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February 10, 2024

Major General Kenneth Hara
State of Hawai'i Adjutant General
Department of Defense
3949 Diamond Head Road
Honolulu, HI 96816

Re: Council of Regency's final appeal to perform your duty or become a war criminal

Dear Major General Hara:

On behalf of the Council of Regency, I hereby make a final appeal for you to perform your duty of transforming the State of Hawai'i into a military government on February 17, 2024, in accordance with Article 43 of the 1907 Hague Regulations, Article 64 of the Fourth Geneva Convention, and Army regulations. To not do so, you will have command responsibility for the commission of the *war crime of usurpation of sovereignty during military occupation* by the legislative, executive, and judicial branches of the State of Hawai'i.

At every step since April 17, 2023, when you were first apprised of the scope and magnitude of the American occupation since January 17, 1893, I have given you every opportunity to refute the information I provided you. As part of your due diligence, your Staff Judge Advocate, LTC Lloyd Phelps could not provide you any rebuttable information as to the presumption of the continuity of the Hawaiian Kingdom as a State. LTC Phelps even told our mutual friend and interlocutor that he wants to change the world with you as his Adjutant General and the law of occupation. And when you stated to our interlocutor on July 27, 2023, that the Hawaiian Kingdom continues to exist, your due diligence was over and your duty to transform the State of Hawai'i into a military government was triggered.

Furthermore, in my meeting with Brigadier General Lance Okamura and First Sergeant Justin Ka‘ahanui, at Restaurant 604 near the Arizona Memorial on November 1, 2023, I apprised him of the reasoning and manner of the Council of Regency’s termination of the Pearl Harbor Convention in accordance with the treaty and international law. I have attached my letter to BG Okamura as Enclosure #1. When he stated to me that the withdrawal of troops of the Indo-Pacific Command by October 26, 2024, would bring about chaos throughout the Hawaiian Islands, especially with the defueling of Red Hill, I answered that is precisely why MG Hara must establish a military government to manage the withdrawal and to bring the State of Hawai‘i into compliance with the law of occupation. BG Okamura responded by stating to me, “that is a good plan!” He then turned to First Sergeant Ka‘ahanui and repeated it to him.

Since returning from the Permanent Court of Arbitration in December of 2000, the Council of Regency methodically and strategically exposed the continued existence of the Hawaiian Kingdom as an occupied State. This exposure was done at the collegiate level in master’s theses and doctoral dissertations defenses, in peer review articles, book reviewed publications, and in federal courts and in courts in the State of Hawai‘i. At no time has any information and/or evidence been refuted or quashed. Furthermore, this exposure was initiated by the provisional government of an occupied State. The Council of Regency has nothing to do with the Native Hawaiian sovereignty movement.

In 2015, your Staff Judge Advocate, LTC Phelps, in an evidentiary hearing, could not refute the information I provided as an expert witness in a case where he was serving as prosecuting attorney. LTC Phelps was the Deputy Prosecuting Attorney for the County of Maui in *State of Hawai‘i v. English et al.*, criminal no. 14-1-0819, brought before Judge Joseph P. Cardoza of the Second Circuit Court. Dexter Ka‘iama served as the defendants’ counsel. He filed a motion to dismiss both criminal complaints on the grounds that the court lacked subject matter jurisdiction because of the American military occupation of the Hawaiian Kingdom. Mr. Ka‘iama has been serving as the Attorney General of the Hawaiian Kingdom and member of the Council of Regency since August 11, 2013.

On March 5, 2015, an evidentiary hearing was held at the Second Circuit Court, where I served as expert witness for the defense. The purpose for the evidentiary hearing was to meet the burden of proof established by the Intermediate Court of Appeals (“ICA”) in *State of Hawai‘i v. Lorenzo* whereby defendants, that are contesting the jurisdiction of the court, must provide a “factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a state’s sovereign nature.”¹

¹ *State of Hawai‘i v. Lorenzo*, 77 Haw. 219, 221; 883 P.2d 641, 643 (1994).

Pursuant to the *Lorenzo* precedent, I provided the factual circumstances of the United States military occupation of the Hawaiian Kingdom and the unlawful imposition of American municipal laws as the reasons why the Court did not have subject matter jurisdiction because its authority extends from the 1959 Statehood Act passed by the Congress, which has no extra-territorial effect. I have attached the court transcripts as Enclosure #2. I stated that should the Court proceed, it would violate “Article 147 [1949 Fourth Geneva Convention], unfair trial [as] a grave breach, which is considered a war crime.”² When Judge Cordoza asked the prosecution, “[a]ny cross-examination?”³ LTC Phelps responded, “[y]our Honor, the State has no questions of Dr. Sai. Thank you for his testimony. One Army officer to another, I appreciate your testimony.”⁴ Although the evidence proved that the Hawaiian Kingdom continues to exist as a State pursuant to the *Lorenzo* case, the Court ignored it and, consequently, committed the *war crime of depriving a person of a fair trial*.

All State of Hawai‘i officers claim to have lawful authority by virtue of the congressional statute—1959 Statehood Act.⁵ They also swore to uphold the constitution of the United States and the State of Hawai‘i. However, since congressional laws have no lawful effect beyond the borders of the United States, the State of Hawai‘i’s presence in the territory of the Hawaiian Kingdom is unlawful, and, more importantly, is the *war crime of usurpation of sovereignty during military occupation*. For the U.S. constitution and its congressional laws to apply in the Hawaiian Islands, the United States must provide a treaty of cession whereby the Hawaiian Kingdom ceded its sovereignty and territory to the United States. There is no such treaty, except for a congressional joint resolution purporting to have annexed the Hawaiian Islands on July 7, 1898.⁶ Here, the U.S. Supreme Court bluntly states the limits of the U.S. constitution and federal laws:

Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.⁷

Regarding the so-called joint resolution of annexation, Senator William Allen of Nebraska, on July 4, 1898, stated on the Senate floor:

The Constitution and the statutes are territorial in their operation; that is, they can not have any binding force or operation beyond the territorial limits of the

² Enclosure 2—Transcript of Proceedings, *State of Hawai‘i v. English et al.*, p. 28.

³ *Id.*, p. 33.

⁴ *Id.*

⁵ 73 Stat. 4 (1959).

⁶ 30 Stat. 750 (1898).

⁷ *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

government in which they are promulgated. In other words, the Constitution and statutes can not reach across the territorial boundaries of the United States into the territorial domain of another government and affect that government or persons or property therein.⁸

Two years later, on February 28, 1900, during a debate on senate bill no. 222 that proposed the establishment of the Territory of Hawai‘i, Senator Allen reiterated, “I utterly repudiate the power of Congress to annex the Hawaiian Islands by a joint resolution such as passed the Senate. It is ipso facto null and void.”⁹ In fact, the Department of Justice, in a 1988 legal opinion by the Office of Legal Counsel, concluded it is “unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution.”¹⁰ Professor Krystyna Marek asserts that, “a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State.”¹¹

Included in the myriad of American laws, unlawfully imposed in the Hawaiian Kingdom, is the 1993 Apology Resolution.¹² It is the source of much confusion and bolsters the sovereignty movement under federal Indian law. While the content of the Apology Resolution is riddled with misinformation, it has no effect in the Hawaiian Kingdom, except for it being a *war crime of usurpation of sovereignty during military occupation* and a *war crime of denationalization*. The power of the United States, in violating their own laws as well as international laws, did not diminish the continued existence of the Hawaiian Kingdom as an occupied State. It only magnifies these violations as war crimes that continue to be committed with impunity today.

Despite the lack of lawful authority by civilian officials of the State of Hawai‘i, your authority is lawful as a commissioned officer of the United States Army. You were not commissioned by the State of Hawai‘i. While your authority as the Adjutant General of the State of Hawai‘i is rendered void, your authority, as the most senior military commander of the organization calling itself the State of Hawai‘i, has not been affected by the unlawful imposition of American laws. As you are in an occupied State, and not within the territory of the United States, international humanitarian law, the law of occupation, and Army regulations obliges you to establish a military government.

⁸ 31 Cong. Rec. 6635 (1898).

⁹ 33 Cong. Rec. 2391 (1900).

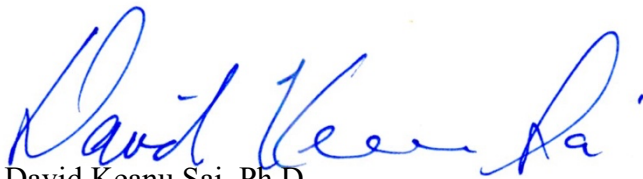
¹⁰ Douglas W. Kmiec, “Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea,” 12 *Op. O.L.C.*, 238, 252 (1988) (online at https://hawaiiankingdom.org/pdf/1988_Opinion_OLC.pdf).

¹¹ Krystyna Marek, *Identity and Continuity of States in Public International Law* 110 (1968).

¹² Public Law 103-150.

It has been six months now that you have not performed your duty. This is why the Council of Regency has set the suspense date for you to proclaim the establishment of the military government as February 17, 2024, which is an auspicious day for the Council of Regency. You must be guided by the Council of Regency's Operational Plan for Transitioning the State of Hawai'i into a Military Government, which I have attached as Enclosure #3. Your failure to do so will also place all the officials of the State of Hawai'i, to include Governor Josh Green and the members of the Legislature and County Councils, as war criminals and subject to war criminal reports by the Royal Commission of Inquiry.

In closing, today is Chinese New Year and the year of the wood Dragon. May this new year bring you the strength and guidance to right the wrong of 131 years of an unlawful and prolonged occupation. You not only have a duty but an opportunity to *ho 'oponopono*—to make right for the benefit of the population of the Hawaiian Islands in accordance with the rule of law and not the politics of unlawful power.



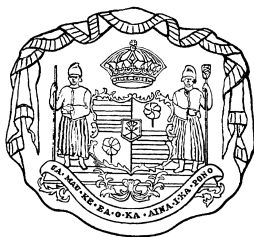
David Keanu Sai, Ph.D.

Head, *Royal Commission of Inquiry*

cc: Professor Federico Lenzerini, Deputy Head, Royal Commission of Inquiry
Major General Kenneth Hara
Lieutenant Colonel Lloyd Phelps
Brigadier General Lance Okamura
Ramsay Taum
Alika Watts
John "Doza" Enos
Edward Halealoha Ayau
Archie Kalepa
Bruce Blankefeld
First Sergeant Justin Ka'ahanui
Members of the Legislature and County Councils

enclosures

Enclosure “1”



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29 October 2023

Brigadier General Lance Okamura
Director, Strategic Engagement,
Joint Task Force-Red Hill
Indo-Pacific Command

Re: Termination of the 1884 Supplemental Convention, also known as the Pearl Harbor Convention

Dear Brigadier General Okamura:

First, allow me to introduce myself. My name is Dr. David Keanu Sai, Ph.D., and I have been serving as the Hawaiian Kingdom's Minister of Foreign Affairs *ad interim* since 11 November 2019 after His Excellency Peter Umialiloa Sai, Minister of Foreign Affairs, died.¹ I also serve as Chairman of the Council of Regency, Minister of the Interior and Head of the Royal Commission of Inquiry. From 1999 to 2001 I also served as lead Agent for the Hawaiian Kingdom in arbitral proceedings—*Larsen v. Hawaiian Kingdom* at the Permanent Court of Arbitration, PCA case no. 1999-01.² His Excellency Peter Umialiloa Sai served as First Deputy Agent. I am also a graduate of the Kamehameha Schools Kapālama, like yourself, KS'82.

The purpose of this letter is intended to acquaint you with information of the factual circumstances that has led to the termination of the 1884 Supplemental Convention (Pearl Harbor Supplemental Convention), which provided exclusive access for the United States to Pearl Harbor since 1887 under international law. The termination of the Pearl Harbor Supplemental Convention shall take place by 5:47am ET on 26 October 2024.

¹ Proclamation announcing Minister of Foreign Affairs at interim (11 Nov. 2019) (online at https://hawaiiankingdom.org/pdf/Proc_Minister_Foreign_Affairs_Ad_interim.pdf).

² *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>); see also award winning documentary on the Council of Regency (online at <https://www.youtube.com/watch?v=CF6CaLAMh98>).

The 1875 Commercial Reciprocity Treaty,³ and the Pearl Harbor Supplemental Convention,⁴ between the Hawaiian Kingdom and the United States is what established the U.S. military presence in the Hawaiian Islands. 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.”⁵

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,”⁶ 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.

³ 19 Stat. 625 (1875), Appendix 1.

⁴ 25 Stat. 1399 (1884), Appendix 2.

⁵ Hawaiian Kingdom, *Cabinet Council Minutes* 384, 26 Sep. 1887 (1874-1891).

⁶ 25 Stat. 1399.

Restoration of the Government of the Hawaiian Kingdom in 1997

According to Professor Rim, the State continues “to exist even in the factual absence of government so long as the people entitled to reconstruct the government remain.”⁷ In 1997, the Hawaiian government was restored *in situ* by a Regency under Hawaiian constitutional law and the doctrine of necessity in similar fashion to governments established in exile during the Second World War.⁸ By virtue of this process, the Hawaiian government is comprised of officers *de facto*. According to U.S. constitutional scholar Thomas Cooley:

A provisional government is supposed to be a government *de facto* for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity.⁹

Under Hawaiian law, the Council of Regency serves in the absence of the Executive Monarch. While the last Executive Monarch was Queen Lili‘uokalani who died on 11 November 1917, the office of the Monarch remained vacant under Hawaiian constitutional law. There was no legal requirement for the Council of Regency, being the successor in office to Queen Lili‘uokalani under Hawaiian constitutional law, to get 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 1844,¹⁰ 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.¹¹ Successors to King Kamehameha III were not established through “extra-legal changes,” but rather under the constitution and laws of the

⁷ Yejoon Rim, “State Continuity in the Absence of Government: The Underlying Rationale in International Law,” 20(20) *European Journal of International Law* 1, 4 (2021).

⁸ David Keanu Sai, “The Royal Commission of Inquiry,” in David Keanu Sai’s (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 18-23 (2020); see also Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Hawaiian Journal of Law and Politics* 317-333 (2021), Appendix 3.

⁹ Thomas M. Cooley, “Grave Obstacles to Hawaiian Annexation,” *The Forum*, 389, 390 (1893).

¹⁰ U.S. Secretary of State Calhoun to Hawaiian Commissioners (6 July 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).

¹¹ M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice*, 1815-1995 26 (1997).

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.”¹²

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

As far as Belgium is concerned, the capture of the king did not create any serious constitutional problems. According to Article 82 of the Constitution of February 7, 1821, as amended, the cabinet of ministers have to assume supreme executive power if the King is unable to govern. True, the ministers are bound to convene the House of Representatives and the Senate and to leave it to their decision of the united legislative chambers to provide for a regency; but in view of the belligerent occupation it is impossible for the two houses to function. While this emergency obtains, the powers of the King are vested in the Belgian Prime Minister and the other members of the cabinet.¹³

Article 33 provides that the Cabinet Council—comprised of the Minister of the Interior, the Minister of Finance, the Minister of Foreign Affairs, and the Attorney General, “shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are constitutionally vested in the King.” Like the Belgian Council, the Hawaiian Council was bound to call into session the Legislative Assembly to provide for a regency but because of the prolonged belligerent occupation and the effects of denationalization it was impossible for the Legislative Assembly to function. Until the Legislative Assembly can be called into session, Article 33 provides that the Cabinet Council, comprised of the Ministers of the Interior, Foreign Affairs, Finance and the Attorney General, “shall be a Council of Regency, until the Legislative Assembly” can be called into session.

The Regency is a government restored in accordance with the constitutional laws of the Hawaiian Kingdom as they existed prior to the unlawful overthrow of the previous administration of Queen Lili‘uokalani. It was not established through “extra-legal changes,” and, therefore, did not require diplomatic recognition to give itself validity as a government. It was a successor in office to Queen Lili‘uokalani as the Executive Monarch.

¹² *Restatement (Third)*, §203, comment c.

¹³ F.E. Oppenheimer, “Governments and Authorities in Exile,” 36 *American Journal of International Law* 568-595, 569 (1942).

According to Professor Lenzerini, based on the *doctrine of necessity*, “the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom.”¹⁴ He also concluded that the Regency “has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level.”¹⁵

On 8 November 1999, arbitral proceedings were instituted at the Permanent Court of Arbitration (“PCA”) in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, where Larsen, a Hawaiian subject, claimed that the government of the Hawaiian Kingdom, by its Council of Regency, should be liable for allowing the unlawful imposition of American laws that denied him a fair trial and led to his incarceration.¹⁶ Prior to the establishment of an *ad hoc* tribunal, the PCA acknowledged the Hawaiian Kingdom as a non-Contracting State under Article 47 of the 1907 Hague Convention on the Pacific Settlement of International Disputes.¹⁷ Article 47 states, “[t]he jurisdiction of the Permanent Court, may within the conditions laid down in the regulations, be extended to disputes between non-Contracting [States] or between Contracting [States] and non-Contracting [States], if the parties are agreed on recourse to this Tribunal.”¹⁸ This brought the dispute under the auspices of the PCA.

In determining the continued existence of the Hawaiian Kingdom as a non-Contracting State, the relevant rules of international law that apply to established States must be considered, and not those rules of international law that would apply to new States such as the case with Palestine. Professor Lenzerini concluded that “according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of international law. In fact, in the event of illegal annexation, ‘the legal existence of [...] States [is] preserved from extinction,’ since ‘illegal occupation cannot of itself terminate statehood.’”¹⁹

Because the State is a juristic person, it requires a government to speak on its behalf, without which the State is silent, and, therefore, there could be no arbitral tribunal to be established by the PCA. On the contrary, the PCA did form a tribunal on 9 June 2000 after confirming the existence of the Hawaiian State and its government, the Council of

¹⁴ Lenzerini, 324.

¹⁵ *Id.*, 325.

¹⁶ *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

¹⁷ Permanent Court of Arbitration, *101st Annual Report*, Annex 2, p. 44, fn. 1 (2001) (online at <https://docs.pca-cpa.org/2015/12/PCA-annual-report-2001.pdf>).

¹⁸ 36 Stat. 2199, 2224 (1907).

¹⁹ Lenzerini, 322.

Regency, pursuant to Article 47. In international intercourse, which includes arbitration at the PCA, the Permanent Court of International Justice, in *German Settlers in Poland*, explained that “States can act only by and through their agents and representatives.”²⁰ As Professor Talmon states, the “government, consequently, possesses the *jus repraesentationis omnimodae*, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. [Professor Talmon submits] that this is the case irrespective of whether the government is *in situ* or in exile.”²¹

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

Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency (“Hawaiian Kingdom”) on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant’s person within the territorial jurisdiction of the Hawaiian Kingdom (emphasis added).²²

It should also be noted that PCA also acknowledged the Hawaiian Kingdom to be a treaty partner with the United States to the 1849 Treaty of Friendship, Commerce and Navigation,²³ which the United States did not dispute. Furthermore, the United States, by its embassy in The Hague, entered into an agreement with the Council of Regency to have access to the pleadings of the arbitration. This agreement was brokered by Deputy Secretary General Phyllis Hamilton of the Permanent Court of Arbitration prior to the formation of the arbitral tribunal.²⁴

²⁰ *German Settlers in Poland*, 1923, PCIJ, Series B, No. 6, 22.

²¹ Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* 115 (1998).

²² *Id.*

²³ 9 Stat. 977 (1849), Appendix 4.

²⁴ Sai, *The Royal Commission of Inquiry*, 25-26.

*Notice of Terminating the 1875 Commercial Reciprocity Treaty
And the Pearl Harbor Supplemental Convention*

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.²⁵ 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 of twelve months after which the said Treaty and the Pearl Harbor Supplemental Convention would terminate, which is by 5:47am ET 26 October 2024.²⁶

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.²⁷

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

²⁵ Proclamation Terminating the 1875 Commercial Reciprocity Treaty and its 1884 Supplemental Convention, Appendix 5.

²⁶ Sai to Blinken (21 Oct. 2023), with signed receipt (24 Oct. 2023), Appendix 6.

²⁷ Robert C. Lydecker, *Roster Legislatures of Hawaii—1841-1918* 57 (1918).

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 treaty and its 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 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 present within the Hawaiian Kingdom today. That of the United States Federal government called Title 10 United States Code (“USC”) armed forces,²⁸ and that of the State of Hawai‘i National Guard called Title 32 USC armed forces.²⁹ 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.

Military Forces of the Hawaiian Kingdom

In 1845, the Hawaiian Kingdom organized its military under the command of the Governors of the several islands of Hawai‘i, Maui, O‘ahu and Kaua‘i but subordinate to the Monarch. According to the statute, “male subjects of His Majesty, between the ages of eighteen and forty years, shall be liable to do military duty in the respective islands where they have their most usual domicil, whenever so required by proclamation of the governor thereof.”³⁰ Those exempt from military duty included ministers of religion of every denomination, teachers, members of the Privy Council of State, executive department

²⁸ Title 10 of the United States Code outlines the role of the armed forces of the United States federal government.

²⁹ 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.

³⁰ “Statute Laws of His Majesty Kamehameha III,” *Hawaiian Kingdom*, Vol. I 69 (1846).

heads, members of the House of Nobles and Representatives when in session, judges, sheriffs, notaries public, registers of wills and conveyances, collectors of customs, poundmasters and constables.³¹

In 1847, the *Polynesian* newspaper, a government newspaper, reported the standing army comprised of 682 of all ranks: the “corps which musters at the fort, including officers, 286; corps of King’s Guards, including officers, 363; stationed at the battery, on Punch Bowl Hill, 33.”³² On 17 December 1852, King Kamehameha III, in Privy Council, established the First Hawaiian Cavalry, commanded by Captain Henry Sea.³³

In 1886, the Legislature enacted *An Act to Organize the Military Forces of the Kingdom*, “for the purpose of more complete military organization in any case requiring recourse to arms and to maintain and provide a sufficient force for the internal security and good order of the Kingdom, and being also in pursuance of Article 26th of the Constitution.”³⁴ The Act of 1886 established “a regular Military and Naval force, not to exceed two hundred and fifty men, rank and file,” and the “term of enlistment shall be for five years, which term may be extended from time to time by re-enlistment.”³⁵ This military force was headed by a Lieutenant General as Commander-in-Chief and the supreme command under the Executive Monarch as Generalissimo.³⁶ This military force was renamed the King’s Royal Guard in 1890,³⁷ and the Executive Monarch was thereafter called the “Commander-in-Chief of all the Military Forces”³⁸ and not Generalissimo. While the King’s Royal Guard was the only active military component of the kingdom,³⁹ there was a reserve force capable of being called to active duty. As previously stated, the statute provides that “[a]ll male subjects of His Majesty, between the ages of eighteen and forty years, shall be liable to do military duty in the respective islands where they have their most usual domicile, whenever so required by proclamation from the governor thereof.”⁴⁰

Upon ascending to the Throne on 29 January 1891, Queen Lili‘uokalani, as the Executive Monarch, succeeded her predecessor King David Kalākaua as Commander-in-Chief of the Royal Guard. The command structure of the Royal Guard consisted of a Captain and two Lieutenants. These officers were authorized “to make, alter and revoke all regulations not

³¹ *Id.*, 70.

³² “Military,” *Polynesian* 138 (9 Jan. 1847).

³³ “First Hawaiian Cavalry,” *Polynesian* 130 (25 Dec. 1852).

³⁴ *An Act to Organize the Military Forces of the Kingdom*, Laws of His Majesty Kalakaua I 37 (1886).

³⁵ *Id.*

³⁶ *Id.*, 38.

³⁷ *An Act to Provide for a Military Force to be Designated as the “King’s Royal Guard,”* Laws of His Majesty Kalakaua I 107 (1890).

³⁸ *Id.*

³⁹ *Id.*, 108.

⁴⁰ Section 3, *Appendix to the Civil Code*, Compiled Laws 493 (1884).

repugnant to the provisions of [the Act of 1890], concerning enlistment, discipline, exercises, accoutrements, arms and clothing and to make such other rules and orders as may be necessary to carry into effect the provisions of [the Act of 1890], and to provide and prescribe penalties for any violations of such regulations not extending to deprivation of life or limb, or the infliction of corporeal punishment.”⁴¹ All rules, regulations or orders required the approval of the Executive Monarch and was to be countersigned by the Minister of Foreign Affairs.⁴²

On 17 January 1893, a small group of insurgents, with the protection of United States troops, declared the establishment of a provisional government whereby all “officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named 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, [and] Arthur P. Peterson, Attorney General, who are hereby removed from office.”⁴³ The insurgency further stated that all “Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils.”⁴⁴ The insurgency unlawfully seized control of the Hawaiian Kingdom civilian government.

The military force of the provisional government was not an organized unit or militia but rather armed insurgents under the command of John Harris Soper. Soper attended a meeting of the leadership of the insurgents calling themselves the Committee of Safety in the evening of 16 January 1893, where he was asked to command the armed wing of the insurgency. Although Soper served as Marshal of the Hawaiian Kingdom under King Kalākaua, on 17 June 1893 he admitted in an interview with U.S. Special Commissioner James Blount, who was investigating the overthrow of the Hawaiian Kingdom government by direction of U.S. President Grover Cleveland, that he “was not a trained military man, and was rather adverse to accepting the position [he] was not especially trained for, under the circumstances, and that [he] would give them an answer on the following day; that is, in the morning.”⁴⁵ Soper told Special Commissioner Blount that he accepted the offer after learning that “Judge Sanford Dole [agreed] to accept the position as the head of the [provisional] Government.”⁴⁶ The insurgency renamed the Hawaiian Kingdom’s Royal Guard to the National Guard by *An Act to Authorize the Formation of a National Guard*

⁴¹ *Id.*, 107.

⁴² *Id.*

⁴³ *Proclamation, Laws of the Provisional Government of the Hawaiian Islands* vii (1893).

⁴⁴ *Id.*, viii.

⁴⁵ Executive Documents, 972.

⁴⁶ *Id.*

on 27 January 1893.⁴⁷ Soper was thereafter commissioned as Colonel to command the National Guard and was called the Adjutant General.

On 17 January 1893, Queen Lili‘uokalani conditionally surrendered to the United States and not the insurgency, thereby transferring effective control of Hawaiian territory to the United States.⁴⁸ Under customary international law, a State’s effective control of another State’s territory by an act of war triggers the Occupying State’s military to establish a military government to provisionally administer the laws of the Occupied State. This rule was later codified under Articles 42 and 43 of the 1899 Hague Regulations, which was superseded by Articles 42 and 43 of the 1907 Hague Regulations. When Special Commissioner Blount ordered U.S. troops to return to the *U.S.S. Boston* on 1 April 1893,⁴⁹ effective control of Hawaiian territory was left with the insurgency calling itself the provisional government.

Special Commissioner Blount submitted his final report on 17 July 1893 to U.S. Secretary of State Walter Gresham.⁵⁰ Secretary of State Gresham submitted his report to President Cleveland on 18 October 1893,⁵¹ and President Cleveland notified the Congress of his findings and conclusions on 18 December 1893.⁵² In his message to the Congress, he stated:

When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister’s recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen’s troops were quartered), though the same had been demanded of the Queen’s officer’s in charge. Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had

⁴⁷ *An Act to Authorize the Formation of a National Guard*, Laws of the Provisional Government of the Hawaiian Islands 8 (1893).

⁴⁸ Executive Documents, 586.

⁴⁹ *Id.*, 597.

⁵⁰ *Id.*, 567.

⁵¹ *Id.*, 459.

⁵² *Id.*, 445.

possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal, while the Committee of Safety, by actual search, had discovered that there but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice. Accordingly, some hours after the recognition of the provisional government by the United States Minister, the palace, the barracks, and the police station, with all the military resources of the country, were delivered up by the Queen upon the representation made to her that her cause would thereafter be reviewed at Washington, and while protesting that she surrendered to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support the provisional government, and that she yielded her authority to prevent collision of armed forces and loss of life and only until such time as the United States, upon the facts being presented to it, should undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands.

This protest was delivered to the chief of the provisional government, who endorsed thereon his acknowledgment of its receipt. The terms of the protest were read without dissent by those assuming to constitute the provisional government, who were certainly charged with the knowledge that the Queen instead of finally abandoning her power had appealed to the justice of the United States for reinstatement in her authority; and yet the provisional government with this unanswered protest in its hand hastened to negotiate with the United States for the permanent banishment of the Queen from power and for sale of her kingdom.

Our country was in danger of occupying the position of having actually set up a temporary government on foreign soil for the purpose of acquiring through that agency territory which we had wrongfully put in its possession. The control of both sides of a bargain acquired in such a manner is called by a familiar and unpleasant name when found in private transactions. We

are not without a precedent showing how scrupulously we avoided such accusation in former days. After the people of Texas had declared their independence of Mexico they resolved that on the acknowledgment of their independence by the United States they would seek admission into the Union. Several months after the battle of San Jacinto, by which Texan independence was practically assured and established, President Jackson declined to recognize it, alleging as one of his reasons that in the circumstances it became us “to beware of a too early movement, as it might subject us, however unjustly, to the imputation of seeking to establish the claim of our neighbors to a territory with a view to its subsequent acquisition by ourselves.” This is in marked contrast with the hasty recognition of a government openly and concededly set up for the purpose of tendering to us territorial annexation.

I believe that a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States.⁵³

Under international law, the provisional government was an armed force of the United States in effective control of Hawaiian territory since 1 April 1893, after the departure of U.S. troops. As an armed proxy of the United States, they were actually obliged to provisionally administer the laws of the Hawaiian Kingdom until a peace treaty was negotiated and agreed upon between the United States and the Hawaiian Kingdom. As a matter of fact and law, it would have been Soper’s duty to head the military government as its military governor after President Cleveland completed his investigation of the overthrow of the Hawaiian Kingdom government and notified the Congress on 18 December 1893. A Military Government was not established under international law but rather the insurgency maintained the facade that they were a *de jure* government.

The insurgency changed its name to the Republic of Hawai‘i on 4 July 1894. Under *An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard* of 13 August 1895, the National Guard was reorganized and commanded by the Adjutant General that headed a regiment comprised of battalions with companies.⁵⁴

⁵³ *Id.*, 453.

⁵⁴ *An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard, Laws of the Republic of Hawaii 29 (1895).*

Under *An Act To provide a government for the Territory of Hawaii* enacted by the U.S. Congress on 30 April 1900,⁵⁵ the Act of 1895 continued to be in force. Under section 6 of the Act of 1900, “the laws not inconsistent with the Constitution or laws of the United States or the provisions of this Act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States.” Soper continued to command the National Guard as Adjutant General until 2 April 1907, when he retired. The Hawai‘i National Guard continued to stay in force under *An Act To provide for the admission of the State of Hawaii into the Union* enacted by the U.S. Congress on 18 March 1959.⁵⁶ While the State of Hawai‘i National Guard is referred to today as Title 32 USC troops, they are in fact and by law the Royal Guard by Hawaiian statute.

Military Forces of the United States

The military force of the United States has a direct link to the 1875 Treaty of Reciprocity between the Hawaiian Kingdom and the United States. Under the commercial treaty, certain products of the Hawaiian Kingdom could enter the American market duty free and certain products of the United States can enter the Hawaiian market duty free. Out of this trade agreement, Hawaiian sugar became a lucrative product, which became a threat to American sugar especially due to the high cost of producing sugar in the aftermath of the Civil War. The treaty was to last for seven years, and further until one of the High Contracting Parties shall give notice to the other of its intention to terminate.

Both the Hawaiian Kingdom and the United States wanted to extend the commercial treaty, but on 19 July 1884, the U.S. Senate Committee on Foreign Relations reported two resolutions: (1) that the Senate advise and consent to the extension of the reciprocity convention for a further definite period of seven years; and (2) “That in the opinion of the Senate it is advisable that the President secure, by negotiation with the Government of Hawaii, the privilege of establishing permanently a proper naval station for the United States in the vicinity of Honolulu, and also a revision and further extension of the schedule of articles to be admitted free of duty from the United States into the Hawaiian Kingdom.”⁵⁷

On 6 December 1884, the Pearl Harbor Supplemental Convention was signed by Henry A.P. Carter for the Hawaiian Kingdom and Frederick T. Frelinghuysen for the United States at the city of Washington. There was no provision for a permanent naval station, but rather to maintain a “coaling and repair station for the use of vessels of the United States,” and it was specified that the term of the Supplemental Convention was seven years from the date when ratifications were exchanged. The United States Senate advised ratification

⁵⁵ An Act To provide a government for the Territory of Hawaii, 31 Stat. 141 (1900).

⁵⁶ An Act To provide for the admission of the State of Hawaii into the Union, 73 Stat. 4 (1959).

⁵⁷ Ralph S. Kuykendall, *The Hawaiian Kingdom: 1874-1893—The Kalakaua Dynasty*, vol. III, 383 (1967).

on 20 January 1887, but the Hawaiian Kingdom was unable to ratify because of opposition in the Legislative Assembly.

While the U.S. Senate advised ratification, the Hawaiian Legislative had not. In the 1886 legislative session, Representative J.L. Kaulukou “said it was the duty of the Nobles and Representatives to jealously guard the independence of the kingdom, as recognized by Great Britain, France and the United States. If they could not retain a treaty without the cession of Pearl Harbor, they had better do without a treaty.”⁵⁸ The legislature’s opposition to the United States’ exclusive access to Pearl Harbor triggered a chain of events in the Hawaiian Kingdom that led to the revolution of 1887. Driven by fear that Hawaiian sugar interests would no longer reap the benefit of duty-free sugar entering the American market, a takeover of the Executive Monarch and the Legislature was initiated to ratify the Pearl Harbor Supplemental Convention.

During the summer of 1887, while the Legislature remained out of session, a minority of Hawaiian subjects of the Hawaiian Kingdom and foreign nationals met to organize a takeover of the political rights of the native population who held the majority of the Legislature Assembly. The driving motivation for these revolutionaries was their perverted and unfounded belief that the “native [was] unfit for government and his power must be curtailed.”⁵⁹ A local volunteer militia, whose members were predominantly United States citizens, called themselves the Hawaiian League, and held a meeting on 30 June 1887 in Honolulu at the Armory building of the Honolulu Rifles. Before this meeting, large caches of arms were brought in by the League from San Francisco and dispersed amongst its members.⁶⁰

The group made certain demands on King Kalākaua and called for an immediate change of the King’s cabinet ministers. Under threat of violence, the King reluctantly agreed on 1 July 1887 to have this group form a new cabinet ministry made up of League members. The purpose of the League was to seize control of the government for their economic gain, and to neutralize the power of the native vote. On that same day the new cabinet comprised of William L. Green as Minister of Finance, Godfrey Brown as Minister of Foreign Affairs, Lorrin A. Thurston as Minister of the Interior, and Clarence W. Ashford as Attorney General, took “an oath to support the Constitution and Laws, and faithfully and impartially to discharge the duties of [their] office.”⁶¹ Under strict secrecy and unbeknownst to Kalākaua, the new ministry also invited two members of the Supreme Court, Chief Justice Albert F. Judd and Associate Justice Edward Preston, “to assist in the preparation of a new

⁵⁸ *Id.*, 392.

⁵⁹ Executive Documents, 574.

⁶⁰ *Id.*, 579.

⁶¹ Hawaiian Civil Code, Compiled Laws §31 (1884).

constitution,”⁶² which now implicated the two highest ranking judicial officers in the revolution.

Hawaiian constitutional law provided that any proposed change to the constitution must be submitted to the “Legislative Assembly, and if the same shall be agreed to by a majority of the members thereof”⁶³ it would be deferred to the next Legislative session for action. Once the next legislature convened, and the proposed amendment or amendments have been “agreed to by two-thirds of all members of the Legislative Assembly, and be approved by the King, such amendment or amendments shall become part of the Constitution of this country.”⁶⁴ As a minority, these individuals had no intent of submitting their draft constitution to the legislature, which was not scheduled to reconvene until 1888. Instead, they embarked on a criminal path of treason.

The draft constitution was completed in just five days. The King was forced to sign on 6 July and, thereafter, what came to be known as the Bayonet Constitution illegally replaced the former constitution and was declared to be the new law of the land. The King’s sister and heir-apparent, Lili‘uokalani, discovered later that her brother had signed the constitution “because he had every assurance, short of actual demonstration, that the conspirators were ripe for revolution, and had taken measures to have him assassinated if he refused.”⁶⁵ Gulick, who served as Minister of the Interior from 1883 to 1886, also concluded:

The ready acquiescence of the King to their demands seriously disconcerted the conspirators, as they had hoped that his refusal would have given them an excuse for deposing him, and a show of resistance a justification for assassinating him. Then everything would have been plain sailing for their little oligarchy, with a sham republican constitution.⁶⁶

This so-called constitution has since been known as the *bayonet* constitution and was never submitted to the Legislative Assembly or to a popular vote of the people. It was drafted by a select group of twenty-one individuals⁶⁷ that effectively placed control of the Legislature

⁶² Merze Tate, *The United States and the Hawaiian Kingdom: A Political History* 91 (1980).

⁶³ 1864 Constitution, as amended, Article 80.

⁶⁴ *Id.*

⁶⁵ Liliuokalani, *Hawaii’s Story by Hawaii’s Queen* 181 (1964).

⁶⁶ Executive Documents, 760.

⁶⁷ In the William O. Smith Collection at the Hawaiian Archives there is a near finished version of the 1887 draft with the following endorsement on the back that read: “Persons chiefly engaged in drawing up the constitution were—L.A. Thurston, Jonathan Austin, S.B. Dole, W.A. Kinney, W.O. Smith, Cecil Brown, Rev. [W.B.] Olelson, N.B. Emerson, J.A. Kennedy, [John A.] McCandless, Geo. N. Wilcox, A.S. Wilcox, H. Waterhouse, F. Wundenberg, E.G. Hitchcock, W.E. Rowell, Dr. [S.G.] Tucker, C.W. Ashford.” Added to this group of individuals were Chief Justice A.F. Judd and Associate Justice Edward Preston.

and Cabinet in the hands of individuals who held foreign allegiances. Special Commissioner Blount reported:

For the first time in the history of the country the number of nobles is made equal to the number of representatives. This furnished a veto power over the representatives of the popular vote to the nobles, who were selected by persons mostly holding foreign allegiance, and not subjects of the Kingdom. The election of a single representative by the foreign element gave to it the legislature.⁶⁸

On 26 September 1887, the Cabinet Council that was forced upon King Kalākaua under the Bayonet Constitution stated that the King agreed to ratify the Pearl Harbor Convention. However, the King told British Commissioner James Wodehouse “that He most unwillingly agreed to sanction the ‘Pearl Harbour’ policy at the urgent desire of His Ministers on the evening of the 26th of September.”⁶⁹ Nevertheless, on 20 October 1887, the Cabinet Council coerced King Kalākaua to sign the ratification of the Pearl Harbor Supplemental Convention. President Cleveland signed the ratification on 7 November 1887, and the ratifications were exchanged at the city of Washington on 9 November 1887, that began the term of seven years to 1894, and further unless one of the Contracting Parties gives notice to the other of its intention to terminate.

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.⁷⁰

⁶⁸ Executive Documents, 579.

⁶⁹ Wodehouse to FO, no. 34, 18 Nov. 1887, BPRO, FO 58/220, Hawai‘i Archives.

⁷⁰ 35 Stat. 127, 141 (1908).

In April 1942, the United States military 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 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 military 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.⁷¹ 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.⁷²

⁷¹ See *The Apollon*, 22 U.S. 362, 370 (1824); and *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

⁷² 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).

The presence of all Title 10 USC military 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 Hawaiian Kingdom's ratification of the Pearl Harbor Supplemental Convention, as previously stated, it was a valid treaty under international law up until the Hawaiian Kingdom's notice of intention to terminate was received by the U.S. Department of State at 5:47am ET on 26 October 2023. As a consequence of the termination of the 1875 Commercial Reciprocity Treaty and the Pearl Harbor Supplemental Convention between the Hawaiian Kingdom and the United States, all Title 10 USC military forces shall have to be withdrawn from the Hawaiian Islands no later than twelve months from 26 October 2023. The military forces that remain is the Hawaiian Kingdom's Royal Guard that is referred to today as the Hawai'i Army and Air National Guard.

With sentiments of the highest regard,

A handwritten signature in blue ink, reading "David Keanu Sai". The signature is fluid and cursive, with the first name "David" being the most prominent.

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

Minister of Foreign Affairs *ad interim*

enclosures

Appendix 1

Convention between the United States of America and His Majesty the King of the Hawaiian Islands. Commercial Reciprocity. Concluded January 30, 1875; Ratification advised by Senate March 18, 1875; Ratified by President May 31, 1875; Ratified by King of Hawaiian Islands April 17, 1875; Ratifications exchanged at Washington June 3, 1875; Proclaimed June 3, 1875

Jan. 30, 1875.

Post, p. 666.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention between the United States of America and His Majesty the King of the Hawaiian Islands, on the subject of Commercial Reciprocity, was concluded and signed by their respective Plenipotentiaries, at the city of Washington, on the thirtieth day of January, one thousand eight hundred and seventy-five, which convention, as amended by the contracting parties, is word for word as follows:

Preamble.

The United States of America and His Majesty the King of the Hawaiian Islands, equally animated by the desire to strengthen and perpetuate the friendly relations which have heretofore uniformly existed between them, and to consolidate their commercial intercourse, have resolved to enter into a Convention for Commercial Reciprocity. For this purpose, the President of the United States has conferred full powers on Hamilton Fish, Secretary of State, and His Majesty the King of the Hawaiian Islands has conferred like powers on Honorable Elisha H. Allen, Chief Justice of the Supreme Court, Chancellor of the Kingdom, Member of the Privy Council of State, His Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America, and Honorable Henry A. P. Carter, Member of the Privy Council of State, His Majesty's Special Commissioner to the United States of America.

Contracting parties.

And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due form, have agreed to the following articles.

ARTICLE I.

For and in consideration of the rights and privileges granted by His Majesty the King of the Hawaiian Islands in the next succeeding article of this convention and as an equivalent therefor, the United States of America hereby agree to admit all the articles named in the following schedule, the same being the growth and manufacture or produce of the Hawaiian Islands, into all the ports of the United States free of duty.

Hawaiian products to be admitted free of duty

SCHEDULE.

Arrow-root; castor oil; bananas; nuts, vegetables, dried and undried, preserved and unpreserved; hides and skins undressed; rice; pulu; seeds, plants, shrubs or trees; muscovado, brown, and all other unrefined sugar, meaning hereby the grades of sugar heretofore commonly imported from the Hawaiian Islands and now known in the markets of San Francisco and Portland as "Sandwich Island sugar;" syrups of sugar-cane, melado, and molasses; tallow.

Schedule.

ARTICLE II.

American products to be admitted free of duty.

For and in consideration of the rights and privileges granted by the United States of America in the preceding article of this convention, and as an equivalent therefor, His Majesty, the King of the Hawaiian Islands hereby agrees to admit all the articles named in the following schedule, the same being the growth, manufacture or produce of the United States of America, into all the ports of the Hawaiian Islands, free of duty.

SCHEDULE.

Schedule.

Agricultural implements; animals; beef, bacon, pork, ham and all fresh, smoked or preserved meats; boots and shoes; grain, flour, meal and bran, bread and breadstuffs, of all kinds; bricks, lime and cement; butter, cheese, lard, tallow, bullion; coal; cordage, naval stores including tar, pitch, resin, turpentine raw and rectified; copper and composition sheathing; nails and bolts; cotton and manufactures of cotton bleached, and unbleached, and whether or not colored, stained, painted or printed; eggs; fish and oysters, and all other creatures living in the water, and the products thereof; fruits, nuts, and vegetables, green, dried or undried, preserved or unpreserved; hardware; hides, furs, skins and pelts, dressed or undressed; hoop iron, and rivets, nails, spikes and bolts, tacks, brads or sprigs; ice; iron and steel and manufactures thereof; leather; lumber and timber of all kinds, round, hewed, sawed, and unmanufactured in whole or in part; doors, sashes and blinds; machinery of all kinds, engines and parts thereof; oats and hay; paper, stationery and books, and all manufactures of paper or of paper and wood; petroleum and all oils for lubricating or illuminating purposes; plants, shrubs, trees and seeds; rice; sugar, refined or unrefined; salt; soap; shooks, staves and headings; wool and manufactures of wool, other than ready made clothing; wagons and carts for the purposes of agriculture or of drayage; wood and manufactures of wood, or of wood and metal except furniture either upholstered or carved and carriages; textile manufactures, made of a combination of wool, cotton, silk or linen, or of any two or more of them other than when ready made clothing; harness and all manufactures of leather; starch; and tobacco, whether in leaf or manufactured.

ARTICLE III.

Evidence as to growth, manufacture, &c., how established.

The evidence that articles proposed to be admitted into the ports of the United States of America, or the ports of the Hawaiian Islands, free of duty, under the first and second articles of this convention, are the growth, manufacture or produce of the United States of America or of the Hawaiian Islands respectively shall be established under such rules and regulations and conditions for the protection of the revenue as the two Governments may from time to time respectively prescribe.

ARTICLE IV.

No export duty to be imposed on free articles.

No export duty or charges shall be imposed in the Hawaiian Islands or in the United States, upon any of the articles proposed to be admitted into the ports of the United States or the ports of the Hawaiian Islands free of duty, under the first and second articles of this convention. It is agreed, on the part of His Hawaiian Majesty, that, so long as this treaty shall remain in force, he will not lease or otherwise dispose of or create any lien upon any port, harbor, or other territory in his dominions, or grant any special privilege or rights of use therein, to any other power, state or government, nor make any treaty by which any other nation shall obtain the same privileges, relative to the admission of any articles free of duty, hereby secured to the United States.

No lease, &c., of Hawaiian ports, and no other nation to have same privileges as United States.

ARTICLE V.

The present convention shall take effect as soon as it shall have been approved and proclaimed by His Majesty the King of the Hawaiian Islands, and shall have been ratified and duly proclaimed on the part of the Government of the United States, but not until a law to carry it into operation shall have been passed by the Congress of the United States of America. Such assent having been given and the ratifications of the convention having been exchanged as provided in article VI, the convention shall remain in force for seven years, from the date at which it may come into operation; and further, until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its wish to terminate the same; each of the high contracting parties being at liberty to give such notice to the other at the end of the said term of seven years, or at any time thereafter.

When to take effect.

Post, p. 668.

How long to remain in force.

ARTICLE VI.

The present convention shall be duly ratified, and the ratifications exchanged at Washington city, within eighteen months from the date hereof, or earlier if possible.

Exchange of ratifications.

In faith whereof the respective Plenipotentiaries of the high contracting parties have signed this present convention, and have affixed thereto their respective seals.

Signature.

Done in duplicate, at Washington, the thirtieth day of January, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL]
[SEAL]
[SEAL]

HAMILTON FISH.
ELISHA H. ALLEN.
HENRY A. P. CARTER.

And whereas the said convention, as amended, has been duly ratified on both parts, and the respective ratifications were exchanged in this city on this day:

Ratification.

Now, therefore, be it known that I, ULYSSES S. GRANT, President of the United States of America, have caused the said convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

Proclamation.

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this third day of June, in the year of our Lord one thousand eight hundred and seventy-five,
[SEAL.] and of the Independence of the United States the ninety-ninth.

U. S. GRANT.

By the President:

HAMILTON FISH,
Secretary of State.

March 8, 1875.

Treaty between the United States of America and His Majesty the King of the Belgians. Commerce and navigation. Concluded March 8, 1875; Ratification advised by Senate March 10, 1875; Ratified by the President March 16, 1875; Ratified by the King of the Belgians June 10, 1875; Ratifications exchanged at Brussels June 11, 1875; Proclaimed June 29, 1875.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Preamble.

Whereas a Treaty of Commerce and Navigation between the United States of America and His Majesty the King of the Belgians was concluded and signed at Washington by their respective Plenipotentiaries on the eighth day of March, eighteen hundred and seventy-five, the original of which treaty, being in the English and French languages, is word for word as follows:

Contracting parties.

The United States of America on the one part, and His Majesty the King of the Belgians on the other part, wishing to regulate in a formal manner their reciprocal relations of commerce and navigation, and further to strengthen, through the development of their interests, respectively, the bonds of friendship and good understanding so happily established between the governments and people of the two countries; and desiring with this view to conclude by common agreement, a treaty establishing conditions equally advantageous to the commerce and navigation of both States, have to that effect appointed as their Plenipotentiaries, namely: The President of the United States, Hamilton Fish, Secretary of State of the United States, and His Majesty the King of the Belgians Maurice Delfosse, Commander of the Order of Leopold, &c., &c., his Envoy Extraordinary and Minister Plenipotentiary in the United States; who, after having communicated to each other their full powers, ascertained to be in good and proper form, have agreed to and concluded the following articles:

Sa Majesté le Roi des Belges, d'une part, et les États-Unis d'Amérique, d'autre part, voulant régler d'une manière formelle les relations réciproques de commerce et de navigation, et fortifier de plus en plus, par le développement des intérêts respectifs, les liens d'amitié et de bonne intelligence si heureusement établis entre les deux gouvernements et les deux peuples; désirant, dans ce but, arrêter de commun accord un traité stipulant des conditions également avantageuses au commerce et à la navigation des deux états, ont à cet effet nommé pour leurs Plénipotentiaires, savoir: Sa Majesté le Roi des Belges, le Sieur Maurice Delfosse, Commandeur de l'Ordre de Léopold, &c., &c., son Envoyé Extraordinaire et Ministre Plénipotentiaire aux États-Unis, et le Président des États-Unis, Hamilton Fish, Secrétaire d'État des États-Unis; lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et dûe forme, ont arrêté et conclu les articles suivants:

ARTICLE I.

Reciprocal freedom of commerce and navigation.

There shall be full and entire freedom of commerce and navigation between the inhabitants of the two

ARTICLE I.

Il y aura pleine et entière liberté de commerce et de navigation entre les habitants des deux pays, et la

Appendix 2

Supplementary Convention between the United States of America and his Majesty the King of the Hawaiian Islands to limit the duration of the Convention respecting commercial reciprocity concluded January 30, 1875. Concluded December 6, 1884; ratification advised by the Senate, with amendments, January 20, 1887; ratified by the President November 7, 1887; ratified by the King of Hawaii, October 20, 1887; ratifications exchanged at Washington November 9, 1887; proclaimed November 9, 1887.

December 6, 1884.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention between the United States of America and the Kingdom of the Hawaiian Islands, for the purpose of definitely limiting the duration of the Convention concerning Commercial Reciprocity concluded between the same High Contracting Parties on the thirtieth day of January 1875, was concluded and signed by their respective plenipotentiaries at the city of Washington, on the sixth day of December, in the year of our Lord, 1884, which Convention, as amended by the Senate of the United States and being in the English language, is word for word as follows:

Preamble.

Supplementary Convention to limit the duration of the Convention respecting commercial reciprocity between the United States of America and the Hawaiian Kingdom, concluded January 30, 1875.

Whereas a Convention was concluded between the United States of America, and His Majesty the King of the Hawaiian Islands, on the thirtieth day of January 1875, concerning commercial reciprocity, which by the fifth article thereof, was to continue in force for seven years from the date after it was to come into operation, and further, until the expiration of twelve months after either of the High Contracting Parties should give notice to the other of its wish to terminate the same; and

Whereas, the High Contracting Parties consider that the increase and consolidation of their mutual commercial interests would be better promoted by the definite limitation of the duration of the said Convention;

Therefore, the President of the United States of America, and His Majesty the King of the Hawaiian Islands, have appointed: The President of the United States of America, Frederick T. Frelinghuysen, Secretary of State; and His Majesty the King of the Hawaiian Islands, Henry A. P. Carter, accredited to the Government of the United States as His Majesty's Envoy Extraordinary and Minister Plenipotentiary; who, having exchanged their respective powers, which were found sufficient and in due form, have agreed upon the following articles:

Plenipotentiaries.

ARTICLE I.

The High Contracting Parties agree, that the time fixed for the duration of the said Convention, shall be definitely extended for a term of seven years from the date of the exchange of ratifications

Duration of reciprocity convention extended.

hereof, and further, until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of its wish to terminate the same, each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter.

ARTICLE II.

Coaling and repair
station at Pearl River.

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.

ARTICLE III.

Ratification.

The present Convention shall be ratified and the ratifications exchanged at Washington, as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed the present Convention in duplicate, and have hereunto affixed their respective seals.

Done at the city of Washington the 6th day of December in the year of our Lord 1884.

Signatures.

FREDK. T. FRELINGHUYSEN. [SEAL.]
HENRY A. P. CARTER. [SEAL.]

And whereas the said Convention, as amended, has been duly ratified on both parts, and the respective ratifications of the same have been exchanged.

Proclamation.

Now, therefore, be it known that I, Grover Cleveland, President of the United States of America, have caused the said Convention to be made public to the end that the same and every article and clause thereof, as amended, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this ninth day of November in the year of our Lord one thousand eight hundred and [SEAL.] eighty-seven and of the Independence of the United States the one hundred and twelfth.

GROVER CLEVELAND.

By the President:

T. F. BAYARD,
Secretary of State.

Appendix 3



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**LEGAL OPINION ON THE AUTHORITY OF THE
COUNCIL OF REGENCY OF THE HAWAIIAN KINGDOM[†]**

Professor Federico Lenzerini^{*}

- I. INTRODUCTION
- II. DOES THE REGENCY HAVE THE AUTHORITY TO REPRESENT THE HAWAIIAN KINGDOM AS A STATE THAT HAS BEEN UNDER A BELLIGERENT OCCUPATION BY THE UNITED STATES OF AMERICA SINCE 17 JANUARY 1893?
- III. ASSUMING THE REGENCY DOES HAVE THE AUTHORITY, WHAT EFFECT WOULD ITS PROCLAMATIONS HAVE ON THE CIVILIAN POPULATION OF THE HAWAIIAN ISLANDS UNDER INTERNATIONAL HUMANITARIAN LAW, TO INCLUDE ITS PROCLAMATION RECOGNIZING THE STATE OF HAWAI‘I AND ITS COUNTIES AS THE ADMINISTRATION OF THE OCCUPYING STATE ON 3 JUNE 2019?
- IV. COMMENT ON THE WORKING RELATIONSHIP BETWEEN THE REGENCY AND THE ADMINISTRATION OF THE OCCUPYING STATE UNDER INTERNATIONAL HUMANITARIAN LAW.

Editor's Note: In light of the severity of the mandate of the Royal Commission, established by the Hawaiian Council of Regency on 17 April

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2019, to investigate war crimes and human rights violations committed within the territorial jurisdiction of the Hawaiian Kingdom, the “authority” of the Council of Regency to appoint the Royal Commission is fundamental and, therefore, necessary to address within the rules of international humanitarian law, which is a component of international law. As explained by the United States Supreme Court in 1900 regarding international law and the works of jurists and commentators:

International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators who by years of labor, research, and experience have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.¹

According to the Statute of the International Court of Justice, “the teachings of the most highly qualified publicists of the various nations, [are] subsidiary means for the determination of rules of law.”² Furthermore, Restatement Third—Foreign Relations Law of the United States, recognizes that “writings of scholars”³ are a source of international law in determining, in this case, whether the Council of Regency has been established in conformity with the rules of international humanitarian law. The writing of scholars, “whether a rule has become international law,” are not prescriptive but rather descriptive “of what the law really is.”

I. INTRODUCTION

As requested in the Letter addressed to me, on 11 May 2020, by Dr. David Keanu Sai, Ph.D., Head of the Hawaiian Royal Commission of Inquiry, I provide below a legal opinion in which I answer the three questions included in the above letter, for purposes of public awareness and clarification of the Regency’s authority.

¹ *The Paquete Habana*, 175 U.S. 677, 700 (1900).

² Article 38(1), Statute of the International Court of Justice.

³ §103(2)(c), *Restatement of the Law (Third)—The Foreign Relations Law of the United States* (1987).

II. DOES THE REGENCY HAVE THE AUTHORITY TO
REPRESENT THE HAWAIIAN KINGDOM AS A STATE
THAT HAS BEEN UNDER A BELLIGERENT OCCUPATION BY
THE UNITED STATES OF AMERICA SINCE 17 JANUARY 1893?

1. In order to ascertain whether the Regency has the authority to represent the Hawaiian Kingdom *as a State*, it is preliminarily necessary to ascertain whether the Hawaiian Kingdom can actually be considered a State under international law. To this purpose, two issues need to be investigated, i.e.: a) whether the Hawaiian Kingdom was a State at the time when it was militarily occupied by the United States of America, on 17 January 1893; b) in the event that the solution to the first issue would be positive, whether the continuous occupation of Hawai'i by the United States, from 1893 to present times, has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law.
2. With respect to the first of the abovementioned issues, as acknowledged by the Arbitral Tribunal of the Permanent Court of Arbitration (PCA) in the *Larsen* case, "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."⁴ At the time of the American occupation, the Hawaiian Kingdom fully satisfied the four elements of statehood prescribed by customary international law, which were later codified by the *Montevideo Convention on the Rights and Duties of States* in 1933⁵: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states. This is confirmed by the fact that "the Hawaiian Kingdom became a full member of the Universal Postal Union on 1 January 1882, maintained more than a hundred legations and consulates throughout the world, and entered into extensive diplomatic and treaty relations with other States that included Austria-Hungary, Belgium, Bremen, Denmark, France, Germany, Great Britain, Hamburg, Italy, Japan, Netherlands, Portugal, Russia, Spain, Sweden-Norway, Switzerland and the United States".⁶

⁴ See *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports*, 2001, 566, at 581.

⁵ See *Montevideo Convention on the Rights and Duties of States*, 1933, 165 *LNTS* 19, Article 1. This article codified the so-called *declarative* theory of statehood, already accepted by customary international law; see Thomas D. Grant, "Defining Statehood: The Montevideo Convention and its Discontents", 37 *Columbia Journal of Transnational Law*, 1998-1999, 403; Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity*, The Hague/Boston/London, 2000, at 77; David J. Harris (ed.), *Cases and Materials on International Law*, 6th Ed., London, 2004, at 99.

⁶ See David Keanu Sai, "Hawaiian Constitutional Governance", in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 58, at 64 (footnotes omitted).

It is therefore unquestionable that in the 1890s the Hawaiian Kingdom was an independent State and, consequently, a subject of international law. This presupposed that its territorial sovereignty and internal affairs could not be legitimately violated by other States.

3. Once established that the Hawaiian Kingdom was actually a State, under international law, at the time when it was militarily occupied by the United States of America, on 17 January 1893, it is now necessary to determine whether the continuous occupation of Hawai'i by the United States from 1893 to present times has led the Hawaiian Kingdom to be extinguished as an independent State and, consequently, as a subject of international law. This issue is undoubtedly controversial, and may be considered according to different perspectives. As noted by the Arbitral Tribunal established by the PCA in the *Larsen* case, in principle the question in point might be addressed by means of a careful assessment carried out through "having regard *inter alia* to the lapse of time since the annexation [by the United States], subsequent political, constitutional and international developments, and relevant changes in international law since the 1890s".⁷
4. However—beyond all speculative argumentations and the consequential conjectures that might be developed depending on the different perspectives under which the issue in point could be addressed—in reality the argument which appears to overcome all the others is that a long-lasting and well-established rule of international law exists establishing that military occupation, irrespective of the length of its duration, *cannot* produce the effect of extinguishing the sovereignty and statehood of the occupied State. In fact, the validity of such a rule has *not* been affected by whatever changes occurred in international law since the 1890s. Consistently, as emphasized by the Swiss arbitrator Eugène Borel in 1925, in the famous *Affaire de la Dette publique ottomane*,

“[q]uels que soient les effets de l’occupation d’un territoire par l’adversaire avant le rétablissement de la paix, il est certain qu’à elle seule cette occupation ne pouvait opérer juridiquement le transfert de souveraineté [...] L’occupation, par l’un des belligérants, de [...] territoire de l’autre belligérant est un pur fait. C’est un état de choses essentiellement provisoire, qui ne substitue pas légalement l’autorité du belligérant envahisseur à celle du belligérant envahi”.⁸

⁷ See *Larsen v. Hawaiian Kingdom*, *supra* n. 1, at 9.2.

⁸ See *Affaire de la Dette publique ottomane (Bulgarie, Irak, Palestine, Transjordanie, Grèce, Italie et Turquie)*, 18 April 1925, *Reports of International Arbitral Awards*, Volume I, 529, also available at <https://legal.un.org/riaa/cases/vol_I/529-614.pdf> (accessed on 16 May 2020), at 555 (“whatever are the effects of the occupation of a territory by the enemy before the re-establishment of peace, it is certain that such an occupation alone cannot legally determine the transfer of sovereignty [...] The occupation, by one of the belligerents, of [...] the territory of the other belligerent is

This position was confirmed by, among others, the US Military Tribunal at Nuremberg in 1948, holding that “[i]n belligerent occupation the occupying power does not hold enemy territory by virtue of any legal right. On the contrary, it merely exercises a precarious and temporary actual control”.⁹ Indeed, as noted, much more recently, by Yoram Dinstein, “occupation does not affect sovereignty. The displaced sovereign loses possession of the occupied territory *de facto* but it retains title *de jure* [i.e. “as a matter of law”]”.¹⁰ In this regard, as previously specified, this conclusion can in no way be influenced by the length of the occupation in time, as “[p]rolongation of the occupation does not affect its innately temporary nature”.¹¹ It follows that “‘precarious’ as it is, the sovereignty of the displaced sovereign over the occupied territory is not terminated” by belligerent occupation.¹² Under international law, “le transfert de souveraineté ne peut être considéré comme effectué juridiquement que par l’entrée en vigueur du Traité qui le stipule et à dater du jour de cette mise en vigueur”,¹³ which means, in the words of the famous jurist Oppenheim, that “[t]he only form in which a cession [of sovereignty] can be effected is an agreement embodied in a treaty between the ceding and the acquiring State. Such treaty may be the outcome of peaceable negotiations or of war”.¹⁴ Such a conclusion corresponds to “a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts”.¹⁵

5. The United States has taken possession of the territory of Hawai‘i solely through *de facto* occupation and unilateral annexation, without concluding any treaty with the Hawaiian Kingdom. Furthermore, it

nothing but a pure fact. It is a state of things essentially provisional, which does not legally substitute the authority of the invading belligerent to that of the invaded belligerent”).

⁹ See *USA v. Otto Ohlendorf et al. (Einsatzgruppen Trial)*, 10 April 1948, (1948) *LRTWC* 411, at 492.

¹⁰ See Yoram Dinstein, *The International Law of Belligerent Occupation*, 2nd Ed., Cambridge, 2019, at 58.

¹¹ *Ibid.*

¹² *Ibid.* (footnotes omitted). See also, consistently, Peter M.R. Stirk, *The Politics of Military Occupation*, Edinburgh, 2009, at 168 and 230.

¹³ See *Affaire de la Dette publique ottomane*, *supra* n. 5, at 555 (“the transfer of sovereignty can only be considered legally effected by the entry into force of a treaty which establishes it and from the date of such entry into force”).

¹⁴ See Lassa FL Oppenheim, *Oppenheim’s International Law*, 7th Ed., vol. 1, 1948, at 500.

¹⁵ See Jean S. Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, Geneva, 1958, at 275.

appears that such an annexation has taken place in contravention of the rule of *estoppel*. At it is known, in international law “the doctrine of estoppel protects legitimate expectations of States induced by the conduct of another State”.¹⁶ On 18 December 1893 President Cleveland concluded with Queen Lili‘uokalani a treaty, by executive agreement, which obligated the President to restore the Queen as the Executive Monarch, and the Queen thereafter to grant clemency to the insurgents.¹⁷ Such a treaty, which was never carried into effect by the United States, would have precluded the latter from claiming to have acquired Hawaiian territory, because it had evidently induced in the Hawaiian Kingdom the legitimate expectation that the sovereignty of the Queen would have been reinstated, an expectation which was unduly frustrated through the annexation. It follows from the foregoing that, according to a plain and correct interpretation of the relevant legal rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and a subject of international law, despite the long and effective exercise of the attributes of government by the United States over Hawaiian territory.¹⁸ In fact, in the event of illegal annexation, “the legal existence of [...] States [is] preserved from extinction”,¹⁹ since “illegal occupation cannot of itself terminate statehood”.²⁰ The possession of the attribute of statehood by the Hawaiian Kingdom was substantially confirmed by the PCA, which, before establishing the Arbitral Tribunal for the *Larsen* case, had to get assured that one of the parties of the arbitration was a State, as a necessary precondition for its jurisdiction to exist. In that case, the Hawaiian Kingdom was actually qualified as a “State”, while the Claimant—Lance Paul Larsen—as a “Private entity.”²¹

¹⁶ See Thomas Cottier, Jörg Paul Müller, “Estoppel”, *Max Planck Encyclopedias of International Law*, April 2007, available at <<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1401>> (accessed on 20 May 2020).

¹⁷ See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai‘i: 1894-95*, 1895, at 1269, available at <[https://hawaiiankingdom.org/pdf/Willis_to_Gresham_\(12.20.1893\).pdf](https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf)> (accessed on 20 May 2020).

¹⁸ In this respect, it is to be emphasized that “a sovereign State would continue to exist despite its government being overthrown by military force”; see David Keanu Sai, “The Royal Commission of Inquiry”, in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 12, at 14.

¹⁹ See James Crawford, *The Creation of States in International Law*, 2nd Ed., Oxford, 2006, at 702.

²⁰ See Ian Brownlie, *Principles of Public International Law*, 7th Ed., Oxford, 2008, at 78.

²¹ See <<https://pcacases.com/web/view/35>> (accessed on 16 May 2020).

6. The conclusion according to which the Hawaiian Kingdom cannot be considered as having been extinguished—as a State—as a result of the American occupation also allows to confirm, *de plano*, that the Hawaiian Kingdom, as an independent State, has been under uninterrupted belligerent occupation by the United States of America, from 17 January 1893 up to the moment of this writing. This conclusion cannot be validly contested, even by virtue of the hypothetical consideration according to which, since the American occupation of Hawai‘i has not substantially involved the use of military force, and has not encountered military resistance by the Hawaiian Kingdom,²² it consequently could not be considered as “belligerent”. In fact, a territory is considered occupied “when it is placed under the authority of the hostile army [...] The law on occupation applies to all cases of partial or total occupation, even if such occupation does not encounter armed resistance. The essential ingredient for applicability of the law of occupation is therefore the actual control exercised by the occupying forces”.²³ This is consistent with the rule expressed in Article 42 of the Regulations annexed to the *Hague Convention (IV) respecting the Laws and Customs of War on Land* of 1907—affirming that a “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army” — as well as with Article 2 common to the four Geneva Conventions of 1949, establishing that such Conventions apply “to all cases of partial or total occupation of the territory of a High Contracting Party, *even if the said occupation meets with no armed resistance*” (emphasis added).
7. Once having ascertained that, under international law, the Hawaiian Kingdom continues to exist as an independent State, it is now time to assess the legitimacy and powers of the Regency. According to the *Lexico Oxford Dictionary*, a “regency” is “[t]he office of or period of government by a regent”.²⁴ In a more detailed manner, the *Black’s Law Dictionary*, which is the most trusted and widely used legal dictionary in the United States, defines the term in point as “[t]he man or body of men intrusted with the vicarious government of a kingdom during the

²² It is to be noted, in this respect, that no armed resistance was opposed to the occupation despite the fact that, as acknowledged by US President Cleveland, the Queen “had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her side and at her disposal”; see United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai‘i: 1894-95, 1895*, at 453, available at <[https://hawaiiankingdom.org/pdf/Willis_to_Gresham_\(12.20.1893\).pdf](https://hawaiiankingdom.org/pdf/Willis_to_Gresham_(12.20.1893).pdf)> (accessed on 20 May 2020).

²³ See International Committee of the Red Cross, “The Law of Armed Conflict. Belligerent Occupation”, Geneva, June 2002, available at <https://www.icrc.org/en/doc/assets/files/other/law9_final.pdf> (accessed on 17 May 2020), at 3.

²⁴ See <<https://www.lexico.com/en/definition/regency>> (accessed on 17 May 2020).

minority, absence, insanity, or other disability of the king”.²⁵ Therefore, it appears that, in consideration of the current situation of the Hawaiian Kingdom, a regency is the right body entitled to provisionally exercise the powers of the Hawaiian Executive Monarch in the absence of the latter, an absence which forcibly continues at present due to the persistent situation of military occupation to which the Hawaiian territory is subjected.

8. In legal terms, the legitimacy of the Hawaiian Council of Regency is grounded on Articles 32 and 33 of the *Hawaiian Kingdom Constitution* of 1864. In particular, Article 32 states that “[w]henever, upon the decease of the Reigning Sovereign, the Heir shall be less than eighteen years of age, the Royal Power shall be exercised by a Regent Council of Regency; as hereinafter provided”. As far as Article 33 is concerned, it affirms that “[i]t shall be lawful for the King at any time when he may be about to absent himself from the Kingdom, to appoint a Regent or Council of Regency, who shall administer the Government in His name; and likewise the King may, by His last Will and Testament, appoint a Regent or Council of Regency to administer the Government during the minority of any Heir to the Throne; and should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, 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 it is assembled shall proceed to choose by ballot, a Regent of 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, until he shall have attained the age of eighteen years, which age is declared to be the Legal Majority of such Sovereign”.

The Council of Regency was established by proclamation on February 28, 1997, by virtue of the offices made vacant in the Cabinet Council, on the basis of the doctrine of necessity, the application of which was justified by the absence of a Monarch. Therefore, the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom. The Council of Regency, composed by *de facto* officers, is actually serving as the provisional government of the Hawaiian Kingdom, and, should the military occupation come to an end, it shall immediately convene the Legislative Assembly, which “shall proceed to choose by ballot, a Regent of 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” until it shall not be possible to nominate a Monarch, pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864.

²⁵ See <<https://thelawdictionary.org/regency/>> (accessed on 17 May 2020).

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

III. ASSUMING THE REGENCY DOES HAVE THE AUTHORITY, WHAT
EFFECT WOULD ITS PROCLAMATIONS HAVE ON THE CIVILIAN
POPULATION OF THE HAWAIIAN ISLANDS UNDER
INTERNATIONAL HUMANITARIAN LAW, TO INCLUDE
ITS PROCLAMATION RECOGNIZING THE STATE OF HAWAI‘I
AND ITS COUNTIES AS THE ADMINISTRATION OF THE
OCCUPYING STATE ON 3 JUNE 2019?

10. As previously ascertained, the Council of Regency actually possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom and, consequently, has the authority to represent the Hawaiian Kingdom as a State pending the American occupation and, in any case, up to the moment when it shall be possible to convene the Legislative Assembly pursuant to Article 33 of the Hawaiian Kingdom Constitution of 1864. This means that the Council of Regency is exactly in the same position of a government of a State under military occupation, and is vested with the rights and powers recognized to governments of occupied States pursuant to international humanitarian law.
11. In principle, however, such rights and powers are quite limited, by reason of the fact that the governmental authority of a government of a State under military occupation has been replaced by that of the occupying power, “[t]he authority of the legitimate power having in fact passed into the hands of the occupant”.²⁶ At the same time, the ousted government retains the function and the duty of, to the extent possible, preserving order, protecting the rights and prerogatives of local people and continuing to promote the relations between its people and foreign countries. In the *Larsen* case, the claimant even asserted that the Council of Regency had “an obligation and a responsibility under international law, to take steps to protect Claimant’s nationality as a Hawaiian subject”;²⁷ the Arbitral Tribunal

²⁶ See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

²⁷ See *Larsen v. Hawaiian Kingdom*, *supra* n. 1, at 12.8.

established by the PCA, however, did not provide a response regarding this claim. In any event, leaving aside the latter specific aspect, in light of its position the Council of Regency may to a certain extent interact with the exercise of the authority by the occupying power. This is consistent with the fact that the occupant is under an international obligation to “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”.²⁸ Indeed, as noted by the eminent jurist Robert Y. Jennings in an influential article published in 1946,²⁹ one of the main purposes of the law of belligerent occupation is to protect the sovereign rights of the legitimate government of the occupied territory, and the obligations of the occupying power in this regard continue to exist “even when, in disregard of the rules of international law, it claims [...] to have annexed all or part of an occupied territory”.³⁰ It follows that, the ousted government being the entity which represents the “legitimate government” of the occupied territory, it may “attempt to influence life in the occupied area out of concern for its nationals, to undermine the occupant’s authority, or both. One way to accomplish such goals is to legislate for the occupied population”.³¹ In fact, “occupation law does not require an exclusive exercise of authority by the Occupying Power. It allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory”.³² While in several cases occupants have maintained the inapplicability to the occupied territory of new legislation enacted by the occupied government, for the reason that it “could undermine their authority [...] the majority of post-World War II scholars, also relying on the practice of various national courts, have agreed that the occupant should give effect to the sovereign’s new legislation as long as it addresses those issues in which the occupant has no power to amend the local law, most notably in matters of personal status”.³³ The Swiss Federal Tribunal has even held that “[e]nactments by the [exiled government] are constitutionally laws of the [country] and applied *ab*

²⁸ See Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907.

²⁹ See “Government in Commission”, 23 *British Year Book of International Law*, 1946, 112.

³⁰ See Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949*, *supra* n. 12, at 276.

³¹ See Eyal Benvenisti, *The International Law of Occupation*, 2nd Ed., Oxford, 2012, at 104.

³² See Philip Spoerri, “The Law of Occupation”, in Andrew Clapham and Paola Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford, 2014, 182, at 190.

³³ See Benvenisti, *The International Law of Occupation*, *supra* n. 28, at 104-105.

initio to the territory occupied [...] even though they could not be effectively implemented until the liberation”.³⁴ Although this position was taken with specific regard to exiled governments, and the Council of Regency was not established *in exile* but *in situ*, the conclusion, to the extent that it is considered valid, would not substantially change as regards the Council of Regency itself.

12. It follows from the foregoing that, under international humanitarian law, the proclamations of the Council of Regency are not divested of effects as regards the civilian population of the Hawaiian Islands. In fact, considering these proclamations as included in the concept of “legislation” referred to in the previous paragraph,³⁵ they might even, if the concrete circumstances of the case so allow, apply retroactively at the end of the occupation, irrespective of whether or not they must be respected by the occupying power during the occupation, on the condition that the legislative acts in point do not “disregard the rights and expectations of the occupied population”.³⁶ It is therefore necessary that the occupied government refrains “from using the national law as a vehicle to undermine public order and civil life in the occupied area”.³⁷ In other words, in exercising the legislative function during the occupation, the ousted government is subjected to the condition of not undermining the rights and interests of the civilian population. However, once the latter requirement is actually respected, the proclamations of the ousted government—including, in the case of Hawai‘i, those of the Council of Regency—may be considered applicable to local people, unless such applicability is explicitly refuted by the occupying authority, in its position of an entity bearing “the ultimate and overall responsibility for the occupied territory”.³⁸ In this regard, however, it is reasonable to assume that the occupying power should not deny the applicability of the above proclamations when they do not undermine, or significantly interfere with the exercise of, its authority. This would be consistent with the obligation of the occupying power “to maintain the status quo ante (i.e. as it was

³⁴ See *Ammon v. Royal Dutch Co.*, 21 *International Law Reports*, 1954, 25, at 27.

³⁵ This is consistent with the assumption that the expression “laws in force in the country”, as used by Article 43 of the Regulations annexed to the Hague Convention (IV) respecting the Laws and Customs of War on Land of 1907 (see *supra*, text corresponding to n. 25), “refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents [...] as well as administrative regulations and executive orders”; see Marco Sassòli, “Legislation and Maintenance of Public Order and Civil Life by Occupying Powers”, 16 *European Journal of International Law*, 2005, 661, at 668-69.

³⁶ See Benvenisti, *The International Law of Occupation*, *supra* n. 28, at 105.

³⁷ *Ibid.*, at 106.

³⁸ See *supra*, text corresponding to n. 29.

before) in the occupied territory as far as is practically possible”,³⁹ considering that local authorities are better placed to know what are the actual needs of the local population and of the occupied territory, in view of guaranteeing that the status quo ante is effectively maintained.

13. As regards, specifically, the Council of Regency’s Proclamation recognizing the State of Hawai‘i and its Counties as the administration of the occupying State of 3 June 2019,⁴⁰ it reads as follows:

“Whereas, in order to account for the present circumstances of the prolonged illegal occupation of the Hawaiian Kingdom and to provide a temporary measure of protection for its territory and the population residing therein, the public safety requires action to be taken in order for the State of Hawai‘i and its Counties to begin to comply with the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law:

Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby recognize the State of Hawai‘i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law;

And, We do hereby further proclaim that the State of Hawai‘i and its Counties shall preserve the sovereign rights of the Hawaiian Kingdom government, and to protect the local population from exploitation of their persons and property, both real and personal, as well as their civil and political rights under Hawaiian Kingdom law”.

As it is evident from a plain reading of its text, this Proclamation pursues the clear purpose of ensuring the protection of the Hawaiian territory and the people residing therein against the prejudicial effects which may arise from the occupation to which such a territory is actually subjected. Therefore, it represents a legislative act aimed at furthering the interests of the civilian population through ensuring the correct administration of their rights and of the land. As a consequence, it has the nature of an act that is equivalent, in its rationale and purpose (although not in its precise subject), to a piece of legislation concerning matters of personal status of the local

³⁹ See International Committee of the Red Cross, “The Law of Armed Conflict. Belligerent Occupation”, *supra* n. 20, at 9.

⁴⁰ Available at <https://www.hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf> (accessed on 18 May 2020).

population, requiring the occupant to give effect to it.⁴¹ It is true that the Proclamation of 3 June 2019 takes a precise position on the status of the occupying power, the State of Hawai‘i and its Counties being a direct emanation of the United States of America. However, in doing so, the said Proclamation simply reiterates an aspect that is self-evident, since the fact that the State of Hawai‘i and its Counties belong to the political organization of the occupying power, and that they are *de facto* administering the Hawaiian territory, is objectively irrefutable. It follows that the Proclamation in discussion simply restates rules already existing under international humanitarian law. In fact, the latter clearly establishes the obligation of the occupying power to preserve the sovereign rights of the occupied government (as previously ascertained in this opinion),⁴² the “overarching principle [of the law of occupation being] that an occupant does not acquire sovereignty over an occupied territory and therefore any occupation must only be a temporary situation”.⁴³ Also, it is beyond any doubts that an occupying power is bound to guarantee and protect the human rights of the local population, as defined by the international human rights treaties of which it is a party as well as by customary international law. This has been authoritatively confirmed, *inter alia*, by the International Court of Justice.⁴⁴ While the Proclamation makes reference to the duty of the State of Hawai‘i and its Counties to protect the human rights of the local population “under Hawaiian Kingdom law”, and not pursuant to applicable international law, this is consistent with the obligation of the occupying power to respect, to the extent possible, the law in force in the occupied territory. In this regard, respecting the domestic laws which protect the human rights of the local population undoubtedly falls within “the extent possible”, because it certainly does not undermine, or significantly interfere with the exercise of, the authority of the occupying power, and is consistent with existing international obligations. In other words, the occupying

⁴¹ See *supra* text corresponding to n. 30.

⁴² See, in particular, *supra*, para. 11.

⁴³ See United Nations, Office of the High Commissioner of Human Rights, “Belligerent Occupation: Duties and Obligations of Occupying Powers”, September 2017, available at <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ohchr_syria_-_belligerent_occupation_-_legal_note_en.pdf> (accessed on 19 May 2020), at 3.

⁴⁴ See, in particular, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, ICJ Reports, 2004, at 111-113; *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda)*, Judgement of 19 December 2005, at 178. For a more comprehensive assessment of this issue see Federico Lenzerini, “International Human Rights Law and Self-Determination of Peoples Related to the United States Occupation of the Hawaiian Kingdom”, in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations in the Hawaiian Kingdom*, Honolulu, 2020, 173, at 203-205.

power cannot be considered “absolutely prevented”⁴⁵ from applying the domestic laws protecting the human rights of the local population, unless it is demonstrated that the level of protection of human rights guaranteed by Hawaiian Kingdom law is less advanced than human rights standards established by international law. Only in this case, the occupying power would be under a duty to ensure in favour of the local population the higher level of protection of human rights guaranteed by international law. In sum, the Council of Regency’s Proclamation of 3 June 2019 may be considered as a domestic act implementing international rules at the internal level, which should be effected by the occupying power pursuant to international humanitarian law, since it does not undermine, or significantly interfere with the exercise of, its authority.

14. It may be concluded that, under international humanitarian law, the proclamations of the Council of Regency—including the Proclamation recognizing the State of Hawai‘i and its Counties as the administration of the occupying State on 3 June 2019—have on the civilian population the effect of acts of domestic legislation aimed at protecting their rights and prerogatives, which should be, to the extent possible, respected and implemented by the occupying power.

III. COMMENT ON THE WORKING RELATIONSHIP BETWEEN THE REGENCY AND THE ADMINISTRATION OF THE OCCUPYING STATE UNDER INTERNATIONAL HUMANITARIAN LAW.

15. As previously noted, “occupation law [...] allows for authority to be shared by the Occupying Power and the occupied government, provided the former continues to bear the ultimate and overall responsibility for the occupied territory”.⁴⁶ This said, it is to be kept well in mind that belligerent occupation necessarily has a *non-consensual nature*. In fact, “[t]he absence of consent from the state whose territory is subject to the foreign forces’ presence [...] [is] a precondition for the existence of a state of belligerent occupation. Without this condition, the situation would amount to a ‘pacific occupation’ not subject to the law of occupation”.⁴⁷ At the same time, we also need to remember that the absence of armed resistance by the territorial government can in no way be interpreted as determining the existence of an implied consent to the occupation, consistently with the principle enshrined by Article 2 common to the four Geneva Conventions of 1949.⁴⁸ On the contrary, the consent, “for the

⁴⁵ See *supra*, text corresponding to n. 25.

⁴⁶ See *supra*, text corresponding to n. 29.

⁴⁷ See Spoerri, “The Law of Occupation”, *supra* n. 29, at 190.

⁴⁸ See *supra*, para. 6.

purposes of occupation law, [...] [must] be genuine, valid and explicit”.⁴⁹ It is evident that such a consent has never been given by the government of the Hawaiian Kingdom. On the contrary, the Hawaiian government opposed the occupation since its very beginning. In particular, Queen Lili‘uokalani, executive monarch of the Hawaiian Kingdom, on 17 January 1893 stated that, “to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands”.⁵⁰

The opposition to the occupation has never been abandoned up to the time of this writing, although for some long decades it was stifled by the policy of *Americanization* brought about by the US government in the Hawaiian Islands. It has eventually revived in the last three lustrums, with the establishment of the Council of Regency.

16. Despite the fact that the occupation inherently configures as a situation unilaterally imposed by the occupying power—any kind of consent of the ousted government being totally absent—there still is some space for “cooperation” between the occupying and the occupied government—in the specific case of Hawai‘i between the State of Hawai‘i and its Counties and the Council of Regency. Before trying to specify the characteristics of such a cooperation, it is however important to reiterate that, under international humanitarian law, the last word concerning any acts relating to the administration of the occupied territory is with the occupying power. In other words, “occupation law would allow for a vertical, but not a horizontal, sharing of authority [...] [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory”.⁵¹ This vertical sharing of authority would reflect “the hierarchical relationship between the occupying power and the local authorities, the former maintaining a form of control over the latter through a top-down approach in the allocation of responsibilities”.⁵²

⁴⁹ See Spoerri, “The Law of Occupation”, *supra* n. 29, at 190.

⁵⁰ See United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai‘i: 1894-95*, 1895, at 586.

⁵¹ See International Committee of the Red Cross, *Expert Meeting. Occupation and Other Forms of Administration of Foreign Territory. Report*, Geneva, 2012, available at <<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf>> (accessed on 20 May 2020), at 20.

⁵² *Ibid.*, at footnote 7.

17. The cooperation referred to in the previous paragraph is implied or explicitly established in some provisions of the Fourth Geneva Convention of 1949. In particular, Article 47 states that

“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory”.

Through referring to possible agreements “concluded between the authorities of the occupied territories and the Occupying Power”, this provision clearly implies the possibility of establishing cooperation between the occupying and the occupied government. More explicitly, Article 50 affirms that “[t]he Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children”, while Article 56 establishes that, “[t]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory [...]”.

As far as United States practice is concerned, it acknowledges that “[t]he functions of the [occupied] government—whether of a general, provincial, or local character—continue only to the extent they are sanctioned”.⁵³ With specific regard to cooperation with the occupied government, it is also recognized that “[t]he occupant may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions”.⁵⁴

18. Importantly, the provisions referred to in the previous paragraph exactly refer to issues related to the protection of civilian persons and of their rights, which is one of the two main aspects (together with the preservation of the sovereign rights of the Hawaiian Kingdom government) dealt with by the Council of Regency’s Proclamation recognizing the State of Hawai‘i and its Counties as the administration of the occupying State of 3 June 2019.⁵⁵ In practice, the cooperation advocated by the provisions in point may take different forms, one of which translates into the possibility for the ousted government to adopt

⁵³ See “The Law of Land Warfare”, *United States Army Field Manual* 27-10, July 1956, Section 367(a).

⁵⁴ *Ibid.*, Section 367(b).

⁵⁵ See *supra*, text following n. 37.

legislative provisions concerning the above aspects. As previously seen, the occupying power has, *vis-à-vis* the ensuing legislation, a duty not to oppose to it, because it normally does not undermine, or significantly interfere with the exercise of, its authority. Further to this, it is reasonable to assume that—in light of the spirit and the contents of the provisions referred to in the previous paragraph—the occupying power has a duty to cooperate in giving realization to the legislation in point, unless it is “absolutely prevented” to do so. This duty to cooperate appears to be reciprocal, being premised on both the Council of Regency and the State of Hawai‘i and its Counties to ensure compliance with international humanitarian law.

19. The latter conclusion is consistent with the logical (and legally grounded) assumption that the ousted government is better placed than the occupying power in order to know what are the real needs of the civilian population and what are the concrete measures to be taken to guarantee an effective response to such needs. It follows that, through allowing the legislation in discussion to be applied—and through contributing in its effective application—the occupying power would better comply with its obligation, existing under international humanitarian law and human rights law, to guarantee and protect the human rights of the local population. It follows that the occupying power has a duty—if not a proper legal obligation—to cooperate with the ousted government to better realize the rights and interest of the civilian population, and, more in general, to guarantee the correct administration of the occupied territory.
20. In light of the foregoing, it may be concluded that the working relationship between the Regency and the administration of the occupying State should have the form of a cooperative relationship aimed at guaranteeing the realization of the rights and interests of the civilian population and the correct administration of the occupied territory, provided that there are no objective obstacles for the occupying power to cooperate and that, in any event, the “supreme” decision-making power belongs to the occupying power itself. This conclusion is consistent with the position of the latter as “administrator” of the Hawaiian territory, as stated in the Council of Regency’s Proclamation recognizing the State of Hawai‘i and its Counties as the administration of the occupying State of 3 June 2019 and presupposed by the pertinent rules of international humanitarian law.

24 May 2020

Professor Federico Lenzerini

Appendix 4

TREATY WITH THE HAWAIIAN ISLANDS, DEC. 20, 1849.

Dec. 20, 1849.

Ratifications
exchanged at
Honolulu Aug.
24, 1850.
Proclamation
made Nov. 9,
1850.
Preamble.

WHEREAS a treaty of friendship, commerce, and navigation, between the United States of America and his Majesty the King of the Hawaiian Islands, was concluded and signed at Washington, on the twentieth day of December, in the year of our Lord one thousand eight hundred and forty-nine, the original of which treaty is, word for word, as follows:—

The United States of America and his Majesty the King of the Hawaiian Islands, equally animated with the desire of maintaining the relations of good understanding which have hitherto so happily subsisted between their respective states, and consolidating the commercial intercourse between them, have agreed to enter into negotiations for the conclusion of a treaty of friendship, commerce, and navigation, for which purpose they have appointed plenipotentiaries, that is to say: The President of the United States of America, John M. Clayton, Secretary of State of the United States; and his Majesty the King of the Hawaiian Islands, James Jackson Jarves, accredited as his special commissioner to the government of the United States; who, after having exchanged their full powers, found in good and due form, have concluded and signed the following articles:—

ARTICLE I.

There shall be perpetual peace and amity between the United States and the King of the Hawaiian Islands, his heirs and his successors.

Peace and
amity.

ARTICLE II.

There shall be reciprocal liberty of commerce and navigation between the United States of America and the Hawaiian Islands. No duty of customs, or other impost, shall be charged upon any goods, the produce or manufacture of one country, upon importation from such country into the other, other or higher than the duty or impost charged upon goods of the same kind, the produce or manufacture of, or imported from, any other country; and the United States of America and his Majesty the King of the Hawaiian Islands do hereby engage, that the subjects or citizens of any other state shall not enjoy any favor, privilege, or immunity, whatever, in matters of commerce and navigation, which shall not also, at the same time, be extended to the subjects or citizens of the other contracting party, gratuitously, if the concession in favor of that other state shall have been gratuitous, and in return for a compensation, as nearly as possible of proportionate value and effect, to be adjusted by mutual agreement, if the concession shall have been conditional.

Reciprocal
freedom of
trade.

"Most-favored
nation" stipulation.

ARTICLE III.

All articles, the produce or manufacture of either country, which can legally be imported into either country from the other, in ships of that other country, and thence coming, shall, when so imported, be subject to the same duties, and enjoy the same privileges, whether imported in ships of the one country, or in ships of the other; and in like manner, all goods which can legally be exported or re-exported

Same subject

from either country to the other, in ships of that other country, shall, when so exported or re-exported, be subject to the same duties, and be entitled to the same privileges, drawbacks, bounties, and allowances, whether exported in ships of the one country, or in ships of the other; and all goods and articles, of whatever description, not being of the produce or manufacture of the United States, which can be legally imported into the Sandwich Islands, shall, when so imported in vessels of the United States, pay no other or higher duties, imposts, or charges, than shall be payable upon the like goods and articles, when imported in the vessels of the most favored foreign nation, other than the nation of which the said goods and articles are the produce or manufacture.

ARTICLE IV.

Tonnage &c.
duties.

No duties of tonnage, harbor, lighthouses, pilotage, quarantine, or other similar duties, of whatever nature, or under whatever denomination, shall be imposed in either country upon the vessels of the other, in respect of voyages between the United States of America and the Hawaiian Islands, if laden, or in respect of any voyage, if in ballast, which shall not be equally imposed in the like cases on national vessels.

ARTICLE V.

Provisions of
this treaty not
to extend to
coasting trade.

It is hereby declared, that the stipulations of the present treaty are not to be understood as applying to the navigation and carrying trade between one port and another, situated in the states of either contracting party, such navigation and trade being reserved exclusively to national vessels.

ARTICLE VI.

Privileges of
steam vessels
carrying mails.

Steam vessels of the United States which may be employed by the government of the said States, in the carrying of their public mails across the Pacific Ocean, or from one port in that ocean to another, shall have free access to the ports of the Sandwich Islands, with the privilege of stopping therein to refit, to refresh, to land passengers and their baggage, and for the transaction of any business pertaining to the public mail service of the United States, and shall be subject in such ports to no duties of tonnage, harbor, lighthouses, quarantine, or other similar duties of whatever nature or under whatever denomination.

ARTICLE VII.

Privileges of
whale ships.

The whale ships of the United States shall have access to the ports of Hilo, Kealahakua, and Hanalei, in the Sandwich Islands, for the purposes of refitment and refreshment, as well as to the ports of Honolulu and Lahaina, which only are ports of entry for all merchant vessels; and in all the above-named ports, they shall be permitted to trade or barter their supplies or goods, excepting spirituous liquors, to the amount of two hundred dollars *ad valorem* for each vessel, without paying any charge for tonnage or harbor dues of any description, or any duties or imposts whatever upon the goods or articles so traded or bartered. They shall also be permitted, with the like exemption from all charges for tonnage and harbor dues, further to trade or barter, with the same exception as to spirituous liquors, to the additional amount of one thousand dollars *ad valorem*, for each vessel, paying upon the additional goods and articles so traded and bartered, no other or higher duties than are payable on like goods and articles, when imported in the vessels and by the citizens or subjects of the most favored foreign nation. They shall also be permitted to pass from port to port of the Sandwich Islands, for the purpose of procuring refreshments, but they

shall not discharge their seamen or land their passengers in the said Islands, except at Lahaina and Honolulu; and in all the ports named in this article, the whale ships of the United States shall enjoy, in all respects whatsoever, all the rights, privileges, and immunities, which are enjoyed by, or shall be granted to, the whale ships of the most favored foreign nation. The like privilege of frequenting the three ports of the Sandwich Islands, above named in this article, not being ports of entry for merchant vessels, is also guaranteed to all the public armed vessels of the United States. But nothing in this article shall be construed as authorizing any vessel of the United States, having on board any disease usually regarded as requiring quarantine, to enter, during the continuance of such disease on board, any port of the Sandwich Islands, other than Lahaina or Honolulu.

ARTICLE VIII.

The contracting parties engage, in regard to the personal privileges, that the citizens of the United States of America shall enjoy in the dominions of his Majesty the King of the Hawaiian Islands, and the subjects of his said Majesty in the United States of America, that they shall have free and undoubted right to travel and to reside in the states of the two high contracting parties, subject to the same precautions of police which are practiced towards the subjects or citizens of the most favored nations. They shall be entitled to occupy dwellings and warehouses, and to dispose of their personal property of every kind and description, by sale, gift, exchange, will, or in any other way whatever, without the smallest hindrance or obstacle; and their heirs or representatives, being subjects or citizens of the other contracting party, shall succeed to their personal goods, whether by testament or *ab intestato*; and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at will, paying to the profit of the respective governments, such dues only as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. And in case of the absence of the heir and representative, such care shall be taken of the said goods as would be taken of the goods of a native of the same country in like case, until the lawful owner may take measures for receiving them. And if a question should arise among several claimants as to which of them said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. Where, on the decease of any person holding real estate within the territories of one party; such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such citizen or subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all duties of detraction on the part of the government of the respective states. The citizens or subjects of the contracting parties shall not be obliged to pay, under any pretence whatever, any taxes or impositions other or greater than those which are paid, or may hereafter be paid, by the subjects or citizens of the most favored nations, in the respective states of the high contracting parties. They shall be exempt from all military service, whether by land or by sea; from forced loans; and from every extraordinary contribution not general and by law established. Their dwellings, warehouses, and all premises appertaining thereto, destined for the purposes of commerce or residence, shall be respected. No arbitrary search of, or visit to, their houses, and no arbitrary examination or inspection whatever of the books, papers, or accounts of their trade, shall be made; but such measures shall be executed only in conformity with the legal sentence of a competent tribunal; and

Privileges of
citizens of U. S.
in Hawaiian Isl-
ands, and *vice*
versæ.

Travel.

Trade.

Heirship.

Real estate.

Taxes.

Military ser-
vice.

Right of search
of tenements.

each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects, or the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively.

ARTICLE IX.

Trade in either
country with cit-
izens of the
country.

The citizens and subjects of each of the two contracting parties shall be free in the states of the other to manage their own affairs themselves, or to commit those affairs to the management of any persons whom they may appoint as their broker, factor, or agent; nor shall the citizens and subjects of the two contracting parties be restrained in their choice of persons to act in such capacities; nor shall they be called upon to pay any salary or remuneration to any person whom they shall not choose to employ.

Absolute freedom shall be given in all cases to the buyer and seller to bargain together, and to fix the price of any goods or merchandise imported into, or to be exported from, the states and dominions of the two contracting parties, save and except generally such cases wherein the laws and usages of the country may require the intervention of any special agents in the states and dominions of the contracting parties. But nothing contained in this or any other article of the present treaty shall be construed to authorize the sale of spirituous liquors to the natives of the Sandwich Islands, farther than such sale may be allowed by the Hawaiian laws.

ARTICLE X.

Consuls, &c.

Each of the two contracting parties may have, in the ports of the other, consuls, vice-consuls, and commercial agents, of their own appointment, who shall enjoy the same privileges and powers with those of the most favored nations; but if any such consuls shall exercise commerce, they shall be subject to the same laws and usages to which the private individuals of their nation are subject in the same place.

Deserters from
vessels.

The said consuls, vice-consuls, and commercial agents, are authorized to require the assistance of the local authorities for the search, arrest, detention and imprisonment of the deserters from the ships of war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall, in writing, demand the said deserters, proving, by the exhibition of the registers of the vessels, the rolls of the crews, or by other official documents, that such individuals formed part of the crews; and this reclamation being thus substantiated, the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the said consuls, vice-consuls, or commercial agents, and may be confined in the public prisons, at the request and cost of those who shall claim them, in order to be detained until the time when they shall be restored to the vessel to which they belonged, or sent back to their own country by a vessel of the same nation, or any other vessel whatsoever. The agents, owners, or masters of vessels on account of whom the deserters have been apprehended, upon requisition of the local authorities, shall be required to take or send away such deserters from the states and dominions of the contracting parties, or give such security for their good conduct as the law may require. But if not sent back nor reclaimed within six months from the day of their arrest, or if all the expenses of such imprisonment are not defrayed by the party causing such arrest and imprisonment, they shall be set at liberty, and shall not be again arrested for the same cause. However, if the deserters should

be found to have committed any crime or offence, their surrender may be delayed until the tribunal before which their case shall be depending shall have pronounced its sentence, and such sentence shall have been carried into effect.

ARTICLE XI.

It is agreed that perfect and entire liberty of conscience shall be enjoyed by the citizens and subjects of both the contracting parties, in the countries of the one and the other, without their being liable to be disturbed or molested on account of their religious belief. But nothing contained in this article shall be construed to interfere with the exclusive right of the Hawaiian government to regulate for itself the schools which it may establish or support within its jurisdiction.

Liberty of conscience.

Proviso as to schools.

ARTICLE XII.

If any ships of war or other vessels be wrecked on the coasts of the states or territories of either of the contracting parties, such ships or vessels, or any parts thereof, and all furniture and appurtenances belonging thereunto, and all goods and merchandise which shall be saved therefrom, or the produce thereof, if sold, shall be faithfully restored with the least possible delay to the proprietors, upon being claimed by them, or by their duly authorized factors; and if there are no such proprietors or factors on the spot, then the said goods and merchandise, or the proceeds thereof, as well as all the papers found on board such wrecked ships or vessels, shall be delivered to the American or Hawaiian consul, or vice-consul, in whose district the wreck may have taken place; and such consul, vice-consul, proprietors, or factors, shall pay only the expenses incurred in the preservation of the property, together with the rate of salvage and expenses of quarantine which would have been payable in the like case of a wreck of a national vessel; and the goods and merchandise saved from the wreck shall not be subject to duties unless entered for consumption, it being understood that in case of any legal claim upon such wreck, goods, or merchandise, the same shall be referred for decision to the competent tribunals of the country.

Wrecks.

ARTICLE XIII.

The vessels of either of the two contracting parties which may be forced by stress of weather or other cause into one of the ports of the other, shall be exempt from all duties of port or navigation paid for the benefit of the state, if the motives which led to their seeking refuge be real and evident, and if no cargo be discharged or taken on board, save such as may relate to the subsistence of the crew, or be necessary for the repair of the vessels, and if they do not stay in port beyond the time necessary, keeping in view the cause which led to their seeking refuge.

Vessels driven into port by stress of weather.

ARTICLE XIV.

The contracting parties mutually agree to surrender, upon official requisition, to the authorities of each, all persons who, being charged with the crimes of murder, piracy, arson, robbery, forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall be found within the territories of the other, provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the person so charged shall be found, would justify his apprehension and commitment for trial, if the crime had there been committed; and the respective judges and other magistrates of the two governments shall have authority, upon complaint made under oath, to

Extradition of criminals.

issue a warrant for the apprehension of the person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE XV.

Mail arrange-
ments.

So soon as steam or other mail packets under the flag of either of the contracting parties shall have commenced running between their respective ports of entry, the contracting parties agree to receive at the post-offices of those ports all mailable matter, and to forward it as directed, the destination being to some regular post-office of either country, charging thereupon the regular postal rates as established by law in the territories of either party receiving said mailable matter, in addition to the original postage of the office whence the mail was sent. Mails for the United States shall be made up at regular intervals at the Hawaiian post-office, and despatched to ports of the United States; the postmasters at which ports shall open the same, and forward the enclosed matter as directed, crediting the Hawaiian government with their postages as established by law, and stamped upon each manuscript or printed sheet.

All mailable matter destined for the Hawaiian Islands shall be received at the several post-offices in the United States, and forwarded to San Francisco, or other ports on the Pacific coast of the United States, whence the postmasters shall despatch it by the regular mail packets to Honolulu, the Hawaiian government agreeing on their part to receive and collect for and credit the post-office department of the United States with the United States' rates charged thereupon. It shall be optional to prepay the postage on letters in either country, but postage on printed sheets and newspapers shall in all cases be prepaid. The respective post-office departments of the contracting parties shall in their accounts, which are to be adjusted annually, be credited with all dead letters returned.

ARTICLE XVI.

Continuance
of this treaty.

The present treaty shall be in force from the date of the exchange of the ratifications, for the term of ten years, and further, until the end of twelve months after either of the contracting parties shall have given notice to the other of its intention to terminate the same, each of the said contracting parties reserving to itself the right of giving such notice at the end of the said term of ten years, or at any subsequent term.

Any citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same, and the harmony and good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.

ARTICLE XVII.

Ratification.

The present treaty shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate of the said States, and by his Majesty the King of the Hawaiian Islands, by and with the advice of his Privy Council of State, and the

ratification shall be exchanged at Honolulu within eighteen months from the date of its signature, or sooner if possible.

In witness whereof, the respective plenipotentiaries have signed the same in triplicate, and have thereto affixed their seals.

Done at Washington, in the English language, the twentieth day of December, in the year one thousand eight hundred and forty-nine. **Date.**

JOHN M. CLAYTON, **[SEAL.]**
JAMES JACKSON JARVES. **[SEAL.]**

Appendix 5

Proclamation

Whereas, by the advice and approval of the Legislature of Our Kingdom, We did enter into a Convention with the United States of America on the subject of Commercial Reciprocity, which said Convention was concluded and signed by duly authorized Plenipotentiaries representing the Hawaiian Kingdom and the United States of America, at the City of Washington, on the 30th day of January, 1875; and

Whereas, a Supplementary Convention to limit the duration of the Convention respecting commercial reciprocity and to grant to the Government of the United States the exclusive right to enter the harbor of Pearl River, in the Island of O'ahu, 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, was concluded and signed by duly authorized Plenipotentiaries representing the Hawaiian Kingdom and the United States of America, at the City of Washington, on the 6th day of December, 1884; and

Whereas, the Supplementary Convention was ratified by both High Contracting Parties, and the respective ratifications of the same have been exchanged at the City of Washington, on the 9th day of November, 1887; and

Whereas, the Supplemental Convention to the 1875 Treaty of Commercial Reciprocity extended the duration of both instruments for a term of seven years from the date of the exchange of ratifications in 1887, and further, until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of its wish to terminate the same, each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter; and

Whereas, the United States in its unlawful and prolonged military occupation of the Hawaiian Kingdom since the 17th day of January, 1893, has exploited its use of Pearl Harbor by establishing military facilities throughout the Hawaiian Islands in violation 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; and

Whereas, the Hawaiian Kingdom is a Neutral Power by treaty provisions in the Hawaiian-Swedish/Norwegian Treaty of 1852, the Hawaiian-Spanish Treaty of 1863, and the Hawaiian-German Treaty of 1879; and

Whereas, 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; and

Whereas, in April 1942, the United States military 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; and

Whereas, the United States command structure of the Army and Navy in the Hawaiian Islands during the Second World War since 1942 was transformed into the United States Pacific Command on the 1st day of January, 1947, which is presently called the Indo-Pacific Command whose headquarters is at Camp H.M. Smith on the Island of O'ahu; and

Whereas, the United States Air Force separated from the United States Army as a separate branch of the armed forces in September 1947 with its base headquartered at Hickam Air Force Base, Island of O‘ahu, and later merged in 2010 to become an element of Joint Base Pearl Harbor-Hickam with the Navy; and

Whereas, 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 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; and

Whereas, the presence of all United States military forces throughout the Hawaiian Islands have a direct nexus to the 1884 Supplemental Convention granting the United States exclusive access to Pearl Harbor:

Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby give notice terminating the 1875 Reciprocity Treaty and its 1884 Supplemental Convention as provided for under Article I of the said Supplemental Convention, which will take effect twelve months from the date the United States has received this notice of termination;

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 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.



In Witness Whereof, We have hereunto
set our hand, and caused the Great Seal of
the Kingdom to be affixed this 20th day of
October A.D. 2023.

David Keanu Sai, Ph.D.
Chairman of the *acting* Council of Regency
Acting Minister of the Interior

Acting Minister of Foreign Affairs ad interim

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

Dexter Ke'eaumoku Ka'iama, *Esq.*,
Acting Attorney General

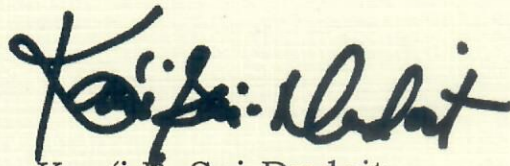
And Whereas the said Notice of Termination of the 1875 Reciprocity Treaty and its 1884 Supplemental Convention as provided for under Article I of the said Supplemental Convention, has been received by the U.S. Department of State, by courier, U.S. Postal Service, on the 26th day of October, 2023, at 5:47am in Washington, DC.

Now, therefore, We, the **acting Council of Regency** of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, have caused the said Notice of Termination to be made public to the end that the same may be observed and fulfilled in good faith by the United States and its military forces in the Hawaiian Kingdom.

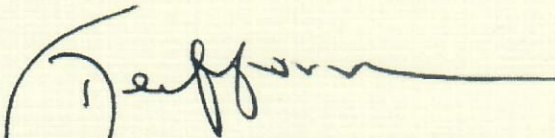


In Witness Whereof, We have hereunto set our hand, and caused the Great Seal of the Kingdom to be affixed this 26th day of October A.D. 2023.

David Keanu Sai, Ph.D.
Chairman of the *acting* Council of Regency
Acting Minister of the Interior
Acting Minister of Foreign Affairs ad interim

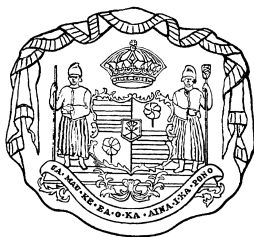
A handwritten signature in black ink, appearing to read 'Kau'i P. Sai-Dudoit'.

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

A handwritten signature in black ink, appearing to read 'Dexter Ke'eaumoku Ka'iama'.

Dexter Ke'eaumoku Ka'iama, *Esq.*,
Acting Attorney General

Appendix 6



H.E. DAVID KEANU SAI, PH.D.

Minister of Foreign Affairs *ad interim*
P.O. Box 4146
Hilo, HI 96720
Tel: +1 (808) 383-6100
E-mail: interior@hawaiiankingdom.org
Website: <http://hawaiiankingdom.org/>

21 October 2023

The Honorable Antony J. Blinken
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

U.S. Postal Service Priority Mail Express tracking no. EE 402 827 679 US

Re: Notice of Termination of the 1875 Reciprocity Treaty and its 1884 Supplemental Convention granting exclusive right for the United States to enter Pearl Harbor

Dear Secretary Blinken:

I have the honor to refer to Article I of the 1884 Supplemental Convention (25 Stat. 1399) that extended the duration of the 1875 Commercial Reciprocity Treaty (19 Stat. 625) between our two countries for an additional term of seven years from the date when ratifications were exchanged by our Plenipotentiaries at Washington, D.C., on 9 November 1887, and further, “until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of its wish to terminate the same, each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter.”

Please find enclosed a Proclamation by the *acting* Council of Regency dated 20 October 2023 terminating the 1875 Commercial Reciprocity Treaty and its 1884 Supplemental Convention that granted “to the Government of the United States the exclusive right to enter the harbor of Pearl River, in the Island of O‘ahu.” Upon receipt of this notice of termination, the United States 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 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.

I have taken the liberty of also enclosing the *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom* by Professor Federico Lenzerini, and a copy of the *Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020).

With sentiments of the highest regard,

A handwritten signature in blue ink, reading "David Keanu Sai". The signature is fluid and cursive, with the first name "David" being the most prominent.

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

Minister of Foreign Affairs *ad interim*

enclosures

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2023 ⓘ

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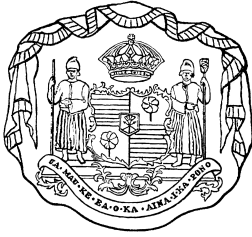


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WASHINGTON, DC 20521

October 26, 2023, 5:47 am



H.E. DAVID KEANU SAI, PH.D.

Minister of Foreign Affairs *ad interim*
P.O. Box 4146
Hilo, HI 96720
Tel: +1 (808) 383-6100
E-mail: interior@hawaiiankingdom.org
Website: <http://hawaiiankingdom.org/>

3 November 2023

Brigadier General Lance Okamura
Director, Strategic Engagement,
Joint Task Force-Red Hill
Indo-Pacific Command

Re: Meeting regarding the termination of the 1884 Supplemental Convention, also known as the Pearl Harbor Convention

Dear Brigadier General Okamura:

It was a pleasure to have met you at Restaurant 604 on 1 November 2023. This letter is intended to affirm what was covered in our meeting with yourself and First Sergeant Justin Ka'ahanui. As the officer in charge for the de-fueling of the Red Hill fuel tankers, it was my intention to bring to your attention the factual circumstances that led to the termination of the Pearl Harbor Convention and the withdrawal of all military forces under the command of the Indo-PACOM by 26 October 2024.

In addition to my letter to you dated 29 October 2023, I provided you the following documents:

1. Permanent Court of Arbitration, PCA Case Repository, *Larsen v. Hawaiian Kingdom*
2. Permanent Court of Arbitration, PCA Case Repository, *Ilya Levitis (United States) v. The Kyrgyz Republic*
3. Memorandum from the UN Independent Expert Dr. Alfred M. deZayas to Members of the State of Hawai'i Judiciary (25 February 2018)
4. Letter from the National Lawyers Guild to State of Hawai'i Governor David Ige (10 November 2020)
5. Key Bullet Points regarding the American Occupation of the Hawaiian Kingdom

6. Royal Commission of Inquiry's War Criminal Report no. 22-0007
7. Book, *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020)
8. FIFA Application letter by a Swiss Law Firm in Zurich representing the Hawaiian Football Federation (28 September 2023)

I look forward to a follow up meeting on this very pressing issue and the implication it has on the de-fueling project at Red Hill.

With sentiments of the highest regard,

A handwritten signature in blue ink, appearing to read 'David Keanu Sai', with a stylized flourish at the end.

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

Minister of Foreign Affairs *ad interim*

Enclosure “2”

1 IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

2 STATE OF HAWAII

3
 4 STATE OF HAWAII,)
 5) Crim. No. 14-1-0819
 6 vs.) TRANSCRIPT OF
 7 KAIULA KALAWA ENGLISH) PROCEEDINGS
 8 Defendant.)

9 STATE OF HAWAII)
 10) Crim. No. 14-1-0820
 11 vs.)
 12 ROBIN WAINUHEA DUDOIT)
 13 Defendant.)

14 TRANSCRIPT OF PROCEEDINGS

15 before the Honorable JOSEPH P. CARDOZA, Circuit Court
 16 Judge presiding on Thursday, March 5, 2015. Defendant
 17 English's Motion to Dismiss Criminal Complaints Pursuant
 18 To HRPP 12(1)(b); Defendant Robin Wainuhea Dudoit's
 19 Joinder In Defendant English's Motion to Dismiss Criminal
 20 Complaint Pursuant To HRPP 12(1)(b).

21

22

23

24 TRANSCRIBED BY:
 Beth Kelly, RPR, CSR #235
 25 Court Reporter

Beth Kelly, CSR #235
 Court Reporter

1 APPEARANCES:

2 LLOYD PHELPS, Esq. Attorney for the State
3 Deputy Prosecuting Attorney
4 County of Maui
5 Wailuku, Hawaii

6 DEXTER KAIAMA, Esq. Attorney for the Defendants
7 111 Hekili Street
8 #A1607
9 Kailua, Hawaii

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1 THURSDAY, MARCH 5, 2015

2 THE CLERK: Calling Criminal Numbers
3 14-1-0819, State of Hawaii versus Kaiula Kalawe English;
4 and Criminal Number 14-1-0820, State of Hawaii versus
5 Robin, Wainuhea Dudoit; for, one, defendant English's
6 motion to dismiss criminal complaints pursuant to HRPP
7 12(1)(b); and two, defendant Robin Wainuhea Dudoit's
8 joinder in defendant English's motion to dismiss criminal
9 complaint pursuant to HRPP 12(1)(b).

10 MR. PHELPS: Good morning, your Honor, Lloyd
11 Phelps appearing on behalf of the State for all matters.

12 MR. KAIAMA: Good morning, your Honor, Dexter
13 Kaiama on behalf of Kaiula English and Robin Dudoit. Mr.
14 English and Mr. Dudoit are present.

15 THE COURT: All right. Good morning,
16 Counsel. Good morning, Mr. English. Good morning, Mr.
17 Dudoit.

18 All right. This is the defendant's motion
19 and joinder. And so, Mr. Kaiama, is there anything you
20 wanted to present?

21 MR. KAIAMA: Yes, just first order of
22 business, your Honor. I just wanted to make sure, because
23 I filed Mr. Dudoit's joinder in the case --

24 THE COURT: You did?

25 MR. KAIAMA: -- to execute the same paper

1 and time for the Court. It's essentially the same motion.

2 But I just wanted it understood, and I
3 believe it is that Mr. Dudoit is bringing the exact same
4 argument and motion to dismiss as Mr. English is bringing
5 by his motion. Yes? Okay. Thank you.

6 Your Honor --

7 MR. PHELPS: State's understanding, your
8 Honor.

9 MR. KAIAMA: Okay. Yes.

10 Your Honor, actually as part of -- before we
11 make oral argument on the motion, your Honor, as I
12 understand, if this was scheduled for an evidentiary
13 hearing, I did retain and I do have an expert witness to
14 testify. And I would like to present his expert testimony
15 before we proceed with our oral argument.

16 THE COURT: All right. If you have a witness
17 to testify.

18 MR. KAIAMA: I would be calling Dr. Keanu
19 Sai.

20 THE CLERK: I'm sorry, sir. Can you please
21 stand and raise your right hand?

22 DR. DAVID KEANU SAI
23 was called as a witness by and on behalf of the Defendants
24 and after having been first duly sworn was examined and
25 testified as follows:

1 THE CLERK: So sworn. Please be seated.

2 THE COURT: You may proceed with your
3 examination of the witness.

4 MR. KAIAMA: Thank you, your Honor. Sorry, I
5 think I turned on my phone. Excuse me. Excuse me, your
6 Honor.

7 DIRECT EXAMINATION

8 BY MR. KAIAMA:

9 Q. Good morning, Dr. Sai. Would you please
10 state your name and your present occupation for the
11 record?

12 A. David Keanu Sai. I'm a lecturer at the
13 University of Hawaii, Windward Community College.

14 Q. Okay. Dr. Sai, before I ask you about your
15 testimony in this case, I'm going to ask you a few
16 questions about your qualifications. Is that okay with
17 you?

18 A. That's fine.

19 Q. Dr. Sai, can you please provide us a
20 background, your educational background from high school
21 to the present date?

22 A. I can. Well, got a high school diploma from
23 Kamehameha, 1982. An Associates Degree from New Mexico
24 Military Institute, a military college. A Bachelor's in
25 sociology from the University of Hawaii. That was 1987.

1 A Master's Degree in political science, specializing in
2 international relations, 2004. And a Ph.D. in political
3 science focusing on international relations and public
4 law, which includes international law, United States law,
5 and Hawaiian Kingdom law of the 19th century. And that
6 was 2008.

7 Q. Okay. Tell us a little bit about obtaining
8 your Ph.D., Dr. Sai. How did you go about doing that?
9 What's the requirements and what did you need to do? What
10 was the process of your getting that Ph.D.?

11 A. Well, you first need a Master's Degree. In
12 my case it was in political science specializing in
13 international relations.

14 A Ph.D. is the highest degree you can get
15 within the academy. And a Ph.D. is based upon something
16 original to contribute to the political science field and
17 law field, because my area's public law.

18 What takes place is you begin with a
19 proposal. You have to give a defense. And you have a
20 committee that -- I had a committee of six professors.

21 And you basically present what your research
22 is going to be. What they do is to ensure that this
23 research has not been done already by another Ph.D.. So
24 it's called a lit review or literature review.

25 My area that I proposed was researching

1 Hawaii's legal and political status since the 18th century
2 to the present and incorporating international relations,
3 international law, and Hawaiian Kingdom law and United
4 States law.

5 That proposal was passed. Then you have to
6 go into what is called the comprehensive exams.

7 So comprehensive exams is where each of your
8 professors, in this case, six of them, would provide two
9 questions to test my comprehension of the topic of the
10 research -- of the proposed research.

11 And they would pose two questions each. I
12 would have to answer one of the two. Each question
13 average about 30 pages. Okay.

14 You're given one week to complete from
15 Monday -- from Monday to Monday. It's a pass or fail.
16 It's not graded.

17 During that process I successfully completed
18 the comprehensive exams. And then you move to what is
19 called all-but-dissertation. That's when you begin the
20 writing of your dissertation through the research.

21 The title of my doctorate dissertation was
22 the continuity of the Hawaiian Kingdom, beginning the
23 transition from occupied to restored state or country.

24 Successfully defended that before my
25 committee. And it was submitted in time for me to

1 graduate in 2008.

2 Q. Okay. Would you be able to tell us, and just
3 for the record, who was on your committee, Dr. Sai?

4 A. My chairman was Neal Milner. He's a pretty
5 famous political pundit on Channel 4 news. His area is --
6 background is law and judicial behavior.

7 Katharina Heyer, political scientist, public
8 law.

9 John Wilson, sovereignty, goes back to the
10 Greek Polis states through Hobbes, Rousseau, political
11 science and law regarding sovereignty.

12 Then I had a Professor Avi Soifer, the Dean
13 of the Law School. His background is U.S. Constitutional
14 law.

15 I also had as an outside member, Professor
16 Matthew Craven from the University of London, who
17 teleconferenced in for my defense. His background is
18 state sovereignty and international law.

19 And then I also had as the final professor,
20 Professor Kanalu Young from Hawaiian Studies, whose
21 background was Hawaiian Chiefs. But he regrettably passed
22 away before my defense. So Professor Jon Osorio stepped
23 in from the Hawaiian Studies Department.

24 They made up my committee.

25 Q. And again, it's obvious, Dr. Sai, you did

1 pass your dissertation defense?

2 A. And that's what I want to -- ensure a clear
3 understanding. When you defend your dissertation, you're
4 not arguing your dissertation. You have to defend it
5 against the committee members who try to break it. And if
6 they're not able to break it, then you're awarded the
7 Ph.D. and that becomes your specialty.

8 Q. Okay. And it's clear in this case and it's
9 of particular interest to me that the Dean of the law
10 school was on this committee; correct?

11 A. Yes.

12 Q. Okay. And he had an opportunity to so-called
13 challenge or break your dissertation defense as well?

14 A. That's part of the academic process.

15 Q. Okay. And did he come to any conclusion
16 concerning your dissertation?

17 A. They couldn't deny what I proposed and what I
18 argued. Because if they could deny it, I wouldn't have my
19 Ph.D.. They would find a hole in the argument or the
20 research.

21 Q. Okay. Thank you, Dr. Sai.

22 Since the obtaining your dissertation
23 defense, have you had any publications that's been -- any
24 articles that have been published in, I guess, relevant
25 journals or journals of higher education?

1 A. Law review articles. One was published in
2 the University of San Francisco School of Law, Journal of
3 Law and Social Challenges. Another one at the University
4 of Hawaii, Hawaiian Journal of Law and Politics, which is
5 published on HeinOnline, which is a legal publication,
6 Hawaiian.

7 Q. I also understand and, Dr. Sai, just so you
8 know, we did provide as Exhibit 1 in the motion, your
9 curriculum vitae. And so it does provide much of the
10 information that you're testifying about, but I wanted to
11 ask you about, besides publication, I know you also
12 have -- or tell me, you've also written education
13 material?

14 A. Yes.

15 Q. Can you explain that?

16 A. Actually I have a history text that is used
17 in the high school and college levels. It's actually a
18 watered down version of my doctorate dissertation. Much
19 more user friendly for teaching the legal and political
20 history of Hawaii that begins with Kamehameha I and brings
21 it up-to-date.

22 So it is used to teach. It's part of the
23 curriculum. And it is actually required reading at the
24 University of Hawaii Maui College, the community colleges,
25 the University of Hawaii at Manoa. And I did find that

1 it's actually required reading and used in NYU, New York
2 University, and University of Massachusetts at Boston.

3 Q. Okay. And what is the name of that education
4 material, Dr. Sai?

5 A. Ua mau kea ea Sovereignty Endures.

6 Q. Thank you. In addition to publications, Dr.
7 Sai, I understand that you've made a number of
8 presentations. In fact, most recently presentations at
9 facilities or educations -- higher educational facilities.
10 Can you give me a little bit of background or other kinds
11 of presentations that you've made and what the topics of
12 those presentations were?

13 A. I've been invited quite often to present to
14 conferences, to the universities. This past April I was
15 giving guest lectures at the University of NYU, New York
16 University; Harvard; University of Massachusetts at Boston
17 and Southern Connecticut State University.

18 Other universities that I've given
19 presentations to as well span across here in Hawaii, the
20 colleges, the high schools.

21 Just recently I was invited as a guest
22 presenter in a conference at Cambridge University History
23 Department in London. And the conference is focusing on
24 non-European states in the age of imperialism.

25 Q. Very good. And, Dr. Sai, again, all of this,

1 both your publications, your educational materials, as
2 well as your presentations, is in your area of expertise;
3 correct?

4 A. Yes.

5 Q. And just for the record again, can you tell
6 us what that area of expertise is?

7 A. The continuity of the Hawaiian state under
8 international law.

9 Q. Okay. Very good. And, Dr. Sai, you have --
10 have you been qualified as an expert or to testify as an
11 expert in any other proceedings?

12 A. Yes. There was a case in Hilo, Judge
13 Freitas. Tamanaha -- it was a lender versus Tamanaha, I
14 believe. I can't recall the exact case.

15 Q. And you were qualified as an expert and you
16 were allowed to provide your expert opinion in that case
17 concerning your area of expertise?

18 A. Yes.

19 MR. KAIAMA: Your Honor, at this time we
20 would ask that Dr. Sai be qualified as an expert witness
21 to testify about matters concerning our motion to dismiss.

22 MR. PHELPS: The State has no objection, your
23 Honor.

24 THE COURT: All right. There being no
25 objection, the Court will so receive the witness as an

1 expert as offered.

2 MR. KAIAMA: Thank you, your Honor.

3 BY MR. KAIAMA:

4 Q. Dr. Sai, based on all of your research, based
5 on your background and your education and this specialty,
6 you understand that on behalf of my clients I am bringing
7 a motion to dismiss for lack of subject matter
8 jurisdiction?

9 A. Yes.

10 Q. Based on all of your research and your
11 expertise in this area, Dr. Sai, have you reached any
12 conclusions about this, and can you tell us what your
13 conclusions are?

14 A. That the Court would not have subject matter
15 jurisdiction as a result of international law.

16 Q. And if you can explain or perhaps expand on
17 that explanation and tell us why the Court does not have
18 subject matter jurisdiction in this case?

19 A. Sure. Well, it goes back to what the status
20 of Hawaii was first, not necessarily what we are looking
21 at today.

22 So when you look at Hawaii and its political
23 and legal status on November 28th, 1843 Great Britain and
24 France jointly recognized Hawaii as an independent state.

25 July 6th, 1844 Secretary of State, John C.

1 Calhoun, also recognized formally the independence of the
2 Hawaiian Kingdom.

3 Now, to determine dependence under
4 international law applies to the political independence,
5 not physically independent.

6 From that point Hawaii was admitted into the
7 Family of Nations.

8 By 1893 it had gone through government reform
9 whereby it transformed itself into a constitutional
10 monarchy that fully adopted a separation of powers since
11 1864.

12 By 1893 the Hawaiian Kingdom as a country had
13 over 90 embassies and consulates throughout the world.
14 The United States had an embassy in Honolulu. And the
15 Hawaiian Kingdom had an embassy in Washington D.C.. And
16 Hawaiian consulates throughout the United States, as well
17 as U.S. consulates throughout Hawaii.

18 So in 1893 clearly Hawaii was an independent
19 state.

20 Now, under international law there is a need
21 to discern between a government and a state. The state is
22 what was recognized as a subject of international law, not
23 its government. The government was merely the means by
24 which that recognition took place in 1843 and 1844.

25 Now, a government is the political organ of a

1 state. What that means is it exercises the authority of
2 that state. Every government is unique in its
3 geopolitical, but every state is identical under
4 international law. It has a defined boundary. It has
5 independence. It has a centralized government. And it
6 has territory -- people within its territory and the
7 ability to enter into international relations.

8 What happened in 1893 on January 17th, as
9 concluded by the United States investigation, presidential
10 investigation, is that the Hawaiian government was
11 overthrown, not the Hawaiian state. Okay.

12 Now, this is no different than overthrowing
13 the Iraqi government in 2003. By the United States
14 overthrowing the Iraqi government that did not equate to
15 the overthrow of Iraq as a state.

16 That situation is what we call an
17 international law occupation. Okay. Occupation is where
18 the sovereignty is still intact, but international law
19 mandates the occupier to conform as a proxy, a temporary
20 proxy of a government to temporarily administer those laws
21 of that particular country.

22 Now, prior to 1899, which is we're talking
23 about 1893, the illegal overthrow of the government,
24 customary international law would regulate the actions
25 taken by governments that occupy the territory of another

1 country.

2 Those customary laws are the law of
3 occupation is to maintain the status quo of the occupied
4 state. The occupier must administer the laws of the
5 occupied state and can not impose its own laws within the
6 territory of an occupied state, because sovereignty and
7 independence is still intact.

8 So by 1899, we have what is called the Hague
9 Conventions. Later 1949, the Geneva Conventions. The
10 Hague Conventions merely codified customary international
11 law, fully recognized. And 1949 again codified customary
12 international law and the gaps that may have been in the
13 Hague Conventions.

14 So when we look at 1893, it is clear the
15 government was overthrown, but it is also clear that the
16 State wasn't, because the United States did not have
17 sovereignty over Hawaii. The only way that you can
18 acquire sovereignty of another state under international
19 law is you need a treaty. Okay, whether by conquest or by
20 voluntary transfer.

21 An example of a voluntary transfer that
22 United States acquired sovereignty would be the 1803
23 Louisiana Purchase. An example of a treaty of conquest
24 where the United States acquired territory through a war,
25 1848, Treaty of Guadalupe Hidalgo, Mexican America War

1 making the Rio Grande the dividing point.

2 You didn't have that in 1893. In fact, you
3 had an attempt to do a treaty, but President Cleveland
4 withdrew that treaty in 1893 in March and investigated the
5 situation. Never resubmitted that treaty. In other
6 words, in the alternative he entered into another treaty
7 with the Queen to reinstate the Hawaiian government. And
8 that's called a sole executive agreement. That took place
9 on December 18th, 1893. All part of the record in the
10 State Department.

11 So what we have there from 1893 is a
12 situation of a governmental matter, not a state or a
13 sovereignty.

14 As we move forward into 1898 there still is
15 no treaty, but the Spanish American War breaks out and
16 that's in April of 1898. The United States is waging war
17 against the Spanish, not just in Puerto Rico and Cuba in
18 the Caribbean, but also in Guam and the Phillipines.

19 And Captain Alfred Mahan from the U.S. Naval
20 War College and General Schoffield gave testimony to the
21 House Committee on Foreign Affairs in May 1898, that they
22 should pass a law, called a joint resolution, to annex the
23 Hawaiian Islands because of necessity called war. They
24 need to seize Hawaii, as stated by those given testimony,
25 in order to protect the west coast of the United States

1 and to reinforce troops in Guam and the Phillipines.

2 The problem we run into is a joint resolution
3 of Congress has no effect beyond the borders of the United
4 States. It's a municipal legislation. It's not
5 international law.

6 That was then taken up for a vote in the
7 house. Congressmen were making points on the record that
8 this is illegal. You can not pass laws that can effect
9 the sovereignty of another country. But the argument was
10 it's necessity. We're at war.

11 On July 7th, after the House and Senate made
12 the record, but was not able to get -- what they did was
13 they passed by majority, July 6th, 1898, joint resolution
14 of annexation and then it was President McKinley on
15 June -- July 7th, 1898 that signed it into law.

16 It was that U.S. law that was used to seize
17 another country in the occupation. And the occupation of
18 Hawaii began formally on August 12th, 1898. Formal
19 ceremonies at Iolani Palace where the Hawaiian flag was
20 lowered and the American flag risen before a full regalia
21 of U.S. military in formation.

22 What has happened since then is that now
23 research is showing that there was a deliberate move to
24 basically denationalize the inhabitants in the public
25 schools that actually began formally in 1906 where they

1 began to teach within the schools American history. You
2 can not speak Hawaiian. And if you do speak Hawaiian and
3 not English, you get disciplined. We hear those stories
4 from our kupuna.

5 And that began what we call in international
6 law, attempts to denationalize the inhabitants of occupied
7 territories. Which since World War I and World War II has
8 been categorized as a war crime.

9 So what we have today is we have in 1900,
10 after 1898, in 1900 the United States Congress passed
11 another law called the Organic Act creating a government
12 for the Territory of Hawaii.

13 In that Organic Act it specifically says that
14 the Republic of Hawaii, which was called the provisional
15 government which President Cleveland called self-declared,
16 is now going to be called the Territory of Hawaii.

17 And then in 1959 the Statehood Act basically
18 stated that what was formerly the Territory of Hawaii is
19 the State of Hawaii.

20 Now, looking at the limitation of U.S. law it
21 has no effect in a foreign state. You still need a
22 treaty.

23 But what's interesting is in 1993 the United
24 States Congress passed a law apologizing for the illegal
25 overthrow of the Hawaiian Kingdom government. What was

1 important in there is that in one of the whereases it
2 stated specifically, that whereas the self-declared
3 Republic of Hawaii ceded sovereignty to the United States.

4 We have a problem there because self-declared
5 means you're not a government. Which is precisely what
6 President Cleveland, in his investigation, called its
7 predecessor the provisional government.

8 So in that genealogy, if the provisional
9 government was self-declared, then the Republic of Hawaii
10 is self-declared, then the Territory of Hawaii was
11 self-declared, then the State of Hawaii self-declared.

12 Now, I fully understand the ramifications of
13 this information and history and the applicable law. I'm
14 a retired captain from the Army, you know. So this is not
15 a political statement. But it's part of my research that
16 clearly shows that I can not find how the State of Hawaii,
17 a court, could have subject matter jurisdiction on two
18 points.

19 First, U.S. law is the Statehood Act is
20 limited to U.S. territory. Second, the State of Hawaii is
21 a successor of the Republic of Hawaii, which was admitted
22 to be self-declared in 1993 by the U.S. Congress.

23 So that's -- that's why I've come to the
24 conclusion where there is what is called a presumption of
25 continuity of the Hawaiian Kingdom as a state, not as a

1 government, but as a state under international law.

2 Q. Can you expand on that, the presumption of
3 continuity just a little bit, so that the Court
4 understands that or I can understand better what
5 continuity means in the context of international law?

6 A. Well, the word presumption is a conclusion
7 based upon facts. Assumption is a conclusion based upon
8 no facts.

9 But what is more important about the
10 presumption is that it shifts the burden. So no different
11 than there is a presumption of innocence because of the
12 fact the person has rights. You have, under international
13 law, a presumption of continuity, because the state itself
14 has rights under international law.

15 So the presumption of continuity is a very
16 well recognized principle of international law. That's
17 what preserves the State's continuity despite the fact
18 that its government was overthrown.

19 Now, there are two legal facts that need to
20 be established on the presumption of continuity of an
21 independent state. The first legal fact has to be that
22 the entity in question existed at some point in time in
23 history as an independent state. That's the first thing.

24 Now, clearly Hawaii's history shows that it
25 was an independent state, but what's more important there

1 was dictum in an arbitration award out of the permanent
2 Court of Arbitration in 2001 published in international
3 law reports out of Cambridge. Which basically says
4 paragraph 7.4, that in the 19th century the Hawaiian
5 Kingdom existed as an independent state, recognized as
6 such by the United States of America, Great Britain and
7 various other states. That right there, that dictum
8 verified and accomplished that first rule. Hawaii was an
9 independent state.

10 The second legal fact that would have to
11 apply, now that the United States which has the burden to
12 prove is that there are intervening events that have
13 deprived that state of its independence under
14 international law.

15 What we have as far as the historical record
16 from the United States of America is that all it has, as a
17 claim to Hawaii, it's not a treaty, but a joint resolution
18 of annexation, which is a U.S. law limited to U.S.
19 territory not recognized by international law. And that
20 the Statehood Act of 1959 is still a U.S. law not
21 recognized by international law.

22 So there are no intervening facts that would
23 deprive or rebut the presumption of continuity.

24 In fact, in 1988 the Office of Legal Counsel,
25 Department of Justice, in a legal opinion looked into that

1 very issue and it stated regarding the joint resolution,
2 it is therefore unclear which constitutional power
3 Congress exercised when it acquired Hawaii by joint
4 resolution. Therefore, this is not a proper precedent for
5 the United States president to follow.

6 And they made reference to the Congressional
7 records of Congressmen and Senators who was saying U.S.
8 laws have no effect beyond our borders. We can not annex
9 a foreign country by passing a joint resolution.

10 So in 1988 the Office of Legal Counsel,
11 Department of Justice, stumbled over that. Therefore,
12 there are no clear evidence that can rebut the presumption
13 of continuity. And that's why my research and my
14 expertise is in that area that the Hawaiian state
15 continues to exist under international law.

16 Q. Thank you, Dr. Sai.

17 MR. KAIAMA: I just wanted to let you know,
18 and for the record, the executive agreements that you
19 refer to between Queen Liliuokalani and President Grover
20 Cleveland has been attached to my client's motion to
21 dismiss as Exhibit 7 and 8, your Honor. So those are the
22 diplomatic records and negotiations, communications
23 between President Grover Cleveland when he comes to that
24 conclusion based on his investigation.

25 BY MR. KAIAMA:

1 Q. Dr. Sai, I also wanted you to confirm, I know
2 you spoke earlier and you testified that the joint
3 resolution, the Territorial Act, as well as the Statehood
4 Act was of Congressional Legislation, which has no force
5 and effect beyond its own territory or borders.

6 And you're referring to U.S. law. And I can
7 speak to that. But it's also true that that same rule of
8 law applies in the international realm as well; right? So
9 no country can occupy other countries by way of joint
10 resolution. That's a -- that's a common -- well, a well
11 established understanding under international as well; is
12 that correct?

13 A. International law is able to distinguish what
14 is international law and what is national law. So
15 national law's applied to states as an exercise of their
16 sovereignty.

17 International law is a law between states.
18 And between states is based upon agreements. And those
19 agreements are evidenced by treaties.

20 Q. Based on your conclusion that the continuity
21 of the Hawaiian Kingdom still exists, Dr. Sai, what are
22 the consequences of that -- of your opinion, your expert
23 opinion about that? Especially particularly with respect
24 to, respectfully, the Court's exercise of jurisdiction in
25 this case?

1 A. When we're looking at this issue within the
2 framework of international law what resonates is, number
3 one, sovereignty is still intact and it remains with the
4 state under occupation. Okay.

5 Now, that because sovereignty is still intact
6 and it's not a part of the United States, then
7 international law regulates that phenomenon or that
8 situation. And that is what we call the law of
9 occupation. And that's called the Hague Conventions of
10 1899, which was amended in 1907. And then we also have
11 the Geneva Conventions of 1949.

12 Now, specific issues regarding occupations
13 are pretty much the substance of Hague Conventions Number
14 Four of 1907, as well as Geneva Conventions Number Four
15 that deals with the civilian population during
16 occupations.

17 After World War I -- well, toward the end of
18 World War I is when war crimes began to be brought up as a
19 possible issue to be addressed with the Germans and the
20 access powers.

21 And they came up with a list of war crimes.
22 And one of those war crimes in 1919 was put out by the
23 United Nations Commission. Now, United Nations, back
24 then, I'm not talking about 1945 United Nations, but they
25 called like the United Front.

1 Attempts to denationalize inhabitants of an
2 occupied state, failure to provide a fair trial, those
3 issues, although they were not successful in prosecution
4 of individuals for war crimes after World War I because
5 there was still that issue of state immunity that people
6 were acting on behalf of the state, so they're not
7 personally liable or criminally liable. The State still
8 carried that.

9 Once World War II took place, it became a
10 foregone conclusion that individuals will be prosecuted
11 for war crimes.

12 There is a similar history that Hawaii has
13 with regard to war crimes in a country called Luxembourg.
14 In 1914 the Germans occupied Luxembourg, which was a
15 neutral country, in order to fight the French. The
16 seizure of Luxembourg under international law was not a
17 justified war, but it was called a war of aggression.
18 That led to war crimes being committed. So from 1914 to
19 1918 Germany occupied Luxembourg even when Luxembourg did
20 not resist the occupation.

21 They also did that same occupation in 1940 to
22 1945. Now 1940 to 1945 they began to attempt to
23 denationalize Luxembourgers into teaching the children
24 that they're German. They began to address the schools,
25 the curriculum.

1 What was also happening, not just in
2 Luxembourg, as a war crime was unfair trials. Germany
3 began to impose their laws and their courts within
4 occupied territories. And that became the subject of war
5 crime prosecutions by the allied states, but a prominent
6 tribunal that did prosecute war crimes for unfair trial
7 and denationalization was the Nuremberg trials.

8 And that set the stage, after the Nuremberg
9 trials, to address those loopholes in the conventional --
10 the Hague Conventions of 1907 which prompted the Geneva
11 Conventions in 1949.

12 And the Geneva Conventions specifically
13 stated as the experience -- as they acquired the
14 experience from World War II, Article 147, unfair trial is
15 a grave breach, which is considered a war crime.

16 So that's where the issue of not providing a
17 fair trial is a war crime according to the Geneva
18 Conventions and customary international law.

19 Q. Is it true, Dr. Sai, that the United States
20 is a party to that Geneva Conventions?

21 A. Yes.

22 Q. So it is obligated under the terms of Geneva
23 Conventions?

24 A. The United States acknowledges customary
25 international law and the law of occupation during the

1 Spanish American War, as evidenced by their written
2 manuals to the military. In administration of justice
3 within occupied territories came to be known as General
4 Order Number 101. Okay. Direction of the president on
5 how to administer the laws of former Spanish territory
6 until a peace treaty is signed where they can acquire the
7 territory themselves.

8 And they're also a party to the 1899 Hague
9 Conventions, the 1907 Hague Conventions, and the 1949
10 Geneva conventions.

11 Q. As part of their obligation as a contracting
12 party to those conventions, including 1949 Geneva
13 Conventions, did the United States create domestic
14 legislation that covered the commission of war crimes,
15 including deprivation of a fair and regular trial?

16 A. That would be in 1996 called the War Crimes
17 Act, which is Title 18, Section 2441, United States Code.

18 Q. Okay. You know, Dr. Sai, you answered all my
19 questions. Thank you. I appreciate it.

20 Is there -- I'll be honest, I think I covered
21 everything I need to cover, but I'm not sure. I'm not the
22 expert. Is there any other area that you would like to
23 provide us some insight that we don't have about the
24 status of Hawaii or about perhaps subject matter
25 jurisdiction?

1 A. I think there's a particular important case
2 here regarding subject matter jurisdiction. That dealt
3 with Guantanamo Bay, Gitmo. And this is a case that went
4 before the United States Supreme Court, Hamdan versus
5 Rumsfeld. Okay.

6 And basically the argument that was presented
7 by a JAG as a Public Defender was that the military
8 tribunals were not properly constituted which was a direct
9 violation of the Geneva Conventions. Therefore, his
10 client could not get a fair trial.

11 Now, these military tribunals were determined
12 by the United States Supreme Court to be illegal because
13 the United States president can not establish -- can not
14 establish military tribunals within U.S. territory because
15 that would undermine the authority of Congress which has
16 plenary power.

17 Guantanamo Bay was not foreign territory
18 where the president could create military tribunals. It
19 was actually part of the United States.

20 Now, the United States President does have
21 the authority under Article 2 to create military tribunals
22 in occupied territories. He did that in Japan after World
23 War II. In Germany after World War II, as well as after
24 World War I.

25 And these military tribunals administer the

1 laws of the occupied state. What was brought up in this
2 case with Hamdan versus Rumsfeld, the president could not
3 create a military tribunal within U.S. territory and it
4 was not justified by necessity.

5 So the Court ruled that the Court's are
6 illegal and then turned over to Congress to pass a law,
7 because it's within U.S. territory, to keep it up.

8 Now, what's important is there was a Justice
9 Robertson, I believe, of the Supreme Court. He was
10 addressing the secondary argument that people were not
11 getting a fair trial within these military tribunals. And
12 Justice Robertson, if I'm not mistaken his name, he stated
13 it is irrelevant whether or not they were given a fair
14 trial, because if they're not properly constituted, they
15 can't give a fair trial.

16 Q. Okay. And so is it fair to say, is it
17 your -- I think I understood this, but I just want to be
18 clear. The Hamdan case also stands for the president does
19 not have authority in U.S. territory, then he is the one
20 that has authority in foreign territory?

21 A. And these courts called military tribunals
22 are also referred to as Article 2 courts.

23 Q. Okay. And is that your opinion with respect
24 to Hawaii, those are the courts that should be
25 administering the laws of the Hawaiian Kingdom?

1 A. Yes.

2 Q. Okay. Thank you. And just to give you a
3 quick correction. It was actually Justice Kennedy who
4 said that.

5 A. Kennedy. My apologies.

6 Q. No. Thank you, Dr. Sai. Is there anything
7 else that you'd like to add?

8 I'd actually like to ask you about how we
9 resolve the situation, but I think that would be something
10 for --

11 A. I can quickly state to that because this
12 information is quite perplexing. All right.

13 My committee members on my doctorate
14 committee could not refute the evidence. All they asked
15 is how do you fix the problem? So Chapter Five of my
16 dissertation is how do you begin the transition in this
17 process.

18 And actually the transition is quite simple.
19 I think this issue is not hard to understand. It's just
20 hard to believe. I mean to understanding, and once you
21 understand, things can take place.

22 So what we have to ensure for myself as a
23 professional, I am not an anarchist. I'm a person to
24 maintain civility. I still am inherently a retired
25 captain.

1 There is a way to fix this problem, yeah.
2 And that is clear, but the rule of law has to apply. But
3 there is a doctrine called necessity under international
4 law that can resolve over a hundred years of noncompliance
5 to the law. And that's what I cover in Chapter Five. But
6 that's another issue.

7 Q. And perhaps one of the first places we can
8 start is with the proper courts administering the proper
9 law; is that correct?

10 A. It's really just the court administering the
11 proper law so that people have a fair trial.

12 MR. KAIAMA: Thank you, Dr. Sai. I have no
13 further questions.

14 THE COURT: Any cross-examination?

15 MR. PHELPS: Your Honor, the State has no
16 questions of Dr. Sai. Thank you for his testimony. One
17 Army officer to another, I appreciate your testimony.

18 THE WITNESS: 13 echo.

19 THE COURT: Thank you. You are excused.

20 Mr. Kaiama.

21 MR. KAIAMA: Thank you, your Honor. And I
22 will try to be brief.

23 As you can see, your Honor, we did file the
24 motion to dismiss for lack of subject matter jurisdiction
25 and I also did file a supplemental memorandum.

1 In the motion in the supplemental memorandums
2 I did provide exhibits. And the exhibits include Dr.
3 Sai's curriculum vitae, and expert opinion briefs that
4 he's written concerning much of what he's testified today.

5 Essentially our argument is this, your Honor.
6 That with the exhibits that's been presented and the
7 testimony of Dr. Sai, we now have met the requirements set
8 forth under State of Hawaii versus Lorenzo.

9 We have provided the courts now with a
10 factual and legal basis to conclude that the Hawaiian
11 Kingdom continues to exist. Because we've met that burden
12 under Lorenzo, we respectfully submit that the State has
13 failed to meet its burden that this Court has jurisdiction
14 under Nishitani versus Baker.

15 And given that we've met our burden and the
16 State, respectfully, has not met theirs, our position
17 simply, your Honor, is that the Court has no other
18 alternative but to dismiss the case for lack of subject
19 matter jurisdiction.

20 In the motion itself we did provide the Court
21 with additional arguments. We did present the Court with
22 the legal arguments as to the limits of Congressional
23 enactments, and we've provided both Supreme Court cases.
24 Curtiss-Wright versus United States Export (sic). I may
25 have said that wrong. But talking about the limits, and

1 basically confirming that the joint resolution which
2 attempted to annex the United States is not lawful and has
3 no force and effect on Hawaiian territory.

4 And because of that, neither the Organic Act
5 which formed the territory, or the Statehood Act which are
6 both Congressional legislations, also have no force and
7 effect on Hawaiian territory.

8 That being the case, your Honor, the United
9 States never lawfully acquired a sovereignty over the
10 Hawaiian territory.

11 In addition with Dr. Sai's testimony, his
12 expert testimony, we've proven or clearly established that
13 the Hawaiian Kingdom, in fact, was recognized as an
14 independent nation as of 1843 and concluded a number of
15 treaties. I believe over 90 treaties -- 46 treaties, a
16 little over 90 countries, to further affirm its position
17 as an independent nation.

18 With Dr. Sai's testimony, again once
19 independence is established, it is the burden in this case
20 of the United States or the State of Hawaii to prove that
21 that continuity has been extinguished.

22 There is no evidence, and in all honesty,
23 your Honor, in the four years that I've been arguing this
24 motion there has not been any evidence to rebut the
25 presumption of that continuity.

1 Finally, your Honor, I think it is important,
2 and I do say this in all respect, that because of the
3 evidence provided in this situation that the Court not
4 only should be -- the Court should be dismissing the case
5 for lack of subject matter jurisdiction, but also the
6 argument is that, respectfully, the Court is not lawfully
7 constituted under Hamsden -- Hamden versus Rumsfeld,
8 because it is not administering the laws of the Hawaiian
9 Kingdom.

10 Because we continue to be under a state of
11 occupation, the rule of law which applies is the law of
12 occupation. And the United States, in this case,
13 presently as the occupier, should be administering
14 Hawaiian Kingdom law.

15 By virtue of the fact that the prosecutor's
16 office and the State has brought this case and sought to
17 confer jurisdiction on the Court by Hawaii Revised
18 Statutes, that the Court's retention of jurisdiction, with
19 all respect, in light of the evidence that's been provided
20 would, in fact, deprive my clients of a fair and regular
21 trial, and would be a violation of the Geneva, the Hague,
22 and other conventions that has been testified to by Dr.
23 Sai.

24 Again, with all respect, your Honor, we think
25 we've met our burden. We do not believe, in fact we are

1 certain, that the State has not met its burden to prove
2 that this Court has jurisdiction.

3 And we would respectfully request -- I would
4 respectfully request on behalf of my clients, Kaiula
5 English and Mr. Robin Dudoit, that the Court dismiss their
6 cases for lack of subject matter jurisdiction. Thank you,
7 your Honor.

8 THE COURT: Mr. Phelps.

9 MR. PHELPS: Your Honor, the State will be
10 brief.

11 We're going to ask that obviously you deny
12 the defense motion to dismiss for lack of subject matter
13 jurisdiction. We're going to submit on the memorandum
14 that we submitted in opposition to it.

15 But the State will simply point out, we
16 appreciate Dr. Sai's testimony. It was one of more
17 impressive dissertations I've heard in awhile. And I do
18 respect some of the points he's made.

19 But the case law is fairly clear on this,
20 your Honor. This isn't a new argument. This isn't a
21 novel argument. Courts have ruled that basically
22 regardless of the legality of the overthrow of the
23 Hawaiian Kingdom, Hawaii, as it is now, is a lawful,
24 lawful state with a lawful court system and a lawful set
25 of laws.

1 That anybody who avails themselves of this
2 jurisdiction, they fall under the law, whether they want
3 to claim to be a member of a sovereign kingdom or not, the
4 law applies, your Honor. And for those reasons, we feel
5 that you have no other choice but to deny this motion,
6 your Honor.

7 I believe that the case law on this is fairly
8 clear as laid out in our memorandum. All due respect to
9 Mr. Kaiama and everybody who's here, we believe the courts
10 have spoken, and we're simply going to ask that you take
11 judicial recognition of the U.S. Constitution, the Hawaii
12 Constitution, the Hawaii Revised Statutes, every law that
13 basically this Court is mandated to follow, and deny his
14 motion -- motions, actually.

15 THE COURT: Thank you.

16 MR. PHELPS: Thank you, your Honor.

17 MR. KAIAMA: Yes, your Honor. Briefly in
18 response.

19 I know that the cases that the prosecutor
20 relies on, your Honor, as a point of order, all of those
21 cases in those decisions deal with personal immunity and
22 personal jurisdiction.

23 So the question of subject matter
24 jurisdiction has not been raised before this Court or
25 before the appellate courts or nor has it been addressed.

1 I can tell you, your Honor, that I believe in
2 2012 I did take two cases up on appeal, bringing the same
3 question before the Court and presenting the same legal
4 analysis.

5 The ICA did not address the legal analysis in
6 this case, and I don't know why. I might say they refused
7 to address it, and, in fact, in both cases issued just a
8 two page summary disposition order, really relying on the
9 Kauwila case -- Kaulia case, excuse me. And the entirety
10 of the Court's analysis or the holding in that is
11 essentially what the prosecutor said. Is that despite or
12 regardless of lawfulness of its origins, this is the proper
13 State of Hawaii.

14 Your Honor, I'm asking that this Court
15 transcend that, and actually look into the analysis, and
16 based on the analysis realize that what we're asking is
17 the predicate question. Did the United States ever
18 establish lawful acquisition of sovereignty here? And if
19 they did not, then none of this legislative enactments can
20 have any bearing on this Court.

21 And, essentially, Dr. Sai and the evidence
22 that we provided has proved that. There is no dispute
23 that the claim for statehood here of Hawaii is by way of a
24 joint resolution. That's not undisputed. That's part of
25 Congressional records.

1 It's also clear, based on the law, both the
2 Supreme Court, by testimony by representatives and
3 Congressmen in Congress at the time of 1898, and the
4 testimony of the Attorney General in 1998 as well, I
5 believe it was Douglas Kmiec, all call into question -- in
6 fact, they don't call into question, basically affirm the
7 fact that the Congress has no legislative powers beyond
8 its own borders.

9 So what I'm asking the Court, your Honor, at
10 this time, is that under its own law, Lorenzo is still the
11 prevailing case.

12 So it still requires us to present that
13 evidence for the Court to conclude relevant factual and
14 legal evidence for the Court to conclude that the Hawaiian
15 Kingdom continues to exist.

16 We've done that now. So we're presenting the
17 Court with that analysis it hasn't had before, and we're
18 asking the Court to transcend the lack of -- and I don't
19 know how to say it, but I wish to say, respectfully, the
20 lack of courage on the part of the Intermediate Courts of
21 Appeals to actually address it and to address the legal
22 analysis.

23 We're asking this Court to take a look at
24 that and, again, once the Court is required or takes a
25 look at that analysis, we assert and we firmly believe

1 that there is no other course but that my clients should
2 prevail. Thank you, your Honor.

3 THE COURT: All right. Well, before the
4 Court today is defendant English's motion to dismiss a
5 criminal complaint pursuant to Hawaii Rules of Penal
6 Procedure 12(1)(b) and the joinder that was filed by Mr.
7 Dudoit joining in Mr. English's motion.

8 And as has been outlined by Mr. Kaiama,
9 essentially the argument here, is that this Court lacks
10 subject matter jurisdiction. As has also been pointed out
11 by Mr. Kaiama in his remarks to the Court, he has brought
12 this issue to our appellate courts in the past and has not
13 achieved the result that he has sought through those
14 arguments.

15 And, of course, as I'm sure everyone would
16 acknowledge, this Court is a trial court and is subject to
17 the rulings of our appellate courts. And what our
18 appellate court has said, as has been acknowledged in Mr.
19 Kaiama's arguments, has in (inaudible) stated that
20 individuals claiming to be citizens of the Kingdom of
21 Hawaii and not the State of Hawaii are not exempt from
22 application of the laws of the State of Hawaii.

23 And Mr. Kaiama has argued on behalf of Mr.
24 English and Mr. Dudoit that he's not of the view that the
25 Court has -- the appellate courts have addressed the issue

1 that they wish to have addressed.

2 But, at any rate, these identical issues
3 having been presented in the past, and the Court having
4 ruled, and the appellate courts having ruled in a certain
5 fashion, in the Court's view, at least for purposes of a
6 trial court, resolves the question presented by the motion
7 and joinder.

8 And, respectfully, the Court is of the view
9 that based on everything that's been presented, that the
10 Court does have subject matter jurisdiction and will --
11 will ask the question though. And that is that in your
12 pleadings, although it was not discussed today, you asked
13 the Court to take judicial notice of various documents,
14 but you never said anything about it today.

15 MR. KAIAMA: Actually, your Honor, I would
16 ask -- and thank you -- I would ask, because we did make
17 the request and it's provided for in the motion itself, as
18 well as the authorities, that the Court take judicial
19 notice of the matters that were presented in the motion
20 itself.

21 And that being, and a number of those are
22 actually treaties between the Hawaiian Kingdom and United
23 States, and they are part of the Congressional records to
24 begin with.

25 And I think it's fairly clear from the law

1 that these kinds of treaties, there is a -- an obligation
2 to take judicial notice of those treaties. That
3 essentially was most of the request.

4 Now, we did also ask that the Court take --
5 request judicial notice of the Hague Conventions of 1907,
6 the Geneva Conventions of 1949. Again, those are treaties
7 that the United States is a contracting party to and it is
8 part of U.S. law and part of Congressional records
9 there. And --

10 THE COURT: Well, it -- I'm sorry, I thought
11 you were finished.

12 MR. KAIAMA: Yeah. And, finally, the other
13 parts that we did ask was that the Court take notice of
14 the agreement -- assignment agreement with Liliuokalani
15 and Grover Cleveland, as well as the restoration agreement
16 between the the United States President and the Queen.
17 Again, those are part of the Congressional records.

18 And, finally, we did ask the Court to take
19 judicial notice of particular court rulings, that being
20 Larsen versus the Hawaiian Kingdom, and that is part of
21 the international law reports, and that's stated there.
22 As well as the U.S. Supreme Court decisions in U.S. versus
23 Belmont, U.S. versus Curtiss-Wright Export Corp, and State
24 of Hawaii, which is -- State of Hawaii versus Lorenzo,
25 which is the prevailing law in Hawaii.

1 Finally, I did ask the Court to take judicial
2 notice of Dr. Sai's expert memorandum, which was attached
3 as an exhibit. I still make that request, although I am
4 aware that the courts have not necessarily granted the
5 request, but I would still make the request on behalf of
6 Mr. English and Mr. Dudoit.

7 THE COURT: The matters that you've requested
8 by way of your written presentation to the Court are set
9 forth in page 12 of the memorandum; correct?

10 MR. KAIAMA: Let me just double -- yes, I
11 believe that is correct. That is on pages -- yes, page
12 12. Yes, page 12 of the memorandum.

13 THE COURT: Yeah, okay. What's the
14 prosecution's position?

15 MR. PHELPS: No objection, your Honor.

16 THE COURT: All right. The Court will
17 take -- there being no objection, the Court will take
18 judicial notice as requested in writing on the documents
19 and the matters requested on the last paragraph of page 12
20 of the memorandum in support of motion filed on February
21 6th, 2015.

22 And having considered all of that, the Court
23 at this time is going to deny the motion and joinder to
24 dismiss the criminal complaint in these cases.

25 And I'll ask Mr. Phelps to prepare the

1 appropriate order.

2 And thank all of you, your report and
3 presentation today.

4 MR. KAIAMA: Thank you, your Honor.

5 MR. PHELPS: Thank you, your Honor.

6 THE CLERK: All rise, court stands in recess.

7 THE COURT: You know, actually we were --
8 yesterday during a pretrial, we were talking about the
9 trial date.

10 MR. KAIAMA: Yes.

11 THE COURT: And --

12 MR. KAIAMA: My clients did sign the waiver.

13 THE COURT: You've done that already?

14 MR. KAIAMA: Yes.

15 THE COURT: Okay. Thank you.

16 (At which time the above-entitled proceedings
17 were concluded.)

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C E R T I F I C A T E

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I, BETH KELLY, a Court Reporter do hereby
certify that the foregoing pages 1 through 46 inclusive
comprise a full, true and correct transcript of the
proceedings had in connection with the above-entitled
cause.

Dated this 20th day of March, 2015.

BETH KELLY, RPR, CSR #235
Court Reporter

Beth Kelly, CSR #235
Court Reporter

Enclosure “3”

Operational Plan for Transitioning the State of Hawai‘i into a Military Government

by

The Council of Regency
Occupied Government of the Hawaiian Kingdom



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14 August 2023

A blue ink signature of David Keanu Sai.

David Keanu Sai, Ph.D.
Chairman of the *acting* Council of Regency
Acting Minister of the Interior
Acting Minister of Foreign Affairs *ad interim*

A black ink signature of Kau'i P. Sai-Dudoit.

Kau'i P. Sai-Dudoit,
Acting Minister of Finance

A black ink signature of Dexter Ke'eumoku Ka'iama.

Dexter Ke'eumoku Ka'iama, *Esq.*,
Acting Attorney General

ABSTRACT

Adhering to the sharing of authority between the Occupying Government and the Occupied Government under the law of occupation, the Council of Regency has drafted an operational plan that addresses 130 years of the violation of international humanitarian law and the law of occupation by the United States of America. This operational plan lays out the process of transition from the State of Hawai'i government to a Military Government in accordance with international humanitarian law, the law of occupation, and U.S. Army regulations in Field Manuals 27-5 and 27-10. The 1907 Hague Regulations and the 1949 Fourth Geneva Convention shows there are four essential tasks of the Military Government. This operational plan will address these essential tasks with their implied tasks for successful execution despite the prolonged nature of the occupation where the basic rules of occupation have been violated for over a century. The operational plan will lay out governing rules of maintaining a Military Government until a peace treaty has been negotiated and agreed upon between the Hawaiian Kingdom and the United States of America.

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THE AMERICAN OCCUPATION OF THE HAWAIIAN KINGDOM

Hawaiian Independence

On 28 November 1843, both Great Britain and France jointly recognized the Hawaiian Kingdom as an independent State making it the first country in Oceania to join the international community of States. The United States followed on 6 July 1844. According to Professor Oppenheim, once recognition of a State is granted, it “is incapable of withdrawal”¹ by the recognizing State, and that “recognition estops the State which has recognized the title from contesting its validity at any future time.”² And the “duty to treat a qualified entity as a state also implies that so long as the entity continues to meet those qualifications its statehood may not be ‘derecognized.’”³

As a progressive constitutional monarchy, the Hawaiian Kingdom had compulsory education, universal health care, land reform and a representative democracy.⁴ The Hawaiian Kingdom treaty partners include Austria and Hungary, Belgium, Bremen, Denmark, France, Germany, Hamburg, Italy, Japan, Luxembourg, Netherlands, Portugal, Russia, Spain, Switzerland, Sweden and Norway, the United Kingdom and the United States.⁵ By 1893, the Hawaiian Kingdom maintained over 90 Legations and Consulates throughout the world. This fact of Hawaiian Statehood was acknowledged in 2001 by the arbitral tribunal, in *Larsen v. Hawaiian Kingdom* at the Permanent Court of Arbitration, which stated, “in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.”⁶

To preserve its political independence, should war break out in the Pacific Ocean, the Hawaiian Kingdom sought to ensure that its neutrality would be recognized beforehand. As a result, provisions recognizing Hawaiian neutrality were incorporated in its treaties with Sweden-Norway, Spain, and Germany. “A nation that wishes to secure her own peace,” says Vattel, “cannot more successfully attain that object than by concluding treaties of neutrality.”⁷

¹ Lassa Oppenheim, *International Law* 137 (3rd ed. 1920).

² Georg Schwarzenberger, “Title to Territory: Response to a Challenge,” 51(2) *American Journal of International Law* 308, 316 (1957).

³ Restatement (Third) of the Foreign Relations Law of the United States, §202, comment g.

⁴ David Keanu Sai, “Hawaiian Constitutional Governance,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 58-94 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

⁵ “Treaties with Foreign States,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 237-310 (2020).

⁶ *Larsen v. Hawaiian Kingdom*, 119 *International Law Reports* 566, 581 (2001).

⁷ Emerich De Vattel, *The Law of Nations* 333 (6th ed., 1844).

The Hawaiian Kingdom also became a full member State of the Universal Postal Union (“UPU”) on 1 January 1882, which is currently a specialized agency of the United Nations and the postal sector’s primary forum for international cooperation. While being a member State of the UPU, the Hawaiian Kingdom has been inactive since 17 January 1893 because it was incapacitated as a result of the illegal overthrow of its government by the United States as it is explained below.

United States’ Invasion and Overthrow of the Hawaiian Kingdom Government

On 16 January 1893, under orders by U.S. Minister John Stevens, the city of Honolulu was invaded by a detachment of U.S. troops “supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies.”⁸ This invasion coerced Queen Lili‘uokalani, executive monarch of the Hawaiian Kingdom, to conditionally surrender to the superior power of the United States military, whereby she stated:

Now, to avoid any collision of armed forces and perhaps the loss of life, I do, under this protest, and impelled by said force, yield my authority until such time as the Government of the United States shall, upon the facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the constitutional sovereign of the Hawaiian Islands.⁹

President Cleveland initiated a presidential investigation on 11 March 1893 by appointing Special Commissioner James Blount to travel to the Hawaiian Islands and provide periodic reports to the U.S. Secretary of State Walter Gresham. Commissioner Blount arrived in the Islands on 29 March after which he “directed the removal of the flag of the United States from the government building and the return of the American troops to their vessels.”¹⁰ Blount’s last report was dated 17 July 1893, and on 18 October 1893, Secretary of State Gresham notified the President:

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

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

⁸ United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawaii: 1894-95*, 451 (1895) (hereafter “Executive Documents”).

⁹ *Id.*, 586.

¹⁰ *Id.*, 568.

[...]

The Government of Hawaii surrendered its authority under a threat of war, until such time only as the Government of the United States, upon the facts being presented to it, should reinstate the constitutional sovereign [...].

Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice.¹¹

On 18 December 1893, President Cleveland delivered a manifesto¹² to the Congress on his investigation into the overthrow of the Hawaiian Kingdom Government. The President concluded that the “military occupation of Honolulu by the United States...was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property.”¹³ He also determined “that the provisional government owes its existence to an armed invasion by the United States.”¹⁴ Finally, the President admitted that by “an act of war [...] the Government of a feeble but friendly and confiding people has been overthrown.”¹⁵

Through executive mediation between the Queen and the new U.S. Minister to the Hawaiian Islands, Albert Willis, that lasted from 13 November through 18 December, an agreement of peace was reached. According to the executive agreement, by exchange of notes, the President committed to restoring the Queen as the constitutional sovereign, and the Queen agreed, after being restored, to grant a full pardon to the insurgents. Political wrangling in the Congress, however, blocked President Cleveland from carrying out his obligation of restoration of the Queen.

Five years later, at the height of the Spanish-American War, President Cleveland’s successor, William McKinley, signed a congressional joint resolution of annexation on 7 July 1898, unilaterally seizing the Hawaiian Islands. The legislation of every State, including the United States of America and its Congress, are not sources of international law. In *The Lotus* case, the Permanent Court of International Justice stated that “the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State.”¹⁶ According to Judge Crawford, derogation of this principle will not be presumed.¹⁷ Since 1898, the United States has unlawfully

¹¹ *Id.*, 462-463.

¹² *Manifesto* is defined as a “formal written declaration, promulgated by...the executive authority of a state or nation, proclaiming its reasons and motives for...important international action.” Black’s Law Dictionary 963 (6th ed., 1990).

¹³ Executive Documents, 452.

¹⁴ *Id.*, 454.

¹⁵ *Id.*

¹⁶ *Lotus*, PCIJ Series A, No. 10, 18 (1927).

¹⁷ James Crawford, *The Creation of States in International Law* 41 (2nd ed. 2006).

imposed its municipal laws and administrative measures throughout the territory of the Hawaiian Kingdom, which is the war crime of *usurpation of sovereignty during military occupation* under particular customary international law.

Stark parallels can be drawn between what the United States did to the Hawaiian Kingdom and what Iraq did to Kuwait in 1990, commonly referred to as the First Gulf War. Just as Iraq, without justification, invaded Kuwait and overthrew the Kuwaiti government on 2 August 1990, and then unilaterally announced it annexed Kuwaiti territory on 8 August 1990, the United States did the same to the Hawaiian Kingdom and its territory. Where Kuwait was under a belligerent occupation by Iraq for 7.5 months, the Hawaiian Kingdom has been under a belligerent occupation by the United States for 130 years. Unlike Kuwait, the Hawaiian Kingdom did not have the United Nations Security Council to draw attention to the illegality of Iraq's invasion and annexation of Kuwaiti territory.¹⁸

Presumption of Continuity of the Hawaiian State under International Law

Because international law provides for the presumption of the continuity of the State despite the overthrow of its government by another State, it shifts the burden of proof and what is to be proven. According to Judge Crawford, there “is a presumption that the State continues to exist, with its rights and obligations [...] despite a period in which there is no, or no effective, government,”¹⁹ and belligerent occupation “does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”²⁰ Addressing the presumption of the German State's continued existence despite the military overthrow of the Nazi government during the Second World War, Professor Brownlie explains:

Thus, after the defeat of Nazi Germany in the Second World War the four major Allied powers assumed supreme power in Germany. The legal competence of the German state did not, however, disappear. What occurred is akin to legal representation or agency of necessity. The German state continued to exist, and, indeed, the legal basis of the occupation depended on its continued existence.²¹

¹⁸ United Nations Security Council Resolution 662 (9 August 1990). In its resolution, the Security Council stated: “Gravely alarmed by the declaration by Iraq of a ‘comprehensive and eternal merger’ with Kuwait, Demanding once again that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990, Determined to bring the occupation of Kuwait by Iraq to an end and to restore the sovereignty, independent and territorial integrity of Kuwait, Determined also to restore the authority of the legitimate Government of Kuwait, 1. Decides that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void; 2. Calls upon all States, international organizations and specialized agencies not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation; 3. Demands that Iraq rescind its actions purporting to annex Kuwait; 4. Decides to keep this item on its agenda and to continue its efforts to put an early end to the occupation.”

¹⁹ Crawford, 34.

²⁰ *Id.*

²¹ Ian Brownlie, *Principles of Public International Law* 109 (4th ed. 1990).

“If one were to speak about a presumption of continuity,” explains Professor Craven, “one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains.”²² Evidence of “a valid demonstration of legal title, or sovereignty, on the part of the United States” would be an international treaty, particularly a peace treaty, whereby the Hawaiian Kingdom would have ceded its territory and sovereignty to the United States. Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*²³ and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.²⁴

In layman terms, you start off with the presumption of the existence of the Hawaiian State until there is rebuttable evidence that the Hawaiian State had been extinguished under international law by its consent, *i.e.*, treaty. One does not start off with proving the Hawaiian Kingdom exists today. The presumption is that since “in the nineteenth century the Hawaiian Kingdom existed as an independent State,” it continues to exist today. Until there is rebuttable evidence that the Hawaiian State had been extinguished by the United States, the Hawaiian State continues to exist. Like the presumption of innocence, the accused does not start off with proving his/her innocence because the innocence is presumed. Rather, the burden of proof is on the opposing side to prove with rebuttable evidence that the person is not innocent. Until there is rebuttable evidence, the person remains innocent.

Rebuttable evidence that the Hawaiian Kingdom no longer exists as a State is a treaty between the Hawaiian Kingdom and the United States whereby the former ceded its sovereignty and territory to the latter. There is no treaty, and, therefore, the Hawaiian Kingdom continues to exist with all its rights and obligations under international law. Conversely, the United States, as the occupant, has certain duties and obligations to comply with international humanitarian law and the law of occupation considering the continued existence of the Hawaiian Kingdom as a subject of international law. Without rebuttable evidence, there is no dispute as to the Hawaiian Kingdom’s continued existence since the nineteenth century.

²² Matthew Craven, “Continuity of the Hawaiian Kingdom as a State under International Law,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 128 (2020).

²³ 9 Stat. 922 (1848).

²⁴ 30 Stat. 1754 (1898).

International Humanitarian Law Prohibits Annexation of the Occupied State

The United States purportedly annexed the Hawaiian Islands in 1898 by a municipal law called the *joint resolution to provide for annexing the Hawaiian Islands to the United States*.²⁵ As a municipal law of the United States, it is without extraterritorial effect. It is not an international treaty. Annex “is to tie or bind[,] [t]o attach.”²⁶ Under international law, to annex territory of another State is a unilateral act, as opposed to cession, which is a bilateral act between States. Under international law, annexation of an occupied State is unlawful. Because the Hawaiian Kingdom retained the sovereignty of the State despite being occupied, only the Hawaiian Kingdom could cede its sovereignty and territory to the United States by way of a treaty of peace. According to *The Handbook of Humanitarian Law in Armed Conflicts*:

The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control over foreign territory. The legal situation of the territory can be altered only through a peace treaty or *debellatio*.²⁷ International law does not permit annexation of territory of another state.²⁸

Furthermore, in 1988, the U.S. Department of Justice’s Office of Legal Counsel (“OLC”) published a legal opinion that addressed, *inter alia*, the annexation of Hawai‘i. The OLC’s memorandum opinion was written for the Legal Advisor for the Department of State regarding legal issues raised by the proposed Presidential proclamation to extend the territorial sea from a three-mile limit to twelve.²⁹ The OLC concluded that only the President and not the Congress possesses “the constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States.”³⁰ As Justice Marshall stated, the “President is the sole organ of the nation in its external relations, and its sole representative with foreign nations,”³¹ and not the Congress.

The OLC further opined, “we doubt that Congress has constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States.”³² Therefore, the OLC concluded it is “unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that

²⁵ 30 Stat. 750 (1898).

²⁶ Black’s Law, 88.

²⁷ There was no extinction of the Hawaiian State by *debellatio* because the Permanent Court of Arbitration acknowledged the continued existence of the Hawaiian Kingdom as a State in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01.

²⁸ Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Section 525, 242 (1995).

²⁹ Douglas Kmiec, “Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea,” 12 *Opinions of the Office of Legal Counsel* 238 (1988).

³⁰ *Id.*, 242.

³¹ *Id.*, 242.

³² *Id.*

the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.”³³ That territorial sea was to be extended from three to twelve miles under the United Nations Law of the Sea Convention and since the United States is not a Contracting State, the OLC investigated whether it could be accomplished by the President’s proclamation. In other words, the Congress could not extend the territorial sea an additional 9 miles by statute because its authority was limited up to the 3 mile limit. This is not rebuttable evidence as to the presumption of the continuity of the Hawaiian State. Furthermore, the United States Supreme Court, in *The Apollon*, concluded that the “laws of no nation can justly extend beyond its own territories.”³⁴

Arriving at this conclusion, the OLC cited constitutional scholar Professor Willoughby who stated the “constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. ...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature enacted it.”³⁵ Professor Willoughby also stated that the “incorporation of one sovereign State, such as was Hawaii prior to annexation, in the territory of another, is [...] essentially a matter falling within the domain of international relations, and, therefore, beyond the reach of legislative acts.”³⁶

Hawaiian Citizenry under Military Occupation

On 21 January 1868, Ferdinand Hutchison, Hawaiian Minister of the Interior, stated the criteria for Hawaiian nationality. He announced that “[i]n the judgment of His Majesty’s Government, no one acquires citizenship in this Kingdom unless he is born here, or born abroad of Hawaiian parents, (either native or naturalized) during their temporary absence from the kingdom, or unless having been the subject of another power, he becomes a subject of this kingdom by taking the oath of allegiance.” According to §429, Hawaiian Civil Code, the Minister of the Interior:

shall have the power in person upon the application of any alien foreigner who shall have resided within the Kingdom for five years or more next preceding such application, stating his intention to become a permanent resident of the Kingdom, to administer the oath of allegiance to such foreigner, if satisfied that it will be for the good of the Kingdom, and that such foreigner owns without encumbrance taxable real estate within the Kingdom, and is not of immoral character, nor a refugee from justice of some other country, nor a deserting sailor, marine, soldier or officer.

³³ *Id.*, 262.

³⁴ *The Apollon*, 22 U.S. 362, 370 (1824).

³⁵ Kmiec, 252.

³⁶ Westel Woodbury Willoughby, *The Constitutional Law of the United States*, vol. 1, 345 (1910).

Once a State is occupied, 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 von Glahn, “children born in territory under enemy occupation possess the nationality of their parents.”³⁷

According to the 1890 government census, Hawaiian subjects numbered 48,107, with the aboriginal Hawaiian, both pure and part, numbering 40,622, being 84% of the national population, and the non-aboriginal Hawaiians numbering 7,485, being 16%. Despite the massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, the population of which, according to the State of Hawai‘i, numbered 1,302,939 in 2009,³⁸ the *status quo ante* of the national population of the Hawaiian Kingdom is maintained. Therefore, under the international laws of occupation, the aboriginal Hawaiian population of 322,812 in 2009 would continue to be 84% of the Hawaiian national population, and the non-aboriginal Hawaiian population of 61,488 would continue to be 16%. The balance of the population in 2009, being 918,639, are aliens who were illegally transferred, either directly or indirectly, by the United States as the occupying Power, and therefore their presence constitutes war crimes.

According to United Nations Special Rapporteur Awn Shawkat Al-Khasawneh of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, population “transfers engage both state responsibility and the criminal liability of individuals.”³⁹ “The remedy, in case of breach of the prohibition,” states Professor Ronen, “is reversion to the status quo ante, *i.e.* the occupying power should remove its nationals from the occupied territory and repatriate them. [...] At any rate, since the occupying power cannot grant what it does not have, the settler population could not acquire status in the territory during the period of occupation.”⁴⁰

³⁷ 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).

³⁸ State of Hawai‘i. Department of Health, Hawai‘i Health Survey (2009) (online at <http://www.ohadatabook.com/F01-05-11u.pdf>); see also David Keanu Sai, *American Occupation of the Hawaiian State: A Century Gone Unchecked*, 1 *Haw. J.L. & Pol.* 46, 63-65 (Summer 2004).

³⁹ Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Human Rights and Population Transfer: Final Report of the Special Rapporteur*, Mr. Al-Khasawneh E/CN.4/Sub.2/1997/23, para. 60.

⁴⁰ Yael Ronen, “Status of Settlers Implanted by Illegal Regimes under International Law,” *International Law Forum of the Hebrew University of Jerusalem Law Faculty* (Dr. Tomer Broude, ed.) 38 (3 Oct. 2008).

*Restoration of the Hawaiian Government and the Acknowledgment of the Hawaiian State
by the Permanent Court of Arbitration*

According to Professor Rim, the State continues “to exist even in the factual absence of government so long as the people entitled to reconstruct the government remain.”⁴¹ In 1997, the Hawaiian government was restored *in situ* by a Council of Regency under Hawaiian constitutional law and the doctrine of necessity in similar fashion to governments established in exile during the Second World War.⁴² By virtue of this process the Hawaiian government is comprised of officers *de facto*. According to U.S. constitutional scholar Thomas Cooley:

A provisional government is supposed to be a government *de facto* for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity.⁴³

Under Hawaiian law, the Council of Regency serves in the absence of the Executive Monarch. While the last Executive Monarch was Queen Lili‘uokalani who died on 11 November 1917, the office of the Monarch remained under Hawaiian constitutional law. The policy of the Hawaiian government is threefold: first, exposure of the prolonged occupation; second, ensure that the United States complies with international humanitarian law; and third, prepare for an effective transition to a *de jure* government when the occupation ends.

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 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 1844,⁴⁴ 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-

⁴¹ Yejoon Rim, “State Continuity in the Absence of Government: The Underlying Rationale in International Law,” 20(20) *European Journal of International Law* 1, 4 (2021).

⁴² David Keanu Sai, “The Royal Commission of Inquiry,” in David Keanu Sai’s (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 18-23 (2020); see also Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Hawaiian Journal of Law and Politics* 317-333 (2021).

⁴³ Thomas M. Cooley, “Grave Obstacles to Hawaiian Annexation,” *The Forum*, 389, 390 (1893).

⁴⁴ U.S. Secretary of State Calhoun to Hawaiian Commissioners (6 July 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).

legal changes in government” of an existing State.⁴⁵ 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.”⁴⁶

On 8 November 1999, arbitral proceedings were instituted at the Permanent Court of Arbitration (“PCA”) in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, where Larsen, a Hawaiian subject, claimed that the government of the Hawaiian Kingdom, by its Council of Regency, should be liable for allowing the unlawful imposition of American laws that denied him a fair trial and led to his incarceration.⁴⁷ Prior to the establishment of an *ad hoc* tribunal, the PCA acknowledged the Hawaiian Kingdom as a non-Contracting State under Article 47 of the 1907 Hague Convention on the Pacific Settlement of International Disputes. This brought the dispute under the auspices of the PCA.

In determining the continued existence of the Hawaiian Kingdom as a non-Contracting State, the relevant rules of international law that apply to established States must be considered, and not those rules of international law that would apply to new States such as the case with Palestine. Professor Lenzerini concluded that “according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of international law. In fact, in the event of illegal annexation, ‘the legal existence of [...] States [is] preserved from extinction,’ since ‘illegal occupation cannot of itself terminate statehood.’”⁴⁸

Because the State is a juristic person, it requires a government to speak on its behalf, without which the State is silent, and, therefore, there could be no arbitral tribunal to be established by the PCA. On the contrary, the PCA did form a tribunal on 9 June 2000 after confirming the existence of the Hawaiian State and its government, the Council of Regency, pursuant to Article 47. In international intercourse, which includes arbitration at the PCA, the Permanent Court of International Justice, in *German Settlers in Poland*, explained that “States can act only by and through their agents and representatives.”⁴⁹ As Professor Talmon states, the “government, consequently, possesses the *jus repraesentationis omnimodae*, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. [Professor Talmon submits] that this is the case irrespective of whether the government is *in situ* or in exile.”⁵⁰

⁴⁵ M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice*, 1815-1995 26 (1997).

⁴⁶ *Restatement (Third)*, §203, comment c.

⁴⁷ *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

⁴⁸ Lenzerini, 322.

⁴⁹ *German Settlers in Poland*, 1923, PCIJ, Series B, No. 6, 22.

⁵⁰ Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* 115 (1998).

After the PCA verified the continued existence of the Hawaiian State, as a juristic person, it also simultaneously ascertained that the Hawaiian State was represented by its government—the Council of Regency. The PCA identified the international dispute in *Larsen* as between a “State” and a “Private entity” in its case repository.⁵¹ Furthermore, the PCA described the dispute between the Council of Regency and Larsen as between a government and a resident of Hawai‘i.

Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency (“Hawaiian Kingdom”) on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant’s person within the territorial jurisdiction of the Hawaiian Kingdom (emphasis added).⁵²

It should also be noted that the United States, by its embassy in The Hague, entered into an agreement with the Council of Regency to have access to the pleadings of the arbitration. This agreement was brokered by Deputy Secretary General Phyllis Hamilton of the Permanent Court of Arbitration prior to the formation of the arbitral tribunal.⁵³

War Crime of Usurpation of Sovereignty during Military Occupation

Usurpation of sovereignty during military occupation was listed as a war crime in 1919 by the Commission on Responsibilities of the Paris Peace Conference that was established by the Allied and Associated Powers at war with Germany and its allies. The Commission was especially concerned with acts perpetrated in occupied territories against non-combatants and civilians. *Usurpation of sovereignty during military occupation* is the imposition of the laws and administrative measures of the Occupying State over the territory of the Occupied State. Usurpation is the “unlawful encroachment or assumption of the use of property, power or authority which belongs to another.”⁵⁴

While the Commission did not provide the source of this crime in treaty law, it appears to be Article 43 of the 1907 Hague Regulations, which states, “[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.” Article 43 is the codification of customary

⁵¹ Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

⁵² *Id.*

⁵³ Sai, *The Royal Commission of Inquiry*, 25-26.

⁵⁴ Black’s Law, 1545.

international law that existed on 17 January 1893, when the United States unlawfully overthrew the government of the Hawaiian Kingdom.

The Commission charged that in Poland the German and Austrian forces had “prevented the populations from organising themselves to maintain order and public security” and that they had “[a]ided the Bolshevik hordes that invaded the territories.” It said that in Romania the German authorities had instituted German civil courts to try disputes between subjects of the Central Powers or between a subject of these powers and a Romanian, a neutral, or subjects of Germany’s enemies. In Serbia, the Bulgarian authorities had “[p]roclaimed that the Serbian State no longer existed, and that Serbian territory had become Bulgarian.” It listed several other war crimes committed by Bulgaria in occupied Serbia: “Serbian law, courts and administration ousted;” “Taxes collected under Bulgarian fiscal regime;” “Serbian currency suppressed;” “Public property removed or destroyed, including books, archives and MSS (e.g., from the National Library, the University Library, Serbian Legation at Sofia, French Consulate at Uskub);” “Prohibited sending Serbian Red Cross to occupied Serbia.” It also charged that in Serbia the German and Austrian authorities had committed several war crimes: “The Austrians suspended many Serbian laws and substituted their own, especially in penal matters, in procedure, judicial organisation, etc.,” “Museums belonging to the State (e.g., Belgrade, Detchani) were emptied and the contents taken to Vienna.”⁵⁵

The crime of *usurpation of sovereignty during military occupation* was referred to by Judge Blair of the American Military Commission in a separate opinion in the *Justice Case*, holding that this “rule is incident to military occupation and was clearly intended to protect the inhabitants of any occupied territory against the unnecessary exercise of sovereignty by a military occupant.”⁵⁶ The war crime of *usurpation of sovereignty during military occupation*, however, has not been included in more recent codifications of war crimes, casting some doubt on its status as a crime under customary international law. According to Professor Schabas, “there do not appear to have been any prosecutions for that crime by international criminal tribunals.”⁵⁷ While this war crime is questionable under customary international law, it is a war crime under “particular” customary international law. According to the International Law Commission, “A rule of particular customary international law, whether regional, local or other, is a rule of customary international law that applies only among a limited number of States.”⁵⁸

⁵⁵ Violation of the Laws and Customs of War, Reports of Majority and Dissenting Reports, Annex, TNA FO 608/245/4 (1919).

⁵⁶ *United States v. Alstötter et al.*, Opinion of Mallory B. Blair, Judge of Military Tribunal III, III TWC 1178, 1181 (1951).

⁵⁷ William Schabas, “War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom,” in David Keanu Sai’s (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 156 (2020).

⁵⁸ Conclusion 16—Particular customary international law, International Law Commission’s Draft conclusions on identification of customary international law, with commentaries (2018) (A/73/10).

In the 1919 report of the Commission, the United States, as a member of the commission, did not contest the listing of the war crime of *usurpation of sovereignty during military occupation*, but rather only disagreed, *inter alia*, with the Commission's position on the means of prosecuting Heads of State for the listed war crimes by conduct or omission. As a war crime under particular customary international law it is binding on the Allied and Associated Powers of the First World War—United States of America, Great Britain, France, Italy and Japan, principal Allied Powers and Associated Powers that include Australia, Belgium, Bolivia, Brazil, Canada, China, Cuba, Czech Republic, formerly known as Czechoslovakia, Ecuador, Greece, Guatemala, Haiti, Honduras, Liberia, New Zealand, Nicaragua, Panama, Peru, Poland, Portugal, Romania, South Africa, Thailand, and Uruguay.

In the Hawaiian situation, *usurpation of sovereignty during military occupation* serves as a source for the commission of secondary war crimes within the territory of an occupied State, *i.e. compulsory enlistment, denationalization, pillage, destruction of property, deprivation of fair and regular trial, deporting civilians of the occupied territory, and transferring populations into an occupied territory*. The reasoning for the prohibition of imposing extraterritorial prescriptions or measures of the occupying State is addressed by Professor Benvenisti:

The occupant may not surpass its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts. The reason for this rule is, of course, the functional symmetry, with respect to the occupied territory, among the various lawmaking authorities of the occupying state. Without this symmetry, Article 43 could become meaningless as a constraint upon the occupant, since the occupation administration would then choose to operate through extraterritorial prescription of its national institutions.⁵⁹

In the situation of Hawai'i, the *usurpation of sovereignty during military occupation* would appear to have been total since the beginning of the twentieth century. This is an ongoing crime where the criminal act would consist of the imposition of legislation or administrative measures by the occupying power that goes beyond what is required necessary for military purposes of the occupation. Since 1898, when the United States Congress enacted an American municipal law purporting to have annexed the Hawaiian Islands, the United State has imposed its legislation and administrative measures to the present in violation of the laws of occupation.

Given these impositions are criminal violations of the law of occupation involving government action or policy or the action or policies of an occupying State's proxies such as the State of Hawai'i and its Counties, a perpetrator who participated in the act would be required to do so intentionally and with knowledge that the act went beyond what was required for military purposes or the protection of fundamental human rights. *Usurpation of sovereignty during military*

⁵⁹ Eyal Benvenisti, *The International Law of Occupation* 19 (1993).

occupation has not only victimized the civilian population in the Hawaiian Islands for over a century, but it has also victimized the civilians of other countries that have visited the islands since 1898 who were unlawfully subjected to American municipal laws and administrative measures.

The State of Hawai‘i is the Civilian Government of the Hawaiian Kingdom

There is a common misunderstanding that the State of Hawai‘i is an American civilian government established by the U.S. Congress. It is not. Its governmental infrastructure was established by the Hawaiian Kingdom to govern Hawaiian territory. Unlike the United States, which is a federated government, the Hawaiian Kingdom is a unitary government, which “is the efficient organization of power” by a central government.⁶⁰ Its civilian governmental infrastructure was founded upon a constitutional monarchy.

On 17 January 1893, the Hawaiian Kingdom civilian government was seized by insurgents under the protection of U.S. troops that invaded Honolulu the day before. All governmental officials remained in place except for the Queen, her Cabinet, and the Marshal of the police force. The civilian government was renamed the so-called provisional government. On 4 July 1894, the name was changed to the so-called Republic of Hawai‘i. After the United States illegally annexed the Hawaiian Islands in 1898, the Congress changed the name of the Republic of Hawai‘i to the Territory of Hawai‘i on 30 April 1900,⁶¹ and on 18 March 1959, the Congress renamed the Territory of Hawai‘i to the State of Hawai‘i.⁶²

After investigating the overthrow of the Hawaiian Kingdom government, President Cleveland concluded that the provisional government “was neither a government *de facto* nor *de jure*,”⁶³ and that the government of the Hawaiian Kingdom “was undisputed and was both the *de facto* and the *de jure* government.”⁶⁴ The State of Hawai‘i is the direct successor to the provisional government, and, therefore, is “neither a government *de facto* nor *de jure*.”

Prolonged Occupation

International humanitarian law is silent on a prolonged occupation because the authors of 1907 Hague Regulations viewed occupations to be provisional and not long term. According to Professor Scobbie, “[t]he fundamental postulate of the regime of belligerent occupation is that it is a temporary state of affairs during which the occupant is prohibited from annexing the occupied territory. The occupant is vested only with temporary powers of administration and does not

⁶⁰ Daniel J. Elazar, “Contrasting Unitary and Federal Systems,” 18(3) *International Political Science Review* 237-251, 243 (1997).

⁶¹ An Act To provide a government for the Territory of Hawaii, 31 Stat. 141 (1900).

⁶² An Act To provide for the admission of the State of Hawaii into the Union, 73 Stat. 4 (1959).

⁶³ Executive Documents, 453.

⁶⁴ *Id.*, 451.

possess sovereignty over the territory.”⁶⁵ The effective military control of occupied territory “can never bring about by itself a valid transfer of sovereignty. Because occupation does not transfer sovereignty over the territory to the occupying power, international law must regulate the inter-relationships between the occupying force, the ousted government, and the local inhabitants for the duration of the occupation.”⁶⁶

Despite the prolonged nature of the American occupation, the law of occupation continues to apply because sovereignty was never ceded or transferred to the United States by the Hawaiian Kingdom. At a meeting of experts on the law of occupation that was convened by the International Committee of the Red Cross, the experts “pointed out that the norms of occupation law, in particular Article 43 of the Hague Regulations and Article 64 of the Fourth Geneva Convention, had originally been designed to regulate short-term occupations. However, the [experts] agreed that [international humanitarian law] did not set any limits to the time span of an occupation. It was therefore recognized that nothing under [international humanitarian law] would prevent occupying powers from embarking on a long-term occupation and that occupation law would continue to provide the legal framework applicable in such circumstances.”⁶⁷ They also concluded that since a prolonged occupation “could lead to transformations and changes in the occupied territory that would normally not be necessary during short-term occupation,” they “emphasized the need to interpret occupation law flexibly when an occupation persisted.”⁶⁸ The prolonged occupation of the Hawaiian Kingdom is, in fact, that case, where drastic unlawful “transformations and changes in the occupied territory” occurred.

Strategic Plan of the Council of Regency

The Council of Regency’s strategic plan entails three phases. Phase I—verification of the Hawaiian Kingdom as an independent State and a subject of international law. Phase II—exposure of Hawaiian Statehood within the framework of international law and the laws of occupation as it affects the realm of politics and economics at both the international and domestic levels.⁶⁹ Phase III—restoration of the Hawaiian Kingdom as an independent State and a subject of international law. Phase III is when the American occupation comes to an end. After the PCA verified the continued existence of Hawaiian Statehood prior to forming the arbitral tribunal in *Larsen v. Hawaiian Kingdom*,⁷⁰ phase II was initiated, which would contribute to ascertaining the *mens rea*

⁶⁵ Iain Scobbie, “International Law and the prolonged occupation of Palestine,” *United Nations Roundtable on Legal Aspects of the Question of Palestine, The Hague*, 1 (20-22 May 2015).

⁶⁶ Eyal Benvenisti, *The International Law of Occupation* 6 (2nd ed., 2012).

⁶⁷ Report by Tristan Ferraro, legal advisor for the International Committee of the Red Cross, *Expert Meeting: Occupation and other forms of Administration of Foreign Territory* 72 (2012).

⁶⁸ *Id.*

⁶⁹ Strategic Plan of the Council of Regency (online at https://hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf).

⁷⁰ David Keanu Sai, “Backstory—Larsen v. Hawaiian Kingdom at the Permanent Court of Arbitration (1999-2001,” 4 *Haw. J.L. Pol.* 133-161 (2022).

and satisfying the element of awareness of factual circumstances that established the existence of the military occupation.

Implementation of phase II was initiated at the University of Hawai‘i at Mānoa when the Chairman of the Council of Regency, David Keanu Sai, entered the political science graduate program, where he received a master’s degree specializing in international relations and public law in 2004 and a Ph.D. degree in 2008 on the subject of the continuity of Hawaiian Statehood while under an American prolonged belligerent occupation since 1893. This prompted other master’s theses, doctoral dissertations, peer review articles and publications on the subject of the American occupation to be published. The exposure through academic research also motivated historian Tom Coffman to change the title of his 1998 book from *Nation Within: The Story of America’s Annexation of the Nation of Hawai‘i*,⁷¹ to *Nation Within—The History of the American Occupation of Hawai‘i*.⁷² Coffman explained the change in his note on the second edition:

I am compelled to add that the continued relevance of this book reflects a far-reaching political, moral and intellectual failure of the United States to recognize and deal with the takeover of Hawai‘i. In the book’s subtitle, the word Annexation has been replaced by the word Occupation, referring to America’s occupation of Hawai‘i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word occupation.

In making this change, I have embraced the logical conclusion of my research into the events of 1893 to 1898 in Honolulu and Washington, D.C. I am prompted to take this step by a growing body of historical work by a new generation of Native Hawaiian scholars. Dr. Keanu Sai writes, “The challenge for ... the fields of political science, history, and law is to distinguish between the rule of law and the politics of power.” In the history of the Hawai‘i, the might of the United States does not make it right.⁷³

As a result of the exposure, United Nations Independent Expert, Dr. Alfred deZayas sent a communication from Geneva to State of Hawai‘i Judges Gary W.B. Chang, Jeannette H. Castagnetti, and members of the judiciary dated 25 February 2018.⁷⁴ Dr. deZayas stated:

I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a

⁷¹ Tom Coffman, *Nation Within: The Story of America’s Annexation of the Nation of Hawai‘i* (1998).

⁷² Tom Coffman, *Nation Within: The History of the American Occupation of Hawai‘i* (2nd ed. 2009). Duke University Press published the second edition in 2016.

⁷³ *Id.*, xvi.

⁷⁴ Letter of Dr. Alfred deZayas to Judge Gary W.B. Chang, Judge Jeannette H. Castagnetti, and Members of the Judiciary of the State of Hawai‘i (25 February 2018) (online at https://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf).

fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).

The exposure also prompted the U.S. National Lawyers Guild (“NLG”) to adopt a resolution in 2019 calling upon the United States of America to begin to comply immediately with international humanitarian law in its long and illegal occupation of the Hawaiian Islands.⁷⁵ Among its positions statement, the “NLG supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”⁷⁶

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

As an organization committed to the mission that human rights and the rights of ecosystems are more sacred than property interests, the NLG is deeply concerned that international humanitarian law continues to be flagrantly violated with apparent impunity by the State of Hawai‘i and its County governments. This has led to the commission of war crimes and human rights violations of a colossal scale throughout the Hawaiian Islands. International criminal law recognizes that the civilian inhabitants of the Hawaiian Islands are “protected persons” who are afforded protection under international humanitarian law and their rights are vested in international treaties. There are no statutes of limitation for war crimes, as you must be aware.

We urge you, Governor Ige, to proclaim the transformation of the State of Hawai‘i and its Counties into an occupying government pursuant to the Council of Regency’s proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom. This would include carrying into effect the Council of Regency’s proclamation of October 10, 2014 that bring the laws of the Hawaiian Kingdom in the nineteenth century up to date. We further urge you and other officials of the State of Hawai‘i and its Counties to familiarize yourselves with the contents of the recent eBook published by the RCI and its reports that comprehensively explains the current situation of the Hawaiian Islands and the impact that international humanitarian law and human rights law have on the State of Hawai‘i and its inhabitants.

⁷⁵ *Resolution of the National Lawyers Guild Against the Illegal Occupation of the Hawaiian Islands* (2019) (online at <https://www.nlg.org/wp-content/uploads/2019/08/Hawaiian-Subcommittee-Resolution-Final.pdf>).

⁷⁶ National Lawyers Guild, *NLG Calls Upon US to Immediately Comply with International Humanitarian Law in its Illegal Occupation of the Hawaiian Islands* (13 January 2020) (online at <https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/>).

On 7 February 2021, the International Association of Democratic Lawyers (“IADL”), a non-governmental organization (NGO) of human rights lawyers that has special consultative status with the United Nations Economic and Social Council (“ECOSOC”) and accredited to participate in the Human Rights Council’s sessions as Observers, passed a resolution calling upon the United States to immediately comply with international humanitarian law in its prolonged occupation of the Hawaiian Islands—the Hawaiian Kingdom.⁷⁷ In its resolution, the IADL also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”

Together with the IADL, the American Association of Jurists—Asociación Americana de Juristas (“AAJ”), which is also an NGO with consultative status with the United Nations ECOSOC and accredited as an observer in the Human Rights Council’s sessions, sent a joint letter dated 3 March 2022 to member States of the United Nations on the status of the Hawaiian Kingdom and its prolonged occupation by the United States.⁷⁸ In its joint letter, the IADL and the AAJ also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”

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

The International Association of Democratic Lawyers and the American Association of Jurists call the attention of the Council to human rights violations in the Hawaiian Islands. My name is Dr. David Keanu Sai, and I am the Minister of Foreign Affairs *ad interim* for the Hawaiian Kingdom. I also served as lead agent for the Hawaiian Kingdom at the Permanent Court of Arbitration from 1999-2001 where the Court acknowledged the continued existence of my country as a sovereign and independent State.

The Hawaiian Kingdom was invaded by the United States on 16 January 1893, which began its century long occupation to serve its military interests. Currently, there are 118 military sites throughout the islands and the city of Honolulu serves as the headquarters for the Indo-Pacific Combatant Command.

⁷⁷ International Association of Democratic Lawyers, *IADL Resolution on the US Occupation of the Hawaiian Kingdom* (7 February 2021) (online at <https://iadllaw.org/2021/03/iadl-resolution-on-the-us-occupation-of-the-hawaiian-kingdom/>).

⁷⁸ International Association of Democratic Lawyers, *IADL and AAJ deliver joint letter on Hawaiian Kingdom to UN ambassadors* (3 March 2022) (online at <https://iadllaw.org/2022/03/iadl-and-aaj-deliver-joint-letter-on-hawaiian-kingdom-to-un-ambassadors/>).

For the past century, the United States has and continues to commit the war crime of usurpation of sovereignty, under customary international law, by imposing its municipal laws over Hawaiian territory, which has denied Hawaiian subjects their right of internal self-determination by prohibiting them to freely access their own laws and administrative policies, which has led to the violations of their human rights, starting with the right to health, education and to choose their political leadership.

None of the 47 member States of the HRC, which included the United States, protested, or objected to the oral statement of war crimes being committed in the Hawaiian Kingdom by the United States. Under international law, acquiescence “concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State would be called for.”⁷⁹ Silence conveys consent. Since they “did not do so [they] thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset.*”⁸⁰

The Royal Commission of Inquiry—Investigating War Crimes

Determined to hold to account individuals who have committed war crimes and human rights violations throughout the Hawaiian Islands, being the territory of the Hawaiian Kingdom, the Council of Regency, by proclamation on 17 April 2019,⁸¹ established a Royal Commission of Inquiry (“RCI”) in similar fashion to the United States proposal of establishing a Commission of Inquiry after the First World War “to consider generally the relative culpability of the authors of the war and also the question of their culpability as to the violations of the laws and customs of war committed during its course.” Dr. Sai serves as Head of the RCI and Professor Federico Lenzerini from the University of Siena, Italy, serves as its Deputy Head.

In mid-November of 2022, the RCI published thirteen war criminal reports finding that the senior leadership of the United States and the State of Hawai‘i, which includes President Joseph Biden Jr., Governor David Ige, Hawai‘i Mayor Mitchell Roth, Maui Mayor Michael Victorino and Kaua‘i Mayor Derek Kawakami, are guilty of the war crime of *usurpation of sovereignty during military occupation* and are subject to criminal prosecutions. All of the named perpetrators have met the requisite element of *mens rea*.⁸² In these reports, the RCI has concluded that these perpetrators have met the requisite elements of the war crime and are guilty *dolus directus* of the first degree. “It is generally assumed that an offender acts with *dolus directus* of the first degree if he desires to

⁷⁹ Nuno Sérgio Marques Antunes, “Acquiescence”, in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* para. 2 (2006).

⁸⁰ *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, International Court of Justice, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

⁸¹ Proclamation: Establishment of the Royal Commission of Inquiry (17 April 2019) (online at https://hawaiiankingdom.org/pdf/Proc_Royal_Commission_of_Inquiry.pdf).

⁸² Website of the Royal Commission of Inquiry at <https://hawaiiankingdom.org/royal-commission.shtml>.

bring about the result. In this type of intent, the actor's 'will' is directed finally towards the accomplishment of that result."⁸³

The evidence of the *actus reus* and *mens rea* or guilty mind were drawn from the perpetrators' own pleadings and the rulings by the court in a U.S. federal district court case in Honolulu, *Hawaiian Kingdom v. Biden et al.*⁸⁴ The perpetrators were being sued not in their individual or private capacities but rather in their official capacities as State actors because the war crime of *usurpation of sovereignty during military occupation* involves "State action or policy or the action or policies of an occupying State's proxies" and not the private actions of individuals. The perpetrators are subject to prosecution and there is no statute of limitation for war crimes.⁸⁵ The commission of the war crime of *usurpation of sovereignty during military occupation* can cease when the United States, through the State of Hawai'i, begins to comply with Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention to administer the laws of the Occupied State—the Hawaiian Kingdom as a military government.

⁸³ Mohamed Elewa Badar, *The Concept of Mens Rea in International Criminal Law: The Case for a Unified Approach* 535 (2013).

⁸⁴ *Hawaiian Kingdom v. Biden et al.*, civil no. 1:21:cv-00243-LEK-RT, United States District Court of the District of Hawai'i.

⁸⁵ United Nations General Assembly Res. 3 (I); United Nations General Assembly Res. 170 (II); United Nations General Assembly Res. 2583 (XXIV); United Nations General Assembly Res. 2712 (XXV); United Nations General Assembly Res. 2840 (XXVI); United Nations General Assembly Res. 3020 (XXVII); United Nations General Assembly Res. 3074 (XXVIII).

MILITARY FORCE OF THE HAWAIIAN KINGDOM

In 1845, the Hawaiian Kingdom organized its military under the command of the Governors of the several islands of Hawai‘i, Maui, O‘ahu and Kaua‘i but subordinate to the Monarch. According to the statute, “male subjects of His Majesty, between the ages of eighteen and forty years, shall be liable to do military duty in the respective islands where they have their most usual domicile, whenever so required by proclamation of the governor thereof.”⁸⁶ Those exempt from military duty included ministers of religion of every denomination, teachers, members of the Privy Council of State, executive department heads, members of the House of Nobles and Representatives when in session, judges, sheriffs, notaries public, registers of wills and conveyances, collectors of customs, poundmasters and constables.⁸⁷

In 1847, the *Polynesian* newspaper, a government newspaper, reported the standing army comprised of 682 of all ranks: the “corps which musters at the fort, including officers, 286; corps of King’s Guards, including officers, 363; stationed at the battery, on Punch Bowl Hill, 33.”⁸⁸ On 17 December 1852, King Kamehameha III, in Privy Council, established the First Hawaiian Cavalry, commanded by Captain Henry Sea.⁸⁹

In 1886, the Legislature enacted *An Act to Organize the Military Forces of the Kingdom*, “for the purpose of more complete military organization in any case requiring recourse to arms and to maintain and provide a sufficient force for the internal security and good order of the Kingdom, and being also in pursuance of Article 26th of the Constitution.”⁹⁰ The Act of 1886 established “a regular Military and Naval force, not to exceed two hundred and fifty men, rank and file,” and the “term of enlistment shall be for five years, which term may be extended from time to time by re-enlistment.”⁹¹ This military force was headed by a Lieutenant General as Commander-in-Chief and the supreme command under the Executive Monarch as Generalissimo.⁹² This military force was renamed the King’s Royal Guard in 1890,⁹³ and the Executive Monarch was thereafter called the “Commander-in-Chief of all the Military Forces”⁹⁴ and not Generalissimo. While the King’s Royal Guard was the only active military component of the kingdom,⁹⁵ there was a reserve force capable of being called to active duty. The statute provides that “[a]ll male subjects of His Majesty, between the ages of eighteen and forty years, shall be liable to do military duty in the respective

⁸⁶ “Statute Laws of His Majesty Kamehameha III,” *Hawaiian Kingdom*, Vol. I 69 (1846).

⁸⁷ *Id.*, 70.

⁸⁸ “Military,” *Polynesian* 138 (9 Jan. 1847).

⁸⁹ “First Hawaiian Cavalry,” *Polynesian* 130 (25 Dec. 1852).

⁹⁰ *An Act to Organize the Military Forces of the Kingdom*, Laws of His Majesty Kalakaua I 37 (1886).

⁹¹ *Id.*

⁹² *Id.*, 38.

⁹³ *An Act to Provide for a Military Force to be Designated as the “King’s Royal Guard,”* Laws of His Majesty Kalakaua I 107 (1890).

⁹⁴ *Id.*

⁹⁵ *Id.*, 108.

islands where they have their most usual domicil, whenever so required by proclamation from the governor thereof.”⁹⁶

Upon ascending to the Throne on 29 January 1891, Queen Lili‘uokalani, as the Executive Monarch, succeeded her predecessor King David Kalākaua as Commander-in-Chief of the Royal Guard. The command structure of the Royal Guard consisted of a Captain and two Lieutenants. These officers were authorized “to make, alter and revoke all regulations not repugnant to the provisions of [the Act of 1890], concerning enlistment, discipline, exercises, accoutrements, arms and clothing and to make such other rules and orders as may be necessary to carry into effect the provisions of [the Act of 1890], and to provide and prescribe penalties for any violations of such regulations not extending to deprivation of life or limb, or the infliction of corporeal punishment.”⁹⁷ All rules, regulations or orders required the approval of the Executive Monarch and was to be countersigned by the Minister of Foreign Affairs.⁹⁸

On 17 January 1893, a small group of insurgents, with the protection of United States troops, declared the establishment of a provisional government whereby all “officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named 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, [and] Arthur P. Peterson, Attorney General, who are hereby removed from office.”⁹⁹ The insurgency further stated that all “Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils.”¹⁰⁰ The insurgency unlawfully seized control of the Hawaiian Kingdom civilian government.

The military force of the provisional government was not an organized unit or militia but rather armed insurgents under the command of John Harris Soper. Soper attended a meeting of the leadership of the insurgents calling themselves the Committee of Safety in the evening of 16 January 1893, where he was asked to command the armed wing of the insurgency. Although Soper served as Marshal of the Hawaiian Kingdom under King Kalākaua, he admitted in an interview with Commissioner James Blount on 17 June 1893, who was investigating the overthrow of the Hawaiian Kingdom government by direction of U.S. President Grover Cleveland, that he “was not a trained military man, and was rather adverse to accepting the position [he] was not especially trained for, under the circumstances, and that [he] would give them an answer on the following day; that is, in the morning.”¹⁰¹ Soper told Special Commissioner Blount he accepted the offer

⁹⁶ Section 3, *Appendix to the Civil Code*, Compiled Laws 493 (1884).

⁹⁷ *Id.*, 107.

⁹⁸ *Id.*

⁹⁹ *Proclamation*, Laws of the Provisional Government of the Hawaiian Islands vii (1893).

¹⁰⁰ *Id.*, viii.

¹⁰¹ Executive Documents, 972.

after learning that “Judge Sanford Dole [agreed] to accept the position as the head of the [provisional] Government.”¹⁰² The insurgency renamed the Hawaiian Kingdom’s Royal Guard to the National Guard by *An Act to Authorize the Formation of a National Guard* on 27 January 1893.¹⁰³ Soper was thereafter commissioned as Colonel to command the National Guard and was called the Adjutant General.

On 17 January 1893, Queen Lili‘uokalani conditionally surrendered to the United States and not the insurgency, thereby transferring effective control of Hawaiian territory to the United States.¹⁰⁴ Under customary international law, a State’s effective control of another State’s territory by an act of war triggers the Occupying State’s military to establish a military government to provisionally administer the laws of the Occupied State. This rule was later codified under Articles 42 and 43 of the 1899 Hague Regulations, which was superseded by Articles 42 and 43 of the 1907 Hague Regulations. When Special Commissioner Blount ordered U.S. troops to return to the *U.S.S. Boston* on 1 April 1893,¹⁰⁵ effective control of Hawaiian territory was left with the insurgency calling itself the provisional government.

Special Commissioner Blount submitted his final report on 17 July 1893, to U.S. Secretary of State Walter Gresham.¹⁰⁶ Secretary of State Gresham submitted his report to President Cleveland on 18 October 1893,¹⁰⁷ and President Cleveland notified the Congress of his findings and conclusions on 18 December 1893.¹⁰⁸ In his message to the Congress, he stated:

When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister’s recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen’s troops were quartered), though the same had been demanded of the Queen’s officer’s in charge. Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her

¹⁰² *Id.*

¹⁰³ *An Act to Authorize the Formation of a National Guard*, Laws of the Provisional Government of the Hawaiian Islands 8 (1893).

¹⁰⁴ Executive Documents, 586.

¹⁰⁵ *Id.*, 597.

¹⁰⁶ *Id.*, 567.

¹⁰⁷ *Id.*, 459.

¹⁰⁸ *Id.*, 445.

side and at her disposal, while the Committee of Safety, by actual search, had discovered that there but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice. Accordingly, some hours after the recognition of the provisional government by the United States Minister, the palace, the barracks, and the police station, with all the military resources of the country, were delivered up by the Queen upon the representation made to her that her cause would thereafter be reviewed at Washington, and while protesting that she surrendered to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support the provisional government, and that she yielded her authority to prevent collision of armed forces and loss of life and only until such time as the United States, upon the facts being presented to it, should undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands.

This protest was delivered to the chief of the provisional government, who endorsed thereon his acknowledgment of its receipt. The terms of the protest were read without dissent by those assuming to constitute the provisional government, who were certainly charged with the knowledge that the Queen instead of finally abandoning her power had appealed to the justice of the United States for reinstatement in her authority; and yet the provisional government with this unanswered protest in its hand hastened to negotiate with the United States for the permanent banishment of the Queen from power and for sale of her kingdom.

Our country was in danger of occupying the position of having actually set up a temporary government on foreign soil for the purpose of acquiring through that agency territory which we had wrongfully put in its possession. The control of both sides of a bargain acquired in such a manner is called by a familiar and unpleasant name when found in private transactions. We are not without a precedent showing how scrupulously we avoided such accusation in former days. After the people of Texas had declared their independence of Mexico they resolved that on the acknowledgment of their independence by the United States they would seek admission into the Union. Several months after the battle of San Jacinto, by which Texan independence was practically assured and established, President Jackson declined to recognize it, alleging as one of his reasons that in the circumstances it became us "to beware of a too early movement, as it might subject us, however unjustly, to the imputation of seeking to establish the claim of our neighbors to a territory with a view to its subsequent acquisition by ourselves." This is in marked contrast with the hasty recognition of a government openly and concededly set up for the purpose of tendering to us territorial annexation.

I believe that a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States.¹⁰⁹

Under international law, the provisional government was an armed force of the United States in effective control of Hawaiian territory since 1 April 1893, after the departure of U.S. troops. As an armed proxy of the United States, they were obliged to provisionally administer the laws of the Hawaiian Kingdom until a peace treaty was negotiated and agreed upon between the United States and the Hawaiian Kingdom. As a matter of fact and law, it would have been Soper's duty to head the military government as its military governor after President Cleveland completed his investigation of the overthrow of the Hawaiian Kingdom government and notified the Congress on 18 December 1893. A Military Government was not established under international law but rather the insurgency maintained the facade that they were a *de jure* government.

The insurgency changed its name to the Republic of Hawai'i on 4 July 1894. Under *An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard* of 13 August 1895, the National Guard was reorganized and commanded by the Adjutant General that headed a regiment comprised of battalions with companies.¹¹⁰

Under *An Act To provide a government for the Territory of Hawaii* enacted by the U.S. Congress on 30 April 1900,¹¹¹ the Act of 1895 continued in force. Under section 6 of the Act of 1900, "the laws not inconsistent with the Constitution or laws of the United States or the provisions of this Act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States." Soper continued to command the National Guard as Adjutant General until 2 April 1907, when he retired. The Hawai'i National Guard continued in force under *An Act To provide for the admission of the State of Hawaii into the Union* enacted by the U.S. Congress on 18 March 1959.¹¹²

¹⁰⁹ *Id.*, 453.

¹¹⁰ An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard, Laws of the Republic of Hawaii 29 (1895).

¹¹¹ An Act To provide a government for the Territory of Hawaii, 31 Stat. 141 (1900).

¹¹² An Act To provide for the admission of the State of Hawaii into the Union, 73 Stat. 4 (1959).

MILITARY GOVERNMENT OF HAWAI‘I

There is a difference between military government and martial law. While both comprise military jurisdiction, the former is exercised over territory of a foreign State under military occupation, and the latter over loyal territory of the State enforcing it. Actions of a military government are governed by international humanitarian law while martial law is governed by the domestic laws of the State enforcing it. According to Birkhimer, “[f]rom a belligerent point of view, therefore, the theatre of military government is necessarily foreign territory. Moreover, military government may be exercised not only during the time that war is flagrant, but down to the period when it comports with the policy of the dominant power to establish civil jurisdiction.”¹¹³

The 1907 Hague Regulations assumed that after the occupant gains effective control it would establish its authority by establishing a system of direct administration. United States practice of a system of direct administration is for the Army to establish a military government to administer the laws of the occupied State pursuant to Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention. This is acknowledged by letter from U.S. President Roosevelt to Secretary of War Henry Stimson dated 10 November 1943, where President Roosevelt stated, “[a]lthough other agencies are preparing themselves for the work that must be done in connection with relief and rehabilitation of liberated areas, it is quite apparent that if prompt results are to be obtained the Army will have to assume initial burden.”¹¹⁴ Military governors that preside over a military government are general officers of the Army. In the current command structure of the State of Hawai‘i, that general officer is the Adjutant General.

Under Article 43, the authority to establish a military government is not with the Occupying State, but rather with the occupant that is physically on the ground. Professor Benvenisti explains, “[t]his is not a coincidence. The *travaux préparatoire* of the Brussels Declaration reveal that the initial proposition for Article 2 (upon which Hague 43 is partly based) referred to the ‘occupying State’ as the authority in power, but the delegates preferred to change the reference to ‘the occupant.’ This insistence on the distinct character of the occupation administration should also be kept in practice.”¹¹⁵ This authority is triggered by Article 42 that states, “[t]erritory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” Only an “occupant,” which is the “army,” and not the Occupying State, can establish a military government.

After the 1907 Hague Conference, the U.S. Army took steps to prepare for military occupations by publishing two field manuals—FM 27-10, *The Law of Land Warfare*,¹¹⁶ and FM 27-5, *Civil*

¹¹³ William E. Birkhimer, *Military Government and Martial Law* 21 (3rd ed., 1914).

¹¹⁴ Earl F. Ziemke, *The U.S. Army in the Occupation of Germany 1944-1946* 22 (1975).

¹¹⁵ Eyal Benvenisti, *The International Law of Occupation* 5 (2nd ed., 2012).

¹¹⁶ Department of the Army, Field Manual 27-10, *The Law of Land Warfare* (1956).

Affairs Military Government.¹¹⁷ Chapter 6 of FM 27-10 covers military occupation. Section 355 of FM 27-10 states, “[m]ilitary occupation is a question of fact. It presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded.” A military government is the civilian government of the Occupied State headed by a U.S. Army general officer called a Military Governor. The State of Hawai‘i governmental infrastructure is the civilian government of the Hawaiian Kingdom.

Article V of the State of Hawai‘i Constitution provides that the Governor is the Chief Executive of the State of Hawai‘i. He is also the Commander-in-Chief of the Army and Air National Guard and appoints the Adjutant General who “shall be the executive head of the department of defense and commanding general of the militia of the State.”¹¹⁸ Accordingly, the “adjutant general shall perform such duties as are prescribed by law and such other military duties consistent with the regulations and customs of the armed forces of the United States as required by the governor.”¹¹⁹ In other words, the Adjutant General operates under two regimes of law, that of the State of Hawai‘i and that of the United States Army.

The State of Hawai‘i Constitution is an American municipal law that was approved by the Territorial Legislature of Hawai‘i on 20 May 1949 under *An Act to provide for a constitutional convention, the adoption of a State constitution, and appropriating money therefor*. The Congress established the Territory of Hawai‘i under *An Act To provide a government for the Territory of Hawaii*, on 30 April 1900.¹²⁰ The constitution was adopted by a vote of American citizens in the election throughout the Hawaiian Islands held on 7 November 1950. The State of Hawai‘i Constitution came into effect by *An Act To provide for the admission of the State of Hawaii into the Union* passed by the Congress on 18 March 1959.¹²¹

In *United States v. Curtiss Wright Corp.*, the U.S. Supreme Court stated, “[n]either the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.”¹²² The Court also concluded that “[t]he laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction.”¹²³ Therefore, the State of Hawai‘i cannot claim to be a

¹¹⁷ Department of the Army, Field Manual 27-5, *Civil Affairs Military Government* (1947).

¹¹⁸ Hawai‘i Revised Statutes, §121-7.

¹¹⁹ *Id.*, §121-9.

¹²⁰ 31 Stat. 141 (1900).

¹²¹ 73 Stat. 4 (1959).

¹²² *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

¹²³ *The Apollon*, 22 U.S. 362, 370 (1824).

de jure government because its only claim to authority derives from congressional legislation that has no extraterritorial effect.

Article 43 of the 1907 Hague Regulations provides that “[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”¹²⁴ Article 64 of the 1949 Fourth Geneva Convention also states, “[t]he penal laws of the occupied territory shall remain in force.”¹²⁵ Under Article 43 sovereignty is not transferred to the occupying State.¹²⁶ Section 358, United States Army Field Manual 27-10, declares, “military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty.” The United States possesses no sovereignty over the Hawaiian Islands.

“The occupant,” according to Professor Sassòli, “may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation.” Professor Sassòli further explains that the “expression ‘laws in force in the country’ in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders.”¹²⁷

In *Hawaiian Kingdom v. Biden et al.*,¹²⁸ the State of Hawai‘i argued that the Hawaiian Kingdom’s “Amended Complaint challenges the legality of Hawaii’s admission to, and continued existence as a state of, the United States. As such, Plaintiff presents a nonjusticiable political question to this Court for determination.”¹²⁹ A political question is not an affirmative defense, but a jurisdictional argument where “there is [arguably] a textually demonstrable constitutional commitment of the issue to a coordinate political department.”¹³⁰ More importantly, it is a court precedence of American jurisprudence and like congressional legislation has no extra-territorial effect. For the

¹²⁴ 36 Stat. 2277, 2306 (1907).

¹²⁵ 6.3 U.S.T. 3516, 3558 (1955).

¹²⁶ See Eyal Benvenisti, *The International Law of Occupation* 8 (1993); Gerhard von Glahn, *The Occupation of Enemy of Territory—A Commentary on the Law and Practice of Belligerent Occupation* 95 (1957); Michael Bothe, “Occupation, Belligerent,” in Rudolf Bernhardt (dir.), *Encyclopedia of Public International Law*, vol. 3, 765 (1997).

¹²⁷ Marco Sassòli, “Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century,”

International Humanitarian Law Research Initiative 6 (2004) (online at <https://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf>).

¹²⁸ *Hawaiian Kingdom v. Biden et al.*, Amended Complaint for Declaratory and Injunctive Relief (11 August 2021) (online at [https://hawaiiankingdom.org/pdf/Amended_Complaint_and_Exhibits_1_&_2%20\(Filed_2021-08-11\).pdf](https://hawaiiankingdom.org/pdf/Amended_Complaint_and_Exhibits_1_&_2%20(Filed_2021-08-11).pdf)).

¹²⁹ *Hawaiian Kingdom v. Biden et al.*, State of Hawai‘i Memorandum in Support of Motion 8 (12 August 2022) (online at [https://hawaiiankingdom.org/pdf/\[ECF_241-11\]_Memo_in_Support_SOH%20Motion_\(Filed_2022-08-12\).pdf](https://hawaiiankingdom.org/pdf/[ECF_241-11]_Memo_in_Support_SOH%20Motion_(Filed_2022-08-12).pdf)).

¹³⁰ *Baker v. Carr*, 369 U.S. 186, 217 (1962).

State of Hawai‘i to have established an affirmative defense, it would have provided rebuttable that the Hawaiian Kingdom as a State was extinguished despite its government having been unlawfully overthrown by the United States on 17 January 1893, and not argue jurisdiction under the political question doctrine.

Moreover, in *Lin v. United States*, the United States District Court for the District of Columbia dismissed a case concerning Taiwan as a political question.¹³¹ The federal court in its order stated that it “must accept as true all factual allegations contained in the complaint when reviewing a motion to dismiss.” When this case went on appeal, the D.C. Appellate Court underlined the modern doctrine of the political question, “[w]e do not disagree with Appellants’ assertion that we could resolve this case through treaty analysis and statutory construction; we merely decline to do so as this case presents a political question which strips us of jurisdiction to undertake that otherwise familiar task.”¹³² In other words, for the defendants to argue that the *Hawaiian Kingdom v. Biden* case “presents a nonjusticiable political question” is to accept “as true all factual allegations contained in the complaint.”

Because the State of Hawai‘i Constitution and its Revised Statutes are situations of facts and not laws, they have no legal effect within Hawaiian territory. Furthermore, the State of Hawai‘i Constitution is precluded from being recognized as a provisional law of the Hawaiian Kingdom, pursuant to the 2014 Proclamation by the Council of Regency recognizing certain American municipal laws as the provisional laws of the Kingdom, because the 1864 Hawaiian Constitution, as amended, remains the organic law of the country and the State of Hawai‘i Constitution is republican in form.¹³³ As such, all officials that have taken the oath of office under the State of Hawai‘i Constitution, to include the Governor and his staff, cannot claim lawful authority without committing the war crime of *usurpation of sovereignty during military occupation* with the exception of the Adjutant General who also operates under U.S. Army doctrine and regulations.

Since the Council of Regency recognized, by proclamation on 3 June 2019, “the State of Hawai‘i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law,”¹³⁴ the State of Hawai‘i and its Counties, however, did not take the necessary steps to comply with international humanitarian law by transforming itself into a military government. This omission consequently led to war criminal reports, subject to prosecution, by the Royal Commission of Inquiry finding the senior leadership

¹³¹ *Lin v. United States*, 539 F. Supp. 2d 173 (D.D.S. 2008).

¹³² *Lin v. United States*, 561 F.3d 506 (2009).

¹³³ Council of Regency, *Proclamation of Provisional Laws* (10 Oct. 2014), (online at https://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf); see also David Keanu Sai, *Memorandum on the Formula to Determine Provisional Laws* (22 March 2023) (online at https://hawaiiankingdom.org/pdf/HK_Memo_Provisional_Laws_Formula.pdf).

¹³⁴ Council of Regency, *Proclamation Recognizing the State of Hawai‘i and its Counties* (3 June 2019) (online at https://www.hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf).

of the United States, State of Hawai‘i and County governments guilty of committing the war crimes of *usurpation of sovereignty during military occupation, deprivation of a fair and regular trial and pillage*.¹³⁵

While international humanitarian law has effectively stripped the authority of senior leadership of the State of Hawai‘i, it did not strip the Adjutant General’s “military duties consistent with the regulations and customs of the armed forces of the United States.”¹³⁶ International humanitarian law acknowledges the military duties of the Adjutant General as the occupant of the territory of the Hawaiian Kingdom as an occupied State. Although the Commanding General of the United States Army Pacific (USARPAC), whose troops comprise the largest Army unit in the Hawaiian Islands, USARPAC is not in effective control of the majority of Hawaiian territory like the State of Hawai‘i and, therefore, there is no duty to establish a military government pursuant to Article 42 of the 1907 Hague Regulations. According to U.S. Army Field Manual 27-5:

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

4. REASON FOR ESTABLISHMENT. a. Reasons for the establishment of [military government is] either military necessity as a right, or as an obligation under international law. b. Since the military occupation of enemy territory suspends the operation of the government of the occupied territory, the obligation arises under international law for the occupying force to exercise the functions of civil government looking toward the restoration and maintenance of public order. These functions are exercised by [military government]. An armed force in territory other than that of an enemy similarly has the duty of establishing [military government] when the government of such territory is absent or unable to function properly.¹³⁷

The transformation of the State of Hawai‘i into a military government would be the first step toward correcting the course of the United States’ non-compliance with international humanitarian law for 130 years. The Adjutant General would make the proclamation of the establishment of the military government, as the military governor, in similar fashion to the establishment of the Office of military government for Germany on 1 October 1945 that was responsible for administering the U.S. zone of occupation and the U.S. sector of Berlin.

¹³⁵ Website of the Royal Commission of Inquiry at <https://hawaiiankingdom.org/royal-commission.shtml>.

¹³⁶ Hawai‘i Revised Statutes, §121-9.

¹³⁷ Department of the Army, Field Manual 27-5, *Civil Affairs Military Government* 4 (1947).

The legal effect of Title 32, United States Code, has a significant impact on the Hawai‘i Army and Air National Guard because they are situated outside of U.S. territory. First, as an enactment of Congress, the United States Code has no legal effect beyond the territory of the United States. According to international law, the concept of jurisdiction is linked to the territory of a State.¹³⁸ As stated by the Permanent Court of International Justice in 1927, “the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention [...] 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.”¹³⁹ And the U.S. Supreme Court affirmed this rule in 1936, that “[n]either the Constitution nor the laws passed in pursuance of it have any force in foreign territory.”¹⁴⁰ Also the Hawaiian Kingdom Supreme Court addressed this in 1858, where it stated, “The laws of a nation cannot have force to control the sovereignty or rights of any other nation within its own jurisdiction. And however general and comprehensive the phrases used in the municipal laws may be, they must always be restricted in construction, to places and persons upon whom the Legislature have authority and jurisdiction.”¹⁴¹ Adhering to the limitation of jurisdiction, the decision by the Hawaiian Kingdom Supreme Court and the Permanent Court of International Justice are binding, but not the U.S. Supreme Court decision, which is merely informative of the same rule.

Second, paragraph 353, FM 27-10, acknowledges that the military occupation of a foreign State “necessarily implies that the sovereignty of the occupied territory is not vested in the occupying power. Occupation is essentially provisional. On the other hand, subjugation or conquest implies a transfer of sovereignty, which generally takes the form of annexation and is normally effected by a treaty of peace. When sovereignty passes, belligerent occupation, as such, of course ceases, although the territory may and usually does, for a period at least, continue to be governed through military agencies.” There is no treaty of peace between the Hawaiian Kingdom and the United States, which is why the military occupation persists today. Because there is no treaty where the Hawaiian Kingdom ceded its sovereignty and territory to the United States, the Permanent Court of Arbitration acknowledged the Hawaiian Kingdom’s continued existence as a State in *Larsen v. Hawaiian Kingdom* in 1999. The Hawaiian Kingdom has sovereignty over the Hawaiian Islands and not the United States.

Since the 1959 Statehood Act (73 Stat. 4) and Title 10 United States Code have no effect within the territory of the Hawaiian Kingdom, the State of Hawai‘i Department of Defense’s status under international law, however, is recognized under the 1907 Hague Regulations as a militia of the

¹³⁸ Arthur Lenhoff, “International Law and Rules on International Jurisdiction,” 50 *Cornell Law Quarterly* 5 (1964).

¹³⁹ *Lotus*, 18.

¹⁴⁰ *United States v. Curtiss Wright Corp.*, 299 U.S. 304, 318 (1936).

¹⁴¹ *In re Francis de Flanchet, a Prisoner in the Fort*, 2 Haw. 96, 108 (1858).

occupying State—the United States. Article 1 states, “[t]he laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: 1. To be commanded by a person responsible for his subordinates; 2. To have a fixed distinctive emblem recognizable at a distance; 3. To carry arms openly; and 4. To conduct their operations in accordance with the laws and customs of war. In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination ‘army.’”

Notwithstanding the territorial limits of United States Code, it does clearly state that the Hawai‘i National Guard forms part of the U.S. Armed Forces. Title 32, U.S.C. §104(b) states, “[e]xcept as otherwise specifically provided in this title, the organization of the Army National Guard and the composition of its units shall be the same as those prescribed for the Army [...]; and the organization of the Air National Guard and the composition of its units shall be the same as those prescribed for the Air Force [...]” Therefore, the Hawai‘i Army National Guard comes “under the denomination ‘army’” in the 1907 Hague Regulations and not the State of Hawai‘i as a whole. United States practice is for the Army to establish a military government and not the Air Force.

As a Title 10 combatant unit, the Indo-Pacific Command is not in the chain of command for the military government of Hawai‘i. It would appear that since the Adjutant General oversees both the Army and Air National Guard he would not have to report to both the Secretaries of the Army and Air Force, but rather to the Secretary of Defense since the Hawai‘i militia is comprised of more than one branch of the U.S. Department of Defense. The Secretary of Defense reports to the President. Army regulations on military government, however, provides flexibility and it must adapt to the uniqueness of every situation that presents itself like the Hawaiian situation. According to paragraph 9(b)(4), FM 27-5, “[s]ince the conditions under which [military government] operate will vary widely in a given area as well as between different areas, flexibility of action must be provided by the preparation of alternate plans in order to meet the rapid changes and alterations which may occur.”

As the last word concerning any acts relating to the administration of the occupied territory is with the occupying power, “occupation law would allow for a vertical, but not a horizontal, sharing of authority [in the sense that] this power sharing should not affect the ultimate authority of the occupier over the occupied territory.”¹⁴² United States practice acknowledges that “[t]he functions of the [occupied] government—whether of a general, provincial, or local character—continue only to the extent they are sanctioned (para. 367(a), FM 27-10).” With specific regard to cooperation with the occupied government, it is also recognized that “[t]he occupant may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions (para. 367(b)).”

¹⁴² International Committee of the Red Cross, *Expert Meeting. Occupation and Other Forms of Administration of Foreign Territory. Report*, Geneva, 20 (2012), online at <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf>.

Since the occupying State does not have the sovereignty of the Hawaiian Kingdom, the Council of Regency, which has the authority to exercise Hawaiian sovereignty, can bring the laws and administrative policies of the Hawaiian Kingdom in 1893 up to date so that the military government can fully exercise its authority under the law of occupation. The purpose of the military government is to protect the population of the occupied State despite 130 years of violating these rights.

According to the 1907 Hague Regulations and the 1949 Fourth Geneva Convention there are four essential tasks that apply to the occupation of the Hawaiian Kingdom. First, temporary administrator of the laws of the occupied State.¹⁴³ Second, temporary administrator of public buildings, real estate, forests, and agricultural estates that belong to the occupied State.¹⁴⁴ Third, protect the institutions of the occupied State.¹⁴⁵ And, fourth, protect and respect the rights of the population of the occupied State.¹⁴⁶

¹⁴³ Article 43, 1907 Hague Regulations and Article 64, 1949 Fourth Geneva Convention.

¹⁴⁴ Article 55, 1907 Hague Regulations.

¹⁴⁵ *Id.*, Article 56.

¹⁴⁶ Articles 27 and 47, 1949 Fourth Geneva Convention.

ESSENTIAL TASK: *Temporary Administrator of the Laws of the Occupied State*

Under customary international law relevant to Queen Lili‘uokalani’s conditional surrender to the United States on 17 January 1893, the United States, as the occupying State, was obligated to administer Hawaiian Kingdom law, which consist of the Civil Code,¹⁴⁷ together with the session laws of 1884¹⁴⁸ and 1886,¹⁴⁹ and the Penal Code.¹⁵⁰ This norm of customary international law was later codified under Article 43 of the 1907 Hague Regulations¹⁵¹ and Article 64 of the 1949 Fourth Geneva Convention.¹⁵² However, instead of administering the laws of the Hawaiian Kingdom,¹⁵³ the United States unlawfully annexed the Hawaiian Islands in 1898 during the Spanish-American War and began to impose its municipal laws over Hawaiian territory since then to the present.

IMPLIED TASK: *Proclaim the Establishment of a Military Government of Hawai‘i*

To begin to comply with Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention, the State of Hawai‘i Adjutant General shall proclaim the establishment of the military government by a public proclamation in accordance with United States’ practice and Army regulations FM 27-5 and 27-10. See Appendix 1.

IMPLIED TASK: *Proclaim Provisional Laws in order to bring the Laws of the Hawaiian Kingdom up to date*

To administer Hawaiian Kingdom law as it existed in 1893 would not be prudent given the longevity of the military occupation that is now at 130 years. Therefore, to bring the laws of the Hawaiian Kingdom up to date, the Council of Regency proclaimed provisional laws for the Realm because of the prolonged military occupation. The proclamation of provisional laws of 10 October 2014 states:

Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom,

¹⁴⁷ Civil Code of the Hawaiian Kingdom (1884) (online at <https://hawaiiankingdom.org/civilcode/index.shtml>).

¹⁴⁸ Session Laws of the Hawaiian Kingdom (1884) (online at https://hawaiiankingdom.org/pdf/1884_Laws.pdf).

¹⁴⁹ Session Laws of the Hawaiian Kingdom (1886) (online at https://hawaiiankingdom.org/pdf/1884_Laws.pdf).

¹⁵⁰ Penal Code of the Hawaiian Kingdom (1869) (online at https://hawaiiankingdom.org/pdf/Penal_Code.pdf).

¹⁵¹ Article 43 of the 1907 Hague Regulations states, “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.”

¹⁵² Article 64 of the 1949 Fourth Geneva Convention states, “The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.”

¹⁵³ See David Keanu Sai, “Hawaiian Constitutional Governance,” in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 57-94 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

do hereby acknowledge that acts necessary to peace and good order among the citizenry and residents of the Hawaiian Kingdom, such for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents, regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful government, but acts in furtherance or in support of rebellion or collaborating against the Hawaiian Kingdom, or intended to defeat the just rights of the citizenry and residents under the laws of the Hawaiian Kingdom, and other acts of like nature, must, in general, be regarded as invalid and void;

And, We do hereby proclaim that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international humanitarian law, and if it be the case they shall be regarded as invalid and void;

And, We do hereby further proclaim that the currency of the United States shall be a legal tender at their nominal value in payment for all debts within this Kingdom pursuant to *An Act To Regulate the Currency* (1876).¹⁵⁴

Before determining what United States statutes, State of Hawai‘i statutes, and County ordinances (collectively referred to herein as “American municipal laws”) are not “contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international humanitarian law,” there must be a type of interpretive methodology for extracting a conclusion based on the doctrine of necessity and the principle of constitutional necessity allowable under Hawaiian law.

This memorandum provides a formula to be used for determining what American municipal laws may be considered the provisional laws of the Hawaiian Kingdom during the American military occupation that augments and not replaces the Civil Code, together with the session laws of 1884 and 1886, and the Penal Code. American municipal laws to be considered as provisional laws exclude the provisions of the constitutions of the United States and the State of Hawai‘i. The Hawaiian Constitution of 1864, as amended,¹⁵⁵ remains the constitutional order and organic law of the country. This memorandum is intended for the use of American authorities operating within

¹⁵⁴ Council of Regency, *Proclamation of Provisional Law* (10 Oct. 2014), (online https://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf).

¹⁵⁵ 1864 Constitution, as amended (online at https://hawaiiankingdom.org/pdf/1864_Constitution.pdf).

the territorial jurisdiction of the Hawaiian Kingdom to determine which American municipal laws may be considered provisional laws during its effective control of Hawaiian territory.

With a view to bringing compliance with international humanitarian law by the State of Hawai‘i and its County governments and recognizing their effective control of Hawaiian territory in accordance with Article 42 of the 1907 Hague Regulations,¹⁵⁶ the Council of Regency proclaimed and recognized their existence as the administration of the occupying State on 3 June 2019. The proclamation read:

Whereas in order to account for the present circumstances of the prolonged illegal occupation of the Hawaiian Kingdom and to provide a temporary measure of protection for its territory and the population residing therein, the public safety requires action to be taken in order for the State of Hawai‘i and its Counties to begin to comply with the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law:

Now, therefore, We, the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Powers of the Kingdom, do hereby recognize the State of Hawai‘i and its Counties, for international law purposes, as the administration of the Occupying Power whose duties and obligations are enumerated in the 1907 Hague Convention, IV, the 1949 Geneva Convention, IV, and international humanitarian law;

And, We do hereby further proclaim that the State of Hawai‘i and its Counties shall preserve the sovereign rights of the Hawaiian Kingdom government, and to protect the local population from exploitation of their persons and property, both real and personal, as well as their civil and political rights under Hawaiian Kingdom law.¹⁵⁷

The State of Hawai‘i and its Counties, under the laws and customs of war during occupation, can now serve as the administrator of the “laws in force in the country.”¹⁵⁸ Prior to the proclamation, the State of Hawai‘i and its Counties were established by virtue of U.S. Congressional legislation unlawfully imposed within Hawaiian territory, being the war crime of *usurpation of sovereignty during military occupation*. According to Professor Schabas, “the actus reus of the offense of ‘usurpation of sovereignty’ would consist of the imposition of legislation or administrative

¹⁵⁶ Article 42 of the 1907 Hague Regulations states, “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.”

¹⁵⁷ Council of Regency, Proclamation Recognizing the State of Hawai‘i and its Counties (3 June 2019) (online https://www.hawaiiankingdom.org/pdf/Proc_Recognizing_State_of_HI.pdf).

¹⁵⁸ Article 43 of the 1907 Hague Regulations.

measures by the occupying power that go beyond those required by what is necessary for military purposes of the occupation.”¹⁵⁹

The establishment and maintenance of the civilian governments of the United States and the State of Hawai‘i and its Counties within the territory of the Hawaiian Kingdom are not “necessary for military purposes of the occupation,” but rather have been established to benefit the United States and its citizenry. The existence of these civilian governments also constitutes a violation of the Hawaiian citizenry’s right to self-determination under international law. Professor Saul explains that the principle of self-determination is where “the people of a state as a whole should be free, within the boundaries of the state, to determine, without outside interference, their social, political, economic, and cultural infrastructure.”¹⁶⁰

Moreover, according to Article VIII of the 1849 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the United States, “each of the two contracting parties engages that the citizens or subjects of the other residing in their respective states shall enjoy their property and personal security, in as full and ample manner as their own citizens or subjects [...] but subject always to the laws and statutes of the two countries respectively.”¹⁶¹ The imposition of American municipal laws is not only a violation of international humanitarian law and international criminal law, but also a violation of the 1849 treaty.

Professor Benvenisti explains that “[d]uring the occupation, the ousted government would often attempt to influence life in the occupied area out of concern for its nationals [...]. One way to accomplish such goals is to legislate for the occupied population.”¹⁶² While some “national courts, and a number of scholars have rejected any duty to respect legislation made by the ousted government while it is outside the occupied area [,] the majority of post-World War II scholars, also relying on the practice of various national courts, have agreed that the occupant should give effect to the sovereign’s new legislation as long as it addresses those issues in which the occupant has no power to amend the local laws.”¹⁶³ The difference here, however, is that the Council of Regency is not operating in exile or “outside the occupied area,” but rather was established and is operating *in situ*—within the territorial jurisdiction of the Hawaiian Kingdom. Furthermore, “even if the occupant does not have to respect such new legislation, the legislation would be regarded as

¹⁵⁹ William Schabas, “War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom,” in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 157 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

¹⁶⁰ Matthew Saul, “The Right to Self-Determination and the Prolonged Occupation of Palestinian Territory,” in Gentian Zyberi (ed.), *Protecting Community Interests through International Law* 3 (2021).

¹⁶¹ Treaty with the United States of America, in David Keanu Sai (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 305, 307 (2020).

¹⁶² Benvenisti, 2nd ed., 104.

¹⁶³ *Id.*

valid nevertheless by the returning sovereigns or by its courts which would apply them retroactively at the end of the occupation.”¹⁶⁴

To legislate is also an exercise of the police power of the Occupied State. While police power escapes an exact definition, it is understood to be the ability of the government of a State to enact legislation to safeguard its citizenry. In *The King v. Tong Lee*, the Hawaiian Supreme Court stated that “an exercise of the police powers of the State with regard to the comfort, welfare and safety of society, and is constitutional.”¹⁶⁵ During times of military occupation, international humanitarian law allows for the government of the Occupied State, *in situ*, to exercise its police power to legislate by necessity “with regard to the comfort, welfare and safety of society.”

Based on the *doctrine of necessity*, Professor Lenzerini states that “the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom.”¹⁶⁶ He also holds that the Regency “has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level.”¹⁶⁷

Doctrine of Necessity

Under English common law, Professor de Smith states that deviations from a State’s constitutional order “can be justified on grounds of necessity.”¹⁶⁸ He also asserts that “State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution.”¹⁶⁹

Certain principles of English common law have been recognized in the Hawaiian Kingdom. In *The King v. Agnee et al.*, the Hawaiian Supreme Court stated that “[w]e do not recognize as conclusive the common law nor the authorities of the courts of England or of the United States, any farther than the principles which they support may have become incorporated in our system of laws, and recognized by the adjudication of the Supreme Court.”¹⁷⁰ In *Agnee*, the Court cited English common law commentators on criminal law such as Chitty and Bishop as well as English criminal cases.

¹⁶⁴ *Id.*, 105.

¹⁶⁵ *The King v. Tong Lee*, 4 Haw. 335 (1880).

¹⁶⁶ Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Hawaiian Journal of Law and Politics* 317-333, 324 (2020).

¹⁶⁷ *Id.*, 325.

¹⁶⁸ Stanley A. de Smith, *Constitutional and Administrative Law* 80 (1986).

¹⁶⁹ *Id.*

¹⁷⁰ *The King v. Agnee et al.*, 3 Haw. 106, 112 (1869).

Professor Oppenheimer explains that “a temporary deviation from the wording of the constitution is justifiable if this is necessary to conserve the sovereignty and independence of the country.”¹⁷¹ In *Madzimbamuto v. Lardner-Burke*, Lord Pearce stated that there are certain limitations to the principle of necessity, “namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful [...] Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign.”¹⁷²

Other national courts, to include the U.S. Supreme Court,¹⁷³ have consistently held that emergency action cannot justify a subversion of a State’s constitutional order. The doctrine of necessity provides the necessary parameters and limits of emergency action so as not to subvert. Of the five governing principles of necessity which apply to the assumption of vacant government office(s), four of these principles apply to the current situation of interpreting what laws are to be considered the provisional laws of the Hawaiian Kingdom. These include:

1. an imperative necessity must arise because of the existence of exceptional circumstances not provided for in the Constitution, for immediate action to be taken to protect or preserve some vital function to the State;
2. there must be no other course of action reasonably available;
3. any such action must be reasonably necessary in the interest of peace, order, and good government; but it must not do more than is necessary or legislate beyond that;
4. it must not impair the just rights of citizens under the Constitution[.]¹⁷⁴

Constitutional Necessity

According to Professor Paulsen, the constitution of necessity “properly operates as a meta-rule of construction governing how specific provisions of the document are to be understood. Specifically, the Constitution should be construed, where possible, to avoid constitutionally suicidal, self-destructive results.”¹⁷⁵ U.S. President Abraham Lincoln was the first to invoke the principle of constitutional necessity, or in his words “indispensable necessity.” President Lincoln determined his duty to preserve, “by every indispensable means, that government—that nation—of which the constitution was the organic law.”¹⁷⁶ In his letter to U.S. Senator Hodges, President Lincoln explained the theory of constitutional necessity.

¹⁷¹ F.W. Oppenheimer, “Governments and Authorities in Exile,” 36 *Am. J. Int’l. L.* 568, 581 (1942).

¹⁷² See *Madzimbamuto v. Lardner-Burke*, 1. A.C. 645, 732 (1969). See also *Chandrika Persaud v. Republic of Fiji* (Nov. 16, 2000); and *Mokosto v. HM King Moshoeshe II*, LRC (Const) 24, 132 (1989).

¹⁷³ *Texas v. White*, 74 U.S. (7 Wall.) 700 (1868).

¹⁷⁴ *Mitchell v. Director of Public Prosecutions*, L.R.C. (Const) 35, 88-89 (1986).

¹⁷⁵ Michael Stokes Paulsen, “The Constitution of Necessity,” 79(4) *Notre Dame L. Rev.* 1268 (2004).

¹⁷⁶ Letter from Abraham Lincoln, U.S. President, to Albert G. Hodges, U.S. Senator (April 4, 1864), in *Abraham Lincoln: Speeches and Writings 1859-65*, Don E. Fehrenbacher (ed.), 585-86 (1989).

By general law life and limb must be protected; yet often a limb must be amputated to save a life; but a life is never wisely given to save a limb. I felt that measures, otherwise unconstitutional, might become lawful, by becoming indispensable to the preservation of the constitution, through the preservation of the nation. Right or wrong, I assumed this ground, and now avow it. I could not feel that, to the best of my ability, I had even tried to preserve the constitution, if, to save slavery, or any minor matter, I should permit the wreck of government, country, and Constitution all together.¹⁷⁷

Like the United States, the Hawaiian Kingdom is a constitutional form of governance whereby the 1864 Constitution, as amended, limits governmental powers. The American republic's constitution is similar yet incompatible to the Hawaiian monarchical constitution. The primary distinction is that the former establishes the functions of a republican form of government, while the latter establishes the function of a constitutional monarchy. Both adhere to the separation of powers doctrine of the executive, legislative and judicial branches. Where they differ as regards this doctrine, however, is in the aspect that the American constitution provides separate but equal branches of government, while the Hawaiian constitution provides for separate but coordinate branches of government, whereby the Executive Monarch retains a constitutional prerogative to be exercised in extraordinary situations within the confines of the constitution.

Under the American construction of separate but equal, the Congress, as the legislative branch, can paralyze government if it does not pass a budget for government operations, and the President, as head of the executive branch, can do nothing to prevent the shutdown. On the contrary, the Hawaiian Kingdom's executive is capable of intervention by constitutional prerogative should the occasion arise, as occurred in 1855.

In that year's legislative session, the House of Representatives could not agree with the House of Nobles on an appropriation bill to cover the national budget. King Kamehameha IV explained that "the House of Representatives framed an Appropriation Bill exceeding Our Revenues, as estimated by our Minister of Finance, to the extent of about \$200,000, which Bill we could not sanction."¹⁷⁸ After the House of Nobles "repeated efforts at conciliation with the House of Representatives, without success, and finally, the House of Representatives refused to confer with the House of Nobles respecting the said Appropriation Bill in its last stages, and We deemed it Our duty to exercise Our constitutional prerogative of dissolving the Legislature, and therefore there are no Representatives of the people in the Kingdom."¹⁷⁹ A new election for Representatives occurred and the Legislative Assembly was reconvened in special session and a budget passed.

Under Article 24 of the 1864 Constitution, the Executive Monarch took the following oath: "I solemnly swear in the presence of Almighty God, to maintain the Constitution of the Kingdom

¹⁷⁷ *Id.*

¹⁷⁸ Robert C. Lydecker, Roster Legislatures of Hawaii, 1841-1918 62 (1918).

¹⁷⁹ *Id.*

whole and inviolate, and to govern in conformity therewith.” The Ministers, however, took another form of oath: “I solemnly swear in the presence of Almighty God, that I will faithfully support the Constitution and laws of the Hawaiian Kingdom, and faithfully and impartially discharge the duties of [Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance, and the Attorney General].”

Lincoln viewed the source of constitutional necessity as arising from the oath taken by the executive chief, whereby the duty for making “constitutional judgments—judgments about constitutional interpretation, constitutional priority, and constitutional necessity—[is] in the President of the United States, whose special sworn duty the Constitution makes it to ‘preserve, protect and defend the Constitution of the United States.’”¹⁸⁰ The operative word for the Executive Monarch’s oath of office is “to maintain the Constitution of the Kingdom whole and inviolate.” Inviolable meaning free or safe from injury or violation. The Hawaiian constitution is the organic law for the country.

Exercising the Constitutional Prerogative without a Monarch

In 1855, the Monarch exercised his constitutional prerogative to keep the government operating under a workable budget, but the king also kept the country safe from injury by an unwarranted increase in taxes. The duty for making constitutional decisions in extraordinary situations, in this case as to what constitutes the provisional laws of the country during a prolonged and illegal belligerent occupation, stems from the oath of the Executive Monarch. The Council of Regency serves in the absence of the Monarch; it is not the Monarch and, therefore, cannot take the oath.

The Cabinet Ministers that comprise the Council of Regency have taken their individual oaths to “faithfully support the Constitution and laws of the Hawaiian Kingdom, and faithfully and impartially discharge the duties” of their offices, but there is no prerogative in their oaths to “maintain the Constitution of the Kingdom whole and inviolate.” Therefore, this prerogative must be construed to be inherent in Article 33 when the Cabinet Council serves as the 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 Monarch’s constitutional prerogative is in its “Powers” that the Council of Regency temporarily exercises in the absence of the Monarch. Therefore, the Council of Regency has the power “to maintain the Constitution of the Kingdom whole and inviolate,” and, therefore, provisionally legislate, through proclamations, for the protection of Hawaiian subjects during the American military occupation.

¹⁸⁰ Paulsen, 1258.

Legal Status of American Municipal Laws in the Hawaiian Kingdom

Under public international law, the laws and administrative measures of the United States that have been imposed throughout the territory of the Hawaiian Kingdom have no extra-territorial effect. In *The Lotus* case, the Permanent Court of International Justice explained, “[n]ow the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.”¹⁸¹ According to Judge Crawford, derogation of this principle will not be presumed.¹⁸² Therefore, under public international law, American municipal laws being imposed in the Hawaiian Kingdom are not laws but rather situations of facts. Within the Hawaiian constitutional order, this distinction between situations of facts and Hawaiian law is fundamental so as not to rupture the Hawaiian legal system in this extraordinary and extralegal situation of a prolonged military occupation.

As Professor Dicey once stated, “English judges never in strictness enforce the law of any country but their own, and when they are popularly said to enforce a foreign law, what they enforce is not a foreign law, but a right acquired under the law of a foreign country.”¹⁸³ Any right acquired under American municipal laws that have been unlawfully imposed within the territory of the Hawaiian Kingdom, being a situation of fact and not law, must be recognized by Hawaiian law. Without it being acquired under Hawaiian law, there is no right to be recognized. Before any right can be claimed, American municipal laws must first be transformed from situations of facts into provisional laws of the Hawaiian Kingdom.

In determining which American municipal laws, being situation of facts, shall constitute a provisional law of the kingdom, the following questions need to be answered. If any question is answered in the affirmative, with the exception of the last question, then it shall not be considered a provisional law.

1. The first consideration begins with Hawaiian constitutional alignment. Does the American municipal law violate any provisions of the 1864 Constitution, as amended?
2. Does it run contrary to a monarchical form of government? In other words, does it promote a republican form of government.
3. If the American municipal law has no comparison to Hawaiian Kingdom law,

¹⁸¹ *Lotus*, 18.

¹⁸² Crawford, 41.

¹⁸³ A.V. Dicey, *The Conflict of Laws* 12 (6th ed., 1949).

would it run contrary to the Hawaiian Kingdom's police power?

4. If the American municipal law is comparable to Hawaiian Kingdom law, does it run contrary to the Hawaiian statute?
5. Does the American municipal law infringe vested rights secured under Hawaiian law?
6. And finally, does it infringe the obligations of the Hawaiian Kingdom under customary international law or by virtue of it being a Contracting State to its treaties? The last question would also be applied to Hawaiian Kingdom laws enumerated in the Civil Code, together with the session laws of 1884 and 1886, and the Penal Code.

*Application to State of Hawai'i statutes on
Murder, Manslaughter, and Negligent Homicide*

§707-701 Murder in the first degree. (1) A person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of:

- (a) More than one person in the same or separate incident;
 - (b) A law enforcement officer, judge, or prosecutor arising out of the performance of official duties;
 - (c) A person known by the defendant to be a witness in a criminal prosecution and the killing is related to the person's status as a witness;
 - (d) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this section;
 - (e) A person while the defendant was imprisoned;
 - (f) A person from whom the defendant has been restrained, by order of any court, including an ex parte order, from contacting, threatening, or physically abusing pursuant to chapter 586;
 - (g) A person who is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order;
 - (h) A person known by the defendant to be a witness in a family court proceeding and the killing is related to the person's status as a witness; or
 - (i) A person whom the defendant restrained with intent to:
 - (i) Hold the person for ransom or reward; or
 - (ii) Use the person as a shield or hostage.
- (2) Murder in the first degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706-656. [L 1972, c 9, pt of §1; am L 1986, c 314, §49; am L 2001, c 91, §4; am L 2006, c 230, §27; am L 2011, c 63, §2; am L 2016, c 214, §1]

§707-701.5 Murder in the second degree. (1) Except as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person; provided that this section shall not apply to actions taken under chapter 327L.

(2) Murder in the second degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706-656. [L 1986, c 314, §50; am L 2018, c 2, §6]

§707-702 Manslaughter. (1) A person commits the offense of manslaughter if:

- (a) The person recklessly causes the death of another person; or
- (b) The person intentionally causes another person to commit suicide;

provided that this section shall not apply to actions taken under chapter 327L.

(2) In a prosecution for murder or attempted murder in the first and second degrees it is an affirmative defense, which reduces the offense to manslaughter or attempted manslaughter, that the defendant was, at the time the defendant caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a reasonable person in the circumstances as the defendant believed them to be; provided that an explanation that is not otherwise reasonable shall not be determined to be reasonable because of the defendant's discovery, defendant's knowledge, or the disclosure of the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the other person made an unwanted nonforcible romantic or sexual advance toward the defendant, or in which the defendant and the other person dated or had a romantic relationship. If the defendant's explanation includes the discovery, knowledge, or disclosure of the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation, the court shall instruct the jury to disregard biases or prejudices regarding the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation in reaching a verdict.

(3) Manslaughter is a class A felony. [L 1972, c 9, pt of §1; am L 1987, c 181, §8; am L 1996, c 197, §2; am L 2003, c 64, §1; am L 2006, c 230, §28; am L 2018, c 2, §7; am L 2019, c 149, §1]

§707-702.5 Negligent homicide in the first degree. (1) A person commits the offense of negligent homicide in the first degree if that person causes the death of:

(a) Another person by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol; or

(b) A vulnerable user by the operation of a vehicle in a negligent manner.

(2) A person who violates subsection (1)(a) shall be guilty of a class B felony; provided that the person shall be guilty of a class A felony when the person:

(a) Has been convicted one or more times for the offense of operating a vehicle under the influence within fifteen years of the instant offense;

(b) Is, at the time of the instant offense, engaging in conduct that would constitute a violation of section 291E-62; or

(c) Is a highly intoxicated driver as defined by section 291E-1.

(3) A person who violates subsection (1)(b) shall be guilty of a class B felony.

(4) Notwithstanding sections 706-620(2), 706-640, 706-641, 706-659, and any other law to the contrary, the sentencing court may impose a lesser sentence for a person convicted of a class A felony under this section if the court finds that strong mitigating circumstances warrant the action. Strong mitigating circumstances shall include but not be limited to the provisions of section 706-621. The court shall provide a written opinion stating its reasons for imposing the lesser sentence.

(5) For the purposes of this section, a person “has been convicted one or more times for the offense of operating a vehicle under the influence” if the person has one or more:

(a) Convictions under section 291E-4(a), 291E-61, 291E-61.5, or 291E-64;

(b) Convictions in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or

(c) Adjudications of a minor for a law violation that, if committed by an adult, would constitute a violation of section 291E-4(a), 291E-61, or 291E-61.5, that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside before the instant offense shall not be deemed prior convictions for the purposes of this section. [L 1988, c 292, pt of §1; am L 2012, c 316, §2; am L 2022, c 48, §2]

§707-703 Negligent homicide in the second degree. (1) A person commits the offense of negligent homicide in the second degree if that person causes the death of:

(a) Another person by the operation of a vehicle in a negligent manner; or

(b) A vulnerable user by the operation of a vehicle in a manner that constitutes simple negligence as defined in section 707-704(2).

(2) Negligent homicide in the second degree is a class C felony. [L 1972, c 9, pt of §1; am L 1988, c 292, §2; am L 2012, c 316, §3]

§707-704 Negligent homicide in the third degree. (1) A person is guilty of the offense of negligent homicide in the third degree if that person causes the death of another person by the operation of a vehicle in a manner which is simple negligence.

(2) “Simple negligence” as used in this section:

(a) A person acts with simple negligence with respect to the person’s conduct when the person should be aware of a risk that the person engages in that conduct.

(b) A person acts with simple negligence with respect to attendant circumstances when the person should be aware of a risk that those circumstances exist.

(c) A person acts with simple negligence with respect to a result of the person's conduct when the person should be aware of a risk that the person's conduct will cause that result.

(d) A risk is within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of the person's conduct and the circumstances known to the person, involves a deviation from the standard of care that a law-abiding person would observe in the same situation.

(3) Negligent homicide in the third degree is a misdemeanor. [L 1972, c 9, pt of §1; am L 1988, c 292, §3]

Hawaiian Kingdom law on Murder and Manslaughter

Penal Code, Chapter VII (As amended by the Act of 30 June 1860)

1. Murder is the killing of any human being with malice aforethought, without authority, justification or extenuation by law.

2. When the act of killing another is proved, malice aforethought shall be presumed, and the burthen shall rest upon the party who committed the killing to show that it did not exist, or a legal justification or extenuation therefor.

3. Whoever is guilty of murder shall be punished by death.

4. In every case of sentence to punishment by death, the court may, in their discretion, order the body of the convict to be dissected, and the marshal in such case shall deliver the dead body to any surgeon who may wish to have the body for dissection.

5. Whoever kills a human being without malice aforethought, and without authority, justification or extenuation by law, is guilty of the offense of manslaughter.

6. Manslaughter is of three degrees, and the jury under an indictment for murder or manslaughter may return a verdict of manslaughter in either degree, or of assault and battery, as the facts proved will warrant.

7. Whoever is guilty of manslaughter in the first degree shall be punished by imprisonment at hard labor, for a term of years not less than ten, nor more than twenty, in the discretion of the court.

8. Whoever is guilty of manslaughter in the second degree shall be punished by imprisonment at hard labor, not more than ten years or less than five years.

9. Whoever is guilty of manslaughter in the third degree shall be punished by imprisonment at hard labor not more than five years, or by a fine not more than one thousand dollars, in the discretion of the court.

10. Whoever, under an indictment for murder, or manslaughter, shall be found guilty of assault and battery, as provided in section 6 of this chapter, shall be punished by imprisonment at hard labor not more than two years, or by a fine not exceeding five hundred dollars, in the discretion of the court.

11. No person shall be adjudged to have killed another unless death ensues within a year and a day from the injury inflicted.

12. Chapter VII of the Penal Code is hereby repealed from and after the passage of this chapter: Provided, however, that such repeal shall not take affect any offense committed or penalty or forfeiture incurred under said chapter, but that the same shall remain in full force in respect to the liability of any person to be proceeded against, or against whom proceedings are pending, for any offense committed under said chapter.

General Analysis and Application of the Formula

The Hawaiian Kingdom law on murder draws from the English law—the 1752 *Murder Act*.¹⁸⁴ Like the *Murder Act*, the Hawaiian statute provides that “[w]hoever is guilty of murder shall be punished by death,” and “[i]n every case of sentence to punishment by death, the court may, in their discretion, order the body of the convict to be dissected, and the marshal in such case shall deliver the dead body to any surgeon who may wish to have the body for dissection.” Section 2 of the *Murder Act* provides that after the execution, the body of the murderer be delivered “to the hall of the Surgeons Company...to be dissected and anatomized by the said Surgeons.”

Teaching human anatomy “became essential for a European medical education, with Paris, Edinburgh and London (in that order of priority) attracting fee-paying students anxious to obtain extra qualifications as physicians and surgeons from dissecting criminal corpses.”¹⁸⁵ Under the *Murder Act*, post-mortem dissection was also viewed as post-mortem punishment to serve as a deterrent for the crime. In the Hawaiian Kingdom, there was no Surgeons Company but only surgeons in private practice or employed by Queen’s Hospital being a quasi-public medical institution. Unlike the *Murder Act*, the sentence to post-mortem dissection was discretionary by the court and only considered if the body was requested by a surgeon, which would appear for the purpose of medical education and not post-mortem punishment.

¹⁸⁴ 25 George II, c. 37.

¹⁸⁵ Elizabeth T. Hurren, *Dissecting the Criminal Corpse: Staging Post-Execution Punishment in Early Modern England* 5 (2016).

Under the 1850 Penal Code, the murder statute had two degrees, but this was repealed by the Legislature in 1860 to have none.¹⁸⁶ Manslaughter, however, had three degrees to be considered by the jury.

Do the State of Hawai‘i statutes on murder, manslaughter and negligent homicide violate any provisions of the 1864 Constitution, as amended? No.

Do they run contrary to a monarchical form of government? No.

If the State of Hawai‘i statutes on murder, manslaughter and negligent homicide have no comparison to Hawaiian Kingdom law, would it be authorized under the Hawaiian Kingdom’s police power? Not applicable because the Hawaiian Kingdom has a law on murder and manslaughter.

If the State of Hawai‘i statutes on murder, manslaughter and negligent homicide are comparable to Hawaiian Kingdom law, does it run contrary to the Hawaiian statute on murder and manslaughter? Under the 1850 Penal Code, the Hawaiian statute on murder provided first and second degrees. First-degree murder carried the death penalty and second-degree murder carried “imprisonment at hard labor for a term of years not less than five nor more than twenty, in the discretion of the court.” The 1850 statute on manslaughter, however, did not have degrees, which stated:

The laws should make some allowance for human infirmity; therefore whoever kills another without malice aforethought, under the sudden impulse of passion, excited by provocation or other adequate cause, whether insult, threats, violence or otherwise, by the party killed, of a nature tending to disturb the judgment and facilities, and weaken the possession of a self-control of the killing party, is not guilty of murder but manslaughter; and shall be punished by imprisonment at hard labor not more than ten years, or by fine not less than one thousand dollars, nor more than ten thousand dollars.

The 1860 Legislature amended that statute to remove the degrees of murder and provide three degrees of manslaughter. The punishment for murder was death and the punishment for the degrees of manslaughter varied by years of imprisonment. The State of Hawai‘i statute has two degrees of murder, no degrees for manslaughter, and three degrees of negligent homicide.

While the punishment under Hawaiian statute is death for murder and imprisonment at hard labor, it does reflect criminal laws of other foreign States in the nineteenth century to include the United States. Hard labor is a “punishment, additional to mere imprisonment, sometimes imposed upon convicts sentenced to a penitentiary for serious crimes, or for misconduct while in prison.”¹⁸⁷

¹⁸⁶ An Act to Amend the Law Relating to Murder and Manslaughter (1860).

¹⁸⁷ Black’s Law, 717.

However under Hawaiian Kingdom criminal statutes, all sentencing to imprisonment is at hard labor. It was not an addition to imprisonment.

With the progressive affirmation of human rights in international law, the death penalty has started to be seen as inconsistent with the very idea of human dignity. Since then, the international community of States adopted several instruments that ban the use of the death penalty. These instruments include:

- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;¹⁸⁸
- Protocol No. 6 to the European Convention on Human Rights, concerning the abolition of the death penalty, and Protocol No. 13 to the European Convention on Human Rights, concerning the abolition of the death penalty in all circumstances;¹⁸⁹ and
- The Protocol to the American Convention on Human Rights to Abolish the Death Penalty.¹⁹⁰

As a member of the community of States, the Hawaiian Kingdom's statute on the death penalty and imprisonment at hard labor is inconsistent with the most recent developments of international law and should no longer be enforced.

Nearly every state in the American Union and the federal government has a felony murder rule. The "rule allows a defendant to be charged with first-degree murder for a killing that occurs during a dangerous felony, even if the defendant is not the killer."¹⁹¹ The felony-murder rule has been used to support murder convictions of defendants where one victim of a robbery accidentally shoots another victim,¹⁹² where one of the defendant's co-robbers kills another co-robber during a robbery for the latter's refusal to obey orders and not as part of the robbery transaction,¹⁹³ and where the defendant (a dope addict) commits robbery of the defendant's homicide victim as an afterthought following the killing.¹⁹⁴ The application of the felony-murder rule dispenses with the need to prove that culpability with respect to the homicidal result that is otherwise required to support a conviction for murder and therefore leads to anomalous results. Therefore, the felony murder rule is inconsistent the Hawaiian statute on murder.

Does the State of Hawai'i statutes on murder, manslaughter and negligent homicide infringe on vested rights secured under Hawaiian law? No.

¹⁸⁸ General Assembly resolution 44/128.

¹⁸⁹ Council of Europe, European Treaty Series – No. 114.

¹⁹⁰ Organization of American States, Treaty Series – No. 73.

¹⁹¹ Justia, *Felony Murder* (online at: <https://www.justia.com/criminal/offenses/homicide/felony-murder/>).

¹⁹² *People v. Harrison*, 203 Cal. 587, 265 P. 230 (1928).

¹⁹³ *People v. Cabalero*, 31 Cal. App. 2d 52, 87 P.2d 364 (1939).

¹⁹⁴ *People v. Arnold*, 108 Cal. App. 2d 719, 239 P.2d 449 (1952).

Does the State of Hawai‘i statutes on murder, manslaughter and negligent homicide infringe on the obligations of the Hawaiian Kingdom under customary international law or being a Contracting State to its treaties? Yes. Although not a party to any treaty banning the use of the death penalty and cruel punishment, the Hawaiian Kingdom recognizes that banning the death penalty and cruel punishment is a duty of States, in line with the recent developments in the field of international human rights law. Therefore, the Hawaiian Kingdom statute on the death penalty and imprisonment at hard labor should be considered as no longer consistent with international law.

Considering this analysis, the State of Hawai‘i laws on murder, manslaughter and negligent homicide are not “contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international humanitarian law.” To the extent that the felony murder rule is omitted, the State of Hawai‘i law on murder would be consistent with the Hawaiian Kingdom law on murder.

The military government shall proclaim provisional laws for the Occupied State of the Hawaiian Kingdom as law proclamation. See Appendix 2.

IMPLIED TASK: *Disband the State of Hawai‘i Legislature and the County Councils*

Legislation is the exercise of sovereignty under the State’s police power. The State of Hawai‘i has no sovereignty over the Hawaiian Islands because sovereignty remains vested in the Hawaiian Kingdom as an independent State. However, limited legislation under the law of occupation is allowable to a military governor under Article 43 of the 1907 Hague Regulations in order “to restore and ensure, as far as possible, public order and safety, respecting at the same time, unless absolutely prevented, the laws in force in the territory.” Article 64 of the 1949 Fourth Geneva Convention, which is seen as “a more precise and detailed [expression of] the terms of Article 43,” states:

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.

While the opening paragraph may lead with criminal law, “it is accepted that the legislative power conferred on the occupant by virtue of the second paragraph.”¹⁹⁵ According to Professor Scobbie:

This competence is, nevertheless, circumscribed. The occupant may only adopt new measures which are “essential” in relation to the issues enumerated in paragraph 2—namely, in order that the occupant may fulfill its obligations under the Fourth Convention; for the orderly government of the territory; and to ensure its own security interests principally within the occupied territory.

United States practice affirms this understanding. Section 1, paragraph 3, of FM 27-5 states, “[i]n occupied territory the commander, by virtue of his position, has supreme legislative, executive, and judicial authority, limited only by the laws and customs of war and by directives from higher authority.” The limitation “by the laws and customs of war” is reflected in Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention. Furthermore, the legislation by the State of Hawai‘i and the Counties constitutes the war crime of *usurpation of sovereignty during military occupation*.

¹⁹⁵ Scobbie, 13.

ESSENTIAL TASK: *Temporary Administrator of Public Buildings, Real Estate, Forests, and Agricultural Estates that belong to the Occupied State*

Article 55 of the 1907 Hague Regulations provides, “The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the [occupied] State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.” The term “usufruct” is to administer the property or institution of another without impairing or damaging it. Article 147 of the Fourth Geneva Convention lists as a grave breach the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

With respect to occupied territory, the relevant provision is Article 53, “[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.” The Commentary to the Fourth Geneva Convention explains the implication of Article 53:

In the very wide sense in which the Article must be understood, the prohibition covers the destruction of all property (real or personal), whether it is the private property of protected persons (owned individually or collectively), State property, that of the public authorities (districts, municipalities, provinces, etc.) or of co-operative organizations. The extension of protection to public property and to goods owned collectively, reinforces the rule already laid down in the Hague Regulations, Articles 46 and 56 according to which private property and the property of municipalities and of institutions dedicated to religion, charity and education, the arts and sciences must be respected.¹⁹⁶

IMPLIED TASK: *Remove the United States flag from all Public Buildings of the Hawaiian Kingdom*

On 25 May 1845 a revised national flag was unfurled at the opening of the Hawaiian legislature. The Hawaiian flag previous to 1845 differed only in the amount of stripes and also the arranging of the colors. The person accredited with the designing of the new flag was Captain Hunt of H.B.M.S. *Baselisk*. It has since remained unchanged to date. In the *Polynesian Newspaper* of May 31, 1845, which was the government newspaper, was the following article:

“At the opening of the Legislative Council, May 25, 1845, the new national banner was unfurled, differing little however from the former. It is octo. (eight) parted per fess

¹⁹⁶ Oscar M. Uhler, Henri Coursier, Frédéric Siordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean-Pierre Schoenholzer, *Commentary IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War* 301 (1958).

(horizontal band), first, fourth and seventh, argent (silver represented by the color white): second, fifth and eighth, gules (the color red): third and sixth, azure (light purplish blue), for the eight islands under one sovereign, indicated by crosses saltire, of St. Andrew and St. Patrick quarterly, per saltire counter changed, argent (white) and gules (red).”

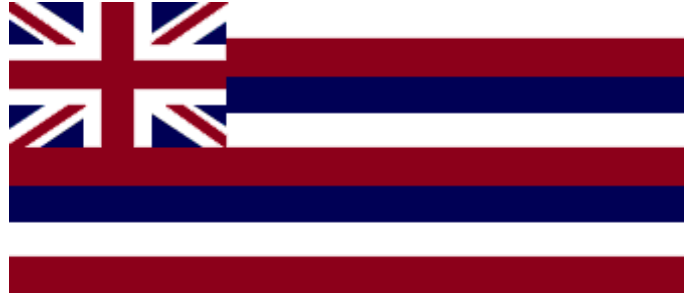


Figure 1. Hawaiian Kingdom National Flag

There is no Hawaiian law providing for the flying of the United States flag over public buildings of the Hawaiian Kingdom. The national flag of the Hawaiian Kingdom, which is currently claimed to erroneously be the flag of the State of Hawai‘i, is the national flag of the Hawaiian Kingdom within its territory and would also fly over the legations and consulates of the Hawaiian Kingdom in foreign States.

To maintain the political and legal *status quo ante* of the Hawaiian Kingdom that existed prior to the occupation, the military government shall take affirmative steps to remove the national flag of the United States currently flying over the public buildings of the Hawaiian Kingdom within its own territory.

ESSENTIAL TASK: *Protect the Institutions of the Occupied State*

The law of occupation prohibits “changes in constitutional forms or in the form of government, the establishment of new military or political organizations, the dissolution of the State, or the formation of new political entities.”¹⁹⁷ In the case of the Hawaiian Kingdom, the United States, either through its puppet regime calling itself the Provisional Government and later calling itself the Republic of Hawai‘i, or through its national legislation since 30 April 1900 under *An Act To provide a government for the territory of Hawaii* (“Territorial Act”),¹⁹⁸ to include *An Act To provide for the admission of the State of Hawaii into the Union* on 18 March 1959 (“Statehood Act”),¹⁹⁹ made drastic changes in the form of government.

On 17 January 1893, the Provisional Government made no changes to the governmental infrastructure except for the replacement of the Queen and her cabinet ministers along with the Marshal of the police force with an Executive and Advisory Councils comprised of the leadership of the insurgency. Structural changes took place on 4 July 1894 when the insurgency declared the form of government to be a so-called republic. The executive branch was changed from Executive Monarch, together with a Cabinet Council and the Privy Council, to a President that headed an Executive Council along with a Council of State. The military force of the Hawaiian Kingdom called the King’s Guard was changed to the National Guard. No other changes were made to the rest of the executive branch. The police court was eliminated in the judicial branch. The legislative branch was changed from a unicameral legislative assembly comprised of Nobles and Representatives to a bicameral legislature comprised of a Senate and House of Representatives.

On 30 April 1900, the United States took control of the governmental infrastructure of the Republic of Hawai‘i and made the following changes. Section 8 of the Territorial Act provided that “the offices of President, minister of foreign affairs, minister of the interior, minister of finance, minister of public instruction, auditor-general, deputy auditor-general, surveyor-general, marshal, and deputy marshal of the Republic of Hawaii are hereby abolished.” Section 9 provided that “wherever the words ‘President of the Republic of Hawaii,’ or ‘Republic of Hawaii,’ or ‘Government of the Republic of Hawaii,’ or their equivalents, occur in the laws of Hawaii not repealed by this Act, they are hereby amended to read ‘Governor of the Territory of Hawaii,’ or ‘Territory of Hawaii,’ or ‘Government of the Territory of Hawaii,’ or their equivalents, as the context requires.”

Section 80 of the Territorial Act provided that the executive branch was comprised of a Governor and Secretary of the Territory who were appointed by the U.S. President with the advice and consent of the U.S. Senate. Section 80 further states that the Governor with the advice of the

¹⁹⁷ Jean Pictet, Commentary, IV, Geneva Convention Relative to the Protection of Civilian Persons in Time of War 273 (1958).

¹⁹⁸ 31 Stat. 141 (1900).

¹⁹⁹ 73 Stat. 4 (1959).

territorial Senate appointed the “attorney-general, treasurer, commissioner of public lands, commissioner of agriculture and forestry, superintendent of public works, superintendent of public instruction, auditor, deputy auditor, surveyor, high sheriff, members of the board of health, commissioners of public instruction, board of prison inspectors, board of registration and inspectors of election, and any other boards of public character that may be created by law.” The legislative branch remained bicameral with a Senate and House of Representatives. Structurally, the judicial branch remained unchanged with the exception that the U.S. President nominates with the advice and consent of the U.S. Senate appoints the chief justice and justices of the supreme court and the judges of the circuit courts. The Territorial legislature created the counties.

By virtue of the Statehood Act, the following departments and agencies were established: Department of Accounting & General Services; Department of Agriculture, Department of the Attorney General; Department of Budget & Finance; Department of Business; Economic Development & Tourism; Department of Commerce & Consumer Affairs; Department of Defense; Department of Education; Department of Hawaiian Home Lands; Department of Health; Department of Human Resources Development; Department of Human Services; Department of Labor & Industrial Relations; Department of Land & Natural Resources; Department of Public Safety; Department of Taxation; Department of Transportation; Office of Information Practices; Office of Hawaiian Affairs; Hawai‘i Health Systems Corporation; and the University of Hawai‘i.

IMPLIED TASK: *Re-align Departments and Agencies to the Status Quo Ante*

The cornerstone of the law of occupation is to maintain the political and legal *status quo ante* of the Hawaiian Kingdom that existed prior to the occupation. Especially as a democratic government, the political institution of the Hawaiian Kingdom is prohibited from being changed or altered by the United States or its proxies. The Hawaiian Kingdom government is separated into three branches—the legislative, the executive, and the judiciary.

The legislative branch represents the three political estates of the kingdom, to wit, “the King, and the Legislative Assembly; which Assembly shall consist of the Nobles appointed by the King, and of the Representatives elected by the people.”²⁰⁰ Being unicameral, the Legislative Assembly is comprised of a President, Vice-President and Secretary. The four Ministers of the Cabinet “hold seats *ex officio*, as Nobles, in the Legislative Assembly.”²⁰¹

The executive branch is headed by an Executive Monarch. The Monarch has a Privy Council of State that provides “advice, and for assisting him in administering the Executive affairs of the Government.”²⁰² The Monarch has a Cabinet that consists “of the Minister of Foreign Affairs, the

²⁰⁰ Article 45, 1864 Constitution, as amended.

²⁰¹ *Id.*, Article 43.

²⁰² *Id.*, Article 41.

Minister of the Interior, the Minister of Finance, and the Attorney General of the Kingdom, and these shall be His Majesty's Special Advisers in the Executive affairs of the Kingdom."²⁰³ The executive branch has four departments. The Department of the Interior is headed by the Minister of the Interior. The Department of Foreign Affairs is headed by the Minister of Foreign Affairs. The Department of Finance is headed by the Minister of Finance. And the Department of Public Instruction is headed by "a committee of the Privy Council, to consist of five members, and to be called the Board of Education. The members of the said Board shall be chosen by the King; and one of their number shall, by him, be appointed President, and all shall serve without pay."²⁰⁴ The Attorney General appears "for the Crown or Government personally or by deputy, in all courts of record of this Kingdom, in all cases criminal or civil in which the Crown or Government may be a party, or be interested, and he shall in like manner appear in the police and district courts when requested so to do by the marshal of the Kingdom or the sheriff of any one of the islands."²⁰⁵

The judicial branch is comprised of the Supreme Court, Circuit Courts, Police Courts, and District Courts. The Supreme Court and the Circuit Courts are courts of record. The Supreme Court consists of a Chief Justice and two Associate Justices. The Kingdom is divided into four judicial circuits. The First Circuit Court consist of the Island of Oahu, whose seat of justice is in Honolulu. The Second Circuit Court consist of the Islands of Maui, Molokai, Lānaʻi, and Kahoʻolawe, whose seat of justice is in Lahaina, Island of Maui. The Third Circuit Court consist of the Island of Hawaiʻi, whose seat of justice is in Hilo and Waimea. The Fourth Circuit Court consist of the Islands of Kauaʻi and Niʻihau, whose seat of justice is in Nawiliwili, Island of Kauaʻi. Police Courts were established in the port cities of Honolulu, Lahaina, and Hilo. There are eight District Courts on the Island of Hawaiʻi established at Hilo, Puna, Kaʻu, South Kona, North Kona, South Kohala, North Kohala, and Hamakua. There are six District Courts for the Islands of Maui, Molokai, Lānaʻi, and Kahoʻolawe, as follows: from Kahakuloa to Ukumehame, including Kahoʻolawe, called the Lahaina District; from Waiheʻe to Honuaua inclusive, called the Wailuku District; Kahikinui, Kaupo, Kipahulu, Hana and Koʻolau, called the Hana District; Hamakualoa, Hamakuapoko, Haliʻimaile, Makawao and Kula, called the Makawao District; Molokai; and Lānaʻi.

The military government shall re-align departments and agencies of the State of Hawaiʻi back to the *status quo ante* of the Hawaiian Kingdom that existed before the military occupation on 17 January 1893. Therefore, the functioning of the State of Hawaiʻi Department of Accounting & General Services, Department of Agriculture, Department of Business, Economic Development & Tourism, Department of Commerce & Consumer Affairs, Department of Health, Department of Human Resources Development, Department of Human Services, Department of Labor & Industrial Relations, Department of Land & Natural Resources, Department of Public Safety,

²⁰³ *Id.*, 42.

²⁰⁴ Section 2, An Act to Repeal Chapter 10 of the Civil Code, and to Regulate the Bureau of Public Instruction (1865), Compiled Laws 199 (1884).

²⁰⁵ Section 1, Defining the Duties of the Attorney-General, Compiled Laws 315 (1884).

Department of Transportation, and the Office of Information Practices shall come under the Department of the Interior headed by Dr. David Keanu Sai, Minister of the Interior. The Department of Budget & Finance and the Department of Taxation shall come under the Department of Finance headed by Ms. Kau'i P. Sai-Dudoit as Minister of Finance. The Attorney General's office shall be headed by Dexter K. Ka'iama, Attorney General. There shall be reinstated the Department of Foreign Affairs headed by Dr. David Keanu Sai, Minister of Foreign Affairs *ad interim*.

The University of Hawai'i shall come under the Department of Public Instruction. The Department of Defense shall come under the Royal Guard. The Hawai'i Health Systems Corporation shall come under the Board of Health. Since, the lands of the Department of Hawaiian Home Lands are Crown Lands and they service aboriginal Hawaiians, their function shall come under the Crown Land Commissioners. There is no place for the Office of Hawaiian Affairs under the Hawaiian Kingdom legal order because the rights of aboriginal Hawaiians are acknowledged and protected by the legal order of the Kingdom.

The military government shall also align departments and agencies of the Counties under the Department of the Interior, Department of Finance, Office of the Attorney General, and the police force under the command of the Marshal with the County Police Chiefs serving as Sheriffs presiding over the islands. The mayors shall be replaced by governors.

IMPLIED TASK: *Oath of Allegiance by Those in the Military Government*

According to the 1874 *Act to Provide for the Taking the Oath of Allegiance by Persons in the Employ of the Hawaiian Government*, as amended in 1876, "[f]rom and after the passage of this Act, every person of foreign birth who may be appointed to any office of profit or emolument under the Government of this Kingdom, shall, before entering upon the duties of his office, take and subscribe the oath of allegiance in manner and form prescribed by Section 430 and 431 of the Civil Code." Black's Law Dictionary defines an "emolument" as the "profit arising from office, employment, or labor; that which is received as a compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites."²⁰⁶ Therefore, all those employed by the State of Hawai'i after it has been transformed into a military government shall take the oath of allegiance as provided under §430 of the Civil Code, to wit:

The undersigned, a native of _____, lately residing in _____, being duly sworn, upon his oath, declares that he will support the Constitution and laws of the Hawaiian Islands, and bear true allegiance to [the Hawaiian Kingdom].

Subscribed and sworn to this ____ day of _____, A.D. 20____, before me, _____.

²⁰⁶ Black's Law, 524.

Persons in the employ of the military government shall be of the nationality of the Hawaiian Kingdom—Hawaiian subjects. For those not of Hawaiian nationality and have taken the oath of allegiance shall be made a Hawaiian subject as if they had been naturalized.²⁰⁷ §432 of the Civil Code states:

Every foreigner so naturalized, shall be deemed to all intents and purposes a native of the Hawaiian Islands, be amenable only to the laws of this Kingdom, and to the authority and control thereof, be entitled to the protection of said laws, and be no longer amenable to his native sovereign while residing in this Kingdom, nor entitled to resort to his native country for protection or intervention. He shall be amenable, for every such resort, to the pains and penalties annexed to rebellion by the Criminal Code. And every foreigner so naturalized, shall be entitled to all the rights, privileges and immunities of an Hawaiian subject.

United States citizens cannot hold any office of profit or emolument under the military government because it is the civilian government of the Hawaiian Kingdom.

IMPLIED TASK: Reinstate Universal Healthcare for Aboriginal Hawaiians

On 31 July 1901 an article was published in *The Pacific Commercial Advertiser* in Honolulu.

The Queen’s Hospital was founded in 1859 by their Majesties Kamehameha IV and his consort Emma Kaleleonalani. The hospital is organized as a corporation and by the terms of its charter the board of trustees is composed of ten members elected by the society and ten members nominated by the Government, of which the President of the Republic (now Governor of the Territory) shall be the presiding officer. The charter also provides for the “establishing and putting in operation a permanent hospital in Honolulu, with a dispensary and all necessary furniture and appurtenances for the reception, accommodation and treatment of indigent sick and disabled Hawaiians, as well as such foreigners and other who may choose to avail themselves of the same.”

Under this construction all native Hawaiians have been cared for without charge, while for others a charge has been made of from \$1 to \$3 per day. The bill making the appropriation for the hospital by the Government provides that no distinction shall be made as to race; and the Queen’s Hospital trustees are evidently up against a serious proposition.

Queen’s Hospital was established as the national hospital for the Hawaiian Kingdom and that health care services for Hawaiian subjects of aboriginal blood was at no charge. The Executive Monarch would serve as President of the Board together with twenty trustees, ten of whom are from the government.

²⁰⁷ Opinion of the Justices of the Supreme Court to the Legislative Assembly of 1884, as to the Allegiance of Aliens and Denizens, 5 Haw. 167, 169 (1884).

Since the hospital's establishment in 1859 the legislature of the Hawaiian Kingdom subsidized the hospital along with monies from the Queen Emma Trust. With the unlawful imposition of the 1900 Organic Act that formed the Territory of Hawai'i, American law did not allow public monies to be used for the benefit of a particular race. 1909 was the last year Queen's Hospital received public funding and it was also the same year that the charter was unlawfully amended to replace the Hawaiian Head of State with an elected president from the private sector and reduced the number of trustees from twenty to seven, which did not include government officers. These changes to a Hawaiian quasi-public institution is a direct violation of Article 43 of the 1907 Hague Regulations and Article 64 of the 1949 Fourth Geneva Convention.

Despite these unlawful changes, aboriginal Hawaiian subjects, whether pure or part, are to receive health care at Queen's Hospital free of charge. This did not change, but through denationalization there was an attempt of erasure. Aboriginal Hawaiian subjects are protected persons as defined under international law, and, as such, the prevention of health care by Queen's Hospital constitute war crimes. Furthermore, there is a direct nexus of deaths of aboriginal Hawaiians as "the single racial group with the highest health risk in the State of Hawai'i [that] stems from [...] late or lack of access to health care"²⁰⁸ to the crime of genocide.

This is not a matter that aboriginal Hawaiians should receive health care at no cost, but rather a law that provides health care at no cost through the Queen's Hospital. The military government shall enforce the law providing health care at no cost for aboriginal Hawaiians, whether pure or part. This is not a matter of blood quantum but rather a matter of vested rights for aboriginal Hawaiians, whether pure or part, to receive health care at no cost.

IMPLIED TASK: Take Affirmative Steps to End Denationalization through Americanization

In 1905, the American editor of the *Pacific Commercial Advertiser* newspaper in Honolulu, which was the propaganda newspaper for the insurgents, Walter Smith, unabashedly reveals the American import of white supremacy being injected in the school system. Under the heading of "The American Way," Smith wrote:

It would have been proper yesterday in the Advertiser's discussion of schools to admit the success which the High School has had in making itself acceptable to white parents. By gradually raising the standard of knowledge of English the High School has so far changed its color that, during the past year seventy-three per cent were Caucasians. It is not so many years ago that more than seventy three per cent were non-Caucasians. At the present rate of progress it will not be long before the High School will have its student body as thoroughly Americanized in blood as it long has been in instruction.

²⁰⁸ Office of Hawaiian Affairs, *Native Hawaiian Health Fact Sheet 2* (2017).

The idea of having mixed schools where the mixture is of various social and political conditions is wholly American; but not so mixed schools where the American youth is submerged by the youth of alien races. On the mainland the Polacks, the Russian Jews, the Huns and negroes are, as far as practicable, kept in schools of their own, with the teaching in English; and only where the alien breeds are few, as in the country, are they permitted to mingle with white pupils. In the South, where Americans of the purest descent live, there are no mixed schools for whites and negroes; and wherever color or race is an issue of moment, the American way is defined through segregation. Only a few fanatics or vote-hunters care to lower the standard of the white child for the sake of raising that of the black or yellow child.

One great and potent duty of our high schools, public and private, is to conserve the domination here of Anglo-Saxon ideas and institutions; and this means control by white men. We have faith in any attempt to make Americans of Asiatics. There are too many obstacles of temperament and even of patriotism in the way. The main thing is to see that our white children when they grow up, are not to be differentiated from the typical Americans of the mainland, having the same standards, the same ideals and the same objects, none of them tempered by the creeds or customs of decaying or undeveloped or pagan races.²⁰⁹

The following year, the Territory of Hawai‘i intentionally sought to “Americanize” the school children throughout the Hawaiian Islands. To accomplish this, they instituted a policy of *denationalization*. Under the policy titled “Programme for Patriotic Exercises in the Public Schools,” the national language of Hawaiian was banned and replaced with the American language of English.²¹⁰ Young students who spoke the Hawaiian language in school were severely disciplined. One of the leading newspapers for the insurgents, who were now officials in the territorial regime, printed a story on the plan of *denationalization*. The *Hawaiian Gazette* reported:

As a means of *inculcating* patriotism in the schools, the Board of Education [of the territorial government] has agreed upon a plan of patriotic observance to be followed in the celebration of notable days in American history, this plan being a composite drawn from the several submitted by teachers in the department for the consideration of the Board. It will be remembered that at the time of the celebration of the birthday of Benjamin Franklin, an agitation was begun looking to a better observance of these notable national days in the schools, as tending to inculcate patriotism in a school population that needed that kind of teaching, perhaps, more than the mainland children do [emphasis added].²¹¹

²⁰⁹ Walter G. Smith, *The American Way*, *The Pacific Commercial Advertiser* 4 (8 Sep. 1905).

²¹⁰ *Programme for Patriotic Exercises in the Public Schools*, Territory of Hawai‘i, adopted by the Department of Public (1906) (online at: http://hawaiiankingdom.org/pdf/1906_Patriotic_Exercises.pdf).

²¹¹ *Patriotic Program for School Observance*, *Hawaiian Gazette* 5 (3 Apr. 1906) (online at http://hawaiiankingdom.org/pdf/Patriotic_Program_Article.pdf).

It is important here to draw attention to the word “inculcate.” As a verb, the term imports force such as to convince, implant, and indoctrinate. Brainwashing is its colloquial term. When a reporter from the American news magazine, *Harper’s Weekly*, visited the Ka’iulani Public School in Honolulu in 1907, he reported:

At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building.... Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet above their heads.... “Attention!” Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. “Salute!” was the principal’s next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: “We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!”²¹²

When the reporter visited Honolulu High School, he commented, “[t]he change in the color scheme from that of the schools below was astounding. Below were all the hues of the human spectrum, with brown and yellow predominating; here the tone was clearly white.”²¹³ While the schools today are predominantly non-white, Americanization remains entrenched. Furthermore, *denationalization* is a war crime as well as a crime against humanity.²¹⁴

The military government shall take affirmative steps to implement the curriculum in the high schools in line with the 1882 annual exams of Lahainaluna Seminary. See Appendix no. 3. The middle schools and primary schools shall continue except for curriculum based on Americanization.

²¹² William Inglis, “Hawai’i’s Lesson to Headstrong California: How the Island Territory has solved the problem of dealing with its four thousand Japanese Public School children,” *Harper’s Weekly* 227 (16 Feb. 1907).

²¹³ *Id.*, 228.

²¹⁴ Schabas, 159-161, 168.

ESSENTIAL TASK: *Protect and Respect the Rights of the Population of the Occupied State*

Article 47 of the 1949 Fourth Geneva Convention addresses inviolability of rights where “Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

Annexation of an occupied State by the Occupying State is a situation of fact, not law. So long as the occupation persists, “the Occupying Power cannot therefore annex the occupied territory, even if it occupies the whole of the territory concerned. A decision on that point can only be reached in the peace treaty. That is a universally recognized rule which is endorsed by jurists and confirmed by numerous rulings of international and national courts.”²¹⁵ According to *The Handbook of Humanitarian Law in Armed Conflicts*:

The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control over foreign territory. The legal situation of the territory can be altered only through a peace treaty or *debellatio*.²¹⁶ International law does not permit annexation of territory of another state.²¹⁷

Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*²¹⁸ and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.²¹⁹ There is no peace treaty between the Hawaiian Kingdom and the United States where the former ceded its sovereignty and territory to the latter.

The legal order of the Hawaiian Kingdom is a constitutional monarchy based on democratic principles. Hawaiian governance is founded on respect for the *Rule of Law*. Hawaiian subjects rely on a society based on law and order and are assured that the law will be applied equally and impartially. Impartial courts depend on an independent judiciary. The independence of the judiciary means that Judges are free from outside influence, and notably from influence from the Crown. Initially, the first constitution of the country in 1840 provided that the Crown serve as Chief Justice of the Supreme Court, but this provision was ultimately removed by amendment in 1852 in order

²¹⁵ Pictet, 275.

²¹⁶ There was no extinction of the Hawaiian State by *debellatio* because the Permanent Court of Arbitration acknowledged the continued existence of the Hawaiian Kingdom as a State in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01.

²¹⁷ Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Section 525, 242 (1995).

²¹⁸ 9 Stat. 922 (1848).

²¹⁹ 30 Stat. 1754 (1898).

to provide separation between the executive and judicial branches. Article 65 of the 1864 Constitution of the country provides that only the Legislative Assembly, can remove Judges by impeachment. The *Rule of Law* precludes capricious acts on the part of the Crown or by members of the government over the just rights of individuals guaranteed by a written constitution. According to Hawaiian Supreme Court Justice Alfred S. Hartwell:

The written law of England is determined by their Parliament, except in so far as the Courts may declare the same to be contrary to the unwritten or customary law, which every Englishman claims as his birthright. Our Legislature, however, like the Congress of the United States, has not the supreme power held by the British Parliament, but its powers and functions are enumerated and limited, together with those of the Executive and Judicial departments of government, by a written constitution. No act of either of these three departments can have the force and dignity of law, unless it is warranted by the powers vested in that department by the Constitution. Whenever an act purporting to be a statute passed by the Legislature is an act which the Constitution prohibits, or does not authorize, and such act is sought to be enforced as law, it is the duty of the Courts to declare it null and void.²²⁰

Unlike the United States where there is no constitutional provision or statute vesting U.S. federal courts with judicial oversight, the Hawaiian Kingdom does have a statute for judicial review. §824 of the Hawaiian Civil Code states, “The several courts of record shall have power to decide for themselves the constitutionality and binding effect of any law, ordinance, order or decree, enacted or put forth by the King, the Legislature, the Cabinet, or Privy Council. The Supreme Court shall have power to declare null and void any such law, ordinance, order or decree, as may upon mature deliberation appear to it contrary to the Constitution, or opposed to the laws of nations, or any subsisting treaty with a foreign power.”

The 1864 Constitution, as amended, provides the protection of civil rights guaranteed to all persons residing within the territory of the Hawaiian Kingdom whether they be Hawaiian subjects or resident aliens.

ARTICLE 1. God hath endowed all men with certain inalienable rights; among which are life, liberty, and the right of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

ARTICLE 2. All men are free to worship God according to the dictates of their own conscience; but this sacred privilege hereby secured, shall not be so construed as to justify acts of licentiousness, or practices inconsistent with the peace or safety of the Kingdom.

²²⁰ *In Re Gip Ah Chan*, 6 Haw. 25 (1870).

ARTICLE 3. All men may freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of that right, and no law shall be enacted to restrain the liberty of speech, or of the press, except such laws as may be necessary for the protection of His Majesty the King and the Royal Family.

ARTICLE 4. All men shall have the right, in an orderly and peaceable manner, to assemble, without arms, to consult upon the common good, and to petition the King or Legislative Assembly for redress of grievances.

ARTICLE 5. The privilege of the writ of Habeas Corpus belongs to all men, and shall not be suspended, unless by the King, when in cases of rebellion or invasion, the public safety shall require its suspension.

ARTICLE 6. No person shall be subject to punishment for any offense, except on due and legal conviction thereof, in a Court having jurisdiction of the case.

ARTICLE 7. No person shall be held to answer for any crime or offense (except in cases of impeachment, or for offenses within the jurisdiction of a Police or District Justice, or in summary proceedings for contempt), unless upon indictment, fully and plainly describing such crime or offense, and he shall have the right to meet the witnesses who are produced against him face to face; to produce witnesses and proofs in his own favor; and by himself or his counsel, at his election, to examine the witnesses produced by himself, and cross-examine those produced against him, and to be fully heard in his defense. In all cases in which the right of trial by Jury has been heretofore used, it shall be held inviolable forever, except in actions of debt or assumpsit in which the amount claimed is less than Fifty Dollars.

ARTICLE 8. No person shall be required to answer again for an offense, of which he has been duly convicted, or of which he has been duly acquitted upon a good and sufficient indictment.

ARTICLE 9. No person shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law.

ARTICLE 10. No person shall sit as a judge or juror, in any case in which his relative is interested, either as plaintiff or defendant, or in the issue of which the said judge or juror, may have, either directly or through a relative, any pecuniary interest.

ARTICLE 11. Involuntary servitude, except for crime, is forever prohibited in this Kingdom; whenever a slave shall enter Hawaiian Territory, he shall be free.

ARTICLE 12. Every person has the right to be secure from all unreasonable searches and seizures of his person, his house, his papers and effects; and no warrants shall issue but on

probable cause supported by oath or affirmation and describing the place to be searched, and the persons or things to be seized.

ARTICLE 13. The King conducts His Government for the common good; and not for the profit, honor, or private interest of any one man, family, or class of men among His subjects.

ARTICLE 14. Each member of society has a right to be protected by it, 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; and whenever the public exigencies may require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

ARTICLE 15. No subsidy, duty or tax of any description shall be established or levied, without the consent of the Legislative Assembly; nor shall any money be drawn from the Public Treasury without such consent, except when between the session of the Legislative Assembly the emergencies of war, invasion, rebellion, pestilence, or other public disaster shall arise, and then not without the concurrence of all the Cabinet, and of a majority of the whole Privy Council; and the Minister of Finance shall render a detailed account of such expenditure to the Legislative Assembly.

ARTICLE 16. No Retrospective Laws shall ever be enacted.

ARTICLE 17. The Military shall always be subject to the laws of the land; and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by the Legislature.

In 1847, Chief Justice William Lee of the Hawaiian Kingdom Supreme Court established a legal maxim to be applied by all courts of the Kingdom that speaks to the role of a Hawaiian constitutional monarchy. Chief Justice Lee stated:

For I trust that the maxim of this Court ever has been, and ever will be, that which is so beautifully expressed in the Hawaiian coat of arms, namely, "The life of the land is preserved by righteousness." We know of no other rule to guide us in the decision of questions of this kind, than the supreme law of the land, and to this we bow with reverence and veneration, even though the stroke fall on our own head. In the language of another, "Let justice be done though the heavens fall." Let the laws be obeyed, though it ruin every judicial and executive officer in the Kingdom. Courts may err. Clerks may err. Marshals

may err—they do err in every land daily; but when they err let them correct their errors without consulting pride, expediency, or any other consequence.²²¹

The military government shall take affirmative steps to assure the population of the Hawaiian Kingdom that their rights are protected in conformity with the laws of the Hawaiian Kingdom, whether as Hawaiian subjects or resident aliens.

²²¹ *Shillaber v. Waldo et al.*, 1 Haw. 31, 32 (1847).

Appendix 1

PROCLAMATION No. 1

TO THE PEOPLE OF HAWAI'I:

I, _____, Adjutant General of the State of Hawai'i, do hereby proclaim as follows:

ARTICLE I.

1. For the past 130 years, the Hawaiian Kingdom, being an internationally recognized sovereign and independent State since the nineteenth century, has been under the military occupation of the United States of America since Queen Lili'uokalani conditionally surrendered her authority to the United States armed forces on 17 January 1893. On 8 November 1999, the Permanent Court of Arbitration, The Hague, Netherlands, acknowledged the continued existence of the Hawaiian Kingdom as a State under international law and the Council of Regency as the Government of the Hawaiian Kingdom when arbitral proceedings were instituted in *Larsen v. Hawaiian Kingdom*. The federal government of the United States of America did not contest the Permanent Court of Arbitration's acknowledgement of the Hawaiian Kingdom as a State, and entered into an agreement with the parties to the arbitration allowing the United States access to the pleadings and records of the arbitral proceedings.
2. At the center of the dispute was the unlawful imposition of American municipal laws over the territory of the Hawaiian Kingdom, which according to customary international law is the war crime of usurpation of sovereignty during military occupation. In order to cease the commission of war crimes and begin to rectify violations of international law against the population of the Hawaiian Kingdom, it is my duty and obligation as the most senior army general officer of the State of Hawai'i in effective control of the majority of the territory of the Hawaiian Kingdom to establish a military government and administer the laws of the Hawaiian Kingdom in compliance with the law of armed conflict, the law of occupation, and U.S. Army regulations.

ARTICLE II.

3. The United States of America system of Government is hereby abrogated.

ARTICLE III.

4. A Military Government for the control and management of public affairs and the protection of the public peace is hereby established to exist until a treaty of peace between the Hawaiian Kingdom and the United States of America has been negotiated and agreed upon. Establishment of a Military Government is an obligation under the law of armed conflict and

U.S. Army regulations when foreign territory is under military occupation. The obligation arises under the law of occupation for the occupying force to exercise the functions of civil government looking toward the maintenance of public order. The law of occupation allows for authority to be shared by the Military Government and the Council of Regency, provided the Military Government continues to bear the ultimate and overall responsibility for the occupied territory.

ARTICLE IV.

5. Supreme legislative, judicial, and executive authority and powers within the occupied territory are vested in me as Commander of the State of Hawai'i Department of Defense and commanding general of the Army and Air National Guard, limited only by the law of armed conflict and the law of occupation, and the Military Government is established to exercise these powers under my direction. All persons in the occupied territory will obey immediately and without question all the enactments and orders of the Military Government.

_____,
[Rank],
Supreme Commander,
Adjutant General of the State of Hawai'i Department of Defense

Appendix 2

Law No. 1

DECLARATION OF PROVISIONAL LAWS

To comply with article 43 of the 1907 Hague Regulations and article 64 of the 1949 Fourth Geneva Convention, and to restore to the people of Hawai'i the rule of justice and equality before the laws of the Hawaiian Kingdom, it is hereby ordered:

ARTICLE I.

ABROGATION OF THE LAWS OF THE UNITED STATES OF AMERICA

1. The following fundamental laws of the United States of America enacted since 7 July 1898, together with all supplementary or subsidiary carrying out laws, decrees or regulations whatsoever are hereby deprived of effect, within the occupied territory:
 - (a) Constitution of the United States of America.
 - (b) Constitution of the State of Hawai'i.
 - (c) Legislation of the United States of America.
 - (d) Legislation of the State of Hawai'i.
 - (e) Legislation of the Counties of the State of Hawai'i.
 - (f) Decisions of United States and State of Hawai'i Courts, to include Administrative Courts.

ARTICLE II.

PROVISIONAL LAWS OF THE OCCUPIED STATE

2. All Federal laws, State of Hawai'i statutes, and County ordinances, together with all judicial decrees or regulations whatsoever, are hereby deprived of effect, within the occupied territory, unless they conform to the Council of Regency's proclamation of provisional laws of 10 October 2014, together with the laws of the Hawaiian Kingdom that existed prior to the overthrow of the Hawaiian government on January 17, 1893.

ARTICLE III.

GENERAL FORMULA TO DETERMINE PROVISIONAL LAWS

3. In determining which American municipal laws, being situation of facts, shall constitute a provisional law of the kingdom, the following questions need to be answered. If any question is answered in the affirmative, except for the last question, then it shall not be considered a provisional law.

- (a) The first consideration begins with Hawaiian constitutional alignment. Does the American municipal law violate any provisions of the 1864 Constitution, as amended?
- (b) Does it run contrary to a monarchical form of government? In other words, does it promote a republican form of government.
- (c) If the American municipal law has no comparison to Hawaiian Kingdom law, would it run contrary to the Hawaiian Kingdom's police power?
- (d) If the American municipal law is comparable to Hawaiian Kingdom law, does it run contrary to the Hawaiian statute?
- (e) Does the American municipal law infringe vested rights secured under Hawaiian law?
- (f) And finally, does it infringe the obligations of the Hawaiian Kingdom under customary international law or by virtue of it being a Contracting State to its treaties? The last question would also be applied to Hawaiian Kingdom laws enumerated in the Civil Code, together with the session laws of 1884 and 1886, and the Penal Code.

ARTICLE VI.
EFFECTIVE DATE

4. This Law shall become effective upon the date of its first promulgation.

BY ORDER OF THE MILITARY GOVERNMENT.

Appendix 3

ANNUAL EXAMINATION
OF THE
LAHAINALUNA SEMINARY,



July 12th, 13th and 14th, 1882.

WEDNESDAY, July 12th--A. M.

Arithmetic.....Freshman Class
Geography.....Sophomore Class
Grammar.....Middle Class
Theology and Physiology.....Senior Class

COMPOSITIONS—P. M.

Arithmetic.....Sophomore Class
History.....Junior Class
Geometry.....Junior Class

DIALOGUE.

Class Paper.....Juniors

THURSDAY, July 13th--A. M.

History.....Middle Class
Science of Common Things.....Junior Class
Algebra.....Middle Class
Trigonometry.....Senior Class

COMPOSITIONS—DRILL—P. M.

History.....Senior Class
Grammar.....Junior Class
Political Economy and Constitution.....Senior Class

DIALOGUE.

Class Paper.....Seniors

Exercises will begin punctually at 9 o'clock A. M.
Singing will be interspersed throughout the exercises.

RHETORICAL EXERCISES

AT

WAINEE CHURCH,

FRIDAY, JULY 14th, 1882,

LAHAINA, MAUI.

Exercises begin at 10 o'clock A. M.

"The Earth is the Lord's" (Chant)	Prayer
See the Sun's First Gleam.....	Chorus
"Shiftlessness, the Root of our Poverty"	Nahera Hipa
"The Old Clock on the Stairs" (Longfellow).....	Nawai
Gaily our Boat Glides o'er the Sea".....	Chorus
The Village Choir.....	Ed. Kauai
Rain in Summer (Longfellow).....	Malakaua
There is Sunshine after Rain.....	Chorus and Duett
Perseverance.....	George Kauhi
Tom Corwin's Militia Speech.....	Wm. Edmonds
Forest Echoes	Chorus
Thanatopsis (Bryant).....	Moses Meheula
Mistakes of Young Men.....	Joseph Liwai
In Silent Mead at Eventide.....	Quartette
Hustle Them In (Harpers' Weekly).....	Waialeale
Hear Our Prayer.....	Quartette
Unproductive Consumption.....	John Maipinepine
Song of the Lark.....	Quartette

Remarks.

O, Rose of the May Time.....Chorus

Distribution of Diplomas.

Senior Class.....Song

Doxology—"Praise God, from Whom all Blessings Flow."

CATALOGUE OF STUDENTS.

SENIOR CLASS.

John Maipinepine.....Lahaina, Maui
George K. Kauhi.....Hilo, Hawaii
Joseph Liwai.....North Kona, Hawaii
Nahora Hipa.....Koloa, Kauai

JUNIOR CLASS.

Moses Meheula.....Kaanapali, Maui
Robert Waialeale.....Waimea, Kauai
Edward Kauai.....Waimea, Kauai
G. W. Pilipo.....South Kona, Hawaii
Hosea Nawai.....Waimea, Kauai
M. Malakaua.....Wailuku, Maui
William Edmonds.....Makawao, Maui
John Kauwe.....Hana, Maui
Daniel Damiana.....Koolau, Maui
Peter Noah.....Olowalu, Maui

MIDDLE CLASS.

Samuel Haluapo.....North Kona, Hawaii
George Rutherford.....Kohala, Hawaii
Adam Pali.....Lahaina, Maui
E. Kaeha.....Kaanapali, Maui
Joseph Kapali.....Ewa, Oahu
Obed Kekuewa.....Kona, Hawaii
Aiu Apo.....Kohala, Hawaii
Titus.....Kau, Hawaii
Mololani.....Koolau, Maui
Joseph Kealoha.....Ulupalakua, Maui
Paul Aea.....Honolulu, Oahu

SOPHOMORE CLASS.

David Keliokamoku.....Lahaina, Maui
William Meheula.....Kaanapali, Maui
Kaukau Meheula.....Kaanapali, Maui
Ramon Makekau.....Lahaina, Maui
Kuhaulua.....North Kona, Hawaii
Moku.....Olowalu, Maui
Koa.....Wailuku, Maui
James Merseburg.....Kohala, Hawaii
Mai Kaawa....." "
Mai Kanakanui....." "
Kahoe....." "
Kakae....." "
Samuel Haina....." "
Mano....." "

1221
L27
A15
1882

FRESHMAN CLASS.

Daniel Keliiaa.....	Ulupalakua, Maui
Solomon Kupihea.....	Molokai
Daniel Abraham.....	Lahaina, Maui
Philip Pali.....	" "
David Taylor.....	" "
Solomon Maheha.....	Punaluu, Oahu
Daniel Poikalani.....	Lahaina, Maui
Moses Kuahine.....	Wailuku, "
Kaanaana (died).....	Lahaina, "
David Kahaulelio.....	" "
Kamakani.....	" "
John Pihe.....	Molokai
Joseph Kaoililani.....	Hana, Maui
John Naai.....	Hanalei, Kauai
Kamaka.....	Kahakuloa, Mani
Keawe.....	Honokahau, "
Namauu.....	Kahakuloa, "
Harry.....	" "
Lanui.....	Wailuku, "
Ephraim.....	Honokahau, "
David Lono.....	" "
David Paku.....	" "
Levi Kamai.....	Ulupalakua, "
Daniel Namauu.....	Kona, Hawaii
Anthony.....	Lahaina, Maui
Naone.....	" "
Achi Apana.....	Hilo, Hawaii
David Aea.....	Honolulu, Oahu
Cum Lan.....	Haiku, Maui
Kapua.....	Hilo, Hawaii
Jesse.....	Kona, "

FRESHMAN CLASS.—READING.

LAHAINALUNA, JULY, 1882.

CORRECT THE FOLLOWING SENTENCES:

1. In the country a house nise this is.
2. Pitty and poor should we those who are onest.
3. One of these men he has found in it a paper and which he has bin readin a story.
4. What kind our parents when we young are cair of us take.
5. When at night we rise from bed and when in the morn-
in in prayer we lie down to god our lift we should harts.
6. Into the field the two friends are sittin on a mosy bank
and now they have gone into the shade of a tree.
7. At the entrance of the churchyard is now shutt and no
one goin out or cumin in the gate is.
8. Coastin along a sort of bluf or hedland they came to the
suthern shore.
9. Muny a bad thing is when put to a good use and a bad
use when it is put to a good thing it is.
10. Remember the earth of children
Its hour is on each way
Report its own to heaven bearing
You all do or say of.
11. The boy has been with the hat on awa from a printin
office and has at bin workin home.
12. Neighbors good with each other in piece leave and all
times ready to help are at each other.
13. A when speaks liar truth not the believed is.
14. When reach he can with hand his them will he them
take and into the bag which is tied his waist around put them.
15. A man took the baby out of the cradel when and ran
into the house the loom was ful of smoke.
16. The trap with his boy up set the dore so that might go
in the labit.
17. When boys and girls go to skool they are cent must to
reed and spel learn well and all get lesouns their.
18. If a drunkard to be you wish do not not taste do or
any other rum strong drink.

CORRECT THE FOLLOWING WORDS:

broaken	peepel	munny	widdo
leves	afrade	slugerd	bruthar
kitin	beleave	oba	cuvvering
baskitt	deseave	onast	thotfull
resite	smokt	tobacko	litest

FRESHMAN CLASS—MENTAL ARITHMETIC.

LAHAINALUNA, JUNE, 1882.

1. If you can buy one hat for 3 shillings and 6 pence, how ~~many~~ hats can you buy for 1 pound?

2. If you can buy 12 marbles for 3 pence and 3 farthings, how many marbles can you buy for 11 pence and 1 farthing?

3. If you can buy 2 gallons and 1 quart of molasses for half a dollar, how much will 1 barrel of molasses cost?

4. David, Daniel, and Moses together bought a melon; David paid 4 pence and 2 farthings, Daniel paid 9 pence, and Moses paid 6 pence and 2 farthings: what part of the melon should each boy have?

5. David, Daniel, and Moses together bought 2 melons; David paid 1 dime and 2 cents; David and Daniel together paid 2 dimes; and Daniel and Moses together paid 3 dimes: what part of two melons ought each boy to have.

6. Philip and John do a job of work together, Philip works 4 days, and John works 3 days; but John does twice as much work in a day as Philip does. They are paid \$2.50 for their work. How much ought each to receive?

7. If $1\frac{1}{2}$ eggs cost 27, 36 cents, how many eggs may be bought for a quarter of a dollar?

8. If you can buy one melon for 6 oranges, and 2 oranges for 8 apples, and four apples for 12 mangoes, and 6 mangoes for 8 marbles, and 24 marbles for 5 cents, how many cents will 1 melon cost?

9. There is a pole standing in a pond of water: $\frac{3}{8}$ of the pole is in the water, $\frac{1}{2}$ as much is in the mud below the water, and 21 feet of the length of pole are above the water; how long is the pole, and how deep is the water?

10. Philip runs to catch David, who is 30 yards ahead of him. But David runs only 5 feet, while Philip runs 7 feet. How many yards must Philip run before he catches David?

FRESHMAN CLASS—GEOGRAPHY.

LAHAINALUNA, JUNE, 1882.

1. What do maps show ?
2. Name the largest divisions of land and water in each hemisphere.
3. What is a peninsula ? (b) Name five peninsulas in the Western Hemisphere.
4. Name the natural divisions of water.
5. Name the branches of the Pacific Ocean found in the Eastern Hemisphere.
6. Name the important islands in Oceanica.
7. What is a city ? Name four of the chief cities in Oceanica.
8. Name the provinces of Canada.
9. Into how many sections are the United States divided ? (b) How many States ? (c) How many Territories ?
10. Name and locate the capital of the United States, and four of the chief cities.
11. Name the sections of the United States which produce cotton, rice, wheat, sugar, pork.
12. Name five of the largest rivers in the United States.
13. What are the important productions of South America ?
14. Name the mountains and animals of South America.
15. Where is Rio Janeiro ? Valparaiso, San Francisco ? New Orleans ? Montreal ?
16. Bound Russia.
17. Name and locate five of the largest cities in Europe.
18. Name four of the most mountainous countries in Europe, and their mountains.
19. For what manufactures are England and France noted ?
20. Name five of the largest rivers in the Eastern Continent, and describe the largest one.
21. What is a volcano ? Name three.
22. What are the divisions and productions of the Chinese Empire ?
23. What are the chief productions of India ?
24. Where is Calcutta ? Jeddo ? Pekin ? Mecca ? Teheran ?
25. Bound the Desert of Sahara.
26. In what countries are the following found : Diamonds ? oases ? pyramids ? ostriches ? pampas ?
27. Correct the following names, and describe them :

Apenines
Rine River
Kiro
Egipt
Himilaia
Jappan iles
Sanwitch iles
Mouna Roa
Hanalula
Californy
Ilynoy

Caribbean
Cheasapeke
Delywair
Nu Jursy
Mane
Nu Hamshear
Road iland
Taxas
Luisiana
Misisipi
Misury

FRESHMAN CLASS—WRITTEN ARITHMETIC.

LAHAINALUNA, JUNE, 1882.

I. What is a quantity? (b) Arithmetic? (c) A unit? (d) A number?

II. What is a numeration? (b) Give rule for writing numbers. (c) Give names of the first six orders of figures? (d) Give the names of the 3d, 9th, 7th, 11th, 8th orders of figures.

III. Write a number having six orders, first in English; then in figures.

(b) Write a number having ten orders of figures; first in Hawaiian, next in English, and lastly in figures.

(c) Write the number of the present year of the christian era; first in Arabic notation, next in Roman notation, and lastly in English.

IV. What is Addition? (b) Give the rule for Addition. (c) Write 8 numbers in figures, using 6 orders, and find their sum. (d) Write 20 numbers in figures, going no higher than the 10th order, and find their sum.

V. What is Subtraction? (b) What is the minuend? (c) How do you prove subtraction? (d) Add together three numbers of ten orders each, then add together 4 more numbers of 8 orders each, and from the greater sum subtract the less, and prove your work.

VI. From the sum of $90,100 + 4,500 + 875 + 2,025 + 15,650 + 19,045 + 2,711$, subtract the sum $6,108 + 84,975 + 25 + 156 + 19,856 + 4728$; then multiply the greater of the two sums by the less, and divide the product by 1, 12 of the smaller of the two sums.

SOPHOMORE CLASS—TRANSLATION.

TRANSLATE INTO HAWAIIAN.

1. George Jones was an idle boy. He did not love study. The teacher of the school often told him, if he did not study diligently when young, he would never succeed well. Yet, George would often go to school without having made any preparation for his morning lesson; and, when called on to recite, he would make so many blunders that the rest of the class could not help laughing at him.

2. At last George went with his class to enter college. Though he passed a very poor examination, he was admitted with the rest; for those who examined him thought it was possible that the reason why he did not answer questions better was because he was frightened. Now came hard times for poor George. In college there is not much mercy shown to poor scholars; and George had neglected his studies so long that he could not now keep up with his class, let him try ever so hard.

3. Charles Barlow was a classmate of George. He was in the academy with him, and he went with him to college. He was about the same age as George, and did not possess superior talents. But Charles was a hard student. When quite young, he was always careful and diligent at school.

4. Charles would sometimes stay in at recess to learn his lessons. This, however, was very seldom. It was only when the lessons were very hard indeed. Generally, he was among the first on the play-ground. Hard study gave him a relish for play, and play, again, gave him a relish for hard study.

5. "Little by little, and lesson after lesson, I will gather up the knowledge which I find in books, and in the world around me," said the thoughtful boy. By learning a little every day, and learning it well, he became at length a wise and useful man, honored and respected by all who knew him. The idle boy is almost always poor and miserable; the industrious boy is happy and prosperous.

LAHAINALUNA, JUNE, 1882.

1. What is Geography ? (b) Name and define its divisions.
2. Name the motions of the earth. (b) What does each produce ?
3. Name the seasons, and the months of each.
4. Name the zones. (b) Name one country in each zone, together with its productions
5. Define the earth's diameter and circumference, and give the number of miles of each.
6. What is a map ?
7. Define latitude and longitude.
8. Give the latitude and longitude of Honolulu ; (b) San Francisco ; (c) New York ; (d) Cape Town ; (e) New Zealand.
9. Describe the mariner's compass and its uses.
10. Name the races, and the estimated number of persons of each.
11. Define a republic ; (b) an empire ; (c) a city ; (d) Name an example of each.
12. Define commerce.
13. Name (a) five of the chief imports of the Hawaiian Islands ; (b) five of their chief exports.
14. Name the sections into which the States and Territories of the United States are divided. How many States are there ? How many Territories ?
15. Name and locate the capital of the United States ; (b) the most important city in each of the sections.
16. How are lakes formed ? (b) Name and locate four of the largest lakes in the world.
17. What is a mountain ? (b) an oasis ?
18. Name five of the highest mountain peaks of the world, and give their heights.
19. Name the five largest rivers of the world, and describe the largest of them.
20. What countries are noted for gold and silver mines ?
21. What countries are noted for the production of (a) sugar ; (b) cotton ; (c) coffee.
22. Name ten different kinds of animals, natives of the temperate and frigid zones.
23. Name the divisions and productions of the Chinese Empire.
24. Name the divisions of Oceanica, and the most important islands in each.
25. Name the Hawaiian Islands and the Legislative districts of the Kingdom.
26. Name five of the principal mountains, and five of the principal bays of the Hawaiian Islands.
27. Name the ports at which the "Likelike" touches in her weekly trips.
28. Travel by the most direct route from Honolulu to Liverpool.

SOPHOMORE CLASS—CONSTRUCTING SENTENCES.

LAHAINALUNA, JUNE, 1882.

Re-arrange the following mixed up sentences, and then translate them into good Hawaiian. Put capital letters in their proper places, and interrogation marks after questions.

1. land the wharves at the Boat which does of.
2. You have seen the Ever Shining daytime in the stars.
3. And drink tobacco avoid of the Strong use.
4. glass people In Stones should not throw Houses.
5. sleep their briny Fishes ever in the do home.
6. to-morrow from evening meeting the early return.
7. except in the room he No Find book could this other.
8. A Hundred Horse bought Three dollars for a man.
9. Straps your boot lift you can by yourself.
10. shower had a Nice Night what we last of rain.
11. Absence you remember your during friends.
12. And all Wide Windows the open doors.
13. That Beard what has a beautiful White Old Man.
14. Money ought to find how we can make the way.
15. And how in the next exist am i where to world.
16. Country into the Journey on a short go.
17. Many sky can count in the how you Stars.
18. nests without their Birds Instruction the build.
19. your Brother Books the pass the table to on those.
20. That there swearing of what man's need is.

MIDDLE AND SOPHOMORE CLASSES—ARITHMETIC
EXAMPLES.

LAHAINALUNA, JUNE, 1882.

1. Sold 45 pieces of studding $17\frac{1}{2}$ feet long, $7\frac{1}{2}$ inches wide, and $2\frac{1}{2}$ inches thick, at $3\frac{1}{2}$ cents a foot; 94 boards, 15 feet and 7 inches long and 13 inches wide, at $4\frac{1}{2}$ cents a foot; 2750 shingles at \$14.65 per M.; 3 kegs of nails, 93 pounds each, at $9\frac{1}{2}$ cents a pound; a pile of wood 4 feet wide, $3\frac{1}{2}$ feet high, and 11 feet long at \$8.50 a cord, and received as part payment 93 pounds of coffee at $16\frac{1}{2}$ cents a pound; 2 packages of sugar $91\frac{3}{4}$ pounds each, at $7\frac{1}{4}$ cents a pound; 7 pounds and 3 ounces of pepper at $3\frac{1}{2}$ cents an ounce. How much remains due? and how much will it take to settle the account if a discount of $3\frac{1}{2}$ per cent. be made for cash?

2. The longitude of Boston is $71^{\circ} 3' 30''$, that of Chicago is $87^{\circ} 35'$; when it is noon at Boston, what is the time at Chicago?

3. Sold three horses for \$100 each; on one I gained 20 per cent; on another I gained 10 per cent.; but on the third I lost 25 per cent.; did I gain or lose by the whole transaction? and how much?

4. What must a merchant ask for goods which cost \$30 that he may take off 30 per cent. from the asking price and yet make 30 per cent. on the cost?

5. In what time will the interest of \$1230, at 7 per cent. per annum, be \$247?

6. A note for \$450 dated July 7th, 1881, payable in one year, at 7 per cent. interest bore the following endorsements, Sept. 10th, 1881, received \$45. Jan. 1st, 1882, received \$110. March 10th, 1882, received \$123. How much should be paid at the time of maturity of the note?

7. What is the face of a draft on 4 m., bought for \$1260, the interest being 8 per cent. per annum, and the premium 4 per cent?

8. Solve the following example by analysis and also by proportion: If 9 men working 10 hours a day, can make 18 sofas in 30 days, how many sofas can 50 men make in 90 days working 8 hours a day?

9. One side of a rectangular field is 19.2 chains and the 14.4 chains other what is the distance between the opposite corners?

10. Divide the cube root of 614125 by the square root of 595984, and express the result as a decimal fraction true to five decimal places.

MIDDLE AND SOPHOMORE CLASSES — ARITHMETIC—DEFINITIONS.

LAHAINALUNA, JULY, 1882.

1. Define arithmetic, number, notation.
2. How many kinds of notation are there in common use? Name each and tell for what it is used.
3. Define prime number, composite number, factor.
4. Define greatest common divisor; least common multiple.
5. Define fraction, numerator, denominator, complex fraction, compound fraction.
6. What is a compound number? reduction?
7. Name the three kinds of weights in common use, and tell in what respects they differ.
8. What is the difference between simple and compound addition?
9. How do you know that a difference of one hour between the time of two places indicates a difference of fifteen degrees in their longitude?
10. Name the elements of percentage, and define each.
11. How many problems of percentage are there? What is given and what is required in each?
12. What is interest? and what elements are there to be considered in calculating interest?
13. What is a bill of exchange? a set of exchange?
14. What is a foreign bill? a domestic bill? What are domestic bills generally called?
15. Define port of entry, duties, specific duties, ad valorem duties.
16. Define ratio, terms, direct ratio, inverse ratio.
17. Define proportion, simple proportion, compound proportion.
18. State the principle upon which a missing term may be found.
19. What is involution? evolution? a perfect power?
20. Define square root, cube root.

MIDDLE CLASS—ALGEBRA, DEFINITIONS.

LAHAINALUNA, JULY, 1882.

1. Define quantity, mathematics, algebra.
2. What is a co-efficient? an exponent? a term?
3. Define power, root, degree.
4. What is a monomial? a polynomial?
5. What is a homogeneous quantity?
6. What is an axiom? State five axioms.
7. What is the apparent sign of a fraction? its real sign?
8. State the principle governing the change of signs.
9. How do you multiply an entire quantity by a fraction?
10. How do you divide an entire quantity by a fraction?
11. What is an equation? a member?
12. How do you transpose any term of an equation?
13. How do you clear an equation of fractions?
14. State the axioms upon which the transformations of equations are based.
15. What is meant by the solution of an equation?
16. What is proportion?
17. How is a proportion changed to an equation?

MIDDLE CLASS—ALGEBRA, EXAMPLES AND PROBLEMS.

LAHAINALUNA, JULY, 1882.

Perform the operations indicated in the following examples:

$$1. \left(3x + \frac{x}{n}\right) - \left(x - \frac{x-a}{c}\right)$$

$$2. \frac{a^2 - 1}{a^2 - 2ab + b^2} \times \frac{a-b}{a^2 - ab}$$

$$3. \frac{a-1}{a-1} \div \frac{1+x}{1-b}$$

Write out the solution and analysis of the following problems :

4. A man has a lease for 15 years ; being asked how much had already expired, he answered that two-thirds of the time past was equal to four-ninths of the time to come. What was the time past ?

5. A man spends seven-twelfths of his salary for board, and three-fourths of the remainder for clothes, and saves \$125 a year. What is his salary ?

6. In a certain orchard one-third are apple trees, four-ninths peach trees, and 400 cherry trees. How many trees are there in the orchard ?

7. What is that number to which if its $\frac{1}{2}$, $\frac{1}{3}$ and $\frac{1}{4}$ be added, the sum will be a .

8. A can do a piece of work in a days, and B can do the same in b days ; how long will it take them if they work together ?

9. The difference of two numbers is 12, and the greater is to the less as 11 to 7 ; what are the numbers ?

10. A man was hired for a year for \$100 and a suit of clothes ; but at the end of eight months he left, and received the clothes and \$60 as full pay for the time he had worked ; what was the value of the clothes ?

MIDDLE CLASS—GRAMMAR.

LAHAINALUNA, JULY, 1882.

1. Define English Grammar and its four parts.
2. Give seven rules for the use of Capitals.
3. Define the Parts of Speech.
4. What modifications have nouns?
5. Define the numbers and genders.
6. Write the plural of
mouse, goose, loaf, tooth,
thief, sheep, child, hand-full.
7. Define the two principal kinds of Adjectives and give an example of each.
8. Define comparison, and compare
near, good, beautiful,
9. Define the different kinds of Pronouns and give an example of each.
10. What is declension?
11. Decline the personal pronouns of the first person and third person.
12. Write four short sentences containing adverbs of different kinds.
13. Define transitive verb, potential mode, passive voice, past-perfect tense, and write examples of each.
14. What is conjugation?
15. Write the conjugation of the verb FIND in the present-perfect ind.
16. Of the verb STRIKE in the potential mode, passive voice, past tense.
17. Write the imp. and inf. of HEAR, and participles both active and passive of TELL.
18. Write a sentence containing all the parts of speech.
19. Arrange the parts of speech in tabular form in the following:
"Casca, who was behind Caesar, drew a dagger and stabbed him in the shoulder. 'Wretch, what doest thou,' cried Caesar, snatching the weapon. The other conspirators now rushed upon him, but he defended himself with the valor which he had shown in a hundred battles."
20. Parse the words in the first sentence of the above.

MIDDLE CLASS—HISTORY.

LAHAINALUNA, JUNE, 1882.

1. What is history ?
2. Name the earliest event in History and give its date.
3. When did the deluge take place, and why ?
4. What happened after the confusion of tongues ?
5. When was the first Empire founded, and by whom ?
6. What can you tell of the cities of this empire ?
7. When was the Egyptian nation founded ? (b) the Chinese ? (c) the Israelitish ? [d] by whom was each founded ?
8. When did the Israelites return to Canaan, and who was their leader ?
9. What country in Europe was settled about this time, and by whom ?
10. Name two of the Judges and two of the Kings of Israel, and tell something of the life of each.
11. By whom were the Jews carried into captivity ? (b) Who set them free ?
12. What event occurred in 490 B. C. ? in 480 B. C. ? in 330 B. C. ?
13. Who built the great Chinese wall, and why was it built ?
14. What prophets foretold the coming of Christ ?
15. In what year, and by what Roman General was Jerusalem destroyed ?
16. Who was the most famous of the Egyptian Kings, and what made him famous ?
17. Give the names of two famous Queens of history, and the date in which they lived.
18. Tell what you know of (a) Lycurgus ? (b) Homer ; (c) Confucius.
19. Tell what you know of the gods of ancient Greece and of Egypt.
20. Give a short account of the slave trade.

JUNIOR CLASS—GEOMETRY—DEFINITIONS.

LAHAINALUNA, JUNE, 1882.

I. What is a line ? (b) a point ? (c) a plane surface ? (d) a geometrical solid ? (e) a physical solid ?

II. What is a circle ? (b) a chord ? (c) a segment of a circle ? (d) a sector ? (e) a tangent ? (f) an inscribed angle ? (g) draw a diagram showing each of the above.

III. Name and define the different kinds of geometrical lines, and draw an example of each. [Three definitions and examples.]

IV. Name and define the different kinds of triangles, and draw a diagram of each. [Four definitions and diagrams.]

V. Name and define the different quadrilaterals, and give a diagram of each. [Six definitions and diagrams.]

VI. The complement of an angle is $16^{\circ} 20'$, what is the angle ? (b) The supplement of an angle is 68 deg. 18 min. 25 sec., what is the angle ?

VII. The vertical angle of an isosceles triangle is 45 deg. 30 min. and the base of the triangle is produced; what is its exterior angle. Demonstrate your answer.

VIII. One of the interior angles of a parallelogram is 44 deg. 15 min. what are the other angles ? Demonstrate.

IX. The sum of four interior angles of an irregular polygon of five sides is 472 deg. what is the 5th interior angle ? Demonstrate.

X. If each of the sides of a regular polygon of twelve sides be produced, what will each exterior angle be ? Demonstrate.

JUNIOR CLASS—GEOMETRY—THEOREMS AND PROBLEMS.

LAHAINALUNA, JUNE, 1882.

I. *Problem*.—To draw a perpendicular to a straight line from a given point without the line.

II. *Problem*.—From a point without a given straight line to draw another line parallel to the given straight line.

III. *Problem*.—From a given point without a given straight line, to draw an angle to that line which shall be equal to a given angle.

IV. *Problem*.—Describe three equal circles which shall touch each other, and then describe another circle which shall touch all the other circles.

V. *Theorem*.—If the base of an isosceles triangle be produced, the exterior angle exceeds one right angle by half the vertical angle.

VI. *Theorem*.—If on the sides of a square, at equal distances from the four angles, four points be taken, one on each side, the figure formed by joining these points will also be a square.

VII. *Theorem*.—The parallelogram whose diagonals are equal is rectangular.

VIII. *Theorem*.—If the diameter of a circle be one of the equal sides of an isosceles triangle, the base of the triangle will be bisected by the circumference.

IX. *Theorem*.—Through any three points not in a straight line but one circumference can be made to pass.

X. *Theorem*.—If one side of a triangle be produced, the exterior angle is equal to the sum of the two interior and remote angles, and the sum of the three interior angles is equal to

JUNIOR CLASS—SCIENCE OF COMMON THINGS.

LAHAINALUNA, JULY, 1882.

1. What is matter? Give illustrations.
2. Name some of the general properties of matter.
3. What is attraction of gravitation?
4. What is centrifugal force? How can you illustrate it?
5. Define center of gravity.
6. In what position only can a body be at rest?
7. What are machines? Do they create power?
8. What is capillary attraction? How does it benefit us?
9. What are artesian wells? Why does water flow from them?
10. Explain the cause of tides.
11. What is the difference between a liquid and a gas?
12. How are the clouds formed?
13. Why are clouds seen about the tops of mountains more frequently than elsewhere?
14. How is a common pump constructed? Draw an illustration.
15. How is a forcing pump constructed? Draw an illustration.
16. Name the sources of heat.
17. What is the effect of heat on substances generally?
18. What is a thermometer?
19. Name three good conductors of heat. Also three bad.
20. What are the chief sources of light?
21. What is reflection? Refraction?
22. How is it known that a ray of light consists of different colors?
23. Why are the clouds red when the sun is near the horizon?
24. What is a lense? and what are its uses?
25. Name the uses of electricity and magnetism.

JUNIOR CLASS—HISTORY.

LAHAINALUNA, JULY, 1882.

1. Give some account of the Crusades.
2. Describe the Feudal System.
3. What can you tell about Charlemagne?
4. What of the Maid of Orleans?
5. Tell what occurred in the reign of Charles 9th.
6. Give some account of events in France from 1789 to 1800.
7. Sketch the career of Bonaparte.
8. Name the rulers of France, in proper order, from the time of Bonaparte to the present.
9. What is the present form of Government of France, and who is its chief officer?
10. Sketch the history of Switzerland.
11. What of Germany in 1870?
12. Tell the story of Peter the Great.
13. Who was Bernadotte?
14. Describe the ancient inhabitants of Great Britain.
15. For what was Alfred the Great noted?
16. In whose reign was Ireland conquered; Wales; Scotland?
17. What was Magna Charta?
18. Sketch the events of the reign of Henry 8th.
19. What can you tell about George 3d?
20. Give some account of affairs in Ireland at the present time.

JUNIOR CLASS—GRAMMAR.

LAHAINALUNA, JULY, 1882.

1. Define Grammar, English Grammar and its four parts.
2. Give rules for the use of Capitals.
3. Define the several Parts of Speech.
4. What modifications have Nouns ?
5. Define the cases.
6. Write the declension of the pers. pronouns of the 3rd pers.
7. What modifications have verbs ?
8. Define the several modes.
9. Write the synopsis of the verb *speak*. 3rd per. sing. com-form.
10. Synopsis of verb *tell*. 3rd sing. prog. form.
11. Write the conjugation of the pres. perf. ind. of the verb *learn*, in the int. reg. and prog. forms combined.
12. Write the infinitives and participals of the verb *bring*, in all possible forms.
13. Define sentence, subject, predicate, modifier.
14. How are sentences divided in form ?
15. How by their propositions ?
16. Define eight kinds of sentences.
17. Define adj. adv. and obj. elements.
18. Define elements of the 1st, 2nd and 3rd class.
19. Enlarge the following sentences by adding modifiers of each class. *Horses run Did Napoleon die? Speak.*
20. Analyze the following.

“Then the master, with a gesture of command
Moved his hand; and, at the word,
Loud and sudden there was heard,
All around them and below,
The sound of hammers, blow on blow,
Knocking away the shores and spurs.”

SENIOR CLASS—CONSTITUTION OF HAWAIIAN ISLANDS.

LAHAINALUNA, JUNE, 1882.

1. What is government? (b) Name the forms of government in civilized nations. (c) To which of these forms of government does our government belong?

2. What is the constitution of a country? Give a short history of the Constitution of 1864.

3. Name the personal rights which the Constitution guarantees in its first six articles.

4. What does Article II. of the Constitution prohibit?

5. How is property protected by the Constitution?

6. How is the Supreme power of the Kingdom divided? Can these powers ever be joined together in the same person?

7. What are the characteristics which disqualify a person from becoming Sovereign of the Hawaiian Islands?

8. Name as many powers of the Sovereign as you can recollect in twenty minutes.

9. Name the councils provided for the King. (b) Who form the Cabinet council?

10. How many branches are there in the Legislature? (b) What is the highest number of persons that can be members of each branch? (c) How is each branch appointed?

11. What are the qualifications for a Representative? (b) For an elector?

12. How is the judicial power of the Kingdom vested? (b) How are the judges appointed? (c) How long do they hold office?

13. What persons are forbidden from holding any office under the government?

14. How can the Constitution of the Kingdom be amended?

LAHAINALUNA, JUNE, 1882.

1. What does Political Economy treat of?
2. Mention some of the natural laws which govern the production of wealth.
3. Mention some human laws which relate to the production and distribution of wealth.
4. What is wealth.
5. Define *natural riches*, and give as many examples as you can.
6. Define capital, and its divisions.
7. Mention a business in which the capital invested is chiefly *fixed*; demonstrate.
8. Mention a business in which the capital is chiefly *circulating*; demonstrate.
9. What are the three elements, or things, necessary to the production of wealth?
10. Define unproductive consumption, and give an example.
11. Define productive consumption and give an example.
12. Into how many parts is wealth produced divided, and to whom do those parts respectively belong?
13. Why should skilled labor be paid more than unskilled labor?
14. What is the test of the highness of wages?
15. If the average money wages of a common laborer are 75 cts. a day in 1882, whilst in 1842 they were 25 cts. a day, and if the cost of living in 1882 has increased three-fold since 1842, what is the difference between the real wages of the two periods?
16. Explain the difference between *market value*, and *intrinsic value*.
17. Demonstrate that the division of labor increases its efficiency.
18. Why is not barter a good method for the exchange of values?
19. What is money?
20. Why are gold and silver used as the universal medium, or common measure of all values?
21. When is a paper currency a good, and when is it an evil?
22. What causes a commercial crisis?
23. Define taxes. (b) Duties. (c) Tariff.
24. Is the tariff of the Hawaiian Kingdom a protective tariff, or a tariff for revenue?
25. Why are the luxuries of life taxed more than the necessities of life.

SENIOR CLASS—ENGLISH COMPOSITION.

LAHAINALUNA, JUNE, 1882.

1. Describe a horse and a donkey, so that the two animals may be recognized from your description by one who sees them for the first time.
2. Write a business letter.
3. Write a letter of information, describing the Hawaiian Kingdom, its natural riches, chief industries, government, and social condition.
4. Write an imaginary news letter to a friend.
5. Write an imaginary account of a journey in some foreign land, and what you saw and did there.
6. Write your opinion on the question—"Is it better for an educated young man to seek his living in public office, or in private business?"
7. Describe the burning of the chapel building of Lahainaluna in 1880.
8. What are your future plans in life?

SENIOR CLASS—MISCELLANEOUS MATHEMATICS.

LAHAINALUNA, JUNE, 1882.

1. I had a triangular piece of land, whose sides were 35, 40 and 45 rods, which I changed for a square piece of equal area. What will it cost me to fence my square piece at \$1.25 a yard?

2. *Theorem*.—The square on the base of an isosceles triangle, whose vertical angle is a right angle, is equal to four times the area of the triangle.

DEMONSTRATE WITH DIAGRAM.

3. *Problem*.—Draw a triangle, and inscribe a circle in it, and circumscribe a circle around it.

4. *Theorem*.—Any line drawn through the center of the the diagonal of a parallelogram to meet the sides is bisected in that point, and also bisects the parallelogram.

5. *Problem*.—Divide a right angle into three equal angles.

6. Given the legs of a right angled triangle 455 and 1092 respectively, to compute the segments into which the hypotenuse is divided by a perpendicular from the right angle, and to compute the perpendicular.

7. Three men hire a pasture. A pays 5-16 of the cost, whilst A and C together pay three-quarters as much as B and C. If C pastures 65 cattle, how many cattle may A and B each pasture?

8. A regiment of soldiers, consisting of 1066 men, forms into two squares, one of which has four more men in a side than the other: what number of men are in a side of each square?

Analyze fully the above examples.

SENIOR CLASS—TRIGONOMETRY—FIRST PAPER.

LAHAINALUNA, JUNE, 1882.

1. Draw a diagram showing all the functions of an arc, and define each function.

2. From the above diagram show the relations of the functions to each other; first, in the form of proportions, then in the form of equations. State the theorem in geometry by which you obtain your proportions.

3. The natural tangent of an arc of 65 degrees, whose radius is unity, is 2.145; compute the secant, sine, and cosine of the arc.

4. What are logarithms?

5. What is the base of the common system of logarithms?

6. What is the characteristic of a logarithm?

7. Find by logarithms the product of 225×345 .

8. Find by logarithms the quotient of $621432 \div 756$.

9. Find the logarithm of the fifth-power of 216.

10. What is the logarithm of the cube root of 871?

11. From the table of logarithmic sines and tangents find the log. of the tangent of an arc of $45^\circ 25' 15''$ and from it compute the logarithm of the secant and co-tangent of the same arc, the logarithm of radius being 10,000,000.

SENIOR CLASS—TRIGONOMETRY—SECOND PAPER.

LAHAINALUNA, JUNE, 1882.

1. From the base of the trunk of a tree, which stands perpendicularly on a plane, to a certain point is 25 rods. From that point the tree subtends an angle of 9 deg. 15 min. from its base to its top; what is the highth of the tree.

Calculate first, by construction, then by trigonometry.

2. How must three trees, A, B, C, be planted so that the angle at A may be double the angle at B, and the angle at C may be one-half the angle at B, and a line of 400 yards may just go around them?

Calculate by construction, by assuming a line at first. Then analyse by trigonometry.

3. A May pole 50 feet 11 inches high, at a certain time will cast a shadow 98 feet 6 inches long. What then is the breadth of a river which runs within 20 feet 6 inches of the foot of a steeple 300 feet 8 inches high, if the steeple at the same time throws its shadow 30 feet 9 inches beyond the stream?

4. From the extremities of a base line measured 10 feet above sea level, parallel with it, and 25 chains long, an object on the summit of a distant hill makes two angles, respectively, 67 deg. 45 min. and 102 deg. 15 min. and the vertical angle which the object makes with the base line is 12 deg. 15 min. What is the highth of the hill, and how distant is the summit from the base line?

SENIOR CLASS—HISTORY.

LAHAINALUNA, JULY, 1882.

1. Give some account of the cause and progress of the French Revolution.
2. Sketch the career of Bonaparte.
3. What happened to France in 1870 ?
4. Name some of the more important events in Russian history during the last 30 years.
5. Name the different royal families of England and the founder of each.
6. Give some account of the reign of Queen Elizabeth.
7. Sketch the history of England during the last half of the 17th Century.
8. What wars have been waged by England during the present reign ?
9. Give some account of the discovery of America and its date.
10. What Colonies established by the English, French, Dutch and Spanish ?
11. Give some account of the capture of Quebec.
12. State the principal causes which led to the American Revolution.
13. Describe the battle of Bunker Hill.
14. When and where was the last battle of the Revolution fought ? Describe the surrender.
15. In what other wars has the United States been engaged ?
16. Describe the condition of the country when Mr. Lincoln became President.
17. Sketch the career of General Grant in the war of Secession.
18. When and by whom were the Hawaiian Islands discovered ?
19. When and by whom was a Constitution granted ?
20. When did Missionaries first come to these Islands, and what was the condition of the people at that time ?

SENIOR CLASS—PHYSIOLOGY.

LAHAINALUNA, JULY, 1882.

1. Define Anatomy, Physiology, Hygiene.
2. Define Vegetable and Comparative Anat, &c.
3. How many bones in the body and how divided?
4. Describe the teeth and their function.
5. Describe a muscle, tendon, joint.
6. Name and describe the organs of digestion.
7. What changes does the food undergo in digestion?
8. Describe the circulation of the blood.
9. Name and describe the parts of the eye.
10. Give six general rules for the preservation of health.

SENIOR CLASS—THEOLOGY.

LAHAINALUNA, JULY, 1882.

1. Define Theology, Natural Theology, Revelation and Christianity.
2. Define Monotheism, Dualism, Pantheism and Polytheism, and name the principal representatives of each.
3. Give four reasons why you believe there is a God.
4. Give six proofs that the Bible is the Book of God.
5. What attributes of God may be known without the Bible ?
6. Why was the Bible needed ?
7. Sketch the life of Jesus.
8. How would you prove Christ's divinity ?
9. State arguments which prove the Holy Ghost is God.
10. What is man's duty to God, and how can it be performed.