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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

HAWAIIAN KINGDOM,

Plaintiff,

v.

JOSEPH ROBINETTE BIDEN JR., in his
official capacity as President of the United
States; KAMALA HARRIS, in her official
capacity as Vice-President and President of
the United States Senate; ADMIRAL JOHN
AQUILINO, in his official capacity as
Commander, U.S. Indo-Pacific Command;
CHARLES P. RETTIG, in his official
capacity as Commissioner of the Internal
Revenue Service; et al.,

Defendants.

Civil No. 1:21:cv-00243-LEK-RT

PLAINTIFF’S RESPONSE TO
MOTION TO DISMISS AMENDED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AS TO
ANDERS G.O. NERVELL FILED
SEPTEMBER 21, 2021 [ECF 74];
DECLARATION OF DEXTER K.
KA‘IAMA; EXHIBITS “1-3”;
CERTIFICATE OF SERVICE

Non-Hearing Motion:
Judge: Leslie E. Kobayashi

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	ii
I. INTRODUCTION.....	1
II. SWEDISH CONSULATE IN THE HAWAIIAN KINGDOM.....	2
III. CONTINUITY OF THE HAWAIIAN KINGDOM AS A STATE.....	4
IV. GOVERNING LAW.....	8
V. JURISDICTION OF THE COURT IN A STATE OF WAR.....	17
VI. CONCLUSION.....	19

TABLE OF AUTHORITIES

Page(s)

CASES:

United States

American Insurance Association v. Garamendi, 539 U.S. 396 (2003).....6

Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146 (1919).....13

In re Edwards, 962 F.2d 641 (7th Cir. 1992).....1

J. Ribas y Hijo v. United States, 194 U.S. 315, 323 (1904).....14

Jalapeno Prop. Mgmt., L.L.C. v. Dukas, 265 F.3rd 506 (6th Cir. 2001).....1

New York Life Ins. Co. v. Bennion, 158 F.2d 260 (C.C.A. 10th, 1946).....12

Picquet v. Swan, 19 F. Cas. 609 (C.C.D. Mass. 1828) (No. 11,134).....1

Pennoyer v. Neff, 95 U.S. 714 (1878).....2

Stoll v. Gottlieb, 305 U.S. 165 (1938).....20

The Apollon, 22 U.S. 362 (1824).....18

The Paquete Habana, 175 U.S. 677 (1900).....9, 20

The Prize Cases, 67 U.S. 635, 688 (1862).....8, 9, 10

The Three Friends, 166 U.S. 1 (1897).....10

United States v. Belmont, 310 U.S. 324 (1937).....6

United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936).....18

United States v. Pink, 315 U.S. 203 (1942).....6

Vanderbilt v. Travelers Insurance Co., N.Y. Sup. Ct. 1920,
184 N.Y. Sup. 54.....16

Williams v. Suffolk Insurance Co., 36 U.S. 415 (1839).....13

Hawaiian Kingdom

In Re Francis de Flanchet, 2 Haw. 96 (1858).....18

In Re Landais, 1 Haw. 353 (1855).....3

International

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

TREATIES:

Convention on Relations between the Three Powers and
the Federal Republic of Germany, May 26, 1952,
6 U.S.T. 4251, 331 U.N.T.S. 327.....19

Convention on the Settlement of Matters Arising Out of the
War and the Occupation, May 26, 1952, 6 U.S.T. 4411,
332 U.N.T.S. 219.....19

Hague Convention on the Pacific Settlement of
International Disputes, 36 Stat. 2199 (1907).....14

Hague Convention, IV, (Hague Regulations),
36 Stat. 2277 (1907).....20

Protocol on the Termination of the Occupation Regime
in the Federal Republic of Germany, Oct. 23, 1954,
6 U.S.T. 4117, 331 U.N.T.S. 253.....19

Treaty of Friendship, Commerce and Navigation between the
Hawaiian Kingdom and the Kingdoms of Sweden and
Norway, Jul. 1, 1852.....2

Vienna Convention on Consular Relations, Apr. 24, 1963,
21 U.S.T. 78, T.I.A.S. No. 6820.....2, 3

UNITED STATES CONSTITUTIONAL PROVISIONS:

U.S. Const. art. II, sec. 2, cl. 1.....5
U.S. Const. art. II, sec. 2, cl. 2.....6
U.S. Const, art. III, sec. 1.....17
U.S. Const. art. IV, sec. 3, cl. 2.17

UNITED STATES STATUTES:

32 Stat. 141.....17
73 Stat. 4.....17

HAWAIIAN KINGDOM CONSTITUTIONAL PROVISIONS:

1864 Hawn. Const. art. 26.....11
1864 Hawn. Const. art. 27.....5
1864 Hawn. Const. art. 29.....6
1864 Hawn. Const. art 42.....5

OTHER AUTHORITIES:

David J. Bederman, “Article II Courts,”
44 *Mercer L. Rev.* 825 (1992-1993).....18, 19
Black’s Law Dictionary, 6th ed. (1990).....11

Roman Boed, “State of Necessity as a Justification for Internationally Wrongful Conduct,” 3(1) *Yale Human Rights and Development L.J.* 1 (2000).....20

Ian Brownlie, *International Law and the Use of Force by States* (1963).....12

Sheldon M. Cohen, *Arms and Judgment: Law, Morality, and the Conduct of War in the Twentieth Century* (1989).....14

James Crawford, *The Creation of States in International Law* (2nd ed., 2006).....14

Christopher Greenwood, “Scope of Application of Humanitarian Law,” in Dieter Fleck, ed., *The Handbook of Humanitarian Law in Armed Conflict* (1999).....8

William Edward Hall, *A Treatise on International Law* (7th ed., 1917).....3

Douglas Kmiec, “Department of Justice, Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea,” 12 *Op. O.L.C.* 238 (1988).....17

Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (1996).....8

Krystyna Marek, *Identity and Continuity of States in Public International Law* (2nd ed., 1968).....7

Myers S. McDougal and Florentino P. Feliciano, “The Initiation of Coercion: A Multi-temporal Analysis,” 52 *Am. J. Int’l. L.* 241 (1958).....8

Lord McNair and A.D. Watts, *The Legal Effects of War* (1966).....11

L. Oppenheim, *International Law*, Vol. 1 (2nd ed., 1912).....3

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

The American Law Institute, *Restatement of the Law (Third) The Foreign Relations Law of the United States* (1987).....9

Quincy Wright, “When Does War Exist?,”
26 *Am. J. Int’l. L.* 327 (1932).....11, 12

Quincy Wright, “The Status of Germany and the Peace Proclamation,” 46(2) *Am. J. Int’l L.* 299 (1952).....14

Quincy Wright, *The Control of Foreign Relations* (1922).....11

United Kingdom, *HL Debs*, vol. 566, *WA* 85, Oct. 16, 1995.....4

United Nations International Law Commission’s Articles on *State Responsibility for Internationally Wrongful Acts* (2001).....3

United States Military Government, Ordinance No. 2, Military Government Courts, 12 Fed. Reg. 2189 (1947).....19

United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai‘i: 1894-95* (1895).....4, 5, 6, 13

PLAINTIFF’S RESPONSE TO MOTION TO DISMISS AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AS TO ANDERS G.O. NERVELL FILED SEPTEMBER 21, 2021 [ECF 74]

I. INTRODUCTION

As its operation and administration occurs within the territory of the Hawaiian Kingdom, this Honorable Court is compelled by international and U.S. constitutional law to first transform itself from an Article III Court to a *de facto* Article II Court before it may lawfully assert subject-matter and personal jurisdiction to address any of the issues raised in Defendant’s motion to dismiss [ECF 74]. Moreover, this lawful Article II transformation will then authorize this Court to address and grant the relief demanded in Plaintiff’s Complaint.

A judgment is void “if the court that rendered judgment lacked jurisdiction of the subject-matter, or of the parties, or acted in a manner inconsistent with due process.”¹ According to Justice Story, “no sovereignty can extend its process beyond its territorial limits, to subject either persons or property to its judicial decisions. Every exertion of authority beyond this limit is a mere nullity.”² In *Pennoyer v. Neff*, the Supreme Court reiterated Story’s views on territorial jurisdiction. The Court stated:

[N]o State can exercise direct jurisdiction and authority over persons or property without its territory (citation omitted). The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists as an elementary principle that the laws of one State have no operation outside of its territory except so far as is allowed by comity, and that no tribunal

¹ *Jalapeno Prop. Mgmt., L.L.C. v. Dukas*, 265 F.3rd 506, 516 (6th Cir. 2001) (quoting *In re Edwards*, 962 F.2d 641, 644 (7th Cir. 1992)).

² *Picquet v. Swan*, 19 F. Cas. 609, 612 (C.C.D. Mass. 1828) (No. 11,134).

established by it can extend its process beyond that territory so as to subject either persons or property to its decisions.³

II. SWEDISH CONSULATE IN THE HAWAIIAN KINGDOM

According to Article XII of the 1852 Treaty of Friendship, Commerce and Navigation between the Hawaiian Kingdom and the Kingdoms of Sweden and Norway, which is a perpetual treaty, “before any consul shall act as such, he shall, in the usual form, **be approved and admitted by the Government to which he is sent** (emphasis added).” (See, Exhibit “1” to the Declaration of Dexter K. Ka‘iama).

The Hawaiian Kingdom does not contest Mr. Nervell’s commission by the Swedish Government as an Honorary Consul, but rather denies the approval and admittance of the Honorary Consulate within the territorial jurisdiction of the Hawaiian Kingdom pursuant to Art. XII of the 1852 Treaty. Therefore, Mr. Nervell’s actions cannot be considered “official acts” under the Vienna Convention on Consular Relations (“VCCR”). As a *de facto* Article II Court, the Hawaiian Kingdom requests this Honorable Court to take judicial notice of the 1852 Treaty. The Hawaiian Kingdom and Sweden were on good terms prior to the United States invasion on January 16, 1893.

Mr. Nervell is a member of the Swedish Mission to the United States and not to the Hawaiian Kingdom, and, therefore, he cannot be protected by virtue of Art. 71(1) of the VCCR in his official activities. Furthermore, if Mr. Nervell had been admitted by the Hawaiian Kingdom he would not have “immunity from jurisdiction” in the courts of Hawai‘i because the Hawaiian Kingdom did not recognize foreign consulates as being privileged from suit according to customary

³ *Pennoyer v. Neff*, 95 U.S. 714, 722 (1878).

international law. *In the Matter of Landais*, foreign Consulates as opposed to foreign Diplomats, are not privileged. The Hawaiian Supreme Court stated, “[i]f M. Perrin should be lowered to the rank of a Consul, [he and] his retainers would immediately lose their immunity from the local jurisdiction.”⁴

Customary international law states that Consuls “are not diplomatic representatives, [and] they do not enjoy the privileges of diplomatists.”⁵ Furthermore, Consuls “must be conceded whatever privileges are necessary to enable him to fulfil the duties of his office, except such as would withdraw him from the civil and criminal jurisdiction of the courts.”⁶ Article 71(1) is not customary international law but rather treaty law. The Hawaiian Kingdom did not sign and ratify the VCCR and, therefore, is not bound by Article 71(1) of the VCCR.

Furthermore, on October 11, 2021, the Permanent Missions to the United Nations, to include the Swedish Permanent Mission, received a Note Verbale No. 2021-1-HI (See, Exhibit “2” to the Declaration of Dexter K. Ka‘iama) from the Hawaiian Ministry of Foreign Affairs serving as a notice of claim by an injured State invoking the responsibility of all Member States of the United Nations who are responsible for the internationally wrongful act of recognizing the United States presence in the Hawaiian Kingdom as lawful to cease that act pursuant to Article 30(a) of the International Law Commission’s Articles on *State Responsibility for Internationally Wrongful Acts*, and to offer appropriate assurances and guarantees of non-repetition pursuant to Article 30(b).

⁴ *In Re Landais*, 1 Haw. 353, 359 (1855).

⁵ L. Oppenheim, *International Law*, Vol. 1, 484 (2nd ed., 1912).

⁶ William Edward Hall, *A Treatise on International Law* 330 (7th ed., 1917).

III. CONTINUITY OF THE HAWAIIAN KINGDOM AS A STATE

The United States' overthrow of the government of the Hawaiian Kingdom on January 17, 1893, being a recognized sovereign and independent State, violated the international principle of the duty of non-intervention, whereby the United States committed "unjustified" acts of war against the government of the Hawaiian Kingdom.

After the completion of a Presidential investigation, the new U.S. Minister Plenipotentiary assigned to the Hawaiian Kingdom, Albert Willis, was tasked, by President Cleveland, to negotiate with Queen Lili'uokalani for resolution and settlement through executive mediation. The negotiations began on November 13, 1893, at the U.S. Legation in Honolulu.

At this initial meeting, Minister Willis made known to the Queen of "the President's sincere regret that, through the unauthorized intervention of the United States, she had been obliged to surrender her sovereignty, and his hope that, with her consent and cooperation, the wrong done to her people might be redressed."⁷ It should be noted that because sovereignty is vested in the State, as a subject of international law, what the Queen yielded was not the sovereignty of the Hawaiian Kingdom but rather the executive authority.⁸ Willis stated to the Queen that the President would expect a full granting of amnesty to the insurgents after being restored. She responded, "[t]here are, under this [Penal Code], no degrees of

⁷ United States House of Representatives, 53rd Congress, *Executive Documents on Affairs in Hawai'i: 1894-95*, 1242 (1895) (hereafter "Executive Documents").

⁸ In a statement by the United Kingdom Government, "Sovereignty is an attribute which under international law resides inherently in any independent State recognized as such. By virtue and in exercise of their sovereignty, states conduct dealings with one another internationally." *HL Debs*, vol. 566, *WA* 85, Oct. 16, 1995.

treason. Plotting alone carries with it the death sentence.”⁹ She denied granting amnesty.

Willis notified the Secretary of State, Walter Gresham, of the Queen’s position. Gresham sent a telegram to Willis stating that “[t]he brevity and uncertainty of your telegram are embarrassing. You will insist upon amnesty and recognition of obligations of the Provisional Government as essential conditions of restoration. All interests will be promoted by prompt action.”¹⁰ After several meetings, the Queen, on December 18 agreed to the conditions.¹¹

The 1864 Constitution vests the Executive Monarch of the Hawaiian Kingdom, “by and with the advice of His Privy Council, [...] the power to grant reprieves and pardons, after conviction, for all offences, except in cases of impeachment.”¹² However, Article 42 of the Constitution also provides that “[n]o act of the [Monarch] shall have any effect unless it be countersigned by a Minister, who by that signature makes himself responsible.”¹³ President Cleveland’s pardoning power derives from the United States Constitution that vests the President the “Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.”¹⁴

Unbeknownst to President Cleveland of the agreement of restoration, he notified the Congress, by message, “that the provisional government owes its existence to an armed invasion by the United States.”¹⁵ He also determined that on January 17, “the Government of the Queen [...] was undisputed and was both the

⁹ Executive Documents, 1243.

¹⁰ *Id.*, 1191.

¹¹ *Id.*, 1269.

¹² 1864 Hawn. Const. art. 27.

¹³ *Id.*, art. 42.

¹⁴ U.S. Const. art. II, sec. 2, cl. 1.

¹⁵ Executive Documents, 454.

de facto and the *de jure* government,”¹⁶ while the insurgency calling itself a provisional government “was neither a government *de facto* nor *de jure*.”¹⁷

After receiving Willis’ telegram of the Queen’s acceptance of the conditions, the President notified Congress, by message, on January 13, 1894.¹⁸ The agreement of restoration is a treaty under international law. Under Hawaiian municipal laws, the Monarch “has the power to make Treaties” or international agreements with the countersignature of a Minister that binds the Hawaiian Kingdom.¹⁹ However, treaties or international agreements “involving changes in the Tariff or in any law of the Kingdom shall be referred for approval to the Legislative Assembly.”²⁰ United States municipal laws provide two procedures by which an international agreement can bind the United States. The first is by a treaty whose entry into force can only take place after two-thirds of the United States Senate has given its advice and consent.²¹ The second is by way of an executive agreement entered into by the President, under his sole authority, that does not require “advice and consent” by the Senate.²²

The Queen’s yielding of her executive authority on January 17 was conditional and two-fold. The first part was that the yielding of authority was limited “until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representative.” The second part was restoring the Queen “as the constitutional sovereign of the Hawaiian Islands.” The first part was met after President Cleveland initiated an investigation with the

¹⁶ *Id.*, 451.

¹⁷ *Id.*, 453.

¹⁸ *Id.*, 1241.

¹⁹ 1864 Hawn. Const. art. 29.

²⁰ *Id.*

²¹ U.S. Const. art. II, sec. 2, cl. 2.

²² *United States v. Belmont*, 310 U.S. 324 (1937); *United States v. Pink*, 315 U.S. 203 (1942); and *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003).

appointment of Special Commissioner Blount on March 11, 1893,²³ and presented his findings to the Congress. The second part of reinstatement, while achieved by executive agreement, was not carried out on the part of the United States. Therefore, the Queen's yielding of Hawaiian executive authority to the President was terminated and the state of war ensued.

The Hawaiian State, as a legal fact, continued to exist despite the unlawful overthrow of its government by the United States. 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."²⁴ On February 28, 1997, Hawaiian subjects exercised their right of internal self-determination and took the necessary steps to restore the Hawaiian Kingdom Government, as a Regency, under the doctrine of necessity and Hawaiian constitutional law.²⁵ The international law of occupation allows for an occupied State's government and the occupying State to co-exist within the same territory. According to Professor Marek,

it is always the legal order of the State which constitutes the legal basis for the existence of its government, whether such government continues to function in its own country or goes into exile; but never the delegation of the [occupying] State nor any rule of international law other than the one safeguarding the continuity of an occupied State. The relation between the legal order of the [occupying] State...is not one of delegation, but of co-existence.²⁶

²³ Executive Documents, 1185.

²⁴ Yejoon Rim, "State Continuity in the Absence of Government: The Underlying Rationale in International Law," 20(20) *Eur. J. Int. Law* 1, 4 (2021).

²⁵ ¶ 86, Complaint.

²⁶ Krystyna Marek, *Identity and Continuity of States in Public International Law* 91 (2nd ed., 1968).

IV. GOVERNING LAW

International law is divided into private and public international law. Private international law regulates private relationships across State borders—interstate conflict of laws or choice of laws. Public international law regulates the relationships between governments of sovereign and independent States and entities legally recognized as international actors, *e.g.*, Permanent Court of Arbitration. Under public international law it is further separated into the laws of peace and the laws of war, and the latter is further divided into *jus ad bellum*—authorization to go to war, and *jus in bello*—regulating war.

“Traditional international law,” states Judge Greenwood, “was based upon a rigid distinction between the state of peace and the state of war.”²⁷ This bifurcation provides the proper context by which certain rules of international law would or would not apply. A state of war “automatically brings about the full operation of all the rules of war,”²⁸ and the laws of war “continue to apply in the occupied territory even after the achievement of military victory, until either the occupant [State] withdraws or a treaty of peace is concluded which transfers sovereignty to the occupant [State].”²⁹ According to the United States Supreme Court, in *The Prize Cases*,

The legal consequences resulting from a state of war between two countries at this day are well understood, and will be found described in every approved work on the subject of international law. The people of the two countries become immediately the enemies of each other—**all intercourse**

²⁷ Christopher Greenwood, “Scope of Application of Humanitarian Law,” in Dieter Fleck, ed., *The Handbook of Humanitarian Law in Armed Conflict* 39 (1999).

²⁸ Myers S. McDougal and Florentino P. Feliciano, “The Initiation of Coercion: A Multi-temporal Analysis,” 52 *Am. J. Int’l. L.* 241, 247 (1958).

²⁹ Sharon Koman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* 224 (1996).

commercial or otherwise between them unlawful—all contracts existing at the commencement of the war suspended, and all made during its existence utterly void. The insurance of enemies’ property, the drawing of bills of exchange or purchase on the enemies’ country, the remission of bills or money to it, are illegal and void. Existing partnerships between citizens or subjects of the two countries are dissolved, and, in fine, interdiction of trade and intercourse direct or indirect is absolute and complete by the mere force and effect of war itself. All the property of the people of the two countries on land or sea are subject to capture and confiscation by the adverse party as enemies’ property, with certain qualifications as it respects property on land, all treaties between the belligerent parties are annulled [...]. War also effects a change in the mutual relations of all States or countries, not directly, as in the case of the belligerents, but immediately and indirectly, though they take no part in the contest, but remain neutral. [...] This great and pervading change in the existing condition of a country, and in the relations of all her citizens or subjects, external and internal, from a state of peace, is the immediate effect and result of a state of war [...] (emphasis added).³⁰

The Supreme Court’s statement, “will be found described in every approved work on the subject of international law,” is referring to the writing of scholars, which is a source of the rules of international law. In *The Paquette Habana*, the Supreme Court stated that “Wheaton places among the principal sources of international law, ‘text writers of authority.’”³¹ The Court explained, “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, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.”³² The Hawaiian Kingdom in its amended complaint and in the instant pleading cites the work of scholars as to the rules of international law.

³⁰ *The Prize Cases*, 67 U.S. 635, 688 (1862).

³¹ *The Paquete Habana*, 175 U.S. 677, 700 (1900).

³² *Id.*; see also Restatement Third—Foreign Relations Law §103(c).

Belligerent rights, under the laws of war, stem from war as a legal concept as opposed to a material fact. The Supreme Court distinguished between war in “the material sense” and war “in the legal sense.”³³ Justice Nelson, in the *Prize Cases*, although dissenting, made the distinction.

An idea seemed to be entertained that all that was necessary to constitute a war was organized hostility in the district or country in a state of rebellion—that conflicts on land and on sea—the taking of towns and capture of fleets—in fine, the magnitude and dimensions of the resistance against the Government—constituted war with all the belligerent rights belonging to civil war [...].

Now in one sense, no doubt this is war, and may be a war of the most extensive and threatening dimensions and effects, but it is a statement simply of its existence in a material sense, and has no relevancy or weight when the question is, what constitutes war in a legal sense, in the sense of the law of nations, and of the Constitution of the United States? For it must be war in this sense to attach to it all the consequences that belong to belligerent rights. Instead, therefore, of inquiring after armies and navies, and victories lost and won, or organized rebellion against the General Government, the inquiry should be into the law of nations and into the municipal fundamental laws of the Government. For we find there that to constitute a [...] war in the sense in which we are speaking, before it can exist, in contemplation of law, it must be recognized or declared by the sovereign power of the State.³⁴

To constitute a war in the legal sense, there must be an act that proceeds from a State’s competent authority under its municipal law to recognize or to make war. In the United States, the competent authority to declare war is the Congress, but the competent authority to recognize war is the President. “As Commander-in-Chief,” says Wright, “he may employ the armed forces in defense of American

³³ *The Prize Cases; The Three Friends*, 166 U.S. 1 (1897).

³⁴ *The Prize Cases*, 690.

citizens abroad, as he did in the bombardment of Greytown, the Koszta case and the Boxer rebellion, and thereby commit acts of war, which the government they offend may consider the initiation of a state of war.”³⁵

In similar fashion to the United States, the competent authority to recognize war in the Hawaiian Kingdom is the Executive Monarch and the competent authority to declare war is the Legislative Assembly. According to Hawaiian constitutional law, the Monarch “is the Commander-in-Chief of the Army and Navy, and of all other Military Forces of the Kingdom, by sea and land; and has full power by Himself, or by any officer or officers He may appoint, to train and govern such forces, as He may judge best for the defense and safety of the Kingdom. But he shall never proclaim war without the consent of the Legislative Assembly.”³⁶

“Action by one state is enough. The state acted against may be forced into a state of war against its will.”³⁷ The Queen’s conditional surrender of January 17 was an act of cessation of hostilities—*commercium belli*,³⁸ and it was countersigned by the members of her cabinet pursuant to Article 42, which made the conditional surrender under Hawaiian municipal law valid and legal. It did not require approval from the Legislative Assembly. This act was a recognition of a state of war, not a declaration of war. According to McNair and Watts, “the absence of a declaration [...] will not of itself render the ensuing conflict any less a war.”³⁹ In *New York Life Ins. Co. v. Bennion*, the Court explained that “the formal declaration by the Congress on December 8th was not an essential prerequisite to a political

³⁵ Quincy Wright, *The Control of Foreign Relations* 285 (1922).

³⁶ 1864 Hawn. Const. art. 26.

³⁷ Quincy Wright, “When Does War Exist?,” 26 *Am. J. Int’l. L.* 327, 363, n. 6 (1932).

³⁸ *Black’s Law Dictionary*, 270 (6th ed. 1990).

³⁹ Lord McNair and A.D. Watts, *The Legal Effects of War* 7 (1966).

determination of the existence of a state of war commencing with the attack on Pearl Harbor” the previous day.⁴⁰

Although the United States Government did not know that U.S. troops committed “acts of war” on Hawaiian territory until after President Cleveland conducted an investigation, customary international law “leads to the conclusion that in so far as a ‘state of war’ had any generally accepted meaning it was a situation **regarded by one** or both of the parties to a conflict as constituting a ‘state of war (emphasis added).”⁴¹ By its conditional surrender, the Hawaiian Government manifestly regarded the situation as a state of war. Furthermore, the Council of Regency, being the successor to Queen Lili‘uokalani, as the Executive Monarch, also regards the situation of a state of war as unchanged.

A “victim of an act of war, if a recognized state, may always if it wishes, regard the act as instituting a state of war, and if it does, a state of war exists. States victims of [...] intervention have usually been much weaker than the state employing such methods.”⁴² The Hawaiian Kingdom was, at the time of the invasion, a “recognized state” and in a “state of war,” which was clearly acknowledged by Secretary of State Walter Gresham in his correspondence to President Cleveland on October 18, 1893. The Secretary of State stated:

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

⁴⁰ *New York Life Ins. Co. v. Bennion*, 158 F.2d 260 (C.C.A. 10th, 1946).

⁴¹ Ian Brownlie, *International Law and the Use of Force by States*, n. 7 at 38 (1963).

⁴² Wright, “When Does War Exist,” 365.

legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice (emphasis added).⁴³

In *Williams v. Suffolk Insurance Co.*, the Supreme Court stated, “when the executive branch of the government, which is charged with our foreign relations [...] assumes a fact in regard to the sovereignty of any [...] country, it is **conclusive on the judicial department** (emphasis added).”⁴⁴ As a *de facto* Article II Court, this Court is bound to take judicial notice of Queen Lili‘uokalani’s conditional surrender of January 17, 1893⁴⁵ and President Cleveland’s message to the Congress of December 18, 1893.⁴⁶

The President’s confirmation that the invasion on January 16, 1893, was an “act of war,” transformed the situation from a state of peace to a state of war on that date. The Hawaiian Government’s conditional surrender took place because of the invasion the previous day. The Hawaiian Government’s conditional surrender was not a termination of the state of war. Only by means of a treaty of peace proclaimed by both States can the situation return to a state of peace. An attempt to end the state of war was made by the agreement of restoration, but it was not carried out.

In *Hamilton v. Kentucky Distilleries & Warehouse Co.*, the Supreme Court concluded that the United States’ war power does not end in “a technical state of war, [but] only with the ratification of a treaty of peace or a proclamation of peace.”⁴⁷ And in *J. Ribas y Hijo v. United States*, the Supreme Court stated, in the case of the Spanish-American War, that a “state of war did not, in law, cease until the ratification in April, 1899, of the treaty of peace. ‘A truce or suspension of

⁴³ Executive Documents, 462-463.

⁴⁴ *Williams v. Suffolk Insurance Co.*, 36 U.S. 415, 420 (1839).

⁴⁵ ¶ 63, Complaint.

⁴⁶ Executive Documents, 445-458.

⁴⁷ *Hamilton v. Kentucky Distilleries & Warehouse Co.*, 251 U.S. 146, 161 (1919).

arms,' says Kent, does not terminate the war, but it is one of the *commercias belli* which suspends operations."⁴⁸

The United States' overthrow of the Hawaiian government during a state of war did not affect, in the least, the continuity of the Hawaiian State. Wright asserts that "international law distinguishes between the government and the state it governs."⁴⁹ "The state must be distinguished from the government. The state, not the government, is the major player, the legal person, in international law."⁵⁰ As Judge Crawford explains, "[t]here is a presumption that the State continues to exist, with its rights and obligations [...] despite a period in which there is no [...] effective, government,"⁵¹ and "[b]elligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State."⁵²

Accordingly, in *Larsen v. Hawaiian Kingdom*, the Permanent Court of Arbitration ("PCA") acknowledged the continuity of the Hawaiian Kingdom as a State "[p]ursuant to article 47 of the 1907 Convention" of the Pacific Settlement of International Disputes that was specifically stated in the PCA Annual Reports from 2000-2011.⁵³ Article 47 provides that the "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]."⁵⁴ (See, Exhibit "3," Annex 2, p. 51, to the Declaration of

⁴⁸ *J. Ribas y Hijo v. United States*, 194 U.S. 315, 323 (1904).

⁴⁹ Quincy Wright, "The Status of Germany and the Peace Proclamation," 46(2) *Am. J. Int'l L.* 299, 307 (Apr. 1952).

⁵⁰ Sheldon M. Cohen, *Arms and Judgment: Law, Morality, and the Conduct of War in the Twentieth Century* 17 (1989).

⁵¹ James Crawford, *The Creation of State in International Law* 34 (2nd, ed. 2006).

⁵² *Id.*

⁵³ PCA Annual Reports online at <https://pca-cpa.org/en/about/annual-reports/>.

⁵⁴ 36 Stat. 2199 (1907).

Dexter K. Ka‘iama). The United States is a Contracting [State] and the Hawaiian Kingdom is a non-Contracting [State] to the 1907 Convention.

All of the governments of the Defendant Consulates, to include Sweden, and the Defendant United States, are member States of the PCA Administrative Council that publishes the PCA’s Annual Reports pursuant to Article 49 of the 1907 Convention, and, therefore, specifically acknowledged the Hawaiian Kingdom as a non-Contracting State and the Council of Regency as its government.⁵⁵ As a *de facto* Article II Court, the Plaintiff requests this Court to take judicial notice Annex 2 of the PCA Annual Report of 2011. Furthermore, the United States entered into an agreement with the Council of Regency to gain access to all pleadings and records of the arbitral proceedings.⁵⁶

Since the invasion on January 16, 1893, there has been no “treaty of peace or a proclamation of peace” ending the state of war between the Hawaiian Kingdom and the United States. Instead, and in violation of the laws of war, the United States unilaterally seized the territory of the Hawaiian Kingdom and has since imposed its municipal laws, being the war crime of usurpation of sovereignty, and established 118 military sites throughout Hawaiian territory in violation of Hawaiian neutrality. American municipal laws became the weapon employed by the United States that led to the obliteration of the national consciousness of Hawaiian subjects, which concealed the United States’ intentional violations of the laws of war for over a century.

The maintenance of Defendant foreign Consulates in the territory of the Hawaiian Kingdom also constitutes acts of belligerency. Regarding the Czech Republic’s recent letter to this Court announcing the temporary closure of its Honorary Consulate in the Hawaiian Kingdom on June 30, 2021, the Hawaiian

⁵⁵ ¶ 104, Complaint.

⁵⁶ See Declaration of David Keanu Sai, Ph.D. [ECF 55-1].

Kingdom acknowledges this act to be in conformity with Article 30(a) and (b) of the International Law Commission's articles of *Responsibility of States for Internationally Wrongful Acts* (2001), whereby "[t]he State responsible for the internationally wrongful act is under an obligation (a) to cease that act, if it is continuing [and] (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require."⁵⁷ India and Finland followed suit and closed their Consulates and have been dismissed from the lawsuit [ECF 100] along with the Czech Republic [ECF 70].

The existence of a state of war is not dependent on the form of hostile operations taken by one of the belligerent States. Nor is it affected by blatant violations of the laws of war because without a "treaty of peace or a proclamation of peace" ending the state of war, the war would nevertheless ensue. As such, New York courts have held that "the death of the insured on board the *Lusitania* must be conceded to be a result of war" despite the death was a result of the violation of the laws of war.⁵⁸ Alfred G. Vanderbilt, the insured, drowned after the "*Lusitania* was sunk in accordance with instructions of the Imperial German Government by torpedoes fired from a submarine vessel."⁵⁹ The *Lusitania* was a civilian passenger ship and was not, at the time, in the service of the United Kingdom as an auxiliary cruiser, which is why the death of the insured was a violation of the laws of war.

⁵⁷ Letter from Josef Smycek, Czech Deputy Consul General Los Angeles, to Magistrate Judge Rom A. Trader, *Hawaiian Kingdom v. Biden et al.*, Case 1:21-cv-00243-LEK-RT, Document 34, filed 07/14/21; see also ¶ 99-101, Complaint.

⁵⁸ *Vanderbilt v. Travelers Insurance Co.*, N.Y. Sup. Ct. 1920, 184 N.Y. Sup. 54, affirmed App. Div., 194 N.Y. Sup. 986, and Ct. of App., 139 N.E. 715.

⁵⁹ *Id.*

V. JURISDICTION OF THE COURT IN A STATE OF WAR

“The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”⁶⁰ This provision authorizes the Congress to establish Courts, which came to be known as legislative courts that prevailed in the territories of the United States. These territorial courts were established in view of Congress’ power to “make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”⁶¹

When these territories became States of the Federal Union, Article IV Courts were transformed into Article III Courts. The District Court of Hawai‘i was established as an Article III Court by Congress under section 9(a) of the 1959 Hawai‘i Statehood Act.⁶² Prior to 1959 it was an Article IV Court created by the Congress under section 86 of the 1900 Hawai‘i Territorial Act.⁶³ Section 2 of the Territorial Act erroneously states “the islands [were] acquired by the United States of America under an Act of Congress entitled ‘Joint resolution to provide for annexing the Hawaiian Islands to the United States,’ approved [July 7, 1898].” The Congress does not have any extraterritorial effect and was not competent to annex a foreign State by enacting a joint resolution.⁶⁴ According to the Department of Justice, “[t]here is a serious question whether Congress has the authority either to assert jurisdiction over an expanded territorial sea for purposes of international law or to assert the United States’ sovereignty over it.”⁶⁵

⁶⁰ U.S. Const, art. III, sec. 1.

⁶¹ *Id.*, art. IV, sec. 3, cl. 2.

⁶² 73 Stat. 4.

⁶³ 32 Stat. 141.

⁶⁴ See Douglas Kmiec, “Department of Justice, Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea,” 12 *Op. O.L.C.* 238 (1988).

⁶⁵ *Id.*, 238.

The jurisdictional reach of Article IV and Article III Courts are confined to the territorial limits of the United States. In *United States v. Curtiss-Wright Export Corp.*, the Supreme Court stated, “[n]either the Constitution nor the laws passed in pursuance of it have any force in foreign territory.”⁶⁶ This is also a rule of international law, as stated by the Permanent Court of International Justice, where “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.”⁶⁷ These cases preclude this Court from exercising subject-matter or personal jurisdiction in an action it would otherwise be empowered to adjudicate under a congressional grant of authority.

Considering that *Curtiss-Wright* and the *Lotus* case precludes this Court, as an Article III Court, from exercising authority outside the territory of the United States, federal courts, which are separate from consular courts, military commissions, or courts martial, have been established under Article II of the U.S. Constitution. As executive courts, these Article II Courts were established in foreign territory that was under belligerent occupation by the United States and were regulated by the laws of war. According to Bederman:

What, then, is distinctive about a court established under Article II of the Constitution? First, executive tribunals are established *without* an act of Congress or any other form of legislative concurrence. Congressional intent concerning the status of a presidential court is irrelevant because no congressional approval is needed. The fact that the President alone can create an executive court places it outside the scope of Article III of the Constitution, which demands that Congress shall establish courts inferior to the Supreme Court. Second, the executive courts are created pursuant only to the power and authority granted to the President in Article II of the

⁶⁶ *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936); see also *The Apollon*, 22 U.S. 362, 370 (1824), and *In Re Francis de Flanchet*, 2 Haw. 96, 108 (1858).

⁶⁷ *Lotus*, PCIJ Series A, No. 10, 18 (1927).

Constitution. In practice, the only presidential power that would call for the creation of a court is that arising from his responsibility as Commander in Chief of the armed services and his consequent war-making authority.⁶⁸

An Article II Court was established in Germany after hostilities ceased in 1945 during the Second World War. After the surrender, western Germany came under belligerent occupation by the United States, France, and Great Britain. The military occupation officially came to an end on May 5, 1955, with the entry into force of the Bonn Conventions between the Federal Republic of Germany and the three Occupying States.⁶⁹ During the occupation, these Article II Courts had jurisdiction “over all persons in the occupied territory,” except for Allied armed forces, their dependents, and civilian officials, for “[a]ll offenses against the laws and usages of war[,] [...] [a]ll offenses under any proclamation, law, ordinance, notice or order issued by or under the authority of the Military Government or of the Allied Forces, [and] [a]ll offenses under the laws of the occupied territory or any part thereof.”⁷⁰

VI. CONCLUSION

On September 30, 2021, Magistrate Judge Rom A. Trader issued an Order granting the Motion for Leave to File Amended *Amicus Curiae Brief* on Behalf of Nongovernmental Organizations with Expertise in International Law and Human Rights Law [ECF 90]. *Amici* filed their Amended *Amicus Curiae Brief* on October 6, 2021 [ECF 96]. Before the Court can address the substance of Defendant’s

⁶⁸ David J. Bederman, “Article II Courts,” 44 *Mercer L. Rev.* 825, 831 (1992-1993).

⁶⁹ Convention on Relations between the Three Powers and the Federal Republic of Germany, May 26, 1952, 6 U.S.T. 4251, 331 U.N.T.S. 327; Convention on the Settlement of Matters Arising Out of the War and the Occupation, May 26, 1952, 6 U.S.T. 4411, 332 U.N.T.S. 219; Protocol on the Termination of the Occupation Regime in the Federal Republic of Germany, Oct. 23, 1954, 6 U.S.T. 4117, 331 U.N.T.S. 253.

⁷⁰ United States Military Government, Ordinance No. 2, Military Government Courts, 12 Fed. Reg. 2189, 2190-91 (1947).

motion to dismiss it must first transform itself into an Article II Court for the reasons stated in the filed *Amicus* Brief, which is “trustworthy evidence of what [international] law really is.”⁷¹

In *Stoll v. Gottlieb*, the Supreme Court stated, “[a] court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators.”⁷² **This court precedent, however, does not bind this Court while situated outside of U.S. territory.** United States municipal laws, which have no effect within the territory of the Hawaiian Kingdom, includes not only statutes, but also the constitution, decrees, ordinances, and court precedents. United States municipal laws, which include the *Stoll* case, can be instructional, not binding, in the Hawaiian situation so long it conforms to international humanitarian law.

Therefore, the Court should, by “judicial fiat” and by necessity, transform itself into a *de facto* Article II Court pursuant to Article 43 of the 1907 Hague Regulations, “[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.”⁷³ Under international law, “when a threat to self-preservation arose, it was considered justified to take any steps necessary to preserve one’s existence.”⁷⁴ The Regency’s 2014 decree of provisional laws would assist the Court in this transformation regarding all its past decisions as an Article III Court and as an Article IV Court.⁷⁵

⁷¹ *The Paquete Habana*, 700.

⁷² *Stoll v. Gottlieb*, 305 U.S. 165, 171 (1938).

⁷³ 36 Stat. 2277.

⁷⁴ Roman Boed, “State of Necessity as a Justification for Internationally Wrongful Conduct,” 3(1) *Yale Human Rights and Development L.J.* 1, 4 (2000).

⁷⁵ ¶ 83, Complaint.

DATED: Honolulu, Hawai‘i, October 19, 2021.

Respectfully submitted,

/s/ Dexter K. Ka‘iama

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DEPARTMENT OF THE ATTORNEY
GENERAL, HAWAIIAN KINGDOM

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Exhibit “1”

(13) TREATY WITH SWEDEN AND NORWAY,

RATIFIED ON THE 5TH OF APRIL, 1855.

WE, KAMEHAMEHA IV., by the Grace of God, King of the Hawaiian Islands, make known:

THAT His late Majesty King Kamehameha III., having authorized a Treaty of Friendship, Commerce and Navigation, with an additional article thereto annexed, between the Hawaiian Kingdom and the Kingdoms of Sweden and Norway, which was concluded, signed and sealed on the first of July, 1852, by our respective Plenipotentiaries viz.: On His behalf, Robert Crichton Wyllie, Esq., His Minister of Foreign Relations, His Secretary at War and of the Navy, Member of His Privy Council of State, Member of the House of Nobles and Chairman of the Commissioners of His Privy Purse; and on behalf of His Majesty Oscar, King of Sweden and Norway, of the Goths and Vandals, Monsieur Christian Adolphe Virgin, His Majesty's Chamberlain, Post Captain in His Majesty's Navy, Knight of the Order of the Sword, and of the Order of St. Stanislaus of Russia, of the second class, which treaty, and its additional article, are word for word, as follows:

It being of great advantage to establish relations of friendship and commerce between the Kingdoms of His Majesty the King of Sweden and Norway, and the Kingdom of His Majesty the King of the Hawaiian Islands, the undersigned, having exchanged their powers, mutually admitted as sufficient, have agreed, on the part of their respective Sovereigns, to conclude a Treaty of Friendship, Commerce and Navigation, as follows:

ARTICLE I. There shall be perpetual friendship between His Majesty the King of the United Kingdoms of Sweden and Norway, his heirs and successors, and the King of the Hawaiian Islands, his heirs and successors, and between their respective subjects.

ARTICLE II. There shall be between all the dominions of His Swedish and Norwegian Majesty, and the Hawaiian Islands, a reciprocal freedom of commerce. The subjects of each of the two contracting parties, respectively, shall have liberty freely and securely to come with their ships and cargoes to all places, ports and rivers in the territories of the other, where trade with other nations is permitted. They may remain and reside in any part of the said territories, respectively, and hire and occupy houses and warehouses,

and may trade, by wholesale or retail, in all kinds of produce, manufactures or merchandise of lawful commerce, enjoying the same exemptions and privileges as native subjects, and subject always to the same laws and established customs as native subjects.

In like manner the ships of war of each contracting party, respectively, shall have liberty to enter into all harbors, rivers and places within the territories of the other, to which the ships of war of other nations are or may be permitted to come, to anchor there, and to remain and refit, subject always to the laws and regulations of the two countries respectively.

The stipulations of this article do not apply to the coasting trade, which each contracting party reserves to itself respectively, and shall regulate according to its own laws.

ARTICLE III. The two contracting parties hereby agree, that any favor, privilege, or immunity whatever, in matters of commerce or navigation, which either contracting party has actually granted, or may hereafter grant, to the subjects or citizens of any other state, shall 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, or 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.

ARTICLE IV. No other or higher duties shall be imposed on the importation into the dominions of His Swedish and Norwegian Majesty of any article the growth, produce or manufacture of the Hawaiian Islands, and no other or higher duties shall be imposed on the importation in the Hawaiian Islands of any article the growth, produce or manufacture of His Swedish and Norwegian Majesty's dominions than are or shall be payable on the like article, being the growth, produce or manufacture of any other foreign country.

Nor shall any other or higher duties or charges be imposed in the territories of either of the contracting parties on the exportation of any article to the territories of the other than such as are or may be payable on the exportation of the like article to any other foreign country. No prohibition shall be imposed upon the importation of any article the growth, produce or manufacture of the territories of either of the two contracting parties, into the territories of the other which shall not equally extend to the importation of the like

articles, being the growth, produce or manufacture of any other country. Nor shall any prohibition be imposed on the exportation of any article from the territories of either of the two contracting parties to the territories of the other, which shall not equally extend to the exportation of the like articles to the territories of all other nations.

ARTICLE V. No other or higher duties or charges on account of tonnage, light, or harbor dues, pilotage, quarantine, salvage in case of damage or shipwreck, or any other local charges, shall be imposed, in any of the ports of the Hawaiian Islands on Swedish and Norwegian vessels, than those payable in the same ports by Hawaiian vessels, nor in the ports of His Swedish and Norwegian Majesty's territories, on Hawaiian vessels, than shall be payable in the same ports on Swedish and Norwegian vessels.

ARTICLE VI. The same duties shall be paid on the importation of any article which is or may be legally importable into the Hawaiian Islands, whether such importation shall be in Hawaiian or in Swedish and Norwegian vessels; and the same duties shall be paid on the importation of any article which is or may be legally importable into the dominions of His Swedish and Norwegian Majesty, whether such importation shall be in Swedish and Norwegian, or Hawaiian vessels. The same duties shall be paid, and the same bounties and drawbacks allowed, on the exportation of any article which is or may be legally exportable from the Hawaiian Islands, whether such exportation shall be in Hawaiian or in Swedish and Norwegian vessels; and the same duties shall be paid, and the same bounties and drawbacks allowed on the exportation of any article which is or may be legally exportable from His Swedish and Norwegian Majesty's dominions, whether such exportation shall be in Swedish and Norwegian or in Hawaiian vessels.

ARTICLE VII. Swedish and Norwegian whaleships shall have access to the ports of Hilo, Kealakeakua and Hanalei, in the Sandwich Islands, for the purpose of refitment and refreshment, as well as to the ports of Honolulu and Lahaina, which two last-mentioned ports only are ports of entry for all merchant vessels, and in all the above-named ports, they shall be permitted to trade or to 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 for 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 on 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 national vessels, and by native subjects. 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 Honolulu and Lahaina, and in all the ports named in this article, Swedish and Norwegian whaleships shall enjoy, in all respects whatsoever, all the rights, privileges and immunities which are or may be enjoyed by national whaleships of the most favored nation.

The like privilege of frequenting the three ports of the Sandwich Islands, named in this article, which are not ports of entry for merchant vessels, is also guaranteed to all the public armed vessels of Sweden and Norway. But nothing in this article shall be construed as authorizing any Swedish or Norwegian vessels, having on board any disease usually regarded as requiring quarantine, to enter, during the continuance of any such disease on board, any port of the Sandwich Islands, other than Honolulu or Lahaina.

ARTICLE VIII. All merchants, commanders of ships, and others, the subjects of His Swedish and Norwegian Majesty, shall have full liberty, in the Hawaiian Islands, to manage their own affairs themselves, or to commit them to the management of whomsoever they please, as broker, factor, agent or interpreter; nor shall they be obliged to employ any other persons than those employed by Hawaiian subjects, nor to pay to such persons as they shall think fit to employ, an higher salary or remuneration than such as is paid, in like cases, by Hawaiian subjects. Swedish and Norwegian subjects in the Hawaiian Islands shall be at liberty to buy from and to sell to whom they like, without being restrained or prejudiced by any monopoly, contract, or exclusive privilege of sale or purchase whatever; and absolute freedom shall be allowed in all cases to the buyer and seller, to bargain and fix the price of any goods, wares or merchandise, imported into, or exported from the Hawaiian Islands, as they shall see good; observing the laws and established customs of

those Islands. The same privileges shall be enjoyed in the dominions of His Swedish and Norwegian Majesty, by Hawaiian subjects, under the same conditions.

The subjects of either of the contracting parties, in the territories of the other, shall receive and enjoy full and perfect protection for their persons and property, and shall have free and open access to the courts of justice in the said countries, respectively, for the prosecution and defense of their just rights; and they shall be at liberty to employ, in all causes, the advocates, attorneys or agents of whatever description, whom they may think proper; and they shall enjoy in this respect the same rights and privileges as native subjects.

ARTICLE IX. In whatever relates to the police of the ports, the lading and unlading of ships, the warehousing and safety of merchandise, goods and effects, the succession to personal estates by will or otherwise, and the disposal of personal property of every sort and denomination by sale, donation, exchange or testament, or in any other manner whatsoever, as also with regard to the administration of justice, the subjects of each contracting party shall enjoy, in the territories of the other, the same privileges, liberties and rights, as native subjects; and they shall not be charged, in any of these respects, with any other or higher imposts or duties, than those which are or may be paid by native subjects; subject always to the local laws and regulations of such territories.

In the event of any subject of either of the two contracting parties dying without will or testament, in the territories of the other contracting party, the consul-general, consul, or acting consul of the State to which the deceased may belong, shall, so far as the laws of each country will permit, take charge of the property which the deceased may have left, for the benefit of his lawful heirs and creditors, until an executor or administrator be named according to the laws of the country in which the death shall have taken place.

ARTICLE X. The subjects of His Swedish and Norwegian Majesty residing in the Hawaiian Islands, and Hawaiian subjects residing in the dominions of His Swedish and Norwegian Majesty, shall be exempted from all compulsory military service whatsoever, whether by sea or land, and from all forced loans or military exactions or requisitions; and they shall not be compelled, under any pretext whatso-

ever, to pay any ordinary charges, requisitions or taxes, other or higher than those that are or may be paid by native subjects.

ARTICLE XI. It is agreed and covenanted that neither of the two contracting parties shall knowingly receive into, or retain in, its service, any subjects, of the other party, who have deserted from the naval or military service of that other party; but that, on the contrary, each of the contracting parties shall respectively discharge from its service any such deserters, upon being required by the other party so to do.

And it is further agreed, that if any of the crew shall desert from a vessel of war or merchant vessel of either contracting party, while such vessel is within any port in the territory of the other party, the authorities of such port and territory shall be bound to give every assistance in their power for the apprehension of such deserters, on application to that effect being made by the Consul of the party concerned, or by the deputy or representative of the Consul; and no public body shall protect or harbor such deserters.

It is further agreed and declared, that any other favor or facility with respect to the recovery of deserters which either of the contracting parties has granted or may hereafter grant, to any other State, shall be considered as granted also to the other contracting party, in the same manner as if such favor or facility had been expressly stipulated by the present treaty.

ARTICLE XII. It shall be free for each of the two contracting parties to appoint consuls for the protection of trade, to reside in the territories of the other party; but before any consul shall act as such, he shall, in the usual form, be approved and admitted by the Government to which he is sent; and either of the contracting parties may except from the residence of consuls such particular places as either of them may judge fit to be excepted. The diplomatic agents and consuls of the Hawaiian Islands, in the dominions of His Swedish and Norwegian Majesty, shall enjoy whatever privileges, exemptions and immunities are or shall be granted there to agents of the same rank belonging to the most favored nation; and, in like manner, the diplomatic agents and consuls of His Swedish and Norwegian Majesty in the Hawaiian Islands shall enjoy whatever privileges, exemptions or immunities are or may be granted there to the diplomatic agents and consuls of the same rank belonging to the most favored nation.

ARTICLE XIII. For the better security of commerce between the subjects of His Swedish and Norwegian Majesty and of the King of the Hawaiian Islands, it is agreed that if, at any time, any rupture or interruption of friendly intercourse should unfortunately take place between the two contracting parties, the subjects of either of the two contracting parties shall be allowed a year to wind up their accounts, and dispose of their property; and a safe conduct shall be given them to embark at the port which they shall themselves select. All subjects of either of the two contracting parties who may be established in the territories of the other, in the exercise of any trade or special employment, shall in such case have the privilege of remaining and continuing such trade and employment therein, without any manner of interruption in full enjoyment of their liberty and property as long as they behave peaceably and commit no offense against the laws; and their goods and effects, of whatever description they may be, whether in their own custody, or entrusted to individuals or to the State, shall not be liable to seizure or sequestration, or to any other charges or demands than those which may be made upon the like effects or property belonging to native subjects. In the same case, debts between individuals, public funds, and the shares of companies shall never be confiscated, sequestered or detained.

ARTICLE XIV. The subjects of His Swedish and Norwegian Majesty, residing in the Hawaiian Islands, shall not be disturbed, persecuted or annoyed on account of their religion, but they shall have perfect liberty of conscience therein, and shall be allowed to celebrate divine service, either within their own private houses, or in their own particular churches or chapels, which they shall be at liberty to build and maintain in convenient places, approved of by the Government of the said Islands. Liberty shall also be granted to them to bury in burial places which, in the same manner, they may freely establish and maintain, such subjects of His Swedish and Norwegian Majesty who may die in the said Islands. In like manner, Hawaiian subjects shall enjoy, within the dominions of His Swedish and Norwegian Majesty, perfect and unrestrained liberty of conscience, and shall be allowed to exercise their religion publicly or privately, within their own dwelling houses, or in the chapels and places of worship appointed for that purpose agreeably to the system of toleration established in the dominions of His said Majesty.

ARTICLE XV. All vessels bearing the flag of Sweden and Norway in time of war shall receive every possible protection, short of actual hostility, within the ports and waters of His Majesty the King of the Hawaiian Islands; and His Majesty the King of Sweden and Norway engages to respect in time of war the neutral rights of the Hawaiian Kingdom, and to use his good offices with all other powers, having treaties with His Majesty the King of the Hawaiian Islands, to induce them to adopt the same policy towards the Hawaiian Kingdom.

ARTICLE XVI. If any ship of war or merchant vessel, of either of the contracting parties, should be wrecked on the coasts of the other, such ship or vessel, 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 to the proprietors, upon being claimed by them, or by their duly authorized agents; and if there are no such proprietors or agents on the spot, then the said goods and merchandise, or the proceeds thereof, as well as all the papers found on board such wrecked ship or vessel, shall be delivered to the Swedish and Norwegian or Hawaiian consul, in whose district the wreck may have taken place; and such consul, proprietors or agents shall pay only the expenses incurred in the preservation of the property, together with the rate of salvage which would have been payable in the like case of a wreck of a national vessel. The goods and merchandise saved from the wreck shall not be subject to duties unless cleared for consumption.

ARTICLE XVII. In order that the two contracting parties may have the opportunity of hereafter treating and agreeing upon such other arrangements as may tend still further to the improvement of their mutual intercourse, and to the advancement of the interest of their respective subjects, it is agreed that at any time after the expiration of seven years from the date of the exchange of the ratifications of the present treaty, either of the contracting parties shall have the right of giving to the other party notice of its intention to terminate articles 4, 5 and 6 of the present treaty; and that at the expiration of twelve months after such notice shall have been received by either party from the other, the said articles, and all the stipulations contained therein, shall cease to be binding on the two contracting parties.

ARTICLE XVIII. The present treaty shall be ratified, and

the ratifications shall be exchanged at Honolulu in eighteen months or sooner; if possible.

In witness whereof, the respective Plenipotentiaries have signed the same, and affixed thereto their respective Seals.

Done at Honolulu, this first day of July, in the year of our Lord, one thousand eight hundred and fifty-two.

[L. s.]

R. C. WYLLIE,

H. H. M.'s Minister of Foreign Affairs, Member of His Privy Council of State, and of His House of Nobles.

[L. s.]

C. A. VIRGIN,

Chamberlain to His Majesty the King of Sweden and Norway, Post Captain in the R. Swedish Navy, Knight of the Royal Order of the Sword and of the Imperial Russian Order of St. Stanislaus.

ADDITIONAL ARTICLE. This Treaty shall not be considered permanently binding until the ratifications have been exchanged as provided for in article eighteen, but it has been agreed that from this date all the benefits under it shall be extended to all the subjects of His Swedish and Norwegian Majesty, their commerce and navigation.

Done at Honolulu, this first day of July, in the year of Our Lord, one thousand eight hundred and fifty-two.

[L. s.]

R. C. WYLLIE.

[L. s.]

C. A. VIRGIN.

AND, WHEREAS, We, Kamehameha IV, have fully examined all the points and articles thereof, by and with the advice of Our Privy Council of State, We have confirmed and ratified the foregoing treaty, and We do confirm and ratify the same, in the most effectual manner, promising on Our faith and word as King, for Us and Our successors, to fulfill and observe it faithfully and scrupulously in all its clauses.

In faith of which We have signed this ratification with Our hand, and have affixed thereto the great seal of Our Kingdom.

Done at Our Palace, at Honolulu, this fifth day of April, in the year of our Lord, one thousand eight hundred and fifty-five, and the first of Our reign.

[L. s.]

KAMEHAMEHA.

VICTORIA K. KAAHUMANU.

By the King and Kuhina Nui

R. C. WYLLIE.

Minister of Foreign Relations.

Exhibit “2”



Keanu Sai <keanu.sai@gmail.com>

Note Verbale No. 2021-1-HI of October 11, 2021, from the Hawaiian Ministry of Foreign Affairs

Minister of the Interior <interior@hawaiiankingdom.org> Mon, Oct 11, 2021 at 11:44 PM
Cc: Afghanistan <info@afghanistan-un.org>, Albania <mission.newyork@mfa.gov.al>, Algeria <algeria@un.int>, Andorra <contact@andorraun.org>, Angola <theangolamission@angolaun.org>, Antigua and Barbuda <unmission@ab.gov.org>, Argentina <enaun@mrecic.gov.ar>, Armenia <armenia@un.int>, Australia <australia@un.int>, Austria <new-york-ov@bmeia.gv.at>, Azerbaijan <azerbaijan@un.int>, Bahamas <mission@bahamasny.com>, Bahrain <bahrain1@un.int>, Bangladesh <bangladesh@un.int>, Barbados <prun@foreign.gov.bb>, Belarus <usaun@mfa.gov.by>, Belgium <newyorkun@diplobel.fed.be>, Belize <blzun@belizemission.com>, Benin <onu.newyork@gouv.bj>, Bhutan <bhutanmission@pmbny.bt>, Bolivia <missionboliviaun@gmail.com>, Bosnia and Herzegovina <bihun@mvp.gov.ba>, Botswana <botswana@un.int>, Brazil <distri.delbrasonu@itamaraty.gov.br>, Brunei Darussalam <brunei@un.int>, Bulgaria <bulgaria@un.int>, Burkina Faso <bfapm@un.int>, Burundi <ambabunewyork@yahoo.fr>, Cabo Verde <capeverde@un.int>, Cambodia <cambodia@un.int>, Cameroon <cameroon.mission@yahoo.com>, Canada <canada.un@international.gc.ca>, Central African Republic <repercaf.ny@gmail.com>, Chad <chadmission.un@gmail.com>, Chile <chile.un@minrel.gob.cl>, China <chinesemission@yahoo.com>, Colombia <colombia@colombiaun.org>, Comoros <comoros@un.int>, Congo <congo@un.int>, Costa Rica <contact@missioncru.org>, Croatia <cromiss.un@mvep.hr>, Cuba <cuba_onu@cubanmission.com>, Cyprus <unmission@mfa.gov.cy>, Czech Republic <un.newyork@embassy.mzv.cz>, Côte d'Ivoire <cotedivoiremission@yahoo.com>, Democratic People's Republic of Korea <dprk.un@verizon.net>, Democratic Republic of the Congo <missiondrc@gmail.com>, Denmark <nycmis@um.dk>, Djibouti <djibouti@nyct.net>, Dominica <dominicaun@gmail.com>, Dominican Republic <drun@un.int>, Ecuador <ecuador@un.int>, Egypt <mission.egypt@un.int>, El Salvador <elsalvador@un.int>, Equatorial Guinea <info@equatorialguineaun.org>, Eritrea <general@eritreun.org>, Estonia <mission.newyork@mfa.ee>, Eswatini <eswatini@un.int>, Ethiopia <ethiopia@un.int>, Fiji <mission@fijiprun.org>, Finland <sanomat.yke@formin.fi>, France <france@franceonu.org>, Gabon <info@gabonunmission.com>, Gambia <gambia_un@hotmail.com>, Georgia <geomission.un@mfa.gov.ge>, Germany <info@new-york-un.diplo.de>, Ghana <ghanaperm@aol.com>, Greece <grdel.un@mfa.gr>, Grenada <grenada@un.int>, Guatemala <onunewyork@minex.gob.gt>, Guinea <missionofguinea.un@gmail.com>, Guinea-Bissau <guinebissauonu@gmail.com>, Guyana <guyana@un.int>, Haiti <mphonu.newyork@diplomatie.ht>, Honduras <Ny.honduras@hnun.org>, Hungary <hungaryun.ny@mfa.gov.hu>, Iceland <unmission@mfa.is>, India <india.newyorkpmi@mea.gov.in>, Indonesia <ptri@indonesiamission-ny.org>, Iran <Iran@un.int>, Iraq <iraq.mission@un.int>, Ireland <newyorkpmun@dfa.ie>, Israel <uninfo@newyork.mfa.gov.il>, Italy <info.italyun@esteri.it>,


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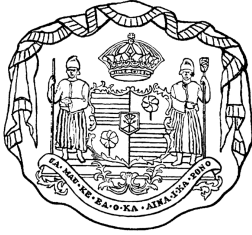
States <usun.newyork@state.gov>, Uruguay <urudeleg@mrree.gub.uy>, Uzbekistan <uzbekistan.un@gmail.com>, Vanuatu <vanunmis@aol.com>, Venezuela <misionvenezuelaonu@gmail.com>, Viet Nam <info@vietnam-un.org>, Yemen <yemenmissionny@gmail.com>, Zambia <zambia@un.int>, Zimbabwe <zimnewyork@gmail.com>

Excellency,

Attached hereto is a Note Verbale from the Hawaiian Foreign Ministry to serve as a notice of claim by an injured State, pursuant to Article 43 of the International Law Commission's Articles on *State Responsibility for Internationally Wrongful Acts*, invoking the responsibility of all Member States of the United Nations who are responsible for the internationally wrongful act of recognizing the United States presence in the Hawaiian Kingdom as lawful to cease that act pursuant to Article 30(a), and to offer appropriate assurances and guarantees of non-repetition pursuant to Article 30(b).

The Government of the Hawaiian Kingdom, by its Council of Regency, represented the State of the Hawaiian Kingdom at the Permanent Court of Arbitration, in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, from 1999 to 2001.

 Note Verbale UN (No. 2021-1-HI).pdf
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MINISTRY OF FOREIGN AFFAIRS

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NOTE VERBALE

No. 2021-1-HI

The Foreign Ministry of the Hawaiian Kingdom presents its compliments to all the Diplomatic Missions accredited to the United Nations in New York City and has the honor to inform the latter that the Government of the Hawaiian Kingdom notifies all Member States of the United Nations that they have and continue to commit internationally wrongful acts against the Hawaiian Kingdom by continuing to recognize as lawful the United States of America's presence in the Hawaiian Islands, and not as a belligerent State that has not complied with international humanitarian law since 16 January 1893 when it unlawfully committed acts of war in the invasion and subsequent overthrow of the Government of the Hawaiian Kingdom. In addition to violating international humanitarian law, the Member States of Austria, Belgium, Denmark, France, Germany, Hungary, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Russia, Spain, Switzerland, Sweden, and the United States of America are in violation of their treaties with the Hawaiian Kingdom. The Government of the Hawaiian Kingdom calls upon the United States of America to immediately comply with international humanitarian law in its prolonged occupation of the Hawaiian Kingdom since 17 January 1893.

This Note Verbale serves as a notice of claim by an injured State, pursuant to Article 43 of the International Law Commission's Articles on *Responsibility of States for Internationally Wrongful Acts* (2001), invoking the responsibility of all Member States of the United Nations who are responsible for the internationally wrongful act of recognizing the United States presence in the Hawaiian Kingdom as lawful to cease that act pursuant Article 30(a), and to offer appropriate assurances and guarantees of non-repetition pursuant to Article 30(b). The form of reparation under Article 31 shall take place in accordance with the provisions of Part Two—*Content of the International Responsibility of a State(s)*.

The Hawaiian Foreign Ministry wishes to point out that the Contracting States to the 1907 *Hague Convention for the Pacific Settlement of International Disputes*, who are also member States of the United Nations, with the exception of Palestine and Kosovo, were aware of the *Larsen v. Hawaiian Kingdom* arbitral proceedings instituted on 8

November 1999, PCA Case no. 1999-01, whereby the Hawaiian Kingdom was acknowledged as a non-Contracting State to the 1907 Convention pursuant to Article 47, and the Council of Regency as its restored government. At the center of the dispute was the unlawful imposition of American municipal laws in violation of international humanitarian law.

As regards the factual circumstances of the United States of America's invasion of the Hawaiian Kingdom, an internationally recognized State since the nineteenth century, the unlawful overthrow of the Government of the Hawaiian Kingdom, and the prolonged belligerent occupation of the Hawaiian Kingdom since 17 January 1893, the Hawaiian Foreign Ministry directs the attention of the Diplomatic Missions to the Royal Commission of Inquiry's publication—*Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020). The ebook can be downloaded online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf). Authors include H.E. Dr. David Keanu Sai, Ph.D., Hawaiian Minister of Foreign Affairs *ad interim*, Professor Matthew Craven, University of London, SOAS, Professor William Schabas, Middlesex University London, and Professor Federico Lenzerini, University of Sienna, Italy. Reports of the Royal Commission of Inquiry and treaties can be accessed online at <https://hawaiiankingdom.org/royal-commission.shtml>.

The Hawaiian Foreign Ministry avails itself of this opportunity to renew to the Diplomatic Missions accredited to the United Nations the assurances of its highest consideration.

Honolulu, 11 October 2021



All Diplomatic Missions
Accredited to the United Nations,
New York, New York, U.S.A

Exhibit “3”

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

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

	Parties	Case	Date Initiated	Date of Award	Arbitrators¹
1.	United States of America - Republic of Mexico	Pious Fund of the Californias	22 - 05 - 1902	14 - 10 - 1902	Matzen Sir Fry de Martens Asser de Savornin Lohman
2.	Great Britain, Germany and Italy - Venezuela	Preferential Treat- ment of Claims of Blockading Powers Against Venezuela	07 - 05 - 1903	22 - 02 - 1904	Mourawieff Lammasch de Martens
3.	Japan - Germany, France and Great Britain	Japanese House Tax leases held in perpetuity	28 - 08 - 1902	22 - 05 - 1905	Gram Renault Motono
4.	France - Great Britain	Muscat Dhows fishing boats of Muscat	13 - 10 - 1904	08 - 08 - 1905	Lammasch Fuller de Savornin Lohman
5.	France - Germany	Deserters of Casablanca	10/24 - 11 - 1908	22 - 05 - 1909	Hammarskjöld Sir Fry Fusinato Kriege Renault
6.	Norway - Sweden ²	Maritime Boundary Grisbådarna Case	14 - 03 - 1908	23 - 10 - 1909	Loeff³ Beichmann Hammarskjöld
7.	United States of America - Great Britain	North Atlantic Coast Fisheries	27 - 01 - 1909	07 - 09 - 1910	Lammasch de Savornin Lohman Gray Sir Fitzpatrick Drago
8.	United States of Venezuela - United States of America	Orinoco Steamship Company	13 - 02 - 1909	25 - 10 - 1910	Lammasch Beernaert de Quesada
9.	France - Great Britain	Arrest and Restoration of Savarkar	25 - 10 - 1910	24 - 02 - 1911	Beernaert Ce de Desart Renault Gram de Savornin Lohman

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

Annex 2 – PCA Cases

Parties	Case	Date Initiated	Date of Award	Arbitrators¹
10. Italy – Peru	Canevaro Claim	25 - 04 - 1910	03 - 05 - 1912	Renault Fusinato Alvarez Calderón
11. Russia – Turkey ²	Russian Claim for Indemnities damages claimed by Russia for delay in payment of compensation owed to Russians injured in the war of 1877-1878	22 - 07 - 1910/ 04 - 08 - 1910	11 - 11 - 1912	Lardy Bon de Taube Mandelstam ³ H.A. Bey ³ A.R. Bey ³
12. France – Italy	French Postal Vessel “Manouba”	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	Hammarskjöld Fusinato Kriege Renault Bon de Taube
13. France – Italy	The “Carthage”	26 - 01 - 1912/ 06 - 03 - 1912	06 - 05 - 1913	Hammarskjöld Fusinato Kriege Renault Bon de Taube
14. France – Italy	The “Tavignano,” “Camouna” and “Gaulois” Incident	08 - 11 - 1912	Settled by agreement of parties	Hammarskjöld Fusinato Kriege Renault Bon de Taube
15. The Netherlands – Portugal ⁴	Dutch-Portuguese Boundaries on the Island of Timor	03 - 04 - 1913	25 - 06 - 1914	Lardy
16. Great Britain, Spain and France – Portugal ⁵	Expropriated Religious Properties	31 - 07 - 1913	02/04 - 09 - 1920	Root de Savornin Lohman Lardy
17. France – Peru ²	French claims against Peru	02 - 02 - 1914	11 - 10 - 1921	Ostertag³ Sarrut ³ Elguera
18. United States of America – Norway ²	Norwegian shipowners’ claims	30 - 06 - 1921	13 - 10 - 1922	Vallotton³ Anderson ³ Vogt ³
19. United States of America – The Netherlands ⁴	The Island of Palmas case (or Miangas)	23 - 01 - 1925	04 - 04 - 1928	Huber
20. Great Britain – France ²	Chevreau claims	04 - 03 - 1930	09 - 06 - 1931	Beichmann
21. Sweden – United States of America ²	Claims of the Nordstjernan company	17 - 12 - 1930	18 - 07 - 1932	Borel
22. Radio Corporation of America – China ²	Interpretation of a contract of radio-telegraphic traffic	10 - 11 - 1928	13 - 04 - 1935	van Hamel³ Hubert ³ Furrer ³
23. States of Levant under French Mandate – Egypt ²	Radio-Orient	11 - 11 - 1938	02 - 04 - 1940	van Lanschot³ Raestad Mondrup ³

1. The names of the presidents are typeset in bold.

2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).

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4. The proceedings of this case were conducted in writing exclusively.

5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

	Parties	Case	Date Initiated	Date of Award	Arbitrators¹
24.	France - Greece ²	Administration of lighthouses	15 - 07 - 1931	24 - 07 - 1956	Verzijl ³ Mestre Charbouris ³
25.	Turriff Construction (Sudan) Limited - Sudan ²	Interpretation of a construction contract	21 - 10 - 1966	23 - 04 - 1970	Erades ³ Parker ³ Bentsi-Enchill ³
26.	United States of America - United Kingdom of Great Britain and Northern Ireland ²	Heathrow Airport user charges treaty obligations; amount of damages	16 - 12 - 1988	30 - 11 - 1992 02 - 05 - 1994 Settlement on amount of damages	Foighel ³ Fielding ³ Lever ³
27.	Moiz Goh Pte. Ltd - State Timber Corporation of Sri Lanka ²	Contract dispute	14 - 12 - 1989	05 - 05 - 1997	Pinto ³
28.	African State - two foreign nationals ²	Investment dispute	-	30 - 09 - 1997 Settled by agreement of parties	-
29.	Technosystem SpA - Taraba State Government and the Federal Government of Nigeria ²	Contract dispute	21 - 02 - 1996	25 - 11 - 1996 Lack of jurisdiction	Ajibola
30.	Asian State-owned enterprise - three European enterprises ²	Contract dispute	-	02 - 10 - 1996 Award on agreed terms	-
31.	State of Eritrea - Republic of Yemen ²	Eritrea/Yemen: Sovereignty of various Red Sea Islands sovereignty; maritime delimitation	03 - 10 - 1996	09 - 10 - 1998 Award on sovereignty 17 - 12 - 1999 Award on maritime delimitation	Jennings Schwebel ³ El-Kosheri ³ Highet ³ Higgins
32.	Italy - Costa Rica ²	Loan agreement between Italy and Costa Rica dispute arising under financing agreement	11 - 09 - 1997	26 - 06 - 1998	Lalive ³ Ferrari Bravo Hernandez Valle ³
33.	Larsen - Hawaiian Kingdom ²	Treaty interpretation	30 - 10 - 1999	05 - 02 - 2001	Crawford ³ Greenwood ³ Griffith ³
34.	The Netherlands - France ²	Treaty interpretation	21 - 10 - /17 - 12 - 1999	12 - 03 - 2004	Skubiszewski Guillaume Kooijmans ³
35.	European corporation - African government	Contract dispute	04 - 08 - 2000	18 - 02 - 2003 Settled by agreement of parties	-
36.	Eritrea-Ethiopia Boundary Commission ²	Boundary dispute	12 - 12 - 2000	13 - 04 - 2002	Lauterpacht Ajibola Reisman ³ Schwebel ³ Watts

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 2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
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 4. The proceedings of this case were conducted in writing exclusively.
 5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

Annex 2 – PCA Cases

Parties	Case	Date Initiated	Date of Award	Arbitrators¹
37. Eritrea-Ethiopia Claims Commission ²	Settlement of claims arising from armed conflict	12 - 12 - 2000	01 - 07 - 2003 Partial Awards for prisoner of war claims 28 - 04 - 2004 Partial Awards for Central Front claims 17 - 12 - 2004 Partial Awards for civilians claims 19 - 12 - 2005 Partial Awards for remaining liability claims 17 - 08 - 2009 Final Award for damages	van Houtte ³ Aldrich ³ Crook ³ Paul ³ Reed ³
38. Dr. Horst Reineccius; First Eagle SoGen Funds, Inc.; Mr.P.M. Mathieu – Bank for International Settlements ²	Dispute with former private shareholders	07 - 03 - 2001 31 - 08 - 2001 24 - 10 - 2001	22 - 11 - 2002 Partial Award 19 - 09 - 2003 Final Award	Reisman ³ van den Berg ³ Frowein ³ Krafft ³ Lagarde ³
39. Ireland – United Kingdom ²	Proceedings pursuant to the OSPAR Convention	15 - 06 - 2001	02 - 07 - 2003	Reisman ³ Griffith ³ Mustill ³
40. Saluka Investments B.V. – Czech Republic ²	Investment treaty dispute	18 - 06 - 2001	17 - 03 - 2006 Partial Award	Watts Behrens ³ Fortier ³
41. Ireland – United Kingdom ²	Proceedings pursuant to the Law of the Sea Convention (UNCLOS) “MOX Plant Case”	25 - 10 - 2001	06 - 06 - 2008 Termination order following withdrawal of claim	Mensah ³ Fortier ³ Hafner Crawford ³ Watts
42. European government – European corporation ²	Investment treaty dispute	30 - 04 - 2002	24 - 05 - 2004 Settled by agreement of parties	-
43. Two corporations – Asian government ²	Contract dispute	16 - 08 - 2002	12 - 10 - 2004 Partial Award	-
44. Telekom Malaysia Berhad – Government of Ghana ²	Investment treaty dispute	10 - 02 - 2003	01 - 11 - 2005 Award on agreed terms	Van den Berg ³ Gaillard ³ Layton ³
45. Belgium – The Netherlands ²	Dispute regarding the use and modernization of the “IJzeren Rijn” on the territory of The Netherlands	22/23 - 07 - 2003	24 - 05 - 2005	Higgins Schrans ³ Simma ³ Soons ³ Tomka
46. Barbados – Trinidad and Tobago ²	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	16 - 02 - 2004	11 - 04 - 2006	Schwebel ³ Brownlie ³ Orrego Vicuña ³ Lowe ³ Watts
47. Guyana – Suriname ²	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	24 - 02 - 2004	17 - 09 - 2007	Nelson ³ Hossain ³ Franck ³ Shearer Smit ³

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 4. The proceedings of this case were conducted in writing exclusively.
 5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

Parties	Case	Date Initiated	Date of Award	Arbitrators¹
48. Malaysia - Singapore ²	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	04 - 07 - 2003	01 - 09 - 2005 Award on agreed terms	Pinto ³ Hossain ³ Shearer Oxman ³ Watts
49. 1.The Channel Tunnel Group Limited 2. France-Mache S.A. - 1. United Kingdom 2. France ²	Proceedings pursuant to the Treaty of Canterbury Concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link (Eurotunnel)	17 - 12 - 2003	30 - 01 - 2007 Partial Award 2010 Termination order	Crawford ³ Fortier ³ Guillaume Millett ³ Paulsson
50. Chemtura Corporation (formerly Crompton Corporation) - Government of Canada ²	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	17 - 10 - 2002/ 17 - 02 - 2005	02 - 08 - 2010	Kaufmann-Kohler ³ Brower ³ Crawford ³
51. Vito G. Gallo - Government of Canada ²	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	30 - 03 - 2007	15 - 9 - 2011	Fernández-Armesto ³ Castel ³ Lévy ³
52. Romak S.A. - The Republic of Uzbekistan ²	Proceedings pursuant to the Agreement between the Swiss Confederation and the Republic of Uzbekistan on the Promotion and the Reciprocal Protection of Investments	06 - 09 - 2007	26 - 11 - 2009	Mantilla-Serrano ³ Rubins ³ Molfessis ³
53. The Government of Sudan - The Sudan People's Liberation Movement/Army ²	Delimitation of the Abyei area	11 - 07 - 2008	22 - 07 - 2009	Dupuy ³ Al-Khasawneh Hafner Reisman ³ Schwebel
54. Centerra Gold Inc. & Kumtor Gold Co. - Kyrgyz Republic ²	Investment agreement dispute	08 - 03 - 2006	29 - 06 - 2009 Termination order	Van den Berg ³
55. TCW Group & Dominican Energy Holdings - Dominican Republic ²	Proceedings conducted under the Central America-DR-USA Free Trade Agreement (CAFTA-DR)	21 - 12 - 2007	16 - 07 - 2009 Consent Award	Böckstiegel ³ Fernández-Armesto ³ Kantor ³
56. Bilcon of Delaware <i>et al.</i> - Government of Canada ²	Proceedings conducted under Chapter Eleven of the North American Free Trade Agreement (NAFTA)	26-05-2008	-	Simma ³ McRae Schwartz ³

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 4. The proceedings of this case were conducted in writing exclusively.
 5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

Annex 2 – PCA Cases

	Parties	Case	Date Initiated	Date of Award	Arbitrators¹
57.	HICEE B.V. – The Slovak Republic ²	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	17 - 12 - 2008	23 - 05 - 2011 Partial Award 17 - 10 - 2011 Supplementary and Final Award	Berman Tomka Brower ³
58.	Polis Fundi Immobiliare di Banche Popolare S.G.R.p.A – International Fund for Agricultural Development (IFAD) ²	Contract dispute	10 - 11 - 2009	17 - 12 - 2010	Reinisch ³ Canu ³ Stern ³
59.	European American Investment Bank AG – The Slovak Republic ²	Proceedings pursuant to the Agreement Between the Republic of Austria and the Czech and Slovak Federal Republic Concerning the Promotion and Protection of Investments	23 - 11 - 2009	-	Greenwood Petsche ³ Stern ³
60.	Bangladesh – India ²	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	08 - 10 - 2009	-	Wolfrum ³ Mensah ³ Rao ³ Shearer Treves ³
61.	China Heilongjiang International Economic & Technical Cooperative Corporation <i>et al.</i> – Mongolia ²	Proceedings pursuant to the Agreement between the Government of the Mongolian People’s Republic and the Government of the People’s Republic of China concerning the Encouragement and Reciprocal Protection of Investments dated August 26, 1991	12 - 02 - 2010	-	Donovan ³ Banifatemi ³ Clodfelter ³
62.	Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	22 - 05 - 2007	31 - 08 - 2011	Böckstiegel ³ Brower ³ Van den Berg ³

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 2. Pursuant to article 47 of the 1907 Convention (article 26 of the 1899 Convention).
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 4. The proceedings of this case were conducted in writing exclusively.
 5. In this case the summary procedure provided for in Chapter IV of the 1907 Convention was applied.

Parties	Case	Date Initiated	Date of Award	Arbitrators¹
63. Achmea B.V. (formerly known as Eureko B.V.) – The Slovak Republic	Proceedings pursuant to the Agreement on Encouragement and Reciprocal Protection of Investments Between the Kingdom of the Netherlands and the Czech and Slovak Federal Republic	01 - 10 - 2008		Lowé ³ Van den Berg ³ Veeder ³
64. Chevron Corporation & Texaco Corporation – The Republic of Ecuador	Proceedings pursuant to the Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment	23 - 09 - 2009		Veeder ³ Grigera Naón ³ Lowé ³
65. Pakistan – India	Indus Waters Treaty Arbitration	17 - 05 - 2010		Schwebel Berman Wheater ³ Cafilisch Paulsson Simma ³ Tomka
66. Guaracachi America, Inc. & Rurelec PLC – The Plurinational State of Bolivia	Proceedings pursuant to the Treaty between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of Bolivia for the Promotion and Protection of Investments	10 - 11 - 2010		Júdice ³ Conthe ³ Vinuesa
67. The Republic of Mauritius – The United Kingdom of Great Britain and Northern Ireland	Proceedings pursuant to the Law of the Sea Convention (UNCLOS)	20 - 12 - 2010		Shearer Greenwood Hoffmann ³ Kateka ³ Wolfrum ³

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