom.org/pdf/3HawJLPol317_(Lenzerini).pdf).
[50] Thomas M. Cooley, "Grave Obstacles to Hawaiian Annexation," *The Forum,* 389, 390 (1893).
[51] U.S. Secretary of State Calhoun to Hawaiian Commissioners (6 July 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).
[52] M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815-1995* 26 (1997).
[53] Restatement (Third) of Foreign Relations Law of the United States, §203, comment c (1987).

Regency was established in similar fashion to the Belgian Council of Regency after King Leopold was captured by the Germans during the Second World War. As the Belgian Council of Regency was established under Article 82 of its 1831 Constitution, as amended, *in exile*, the Hawaiian Council was established under Article 33 of its 1864 Constitution, as amended, not *in exile* but *in situ*. Oppenheimer explained:

> 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, 1821 [sic], 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.[54]

Article 33 provides that the Cabinet Council—comprised of the Minister of the Interior, the Minister of Finance, the Minister of Foreign Affairs, and the Attorney General, "shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are constitutionally vested in the King."

Like the Belgian Council, the Hawaiian Council was bound to call into session the Legislative Assembly to provide for a regency, but because of the prolonged belligerent occupation and the effects of the war crime of denationalization of the population, it was impossible for the Legislative Assembly to function. Until the Legislative Assembly can be called into session, Article 33 provides that the Cabinet Council, comprised of the Ministers of the Interior, Foreign Affairs, Finance and the Attorney General, "shall be a Council of Regency, until the Legislative Assembly" can be called into session.

The Regency is a government restored in accordance with the constitutional laws of the Hawaiian Kingdom as they existed prior to the unlawful overthrow of the previous administration of Queen Lili'uokalani. It was not established through "extra-legal changes," and, therefore, did not require diplomatic recognition to give itself validity as a government. According to Professor Lenzerini, based on the *doctrine of necessity*, "the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom."[55] Professor Lenzerini also concluded that the Regency "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 January 17, 1893, both at the domestic and international level."[56]

For over a century, the United States has not complied with international humanitarian law in its prolonged occupation of the Hawaiian Kingdom. Compliance with international

[54] F.E. Oppenheimer, "Governments and Authorities in Exile," 36 *Am. J. Int'l L.* 568-595, 569 (1942).
[55] Lenzerini, Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom, 324.
[56] *Id.*, 325.

humanitarian law and the law of occupation will bring the occupation to an end. Therefore, by all peaceful means, the objective for the Council of Regency is to compel the United States and the State of Hawai'i to comply with international humanitarian law and the law of occupation. To accomplish this, the Council of Regency established a three phase strategic plan.[57] Phase I—verification of the Hawaiian Kingdom as an independent State and a subject of international law. Phase II—exposure of Hawaiian Statehood within the framework of international law and the laws of occupation as it affects the realm of politics and economics at both the international and domestic levels. Phase III—restoration of the Hawaiian Kingdom as an independent State and a subject of international law. Phase III occurs when the American occupation comes to an end by a treaty of peace.

Permanent Court of Arbitration Recognizes the Continuity of Hawaiian Statehood and the Council of Regency as its Government

In *Larsen v. Hawaiian Kingdom*, Permanent Court of Arbitration ("PCA") case no. 1999-01, Larsen, a Hawaiian subject, claimed that the government of the Hawaiian Kingdom, by its Council of Regency, should be liable for allowing the unlawful imposition of American laws. These laws denied him a fair trial and led to his incarceration. Prior to the establishment of an *ad hoc* tribunal, the PCA acknowledged the Hawaiian Kingdom as a non-Contracting State under Article 26 of the 1899 Hague Convention for the Pacific Settlement of International Disputes, and Article 47 of the 1907 Hague Convention for the Pacific Settlement of International Disputes ("1907 PCA Convention"). This was noted in the PCA Annual Reports of 2001 through 2011.[58]

In determining the continued existence of the Hawaiian Kingdom as a non-Contracting State, the rules of international law, that apply to established States, must be considered. Professor Lenzerini concluded that "according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of international law. In fact, in the event of illegal annexation, 'the legal existence of […] States [is] preserved from extinction,' since 'illegal occupation cannot of itself terminate statehood.'"[59]

Because the State is a juristic person, it requires a government to speak on its behalf, without which the State is silent, and, therefore, among other consequences, there could be no arbitral tribunal to be established by the PCA. On the contrary, on June 9, 2000, after recognizing the continued existence of the Hawaiian State and the Council of Regency, as its Government, the PCA did form an arbitral tribunal pursuant to Article 47 of the 1907 PCA Convention. In international intercourse, which includes arbitration at the PCA, the Permanent Court of International Justice, in *German Settlers in Poland*, explained that "States can act only by and through their agents and representatives."[60] As Professor Talmon states, the "government, consequently, possesses the *jus repraesentationis*

[57] Strategic Plan of the Council of Regency (online at https://hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf).
[58] Permanent Court of Arbitration Annual Reports (online at https://pca-cpa.org/en/about/annual-reports/).
[59] Lenzerini, 322.
[60] Permanent Court of International Justice, *German Settlers in Poland*, 1923, PCIJ, Series B, No. 6, 22.

omnimodae, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. [Professor Talmon submits] that this is the case irrespective of whether the government is *in situ* or in exile."[61]

After the PCA verified the continued existence of the Hawaiian State, as a juristic person, it also simultaneously determined that the Hawaiian State was represented by its government—the Council of Regency. The PCA, in its case repository, identified the international dispute in *Larsen* as between a "State" and a "Private entity." Furthermore, the PCA described the dispute, between the Council of Regency and Larsen, as between a government and a resident of Hawai'i.

> Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 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.[62]

It should also be noted that the PCA acknowledged the Hawaiian Kingdom as a treaty partner with the United States to the 1849 Treaty of Friendship, Commerce and Navigation,[63] which was at the center of the *Larsen* dispute.[64] Furthermore, the United States, through its embassy in The Hague, entered into an agreement with the Council of Regency to have access to the arbitration's records and pleadings. Prior to the formation of the arbitral tribunal, Phyllis Hamilton, the PCA's Secretary General, brokered this agreement.[65] After the PCA verified the continued existence of Hawaiian Statehood,[66] Phase II was initiated at the oral hearings held at the Peace Palace on December 7, 8, and 11, 2000.[67]

---

[61] Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* 115 (1998).
[62] Permanent Court of Arbitration, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at https://pca-cpa.org/en/cases/35/).
[63] 9 Stat. 977 (1849).
[64] Article VIII of the 1849 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the United States provides that "each of the two contracting parties engages that the citizens or subjects pf the other residing in their respective states, shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively." The imposition of American municipal laws is not only a violation of international humanitarian law but also a violation of Article VIII of the 1849 treaty.
[65] Sai, The Royal Commission of Inquiry, 25-26.
[66] David Keanu Sai, "Backstory—Larsen v. Hawaiian Kingdom at the Permanent Court of Arbitration (1999-2001," 4 *Haw. J.L. Pol.* 133-161 (2022) (online at https://www2.hawaii.edu/~anu/pdf/Backstory_Larsen_case_Sai_(HJLP)_Vol_4.pdf).
[67] See mini-documentary "The Permanent Court of Arbitration, The Hague Netherlands—Lance Paul Larsen vs. The Hawaiian Kingdom (1999-2001)" (online at https://www.youtube.com/watch?v=tmpXy2okJIg&t=785s).

After returning from The Hague, implementation of phase II continued at the University of Hawai'i at Mānoa when I entered the political science graduate program in 2001. In 2004, I received a master's degree specializing in international relations and public law and in 2008, a Ph.D. on the subject of the continuity of Hawaiian Statehood while under an American prolonged belligerent occupation since January 17, 1893. This prompted other master's theses, doctoral dissertations, peer review articles in law journals, and publications about the American occupation. The exposure through academic research also motivated historian Tom Coffman to change the title of his 1998 book from *Nation Within: The Story of America's Annexation of the Nation of Hawai'i*,[68] to *Nation Within—The History of the American Occupation of Hawai'i*.[69] Coffman explained the change in his note on the second edition:

> I am compelled to add that the continued relevance of this book reflects a far-reaching political, moral and intellectual failure of the United States to recognize and deal with the takeover of Hawai'i. 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.
>
> In making this change, I have embraced the logical conclusion of my research into the events of 1893 to 1898 in Honolulu and Washington, D.C. I am prompted to take this step by a growing body of historical work by a new generation of Native Hawaiian scholars. Dr. Keanu Sai writes, "The challenge for […] the fields of political science, history, and law is to distinguish between the rule of law and the politics of power." In the history of Hawai'i, the might of the United States does not make it right.[70]

Inherent in the Council of Regency's objective to bring compliance with the law of occupation is to mitigate the sweeping effect of *ex injuria jus non oritur* and the impact of *postliminium* allowable under international law and Hawaiian Kingdom laws. With a view to bringing compliance with international humanitarian law by the State of Hawai'i and its County governments and recognizing their effective control of Hawaiian territory in accordance with Article 42 of the 1907 Hague Regulations, the Council of Regency proclaimed and recognized their existence as the administration of the occupying State on June 3, 2019.

> Whereas, in order to account for the present circumstances of the prolonged illegal occupation of the Hawaiian Kingdom and to provide a temporary measure of protection for its territory and the population residing therein, the public safety requires action to be taken in order for the State of Hawai'i and its Counties to

[68] Tom Coffman, *Nation Within: The Story of America's Annexation of the Nation of Hawai'i* (1998).
[69] Tom Coffman, *Nation Within: The History of the American Occupation of Hawai'i* (2nd ed. 2009). Duke University Press published the second edition in 2016.
[70] *Id*., xvi.

> begin to comply with the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law:
>
> Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby recognize the State of Hawai'i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law;
>
> And, We do hereby further proclaim that the State of Hawai'i and its Counties shall preserve the sovereign rights of the Hawaiian Kingdom government, and to protect the local population from exploitation of their persons and property, both real and personal, as well as their civil and political rights under Hawaiian Kingdom law.[71]

The State of Hawai'i and its Counties, under the laws and customs of war during occupation, can now serve as the administrator of the "laws in force in the country," which includes the decree of provisional laws of the *acting* Government in accordance with Article 43. "During the occupation," according to Benvenisti, "the ousted government would often attempt to influence life in the occupied area out of concern for its nationals, to undermine the occupant's authority or both. One way to accomplish such goals is to legislate for the occupied population."[72] Furthermore, the "occupant should give effect to the sovereign's new legislation as long as it addresses those issues in which the occupant has no power to amend the local laws, most notably in matters of personal status."[73] The decree of October 10, 2014, stated:

> Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby acknowledge that acts necessary to peace and good order among the citizenry and residents of the Hawaiian Kingdom, such for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful government, but acts in furtherance or in support of rebellion or collaborating against the Hawaiian Kingdom, or intended to defeat the just rights of the citizenry and residents under the laws of the Hawaiian Kingdom, and other acts of like nature, must, in general, be regarded as invalid and void;
>
> And, We do hereby proclaim that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these

[71] Council of Regency, *Proclamation Recognizing the State of Hawai'i and its Counties* (June 3, 2019) (available at https://www.hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf).
[72] Benvenisti, 104.
[73] *Id*.

> provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international humanitarian law, and if it be the case they shall be regarded as invalid and void;
>
> And, We do hereby further proclaim that the currency of the United States shall be a legal tender at their nominal value in payment for all debts within this Kingdom pursuant to *An Act To Regulate the Currency* (1876).[74]

On February 25, 2018, as a result of the exposure, United Nations Independent Expert, Dr. Alfred deZayas, sent a communication from Geneva to State of Hawai'i Judges Gary W.B. Chang and 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).[75]

The exposure also prompted the U.S. National Lawyers Guild ("NLG") to adopt a resolution in 2019 calling upon the United States to immediately comply with international humanitarian law in its prolonged and illegal occupation of the Hawaiian Islands.[76] Among its positions statement, the "NLG supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai'i and its Counties comply with international humanitarian law as the administration of the Occupying State."[77]

On February 7, 2021, the International Association of Democratic Lawyers ("IADL"), a non-governmental organization ("NGO") of human rights lawyers that has special consultative status with the United Nations Economic and Social Council ("ECOSOC") and is accredited to participate in the Human Rights Council's sessions as Observers, passed a resolution calling upon the United States to immediately comply with

---

[74] Council of Regency, *Proclamation of Provisional Law* (Oct. 10, 2014), (available at https://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf).
[75] Letter of Dr. Alfred deZayas to Judge Gary W.B. Chang, Judge Jeannette H. Castagnetti, and Members of the Judiciary of the State of Hawai'i (25 February 2018) (online at https://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf).
[76] Resolution of the National Lawyers Guild Against the Illegal Occupation of the Hawaiian Islands (2019) (online at https://www.nlg.org/wp-content/uploads/2019/08/Hawaiian-Subcommittee-Resolution-Final.pdf).
[77] 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/).

international humanitarian law in its prolonged occupation of the Hawaiian Islands—the Hawaiian Kingdom.[78] In its resolution, the IADL also "supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai'i and its Counties comply with international humanitarian law as the administration of the Occupying State."

Together with the IADL, the American Association of Jurists—Asociación Americana de Juristas ("AAJ"), which is also an NGO with consultative status to the United Nations ECOSOC and is accredited as an observer in the Human Rights Council's sessions, sent a joint letter, dated March 3, 2022, to the Ambassadors of the Member States of the United Nations on the status of the Hawaiian Kingdom and its prolonged occupation by the United States.[79] In its joint letter, they state:

> The IADL and the AAJ fully supports the National Lawyers Guild's 2019 resolution that "calls upon the United States of America immediately to begin to comply with international humanitarian law in its prolonged and illegal occupation of the Hawaiian Islands." Together with the National Lawyers Guild (NLG):
>
> - IADL and the AAJ strongly condemns the prolonged and illegal occupation of the Hawaiian Islands.
> - IADL and the AAJ also condemns the unlawful presence and maintenance of the United States Indo-Pacific Command with its 118 military sites throughout the Hawaiian Islands.
> - IADL and the AAJ calls for the United States to immediately comply with international humanitarian law and begin to administer the laws of the Hawaiian Kingdom as the occupied State.
> - IADL and the AAJ calls on the legal and human rights community to view the United States presence in the Hawaiian Islands through the prism of international law and to roundly condemn it as an illegal occupation under international law.
> - IADL and the AAJ 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.
> - IADL and the AAJ calls on all United Nations member States and non-member States to not recognize as lawful a situation created by a serious violation of international law, and to not render aid or assistance in maintaining the unlawful situation. As an internationally wrongful act, all States shall cooperate to ensure the United States complies with

[78] International Association of Democratic Lawyers, *IADL Resolution on the US Occupation of the Hawaiian Kingdom* (7 February 2021) (online at https://iadllaw.org/2021/03/iadl-resolution-on-the-us-occupation-of-the-hawaiian-kingdom/).
[79] International Association of Democratic Lawyers, *IADL and AAJ deliver joint letter on Hawaiian Kingdom to UN ambassadors* (3 March 2022) (online at https://iadllaw.org/2022/03/iadl-and-aaj-deliver-joint-letter-on-hawaiian-kingdom-to-un-ambassadors/).

> international humanitarian law and consequently bring to an end the unlawful occupation of the Hawaiian Islands.

None of the Ambassadors of the Member States of the United Nations objected to the IADL-AAJ joint letter notifying them of the continued existence of the Hawaiian Kingdom and the prolonged American occupation. While the conduct of NGOs "does not contribute to the formation, or expression, of rules of customary international law,"[80] their conduct "may have an indirect role in the identification of customary international law, by stimulating or recording the practice and acceptance as law (*opinio juris*) of States and international organizations."[81]

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

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

None of the 47 Member States of the HRC, which included the United States, protested, or objected to the oral statement of the continuity of the Hawaiian Kingdom, the arbitral proceedings at the PCA, and war crimes being committed in the Hawaiian Kingdom by the United States. While the oral statement was given on behalf of the IADL and the AAJ, it was delivered in my capacity as Minister of Foreign Affairs *ad interim* of the Hawaiian Kingdom. Therefore, statements by a State are recognized as a general practice, and by their silence, these 47 States, to include the United States, accepted the Hawaiian Kingdom's continued existence as an occupied State and that war crimes and human rights

[80] United Nations, *Yearbook of the International Law Commission*, vol. II, Part Two, Conclusion 4. Requirement of practice 98, commentary n. 8 (2018).
[81] *Id*.

violations are taking place throughout the Hawaiian Islands.[82] 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."[83] In the event that any one of these 47 States would have disagreed that the Hawaiian Kingdom continues to exist and that war crimes and human rights violations are being committed therein, an explicit reaction would have been necessary. Since these States "did not do so […] they must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset*."[84]

Transforming the State of Hawai'i into a Military Government

International law distinguishes between the occupying State and the Occupant because the determining factor that triggers the law of occupation and the establishment of a military government is the effective control of the territory of the occupied State. Effective control can only come about by the Occupant when it physically enforces its authority over the territory and its population. As a federated system, there are two occupants, that of the federal government and that of the State of Hawai'i government. The latter is in effective control of 10,931 square miles of Hawaiian territory, while the former is in control of less than 500 square miles.

Department of Defense Directive no. 5100.01 establishes the duty of the Army in "[occupied] territories abroad [to] provide for the establishment of a military government pending transfer of this responsibility to other authority."[85] Article 43 of the 1907 Hague Regulations obliges the occupant in foreign territory, after securing effective control of the territory, to establish a military government. The military government has centralized control over the territory of an occupied State under the effective control of the occupant. According to FM 27-5:

> The theater commander bears full responsibility for [Military Government]; therefore, he is usually designated as military governor or civil affairs administrator, but has authority to delegate authority and title, in whole or in part, to a subordinate commander. In occupied territory the commander, by virtue of his position, has supreme legislative, executive, and judicial authority, limited only the laws and customs of war and by directives from higher authority.[86]

[82] Argentina, Armenia, Benin, Plurinational State of Bolivia, Brazil, Cameroon, China, Cuba, Côte d'Ivoire, Eritrea, Finland, France, Gambia, Germany, Honduras, India, Indonesia, Japan, Kazakhstan, Libya, Lithuania, Luxembourg, Malawi, Malaysia, Marshall Islands, Mauritania, Mexico, Montenegro, Namibia, Nepal, Netherlands, Pakistan, Paraguay, Poland, Qatar, Republic of Korea, Russian Federation, Senegal, Somalia, Sudan, Swiss Confederation, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Arab Emirates, United States of America, Uzbekistan, and Venezuela.
[83] Nuno Sérgio Marques Antunes, "Acquiescence," in Rüdiger Wolfrum (ed.) *Max Planck Encyclopedia of Public International Law*, para. 2 (2006).
[84] International Court of Justice, *Case concerning the Temple of Preah* Vihear (Cambodia v. Thailand), Merits, Judgment of June 15, 1962, I.C.J. Reports 1962, p. 6, at 23.
[85] Department of Defense Directive no. 5100.01, enclosure 6, para. 4(b)(6) (Dec 21, 2010).
[86] Department of the Army, Field Manual 27-5, *Civil Affairs Military Government* 4 (1947).

Therefore, the Adjutant General, that heads the State of Hawai'i Department of Defense, has the duty and obligation to transform the State of Hawai'i into a Military Government. "Since the military occupation of enemy territory suspends the operation of the government of the occupied territory, the obligation arises under international law for the occupying force to exercise the functions of civil government looking toward the restoration and maintenance of public order."[87]

On April 17, 2023, I had a meeting with MG Kenneth Hara at the Grand Naniloa Hotel in Hilo. After providing him the information and resources of the American occupation and his duty to transform the State of Hawai'i into a military government, I recommended that he task his Staff Judge Advocate, Lieutenant Colonel Lloyd Phelps, to do his due diligence on the continued existence of the Hawaiian Kingdom and whether this duty to transform exists under international law and Army regulations.[88] On July 27, 2023, I was apprised that MG Hara stated the Hawaiian Kingdom continues to exist despite the prolonged American occupation. I took this statement to mean that his due diligence was over, which prompted me to send him a letter dated August 1, 2023, acknowledging his affirmation.[89] My letter concluded with:

> Since the occupying State does not have the sovereignty of the Hawaiian Kingdom, the Council of Regency, which has the authority to exercise Hawaiian sovereignty, can bring the laws and administrative policies of the Hawaiian Kingdom in 1893 up to date so that the military government can fully exercise its authority under the law of occupation. The purpose of the military government is to protect the population of the occupied State despite 130 years of violating these rights. On behalf of the Council of Regency, I can assure you that the Council of Regency commits itself to working with you to bring compliance with the law of occupation, for both the occupying and occupied States, that will eventually bring the prolonged occupation of the Hawaiian Kingdom to an end.

I sent another communication to MG Hara dated August 21, 2023:[90]

> As the occupant in effective control of 10,931 square miles of Hawaiian territory, the State of Hawai'i, being the civilian government of the Hawaiian Kingdom that was unlawfully seized in 1893, is obligated to transform itself into a military government in order "to protect the sovereign rights of the legitimate government of the Occupied State, and […] to protect the inhabitants of the Occupied State from being exploited." The military government has centralized control, with you as its military governor, and by virtue of your position you have "supreme legislative, executive, and judicial authority, limited only the laws and customs of war and by directives from higher authority."

---

[87] *Id*., para. 4(b).
[88] The letters of communication I had with MG Hara can be accessed online at https://hawaiiankingdom.org/pdf/HK_Comm_with_MG_Hara.pdf).
[89] Council of Regency letter to Major General Kenneth Hara (August 1, 2023) (online at https://hawaiiankingdom.org/pdf/Regency_Ltr_to_SOH_TAG_(8.1.23).pdf).
[90] Council of Regency letter to Major General Kenneth Hara (August 21, 2023) (online at https://hawaiiankingdom.org/pdf/Regency_Ltr_to_SOH_TAG_(8.21.23).pdf).

> The reasoning for the centralized control of authority is so that the military government can effectively respond to situations that are fluid in nature. Under the law of occupation, this authority by the occupant is to be shared with the Council of Regency, being the government of the Occupied State. As the last word concerning any acts relating to the administration of the occupied territory is with the occupying power, "occupation law would allow for a vertical, but not a horizontal, sharing of authority [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory."
>
> By virtue of this shared authority, the Council of Regency, in its meeting on August 14, 2023, approved an "Operational Plan for Transitioning the State of Hawai'i into a Military Government," to assist you in your duties as the theater commander of the occupant. International humanitarian law distinguishes between the "Occupying State" and the "occupant." The law of occupation falls upon the latter and not the former, because the former's seat of government exists outside of Hawaiian territory, while the latter's military government exists within Hawaiian territory.

This request went unanswered until I saw MG Hara at a mutual friend's home, Archie Kalepa, in Lahaina the evening of January 19, 2024. Mr. Kalepa called me to ask if I could join him in the Lahaina March the following day. Later at Mr. Kalepa's home, MG Hara told me that he will be retiring this year. I understood this as a dereliction of duty to establish a military government under customary international law and Army regulations. I have subsequently told that MG Hara stated he was concerned with the potentiality of committing treason under American law. There is no basis for this concern, and it does not relieve him of his duty while in the territory of a foreign State. There is no *de jure* American government in these islands that would come under the American treason law. The Hawaiian Kingdom has a treason law under its Penal Code, but it is suspended because of the law of occupation.

The Council of Regency has notified MG Hara that, on February 17, 2024, he shall proclaim the establishment of a military government in accordance with the Council of Regency's August 14, 2024 Operational Plan, transitioning the State of Hawai'i into a Military Government.[91] Although his concern for committing treason is misplaced, I recommended, in that letter of communication, that he have LTC Phelps draft a letter for him to send to the Staff Judge Advocate for U.S. Army Garrison Hawai'i. This letter should state the situation he finds himself in regarding DoDD no. 5100.01 and Army regulations. It should also state that he will proceed to issue a proclamation for military government on February 17, unless the Staff Judge Advocate tells him not to, because he would be committing treason otherwise under American laws. This letter should be sent with enough time for LTC Phelps to draft his letter and ample time for Staff Judge Advocate to respond.

February 17th has passed, and MG Hara has taken no action. This does not change or alter his duty and obligation under international law, DoDD no. 5100.01, and Army regulations. His apprehension to perform his duty, because of the American treason statute, temporarily

[91] Council of Regency, *Operational Plan Transitioning the State of Hawai'i into a Military Government* (August 14, 2023) (online at: https://hawaiiankingdom.org/pdf/HK_Operational_Plan_of_Transition.pdf).

precludes his criminal culpability, for dereliction of duty and the war crime of omission, until the Council of Regency can quell his apprehension. In the meantime, he is preventing aboriginal Hawaiian subjects from exercising their rights to land, healthcare, and piscary rights secured to them under Hawaiian Kingdom statutory laws.

In addition to the Council of Regency's *Operational Plan for Transitioning the State of Hawai'i into a Military Government* with essential and implied tasks to bring back the *status quo ante* of the Hawaiian Kingdom as it was prior to January 17, 1893, MG Hara is also in possession of the Council of Regency's *Operational Plan for Transitioning the Military Government to the Hawaiian Kingdom Government* where the occupation will end by a treaty of peace with the United States.[92]

Continuity of Rights of Hawaiian subjects

Due to the devastating effects of the war crime of denationalization—*Americanization*, the Council of Regency understands the scope and magnitude of the United States and the State of Hawai'i's violation of international laws even if the population does not. The violation of international laws has rendered the entire population, including Hawaiian subjects, with no rights to property that can be protected, which include land, homes, cars, copyrights, trademarks, trade secrets and patents. Because the Hawaiian Kingdom has now been exposed as an occupied State, the American occupation will come to an end. The Council of Regency's *Operational Plan to Transition the State of Hawai'i into a Military Government* addresses this significant issue so that what is unlawful can be transformed into what is lawful under Hawaiian law, without violating the legal order of the Hawaiian State. [93] In the meantime, Hawaiian Kingdom 'laws, regulations, court decisions, administrative guidelines, and even customs,' that existed prior to the American occupation, continue to exist today.

When compared to the European States and their successor States on the American continent in the nineteenth century, the Hawaiian Kingdom was a progressive country. Its political economy was not based on Adam Smith's capitalism—*Wealth of Nations*, but rather on Francis Wayland's approach of a cooperative capitalism. According to Professor Mykkanen, Wayland was interested in "defining the limits of government by developing a theory of contractual enactment of political society, which would be morally and logically binding and acceptable to all its members."[94]

When written in the Hawaiian language and adjusted to apply to Hawaiian society by William Richards, Wayland's *Elements of Political Economy* was the fundamental basis.

---

[92] Council of Regency, *Operational Plan for Transitioning the Military Government into the Hawaiian Kingdom Government* when the occupation will come to an end (November 13, 2023) (online at https://hawaiiankingdom.org/pdf/Op_Plan_Trans_from_MG_to_HKG.pdf).

[93] Council of Regency, *Operational Plan for Transitioning the State of Hawai'i into a Military Government* (August 14, 2023) (online at https://hawaiiankingdom.org/pdf/HK_Operational_Plan_of_Transition.pdf); see also Operational Plan for Transitioning the Military Government into the Hawaiian Kingdom Government when the occupation will come to an end (November 13, 2023) (online at https://hawaiiankingdom.org/pdf/Op_Plan_Trans_from_MG_to_HKG.pdf).

[94] Juri Mykkanen, *Inventing Politics: A New Political Anthropology of the Hawaiian Kingdom* 154 (2003).

This book was titled *No Ke Kālai'āina* and theorized governance from a foundation of Natural Rights within a Hawaiian agrarian society.[95] It was based upon capitalism that was not only cooperative in nature, but also morally grounded in Christian values. Contemporary historians and academics mistakenly assumed that American capitalism was the political economy of the Hawaiian Kingdom. Along with the unlawful imposition of American municipal laws after 1898, was the unlawful imposition of the American version of capitalism. Karl Marx, the renowned critical theorist, would have found the Hawaiian Kingdom's political economy very appealing.

The Hawaiian Kingdom was the only country to adopt Wayland's theory of economics. The United States and the United Kingdom based their economies on Smith's theory of capitalism. Wayland's form of capitalism was taught in the schools throughout the islands and framed political and economic discourse for the country. It also set in motion Hawai'i's mixed economy and the planted the seed for the Hawaiian Kingdom to become a welfare State. This would predate the Nordic countries by a century. The welfare State is a "concept of government in which the state or a well-established network of social institutions plays a key role in the protection and promotion of the economic and social well-being of [its] citizens."[96] German Chancellor Otto von Bismark is credited with being the creator of the concept of the welfare State in nineteenth century Germany. Of note, is that Bismark was often cited by Hawaiian law makers regarding economic reform and legislation. He was referred to as "Bisimaka," which is Hawaiian for Bismark.

Under Hawaiian constitutional law, everyone is equal before the law so long they have lawful residency. According to the 1890 government census, Hawaiian subjects numbered 48,107, with the aboriginal Hawaiian, both pure and part, numbering 40,622, being 84% of the national population, and the non-aboriginal Hawaiians numbering 7,485, being 16%. Despite the massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, the population of which, according to the State of Hawai'i, numbered 1,302,939 in 2009,[97] the *status quo ante* of the national population of the Hawaiian Kingdom is maintained. Therefore, under the international laws of occupation, the aboriginal Hawaiian population of 322,812 in 2009 would continue to be 84% of the Hawaiian national population, and the non-aboriginal Hawaiian population of 61,488 would continue to be 16%. The balance of the population in 2009, being 918,639, are aliens who were illegally transferred, either directly or indirectly, by the United States as the occupying Power. The nationality of an occupied State is acquired by parentage—*jus sanguinis*, and not by birth—*jus soli* in occupied territory. Professor von Glahn states, "children born in territory under enemy occupation possess the nationality of their parents."[98]

---

[95] William Richards, *No Ke Kalaiania* (online at https://hawaiiankingdom.org/pdf/No_Ke_Kalaiaina.pdf). See English translation of Richards' *No Ke Kalaiaina* (online at https://hawaiiankingdom.org/pdf/No_Ke_Kalaiaina_(English_Translation).pdf).

[96] "Welfare state," *Encyclopedia Britannica* (online at https://www.britannica.com/topic/welfare-state).

[97] State of Hawai'i. Department of Health, Hawai'i Health Survey (2009) (online at http://www.ohadatabook.com/F01-05-11u.pdf); *see* also David Keanu Sai, *American Occupation of the Hawaiian State: A Century Gone Unchecked*, 1 *Haw. J.L. & Pol.* 46, 63-65 (Summer 2004).

[98] Gehard von Glahn, *Law Among Nations* 780 (6th ed., 1992). See also Willy Daniel Kaipo Kauai, "The Color of Nationality: Continuities and Discontinuities of Citizenship in Hawai'i" (PhD dissertation, University of Hawai'i at Manoa, 2014).

According to United Nations Special Rapporteur Awn Shawkat Al-Khasawneh of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, population "transfers engage both state responsibility and the criminal liability of individuals."[99] "The remedy, in case of breach of the prohibition," states Ronen, "is reversion to the status quo ante, *i.e.* the occupying power should remove its nationals from the occupied territory and repatriate them. […] At any rate, since the occupying power cannot grant what it does not have, the settler population could not acquire status in the territory during the period of occupation."[100] As to a remedy for the breach, Special Rapporteur Al-Khasawneh states:

> [A]ccording to the principle *ubi jus, ibi remedium* (where there is a law, there is a remedy), it is important that certain remedies are available to the survivors and that victims of population transfers are entitled to appropriate remedies [by the transferring State]. The heading under which such remedies can consider is *restitutio in integrum* which aims, as far as possible, at eliminating the consequences of the illegality associated with particular acts such as population transfer and the implantation of settlers.[101]

Under American law, aboriginal Hawaiians, are referred to as *native Hawaiians* that have more than fifty percent aboriginal blood, or *Native Hawaiians* that have less than fifty percent aboriginal blood, or *Hawaiians* that refers to no blood quantum. Since all aboriginal Hawaiians, irrespective of blood quantum or not, are Hawaiian subjects under Hawaiian law, there is no requirement to provide birth certificates of their ancestors prior to January 17, 1893. For aboriginal Hawaiians born in the Hawaiian Islands, citizenship can be determined by a current certified birth certificate from the State of Hawai'i Department of Health. If they are born abroad, then they must provide a certified birth certificate from the government authority for the territory of their birth. If a person is claiming to be an aboriginal Hawaiian subject but his/her birth certificate does not have native Hawaiian, Native Hawaiian, or Hawaiian stated on the certificate, that person shall produce a copy of their parent's birth certificate or any of their grand or great grand parents' birth certificate that has native Hawaiian, Native Hawaiian, or Hawaiian stated on it.

For Hawaiian subjects that are not aboriginal Hawaiian, citizenship can be determined by providing certified birth certificates from the claimant and his/her ancestors that go back to before January 17, 1893, where that person was either born in Hawaiian territory or was naturalized. Evidence of naturalization can be retrieved from the Archives building on the grounds of 'Iolani Palace in Honolulu. Evidence of birth on Hawaiian territory can also be retrieved from the Archives building from the Hawaiian Kingdom census reports.

Under Hawaiian statutory laws, aboriginal Hawaiian subjects have a vested right in all lands of the Hawaiian Kingdom. The exercise of this right is by virtue of the 1850 *Kuleana Act* where any aboriginal Hawaiian subject can purchase from the Hawaiian government

[99] Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Human Rights and Population Transfer: Final Report of the Special Rapporteur*, Mr. Al-Khasawneh E/CN.4/Sub.2/1997/23, para. 60.
[100] Yael Ronen, "Status of Settlers Implanted by Illegal Regimes under International Law," *International Law Forum of the Hebrew University of Jerusalem Law Faculty* (Dr. Tomer Broude, ed.) 38 (3 Oct. 2008).
[101] Human Rights and Population Transfer: Final Report of the Special Rapporteur, para. 60.

up to 50 acres at a price of $.50 per acre. According to the inflation calculator, $.50 in 1850 is $20.00 today. The *Kuleana Act* was not repealed.

For those aboriginal Hawaiians that hold leases, under the 1921 American statute *Hawaiian Homes Commission Act*, they could receive a fee-simple title to these lands by the Hawaiian Government if these lands are public lands, or from the Crown Land Commissioners if these lands are Crown Lands. While the Crown Lands are limited to 30-year leases under the 1865 *Act to Relieve the Royal Domain from Encumbrances and to render the same Inalienable*, aboriginal Hawaiians can acquire a fee-simple title from the Crown, by its Crown Land Commissioners. This is authorized under the 1848 Great Māhele rule 4 that provides, "tenants of His Majesty's private lands, shall be entitled to a fee-simple title,"[102] because of their vested right as a member of the native tenant class.

Piscary rights were secured to the tenants who resided within the land units called *ahupua'a* and *'ili* that were Konohiki lands, which included the Crown Lands. Tenants within these land units had exclusive rights to the "fishing grounds, and where there happen to be no reefs, from the distance of one geographical mile seaward to the beach at low water mark."[103] According to Attorney General R.H. Stanley, "the fishing grounds from the coral reefs to the sea-beach are for the landlords [konohikis], and for the tenants of their several lands, but not for others."[104]

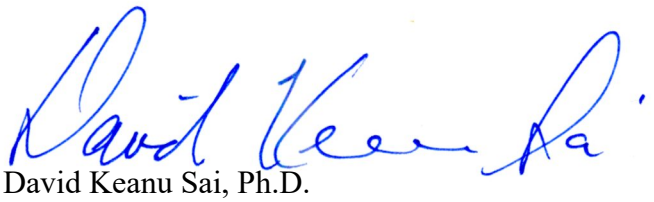
The fishing grounds, that extended from the outer edge of the reefs or from the distance of one geographical mile from all coasts of the islands, came under the ownership of the Government and was managed by the Minister of the Interior. However, those fishing grounds that were both within and beyond the reefs or one geographical mile from low water mark, that were adjacent to Government lands, were "forever granted to the people, for the free and equal use of all persons,"[105] irrespective of where the people resided. These fishing grounds were freely accessed by all persons throughout the islands regardless of what land unit they resided in.

Aboriginal Hawaiian subjects also have a right to free health care at Queen's Hospital by virtue of the 1859 *Act to Provide Hospitals for the Relief of Hawaiians in the City of Honolulu and other Localities*.[106] Queen's Hospital was established as the national hospital for the Hawaiian Kingdom and for health care services to Hawaiian subjects of aboriginal blood at no charge. The Hawaiian Head of State would serve as the *ex officio* President of the Queen's Hospital Board together with twenty trustees, ten of whom were from the Hawaiian government. Since the hospital's establishment, the legislature of the Hawaiian Kingdom has subsidized the hospital along with monies from the Queen Emma Trust.

---

[102] Sai, Constitutional Governance, 69.
[103] Civil Code of the Hawaiian Islands, Compiled Laws §387 (1884).
[104] Attorney General R.H. Stanley, *Opinion regarding the right to take fish for one's sustenance, and the privilege of taking fish for sale at profit; and the restrictions associated with the laws pertaining to those things of the fisheries and of the land* 3 (1874).
[105] Civil Code, §384.
[106] Sai, Constitutional Governance, 115.

With the unlawful imposition of the 1900 Organic Act that formed the Territory of Hawai‘i, American law did not allow public monies to be used for the benefit of a particular race. The last year Queen’s Hospital received public funding was 1909. That same year the hospital charter was unlawfully amended to replace the Hawaiian Head of State with an elected president from the private sector, and to reduce the number of trustees from twenty to seven, which did not include government officers.



David Keanu Sai, Ph.D.
Acting Minister of the Interior