

## PSLU Committee

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**From:** Keanu Sai, Ph.D. <keanu.sai@gmail.com>  
**Sent:** Thursday, May 23, 2019 8:46 PM  
**To:** PSLU Committee  
**Subject:** Mahalo and Further Information  
**Attachments:** McCartney\_Ltr\_7\_2\_15\_(Report).pdf; Memo\_Ka\_Pouhana\_5\_27\_14.pdf

Aloha kakou.

I would like to take this opportunity to thank Madam Chair Tamara Paltin and all the Council members who were present for allowing me to share with all of you information regarding the legal status of the Hawaiian Kingdom under international law. I very much appreciated your questions and I thought they thoughtful and pertinent, and I hope my answers were sufficient.

I would also like to attach my report to Mike McCartney and my memorandum for the Office of Hawaiian Affairs regarding the standing of OHA under the international law of occupation, which I stated that I would provide a copy to each of you.

Should any of you have any questions regarding what was presented or regarding other matters you wish to ask please do not hesitate to contact me.

A hui hou,  
Keanu.

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July 2, 2015

Mike McCartney  
Chief of Staff, Governor  
Executive Chambers  
State Capitol  
Honolulu, Hawaii 96813

Re: Report on Military Government

Dear Mike:

Enclosed please find a report I authored, titled *Military Government: Transformation of the State of Hawai'i*, for your consideration. As you know after we met on three previous occasions, this is a serious matter with profound political and economic consequences. After our last meeting I scoured through the laws and customs of war and international humanitarian law, and I discovered that the State of Hawai'i is fully authorized to declare itself as a Military Government in accordance with provisions in the State Constitution and the laws and customs of war during occupation.

The process will be reminiscent of Governor Poindexter's declaration of a Military Government under martial law in 1941, but a civilian rather than a military officer will be the Military Governor. It will also be shorn of the military dictatorship that plagued the Military Government then, and, as you will see in the report, it will be pretty much business as usual with some alterations necessary because of international law. The State of Hawai'i is currently playing in a negative-sum game and it needs to take the necessary steps to gain positive-sums. The State of Hawai'i does not have the luxury of time on its side.

I spoke with my client who is the Swiss citizen and he has agreed not to pursue the re-filing of the complaint to Swiss authorities, but only on condition that the State of Hawai'i begins to comply with the laws and customs of war during occupation by establishing a Military Government. My other client, Mr. Gumapac has also agreed to the same terms regarding the State of Hawai'i judge that presided over his unfair trial and the officers from the Sheriff's Department who pillaged his home, so long as there is restitution so he can return to his home and property. He will, however, maintain his criminal complaint against Deutsche Bank and Joseph Ackermann with the Swiss Authorities.

I will also be presenting this report as a paper at an academic conference at the University of Cambridge, England, in September, titled *Sovereignty and Imperialism: Non European*

*Powers in the Age of Empire*. I am enclosing a copy of my letter of invitation. Oxford Press will also publish papers presented at the conference.

It is crucial that we maintain a line of communication on this very delicate topic, and I look forward to another meeting with you after you've gone over the report. I am also enclosing a flash-drive that has Appendix I-VI of the report.

Sincerely,

Keanu Sai, Ph.D.

enclosures



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USA

Cambridge, 20 March 2015

*Letter of Invitation*

Dear Dr. Sai,

We hereby have the honour to invite you to the conference *Sovereignty and Imperialism: Non-European Powers in the Age of Empire* to be held at the University of Cambridge, from 10 to 12 September 2015.

The conference will explore how the few formally independent non-European states, most notably Abyssinia, China, Japan, the Ottoman Empire, Persia and Siam, managed to keep European imperialism at bay, while others, such as Hawaii, Korea, Madagascar and Morocco, struggled but then succumbed to imperial powers.

We would be delighted if you would be interested in contributing a paper on relations between Europe, America and Hawaii. We also plan to publish the papers in a volume with Oxford University Press.

We will be able to provide accommodation at Cambridge and cover up to \$ 150 of your travel costs.

Yours sincerely,

David Motadel





# Military Government: Transformation of the State of Hawai‘i

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July 2, 2015

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## SUMMARY

The author's doctoral research<sup>1</sup> in political science, published law reviewed articles,<sup>2</sup> and books<sup>3</sup> are focused on Hawai'i's legal status as an occupied state that has gone unchecked for over a century. Not only were the international rights of a neutral country violated, but also the violation of human rights took place on a grand scale that was hidden under a cloak of deception and lies. These abuses are now coming to the forefront as documents are surfacing that has changed Hawai'i before the whole world.

Critical to the author's research was finding a remedial prescription to right the wrong, given the magnitude and complexity of Hawai'i's situation. The author's conclusion in his doctoral dissertation was, "Establishing a military government will shore up these blatant abuses of protected persons under one central authority, that has not only the duty, by the obligation, of suppressing conduct contrary to the Hague and Geneva conventions taking place in an occupied State."<sup>4</sup>

This report provides a comprehensive analysis and legal reasoning for the State of Hawai'i to transform itself from an Armed Force to a Military Government, in light of the growing knowledge and awareness of Hawai'i's legal status as an occupied state. The transformation must take place in conformity with the laws and customs of war during occupation and international humanitarian law. This revelation has profound ramifications not for only the State of Hawai'i and the United States, but also for the international community at large and their citizenry. Failure to do so will be catastrophic.

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<sup>1</sup> David Keanu Sai, *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State* (December 2008) (unpublished Ph.D. dissertation, University of Hawai'i at Manoa) (on file with the University of Hawai'i Hamilton Library), available at [http://www2.hawaii.edu/~anu/pdf/Dissertation\(Sai\).pdf](http://www2.hawaii.edu/~anu/pdf/Dissertation(Sai).pdf).

<sup>2</sup> DAVID KEANU SAI, *American Occupation of the Hawaiian State: A Century Unchecked*, 1 HAW. J. L. & POL. 46 (2004), available at [http://www2.hawaii.edu/~hslp/journal/vol1/Sai\\_Article\\_\(HJLP\).pdf](http://www2.hawaii.edu/~hslp/journal/vol1/Sai_Article_(HJLP).pdf); DAVID KEANU SAI, *A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its use and practice in Hawai'i today*, 10 J. L. & SOC. CHALLENGES 69 (Fall 2008), available at <http://www2.hawaii.edu/~anu/pdf/Indigeneity.pdf>.

<sup>3</sup> DAVID KEANU SAI, *LARSEN CASE (LANCE LARSEN VS. HAWAIIAN KINGDOM)*, PERMANENT COURT OF ARBITRATION (2003); DAVID KEANU SAI, *UA MAU KE EA: SOVEREIGNTY ENDURES* (2011).

<sup>4</sup> See Sai Dissertation, at 239

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<sup>5</sup> Appendix I, available at [http://hawaiiankingdom.org/pdf/Continuity\\_Brief.pdf](http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf).

<sup>6</sup> Appendix II, available at [http://hawaiiankingdom.org/pdf/Proc\\_Provisional\\_Laws.pdf](http://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf).

<sup>7</sup> Appendix III, available at [http://hawaiiankingdom.org/pdf/Transcript\\_Molokai\\_hearing.pdf](http://hawaiiankingdom.org/pdf/Transcript_Molokai_hearing.pdf).

<sup>8</sup> Appendix IV, available at <http://ia600604.us.archive.org/17/items/programmeforpatr00hawa/programmeforpatr00hawa.pdf>.

<sup>9</sup> Appendix V (German), available at [http://hawaiiankingdom.org/pdf/Federal\\_Criminal\\_Court\\_28\\_April\\_2015\\_Deutsche\\_\(redacted\).pdf](http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_(redacted).pdf).

<sup>10</sup> Appendix V (English), available at [http://hawaiiankingdom.org/pdf/Federal\\_Criminal\\_Court\\_28\\_April\\_2015\\_English\\_\(redacted\).pdf](http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_(redacted).pdf).

## INTRODUCTION

Customary international law, in particular the laws and customs of war on land, provides for the establishment of a Military Government during belligerent occupation of an independent and sovereign state. The failure of the United States to establish a Military Government since the prolonged occupation of the Hawaiian Kingdom began during the Spanish-American War has led to unimaginable violations of international law and human rights, called international humanitarian law, that has profound ramifications not only for Hawai'i, but for the world at large.

The prolonged occupation of a friendly and neutral state, during war for military interest, is unparalleled and unprecedented. Military interest and necessity would apply solely to belligerent states and not to neutral states, whose neutrality was critical to the balance of power amongst the members of the family of nations. Hawai'i ensured its place as a neutral state throughout the nineteenth century. The closest parallel to Hawai'i's situation would not take place until sixteen years later when the Germans occupied the neutral state of Luxemburg prior to the breakout of World War I in 1914. Germany justified this occupation as a matter of military necessity, claiming that France had made overtures of occupying Luxemburg in order to launch attacks against Germany. Although Germany's claims were unfounded, it did not seek to unilaterally seize Luxemburg's sovereignty, but allowed Luxemburg's government to continue until the occupation ended in 1918. In World War II, however, Germany did attempt to unilaterally seize the neutral state of Luxemburg after Germany had occupied it, and the perpetrators were prosecuted for war crimes after the war.

## FIRST ARMED CONFLICT: UNITED STATES INTERVENTION

In 2001, the Permanent Court of Arbitration acknowledged 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, including by exchanges of diplomatic or consular representatives and the conclusion of treaties."<sup>12</sup> As an independent state, the Hawaiian Kingdom was a subject of international law, which prohibited intervention in its domestic affairs by other states. According to Brownlie,

"The principal corollaries of the sovereignty and equality of states are: (1) a jurisdiction, *prima facie* exclusive, over a territory and the permanent population living there; (2) a duty of non-intervention in the area of exclusive jurisdiction of other states; and (3) the dependence of obligations arising from customary law and treaties on the consent of the obligor."<sup>13</sup>

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<sup>11</sup> Appendix VI, available at [http://www.loc.gov/rr/frd/Military\\_Law/pdf/FM-27-5-1947.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/FM-27-5-1947.pdf).

<sup>12</sup> *Larsen v. Hawaiian Kingdom*, 119 INT'L L. REP. 566, 581 (2001).

<sup>13</sup> IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 287 (4th ed. 1990).

Should a state seek to merge into another state, international law only allows it through cession. “Cession of State territory is the transfer of sovereignty over State territory by the owner-State to another State,”<sup>14</sup> says Oppenheim. “The only form in which a cession can be effected is an agreement embodied in a treaty between the ceding and the acquiring State. Such treaty may be the outcome of peaceable negotiations or of war.”<sup>15</sup> Through peaceful negotiations, the United States acquired by treaty, the former territories of the French in Louisiana in 1803,<sup>16</sup> the Spanish in Florida in 1819,<sup>17</sup> the British in Oregon in 1846,<sup>18</sup> the Russian in Alaska in 1867,<sup>19</sup> and the Danish in the Virgin Islands in 1916.<sup>20</sup> The United States acquired, through treaties of conquest, the former territories of the British in the Americas in 1783,<sup>21</sup> the Mexicans in territory north of the Rio Grande in 1848, which includes Texas,<sup>22</sup> and the Spanish in the Philippines, Guam and Puerto Rico in 1898.<sup>23</sup> Hawai‘i is the only territory the United States claims without a treaty.

International law also distinguishes between the state and its government, where the latter is the physical manifestation that exercises the sovereignty of the former. Hoffman emphasizes that a government “is not a State any more than man’s words are the man himself,” but “is simply an expression of the State, an agent for putting into execution the will of the State.”<sup>24</sup> Wright also concluded, “international law distinguishes between a government and the state it governs.”<sup>25</sup> Therefore, a sovereign State would continue to exist despite its government being overthrown by military force. “There is a presumption that the State continues to exist, with its rights and obligations...despite a period in which there is no, or no effective, government,” explains Crawford. “Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”<sup>26</sup> Crawford states,

“The occupation of Iraq in 2003 illustrated the difference between ‘government’ and ‘State’; when Members of the Security Council, after adopting SC res. 1511, 16 October 2003, called for the rapid ‘restoration of Iraq’s sovereignty,’ they did not imply that Iraq had ceased to exist as a State but that normal governmental arrangements should be restored.”<sup>27</sup>

The Hawaiian Kingdom Civil Code provides, “The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while

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<sup>14</sup> L. OPPENHEIM, INTERNATIONAL LAW, vol. 1, 499 (7th ed. 1948).

<sup>15</sup> *Id.*, at 500.

<sup>16</sup> 8 U.S. Stat. 200; Treaty Series 86.

<sup>17</sup> 8 U.S. Stat. 252; Treaty Series 327.

<sup>18</sup> 9 U.S. Stat. 869; Treaty Series 120.

<sup>19</sup> 15 U.S. Stat. 539; Treaty Series 301.

<sup>20</sup> 39 U.S. Stat. 1706; Treaty Series 629.

<sup>21</sup> 8 U.S. Stat. 80; Treaty Series 104.

<sup>22</sup> 9 U.S. Stat. 922; Treaty Series 207.

<sup>23</sup> 30 U.S. Stat. 1754; Treaty Series 343.

<sup>24</sup> FRANK SARGENT HOFFMAN, THE SPHERE OF THE STATE OR THE PEOPLE AS A BODY-POLITIC 19 (1894).

<sup>25</sup> QUINCY WRIGHT, *The Status of Germany and the Peace Proclamation*, 46(2) AM. J. INT’L L. 299, 307 (Apr. 1952).

<sup>26</sup> JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 34 (2d ed. 2006).

<sup>27</sup> *Id.*

within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.”<sup>28</sup> The Hawaiian Kingdom Penal Code defines treason “to be any plotting or attempt to dethrone or destroy the King, or the adhering to the enemies thereof, giving them aid and comfort, the same being done by a person owing allegiance to this kingdom.”<sup>29</sup> For any person committing the crime of treason “shall suffer the punishment of death; and all his property shall be confiscated to the government.”<sup>30</sup>

On January 16, 1893, the United States intervened in the internal affairs of the kingdom when its diplomat—Minister John Stevens, ordered the landing of U.S. troops to actively participate in the treasonous take over of the Hawaiian government. The following day, U.S. troops forcibly removed the executive Monarch—Queen Lili’uokalani, and her Cabinet of four ministers, and replaced them with insurgents led by Hawai’i Supreme Court Judge Sanford Dole. The insurgents’ proclamation of January 17, 1893 stated:

“All officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named person: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, Arthur P. Peterson, Attorney-General, who are hereby removed from office. All Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils.”<sup>31</sup>

Once the regime change was effected, all government officers and employees were forced to sign oaths of allegiance or face termination or arrest.<sup>32</sup> This being done under the oversight of U.S. troops after Minister Stevens declared Hawai’i to be an American Protectorate on February 1, 1893. The purpose of the regime change was for the provisional government to cede, by treaty, Hawai’i’s sovereignty and territory to the United States.

One month after the treaty of annexation was signed in Washington, D.C., on February 14, 1893, under President Benjamin Harrison and submitted to the Senate for ratification, President Grover Cleveland, Harrison’s successor, withdrew the treaty and initiated an investigation into the overthrow of the Hawaiian Government. President Cleveland concluded that the provisional government was neither *de facto* nor *de jure*, but self-declared,<sup>33</sup> and the U.S. “military demonstration upon the soil of Honolulu was itself an

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<sup>28</sup> Hawaiian Kingdom Civil Code, §6 (Compiled Laws 1884).

<sup>29</sup> Hawaiian Kingdom Penal Code, Chapter VI, sec. 1 (1869).

<sup>30</sup> *Id.*, at Sec. 9.

<sup>31</sup> ROBERT C. LYDECKER, ROSTER LEGISLATURES OF HAWAII 188 (1918).

<sup>32</sup> Oath of Allegiance to Provisional Government, available at [http://hawaiiankingdom.org/blog/wp-content/uploads/2014/01/Oath\\_Provisional\\_Gov.jpg](http://hawaiiankingdom.org/blog/wp-content/uploads/2014/01/Oath_Provisional_Gov.jpg).

<sup>33</sup> United States House of Representatives, 53d Cong., Executive Documents on Affairs in Hawai’i: 1894-95, 453 (Government Printing Office 1895).

act of war.”<sup>34</sup> The President then notified the Congress that he began executive mediation with the Queen to reinstate her and her Cabinet of ministers on condition she would grant amnesty to the insurgents. The first of several meetings were held at the U.S. Legation in Honolulu on November 13, 1893.<sup>35</sup> An agreement was reached on December 18, 1893,<sup>36</sup> but President Cleveland was unable to get Congressional authorization for the use of force in order to redeploy the troops to Hawai'i. The agreement was not carried out. This executive agreement is recognized under international law as a treaty.<sup>37</sup>

On July 4, 1894, the insurgency declared the Provisional Government to be the Republic of Hawai'i and continued to have government officers and employees sign oaths of allegiance under threat by American mercenaries who were employed by the insurgency.<sup>38</sup> The proclamation of the insurgents stated,

“it is hereby declared, enacted and proclaimed by the Executive and Advisory Councils of the Provisional Government and by the elected Delegates, constituting said Constitutional Convention, that on and after the Fourth day of July, A.D. 1894, the said Constitution shall be the Constitution of the Republic of Hawaii and the Supreme Law of the Hawaiian Islands.”<sup>39</sup>

On June 17, 1897, the day after a second treaty of annexation was signed in Washington, D.C., under President William McKinley, Cleveland's successor; Queen Lili'uokalani submitted a formal protest to the U.S. State Department. Her protest stated,

“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.”<sup>40</sup>

President McKinley ignored the protest and submitted the treaty to the Senate for ratification. Additional protests were filed with the Senate from the people, which included a 21,269 signature-petition of members and supporters of the Hawaiian Patriotic

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<sup>34</sup> *Id.*, at 451.

<sup>35</sup> *Id.*, at 1241-43.

<sup>36</sup> *Id.*, at 1269-73.

<sup>37</sup> See *Dames & Moore v. Regan*, 453 U. S. 654, 679, 682-683 (1981); *United States v. Pink*, 315 U. S. 203, 223, 230 (1942); *United States v. Belmont*, 301 U. S. 324, 330-331 (1937); see also L. HENKIN, *FOREIGN AFFAIRS AND THE UNITED STATES CONSTITUTION* 219, 496, n. 163 (2d ed. 1996) (“Presidents from Washington to Clinton have made many thousands of agreements ... on matters running the gamut of U. S. foreign relations”).

<sup>38</sup> Oath of Allegiance to Republic of Hawai'i, available at [http://hawaiiankingdom.org/blog/wp-content/uploads/2014/01/Oath\\_Republic.jpg](http://hawaiiankingdom.org/blog/wp-content/uploads/2014/01/Oath_Republic.jpg). In a 1993 joint resolution apologizing for the illegal overthrow of the government of the Hawaiian Kingdom, the U.S. Congress acknowledged that the Republic of Hawai'i was self-declared. 107 U.S. Stat. 1510, 1512 (1993).

<sup>39</sup> See LYDECKER, at 225.

<sup>40</sup> Queen Lili'uokalani's Protest against Treaty of Annexation, June 17, 1897, available at <http://libweb.hawaii.edu/digicoll/annexation/protest/liliu5.html>.



League protesting the annexation of Hawai'i. By March of 1898, the treaty is dead after the Senate was unable to garner enough votes for ratification.

## SECOND ARMED CONFLICT: UNITED STATES OCCUPATION

On May 4, 1898, Congressman Francis Newlands submitted a joint resolution for the annexing of the Hawaiian Islands to the U.S. House Committee on Foreign Affairs after Commodore Dewey defeated the Spanish fleet at Manila Bay, Philippines, on May 1. On May 17, the joint resolution was reported out of the committee without amendment and headed to the floor of the House of Representatives. The joint resolution's accompanying Report justified the congressional action to seize the Hawaiian Islands as a matter of military interest. The Report stated,

"The leading nations—England, France, Germany, Japan, Spain, and the United States—have each a Pacific Squadron. Every one of these squadrons is stronger than ours save that of Spain, which is the weakest. Had the war in which we are now engaged been with any of the other powers they might have worsted our fleet and seized the Hawaiian Islands, which are not now defended by any fortification or cannon, thus exactly reversing our recent good fortune at Manila. They would then have had a convenient base for supplies, coal, and repairs, from which to actively harry and devastate our coast. But were we in complete possession of the Hawaiian Islands and they properly prepared for defense (which eminent officers of the Army and Navy stated to the committee could be done at a cost of \$500,000), our fleet, even if pressed by a greatly superior sea power, would have an impregnable refuge at Pearl Harbor, backed by a friendly population and militia, with all the resources of the large city of Honolulu and a small but fruitful country. Holding this all important strategic point, the enemy could not remain in that part of the Pacific, thousands of miles from any base, without running out of coal sufficient to get back to their own possessions. The islands would secure both our fleet and our coast."<sup>41</sup>

Despite objections by Senators and Representatives that foreign territory can only be acquired by treaty and not through a congressional statute, President McKinley signs the joint resolution into law on July 7, 1898, and the occupation of the Hawaiian Islands began on August 12. The war with Spain did not come to an end until April 11, 1899, after documents of ratifications of the Treaty of Paris were exchanged. Customary international law mandated the United States, as the occupying state, to establish a Military Government in order to provisionally administer the laws of the occupied state, being the laws of the Hawaiian Kingdom that stood prior to the regime change on January 17, 1893. Instead of establishing a Military Government, the U.S. authorities allowed the insurgents to maintain control until the Congress could reorganize the so-called Republic of Hawai'i.

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<sup>41</sup> House Committee on Foreign Affairs Report to accompany H. Res. 259, May 17, 1898, 2 (House Report no. 1355, 55th Congress, 2d session).



By statute, the U.S. Congress changed the name of the Republic of Hawai'i to the Territory of Hawai'i on April 30, 1900. The Territorial Act stated,

“The constitution and statute laws of the Republic of Hawaii then in force, set forth in a compilation made by Sidney M. Ballou under the authority of the legislature, and published in two volumes entitled ‘Civil Laws’ and ‘Penal Laws,’ respectively, and in the Session Laws of the Legislature for the session of eighteen hundred and ninety-eight, are referred to in this Act as ‘Civil Laws,’ ‘Penal Laws,’ and ‘Session Laws.’”<sup>42</sup>

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. The Statehood Act stated,

“All Territorial laws in force in the Territory of Hawaii at the time of its admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii.”<sup>43</sup>

When the United States created the Territory of Hawai'i in 1900 it surpassed “its limits under international law through extraterritorial prescriptions emanating from its national institutions: the legislature, government, and courts.”<sup>44</sup> The purpose of this extraterritorial prescription was to conceal the occupation of the Hawaiian Kingdom and bypass the duty of administering the laws of the occupied state in accordance with the 1899 Hague Convention, II, which the United States had ratified. Article 43, provides:

“The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

The 1899 Hague Convention, II, was superseded by the 1907 Hague Convention, IV, and the text of Article 43 was slightly altered to read,

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

The United States creation of the State of Hawai'i in 1959, as the successor of the Territory of Hawai'i, not only stood in direct violation of Article 43, but also the duty of non-intervention in the internal affairs of another state.

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<sup>42</sup> 31 U.S. Stat. 141.

<sup>43</sup> 73 U.S. Stat. 4.

<sup>44</sup> EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 19 (1993).

## LIMITS OF U.S. CONGRESSIONAL LEGISLATION

Sources of international law are, in rank of precedence: international conventions, international custom, general principles of law recognized by civilized nations, and judicial decisions and the teachings of the most highly qualified publicists of the various nations.<sup>45</sup> The legislation of every state, to include the United States of America and its Congress, is not a source of international law, but rather a source of municipal law of the state whose legislature enacted it. In *The Lotus*, the International Court stated, “Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State.”<sup>46</sup> According to Crawford, derogation of this principle will not be presumed, which he refers to as the *Lotus* presumption.<sup>47</sup>

Since Congressional legislation, whether by a statute or a joint resolution, has no extraterritorial effect, it is not a source of international law, which “governs relations between independent States.”<sup>48</sup> The U.S. Supreme Court has always adhered to this principle. The U.S. Supreme Court stated,

“Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.”<sup>49</sup>

The Supreme Court also concluded, “The laws of no nation can justly extend beyond its own territories except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction.”<sup>50</sup> Adhering to this principle, the U.S. Attorney General’s Office of Legal Counsel was befuddled by Congress’s annexation of the Hawaiian Islands by a joint resolution. In a 1988 legal opinion, the Office of Legal Counsel addressed the annexation of the Hawaiian Islands by joint resolution. Douglas Kmiec, Acting Assistant Attorney General, authored the memorandum for Abraham D. Sofaer, legal advisor to the U.S. State Department. After covering the limitation of Congressional authority and the objections made by members of the Congress, Kmiec concluded,

“Notwithstanding these constitutional objections, Congress approved the joint resolution and President McKinley signed the measure in 1898. Nevertheless, whether this action demonstrates the constitutional power of Congress to acquire territory is certainly questionable. ... It is therefore 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

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<sup>45</sup> Statute of the International Court of Justice, Article 38.

<sup>46</sup> *Lotus*, PCIJ, ser. A no. 10, 18 (1927).

<sup>47</sup> See CRAWFORD, at 41-42.

<sup>48</sup> See *Lotus*, at 18.

<sup>49</sup> *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

<sup>50</sup> *The Apollon*, 22 U.S. 362, 370 (1824).

appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.”<sup>51</sup>

This 1988 opinion clearly undermines the claim of sovereignty over the Hawaiian Islands by the United States. If the Attorney General’s Office of Legal Counsel is “unclear” as to the authority of Congress to annex the Hawaiian Islands, it surely cannot be considered as a valid demonstration of legal title by the United States as the successor to the Hawaiian Kingdom under international law. If the United States is not the successor, then the presumption of the Hawaiian Kingdom’s existence as an independent state is maintained.

## CONTINUANCE OF INTERNATIONAL TREATIES

The first friendship treaty the Hawaiian Kingdom entered into as a sovereign state was with Denmark on October 19, 1846. Other friendship treaties followed with Hamburg, succeeded by Germany, (January 8, 1848), the United States of America (December 20, 1849), the United Kingdom (July 10, 1851), Bremen, succeeded by Germany, (March 27, 1854), Sweden-Norway, now separate states, (April 5, 1855), France (September 8, 1858), Belgium (October 4, 1862), Netherlands (October 16, 1862), Luxembourg (October 16, 1862), Italy (July 22, 1863), Spain (October 9, 1863), Switzerland (July 20, 1864), Russia (June 19, 1869), Japan (August 19, 1871), Austria-Hungary, now separate states (June 18, 1875), Germany (March 25, 1879), and Portugal (May 5, 1882). Neither the Hawaiian Kingdom nor any of these states expressed any intention to terminate any of the treaties according to the provisions provided in each of the treaties, and therefore remain in full force and effect.

These treaties have the “most favored nation” clause, and secure the equal application of commercial trade in the Hawaiian Islands to all treaty partners. These treaties have all been violated by the United States through the unlawful imposition of the *Merchant Marine Act* (1920)—also known as the *Jones Act*—that has secured commercial control over the seas to United States citizens, which has consequently placed the citizens of these foreign states at a commercial disadvantage.<sup>52</sup> The clause is designed

“to establish the principle of equality of international treatment. The test of whether the principle is violated by the concession of advantages to a particular nation is not the form in which such concession is made, but the condition on which it is granted; whether it is given for a price, or whether this price is in the nature of a substantial equivalent, and not a mere evasion.”<sup>53</sup>

Treaties “are legally binding, because there exists a customary rule of International Law that treaties are binding. The binding effect of that rule rests in the last resort on the fundamental assumption, which is neither consensual nor necessarily legal, of the

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<sup>51</sup> DOUGLAS W. KMEIC, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, 12 OPINIONS OF THE OFFICE OF LEGAL COUNSEL 238, 252 (1988).

<sup>52</sup> 46 U.S.C. §883-1.

<sup>53</sup> BLACK’S LAW DICTIONARY 1013 (6th ed. 1990).

objectively binding force of International Law,”<sup>54</sup> states Oppenheim. “No distinction should be made between more or less important parts of a treaty as regards its execution. Whatever may be the importance or the insignificance of a part of a treaty, it must be executed in good faith, for the binding force of a treaty covers all its parts and stipulations equally.”<sup>55</sup>

## STATE OF HAWAI‘I UNDER INTERNATIONAL LAW

While the State of Hawai‘i cannot claim to be a government *de jure* or *de facto*, customary international law defines the organization as an Armed Force for the occupying state. Military manuals define Armed Forces as “organized armed groups which are under a command responsible to that party for the conduct of its subordinates.”<sup>56</sup> According to Henckaerts and Doswald-Beck, “this definition of armed forces covers all persons who fight on behalf of a party to a conflict and who subordinate themselves to its command,”<sup>57</sup> and that this “definition of armed forces builds upon earlier definitions contained in the Hague Regulations and the Third Geneva Convention which sought to determine who are combatants entitled to prisoner-of-war status.”<sup>58</sup> Article 1 of the 1907 Hague Convention, IV, provides that

“The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: (1) To be commanded by a person responsible for his subordinates; (2) To have a fixed distinctive emblem recognizable at a distance; (3) To carry arms openly; and (4) To conduct their operations in accordance with the laws and customs of war.”

The laws and customs of war during occupation applies only to territories that come under the authority of either the occupier’s military or an occupier’s Armed Force, such as the State of Hawai‘i, and that the “occupation extends only to the territory where such authority has been established and can be exercised.”<sup>59</sup> According to Ferraro, “occupation—as a species of international armed conflict—must be determined solely on the basis of the prevailing facts.”<sup>60</sup> Although unlawful, it is a fact that the United States created the State of Hawai‘i through congressional action and signed into law by its President, Dwight D. Eisenhower, in 1959. It is also a fact that the United States approved the constitution of the State of Hawai‘i that provides for its organizational structure.

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<sup>54</sup> See OPPENHEIM, at 794.

<sup>55</sup> *Id.*, 829.

<sup>56</sup> JEAN-MARIE HENCKAERTS AND LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, vol. I, 14 (2009).

<sup>57</sup> *Id.*, at 15.

<sup>58</sup> *Id.*

<sup>59</sup> 1907 Hague Convention, IV, Article 42.

<sup>60</sup> TRISTAN FERRARO, *Determining the beginning and end of an occupation under international humanitarian law*, 94 (no. 885) INT’L REV RED CROSS 133, 134 (Spring 2012).

As an Armed Force, the State of Hawai'i established its authority over 137 islands,<sup>61</sup> "together with their appurtenant reefs and territorial and archipelagic waters."<sup>62</sup> These islands include the major islands of Hawai'i, Maui, O'ahu, Kaua'i, Molokai, Lana'i, Ni'ihau, and Kaho'olawe. It is the effectiveness of the control exercised by the State of Hawai'i over this territory, as an Armed Force for the United States, which triggers the application of occupation law.

### *Allegiance to the United States*

The State of Hawai'i, as an Armed Force, bears its allegiance to the United States where its public officers, to include its Governor, take the following oath of office: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Hawaii, and that I will faithfully discharge my duties as [...] to best of my ability."<sup>63</sup>

### *Commanded by a Person Responsible for His Subordinates*

A Governor who is elected by U.S. citizens in Hawai'i is head of the State of Hawai'i. The Governor is responsible for the execution of its laws from its legislature and to carry out the decisions by its courts. The Governor is also the "commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion."<sup>64</sup> The Governor's subordinates include all "executive and administrative offices, departments and instrumentalities of the state government."<sup>65</sup>

### *Fixed Distinctive Emblem Recognizable at a Distance*

According to its constitution, "The Hawaiian flag shall be the flag of the State."<sup>66</sup>

### *Carry Arms Openly*

Law enforcement officers of the State of Hawai'i, to include the Sheriff's Division, Department of Land and Natural Resources, and the police of the State's four Counties, all openly carry arms. Also included are the State of Hawai'i's Army National Guard and Air National Guard who openly carry arms while in tactical training.

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<sup>61</sup> "Hawai'i Facts and Figures" (December 2014), State of Hawai'i Department of Business, Economic Development & Tourism.

<sup>62</sup> State of Hawai'i Constitution, Article XV, section 1, available at <http://lrbhawaii.org/con/>.

<sup>63</sup> *Id.*, Article XVI, sec. 4.

<sup>64</sup> *Id.*, Article V, sec. 5.

<sup>65</sup> *Id.*, sec. 6.

<sup>66</sup> *Id.*, Article XV, sec. 3.

## *Conduct Operations in Accordance with the Laws and Customs of War*

As the Governor is the commander in chief of the State's Armed Forces, and is responsible for the suppression or prevention of insurrection or lawless violence, as well as repelling an invasion, the State of Hawai'i is capable of conducting operations in accordance with the laws and customs of war during occupation.

## ACTING GOVERNMENT OF THE HAWAIIAN KINGDOM

In 1996, remedial steps were taken under the doctrine of necessity to reinstate the Hawaiian Kingdom government as it was under our late Queen Lili'uokalani on January 17, 1893.<sup>67</sup> An *acting* Council of Regency was established in accordance with the Hawaiian Constitution and the doctrine of necessity to serve in the absence of the executive monarch. By virtue of this process an *acting* Government comprised of *de facto* officers was established and has since received diplomatic recognition.<sup>68</sup>

From 1999-2001, the *acting* Government represented the Hawaiian Kingdom in international arbitration proceedings, *Larsen vs. Hawaiian Kingdom*, at the Permanent Court of Arbitration (PCA), The Hague, Netherlands.<sup>69</sup> In its commentary on international decisions in the *American Journal of International Law*, Bederman and Hilbert state,

“At the center of the PCA proceeding was the argument that Hawaiians never directly relinquished to the United States their claim of inherent sovereignty either as a people or over their national lands, and accordingly that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States’ ‘unlawful imposition [over him] of [its] municipal laws’ through its political subdivision, the State of Hawaii. As a result of this responsibility,

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<sup>67</sup> David Keanu Sai, *Brief—The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*, 25-51 (August 4, 2013), available at [http://hawaiiankingdom.org/pdf/Continuity\\_Brief.pdf](http://hawaiiankingdom.org/pdf/Continuity_Brief.pdf). Appendix I.

<sup>68</sup> *Id.*, at 40-48. On April 3, 2014, the Directorate of International Law, Swiss Federal Department of Foreign Affairs, in Bern, accepted the *acting* Government's letter of credence for its Envoy whose mission was to initiate negotiations with the Swiss Confederation to serve as a Protecting Power in accordance with the 1949 Geneva Convention, IV. The negotiations are ongoing.

<sup>69</sup> The author served as lead agent for the *acting* Government in these arbitral proceedings. For law-reviewed articles on the Hawaiian arbitration, see BEDERMAN & HILBERT, *Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawai'i*, 95 AM. J. INT'L L. 927, 928 (2001); see also DAVID KEANU SAI, *American Occupation of the Hawaiian State: A Century Unchecked*, 1 HAW. J. L. & POL. 46 (Summer 2004); and PATRICK DUMBERRY, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law*, 2(1) CHINESE J. INT'L L. 655, 682 (2002).

Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States committed against him.”<sup>70</sup>

After oral hearings were held at the Permanent Court of Arbitration on December 7, 8 and 11, the *acting* Government was called to a meeting in Brussels, Belgium, by His Excellency Dr. Jacques Bihozagara, Ambassador for the Republic of Rwanda assigned to Belgium. Ambassador Bihozagara was at the International Court of Justice where he was made aware of the Hawaiian Kingdom arbitration. At this meeting in Brussels on December 12, Ambassador Bihozagara conveyed to the *acting* Government that his government was prepared to bring to the attention of the United Nations General Assembly the prolonged occupation of the Hawaiian Kingdom.

“Recalling his country’s experience of genocide and the length of time it took for the international community to finally intervene as a matter of international law, Ambassador Bihozagara conveyed to the author that the illegal and prolonged occupation of Hawai‘i was unacceptable and should not be allowed to continue. Despite the excitement of the offer, apprehension soon took hold and the acting government could not, in good conscience, accept the offer and put Rwanda in a position of reintroducing Hawai‘i’s State continuity before the United Nations, when Hawai‘i’s community, itself, remained ignorant of Hawai‘i’s profound legal position. The author thanked Ambassador Bihozagara for his government’s offer, but the timing was premature. The author conveyed to the ambassador that the gracious offer could not be accepted without placing Rwanda in a vulnerable position of possible political retaliation by the United States, but that the acting government should instead focus its attention on continued exposure of the occupation both at the national and international levels.”<sup>71</sup>

What faced the *acting* Government was the prolonged nature of the occupation, together with the United States violation of the laws and customs of war during occupation, its devastating effect on Hawai‘i’s political economy, and the violation of international humanitarian law. The exigency of the situation is what prompted the *acting* Government to exercise its legislative authority as a matter of necessity. On October 10, 2014, the *acting* Council of Regency decreed, by Proclamation, provisional laws for the Kingdom, subject to ratification by the Legislative Assembly when called into session, in order to provide for the proper legal foundation for the administration of Hawaiian Kingdom laws in compliance with the law and customs of war during occupation. The Proclamation decreed,

“that from the date of this proclamation all laws that have emanated from an unlawful legislature since the insurrection began on July 6, 1887 to the present, to include United States legislation, shall be the provisional laws of the Realm subject to ratification by the Legislative Assembly of the Hawaiian Kingdom once assembled, with the express proviso that these provisional laws do not run contrary to the express, reason and spirit of the laws of the Hawaiian Kingdom prior to July 6, 1887, the international laws of occupation and international

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<sup>70</sup> See BEDERMAN & HILBERT, at 928.

<sup>71</sup> See SAI, *Slippery Path*, at 131.



humanitarian law, and if it be the case they shall be regarded as invalid and void.”<sup>72</sup>

The Proclamation also called upon

“all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, to obey promptly and fully, in letter and in spirit, such proclamations, rules, regulations and orders, as the military government may issue during the present military occupation of the Hawaiian Kingdom so long as these proclamations, rules, regulations and orders are in compliance with the laws and provisional laws of the Hawaiian Kingdom, the international laws of occupation and international humanitarian law.”<sup>73</sup>

Although, Hawaiian law prohibits the enactment of retrospective laws,<sup>74</sup> the doctrine of necessity would allow for it in extraordinary circumstances. Necessity is where the “power of a Head of State under a written Constitution extends by implication to executive acts, and also legislative acts taken temporarily (that is, until confirmed, varied or disallowed by the lawful Legislature) to preserve or restore the Constitution, even though the Constitution itself contains no express warrant for them.”<sup>75</sup> Deviations from a State’s constitutional order “can be justified on grounds of necessity,”<sup>76</sup> states de Smith. “State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution.”<sup>77</sup> Lord Pearce also states that there are certain limitations to the principle of necessity,

“namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful...Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign.”<sup>78</sup>

According to Sassòli, “The expression ‘laws in force in the country’ in Article 43 refers not only to laws in the strict sense of the word, but also to the constitution, decrees, ordinances, court precedents (especially in territories of common law tradition), as well as administrative regulations and executive orders, provided that the ‘norms’ in question are general and abstract.”<sup>79</sup> The Proclamation is a part of the “laws in force in the country”

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<sup>72</sup> Proclamation (October 10, 2014), available at [http://hawaiiankingdom.org/pdf/Proc\\_Provisional\\_Laws.pdf](http://hawaiiankingdom.org/pdf/Proc_Provisional_Laws.pdf). Appendix II.

<sup>73</sup> *Id.*

<sup>74</sup> Hawaiian Kingdom Constitution (1864), Article 16—“No Retrospective Laws shall ever be enacted;” see also Hawaiian Kingdom Civil Code, §5—“No law shall have any retrospective operation.”

<sup>75</sup> F.M. BROOKEFIELD, *The Fiji Revolutions of 1987*, NEW ZEALAND L.J. 250, 251 (July 1988).

<sup>76</sup> STANLEY A. DE SMITH, *CONSTITUTIONAL AND ADMINISTRATIVE LAW* 80 (1986).

<sup>77</sup> *Id.*

<sup>78</sup> *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969).

<sup>79</sup> Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, 6 (Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law, Cambridge, June 25-27, 2004).



as a “decree” of the *acting* Government that must be administered in accordance with Article 43.

At an evidentiary hearing held on March 5, 2015, where the Court received the author as an expert in international law, the Court took judicial notice of the brief titled, “*The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom*.”<sup>80</sup> According to the State of Hawai'i Rules of Evidence, Rule 201(b)(2), a “judicially noticed fact must be one not subject to reasonable dispute in that it is...capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” When the trial court took judicial notice of the brief it not only recognized the continuity of the Hawaiian Kingdom to be true, but it also recognized the establishment of the *acting* government to be true. The State of Hawai'i cannot claim otherwise, unless it can show that the evidentiary hearing was unfair and did not allow the Prosecutor to object to the judicial notice, which was not the case.

## DENATIONALIZATION THROUGH AMERICANIZATION

In 1906 began the intentional and methodical plan of *Americanization* intended to not only conceal the violation of Hawai'i's sovereignty and the international law of occupation, but to obliterate the national consciousness of the Hawaiian Kingdom in the minds of the children who were attending the public and private schools throughout the islands. This program 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 the program was to inculcate American patriotism in the minds of the children and forced them to speak English and not Hawaiian.

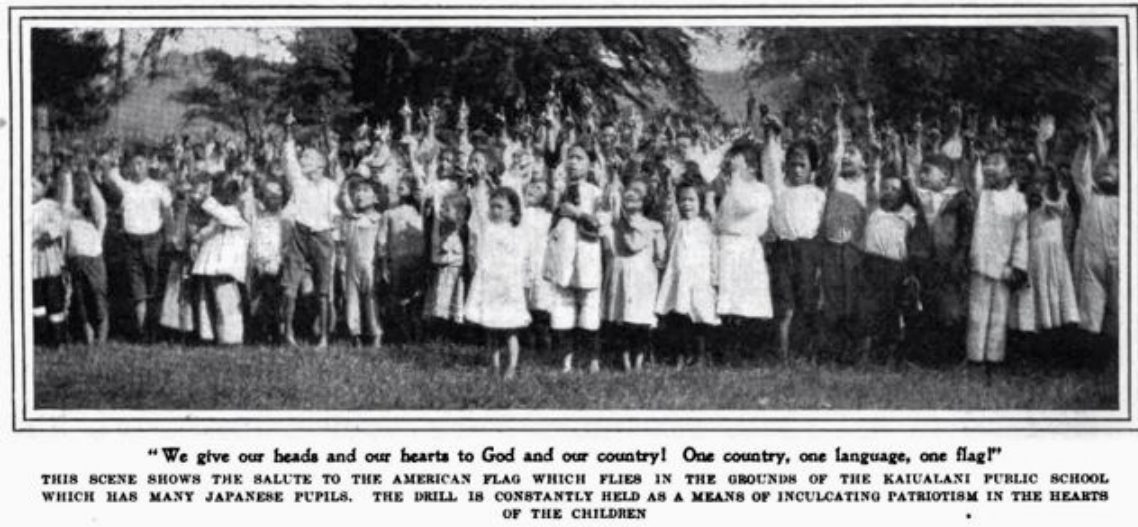
According to the Programme, “The teacher will call one of the pupils to come forward and stand at one side of the desk while the teacher stands at the other. The pupil shall hold an American flag in military style. At second signal all children shall rise, stand erect and salute the flag, concluding with the salutation, ‘We give our heads and our hearts to God and our Country! One Country! One Language! One flag!’”<sup>81</sup> In 1907, Harper's Weekly magazine covered the *Americanization* taking place at Ka'ahumanu and Ka'iulani Public Schools.<sup>82</sup> Below is a photo taken by the reporter of Harper's Weekly at Ka'iulani Public School.

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<sup>80</sup> Transcript of Proceedings, State of Hawai'i vs. Kaiula Kalawe English, criminal no. 14-1-0819, State of Hawai'i vs. Robin Wainuhea Dudoit, criminal no. 14-1-0820, Circuit Court of the Second Circuit, State of Hawai'i (Mar. 5, 2015), available at [http://hawaiiankingdom.org/pdf/Transcript\\_Molokai\\_hearing.pdf](http://hawaiiankingdom.org/pdf/Transcript_Molokai_hearing.pdf). Appendix III.

<sup>81</sup> Territory of Hawai'i, Programme for Patriotic Exercises (1906), 4, available at <http://ia600604.us.archive.org/17/items/programmeforpatr00hawa/programmeforpatr00hawa.pdf>. Appendix IV.

<sup>82</sup> William Inglis, *Hawaii's Lesson to Headstrong California*, HARPER'S WEEKLY, Feb. 16, 1907, at 228.



Under customary international law, *Americanization* is a war crime of attempting to denationalize the inhabitants of an occupied territory. Germans and Italians were prosecuted for the same war crime after World War II for implementing a systematic plan of *Germanization* and *Italianization* in occupied territories. According to the Nuremberg Indictment of Nazis,

"In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported de jure annexation and enforced conscription into the German Armed Forces. This was carried out in most of the occupied countries including: Norway, France, Luxembourg, the Soviet Union, Denmark, Belgium, and Holland."<sup>83</sup>

Since the Programme began, *Americanization* had become so pervasive and institutionalized throughout Hawai'i, that the national consciousness of the Hawaiian Kingdom was nearly obliterated, but for the institutional recovery of the Hawaiian language and the resurrection of diligent historical research that has begun to uncover the true status of the Hawaiian Kingdom as an independent state under an illegal and prolonged occupation. This revelation is reconnecting Hawai'i to the international community and its treaty partners regarding the violations of rights and war crimes committed against the citizens and subjects of foreign states who have visited, resided or have done business in the Hawaiian Islands.

<sup>83</sup> Nuremberg Trial Proceedings, Indictment, Count 3, Article VIII (J), available at <http://avalon.law.yale.edu/imt/count3.asp>.

## WAR CRIMES COMMITTED WITH IMPUNITY

Since the 1949 Geneva Conventions, the expression “armed conflict” substituted the term “war” in order for the Conventions to apply “to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance (Common Article 2).” According to the International Committee of the Red Cross (ICRC) Commentary of Geneva Convention, IV, this wording of Article 2 “was based on the experience of the Second World War, which saw territories occupied without hostilities, the Government of the occupied country considering that armed resistance was useless. In such cases the interests of protected persons are, of course, just as deserving of protection as when the occupation is carried out by force.”<sup>84</sup>

Casey-Maslen, editor of the War Report, states an international armed conflict exists “whenever one state uses any form of armed force against another, irrespective of whether the latter state fights back,” which “includes the situation in which one state invades another and occupies it, even if there is no armed resistance.”<sup>85</sup> The ICRC Commentary further clarifies that “Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to the human person as such is not measured by the number of victims.”<sup>86</sup>

The International Criminal Court defines war crimes as “serious violations of the laws and customs applicable in international armed conflict.”<sup>87</sup> United States Army Field Manual 27-10 expands the definition of a war crime, which is applied in armed conflicts that involve United States troops, to be “the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime.”<sup>88</sup> War crimes include deliberate acts as well as omissions, which the latter includes the failure to administer the laws of the occupied state (Article 43, 1907 Hague Convention, IV) and failure to provide a fair and regular trial (Article 147, Geneva Convention, IV).

International case law indicates that there must be a mental element of intent for the prosecution of war crimes, whereby war crimes must be committed willfully, either intentionally—*dolus directus*, or recklessly—*dolus eventualis*. According to Article 30(1) of the Rome Statute, the defendant is “criminally responsible and liable for punishment...only if the material elements [of the war crime] are committed with intent and knowledge.” Therefore, in order to prosecute there must be a mental element that includes a volitional component (intent) as well as a cognitive component (knowledge). Article 30(2) further clarifies that “a person has intent where: (a) In relation to conduct,

<sup>84</sup> JEAN S. PICTET, COMMENTARY ON THE IV GENEVA CONVENTION, RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 21 (1958).

<sup>85</sup> STUART CASEY-MASLEN, WAR REPORT 2012 7 (2013).

<sup>86</sup> See PICTET, at 20.

<sup>87</sup> International Criminal Court, *Elements of a War Crime*, Article 8(2)(b).

<sup>88</sup> U.S. Army Field Manual 27-10, sec. 499 (July 1956).

that person means to engage in the conduct; [and] (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.” Furthermore, the International Criminal Court’s *Elements of a War Crime*, states that there is no requirement for a legal evaluation to be done by the perpetrator.<sup>89</sup>

Is there a particular time or event that could serve as a definitive point of knowledge for purposes of prosecution? In other words, where can there be “awareness that a circumstance exists or a consequence will occur in the ordinary course of events” stemming from the illegality of the overthrow of the Hawaiian Kingdom government on January 17, 1893? For the United States government that definitive point would be December 18, 1893, when President Cleveland notified the Congress of the illegality of the overthrow of the Hawaiian Kingdom government and called the landing of U.S. troops an act of war. For the private sector, however, it is the opinion of the author of this report, that the United States’ 1993 apology for the illegal overthrow of the Hawaiian Kingdom government, would serve as that definitive point of knowledge for those who are not in the service of government. In the form of a Congressional joint resolution enacted into United States law, the law specifically states that the Congress “on the occasion of the 100<sup>th</sup> anniversary of the illegal overthrow of the Kingdom of Hawai‘i on January 17, 1893 acknowledges the historical significance of this event.”<sup>90</sup> Additionally, the Congress also urged “the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawai‘i.”<sup>91</sup>

Despite the mistake of facts and law riddled throughout the apology resolution, it nevertheless serves as a specific point of knowledge and the ramifications that stem from that knowledge. Evidence that the United States knew of the ramifications was clearly displayed in the apology law’s disclaimer, “Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.”<sup>92</sup> It is a presumption that everyone knows the law, which stems from the legal maxim *ignorantia legis neminem excusat* (ignorance of the law excuses no one). Unlike the United States government, being a public body, the State of Hawai‘i government cannot claim to be a government at all, and therefore is merely a private organization. Therefore, awareness and knowledge for members of the State of Hawai‘i would have begun with the enactment of the Apology resolution in 1993.

In *State of Hawai‘i v. Lorenzo* (1994),<sup>93</sup> the State of Hawai‘i Intermediate Court of Appeals considered an appeal by a defendant that argued the courts in the State of Hawai‘i have no jurisdiction as a direct result of the illegal overthrow of the government of the Hawaiian Kingdom. The basis of the appeal stemmed from the lower court’s ruling, “Although the Court respects Defendant’s freedom of thought and expression to believe that jurisdiction over the Defendant for the criminal offenses in the instant case should be

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<sup>89</sup> See ICC Elements of a War Crime, Article 8.

<sup>90</sup> See Apology Resolution, at 1513.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*, at 1514.

<sup>93</sup> *State of Hawai‘i v. Lorenzo*, 77 Haw. 219 (1994).

with a sovereign, Native Hawaiian entity, like the Kingdom of Hawaii, such an entity does not preempt nor preclude jurisdiction of this court over the above-entitled matter.”<sup>94</sup> After acknowledging that the “United States Government recently recognized the illegality of the overthrow of the Kingdom and the role of the United States in that event,”<sup>95</sup> the appellate court denied the appeal.

The appellate court reasoned, the “essence of the lower court’s decision is that even if, as Lorenzo contends, the 1893 overthrow of the Kingdom was illegal, that would not affect the court’s jurisdiction in this case.”<sup>96</sup> The Court, however, admitted its “rationale is open to question in light of international law.”<sup>97</sup> The Court also admitted, “The illegal overthrow leaves open the question whether the present governance should be recognized.”<sup>98</sup> Although the courts of the State of Hawai‘i are not properly constituted, because it is an Armed Force and not a government, this clearly confirms awareness by the State of Hawai‘i.

In light of both the lower and appellate courts’ ignorance of international law and the presumption of continuity of an established state despite the illegal overthrow of its government, it clearly presents a case of applying the wrong law. According to the International Criminal Court’s elements of crimes, there “is no requirement for a legal evaluation by the perpetrator,” but “only a requirement of awareness.”<sup>99</sup> The *Lorenzo case* has become the seminal case used to quash all claims by defendants that the courts in the State of Hawai‘i are not properly constituted. There can be no doubt that the decisions made by each of the judges confronted with this defense has ruled against the defendants with full awareness since the Apology resolution in 1993 and the *Lorenzo case* in 1994.

War crimes that have and continue to be committed in the Hawaiian Islands include, but are not limited to: *pillaging* (Article 47, Hague Convention, IV, and Article 33, Geneva Convention, IV); *destroying public property belonging to the occupied State* (Article 55, Hague Convention, IV, and Article 147 Geneva Convention, IV); *denationalization in the public schools* (Article 56, Hague Convention, IV); *extensive appropriation of property, not justified by military necessity and carried out unlawfully and wantonly* (Article 147, Geneva Convention, IV); *depriving individuals of a fair and regular trial* (Article 147, Geneva Convention, IV); and *unlawful deportation or transfer or unlawful confinement* (Article 147, Geneva Convention, IV).

This is a human rights crisis of unimaginable proportions. Here follows some of the most serious war crimes that will have a paralyzing effect on the State of Hawai‘i as an Armed Force.

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<sup>94</sup> *Id.*, at 220.

<sup>95</sup> *Id.*, at 221.

<sup>96</sup> *Id.*, at 220.

<sup>97</sup> *Id.*, at 220-221.

<sup>98</sup> *Id.*, at 221, n. 2.

<sup>99</sup> See ICC Elements of Crimes, Article 8 – Introduction.



## *War Crime—Pillaging through Taxation*

Articles 46-54 of Hague Convention, IV, contain the rules governing the treatment of both personal and real property belonging to inhabitants of the occupied territory. Under Article 47, “pillage is formally forbidden.” In light of the “absolute character of the rule and of its obvious purpose to prevent plundering by any individual, the rule of the article would seem to extend to plundering by any national of the occupant, and generally any person subject to its local jurisdiction, including inhabitants as well as civilian officials of the occupant.”<sup>100</sup> The State of Hawai‘i’s officials and members, being the occupant state’s Armed Force and not a Military Government, must not plunder for the private use and purpose of maintaining the organization.

The State of Hawai‘i is an Armed Force comprised of private individuals under the guise of being a *de jure* government. Consequently, the compulsory collection of what it calls taxes, is in fact not taxes at all, but rather revenues derived through pillaging. Pillage or plunder is “the forcible taking of private property,”<sup>101</sup> which, according to the Elements of Crimes of the International Criminal Court, must be seized “for private or personal use.”<sup>102</sup> As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.<sup>103</sup>

Currently the State of Hawai‘i, to include the Counties, derives their revenues through the collection of 14 taxes by the State of Hawai‘i (income tax, estate and transfer tax, general excise tax, transient accommodation tax, use tax, public service company tax, banks and other financial corporations franchise tax, fuel tax, liquor tax, cigarette and tobacco tax, conveyance tax, rental motor vehicle and tour vehicle surcharge tax, unemployment insurance tax, and insurance premiums tax), and 3 taxes by the Counties (real property tax, motor vehicle weight tax, and public utility franchise tax). The State of Hawai‘i’s primary revenue is the general excise tax, followed by the individual income tax. In 2014, the State of Hawai‘i and the Counties collected \$6.58 billion in taxes. Of all the war crimes, pillaging through taxation has not only affected the inhabitants of the islands, but also the international community that have traveled through the islands or have been engaged in commercial activities in the islands.

The authority to levy taxes is a fiscal and property right of an independent and sovereign state. Taxes constitute a portion of the property of the State and consist of obligatory contributions, which the States is authorized to levy upon individuals and corporations in order to provide necessary services of the State. The state’s government freely exercises this right as long as it is in conformity with its public law. The public law of the Hawaiian Kingdom provides a list of obligatory contributions, which along with taxes,<sup>104</sup>

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<sup>100</sup> ERNST H. FEILCHENFELD, *THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION* 30 (1958).

<sup>101</sup> See BLACK’S LAW, at 1148.

<sup>102</sup> Elements of Crimes, International Criminal Court, Pillage as a war crime (ICC Statute, Article 8(2)(b)(xvi) and (e)(v)).

<sup>103</sup> See HENCKAERTS AND DOSWALD-BECK, at 185.

<sup>104</sup> See Hawaiian Civil Code, at 117-136.

includes customs and duties on foreign trade,<sup>105</sup> health insurance for visiting tourists,<sup>106</sup> land sales,<sup>107</sup> and bonds.<sup>108</sup> Since January 17, 1893, there has been no government, but rather Armed Forces established by the United States—the Provisional Government (1893-1894), Republic of Hawai'i (1894-1900), Territory of Hawai'i (1900-1959) and currently the State of Hawai'i (1959-present). As these entities were neither governments *de facto* nor *de jure*, their collection of tax revenues were not for the benefit of a *bona fide* government in the exercise of its police power.

Unlike the State of Hawai'i, which is an Armed Force, the United States is a *de jure* government, but its exercising of authority in the Hawaiian Islands in violation of international laws is unlawful. Therefore, the United States cannot be construed to have committed the act of pillaging since it is a legitimate government, but has appropriated private property through unlawful contributions, *e.g.* federal taxation, which is regulated by Article 48, 1907 Hague Convention, IV. The subsequent Article (49) provides, “If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.” The United States collection of federal taxes from the residents of the Hawaiian Islands is an unlawful contribution that is exacted for the sole purpose of supporting the United States federal government and not for “the needs of the army or of the administration of the territory.”

### *War Crime—Omission of Administering Hawaiian Laws*

The willful omission to administer Hawaiian law as mandated under Article 43, Hague Convention, IV, has placed Hawai'i's political economy into peril. In particular, all commercial entities registered to do business in the Hawaiian Islands, since January 17, 1893, which includes sole proprietorships, general partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, corporations, s corporations, and limited liability companies, are illegal. Their legal basis stems from pretended governments, and not the Hawaiian Kingdom. Foreign commercial entities doing business in Hawai'i are also illegal because “Every corporation or incorporated company formed or organized under the laws of any foreign State, which may be desirous of carrying on business in this Kingdom and to take, hold and convey real estate therein, shall [register with] the office of the Minister of the Interior.”<sup>109</sup>

Furthermore, all real estate transactions, *e.g.* deeds, leases or mortgages, since January 17, 1893 were not capable of being conveyed because the notaries public and the registrars of conveyances were self-declared and therefore unlawful. Hawaiian law requires that all conveyances be registered in the Bureau of Conveyances. “To entitle any conveyance, or other instrument to be recorded, it shall be acknowledged by the party or parties

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<sup>105</sup> *Id.*, at 137-150.

<sup>106</sup> *Id.*, at 666.

<sup>107</sup> *Id.*, at 10.

<sup>108</sup> *Id.*, at 523, 565, 582, 599, 609, 627, 681.

<sup>109</sup> An Act Relating to Corporations and Incorporated Companies Organized under the Laws of Foreign Countries and Carrying on Business in this Kingdom (1880).

executing the same, before the Registrar of Conveyances, or his agent, or some judge of a court of record, or notary public of this Kingdom, or before some minister, commissioner or consul of the Hawaiian Islands, or some notary public or judge of a court of record in any foreign country.”<sup>110</sup> This has not only rendered all conveyances of real estate defective, but has also voided all mortgages, which serve as security instruments for loans.

A deed not properly notarized and recorded in the government registry is a covered risk in title insurance policies. Title insurance is a “policy issued by a title company after searching the title, representing the state of that title and insuring the accuracy of the title search against claims of title defects.”<sup>111</sup> There are two policies of title insurance; a lender’s policies that cover the lender’s debt due to the invalidity of the mortgage loan, and an owner’s policies that cover the value of the owner’s property at the time the policies were purchased. Title insurance policies are predominantly sold in the United States.

As mortgage loans have been unsecured since 1893, this has a dramatic and devastating effect today on the investment rating and net value of mortgaged-backed securities that comprise mortgage loans from Hawai‘i. Mortgage-backed securities are pools of mortgage loans purchased from mortgage lenders by U.S. Government sponsored enterprises, such as Fannie Mae or Freddie Mac, or private institutions, who then sells claims to the monthly payments to investors in the form of securities called *tranches* (slices). The investor banks can also reshape these *tranches* into other securities called collateralized-debt-obligations. Mortgage-backed securities issued by Fannie Mae and Freddie Mac are given the highest investment rating of AAA and are the most actively traded commodity in the U.S. bond market.

Coupled with the fact that mortgage lenders are illegally doing business in Hawai‘i and borrowers have title insurance to pay off their debt, this revelation not only has the capacity of throwing the title insurance industry spiraling into bankruptcy, but will void stocks owned by shareholders of Hawai‘i mortgage lenders listed on the stock markets of NASDAQ, NYSE, and AMEX, such as Bank of Hawai‘i. This is not limited to Hawai‘i mortgage lenders listed on the stock markets, but all Hawai‘i businesses listed, such as Hawaiian Electric Industries. Business entities created under State of Hawai‘i law would simply vanish. Furthermore, title insurance companies could target the State of Hawai‘i for reimbursement under subrogation. This has the capacity of bringing the United States economy, which would include Hawai‘i, to the brink of financial disaster.

### *War Crime—Unfair Trials and Pillaging*

All judicial and administrative courts in the Hawaiian Islands are not properly constituted under the laws of the Hawaiian Kingdom, nor are they properly constituted as courts of a Military Government. As such, these courts cannot provide a fair trial and therefore

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<sup>110</sup> See Hawaiian Civil Code, at §1255.

<sup>111</sup> See BLACK’S LAW, at 806.



decisions and judgments are extra-judicial. Since 2011, defendants in over 100 civil cases, whose homes were being foreclosed in Circuit Courts of the State of Hawai'i or being evicted as a result of non-judicial foreclosures in the district courts of the State of Hawai'i, were challenging the subject matter jurisdiction of these courts based upon evidence that the Hawaiian Kingdom, as an independent and sovereign state, continues to exist. As such, the controlling law for jurisdictions of any and all courts, whether judicial or administrative, within the territory of the Hawaiian Kingdom is Hawaiian law and not United States law.

As an occupied State, Hawaiian Kingdom law is the controlling law. In every case, the judges systematically and summarily denied the motions to dismiss without providing any rebuttable evidence that the courts are properly constituted, and homes were pillaged. The war crimes of unfair trial and pillaging also occurred in light of the fact that the mortgage lenders were provided evidence by those being foreclosed of defects in their titles and the invalidity of the mortgage instruments, but the mortgage lenders refused to file title insurance claims. What is more abhorrent and criminal is that borrowers were required to purchase lender's policies of title insurance for the protection of the mortgage lenders as a condition of the mortgage loan should the mortgage become void as a result of a defect in title.

Common Article 3 of the 1949 Geneva Conventions prohibits "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Article 43 of the Hague Convention, IV, mandates the occupying State "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." According to United States Justice Kennedy, in *Hamdan v. Rumsfeld*, there was no need to determine whether or not defendants received a fair trial by the military commissions in Guantanamo Bay because they were not properly constituted in the first place. Justice Kennedy reasoned that the fairness of a trial is a moot point since the Court already found that "the military commissions...fail to be regularly constituted under Common Article 3."<sup>112</sup>

As an Armed Force of the United States, the State of Hawai'i is a pretended government. All decisions and judgments made by State of Hawai'i judicial and administrative courts are extrajudicial done "outside the course of regular judicial proceedings."<sup>113</sup> And where individuals have been sentenced to prison, they have the status of prisoners of war and protection afforded under the 1949 Geneva Convention, III. Summary judgments stem from "willfully depriving a prisoner of war of the rights of fair and regular trial." which is a war crime under Article 130.

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<sup>112</sup> *Hamdan v. Rumsfeld*, 548 U.S. 557, 655 (2006).

<sup>113</sup> See BLACK'S LAW, at 586.

## RISK OF DELAY

It is impossible for the State of Hawai'i to maintain its existence in light of the ascending knowledge of Hawai'i's legal status as an independent state under an illegal and prolonged occupation. The foundation of the existence of the State of Hawai'i is directly traced to the provisional government, which was illegally established through intervention by the U.S. diplomat with the assistance of U.S. troops in 1893. In similar fashion through intervention, the U.S. Congress illegally established the State of Hawai'i in 1959 in direct violation of its mandate to administer the laws of the Hawaiian Kingdom. This omission by the United States is not only a war crime, but has consequently placed every official and employee of the State of Hawai'i into a position of criminal liability as war crimes have and continue to be committed on a colossal scale. In the latest edition of the War Report, 2013, Hawai'i's occupation is noted under the category of international armed conflicts. Casey-Maslen states, "Other belligerent occupations that have been alleged include the occupation by the UK of the Falkland Islands/Malvinas (Argentina claims this as sovereign territory), of Tibet by China, and of the state of Hawaii by the USA."<sup>114</sup> Hawai'i would not be noted here unless there is an evidential basis.

On April 28, 2015, a judgment by the Swiss Federal Criminal Court's Objections Chamber specifically named the former CEO of Deutsche Bank, Josef Ackermann, former State of Hawai'i Governor, Neil Abercrombie, current Lieutenant Governor, Shan Tsutsui, former Director of Taxation, Frederik Pablo, and former Deputy Director of Taxation, Joshua Wisch, as alleged war criminals.<sup>115</sup> The Swiss Federal Criminal Court is addressing war crime complaints filed with the Swiss Attorney General by a Hawaiian national who is alleging that Deutsche Bank pillaged his home as a direct result of an unfair trial in a State of Hawai'i court;<sup>116</sup> and by a Swiss citizen alleging that the State of Hawai'i pillaged his private property through taxation.<sup>117</sup>

Switzerland is a civil-law state, as opposed to a common-law state like the United States and the United Kingdom. Under the Swiss criminal procedure, judges have the capacity to conduct criminal investigations as an investigative magistrate, along with the prosecutor and the police. The Objections Chamber of the Federal Criminal Court oversees investigative magistrates, prosecutors and police if a person objects to their

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<sup>114</sup> See CASEY-MASLEN, at 28.

<sup>115</sup> Kale Kepekaio Gumapac, et al. v. Office of Federal Attorney General, BB 2015.36+37 (April 28, 2015), original in German *available at* [http://hawaiiankingdom.org/pdf/Federal\\_Criminal\\_Court\\_28\\_April\\_2015\\_Deutsche\\_\(redacted\).pdf](http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_Deutsche_(redacted).pdf), translation into English *available at* [http://hawaiiankingdom.org/pdf/Federal\\_Criminal\\_Court\\_28\\_April\\_2015\\_English\\_\(redacted\).pdf](http://hawaiiankingdom.org/pdf/Federal_Criminal_Court_28_April_2015_English_(redacted).pdf).

Appendix V.

<sup>116</sup> War Crimes Report, Dec. 7, 2014, *available at* [http://hawaiiankingdom.org/pdf/Swiss\\_AG\\_War\\_Crimes\\_Report.pdf](http://hawaiiankingdom.org/pdf/Swiss_AG_War_Crimes_Report.pdf). See also Gumapac's Amended War Crimes Complaint, Jan. 22, 2015, *available at* [http://hawaiiankingdom.org/pdf/Gumapac\\_Amended\\_Complaint\\_1\\_22\\_15.pdf](http://hawaiiankingdom.org/pdf/Gumapac_Amended_Complaint_1_22_15.pdf).

<sup>117</sup> Unnamed Swiss citizen's War Crime Complaint, Jan. 21, 2015, *available at* [http://hawaiiankingdom.org/pdf/Swiss\\_Complaint\\_\(redacted\).pdf](http://hawaiiankingdom.org/pdf/Swiss_Complaint_(redacted).pdf).

decisions in a criminal investigation. The Federal Criminal Court's April 28 judgment addressed an objection by a Hawaiian and a Swiss national who were both objecting to the Attorney General's decision to terminate the criminal investigation. The Prosecutor decided not to pursue an indictment because it took the position that Hawai'i was annexed by a congressional joint resolution.<sup>118</sup> In its decision, however, the Court appears to not have been convinced that Hawai'i was annexed by a domestic law of the United States, and began to state the relevant facts and allegations of the case that read like an indictment. Instead of concluding with charges, the Court stated it was prevented from moving forward because the filing of the objection did not meet the time line of ten days.<sup>119</sup>

In the civil-law tradition, a Prosecutor will need to present written charges—an indictment, to a court for confirmation. According to O'Connor, "the indictment will describe the acts committed by the suspect, and outline the applicable law and the evidence upon which the accusation rests."<sup>120</sup> This is similar to the contents of an indictment you would find in the common-law system. In a common-law indictment, "the prosecutor must present sufficient evidence to establish the identity of the accused, and probable cause to arrest him or her. However, the 'requirement of sufficient evidence to establish [these two facts] is considerably less exacting than a requirement of sufficient evidence to warrant a guilty finding.'"<sup>121</sup> It is clear that the Swiss Court, in its statement, named the accused and provided probable cause. Probable cause is defined as an "apparent state of facts found to exist upon reasonable intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime."<sup>122</sup>

What the judgment does not reference is that on April 9, a day after the Court received the objection by FedEx, a directive from the President of the Objections Chamber was sent to the Prosecutor. The directive stated, "In the matter mentioned above, a complaint against your decision not to engage of February 15, 2015 has been received at the Federal Criminal Court. You are requested to furnish the Federal Criminal Court right away with the records established in the abovementioned matter (including documents of receipt) with an index of the records."<sup>123</sup> The Court's recital of facts came from the record of the Prosecutor's investigation and not from the victims, which the Court clearly noted after citing the facts of the case by stating in parenthesis (case files, box section 3+act. 1.1). In

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<sup>118</sup> Swiss Prosecutor's Report on War Crimes in Hawai'i, dated February 3, 2015 (English translation), available at [http://hawaiiankingdom.org/pdf/Prosec\\_Rep\\_2\\_3\\_15\\_Eng\\_redacted.pdf](http://hawaiiankingdom.org/pdf/Prosec_Rep_2_3_15_Eng_redacted.pdf).

<sup>119</sup> The objection was sent off from Honolulu by FedEx on April 1, one day prior to the close of the ten-day period, but it did not reach the Objections Chamber until April 8. Under Swiss procedure, the Courts can only accept deliveries of private couriers, *i.e.* FedEx, on the date it was delivered and not the date sent as it would if it was sent via the Swiss postal service or a diplomatic representative in a foreign country. The Swiss Federal Criminal Court Objections Chamber, in its decision, cited A & B., Ltd. vs. Office of the Federal Attorney General, reference no. BB.2012.155-156 (October 31, 2012), as the basis for its rationale.

<sup>120</sup> DR. VIVIENNE O'CONNOR, *Practitioner's Guide: Common Law and Civil Law Traditions*, INPROL 26 (March 2012), available at <http://www2.fjc.gov/sites/default/files/2015/Common%20and%20Civil%20Law%20Traditions.pdf>.

<sup>121</sup> *Commonwealth v. Caracciola*, 409 Mass. 648, 650 (1991).

<sup>122</sup> See BLACK'S LAW, at 1201.

<sup>123</sup> Directive from President of Objections Chamber to Prosecutor, April 9, 2015, available at [http://hawaiiankingdom.org/pdf/FCC\\_Ltr\\_4\\_9\\_15\\_redacted.pdf](http://hawaiiankingdom.org/pdf/FCC_Ltr_4_9_15_redacted.pdf).

other words, the Prosecutor was prepared to pursue written charges, but decided not to because the United States claimed it annexed Hawai'i by legislation.

The purpose of criminal investigations is to collect facts that aim to identify and locate the guilty parties and to provide evidence of their guilt.<sup>124</sup> It is important to keep in mind that the time line is a procedural matter and that it did not diminish the facts of the case. A simple remedy would be to re-file a second complaint with the Attorney General and cite the evidence that is already in the possession of the Prosecutor. Here follows the English translation from German of the Court's decision.

"The Objections Chamber states:

-that on December 22, 2014 the former [diplomat], introduced a report by David Keanu Sai (henceforth "Sai") of December 7, 2014 to the Office of the Federal Attorney General, which stated that war crimes had been committed in Hawaii;

-that according to this report, Sai suspects the US-American authorities of committing war crimes and pillaging by way of the unlawful levying of taxes, since all locally established authorities are said to be unconstitutional according to Hawaiian Kingdom law;

-that by way of a letter dated January 21, 2015, [Unnamed Swiss citizen] (henceforth "[the Swiss citizen]") and his representative Sai made a criminal complaint with the Office of the Federal Attorney General, stating that [the Swiss] was a victim of a war crime according to Art. 115 StPO, because during the years 2006-2007 and 2011-2013, he had paid taxes to US-American authorities in Hawaii without justification, and that [the Swiss citizen], in addition, is the victim of fraud, committed by the State of Hawaii, because together with his wife he wanted to acquire a real estate property, which however on the basis of the lacking legitimacy of the official authorities of Hawaii to transfer the property title, was not possible, for which reason the governor of the State of Hawaii Neil Abercrombie (henceforth "Abercrombie"), Lieutenant Shan Tsutsui (henceforth "Tsutsui"), the director of the Department of Taxation Frederik Pablo (henceforth "Pablo") and his deputy Joshua Wisch (henceforth "Wisch") are to be held criminally accountable for the pillaging of [the Swiss citizens's] private property and for fraud;

-that, in addition, by way of a letter dated January 22, 2015, Sai, in the name of Kale Kepekaio Gumapac (henceforth "Gumapac") contacted the office of the Federal Attorney General and requested that criminal proceedings against Josef Ackermann (henceforth "Ackermann"), the former CEO of Deutsche Bank National Trust Company (henceforth "Deutsche Bank") be opened and in this connection invoked rights deriving from Art. 1 of the friendship treaty between the Swiss Confederation and the then Hawaiian Kingdom of July 20, 1864, which has not been cancelled; that this complaint arose from a civil dispute between Gumapac and Deutsche Bank; that Gumapac was the owner of a property on Hawaii and a mortgagee of Deutsche Bank; that however the title of property, due to the illegal annexation of the Kingdom of Hawaii, was null and void, since

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<sup>124</sup> CHARLES E. O'HARA, FUNDAMENTALS OF CRIMINAL INVESTIGATION 5 (2nd ed. 1970).

the local US-American notaries were not empowered to transfer title; that Deutsche Bank did not recognize this fact and that it had foreclosed on Gumapac's house to cover the mortgage debt, instead of claiming its rights stemming from a "title insurance;" that the bank therefore pillaged Gumapac's house according to the international laws of war (case files, box section 3 and 5);

-that the office of the Federal Attorney General on February 3, 2015 decreed a decision of non-acceptance of the criminal complaints and civil suits against Ackermann, Abercrombie, Tsutsui, Pablo and Wisch on account of war crimes allegedly committed in Hawaii between 2006 and 2013 (case files, box section 3 + act. 1.1);

-that Gumapac and [the Swiss citizen] introduced, in opposition to this, an objection on March 31, 2015 to the Objections Chamber of the Federal Criminal Court and accordingly requested the cancellation of the decision of non-acceptance, and the carrying out of the criminal proceedings against the defendants indicated by them (act. 1)."<sup>125</sup>

The recital of these facts and the naming of State of Hawai'i officials, as alleged war criminals, should be alarming to the State of Hawai'i. If Hawai'i were a part of the United States there would be no grounds for the allegation of war crimes; and the naming of State of Hawai'i officials, being government officials of the United States, would be a direct act of intervention in the internal affairs of the United States on the part of Switzerland, and consequently a violation of the 1850 U.S.-Swiss treaty<sup>126</sup> and international law. Additionally, the naming of the CEO of Deutsche Bank should also be alarming to other lending institutions, *e.g.* First Hawaiian Bank, who have also committed war crimes of pillaging through unlawful foreclosures.

Furthermore, the Swiss Court also acknowledged that the 1864 treaty between the Hawaiian Kingdom and Switzerland was not cancelled. This is a significant concession because since a treaty is the highest source of international law, it is also an agreement between two or more sovereign states. This is another indication that the Court does not recognize Hawai'i as part of the United States, because if it were annexed under international law, the Swiss treaty would have become void. All "treaties concluded between two States become void through the extinction of one of the contracting parties."<sup>127</sup> According to Hyde, "When a state relinquishes its life as such through incorporation into, or absorption by, another state, the treaties of the former are believed to be automatically terminated."<sup>128</sup> Therefore, by acknowledging that the Hawaiian-Swiss treaty was not canceled is tantamount to acknowledging the continuity of the Hawaiian Kingdom as a state and treaty partner.

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<sup>125</sup> See Gumapac, et al. v. Office of Federal Attorney General, English translation.

<sup>126</sup> 11 U.S. Stat. 587; Treaty Series 353.

<sup>127</sup> See OPPENHEIM, at 851.

<sup>128</sup> Charles Cheney Hyde, *The Termination of the Treaties of a State in Consequence of its Absorption by Another—The Position of the United States*, 26 AM. J. INT'L L. 133 (1932).

Along with the Swiss proceedings, a war crime complaint has also been filed with the Canadian authorities alleging destruction of property on Mauna Kea by the construction of telescopes.<sup>129</sup> Additional complaints are planned to be filed with the authorities of other countries, all of which have similar war crime statutes as the Swiss. Prior to the Swiss proceedings, complaints against State of Hawai'i judges and mortgage lenders were also filed with the Prosecutor of the International Criminal Court in The Hague, Netherlands.<sup>130</sup> Countries that have similar war crime statutes as Switzerland are also state parties to the Rome Statute of the International Criminal Court, which provides that primary responsibilities for the prosecution for war crimes are with the member states, while the International Criminal Court has complimentary jurisdiction.<sup>131</sup> The International Criminal Court will prosecute if states are unwilling or unable to prosecute themselves.

Compliance with the law of occupation and the administration of Hawaiian Kingdom law will remedy the blatant violations of international law and the large-scale commission of war crimes that would appear to be part of a systematic plan or policy, whether by chance or design. As the State of Hawai'i is the product of an unlawful act, it cannot claim any powers or rights as a government—*ex injuria jus non oritur* (illegal acts cannot create law). It is an Armed Force, whose actions are limited by the laws and customs of war on land. The fact that the State of Hawai'i has acted as if it were a government is why it is in the dire situation it is in now. The remedy for the State of Hawai'i is to be a legitimate government, and the only legitimate government during occupations is a Military Government.

## REMEDIAL PRESCRIPTION

In decision theory, a negative-sum game is where everyone loses. Any decision from a loss can only have the effect of a loss—a lose-lose situation. The State of Hawai'i is presently operating from a position of no lawful authority, and everything that it has done or that it will do is unlawful. There can be no fruit from a poisonous tree. The rapidly growing knowledge and awareness of the prolonged occupation of Hawai'i has the effect of causing the State of Hawai'i to speedily descend and crash. The State of Hawai'i has found itself in a mammoth negative-sum game. In order to stave off the inevitable, the *acting* Government and the State of Hawai'i must cooperate so that positive-sums are realized. The laws and customs of war during occupation provide the legal basis for the State of Hawai'i to realize positive-sums, which the *acting* Government has been adhering to since its inception in 1996.

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<sup>129</sup> KITV News, *TMT protesters in Canada file formal war crime*, available at

<http://www.kitv.com/news/tmt-protesters-in-canada-file-formal-war-crimes/33066402>.

<sup>130</sup> Hawaiian Kingdom Blog, *International Criminal Court to Consider Alleged War Crimes Committed by State of Hawai'i Officials, Judges, Banks and Attorneys*, available at

<http://hawaiiankingdom.org/blog/international-criminal-court-to-consider-alleged-war-crimes-committed-by-state-of-hawaii-officials-judges-banks-and-attorneys/>.

<sup>131</sup> Rome Statute, International Criminal Court, preamble, “the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions.”



Critical to the administration of Hawaiian law is the establishment of Military Government, which is “defined as the supreme authority exercised by an armed occupying force over the lands, properties, and inhabitants of an enemy, allied, or domestic territory.”<sup>132</sup> The establishment of a Military Government is not limited to the U.S. military, but to any Armed Force that is in effective control of occupied territory. U.S. Army Field Manual FM 27-5 provides that an “armed force in territory other than that of [of the occupied state] has the duty of establishing CA/MG [civil affairs/military government] when the government of such territory is absent or unable to function properly.”<sup>133</sup> What distinguishes the U.S. military stationed in the Hawaiian Islands from the State of Hawai‘i in light of the laws and customs of war during occupation, is that the State of Hawai‘i, as an Armed Force, is in effective control of the majority of Hawaiian territory. U.S. military sites number 118 that span 230,929 acres of the Hawaiian Islands, which is 20% of the total acreage of Hawaiian territory.<sup>134</sup>

As an Armed Force whose allegiance is to the occupier, the State of Hawai‘i has no choice but to establish itself as a Military Government, which is allowable under the laws and customs of war during occupation. To do so, would prevent the collapse of the State of Hawai‘i that would no doubt lead to an economic catastrophe with devastating effect on the U.S. market and the global economy. Military Government is empowered under the laws and customs of war during occupation to provisionally serve as the administrator of the “laws in force in the country,” which includes the “decree” of the *acting* Government in accordance with Article 43. Without the decree of the *acting* Government all commercial entities created by the State of Hawai‘i, *e.g.* corporations and partnerships, and all conveyances of real estate would simply evaporate. Therefore, it is crucial for the Military Government to work in tandem with the *acting* Government to ensure the lawfulness of its actions for not only the present, but also for the future maintenance of Hawai‘i’s economy.

The proclamation for the establishment of a Military Government would be done in like fashion to the declaration of martial law for the Hawaiian Islands from December 7, 1941 to April 4, 1943. Governor Joseph Poindexter and Lieutenant General Walter Short relied on section 67 of the 1900 Territorial Act (48 U.S.C. §532) as the basis to declare martial law under a Military Government headed by General Short as the Military Governor, being appointed by Poindexter.<sup>135</sup> The Proclamation, however, required the prior approval

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<sup>132</sup> United States Army and Navy Manual of Civil Affairs Military Government, Army Field Manual FM 27-5, Navy Manual OPNAV P22-1115, 2-3 (October 1947), *available at* [http://www.loc.gov/rr/frd/Military\\_Law/pdf/FM-27-5-1947.pdf](http://www.loc.gov/rr/frd/Military_Law/pdf/FM-27-5-1947.pdf). Appendix VI.

<sup>133</sup> *Id.*, at 4.

<sup>134</sup> See U.S. Department of Defense’s Base Structure Report (2012), *available at* <http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf>.

<sup>135</sup> §67. Enforcement of law — That the governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Territory of Hawaii, or summon the posse comitatus, or call out the militia of the Territory to prevent or suppress lawless violence, invasion, insurrection, or rebellion in said Territory, and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privilege of the writ of habeas corpus, or place the Territory, or any part thereof, under martial law until communication can be had with the President and his decision thereon made known.

of President Franklin D. Roosevelt, since the Governor of the Territory of Hawai'i was a Presidential appointment. When the Armed Force was transformed from Territory to the State of Hawai'i in 1959, section 67 was superseded by Article V, section 5 of the State of Hawai'i Constitution, which gives the Governor full and complete authorization to declare martial law without the prior approval of the President. Section 5 provides, "The governor shall be commander in chief of the armed forces of the State and may call out such forces to execute the laws, suppress or prevent insurrection or lawless violence or repel invasion."

The fundamental difference between Martial Law and Military Government is that the former is instituted within domestic territory when the military supersedes the civil authority on the grounds of self-preservation during a foreign invasion, while the latter is instituted in foreign territory when the occupied state's government ceases to operate as a result of an armed conflict. Military Government "derives its authority from the customs of war, and not the municipal law."<sup>136</sup> Its functions, however, are the same except for the venue.

"Military government is exercised when an armed force has occupied such territory, whether by force or agreement, and has substituted its authority for that of the sovereign or previous government. The right of control passes to the occupying force limited only by the rules of international law and established customs of war."<sup>137</sup>

There is no question as to the authority of the Governor to declare the establishment of a Military Government, but there will be questions as to the authority of the individual himself if he is an alleged war criminal. Unlike former Governor Abercrombie, Governor David Ige is not currently under criminal investigation for war crimes. The filing of the second complaint with the Swiss authorities is pending, which does explicitly name Governor Ige, the new Director of Taxation, Maria E. Zielinski, and Deputy Director, Joseph K. Kim. Another complaint for pillaging is also pending to be filed by a New Zealand citizen with the New Zealand Ministry of Justice in Wellington, which has a similar war crime statute as Switzerland. Before establishing a Military Government, Governor Ige has to ensure that he is not the subject of a criminal investigation, which would violate the clean hands doctrine. He cannot be perceived as acting in bad faith. In order to do just he must be just.

In order to transform the State of Hawai'i into a Military Government, the Governor will need to decree, by Proclamation, the establishment of Military Government in accordance with section 28 of FM 27-5. Central to the proclamation is the administration of Hawaiian Kingdom law in accordance with Article 43 to include the decree of the *acting* Government of October 10, 2014. Additionally, the proclamation will also decree that all State of Hawai'i judicial and executive officers and employees remain in operation with the exception of the legislative bodies to include the Legislature and County Councils. This reasoning is because "since supreme legislative power is vested in the military

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<sup>136</sup> WILLIAM E. BIRKHIMER, *MILITARY GOVERNMENT AND MARTIAL LAW* 53 (3rd ed. 1914).

<sup>137</sup> See FM 27-5, at 3.



governor, existing legislative bodies will usually be suspended.”<sup>138</sup> The Military Government will have to conform to the laws and customs of war during occupation, international humanitarian law, and FM 27-5—*United States Army and Navy Manual of Civil Affairs Military Government*.

The Proclamation, however, would not have the effect of absolving criminal responsibility by State of Hawai'i officials for war crimes, but it will mitigate them. The commission of war crimes prior to the Proclamation can be dealt with through restitution and reparations made to the victims. After the Proclamation, however, the Military Government has the duty to prevent and to prosecute war crimes under the laws and customs of war during occupation.

## CONCLUSION

The root cause for putting the State of Hawai'i into this dire situation is the deliberate and intentional failure of the United States to establish a Military Government to administer the laws of the Hawaiian Kingdom in accordance with Article 43. The United States' creation and maintenance of Armed Forces since 1893, which included the Provisional Government (1893-1894), Republic of Hawai'i (1894-1900), Territory of Hawai'i (1900-1959), and presently the State of Hawai'i, has worsened the situation today and placed Hawai'i, and its residents, in a position of catastrophic proportions. Thus, this is a race against time. If the second war crimes complaint is filed with the Swiss authorities to reinstate the prosecution of war crimes committed by members of the State of Hawai'i then the world-at-large will naturally conclude what is already been stated in this report.

In this report, the author has laid out the overarching themes that warrant and compel the State of Hawai'i to transform itself into a Military Government, not only its own survival, but for the survival of Hawai'i. The first Armed Force created by the United States in 1893 was comprised of insurgents who set a course to commit the high crime of treason for self-gain and greed. The current Armed Force, the State of Hawai'i, however, is not comprised of insurgents, but rather people of Hawai'i who were led to believe, through *Americanization*, that they are an incorporated territory of the United States and that the State of Hawai'i is a *bona fide* government.

We are at a stage where no one can deny the true history of this country. People are becoming aware of their rights and the right to hold people accountable for the violation of these rights. These human rights cannot be dismissed without incurring criminal liability. The Governor of the State of Hawai'i has no choice but to establish a Military Government and begin to comply with the laws and customs of war during occupation. It is not only his duty, but it is his moral obligation to the people of Hawai'i.

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<sup>138</sup> See FM 27-5, at 11.

Memorandum for Ka Pouhana, CEO  
of the Office of Hawaiian Affairs regarding  
Hawai‘i as an Independent State and the Impact  
it has on the Office of Hawaiian Affairs

D. Keanu Sai, Ph.D.  
May 27, 2014

The views expressed in this paper are those of the author and do not necessarily reflect those of Ka Pouhana or the Office of Hawaiian Affairs.

## 1. Introduction

At the request of Ka Pouhana, CEO of the Office of the Hawaiian Affairs (OHA), this memorandum addresses Hawai‘i as an independent state and its impact on OHA. My qualifications for providing this analysis stems from my doctoral research in political science specializing in international relations and public law regarding Hawai‘i’s legal status under international law, my law review articles on the subject of Hawai‘i’s sovereignty, and my experience as lead agent representing Hawai‘i in international arbitral proceedings before the Permanent Court of Arbitration in The Hague, Netherlands (**Appendix I**).

Since the Permanent Court of Arbitration’s *dictum* in *Larsen v. Hawaiian Kingdom*, 119 Int’l L. Rep. 566, 581 (2001), where the Court verified the Hawaiian Kingdom to have been an independent state in the nineteenth century, there are substantial legal questions concerning OHA’s involvement with the Native Hawaiian Roll Commission’s project of Kana‘iolowalu pursuant to Act 195. In light of Hawai‘i’s legal status under international law, OHA may have incurred criminal liability under both U.S. federal law and international law under what is called “war crimes” as defined under Title 18 United States Code. §2441 states:

(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.

...

(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.

Grave breaches in the Geneva Conventions also apply to territory that has been occupied, even if it took place without resistance.<sup>1</sup> What this means is that “war” is not a prerequisite to commit a war crime. Section 499 of the U.S. Army Field Manual 27-10 also defines a war crime as “the technical expression for a violation of the law of war by any person or persons, military or civilian. Every violation of the law of war is a war crime,” which includes not only the Geneva Conventions, but also the Hague Conventions of 1907. Violations of both the Hague and Geneva Conventions have been listed as war crimes under the jurisdiction of the International Criminal Court, which prosecutes individuals, not states, for the commission of war crimes.

It should be noted that this memorandum is timely given the recent actions taken by the Trustees of OHA with respect to Ka Pouhana’s letter dated May 5, 2014 to Secretary of

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<sup>1</sup> Article 2, *Geneva Convention relative the Protection of Civilian Persons in Time of War*, IV, 6.3 U.S.T.

State John Kerry that sought clarity as to the status of the Hawai‘i under international law and whether or not OHA’s Trustees and staff have incurred criminal liability. Since the Board meeting of May 19, 2014, the Trustees are now in support of Ka Pouhana’s questions to the Secretary of State and agree that there is merit to the questions. Ka Pouhana’s four questions posed to the Secretary of State were:

- First, does the Hawaiian Kingdom, as a sovereign independent state, continue to exist as a subject of international law?
- Second, if the Hawaiian Kingdom continues to exist, do the sole-executive agreements bind the United States today?
- Third, if the Hawaiian Kingdom continues to exist and the sole-executive agreements are binding on the United States, what effect would such a conclusion have on United States domestic legislation, such as the Hawai‘i Statehood Act, 73 Stat. 4, and Act 195?
- Fourth, if the Hawaiian Kingdom continues to exist and the sole-executive agreements are binding on the United States, have the members of the Native Hawaiian Roll Commission, Trustees and staff of the Office of Hawaiian Affairs incurred criminal liability under international law?

It was upon my advice that Ka Pouhana carefully framed each of the questions to the Secretary of State, and the rule of thumb is to never ask a question you don’t know the answer to or at least have an answer to. The first question, which specifically addresses whether the Hawaiian Kingdom continues to exist, is based on a rule of international law called the presumption of continuity of an established state. If the Hawaiian Kingdom was an established state as declared by the Permanent Court of Arbitration, then it is presumed to still exist unless there is overwhelming evidence to the contrary under international law. The difference between an *assumption* and a *presumption* is that the former is a conclusion without facts, and the latter is a conclusion based on facts. A presumption, however, is only rebuttable with “legally relevant facts” that would have terminated the continuity of the Hawaiian state. This rule of law is similar in operation to the presumption of innocence, whereby the accused does not have the burden to prove their innocence, because it is already presumed, but rather the burden to prove that the individual is not innocent is on the prosecution. In other words, Ka Pouhana was not seeking to prove the Hawaiian Kingdom continues to exist, because it is already presumed, but rather he was seeking “legally relevant facts” from the Secretary of State that would show that the United States effectively extinguished the Hawaiian Kingdom under international law.

In addition to the presentation at the William S. Richardson School of Law on April 17, 2014, Ka Pouhana’s questions also stemmed from a memorandum of the U.S. Department of Justice’s Office of Legal Counsel dated October 4, 1988 that addressed the 1898 annexation of the Hawaiian Islands by a joint resolution of Congress.<sup>2</sup> Douglas

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<sup>2</sup> Douglas Kmiec, *Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea*, 12 Op. Off. Legal Counsel 238 (1988).

Kmiec, Acting Assistant Attorney General, authored the memorandum for Abraham D. Sofaer, legal advisor to the U.S. Department of State. After covering the scope of Congressional authority, which is limited to U.S. territory, and the objections made by members of the Congress, Kmiec concluded,

“Notwithstanding these constitutional objections, Congress approved the joint resolution and President McKinley signed the measure in 1898. Nevertheless, whether this action demonstrates the constitutional power of Congress to acquire territory is certainly questionable. ... It is therefore 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.”<sup>3</sup>

The United States very own Attorney General’s office in 1988 clearly undermined the claim of United States sovereignty over the Hawaiian Islands. What followed the joint resolution were other acts of Congress establishing the Territory of Hawai’i government in 1900, and later a State of Hawai’i government in 1959. If it were unclear which constitutional power Congress exercised when it acquired Hawaii by a joint resolution, it would also be unclear which constitutional power Congress exercised when it created the Territorial and State governments. Sovereignty of an established state is never in abeyance or in suspension. The sovereignty is either vested in the Hawaiian state itself or in the United States as its successor. If the Attorney General’s Office of Legal Counsel is “unclear” as to the authority of Congress, it cannot be construed to have extinguished the Hawaiian Kingdom’s continuity under international law, and, therefore, the presumption of continuity would remain with the Hawaiian Kingdom as an independent sovereign state.

The purpose of the memorandum will be to assess OHA’s actions, as a government agency, servicing the Native Hawaiian community in light of public international law. The memorandum begins by providing a comprehensive understanding of the elements of statehood under public international law, where there is a strong presumption of continuity for an established state, and the legal status of Hawai’i as an independent state despite its government being illegally overthrown by the United States in 1893. The memorandum will then specifically examine the actions taken by OHA in servicing the Native Hawaiian community, and the risk of criminal liability under international law that may have resulted from these actions. The memorandum concludes by exploring proposed actions to be taken by OHA in order to mitigate past acts that appear to be criminal, and also to prevent acts that could be criminal in the future. I am also providing six copies of relevant documents identified as Appendix I-VII.

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<sup>3</sup> *Id.*, at 252.

## 2. International Law and States

International law, by definition, is law “between” nations or states, as opposed to national or municipal law that exists “within” nations or states. One definition of international law “may be defined as the body of rules and principles of action which are binding upon civilized states in their relations with one another.”<sup>4</sup> Unlike constitutional machineries you find within states that create laws, *e.g.* a legislative body, none exists at the international level. A common misunderstanding, however, is that the United Nations General Assembly is a legislative body that creates international law. It doesn’t. The General Assembly is primarily a forum for discussing matters between member states. As Professor Crawford explains, “the General Assembly is not a legislature.”<sup>5</sup>

Since international laws are the rules and principles that govern the relations between states, the primary source of international law would be agreements or treaties. An accepted definition as to the sources of international law stems from the Statute of the International Court of Justice. According to Article 38 of the Statute, the Court shall apply the following sources of law, ranked in order of precedence:

- a. International conventions (treaties), whether general or particular, establishing rules expressly recognized by the contesting states;
- b. International custom, as evidence of a general practice accepted as law;
- c. The general principles of law recognized by civilized nations;
- d. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.<sup>6</sup>

Although there is no agreed upon definition of a state in international law,<sup>7</sup> there is an accepted understanding regarding the criteria of statehood. The basic criteria is provided in Article 1 of the *Montevideo Convention on the Rights and Duties of States* (1933): “The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States.”<sup>8</sup> To these four criteria, Crawford adds independence and sovereignty. Judge Huber in the *Island of Palmas* arbitration stated, “Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State.”<sup>9</sup> According to Crawford, “Since the two meanings

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<sup>4</sup> J.L. BRIERLY, *THE LAW OF NATIONS* 1 (6<sup>th</sup> ed., 1963).

<sup>5</sup> JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 113 (2<sup>nd</sup> ed. 2006).

<sup>6</sup> Statute of the International Court of Justice can be accessed online at: <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0> (last accessed May 22, 2014).

<sup>7</sup> Crawford cites a number of attempts in defining a state, see CRAWFORD, *supra* note 5, at 31, 37-45.

<sup>8</sup> *Montevideo Convention on Rights and Duties of States*, 165 LNTS 19, signed at Montevideo, December 26, 1933, entered into force December 26, 1934.

<sup>9</sup> *Island of Palmas Case* (1928) 2 RIAA 829, 838.



are distinct, it is better to use the term ‘independence’ to denote the prerequisite for statehood and ‘sovereignty’ the legal incident.”<sup>10</sup>

The United States of America is an example where “thirteen” independent and sovereign states voluntarily relinquished their status under international law to form “one” independent and sovereign state. In the Treaty of Paris (1783), Great Britain recognized the former thirteen colonies as independent states, whereby, Article 1 provides, “His Britannic Majesty acknowledges the said United States, *viz.*, New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free sovereign and Independent States; that he treats with them as such, and for himself his Heirs & Successors, relinquishes all claims to the Government, Propriety, and Territorial Rights of the same and every Part thereof.”<sup>11</sup> Six years later, however, these states decided to transfer their independence and sovereignty, as well as the capacity to enter into foreign relations, to a federal government under the constitution of the United States of America. From 1789, these states were considered component states of a federal union and were thereafter represented in international relations by the federal government of the United States of America. When distinguishing an independent state from a non-independent State within a federal union, the lower case “s” is used for the former, while an upper case “S” is used for the latter, *i.e.* Hawaiian state, State of Hawai‘i.

### **3. State, Government and Sovereignty**

Sovereignty in the nineteenth century was understood to be of two forms—internal and external, and defined in Henry Wheaton’s renowned 1836 treatise of international law.

Sovereignty is the supreme power by which a State is governed. This supreme power may be exercised either internally or externally. Internal sovereignty is that which is inherent in the people of any State, or vested in its ruler, by its municipal constitution or fundamental laws... External sovereignty consists in the independence of one political society, in respect to all other political societies. It is by the exercise of this branch of sovereignty that the international relations of one political society are maintained, in peace and in war, with all other political societies.<sup>12</sup>

The terms state, government and sovereignty are not synonymous in international law, but rather are distinct from each other. A state is a “body of people occupying a definite territory and politically organized,”<sup>13</sup> under one government, being the agency of the state,”<sup>14</sup> that exercises sovereignty, which is the “supreme, absolute, and uncontrollable

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<sup>10</sup> See CRAWFORD, *supra* note 5, at 89.

<sup>11</sup> See transcript of Treaty of Paris (1783), available online at: <http://www.ourdocuments.gov/doc.php?doc=6&page=transcript> (last accessed May 22, 2014).

<sup>12</sup> HENRY WHEATON, ELEMENTS OF INTERNATIONAL LAW 27 (1936).

<sup>13</sup> BLACK’S LAW DICTIONARY 1407 (6<sup>th</sup> ed. 1990).

<sup>14</sup> *Id.* at 695.

power by which an independent state is governed.”<sup>15</sup> In other words, sovereignty, both internal and external, is an attribute of an independent state, while the government exercising sovereignty is the state’s physical agent. In the sixteenth century, French jurist and political philosopher Jean Bodin stressed the importance that “a clear distinction be made between the form of the state, and the form of the government, which is merely the machinery of policing the state.”<sup>16</sup> Nineteenth century political philosopher Professor Hank Hoffman also emphasizes that a government “is not a State any more than a man’s words are the man himself,” but “is simply an expression of the State, an agent for putting into execution the will of the State.”<sup>17</sup> Professor Quincy Wright, a twentieth century American political scientist, also concluded that, “international law distinguishes between a government and the state it governs.”<sup>18</sup> Therefore, a sovereign state would continue to exist despite its government being overthrown by military force. Two contemporary examples illustrate this principle of international law, the overthrow of the Taliban (Afghanistan) in 2001 and Saddam Hussein (Iraq) in 2003, whereby the former has been a recognized sovereign state since 1919,<sup>19</sup> and the latter since 1932.<sup>20</sup>

With regard to the recognition of external sovereignty, there are two aspects—recognition of sovereignty and the recognition of government. External sovereignty cannot be recognized without the initial recognition of the government representing the state, and once recognition of sovereignty is granted, Professor Lassa Oppenheim asserts that it “is incapable of withdrawal”<sup>21</sup> by the recognizing states. Professor Georg Schwarzenberger also asserts, that “recognition estops [precludes] the State which has recognized the title from contesting its validity at any future time.”<sup>22</sup> Therefore, recognition of a sovereign state is a political act with legal consequences.<sup>23</sup>

The recognition of governments, though, which could change form through constitutional or revolutionary means subsequent to the recognition of state sovereignty, is a purely political act and can be retracted by another government for strictly political reasons. Cuba is a clear example of this principle, where the U.S. withdrew the recognition of Cuba’s government under President Fidel Castro, but at the same time this political act did not mean Cuba ceased to exist as a sovereign state. In other words, sovereignty of an independent state, once established, is not dependent upon the political will of other governments, but rather the objective rules of international law. According to Wheaton:

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<sup>15</sup> *Id.* at 1396.

<sup>16</sup> JEAN BODIN, *SIX BOOKS OF THE COMMONWEALTH* 56 (1955).

<sup>17</sup> FRANK SARGENT HOFFMAN, *THE SPHERE OF THE STATE OR THE PEOPLE AS A BODY-POLITIC* 19 (1894).

<sup>18</sup> Quincy Wright, *The Status of Germany and the Peace Proclamation*, 46(2) AM. J. INT’L L. 299, 307 (Apr. 1952).

<sup>19</sup> Manley O. Hudson, *Afghanistan, Ecuador, and the Soviet Union in the League of Nations*, 29 AM. J. INT’L L. 109, 110 (1935).

<sup>20</sup> Manley O. Hudson, *The Admission of Iraq to Membership in the League of Nations*, 27 AM. J. INT’L L. 133 (1933).

<sup>21</sup> LASSA OPPENHEIM, *INTERNATIONAL LAW* 137 (3d ed. 1920).

<sup>22</sup> Georg, Schwarzenberger, *Title to Territory: Response to a Challenge*, 51(2) AM. J. INT’L L. 308, 316 (1957).

<sup>23</sup> GERHARD VON GLAHN, *LAW AMONG NATIONS* 85 (6<sup>th</sup> ed. 1992).

The recognition of any State by other States, and its admission into the general society of nations, may depend...upon its internal constitution or form of government, or the choice it may make of its rulers. But whatever be its internal constitution, or form of government, or whoever be its ruler, or even if it be distracted with anarchy, through a violent contest for the government between different parties among the people, the State still subsists in contemplation of law, until its sovereignty is completely extinguished by the final dissolution of the social tie, or by some other cause which puts an end to the being of the State.<sup>24</sup>

#### **4. Hawaiian Statehood under International Law**

When the United Kingdom and France formally recognized the Hawaiian Kingdom as an “independent state” at the Court of London on November 28, 1843,<sup>25</sup> and later formally recognized by the United States of America on July 6, 1844 by letter to the Hawaiian government from Secretary of State John C. Calhoun,<sup>26</sup> the Hawaiian state was admitted into the Family of Nations. Since its recognition, the Hawaiian Kingdom entered into extensive treaty relations with a variety of states establishing diplomatic relations and trade agreements.<sup>27</sup> Additionally, the Hawaiian Kingdom became a full member of the Universal Postal Union on January 1, 1882.

As an independent state, the Hawaiian Kingdom, along with other independent states within the Family of Nations, obtained “international personality” and, as such, all independent states “are regarded equal, and the rights of each not deemed to be dependent upon the possession of power to insure their enforcement.”<sup>28</sup> According to Professor Dickinson, the

“principle of equality has an important legal significance in the modern law of nations. It is the expression of two important legal principles. The first of these may be called the equal protection of the law or equality

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<sup>24</sup> See WHEATON, *supra* note 12, at 15.

<sup>25</sup> The Joint Declaration can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%202.pdf> (last accessed May 22, 2014).

<sup>26</sup> The Letter can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%203.pdf> (last accessed May 22, 2014).

<sup>27</sup> The Hawaiian Kingdom entered into treaties with Austria-Hungary, June 18, 1875; Belgium, October 4, 1862; Bremen (succeeded by Germany), March 27, 1854; Denmark, October 19, 1846; France, September 8, 1858; French Tahiti, November 24, 1853; Germany, March 25, 1879; New South Wales (now Australia), March 10, 1874; Hamburg (succeeded by Germany), January 8, 1848; Italy, July 22, 1863; Japan, August 19, 1871, January 28, 1886; Netherlands, October 16, 1862; Portugal, May 5, 1882; Russia, June 19, 1869; Samoa, March 20, 1887; Spain, October 9, 1863; Sweden-Norway (now separate States), April 5, 1855; and Switzerland, July 20, 1864; the United Kingdom of Great Britain and Northern Ireland) March 26, 1846; and the United States of America, December 20, 1849, January 13, 1875, September 11, 1883, December 6, 1884. These treaties can be accessed online at: [http://hawaiiankingdom.org/UN\\_Protest\\_Annexes.shtml](http://hawaiiankingdom.org/UN_Protest_Annexes.shtml) (last accessed May 22, 2014).

<sup>28</sup> CHARLES CHENEY HYDE, INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 20 (Vol. I, 1922).

before the law. ...The second principle is usually described as equality of rights and obligations or more often as equality of rights.”<sup>29</sup>

International personality is defined as “the capacity to be bearer of rights and duties under international law.”<sup>30</sup> Crawford, however, distinguishes between “general” and “special” legal personality. The former “arises against the world (*erga omnes*),” and the latter “binds only consenting States.”<sup>31</sup> As an independent state, the Hawaiian Kingdom, like the United States of America, has both “general” legal personality under international law as well as “special” legal personality under the 1893 executive agreements that bind both the Hawaiian Kingdom and the United States to certain duties and obligations as hereinafter described.

The consequences of statehood at that time were several. States were deemed to be sovereign not only in a descriptive sense, but were also regarded as being “entitled” to sovereignty. This entailed, among other things, the rights to free choice of government, territorial inviolability, self-preservation, free development of natural resources, of acquisition and of absolute jurisdiction over all persons and things within the territory of the state.<sup>32</sup> It was, however, admitted that intervention by another state was permissible in certain prescribed circumstances such as for purposes of self-preservation, for purposes of fulfilling legal engagements, or of opposing wrongdoing. Although intervention was not absolutely prohibited in this regard, it was generally confined as regards the specified justifications. As Professor Hall remarked, “The legality of an intervention must depend on the power of the intervening state to show that its action is sanctioned by some principle which can, and in the particular case does, take precedence of it.”<sup>33</sup> A desire for simple aggrandizement of territory did not fall within these terms, and intervention for purposes of supporting one party in a civil war was often regarded as unlawful.<sup>34</sup> In any case, the right of independence was regarded as so fundamental that any action against it “must be looked upon with disfavor.”<sup>35</sup>

“Governmental authority,” states Crawford, “is the basis for normal inter-State relations; what is an act of a State is defined primarily by reference to its organs of government, legislative, executive or judicial.”<sup>36</sup> On January 17, 1893, Queen Lili‘uokalani, who was constitutionally vested with the “executive power” under Article 31 of the Hawaiian constitution,<sup>37</sup> was unable to apprehend certain insurgents calling themselves the provisional government without armed conflict between United States troops, who were

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<sup>29</sup> EDWIN DEWITT DICKINSON, *THE EQUALITY OF STATES IN INTERNATIONAL LAW* 335 (1920).

<sup>30</sup> SCHWARZENBERGER, *A MANUAL OF INTERNATIONAL LAW* 53 (6<sup>th</sup> ed., 1976).

<sup>31</sup> See CRAWFORD, *supra* note 5, at 30.

<sup>32</sup> ROBERT PHILLIMORE, *COMMENTARIES UPON INTERNATIONAL LAW* 216 (vol. 1, 1879).

<sup>33</sup> WILLIAM EDWARD HALL, *A TREATISE ON INTERNATIONAL LAW* 298 (4<sup>th</sup> ed. 1895).

<sup>34</sup> THOMAS LAWRENCE, *PRINCIPLES OF INTERNATIONAL LAW* 134 (4<sup>th</sup> ed. 1913).

<sup>35</sup> See HALL, *supra* note 33, at 298.

<sup>36</sup> See CRAWFORD, *supra* note 5, at 56.

<sup>37</sup> Hawaiian constitution, art. 31, provides: “The person of the King is inviolable and sacred. His Ministers are responsible. To the King belongs the executive power. All laws that have passed the Legislative Assembly, shall require His Majesty’s signature in order to their validity” The constitution can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%204.pdf> (last accessed May 22, 2014).

illegally landed by the United States Legation to protect the insurgents, and the Hawaiian police force headed by Marshal Charles Wilson. She was forced to temporarily assign her executive power to the President of the United States under threat of war calling for an investigation of its diplomat and military commanders who intervened in the internal affairs of the Hawaiian Kingdom, and, thereafter, restore the government.<sup>38</sup> Upon receipt of the Queen's diplomatic protest, United States President Cleveland initiated an investigation by first withdrawing a treaty, which provided for the cession of Hawaiian territory, from the United States Senate, and appointed a Special Commissioner, James Blount, to travel to the Hawaiian Islands in order to provide reports to the United States Secretary of State Walter Gresham. Blount reported that, "in pursuance of a prearranged plan [between the insurgents, claiming to be a government, and the U.S. Legation], the Government thus established hastened off commissioners to Washington to make a treaty for the purpose of annexing the Hawaiian Islands to the United States."<sup>39</sup>

The investigation concluded that the United States Legation accredited to the Hawaiian Kingdom, together with United States Marines and Naval personnel, were directly responsible for the illegal overthrow of the Hawaiian government with the ultimate goal of transferring the Hawaiian Islands to the United States from an installed puppet government.<sup>40</sup> The President acknowledged that the

"military demonstration upon the soil of Honolulu was of itself an act of war, unless made either with the consent of the Government of Hawai'i 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."<sup>41</sup>

"When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in a manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*."<sup>42</sup>

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<sup>38</sup> The diplomatic protest stated, "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."

<sup>39</sup> United States House of Representatives, 53<sup>rd</sup> Congress, Executive Documents on Affairs in Hawai'i: 1894-95, (Government Printing Office 1895), 587, [hereafter Executive Documents]. Reprinted at 1 HAW. J. L. & POL. 136 (Summer 2004).

<sup>40</sup> *Id.* at 567.

<sup>41</sup> *Id.*, at 451.

<sup>42</sup> *Id.*, at 453.

The investigation also detailed the culpability of the United States government in violating international laws, as well as Hawaiian sovereignty, and concluded it must provide *restitutio in integrum*—restoration to the original situation before the United States intervention occurred on January 16, 1893.

Through executive mediation and *exchange of notes* between the Queen and the new United States Minister Plenipotentiary Albert Willis, assigned to the Hawaiian Islands, settlement for the illegal overthrow of the Hawaiian government was achieved by executive agreement. On the part of the United States, the President committed to restore the government as it stood before the landing of United States troops on January 16, 1893, and, thereafter, on the part of the Hawaiian Kingdom, the Queen committed to grant amnesty to the insurgents and assume all obligations of the self-proclaimed provisional government. Myers explains, “*Exchange of notes* is the most flexible form of a treaty... The exchange consists of an offer and an acceptance... The offering instrument contains a text of the proposed agreement and the acceptance invariably repeats it verbatim, with assent.”<sup>43</sup> According to Garner,

“Agreements in the form of an *exchange of notes* between certain high officials acting on behalf of States, usually their Ministers of Foreign Affairs or diplomatic representatives are numerous... They are employed for a variety of purposes and, like instruments which are designated as ‘treaties’, they may deal with any matter which is a proper subject of international regulation. One of their most common objects is to record the understandings of the parties to a treaty which they have previously entered into; but they may record an entirely new agreement, sometimes one which has been reached as a result of negotiation. While the purpose of an agreement effected by any *exchange of notes* may not differ from that of instruments designated by other names, it is strikingly different in its form from a ‘treaty’ or a ‘convention.’ Unlike a treaty, the relations which it establishes or seeks to establish is recorded, not in a single highly formalized instrument, but in two or more letters usually called ‘notes,’ signed by Ministers or other officials.”<sup>44</sup>

The first executive agreement, by *exchange of notes*, was the temporary and conditional assignment of executive power (police power) from the Queen to the President on January 17, 1893, and the acceptance of the assignment by the President on March 9, 1893 when he initiated the investigation. The second executive agreement, by *exchange of notes*, was the President’s “offer” to restore the *de jure* government on condition that the Queen would commit to grant amnesty to the insurgents on November 13, 1893, and the “acceptance” by the Queen of this condition on December 18, 1893. The two executive agreements are referred to herein as the *Lili‘uokalani assignment* and the *Agreement of restoration*, respectively. Amnesty could only be granted after the Hawaiian government was restored.

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<sup>43</sup> Denys P. Myers, *The Names and Scope of Treaties*, 51 AM. J. INT’L L. 590 (1957).

<sup>44</sup> 29 AM. J. INT’L L., Supplement, 698 (1935).

By virtue of the *Lili'uokalani assignment*, executive power (police power) of the Hawaiian Kingdom is temporarily vested in the President of the United States to faithfully administer Hawaiian Kingdom law, until the Hawaiian Kingdom government (**Appendix II**) is restored pursuant to the *Agreement of restoration*, whereby the executive power is reassigned and thereafter the Monarch, or its successor, to grant amnesty. The failure of Congress to authorize the President to use force in carrying out these agreements did not diminish the validity of the *Lili'uokalani assignment* and the *Agreement of restoration*. Despite over a century of non-compliance, these executive agreements remain binding upon the office of President of the United States to date, and are considered treaties under international law. According to Professor Wright, the President binds “himself and his successors in office by executive agreements.”<sup>45</sup>

President Cleveland failed to follow through in his commitment to administer Hawaiian law and re-instate the *de jure* government as a result of partisan wrangling in the United States Congress. In a deliberate move to further isolate the Hawaiian Kingdom from any assistance by other states and treaty partners and to reinforce and protect the puppet regime installed by United States officials, the Senate and House of Representatives each passed similar resolutions in 1894 strongly warning other states “that any intervention in the political affairs of these islands by any other Government will be regarded as an act unfriendly to the United States.”<sup>46</sup> Although the Hawaiian government was not restored and the country thrown into civil unrest as a result, the continuity of the Hawaiian state was nevertheless maintained.

Five years passed before Cleveland’s presidential successor, William McKinley, entered into a second treaty of cession with the same individuals who participated in the illegal overthrow with the United States legation in 1893, and were now calling themselves the Republic of Hawai’i. This second treaty was signed on June 16, 1897 in Washington, D.C., but would “be taken up immediately upon the convening of Congress next December.”<sup>47</sup>

Queen Lili’uokalani was in the United States at the time of the signing of the treaty and protested the second annexation attempt. While in Washington, D.C., the Queen filed a diplomatic protest with the United States Department of State on June 17, 1897. The Queen stated, in part:

I, Lili’uokalani of Hawai’i, 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

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<sup>45</sup> QUINCY WRIGHT, *THE CONTROL OF FOREIGN RELATIONS*, 235 (1922).

<sup>46</sup> Senate Resolution, May 31, 1894, 53<sup>rd</sup> Congress, 2<sup>nd</sup> Session, vol. 26.

<sup>47</sup> “Hawaiian Treaty to Wait—Senator Morgan Suggests that It Be Taken Up at This Session Without Result.” *The New York Times*, 3 (July 25, 1897).



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.<sup>48</sup>

Hawaiian political organizations in the Islands filed additional protests with the Department of State in Washington, D.C. These organizations were the Men and Women's Hawaiian Patriotic League (Hui Aloha 'Aina), and the Hawaiian Political Association (Hui Kalai'aina).<sup>49</sup> In addition, a petition of 21,269 signatures of Hawaiian subjects and resident aliens protesting annexation was filed with the Senate when it convened in December 1897.<sup>50</sup> As a result of these protests, the Senate was unable to garner enough votes to ratify the so-called treaty. Unable to procure a treaty of cession from the Hawaiian Kingdom government acquiring the Hawaiian Islands as required by international law, Congress unilaterally enacted a *Joint Resolution To provide for annexing the Hawaiian Islands to the United States*, which was signed into law by President McKinley on July 7, 1898 during the Spanish-American War.<sup>51</sup>

Many government officials and constitutional scholars were at a loss in explaining how a joint resolution could have extra-territorial force in annexing Hawai'i, a foreign and sovereign state, because during the 19<sup>th</sup> century there were strict limitations on domestic laws. During the debate in Congress, Representative Thomas H. Ball (D-Texas) characterized the annexation of the Hawaiian state by joint resolution as "a deliberate attempt to do unlawfully that which can not be lawfully done."<sup>52</sup>

The citizenry and residents of the Hawaiian Kingdom also understood the illegality of the joint resolution. On October 20, 1900, the following editorial was published in the Maui News newspaper making reference to statements made by Thomas Clark, a Hawaiian subject. Clark was also a signatory to the 21,269 signature petition against the treaty of annexation that was before the United States Senate.

Thomas Clark, a candidate for Territorial senator from Maui, holds that it was an unconstitutional proceeding on the part of the United States to annex the Islands without a treaty, and that as a matter of fact, the Island[s] are not annexed, and cannot be, and that if the democrats come in to power they will show the thing up in its true light and demonstrate that...the Islands are de facto independent at the present time.<sup>53</sup>

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<sup>48</sup> LILI'UOKALANI, HAWAI'I'S STORY BY HAWAI'I'S QUEEN, 354 (1964); Protest *reprinted in* 1 HAW. J. L. & POL. 227 (Summer 2004).

<sup>49</sup> These protests can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2018.pdf> (last accessed May 22, 2014).

<sup>50</sup> The signature petition can be accessed online at: <http://hawaiiankingdom.org/pdf/Annex%2019.pdf> (last accessed May 22, 2014).

<sup>51</sup> 30 Stat. 750.

<sup>52</sup> 31 CONG. REC. 5975 (1898).

<sup>53</sup> The Maui News article can be accessed online at: <http://hawaiiankingdom.org/blog/?p=189> (last accessed May 22, 2014).

## 5. Hawaiian Statehood and the Presumption of Continuity

In 2001, the Permanent Court of Arbitration in the Netherlands, *Larsen v. Hawaiian Kingdom*, verified the existence of the Hawaiian Kingdom as an independent state. The Court stated, “in the nineteenth century the Hawaiian Kingdom existed as an independent State recognized as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.” Under international law all states have sovereign equality. States have equal rights and duties and are co-equal members of the international community regardless of their economic, social and political differences. Sovereign equality means:

1. States are judicially equal;
2. Each state enjoys the rights inherent in full sovereignty;
3. Each state has the duty to respect the personality of other states;
4. The territorial integrity and political independence of the state are inviolable;
5. Each state has the right freely to choose and develop its own political, social, economic and cultural systems; and
6. Each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other states.

The claim of state continuity on the part of the Hawaiian Kingdom has to be opposed as against a claim by the United States as to its succession. Principles of succession may operate even in cases where continuity is not called into question, such as with the cession of a portion of territory from one state to another, or occasionally in case of unification. Continuity and succession are, in other words, not always mutually exclusive but might operate in tandem. It is evident, furthermore, that the principles of continuity and succession may not actually differ a great deal in terms of their effect.

It is generally held that there are three principles that have some bearing upon the issue of continuity. First, that the continuity of the state is not affected by changes in government even if of a revolutionary nature. Secondly, that continuity is not affected by territorial acquisition or loss, and finally, continuity is not affected by military occupation. Crawford points out that, “There is a strong presumption that the State continues to exist, with its rights and obligations, despite revolutionary changes in government, or despite a period in which there is no, or no effective, government. Belligerent occupation does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”<sup>54</sup>

Each of these principles reflects upon one of the key incidents of statehood—territory, government (legal order) and independence—making clear that the issue of continuity is essentially one concerned with the existence of states: unless one or more of the key constituents of statehood are entirely and permanently lost, state identity will be retained.

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<sup>54</sup> See CRAWFORD, *supra* note 5, at 34.

Their negative formulation, furthermore, implies that there exists a general presumption of continuity. According to Hall, a state retains its identity “so long as the corporate person undergoes no change which essentially modifies it from the point of view of its international relations, and with reference to them it is evident that no change is essential which leaves untouched the capacity of the state to give effect to its general legal obligations or to carry out its special contracts.”<sup>55</sup>

If one were to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains. It might be objected that formally speaking, the survival or otherwise of a state should be regarded as independent of the legitimacy of any claims to its territory on the part of other states. It is commonly recognized that a state does not cease to be such merely in virtue of the existence of legitimate claims over part or parts of its territory. Nevertheless, where those claims comprise the entire territory of the state, as they do in the case of Hawai’i, and when they are accompanied by effective governance to the exclusion of the Hawaiian Kingdom, it is difficult, if not impossible, to separate the two questions. The survival of the Hawaiian Kingdom is premised upon the “legal” basis of present or past United States claims to sovereignty over the Hawaiian Islands.

To sum it up, any claim to state continuity will be dependent upon the establishment of two legal facts: *first*, that the state in question existed as a recognized entity for purposes of international law at some relevant point in history; and, *secondly*, that intervening events have not been such as to deprive it of that status. It should be made very clear, however, that the issue is not simply one of “observable” or “tangible facts,” but more specifically of “legally relevant facts.” It is not a case, in other words, simply of observing how power or control has been exercised in relation to persons or territory, but of determining the scope of “authority,” which is understood as “a legal entitlement to exercise power and control.” Authority differs from mere control by not only being essentially rule governed, but also in virtue of the fact that it is not always entirely dependent upon the exercise of that control.

Under international law, a state who claims to be the successor of another State, when not at war, must take place by cession. Professor Oppenheim explains that, “cession of State territory is the transfer of sovereignty over State territory by the owner-State to another State.”<sup>56</sup> He further states that the “only form in which a cession can be effected is an agreement embodied in a treaty between the ceding and the acquiring State.”<sup>57</sup> The United States only claim to have extinguished the Hawaiian Kingdom is by a joint resolution of annexation passed by its Congress.

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<sup>55</sup> See HALL, *supra* note 33, at 22.

<sup>56</sup> LASSA OPPENHEIM, INTERNATIONAL LAW 499 (vol. 1, 1948).

<sup>57</sup> *Id.*, at 500.

A joint resolution, however, is not a treaty or agreement between two states, but rather an agreement between the House of Representatives and the Senate in Washington, D.C. A joint resolution is a municipal law of the United States whose effect is limited to United States territory. The United States Supreme Court, *The Apollon*, 22 U.S. 362, 370 (1824), affirmatively stated, that the “laws of no nation can justly extend beyond its own territory” for it would be “at variance with the independence and sovereignty of foreign nations” In *U.S. v. Belmont*, 301 U.S. 324, 332 (1937), the Court also stated that, “our Constitution, laws and policies have no extraterritorial operation.” Furthermore, in *United States v. Curtiss-Wright Export Corp.*, (1936), the Court concluded,

“Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens; and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.... [T]he court recognized, and in each of the cases cited [involving the exercise of the sovereign power of the United States] found, the warrant for its conclusions not in the provisions of the Constitution, but in the law of nations.”<sup>58</sup>

When the House of Representatives and the Senate were debating the joint resolution in 1898, the Congressional record clearly showed that even the Representatives and Senators knew the limitation of congressional laws. On June 15, 1898, Congressman Thomas H. Ball (D-Texas) stated,

“The annexation of Hawai‘i by joint resolution is unconstitutional, unnecessary, and unwise. If the first proposition be true, sworn to support the Constitution, we should inquire no further. I challenge not the advocates of Hawaiian annexation, but those who advocate annexation in the form now presented, to show warrant or authority in our organic law for such acquisition of territory. To do so will be not only to subvert the supreme law of the land but to strike down every precedent in our history. ...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.”

And on June 20, 1898, Senator Augustus Bacon (D-Georgia) stated,

“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. If Hawaii was to be annexed, it ought certainly to be annexed by a constitutional method; and if by a constitutional method it can not be annexed, no Senator ought to desire its annexation sufficiently to induce him to give his support to an unconstitutional measure.” Senator Bacon further explained, “Now, a statute is this: A Statute is a rule of conduct

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<sup>58</sup> See *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936).

laid down by the legislative department, which has its effect upon all of those within the jurisdiction. In other words, a statute passed by the Congress of the United States is obligatory upon every person who is a citizen of the United States or a resident therein. A statute can not go outside the jurisdiction of the United States and be binding upon the subjects of another power. It takes the consent of the subjects of the other power, speaking or giving their consent through their duly authorized government, to be bound by a certain thing which is enacted in this country; and therein comes the necessity for a treaty.”

## 6. Hawai‘i under Prolonged Occupation

The Hawaiian Kingdom came under military occupation on August 12, 1898 at the height of the Spanish-American War, and the occupation was justified as a military necessity in order to reinforce and supply the troops that have been occupying the Spanish colonies of Guam and the Philippines since May 1, 1898. The justification as a war measure was clearly displayed in a secret session of the United States Senate on May 31, 1898.<sup>59</sup> Following the close of the Spanish-American War by the Treaty of Paris,<sup>60</sup> United States troops remained in the Hawaiian Islands and continued its occupation to date in violation of international law and the 1893 *Lili‘uokalani assignment* and the *Agreement of restoration*. The United States Supreme Court has also confirmed that military occupation, which is deemed provisional, does not transfer sovereignty of the occupied state to the occupant state even when the *de jure* sovereign is deprived of power to exercise its right within the occupied territory.<sup>61</sup> Hyde states, in “consequence of belligerent occupation, the inhabitants of the district find themselves subjected to a new and peculiar relationship to an alien ruler to whom obedience is due.”<sup>62</sup> In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai‘i*,<sup>63</sup> and shortly thereafter, intentionally sought to “Americanize” the inhabitants of the Hawaiian Kingdom politically, culturally, socially, and economically. To accomplish this, a plan was instituted in 1906 by the Territorial government, titled “Programme for Patriotic Exercises in the Public Schools, Adopted by the Department of

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<sup>59</sup> 1 HAW. J. L. & POL. 230 (Summer 2004).

<sup>60</sup> 30 Stat. 1754.

<sup>61</sup> *Thirty Hogsheads of Sugar v. Boyle*, 13 U.S. 191 (1815); *United States v. Rice*, 17 U.S. 246 (1819); *Flemming v. Page*, 50 U.S. 603 (1850); see also United States Army Field Manual 27-10, *Section 358—Occupation Does Not Transfer Sovereignty*. Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress.

<sup>62</sup> CHARLES CHENEY HYDE, *INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES* 363 (Vol. II, 1922).

<sup>63</sup> 31 Stat. 141.

Public Instruction,”<sup>64</sup> (**Appendix III**). to denationalize the children of the Hawaiian Islands through the public schools on a massive scale. *Harper’s Weekly* (**Appendix IV**) reported:

“At the suggestion of Mr. Babbitt, the principal, Mrs. Fraser, gave an order, and within ten seconds all of the 614 pupils of the school began to march out upon the great green lawn which surrounds the building. ...Out upon the lawn marched the children, two by two, just as precise and orderly as you find them at home. With the ease that comes of long practice the classes marched and counter-marched until all were drawn up in a compact array facing a large American flag that was dancing in the northeast trade-wind forty feet about their heads. ...‘Attention!’ Mrs. Fraser commanded. The little regiment stood fast, arms at side, shoulders back, chests out, heads up, and every eye fixed upon the red, white and blue emblem that waived protectingly over them. ‘Salute!’ was the principal’s next command. Every right hand was raised, forefinger extended, and the six hundred and fourteen fresh, childish voices chanted as one voice: ‘We give our heads and our hearts to God and our Country! One Country! One Language! One Flag!’<sup>65</sup>

The purpose of the plan was to obliterate any memory of the national character of the Hawaiian Kingdom the children may have and replace it, through indoctrination, with American patriotism and the English language. “Usurpation of sovereignty during military occupation” and “attempts to denationalize the inhabitants of occupied territory” were recognized as international crimes since 1919.<sup>66</sup> In the Nuremburg trials, these two crimes were collectively known as Germanization. Under the heading “Germanization of Occupied Territories,” Count III(j) of the Nuremburg Indictment, it provides:

In certain occupied territories purportedly annexed to Germany the defendants methodically and pursuant to plan endeavored to assimilate those territories politically, culturally, socially, and economically into the German Reich. The defendants endeavored to obliterate the former national character of these territories. In pursuance of these plans and endeavors, the defendants forcibly deported inhabitants who were predominantly non-German and introduced thousands of German colonists. This plan included economic domination, physical conquest, installation of puppet governments, purported *de jure* annexation and enforced conscription into the German Armed Forces. This was carried out in most

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<sup>64</sup> The Programme can be accessed from the United States Archives online at: <http://ia700604.us.archive.org/17/items/programmeforpatr00hawa/programmeforpatr00hawa.pdf> (last accessed May 22, 2014).

<sup>65</sup> WILLIAM INGLIS, *Hawai‘i’s Lesson to Headstrong California: How the Island Territory has solved the problem of dealing with its four thousand Japanese Public School children*, HARPER’S WEEKLY 227 (Feb. 16, 1907).

<sup>66</sup> See Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, *Report Presented to the Preliminary Peace Conference, March 29, 1919*, 14 AM. J. INT’L L. 95, 114 (1920).

of the occupied countries including: Norway, France...Luxembourg, the Soviet Union, Denmark, Belgium, and Holland.<sup>67</sup>

Further usurping Hawaiian sovereignty, President Eisenhower signed into United States law *An Act To provide for the admission of the State of Hawai'i into the Union*, hereinafter "Admission Act of 1959."<sup>68</sup> These laws, which have no extraterritorial effect, stand in direct violation of the *Lili'uokalani assignment and Agreement restoration*, being international compacts, the 1907 Hague Convention, IV,<sup>69</sup> and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, IV.<sup>70</sup>

In 1946, prior to the passage of the Admission Act of 1959, the United States further misrepresented its relationship the Hawaiian state when its permanent representative to the United Nations identified Hawai'i as a non-self-governing territory under the administration of the United States since 1898. In accordance with Article 73(e) of the U.N. Charter, the United States permanent representative erroneously reported Hawai'i as a non-self-governing territory that was acknowledged in a resolution by United Nations General Assembly.<sup>71</sup> Self-governing, by definition of international law, is an independent and sovereign state.

On June 4, 1952, the Secretary General of the United Nations reported information submitted to him by the permanent representative of the United States regarding American Samoa, Hawai'i, Puerto Rico and the Virgin Islands.<sup>72</sup> In this report, the United States made no mention that the Hawaiian Islands were an independent state since 1843 and that its government was illegally overthrown by U.S. forces, which was later settled by an executive agreement through *exchange of notes*. The representative also failed to disclose diplomatic protests that succeeded in preventing the second attempt to annex the Islands by a treaty of cession in 1897. Instead, the representative provides a picture of Hawai'i as a non-state nation, by stating:

"The Hawaiian Islands were discovered by James Cook in 1778. At that time divided into several petty chieftainships, they were soon afterwards united into one kingdom. The Islands became an important port and recruiting point for the early fur and sandalwood traders in the North Pacific, and the principal field base for the extensive whaling trade. When whaling declined after 1860, sugar became the foundation of the economy, and was stimulated by a reciprocity treaty with the United States (1896).

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<sup>67</sup> See Trial of the Major War Criminals before the International Military Tribunal, *Indictment*, vol. 1, at 27, 63 (Nuremberg, Germany, 1947).

<sup>68</sup> 73 Stat. 4.

<sup>69</sup> See Hague Convention, IV, *Respecting the Laws and Customs of War on Land*, 36 Stat. 2277.

<sup>70</sup> See Geneva Convention, IV, *supra* note 1.

<sup>71</sup> *Transmission of Information under Article 73e of the Charter*, December 14, 1946, United Nations General Assembly Resolution 66(I).

<sup>72</sup> *Information from Non-self-governing Territories: Summary and Analysis of Information Transmitted Under Article 73 e of the Charter. Report of the Secretary General: Summary of Information transmitted by the Government of the United States of America*, 4 June 1952, United Nations, Document A/2135.



American missionaries went to Hawaii in 1820; they reduced the Hawaiian language to written form, established a school system, and gained great influence among the ruling chiefs. In contact with foreigners and western culture, the aboriginal population steadily declined. To replace this loss and to furnish labourers for the expanding sugar plantations, large-scale immigration was established.

When later Hawaiian monarchs showed a tendency to revert to absolutism, political discords and economic stresses produced a revolutionary movement headed by men of foreign birth and ancestry. The Native monarch was overthrown in 1893, and a republic government established. Annexation to the United States was one aim of the revolutionists. After a delay of five years, annexation was accomplished.

...The Hawaiian Islands, by virtue of the Joint Resolution of Annexation and the Hawaiian Organic Act, became an integral part of the United States and were given a territorial form of government which, in the United States political system, precedes statehood.<sup>73</sup>

In 1959, the Secretary General received a communication from the United States permanent representative that they will no longer transmit information regarding Hawai‘i because it supposedly “became one of the United States under a new constitution taking affect on [August 21, 1959].”<sup>74</sup> This resulted in a General Assembly resolution stating it “Considers it appropriate that the transmission of information in respect of Alaska and Hawaii under Article 73e of the Charter should cease.”<sup>75</sup> Evidence that the United Nations was not aware of Hawaiian independence since 1843 can be gleaned from the following statement by the United Nations.

“Though the General Assembly considered that the manner in which Territories could become fully self-governing was primarily through the attainment of independence, it was observed in the Fourth Committee that the General Assembly had recognized in resolution 748 (VIII) that self-government could also be achieved by association with another State or group of States if the association was freely chosen and was on a basis of absolute equality. There was unanimous agreement that Alaska and Hawaii had attained a full measure of self-government and equal to that enjoyed by all other self-governing constituent states of the United States. Moreover, the people of Alaska and Hawaii had fully exercised their right to choose their own form of government.”<sup>76</sup>

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<sup>73</sup> *Id.*, at 16-17.

<sup>74</sup> *Cessation of the transmission of information under Article 73e of the Charter: communication from the Government of the United States of America*, United Nations, Document no. A/4226, at 99.

<sup>75</sup> *Cessation of the transmission of information under Article 73 e of the Charter in respect of Alaska and Hawaii*, December 12, 1959, United Nations General Assembly Resolution 1469 (XIV).

<sup>76</sup> *Repertory of Practice of United Nations Organs, Extracts relating to Article 73 of the Charter of the United Nations*, Supplement No. 1 (1955-1959), volume 3, at 200, para. 101.

Although the United Nations passed two resolutions acknowledging Hawai‘i to be a non-self-governing territory that has been under the administration of the United States of America since 1898 and was granted self-governance in 1959, it did not affect the continuity of the Hawaiian state because, foremost, United Nations resolutions are not binding on member states of the United Nations,<sup>77</sup> let alone a non-member state—the Hawaiian Kingdom. Crawford explains, “Of course, the General Assembly is not a legislature. Mostly its resolutions are only recommendations, and it has no capacity to impose new legal obligations on States.”<sup>78</sup> Secondly, the information provided to the General Assembly by the United States was distorted and flawed. In *East Timor*, Portugal argued that resolutions of both the General Assembly and the Security Council acknowledged the status of East Timor as a non-self-governing territory and Portugal as the administering power and should be treated as “givens.”<sup>79</sup> The International Court of Justice, however, did not agree and found “that it cannot be inferred from the sole fact that the above-mentioned resolutions of the General Assembly and the Security Council refer to Portugal as the administering Power of East Timor that they intended to establish an obligation on third States.”<sup>80</sup>

Even more problematic is when the decisions embodied in the resolutions as “givens” are wrong. Acknowledging this possibility, Professor Bowett states, “where a decision affects a State’s legal rights or responsibilities, and can be shown to be unsupported by the facts, or based upon a quite erroneous view of the facts, or a clear error of law, the decision ought in principle to be set aside.”<sup>81</sup> Öberg, a Legal Officer at the International Criminal Tribunal for the Former Yugoslavia, also concurs and acknowledges that resolutions “may have been made on the basis of partial information, where not all interested parties were heard, and/or too urgently for the facts to be objectively established.”<sup>82</sup> An example Öberg cited was Security Council Resolution 1530, March 11, 2004, that “misidentified the perpetrator of the bomb attacks carried out in Madrid, Spain, on the same day.”<sup>83</sup>

## 7. The Law of Occupation

While Hawai‘i was not at war with the United States, but rather being a neutral state, the international laws of occupation would still apply. With specific regard to occupying neutral territory, the Arbitral Tribunal, in its 1927 case, *Coenca Brothers vs. Germany*, concluded that “the occupation of Salonika by the armed forces of the Allies constitutes a violation of the neutrality of that country.”<sup>84</sup> Later, in the 1931 case, *In the matter of the*

<sup>77</sup> IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 14 (4<sup>th</sup> ed. 1990).

<sup>78</sup> See CRAWFORD, *supra* note 5, at 113.

<sup>79</sup> In *East Timor* (Portugal v. Australia) [1995] ICJ Rep. 90, at 103, para. 30.

<sup>80</sup> *Id.*, at 104, para. 32.

<sup>81</sup> Derek Bowett, *The Impact of Security Council Decisions on Dispute Settlement Procedures*, 5 Eur. J. Int’l L. 89, 97 (1994).

<sup>82</sup> Marko Divac Öberg, *The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ*, 16(5) EUR. J. INT’L L. 879, 892 (2005).

<sup>83</sup> *Id.*, at n. 82.

<sup>84</sup> *Coenca Brothers v. Germany*, Greco-German Mixed Arbitral Tribunal, Case No. 389 (1927), reprinted in ANN. DIG. PUB. INT’L L. CASES, YEARS 1927 AND 1928 570, 571 (1931).

*Claim Madame Chevreau against the United Kingdom*, the Arbitrator concluded that the status of the British forces while occupying Persia (Iran)—a neutral state in the First World War—was analogous to “belligerent forces occupying enemy territory.”<sup>85</sup> Oppenheim observes that an occupant state on neutral territory “does not possess such a wide range of rights with regard to the occupied country and its inhabitants as he possesses in occupied enemy territory.”<sup>86</sup> Article 2 of the Fourth Geneva Convention (1949) states:

“The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

On the face of the Hague Regulations it appears to apply only to territory belonging to an enemy, but Professor Feilchenfeld states, “it is nevertheless, usually held that the rules of belligerent occupation will also apply where a belligerent, in the course of the war, occupied neutral territory, even if the neutral power should have failed to protest against the occupation.”<sup>87</sup> The law of occupation is not only applied with equal force and effect, but the occupier is also greatly shorn of its belligerent rights in Hawaiian territory as a result of the Hawai‘i’s neutrality. Therefore, the United States cannot impose its own domestic laws in Hawai‘i without violating international law. This principle is clearly laid out in Article 43 of the Hague Regulations, which states, “the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and civil life, while respecting, unless absolutely prevented, the laws in force in the country.” Referring to the American occupation of Hawai‘i, Dumberry states:

“...the 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.”<sup>88</sup>

According to von Glahn, there are three distinct systems of law that exist in an occupied territory: “the indigenous law of the legitimate sovereign, to the extent that it has not been

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<sup>85</sup> *In the Matter of the Claim Madame Chevreau Against the United Kingdom*, 27 AM. J. INT’L L. 153, 160 (1933).

<sup>86</sup> LASSA OPPENHEIM, INTERNATIONAL LAW 241 (7<sup>th</sup> ed. 1948-52).

<sup>87</sup> ERNST FEILCHENFELD, THE INTERNATIONAL ECONOMIC LAW OF BELLIGERENT OCCUPATION 8 (1942).

<sup>88</sup> Patrick Dumberry, *The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom’s Claim to Continue as an Independent State under International Law*, 2(1) CHINESE J. INT’L L. 655, 682 (2002).

necessary to suspend it; the laws (legislation, orders, decrees, proclamations, and regulations) of the occupant, which are gradually introduced; and the applicable rules of customary and conventional international law.”<sup>89</sup> Hawai‘i’s sovereignty is maintained and protected as a subject of international law, in spite of the absence of an effective government since 1893. In other words, the United States should have administered Hawaiian Kingdom law as defined by its constitution and statutory laws, similar to the U.S. military’s administration of Iraqi law in Iraq with portions of the law suspended due to military necessity.<sup>90</sup> A United States Army regulation on the law of occupation recognizes not only the sovereignty of the occupied state, but also bars annexation of the territory during hostilities because of the continuity of the invaded state’s sovereignty. In fact, United States Army regulations on the laws of occupation not only recognize the continued existence of the sovereignty of the occupied state, but,

“...confers upon the invading force the means of exercising control for the period of occupation. It does not transfer sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress.”<sup>91</sup>

It is abundantly clear that the United States occupied the Hawaiian Islands for the purpose of waging the war against Spain, as well as fortifying the Islands as a military outpost for the defense of the United States in future conflicts with the convenience of the puppet government it installed on January 17, 1893. According to the United States Supreme Court, “Though the [annexation] resolution was passed July 7, [1898] the formal transfer was not made until August 12, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States.”<sup>92</sup> Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony and “they protested annexation occurring without the consent of the governed.”<sup>93</sup> The “power exercising effective control within

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<sup>89</sup> See VON GLAHN, *supra* note 23, at 774.

<sup>90</sup> David J. Scheffer, *Beyond Occupation Law*, 97(4) AM. J. INT’L L. 842-860 (Oct. 2003).

<sup>91</sup> “The Law of Land Warfare,” *U.S. Army Field Manual 27-10* §358 (July 1956).

<sup>92</sup> *Territory of Hawai‘i v. Mankichi*, 190 U.S. 197, 212 (1903).

<sup>93</sup> TOM COFFMAN, *NATION WITHIN: THE HISTORY OF THE AMERICAN OCCUPATION OF HAWAI‘I* 322 (2<sup>nd</sup> ed. 2009). Coffman initially published this book in 1998 titled *Nation Within: The Story of the American Annexation of the Nation of Hawai‘i*. In his second edition published in 2009 he explains the change. Coffman explains:

“I am compelled to add the continued relevance of this book reflects a far-reaching political, moral and intellectual failure of the United States to recognize and deal with its takeover of Hawai‘i. In the book’s subtitle, the word *Annexation* has been replaced by the word *Occupation*, referring to America’s occupation of Hawai‘i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word *occupation*. In making this change, I have embraced the logical conclusion of my research into the events of 1893 to 1898 in Honolulu and Washington, D.C. I am

another's sovereign territory has only temporary managerial powers," and, during "that limited period, the occupant administers the territory on behalf of the sovereign."<sup>94</sup>

The actions taken by the McKinley administration, with the consent of the Congress by joint resolution, clearly intended to mask the violation of international law as if the annexation took place by a voluntary treaty thereby giving the appearance of cession. As Marek states, "a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State."<sup>95</sup> Although the United States signed and ratified both the 1899 and the 1907 Hague Regulations, which post-date the occupation of the Hawaiian Islands, the "text of Article 43," according to Professor Benvenisti, "was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law."<sup>96</sup> Professor Graber also states, that "nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code."<sup>97</sup> Consistent with this understanding of the international law of occupation during the Spanish-American War, Smith reported that the "military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials."<sup>98</sup> In light of this instruction to apply the local laws of the occupied State, the disguised annexation of Hawai'i during the Spanish-American War, together with its ceremony on August 12, 1898 on the grounds of 'Iolani Palace, would appear to show clear intent to conceal an illegal occupation.

When the insurgents seized control of the government in 1893, they did not take over the entire governmental apparatus because they were too few in numbers. They only seized the office of the Queen and her executive cabinet after the United States diplomat declared that he would support the provisional government and provide protection with a detachment of U.S. marines. Through force and intimidation, the provisional government had government employees and officials sign oaths of allegiance to the insurgents or risk losing their jobs. One of the famous stories of defiance was the Royal Hawaiian Band who, as government employees, refused to take the oath of allegiance. Sadly, they were forced to resign from their jobs on February 1, 1893, but their defiance lived on through the *Mele Aloha 'Aina* (Patriots Song) composed by Mrs. Ellen Kekoahikiwaikalani Wright Prendergrast, which is commonly known today as *Kaulana Na Pua*. What you have since 1893 was only the change in the name of government: first, the provisional government; second, the Republic of Hawai'i in 1894; third, the Territory of Hawai'i in 1900; and,

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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."

<sup>94</sup> EYAL BENVENISTI, *THE INTERNATIONAL LAW OF OCCUPATION* 6 (1993).

<sup>95</sup> KRYSZYNA MAREK, *IDENTITY AND CONTINUITY OF STATES IN PUBLIC INTERNATIONAL LAW* 110 (2<sup>nd</sup> ed. 1968).

<sup>96</sup> See BENVENISTI, *supra* note 94, at 8.

<sup>97</sup> DORIS GRABER, *THE DEVELOPMENT OF THE LAW OF BELLIGERENT OCCUPATION: 1863-1914*, 143 (1949).

<sup>98</sup> Munroe Smith, *Record of Political Events*, 13(4) POL. SCI. Q. 745, 748 (Dec. 1898).

fourth, the State of Hawai‘i in 1959. The Executive, Legislative and Judicial branches today belong to the Hawaiian Kingdom.

## **8. OHA’s involvement with the Native Hawaiian Roll Commission through Act 195**

In 2011, the Native Hawaiian Roll Commission was established under Act 195. The roll will “determine eligible individuals that with to participate in the process of reorganizing a Native Hawaiian government for the purposes of Native-Hawaiian self-governance recognized by the State of Hawai‘i. Act 195 also expresses the State’s desire to support federal government recognition of a Native Hawaiian government.”<sup>99</sup> Act 195 also provides that OHA will house the Commission and is responsible for it’s funding. The text of Act 195 is replete with inaccuracies and admissions to violations of the law of occupation. For this memorandum I will focus the following text from Act 195:

*In section 5(f) of the Admission Act of 1959, Congress created what is commonly known as the ceded lands trust. The ceded lands trust, consisting of lands, including submerged lands, natural resources, and the proceeds from the disposition or use of those lands – purportedly ceded to the United States by the Republic of Hawaii – is for five purposes, one of which remains the betterment of the conditions of native Hawaiians.*

The Admission Act of 1959 relies on the cession of Hawaiian territory, to include the Hawaiian Kingdom Government and Crown lands commonly known as “ceded lands.” The power of Congress is incidental to the power of the President. The U.S. Supreme Court, *Mormon Church v. United States*, stated, “The power of Congress over the territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself and from the power given by the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States. ... The power to acquire territory...is derived from the treaty-making power [of the President].”<sup>100</sup> In other words, Congressional power is “incidental” and not “coordinate” to the President’s “power to make acquisitions of territory by conquest, by treaty, and by cession [which] is an incident of national sovereignty.”<sup>101</sup> The power of Congress over newly acquired territory ensues from having “rightfully acquired said territories...[after] which [it] could impose laws upon them, and its sovereignty over them was complete.”<sup>102</sup>

Act 195 admits the lands were “purportedly ceded to the United States by the Republic of Hawaii.” According to Black’s Law dictionary, purport is to “imply,” and the word imply is “used in law in contrast to ‘express’; *i.e.* where the intention in regard to the subject-matter is not manifested by explicit and direct words, but is gathered by implication or necessary deduction from the circumstances.” As stated earlier in this memorandum, the

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<sup>99</sup> Native Hawaiian Roll Commission, *Report to Governor Abercrombie and the Hawai‘i State Legislature* (December 28, 2011).

<sup>100</sup> *Mormon Church v. United States*, 136 U. S. 1, 42 (1890).

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

Office of Legal Counsel in 1988 addressed this very issue and opined, “It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution.”<sup>103</sup> The Opinion dispensed with any notion that the so-called Republic of Hawai‘i ceded any Hawaiian sovereignty and territory by treaty under international law because it failed to acquire the 2/3’s ratification vote in the Senate, but rather focused on whether or not the Congress had the constitutional power to acquire the Hawaiian Islands by legislation. The Opinion found that it couldn’t.

The Opinion also clarified that Texas was not necessarily annexed by a joint resolution, but rather admitted as a State of the union. Upon further review of the Texas case, the joint resolution annexing Texas was conditional and not conclusive. Section 2 of the 1845 Joint Resolution no. 8 specifically stated, “That the foregoing consent of the Congress is given upon the following conditions, and with the following guarantees, to wit: First, Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments.”

The *Joint Resolution for annexing Texas to the United States* on March 1, 1845, (5 Stat. 797) did not annex the territory of Texas, but rather was one of the causes of the Mexican-American War the following year in 1846. Other causes of the war included the validity of the 1836 secession of the Republic of Texas and Texas’ unenforced boundary claims as far as the Rio Grande River against the Mexican government. It was only at the conclusion of the war that Texas territory was incorporated by virtue of the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*, together with all other former Mexican territory north of the Rio Grande river.<sup>104</sup> The 1848 Treaty of Peace remedied the territorial limitations of the 1845 joint resolution annexing Texas. Article 5 of the 1848 Treaty of Guadalupe-Hidalgo ending the Mexican American War stated:

The boundary between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called Rio Bravo del Norte, or Opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso) to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gambia; (or if it should not intersect any branch of that river, then to the point on the said line nearest to such branch, and thence in a direct line to the same); thence down the middle of the said branch and of the said river, until it empties into the Rio Colorado; thence across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean.

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<sup>103</sup> See Kmiec, *supra* note 2, at 252.

<sup>104</sup> *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*, February 2, 1848, 9 Stat. 922.



In 1903, Panama declared their independence from Colombia and established the Republic of Panama on November 3, 1903. On November 18, 1903, the United States and the Republic of Panama entered into a *Convention for the construction of a ship canal to connect the waters of the Atlantic and Pacific Oceans*, whereby the United States acquired the Panama Canal Zone.<sup>105</sup> In 1921, Colombia recognized Panamanian sovereignty only after the United States apologized for intervening in the Panamanian—Columbian conflict and compensated Colombia \$25 million dollars under the *Treaty between the United States and Colombia for the settlement of differences* (42 U.S. Stat. 2122). The Treaty was signed on April 6, 1914, but the U.S. Senate did not ratify until April 20, 1921.

There is no treaty ceding Hawaiian territory to the United States, as was the case with Texas under the 1848 *Treaty of Peace*, and with Panama under the 1903 *Convention for the Construction of a Ship Canal*. The joint resolution of annexation is not a treaty, and since Congressional joint resolutions as well as Congressional Acts have no extra-territorial effect, except for crimes under the effects doctrine,<sup>106</sup> it cannot be considered to have annexed the Hawaiian Islands, nor could it be considered to have terminated the 1893 executive agreements between the Hawaiian Kingdom and the United States. Because Congress has not been vested with plenary power over the Hawaiian Islands, being the territory of the Hawaiian Kingdom and subject to Hawaiian law, all legislation enacted by the Congress regarding the Hawaiian Islands, to include the Admission Act of 1959 and, by extension, the State of Hawai‘i 1979 Constitutional Convention establishing OHA, and Act 195, is not only void, but is evidence of the violation of international laws and the law of occupation.

The sovereignty of an independent state is territorial and international law provides for its restrictions and exceptions. The Permanent Court of International Justice, in *The Lotus case*, stated, “Now the first and foremost restriction imposed by international law upon a State is that—failing the existence of a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is

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<sup>105</sup> *Convention for the construction of a ship canal to connect the waters of the Atlantic and Pacific Oceans*, 33 Stat. 2234.

<sup>106</sup> The *Lotus case* also ushered in the 20<sup>th</sup> century the “effects doctrine,” which permitted the criminal law of states to have extraterritorial effect. See *Lotus case*, PCIJ Series A, No. 10 (1927), 25. This extraterritoriality, however, is limited to criminal acts of individuals abroad, whether nationals of the state itself or foreigners. *Restatement* (Third) §402 (“a state has jurisdiction to prescribe law with respect to (1)(a) conduct that, wholly or in substantial part, takes place within its territory; (b) the status of persons, or interests in things, present within its territory; (c) *conduct outside its territory that has or is intended to have substantial effect within its territory*; (2) the activities, interests, status, or relations of its nationals outside as well as within its territory; and (3) *certain conduct outside its territory by persons not its nationals that is directed against the security of the state or against a limited class of other state interests* (emphasis added)”); *Strassheim v. Daily*, 221 U.S. 280, 285 (1911) (“[a]cts done outside a jurisdiction, but intended to produce or producing effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect, if the State should succeed in getting him within its power”); *Rivard v. United States*, 375 F.2d 882, 887 (5<sup>th</sup> Cir.), cert. denied, 389 U.S. 884 (1967) (“All the nations of the world recognize the principle that a man who outside of a country willfully puts in motion a force to take effect in it is answerable at the place where the evil is done...”). See also *U.S. v. Noriega*, 746 F.Supp. 1506, 1512-1514 (S.D.Fla. 1990).

certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from convention (treaty).”<sup>107</sup> The Court continued, “In these circumstances, all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.”<sup>108</sup>

According to Born, in “the 19<sup>th</sup> century, American courts, commentators, and other authorities understood international law as imposing strict territorial limits on national assertions of legislative jurisdiction.”<sup>109</sup> The U.S. Supreme Court also concluded, “The laws of no nation can justly extend beyond its own territory, except so far as regards its own citizens,”<sup>110</sup> and the Court also “conceded that the legislation of every country is territorial; that beyond its own territory it can only affect its own subjects or citizens. It is not easy to conceive a power to execute a municipal law or to enforce obedience to that law without the circle in which that law operates.”<sup>111</sup> Justice Story also determined that from “an international point of view, jurisdiction, to be rightfully exercised, must be founded either upon the person being within the territory or the thing being within the territory; for otherwise there can be no sovereignty exerted. ...[N]o sovereignty can extend to process beyond its own territorial limits to subject either persons or property to its judicial decisions.”<sup>112</sup> U.S. Secretary of State Frelinghuysen also stated, it is the “uniform declaration of writers on public law [that] in an international point of view, either thing or the person made the subject of jurisdiction must be within the territory, for no sovereignty can extend its process beyond its own territorial limits.”<sup>113</sup>

## 9. War Crimes under U.S. Federal Law and International Law

Under Title 18 U.S.C. §2441(c)(1), a war crime is “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.” (**Appendix V**). Grave breaches in the Geneva Conventions “shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.” According to the Conference of Government Experts, the Geneva Conventions should be applicable to “cases of occupation of territories in the absence of any state of war.”<sup>114</sup> Furthermore, “any Contracting Power [United States] in conflict with a non-Contracting Power [Hawai‘i] will begin by complying with the provisions of the Convention pending the adverse Party’s declaration.”<sup>115</sup>

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<sup>107</sup> *The Lotus*, PCIJ Series A, No. 10 (1927), 18-19.

<sup>108</sup> *Id.*, 19.

<sup>109</sup> GARY B. BORN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS 493 (1996).

<sup>110</sup> *The Apollon*, 22 U.S. 362, 370-371 (1824).

<sup>111</sup> *Rose v. Himely*, 8 U.S. 241, 279 (1807).

<sup>112</sup> JOSEPH STORY, COMMENTARIES ON THE CONFLICTS OF LAWS §449-50 (2 ed. 1841).

<sup>113</sup> Secretary of State Frelinghuysen to Senator Morgan, May 17, 1884, *Foreign Relations of the United States* 358 (1885).

<sup>114</sup> *Report on the Work of the Conference of Government Experts for the Study of the Convention for the Protection of War Victims* 8 (Geneva, April 14-26, 1947).

<sup>115</sup> International Committee of the Red Cross, *Commentary: IV Geneva Convention relative to the Protection of Civilian Persons in Time of War*, 25 (1958).

Of the four Geneva Conventions, the *Convention relative the Protection of Civilian Persons in Time of War, IV*, hereinafter referred to as the “Fourth Geneva Convention,” applies to Hawai‘i’s occupation. The relevant grave breach of the Fourth Geneva Convention applicable to OHA by virtue of its revenue derived from the State of Hawai‘i General Fund and the Public Land Trust is directly linked to the State of Hawai‘i’s extensive “appropriation of property, not justified by military necessity and carried out unlawfully and wantonly,”<sup>116</sup> through unlawful taxation and rents. War crimes also extend to violations of the law of war,<sup>117</sup> which include provisions of the 1907 Hague Convention, Respecting the Laws and Customs of War on Land, IV, hereinafter referred to as “Fourth Hague Convention.”<sup>118</sup>

As an illegal regime established in violation of the laws of occupation, the State of Hawai‘i government cannot claim to be a government authorized to collect taxes in the territory that belongs to the occupied state—the Hawaiian Kingdom. Nor can the State of Hawai‘i government claim to be a government of the occupying state under the laws of occupation if the Congress established it. Under the law of occupation, only the military of the United States, being an extension of the President and not the Congress, is temporarily vested with the authority to form a military government to administer the laws of the Hawaiian Kingdom, which includes the collection of taxes. Regarding the authority and limitation in the collection of taxes, the Hague Convention, IV, provides:

Article 48. If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was bound.

Article 49. If, in addition to the taxes mentioned in the above Article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question.<sup>119</sup>

Without any lawful authority, the State of Hawai‘i’s collection of monies from the inhabitants of the Hawaiian Islands would constitute the war crime of pillaging, which is directed against stealing and thieving by individuals, not government. Under Article 47 of the Hague Convention, IV, “pillage is formally forbidden.”<sup>120</sup> Professor Feilchenfeld explains, “In view of the absolute character of the rule and of its obvious purpose to prevent plundering by an national of the occupant, and generally any person subject to its local jurisdiction, including inhabitants as well as civilian officials of the occupant;”<sup>121</sup>

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<sup>116</sup> See Geneva Convention, IV, *supra* note 1, Article 147.

<sup>117</sup> U.S. Army Field Manual 27-10, section 499 (July 1956).

<sup>118</sup> See Hague Convention, IV, *supra* note 69.

<sup>119</sup> *Id.*, 2307.

<sup>120</sup> *Id.*

<sup>121</sup> See FEILCHENFELD, *supra* note 87, at 30.

and the “better interpretation would seem to be that the rule against pillage does not merely protect private property, but is also directed against all acts of individual lawlessness committed in regard to property interests of all kinds, including public property.”<sup>122</sup>

Furthermore, the Crown lands that were seized by the United States in 1898 were “private lands,” and should not have been confiscated from Queen Lili‘uokalani. The *Act Relating to the Lands of His Majesty the King and of the Government*, June 7, 1848, established private ownership to the wearers of the Crown. This was confirmed by the Hawaiian Kingdom Supreme Court, *In re Kamehameha IV*, where the Court stated, “Under that act the lands descend in fee, the inheritance being limited however the successors to the throne, and each successive possessor may regulate and dispose of the same according to his will and pleasure, as private property, in like manner as was done by Kamehameha IV.”<sup>123</sup> Moreover, in 1864, the Crown lands were rendered inalienable under an *Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*, which came under the administration of a Board of Commissioners of Crown Lands. Section 2 of the Act provides:

It is further enacted that so many of the lands which by the statute enacted on the 7<sup>th</sup> of June, 1848, are declared to the private lands of His Majesty Kamehameha III, to have and to hold to himself, his heirs and successors forever, as may be at this time unalienated, and have descended to His Majesty Kamehameha V, shall be henceforth inalienable, and shall descend to the heir and successors of the Hawaiian Crown forever; and it is further enacted that it shall not be lawful hereafter to execute any lease or leases of the said lands, for any term of years to exceed thirty.

As private lands, only the Board of Commissioners of Crown Lands are lawfully authorized to collect the revenues off of leases that are limited to thirty years. In a lawsuit filed in the United States Court of Claims in 1909, Queen Lili‘uokalani contested the United States seizure of these lands claiming it was private property, but her petition was denied.<sup>124</sup> Article 46 of the Fourth Hague Convention provides, “Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.” The monies collected by the State of Hawai‘i government under the Public Land Trust from Crown lands are illegal and would constitute the war crime of pillaging. Although, OHA is not directly tied to the war crime of pillaging as a principal or accomplice, it can be considered as an accessory after the fact or as receiving stolen property. OHA receives funding from the State of Hawai‘i general fund appropriations, ceded land revenues, federal grants and other miscellaneous income. Revenues from the State of Hawai‘i general fund and the so-called ceded lands are revenues derived from pillaging.

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<sup>122</sup> *Id.*, 31.

<sup>123</sup> *Estate of His Majesty Kamehameha IV*, 2 Haw. 715, 725 (1864).

<sup>124</sup> *Lili‘uokalani v. United States of America*, 45 Ct. Claims 418 (1910).

The Native Hawaiian Roll Commission's project Kana'iolowalu under Act 195 also draws attention to another war crime called "attempts to denationalize the inhabitants of occupied territory." As stated in Act 195:

"The State [of Hawai'i] has supported the reorganization of a Native Hawaiian governing entity. It has supported the Sovereignty Advisory Council, the Hawaiian Sovereignty Advisory Commission, the Hawaiian Sovereignty Elections Council, and Native Hawaiian Vote, and the convening of the Aha Hawai'i 'Oiwī (the Native Hawaiian Convention). The legislature has adopted various resolutions during its regular sessions throughout the 1990s and 2000s. The Governor has testified before Congress regarding the State's support for Native Hawaiians as the indigenous people of Hawai'i with the right to self-government. Recognizing the likelihood of a reorganized Native Hawaiian governing entity, the State has also provided for the transfer of the management and control of the island of Kaho'olawe and its waters to the sovereign Native Hawaiian entity upon its recognition by the United States and the State of Hawai'i."

Act 195 is just one of a series of historical events since 1898 that portrays the Native Hawaiians as an indigenous people of the United States, which by definition is a stateless nation of people. According to Corn tassel and Primeau, "indigenous peoples were viewed not as sovereign states, but rather 'any stateless group' residing within the territorial dominions of existing sovereign states."<sup>125</sup> In 1993, the U.S. government, maintaining an indigenous and historically inaccurate focus, apologized only to the Native Hawaiian people, rather than the citizenry of the Hawaiian Kingdom, for the United States' role in the overthrow of the Hawaiian government.<sup>126</sup> This implied that only ethnic Hawaiians constituted the kingdom, and reinforced the ethnocentrism of the Native Hawaiian governance initiative.

Once a state is occupied, international law preserves the *status quo* of the occupied state as it was before the occupation began. To preserve the nationality of the occupied state from being manipulated by the occupying state to its advantage, international law only allows individuals born within the territory of the occupied state to acquire the nationality of their parents—*jus sanguinis*. To preserve the *status quo*, Article 49 of the Fourth Geneva Convention mandates that the "Occupying Power shall not...transfer parts of its own civilian population into the territory it occupies." For individuals, who were born within Hawaiian territory, to be Hawaiian subjects they must be a direct descendant of a person or persons who were Hawaiian subjects prior to the American occupation that began at 12 noon on August 12, 1898, which was when ceremonies took place by the United States annexing the islands. All other individuals born after 12 noon on August 12, 1898 to the present are aliens who can only acquire the nationality of their parents.

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<sup>125</sup> Jeff J. Corn tassel and Tomas Hopkins Primeau, *Indigenous "Sovereignty" and International Law: Revised Strategies for Pursuing "Self-Determination,"* 17(2) HUM. RTS. Q. 347 (1995).

<sup>126</sup> S.J. Res. 19, 103d Cong., 107 Stat. 1510 (1993), also known as the *Apology Resolution*.

According to the 1890 government census,<sup>127</sup> Hawaiian subjects numbered 48,107, with the aboriginal Hawaiian, both pure and part (known today as Native Hawaiians), numbering 40,622, being 84% of the national population, and the non-aboriginal Hawaiians numbering 7,485, being 16%. Despite the massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, which, according to the State of Hawai'i numbers 1,302,939 in 2009,<sup>128</sup> the *status quo* of the national population of the Hawaiian Kingdom is maintained under international law. Therefore, under the laws of occupation, the aboriginal Hawaiian population of 322,812 in 2009 would continue to be 84% of the Hawaiian national population, and the non-aboriginal Hawaiian population of 61,488 would continue to be 16%. The balance of the population in 2009, being 918,639, are aliens who were illegally transferred, either directly or indirectly, by the United States of America as the occupying Power.

Act 195 and Kana'iowalu falsely maintains the *status quo* of the prolonged occupation with Native Hawaiians as a minority group of the citizenry of Hawai'i, when Native Hawaiians are actually the majority group of the Hawaiian citizenry under the law of occupation. Additionally, the initiative for a Native Hawaiian governing entity stands in direct violation of the 1893 executive agreement between Queen Lili'uokalani and President Cleveland to restore the Hawaiian Kingdom government. Being a treaty, this executive agreement binds successor Presidents of the United States for its faithful execution as already stated previously in this memorandum. Native Hawaiians already have a governing infrastructure, which is currently being run illegally by the State of Hawai'i today. In other words, the governmental infrastructure already exists, but has yet to be restored under the 1893 executive agreement of restoration.

*Anecdotally—in 1893, the Hawaiian Porsche was carjacked by the United States and painted red, white and blue. Although we have not been driving the Porsche for the past 121 years and were brainwashed to believe it was not a Hawaiian car, it doesn't mean the Porsche belongs to the United States. The fact that this history, which is only two generations back, is not common knowledge is the evidence of denationalization and usurpation of sovereignty.*

Denationalization, through *Americanization*, and usurpation of sovereignty are war crimes that fall under the provisions of the Fourth Hague Convention. In the aftermath of World War II, an Italian Educational Trustee was prosecuted for committing the war crime of *Italianization* while a portion of Yugoslavia was under Italian occupation. In a report by Committee III (law matters) under the United Nations War Crimes Commission, the Committee stated:

It is the duty of belligerent occupants to respect, unless absolutely prevented, the laws in force in the country (Art. 43 of the Hague

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<sup>127</sup> See Hawaiian Government Census 1890, available online at: <http://hawaiiankingdom.org/info-census1890.shtml> (last accessed May 22, 2014).

<sup>128</sup> See Race/Ethnicity Composition of the States of Hawai'i: 2009, available online at: <http://www.ohadatabook.com/F01-05-11u.pdf> (last accessed May 22, 2014).

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 willfully 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.

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

Denationalization through *Germanization* was also taking place during World War II.

"Within weeks of the fall of France, Alsace-Lorraine was annexed and thousands of citizens deemed too loyal to France, not to mention all its 'alien-race' Jews and North African residents, were unceremoniously deported to Vichy France, the southeastern section of the country still under French control. This was done in the now all too familiar manner: the deportees were given half an hour to pack and were deprived of most of their assets. By the end of July 1940, Alsace and Lorraine had become Reich provinces. The French administration was replaced and the French language totally prohibited in the schools. By 1941, the wearing of berets had been forbidden, children had to sing 'Deutschland über Alles' instead of 'La Marseillaise' at school, and racial screening was in full swing."<sup>129</sup>

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<sup>129</sup> LYNN H. NICHOLAS, *CRUEL WORLD: THE CHILDREN OF EUROPE IN THE NAZI WEB* 277 (2005).



## 10. Prosecution for War Crimes

Prosecution for war crimes can take place before the International Criminal Court in The Hague, Netherlands, and other countries that have enacted war crime statutes. The United States has enacted the 1996 War Crimes Act under Title 18 United States Code. Under §2441(a), “Whoever, whether inside or outside of 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.” The United States is also authorized to prosecute war crimes by military commissions established during occupations of foreign territory.

The U.S. House Committee on the Judiciary, where the War Crimes Bill was referred to in order to amend Title 18, reported, “military commissions could be used to provide a mechanism for the prosecution of war criminals,”<sup>130</sup> and that Congress “has left to the President, and the military commanders representing him, to employ the commission, as occasion may require, for the investigation and punishment of violations of the laws of war and other offenses not cognizable by court-martial.”<sup>131</sup> According to Colonel Winthrop, which the House Report cites in footnote 19, “In the absence of any statute prescribing by whom military commissions shall be constituted, they have been constituted in practice by the same commanders as are empowered by Arts. 72 and 73 [the Uniform Code of Military Justice] to order general courts-martial.”<sup>132</sup> According to the Uniform Code of Military Justice, the convening authority for military commissions for the prosecution of war crimes during the occupation of the Hawaiian Kingdom would be the commander of the United States Pacific Command (USPACOM), which was established as a unified command in the Hawaiian Islands since January 1, 1947.

In addition to the USPACOM, governments such as Germany and the Philippines could also provide for the prosecution of war crimes if the war crime was committed by a national of their country or against a national of their country in the Hawaiian Islands under universal jurisdiction. Section 6(9) of the German Criminal Code, provides “German criminal law shall further apply, regardless of the law of the locality where they are committed, to the following offences committed abroad...offenses which on the basis of an international agreement binding on the Federal Republic of Germany must be prosecuted even though committed abroad.” Also section 17 of the *Filipino Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for Related Purposes*, “The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, provided: (c) The accused has committed the said crime against a Filipino citizen.” Trustee Apoliona has been accused of committing a war crime

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<sup>130</sup> See Report no. 104-698, Committee of the Judiciary, War Crimes Act of 1996, 5 (July 24, 1996).

<sup>131</sup> *Id.*

<sup>132</sup> WILLIAM WINTHROP, *MILITARY LAW AND PRECEDENTS* 835 (1920). Article 22—§822, Uniform Code of Military Justice, *Who may convene general courts-martial*, has superseded Articles 72 and 73. §822(a) provides, “General courts-martial may be convened by...the commanding officer of a unified or specified combatant command.”

against a Filipino citizen on the Island of Hawai‘i while she served on the Board of Directors for Bank of Hawai‘i. The war crimes alleges unfair trial and pillaging.

According Article 8 of the Rome Statute, the International Criminal Court “shall have jurisdiction in respect of war crimes in particular when committed as part of plan or policy or as part of a large-scale commission of such crimes.”<sup>133</sup> Article 30 of the Statute provides, “Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. For the purposes of this article, a person has intent where: (a) In relation to conduct, that person means to engage in the conduct; (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.”<sup>134</sup> The Statute also states that war crimes that may be applicable in the case of OHA, means: extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly — Article 8(2)(a)(iv); and pillaging a town or place — Article 8(2)(b)(xvi).

Clearly OHA, to include its Trustees and administrative staff, cannot be construed to have been acting with any intent to commit the aforementioned war crimes that have a direct nexus to the continuity of the Hawaiian Kingdom as an independent and sovereign state under international law, and its prolonged and illegal occupation by the United States. However, OHA now has knowledge and awareness of these alleged war crimes, which is what prompted Ka Pouhana to send the letter to the Secretary of State. According to the International Criminal Court’s *Elements of Crimes* (**Appendix VI**):

- a) There is no requirement for a legal evaluation by the perpetrator as to the existence of a military occupation;
- b) In that context there is no requirement for awareness by the perpetrator of the facts that established the military occupation;
- c) There is only a requirement for the awareness of the factual circumstances that established the existence of a military occupation that is implicit in the terms “took place in the context of and was associated with.”<sup>135</sup>

What also complicates the issue for OHA was the public statement made by the Chair of the Native Hawaiian Roll Commission, John Waihe‘e, III, at the William S. Richardson School of Law on April 17, 2014, and a statement by Trustee Oz Stendor in an email that has been recently circulating in the community to Maxine.

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<sup>133</sup> See International Criminal Court’s Rome Statute (2002), Article 8, available online at: [http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf) (last accessed May 22, 2014).

<sup>134</sup> *Id.*, Article 30.

<sup>135</sup> See International Criminal Court’s *Elements of Crimes*, Article 8—Introduction; note 34 provides, “The term ‘international armed conflict’ includes military occupation, available online at: <http://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf> (last accessed May 22, 2014).

Waihe'e stated, "I have absolutely no doubt that Hawai'i is in an illegal occupation, I have absolutely no doubt. I mean, you've got to be illiterate not to finally get to that point (1:19:04 hr/min/sec)." <sup>136</sup>

Trustee Stendor stated, "Since I became a trustee of OHA, I met with Keanu Sai many times. We have had long discussions and he provided me with a lot of documentation on the issues regarding the overthrow and all of his work. I supported his request for funding to document, in book form, his dissertation on the matter because I believe that he is correct in his analysis of the overthrow i.e. that it was illegal and Hawaiian sovereignty exists and Hawaii is illegally occupied. But what does it get you?"

For OHA to continue to fund the Native Hawaiian Roll Commission and their project Kana'iowalu in light of the Roll Chair's public statement, and to continue to pursue federal recognition in light of Trustee Stendor's statement will have consequences for Ka Pouhana and OHA. It should be clearly noted that, "there is no requirement for a legal evaluation by the perpetrator as to the existence of a military occupation," but rather only "awareness of the factual circumstances that established the existence of a military occupation." Waihe'e and Stendor cannot claim they weren't aware of the factual circumstances, even if they dismiss it.

In December of 2013 was the launching of The War Report in Geneva Switzerland by the Geneva Academy of International Humanitarian Law. <sup>137</sup> The War Report identifies "armed conflicts" according to international humanitarian law, which includes the 1907 Hague Regulations and the 1949 Geneva Conventions and their 1977 Additional Protocols. Only accused violators in conflicts classified as such can be prosecuted for war crimes. The War Report states an international armed conflict "also exists whenever one state uses any form of armed force against another state, irrespective of whether the latter state fights back. This includes the situation in which one state invades another and occupies it, even if there is no armed resistance." <sup>138</sup> The Fourth Geneva Convention not only applies to "armed conflicts" but also "to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance (Article 2)." The War Report concluded in the year of 2012 there were thirty-eight armed conflicts, nine occupations, and fifteen armed conflicts within states.

"The long-term trend from officially declared wars between sovereign states to armed conflicts inside states and territories has important implications for international justice," says Dr. Stuart Casey-Maslen, editor of The War Report. "Without a clearer legal basis for what constitutes an armed conflict under international law, accused perpetrators of

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<sup>136</sup> See video of the presentation at the Law School, available online at: <https://vimeo.com/92655472> (last accessed May 22, 2014).

<sup>137</sup> See New Initiative: The War Report, available online at: <http://www.geneva-academy.ch/the-academy/events/events-a-news-2013/1024-new-initiative-the-war-report> (last accessed May 22, 2014).

<sup>138</sup> STUART CASEY-MASLEN (ED.), THE WAR REPORT: 2012 7 (2013).

war crimes will not be prosecuted.”<sup>139</sup> “The classification of an armed conflict under international law is an objective legal test and not a decision left to national governments or any international body, not even the UN Security Council,” says Professor Andrew Clapham, Director of the Academy and Graduate Institute Professor in International Law.<sup>140</sup> “It is not always clear when a situation is an armed conflict, and hence when war crimes can be punished,” added Clapham. “The War Report aims to change this and bring greater accountability for criminal acts perpetuated in armed conflicts.”

On May 24, 2014, Dr. Maslen notified the author by email that Hawai‘i would be noted in the next publication of *The War Report: 2013*. When the author met with Dr. Maslen at the Geneva Academy of International Humanitarian Law’s office in Geneva on March 26, 2014, the staff of the War Report was already in their final stages of editing the reported armed conflicts and occupations for the year 2013 before submitting the manuscript to Oxford Press. The author sought to have Hawai‘i included, but realized at the meeting it was too late for this edition.

At the meeting, the author presented a power point presentation on the history of the Hawaiian Kingdom and how it came under an illegal and prolonged occupation. Dr. Maslen was also provided with additional information and evidence. At the March meeting, Dr. Maslen assured the author that a decision would be made, and if it has been determined that Hawai‘i is occupied according to the Academy’s criteria it will be listed on its website *Rule of Law in Armed Conflict* in June.<sup>141</sup> The website provides monthly updates on armed conflicts and occupations and is currently under construction, but was scheduled to be completed by June. Dr. Maslen also told the author in the email that the website will be completed at the end of July instead of June as previously thought. It would appear that the information on Hawai‘i’s occupation is what prompted Dr. Maslen to note Hawai‘i’s occupation in the publication of *The War Report: 2013*, and the Geneva Academy will be monitoring the developments in Hawai‘i for inclusion in the next publication, which will be released in December 2015.

## **11. Impact and Proposed Remedy for Non-Compliance to the Law of Occupation by the United States**

For the United States to have secured such a stronghold in the Hawaiian Islands as a governing body in a relatively short span of time was dependent upon the seizure of an already existing governmental infrastructure. A common misunderstanding is that the United States created the governmental infrastructure we have today through Congressional legislation such as the 1900 Organic Act<sup>142</sup> that created the Territory of Hawai‘i, and the 1959 Admission Act<sup>143</sup> that created the State of Hawai‘i. The

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<sup>139</sup> See Ellen Wallace, “War Report”: global report calls for caution with armed conflict label (Dec. 10, 2013) in [genevalunch.com](http://genevalunch.com), available online at: <http://genevalunch.com/2013/12/10/war-report-global-report-calls-caution-armed-conflict-label/> (last accessed May 22, 2014).

<sup>140</sup> *Id.*

<sup>141</sup> *Rule of Law in Armed Conflict* website available online at: <http://www.geneva-academy.ch/RULAC/index.php> (last accessed May 22, 2014).

<sup>142</sup> See An Act to provide a government for the Territory of Hawai‘i, 31 Stat. 141.

<sup>143</sup> See An to provide for the admission of the State of Hawai‘i into the Union, 73 Stat. 4.

governmental structure today and its municipalities were established in the mid-nineteenth century by the Hawaiian Kingdom from 1846-1847 under *An Act to Organize the Executive Ministry of the Hawaiian Islands*, *An Act to Organize the Executive Departments of the Hawaiian Islands*, and *An Act to Organize the Judiciary Department of the Hawaiian Islands*.

A practical strategy to impel compliance must be based on the legal personality of the Hawaiian state first, and from this premise expose the effect that this status has on the national and global economies—*e.g.* illegally assessed taxes, duties, contracts, licensing, real estate transactions, etc. This exposure will no doubt force states to intercede on behalf of their own citizenry, but it will also force states to abide by the doctrine of non-recognition qualified by the *Articles of State Responsibility for International Wrongful Acts*.<sup>144</sup> Parties who entered into contracts within the territorial jurisdiction of the Hawaiian Kingdom, cannot rely on United States Courts in the Islands to provide a remedy for breach of simple or sealed contracts, because the courts themselves cannot exercise jurisdiction without a lawful transfer of Hawaiian sovereignty. Therefore, all official acts performed by the provisional government and the Republic of Hawai‘i after the *Lili‘uokalani assignment* and the *Agreement of restoration*; and all actions done by the United States and its surrogates—the Territory of Hawai‘i and the State of Hawai‘i, for and on behalf of the Hawaiian Kingdom since the occupation began 12 noon on August 12, 1898, cannot be recognized as legal and valid without violating international law.

According to the International Court of Justice, *Namibia Advisory Opinion*, “while official acts performed by the government of South Africa on behalf of or concerning Namibia...are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory.”<sup>145</sup> Oppenheim explains, “The principle *ex iniuria ius non oritur* is well established in international law and according to it acts which are contrary to international law cannot become a source of legal rights for a wrongdoer... To grant recognition to an illegal act or situation will tend to perpetuate it and to be of benefit to the state which has acted illegally.”<sup>146</sup>

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<sup>144</sup> See United Nations *Articles on Responsibility of States for Internationally Wrongful Acts* (2001) website available online at: <http://legal.un.org/avl/ha/rsiwa/rsiwa.html> (last accessed May 22, 2014).

<sup>145</sup> Legal Consequences for States of the Constituted Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, para 125.

<sup>146</sup> OPPENHEIM’S INTERNATIONAL LAW 184, para. 54 (9<sup>th</sup> ed. 2008); see also Ranjan Amerasinghe and others, “International Jurists Opinion on Exhaustion of Local Remedies” regarding Turkey’s occupation of northern Cyprus, (Dec. 4, 2009), available online at: [http://www.google.ru/url?sa=t&rct=j&q=expert+opinion+on+local+remedies+draft+01&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.law.gov.cy%2FLaw%2FLawoffice.nsf%2F0%2F0AB851D1B5CE0AD0C225768C003FEC92%2F%24file%2FINTERNATIONAL%2520JURISTS%2520OPINION%2520ON%2520EXHAUSTION%2520OF%2520LOCAL%2520REMEDIES%2520-%2520Experts%27%2520Opinion%2520on%2520Local%2520Remedies.doc&ei=4rlgUO-WJtDYsgb8goH4DA&usg=AFQjCNF3UBrOq7xSIT\\_HdYSR3WCQqiseSg&cad=rjt](http://www.google.ru/url?sa=t&rct=j&q=expert+opinion+on+local+remedies+draft+01&source=web&cd=1&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.law.gov.cy%2FLaw%2FLawoffice.nsf%2F0%2F0AB851D1B5CE0AD0C225768C003FEC92%2F%24file%2FINTERNATIONAL%2520JURISTS%2520OPINION%2520ON%2520EXHAUSTION%2520OF%2520LOCAL%2520REMEDIES%2520-%2520Experts%27%2520Opinion%2520on%2520Local%2520Remedies.doc&ei=4rlgUO-WJtDYsgb8goH4DA&usg=AFQjCNF3UBrOq7xSIT_HdYSR3WCQqiseSg&cad=rjt) (last accessed May 22, 2014).

In my doctoral dissertation,<sup>147</sup> I provided a temporary remedy to this incredible quandary. First, the Commander of the USPACOM must begin to comply with international law and establish a military government in order to exercise its legislative capacity under the laws of occupation. By virtue of this authority, the commander of the military government can provisionally legislate and proclaim that all laws having been illegally exercised in the Hawaiian Islands since January 17, 1893 to the present, so long as they are consistent with Hawaiian Kingdom laws and the law of occupation, shall be the provisional laws of the occupier.<sup>148</sup> The military government will also have to reconstitute all State of Hawai‘i courts under the law of occupation in order for these contracts to be enforceable, as well as being accessible to private individuals, whether Hawaiian subjects or foreign citizens. The military government’s authority exists under the Hague and Geneva Conventions.

The military government should also provisionally maintain, by decree, the executive branches of the Federal and State of Hawai‘i governments in order to continue services to the community headed by the Mayors of Hawai‘i island, Maui, O‘ahu and Kaua‘i, who should report directly to the commander of the military government. The Pacific Command Commander will replace the function of the State of Hawai‘i Governor, and the legislative authority of the military governor would also replace the State of Hawai‘i’s legislative branch, *i.e.* the State Legislature and County Councils. The Legislative Assembly of the Hawaiian Kingdom can take up the lawfulness of these provisional laws when it reconvenes during the transitional stage of ending the occupation. At that point, it can determine whether or not to enact these laws into Hawaiian statute or replace them altogether with new statutes.<sup>149</sup>

Without having its economic base spiral out of control, the United States is faced with no other alternative but to establish a military government. Yet another serious reason to establish a military government, aside from the economic factor, is to put an end to war crimes having been committed by individuals within the Federal and State of Hawai‘i governments. Their willful denial of Hawai‘i’s true status as an occupied State does not excuse them of criminal liability under laws of occupation. “War crimes,” states von Glahn, “played an important part of the deliberations of the Diplomatic Conference at Geneva in 1949. While the attending delegates studiously eschewed the inclusion of the terms ‘war crimes’ and ‘Nuremberg principles’ (apparently regarding the latter as at best representing particular and not general international law), violations of the rules of war had to be, and were, considered.”<sup>150</sup>

Article 146 of the Geneva Convention provides that the “High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the

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<sup>147</sup> David Keanu Sai, *The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State*, [Ph.D.] dissertation, University of Hawai‘i at Manoa (2008), available online at: [http://www2.hawaii.edu/~anu/pdf/Dissertation\(Sai\).pdf](http://www2.hawaii.edu/~anu/pdf/Dissertation(Sai).pdf) (last accessed May 22, 2014).

<sup>148</sup> See VON GLAHN, *supra* note 23, at 777.

<sup>149</sup> See FEILCHENFELD, *supra* note 87, at 145.

<sup>150</sup> See VON GLAHN, *supra* note 23, at 248.

present Convention defined in the following Article.” According to Marschik, this article provides that “States have the obligation to suppress conduct contrary to these rules by administrative and penal sanctions.”<sup>151</sup> “Grave breaches” enumerated in Article 147, that are relevant to the occupation of the Hawaiian Islands, include: “unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention...[and] extensive destruction and appropriation of property, not justified by military necessity.”<sup>152</sup> Protected persons “are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”<sup>153</sup>

Establishing a military government will shore up these blatant abuses of protected persons under one central authority, that has not only the duty, but the obligation, of suppressing conduct contrary to the Hague and Geneva conventions taking place in an occupied state. The United States did ratify both Hague and Geneva Conventions, and is considered one of the “High Contracting Parties.”<sup>154</sup> On July 1, 2002, the International Criminal Court was established after the ratification of 60 states as a permanent, treaty based, independent court under the Rome Statute (1998) for the prosecution of individuals, not states, for war crimes.

Thus, the primary objective is to ensure the United States complies with its duties and obligations under international law. As explained hereinbefore, the United States military does not possess wide discretionary powers in the administration of Hawaiian Kingdom law, as it would otherwise have in the occupation of a state it is at war with. Hence, belligerent rights do not extend over territory of a neutral state, and the occupation of neutral territory for military purposes is an international wrongful act.<sup>155</sup> As a result, there exists a continued exploitation of Hawaiian territory for military purposes in willful disregard of the 1893 executive agreements of administering Hawaiian law and then restore the Hawaiian government *de jure*. In a neutral state, the Hague and Geneva conventions merely provide guidance for the establishment of a military government.

In light of the fact that the Commander, USPACOM, has not established a military government in accordance with the laws of occupation, OHA has found itself to be in a precarious legal situation. What cannot be denied, though, is that OHA is in control of assets that it can claim no right to. Therefore, OHA’s previous concern for the protection of these assets, which has prompted nation building and federal recognition, whether through Kana‘iolowalu or not, is now moot. In other words, OHA need not worry about lawsuits anymore, because all courts, whether they are State of Hawai‘i or federal, cannot

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<sup>151</sup> Axel Marschik, *The Politics of Prosecution: European National Approaches to War Crimes*, (Timothy L. H. McCormack and Gerry J. Simpson, ed.s), *THE LAW OF WAR CRIMES: NATIONAL AND INTERNATIONAL APPROACHES* 72, note 33 (1997).

<sup>152</sup> See Geneva Convention, IV, *supra* note 1, Article 147.

<sup>153</sup> *Id.*, Article 4.

<sup>154</sup> See Hague Convention, IV, *supra* note 69; see Geneva Convention, IV, *supra* note 1.

<sup>155</sup> See Hague Convention, V, October 18, 1907, *Rights and Duties of Neutral Powers and Persons in Case of War on Land*, 36 Stat. 2310.



be considered properly constituted courts under the law of occupation. As such, plaintiffs would be prevented from utilizing the 14<sup>th</sup> Amendment of the U.S. Constitution and the Equal Protection Clause as the basis of their lawsuits. To quote again the U.S. Supreme Court, “Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens; and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law.”<sup>156</sup>

OHA needs to be mindful that Hawai‘i’s occupation also involves other states that have treaties with the Hawaiian Kingdom, which includes their successor states today. The Australian News Network (ANN) has already picked up this story in their interview I provided them regarding Ka Pouhana’s letter to Secretary of State Kerry. ANN reported, “if the Kingdom of Hawaii does indeed still exist, many historical treaties with nations including the UK and Australia would still be in effect.” (**Appendix VII**).

## 12. Conclusion and Recommendations

OHA needs to consider and to keep in mind that the community they service are the majority of the nationals of the Hawaiian Kingdom, being the aboriginal Hawaiian subjects, both pure and part. Aboriginal Hawaiian subjects have both political and civil rights under the laws of the Hawaiian Kingdom and are protected under the Fourth Geneva Convention. The maintenance of services to this community can be justified under the doctrine of necessity so long as the policies of OHA do not run contrary to Hawaiian Kingdom law and the laws of occupation. Although the doctrine of necessity has been applied to extenuating circumstances regarding the constitutional order of an established state, and not to the extenuating circumstances of a military government during the occupation of the state, the doctrine can provide some guidance for OHA.

Deviations from a state’s constitutional order “can be justified on grounds of necessity.”<sup>157</sup> Professor de Smith explains, “State necessity has been judicially accepted in recent years as a legal justification for ostensibly unconstitutional action to fill a vacuum arising within the constitutional order [and to] this extent it has been recognized as an implied exception to the letter of the constitution.”<sup>158</sup> Lord Pearce also posits that there are certain limitations to the principle of necessity, “namely (a) so far as they are directed to and reasonably required for ordinary orderly running of the State, and (b) so far as they do not impair the rights of citizens under the lawful...Constitution, and (c) so far as they are not intended to and do not run contrary to the policy of the lawful sovereign.”<sup>159</sup> Judge Gates took up the matter of the legal doctrine of necessity in *Chandrika Persaud v. Republic of Fiji*, and drew from the decision in the *Mitchell case*,<sup>160</sup> which provided that the requisite conditions for the principle of necessity consists of:

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<sup>156</sup> See *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936).

<sup>157</sup> STANLEY A. DE SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, 80 (1986).

<sup>158</sup> *Id.*

<sup>159</sup> *Madzimbamuto v. Lardner-Burke*, 1 A.C. 645, 732 (1969).

<sup>160</sup> *Mitchell v. Director of Public Prosecutions*, L.R.C. (Const.) 35, 88–89 (1986).



1. An imperative necessity must arise because of the existence of exceptional circumstances not provided for in the Constitution, for immediate action to be taken to protect or preserve some vital function of the State;
2. There must be no other course of action reasonably available;
3. Any such action must be reasonably necessary in the interest of peace, order, and good government; but it must not do more than is necessary or legislate beyond that;
4. It must not impair the just rights of citizens under the Constitution; and,
5. It must not be one the sole effect and intention of which is to consolidate or strengthen the revolution as such.

Brookfield summarized the principle of necessity as the “power of a Head of State under a written Constitution extends by implication to executive acts, and also legislative acts taken temporarily (that is, until confirmed, varied or disallowed by the lawful Legislature) to preserve or restore the Constitution, even though the Constitution itself contains no express warrant for them.”<sup>161</sup> Brookfield also explains “such powers are not dependent on the words of a particular Constitution, except in so far as that Constitution designates the authority in whom the implied powers would be found to reside.”<sup>162</sup>

OHA could rely on the implied powers of a military government under the Hague and Geneva Conventions, being that it is a part of the original governmental infrastructure of the Hawaiian Kingdom. When an occupier establishes a military government, it makes use of the governmental infrastructure of the occupied state. The occupier does not form a completely new government. All that is changed is the executive head while the rest of government remains intact with the exception of the legislative bodies, and this government is headed a military governor. Although, the Commander of USPACOM has not formally declared the existence of a military government, OHA could, by necessity, consider itself as an agency of a military government and begin to take active steps to comply with the law of occupation and Hawaiian Kingdom law as a preemptive measure of compliance. It would be irresponsible for the author to provide exactly what steps should be taken without the assistance of other professionals in the fields of political science and law, because these matters are very intricate.

The purpose of this memorandum is to provide an initial analysis of Hawai‘i’s situation under public international law and the direct impact it has on OHA. At center is education for both the OHA Trustees and staff, as well as for the Native Hawaiian community it services. Research into questions revolving around Hawai‘i’s occupation have been ongoing at the University of Hawai‘i at the graduate and doctoral levels and OHA should be aware of these extraordinary studies. The caliber of research in the last 10 years has grown exponentially and has reached other scholars worldwide. This research has completely revamped what was previously understood and the positions once held, but

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<sup>161</sup> F.M. Brookefield, *The Fiji Revolutions of 1987*, NEW ZEALAND L.J. 250, 251 (July 1988).

<sup>162</sup> *Id.*

more importantly it has provided viable and practical solutions to a very complex situation.

In light of the aforementioned, I respectfully make the following four recommendations to Ka Pouhana:

1. Ka Pouhana refrain from providing further funding to the Native Hawaiian Roll Commission and their project Kana'iolowalu for a Convention because of the implication of war crimes of pillaging and denationalization;
2. Recommend to the OHA Trustees to refrain from seeking federal recognition by the President of the United States because it is a direct violation of the 1893 executive agreements to restore the Hawaiian Kingdom government and the war crime of denationalization;
3. Maintain services to the Native Hawaiian community under the doctrine of necessity as long as these services do not run contrary to Hawaiian Kingdom law and the law of occupation;
4. Take steps to educate the Native Hawaiian community on the status of Hawai'i under both Hawaiian Kingdom law and international law.

# "Appendix I"

## Curriculum Vitae

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**DAVID KEANU SAI**



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### **EXPERTISE:**

International relations, state sovereignty, international laws of occupation, United States constitutional law, Hawaiian constitutional law, and Hawaiian land titles.

### **ACADEMIC QUALIFICATIONS:**

- Dec. 2008: Ph.D. in Political Science specializing in international law, state sovereignty, international laws of occupation, United States constitutional law, and Hawaiian constitutional law, University of Hawai'i, Manoa, H.I.
- Doctoral dissertation titled, "American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State."
- May 2004: M.A. in Political Science specializing in International Relations, University of Hawai'i, Manoa, H.I.
- May 1987: B.A. in Sociology, University of Hawai'i, Manoa, H.I.
- May 1984: A.A. in Pre-Business, New Mexico Military Institute, Roswell, N.M., U.S.
- May 1982: Diploma, Kamehameha Schools, Honolulu, H.I.

### **PANELS AND PRESENTATIONS:**

- *Alternative Visions of Sovereignty*, American Constitution Society's William S. Richardson School of Law Student Chapter, University of Hawai'i at Manoa,

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Presenter-Panelist with Professor Williamson Chang and former Governor John Waihe'e, III, April 17, 2014.

- *The Hawai'i-Connecticut Missionary Connection: Rumors and Realities*, Hartford Seminary, Panellist-Discussant with Aolani Kailihou, Dr. Stephen Blackburn, and Dr. Clifford Putney, April 10, 2014.
- *Hawai'i: An American State or a State under American Occupation*, Central Connecticut State University, April 10, 2014.
- *Hawai'i: An American State or a State under American Occupation*, University of Massachusetts Boston, April 8, 2014.
- *Hawai'i: An American State or a State under American Occupation*, Harvard University, April 8, 2014.
- *Hawai'i: An American State or a State under American Occupation*, New York University, April 7, 2014.
- *Hawai'i: An American State or a State under American Occupation*, Swiss Diplomats—Zurich Network and Foraus, University of Zurich, Switzerland, November 11, 2013.
- *Puana Ka 'Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai'i. A presentation entitled "1893 Executive Agreements and their Impact Today," March 15, 2013.
- *Why the Birthers Are Right For All The Wrong Reasons*, Harvard University, Massachusetts, October 12, 2012.
- *Why the Birthers Are Right For All The Wrong Reasons*, University of Massachusetts, Boston, October 12, 2012.
- *Puana Ka 'Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai'i. A presentation entitled "1893 Executive Agreements and their Impact Today," March 16, 2012.
- "The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State." *Sustainability for Biological Engineers Lecture Series*, University of Hawai'i at Manoa, Agricultural Science Bldg. 219, December 7, 2010.
- "1893 Cleveland-Lilu'uokalani Executive Agreements and their Impact Today." Presentation at the *Annual Convention of Hawaiian Civic Clubs*, Sheraton Keauhou Bay Resort & Spa, Island of Hawai'i, November 9, 2010.
- "The History of the Hawaiian Kingdom." Presentation at the annual convention of the *Victorian Society of Scholars*, Kana'ina Bldg., Honolulu, October 28, 2010.

- “Pu`a Foundation: E pu pa`akai kakou.” Joint presentation with Pu`a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Healing Our Spirit World, The Sixth Gathering*, Hawai`i Convention Center, September 7, 2010.
- “Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements.” Sponsored by the County of Maui, Real Property Tax Division, HGEA Bldg, Kahului, June 28, 2010.
- “Evolution of Hawaiian land Titles and the Impact of the 1893 Executive Agreements.” Sponsored by the City & County of Honolulu, Real Property Assessment Division, Mission Memorial Auditorium, June 9, 2010.
- “Hawai`i’s Legal and Political History.” Sponsored by *Kokua A Puni Hawaiian Student Services*, UH Manoa, Center for Hawaiian Studies, UHM, May 26, 2010.
- “Ua Mau Ke Ea: Sovereignty Endured.” Joint presentation with Pu`a Foundation of an educational package and curriculum I authored for teaching Hawaiian history, *Native Hawaiian Education Association Conference*, Windward Community College, March 19, 2010.
- *Puana Ka `Ike Lecture Series (Imparting Knowledge)*, Kamehameha Investment Corporation, Keahou Hotel, Kona, Hawai`i. A presentation entitled “Evolution of Hawaiian Land Titles and its Impact Today,” March 12, 2010.
- “1893 Cleveland-Lili`uokalani Agreement of Restoration (Executive Agreement).” Sponsored by the Haloa Research Center, Baldwin High School Auditorium, February 20, 2010.
- “1893 Cleveland-Lili`uokalani Agreement of Restoration (Executive Agreement).” Sponsored by Kamehameha Schools’ Kula Hawai`i Teachers Professional Development, Kapalama Campus, Konia, January 4, 2010.
- “The Legal and Political History of Hawai`i.” Sponsored by House Representative Karen Awana, National Conference of Native American State Legislators, State of Hawai`i Capital Bldg, November 16, 2009.
- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by Hawaiian Studies, Ho`a and Ho`okahua (STEM), Maui Community College, Noi`i 12-A, November 2, 2009.
- “The Legal and Political History of Hawai`i.” Presentation to the *Hui Aloha `Aina Tuahine*, Center for Hawaiian Studies, University of Hawai`i at Manoa, October 30, 2009.

- “The Legal and Political History of Hawai‘i.” Presentation to *Kahuewai Ola*, Queen Lili‘uokalani Center for Student Services, University of Hawai‘i at Manoa, October 23, 2009.
- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by Kamehameha Schools Ka‘iwakiloumoku Hawaiian Cultural Events Series, Ke‘eliokalani Performing Arts Center, Kamehameha Schools Kapalama campus, October 21, 2009.
- “The Myth of Ceded Lands: A Legal Analysis.” Sponsored by ASUH and Hawaiian Studies, Paliku Theatre, Windward Community College, September 10, 2009.
- *Puana Ka ‘Ike Lecture Series (Imparting Knowledge)*, Kohana Center/Kamehameha Investment Corporation, Keauhou II Convention Center, Kona, Hawai‘i. A presentation entitled “The Myth of Ceded Lands: A Legal Analysis,” March 13, 2009.
- “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State.” Briefing for Colonel James Herring, Army Staff Judge Advocate, 8th Theater Sustainment Command, and his staff officers, Wheeler AAF Courthouse, U.S. Army Pacific, Wahiawa, Hawai‘i, February 25, 2009.
- *Ka Nalu: Towards a Hawaiian National Consciousness*, Symposium of the Hawaiian Society of Law and Politics, University of Hawai‘i at Manoa, Imin Conference Bldg (East West Center). Presented a portion of my doctoral dissertation entitled “The Myth of Ceded Lands: A Legal Analysis,” February 28, 2009.
- *Manifold Destiny: Disparate and Converging Forms of Political Analysis on Hawai‘i Past and Present*, International Studies Association Annual Conference, San Francisco, California, March 26, 2008. Presented a paper entitled “A Slippery Path Towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian Nationality and Hawaiian Indigeneity and its Use and Practice in Hawai‘i today,” March 26, 2008.
- *Mana Kupuna Lecture Series*, University of Waikato, New Zealand. A presentation entitled “Legal and Political History of the Hawaiian Kingdom,” March 5, 2008.
- *Indigenous Politics Colloquium* speaker series, Department of Political Science, University of Hawai‘i at Manoa. Presented an analysis and comparison between Hawaiian State sovereignty and Hawaiian indigeneity and its use and practice in Hawai‘i today,” January 30, 2007.
- Conference at Northeastern Illinois University entitled *Dialogue Under Occupation: The Discourse of Enactment, Transaction, Reaction and Resolution*. Presented a paper on a panel entitled “Prolonged Occupation of the Hawaiian Kingdom,” Chicago, Illinois, November 10, 2006.
- The 14<sup>th</sup> Biennial Asian/Pacific American Midwest Student Conference, “Refocusing Our Lens: Confronting Contemporary Issues of Globalization and Transnationalism.”

Presented article “American Occupation of the Hawaiian State: A Century Unchecked” on Militarization Panel, Oberlin College, Ohio, February 18, 2006.

- 2005 American Studies Association Annual Conference. Panelist on a roundtable discussion entitled, “The Case for Hawai‘i’s Independence from the United States - A Scholarly and Activist Roundtable Discussion,” with Keala Kelly and Professor Kehaulani Kauanui. Renaissance Hotel, Washington, D.C., November 4, 2005.
- Kamehameha Schools 2005 Research Conference on Hawaiian Well-being, sponsored by the Kamehameha Schools *Policy Analysis & Systems Evaluation* (PACE). Presented article “Employing Appropriate Theory when Researching Hawaiian Kingdom Governance” with two other presenters, Malcolm Naea Chun and Dr. Noelani Goodyear-Kaopua. Radisson Prince Kuhio Hotel, Waikiki, October 22, 2005.
- 1<sup>st</sup> Annual Symposium of the *Hawaiian Society of Law & Politics* showcasing the first edition of the *Hawaiian Journal of Law & Politics* (summer 2004). Presented article “American Occupation of the Hawaiian State: A Century Gone Unchecked,” with response panellists Professor John Wilson, Political Science, and Kanale Sadowski, 3<sup>rd</sup> year law student, Richardson School of Law. Imin International Conference Center, University of Hawai‘i at Manoa, April 16, 2005.
- “A Symposium on Practical Pluralism.” Sponsored by the *Office of the Dean*, William S. Richardson School of Law. Panelist with Professor Williamson Chang and Dr. Kekuni Blaisdell, University of Hawai‘i at Manoa, Honolulu, April 16-17, 2004.
- “Mohala A‘e: Blooming Forth,” *Native Hawaiian Education Association’s 5<sup>th</sup> Annual Conference*. Presented a workshop entitled “Hawaiian Epistemology.” Windward Community College, Kane‘ohe, March 23, 2004.
- “First Annual ‘Ahahui o Hawai‘i Kukakuka: Perspectives on Federal Recognition.” Guest Speaker at a symposium concerning the Akaka Bill. Sponsored by the ‘*Ahahui o Hawai‘i* (organization of native Hawaiian law students), University of Hawai‘i at Manoa Richardson School of Law, Honolulu, March 12, 2004.
- “The Status of the Kingdom of Hawai‘i.” A debate with Professor Didrick Castberg, University of Hawai‘i at Hilo (Political Science), and moderator Professor Todd Belt University of Hawai‘i at Hilo (Political Science). Sponsored by the *Political Science Club*, University of Hawai‘i at Hilo, Campus Center, March 11, 2004.
- “The Political History of the Hawaiian Kingdom: Past and Present.” A presentation to the *Hawai‘i Island Association of Hawaiian Organizations*, Queen Lili‘uokalani Children’s Center, Hilo, February 13, 2004.
- “Globalization and the Asia-Pacific Region.” Panel with Dr. Noenoe Silva (Political Science). *East-West Center Spring 2004 Core Course*, Honolulu, February 4, 2004.

- Televised symposium entitled, “Ceded Lands.” Other panelists included Professor Jon Van Dyke (Richardson School of Law) and Professor Lilikala Kame’eleihiwa (Center for Hawaiian Studies). Sponsored by the *Office of Hawaiian Affairs*, Wai’anae, August 2003.
- “Hawai`i’s Road to International Recovery, II.” Sponsored by *Kipuka*, University of Hawai`i at Hilo, September 25, 2003.
- “An Analysis of Tenancy, Title, and Landholding in Old Hawai‘i.” Sponsored by *Kipuka*, University of Hawai`i at Hilo, September 26, 2002.
- “The Hawaiian Kingdom in Arbitration Proceedings at the Permanent Court of Arbitration, The Hague, Netherlands.” A presentation at the 6th World Indigenous Peoples Conference on Education, Stoney Park, Morley, Alberta, Canada, August 6, 2002.
- "The Hawaiian Kingdom and the United States of America: A State to State Relationship." *Reclaiming the Legacy*, U.S. National Archives and Records Administration, University of San Francisco, May 4, 2002
- “Hawai`i’s Road to International Recovery.” Sponsored by *Kipuka*, University of Hawai`i at Hilo, April 11, 2002.
- “Hawai`i’s Road to International Recovery,” a presentation to the Officers Corps of the 25<sup>th</sup> Infantry Division, U.S. Army, Officer’s Club, Schofield Barracks, Wahiawa, February 2001.
- “Lance Larsen vs. the Hawaiian Kingdom,” presentation to the *Native Hawaiian Bar Association*, quarterly meeting, Kana`ina Building, Honolulu, 2001.
- “Hawaiian Political History,” *Hawai`i Community College*, Hilo, March 5, 2001.
- “The History of the Hawaiian Kingdom,” A guest speaker at the *Aloha March* rally in Washington, D.C., August 12, 1998.
- Symposium entitled, “Human Rights and the Hawaiian Kingdom on the occasion of the 50th anniversary of the Universal Declaration of Human Rights.” Other panelist included Francis Boyle (Professor of International Law, University of Illinois), Mililani Trask (Trustee, Office of Hawaiian Affairs), Richard Grass (Lakota Sioux Nation), and Ron Barnes (Tununak Traditional Elders Council, Alaska). University of Hawai`i at Hilo, April 16, 1998.
- Symposium entitled, “Perfect Title Company: Scam or Restoration.” Sponsored by the *Hawai`i Developers Council*, Hawai`i Prince Hotel, Honolulu, August 1997.



## PUBLICATIONS:

Book, "Ua Mau Ke Ea-Sovereignty Endures: An Overview of the Political and Legal History of the Hawaiian Islands." (Pu`a Foundation, Honolulu, 2011).

Article, "1893 Cleveland-Lili`uokalani Executive Agreements." November 28, 2009, unpublished, online at <http://www2.hawaii.edu/~anu/publications.html>.

Article, "Establishing an Acting Regency: A Countermeasure Necessitated to Preserve the Hawaiian State." November 28, 2009, unpublished, online at <http://www2.hawaii.edu/~anu/publications.html>.

Book, "Land Titles in the Hawaiian Islands: From Origins to the Present (forthcoming)." Contract signed with University of Hawai`i Press, May 7, 2009.

Article, "The Myth of Ceded Lands and the State's Claim to Perfect Title." *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, April 2009.

Dissertation, "American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State," University of Hawai`i at Manoa, Political Science, December 2008, online at <http://www2.hawaii.edu/~anu/publications.html>.

Article, "A Slippery Path towards Hawaiian Indigeneity: An Analysis and Comparison between Hawaiian State Sovereignty and Hawaiian Indigeneity and its Use and Practice in Hawai`i Today," *Journal of Law and Social Challenges* (San Francisco School of Law), Vol. 10 (Fall 2008), online at <http://www2.hawaii.edu/~anu/publications.html>.

Book Review for "Kahana: How the Land was Lost," *The Contemporary Pacific: A Journal of Island Affairs*, Vol. 15, No. 1 (2005), online at <http://www2.hawaii.edu/~anu/publications.html>.

Article, "Experts Validate Legitimacy of International Law Case." *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, August 2004.

"American Occupation of the Hawaiian State: A Century Unchecked," *Hawaiian Journal of Law and Politics*, vol. 1 (Summer 2004), online journal at: <http://www2.hawaii.edu/~hslp/journal.html>.

Article, "The Indian Commerce Clause sheds Light on Question of Federal Authority over Hawaiians," *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, September 2003.

Article, "Before Annexation: Sleight of Hand—Illusion of the Century." *Ka Wai Ola o OHA Newspaper*, Office of Hawaiian Affairs, July 1998.

"Unpublished Short Essays" on line at <http://hawaiiankingdom.org/info-nationals.shtml>

- "The Hawaiian Kingdom: A Constitutional Monarchy"
- "The Relationship between the Hawaiian Kingdom and the United States"

- “Revisiting the Fake Revolution of January 17, 1893”
- “What does TWA Flight 800 and the Hawaiian Kingdom have in Common”
- “American Migration to the Hawaiian Kingdom and the Push for State into the American Union”
- “Hawaiian Nationality: Who Comprises the Hawaiian Citizenry?”
- “The Vision of the *acting* Council of Regency”

## VIDEO/RADIO:

Video: “Ka‘apuni Honua, KS Song Contest Preshow,” *Kamehameha Schools Song Contest*, KGMB television, March 21, 2014.

Video: “Hawai‘i and the Law of Occupation.” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, March 11, 2009.

Video: “Title Insurance and Land Ownership in Hawai‘i.” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, February 4, 2009.

Video: “What are Ceded Lands?” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, December 22, 2009.

Video: “Hawaiian Kingdom Law and Succession.” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, November 16, 2008.

Video: “Kamehameha I: From Chiefly to British Governance.” *Lecture Series of the Kaleimaileali‘i Hawaiian Civic Club*, ‘Olelo Community Television, July 23, 2008.

Internet Radio: “The Gary Baumgarten Report News Talk Online: Hawai‘i 'Kingdom' Proponent Makes Case For An Independent Hawai‘i.” Guest on a daily talk internet radio show, <http://garybaumgarten.blogspot.com/2008/04/hawaii-kingdom-proponent-makes-case-for.html>, April 11, 2008.

Radio: “Talk Story with Uncle Charlie.” Guest on a weekly talk radio show. *KNUI AM 900*, Kahului, January 23, 2004.

Radio: “Perspective.” Co-host with Keaumiki Akui for a weekly talk radio show concerning Hawaiian political history. *KCCN AM 1420*, Honolulu, 1999-2001.

Video: “Hawaiian Kingdom Law a Presentation.” *Na Maka o ka Aina*, 1999.

Video: Segments of *Aloha Quest* (six-hour broadcast), KFVE television, Honolulu, December 19, 1999.

- “The Hawaiian Kingdom”
- “What is a Hawaiian subject”
- “Attempted Overthrow of 1893”
- “The Annexation that Never Was”

- “Internal Laws of the United States”
- “Supreme Courts and International Courts”
- “U.S. Senate debate: Apology resolution, Oct. 1993”

## **MILITARY:**

Aug. 1994: Honourably Discharged  
 Dec. 1990: Diploma, *U.S. Army Field Artillery Officer Advanced Course*, Fort Sill, OK  
 May 1990: Promoted to Captain (O-3)  
 Apr. 1990: Diploma, *U.S. Air Force Air Ground Operations School*, Hurlbert Field, FL  
 May 1987: Promoted to 1<sup>st</sup> Lieutenant (O-2)  
 Sep. 1987: Diploma, *U.S. Army Field Artillery Officer Basic Course*, Fort Sill, OK  
 Sep. 1984: Assigned to *1<sup>st</sup> Battalion, 487<sup>th</sup> Field Artillery*, Hawai'i Army National Guard, Honolulu, H.I.  
 May 1984: Army Reserve Commission, 2<sup>nd</sup> Lieutenant (O-1), Early Commissioning Program (ECP) from the New Mexico Military Institute, Roswell, NM

## **GENERAL DATA:**

Nationality: Hawaiian  
 Born: July 13, 1964, Honolulu, H.I.

# "Appendix II"

HAWAIIAN REGISTER AND DIRECTORY.

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## HAWAIIAN REGISTER AND DIRECTORY FOR 1893.

### The Court.

HER MAJESTY, LILIUOKALANI, *b.* September 2, 1838; succeeded to the Throne January 29, 1891, on the death of her brother, King Kalakaua; *m.* to his late Royal Highness Jno. Owen Dominis, Prince Consort, who was *b.* March 10, 1832, and *d.* August 27, 1891. Daughter of Kapaakea and Keohokalole.

Her Majesty the Dowager Queen KAPIOLANI, *b.* December 31, 1835.

Her Royal Highness the Princess VICTORIA-KAWEKIU-KAIULANI-LUNALILO-KALANINUI-AHILAPALAPA, *b.* October 16, 1875, daughter of Her late K. H. Princess Likelike and His Ex A.S. Cleghorn, K.G.C., Member of the Privy Council of State. Proclaimed Heir Apparent, to the Throne, March 9, 1891.

His Excellency ARCHIBALD SCOTT CLEGHORN, K.G.C., Governor of Oahu and member of Privy Council of State. Father of the Heir Apparent.

Her Royal Highness VIRGINIA KAPOOLOKU POOMAIKELANI, *b.* April 7, 1839. Sister to the Queen Dowager.

His Royal Highness Prince DAVID KAWANAKOHA, son of H. R. H. Princess Kekaulike, *b.* February 19, 1868.

His Royal Highness Prince JONAH KUHIO KALANIANA'OLE, son of H. R. H. Princess Kekaulike, *b.* March 28, 1870.

Her Majesty's Chamberlain, MAJOR JAS. W. ROBERTSON.

### Her Majesty's Staff.

Cols C. P. Iaukea, J H Boyd, R Hoapili Baker W. H. Cornwell, J D Holt, Jr, H F Bertelmann J. T. Baker and E K Lilikalani.

### The Cabinet.

Her Majesty, THE QUEEN.

Minister of Foreign Affairs, His Ex M P Robinson; Minister of the Interior, His Ex G N Wilcox; Minister of Finance, His Ex P C Jones; Attorney-General, His Ex C Brown.

### Governors.

His Ex A S Cleghorn, Governor of Oahu.

His Ex T W Everett, Governor of Maui.

His Ex J T Baker, Governor of Hawaii.

His Ex W H Rice, Governor of Kauai.

### Governor of Oahu's Staff.

Majors J W Robertson, Sam'l Nowlein.

### Privy Council of State.

Her Majesty, THE QUEEN.

Hons. C R Bishop, A S Cleghorn, A F Judd, H A Widemann, H M Whitney, J A Cummins, G Rhodes, J M Smith, J S Walker, W J Smith, W F Allen, D Kahanu, J E Bush, C P Iaukea, G W Macfarlane, P P Kanoa, W D Alexander, E K Lilikalani, P Neumann, S Parker, J T Baker, R H Baker, S M Damon, J K Kaunamano, A N Tripp, J G Hoapili, F H Hayselden, W G Irwin, D H Nahinu, A Rosa, J B Atherton, J T Waterhouse, Jr, J Ena, W H Cornwell, R F Bickerton, C B Wilson, F S

Pratt, J O Carter, H R H. D Kawanakoa, S B Dole, G C Beckley, A Fernandez, P Kenberg, Jr, Jno Richardson, J W Robertson. C P Iaukea, Secretary.

### Legislative Assemblage, Session of 1893.

#### OFFICERS.

President.....Hon J S Walker  
Vice-President.....Hon J Kauhane  
Secretary.....C J McCarthy  
Interpreter.....W L Wilcox  
Sergeant-at-Arms.....F J Testa  
Chaplain.....Rev J Waia mau  
The Cabinet Ministers hold seats in the House ex-officio.

#### HOUSE OF NOBLES.

#### OAHU:

Hons D W Pua, A P Peterson, C L Hopkins. Term expires Feb 1894.

Hons. J S Walker, C O Berger, Jno Ena. Term expires Feb 1896.

Hons. J A Cummins, J N S Williams, C B Maile. Term expires Feb 1898.

#### MAUI:

Hons R D Walbridge, W H Cornwell. Term expires Feb 1894.

Hons. H P Baldwin, W Y Horner. Term expires Feb 1896.

Hons. Jas Anderson, L A Thurston. Term expires Feb 1898.

#### HAWAII:

Hons. R R Hind, J G Hoapili. Term expires Feb 1894.

Hons. J Kauhane, J M Horner. Term expires Feb 1896.

Hons. Alex Young, Jos Mardsen. Term expires Feb 1898.

#### KAUAI:

Hon. P P Kanoa. Term expires Feb 1894.

Hon. Alex McBryde. Term expires Feb 1896.

Hon. A Dreier. Term expires Feb 1898.

#### REPRESENTATIVES.

#### OAHU:

Honolulu:—Hons. W C Wilder, J W Bipikane, C W Ashford, S K Aki, S K Pua.

Ewa:—Hon A Kauh. Waialua:—Hon R W Wilcox. Koolau, J E Bush.

#### MAUI:

Lahaina:—Hon Wm White. Wailuku:—Hons W P Kanealii, W Edmonds. Makawao:—Hon J Kaluna. Hana:—Hon J K Iosepa.

Molokai:—Hon T S Nahinu.

#### HAWAII:

Hilo:—Hons J Nawahi, K M Koahou, A Horner. Hamakua:—Hon J K Kaunamano.

Kohala:—Hon G P Kamaooha. Kona:—Hon J H Waipuilani. Kau:—Hon J N Kapahu.

#### KAUAI:

Koloa:—Hon W O Smith. Waimea:—Hon J A Akina. Hanalei:—Hon A S Wilcox.

### Department of Judiciary.

#### SUPREME COURT.

Chief Justice.....Hon A F Judd  
First Associate Justice.....Hon R F  
Second Associate Justice.....Hon

Clerk Judiciary Department.....F

**Circuit Judges.**

First Judge 1st Circuit, Oahu.....  
 Second Judge 1st Circuit, Oahu.....  
 Second Circuit, Maui..... Hon A N Kepoikai  
 3rd and 4th Circuits, Hawaii..... Hon S L Austin  
 Fifth Circuit, Kauai..... Hon J Hardy

**CLERKS OF SUPREME AND CIRCUIT COURTS:**

H Smith.....ex officio  
 1st clerk 1st Circuit, Oahu..... F. Wundenberg  
 2nd clerk 1st Circuit, Oahu..... Geo Lucas  
 Second Circuit, Maui..... Goodale Armstrong  
 3rd and 4th Circuits, Hawaii..... Daniel Porter  
 Fifth Circuit, Kauai..... R W T Purvis

**INTERPRETERS, ETC.**

Hawaiian..... W Luther Wilcox  
 Chinese..... Li Cheung  
 Portuguese..... J M Vivas  
 Stenographer..... J W Jones

**District Magistrates.****OAHU.**

Wm Foster..... Honolulu  
 ..... Ewa  
 J K Kupau..... Waianae  
 J Kaluhi..... Koolauloa  
 S H Kalamakee..... Waialua  
 F Pahia..... Koolaupoko

**MAUI.**

W H Daniels..... Wailuku  
 D Kahaulelio..... Lahaina  
 Chas Copp..... Makawao  
 J H S Kaleo..... Hana  
 J K Piimanu..... Kipahulu, Hana  
 M Kealoha..... Honouliuli  
 D Kalauokalani..... Molokai  
 S Kahoohalahala..... Lanai

**KAUAI.**

S R Hapuku..... Lihue  
 J W Kala..... Koloa  
 R Puuki..... Hanalei  
 J K Kauniala..... Waimea  
 J W Iota..... Kawaihau

**HAWAII.**

G W A Hapai..... 1st District, Hilo  
 Jos P. Misson..... 2nd District, Hilo  
 R H Atkins..... North Kohala  
 S H Mahuka..... South Kohala  
 E W Barnard..... North Hilo  
 Edwin Thomas..... Hamakua  
 Jas M Kauwila..... Puna  
 J H S Martin..... West Kau  
 Kekani Pa..... East Kau  
 S B Kaalawamaka..... North Kona  
 S M Kekoa..... South Kona

**Department of Foreign Affairs.**

Minister of Foreign Affairs. His Ex M P Robinson  
 Secretary of Department..... F P Hastings  
 Clerks of Department, W H Wright, Ed Stiles,  
 H R H D Kawanakoa.

**Diplomatic Representatives Accredited to the Court of Hawaii.**

United States—His Ex John L Stevens, Envoy Extraordinary and Minister Plenipotentiary; residence, Nuuanu Avenue.

Portugal—Senhor A de Souza Canavarro, Charge d'Affaires and Consul-General; residence, Beretania street.

Great Britain—His Ex J H Wodehouse, Minister Resident; residence, Emma street.

France—Mons G M G Bossert d'Anglade, Consul Commissioner; residence, Beretania street. Chancellor, Mons A Vizzavona.

Japan—Mons S Fugii, Diplomatic Agent and Consul General. Secretary, G Narita.

**Foreign Consuls, Etc.**

United States—Consul-General, H W Severance; Vice and Deputy Consul-General, W Porter Boyd.

Italy—F A Schaefer, (Dean of the Consular Corps)

Chili..... F A Schaefer

German Empire..... H F Glade

Sweden and Norway..... H W Schmidt

Denmark..... H R Macfarlane

Peru..... Bruce Cartwright

Belgium..... J F Hackfeld

Netherlands..... J H Paty

Spain—Vice-Consul..... H Renjes

Austro-Hungary..... H F Glade

Russia, Acting Vice-Consul..... J F Hackfeld

Great Britain, Vice-Consul..... T R Walker

Mexico..... H Renjes

(Attaches to Consulate: F Tanno, G Narita, H Ito.)

China—Commercial Agent, Goo Kim; Assistant Commercial Agent, Wong Kwai.

United States Cons'l'r Ag't, Hilo..... C Furneaux

U S Consular Agent, Kahului..... A F Hopke

U S Consular Agent, Mahukona..... C L Wight

**Diplomatic and Consular Representatives of Hawaii Abroad.***In the United States.*

United States—J Mott Smith, Envoy Extraordinary and Minister Plenipotentiary, Washington, D C.

New York—E H Allen, Consul-General.

San Francisco—F S Pratt, Consul-General for the Pacific States: California, Oregon and Nevada and Washington. J B Maholm, Vice Consul General.

Philadelphia..... Robert H Davis, Consul

San Diego, Cal..... Jas W Girvin, Consul

Boston..... Lawrence Bond, Consul

Portland, Or..... J McCracken, Consul

Port Townsend, Wash..... James G Swan, Consul

Seattle..... G R Carter, Consul

*Mexico, Central and South America.*

U S of Mexico, Mexico—Col W J De Gress, Consul. R H Baker, Vice-Consul.

Manzanillo..... Robert James Barney, Consul

Guatemala..... Henry Tolke, Consul

Peru, Lima—R H Beddy, Charge d'Affaires and Consul-General.

Callao, Peru..... S Crosby, Consul

Chile—Valparaiso, D Thomas, Charge d'Affaires and Consul-General.

Monte Video, Uruguay: Conrad Hughes, Consul

Philippine Islands, Iloilo—George Sheldermine, Consul.

Manila..... Jasper M Wood, Consul

*Great Britain.*

London..... A Hoffnung, Charge d'Affaires Secretary of Legation, S B Francis Hoffnung, Manley Hopkins, Consul.

Liverpool..... Harold Janion, Consul

Bristol..... Mark Whitwell, Consul

Hull..... W Moran, Consul

Newcastle on Tyne..... E Biesterfeld, Consul

Falmouth..... C R Broad, Consul  
Dover (and the Cinque Ports), Francis William  
Prescott, Consul.

Cardiff and Swansea..... H Goldberg, Consul  
Edinburgh and Leith..... E G Buchanan, Consul  
Glasgow..... Jas Dunn, Consul  
Dundee..... J G Zoller, Consul  
Dublin..... R Jas Murphy, Vice-Consul  
Queenstown..... Geo B Dawson, Consul  
Belfast..... W A Ross, Consul  
Cebu..... George E A Cadell, Consul

#### *British Colonies.*

Toronto, Ontario, J E Thompson, Consul-General  
Geo A Shaw, Vice-Consul.

Montreal..... Dickson Anderson, Consul  
Belleville, Ontario, Alex Robertson, Vice-Consul  
Kingston, Ontario, Geo Richardson, Vice-Consul  
Rimouski, Quebec, J N Pouliot Q C, Vice-Consul  
St John's, N B..... Allan O Crookshank, Consul  
Yarmouth, N S, ...Ed F Clements, Vice-Consul  
Victoria, B C..... R P Rithet, Consul  
Vancouver, B. C..... G A Fraser, Consul  
Sydney, N S W..... E O Smith, Consul-General  
Melbourne, Victoria..... G N Oakley, Consul  
Brisbane, Queensland, Alex B Webster, Consul  
Hobart, Tasmania, Captain Hon. Audley Coote,  
Consul

Launceston..... Geo Collins, Vice-Consul  
Newcastle, N S W..... W H Moulton, Consul  
Auckland, N Z..... D B Cruikshank, Consul  
Dunedin, N Z..... Henry Driver, Consul  
Hongkong, China..... Consul-General.  
Shanghai, China..... Hon J Johnstone Keswick.

#### *France and Colonies.*

Paris..... Alfred Houle, Charge d'Affaires  
and Consul-General; A N H Teyssier, Vice-  
Consul.

Marcelles..... G du Cayla, Consul  
Bordeaux..... Ernest de Boissac, Consul  
Dijon H..... Vielhoune, Consul  
Libourne..... Charles Schoessier, Consul  
Tahiti, Papeete..... A F Bonet, Consul

#### *Germany.*

Bremen..... John F Muller, Consul  
Hamburg..... Edward F Weber, Consul  
Frankfort-on-Maine..... Joseph Kopp, Consul  
Dresden..... Augustus P Kuss, Consul  
Karlsruhe..... H Muller, Consul

#### *Austria.*

Vienna..... V von Schonberger, Consul

#### *Spain and Colonies.*

Barcelona..... Enrique Minguez, Consul-General  
Cadiz..... James Shaw, Consul  
Valencia..... Vicente Chust, Consul  
Malaga—F T De Navarra, Consul; F Gimenez  
y Navarra, Vice-Consul.

Cartagena..... J Paris, Consul  
Las Palmas, Gran Canaria, Luis Fa'cony Que-  
vedo, Consul; J Bravo de Laguna, Vice-Consul  
Santa Cruz..... B M y Battaller, Vice-Consul  
Arecife de Lanzarote—E Morales y Rodriguez,  
Vice-Consul.

#### *Portugal and Colonies.*

Lisbon..... A Ferreira de Serpa, Consul-General  
Oporto..... Narciso F M Ferro, Consul  
Madeira..... F Rodrigues, Consul  
St Michaels..... A de S Moreira, Consul  
St Vincent, Cape de Verde Islands—C Martins  
Vice-Consul.

#### *Italy.*

Rome..... James Clinton Hooker, Consul-General  
Genoa..... Raphael de Luchi, Consul  
Palermo..... Atgelo Tagliavia, Consul

#### *Netherlands.*

Amsterdam..... D H Schmuil, Consul-General  
Dordrecht..... P J Bowman  
Consul.

#### *Belgium.*

Antwerp..... Victor Forge, Consul-General  
Ghent..... E Coppieters, Consul  
Liege..... Jules Blanpain, Consul  
Bruges..... Emile Van den Brande, Consul

#### *Sweden and Norway.*

Stockholm..... C A Engalls, Acting Consul-General  
Christiania..... L Samson, Consul  
Lyskil..... H Bergstrom, Vice-Consul  
Gothemburg..... Gustav Kraak, Vice-Consul

#### *Denmark.*

Copenhagen..... ———, Consul-General

#### *Japan.*

Tokio, His Excellency R Walker Irwin, Minister  
Resident.  
Hiogo and Osaka..... Samuel Endicott, Consul

#### *Interior Department.*

Minister of Interior..... His Ex G N Wilcox  
Chief Clerk of Department..... J A Hassinger  
Clerks—J H Boyd, M K Keohokalole, J L  
Aholo, S Mahaulu, Geo Ross, Edwd S Boyd.  
Electoral Registrar..... Wray Taylor  
Registrar of Conveyances..... Thos G Thrum  
Deputy Registrar..... Malcolm Brown  
Supt Public Works and C E..... W E Rowell  
Superintendent Water Works..... J C White  
Clerk of Water Works..... A Lucas  
Supt Electric Lights..... Jno Cassidy  
Road Supervisor, Honolulu..... W H Cummins  
Commissioner of Patents..... C T Gulick  
Physician Insane Asylum..... Dr A McWayne

#### *Government Surveying Corps.*

W D Alexander..... Surveyor-General  
J F Brown..... Assistant in charge of gov't lands  
C J Lyons..... Assistant in charge of office  
F S Dodge..... Assistant

#### *Board of Immigration.*

His Ex Hon G N Wilcox..... President  
Members—His Ex A S Cleghorn, Hon M P Ro-  
binson, Hon Joseph B Atherton, Jas B Castle,  
Esq., Jas G Spencer, Esq.  
Wray Taylor..... Secretary  
G O Nacayama..... Inspector-in-Chief of Japanese  
Immigrants.

#### *Board of Health.*

President..... D Dayton  
Members: Hon S Parker, J O Carter, J T Water-  
house, J F Colburn.  
Secretary..... Chas Wilcox  
Agents..... C B Reynolds, G W C Jones, S Ku

#### *GOVERNMENT PHYSICIANS.*

OAHU—Honolulu, Dr H G McGrew; Waialua,  
Dr L F Alvarez; Waianae, Dr N Russel.  
KAUAI—Waimea, Dr D Campbell; Hanalei,  
——, Puna, Dr St D G Walters; Koloa,  
Dr Jared K Smith.

MAUI—Makawao, Dr C L Stow; Hana, Dr T Allen; Wailuku, Dr Geo Herbert; Lahaina, Dr C Davison.

HAWAII—Hamakua, Dr C B Greenfield; Hilo, Dr R B Williams; N Hilo, Dr L S Thompson; Kau, Dr C B Cooper; Kohala, Dr B D Bond; Kona, Dr H A Lindley.

ISLAND OF MOLOKAI, Dr A Mouritz. LEPER SETTLEMENT, Dr R Oliver.

### Road Boards.

#### HAWAII.

Hilo.....J T Baker, J T Unea, W G Kaihenui.  
North Hilo...A C Palfrey, L S Thompson, W S Walker.

Puna.....  
Kau.....W K Moi, J Ikaika, K Kimokea  
Hamakua.....A Lidgate, J H Kaumelelau, C Williams.

N Kohala....E P Low, D H Kailau, D W Pua  
S Kohala...W Hookuanui, W K Davis, J Maguire  
N Kona...J Kaelemakule, J K Nahale, S B Kaalawamaka.

S Kona...D H Nahinu, K M M Hu, W Punikaia

#### MAUI.

Lahaina...R H Makekani, G Kauhi, S Kaluakini  
Wailuku.....A Barnes, H Center, E B Friel  
Hana.....D Center, J P Sylva, M H Reuter  
Makawao.....J Kalama, L A Andrews  
Molokai...S K Kupihea, S Kekahuna, J H Mahoe

#### OAHU.

Honolulu...C B Dwight, A Fernandez, S M Kaaukai.

Koolaupoko...F Pahia, J H Kealo, E P Aikue.  
Koolauloa...L J Aylett, S Kapu, L K Naone.  
Waialua....E S Timoteo, S H Kalamake, B Naukana.

Ewa and Waianae...L P Halualani, Poe, J Pinao

#### KAUAI.

Koloa.....J K Smith, A Cropp.  
Lihue.....S W Wilcox, S G D Walters, J H K Kaiwi.

Kawaihau...S N Hundley, D Lovell, J W Lota  
Hanalei.....S Kanewanui, G W Mahikoa, E Kuapuhi.

Waimea...J K Kapuniai, T Brandt, J Kamalinui  
Niihau...M W Keale, J B Kaomea, A W Kawaiula

### Commissioners of Crown Lands.

His Ex M P Robinson, His Ex C Brown, Col C P Iaukea.

Col C P Iaukea.....Agent

### Commissioners of Boundaries.

Hawaii.....F S Lyman  
Maui, Molokai and Lanai...S F Chillingworth

Oahu.....Wm Foster  
Kauai.....J Hardy

### Commissioners of Fences.

#### HAWAII.

Hilo.....B Brown.  
Hamakua.....

North Kona....G McDougall, E Kahulanui, J K Nahale.

South Kona....M Barrett, J W Smith S Keku-mano.

North Kohala.....H L Holstein, R Hind, Jr.

South Kohala.....S H Mahuka

Kau...D W Kaeomoku, C Meinecke, N C Hailey

#### MAUI.

Lahaina....K Nahaolekua, E S Kaiue, ———  
Wailuku....W A McKay, N Kepoikai, W B Keanu.

Makawao.....R von Tempsky, E Hele-kunihi.

Hana.....O Unna, J Nakila, P K Kaumakaole  
Molokai.....D Kailua, J Kaoo, J H Mahoe

#### OAHU.

Kona.....D Kahanu, P Jones, W S Wond  
Ewa and Waianae...S Andrews, J Kekahuna, H Kapu.

Waialua...H Wharton, J Amara, J F Anderson.  
Koolauloa.....J Kaluhi, J L Naili, W C Lane

Koolaupoko.....G Barenabe, M Rose

#### KAUAI.

Kawaihau....J P Kaumuali, Napalehua, J M Kealoha.

Koloa and Lihue...S Kaiu, E Kopke, J Gandall

### Agents to Grant Marriage Licences.

#### Hawaii—

Hilo...J Kanaeholo, B Naaikauna, L Severance,  
D H Hitchcock, L Kaapa, W Nailima

E W Barnard, J M Kauhi, S K Pookalani.  
Hamakua.....J N Haena, S B Kaleo, M Beniamina, W A Mio, J Kanakaoluna.

North Kohala...Jno Nalii, E de Harne, D S Kahockano, J S Smithies, K Kaai.

South Kohala.....James Bright  
North Kona.....J Kaelemakule

South Kona...Jos Kaoo, J W Maele, S W Kino,  
W J Wright, Jno Nahinu.

Puna.....D Kapela

Kau.....T C Wills, C Meinecke

#### Maui—

Wailuku...Chas Wilcox, J Haole, A N Kepoi-kai, P Pakualani, J Kealoalii.

Lahaina.....D Kahaulelio  
Makawao...H P Keliikipi, H Kawaihana, Jas Anderson, M Naaieono.

Hana...P Momoa, S W Kaai, D Napihao, J Nakila, Jr, C Andrews, P H Kaumakaole,

Kaanapali.....S M Sylva  
Molokai...R W Meyer, D Kalua, K Kainuwai,  
J H Babcock.

Lanai.....

#### Oahu—

Kona...W J Smith, C T Gulick, J H Boyd, P Jones, J H Thompson.

Koolaupoko.....E P Aikue  
Koolauloa...W C Lane, J L Naili, L B Nainoa

Ewa and Waianae....J Kahalualani, D Malo  
Waialua.....J F Anderson

#### Kauai—

Koloa.....A W Maioho, J Kala  
Lihue.....J H K Kaiwi

Kawaihau.....W H Williams  
Hanalei...Naohenui, J Kakina, Kaumeheiva,

J H Barenabe, E Kuapuhi.  
Waimea...S E Kaule, E L Kauai, D Kua.

Niihau.....F Sinclair, G S Gay

### Commissioners of Private Ways and Water Rights.

#### HAWAII.

Hilo.....J T Brown

Hamakua.....

North Kohala.....E C Bond

South Kohala.....Z Pakiki

Kau.....J H S Martin

Puna.....A W Maioho

## MAUI.

Lahaina.....	M Makalua
Wailuku.....	S E Kaiue
Makawao.....	E Helekunihi
Hana.....	S W Kaai
Kaanapali.....	J A Kaukau
Molokai.....	D Kailua

## OAHU.

Kona.....	Mrs E M Nakuina
Koolaupoko.....	G Barenaba
Koolauloa.....	J Kaluhi
Waialua.....	J Amara
Ewa and Waianae.....	J Kekahuna

## KAUAI.

Koloa and Lihue.....	S R Hapuku
Waimea.....	E L Kauai
Hanalei and Kawaihau.....	S U Kaneole

## Agents to Take Acknowledgments to Instruments.

## ISLAND OF OAHU.

Honolulu.....	M Brown, F M Hatch, W A Whitling, A S Hartwell, V V Ashford, F W Macfarlane, J M Vivas, P Jones, W L Wilcox, W L Holokahiki, J M Kaneakua, S M Kaaukai, D Dayton, W C Parke, H Holmes.
Ewa.....	L K Halualani
Waianae.....	J K Kekahuna
Waialua.....	S N Emerson, S K Mahoe
Koolauloa.....	W C Lane, H Kauaihiho, E P Aikue
Koolaupoko.....	A Ku

## ISLAND OF MAUI.

Lahaina.....	H Dickenson.
Kaanapali.....	D M Kalama
Honouliuli.....	S P Halama
Wailuku.....	T W Everett, W S Maule, G P Wilder, A N Kepoikai.
Makawao.....	S F Chillingworth, J Kalama, J Kamakele.
Hana.....	J Grunwald, J Gardner, S W Kaai
Kaupo.....	J Kawaiiea
Koolau.....	Jas Saunders
Kipahulu.....	J Nakila, Jr

## MOLOKAI AND LANAI.

Molokai—Kalae, R W Meyer, Pukoo, S P Kupaheia; Halawa, M Kane; Kalaupapa, Ambrose Hutchinson, D H Pierce.
Lanai.....

## ISLAND OF HAWAII.

N Kohala..	D S Kahookano, J W Moanauli, C H Pulaa.
S Kohala.....	F Spencer, Geo Bell, Miss E W Lyons.
Hamakua—	J W Leonhart, T P Kaeeae, Chas Williams.
Hilo.....	W C Borden, G W A Hapai, A B Loebenstein, S W Pa, D I Wailani, J T Unea, Jas Mattoon.
Puna.....	J Kauwila
Kau.....	C Meimecke, W Kaaemoku, G S Patten
S Kona.....	J W Maele
N Kona.....	D Alawa, J W H I Kihe

## ISLAND OF KAUAI.

Koloa.....	E Strehz
Waimea.....	L H Stolz, E L Kauai
Lihue.....	S W Wilcox, J B Hanaike
Hanalei.....	J C Long, J B Alexander, J Radway
Kawaihau.....	L K Kaumualii, J M Kealoha
Niihau.....	J B Kaomea

## Inspectors of Animals.

Oahu.....	W T Monsarratt, V S P Isenberg Jr.
Hawaii.....	W H Shipman, A Wall, C E Richardson
Maui.....	W Marshall, S F Chillingworth,
Kauai.....	S Hundley, L Kahlbaum

## Notaries Public.

Hawaii.....	D Porter, E W Barnard, A E Hitchcock, Thos Aiu, J Kaao, W Kaaemoku, W J Wright, S H Haaheo, J S Smithies, W L Eaton, S Haanio, Jr, Jas Bright, I K Kekaula, I H Sherwood, E E Richards, G P Tulloch, W P Fennel, C Williams, D H Nahinu, Z Paakiki, J K Naeole, S W Kekuewa.
Maui.....	J P Silva, C H Dickey, W F Mossman, M Makalua, E Helekunihi, E Lililehua, J Richardson, P K Kauiakaole, W P Haia, S E Kaiue, E B Friel, P M Kaluna, F W Hardy, J H Babcock.
Oahu.....	J H Paty, C T Gulick, S B Dole, Jas M Monsarratt, M Brown, T W Hobron, V V Ashford, W Foster, C L Carter, J L Kaulukou, N M Lowrey, J A Magoon, G K Wilder, W C Achi, J M Camara Jr, S K Kane, C W Ashford, E Johnson, F J Testa, J A Hassinger, C F Peterson, D Lamb, C E Vida, H Lose, A Rosa, J H Thompson, J H Kahookano, N Fernandez, J H Paole, H Holmes, W L Peterson, J W Luning, J H Nakookoo, A M Brown, J K Kaupu, A Perry.
Kauai.....	L H Stolz, J C Long, J A Akina, J H Kawelo, Jno M Kealoha.

## Agents to Acknowledge Contracts for Labor.

Oahu—Honolulu, C T Gulick, J A Hassinger, J W Robertson, Samuel Kuula, Chas Phillips, Moses Keliiaa, John Lucas, W S Wond, W H Tell, F S Lyman Jr, J E Brown, T N Starkey, F Godfrey, J H Thompson.

Waialua—C H Kalama, S N Emerson, S K Mahoe, H N Kahulu.

Koolauloa—M Makuuan, W C Lane, M Kaanuu.

Koolaupoko..... G Barenaba, P E Aikue  
Ewa and Waianae..... J D Holt, J K Kaanaana,  
J Kekahuna, J Kahoa.

Hawaii..Hilo, L Severance, L E Swain, A B  
Loebenstein, D B Wahine.

N Kona..... J G Hoapili, J W Smith  
S Kona..... J H Nahinu, W J Wright  
Hamakua... J P Leiahi, Kimo, J Waiohinu, C  
Williams, J L Kanakaoluana.

N Kohala.. H Rickard, D S Kahookano, J W  
Moanauli, W L Eaton, G P Tulloch, C J  
Falk, G H Kaailau.

S Kohala..... Geo Bell, Jas Bright, J Jones  
Kau..... W Kaaemoku, R Zeigler, J C Searle,  
C Thompson, T P Harris.

Puna..... J N Kamoku

Maui—Lahaina.. K Nahaolelua, S L Kalaikini,  
J Kulailua, M Makalua, G Kaluakini, T C  
Forsyth.

Wailuku.. J Richardson, P S Kalama, W S  
Maule, S E Kaiue, C L Kookoo, S E Kalei-  
kau, J Haole, E R Biven.

Makawao.. J K Smyth, Keliiki, P Keaupuni  
Hana... F Wittrock, P Kaiumakaole, Kahele,  
Jr, B K Kaiwiae, J Murdock, J Hakila, J  
P Sylva.

Molokai..... Geo Kekipi, S K Piapoo



Kauai—Koloa, E Strehz, H C Norton, E Kaaloa  
 Lihue.. J B Hanaike, C H Wills, H K Kahale  
 Hanalei.. J W Loka, J Kakina, J Kukuia, J H  
 Mahoe, J B Alexander.  
 Waimea..... J H Kapukui, S E Kaula, I H  
 Kaapuwai.  
 Kawaihau..... E Kaiu, J M Kealoha  
 Niihau..... J B Kaomea

### Department of Finance.

Minister of Finance..... His Ex P C Jones  
 Registrar of Public Accounts..... G E Smithies  
 Auditor General..... Geo J Ross  
 Collector General of Customs..... A S Cleghorn  
 Clerk of Registrar..... C A Widemann  
 Tax Assr and Collr, Oahu..... C N Spencer  
 " " Maui..... C H Dickey  
 " " Hawaii..... H C Austin  
 " " Kauai..... J K Farley  
 Collector Port of Hilo..... J Stuppelbeen  
 Collector Port of Kahului..... E Hoffmann  
 Collector Port of Lahaina (ex-officio) F H Hay-  
 selden.  
 Collector Port of Mahukona..... J S Smithies  
 Collector Port of Kealakekua.....  
 Collector Port of Kawaihae.....  
 Collector Port of Koloa..... E Strehz  
 Port Surveyor, Kahului..... W S Maule  
 Port Surveyor, Hilo..... G Nakapuaui

### Customs Department, Honolulu.

Collector..... A S Cleghorn  
 Deputy Collector..... G E Boardman  
 Bookkeeper..... O Stillman  
 Statistical Clerks.. Wm Chamberlain, C K Stil-  
 man, C E Coville, J B Gibson.  
 Store Keeper..... F B McStocker  
 Assistant Store Keeper..... E Langley  
 Harbor Master..... Capt A Fuller  
 Pilots—Captains A McIntyre, P P Shepherd, J  
 C Lorenzen  
 Port Surveyor..... C L Crabb  
 Guards—J Crowder, G Parminter, E Devauchelle  
 R W Holt, W H Aldrich, C H Clark.

### Post Office Department.

Walter Hill..... Postmaster-General  
 J G Rothwell..... Book-keeper and Cashier  
 E Wodehouse..... Savings Bank Department  
 F B Oat..... Money Order Department  
 G E Thrum..... General Delivery Department

### Department of Attorney-General.

Attorney-General..... His Ex C Brown  
 Deputy Attorney-General..... G K Wilder  
 Marshal of the Hawaiian Islands... C B Wilson  
 Deputy Marshals..... J A Mehrtens  
 Clerk to Marshal..... H M Dow  
 Sheriff of Hawaii..... E G Hitchcock  
 Sheriff of Maui..... F H Hayselden  
 Sheriff of Kauai..... S W Wilcox  
 Jailor of Oahu Prison..... A N Tripp

Oahu—Deputy Sheriffs, Ewa, WS Wond; Waia-  
 nae, S K Hui; Waialua, J Amara; Koolauloa, H  
 Kauaihilo; Koolaupoko, E P Aikue.

Kauai—Sheriff, S W Wilcox; Deputy Sheriffs:  
 Lihue, C H Willis; Koloa, E Kaaloa; Waimea,  
 L H Stolz; Hanalei, W E H Deverill, Kawai-  
 hau, S Kaiu.

Molokai—Deputy Sheriff, Pukoo, E Liliiehua.

Maui-Sheriff. F H Hayselden; Deputy Sheriffs,  
 Lahaina, R P Hose; Wailuku, S F Chillingworth;  
 Makawao, Lorrin Andrews; Hana, M H Reuter.

Hawaii—Sheriff, E G Hitchcock; Deputy  
 Sheriffs, North Hilo, L E Swain; Hamakua, J W  
 Moanauli; South Kohala, W Hookuanui; North  
 Kohala, Chas Pulaa, North Kona, J K Na-  
 hale; South Kona, Lakale; Kau, W J Yates; Puna,  
 J E Eldarts.

### Board of Prison Inspectors.

Jas G Spencer, J F Colburn, W A Whiting.

### Board of Education.

President..... Chas R Bishop  
 Members—W D Alexander, W W Hall, S M  
 Damon, W Hill.  
 Inspector General of Schools..... A T Atkinson  
 Secretary..... W J Smith  
 Assistant..... G C Potter

### School Agents in Commission.

#### HAWAII.

Hilo..... L Severance  
 Puna..... J E Eldarts  
 Kau..... C Meinecke  
 North and South Kona..... J D Paris, Jr  
 South Kohala..... Miss E W Lyons  
 North Kohala..... Dr B D Bond  
 Hamakua..... C Williams

#### MAUI.

Lahaina and Lanai..... H Dickenson  
 Wailuku..... A Barnes  
 Hana..... F Wittrock  
 Makawao..... C H Dickey  
 Molokai..... R W Meyer

#### OAHU.

Honolulu..... W J Smith  
 Ewa and Waianae..... W J Smith  
 Waialua..... J F Anderson  
 Koolauloa..... W C Lane  
 Koolaupoko..... (acting) W J Smith

#### KAUAI.

Waimea and Niihau..... T H Gibson  
 Koloa, Lihue..... J K Burkett  
 Hanalei..... W E H Deverill  
 Kawaihau..... G H Fairchild

### Chamber of Commerce.

President..... C R Fishop  
 Vice-President..... F A Schaefer  
 Secretary and Treasurer..... J B Atherton

### Board of Underwriters—Agencies.

Boston..... C Brewer & Co  
 Philadelphia..... C Brewer & Co  
 New York..... A J Cartwright  
 Liverpool..... T H Davies & Co  
 Lloyds, London..... T H Davies & Co  
 San Francisco..... H Hackfeld & Co  
 Bremen, Dresden, Vienna..... F A Schaefer

### Honolulu Board of Underwriters.

F A Schaefer..... President  
 J H Paty..... Vice-President  
 C O Berger..... Secretary and Treasurer

**Packet Agencies.**

Boston Packets..... C Brewer & Co  
 Planters' Line, San Francisco.... C Brewer & Co  
 Pioneer, Liverpool..... T H Davies & Co  
 Merchants' Line, San Francisco.. Castle & Cooke  
 New York Line..... Castle & Cooke  
 Oceanic S S Co's Line..... W G Irwin & Co  
 Pacific Mail S S Company.... H Hackfeld & Co  
 Oriental and Oceanic S S Co.. H Hackfeld & Co  
 Bremen Packets..... H Hackfeld & Co  
 Hawaiian Packet Line S F.... H Hackfeld & Co  
 Glasgow and Honolulu..... F A Schaefer & Co

**Honolulu Fire Department.**

Organized 1851. Biennial Election of Engineers  
 First Monday in December.

Officers for 1890-92:

Chief Engineer..... Julius Asch  
 First Assistant Engineer..... Jas H Hunt  
 Second Assistant Engineer..... D L Kalawala  
 Secretary and Treasurer..... Henry Smith  
 Fire Marshal and Survey Engineer..... Jno Neil  
 Honolulu Engine Company No 1 (steam) formed  
 1850, organized July 18, 1855. Annual election  
 of officers, first Wednesday in July.  
 Mechanic Engine Company No 2, (steam) organized  
 December, 1850, admitted February 3,  
 1850. Annual election of officers, first Wednesday  
 in February.  
 Hawaii Engine Co No 4, (steam) organized  
 February, 1861. Annual election of officers, first  
 Tuesday in February.  
 China Engine Company No 5 (steam), organized  
 February, 1870.  
 Protection Hook and Ladder Company No 1,  
 re-organized September, 1857. Annual election  
 of officers, first Monday in September.  
 Fire Police, Captain T E Krouse.

**Fire Wards of Honolulu.**

No. 1—Bounded by School, Likelike, Judd and  
 Punchbowl streets.  
 No. 2—Bounded by Beretania, Liliha, School  
 and Fort streets.  
 No. 3—Bounded by King, Beretania and Fort  
 streets.  
 No. 4—Bounded by Water Front, King and Fort  
 streets.  
 No. 5—Bounded by Water Front, Fort, King  
 and Richard streets.  
 No. 6—Bounded by King, Fort, Beretania and  
 Richard streets.  
 No. 7—Bounded by Beretania, Fort, School and  
 Punchbowl streets.  
 No. 8—Bounded by Water Front, Richards,  
 Beretania and Punchbowl streets.  
 No. 9—Bounded by Water Front Punchbowl  
 and Victoria streets.  
 No. 10—Bounded by King, Victoria and Piikoi  
 streets.  
 No. 11—Bounded by Piikoi, Wilder avenue and  
 Punahou streets.  
 No. 12—Beyond Punahou street.  
 No. 13—The Harbor.

**Queen's Hospital.**

ERECTED IN 1860.

President..... Her Majesty  
 Vice-President..... C R Bishop  
 Sec'y..... F A Schaefer | Treas..... J H Paty  
 Auditor..... J S Walker  
 Physicians..... G P Andrews, C B Wood  
 Executive Committee—C R Bishop, J H Paty,  
 F A Schaefer, A S Cleghorn.

**Hawaiian Historical Society.**

Organized Jan., 11, 1892.

President..... Hon C R Bishop  
 Vice-President..... J S Emerson  
 Recording Secretary..... Rev C M Hyde, D.D.  
 Corresponding Secretary... Prof W D Alexander  
 Treasurer..... G P Castle  
 Librarian..... Rev R R Hoes, U.S.N.

**American Relief Fund.**

Organized 1864. Meets annually February 22

President.....  
 Secretary and Treasurer..... C R Bishop

**British Club.**

Organized 1852. Premises on Alakea Street, two  
 doors below Beretania.

President..... A S Cleghorn  
 Sec'y..... F M Swanzy | Treas..... J G Spencer  
 Managers—A S Cleghorn, W A Whiting, F M  
 Swanzy, J G Spencer, A Jaeger, Dr Robt  
 McKibbin, H Focke.

**British Benevolent Society.**

Organized 1860. Meets annually April 23.

President..... J H Wodehouse  
 Vice-President..... Rev A Mackintosh  
 Sec'y..... F M Swanzy | Treas.....

**German Benevolent Society.**

Organized August 22, 1856.

President..... J F Hackfeld  
 Secretary..... John F Eckart  
 Treasurer..... F Klamp

**Portuguese Ladies' Benevolent Society.**

Organized December, 1886.

President..... Mrs Cannavaro, Mrs W G Irwin,  
 Mrs C M Hyde  
 Vice-Presidents.....  
 Secretary..... Mrs Wm Foster  
 Treasurer..... E Hutchinson

**The St. Antonio Benevolent Society.**

Organized 1876: Incorporated 1890.

President..... J M Camara, Jr  
 Vice-President..... J B Vieira  
 Secretary..... J S Ramos  
 Treasurer..... C L Brito

**Portuguese Mutual Benefit Society of Ha-  
 wail.**

Organized Jan. 1882: Incorporated 1887.

President..... J M Vivas  
 Vice-President..... J G Silva  
 Secretary..... M Gonsalves Silva  
 Treasurer..... A G Silva, Jr

**Stranger's Friend Society.**

Organized 1852. Annual Meeting in June.

President..... Mrs W F Allen  
 Vice-Presidents. Mrs A Mackintosh, Mrs T H  
 Hobron.  
 Secretary..... Mrs S M Damon  
 Treasurer..... Mrs E W Jordan  
 Directress..... Mrs S H Dowset

**Mission Children's Society.**

Organized 1851. Annual Meeting in June.

President	W R Castle
Vice-President	Mrs S R Dole
Recording Secretary	W J Forbes
Cor Secretary	Mrs L B Coan
Elective Members	Mrs A S Hartwell, Dr N B Emerson
Treasurer	W F Frear

**Board of Hawaiian Evangelical Association.**

Originally organized 1823.

Constitution revised 1863. Annual meeting June	
President	Hon A F Judd
Vice-President	H Waterhouse
Corresponding Secretary	Rev O P Emerson
Recording Secretary	Rev C M Hyde, D D
Treasurer	W W Hall   Auditor, J B Atherton

**Woman's Board of Missions.**

Organized 1871.

President	Mrs C M Hyde
Recording Secretary	Mrs S E Bishop
Home Cor Sec'y.	Mrs G P Castle
Foreign Cor Sec'y	Mrs E H McCully
Treasurer	Mrs B F Dillingham
Auditor	W W Hall

**Sailors' Home Society.**

Organized 1853. Meets annually in December.

President	C R Bishop
Secretary	F A Schaefer   Treasurer, J H Paty
Ex Com	S M Damon, J B Atherton, C M Cooke

**Missionary Gleaners—Branch of Woman's Board.**

President	Mrs E Jones
Vice-President	Miss C Gilman
Rec Secretary	Miss E R Hopper
Cor Secretary	Mrs E C Damon
Treasurer	Mrs T W Hobron
Directress	Miss H S Judd

**Woman's Christian Temperance Union.**

Organized Dec., 1884.

President	Mrs J M Whitney
Vice-Presidents	Mrs C M Hyde, Mrs E G Beckwith, Mrs E W Jordan
Recording Secretary	Mrs R Jay Greene
Corresponding Secretary	Mrs E W Jordan
Treasurer	Mrs L B Coan
Auditor	W A Bowen

**Young Men's Christian Association.**

Organized 1869. Annual meeting in April.

President	Hon J B Atherton
Vice-President	C B Ripley
Secretary	W L Howard
Treasurer	H F Wichman
General Secretary	H W Peck

**Library and Reading Room Association.**

Organized March, Incorporated June 24, 1879.

President	A J Cartwright
Vice-President	M M Scott
Secretary	H A Parmelee
Treasurer	Miss M A Burbank

**Hawaiian Rifle Association.**

Organized December, 1885.

President	J H Soper
Vice-President	Hon S B Dole
Secretary and Treasurer	Walter E Wall

**Honolulu Cemetery Association.**

President	Hon J I Dowsett
Vice-President	Hon J T Waterhouse, Jr
Secretary	J H Paty
Treasurer	B Cartwright

**Oahu College.**Located at Punahou, two miles east of Honolulu.  
F A Hosmer, A M. . . . . President

Mental and Moral Sciences.	
A B Lyons, M D, F C S, Chemistry and Natural Sciences.	
Miss L F Dale, Vocal and Instrumental Music and French.	
A W Crockett, A B., Latin and English Literature.	
Miss M R Wing. . . . . Greek, Rhetoric, etc	
J Q Wood, A B. Mathematics, History and English.	
P H Dodge. . . . . Drawing and Painting	

**Punahou Preparatory.**

Miss Margaret Brewer, Principal: First and Second Grades.	
Miss Helen M Sorenson. Third and Fourth Grades.	
Miss Ella B Snow. . . . . Fifth and Sixth Grades.	
Miss Carrie A Gilman. Seventh and Eighth Grades.	
Miss M Birch Fanning. . . . . Kindergarten	

**Kamehameha Schools.**

Located at Kalihi, west of Honolulu.

Rev W B Oleson. . . . . Principal	
U Thompson, Asst. . . . . Instructor in Carpentry	
G H Babb Asst. . . . . Instructor in Wood-turning	
R B Anderson. . . . . Supt. Manual Labor	
L C Lyman . . . . . Drawing, Supt. Machine Shop	
Mr Ruetsky, Asst. . . . . Instructor in Printing	
Miss C Pope, Asst. . . . . Instructor in Sewing	
Mrs W B Oleson . . . . . Assistant	

**Kamehameha Preparatory.**

Miss Malone. . . . . Principal	
Misses E Halstead, A E Knapp, R Hoppin	
Assistants.	

**Publications.**The *Hawaiian Gazette*, issued weekly by the Hawaiian Gazette Co. on Tuesdays. H M Whitney, Manager.The *Daily Pacific Commercial Advertiser*, issued by the Hawaiian Gazette Co. every morning (except Sundays). H N Castle, Editor; H M Whitney, Manager.The *Daily Bulletin*, issued every evening (except Sundays), by the Daily Bulletin Co. D Logan, Editor. Weekly issue on Tuesdays.The *Friend*, issued on the first of each month. Rev. S. E. Bishop, Editor.The *Anglican Church Chronicle*, issued on the first Saturday of every month. Rev. A. Mackintosh, Editor.The *Paradise of the Pacific*, issued monthly. F Godfrey, Editor, J J Williams, Manager.The *Planters' Monthly*, issued on the 15th of each month. H. M. Whitney, Editor.The *Honolulu Diocesan Magazine*, issued quarterly. Rt Rev Bishop Willis, Editor.

The *Kuokoa* (native), issued every Saturday morning, by the Hawaiian Gazette Co. J U Kawaiui, Editor.

A *Uniao Lusitana-Hawaiana*, amalgamation of the *Luso* and *Auora*, (Portuguese) issued every Saturday, C Pereira, Editor.

The *Hawaiian-Chinese News*, issued weekly, Ho Fon, Editor.

*Hawaii Holomua* (native), issued daily and weekly. J G M Sheldon, Editor.

The *Ka Oiaio* (na'ive), issued every Friday, J E Bush Editor. Issues also a daily, *Ka Leo o ka Lahui* for native, and *The Voice of the Chinese Times*, issued weekly, Chang Tin Sang, Editor.

The *Japanese Weekly News*, issued Mondays in the Japanese language. B Onoma, Editor.

*The Liberal*, issued semi-weekly, part English and part Hawaiian. Hon R W Wilcox, Editor

*Handicraft*, issued monthly during the school year at the Kamehameha School. Rev W B Oleson, Editor.

A *Sentinella* (Portuguese), issued weekly on Saturday. J M Vivas, Editor.

HAWAIIAN ALMANAC AND ANNUAL, issued the latter part of December for the following year. Thos G Thrum, Editor and Publisher.

### Lodges.

LODGE LE PROGRES DE L'OCEANIE, No 124, A F & A M; meets on King St., on the last Monday in each month.

HAWAIIAN, No 21, F & A M; meets in its hall corner Queen and Fort Streets, on the first Monday in each month.

HONOLULU CHAPTER, No 1, R A M; meets in the hall of Le Progres de l'Oceanie on the third Thursday of each month.

HONOLULU COMMANDERY No 1 KNIGHTS TEMPLAR meets at the Lodge Room of Le Progres de l'Oceanie second Thursday of each month.

KAMEHAMEHA LODGE OF PERFECTION. No. 1. A & A S R; meets in the hall of Le Progres de l'Oceanie on the fourth Thursday of each month.

NUUANU CHAPTER OF ROSE CROIX, No 1, A & A S R; meets at the hall of Le Progres de l'Oceanie, first Thursday in the month.

ALEXANDER LIHOLOHO COUNCIL No 1, OF KADOSH; meets on the third Monday of alternate months from February.

EXCELSIOR LODGE, No 1, I O O F; meets at the hall in Odd Fellows' Building, on Fort St, every Tuesday evening.

HARMONY LODGE, No 2, I O O F; meets each Monday evening in Harmony Hall.

POLYNESIA ENCAMPMENT, No 1, I O O F; meets in Odd Fellows' Building, Fort street, first and third Fridays of each month.

PACIFIC DEGREE LODGE, No 1, DAUGHTERS OF REBBKAH; meets at Excelsior Hall, Fort street, second and fourth Fridays of each month.

OAHU LODGE No 1, K of P; meets every Wednesday at hall on Fort Street.

MYSTIC LODGE, No 2, K of P; meets every Thursday evening, at Harmony Hall.

SECTION No 225—ENDOWMENT RANK, K of P; meets on the second Saturday of January, July and December in the hall of Oahu Lodge.

MAILE LODGE, No. 4, KNIGHTS OF PYTHIAS; meets every Saturday night in Lyceum Build-

ing, Honokaa, Hawaii. Visiting brothers always welcome.

HAWAIIAN COUNCIL No 689, AMERICAN LEGION OF HONOR; meets on second and fourth Friday evenings of each month in Harmony hall.

OCEANIC COUNCIL, No 777, AMERICAN LEGION OF HONOR; meets on the first and third Thursdays of each month, at the K of P hall.

HAWAIIAN TRIBE, No 1, IMP. O R M; meets at the hall of Oahu Lodge, K of P, every Friday evening.

COURT LUNALILLO, No 6600; A O of FORESTERS meets at hall of Oahu Lodge, K of P, on second and fourth Tuesdays of each month.

GEO. W DE LONG POST, No 45, G A R; meets the second Tuesday of each month in Harmony hall.

CAPT. COOK LODGE No. 353, ORDER SONS OF ST. GEORGE; meets at the K of P Hall, Fort st., every Saturday evening.

### Places of Worship.

CENTRAL UNION CHURCH (Congregational), corner of Beretania and Richards sts, Rev E G Beckwith, D.D., Pastor. Services every Sunday at 11 A M and 7:30 P M. Sunday School meets one hour before morning service. Prayer meeting Wednesday evenings at 7:30.

ROMAN CATHOLIC CHURCH, Fort Street, near Beretania; Rt Rev Gulstan F Ropert, Bishop of Panopolis; Revs Leonor and Clement, assisting. Services every Sunday at 10 A M, and at 4:30 P M. Low Mass every day at 6 and 7 A M. High Mass Sundays and Saints' days at 10 A M.

ST. ANDREW'S CATHEDRAL, Emma Square. First Congregation. Clergy: Rt Rev Bishop Willis, and Rev V H Kitcat. Services on Sunday: Holy Communion at 6:30 A M. Morning prayer, with sermon at 11 A M. Hawaiian Evensong 3:30 P M. Evening Prayer with sermon 7:30 P M. Holy Communion at 11 A M the last Sunday in each month. Sunday School 10 A M. Daily prayer at 7 A M.

Second Congregation, Rev A Mackintosh, Pastor. Services on Sunday: Morning prayer with sermon, 9:45 A M; Evening prayer with sermon 6:30 P M. Holy Communion first Sunday in month, 9:45 A M. Sunday School 10 A M. Evening prayer, with address, every Friday, at 7:30 P M.

Chinese Congregation. Services on Sunday at 11 A M and 7:30 P M. Evening prayer every Wednesday, at 7:30 P M.

CHRISTIAN CHINESE CHURCH, Fort Street, F W Damon, acting Pastor. Services every Sunday at 10:30 A M and 7:30 P M. Prayer Meeting Wednesdays at 7:30 P M.

### NATIVE CHURCHES.

KAWAIAHAO CHURCH (Congregational), corner of King and Punchbowl Streets, Rev H H Parker, Pastor. Services in Hawaiian every Sunday at 11 A M, and at 7:30 on Sunday evenings alternating with Kaumakapili. Sunday School at 10 A M. Prayer Meeting, Wednesday at 7:30 P M.

KAUMAKAPILI CHURCH (Congregational), Beretania street near Maunakea. Rev J Waiama, Pastor. Services in Hawaiian every Sunday at 11 A M, and at 7:30 P M on Sunday evenings alternating with Kawaiahao. Sunday School at 10 A M. Prayer Meeting every Wednesday at 7:30 P M.

LB 3531

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## "Appendix III"



### PROGRAMME

for

Patriotic Exercises in the Public Schools

Territory of Hawaii,

Adopted by the Department of Public Instruction.

1906

# PROGRAMME FOR PATRIOTIC EXERCISES

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## 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. Pitt, 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 unselfish-  
ly, 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 our 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.

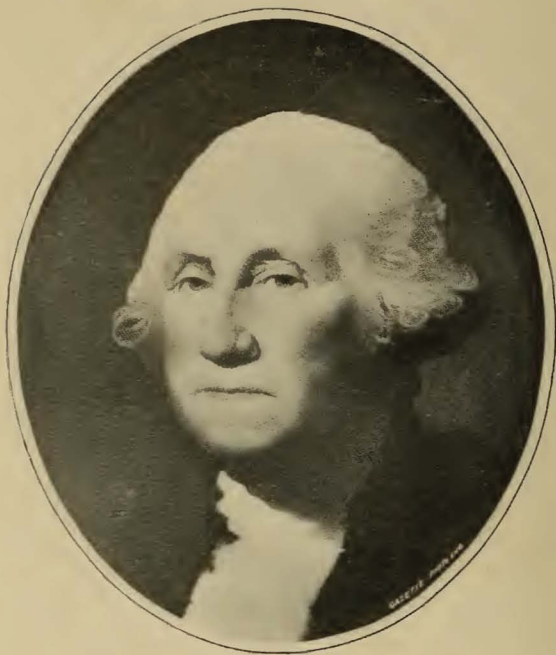


DATES.	SUBJECT.	REMARKS.
April 10 —	"Home, Sweet Home"	The author, John Howard Payne, was born April 10, 1792. Sing the song. Tell stories of his life.
May 20 to 25—	The Flag	Joseph R. Drake wrote "America's Flag." Sing this song.
May 30—	Memorial Day	Sing "The Battle Hymn of the Republic." Recite "Gettysburg."
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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## "Appendix IV"



"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.

**T**HE 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.

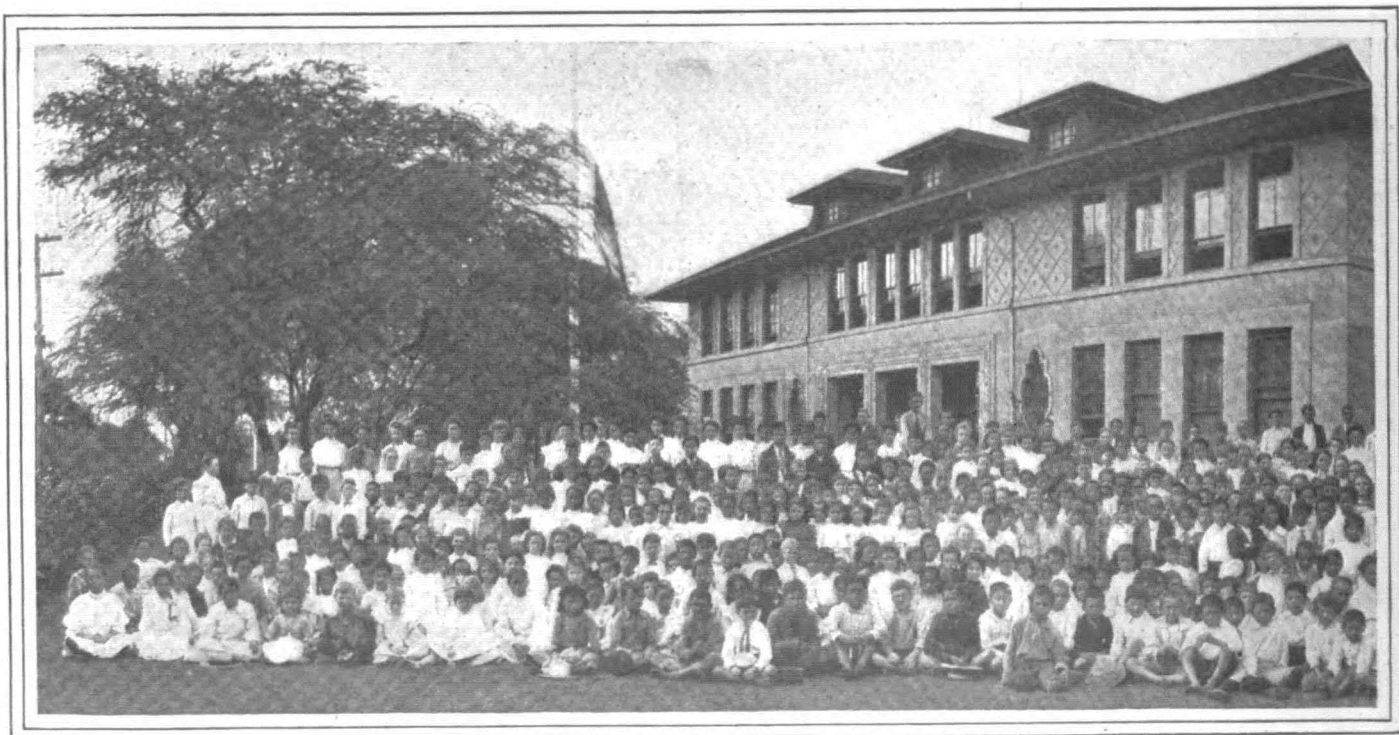
Many of them are married, and on every plantation you will find a quaint reproduction of a Japanese village, the houses very like those of the Orient, Japanese women in kimonos going about their daily tasks, and chubby-cheeked, brown-eyed little boys and girls very gravely beginning the solemn business 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

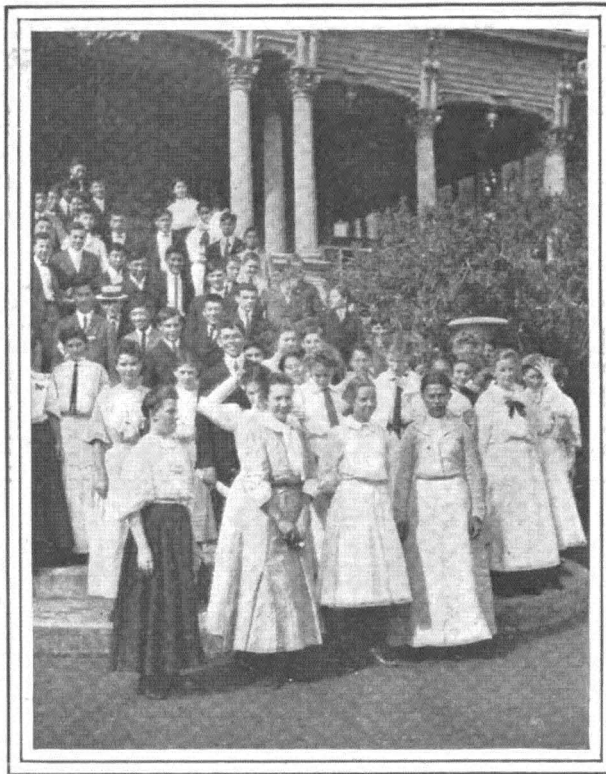


Was there ever such a heterogeneous company since Babel? Yet they are all fused in the great retort of our American schools, and they are coming out good American citizens. Incidentally it may be remarked that the people of Hawaii are prouder of their schools than of anything else in their marvellously 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.

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



**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

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 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. 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.

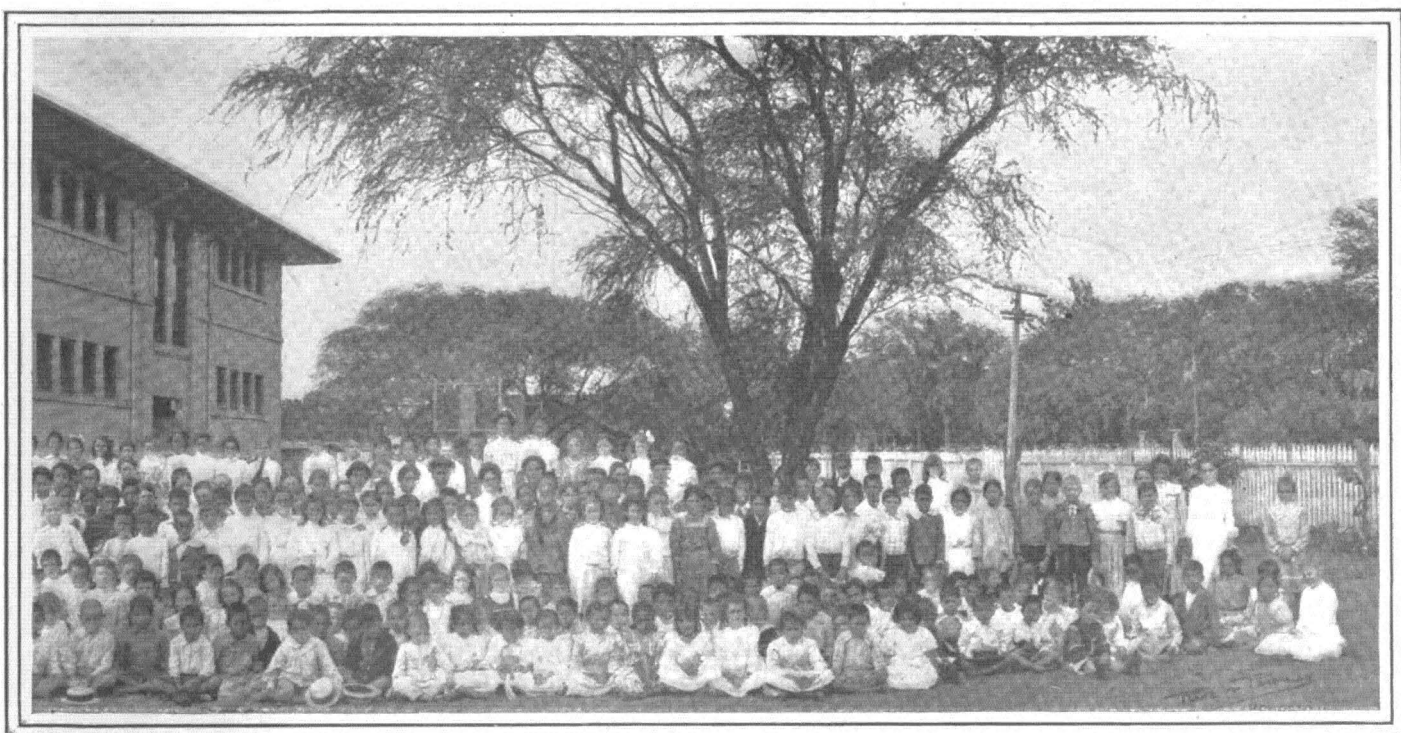
"Salute!" was the principal's next command.

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.

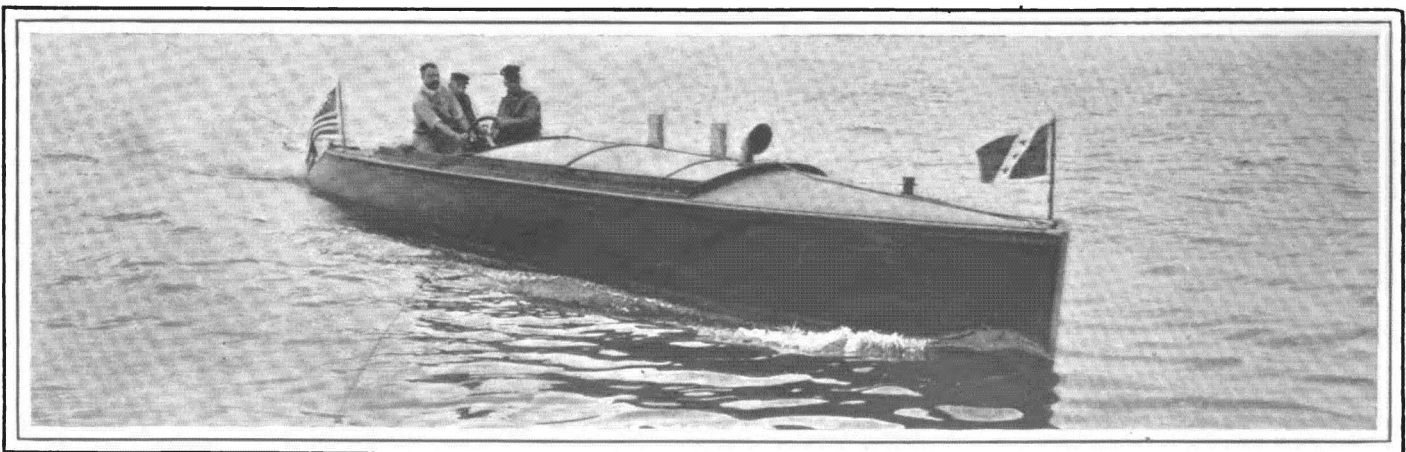
"You will be glad to know," said Mr. Miki to me, "that the Japanese people here are entirely satisfied with the treatment of their children in the public schools. I have not heard one word of complaint anywhere; but on the other hand I have heard our people express satisfaction at the kindness and cooperation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

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 off-

fense 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).”



## EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-273, div. B, title IV, § 4002(e)(7), Nov. 2, 2002, 116 Stat. 1810, provided that the amendment made by section 4002(e)(7) is effective Nov. 26, 1997.

## SHORT TITLE

Section 1 of Pub. L. 104-192 provided that: “This Act [enacting this chapter] may be cited as the ‘War Crimes Act of 1996’.”

## IMPLEMENTATION OF TREATY OBLIGATIONS

Pub. L. 109-366, § 6(a), Oct. 17, 2006, 120 Stat. 2632, provided that:

“(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (c) of this section [enacting section 2000dd-0 of Title 42, The Public Health and Welfare], constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

“(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

“(3) INTERPRETATION BY THE PRESIDENT.—

“(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

“(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

“(C) Any Executive Order published under this paragraph shall be authoritative (except as to grave breaches of common Article 3) as a matter of United States law, in the same manner as other administrative regulations.

“(D) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

“(4) DEFINITIONS.—In this subsection:

“(A) GENEVA CONVENTIONS.—The term ‘Geneva Conventions’ means—

“(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

“(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

“(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

“(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

“(B) THIRD GENEVA CONVENTION.—The term ‘Third Geneva Convention’ means the international convention referred to in subparagraph (A)(iii).”

## EXECUTIVE ORDER NO. 13440

Ex. Ord. No. 13440, July 20, 2007, 72 F.R. 40707, which interpreted the Geneva Conventions Common Article 3 as applied to a program of detention and interrogation operated by the Central Intelligence Agency, was revoked by Ex. Ord. No. 13491, § 1, Jan. 22, 2009, 74 F.R.

4893, set out as a note under section 2000dd of Title 42, The Public Health and Welfare.

## § 2442. Recruitment or use of child soldiers

(a) OFFENSE.—Whoever knowingly—

(1) recruits, enlists, or conscripts a person to serve while such person is under 15 years of age in an armed force or group; or

(2) uses a person under 15 years of age to participate actively in hostilities;

knowing such person is under 15 years of age, shall be punished as provided in subsection (b).

(b) PENALTY.—Whoever violates, or attempts or conspires to violate, subsection (a) shall be fined under this title or imprisoned not more than 20 years, or both and, if death of any person results, shall be fined under this title and imprisoned for any term of years or for life.

(c) JURISDICTION.—There is jurisdiction over an offense described in subsection (a), and any attempt or conspiracy to commit such offense, if—

(1) the alleged offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20)));<sup>1</sup>

(2) the alleged offender is a stateless person whose habitual residence is in the United States;

(3) the alleged offender is present in the United States, irrespective of the nationality of the alleged offender; or

(4) the offense occurs in whole or in part within the United States.

(d) DEFINITIONS.—In this section:

(1) PARTICIPATE ACTIVELY IN HOSTILITIES.—The term “participate actively in hostilities” means taking part in—

(A) combat or military activities related to combat, including sabotage and serving as a decoy, a courier, or at a military checkpoint; or

(B) direct support functions related to combat, including transporting supplies or providing other services.

(2) ARMED FORCE OR GROUP.—The term “armed force or group” means any army, militia, or other military organization, whether or not it is state-sponsored, excluding any group assembled solely for nonviolent political association.

(Added Pub. L. 110-340, § 2(a)(1), Oct. 3, 2008, 122 Stat. 3735.)

## CHAPTER 119—WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

Sec. 2510.	Definitions.
2511.	Interception and disclosure of wire, oral, or electronic communications prohibited.
2512.	Manufacture, distribution, possession, and advertising of wire, oral, or electronic communication intercepting devices prohibited.

<sup>1</sup> So in original. An additional closing parenthesis probably should precede the semicolon.

## "Appendix VI"

### Elements of Crimes<sup>\*,\*\*</sup>

\* Explanatory note: The structure of the elements of the crimes of genocide, crimes against humanity and war crimes follows the structure of the corresponding provisions of articles 6, 7 and 8 of the Rome Statute. Some paragraphs of those articles of the Rome Statute list multiple crimes. In those instances, the elements of crimes appear in separate paragraphs which correspond to each of those crimes to facilitate the identification of the respective elements.

\*\* The Elements of Crimes are reproduced from the *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.B. The Elements of Crimes adopted at the 2010 Review Conference are replicated from the *Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010* (International Criminal Court publication, RC/11) .

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## General introduction

1. Pursuant to article 9, the following Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8, consistent with the Statute. The provisions of the Statute, including article 21 and the general principles set out in Part 3, are applicable to the Elements of Crimes.
2. As stated in article 30, unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge. Where no reference is made in the Elements of Crimes to a mental element for any particular conduct, consequence or circumstance listed, it is understood that the relevant mental element, i.e., intent, knowledge or both, set out in article 30 applies. Exceptions to the article 30 standard, based on the Statute, including applicable law under its relevant provisions, are indicated below.
3. Existence of intent and knowledge can be inferred from relevant facts and circumstances.
4. With respect to mental elements associated with elements involving value judgement, such as those using the terms “inhumane” or “severe”, it is not necessary that the perpetrator personally completed a particular value judgement, unless otherwise indicated.
5. Grounds for excluding criminal responsibility or the absence thereof are generally not specified in the elements of crimes listed under each crime.<sup>1</sup>
6. The requirement of “unlawfulness” found in the Statute or in other parts of international law, in particular international humanitarian law, is generally not specified in the elements of crimes.
7. The elements of crimes are generally structured in accordance with the following principles:
  - (a) As the elements of crimes focus on the conduct, consequences and circumstances associated with each crime, they are generally listed in that order;
  - (b) When required, a particular mental element is listed after the affected conduct, consequence or circumstance;
  - (c) Contextual circumstances are listed last.
8. As used in the Elements of Crimes, the term “perpetrator” is neutral as to guilt or innocence. The elements, including the appropriate mental elements, apply, *mutatis mutandis*, to all those whose criminal responsibility may fall under articles 25 and 28 of the Statute.
9. A particular conduct may constitute one or more crimes.
10. The use of short titles for the crimes has no legal effect.

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<sup>1</sup> This paragraph is without prejudice to the obligation of the Prosecutor under article 54, paragraph 1, of the Statute.

## Article 8

### War crimes

#### Introduction

The elements for war crimes under article 8, paragraph 2 (c) and (e), are subject to the limitations addressed in article 8, paragraph 2 (d) and (f), which are not elements of crimes.

The elements for war crimes under article 8, paragraph 2, of the Statute shall be interpreted within the established framework of the international law of armed conflict including, as appropriate, the international law of armed conflict applicable to armed conflict at sea.

With respect to the last two elements listed for each crime:

- (a) There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international;
- (b) In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non-international;
- (c) There is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms “took place in the context of and was associated with”.

#### Article 8 (2) (a)

##### Article 8 (2) (a) (i)

##### War crime of wilful killing

#### Elements

1. The perpetrator killed one or more persons.<sup>31</sup>
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.<sup>32, 33</sup>
4. The conduct took place in the context of and was associated with an international armed conflict.<sup>34</sup>

31 The term “killed” is interchangeable with the term “caused death”. This footnote applies to all elements which use either of these concepts.

32 This mental element recognizes the interplay between articles 30 and 32. This footnote also applies to the corresponding element in each crime under article 8 (2) (a), and to the element in other crimes in article 8 (2) concerning the awareness of factual circumstances that establish the status of persons or property protected under the relevant international law of armed conflict.

33 With respect to nationality, it is understood that the perpetrator needs only to know that the victim belonged to an adverse party to the conflict. This footnote also applies to the corresponding element in each crime under article 8 (2) (a).

34 The term “international armed conflict” includes military occupation. This footnote also applies to the corresponding element in each crime under article 8 (2) (a).

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (a) (ii)-1**

### **War crime of torture**

#### **Elements<sup>35</sup>**

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.
3. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
4. The perpetrator was aware of the factual circumstances that established that protected status.
5. The conduct took place in the context of and was associated with an international armed conflict.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (a) (ii)-2**

### **War crime of inhuman treatment**

#### **Elements**

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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<sup>35</sup> As element 3 requires that all victims must be “protected persons” under one or more of the Geneva Conventions of 1949, these elements do not include the custody or control requirement found in the elements of article 7 (1) (e).

### **Article 8 (2) (a) (ii)-3**

#### **War crime of biological experiments**

##### **Elements**

1. The perpetrator subjected one or more persons to a particular biological experiment.
2. The experiment seriously endangered the physical or mental health or integrity of such person or persons.
3. The intent of the experiment was non-therapeutic and it was neither justified by medical reasons nor carried out in such person's or persons' interest.
4. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (a) (iii)**

#### **War crime of wilfully causing great suffering**

##### **Elements**

1. The perpetrator caused great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (a) (iv)**

#### **War crime of destruction and appropriation of property**

##### **Elements**

1. The perpetrator destroyed or appropriated certain property.
2. The destruction or appropriation was not justified by military necessity.
3. The destruction or appropriation was extensive and carried out wantonly.
4. Such property was protected under one or more of the Geneva Conventions of 1949.

5. The perpetrator was aware of the factual circumstances that established that protected status.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (a) (v)**

#### **War crime of compelling service in hostile forces**

##### **Elements**

1. The perpetrator coerced one or more persons, by act or threat, to take part in military operations against that person's own country or forces or otherwise serve in the forces of a hostile power.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (a) (vi)**

#### **War crime of denying a fair trial**

##### **Elements**

1. The perpetrator deprived one or more persons of a fair and regular trial by denying judicial guarantees as defined, in particular, in the third and the fourth Geneva Conventions of 1949.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.



## **Article 8 (2) (a) (vii)-1**

### **War crime of unlawful deportation and transfer**

#### **Elements**

1. The perpetrator deported or transferred one or more persons to another State or to another location.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (a) (vii)-2**

### **War crime of unlawful confinement**

#### **Elements**

1. The perpetrator confined or continued to confine one or more persons to a certain location.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (a) (viii)**

### **War crime of taking hostages**

#### **Elements**

1. The perpetrator seized, detained or otherwise held hostage one or more persons.
2. The perpetrator threatened to kill, injure or continue to detain such person or persons.
3. The perpetrator intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.
4. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.

6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b)**

### **Article 8 (2) (b) (i)**

#### **War crime of attacking civilians**

##### **Elements**

1. The perpetrator directed an attack.
2. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.
3. The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (ii)**

#### **War crime of attacking civilian objects**

##### **Elements**

1. The perpetrator directed an attack.
2. The object of the attack was civilian objects, that is, objects which are not military objectives.
3. The perpetrator intended such civilian objects to be the object of the attack.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (iii)**

#### **War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission**

##### **Elements**

1. The perpetrator directed an attack.
2. The object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.

3. The perpetrator intended such personnel, installations, material, units or vehicles so involved to be the object of the attack.
4. Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict.
5. The perpetrator was aware of the factual circumstances that established that protection.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b) (iv)**

### **War crime of excessive incidental death, injury, or damage**

#### **Elements**

1. The perpetrator launched an attack.
2. The attack was such that it would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.<sup>36</sup>
3. The perpetrator knew that the attack would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.<sup>37</sup>
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

36 The expression “concrete and direct overall military advantage” refers to a military advantage that is foreseeable by the perpetrator at the relevant time. Such advantage may or may not be temporally or geographically related to the object of the attack. The fact that this crime admits the possibility of lawful incidental injury and collateral damage does not in any way justify any violation of the law applicable in armed conflict. It does not address justifications for war or other rules related to *jus ad bellum*. It reflects the proportionality requirement inherent in determining the legality of any military activity undertaken in the context of an armed conflict.

37 As opposed to the general rule set forth in paragraph 4 of the General Introduction, this knowledge element requires that the perpetrator make the value judgement as described therein. An evaluation of that value judgement must be based on the requisite information available to the perpetrator at the time.

## **Article 8 (2) (b) (v)**

### **War crime of attacking undefended places<sup>38</sup>**

#### **Elements**

1. The perpetrator attacked one or more towns, villages, dwellings or buildings.
2. Such towns, villages, dwellings or buildings were open for unresisted occupation.
3. Such towns, villages, dwellings or buildings did not constitute military objectives.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b) (vi)**

### **War crime of killing or wounding a person *hors de combat***

#### **Elements**

1. The perpetrator killed or injured one or more persons.
2. Such person or persons were *hors de combat*.
3. The perpetrator was aware of the factual circumstances that established this status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b) (vii)-1**

### **War crime of improper use of a flag of truce**

#### **Elements**

1. The perpetrator used a flag of truce.
2. The perpetrator made such use in order to feign an intention to negotiate when there was no such intention on the part of the perpetrator.
3. The perpetrator knew or should have known of the prohibited nature of such use.<sup>39</sup>
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.

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38 The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

39 This mental element recognizes the interplay between article 30 and article 32. The term “prohibited nature” denotes illegality.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (vii)-2**

### **War crime of improper use of a flag, insignia or uniform of the hostile party**

#### **Elements**

1. The perpetrator used a flag, insignia or uniform of the hostile party.
2. The perpetrator made such use in a manner prohibited under the international law of armed conflict while engaged in an attack.
3. The perpetrator knew or should have known of the prohibited nature of such use.<sup>40</sup>
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (vii)-3**

### **War crime of improper use of a flag, insignia or uniform of the United Nations**

#### **Elements**

1. The perpetrator used a flag, insignia or uniform of the United Nations.
2. The perpetrator made such use in a manner prohibited under the international law of armed conflict.
3. The perpetrator knew of the prohibited nature of such use.<sup>41</sup>
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (vii)-4**

### **War crime of improper use of the distinctive emblems of the**

<sup>40</sup> This mental element recognizes the interplay between article 30 and article 32. The term “prohibited nature” denotes illegality.

<sup>41</sup> This mental element recognizes the interplay between article 30 and article 32. The “should have known” test required in the other offences found in article 8 (2) (b) (vii) is not applicable here because of the variable and regulatory nature of the relevant prohibitions.

## Geneva Conventions

### Elements

1. The perpetrator used the distinctive emblems of the Geneva Conventions.
2. The perpetrator made such use for combatant purposes<sup>42</sup> in a manner prohibited under the international law of armed conflict.
3. The perpetrator knew or should have known of the prohibited nature of such use.<sup>43</sup>
4. The conduct resulted in death or serious personal injury.
5. The perpetrator knew that the conduct could result in death or serious personal injury.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### Article 8 (2) (b) (viii)

**The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory**

### Elements

1. The perpetrator:
  - (a) Transferred,<sup>44</sup> directly or indirectly, parts of its own population into the territory it occupies; or
  - (b) Deported or transferred all or parts of the population of the occupied territory within or outside this territory.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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42 "Combatant purposes" in these circumstances means purposes directly related to hostilities and not including medical, religious or similar activities.

43 This mental element recognizes the interplay between article 30 and article 32. The term "prohibited nature" denotes illegality.

44 The term "transfer" needs to be interpreted in accordance with the relevant provisions of international humanitarian law.

## **Article 8 (2) (b) (ix)**

### **War crime of attacking protected objects<sup>45</sup>**

#### **Elements**

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b) (x)-1**

### **War crime of mutilation**

#### **Elements**

1. The perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
2. The conduct caused death or seriously endangered the physical or mental health of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.<sup>46</sup>
4. Such person or persons were in the power of an adverse party.
5. The conduct took place in the context of and was associated with an international armed conflict.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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45 The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

46 Consent is not a defence to this crime. The crime prohibits any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the party conducting the procedure and who are in no way deprived of liberty. This footnote also applies to the same element for article 8 (2) (b) (x)-2.

## **Article 8 (2) (b) (x)-2**

### **War crime of medical or scientific experiments**

#### **Elements**

1. The perpetrator subjected one or more persons to a medical or scientific experiment.
2. The experiment caused death or seriously endangered the physical or mental health or integrity of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.
4. Such person or persons were in the power of an adverse party.
5. The conduct took place in the context of and was associated with an international armed conflict.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b) (xi)**

### **War crime of treacherously killing or wounding**

#### **Elements**

1. The perpetrator invited the confidence or belief of one or more persons that they were entitled to, or were obliged to accord, protection under rules of international law applicable in armed conflict.
2. The perpetrator intended to betray that confidence or belief.
3. The perpetrator killed or injured such person or persons.
4. The perpetrator made use of that confidence or belief in killing or injuring such person or persons.
5. Such person or persons belonged to an adverse party.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b) (xii)**

### **War crime of denying quarter**

#### **Elements**

1. The perpetrator declared or ordered that there shall be no survivors.
2. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.
3. The perpetrator was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.



4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (xiii)**

#### **War crime of destroying or seizing the enemy's property**

##### **Elements**

1. The perpetrator destroyed or seized certain property.
2. Such property was property of a hostile party.
3. Such property was protected from that destruction or seizure under the international law of armed conflict.
4. The perpetrator was aware of the factual circumstances that established the status of the property.
5. The destruction or seizure was not justified by military necessity.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (xiv)**

#### **War crime of depriving the nationals of the hostile power of rights or actions**

##### **Elements**

1. The perpetrator effected the abolition, suspension or termination of admissibility in a court of law of certain rights or actions.
2. The abolition, suspension or termination was directed at the nationals of a hostile party.
3. The perpetrator intended the abolition, suspension or termination to be directed at the nationals of a hostile party.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (xv)**

#### **War crime of compelling participation in military operations**

##### **Elements**

1. The perpetrator coerced one or more persons by act or threat to take part in military operations against that person's own country or forces.

2. Such person or persons were nationals of a hostile party.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (xvi)** **War crime of pillaging**

#### **Elements**

1. The perpetrator appropriated certain property.
2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.<sup>47</sup>
3. The appropriation was without the consent of the owner.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (xvii)** **War crime of employing poison or poisoned weapons**

#### **Elements**

1. The perpetrator employed a substance or a weapon that releases a substance as a result of its employment.
2. The substance was such that it causes death or serious damage to health in the ordinary course of events, through its toxic properties.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (xviii)** **War crime of employing prohibited gases, liquids, materials or devices**

#### **Elements**

1. The perpetrator employed a gas or other analogous substance or device.
2. The gas, substance or device was such that it causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties.<sup>48</sup>

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<sup>47</sup> As indicated by the use of the term “private or personal use”, appropriations justified by military necessity cannot constitute the crime of pillaging.

<sup>48</sup> Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to the development, production, stockpiling and use of chemical weapons.

3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (xix)**

#### **War crime of employing prohibited bullets**

##### **Elements**

1. The perpetrator employed certain bullets.
2. The bullets were such that their use violates the international law of armed conflict because they expand or flatten easily in the human body.
3. The perpetrator was aware that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (xx)**

#### **War crime of employing weapons, projectiles or materials or methods of warfare listed in the Annex to the Statute**

##### **Elements**

*[Elements will have to be drafted once weapons, projectiles or material or methods of warfare have been included in an annex to the Statute.]*

### **Article 8 (2) (b) (xxi)**

#### **War crime of outrages upon personal dignity**

##### **Elements**

1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons.<sup>49</sup>
2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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<sup>49</sup> For this crime, “persons” can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim.

## **Article 8 (2) (b) (xxii)-1**

### **War crime of rape**

#### **Elements**

1. The perpetrator invaded<sup>50</sup> the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.<sup>51</sup>
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b) (xxii)-2**

### **War crime of sexual slavery<sup>52</sup>**

#### **Elements**

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.<sup>53</sup>
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

50 The concept of “invasion” is intended to be broad enough to be gender-neutral.

51 It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements of article 8 (2) (b) (xxii)-3, 5 and 6.

52 Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose.

53 It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

## **Article 8 (2) (b) (xxii)-3**

### **War crime of enforced prostitution**

#### **Elements**

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b) (xxii)-4**

### **War crime of forced pregnancy**

#### **Elements**

1. The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b) (xxii)-5**

### **War crime of enforced sterilization**

#### **Elements**

1. The perpetrator deprived one or more persons of biological reproductive capacity.<sup>54</sup>
2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.<sup>55</sup>
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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54 The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice.

55 It is understood that "genuine consent" does not include consent obtained through deception.

## **Article 8 (2) (b) (xxii)-6**

### **War crime of sexual violence**

#### **Elements**

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The conduct was of a gravity comparable to that of a grave breach of the Geneva Conventions.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b) (xxiii)**

### **War crime of using protected persons as shields**

#### **Elements**

1. The perpetrator moved or otherwise took advantage of the location of one or more civilians or other persons protected under the international law of armed conflict.
2. The perpetrator intended to shield a military objective from attack or shield, favour or impede military operations.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (b) (xxiv)**

### **War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions**

#### **Elements**

1. The perpetrator attacked one or more persons, buildings, medical units or transports or other objects using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions.
2. The perpetrator intended such persons, buildings, units or transports or other objects so using such identification to be the object of the attack.
3. The conduct took place in the context of and was associated with an international armed conflict.

4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (xxv)**

#### **War crime of starvation as a method of warfare**

##### **Elements**

1. The perpetrator deprived civilians of objects indispensable to their survival.
2. The perpetrator intended to starve civilians as a method of warfare.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (b) (xxvi)**

#### **War crime of using, conscripting or enlisting children**

##### **Elements**

1. The perpetrator conscripted or enlisted one or more persons into the national armed forces or used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (c)**

#### **Article 8 (2) (c) (i)-1**

#### **War crime of murder**

##### **Elements**

1. The perpetrator killed one or more persons.
2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel<sup>56</sup> taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.

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56 The term "religious personnel" includes those non-confessional non-combatant military personnel carrying out a similar function.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (c) (i)-2**

### **War crime of mutilation**

#### **Elements**

1. The perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
2. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interests.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
4. The perpetrator was aware of the factual circumstances that established this status.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (c) (i)-3**

### **War crime of cruel treatment**

#### **Elements**

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (c) (i)-4**

### **War crime of torture**

#### **Elements**

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.



3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
4. The perpetrator was aware of the factual circumstances that established this status.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## Article 8 (2) (c) (ii)

### War crime of outrages upon personal dignity

#### Elements

1. The perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons.<sup>57</sup>
2. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognized as an outrage upon personal dignity.
3. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
4. The perpetrator was aware of the factual circumstances that established this status.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## Article 8 (2) (c) (iii)

### War crime of taking hostages

#### Elements

1. The perpetrator seized, detained or otherwise held hostage one or more persons.
2. The perpetrator threatened to kill, injure or continue to detain such person or persons.
3. The perpetrator intended to compel a State, an international organization, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.
4. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
5. The perpetrator was aware of the factual circumstances that established this status.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

<sup>57</sup> For this crime, “persons” can include dead persons. It is understood that the victim need not personally be aware of the existence of the humiliation or degradation or other violation. This element takes into account relevant aspects of the cultural background of the victim.

## Article 8 (2) (c) (iv)

### War crime of sentencing or execution without due process

#### Elements

1. The perpetrator passed sentence or executed one or more persons.<sup>58</sup>
2. Such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities.
3. The perpetrator was aware of the factual circumstances that established this status.
4. There was no previous judgement pronounced by a court, or the court that rendered judgement was not “regularly constituted”, that is, it did not afford the essential guarantees of independence and impartiality, or the court that rendered judgement did not afford all other judicial guarantees generally recognized as indispensable under international law.<sup>59</sup>
5. The perpetrator was aware of the absence of a previous judgement or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## Article 8 (2) (e)<sup>60</sup>

### Article 8 (2) (e) (i)

#### War crime of attacking civilians

#### Elements

1. The perpetrator directed an attack.
2. The object of the attack was a civilian population as such or individual civilians not taking direct part in hostilities.
3. The perpetrator intended the civilian population as such or individual civilians not taking direct part in hostilities to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

58 The elements laid down in these documents do not address the different forms of individual criminal responsibility, as enunciated in articles 25 and 28 of the Statute.

59 With respect to elements 4 and 5, the Court should consider whether, in the light of all relevant circumstances, the cumulative effect of factors with respect to guarantees deprived the person or persons of a fair trial.

60 As amended by resolution RC/Res.5.

### **Article 8 (2) (e) (ii)**

#### **War crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions**

##### **Elements**

1. The perpetrator attacked one or more persons, buildings, medical units or transports or other objects using, in conformity with international law, a distinctive emblem or other method of identification indicating protection under the Geneva Conventions.
2. The perpetrator intended such persons, buildings, units or transports or other objects so using such identification to be the object of the attack.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (e) (iii)**

#### **War crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission**

##### **Elements**

1. The perpetrator directed an attack.
2. The object of the attack was personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations.
3. The perpetrator intended such personnel, installations, material, units or vehicles so involved to be the object of the attack.
4. Such personnel, installations, material, units or vehicles were entitled to that protection given to civilians or civilian objects under the international law of armed conflict.
5. The perpetrator was aware of the factual circumstances that established that protection.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (e) (iv)**

### **War crime of attacking protected objects<sup>61</sup>**

#### **Elements**

1. The perpetrator directed an attack.
2. The object of the attack was one or more buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives.
3. The perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (e) (v)**

### **War crime of pillaging**

#### **Elements**

1. The perpetrator appropriated certain property.
2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.<sup>62</sup>
3. The appropriation was without the consent of the owner.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (e) (vi)-1**

### **War crime of rape**

#### **Elements**

1. The perpetrator invaded<sup>63</sup> the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

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61 The presence in the locality of persons specially protected under the Geneva Conventions of 1949 or of police forces retained for the sole purpose of maintaining law and order does not by itself render the locality a military objective.

62 As indicated by the use of the term "private or personal use", appropriations justified by military necessity cannot constitute the crime of pillaging.

63 The concept of "invasion" is intended to be broad enough to be gender-neutral.

2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.<sup>64</sup>
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (e) (vi)-2 War crime of sexual slavery<sup>65</sup>**

### **Elements**

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.<sup>66</sup>
2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (e) (vi)-3 War crime of enforced prostitution**

### **Elements**

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

<sup>64</sup> It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements in article 8 (2) (e) (vi)-3, 5 and 6.

<sup>65</sup> Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose.

<sup>66</sup> It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

## **Article 8 (2) (e) (vi)-4 War crime of forced pregnancy**

### **Elements**

1. The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.
2. The conduct took place in the context of and was associated with an armed conflict not of an international character.
3. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (e) (vi)-5 War crime of enforced sterilization**

### **Elements**

1. The perpetrator deprived one or more persons of biological reproductive capacity.<sup>67</sup>
2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.<sup>68</sup>
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (e) (vi)-6 War crime of sexual violence**

### **Elements**

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The conduct was of a gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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<sup>67</sup> The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice.

<sup>68</sup> It is understood that "genuine consent" does not include consent obtained through deception.

### **Article 8 (2) (e) (vii)**

#### **War crime of using, conscripting and enlisting children**

##### **Elements**

1. The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities.
2. Such person or persons were under the age of 15 years.
3. The perpetrator knew or should have known that such person or persons were under the age of 15 years.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (e) (viii)**

#### **War crime of displacing civilians**

##### **Elements**

1. The perpetrator ordered a displacement of a civilian population.
2. Such order was not justified by the security of the civilians involved or by military necessity.
3. The perpetrator was in a position to effect such displacement by giving such order.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (e) (ix)**

#### **War crime of treacherously killing or wounding**

##### **Elements**

1. The perpetrator invited the confidence or belief of one or more combatant adversaries that they were entitled to, or were obliged to accord, protection under rules of international law applicable in armed conflict.
2. The perpetrator intended to betray that confidence or belief.
3. The perpetrator killed or injured such person or persons.
4. The perpetrator made use of that confidence or belief in killing or injuring such person or persons.
5. Such person or persons belonged to an adverse party.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.

7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (e) (x)**

### **War crime of denying quarter**

#### **Elements**

1. The perpetrator declared or ordered that there shall be no survivors.
2. Such declaration or order was given in order to threaten an adversary or to conduct hostilities on the basis that there shall be no survivors.
3. The perpetrator was in a position of effective command or control over the subordinate forces to which the declaration or order was directed.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (e) (xi)-1**

### **War crime of mutilation**

#### **Elements**

1. The perpetrator subjected one or more persons to mutilation, in particular by permanently disfiguring the person or persons, or by permanently disabling or removing an organ or appendage.
2. The conduct caused death or seriously endangered the physical or mental health of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of the person or persons concerned nor carried out in such person's or persons' interest.<sup>69</sup>
4. Such person or persons were in the power of another party to the conflict.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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<sup>69</sup> Consent is not a defence to this crime. The crime prohibits any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the party conducting the procedure and who are in no way deprived of liberty. This footnote also applies to the similar element in article 8 (2) (e) (xi)-2.



## **Article 8 (2) (e) (xi)-2**

### **War crime of medical or scientific experiments**

#### **Elements**

1. The perpetrator subjected one or more persons to a medical or scientific experiment.
2. The experiment caused the death or seriously endangered the physical or mental health or integrity of such person or persons.
3. The conduct was neither justified by the medical, dental or hospital treatment of such person or persons concerned nor carried out in such person's or persons' interest.
4. Such person or persons were in the power of another party to the conflict.
5. The conduct took place in the context of and was associated with an armed conflict not of an international character.
6. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (e) (xii)**

### **War crime of destroying or seizing the enemy's property**

#### **Elements**

1. The perpetrator destroyed or seized certain property.
2. Such property was property of an adversary.
3. Such property was protected from that destruction or seizure under the international law of armed conflict.
4. The perpetrator was aware of the factual circumstances that established the status of the property.
5. The destruction or seizure was not required by military necessity.
6. The conduct took place in the context of and was associated with an armed conflict not of an international character.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

## **Article 8 (2) (e) (xiii)<sup>70</sup>**

### **War crime of employing poison or poisoned weapons**

#### **Elements**

1. The perpetrator employed a substance or a weapon that releases a substance as a result of its employment.
2. The substance was such that it causes death or serious damage to health in the ordinary course of events, through its toxic properties.

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<sup>70</sup> As amended by resolution RC/Res.5; see *Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010* (International Criminal Court publication, RC/11), part II.

3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (e) (xiv)<sup>71</sup>**

## **War crime of employing prohibited gases, liquids, materials or devices**

### **Elements**

1. The perpetrator employed a gas or other analogous substance or device.
2. The gas, substance or device was such that it causes death or serious damage to health in the ordinary course of events, through its asphyxiating or toxic properties.<sup>72</sup>
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

### **Article 8 (2) (e) (xv)<sup>73</sup>**

## **War crime of employing prohibited bullets**

### **Elements**

1. The perpetrator employed certain bullets.
2. The bullets were such that their use violates the international law of armed conflict because they expand or flatten easily in the human body.
3. The perpetrator was aware that the nature of the bullets was such that their employment would uselessly aggravate suffering or the wounding effect.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

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<sup>71</sup> Ibid.

<sup>72</sup> Nothing in this element shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law with respect to the development, production, stockpiling and use of chemical weapons.

<sup>73</sup> As amended by resolution RC/Res.5; see *Official Records of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, 31 May -11 June 2010* (International Criminal Court publication, RC/11), part II.



## "Appendix VII"

# Kingdom of Hawaii may still exist, challenges US over sovereignty

*Updated Thu 22 May 2014, 6:04pm AEST*

**The CEO of the Hawaiian Affairs Office (OHA) has retained his job and gained public support to challenge the US on whether the Kingdom of Hawaii still exists as a sovereign country.**

Kamanaopono Crabbe sparked an internal crisis when he sent a letter to US Secretary of State John Kerry, asking for a ruling on whether the Kingdom of Hawaii still legally exists.

The letter, which was quickly rescinded by the OHA's trustees, was prompted by the US Government's acknowledgment that the overthrow of the kingdom in 1893 was illegal.

Political scientist Dr Keanu Sai, from Windward Community College in Honolulu, told Pacific Beat the OHA board thought Dr Crabbe had violated their policy by sending the letter without approval, but later realised they were mistaken.

"[Dr Crabbe] was not in violation of any policy of the board but rather was operating on his diligence and risk management," Dr Sai said.

Mr Crabbe has now won the support of the OHA trustees, who have moved to send the letter again and retain him in his role as CEO.

"They're in full support and they say that his questions definitely do have merit."



**PHOTO:** Bluejackets of the USS Boston occupying Arlington Hotel grounds during overthrow of Queen Liliuokalani, the last monarch of the Kingdom of Hawaii, January 1893.

(Hawaii State Archives: PP-36-3-002)

**MAP:** Hawaii

Public support for Mr Crabbe's campaign is also growing, with 2,500 people signing an online petition.

Dr Sai said Hawaiians need clarification on the issue.

"What was overthrown was the government, not the country," he said.

Dr Sai blames revisionist history education for misconstruing local understanding of Hawaii's true status.

"A revisionist history has been taught here in Hawaii since the early 1900s that presented Hawaii as if it was a part of the United States when in fact there is clear evidence that it's not," he said.

"We need to address this because it will affect our people but it also affects everyone."

Dr Sai says if the Kingdom of Hawaii does indeed still exist, many historical treaties with nations including the UK and Australia would still be in effect.

## International law

The US may be in violation of international law if Hawaii is still technically its own country.

The US would be guilty of appropriating funds by taxation and other related crimes, by not complying with occupation laws.

Dr Sai says within the framework of international law, there is presumed of continuity of a country when it is established.

"All that needs to be provided is evidence that Hawaii was a country (and it was, fully recognised by the United States and Great Britain and everyone else)," he said.

"It places the burden upon the United States to provide overwhelming evidence that it in fact extinguished Hawaii as an independent state under international law.

"In the absence of that evidence, the Hawaiian kingdom continues to exist."

**Topics:** states-and-territories, law-crime-and-justice, international-law, hawaii, united-states, pacific

*First posted Thu 22 May 2014, 12:40pm AEST*

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