

Operational Plan for Transitioning the Military Government into the Hawaiian Kingdom Government

by

The Council of Regency
Occupied Government of the Hawaiian Kingdom



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ABSTRACT

This operation plan of transitioning the Military Government to the Hawaiian Kingdom Government assumes that the State of Hawai‘i has already transformed itself into a military government. It lays out the process for the military occupation to come to an end in accordance with the law of occupation and the laws of the Hawaiian Kingdom. It takes into consideration the restoration of the Hawaiian government by an *acting* Council of Regency, as officers *de facto*, and the manner by which the Hawaiian government moves from *de facto* to *de jure* under Hawaiian law. This operational plan will address the essential task of transitioning power and the implied tasks for successful execution.

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TRANSITIONING THE MILITARY GOVERNMENT TO THE *DE JURE* HAWAIIAN KINGDOM GOVERNMENT

State of Peace and a State of War

Judge Greenwood of the International Court of Justice states that “[t]raditional international law was based upon a rigid distinction between the state of peace and the state of war.”¹ This bifurcation provides the proper context by which certain rules of international law would apply or would not apply. International humanitarian law, also called the law of armed conflict, are not applicable in a state of peace. Inherent in the rules of international humanitarian law and the law of occupation, is the co-existence of two legal orders, the occupying State and that of the occupied State. As an occupied State, the continuity of the Hawaiian Kingdom has been maintained for the past 130 years by the positive rules of international law, notwithstanding the absence of effectiveness, which is required during a state of peace.²

Once a state of war ensued between the Hawaiian Kingdom and the United States that began with the invasion by U.S. Marines on 16 January 1893, “the law of peace ceased to apply between them and their relations with one another became subject to the laws of war, while their relations with other states not party to the conflict became governed by the law of neutrality.”³ This outbreak of a state of war, between the Hawaiian Kingdom and the United States, would “lead to many rules of the ordinary law of peace being superseded [...] by rules of humanitarian law.”⁴ A state of war “automatically brings about the full operation of all the rules of war and neutrality,” which includes the law of occupation.⁵ And, according to Venturini, “[i]f an armed conflict occurs, the law of armed conflict must be applied from the beginning until the end, when the law of peace resumes in full effect.”⁶ “For the laws of war,” according to Koman, “continue to apply in the occupied territory even after the achievement of military victory, until either the occupant withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant.”⁷

In the *Tadić* case, the International Criminal Tribunal for the former Yugoslavia indicated that the laws of war—international humanitarian law—applies from “the initiation of [...] armed conflicts

¹ 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).

² James Crawford, *The Creation of States in International Law* 34 (2nd ed., 2006); Krystyna Marek, *Identity and Continuity of States in Public International Law* 102 (2nd ed., 1968).

³ Greenwood, 45.

⁴ *Id.*, 46.

⁵ Myers S. McDougal and Florentino P. Feliciano, “The Initiation of Coercion: A Multi-temporal Analysis,” 52 *Am. J. Int’l. L.* 241, 247 (1958).

⁶ Gabriella Venturini, “The Temporal Scope of Application of the Conventions,” in Andrew Clapham, Paola Gaeta, and Marco Sassòli, eds., *The 1949 Geneva Conventions: A Commentary* 52 (2015).

⁷ Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* 224 (1996).

and extends beyond the cessation of hostilities until a general conclusion of peace is reached.”⁸ Only by an agreement between the Hawaiian Kingdom and the United States could a state of peace be restored, without which a state of war ensues.⁹ An attempt to transform the state of war to a state of peace was made by executive agreement on 18 December 1893 between President Cleveland and Queen Lili‘uokalani. President Cleveland stated to the Congress that he “instructed Minister Willis to advise the Queen and her supporters of [his] desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned.”¹⁰ President Cleveland, however, was unable to carry out his duties and obligations under this agreement to restore the situation that existed before the unlawful landing of American troops, due to political wrangling in the Congress.¹¹ Consequently, the state of war continued and international humanitarian law—law of armed conflict continued to apply.

There are four stages in a state of war. The *first stage* is an act of war committed by a State’s military against another State. This act of war triggers a state of war. The *second stage* takes place when there is a surrender by one of the States. This *second stage* transfers effective control over the territory that the surrendering State previously held. This transfer of effective control of the territory of the occupied State satisfies Article 42 of the 1907 Hague Regulations and triggers the law of occupation under Article 43, which is to administer the laws of the occupied State until a treaty of peace.¹² The surrender takes it to the *third stage* of belligerent occupation. The *fourth phase* is a treaty of peace that ends the belligerent occupation and returns the situation back to a state of peace that existed before the act of war was committed.

⁸ ICTY, *Prosecutor v. Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), §70 (Oct. 2, 1995).

⁹ Under United States municipal laws, there are two procedures by which an international agreement can bind the United States. The first is by a treaty whose entry into force can only take place after two-thirds of the United States Senate has given its advice and consent under Article II, section 2, Clause 2 of the U.S. Constitution. The second is by way of an executive agreement entered into by the President that does not require ratification by the Senate. See *United States v. Belmont*, 301 U.S. 324, 326 (1937); *United States v. Pink*, 315 U.S. 203, 223 (1942); *American Insurance Association v. Garamendi*, 539 U.S. 396, 415 (2003).

¹⁰ United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawaii: 1894-95*, 458 (1895) (Executive Documents) (online at: [https://hawaiiankingdom.org/pdf/Cleveland's_Message_\(12.18.1893\).pdf](https://hawaiiankingdom.org/pdf/Cleveland's_Message_(12.18.1893).pdf)).

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¹² Article 42. Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised. Article 43. The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

The state of war between the United States and Japan was triggered by Japan's act of war in its attack of U.S. forces on the island of O'ahu on 7 December 1941—*first stage*. Hostilities lasted until 2 September 1945, when Japan signed the instrument of surrender—*second stage*. As a result, the belligerent occupation of Japanese territory began under General MacArthur as military governor—*third stage*. Initially, the occupation was supposed to last three years, but it went on for seven years.¹³ According to the U.S. Department of State, Office of the Historian, "[t]he occupation of Japan can be divided into three phases: the initial effort to punish and reform Japan, the work to revive the Japanese economy, and the conclusion of a formal peace treaty and alliance."¹⁴

The American occupation lasted until 28 April 1952, when the treaty of peace, called the Treaty of San Francisco, was ratified and declared in force by the United States—*fourth stage*. Article 1 of the Treaty of San Francisco stated, "[t]he state of war between Japan and each of the Allied Powers is terminated as from the date on which the present Treaty comes into force." And Article 6(a) provides that "[a]ll occupation forces of the Allied Powers shall be withdrawn from Japan as soon as possible after the coming into force of the present Treaty, and in any case not later than 90 days thereafter." Japan was the first to submit its ratification on 28 November 1951; followed by the United Kingdom on 3 January 1952; Mexico on 3 March 1952; Argentina on 9 April 1952; Australia and New Zealand on 10 April; Canada and Pakistan on 17 April 1952; France on 18 April 1952; and Ceylon, on the same day as the United States, 28 April 1952.

The state of war between the Hawaiian Kingdom and the United States was triggered by the United States' act of war committed U.S. Marines on January 16, 1893—*first stage*. President Grover Cleveland stated to the Congress, "[a]nd so it happened that on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies. This military demonstration upon the soil of Honolulu was of itself an act of war."¹⁵ This prompted Queen Lili'uokalani to conditionally surrender to the United States on January 17, 1893, calling upon the President to investigate the actions taken by U.S. Minister John Stevens and the Marines that were landed by Minister Steven's orders, and, thereafter, to reinstate her as the Executive Monarch—*second stage*.

¹³ Philip H. Taylor, "The Administration of Occupied Japan," *The Annals of the American Academy of Political and Social Science*, 267 Military Government 140-153, 140 (1950).

¹⁴ U.S. Department of State, Office of the Historian, "Occupation and Reconstruction of Japan, 1945–52," (online at <https://history.state.gov/milestones/1945-1952/japan-reconstruction#:~:text=After%20the%20defeat%20of%20Japan,%2C%20economic%2C%20and%20social%20reforms.>).

¹⁵ Executive Documents, 451.

President Cleveland’s investigation led to an agreement of restoration on 18 December 1893, but that international agreement was not carried out. Unlike the Japanese situation where the military government under General MacArthur administered Japanese laws after the surrender, the United States did not administer the laws of the Hawaiian Kingdom after the surrender by the Queen. Instead, that United States allowed their puppet regime called the provisional government to maintain control until the United States unilaterally annexed Hawaiian territory by congressional legislation on 7 July 1898, that has no extra-territorial effect. According to President Cleveland, the “provisional government owes its existence to an armed invasion by the United States.”¹⁶ In the Hawaiian situation, the *third stage* has not been initiated by establishing a military government to provisionally administer the laws of the Hawaiian Kingdom until a treaty of peace—*fourth stage* has been agreed upon by both the Hawaiian Kingdom and the United States.

This operational plan assumes that the *third stage* has been initiated with the transformation of the State of Hawai‘i into a Military Government pursuant to the Council of Regency’s *Operational Plan for Transitioning the State of Hawai‘i into a Military Government*.¹⁷ The Military Government is the civilian government of the Hawaiian Kingdom as it existed before the American invasion on 16 January 1893. Only the Queen, her Cabinet of Ministers and the Marshal of the police force were forcibly removed from office. All other government officials were told to remain in place and were forced to sign an oath of allegiance to the leadership of the insurgency. On 17 January 1893, the insurgency proclaimed:

4. All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exceptions of the following named persons:

Queen Liliuokalani,
Charles B. Wilson, Marshal,
Samuel Parker, Minister of Foreign Affairs,
W.H. Cornwell, Minister of Finance,
John F. Colburn, Minister of the Interior,
Arthur P. Peterson, Attorney-General,

who are hereby removed from office.

Since then, officers and departments were renamed throughout the era of the provisional government’s successor, the Republic of Hawai‘i (1894-1900), the Territory of Hawai‘i (1900-1959), the State of Hawai‘i (1959-2023), and the Military Government of Hawai‘i (2023-TBD).

¹⁶ *Id.*, 454.

¹⁷ Council of Regency, *Operational Plan for Transitioning the State of Hawai‘i into a Military Government* (14 August 2023) (online at https://hawaiiankingdom.org/pdf/HK_Operational_Plan_of_Transition.pdf).

The Military Government of Hawai‘i’s governmental infrastructure is that of the Hawaiian Kingdom.

Negotiations for the Hawaiian Kingdom – United States Treaty of Peace shall begin as soon as the Military Government is established and shall cover the terms of peace, establishing Hawaiian territory, the withdrawal of occupation forces, its treaties with the United States and other States, and reparations. The Council of Regency has drafted a proposed Treaty of Peace, which is attached herein as Appendix 1.

Withdrawal of Title 10 Armed Forces in accordance with the 1884 Pearl Harbor Convention

The 1875 Commercial Reciprocity Treaty,¹⁸ and the 1884 Supplemental Convention (Pearl Harbor Supplemental Convention),¹⁹ between the Hawaiian Kingdom and the United States is what established the U.S. military presence in the Hawaiian Islands called Title 10 United States Code (“USC”) armed forces. The Pearl Harbor Supplemental Convention extended the duration of the 1875 Commercial Reciprocity Treaty an additional seven years until 1894. As a condition for the extension of the commercial treaty, the United States sought exclusive access to Pearl Harbor. Article II of the Pearl Harbor Supplemental Convention provides:

His Majesty the King of the Hawaiian Islands grants to the Government of the United States the exclusive right to enter the harbor of Pearl River, in the Island of Oahu, and to establish and maintain there a coaling and repair station for the use of vessels of the United States, and to that end the United States may improve the entrance to said harbor and do all other things needful to the purpose aforesaid.

On 26 September 1887, King Kalākaua and his Cabinet Council concluded to add a note to the Pearl Harbor Convention before its ratification. According to the Cabinet Council minutes:

The subject of discussion was the [U.S.] Senate amendment to the Reciprocity Treaty and after lengthy consideration it was decided that the Minister of Foreign Affairs should advise the Minister of Resident at Washington that His Majesty gave his consent to the amendment on the condition that the Secretary of State should accept a note explaining that the Hawaiian Government’s understanding of the amendment was that Hawaiian Sovereignty and jurisdiction were not impaired that the Hawaiian Government was not bound to furnish land for any purpose and that the privilege to be granted should be coterminous with the Treaty.”²⁰

¹⁸ 19 Stat. 625 (1875).

¹⁹ 25 Stat. 1399.

²⁰ Hawaiian Kingdom, *Cabinet Council Minutes* 384, 26 Sep. 1887 (1874-1891).

The Pearl Harbor Convention came into effect on 9 November 1887 after ratifications were exchanged in the city of Washington and would last for seven years and further until “either of the High Contracting Parties shall give notice to the other of its wish to terminate the same,”²¹ where termination would commence twelve months after the notification is received by the other High Contracting Party. Although the Hawaiian government was unlawfully overthrown by the United States on 17 January 1893, the Hawaiian Kingdom as a State under international law continued to exist.

Prior to the American invasion of Honolulu on 16 January 1893, the United States did not take any steps to establish a coaling station at Pearl Harbor. After the unlawful overthrow of the government of the Hawaiian Kingdom on 17 January 1893, U.S. Special Commissioner James Blount ordered United States forces to return back onto the USS Boston that was docked in Honolulu Harbor on 1 April 1893. For the next five years effective control of Hawaiian territory was in the hands of the insurgents calling themselves the so-called Republic of Hawai‘i.

When the United States unilaterally annexed the Hawaiian Islands in violation of international law on 7 July 1898, it initiated the establishment of the United States Army Pacific, United States Marine Forces Pacific, United States Pacific Fleet, and the United States Pacific Air Forces. The United States Army Pacific was established in the Hawaiian Islands in 1898 during the Spanish-American War, headquartered at its first military base called Camp McKinley on the Island of O‘ahu, and later headquartered at Fort Shafter on the Island of O‘ahu in 1921. In 1908, the Congress allocated funds to establish a Naval Station at Pearl Harbor.²²

In April 1942, the United States armed forces in the Hawaiian Islands were organized into two commands for the Army under United States Army Forces Pacific and for the Navy as Commander-in-Chief, Pacific Fleet, and Pacific Oceans Areas Commander-in-Chief. This command structure of the Army and Navy in the Hawaiian Islands during the Second World War was transformed into the United States Pacific Command on 1 January 1947, which is presently called the Indo-Pacific Command, whose headquarters is at Camp H.M. Smith on the Island of O‘ahu. In September 1947, the United States Air Force separated from the United States Army as a separate branch of the armed forces with its base headquartered at Hickam Air Force Base on the Island of O‘ahu, and later, in 2010, merged to become an element of Joint Base Pearl Harbor-Hickam with the Navy.

The Indo-Pacific Command has four component commands stationed in the territory of the Hawaiian Kingdom—United States Army Pacific, whose headquarters is at Fort Shafter on the Island of O‘ahu, United States Marine Forces Pacific, whose headquarters is at Camp H.M. Smith on the Island of O‘ahu, United States Pacific Fleet, whose headquarters is at Naval Station Pearl

²¹ 25 Stat. 1399.

²² 35 Stat. 127, 141 (1908).

Harbor on the Island of O‘ahu, and United States Pacific Air Forces, whose headquarters is at Hickam Air Force Base/Joint Base Pearl Harbor-Hickam on the Island of O‘ahu.

There is no legal basis for the presence of Title 10 USC armed forces in the Hawaiian Islands by virtue of Congressional legislation because municipal laws have no extraterritorial effect. Since Congressional legislation is limited in operation to the territory of the United States, it cannot unilaterally establish military installations in the territory of a foreign State without the State’s consent through a treaty or convention.²³ According to traditional international law, the concept of jurisdiction is linked to the State territory. As the Permanent Court of International Justice in the *Lotus* case stated:

[T]he 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 [...] all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.²⁴

The presence of all Title 10 USC armed forces throughout the Hawaiian Islands has a direct nexus to the Pearl Harbor Supplemental Convention that granted the United States exclusive access to Pearl Harbor. Notwithstanding the nefarious nature of the ratification of the Pearl Harbor Supplemental Convention by the Hawaiian Kingdom that arose out of the 1887 unsuccessful revolution,²⁵ the ratifications were exchanged in 1887, and, therefore, is a valid Convention under international law.

On 20 October 2023, the Hawaiian Kingdom, by its Council of Regency, proclaimed the termination of the 1875 Commercial Reciprocity Treaty and the Pearl Harbor Supplemental Convention in accordance with Article I of the said Pearl Harbor Supplemental Convention.²⁶ The following day, a notice of termination was sent, by courier United States Postal Service, to Secretary of State Antony J. Blinken. The notice of termination was received by the United States Department of State at 5:47am ET on 26 October 2023, which consequently triggered the tolling

²³ See *The Apollon*, 22 U.S. 362, 370 (1824); and *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

²⁴ S.S. “*Lotus*”, Judgment, 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).

²⁵ David Keanu Sai, “Hawaiian Constitutional Governance,” in David Keanu Sai’s (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 79-81 (2020).

²⁶ Proclamation Terminating the 1875 Commercial Reciprocity Treaty and its 1884 Supplemental Convention (online at https://hawaiiankingdom.org/pdf/Proc_Terminating_1875_Treaty_and_1884_Supp_Conven.pdf).

of twelve months after which the said Treaty and the Pearl Harbor Supplemental Convention would terminate, which is by 5:47am ET on 26 October 2024.²⁷

The reasoning behind the notice of termination was that the United States exploited and expanded its use of Pearl Harbor by establishing military bases and facilities throughout the Hawaiian Islands under the Indo-Pacific Command of the U.S. Department of Defense, thereby violating the Hawaiian Kingdom's note to the Pearl Harbor Convention "that the privilege to be granted should be coterminous with the Treaty." The expansion of military bases and facilities also constitute violations of Article 1 of the 1907 Hague Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. Although the Hawaiian Kingdom is not a Contracting State to the 1907 Hague Convention (V), it is mere codification of nineteenth century customary international law. On 7 April 1855, King Kamehameha IV proclaimed the foreign policy of the Kingdom:

My policy, as regards all foreign nations, being that of peace, impartiality and neutrality, in the spirit of the Proclamation by the late King, of the 16th May last, and of the Resolutions of the Privy Council of the 15th June and 17th July, I have given to the President of the United States, at his request, my solemn adhesion to the rule, and to the principles establishing the rights of neutrals during war, contained in the Convention between his Majesty the Emperor of all the Russias and the United States, concluded in Washington on the 22nd July last.²⁸

This policy of neutrality remained unchanged throughout the nineteenth century. Furthermore, the policy of neutrality by the Hawaiian Kingdom as a Neutral Power were inserted as treaty provisions in the Hawaiian-Swedish/Norwegian Treaty of 1852, the Hawaiian-Spanish Treaty of 1863, and the Hawaiian-German Treaty of 1879. In its treaty with Sweden/Norway, Article XV states, "His Majesty the King of Sweden and Norway engages to respect in time of war the neutral rights of the Hawaiian Kingdom, and to use his good offices with all other powers, having treaties with His Majesty the King of the Hawaiian Islands, to induce them to adopt the same policy towards the Hawaiian Kingdom."

As a result of the termination of the Reciprocity Treaty and the Pearl Harbor Supplemental Convention, all United States military forces in the Hawaiian Islands will be withdrawn in twelve months from 26 October 2023. On the withdrawal, the Council of Regency proclaimed:

And, We do require that when the United States has received this notice of termination, it shall, prior to the expiration of twelve months in accordance with Article I of the 1884 Supplemental Convention, remove all movable property at its military facilities throughout

²⁷ Sai to Blinken (21 Oct. 2023), with signed receipt (24 Oct. 2023) (online at [https://hawaiiankingdom.org/pdf/Ltr_to_Sec_of_State_Blinken_\(10.20.23\).pdf](https://hawaiiankingdom.org/pdf/Ltr_to_Sec_of_State_Blinken_(10.20.23).pdf)).

²⁸ Robert C. Lydecker, *Roster Legislatures of Hawaii—1841-1918* 57 (1918).

the Hawaiian Islands, including unexploded munitions, and fuel, with the exception of real property attached to the land or erected on it, including man-made objects, such as buildings, homes, structures, roads, sewers, and fences, to include on other properties that have been or are currently under its supervision and command.

Not all military forces in the Hawaiian Islands are affected by the notice of termination. There are two military forces within the Hawaiian Kingdom. That of the United States Federal government called Title 10 USC armed forces,²⁹ and that of the State of Hawai‘i National Guard called Title 32 USC armed forces.³⁰ Title 10 troops are purely American in origin while the Title 32 troops are Hawaiian in origin, and, therefore, remain in the Hawaiian Islands to be called by its original designation—the Royal Guard.³¹

Hawaiian Territory

On 16 March 1854, Robert Wyllie, Hawaiian Minister of Foreign Affairs, made the following announcement to the British, French and U.S. diplomats stationed in Honolulu:

I have the honor to make known to you that that the following islands, &c., are within the domain of the Hawaiian Crown, viz:

Hawai‘i, containing about, 4,000 square miles;
Maui, 600 square miles;
O‘ahu, 520 square miles;
Kaua‘i, 520 square miles;
Molokai, 170 square miles;
Lāna‘i, 100 square miles;
Ni‘ihau, 80 square miles;
Kaho‘olawe, 60 square miles;
Nihoa, known as Bird Island,
Molokini)
Lehua) Islets, little more than barren rocks:
Ka‘ula)
and all Reefs, Banks and Rocks contiguous to either of the above, or within the compass of the whole.³²

Four additional Islands were annexed to the Hawaiian Kingdom under the doctrine of discovery since the above announcement. Laysan Island was annexed to the Hawaiian Kingdom by discovery

²⁹ Title 10 of the United States Code outlines the role of the armed forces of the United States federal government.

³⁰ Title 32 of the United States Code outlines the role of the Army and Air National Guard of the States and Territories of the United States.

³¹ Sai, *Hawaiian Constitutional Governance*, 67

³² A.P. Taylor, “Islands of the Hawaiian Domain,” 5 (Hawai‘i Archives, 10 January 1931).

of Captain John Paty on 1 May 1857.³³ Lisiansky Island also was annexed by discovery of Captain Paty on 10 May 1857.³⁴ Palmyra atoll, a cluster of low islets, was taken possession of by Captain Zenas Bent on 15 April 1862, and proclaimed as Hawaiian Territory.³⁵ And Ocean Island, also called Kure atoll or Moku Pāpapa, was acquired 20 September 1886, by proclamation of Colonel J.H. Boyd.³⁶ Territorial jurisdiction extends “to the distance of one marine league (three miles), surrounding each of Our Islands of Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu, Kauai and Niihau, commencing at low water mark on each of the respective coasts, of said Islands, and includes all the channels passing between and dividing said Islands, from Island to Island.”³⁷

Five more islands were claimed by the provisional government after 17 January 1893. Necker Island was taken possession on 27 May 1894 and French Frigate Shoals taken possession on 13 July 1895. Dates of possession are not known for Gardner Pinnacles, Maro Reef, and Pearl and Hermes Atoll, but they were considered territory held by the insurgents. All these islands constitute the territory of the Hawaiian Kingdom by virtue of the executive agreement, by exchange of notes, between the President Cleveland and Queen Lili‘uokalani on 18 December 1893. Although the Queen was not restored, the Council of Regency considers that it is bound by the agreement so long as those provisions do not violate Hawaiian law. In particular, “to assume all the obligations created by the Provisional Government, in the proper course of administration.”³⁸

While Midway Island, which lies between Kure Atoll and Pearl and Hermes Atoll, was recognized by the Hawaiian Kingdom in the nineteenth century as being a part of the territory of the United States of America, the Hawaiian Kingdom will demand that it renounces its claim over the island as a part of reparations in order for the Hawaiian chain of islands to be contiguous.

The Islands that comprise the territory of the Hawaiian Kingdom are:

<u>Island:</u>	<u>Location:</u>	<u>Square Miles/Acreage:</u>
Hawai‘i	155°31'0.506"W 19°35'30.587"N	4,028.2 / 2,578,048
Maui	156°19'59.627"W 20°46'45.556"N	727.3 / 465,472
Molokini	156°29'45.432"W 20°37'54.49"N	0.04 / 25.6
Kaho‘olawe	156°36'41.856"W 20°32'48.295"N	44.6 / 28,544
Molokai	156°59'58.124"W 21°7'49.05"N	260.0 / 166,400
Lāna‘i	156°55'19.727"W 20°49'36.877"N	140.6 / 89,984
O‘ahu	157°58'30.208"W 21°28'31.128"N	597.1 / 382,144
Kaua‘i	159°31'39.562"W 22°3'12.681"N	552.3 / 353,472
Lehua	160°5'43.795"W 22°1'16.582"N	0.4 / 256

³³ *Id.*, 7.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*, 8.

³⁷ March 16, 1854 Proclamation of Hawaiian Neutrality by His Majesty King Kamehameha III.

³⁸ Executive Documents, 1269-1270.

Ni‘ihau	160°9'12.122"W 21°53'57.2"N	69.5 / 44,480
Ka‘ula	160°32'25.391"W 21°39'14.554"N	0.2 / 128
Nihoa	161°55'19.454"W 23°3'39.022"N	0.3 / 192
Necker	164°42'0.7"W 23°34'34.198"N	.07 / 45
French Frigate Shoals	166°13'17.92"W 23°48'23.599"N	.096 / 61
Gardner Pinnacles	167°59'58.394"W 24°59'56.537"N	.009 / 5.9
Maro Reef	170°34'27.999"W 25°25'43.924"N	746 / 478,000
Laysan	171°43'58.532"W 25°46'9.952"N	1.6 / 1,024
Lisiansky	173°57'58.655"W 26°3'46.062"N	0.6 / 384
Pearl and Hermes Atoll	175°49'0.409"W 27°49'31.244"N	.19 / 80
Midway Atoll	177°22'39.208"W 28°12'34.869"N	2.4 / 1,536
Kure Atoll	178°17'36.609"W 28°23'32.226"N	0.4 / 256
Palmyra Atoll	162°4'35.49"W 5°52'54.126"N	4.6 / 2,944
Kalama (Johnston) Atoll	169°32'0.019"W 16°43'45.017"N	1.03 / 832

Reparations

The Hawaiian Kingdom will establish an international commission of inquiry, called the Hawaiian Commission of Inquiry, that will function in similar fashion as the United Nations Compensation Commission (“UNCC”) comprised of commissioners that was established after Iraq invaded Kuwait in 1991. United Nations Security Council resolution 687 “affirmed that Iraq was liable under international law for any direct loss, damage—including environmental damage and the depletion of natural resources—or injury to foreign Governments, nationals and corporations as a result of its invasion and occupation of Kuwait.” The UNCC’s responsibility was to review claims, including all fact-finding and legal reasoning, and entailed three tasks:

First, they were required to determine whether the various types of losses alleged by the claimants were within the jurisdiction of the Commission, i.e. whether the losses were a direct result of the invasion and occupation of Kuwait by Iraq. Second, they were required to verify whether alleged losses compensable in principle had in fact been incurred by the claimant. Third, they were required to determine whether those compensable losses had been incurred in the amounts claimed and, if not, to determine the appropriate quantum for the loss on the basis of the evidence provided to the panel.³⁹

Claims were submitted by Governments and international organizations on their own behalf as well as on behalf of their nationals and corporations. The UNCC did not receive claims directly by the claimants themselves but through their Governments and international organizations. There were six categories of claims.

³⁹ Annex—Final report of the Governing Council of the United Nations Compensation Commission to the Security Council on the work of the Commission, S/2022/104, p. 4 (online at <https://uncc.ch/sites/default/files/attachments/documents/Final%20Report%20with%20letter.pdf>).

- (a) Category A claims were for departure from Kuwait or Iraq as a result of the invasion and occupation of Kuwait by Iraq during the period from 2 August 1990 to 2 March 1991. The Council fixed the amount of compensation for successful claimants in this category at \$2,500 for individuals and \$5,000 for families;
- (b) Category B claims were for serious personal injury or for people whose spouse, child or parent had been injured or died as a result of the invasion and occupation of Kuwait by Iraq. The Council fixed the amount of compensation for successful claimants in this category at \$2,500 for each injury or death and up to \$10,000 for families (moreover, if the actual loss in question was greater than \$2,500, payments were treated as interim relief and claims for additional amounts could be submitted in other appropriate categories);
- (c) Category C claims were for individual claims for damages up to \$100,000 grouped under nine loss types: departure from Iraq or Kuwait, personal injury, mental pain and anguish, loss of personal property, loss of bank accounts, stocks and other securities, loss of income or support, loss of real property, business losses and any losses not covered by the other groupings;
- (d) Category D claims were for individual claims for damages above \$100,000 with the same loss types as category C;
- (e) Category E claims were for direct loss, damage or injury to corporate or other private legal entities and public sector enterprises;
- (f) Category F claims were for direct loss, damage or injury to Governments and international organizations, including claims for loss or expense incurred in evacuating nationals or in providing relief to nationals, damage to diplomatic premises, loss of and damage to government property and damage to the environment and public health.⁴⁰

UNCC's "mandate was to process claims and pay compensation for losses and damage suffered by individuals, corporations, Governments and international organizations as a direct result of the unlawful invasion and occupation of Kuwait by Iraq."⁴¹ In its final report, the UNCC reported that it paid out a total of reparations at \$52,383,356,715.00 to multiple Governments, their nationals and corporations, and international organizations.⁴² Kuwait received a total of \$41,162,036,186.00 in reparations for Iraq's 7.5 months of occupation. For its claim, the Kuwaiti Government received \$12,066,518,518.00, which is \$1,508,314,814.75 per month when the Iraqi occupation is rounded up to 8 months. If we apply this calculation to the United States occupation of the Hawaiian Kingdom, which is, as of September 2023, 1,557 months, the total amount of reparations would be \$2,348,446,166,565.75. This does not include claims by Hawaiian nationals and corporations.

Reparations are for Hawaiian subjects wherever they are domiciled. If there are any claims by nationals of other countries, it is by their governments and not the Government of the Hawaiian Kingdom. Hawaiian subjects reside not only in the Hawaiian Islands but also in other countries

⁴⁰ *Id.*, p. 6.

⁴¹ *Id.*, p. 7.

⁴² *Id.*, p. 22.

including the United States. When the Hawaiian Kingdom came under military occupation on 17 January 1893, international law preserves the *status quo ante* of the occupied State as it was before the occupation began. To preserve the nationality of the occupied State from being manipulated by the occupying State to its advantage, international law only allows individuals born within the territory of the occupied State to acquire the nationality of their parents—*jus sanguinis*. To preserve the *status quo*, Article 49 of the GC IV mandates that the “Occupying Power shall not [...] transfer parts of its own civilian population into the territory it occupies.” For individuals, who were born within Hawaiian territory, to be a Hawaiian subject, they must be a direct descendant of a person or persons who were Hawaiian subjects prior to 17 January 1893. All other individuals, born after 17 January 1893, to the present are aliens who can only acquire the nationality of their parents. According to Professor von Glahn, “children born in territory under enemy occupation possess the nationality of their parents.”⁴³

In 1999, the Permanent Court of Arbitration acknowledged the Hawaiian Kingdom to be a non-Contracting State to the 1907 Hague Convention, I, for the Pacific Settlement of International Disputes (“1907 Convention”), which is an acknowledgment of the continued existence of the Hawaiian Kingdom as a State under international law. Article 47 of the 1907 Convention provides “[t]he jurisdiction of the Permanent Court may, within the conditions laid down in the regulations, be extended to disputes between non-Contracting Powers or between Contracting Powers and non-Contracting Powers, if the parties are agreed on recourse to this Tribunal.” Part III of the 1907 Convention provides for International Commissions of Inquiry. The United States is a Contracting State to the 1907 Convention.

The Hawaiian Kingdom will enter into an agreement with the United States to establish an International Commission of Inquiry (“ICI”) under the auspices of the Permanent Court of Arbitration. The mandate of the ICI is to process claims and pay compensation for losses and damage suffered by individuals, corporations, governments, and international organizations as a direct result of the unlawful invasion and occupation of the Hawaiian Kingdom by the United States. As stated in its arbitral award in *Larsen v. Hawaiian Kingdom*, “[t]he Tribunal notes that that the interstate fact-finding commissions so far held under the auspices of the Permanent Court of Arbitration have not confined themselves to pure questions of fact but have gone on, expressly or by clear implication, to deal with issues of responsibility for those facts.”⁴⁴

Seizing of Property

Should the United States delay or refuse to enter into an agreement to form the ICI, the Hawaiian Kingdom shall exercise its right under international humanitarian law of seizing, retaining,

⁴³ 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 Mānoa, 2014).

⁴⁴ *Larsen v. Hawaiian Kingdom*, 119 *Int’l L. Reports* 566, 597 (2001).

liquidating or otherwise dispose of all property, rights and interests of the United States and United States nationals; persons acting for or on behalf of the United States or United States nationals; and entities owned or controlled by the United States or United States nationals within the territorial jurisdiction of the Hawaiian Kingdom for reparations.

As part of Japan's reparations, the seizure of Japanese assets in the territories of Allied Powers was provided in Article 14(a)(2)(I) of the 1951 Treaty, to wit, "[s]ubject to the provisions of subparagraph (II) below, each of the Allied Powers shall have the right to seize, retain, liquidate or otherwise dispose of all property, rights and interests of (a) Japan and Japanese nationals, (b) persons acting for or on behalf of Japan or Japanese nationals, and (c) entities owned or controlled by Japan or Japanese nationals, which on the first coming into force of the present Treaty were subject to its jurisdiction."

Seizure of Italian assets in the territories of Allied Powers pursuant to Article 79, Italian Treaty of Peace, to wit, "Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which on the coming into force of the present Treaty are within its territory and belong to Italy or to Italian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Italy or Italian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty."

In the United States, Japanese assets seized amounted to \$85 million (inflation conversion for 2017—\$752 million), and Italian assets seized amounted to \$62 million (inflation conversion for 2017—\$766 million). Pursuant to Presidential Executive Order no. 9567—Alien Property Custodian (1945), the United States took title by "vesting" of all property of Japan and Germany and their nationals.⁴⁵ Under the 1948 War Claims Act, proceeds derived from these assets would not be returned, but rather placed in a War Claims Fund from which payments would be made to United States citizens that suffered as a consequence of the war with Japan, Germany and Italy.⁴⁶ In the Hawaiian situation, payments would be made to Hawaiian subjects that suffered as a consequence of the prolonged military occupation.

Assets held by the United States and other States, who are parties to the conflict since 16 January 1893, to include their nationals, within the territorial jurisdiction of the Hawaiian Kingdom, are yet to be determined. The liquidation of these assets would be utilized in similar fashion as the United States did regarding Japanese, German, and Italian properties that were vested by the Alien Property Custodian during World War II.

⁴⁵ Exec. Order No. 9567, 10 Fed. Reg. 6917 (1945); see Ann. Rep. Alien Property Custodian 1-7 (1945).

⁴⁶ 62 Stat. 1240 (1948), 50 U.S.C. §§ 2012, 2013 (1951).

It is an inherent right of every government in a state of war to control, seize and administer enemy property within its territorial jurisdiction.⁴⁷ Authority to seize enemy property situated within United States territory stems from the federal Constitution’s Article I, Section 8, Clause II, which states that Congress shall have the power to “declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.” Under Hawaiian Kingdom law, the authority to seize properties of enemies of the Hawaiian Kingdom within its jurisdiction over Hawaiian territory, stems from Article 14 of the 1864 Constitution, as amended:

Each member of society has a right to be protected by [the constitution], in the enjoyment of his life, liberty, and property, according to law; and, therefore, he shall be obliged to contribute his proportional share to the expenses of this protection, and to give his personal services, or an equivalent when necessary; but no part of the property of any individual shall be taken from him, or applied to public uses, without his own consent, or the enactment of the Legislative Assembly, except the same shall be necessary for the military operation of the Kingdom in time of war or insurrection.

The seizure of enemy property can be employed as a matter of economic warfare against the citizenry of the belligerent State while in a state of war, and it can also be employed as a matter of reparation to bring the state of war to an end. The United States employed this type of economic warfare during its war with Japan, Germany, and Italy, but waived its right to reparation from these countries when the wars ended by virtue of the treaties of peace. The United States, however, did maintain the right of Allied Powers to seize properties owned by Japan or Japanese nationals, with conditions, under Chapter V—Claims and Property of the 1851 Treaty.

*Military Government of Hawai‘i Preparing for Transition
to the de jure Government of the Hawaiian Kingdom*

The function of the Military Government of Hawai‘i will be divided into three phases: first, the initial effort to bring back the *status quo ante* of the Hawaiian Kingdom governmental institutions, its territory, and its population; second, to take affirmative steps to rectify land titles⁴⁸ and personal property ownership⁴⁹ to revive the Hawaiian economy; and third, the conclusion of a formal treaty of peace. The Military Government will have three years to complete its function. After the treaty of peace has been negotiated, agreed upon, and ratified by both the Hawaiian Kingdom and the United State of America, the transition from the Military Government to the Government of the Hawaiian Kingdom will be initiated, and the military occupation will come to an end.

⁴⁷ Paul V. Myron, “The Work of the Alien Property Custodian,” 11 *Law & Contemp. Probs.* 76 (1945-46).

⁴⁸ See Royal Commission of Inquiry’s Preliminary Report on the Status of Land Titles throughout the Realm (16 July 2020) (online at https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Land_Titles.pdf).

⁴⁹ *Id.*, Criminal Report No. 22-0001—Insurgency of 1893 and Attainder of Treason (4 November 2022) (online at https://hawaiiankingdom.org/pdf/RCI_Criminal_Report_no._22-0001.pdf).

ESSENTIAL TASK: *Transfer of Power from the Military Government
to the Government of the Hawaiian Kingdom*

The transitional period from Military Government to the Government of the Hawaiian Kingdom is divided into three phases. The first phase takes place when the *acting* Council of Regency, as a government *de facto*, assumes power from the Military Governor so that the Legislative Assembly can be called into special session. The second phase begins after the Legislative Assembly, elects by ballot, a Regency *de jure* in accordance with Article 33 of the 1864 Constitution, as amended, which will transform the Government of the Hawaiian Kingdom from *de facto* to *de jure*. The Legislative Assembly will then vote to ratify the Treaty of Peace in accordance with Article 29 of the 1864 Constitution, as amended, whereby “Treaties involving changes in the Tariff or in any law of the Kingdom shall be referred for approval to the Legislative Assembly.” The third phase will be initiated by a ceremony where ratifications are exchanged, and the Treaty of Peace is proclaimed to be in full force. This will bring the military occupation to an end.

Government de facto during First Phase

According to Article 28 of the 1864 Constitution, as amended, “[t]he King, by and with the advice of His Privy Council, convenes the Legislative Assembly at the seat of Government.” However, the office of the King was made vacant after the death of Queen Lili‘uokalani on 11 November 1917, and Prince Jonah Kuhio Kalaniana‘ole, the last heir to throne, died on 7 January 1922. In this situation, 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 did not name an heir to the throne. If it did, the will could not be accepted into probate under Hawaiian law since the government, which would include the probate courts, was not restored under the agreement with President Cleveland.

Article 22 of the 1864 Constitution, as amended, provides that a successor to the throne, which also called an heir apparent, “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.” Consent of the Nobles in the Legislative Assembly is informed by Article 25 that provides, “[n]o person shall ever sit upon the Throne, who has been convicted of any infamous crime, or who is insane, or an idiot.” Article 25 was the threshold to determine whether the appointee would receive confirmation by the Nobles.

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.”⁵⁰ 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.”⁵¹ 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.”⁵²

There was no legal requirement for the Council of Regency, being the successor in office to Queen Lili‘uokalani under Hawaiian constitutional law, to get diplomatic 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 6 July 1844,⁵³ was also the 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.⁵⁴ 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.”⁵⁵

Filling the vacancy after the death of Prince Kuhio would be the ministry that collectively forms the Cabinet Council as a Council of Regency in accordance with Article 33 of the 1864 Constitution, as amended. Pursuant to Article 42, “[t]he King’s Cabinet shall consist of the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance, and the Attorney General of the Kingdom.” Although Article 33 provides that the Cabinet Council “shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately [and] shall proceed to

⁵⁰ Thomas Cooley, *A Treatise on the Law of Taxation* 185 (1876).

⁵¹ *Carpenter v. Clark*, 217 Michigan 63, 71 (1921).

⁵² *The King v. Ah Lin*, 5 Haw. 59, 61 (1883).

⁵³ U.S. Secretary of State Calhoun to Hawaiian Commissioners (6 July 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).

⁵⁴ M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice*, 1815-1995 26 (1997).

⁵⁵ *Restatement (Third)*, §203, comment c.

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,” the convening of the Legislative Assembly was impossible in light of the prolonged occupation. The impossibility of convening the Legislative Assembly during the occupation did not prevent the Cabinet from becoming the Council of Regency because of the operative word “shall,” but only prevents the Legislature from electing a Regent or Regency *de jure*.

Therefore, the Council was established in similar fashion to the Belgian Council of Regency after King Leopold was captured by the Germans during World War II. As the Belgian Council 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*. As Professor Oppenheimer explains:

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 the 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.⁵⁶

To be in full compliance with Article 33, it is the duty of the Council of Regency, as officers *de facto*, to “immediately” call into session the Legislative Assembly who “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.” Article 46 provides that the Legislative Assembly “shall assemble biennially, in the month of April” in regular session in an even numbered year, but if it is convened outside of this time frame, it will convene in special session.

It is premature for the Legislative Assembly to elect a Monarch pursuant to Article 22 because the country is coming out of a prolonged occupation where the national consciousness must first be repaired and completely restored. In the meantime, a Regency would suffice because the ministry that comprises the Regency is also answerable to the Legislative Assembly in their individual capacities, but not in their collective capacity as a Regency they “administer the Government in the name of the King, and exercise all the Powers which are constitutionally vested in the King.” An elected Monarch would have full sovereign immunity, but according to Article 42, “[n]o act of the King shall have any effect unless it be countersigned by a Minister, who by that signature makes himself responsible” to the Legislative Assembly. The election of a Monarch will be a

⁵⁶ F.E. Oppenheimer, “Governments and Authorities in Exile,” 36 *Am. J. Int’l L.* 568, 569 (1942).

monumental and solemn step for the country. According to Article 42, the Representatives have the power of impeaching any member of the Cabinet Council, and according to Article 59, the Nobles have the power to remove any member of the Cabinet Council that has been impeached “for misconduct or maladministration in their offices.”

Government de jure during Second Phase

As a *de jure* government, the Hawaiian Kingdom will have full power and authority under Hawaiian law, and the Legislative Assembly will have the legal standing to ratify the Treaty of Peace. After the Treaty of Peace has been ratified, the Legislative Assembly will then consider enacting the provisional laws into statutory provisions. According to Article 48, the Legislative Assembly shall “make all manner of wholesome laws, not repugnant to the provisions of the Constitution.” The Legislative Assembly shall ensure that each and every provisional law is not repugnant to the Constitution.

Ratifications of the Treaty of Peace Exchanged during Third Phase

The instrument of ratification is the acceptance by the Hawaiian Kingdom and the United States of the terms of the treaty. According to Article 29, treaties that involve “changes in the Tariffs or any law of the Kingdom shall be referred for approval to the Legislative Assembly.” Ratification is by majority vote. The terms of the Treaty of Peace come under the purview of “any law of the Kingdom,” and, therefore, requires the approval by the Legislative Assembly. Under United States law, all treaties require the ratification of two-thirds vote by the U.S. Senate. The exchange of the instruments of ratification shall take place at a public ceremony on the grounds of ‘Iolani Palace, which signifies the Treaty of Peace has been accepted by both governments.

IMPLIED TASK: *Conduct National Census*

Prior to the convening of the Legislative Assembly, a national census will need to be concluded in order to know the number of Hawaiian subjects and in what gubernatorial districts they reside on matters regarding the election of Representatives. The census will also need to determine the number of aliens residing in the Kingdom. The census will be done in accordance with the 1865 *Act To Amend Sections 3 and 4 of Chapter 79 of the Penal Code, relating to the Bureau of Public Instruction* regarding the census, which is stated on page 211 of the Civil Code.

OF THE CENSUS

SECTION 41. It shall be the duty of the Board of Education, every sixth year, counting from the year 1860, to make a complete census of the inhabitants of the Kingdom, to be laid before the King and Legislature for their consideration; every census shall comprise, in distinct columns, the number of inhabitants in each district, the number of each sex, and such other particulars as the Board of Education may direct, and shall show the increase or decrease of the population. P.C. Chap. LXXIX, Section 6.

SECTION 1. That Section 7 of Chapter LXXIX of the Penal Code, approved July 7, 1870, be and the same is hereby amended to read as follows (Amendment 1878, Chapter XVII):

SECTION 7. To enable the Board of Education to carry into execution the design of the last preceding section, relating to the census, it is hereby authorized to make, through its agents, all proper and necessary inquiries. And all persons are hereby required, under pain of a fine not to exceed fifty (\$50) dollars, to be imposed by any police or district justice, to answer to the best of their knowledge, all such questions as shall be propounded by the agents of the Board, relating to, or necessary for, the making of a complete census. (Note—This is Sec. 42 of this Act).

SECTION 42. The necessary expenses of making any census shall be paid by the Minister of Finance, upon the order of the Board of Education, out of moneys appropriated by the Legislature for that object.

IMPLIED TASK: *Convening the Legislative Assembly*

Pursuant to Article 28 of the 1864 Constitution, as amended, the Council of Regency shall convene the Legislative Assembly after the Representatives have been duly elected. The Nobles who were appointed to the life office in the Legislative Assembly were prevented from sitting as members of the Legislative Assembly since the insurrection began in 1887. As a result, these offices were made vacant. Article 57 of the 1864 Constitution, as amended, provides that “[t]he King appoints the Nobles, who shall hold their appointments during life, subject to the provisions of Article 53; but their number shall not exceed twenty.” This provision does not state a minimum number of Nobles but only the maximum number not to exceed twenty.

The members of the Council of Regency, are members of the Cabinet Council, and Article 43 of the 1864 Constitution, as amended, provides that “[t]he Ministry hold seats *ex officio*, as Nobles, in the Legislative Assembly.” *Ex officio* is being a member of the Legislative Assembly “by virtue of the office”⁵⁷ as a cabinet minister. Therefore, the cabinet members of the Council of Regency can represent the Estate of the Nobles in the Legislative Assembly, and, the Council of Regency, serving in the absence of the Monarch, can represent the Estate of the Monarch. The elected Representatives represent the Estate of the People.

The Council of Regency, as officers *de facto*, cannot appoint Nobles pursuant to Article 57, until there is an election by the Legislative Assembly to elect a Regent or Council of Regency as officers *de jure* in accordance with Article 33, which provides that “the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that is assembled 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.” The Council of Regency, as officers *de facto*, was prevented from “immediately” assembling the Legislative Assembly as a result of the effects the American prolonged occupation has had on the national consciousness of the Hawaiian Kingdom in the minds of its citizenry.

Together with the elected Representatives that represent the Estate of the People, the Legislative Assembly can be assembled representing the Three Estates of the Kingdom pursuant to Article 45 of the 1864 Constitution, as amended. The first order of business is to transform the Regency from officers *de facto* to officers *de jure*, so that it can appoint Nobles, not to exceed twenty in number, to sit in the Legislative Assembly. The second order of business is to transform the provisional laws of the Kingdom into statutory laws enacted by the Legislative Assembly.

To convene the Legislative Assembly, the laws laid out under Title 3 of the Hawaiian Civil Code shall be followed and adhered to. Wherever the laws refer to the “King,” it shall also include the

⁵⁷ *Black's Law Dictionary* 575 (6th ed., 1990).

“Council of Regency” that serves in the absence of the monarch. All other laws under Title 3 would be brought up to date, *e.g.*, the vote by women, the salary for Representatives, and the use of voting machines, under the provisional laws of the Hawaiian Kingdom that would exist prior to the convening of the Legislative Assembly.

TITLE 3.—OF THE LEGISLATIVE DEPARTMENT

CONSTITUTION

Article 43. Each member of the Kings Cabinet shall keep an office at the seat of Government, and shall be accountable for the conduct of his deputies and clerks. The Ministry hold seats *ex officio*, as Nobles, in the Legislative Assembly.

Article 44. The Minister of Finance shall present to the Legislative Assembly in the name of the Government, on the first day of the meeting of the Legislative Assembly, the Financial Budget, in the Hawaiian and English languages.

Article 45. The Legislative power of the Three Estates of this Kingdom is vested in the King, and the Legislative Assembly; which Assembly shall consist of the Nobles appointed by the King, and of the Representatives of the People, sitting together.

Article 46. The Legislative Body shall assemble biennially, in the month of April, and at such other time as the King may judge necessary, for the purpose of seeking the welfare of the nation. This Body shall be styled the Legislature of the Hawaiian Kingdom.

Article 47. Every member of the Legislative Assembly shall take the following oath: I most solemnly swear, in the presence of Almighty God, that I will faithfully support the Constitution of the Hawaiian Kingdom, and conscientiously and impartially discharge my duties as a member of this Assembly.

Article 48. The Legislature has full power and authority to amend the Constitution as hereafter provided; and from time to time make all manner of wholesome laws, not repugnant to the provisions of the Constitution.

Article 49. The King shall signify His approval of any Bill or Resolution, which shall have passed the Legislative Assembly, by signing the same previous to the final rising of the Legislature. But if He shall object to the passing of such Bill or Resolution, He will return it to the Legislative Assembly, who shall enter the fact of such return on its journal, and such Bill or Resolution shall not be brought forward thereafter during the same session.

Article 50. The Legislative Assembly shall be the judge of the qualifications of its own members, and a majority shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as the Assembly may provide.

Article 51. The Legislative Assembly shall choose its own officers and determine the Rules of its own proceedings.

Article 52. The Legislative Assembly shall have authority to punish by imprisonment, not exceeding thirty days, every person, not a member, who shall be guilty of disrespect to the Assembly, by any disorderly or contemptuous behavior in its presence; or who, during the time of its sitting, shall publish any false report of its proceedings, or insulting comments upon the same; or who shall threaten harm to the body or estate of any of its members, for anything said or done in the Assembly; or shall assault any of them thereof, or who shall assault or arrest any witness, or other person ordered to attend the Assembly, in his way going or returning; or who shall rescue any person arrested by order of the Assembly.

Article 53. The Legislative Assembly may punish its own members for disorderly behavior.

Article 54. The Legislative Assembly shall keep a journal of its proceedings; and the yeas and nays of the members, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Article 55. The Members of the Legislative Assembly shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of the Legislature, and in going to and returning from the same; and they shall not be held to answer for any speech or debate made in the Assembly, in any other Court or place whatsoever.

Article 56. The Representatives shall receive for their services a compensation to be ascertained by law, and paid out of the public treasury, but no increase of compensation shall take effect during the year in which it shall have been made; and no law shall be passed, increasing the compensation of said Representatives beyond the sum of five dollars for each session.

Article 57. The King appoints the Nobles, who shall hold their appointments during life, subject to the provisions of Article 53; but their number shall not exceed twenty.

Article 58. No person shall be appointed a Noble who shall not have attained the age of twenty-one years and resided in the Kingdom five years.

Article 59. The Nobles shall be a Court, will full and sole authority to hear and determine all impeachments made by the Representatives, as the Grand Inquest of the Kingdom, against any officers of the Kingdom, for misconduct or mal-administration in their offices; but previous to the trial of every impeachment the Nobles shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence and the law. Their judgment, however shall not extend further than to removal from office and disqualification to hold or enjoy any place of honor, trust, or profit, under this Government; but the party so convicted shall be, nevertheless, liable to indictment, trial, judgment and punishment according to the laws of the land. No Minister shall sit as a Noble on the trial of any impeachment.

Article 60. The Representation of the People shall be based upon the principle of equality, and shall be regulated and apportioned by the Legislature according to the population, to ascertained from time to time, by the official census. The Representatives shall not be less in number than twenty-four, nor more than forty, who shall be elected biennially.

CHAPTER XI.

§768. The Legislative Department of this Kingdom is composed of the King, the House of Nobles, and the House of Representatives, each of whom has a negative on the other, and in whom is vested full power to make all manner of wholesome laws, as they shall judge for the welfare of the nation, and for the necessary support and defense of good government, provided the same be not repugnant or contrary to the Constitution. (Constitution, Article 45).

§769. The legislative body shall assemble biennially, for the purpose of seeking the welfare of the nation, at such time, and in the place that the King may judge necessary. Article 28. (Article 46).

§770. The members of either branch of the Legislature shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and they shall not be held to answer for any speech, or debate made in the House, in any other court or place whatsoever. (Article 55).

ARTICLE XXX—OF THE HOUSE OF NOBLES.

§771. The King appoints the members of the House of Nobles, who hold their seats during life, unless in case of resignation, subject, however, to punishment for disorderly behaviour. The number of members of the House of Nobles shall not exceed thirty. (Article 57. Article 42).

§772. No person shall be eligible to a seat in the House of Nobles, who shall not have attained the age of twenty-one years, and resided in the Kingdom five years.

§773. The sessions of the House of Nobles shall be open to the public: provided, always, that any person creating a noise or disturbance shall be considered guilty of a high contempt, and shall be immediately committed to prison, there to remain during the pleasure of the House ; and further provided, that the presiding officer may, at any time, order all persons not members, to withdraw from the House, when he or the House shall deem it proper or necessary. (Article 52).

ARTICLE XXXI—OF THE HOUSE OF REPRESENTATIVES

§774. The House of Representatives shall be composed of not less than twenty-four nor more than forty members, who shall be elected biennially. (Article 60).

PROVIDING FOR THE TENURE OF OFFICE OF REPRESENTATIVES

The term of office of the Representatives of the People chosen for the Legislature shall commence with the date of the general election, and shall continue for two years; *provided, nevertheless*, that Representatives not chosen at the general election, but chosen to fill unexpired terms, shall hold office only for the balance of such unexpired term. (Act 1874, Chap. XVII).

§775. The members of the House of Representatives are chosen by the people; and shall receive for their services, a compensation of three dollars for every day's attendance in the Legislature, and five cents per mile, calculating by the most direct route, in going to and returning from the Legislature; provided, that no representative shall be entitled to receive pay for any day on which he is absent from the Legislature, unless such absence be occasioned by his illness. (Article 56).

“SECTION 1. The compensation of the representatives of the people is hereby established at five hundred dollars for each session.” (Act, 1882, Chapter IV).

§776. All bills, or resolves, for raising the revenue, or calling for any expenditure of the public money, shall originate in the House of Representatives. (Art. 44 and 45).

§777. The sessions of the House of Representatives shall be open to the public; provided, always, that any person creating a noise or disturbance, shall be considered guilty of a high contempt, and shall be immediately committed to prison, there to remain during the pleasure of the House; and further provided, that the presiding officer may, at any time, order all persons not members, to withdraw from the House, when he or the House shall deem it proper or necessary. (Article 52).

§778. The following persons shall be eligible for representatives of the people, namely: Every male subject, or denizen of the Kingdom, who shall have arrived at the full age of twenty-five years, who shall know how to read and write; who shall understand accounts, and who shall have resided in the Kingdom for at least one year immediately preceding his election; provided always, that no person who is insane, or an idiot, or who shall at any time have been convicted of theft, bribery,

perjury, forgery, embezzlement, polygamy, or other high crime or misdemeanor, shall ever hold seat as Representative of the people. (Article 61).

§779. Every member of the House of Representatives before being admitted to take his seat, shall take and subscribe the following oath:

I most solemnly swear, in the presence of Almighty God, that I will faithfully support the Constitution and laws of the Hawaiian Islands, and conscientiously and impartially discharge my duties as a Representative of the people.

Which oath, after being subscribed, shall be filed by the clerk of the House.

ARTICLE XXXII—OF THE ELECTION OF REPRESENTATIVES.

ELECTION DISTRICTS

§780. The number of the Representatives of the people in the Legislature shall be as follows, viz.:

For the Island of Hawaii, eight, that is to say: One for the district of North Kona, beginning at and including Keahualono, and extending to and including Puuohao; one for the district of South Kona, beginning at Puuohoa and extending to and including Kaheawai.

One for the district of Kau.

One for the district of Puna.

Two for the district of Hilo.

One for the district of Hamakua.

One for the district of Kohala.

For the Island of Maui, seven, that is to say: Two for the district composed of Lahaina, Olowalu, Ukumehame, and Kahoolawe.

One for the district composed of Kahakuloa and Kaanapali.*

One for the district beginning with and including Waihee, and extending to and including Honuaula.

* See Chapter I, 1882, Act to authorize an election and to appoint inspectors for this district.

One for the district beginning with and including Kahikinui, and extending to and including Koolau.

One for the district beginning with and including Hamakualoa, and extending to and including Kula.

Two for the districts composing the Islands of Molokai and Lanai.

For the Island of Oahu, eight, that is to say: Four for the district of Honolulu, beginning with and including Maunalua, and extending to and including Moanalua.

One for the district composed of Ewa and Waianae.

One for the district of Waialua.

One for the district of Koolauloa.

One for the district of Koolaupoko.

For the Island of Kauai, three, that is to say: One for the district of Waimea, beginning with and including Nualolo, and extending to and including Hanapepe, and also including the Island of Niihau.

One for the district of Puna, beginning with and including Wahiawa, and extending to and including Wailua.

One for the district of Hanalei, beginning with and including Kapaa, and extending to and including Awa-awa-puhi. (As amended 1868, p. 49).

OF THE TIME AND PLACE OF HOLDING ELECTIONS

§781. The elections for representatives of the people to sit in the Legislature, shall be held in all the districts throughout the kingdom, on the first Wednesday of February, every second year, at such places as shall, from time to time, be designated by the Minister of the Interior, who shall give public notice of the same at least thirty days previous to the time of election. (As amended 1874, Chapter XXV).

§782. Whenever the Minister of the Interior shall deem it necessary, for the public convenience, that more than one place should be established for receiving votes in any one district, he shall have the power to appoint two places, and he shall designate from among the justices, tax-collectors,

and tax-assessors, within the district, inspectors to preside over and conduct the election at such places. (As amended by Act 1868, Sec. 6).

TO REPEAL AN ACT ENTITLED “AN ACT REGARDING THE QUALIFICATIONS OF ELECTORS,” APPROVED DECEMBER 31ST, 1864, AND TO REGULATE THE QUALIFICATIONS OF ELECTORS FOR REPRESENTATIVES TO THE LEGISLATIVE ASSEMBLY OF THE KINGDOM. Act 1868.

SECTION 1. That the Act entitled “An Act regarding the Qualifications of Electors,” approved December 31st, A.D. 1864, be and the same is hereby repealed, from Section 1 to Section 12, inclusive.

SECTION 2. Every male subject of the Kingdom who shall have paid his taxes, who shall have attained the age of twenty years, and shall have been domiciled in the Kingdom for one year immediately preceding the election, and shall know how to read and write, if born since the year 1840, and shall have caused his name to be entered on the list of voters of his district, as hereinafter provided, shall be entitled to one vote for Representative or Representatives of that district; provided, however, that no insane or idiotic person, or any person who shall have been convicted of any infamous crime within this Kingdom unless he shall have been pardoned by the King, and by the terms of such pardon have been restored to all the rights of a subject, shall be allowed to vote; and no other person than those qualified as in this section provided shall be allowed to vote at any election for Representatives to the Legislative Assembly of this Kingdom. (As amended 1874, Chapter XLVI. This is Sec. 783 C.C. and Sec. 1, Ch. LXXXVI P.C.).

SECTION 3. The assessors of taxes in the several districts shall carefully record upon their several assessment registers, in separate columns, to be provided for that purpose, according to the form immediately following this section, the names of all persons possessing the necessary qualifications for voters as provided by Section 2 of this Act; and if there shall be any persons in their respective districts who shall be possessed of the requisite qualifications to justify their voting, as provided by the Sixty-second article of the Constitution as amended, and yet may be disqualified by any Constitutional reason, they shall note the same carefully against such name on their said lists in the column set apart for remarks. (As amended 1874, Chapter LXVI).

QUALIFICATION OF VOTERS

Name.	Age.	How long Domiciled.	Read and Write (if born since 1840)	Remarks.

SECTION 4. For the purposes of such elections, every Tax-Collector shall make out an accurate list of the names of all the persons in his district, who shall have paid their taxes for the year immediately preceding an election, within the time prescribed by law, and who shall have been entered by the assessor upon the assessment register as possessing the requisite qualifications to

vote, together with the names of all persons who shall have paid in to him their taxes within the time prescribed by law, who may possess the requisite qualifications to vote, but who may have been omitted to be entered by the assessor on the assessment register, as provided in Section 3 of this Act; and in every such case the tax collector shall enter upon the proper column of the assessment register, in his possession, the nature of the qualification of the party so omitted to be entered by the assessor, and who shall thereupon become entitled to vote at such election.

SECTION 5. Every tax collector shall, on or before the last day of December of the year immediately preceding that in which an election for Representatives shall be held, make out and return to the inspectors of election of the district an accurate list of all the persons in the district who shall have paid their taxes within the time prescribed by law, whose names may appear upon the assessors' assessment register, as extended and corrected by the tax collector, according to the provisions of Section 4 of this Act, as possessing the requisite qualifications for voters.

SECTION 6. The inspectors of election, viz: the police or district justice, the tax collector and the tax assessor, or in their absence, agents appointed by them shall, at least fifteen days before the day of holding any elections for Representatives, excepting such as may be ordered pursuant to the provisions of Section 707 of the Civil Code, make out and cause copies to be posted at the place where the election is to be held, and at least two other public places in the district, correct alphabetical lists of all the persons in the district who may be qualified to vote, and whose names may appear upon the list returned to the inspectors of election by the tax collector of the district, as in the last preceding section required.

SECTION 7. The inspectors of election aforesaid, shall hold at least two sessions, of reasonable and sufficient length, at some convenient place in the district, not less than ten nor more than twenty days next preceding the day of holding an election for Representatives, for the purpose of receiving evidence of the qualification of persons who may not have been previously registered by the assessor or collector on the assessment register, as provided in Sections 3 and 4 of this Act, and who may claim a right to vote; and also for the purpose of correcting, when necessary, the alphabetical list of voters provided for in Section 6 of this Act. Notice of the time and place of holding such sessions, respectively, shall be given by the inspectors of election upon the alphabetical lists posted, as provided in Section 6 of this Act; and at such sessions any one offering testimony against the right of any person to vote, whose name may appear in the aforesaid alphabetical lists, shall be reasonably heard; and if the inspectors aforesaid shall be satisfied, on such hearing, that the name of such person should not have been placed on the register, they shall at once erase the same therefrom.

SECTION 8. Any assessor or collector who shall fail or neglect to make such a register as in Sections 3 and 4 of this Act provided, shall forfeit and pay for every such failure or neglect the sum of one

hundred dollars; and every assessor or collector who shall make any false entry in respect to any point of the said register, shall forfeit and pay for every such false entry the sum of ten dollars.

SECTION 9. Every collector who shall fail or neglect to return to the inspectors of election of his district an accurate list, as provided in Section 5 of this Act, of all the persons in the district who may have paid their taxes within the time prescribed by law, and whose names may appear upon the assessor's assessment register, shall forfeit and pay for every such failure or neglect the sum of one hundred dollars.

SECTION 10. For the purposes of election, every tax collector shall be supplied by the Minister of Finance with a form of blank tax receipt, similar to those now in use, or any which may be hereafter in use, but which shall bear conspicuously upon it in printed letters, the words, "Qualified to vote;" and it shall be the duty of every tax collector, upon receiving the payment of the taxes due from any person in other respects, entitled to the franchise, under the provisions of Section 2 of this Act, to fill out and deliver to every such person one of the tax receipts so impressed.

SECTION 11. If at any meeting of the inspectors of election for the qualification of voters, as provided in Section 7 of this Act, it shall be shown that any person whose name may have been omitted from the list returned by the tax collector to the inspectors of election, as provided in Section 5 of this Act, possesses the requisite and legal qualifications of a voter, and shall have requested the inspectors of election to insert his name on the list of voters returned to them by the tax collector, as provided in Section 5 of this Act, the inspectors of election shall require the tax collector to fill out and deliver to the person so qualified by the inspectors a tax receipt of the description required to be used for electors, as provided in Section 10 of this Act; the person so qualified being required to return to the tax collector to be cancelled the tax receipt of the ordinary form first issued to him in exchange for the one to be given to him, bearing the impress of the words "Qualified to vote."

SECTION 12. The inspectors of election in case they shall have duly entered on the alphabetical list of voters, provided for in Section 6 of this Act, the names of all persons who may have been returned to them by the collectors aforesaid, as provided in Section 5 of this Act, shall not be held answerable or responsible for any omission in said list.

SECTION 13. The inspectors of the election aforesaid shall upon the day of election for representatives, receive the votes of all persons whose names may be borne on the list of voters, and who shall produce to the inspectors of election, at the polls, on such election day, a tax receipt bearing upon it in printed letters, the words "qualified to vote," which tax receipt the inspectors aforesaid shall return to the owner thereof, after having received his vote and recorded his name on the list of persons who shall have voted; and in each and every case it shall be the duty of the inspectors of election aforesaid, to cancel or deface the words "qualified to vote," before returning to any voter his tax receipt so impressed; and the said inspectors of election shall not be held answerable or responsible for refusing the vote of any person whose name may not be borne upon the list of voters, and who does not produce to the inspectors of election, a tax receipt, properly filled and signed by the tax collector, upon which shall be impressed in printed letters the words "qualified to vote."

SECTION 14. If any person shall give a false name, or any false answer, to the inspectors of election aforesaid, when in session, as provided in Section 7 of this Act, he shall forfeit and pay the sum of fifteen dollars for each offense.

SECTION 15. For the purposes of this Act, the term “infamous crime,” as expressed in Section 2 of this Act, shall be construed to include murder in either degree, sodomy, arson, perjury, forgery, subornation of perjury, theft, bribery, embezzlement, or other high crime or misdemeanor, for which the pardon of the King is necessary to restore a subject to his civil rights.

SECTION 16. Any person who shall have been convicted of an infamous crime, and who shall have been pardoned by the King, and shall, by the terms of his pardon, have been restored to all the rights of a subject, shall, before being qualified to vote, be required to produce to the assessor, the collector, or the inspectors of election, as the case may be, a certificate of such pardon, or a duly certified copy thereof.

SECTION 17. In all cases where a difference of opinion may arise between the inspectors of election, upon any subject connected with their duties as inspectors of election, the ruling of a majority of them shall be considered binding and conclusive. (Act 1876, Chapter XIV).

SECTION 18. Each and every member of any board of inspectors of election, required by law to hold and preside at an election for a representative or representatives to the Legislative Assembly of the Kingdom, who shall refuse or fail to open the poll at such election, at the hour of eight o'clock in the morning of the day fixed for such election, or who shall participate in, or be accessory to such refusal or failure; or who shall close the poll at any such election before five o'clock in the afternoon of such election day, or who shall participate in, or be accessory to such closing of such polls, shall forfeit and pay for every such offense a fine not to exceed five hundred dollars, to be recovered by the Attorney General on his own information and complaint, or that of the Minister of Interior, or of any inhabitant of the district in which such offense may have occurred, for the use of the public treasury, and such complaint shall be heard before the Supreme Court at any one of its regular terms, or before the Circuit Court of the island on which such offense may have taken place, and all other penalties provided for in this chapter, shall be recoverable before the several police or district justices of the several districts where the offense may have been committed; and all persons informing of any violation of this law cognizable before a police or district justice, shall be entitled to one quarter of the amount of the fine recovered from the convicted offender.

§784. No alien shall be allowed to vote for representatives of the people.

OF THE MANNER OF CONDUCTING ELECTIONS

§785. The elections shall take place in the presence of the district justices, the tax-collector, and the school-superintendent of the district; or, in their absence, of agents appointed by them for that purpose, any three of whom shall constitute a board of inspectors to conduct the election, and decide on the qualifications of voters. The district justice, or in case there is more than one, the justice who has been longest in office, or his agent, shall be chairman of the said board. Nothing in this section contained shall be construed as applicable to those cases where more than one place is appointed for receiving votes in any district, as provided in Section 782. (Tax Assessor 1868, p. 16, see Sec. 6, p. 223 of this code).

§786. The Minister of the Interior shall provide, at the expense of the Government; a suitable ballot-box, or boxes, for each election district, with suitable locks and keys for fastening the same.

§787. Every board of inspectors in any district shall appoint a clerk, whose duty it shall be, under oath to be administered to him by the chairman, to record truly the names of all persons who vote at the election. Such clerk shall receive a compensation of five dollars, to be paid out of any Government moneys in the hands of the chairman.

§788. The polls shall be opened by the inspectors of election, and proclamation thereof made at eight o'clock in the morning of the day of election, and shall be kept open till five o'clock in the afternoon, and no longer. The electors shall, vote by ballot, and each elector offering to vote shall deliver his ballot to one of the inspectors, who, on receiving such ballot, shall cause the clerk of the election to record the name of the person delivering the same, and shall, without inspecting the name of the person voted for, examine said ballot so far only as to determine whether the same contains more than one ticket, if it do not, he shall place it in the ballot box, but if it do, he shall make it manifest, and reject the same; *provided always*, that it shall be the privilege of any elector voting at any such elections, to enclose his ballot in a sealed envelope, before delivering the same to the inspectors of election, as hereinbefore provided, the same being subject to the provisions of Sections 794, 795 and 807 of the Civil Code. The ballots, after having been placed in the ballot box, shall not be removed from such box until the same are taken out to be sorted and counted by the inspectors. (As amended 1868. P.C. Ch. LXXXVI, Section 17).

TO AMEND CHAPTER 86 OF THE PENAL CODE, "REGARDING THE QUALIFICATION OF ELECTORS," BY
ADDING A NEW SECTION TO BE NUMBERED 17a

SECTION 1. Chapter 86 of the Penal Code, regarding the qualification of electors shall be, and the same is hereby amended by adding the following section to the inserted after Section 17, and to be designated 17a:

"Section 17a. The inspectors of election shall previously to opening the polls, set apart a sufficient space around the polling place to prevent persons not thereto authorized from interfering with the conduct of the election, and no person other than the inspectors of election, their clerk and any electors not exceeding six in number being actually engaged in voting, to be designated if necessary by the presiding officer, shall be permitted at any one time to enter or remain within the polling room or the space so set apart during the taking of the poll." (Act 1876, Ch. XXXVIII. Sec. 17 is Sec. 788 C.C.).

§789. The ballot shall be a paper ticket, which shall contain written or printed, or partly written and partly printed, the name or names of the person or persons, for whom the elector votes. After the close of the polls, the inspectors shall proceed without delay, first, to ascertain from the clerk's record the whole number of persons voting, and then to sort and count the whole number of votes given for the different candidates. If the number of ballots shall overrun the number of names on the clerk's record so as to affect the election, then it shall be the duty of the inspectors to return all the ballots into the box, close, lock and shake the same, so as to again thoroughly mix the ballots; the box shall then again be opened and a cloth laid over the same, and the chairman of the inspectors having previously held up his open hand and arm bare, shall introduce his hand under the cloth cover of the box and draw therefrom, without looking, one ballot at a time, until the

number of ballots in the box is reduced to correspond with the number of names on the clerk's list; the clerk shall take a note of each ballot as it is withdrawn, and deduct the same from the number of votes for the candidate or candidates whose ballot is so withdrawn, and the result thus obtained shall be adopted by the inspectors. All persons who choose to attend at the counting of such votes shall be at liberty to do so. Nothing in this section contained shall be held to interfere with the power given to the inspectors in Section 794 of the Civil Code.

§790. When the inspectors have ascertained the number of votes given for each candidate respectively, they shall make public declaration of the whole number of votes given in, the names of the persons voted for, and the number of votes for each person, and the clerk shall make a fair record of the same, which shall be signed by the inspectors, and forwarded to the Minister of the Interior.

§791. In those districts where there is only one place appointed for receiving votes, the board of inspectors shall deliver a certificate to the candidates for representatives in their respective districts, who have received the greatest number of votes for that office, in the following form, viz:

We, the undersigned, inspectors of election for the district of _____, Island of _____, do hereby certify that _____ was duly elected a representative for the said district, on ____ day of _____, A.D. 18__.

Given under our hands this ____ day of _____

§792. In those districts where two places are appointed for receiving votes, the certificate of election shall be given by the two persons presiding at such places of election.

§793. It shall be the duty of the inspectors of election, upon granting certificates of election, to immediately transmit a copy of the same to the Minister of the Interior, to be filed in his office.

§794. Whenever two or more ballots are found folded or rolled together, in such manner as to satisfy the inspectors that they are fraudulent, they shall be rejected.

§795. If a ballot shall be found to contain a greater number of names for the office of representative, than the number of representatives to which that district is entitled, it shall be considered fraudulent, and shall be rejected; but no ballot shall be considered fraudulent, or be rejected, for containing a less number of names than are authorized to be inserted.

MODE OF ANNULING AN ELECTION AND OF FILLING VACANCIES

§796. Whenever fifty or more of the voters of any district shall petition the Legislative Assembly, setting forth that any person chosen as representative for said district has been elected through bribery, or any other unfair means, or that he is not qualified according to law, the Legislative Assembly shall institute an enquiry into the truth of the charges in said petition, and if they find the charges to be true, they shall immediately declare his election null and void. (As amended 1876, Chap. VII).

§797. Whenever the Legislative Assembly shall declare the election of any person null and void as provided in the last preceding section, the clerk of said Legislative Assembly shall immediately notify the inspectors of election for the district in which such person was chosen of the fact of the annulment of his election; said inspectors upon receiving such notification, shall give ten days previous public notice for holding a new election, and the electors of such district shall accordingly proceed again to procure a representative in the same manner as at the regular election.

§798. Whenever any vacancy shall occur in any of the election districts of the Kingdom, either by resignation, death, or any other cause, it shall be the duty of the inspectors of election in such district, immediately on ascertaining the fact, to give ten days previous public notice for holding a new election, at the usual place or places within such district; and any such election so ordered and held, shall be valid and binding to all intents and purposes.

§799. In the event of any such vacancy occurring during the period in which the Legislature is in session it shall be the duty of the clerk of the Legislative Assembly immediately to notify the inspectors of election of the district in which such vacancy has occurred of that fact; and said inspectors shall proceed to order, notify and hold a new election, as provided in the last preceding section. (As amended 1876, Chapter VII).

PROVISIONS TO PRESERVE THE PURITY OF ELECTIONS

§800. It shall be the duty of each inspector of any election to challenge any person offering to vote, whom he shall know or suspect not be duly qualified as an elector. (P.C. Ch. LXXXVI).

§801. If any person offering to vote shall be challenged as unqualified by an inspector, or by any other person, the board of inspectors shall read to the person so challenged, the qualifications of an elector as contained in section 783, and shall tender to him the following oath:

You do swear that you will fully and truly answer all such questions as shall be put to you, touching your place of residence, and qualifications as an elector at this election.

The inspectors of election, or one of them, shall then put such questions to the person challenged, as may be necessary to test his qualifications as an elector at that election.

§802. If the person challenged shall refuse to answer fully any questions which may be put to him as aforesaid, the inspectors shall reject his vote.

§803. If the challenge be not withdrawn, after the person offering to vote shall have answered the questions put to him as aforesaid, one of the inspectors shall tender to him the following oath:

You do solemnly swear that you are a subject or denizen of this Kingdom, (as the case may be) of the age of twenty years; that you have resided in this Kingdom for the last year immediately preceding this election; and in this district for the last three months immediately preceding this

election; and that you have not voted at this election; and that you have never been convicted of any infamous crime within this Kingdom which has not been fully pardoned.

§804. If any person shall refuse to take the oath tendered, as prescribed in the last preceding section, his vote shall be rejected.

§805. Any person who shall vote more than once at the same election, shall, on conviction thereof, be fined not exceeding fifty dollars, or imprisoned at hard labor not more than six months, in the discretion of the court.

§806. Any person who shall vote, being disqualified by law, by reason of his conviction of some infamous crime, which shall not have been pardoned, with the restoration to all the rights of a subject, or by reason of non-age, non-residence, or other cause, knowing of his disqualification, shall, on conviction thereof, be fined not exceeding fifty dollars, or imprisoned at hard labor not exceeding six months, in the discretion of the court.

§807. If any elector shall, knowingly, give in more than one ballot at any election, he shall be fined not exceeding fifty dollars, or be imprisoned at hard labor not exceeding six months, in the discretion of the court.

§808. If any person shall willfully aid or abet any one, in the commission of either of the offenses specified in the last three preceding sections, he shall be fined not exceeding fifty dollars, or imprisoned at hard labor not exceeding six months, in the discretion of the court.

§809. Any person who shall, by bribing another with money, promise of reward, or otherwise, attempt to influence any elector in giving his ballot; or who shall use any threat to procure any elector to vote contrary to the inclination of such elector, or to deter him from giving his ballot, shall, on conviction thereof, be fined not exceeding fifty dollars, or imprisoned at hard labor not exceeding six months, in the discretion of the court.

§810. It shall be the duty of the inspectors of election, or one of them, immediately before proclamation is made of the opening of the polls, to open the ballot-box, in the presence of the people there assembled, and turn it upside down, so as to empty it of everything that may be in it, and then lock it; and it shall not be re-opened, until the close of the polls, for the purpose of counting the ballots therein.

§811. Any inspector of an election who shall, after the opening of the polls, put a ballot into the ballot-box, except his own ballot, or such as he may have received in the regular discharge of his duty; or who shall be guilty of any other fraud or unfair dealing at such election, shall be fined not exceeding one hundred dollars, and disqualified from holding any office under the Government.

§812. Any inspector of election, who shall willfully neglect, or refuse, to perform any of the duties required of him, respecting elections. shall be fined not exceeding one hundred dollars, and be disqualified from holding any office under the Government.

§813. Any person who shall be disorderly or create any disturbance at any election, or who shall break up, or prevent, the lawful holding of any election, or obstruct, or attempt to obstruct the same, may be arrested without warrant, and shall be fined not exceeding one hundred dollars, or imprisoned at hard labor, not exceeding six months, in the discretion of the court.

§814. No civil process shall be served in any district on any person entitled to vote therein, on the day of election for representatives.

Appendix 1

THE HAWAIIAN KINGDOM—UNITED STATES OF AMERICA

PROPOSED TREATY OF PEACE

Whereas the Hawaiian Kingdom and the United States of America have resolved that henceforth their relations shall be those of nations which, as sovereign equals, cooperate in friendly association to promote their common welfare and to maintain international peace and security, and are therefore desirous of concluding a Treaty of Peace which will settle questions still outstanding as a result of the existence of a state of war between them;

Whereas the Hawaiian Kingdom welcomes the intentions of the United States of America set out in the foregoing paragraph;

The Hawaiian Kingdom and the United States of America have therefore determined to conclude the present Treaty of Peace, and have accordingly appointed the undersigned Plenipotentiaries, who, after presentation of their full powers, found in good and due form, have agreed on the following provisions:

CHAPTER I—PEACE

ARTICLE 1

- (a) The state of war between the Hawaiian Kingdom and the United States of America is terminated as from the date on which the present Treaty comes into force between the Hawaiian Kingdom and the United States of America as provided for in Article 8.
- (b) The United States of America recognizes and supports recognition of the full sovereignty of the Hawaiian Kingdom and its territorial waters.

CHAPTER II—TERRITORY

ARTICLE 2

The United States of America renounces all right, title and claim to the islands of Necker, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Pearl and Hermes Atoll, Midway Atoll, and Kalama (Johnston) Atoll.

The Islands that comprise the territory of the Hawaiian Kingdom include:

<u>Island:</u>	<u>Location:</u>	<u>Square Miles/Acreage:</u>
Hawai'i	155°31'0.506"W 19°35'30.587"N	4,028.2 / 2,578,048
Maui	156°19'59.627"W 20°46'45.556"N	727.3 / 465,472
Molokini	156°29'45.432"W 20°37'54.49"N	0.04 / 25.6

Kaho‘olawe	156°36'41.856"W 20°32'48.295"N	44.6 / 28,544
Molokai	156°59'58.124"W 21°7'49.05"N	260.0 / 166,400
Lāna‘i	156°55'19.727"W 20°49'36.877"N	140.6 / 89,984
O‘ahu	157°58'30.208"W 21°28'31.128"N	597.1 / 382,144
Kaua‘i	159°31'39.562"W 22°3'12.681"N	552.3 / 353,472
Lehua	160°5'43.795"W 22°1'16.582"N	0.4 / 256
Ni‘ihau	160°9'12.122"W 21°53'57.2"N	69.5 / 44,480
Ka‘ula	160°32'25.391"W 21°39'14.554"N	0.2 / 128
Nihoa	161°55'19.454"W 23°3'39.022"N	0.3 / 192
Necker	164°42'0.7"W 23°34'34.198"N	.07 / 45
French Frigate		
Shoals	166°13'17.92"W 23°48'23.599"N	.096 / 61
Gardner Pinnacles	167°59'58.394"W 24°59'56.537"N	.009 / 5.9
Maro Reef	170°34'27.999"W 25°25'43.924"N	746 / 478,000
Laysan	171°43'58.532"W 25°46'9.952"N	1.6 / 1,024
Lisiansky	173°57'58.655"W 26°3'46.062"N	0.6 / 384
Pearl and		
Hermes Atoll	175°49'0.409"W 27°49'31.244"N	.19 / 80
Midway Atoll	177°22'39.208"W 28°12'34.869"N	2.4 / 1,536
Kure Atoll	178°17'36.609"W 28°23'32.226"N	0.4 / 256
Palmyra Atoll	162°4'35.49"W 5°52'54.126"N	4.6 / 2,944
Kalama		
(Johnston) Atoll	169°32'0.019"W 16°43'45.017"N	1.03 / 832

CHAPTER III—SECURITY

ARTICLE 3

- (a) The United States of America recognizes the Hawaiian Kingdom as a neutral State together with all of its rights and obligations envisaged in the 1907 Hague Convention, V, respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land.
- (b) The United States of America recognizes that the Hawaiian Kingdom, as a neutral State, possesses the inherent right of self-defense.

CHAPTER IV—WITHDRAWAL OF THE OCCUPATION FORCES

ARTICLE 4

- (a) With the exception of the Civil Affairs unit who is advising the Military Governor on transitional governance, all Title 10 United States Code armed forces of the United States of America shall be withdrawn from the Hawaiian Kingdom after the Military Government has

been established. The Civil Affairs unit will be with the Military Government of Hawai‘i until the coming into force of the present Treaty.

- (b) All Hawaiian Kingdom property for which was supplied for the use of the occupation forces, and which remain in the possession of those forces before the coming into force of the present Treaty, shall be returned to the Hawaiian Kingdom Government within 90 days.
- (c) The United States of America renounces all rights, title and interest of real property, buildings, and housing, erected at all its military sites throughout the Hawaiian Islands, with the exception of all its rights, title and interest of personal property that is movable at these sites. Included in these sites are personal property claimed by the federal government of the United States of America, in addition to those equipment and weaponry provided for in Article 6.
- (d) All former Title 32, United States Code, armed forces called the Hawai‘i Army and Air National Guard shall remain and at the coming into force of the present Treaty shall be thereafter called the Royal Guard of the Hawaiian Kingdom.

CHAPTER V—BILATERAL TREATIES

ARTICLE 5

The Hawaiian Kingdom, within one year after the present Treaty has come into force between itself and the United States of America which of its prewar bilateral treaties or conventions with the United States of America it wishes to continue in force or revive, and any treaties or conventions so notified shall continue in force or be revived.

CHAPTER VI—REPARATIONS

ARTICLE 6

Yet to be determined by the International Commission of Inquiry under the auspices of the Permanent Court of Arbitration, The Hague, Netherlands.

CHAPTER VII—MILITARY EQUIPMENT

ARTICLE 7

The United States of America renounces all rights, title, and interest to the personal property, which includes weapons and vehicles, of the Army and Air National Guard to come under the right, title, and interest of the Royal Guard of the Hawaiian Kingdom. The United States of America shall also renounce all right, title, and interest to the personal property, which includes weapons and ships, of the United States Coast Guard to come under the right, title, and interest of the Hawaiian Kingdom Navy.

CHAPTER VIII—RATIFICATION

ARTICLE 8

The present Treaty shall be ratified, and the Ratifications shall be exchanged at Honolulu in ten months, or as soon as possible.