

PRELIMINARY LIST OF ALLEGED WAR CRIMES

War Crimes: 1907 Hague Convention, IV

Article 43—The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

The United States failed in its duty to administer the laws of the Hawaiian Kingdom as it stood prior to the unlawful overthrow of the Hawaiian Kingdom government on January 17, 1893. Instead, through its puppet regime, the United States unlawfully maintained the continued presence and administration of law it established through intervention. The puppet regime was originally called the provisional government, which was later changed in name only to the Republic of Hawai'i on July 4, 1894. The provisional government was neither a government *de facto* nor *de jure*, but self-proclaimed as concluded by President Cleveland in his message to the Congress on December 18, 1893, and the Republic of Hawai'i was acknowledged as *self-declared* by the Congress in a joint resolution apologizing on the one hundredth anniversary of the illegal overthrow of the Hawaiian Kingdom government on November 23, 1993.

Since April 30, 1900, the United States had imposed its national laws over the territory of the Hawaiian Kingdom in violation of international law and the laws of occupation. By virtue of congressional legislation, the so-called Republic of Hawai'i was subsumed. Through *An Act to provide a government for the Territory of Hawai'i*, "the phrase 'laws of Hawaii,' as used in this Act without qualifying words, shall mean the constitution and laws of the Republic of Hawaii in force on the twelfth day of August, eighteen hundred and ninety-eight."¹ When the Territory of Hawai'i was succeeded by the State of Hawai'i on March 18, 1959 through United States legislation, the Congressional Act provided that all "laws in force in the Territory of Hawaii at the time of 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."² Furthermore:

[T]he term "Territorial law" includes (in addition to laws enacted by the Territorial Legislature of Hawaii) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Hawaii prior to its admission into the Union, and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Hawaii

¹ 31 Stat. 141.

² 73 Stat. 11.

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at the time of its admission into the Union, (2) are not “Territorial laws” as defined in this paragraph, and (3) are not in conflict with any other provision of this Act.³

In addition, Article 43 does not transfer sovereignty to the occupying power.⁴ Section 358, United States Army Field Manual 27-10, declares, “[b]eing 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.” Sassòli further elaborates, “The occupant may therefore not extend its own legislation over the occupied territory nor act as a sovereign legislator. It must, as a matter of principle, respect the laws in force in the occupied territory at the beginning of the occupation.”⁵

Therefore, the United States’ failure to comply with the 1893 executive agreements to reinstate the Queen and her cabinet, and its failure to comply with the law of occupation to administer Hawaiian Kingdom law, as it stood prior to the unlawful overthrow of the Hawaiian government on January 17, 1893, rendered all administrative and legislative acts of the provisional government, the Republic of Hawai‘i, the Territory of Hawai‘i and currently the State of Hawai‘i illegal and void because these acts stem from governments that are neither *de facto* nor *de jure*, but self-declared. As the United States is a government that is both *de facto* and *de jure*, its legislation has no extraterritorial effect except under the principles of active and passive personality jurisdiction. In particular, this fact has rendered all conveyances of real property and mortgages to be defective since January 17, 1893, because of the absence of a competent notary public under Hawaiian Kingdom law. Since January 17, 1893, all notaries public stemmed from unlawful entities.

Article 45—It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the [Occupying] Power.

When the provisional government was established through the support and protection of U.S. troops on January 17, 1893, it proclaimed that it would provisionally “exist until terms of union with the United States of America have been negotiated and agreed upon.”⁶ The provisional government was not a new government, but rather a small group of insurgents installed through intervention. With the backing of U.S. troops these insurgents further proclaimed, “[a]ll officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named persons:

³ *Id.*

⁴ Eyal Benvenisti, *The International Law of Occupation* 8 (1993); Gerhard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* 95 (1957); Michael Bothe, “Occupation, Belligerent,” in Rudolf Bernhardt (dir.), *Encyclopedia of Public International Law*, vol. 3, 765 (1997).

⁵ Marco Sassòli, *Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century*, International Humanitarian Law Research Initiative 5 (2004) (online at <http://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf>).

⁶ United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawai‘i: 1894-95, 210 (1895).

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.”⁷ All government officials were coerced and forced to sign oaths of allegiance,

I ____, aged ____, a native of ____, residing at ____, in said district, do solemnly swear, in the presence of Almighty God, that I will support and bear true allegiance to the Provisional Government of the Hawaiian Islands, and faithfully perform the duties appertaining to the office or employment of ____.⁸

The compelling of inhabitants, serving in the Hawaiian Kingdom government, to swear allegiance to the occupying power, through its puppet regime, began on January 17, 1893, with oversight by United States troops, until April 1, 1893, when the troops were ordered to depart Hawaiian territory by U.S. Special Commissioner, James Blount, who had begun the presidential investigation into the overthrow. When Special Commissioner Blount arrived in the Hawaiian Kingdom on March 29, 1893, he reported to U.S. Secretary of State Walter Gresham, “[t]he troops from the *Boston* were doing military duty for the Provisional Government. The American flag was floating over the government building. Within it the Provisional Government conducted its business under an American protectorate, to be continued, according to the avowed purpose of the American minister, during negotiations with the United States for annexation.”⁹

As a result of the deliberate failure of the United States to carry out the 1893 *executive agreements* to reinstate the Queen and her cabinet of officers, and with the employment of American mercenaries, the insurgents were allowed to maintain their unlawful control of the government. The provisional government was renamed the Republic of Hawai‘i on July 4, 1894. In 1900, the Republic was renamed the Territory of Hawai‘i. The United States then directly compelled the inhabitants of the Hawaiian Kingdom to swear allegiance to the United States when serving in the so-called Territory of Hawai‘i and, beginning in 1959, allegiance to the State of Hawai‘i. All this was in direct violation of Article 45 of the HC IV.

Section 19 of the Territorial Act provides, “every member of the legislature, and all officers of the government of the Territory of Hawaii, shall take the following oath: I do solemnly swear (or affirm), in the presence of Almighty God, that I will faithfully support the Constitution and laws of the United States, and conscientiously and impartially discharge my duties as a member of the legislature, or as an officer of the government of the Territory of Hawaii.”¹⁰ Section 4, Article XVI of the State of Hawai‘i constitution provides, “All eligible public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation:

⁷ *Id.*, at 211.

⁸ *Id.*, at 1076.

⁹ *Id.*, at 568.

¹⁰ 31 Stat. 145.

‘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.’”

Article 46—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.

Beginning on July 20, 1899, President McKinley began to set aside portions of lands by executive orders for “installation of shore batteries and the construction of forts and barracks.”¹¹ The first executive order set aside 15,000 acres for two Army military posts on the Island of O‘ahu called Schofield Barracks and Fort Shafter. This soon followed the securing of lands for Pearl Harbor naval base in 1901 when the U.S. Congress appropriated funds for condemnation of seven hundred nineteen (719) acres of private lands surrounding Pearl River, which later came to be known as Pearl Harbor.¹² By 2012, the U.S. military has one hundred eighteen (118) military sites that span 230,929 acres of the Hawaiian Islands.¹³

Article 47—Pillage is formally forbidden.

Since January 17, 1893, there has been no lawful government exercising its authority in the Hawaiian Islands, *e.g.* provisional government (1893-1894), Republic of Hawai‘i (1894-1900), Territory of Hawai‘i (1900-1959) and the State of Hawai‘i (1959-present). As these entities were neither governments *de facto* nor *de jure*, but self-proclaimed, and their collection of tax revenues and non-tax revenues, *e.g.* rent and purchases derived from real estate, were not for the benefit of a *bona fide* government in the exercise of its police power, these collections can only be considered as benefitting private individuals who are employed by the State of Hawai‘i.

Pillage or plunder is “the forcible taking of private property by an invading or conquering army,”¹⁴ which, according to the Elements of Crimes of the International Criminal Court, must be seized “for private or personal use.”¹⁵ As such, the prohibition of pillaging or plundering is a specific application of the general principle of law prohibiting theft.¹⁶ The residents of the Hawaiians Islands have been the subject of pillaging and plundering since the establishment of the provisional

¹¹ Robert H. Horwitz, Judith B. Finn, Louis A. Vargha, and James W. Ceaser, *Public Land Policy in Hawai‘i: An Historical Analysis*, 20 (State of Hawai‘i Legislative Reference Bureau Report No. 5, 1969).

¹² John D. VanBrackle, Pearl Harbor from the First Mention of ‘Pearl Lochs’ to Its Present Day Usage, 21-26 (undated manuscript on file in Hawaiian-Pacific Collection, Hamilton Library, University of Hawai‘i at Manoa).

¹³ U.S. Department of Defense’s Base Structure Report (2012) (online at <http://www.acq.osd.mil/ie/download/bsr/BSR2012Baseline.pdf>).

¹⁴ Black’s Law Dictionary 1148 (1990).

¹⁵ International Criminal Court, *Elements of a War Crime*, Article 8(2)(b)(xvi) and (e)(v)).

¹⁶ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I, 185 (2009).

government by the United States on January 17, 1893 and continues to date by its successor, the State of Hawai‘i.

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 so bound.

Unlike the State of Hawai‘i that claims to be a public entity, but in reality is private, the United States government is a public entity, 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 public entity, but it has appropriated private property through unlawful contributions, *e.g.* federal taxation, which is regulated by Article 48. And 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.” Thus, 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.”

Article 55—The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.

With the backing of United States troops, the provisional government unlawfully seized control of all government property, both real and personal. In 1894, the provisional government’s successor, the so-called Republic of Hawai‘i, seized the private property of Her Majesty Queen Lili‘uokalani, which was called Crown lands, and they called it public lands. According to Hawaiian Kingdom law, the Crown lands were distinct from the public lands of the Hawaiian government since 1848. Crown lands comprised roughly 1 million acres, and the government lands comprised roughly 1.5 million acres. The total acreage of the Hawaiian Islands comprised 4 million acres.

In a case before the Hawaiian Kingdom Supreme Court in 1864 that centered on Crown lands, the Court stated:

In our opinion, while it was clearly the intention of Kamehameha III to protect the lands which he reserved to himself out of the domain which had been acquired by his family through the prowess and skill of his father, the conqueror, from the danger of being treated as public domain or Government property, it was also his intention to provide that those

lands should descend to his heirs and successors, the future wearers of the crown which the conqueror had won; and we understand the act of 7th June, 1848, as having secured both those objects. Under that act the lands descend in fee, the inheritance being limited however to 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 III.¹⁷

In 1898, the United States seized control of all these lands and other property of the Hawaiian Kingdom government as evidenced by the joint resolution of annexation. The resolution stated, that the United States has acquired “the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining.”¹⁸

Article 56—The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings.

In 1900, President McKinley signed into United States law *An Act To provide a government for the Territory of Hawai‘i*,¹⁹ 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 Public Instruction.” The policy of this program was to denationalize the children of the Hawaiian Islands on a massive scale, which included forbidding the children from speaking the Hawaiian national language, and allowing only English to be spoken. Its intent was to obliterate any memory of the national character of the Hawaiian Kingdom that the children may have had and replace this, through inculcation, with American patriotism. “Usurpation of sovereignty during military occupation” and “attempts to denationalize the inhabitants of occupied territory” was recognized as international crimes since 1919.²⁰

At the close of the Second World War, the United Nations War Commission’s Committee III was asked to provide a report on war crime charges against four Italians accused of denationalization in the occupied state of Yugoslavia. The charge stated that, “the Italians started a policy, on a vast

¹⁷ *Estate of His Majesty Kamehameha IV*, 3 Haw. 715, 725 (1864).

¹⁸ 30 Stat. 750.

¹⁹ 31 Stat. 141.

²⁰ 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 (1920).

scale, of denationalization. As a part of such policy, they started a system of 're-education' of Yugoslav children. This re-education consisted of forbidding children to use the Serbo-Croat language, to sing Yugoslav songs and forcing them to salute in a fascist way."²¹ The question before Committee III was whether or not "denationalization" constituted a war crime that called for prosecution or merely a violation of international law. In concluding that denationalization is a war crime, the Committee reported:

It is the duty of belligerent occupants to respect, unless absolutely prevented, the laws in force in the country (Art. 43 of the Hague Regulations). Inter alia, family honour and rights and individual life must be respected (Art. 46). The right of a child to be educated in his own native language falls certainly within the rights protected by Article 46 ('individual life'). Under Art. 56, the property of institutions dedicated to education is privileged. If the Hague Regulations afford particular protection to school buildings, it is certainly not too much to say that they thereby also imply protection for what is going to be done within those protected buildings. It would certainly be a mistaken interpretation of the Hague Regulations to suppose that while the use of Yugoslav school buildings for Yugoslav children is safe-guarded, it should be left to the unfettered discretion of the occupant to replace Yugoslav education by Italian education.²²

War Crimes: 1949 Geneva Convention, IV

Article 64—The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention

The failure of the United States to administer the laws of the Hawaiian Kingdom has caused extrajudicial proceedings that have led to unlawful confinements, sentencing and executions.

Article 147—Extensive [...] appropriation of property, not justified by military necessity and carried out unlawfully and wantonly

In 2013, the United States Internal Revenue Service ("IRS") illegally appropriated \$7.1 million dollars from the residents of the Hawaiian Islands.²³ During this same year, the State of Hawai'i

²¹ E. Schwelb, Note on the Criminality of "Attempts to Denationalize the Inhabitants of Occupied Territory" (Appendix to Doc, C, 1. No. XII) – Question Referred to Committee III by Committee I, United Nations War Crime Commission, Doc. III/15, 1 (Sep. 10, 1945) (online at http://hawaiiankingdom.org/pdf/Committee_III_Report_on_Denationalization.pdf).

²² *Id.*, at 6.

²³ IRS, *Gross Collections, by Type of Tax and State and Fiscal Year, 1998-2012* (online at <http://www.irs.gov/uac/SOI-Tax-Stats-Gross-Collections,-by-Type-of-Tax-and-State,-Fiscal-Year-IRS-Data-Book-Table-5>).

additionally appropriated \$6.5 billion dollars illegally.²⁴ The IRS is an agency of the United States and cannot appropriate money from the inhabitants of an occupied state without violating international law. The State of Hawai'i is a political subdivision of the United States, established by an Act of Congress in 1959, and being an entity without any extraterritorial effect, so it is precluded from appropriating money from the inhabitants of an occupied state without violating the international laws of occupation.

According to the laws of the Hawaiian Kingdom, taxes upon the inhabitants of the Hawaiian Islands include: an annual poll tax of \$1 dollar to be paid by every male inhabitant between the ages of seventeen and sixty years; an annual tax of \$2 dollars for the support of public schools to be paid by every male inhabitant between the ages of twenty and sixty years; an annual tax of \$1 dollar for every dog owned; an annual road tax of \$2 dollars to be paid by every male inhabitant between the ages of seventeen and fifty; and an annual tax of $\frac{3}{4}$ of 1% upon the value of both real and personal property.²⁵

The *Merchant Marine Act* of June 5, 1920,²⁶ hereinafter referred to as the *Jones Act*, is a restraint of trade and commerce and is also a violation of international law and treaties between the Hawaiian Kingdom and other foreign states. According to the *Jones Act*, all goods, which includes tourists on cruise ships, whether originating from Hawai'i or being shipped to Hawai'i, must be shipped on vessels built in the United States that are wholly owned and crewed by United States citizens. Should a foreign flag ship attempt to unload foreign goods and merchandise in the Hawaiian Islands, the person transporting the merchandise would have to forfeit its cargo to the U.S. Government, or forfeit an amount equal to the value of the merchandise, or the cost of transportation.

As a result of the *Jones Act*, there is no free trade in the Hawaiian Islands. Ninety percent of Hawai'i's food is imported from the United States, which has created a dependency on outside food. The three major American ship carriers for the Hawaiian Islands are Matson, Horizon Lines, and Pasha Hawai'i Transport Services, as well as several low cost barge alternatives. Under the *Jones Act*, these American carriers travel 2,400 miles to ports on the west coast of the United States in order to reload goods and merchandise, delivered from Pacific countries on foreign carriers, which would have otherwise come directly to Hawai'i ports. The cost of fuel and the lack of competition drive up the cost of shipping and contributes to Hawai'i's high cost of living, and according to the USDA Food Cost, Hawai'i residents in January 2012 paid an extra \$417 per month

²⁴ State of Hawai'i Department of Taxation Annual Reports (2013) (online at <http://files.hawaii.gov/tax/stats/stats/annual/13annrpt.pdf>).

²⁵ Civil Code of the Hawaiian Islands, *To Consolidate and Amend the Law Relating to Internal Taxes* (Act of 1882), 117-120 (online at http://www.hawaiiankingdom.org/civilcode/pdf/CL_Title_2.pdf).

²⁶ 41 Stat. 988.

for food on a thrifty plan than families who are on a thrifty plan in the United States.²⁷ Therefore, appropriating monies directly through taxation and appropriating monies indirectly as a result of the *Jones Act* to benefit American ship carriers and businesses are war crimes.

Article 147—Compelling a [...] protected person to serve in the forces of an [Occupying] Power

The United States Selective Service System is an agency of the United States government that maintains information on those potentially subject to military conscription. Under the *Military Selective Service Act*, “it shall be the duty of every male citizen of the United States, and every other male person residing in the United States, who, on the day or days fixed for the first or any subsequent registration, is between the ages of eighteen and twenty-six, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President and by rules and regulations prescribed hereunder.”²⁸ Conscription of the inhabitants of the Hawaiian Kingdom, unlawfully inducted into the United States Armed Forces through the Selective Service System, occurred during World War I (September 1917-November 1918), World War II (November 1940-October 1946), Korean War (June 1950-June 1953), and the Vietnam War (August 1964-February 1973).

Although induction into the United States Armed Forces has not taken place since February 1973, the requirements to have residents of the Hawaiian Island, who reach the age of 18, to register with the Selective Service System for possible induction, is a war crime.

Article 147—Willfully depriving a [...] protected person of the rights of fair and regular trial

Since January 17, 1893, there have been no lawfully constituted courts in the Hawaiian Islands whether it be Hawaiian Kingdom courts or military commissions established by order of the Commander of the United States Indo-Pacific Command in conformity with the HC IV, GC IV, and the international laws of occupation. All Federal and State of Hawai‘i Courts in the Hawaiian Islands derive their authority from the United States Constitution and the laws enacted in pursuance thereof. As such, these Courts cannot claim to have authority in the territory of a foreign state and therefore are not properly constituted to give defendant(s) a fair and regular trial.

²⁷ United States Department of Agriculture Center for Nutrition Policy and Promotion, *Cost of Food at Home* (online at <http://www.cnpp.usda.gov/USDAFoodCost-Home.htm#AK%20and%20HI>).

²⁸ 50 U.S.C. App. 453.

Article 147—Unlawful deportation or transfer or unlawful confinement

According to the United States Department of Justice, the prison population in the Hawaiian Islands in 2009 was at 5,891.²⁹ Of this population there were 286 aliens.³⁰ Thus, two paramount issues arise—first, prisoners were sentenced by courts that were not properly constituted under Hawaiian Kingdom law and/or the international laws of occupation and therefore were unlawfully confined, which is a war crime under this court’s jurisdiction; second, the alien prisoners were not advised of their rights in an occupied state by their state of nationality in accordance with the 1963 *Vienna Convention on Consular Relations*.³¹ Compounding the violation of alien prisoners rights under the *Vienna Convention*, Consulates located in the Hawaiian Islands were wrongly granted exequaturs by the government of the United States by virtue of United States treaties and not by treaties between the Hawaiian Kingdom and these foreign states.

In 2003, the State of Hawai‘i Legislature allocated funding to transfer up to 1,500 prisoners to private corrections institutions in the United States.³² By June of 2004, there were 1,579 Hawai‘i inmates in these facilities. Although the transfer was justified as a result of overcrowding, the government of the State of Hawai‘i did not possess authority to transfer, let alone to prosecute these prisoners in the first place. Therefore, the unlawful confinement and transfer of inmates are war crimes.

Article 147—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

Once a state is occupied, international law preserves the *status quo* of the occupied state to what it was before the occupation began. To preserve the nationality of the occupied state from being manipulated by the occupying state to its advantage, international law only allows individuals born within the territory of the occupied state to acquire the nationality of their parents—*jus sanguinis*. To preserve the *status quo*, Article 49 of the GC IV mandates that the “Occupying Power shall not [...] transfer parts of its own civilian population into the territory it occupies.” For individuals, who were born within Hawaiian territory during the occupation, to be a Hawaiian subject, they must be a direct descendant of a person or persons who were Hawaiian subjects prior to January 17, 1893. All other individuals, born after January 17, 1893 to the present, are aliens who can only

²⁹ United States Department of Justice’s Bureau of Justice Statistics, *Prisoners in 2011* (online at <http://www.bjs.gov/content/pub/pdf/p11.pdf>).

³⁰ United States Government Accountability Office, *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs* (March 2011) (online at <http://www.gao.gov/new.items/d11187.pdf>).

³¹ *LaGrand* (Germany v. United States of America), Judgment, I.C.J. Reports 2001, p. 466.

³² State of Hawai‘i, Department of Public Safety, Response to Act 200, Part III, Section 58, Session Laws of Hawai‘i 2003 As Amended by Act 41, Part II, Section 35, Session Laws of Hawai‘i 2004 (January 2005) (online at http://lrbhawaii.info/reports/legprts/psd/2005/act200_58_slh03_05.pdf).

acquire the nationality of their parents. According to von Glahn, “children born in territory under enemy occupation possess the nationality of their parents.”³³

According to the 1890 government census, Hawaiian subjects numbered 48,107, with the aboriginal Hawaiian, both pure and part, numbering 40,622, being 84% of the national population, and the non-aboriginal Hawaiians numbering 7,485, being 16%. Despite the massive and illegal migrations of foreigners to the Hawaiian Islands since 1898, which, according to the State of Hawai‘i numbered 1,302,939 in 2009,³⁴ the *status quo* of the national population of the Hawaiian Kingdom is maintained. Therefore, under the international laws of occupation, the aboriginal Hawaiian population of 322,812 in 2009 would continue to be 84% of the Hawaiian national population, and the non-aboriginal Hawaiian population of 61,488 would continue to be 16%. The balance of the population in 2009, being 918,639, would be aliens who were illegally transferred, either directly or indirectly, by the United States as the occupying Power, and therefore these transfers are war crimes.

Article 147—Destroying or seizing the [Occupied State’s] property unless such destruction or seizure be imperatively demanded by the necessities of war

On August 12, 1898, the United States seized approximately 1.8 million acres of land that belonged to the Government of the Hawaiian Kingdom and to the office of the Monarch. These lands were called Government lands and Crown lands, respectively, whereby the former being public lands and the latter private lands.³⁵ These combined lands constituted nearly half of the entire territory of the Hawaiian Kingdom.

Military training locations include Pacific Missile Range Facility, Barking Sands Tactical Underwater Range, and Barking Sands Underwater Range Expansion on the Island of Kaua‘i; the entire Islands of Ni‘ihau and Ka‘ula; Pearl Harbor, Lima Landing, Pu‘uloa Underwater Range—Pearl Harbor, Barbers Point Underwater Range, Coast Guard AS Barbers Point/Kalaeloa Airport, Marine Corps Base Hawai‘i, Marine Corps Training Area Bellows, Hickam Air Force Base, Kahuku Training Area, Makua Military Reservation, Dillingham Military Reservation, Wheeler

³³ Gerhard von Glahn, *Law Among Nations* 780 (6th ed. 1992).

³⁴ State of Hawai‘i. Department of Health, Hawai‘i Health Survey (2009) (online at <http://www.ohadatabook.com/F01-05-11u.pdf>); see also David Keanu Sai, “American Occupation of the Hawaiian State: A Century Unchecked,” 1 Haw. J.L. & Pol. 63-65 (2004).

³⁵ Public lands were under the supervision of the Minister of the Interior under Article I, Chapter VII, Title 2—*Of The Administration of Government*, Civil Code, §§ 39-48 (1884), and Crown lands were under the supervision of the Commissioners of Crown Lands under *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*, Civil Code, Appendix, pp. 523-525 (1884). Crown lands are private lands that “descend in fee, the inheritance being limited however to 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 the Matter of the Estate of His Majesty Kamehameha IV., late deceased*, 2 Haw. 715, 725 (1864), subject to *An Act to Relieve the Royal Domain from Encumbrances and to Render the Same Inalienable*.

Army Airfield, and Schofield Barracks on the Island of O‘ahu; and Bradshaw Army Airfield and Pohakuloa Training Area on the Island of Hawai‘i.

The United States Navy’s Pacific Fleet headquartered at Pearl Harbor hosts the Rim of the Pacific Exercise (“RIMPAC”), every other even numbered year, and is the largest international maritime warfare exercise in the world. RIMPAC is a multinational, sea control and power projection exercise that collectively consists of activity by the U.S. Army, Air Force, Marine Corps, and Naval forces, as well as military forces from other foreign states. During the month long exercise, RIMPAC training events and live fire exercises occur in the open-ocean and at the military training locations throughout the Hawaiian Islands.

Moreover, in 2006, the United States Army disclosed to the public that depleted uranium (“DU”) was found on the firing ranges at Schofield Barracks on the Island of O‘ahu.³⁶ The army subsequently confirmed that DU was also found at Pohakuloa Training Area on the Island of Hawai‘i and suspect that DU is also at Makua Military Reservation on the Island of O‘ahu.³⁷ These ranges have yet to be cleared of DU and are still used for live fire. This brings the inhabitants, who live down wind from these ranges, into harms way because when the DU ignites or explodes from the live fire, it creates tiny particles of hazardous aerosolized DU oxide that can travel by wind. And if the DU gets into the drinking water or into oceans it would have a devastating effect across the islands.

The Hawaiian Kingdom has never consented to the establishment of military installations throughout its territory and these installations and war-gaming exercises stand in direct violation of Articles 1, 2, 3 and 4, of HC V, HC IV, and GC IV, and therefore are war crimes.

³⁶ U.S. Army Garrison-Hawai‘i, Depleted Uranium on Hawai‘i’s Army Ranges (online at <http://www.garrison.hawaii.army.mil/du/>).

³⁷ *Id.*