Denationalization through *Americanization*

III/15.
10th September 1945.

UNITED NATIONS WAR CRIMES COMMISSION.

Note on the Criminality of "Attempts to Denationalise the Inhabitants of Occupied Territory" (Appendix to Doc.C.1. No. XII) - Question Referred to Committee III by Committee I.

By Mr. E. Schwelb.

I. On 29th August, the Yugoslav National Office submitted to the Commission the charge No.1434 against 24 Italian war criminals accused of a large number of common war crimes, e.g. murder, massacres, systematic terrorism, putting hostages to death, etc.

Committee I at its meeting, held on 5th September 1945, decided to put 20 out of the 24 accused persons on A. The cases of 4 of the 24 accused: Bettini (No.6), Inchiostri (7), Ciubelli (9) and Nicoletti (20), were adjourned and Committee I decided to put the question of law, relevant to the case of these four persons, before the Legal Committee (III)

II. The four persons mentioned are accused of the war crime mentioned in the list of war crimes annexed to Doc. C.1. para XII, "Attempts to Denationalise the Inhabitants of Occupied Territory."

The following particulars are stated in the Yugoslav charge No. 1434 about the four persons: "Apart from killing, deporting and interning innocent persons, the Italians started a policy, on a vast scale, of denationalisation. As a part of such a policy, they started a system of "re-education" of Yugoslav children. This re-education consisted of forbidding children to use the Serbo-Croat language, to sing Yugoslav songs and forcing them to salute in a fascist way, become members of the G.I.L. (Gioventu italiana del Littoria) and spend a certain time in camps for "education." In all these actions aimed at the denationalisation of Yugoslav children, Dr. Binna took a very active part. He brought Italian teachers from Italy and posted them all over the province of ZADAR. Amongst those Italian teachers who insisted on the italianisation of Yugoslav children, BETTINI, Education Inspector and INCHIOSTRI, head-master of a secondary school at SIBENIK took a prominent part. Dr. Tulio NICOLETTI Trustee for Education at SIBENIK, and Edoardo CIUBELLI, Education Inspector at ZADAR, were also prominently associated with this policy. NICOLETTI organised special courses for teachers to learn Italian and Italian "methods" and he threatened all those who would not attend the courses. Dr. BINNA is also responsible for forbidding the edition of any newspaper printed in the Serbo-Croat language, and for forcing Yugoslavs to hoist Italian flags." It may be added that Prefetto Binna, who is mentioned in the paragraph quoted, is accused of a great number of other crimes, the character of which as war crimes is beyond doubt and he has, therefore, been put on A.

III. The opinion of Committee I both on the principle to be applied in deciding the case of these four persons, and on the application of this principle to the particular facts of the case, was divided. Some members of Committee I expressed doubt whether what these four persons were charged with, constituted war crimes. One member of Committee I pointed out that there must be made a distinction between violations of International law on the one hand and war crimes on the other.

Only such acts should be treated as war crimes as shocked the conscience of humanity. Another member, on the other hand, expressed the opinion that, as the Commission had accepted the attempt to denationalise the inhabitants of occupied territory as a war crime (Appendix to Doc.1. No. XII) it could not be denied that, in the present case, there was prima facie evidence of this crime.

IV. Without expressing an opinion of my own, I venture to place before Committee III some material which might be considered relevant for the decision of the question.

V. In the report of the sub-committee, as adopted at the second unofficial meeting of the United Nations War Crimes Commission, held on the 2nd December 1943, (Doc C.1.) it was pointed out in paragraph 6 that "in the opinion of the sub-committee it will be better for the Commission not to attempt to draw up any list of war crimes which will tie the hands of the Governments of the United Nations," but it was said in paragraph 7 that "it will be convenient, both to the Commission and to the National Offices which will prepare the individual cases and transmit them to the Commission that there should be a working list, enumerating the various headings under which war crimes should be grouped." The sub-committee went on to recommend that the list framed by the Responsibilities Commission of the 1919 Conference should be adopted by the Commission as the working list for the above purpose. (Paragraph 9) In paragraph 10 of the report, it was pointed out that it would be necessary to add to this list one or two items which seemed to be inadequately covered by the language employed in framing the list. Simultaneously it was said that it would be necessary to disregard certain items - such as No.21 - as these referred to acts which in the present war the forces of the United Nations have themselves been obliged to commit.

According to paragraph 12 of the report, the advantage of working, as far as possible, on the basis of the 1919 list is that of the present Axis powers, Italy and Japan were parties to its preparation and, so far as the sub-committee was aware, Germany had never questioned the inclusion of any particular item in the list. Furthermore it diminishes the risk of criticism on the ground that the United Nations are inventing new war crimes after the acts have been perpetrated. It may be quoted in this connection that, at the meeting of the 2nd December 1943, Lord ATKIN considered the 1919 list of war crimes to be too long; some of the offences contained in it would, in his opinion, have to be dropped. The Commission, however, considered that for present purposes, no change should be made in the list.

From what has been said so far, it follows that the adoption of the 1919 list as the working basis for the activities of this Commission, does not constitute a binding decision on what to consider and what not to consider a war crime, and that, therefore, this Committee and the Commission, in deciding the present case, may proceed entirely unfettered by what was done at the meeting of 2nd December 1943.

VI. The problem raised in this case goes to the root, not only of the jurisdiction of the United Nations War Crimes Commission, but of the fundamental problems of delinquency in International Law in general. The notion of an International Crime or of a crime in International Law has been controversial for a very long time. It is interesting to note that it is particularly the German literature on the subject which holds that every contravention of International Law amounts to an International Crime; not only acts which are shocking from the moral point of view are under this doctrine International Crimes, but also

every breach of contract or agreement. This doctrine is particularly upheld by STRUPP in his book "Das völkerrechtliche Delikt, 1920". He says "Völkerrechtliches Delikt ist eine von einem Staate ausgehende, die Rechte eines anderen Staates verletzende Handlung, die nur dann auf staatliches Verschulden zurückzuführen sein muss, wenn ein staatliches Unterlassen in Frage steht". This definition has not been accepted by other writers. FAUCHILLE distinguishes between "délits internationaux" and the breach of contractional obligations. RIVIER, Principes du droit des gens, 1896, says: "Tout acte qui viole un droit essentiel est une infraction au droit des gens, un crime au délit international." It is interesting to note that Rivier speaks of the violation of an essential right as constituting an international crime.

VII. It is submitted that the fact that acts constituting what corresponds to civilian wrongs (torts) and breach of contract were, by writers on international law, put on the same footing as acts corresponding to crimes in municipal law, was mainly due to the fact that, until very recent times, only States were considered to be subjects of International law. This alleged nature of the Law of Nations excluded the possibility of "punishing" a state for an international delinquency and of considering the latter in the light of a crime and led to the conclusion that the only legalconsequences of international delinquency were such as create reparation of the moral and material wrong done. The equation of acts morally shocking with acts constituting merely contraventions of contractual obligations was due to the fact that even atrocious crimes led not to the punishment of the guilty individual, but only to a claim against the State for reparation and damages.

At a stage in the development of International law which has so far culminated in the conclusion of the Four-Power Agreement, dated 8th August 1945, a doctrine which does not distinguish between crimes in the sense of criminal law and mere civil or administrative wrongs must be considered obsolete in Internation law to the same extent as it has been obsolete in the municipal law of civilised states for hundreds of years. At a time when International Law assumes the responsibility for punishing international crimes, it is necessary to establish a delimitation between crimes in the sense of criminal law and other illegal acts which, without constituting a crime, are mere contraventions of customary or conventional International Law.

VIII. It may even be that it is necessary to draw this line of delimitation between punishable crimes on the one hand, and what may correspond to civil wrongs and breach of contract on the other, straight across the facts described in the list appended to Doc. C.1. Professor H. LAUTERPACHT in his article "The Law of Nations and the Punishment of War Crimes" (British Year Book of International Law, 1944, page 58 and following) has hinted on this necessity of distinguishing between violations of rules of warfare and war crimes. He says, inter alia:

" In particular, does every violation of a rule of warfare constitute a war crime? It appears that, in this matter, textbook writers and, occasionally, military manuals and official pronouncements have erred on the side of comprehensiveness. They make no attempt to distinguish between violations of rules of warfare and war crimes. The Commission on Responsibilities set up by the Paris Conference in 1919 included under the list of charges of war crimes such acts as "usurpation of sovereignty during military occupation", "attempts to denationalize the inhabitants of occupied territory", "confiscation of property", "exaction of illegitimate or exhorbitant contributions and requisitions", "Debasement of the currency and issue of spurious currency", "imposition of collective penalties", and "wanton destructionof religious, charitable, educational and historic buildings and monuments." In view of the comprehensiveness of this list it is in the nature of an anti-climax to note that the number of persons whose delivery the Allied States

eventually demanded was inconsiderable. It is possible that one of the reasons for the failure to give effect to the decision to prosecute war criminals after the first World War was the extent of the list of offences as adopted by the Conference and the absence of a distinction between violations of international law and war crimes in the more restricted sense of the term...."

" It must be a matter for serious consideration to what extent an attempt to penalise by criminal prosecution at the hand of the victorious belligerent all and sundry breaches of the law of war may tend to blur the emphasis which must be placed on the punishment of war crimes proper in the limited sense of the term. These may be defined as such offences against the law of war as are criminal in the ordinary and accepted sense of fundamental rules of warfare and of general principles of criminal law by reason of their heinousness, their brutality, their ruthless disregard of the sanctity of human life and personality, or their wanton interference with rights or property unrelated to reasonably conceived requirements of military necessity. There is room for the view that the punishment of war crimes by the victorious belligerent ought to be limited to offences of this nature - offences which, on any reasonable assumption must be regarded as condemned by the common conscience of mankind...."

" The task of defining, from this point of view, the scope of violations of the laws of war which ought to fall within the purview of punishment by the victorious belligerent is one of considerable difficulty. A seemingly administrative act of a political nature, like deportation or segregation of large sections of the population of the occupied territory, may, in its effects upon human life and in the cruelty of its execution, be indistinguishable from the common crime of deliberate murder. But it is a task which ought to be attempted. The result of the differentiation thus established between the two categories of violations of the law of war would not necessarily be to render immune from punishment or from the duty of compensation the less heinious manifestations of lawlessness...."

" Pillage, plunder and arbitrary destruction of private and public property may, in their effects, be no less cruel and deserving of punishment than acts of personal violence. There may, in effect, be little difference between executing a person and condemning him to a slow death of starvation and exposure by depriving him of shelter and means of sustenance. "

IX. It will be noted that Professor Lauterpacht does not purport to lay down existing rules of International law. On the contrary, he proposes, as a matter of policy, to restrict the procedure applied to the punishment of war crimes, to such acts and omissions as are not only illegal but, in addition, shock the conscience of mankind. It is a matter left to the discretion of the United Nations in general and to the Governments represented on the United Nations War Crimes Commission in particular to adopt or to reject Professor Lauterpacht's view, which, as has been pointed out, was also shared by Lord Atkin in December 1943.

If Committee III should see its way towards adopting Professor Lauterpacht's distinction for the purposes of the work of the United Nations War Crimes Commission, the further question would arise, viz, where to draw the line and try to distinguish the mere contravention of rules of International law from war crimes in the narrower sense. The problem becomes particularly acute in such matters as "debasement of currency", (see Doc. I/22) or "attempts to denationalise the population" or "usurpation of sovereignty".

X. It is submitted that the following considerations would, perhaps, be relevant when attempts are made to distinguish war crimes proper from mere contraventions of rules of International law. (a) First it is necessary to ascertain whether the act in question constitutes, quite apart from all considerations of International law and legitimate warfare, a criminal offence. (b) If the question put under (a) is answered in the negative, the case is at an end. If it is answered in the affirmative, the further question arises, viz, whether the rules of International law afford to the perpetrator of the act immunity from his criminal liability, e.g. whether the act be excused as an act of legitimate warfare, or as an act falling within the lawful authority of a belligerent occupant. If the activities are not covered by the rules of International law as to warfare or belligerent occupation, the case for the criminal liability of the perpetrator is made out.

If, for instance, the authorities of the occupant illegally declare the annexation of certain territory and the inhabitants of the occupied territory are imprisoned or put to death only because of their disobedience to the constitutional situation brought about in this way, we have, applying what has been said in the preceeding paragraph, to consider whether the particular imprisonment or shooting as such constitutes an offence, irrespective of questions of International law. The answer to this question is obviously in the affirmative, the acts constitute either false imprisonment or homicide, as the case may be. We then proceed to examine whether international law affords any defence for this behavior of an accused person, and, finding that the illegal annexation is outside the legitimate scope of the activities of belligerent occupants, we come necessarily to the conclusion that there is prima facie evidence that a war crime has been committed.

In the case of "attempts at denationalisation", we have to consider whether acts, such as depriving Yugoslav children of the possibility of being educated in the Serbo-Croat language, or compelling Yugoslav children to receive instruction only in a foreign language, constitute criminal offences. The answer to this question will, in my opinion, mainly depend on the positive municipal law applicable to the case. There are a great many municipal legal orders which protect the population against denationalisation, inter alia, by declaring acts aiming at such denationalisation criminal offences. But even in such legal orders as do not contain special criminal sanctions against acts of denationalisation, such activities will more often than not be criminal under general provisions prohibiting and punishing violence, blackmail, menaces, and similar offences.

It is submitted that each case will have to be judged on its own merits. The "denationalisation" may be either effected or accompanied by acts on the part of the occupying authorities, which are criminal per se. There may, on the other hand, exist circumstances which do not let the activities appear criminal, though they, no doubt, are illegal. An example of the latter type of "attempts at denationalisation may exist where the occupation authorities do not close the existing schools and do not prevent parents from sending their children to them either by actual violence, or by threat, but where they try to bribe parents into sending children to schools instituted by the occupant by offering various advantages, like better school meals, clothing, etc.

XI. In the present case it would seem necessary to ask the Yugoslav National Office for further particulars both with regard to the actual facts and with regard to the municipal law to be applied. The result will probably be that at least certain acts of denationalisation of inhabitants of occupied territory committed by some of the accused, constitute a criminal offence. This being so, the second question

arises whether the criminality is cancelled by provisions of International law. This question must obviously be answered in the negative, because the Hague Regulations definitely forbid such interference on the part of the occupant.

It is the duty of belligerent occupants to respect, unless absolutely prevented, the laws in force in the country (Art. 43 of the Hague Regulations). Inter alia, family honour and rights and individual life must be respected (Art. 46). The right of a child to be educated in his own native language falls certainly within the rights protected by Article 46 ("individual life"). Under Art. 56, the property of institutions dedicated to education is privileged. If the Hague Regulations afford particular protection to school buildings, it is certainly not too much to say that they thereby also imply protection for what is going to be done within those protected buildings. It would certainly be a mistaken interpretation of the Hague Regulations to suppose that while the use of Yugoslav school buildings for Yugoslav children is safe-guarded, it should be left to the unfettered discretion of the occupant to replace Yugoslav education by Italian education.

It is the rationale of Art. 56 to protect spiritual values. And in order to afford this protection to spiritual values the provision protects the property of institutions dedicated to public worship, charity, education, science and art as a means to a certain end: to make public worship, charity, education, science and art possible even under belligerent occupation. If the belligerent occupant must not confiscate, seize, destroy, or wilfully damage the property of educational institutions, he is the less entitled to interfere with the spiritual and intellectual life of the schools, the only possible legitimate exception being considerations of the safety of the occupying forces.

XII. What has been said so far concerns the problem as a general proposition only. It is a different question to decide to what extent there is in the charge No. 1434 a prima facie case against the four persons whose listing is proposed by the Yugoslav National Office.

In the case of Nicoletti (No. 20) who is described as Educational Trustee, it appears that he was a kind of Commissioner in chargeof the administration and Italianisation of the schools in the district. In his case it seems to be conceivable to fasten upon him the individual responsibility for the whole Italianisation scheme. The case of the three other persons who were mainly teaching personnel, seems prima facie to be different.

PROGRAMME

for

Patriotic Exercises in the Public Schools

Territory of Hawaii,

Adopted by the Department of Public Instruction.

1906

PROGRAMME FOR PATRIOTIC EXERCISES

I.

Formation and Salute to Flag.

(a) At three minutes to nine o'clock the children assemble in front of the school, the classes forming a circle (or circles) about the flag pole or facing the building over which the stars and stripes are to float. The principal gives the order, "Attention!" or "Face!" The boys remove hats and the teachers, and pupils watch the flag hoisted by two of the older boys. When it reaches the top of the flag-pole, the principal gives the order, "Salute!" or three cheers may be given for the flag as it is being raised.

At nine o'clock the pupils march to their class rooms to the beating of a drum or to some march played by the pianist or school band.

On reaching their class rooms, the children may stand by their seats and repeat in concert the following salutation:

"We give our heads and our hearts to God and our Country! *One Country! One Language! One Flag!*"

(NOTE: The flag is dipped while the children raise the right hand, forefinger extended, and repeat the pledge. When they salute, the flag is raised to an upright position.)

(b) All the children to be drawn up in line before the school building.

A boy and a girl each holding a medium-sized American flag, stand one on the right and one on the left of the school steps. Boy on the right and girl on the left. The flags should be held military style.

The children at a given signal by the principal or teacher in charge, file past the flags, saluting in correct military manner. The boys to the right and the girls to the left, entering and taking their positions in the school. The flag bearers enter last, and take their positions right and left of the principal, remaining in that position during the salutation, "We give our heads and our hearts to God and our Country! *One Country! One Language! One Flag!*"

The flag bearers place the flags in position at the head of the school. The boy and girl who carry the flags should be chosen from among the pupils for good conduct during the hours of school.

(c) Pupils attention! at chord on piano or organ, or stroke of drum or bell.

The teacher will call one of the pupils to come forward and stand at one side of desk while the teacher stands at the other. The pupil shall hold an American flag in military style.

At second signal all children shall rise, stand erect and salute the flag, concluding with the salutation, "We give our heads and our hearts to God and our Country! *One Country! One Language! One Flag!*"

II.

Morning Prayer (in unison).

(a) THE LORD'S PRAYER;

Or

(b) Dear Lord we thank thee for the night
That brought us peaceful rest,
We thank thee for the pleasant light
With which our day is blessed;
We thank thee for our native land,
The dearest in the world;
We thank thee for our starry flag
For freedom's sake unfurled.

O, make us worthy, God, to be
The children of this land,
Give us the truth and purity
For which our colors stand,
May there be in us greater love
That by our lives we'll show
We're children true of God above
And our country here below.

Or

(c) "Hawaii's land is fair,
Rich are the gifts we share.
This is our earnest prayer
O Lord of Light,
That as a noble band
We may join heart and hand
Till all Hawaii's land
Stands for the right."

P. H. DODGE.

III.

Patriotic Song.

Any one of following:

America;

Star Spangled Banner;

The Red, White and Blue;

Battle Hymn of the Republic;

Rally Round the Flag;

Yankee Doodle;

Hail Columbia;

Home, Sweet Home;

Columbia, the Gem of the Ocean;

Glory—Glory—Hallelujah;

My Own United States;

John Brown's Body.

IV.

Patriotic Topics for Day.

(a) FORMAL TALK BY THE TEACHERS ON—

1.—Presidents and Famous Men;
2.—Great Events in History and Science;
3.—Current Events in United States;
4.—Vivid descriptions (illustrated whenever possible) of Great Industries, Cities, Famous Localities, Physical and Climatic Conditions.

(b) QUOTATIONS OR RECITATIONS.

It is the idea that on each Monday morning a new text be introduced in a brief talk by the teacher, written on the board, and during the week repeated by the pupils each day.

QUOTATIONS.

Our parents are dear to us; our children, our kinsmen, our friends are dear to us, but our country comprehends alone all the endearments of all.—*Cicero.*

"I was summoned by my country, whose voice I never hear but with veneration and love."—*George Washington.*

The union of hearts, the union of hands,
And the flag of our Union forever.

—*G. P. Morris.*

And never shall the sons of Columbia be slaves,
While the earth bears a plant, or the sea rolls its waves.

—*Joseph Thrumbull.*

One flag, one land, one heart, one hand,
One nation ever more! —*Holmes.*

Our fathers brought forth upon this continent a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.—*Abraham Lincoln.*

Liberty and Union, now and forever, one and inseparable.—*Daniel Webster.*

Let our object be our country, our whole country, and nothing but our country.—*Daniel Webster.*

Our Country—to be cherished in all our hearts, to be defended by all our hands.—*Robt. C. Winthrop.* (Given as a toast in Faneuil Hall.)

Lose then the sense of your private sorrows and lay hold of the common good.—*Demosthenes.*

In peace there's nothing so becomes a man as modest stillness and humility; But when the blast of war blows in our ears, then imitate the action of the tiger.—*Shakespeare.*

You cannot, my lords, you *cannot* conquer America.—*Wm. Pit,* Earl of Chatham.

If I were an American as I am an Englishman, while a foreign troop was landed in my country, I would never lay down my arms—never, never, never.—*Wm. Pitt,* Earl of Chatham.

What is the individual man, with all the good or evil that may betide him, in comparison with the good or evil which may befall a great country?—*Daniel Webster.*

I advise you not to believe in the destruction of the American nation. (Time of Civil War.)—*John Bright.*

I believe there is no permanent greatness to a nation except it be based on morality.—*John Bright.*

Our business is like men to fight. And hero-like to die.—*Wm. Motherwell.*

A star for every state and a state for every star.—*Robt. C. Winthrop.*

I call upon yonder stars which shine above us to bear witness—that liberty can never die.—*Victor Hugo.*

Four years ago, O Illinois, we took from your midst an untried man, and from among the people. We return him to you a mighty conqueror; not thine any more, but the nation's; not ours, but the world's.—*Henry Ward Beecher.* (On Lincoln).

If it be the pleasure of Heaven that my country shall require the poor offering of my life, the victim shall be ready at the appointed hour of sacrifice, come when that hour may.—By *Daniel Webster.*

There's freedom at thy gates, and rest
For earth's downtrodden and opprest,
And shelter for the hunted head;
For the starved laborer, toil and bread.
(America). By *Wm. Cullen Bryant.*

We mutually pledge to each other our lives, our fortunes, and our sacred honor. (Declaration of Independence.)'—*Thomas Jefferson.*

Let us have peace.—*U. S. Grant.*

Fondly do we hope, fervently do we pray, that this mighty scourge of war may soon pass away.—*Abraham Lincoln.*

I was born an American; I live an American; I shall die an American; and I intend to perform the duties incumbent upon me in that character to the end of my career.—*Daniel Webster.*

Seek the forests where shone the sword of Washington. What do you find? A place of tombs? No, A World. Washington has left the United States as a trophy on his battlefield.—*Chateaubriand.*

The man who loves home best and loves it most unselfishly, loves his country best.—*J. G. Holland.*

I know not what course others may take; but, as for me, give me liberty or give me death.—*Patrick Henry.*

Breathes there a man with soul so dead
Who never to himself hath said,
"This is my own, my native land!"
Whose heart hath ne'er within him burned
As home his footsteps he hath turned,
When wandering on a foreign strand?—*Sir Walter Scott.*

Ye people, behold, a martyr whose blood—pleads for fidelity, for law, and for liberty.—*Henry Ward Beecher.* (On Lincoln.)

Stand by the flag, all doubt and treason scorning,
Believe with courage firm and faith sublime,
That it will float until the eternal morning
Pales in its glories all the lights of time.
John Nicholas Wilder.

There is the national flag. He must be cold indeed who can look upon its folds rippling in the breeze without pride of country.—*Charles Sumner.*

We cannot honor our country with too deep a reverence; we cannot love her with an affection too fervent; we cannot serve her with faithfulness of zeal too steadfast and ardent.—*Thos. Smith Grimke.*

My angel—his name is Freedom,
Choose him to be your king;
He shall cut pathways east and west
And fend you with his wing.

Let us animate and encourage each other, and show the whole world that a freeman contending for liberty on his own ground is superior to any slavish mercenary on earth.—*George Washington.* (In a speech to his troops before the battle of Long Island.)

——— that the nation shall, under God, have a new birth of freedom, and that government of the people, by the people, and for the people shall not perish from the earth.—*Abraham Lincoln.*

Proclaim liberty throughout the land to all the inhabitants thereof.—Inscription on Liberty Bell.

A man's country is not a certain area of land, but a principle, and patriotism is loyalty to that principle.—*Geo. Wm. Curtis.*

Through all history a noble army of martyrs has fought fiercely and fallen bravely for that unseen mistress, their country.—*Geo. Wm. Curtis.*

With malice towards none, with charity for all, with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in: to bind up the nation's wound; to care for him who shall have borne the battle, and for his widow and orphans; to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations.—*Abraham Lincoln.*

The ends I aim at shall be my country's, my God's and truth's.—*Daniel Webster.*

I love my country's good, with a respect more tender, more holy and profound, than my whole life.—*Shakespeare.*

Be just, and fear not; let the ends thou aim'st at, be thy country's, thy God's and truth's.—*Shakespeare.*

"Then conquer we must, for our cause it is just,
And this be out motto,
In God is our trust."

RECITATIONS.

"The Eagle flew; the flag unfurled."

"Speed on our Republic."

"Landing of the Pilgrims."

"Our Chieftain, Washington."

"The Ballot Box."

"Old Liberty Bell."

"Paul Revere's Ride."

"Barbara Fritche."

"Liberty Hall."

"The Union," by Daniel Webster.

Liberty of the Press, by Col. E. D. Baker.

Bunker Hill Monument, by Webster.

Fourth of July, by Daniel Webster.

"Washington's Birthday."

In Favor Liberty, by Patrick Henry.

The Constitution and the Union, by Webster.

"God Wants the Boys and Girls."

"The Boy for Me."

"The Man with the Musket."

"Native Land."

Declaration of Independence.

Preamble of the Constitution.

(c) SPECIAL ANNIVERSARY DATE.

Following are suggestive dates. Have picture hung up before the pupils or sketched on the blackboard and as much said of his life and deeds as the time will allow.

DATES. SUBJECT.	REMARKS.
Jan. 18—Daniel Webster	Born Jan. 18, 1782. Recite Bunker Hill Monument.
Jan. 29—McKinley	Born Jan. 29, 1843. Sing "Lead Kindly Light."
Feb. 1—Slavery abolished	Feb. 1, 1865. Sing "Battle Hymn of the Republic." Recite "Battle of Gettysburg."
Feb. 12—Lincoln	Born Feb. 12, 1809. Tell anecdotes and recite "Battle of Gettysburg."
Feb. 21—American Flag made from American Bunting	Tell about our great industries. Sing "Star Spangled Banner." Recite "Speed on the Ship."
Feb. 22—Washington	Born Feb. 22, 1732. Tell stories. Recite "Our Chieftain, Washington."
March 4—Presidents	Inauguration Day. Show pictures of the Presidents or sketch them on blackboards.
March 9—Monitor and Merrimac	Battle March 9, 1862, when the men of the Monitor sang in the midst of the fight, "Yankee Doodle Dandy."
May 9—John Brown	Born May 9, 1800. Sing "John Brown's Body." Tell the story of his life.

DATES.	SUBJECT.	REMARKS.
April 10	"Home, Sweet Home"	The author, John Howard Payne, was born April 10, 1792. Sing the song. Tell stories of his life.
May 20 to 25	The Flag	Joseph R. Drake wrote "America's Flag." Sing this song.
May 30	Memorial Day	Sing "The Battle Hymn of the Republic." Recite "Gettysburg."
June 14	Flag Day	Flag adopted June 14, 1777. Sing "Red, White and Blue" and "Star Spangled Banner."
July 4	Declaration of Independence	Read part of the Declaration of Independence.
Sept. 14	"Star Spangled Banner"	Written by Francis Scott Key, Sept. 14, 1818. Sing this song. Recite "Barbara Fritche."
Sept. 27	Samuel Adams	Born Sept. 27, 1722. Read part of Declaration of Independence, as Adams was the chief man in securing the D. of I.
Oct. 12	Discovery of America	Sing "O Columbia." Recite "Native Land."
Oct. 21	"America"	Dr. Smith, the author, was born Oct. 21, 1808. Sing "America."
Dec. 22	Pilgrim Land	Recite "Landing of the Pilgrims," Dec. 22, 1620.

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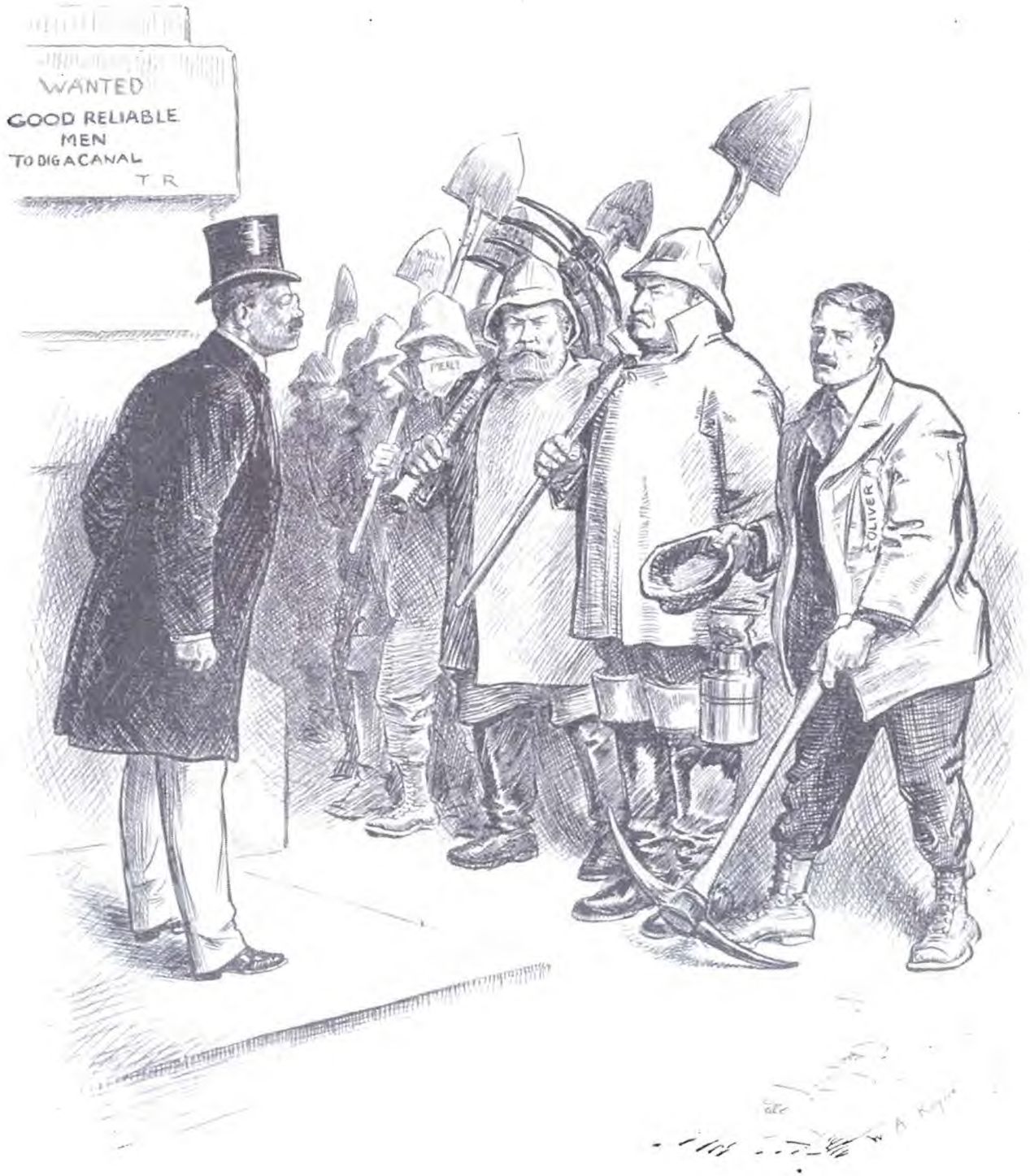


"THEY'LL DO"

HAWAII'S LESSON TO HEADSTRONG CALIFORNIA

HOW THE ISLAND TERRITORY HAS SOLVED THE PROBLEM OF DEALING WITH ITS FOUR THOUSAND JAPANESE PUBLIC-SCHOOL CHILDREN

By WILLIAM INGLIS

SPECIAL CORRESPONDENT FOR "HARPER'S WEEKLY"

HONOLULU, TERRITORY OF HAWAII, *January 15, 1907.*

THE American government in Hawaii has no trouble whatever in dealing with the Japanese pupils in the public schools. Nothing can be more startling to the observer who comes from the bubbling volcano of San Francisco school-politics than the ease with which the annoying race question is handled by intelligent Americans in this garden-spot of the Pacific. There are more than 4000 Japanese pupils here, as against a meagre ninety-three in San Francisco, yet there is no vexation.

There would be nothing to wonder at in the situation if most of the Japanese residents of Hawaii were people of culture and wealth, not competing with American labor. It is the status of the Mikado's subjects in these islands that forces one to admire the diplomacy with which an awkward problem has been handled. For the Japanese in Hawaii are nearly all of the coolie type. They are cheap workers, whether as laborers in the cane-fields or mechanics or artisans of any class. There is bitter strife between them and American labor. Strenuous efforts have been made to exclude Japanese laborers, to prevent Japs from working as mechanics, cabmen, or farriers; to prohibit them from owning drinking-saloons. The Palama, as the Japanese quarter in Honolulu is called, contains six times as many Asiatics as the Chinese quarter of New York, and the Japanese is very fond of driving dull care away with a glass; yet a most determined effort has been made to oust the little brown men from the profitable business of liquor-selling. An attempt was made, too, to compel the Japanese doctors who attend their countrymen here to take medical examinations in the English language, under penalty of not being allowed to practise in this Territory.

All of these anti-Japanese campaigns failed of success because the Territorial courts held that their basis was illegal, inasmuch as it was an invasion of treaty rights. I mention them merely to show how bitter and uncompromising has been the economic warfare upon the Japanese in these islands.

The great difference between the situation here and in California is that the Hawaiian-Americans have fought the Japanese bitterly but according to law and the treaty rights of the foreigners, while the San-Franciscans, with far less provocation, have airily disregarded both law and treaty in order to inflict upon Japan a gratuitous affront.

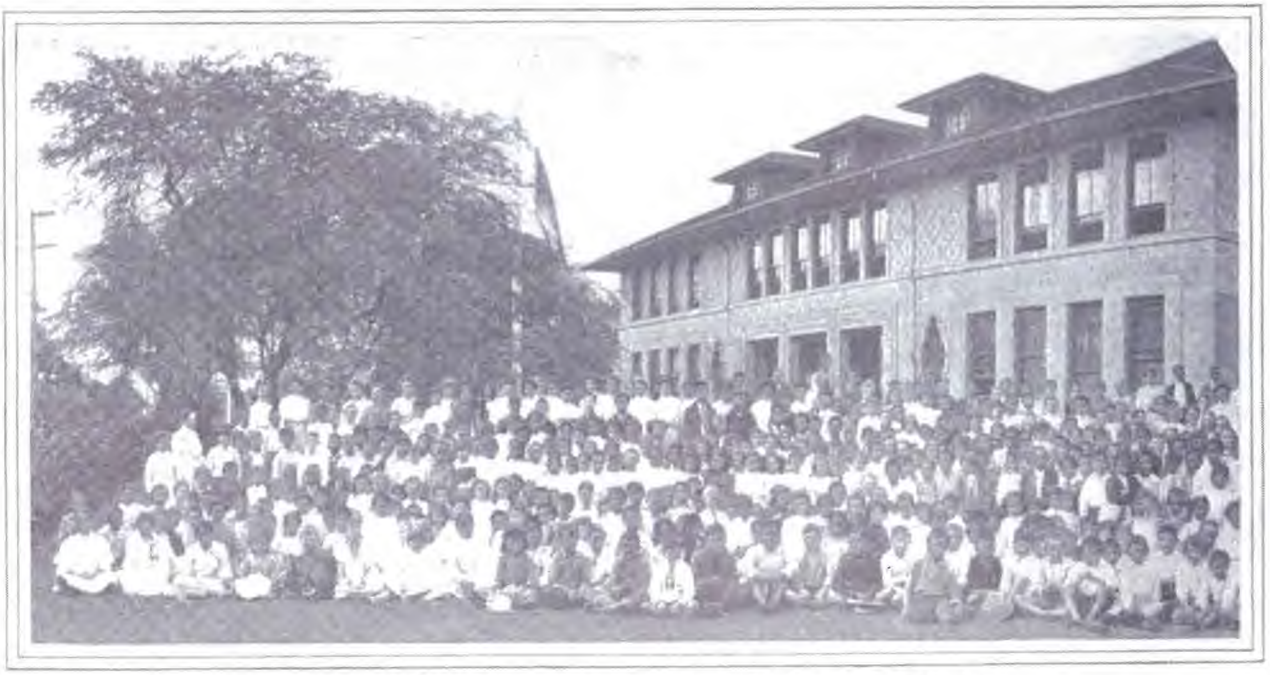
There are more than sixty thousand Japanese in the Hawaiian Islands. Nearly all of them are laborers on the sugar-plantations. Many of them are married, and on every plantation you will find a quaint reproduction of a Japanese village, the houses very like those of the Orient, Japanese women in kimonos going about their daily tasks, and chubby-cheeked, brown-eyed little boys and girls very gravely beginning the solemn business of life.

Whether in town or country, these little folks work with an energy that amazes an American. Their parents want them to learn as much as possible about the history and literature of the land of their fathers; so all the Japanese boys and girls go to a Japanese school from seven o'clock until nine in the morning. Then they attend an American public school from nine o'clock until two in the afternoon. The moment they are free they hurry back to Japanese school and work there until five or six o'clock in the evening. Imagine a school day that lasts from seven in the morning until dark! Yet these brown children thrive on that system. It has been going on for ten years now, and it is impossible to find any record of shattered health or injured eyes as a result of this tremendous industry.

Down in old Mulberry Bend, New-Yorkers have a public school of which they are very proud, because in it the teachers receive young Italians, Greeks, Syrians, Arabs, Japanese, Chinese, Scandinavians, Turks, etc., as raw material and turn them out as a finished product of excellent American citizens. The school is unique in its mixture of races, and for that reason attracts a great deal of attention. In Honolulu that school would pass unnoticed, for in every school you will find little folk of a dozen races working amicably side by side. Such a thing as race prejudice is unknown.

Observe the remarkable mixture shown by the latest census of the schools of Hawaii, taken at the end of last June:

	Public.	Private.	Totals.
Hawaiian	4,045	800	4,845
Part Hawaiian	2,382	1,040	3,422
American	457	502	959
British	142	81	223
German	144	119	263
Portuguese	3,239	1,233	4,472
Scandinavian	63	38	101
Japanese	3,578	719	4,297
Chinese	1,489	603	2,092
Porto-Rican	338	....	338
Other Foreigners	242	104	346
Totals	16,119	5,239	21,358



The Pupils of the Kaahumanu Elementary Grades Public School at Honolulu

THIS PHOTOGRAPH, THE CONTINUATION OF WHICH WILL BE FOUND ON THE OPPOSITE PAGE, GIVES A COMPREHENSIVE IDEA OF THE MANY NATIONALITIES HAWAII HAS PEACEFULLY ACCOMMODATED IN THE CLASS-ROOMS OF HER SCHOOLS, AND HOW SHE HAS SET A LESSON FOR CALIFORNIA'S SCHOOL BOARD

Was there ever such a heterogeneous company since Babel? Yet they are all fused in the great retort of our American schools, and they are coming out good American citizens. Incidentally it may be remarked that the people of Hawaii are prouder of their schools than of anything else in their marvellously rich and beautiful islands. There are 154 public schools, with 435 teachers, and 58 private schools, with 261 teachers. The high schools send pupils to the leading colleges in the United States, and of these many have achieved distinction in letters and science.

In the Kaahumanu and Kaiualani public schools one finds the jumble of races hard at work. There is every hue of skin known to the human species except the black of the negro, which is conspicuously absent. At the same desk in the Kaiualani school a dainty little girl with pink cheeks, blue eyes, and hair of spun gold—the only native American in the school—was sitting beside a girl whose father was a white man and whose mother was Hawaiian. The half-caste child was dark as an Indian and her hair was long, straight, black and coarse as an Indian's. At the desk before these two sat two Japanese girls, about ten years old. They were demure little things in American clothes, very solemn and full of dignity. Their sparkling black eyes shone with keen speculation. A few feet away sat a Portuguese girl beside a Chinese girl who wore the loose silk jacket and flowing trousers of her native land.

A Group at the Honolulu High School

THREE PER CENT. OF THE PUPILS HERE ARE JAPANESE, THE IMPERATIVE REQUISITE FOR ADMISSION BEING A THOROUGH WORKING KNOWLEDGE OF ENGLISH

The boys were a sturdy lot, and, in spite of the wide divergence of race types, one saw a great resemblance among them, the resemblance that comes of working at the same tasks, thinking the same thoughts, having the same duties, aims, ambitions, and rewards. This resemblance was much more marked among the boys than among the girls. The costumes were as various as the leaves in the forest, and very few of the children wore shoes. Every boy and every girl was scrupulously clean. Order in the schoolroom was perfect. There was no giggling or whispering nor any evidence of self-consciousness. The children regarded the visitor with a curiosity that was frank but well bred.

At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building. Hawaii differs from all our other tropical neighbors in the fact that grass will grow here. To see beautiful, velvety turf amid groves of palms and banana-trees and banks of gorgeous scarlet flowers gives a feeling of sumptuousness one cannot find elsewhere.

Out upon the lawn marched the children, two by two, just as precise and orderly as you can find them at home. With the ease that comes of long practice the classes marched and countermarched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet above their heads. Surely this was the most curious, most diverse regiment ever drawn up under that banner—tiny Hawaiians, Americans, Britons, Germans, Portuguese, Scandinavians, Japanese, Chinese, Porto-Ricans, and Heaven knows what else.

"Attention!" Mrs. Fraser commanded.

The little regiment stood fast, arms at sides, shoulders back, chests out, heads up, and every eye fixed upon the red, white, and blue emblem that waved protectingly over them.

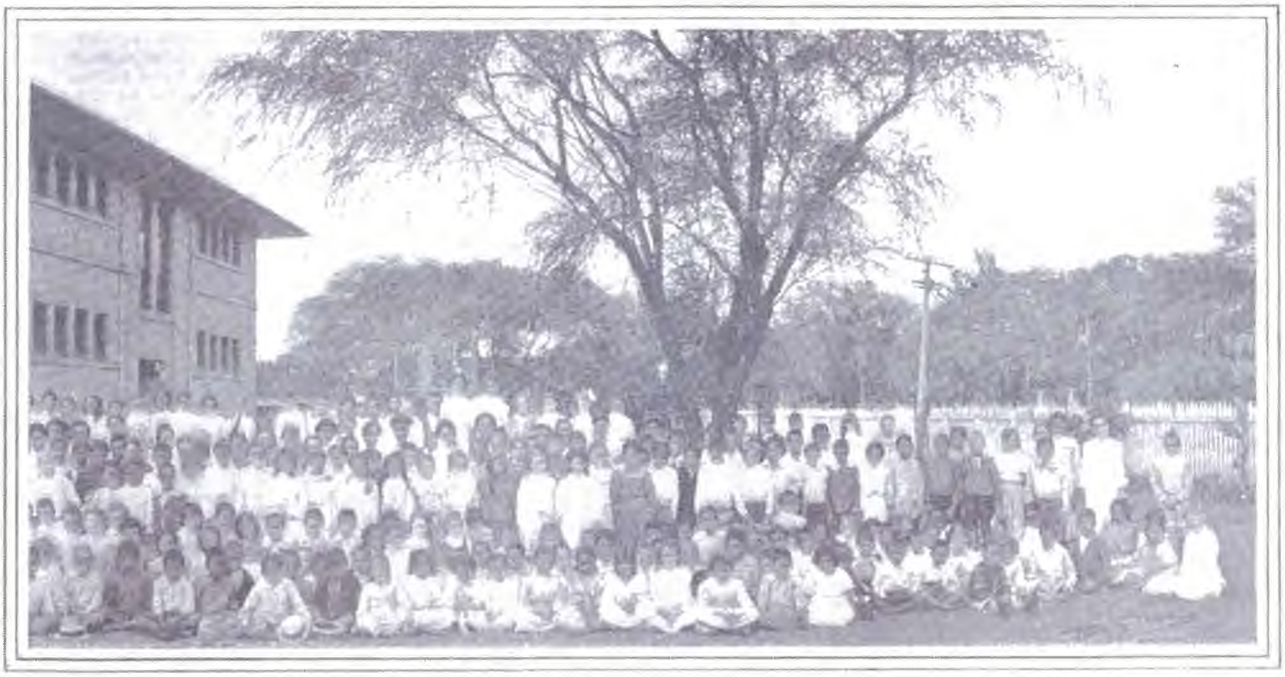
"Salute!" was the principal's next command.

Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice:

"We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!"

The last six words were shot out with a force that was explosive. The tone, the gesture, the gaze fixed reverently upon the flag, told their story of loyal fervor. And it was apparent that the salute was given as spontaneously and enthusiastically by the Japanese as by any of the other children. There were hundreds of them in the throng, and their voices rang out as clearly as any others, their hands were raised in unison. The coldest clod of a man who sees the children perform this act of reverence must feel a tightening at the throat, and it is even more affecting to see these young atoms from all the world actually being fused in the crucible from which they shall issue presently as good American citizens.

So much for the Japanese in the lower-grade schools. Everybody agrees that no children can be more polite and agreeable than they are. The principal burden of the complaint in San Francisco



In this Group may be found Representatives of at least Ten Nationalities

THE NUMEROUS JAPANESE CHILDREN IN THIS SCHOOL ATTEND IT FROM NINE O'CLOCK UNTIL TWO, AFTER HAVING BEEN IN THEIR NATIVE SCHOOL FROM SEVEN UNTIL NINE. AFTERWARD, FROM TWO O'CLOCK UNTIL FIVE OR SIX, THEY RETURN FOR INSTRUCTION IN THEIR OWN JAPANESE SCHOOL

"We give our heads and our hearts to God and our country! One country, one language, one flag!"

THIS SCENE SHOWS THE SALUTE TO THE AMERICAN FLAG WHICH FLIES IN THE GROUNDS OF THE KAIUALANI PUBLIC SCHOOL WHICH HAS MANY JAPANESE PUPILS. THE DRILL IS CONSTANTLY HELD AS A MEANS OF INCULCATING PATRIOTISM IN THE HEARTS OF THE CHILDREN

is that parents cannot endure to have their girls exposed to contamination by adult Asiatics, whose moral code is far different from our own. Whether or not there is reason for this complaint is not the question here. That there is such a feeling of apprehension among parents is readily found by any one who inquires, and it exists in Hawaii no less than in California. The Hawaiian school authorities long ago took steps to prevent the mingling of grown Japanese boys in classes with American girls.

In the Honolulu high school there are 143 pupils, including a few more boys than girls. Most of them are above fifteen years of age. There is now, as there has been for the last six years, only five per cent. of Asiatics among these pupils—three per cent. Japanese, and two per cent. Chinese. The boys are well behaved.

Professor M. M. Scott, the principal of the high school, was kind enough to call all the pupils, who were not taking examinations, out on the front steps of the building, where the visitor could inspect them in the sunshine. The change in the color scheme from that of the schools below was astounding. Below were all the hues of the human spectrum, with brown and yellow predominating; here the tone was clearly white.

What had made the change? Practically the Asiatics had been eliminated. But how? By building separate schools and brusquely ordering the Japanese to attend them in company with Chinese and Koreans, whom they despise? Not at all. The Hawaiian Commissioners of Public Instruction long ago made a regulation that no pupil may attend a school of the higher grade unless he has a thorough working knowledge of the English language.

"That rule," said Commissioner Wallace Farrington, "rids us of all individuals whose presence could possibly be objectionable. We have not now, and we never have had, any trouble over the presence of Japanese or any other Asiatics in our public schools. I do not think the question will ever cause us any annoyance.

"The rule under which the exclusion is accomplished is based on simple common sense, and no one can object to it. The speed of any fleet is the speed of the slowest ship in the fleet. It would be most unjust for us to delay the progress of our advanced pupils by putting in their classes foreigners who do not clearly understand English; for their presence would make it necessary to waste time in long explanations. The fairness of that rule is so evident that we have never had any complaint from Japanese nor anybody else. It is—perhaps—a mere coincidence that the operation of the rule rids the classes of certain individuals whose presence may not be desired. We make no comparison with any other way of handling the problem; but we know that in Hawaii the Americans, the Japanese, and all the others, are satisfied with the plan on which we are working."

Mr. Miki Saito, His Imperial Japanese Majesty's Consul-General at Hawaii, has just returned from a three weeks' tour of inspection of the public schools throughout the islands, begun soon after the San Francisco incident was made public. He is, of course, devoted to the welfare of all the Mikado's subjects, and during his three weeks' tour he questioned children and parents everywhere.

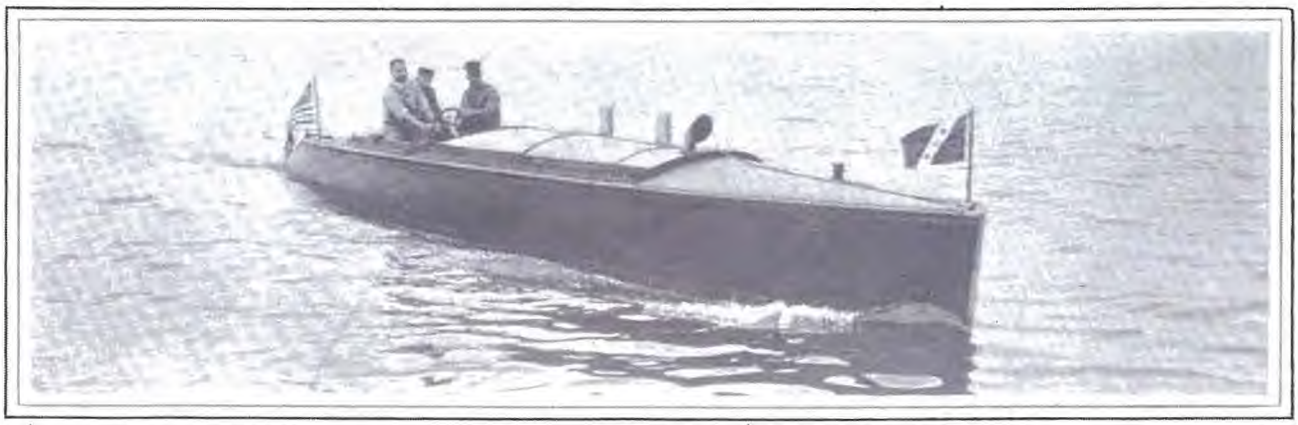
"You will be glad to know," said Mr. Miki to me, "that the Japanese people here are entirely satisfied with the treatment of their children in the public schools. I have not heard one word of complaint anywhere; but on the other hand I have heard our people express satisfaction at the kindness and cooperation of the Americans.

In the public schools our children have the same opportunities as the rest. On the plantations American employers have kindly put up buildings in which the Japanese teachers can hold school in our native tongue. I can find in the Hawaiian schools nothing to criticise and much to praise."

It is difficult for the unprejudiced observer to understand why the impetuous San-Franciscans did not adopt the Hawaiian plan of dealing with the Japanese in the schools. Surely they must have known of the easy success of the scheme, for in community of interests Honolulu is as near to San Francisco as Philadelphia is to New York.

The more one studies the subject, the harder it is to understand why the Californians took so much pains to affront the Japanese. The warlike spirit in a nation fresh from great victories may well be compared to a sleeping dog on the porch of a home he has just defended. The hasty Californians seem to have acted on the principle laid down by an American philosopher whose thoughts outstripped his words, so that he airily exclaimed, "Oh, let sleeping dogs bark!"

A MOTOR-BOAT WHICH HAS RUN A MILE IN 2:21 1-5



IN THE MOTOR-BOAT RACES AT PALM BEACH, FLORIDA, THE "DIXIE" RECENTLY MADE A NEW MILE RECORD AGAINST THE TIDE OF 2:21 1-5, WINNING BY THIS FEAT THE DEWAR TROPHY. RUNNING WITH THE TIDE HER TIME WAS ONE AND A FIFTH SECONDS LESS

Permanent Court of Arbitration
Larsen v. Hawaiian Kingdom

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

DISPUTE SETTLEMENT

GENERAL TOPICS

1.3 Permanent Court of Arbitration

UNITED NATIONS
New York and Geneva, 2003

1. BACKGROUND

1.1 History

In July 1899, the sovereign Powers, meeting in The Hague at the first International Peace Conference, adopted a "Convention for the Pacific Settlement of International Disputes,"[1] which established a global institution for international dispute resolution: the Permanent Court of Arbitration. In the same way in which the 1899 Hague Peace Conference – the world's first successful egalitarian assembly of a political character – can be said to have been a precursor of the League of Nations and the United Nations,[2] the PCA – as conceived by the drafters of the 1899 Convention – was a precursor of all present-day forms of international dispute resolution, including the International Court of Justice ("ICJ").

The 1899 Convention was revised at the Second Hague Peace Conference in 1907, by the adoption of a second "Convention for the Pacific Settlement of International Disputes."[3] Although the majority of States are parties to the 1907 Convention, both Conventions remain in force. There are currently 97 Contracting States.[4]

In 1913, construction was completed on the Peace Palace in The Hague. Originally built to serve as PCA headquarters, the Peace Palace now also houses the ICJ, the Carnegie Library and the Hague Academy of International Law.

In the first few decades of the PCA's existence, a significant number of inter-State disputes were submitted to tribunals established under its auspices.[5] Because the PCA was established for the purpose of resolving disputes between States, all of its early tribunals were called upon to decide disputes involving issues of public international law, including territorial sovereignty, State responsibility, and treaty interpretation. Many of the principles laid down in the early PCA cases are still good law today, and are cited by other international tribunals, including the ICJ.[6]

[1] *Convention for the Pacific Settlement of International Disputes, July 29, 1899, 32 Stat. 1799 [hereinafter, "1899 Convention"].*

[2] *Sharwood R. The Hague Peace Conference of 1899: A Historical Introduction. In: International Alternative Dispute Resolution: Past, Present and Future – The Permanent Court of Arbitration Centennial Papers 170 (2000) [hereinafter "PCA Centennial Papers"].*

[3] *Convention for the Pacific Settlement of International Disputes, Oct. 18, 1907, 36 Stat. 2199 [hereinafter, "1907 Convention"].*

[4] *Although adherence to the Conventions is not a prerequisite for recourse to PCA dispute resolution, States continue to accede to the 1907 Convention, inter alia, in order to participate in the PCA's Administrative Council (see Section 2, below). An up-to-date list of Contracting States can be found on the PCA's website: http://www.pca-cpa.org/CSAI.*

[5] *See, for example, Hamilton P et al., eds., The Permanent Court of Arbitration: International Arbitration and Dispute Resolution: Summaries of Awards, Settlement Agreements and Reports (1999) [hereinafter "PCA Summaries"].*

[6] *See J.G. Merrills, The contribution of the Permanent Court of Arbitration to international law and to the settlement of disputes by peaceful means, in PCA Summaries, supra note 5, at 3.*

1.2 Non-State Parties

Initially conceived as an instrument for the settlement of disputes between States, the PCA was authorized, in the 1930s, to use its facilities for conciliation, and for the arbitration of international disputes between States and private parties, thus making it available for resolving certain commercial and investment disputes.[7] In 1962, the PCA elaborated a set of "Rules of Arbitration and Conciliation for settlement of international disputes between two parties of which only one is a State," which undoubtedly inspired the subsequent adoption of the 1965 Agreement[8] establishing the International Centre for Settlement of Investment Disputes (ICSID) at the World Bank.[9]

In subsequent years, however, following two world wars and the establishment of the International Court of Justice and its predecessor, the Permanent Court of International Justice, the PCA came to be underutilized by the international community.

1.3 UNCITRAL Link

The first stirrings of revitalization of the PCA began in the 1980s. In 1976, the United Nations Commission on International Trade Law (UNCITRAL),[10] adopted a set of non-institutional arbitration rules for use "in the settlement of disputes arising in the context of international commercial relations, particularly . . . commercial contracts." Realizing that these rules would not be effective unless they included a "fall-back" method for appointing arbitrators and deciding challenges, the UNCITRAL drafters created an "appointing authority", to be designated by agreement of the parties. It was felt that in cases in which the parties were unable to agree on the choice of an appointing authority, a trusted international institution was needed. The UNCITRAL Arbitration Rules therefore provide that:

> *"[i]f no appointing authority has been agreed upon by the parties, or if the appointing authority agreed upon refuses to act or fails to appoint the arbitrator . . . either party may request the Secretary-General of the* →

[7] *The question arose in connection with an arbitration between the Chinese Government and Radio Corporation of America (RCA), see PCA Summaries, supra note 5, at 145. RCA had concluded an agreement for the operation of radio telegraphic communications between China and the United States. RCA claimed that a subsequent agreement entered into by China with a different entity constituted a breach of its agreement. The PCA agreed, at the request of the arbitral tribunal, to provide registry services.*

[8] *Convention on the Settlement of Investment Disputes between States and Nationals of Other States, March 18, 1965, 575 U.N.T.S. 160.*

[9] *See M. Pinto, Introductory statement by the Secretary-General of the Iran-United States Claims Tribunal, in PCA Centennial Papers, supra note 2, at 179, 183.*

[10] *UNCITRAL Arbitration Rules, adopted April 28, 1976. Report of the United Nations Commission on International Trade Law on the Work of its Ninth Session, 31 UN GAOR Supp. (No. 17) at paras. 56-57, United Nations Document No. A/31/17 (1976), reprinted in 15 I.L.M. 701 (1976) [hereinafter, "UNCITRAL Rules"]. See generally Holtzmann HM, The History, Creation and Need for the UNCITRAL Arbitration Rules, in Stockholm Symposium On International Commercial Arbitration (1982).*

3. JURISDICTION

3.1 Jurisdiction of the Institution

As pointed out above, although the PCA was originally established for inter-State arbitration, the Hague Conventions allow considerable flexibility in the constitution of a "special Board of Arbitration."[24]

Pursuant to the various Optional Rules, the following parties may, in principle, agree to bring a case before the PCA:

- Any two or more States;
- A State and an international organization (i.e. an intergovernmental organization);
- Two or more international organizations;
- A State and a private party; and
- An international organization and a private party.

The PCA Rules of Procedure for Arbitrating Disputes Relating to Natural Resources and/or the Environment and the Optional Rules for Conciliation of Disputes Relating to Natural Resources and/or the Environment contain no requirement that one of the parties be a State or organization of States. Private parties may agree to use the administrative and other facilities of the PCA in arbitrations conducted under the UNCITRAL Rules, and the PCA is contemplating adopting its own institutional version of the UNCITRAL Rules for this purpose.[25]

There is no requirement that a State agreeing to PCA dispute resolution be a party to the 1899/1907 Conventions, and accession to the Conventions does not establish any type of compulsory jurisdiction.

3.2 Jurisdiction of the Arbitral Tribunal

The cornerstone of all types of arbitral jurisdiction is agreement of the parties. This agreement can be made by way of a separate agreement covering an existing dispute (often referred to as a "submission agreement") or through a clause in a treaty, contract, or other legal instrument, which is usually more general, covering any future disputes "arising under" or "in connection with" the instrument concerned.

The various PCA Rules follow the UNCITRAL Rules in empowering the arbitral tribunal to decide on any objections to its jurisdiction,[26] and providing

[24] *1899 Convention, Art. 26; 1907 Convention, Art. 47.*
[25] *See United Nations document no. A/CN. 9/230 (1982), supra, note 22.*
[26] *Art. 21(1).*

that, for purposes of determining jurisdiction, an arbitration agreement shall be considered separable from the instrument in which it is contained.[27] Thus, the invalidity of the contract, agreement or instrument does not *ipso facto* deprive the arbitral tribunal of jurisdiction.

Under the two sets of PCA Rules providing for the involvement of a private party with either a State or an international Organization, agreement to arbitrate under the rules constitutes a waiver of sovereign immunity from jurisdiction on the part of the State or international organization concerned.[28]

3.3 Contentious/Advisory Jurisdiction

PCA practice, unlike that of the ICJ, knows no distinction between contentious and advisory jurisdiction. Arbitration is virtually always contentious, and can be distinguished from other forms of non-judicial dispute resolution by the final and binding nature of the resulting arbitral award. The PCA's non-binding methods of dispute resolution, including mediation, conciliation and inquiry or fact-finding, might therefore be more appropriate for parties seeking an advisory – or non-binding – declaration of their mutual rights and obligations.

3.4 Subject Matter

The potential subject-matter jurisdiction of PCA arbitral tribunals is unlimited. In each case however, the scope of jurisdiction is governed by the wording of the applicable arbitration agreement. The PCA Rules of Procedure for Arbitrating Disputes Relating to Natural Resources and/or the Environment expressly provide that

> *"The characterization of the dispute as relating to the environment or natural resources is not necessary for jurisdiction, where all the parties have agreed to settle a specific dispute under these rules." (Art. 1)*

3.5 Time Limits

The various rules of procedure do not place any temporal limits upon the referral of disputes to PCA arbitration. Such restrictions may be found in the arbitration agreement.

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[27] *Art. 21(2).*

[28] *Any waiver of sovereign immunity from execution, however, must be express; see, for example, PCA Optional Rules for Arbitrating Disputes between Two Parties of Which Only One is a State, Introduction, http://www.pca-cpa.org/BD/2stateeng.htm.*

Permanent Court of Arbitration

PCA Case Repository

The Republic of Ecuador v. The United States of America

Case name	The Republic of Ecuador v. The United States of America
Case description	On June 28, 2011, the Republic of Ecuador instituted arbitral proceedings concerning the interpretation and application of Article II(7) of the Treaty between the United States of America and the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment, 27 August 1993 (US-Ecuador BIT), pursuant to Article VII of the US-Ecuador BIT. The Permanent Court of Arbitration acted as Registry in this arbitration.
Name(s) of claimant(s)	The Republic of Ecuador (State)
Name(s) of respondent(s)	The United States of America (State)
Names of parties	
Case number	2012-05
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Inter-state arbitration
Subject matter or economic sector	International investment law
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	Bilateral treaty Treaty between the United States of America and the Republic of Ecuador Concerning the Encouragement and Reciprocal Protection of Investment Country A: United States Country B: Ecuador
Language of proceeding	English Spanish
Seat of arbitration (by country)	
Arbitrator(s)	Professor Luiz Olavo Baptista (Presiding Arbitrator) Professor Donald McRae Professor Raúl Emilio Vinuesa
Representatives of the claimant(s)	Dr. Diego García Carrión, Procurador General del Estado Ms. Christel Gaibor, Directora de Asuntos Internacionales y Arbitraje, Encargada Ms. Cristina Viteri PROCURADURÍA GENERAL DEL ESTADO Mr. Paul S. Reichler Mr. Mark A. Clodfelter Mr. Andrew B. Loewenstein FOLEY HOAG LLP Mr. Bruno Leurent FOLEY HOAG AARPI

Representatives of the respondent(s)	Mr. Harold Hongju Koh, Legal Adviser Mr. Jeffrey D. Kovar, Assistant Legal Adviser Ms. Lisa J. Grosh, Deputy Assistant Legal Adviser Mr. Jeremy K. Sharpe, Chief of Investment Arbitration Mr. Lee M. Caplan, Attorney Adviser Ms. Karin L. Kizer, Attorney-Adviser Ms. Neha Sheth, Attorney-Adviser U.S. DEPARTMENT OF STATE
Representatives of the parties	
Number of arbitrators in case	3
Date of commencement of proceeding [dd-mm-yyyy]	28-06-2011
Date of issue of final award [dd-mm-yyyy]	
Length of proceedings	1-2 years
Additional notes	

Attachments

Notice of arbitration

- "Request for Arbitration and Statement of Claim" - 28-06-2011 (English)
- "Request for Arbitration and Statement of Claim" - 28-06-2011 (Spanish)

Written submission

- "Statement of Defense" - 29-03-2012 (Spanish)
- "Statement of Defense" - 29-03-2012 (English)
- "Expert Opinion of Prof. W. Michael Reisman - Respondent's Memorial on Jurisdiction" - 24-04-2012 (English)
- "Expert Opinion of Prof. W. Michael Reisman - Respondent's Memorial on Jurisdiction" - 24-04-2012 (Spanish)
- "Expert Opinion of Prof. Christian Tomuschat - Respondent's Memorial on Jurisdiction" - 24-04-2012 (English)
- "Expert Opinion of Prof. Christian Tomuschat - Respondent's Memorial on Jurisdiction" - 24-04-2012 (Spanish)
- "Respondent's Memorial on Jurisdiction" - 25-04-2012 (English)
- "Respondent's Memorial on Jurisdiction" - 25-04-2012 (Spanish)
- "Claimant's Counter-Memorial on Jurisdiction" - 23-05-2012 (Spanish)
- "Witness Statement of Mr. Luis Benigno Gallegos - Claimant's Counter-Memorial on Jurisdiction" - 23-05-2012 (Spanish)
- "Expert Opinion of Prof. Alain Pellet - Claimant's Counter-Memorial on Jurisdiction" - 23-05-2012 (English)
- "Expert Opinion of Prof. Alain Pellet - Claimant's Counter-Memorial on Jurisdiction" - 23-05-2012 (Spanish)
- "Expert Opinion of Prof. Stephen McCaffrey - Claimant's Counter-Memorial on Jurisdiction" - 23-05-2012 (English)
- "Expert Opinion of Prof. Stephen McCaffrey - Claimant's Counter-Memorial on Jurisdiction" - 23-05-2012 (Spanish)
- "Expert Opinion of Prof. C.F. Amerasinghe - Claimant's Counter-Memorial on Jurisdiction" - 23-05-2012 (English)
- "Expert Opinion of Prof. C.F. Amerasinghe - Claimant's Counter-Memorial on Jurisdiction" - 23-05-2012 (Spanish)
- "Claimant's Counter-Memorial on Jurisdiction" - 23-05-2012 (English)
- "Witness Statement of Mr. Luis Benigno Gallegos - Claimant's Counter-Memorial on Jurisdiction" - 23-05-2012 (English)

Permanent Court of Arbitration
PCA Case Repository

District Municipality of La Punta (Peru) v. United Nations Office for Project Services (UNOPS)

Case name	District Municipality of La Punta (Peru) v. United Nations Office for Project Services (UNOPS)
Case description	The PCA provided administrative support in this arbitration, which was conducted under the UNCITRAL Arbitration Rules (1976).
Name(s) of claimant(s)	District Municipality of La Punta (Peru) (State)
Name(s) of respondent(s)	United Nations Office for Project Services (UNOPS) (International organization)
Names of parties	
Case number	PCA Case No. 2014-38
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Contract-based or other arbitration
Subject matter or economic sector	- Other -
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	
Language of proceeding	Spanish
Seat of arbitration (by country)	
Arbitrator(s)	Dr. Felipe Ossa Guzmán (Presiding Arbitrator) Dr. Pablo Solari Barboza Dr. Francisco González de Cossío
Representatives of the claimant(s)	Mr. Alberto Tocunaga Ortiz (Municipal Public Prosecutor) Ms. Lucy Vidal Zamora Mr. Víctor Ceballos Gargurevich DISTRICT MUNICIPALITY OF LA PUNTA
Representatives of the respondent(s)	Mr. Fernando Cotrim Barbieri (Director of the Operations Centre in Peru – Legal Expert for Latin America and the Caribbean) Mr. Alberto Quintana Sánchez (Legal Advisor) UNITED NATIONS OFFICE FOR PROJECT SERVICES (UNOPS)
Representatives of the parties	
Number of arbitrators in case	3
Date of commencement of proceeding [dd-mm-yyyy]	2014

Date of issue of final award [dd-mm-yyyy]	
Length of proceedings	Less than one year
Additional notes	
Attachments	

Larsen v. Hawaiian Kingdom

Case name	Larsen v. Hawaiian Kingdom
Case description	Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency ("Hawaiian Kingdom") on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant's person within the territorial jurisdiction of the Hawaiian Kingdom. In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings. The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States' actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.
Name(s) of claimant(s)	Lance Paul Larsen (Private entity)
Name(s) of respondent(s)	The Hawaiian Kingdom (State)
Names of parties	
Case number	1999-01
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Other proceedings
Subject matter or economic sector	Treaty interpretation
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	Other The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America
Language of proceeding	English
Seat of arbitration (by country)	Netherlands
Arbitrator(s)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
Representatives of the claimant(s)	Ms. Ninia Parks, Counsel and Agent
Representatives of the respondent(s)	Mr. David Keanu Sai, Agent

Representatives of the parties	Mr. Peter Umialiloa Sai, First deputy agent Mr. Gary Victor Dubin, Second deputy agent and counsel
Number of arbitrators in case	3
Date of commencement of proceeding [dd-mm-yyyy]	08-11-1999
Date of issue of final award [dd-mm-yyyy]	05-02-2001
Length of proceedings	1-2 years
Additional notes	

Attachments

Award or other decision

> Arbitral Award 15-05-2014 English

Other

> Annex 1 - President Cleveland's Message to the Senate and the House of Representatives	18-12-1893	English
> Joint Resolution - To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.	23-11-1993	English

United Nations Independent Expert

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

MEMORANDUM

Date: 25 February 2018

From: Dr. Alfred M. deZayas
United Nations Independent Expert
Office of the High Commissioner for Human Rights

To: Honorable Gary W. B. Chang, and
Honorable Jeannette H. Castagnetti, and
Members of the Judiciary for the State of Hawaii

Re: The case of Mme Routh Bolomet

As a professor of international law, the former Secretary of the UN Human Rights Committee, co-author of book, *The United Nations Human Rights Committee Case Law 1977-2008,* and currently serving as the UN Independent Expert on the promotion of a democratic and equitable international order, I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).

Based on that understanding, in paragraph 69(n) of my 2013 report (A/68/284) to the United Nations General Assembly I recommended that the people of the Hawaiian Islands — and other peoples and nations in similar situations — be provided access to UN procedures and mechanisms in order to exercise their rights protected under international law. The adjudication of land transactions in the Hawaiian Islands would likewise be a matter of Hawaiian Kingdom law and international law, not domestic U.S. law.

I have reviewed the complaint submitted in 2017 by Mme Routh Bolomet to the United Nations Office of the High Commissioner for Human Rights, pointing out historical and ongoing plundering of the Hawaiians' lands, particularly of those heirs and descendants with land titles that originate from the distributions of lands under the authority of the Hawaiian Kingdom. Pursuant to the U.S. Supreme Court judgment in the Paquete Habana Case (1900),

U.S. courts have to take international law and customary international law into account in property disputes. The state of Hawaii courts should not lend themselves to a flagrant violation of the rights of the land title holders and in consequence of pertinent international norms. Therefore, the courts of the State of Hawaii must not enable or collude in the wrongful taking of private lands, bearing in mind that the right to property is recognized not only in U.S. law but also in Article 17 of the Universal Declaration of Human Rights, adopted under the leadership of Eleanor Roosevelt.

Respectfully,

Dr. Alfred M. deZayas
United Nations Independent Expert on the promotion of a democratic and equitable international order
Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

War Crimes are Violations of the Hague and Geneva Conventions

AMNESTY INTERNATIONAL

ARMED CONFLICT

ISSUE ARMED CONFLICT

← Back to What We Do

Overview

Armed conflicts – wars – continue to cause death, displacement and suffering on a massive scale.

Numerous armed conflicts are currently taking place around the world including those involving warring parties within a single state (non-international armed conflicts) and those involving armed forces from two or more states (international armed conflicts). In 2016, armed conflicts killed more than a hundred thousand people; countless survivors

Non-international armed conflict: A protracted armed confrontation occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum level of organization.

Principle of distinction: All sides must distinguish between military targets and civilians. Any deliberate attack on a civilian or civilian building – such as homes, medical facilities, schools or government buildings – is a war crime (providing the building has not been taken over for military use). If there is any doubt as to whether a target is civilian or military, then it must be presumed to be civilian.

Principle of proportionality: It is prohibited to launch an attack which may be expected to cause loss of civilian life, injury to civilians, and/or damage to civilian objects which would be excessive in relation to the anticipated military advantage.

Universal jurisdiction: It refers to the principle that a national court may, and in some circumstances must, prosecute individuals for crimes under international law – such as crimes against humanity, war crimes, genocide, and torture – wherever they happened, based on the principle that such crimes harm the international community or international order itself, which individual States may act to protect. Such an exercise of jurisdiction is known as universal jurisdiction. Amnesty calls on states to ensure that their national courts can exercise universal jurisdiction over crimes under international law, such as war crimes, crimes against humanity, genocide and torture.

War crimes - crimes that violate the laws or customs of war defined by the Geneva and Hague Conventions. Including targeting civilians, murder, torture or other ill-treatment of civilians or prisoners of war.

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be used to commit or to facilitate the commission of such violation; and

(2) any property, real or personal, constituting or derived from any proceeds that such person obtained, directly or indirectly, as a result of such violation.

(b) PROPERTY SUBJECT TO FORFEITURE.—

(1) IN GENERAL.—The following shall be subject to forfeiture to the United States and no property right shall exist in them:

(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(B) Any property, real or personal, that constitutes or is derived from proceeds traceable to any violation of this chapter.

(2) APPLICABILITY OF CHAPTER 46.—The provisions of chapter 46 of this title relating to civil forfeitures shall apply to any seizure or civil forfeiture under this subsection.

(Added Pub. L. 109–164, title I, §103(d)(1), Jan. 10, 2006, 119 Stat. 3563.)

CHAPTER 118—WAR CRIMES

Sec.
2441. War crimes.
2442. Recruitment or use of child soldiers.

AMENDMENTS

2008—Pub. L. 110–340, §2(a)(3)(A), Oct. 3, 2008, 122 Stat. 3736, added item 2442.

1996—Pub. L. 104–294, title VI, §605(p)(2), Oct. 11, 1996, 110 Stat. 3510, redesignated item 2401 as 2441.

§ 2441. War crimes

(a) OFFENSE.—Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) CIRCUMSTANCES.—The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).

(c) DEFINITION.—As used in this section the term "war crime" means any conduct—

(1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;

(2) prohibited by Article 23, 25, 27, or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;

(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or

(4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.

(d) COMMON ARTICLE 3 VIOLATIONS.—

(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term "grave breach of common Article 3" means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrat-

ing, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

(A) the term "severe mental pain or suffering" shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

(B) the term "serious bodily injury" shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

(C) the term "sexual contact" shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

(D) the term "serious physical pain or suffering" shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

(E) the term "serious mental pain or suffering" shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term "severe mental pain or suffering" (as defined in section 2340(2) of this title), except that—

(i) the term "serious" shall replace the term "severe" where it appears; and

(ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term "serious and non-transitory mental harm (which need not be prolonged)" shall replace the term "prolonged mental harm" where it appears.

(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

(A) collateral damage; or

(B) death, damage, or injury incident to a lawful attack.

(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.

(5) DEFINITION OF GRAVE BREACHES.—The definitions in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.

(Added Pub. L. 104–192, § 2(a), Aug. 21, 1996, 110 Stat. 2104, § 2401; renumbered § 2441, Pub. L. 104–294, title VI, § 605(p)(1), Oct. 11, 1996, 110 Stat. 3510; amended Pub. L. 105–118, title V, § 583, Nov. 26, 1997, 111 Stat. 2436; Pub. L. 107–273, div. B, title IV, § 4002(e)(7), Nov. 2, 2002, 116 Stat. 1810; Pub. L. 109–366, § 6(b)(1), Oct. 17, 2006, 120 Stat. 2633.)

REFERENCES IN TEXT

Section 101 of the Immigration and Nationality Act, referred to in subsec. (b), is classified to section 1101 of Title 8, Aliens and Nationality.

The date of the enactment of the Military Commissions Act of 2006, referred to in subsec. (d)(2)(E)(ii), is the date of enactment of Pub. L. 109–366, which was approved Oct. 17, 2006.

AMENDMENTS

2006—Subsec. (c)(3). Pub. L. 109–366, § 6(b)(1)(A), added par. (3) and struck out former par. (3) which read as follows: "which constitutes a violation of common Article 3 of the international conventions signed at Geneva, 12 August 1949, or any protocol to such convention to which the United States is a party and which deals with non-international armed conflict; or".

Subsec. (d). Pub. L. 109–366, § 6(b)(1)(B), added subsec. (d).

2002—Subsecs. (a) to (c). Pub. L. 107–273 made technical correction to directory language of Pub. L. 105–118, § 583. See 1997 Amendment notes below.

1997—Subsec. (a). Pub. L. 105–118, § 583(1), as amended by Pub. L. 107–273, substituted "war crime" for "grave breach of the Geneva Conventions".

Subsec. (b). Pub. L. 105–118, § 583(2), as amended by Pub. L. 107–273, substituted "war crime" for "breach" in two places.

Subsec. (c). Pub. L. 105–118, § 583(3), as amended by Pub. L. 107–273, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

"(c) DEFINITIONS.—As used in this section, the term 'grave breach of the Geneva Conventions' means conduct defined as a grave breach in any of the international conventions relating to the laws of warfare signed at Geneva 12 August 1949 or any protocol to any such convention, to which the United States is a party."

1996—Pub. L. 104–294 renumbered section 2401 of this title as this section.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–366, § 6(b)(2), Oct. 17, 2006, 120 Stat. 2635, provided that: "The amendments made by this subsection [amending this section], except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 [amending this section] (as amended by section 4002(e)(7) of Public Law 107–273)."

International Committee of the Red Cross

International Committee of the Red Cross (ICRC)

The ICRC's mandate and mission

The work of the ICRC is based on the Geneva Conventions of 1949, their Additional Protocols, its Statutes – and those of the International Red Cross and Red Crescent Movement – and the resolutions of the International Conferences of the Red Cross and Red Crescent. The ICRC is an independent, neutral organization ensuring humanitarian protection and assistance for victims of armed conflict and other situations of violence. It takes action in response to emergencies and at the same time promotes respect for international humanitarian law and its implementation in national law.

It was on the ICRC's initiative that States adopted the original Geneva Convention of 1864. Since then, the ICRC, with the support of the entire Red Cross and Red Crescent Movement, has constantly urged governments to adapt international humanitarian law to changing circumstances, in particular to modern developments in the means and methods of warfare, so as to provide more effective protection and assistance for conflict victims.
Today, all States are bound by the four Geneva Conventions of 1949 which, in times of armed conflict, protect wounded, sick and shipwrecked members of the armed forces, prisoners of war and civilians. Over three-quarters of all States are currently party to the two 1977 Protocols additional to the Conventions. Protocol I protects the victims of international armed conflicts, Protocol II the victims of non-international armed conflicts. In particular, these treaties have codified the rules protecting the civilian population against the effects of hostilities. Additional Protocol III of 2005 allows for the use of an additional emblem – the Red Crystal – by national societies in the Movemen

The legal bases of any action undertaken by the ICRC are as follows:

- The four Geneva Conventions and Additional Protocol I confer on the ICRC a specific mandate to act in the event of international armed conflict. In particular, the ICRC has the right to visit prisoners of war and civilian internees. The Conventions also give the ICRC a broad right of initiative.
- In non-international armed conflicts, the ICRC enjoys a right of humanitarian initiative recognized by the international community and enshrined in Article 3 common to the four

Geneva Conventions.

- In the event of internal disturbances and tensions, and in any other situation that warrants humanitarian action, the ICRC also enjoys a right of initiative, which is recognized in the Statutes of the International Red Cross and Red Crescent Movement. Thus, wherever international humanitarian law does not apply, the ICRC may offer its services to governments without that offer constituting interference in the internal affairs of the State concerned.

The ICRC's Mission Statement

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance.

The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

National Education Association

New Business Item 37 (2017)

ACTION: ADOPTED

< NEW BUSINESS ITEM 36 (2017)

NEW BUSINESS ITEM 39 (2017) >

The NEA will publish an article that documents the illegal overthrow of the Hawaiian Monarchy in 1893, the prolonged illegal occupation of the United States in the Hawaiian Kingdom, and the harmful effects that this occupation has had on the Hawaiian people and resources of the land.

STUDENTS AND SOCIAL ISSUES (/CATEGORY/STUDENTS-AND-SOCIAL-ISSUES/) RACISM AND BIAS (/CATEGORY/RACISM-AND-BIAS/)

APRIL 2, 2018 • 11:28AM

The Illegal Overthrow of the Hawaiian Kingdom Government

BY KEANU SAI PH.D.
(HTTP://NEATODAY.ORG/AUTHORS/KEANU-SAI-PH-D)

Status of the Hawaiian Kingdom under International Law

RELATED POSTS

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Honoring Black Student Activists (http://neatoday.org/2018/09/25/honoring-black-student-activists/)

In 2001, the Permanent Court of Arbitration's arbitral tribunal, in *Larsen v. Hawaiian Kingdom*, declared "in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties." The terms State and Country are synonymous.

As an independent State, the Hawaiian Kingdom entered into extensive treaty relations with a variety of States establishing diplomatic relations and trade agreements. The Hawaiian Kingdom entered into three treaties with the United States: 1849 Treaty of Friendship, Commerce and Navigation; 1875 Commercial Treaty of Reciprocity; and 1883 Convention Concerning the Exchange of Money Orders. In 1893 there were only 44 independent and sovereign States, which included the Hawaiian Kingdom, as compared to 197 today.

On January 1, 1882, it joined the Universal Postal Union. Founded in 1874, the UPU was a forerunner of the United Nations as an organization of member States. Today the UPU is presently a specialized agency of the United Nations.

By 1893, the Hawaiian Kingdom maintained over ninety Legations and Consulates throughout the world. In the United States of America, the Hawaiian Kingdom manned a diplomatic post called a legation in Washington, D.C., which served in the same function as an embassy today, and consulates in the cities of New York, San Francisco, Philadelphia, San Diego, Boston, Portland, Port Townsend and Seattle. The United States manned a legation in Honolulu, and consulates in the cities of Honolulu, Hilo, Kahului and Mahukona.

"Traditional international law was based upon a rigid distinction between the state of peace and the state of war (p. 45)," says Judge Greenwood in his article "Scope of Application of Humanitarian Law" in The Handbook of the International Law of Military Occupations (2nd ed., 2008), "Countries were either in a state of peace or a state of war; there was no intermediate state (Id.)." This is also reflected by the fact that the renowned jurist of international law, Professor Lassa Oppenheim,

separated his treatise on International Law into two volumes, Vol. I—Peace, and Vol. II—War and Neutrality.

Presidential Investigation of the Overthrow of the Hawaiian Government

On January 16, 1893, United States troops invaded the Hawaiian Kingdom without just cause, which led to a conditional surrender by the Hawaiian Kingdom's executive monarch, Her Majesty Queen Lili'uokalani, the following day. Her conditional surrender read:

"I, Liliuokalani, by the grace of God and under the constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a provisional government of and for this Kingdom.

That I yield to the superior force of the United States of America, whose minister plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the said provisional government.

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

In response to the Queen's conditional surrender of her authority, President Grover Cleveland initiated an investigation on March 11, 1893, with the appointment of Special Commissioner James Blount whose duty was to "investigate and fully report to the President all the facts [he] can learn respecting the condition of affairs in the Hawaiian Islands, the causes of the revolution by which the Queen's Government was

Executive Council of the Provisional Government (The Bishop Museum)

overthrown, the sentiment of the people toward existing authority, and, in general, all that can fully enlighten the President touching the subjects of [his] mission (p. 1185)." After arriving in the Hawaiian Islands, he began his investigation on April 1, and by July 17, the fact-finding investigation was complete with a final report. Secretary of State Walter Gresham was receiving periodic reports from Special Commissioner Blount and was preparing a final report to the President.

On October 18, 1893, Secretary of State Gresham reported to the President, the "Provisional Government was established by the action of the American minister and the presence of the troops landed from the Boston, and its continued existence is due to the belief of the Hawaiians that if they made an effort to overthrow it, they would encounter the armed forces of the United States." He further stated that 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, and the Provisional Government was created 'to exist until terms of union with the United States of America have been negotiated and agreed upon (p. 462).'" Gresham then concluded, "Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice (p. 463)."

Investigation Concludes United States Committed Acts of War against the Hawaiian Kingdom

One month later, on December 18, 1893, the President proclaimed by manifesto, in a message to the United States Congress, the circumstances for committing acts of war against the Hawaiian Kingdom that transformed a state of peace to a state of war on January 16, 1893. Black's Law Dictionary defines a war manifesto as a "formal declaration, promulgated...by the executive authority of a state or nation, proclaiming its reasons and motives for...war." And according to Professor Oppenheim in his seminal publication, International Law, vol. 2 (1906), a "war manifesto may...follow...the actual commencement of war through a hostile act of force (p. 104)."

Addressing the unauthorized landing of United States troops in the capital city of the Hawaiian Kingdom, President Cleveland stated, "on the 16th day of January, 1893, between four and five o'clock in the afternoon, a detachment of marines from the United States steamer Boston, with two pieces of artillery, landed at Honolulu. The men, upwards of 160 in all, were supplied with double cartridge belts filled with ammunition and with haversacks and canteens, and were accompanied by a hospital corps with stretchers and medical supplies (p. 451)."

President Cleveland ascertained that this "military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawaii or for the bona fide purpose of protecting the imperiled lives and property of citizens of the United States. But there is no pretense of any such consent on the part of the Government of the Queen, which at that time was undisputed and was both the de facto and the de jure government. In point of fact the existing government instead of requesting the presence of an armed force protested against it (p. 451)." He then stated, "a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States (p. 454)."

"War begins," says Professor Wright in his article "Changes in the Conception of War," American Journal of International Law, vol. 18 (1924), "when any state of the world manifests its intention to make war by some overt act, which may take the form of an act of war (p. 758)." According to Professor Hall in his book International Law (4th ed., 1895), the "date of the commencement of a war can be perfectly defined by the first act of hostility (p. 391)."

The President also determined that when "our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government de facto nor de jure (p. 453)." He unequivocally referred to members of the so-called Provisional Government as insurgents, whereby he stated, and "if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice." He then concluded that by "an act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress, the Government of a feeble but friendly and confiding people has been overthrown (p. 453)."

"Act of hostility unless it be done in the urgency of self-preservation or by way of reprisals," according to Hall, "is in itself a full declaration of intent [to wage war] (p. 391)." According to Professor Wright in his article "When does War Exist," American Journal of International Law, vol. 26(2) (1932), "the moment legal war begins...statutes of limitation cease to operate (p. 363)." He also states that war "in the legal sense means a period of time during which the extraordinary laws of war and neutrality have superseded the normal law of peace in the relations of states (Id.)."

Unbeknownst to the President at the time he delivered his message to the Congress, a settlement, through executive

In August 1898, the Hawaiian flag was lowered from Iolani Palace and replaced by the flag of the United States of America.

mediation, was reached between the Queen and United States Minister Albert Willis in Honolulu. The agreement of restoration, however, was never implemented. Nevertheless, President Cleveland's manifesto was a political determination under international law of the existence of a state of war, of which there is no treaty of peace. More importantly, the President's manifesto is paramount and serves as actual notice to all States of the conduct and course of action of the United States. These actions led to the unlawful overthrow of the government of an independent and sovereign State. When the United States commits acts of hostilities, the President, says Associate Justice Sutherland in his book Constitutional Power and World Affairs (1919), "possesses sole authority, and is charged with sole responsibility, and Congress is excluded from any direct interference (p. 75)."

According to Representative Marshall, before later became Chief Justice of the U.S. Supreme Court, in his speech in the House of Representatives in 1800, the "president is the sole organ of the nation in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made of him (Annals of Congress, vol. 10, p. 613)." Professor Wright in his book The Control of American Foreign Relations (1922), goes further and explains that foreign States "have accepted the President's

interpretation of the responsibilities [under international law] as the voice of the nation and the United States has acquiesced (p. 25)."

Despite the unprecedented prolonged nature of the illegal occupation of the Hawaiian Kingdom by the United States, the Hawaiian State, as a subject of international law, is afforded all the protection that international law provides. "Belligerent occupation," concludes Judge Crawford in his book The Creation of States in International Law (2nd ed., 2006), "does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State (p. 34)." Without a treaty of peace, the laws of war and neutrality would continue to apply.

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OCTOBER 1, 2018 • 1:23PM

The U.S. Occupation of the Hawaiian Kingdom

BY KEANU SAI PH.D.
(HTTP://NEATODAY.ORG/AUTHORS/KEANU-SAI-PH-D)

U.S.S. Boston occupying Arlington Hotel grounds during overthrow of Queen Lili'uokalani in 1893. (Hawaii State Archives)

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The Illegal Overthrow of the Hawaiian Kingdom Government (http://neatoday.org/2018/04/02/the-illegal-overthrow-of-

the-hawaiian-kingdom-government/)

In his message to the Congress on December 18, 1893, President Grover Cleveland acknowledged that the Hawaiian Kingdom was unlawfully invaded by United States marines on January 16, 1893, which led to an illegal overthrow of the Hawaiian government the following day (http://neatoday.org/2018/04/02/the-illegal-overthrow-of-the-hawaiian-kingdom-government/). The President told the Congress that he "instructed Minister Willis to advise the Queen and her supporters of [his] desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned (U.S House of Representatives, 53d Cong., Executive Documents on Affairs in Hawaii: 1894-95, p. 458)."

What the President didn't know at the time he gave his message was that Minister Willis succeeded in securing an agreement with the Queen that committed the United States to restore her as the Executive Monarch, and, thereafter, the Queen committed to granting amnesty to the insurgents. International law recognizes this executive agreement as a treaty. The President, however, did not carry out his duty under the treaty to restore the Queen, and, consequently, the Queen did not grant amnesty to the insurgents. The state of war continued.

Insurgency Continues to Seek Annexation to the United States

President Cleveland acknowledged that those individuals who he sought the Queen's consent to grant amnesty were not a government at all. In fact, he stated they were "neither a government de facto nor de jure (p. 453)." Instead, the President referred to these individuals as "insurgents (Id.)," which by definition are rebels who revolt against an established government. Under Chapter VI of the Hawaiian Penal Code a revolt against the government is treason, which carries the punishment of death and property of the convicted is seized by the Hawaiian government.

On July 3, 1894, the insurgents renamed themselves the Republic of Hawai'i and continued to seek annexation with the United States. Article 32 of its so-called constitution states, "The President, with the approval of the Cabinet, is hereby expressly authorized and empowered to make a Treaty of Political or Commercial Union between the Republic of Hawaii and the United States of America, subject to the ratification of the Senate." The insurgents always sought to be annexed by the United States.

After President William McKinley succeeded President Cleveland in office he entered into a treaty of annexation with the insurgents on June 16, 1897, in Washington, D.C. The following day, Queen Lili'uokalani, who was also in Washington, submitted a formal protest with the State Department. Her protest stated:

> *"I, Liliuokalani of Hawaii, by the will of God named heir apparent on the tenth day of April, A.D. 1877, and by the grace of God Queen of the Hawaiian Islands on the seventeenth day of January, A.D. 1893, do hereby protest against the ratification of a certain treaty, which, so I am informed, has been signed at Washington by Messrs. Hatch, Thurston, and Kinney, purporting to cede those Islands to the territory and dominion of the United States. I declare such a treaty to be an act of wrong toward the native and part-native people of Hawaii, an invasion of the rights of the ruling chiefs, in violation of international rights both toward my people and toward friendly nations with whom they have made treaties, the perpetuation of the fraud whereby the constitutional government was overthrown, and, finally, an act of gross injustice to me."*

Additional protests were filed with the State Department by two Hawaiian political organizations—the Men and Women's Hawaiian Patriotic League (Hui Aloha 'Aina), and the Hawaiian Political Association (Hui Kalai'aina). President McKinley ignored these protests and was preparing to submit the so-called treaty for ratification by the Senate when the Congress would reconvene in December of 1897.

This prompted the Hawaiian Patriotic League to gather of 21,169 signatures from the Hawaiian citizenry and residents throughout the islands opposing annexation. On December 9, 1897, Senator George Hoar of Massachusetts entered the petition into the Senate record.

Under the Queen's instructions, the delegates from the two Hawaiian political organizations who were in Washington began to meet with Senators who supported ratifying the so-called treaty. Sixty votes were necessary to accomplish ratification and there were already fifty-eight commitments. By the time the Hawaiian delegation left Washington on February 27, 1897, they had successfully chiseled the fifty-eight Senators in support of annexation down to forty-six.

Unable to garner the necessary sixty votes, the so-called treaty was dead by March, yet war with Spain was looming over the horizon, and Hawai'i would have to face the belligerency of the United States once again. American military interest would be the driving forces to fortify the islands as an outpost to protect the United States from foreign invasion.

Annexation by Legislation

On April 25, 1897, one month after the treaty was killed, Congress declared war on Spain. The Spanish-American War was not waged in Spain, but rather in the Spanish colonies of Puerto Rico and Cuba in the Caribbean, and in the colonies of the Philippines and Guam in the Pacific. On May 1, 1898, Commodore George Dewey defeated the Spanish fleet at Manila Bay in the Philippines.

Three days later in Washington, D.C., Congressman Francis Newlands submitted a joint resolution for the annexation of the Hawaiian Islands to House Committee on Foreign Affairs on May 4. On May 17, the joint resolution was reported out of the committee and headed to the floor of the House of Representatives.

On June 15, 1898, Congressman Thomas H. Ball from Texas emphatically stated, "The annexation of Hawai'i by joint resolution is unconstitutional, unnecessary, and unwise. ...Why, sir, the very presence of this measure here is the result of a deliberate attempt to do unlawfully that which can not be done lawfully (31 Cong. Rec. 5975)."

Queen Lili'uokalani

When the resolution reached the Senate, Senator Augustus Bacon from Georgia sarcastically remarked that, the "friends of annexation, seeing that it was not possible to make this treaty in the manner pointed out by the Constitution, attempted then to nullify the provision of in the Constitution by putting that treaty in the form of a statute, and here we have embodied the provisions of the treaty in the joint resolution which comes to us from the House (31 Cong. Rec. 6150)." Senator Bacon further explained, "That a joint resolution for the annexation of foreign territory was necessarily and essentially the subject matter of a

treaty, and that it could not be accomplished legally and constitutionally by a statute or joint resolution (31 Cong. Rec. 6148)."

Despite the objections from Senators and Representatives, it managed to get a majority vote and President McKinley signed the joint resolution into law on July 7, 1898. The military buildup began in August of 1898 with the first army base in Waikiki called Camp McKinley. Today there are 118 military sites throughout the Hawaiian Islands and it serves as the headquarters for the United States Indo-Pacific Command.

Many government officials and constitutional scholars could not explain how a joint resolution could have the extra-territorial force and effect of a treaty in annexing Hawai'i, a foreign and sovereign state. During the 19th century, Born states, "American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction (Gary Born, International Civil Litigation in United States Courts, p. 493)."

In 1824, the United Supreme Court explained that, "the legislation of every country is territorial," and that the "laws of no nation can justly extend beyond its own territory (Rose v. Himely, 8 U.S. 241, p. 279)," for it would be "at variance with the independence and sovereignty of foreign nations (The Apollon, 22 U.S. 362, p. 370)."

In violation of international law and the treaties with the Hawaiian Kingdom, the United States maintained the insurgents' control until the Congress could reorganize the insurgency so that it would look like a government. On April 30, 1900, the U.S. Congress changed the name of the Republic of Hawai'i to the Territory of Hawai'i. Later, on March 18, 1959, the U.S. Congress, again by statute, changed the name of the Territory of Hawai'i to the State of Hawai'i.

In 1988, Acting Assistant United States Attorney General, Douglas W. Kmiec, drew attention to this American dilemma in a memorandum opinion written for the Legal Advisor for the Department of State regarding legal issues raised by the proposed Presidential proclamation to extend the territorial

sea from a three-mile limit to twelve (Opinions of the Office of Legal Counsel, vol. 12, p. 238-263). After concluding that only the President and not the Congress possesses "the constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States (Id., p. 242)," Kmiec also concluded that it was "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea (Id., p. 262)."

Kmiec cited United States constitutional scholar Westel Woodbury Willoughby, who wrote in 1929, "The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. ...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature enacted it (Id., p. 252)."

In 1910, Willoughby wrote, "The incorporation of one sovereign State, such as was Hawaii prior to annexation, in the territory of another, is...essentially a matter falling within the domain of international relations, and, therefore, beyond the reach of legislative acts (Willoughby, The Constitutional Law of the United States, vol. 1, p. 345)."

United Nations Acknowledges the Occupation of the Hawaiian Kingdom

In a communication to the State of Hawai'i dated February 25, 2018 from Dr. Alfred M. deZayas, a United Nations Independent Expert, the UN official acknowledged the prolonged occupation of the Hawaiian Kingdom. He wrote:

"As a professor of international law, the former Secretary of the UN Human Rights Committee, co-author of book, The United Nations Human Rights Committee Case Law 1977-2008, and currently serving as the UN Independent Expert on the promotion of a democratic and equitable international order, I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States)."

A state of peace between the Hawaiian Kingdom and the United States was transformed to a state of war when United States troops invaded the Hawaiian Kingdom on January 16, 1893, and illegally overthrew the Hawaiian government the following day. Only by way of a treaty of peace can the state of affairs be transformed back to a state of peace. The 1907 Hague Convention, IV, and the 1949 Geneva Convention, IV, mentioned by the UN official regulate the occupying State during a state of war.

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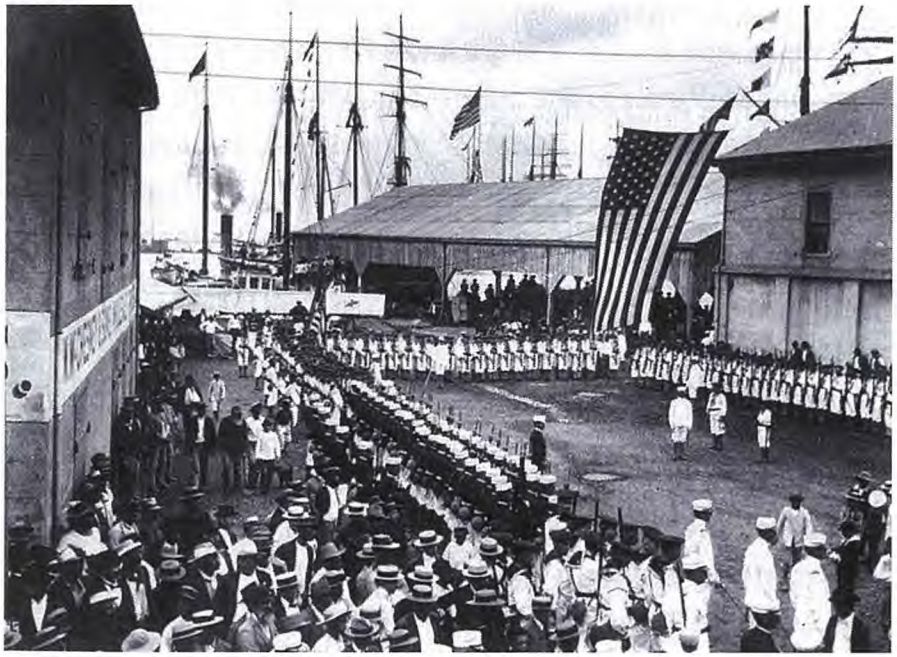
EDUCATORS IN ACTION (/CATEGORY/EDUCATORS-IN-ACTION/) MINORITY COMMUNITY OUTREACH (/CATEGORY/MINORITY-COMMUNITY-OUTREACH/)

OCTOBER 13, 2018 • 2:36PM

The Impact of the U.S. Occupation on the Hawaiian People

BY KEANU SAI PH.D. (HTTP://NEATODAY.ORG/AUTHORS/KEANU-SAI-PH-D)



U.S. troops come ashore.

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APRIL 12, 2018 • BRENDA ÁLVAREZ

The Hawaiian Kingdom was a progressive constitutional monarchy since 1840 and it viewed education and health care as cornerstones for the country's maintenance in the nineteenth century. By 1893, the Hawaiian Kingdom maintained a literacy rate that was nearly universal amongst the Hawaiian population. It also managed to successfully address the rapid decrease of the Hawaiian population from foreign diseases, such as small pox and measles, through universal health care under the 1859 Act to Provide Hospitals for the Relief of Hawaiians in the city of Honolulu and other Localities.

Despite Rising Fear and Anxiety, DACA Activists Keep Up the Pressure (http://neatoday.org/2018/04/12/daca-activists-keep-up-pressure/)

Universal Education in the Hawaiian Kingdom

Education was through the medium of the native language. On January 7, 1822, the first printing of an eight-page Hawaiian spelling book was done, and all "the leading chiefs, including the king, now eagerly applied themselves to learn the arts of reading and writing, and soon began to the use them in business and correspondence (W.D. Alexander, A Brief History of the Hawaiian People (1892), p. 179)." By 1839, the success of the schools was at its highest point, and literacy was "estimated as greater than in any other country in the world, except Scotland and New England (Laura Judd, Honolulu (1880), p. 79)."

The Privy Council in 1840 established a system of universal education under the leadership of what came to be known as the Minister of Public Instruction. A Board of Education later replaced the office of the Minister in 1855 and named the department the Department of Public Instruction. This department was under the supervision of the Minister of the Interior.

The Monarch served on the Board as its President. The President and Board administered the educational system through school agents that were stationed in twenty-four school districts throughout the country. And in 1865 the office of Inspector General of schools was formed in order to improve the quality of the education being taught.

The Hawaiian Kingdom became the fifth country in the world to provide compulsory education for all youth in 1841, which predated compulsory education in the United States by seventy-seven years. The other four countries were Prussia in 1763, Denmark in 1814, Greece in 1834, and Spain in 1838.

Education was a hallowed word in the halls of the Hawaiian government, "and there is no official title more envied or respected in the islands than that of a member of the board of public instruction (Charles De Varigny, Fourteen Years in the Sandwich Islands, 1855-1868 (1981), p. 151." De Varigny explains that this "is because there is no civic question more debated, or studied with greater concern, than that of education. In all the annals of the Hawaiian Legislature one can find not one example of the legislative houses refusing—or even reducing—an appropriation requested by the government for public education. It is as if this magic word alone seems to possess the prerogative of loosening the public purse strings (Id.)."

After the invasion, the United States seized control of the entire governmental infrastructure, (http://neatoday.org/2018/10/01/the-u-s-occupation-of-the-hawaiian-kingdom/) through its insurgents calling themselves the Provisional government, on January 17, 1893. The insurgents renamed themselves the Republic of Hawai'i on July 3, 1894. On April 30, 1900, the United States Congress renamed the insurgents as the Territory of Hawai'i by a congressional act. And on March 18, 1959, the U.S. Congress, again by congressional act, changed the name of the Territory of Hawai'i to the State of Hawai'i.

Americanization Throughout the School System

In 1906, the intentional policy and methodical plan of Americanization began. This plan sought to obliterate the national consciousness of the Hawaiian Kingdom in the minds of the school children throughout the islands. It was developed by the Territory of Hawai'i's Department of Public Instruction

and called "Programme for Patriotic Exercises in the Public Schools."

The purpose of this policy was to have the children believe they were Americans. To do so required instruction of American history and only the English language could be spoken. If the children spoke the national language of Hawaiian, they were severely punished.

In 1907, Harper's Weekly magazine covered this Americanization (William Inglis, Hawaii's Lesson to Headstrong California, Harper's Weekly, Feb. 16, 1907, p. 226-228). At the time, there were 154 public schools, with 435 teachers, and 58 private schools, with 261 teachers. Harper's special correspondent, William Inglis, visited Ka'ahumanu and Ka'iulani grade schools. He also visited Honolulu High School, before the name was changed to President William McKinley High School in 1911.

While visiting Ka'iulani grade school, Inglis wrote, "Out upon the lawn marched the children, two by two, just as precise and orderly as you can find them at home. With the ease that comes of long practice the classes marched and counter marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet above their heads (Id., p. 227)."

"The little regiment stood fast, arms at sides, shoulders back, chests out, heads up, and every eye fixed upon the red, white, and blue emblem that waved protectingly over them. 'Salute' was the principal's next command. Every right hand was raised, forefinger extended, and the six hundred fourteen fresh, childish voices chanted as one voice: 'We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!' (Id.)"

Inglis stated, "The drill is constantly held as a means of inculcating patriotism in the hearts of the children (Id., p. 228)." The word inculcate is defined as to fix beliefs or ideas in someone's mind, especially by repetition. Inculcate is synonymous with indoctrination, which is to persuade

someone to accept an idea by repeating it and showing it to be true.

"We give our heads and our hearts to God and our country! One country, one language, one flag!"
THIS SCENE SHOWS THE SALUTE TO THE AMERICAN FLAG WHICH FLIES IN THE GROUNDS OF THE KAIUALANI PUBLIC SCHOOL WHICH HAS MANY JAPANESE PUPILS. THE DRILL IS CONSTANTLY HELD AS A MEANS OF INCULCATING PATRIOTISM IN THE HEARTS OF THE CHILDREN

Denationalization

This type of policy instituted by the occupying State is called denationalization, which was codified by the Commission on the Responsibility of the Authors of War and Enforcement of Penalties as a war crime in 1919. This particular war crime addressed the attempts to denationalize Serbs when Serbia was occupied during World War I by Austria, Bulgaria and Germany. In the 1947 Nuremburg trial of Ulrich Greifelt and Others, Nazis were prosecuted for attempting to denationalize Poles, Alsace-Lorrainers, and Slovenes through a policy of Germanization in occupied Poland during World War II.

Since this policy of denationalization began, it had become so pervasive and institutionalized throughout Hawai'i that the national consciousness of the Hawaiian Kingdom was nearly obliterated. It also had a devastating effect on the Hawaiian population that effectively made them strangers in their own country. If the children weren't Americanized enough they were not allowed to attend high school and entered the work force after completing grade school. When Inglis compared the student populations between the grade schools and that of Honolulu High School, he wrote, "The change in the color scheme from that of the schools below was astounding. Below were all the hues of the human spectrum, with brown and yellow predominating; here the tone was clearly white (Inglis, p. 228)."

Universal Health Care in the Hawaiian Kingdom

Another Hawaiian institution that had a devastating effect on the health of the Hawaiian people was that of Queen's Hospital. Queen's Hospital was established in 1859 by King Kamehameha IV and Queen Emma under the 1859 Hospital Act. Its purpose was to provide universal health care at no cost for native Hawaiians. Under its charter the Monarch would serve as President of a Board of Trustees comprised of ten persons appointed by the government and ten persons elected by the corporation's shareholders.

The Hawaiian government appropriated funding for the maintenance of the hospital. "Native Hawaiians are admitted free of charge, while foreigners pay from seventy-five cents to two dollars a day, according to accommodations and attendance (Henry Witney, The Tourists' Guide through the Hawaiian Islands Descriptive of Their Scenes and Scenery (1895), p. 21)." It wasn't until the 1950's and 1960's that the Nordic countries followed what the Hawaiian Kingdom had already done with universal health care.

U.S. warship docked in Honolulu harbor.

Willful Damage to the Institution of Hawaiian Health Care

In 1909, the government's interest in Queen's Hospital was severed and native Hawaiians would no longer be admitted free of charge. The new Board of Trustees changed the 1859 charter where it stated, "for the treatment of indigent sick and disabled Hawaiians" to "for the treatment of sick and disabled persons." Gradually native Hawaiians were denied health care unless they could pay. This led to a crisis of native Hawaiian health today. Queen's Hospital, now called Queen's Health Systems, currently exists on the islands of O'ahu, Molokai, and Hawai'i.

A report by the Office of Hawaiian Affairs in 2017 stated, "Today, Native Hawaiians are perhaps the single racial group with the highest health risk in the State of Hawai'i. This risk stems from high economic and cultural stress, lifestyle and risk behaviors, and late or lack of access to health care (Native Hawaiian Health Fact Sheet 2017, p. 2)." Hawaiians should not have died due to "late or lack of health care" because Queen's Hospital was an institution that provided health care at no cost.

Academic Research Unveils the Truth of the American Occupation

As a result of diligent and thorough academic research that began in 2001, a more accurate portrayal of what transpired with the American invasion and occupation of the Hawaiian Kingdom began to unveil this painful truth. This caused American historian Tom Coffman to change the subtitle of his book from The Story of America's Annexation of the Nation of Hawai'i to The History of the American Occupation of Hawai'i.

He explained, "In making this change, I have embraced the logical conclusion of my research into the events of 1893 to 1898 in Honolulu and Washington, D.C. I am prompted to take this step by a growing body of historical work by a new generation of Native Hawaiian scholars. Dr. Keanu Sai writes, 'The challenge for...the fields of political science, history, and law is to distinguish between the rule of law and the politics of power.' In the history of Hawai'i, the might of the United States does not make it right (Tom Coffman, Nation Within: The History of the American Occupation of Hawai'i (2016), p. xvi."

The failure of the United States to comply with the 1907 Hague Convention, IV, and the 1949 Geneva Convention, IV, has had a devastating effect on the Hawaiian population. According to Amnesty International, war crimes are "crimes that violate the laws or customs of war defined by the Geneva and Hague Conventions."

These international conventions were specifically cited by Dr. Alfred M. deZayas, a United Nations Independent Expert, in his letter to the State of Hawai'i dated February 28, 2018. The UN official wrote, "international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States)." He was referring to Article 43 of the 1907 Hague Convention, IV, and Article 64 of the 1949 Geneva Convention, IV.

The Hawaiian Kingdom's educational system and health care institutions are protected under the 1907 Hague Convention, IV. Article 56 states, "The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings."

In his doctoral dissertation, Kauai writes, "From one of the most progressive independent states in the world to one of the most forgotten. If not for the US, where would Hawai'i rank among the countries of the world today in regard to health care, political rights, civil rights, economy, and the environment? In the 19th century Hawai'i was a global leader in many ways, even despite its size (Willy Kauai, The Color of Nationality (doctoral dissertation, political science, University of Hawai'i (2014), p. 298)."

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NLG launches new Hawaiian Kingdom Subcommittee

At the International Committee weekend retreat in the Bay Area in March 2019, the IC launched a new subcommittee, the Hawaiian Kingdom Subcommittee. Read on to learn more about the subcommittee's work. To reach out or join the subcommittee, contact co-chairs Martha Schmidt, Keanu Sai and Steve Laudig.

There is a common misconception that the Hawaiian Islands comprise United States territory as its political subdivision, the State of Hawai'i. The Hawaiian Islands is the territory of the Hawaiian Kingdom. In *Larsen v. Hawaiian Kingdom*, the Permanent Court of Arbitration recognized "that in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States (Award, para. 7.4)." By 1893, the Hawaiian Kingdom maintained over 90 embassies and consulates throughout the world and entered into treaty relations with other countries to include the United States.

The lack of any US congressional constitutional authority to annex a foreign country without a treaty was noted in a 1988 memorandum by the Office of Legal Counsel, U.S. Department of Justice, which questioned whether Congress was empowered to enact a domestic law annexing the Hawaiian State in 1898. Its author, Douglas Kmiec, cited constitutional scholar Westel Willoughby who had written: "The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. … Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature it is enacted." Since 1898, the United States have been imposing American municipal laws over the territory of the Hawaiian Kingdom in violation of international humanitarian law.

On February 25, 2018, Dr. Alfred M. deZayas, a United Nations Independent Expert, sent a communication to State of Hawai'i judges stating: "I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States)."

The Hawaiian Kingdom Subcommittee provides legal support to the movement demanding that the U.S., as the occupier, comply with international humanitarian and human rights law within Hawaiian Kingdom territory, the occupied. This support includes organizing delegations and working with the United Nations, the International Committee of the Red Cross, and NGOs addressing U.S. violations of international law and the rights of Hawaiian nationals and other Protected Persons.

For a historical and legal overview of the Hawaiian Kingdom situation see: Dr. Keanu Sai's three articles on the Hawaiian Kingdom published by the National Education Association; and, Professor Matthew Craven's legal brief on Hawaiian Kingdom's continuity as a State under international law cited by Judge James Crawford in his *The Creation of States in International Law (2d ed.)*.

The National Lawyers Guild was established in 1937 as an association equal in standing to the American Bar Association.

Royal Commission of Inquiry

PROCLAMATION NO. 2019-1

By virtue of the prerogative of the Crown provisionally vested in us in accordance with Article 33 of the 1864 Constitution, and to ensure a full and thorough investigation into the violations of international humanitarian law and human rights within the territorial jurisdiction of the Hawaiian Kingdom, it is hereby ordered as follows:

Article 1

Head of the Royal Commission of Inquiry and terms of the investigation

1. His Excellency David Keanu Sai, Ph.D., *Acting* Minister of the Interior and Chairman of the Council of Regency, because of his recognized expertise in international relations and public law, is hereby appointed head of the Royal Commission of Inquiry, hereinafter "Royal Commission," on the consequences of the belligerent occupation of the Hawaiian Kingdom by the United States of America since January 17, 1893.

2. The purpose of the Royal Commission shall be to investigate the consequences of the United States' belligerent occupation, including with regard to international law, humanitarian law and human rights, and the allegations of war crimes committed in that context. The geographical scope and time span of the investigation will be sufficiently broad and be determined by the head of the Royal Commission.

3. The results of the investigation will be presented to the Council of Regency, the Contracting Powers of the 1907 Hague Convention, IV, respecting the Laws and Customs of War on Land, the Contracting Powers of the 1949 Geneva Convention, IV, relative to the Protection of Civilian Persons in Time of War, the Contracting Powers of the 2002 Rome Statute, the United Nations, the International Committee of the Red Cross, and the National Lawyers Guild in the form of a report.

4. The head of the Royal Commission shall be responsible for the implementation of the inquiry. He shall determine, with complete independence, the procedures and working methods of the inquiry, and the content of the report referred to in paragraph 3.

5. The head of the Royal Commission shall take the following oath:

> "The undersigned, a Hawaiian subject, being duly sworn, upon his oath, declares that as head of the Royal Commission of Inquiry

duly constituted on April 15, 2019, I will act correctly, truly and faithfully, and without favor to or prejudice against anyone."

Article 2

Financing

1. All costs incurred by the Royal Commission shall be borne by the Hawaiian Government, by its Council of Regency, and that the latter has granted on this day $15,000.00 (USD) for initial expenditures of the Royal Commission.

2. The management of the expenditures of the Royal Commission shall be subject to contracts between the head of the Royal Commission and the *Acting* Minister of Finance.

3. The head of the Royal Commission shall be accountable to the *Acting* Minister of Finance for all expenditures.

Article 3

Composition of the Royal Commission of Inquiry

The composition of the Royal Commission shall be decided by the head and shall be comprised of recognized experts in various fields.

Article 4

Entry into effect and expiration

This decision shall take effect on the day of its adoption and shall expire on the day that the head is satisfied that the mandate of the Royal Commission has been completed.

[seal]

In Witness Whereof, We have hereunto set our hand, and caused the Great Seal of the Kingdom to be affixed this 17th day of April A.D. 2019.

[signed]
David Keanu Sai, Ph.D.
Chairman of the Council of Regency
Acting Minister of the Interior

Peter Umialiloa Sai, deceased
Acting Minister of Foreign Affairs

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

[signed]
Dexter Ke'eaumoku Ka'iama, Esq.,
Acting Attorney General