

The Permanent Court of Arbitration

at the Hague, the Netherlands

LANCE PAUL LARSEN, CLAIMANT

vs.

THE HAWAIIAN KINGDOM, RESPONDENT

*MEMORIAL OF THE
HAWAIIAN KINGDOM GOVERNMENT*

MEMORIAL

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**MEMORIAL
of the Government of the Hawaiian Kingdom**

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**MEMORIAL
of the Government of the Hawaiian Kingdom**

INTRODUCTION

A. Preliminary Statement

1. This case arises out of a dispute between the Claimant, Mr. Lance Paul Larsen, a Hawaiian national, and the Respondent, the Hawaiian Kingdom Government, the interim governing body of the Independent Nation State, the Hawaiian Kingdom, over its alleged failure to protect Mr. Larsen's life, liberty and national rights from the imposing force of the occupying Nation, the United States of America. ¹

2. Under the Hague Convention IV, Respecting the Laws and Customs of War on Land of 18 October 1907, an occupying State must respect the existing territorial laws and not impose its own domestic laws within the occupied territory. Further, under the basic rules of wartime occupation, the sovereignty of the territory does not pass to the occupying power.

3. The United States has egregiously subsumed the Hawaiian Kingdom. With respect to the violations against Mr. Larsen, the United States, through its political sub-division, the State of Hawaii, imposed its own domestic laws related to traffic infractions and illegally incarcerated Mr. Larsen for adhering to Kingdom law. ² Mr. Larsen was sent to prison for thirty days, seven of which was under solitary confinement.

4. In this case, the Hawaiian Kingdom Government acknowledges the violations against Mr. Larsen and submits that it has acted, although unsuccessfully, on the Petitions made by Mr. Larson to protect his national rights.

5. Therefore the parties to this matter seek a determination by the Arbitral Tribunal regarding the rights of Mr. Larsen under international law and the redress, if any, he may have against the Hawaiian Kingdom Government.

6. This Memorial is divided into two parts.

Part One deals with the Hawaiian Kingdom from (a) the era of non State recognition on through (b) the recognition of its independence by the major powers of the world and to (c) the maintenance of its independence to the present.

Part Two deals with (a) the interpretation of the Regulations on the Laws and Customs of War on Land, and (b) the subsequent conduct of the United States in relation to both the Regulations and the Hawaiian Kingdom, and as a consequence, the Claimant's national rights.

B. Procedural Statement.

7. The case comes before the Arbitral Tribunal pursuant to a special agreement between the Hawaiian Kingdom Government and Mr. Larsen of 25 January 2000,³ which superceded, to the extent inconsistent with, the Notice of Arbitration of November 8, 1999 and the Arbitration Agreement of October 30, 1999,⁴ requesting the Arbitral Tribunal:

"...to determine, on the basis of the Hague Conventions IV and V of 18 October 1907, and the rules and principles of international law, whether the rights of the Claimant under international law as a Hawaiian subject are being violated, and if so, does he have any redress against the Respondent Government of the Hawaiian Kingdom?"

8. Article 43 of the Hague Convention IV of 18 October 1907, Respecting the Laws and Customs of War on Land, provides:

"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."

9. Article 1 of the Hague Convention V of 18 October 1907, Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, provides:

"The territory of neutral Powers is inviolable."

10. For the purpose of these proceedings and in the absence of the Hawaiian Kingdom's ratification of the 1907 Hague Conventions IV and V, the Hawaiian Kingdom accedes to the terms of the Conventions as well as to the principles of the law of nations for the purpose of these proceedings.

11. The Hawaiian Kingdom was recognized as an Independent State by the United States of America on December 19, 1842⁵ and also recognized in a separate act by Her British Majesty, the Queen of Great Britain, and by His French Majesty, the King of France on November 28, 1843.⁶ This recognition by Great Britain and France was by Proclamation at the Court of London, (hereinafter referred to as the "1843 Anglo-Franco Proclamation").

12. His Majesty King Kamehameha III, by Proclamation of May 16, 1854, declared Hawai'i as a Neutral State.⁷ Hawai'i has maintained its neutrality to the present, notwithstanding the present and ongoing illegal occupation of Hawai'i's territorial dominion by another State.

13. The steps by which this dispute came before the Arbitral Tribunal are as follows:

14. On August 4, 1999, Claimant filed an original complaint for injunctive relief in the United States District Court for the District of Hawai'i. ⁸ The complaint sought protection for the Claimant under the 1849 Hawaiian-American Treaty until the international title to the Hawaiian Islands can be resolved at the Permanent Court of Arbitration between the Hawaiian Kingdom and the United States of America. The complaint also alleged that both the Governments of the Hawaiian Kingdom and the United States were in violation of its 1849 Treaty. The Hawaiian Kingdom in violation for "allowing" the unlawful imposition of U.S. municipal laws over the Claimant within the territorial jurisdiction of the Hawaiian Kingdom, the United States for "imposing" said laws.

15. On August 31, 1999, Claimant filed a Petition For Redress of Grievances with his government, the Hawaiian Kingdom. ⁹ Simultaneously, Claimant was being threatened with imprisonment by the United States, via its political subdivision the State of Hawai'i, for adhering to Kingdom law. Despite Claimant's efforts to protect himself from incarceration, Claimant was illegally imprisoned by the United States, via the said State of Hawai'i, pursuant to convictions on various traffic offenses. While in prison, Claimant filed a Writ of Habeas Corpus with the Third Circuit Court, Hilo Division, State of Hawai'i, in order to preserve his nationality, his protest, and his hopes of obtaining release from the illegal imprisonment. ¹⁰

16. On October 13, 1999, Claimant voluntarily dismissed, without prejudice, all parties except for the Hawaiian Kingdom in the said Complaint for Injunctive Relief filed in the U.S. District Court of Hawai'i on August 4, 1999. ¹¹ This was done so that a stipulated settlement agreement could be entered into between Claimant and the Hawaiian Kingdom to dismiss the entire case and submit the dispute between them to binding arbitration before the Permanent Court of Arbitration at The Hague, in the Netherlands. Both Parties had determined that the United States was not a Party to their present dispute and that the rules of the Permanent Court of Arbitration did allow a private party and a State to binding arbitration.

17. On October 30, 1999, Claimant entered into said Arbitration Agreement with the Hawaiian Kingdom, through the Kingdom's Council of Regency. ¹² The agreement was to submit the dispute, alleged in the said Complaint for Injunctive Relief, to final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules For Arbitrating Disputes Between Two Parties of Which Only One is a State.

18. On November 5, 1999, Judge Samuel King of the United States District Court for Hawai'i signed an Order to a "Stipulated Settlement Agreement dismissing entire case without prejudice as to all parties and all issues and submitting all issues to binding arbitration" between the Hawaiian Kingdom and Mr. Larsen at the Permanent Court of Arbitration at The Hague, in the Netherlands. ¹³

19. On November 8, 1999, arbitral proceedings were instituted by Notice of the Claimant. ¹⁴ On December 3, 1999, the Notice of Arbitration was amended by replacing the *Optional Rules For Arbitrating Disputes Between Two Parties of Which Only One is a State* with the *United*

20. On January 25, 2000, a Special Agreement was entered into between the parties clarifying the dispute. ¹⁶ The schedule of submission of the parties' memorials, counter-memorials and oral hearings was also made a part of the Special Agreement.

21. Both parties mutually agreed to extend the submission of their Memorials an additional forty-five (45) days and jointly notified the International Bureau of the Permanent Court of Arbitration on February 25, 2000 of this agreement. ¹⁷

22. On February 28, 2000, the Special Agreement was amended to increase the number of arbitrators from one to three. ¹⁸

23. On March 3, 2000, the Hawaiian Kingdom, by its Agent David Keanu Sai, and with the consent of the Claimant, spoke to Mr. John Crook, (Assistant Legal Adviser for United Nations, United States Department of State), in Washington D.C. At this time His Excellency David Keanu Sai extended to the United States of America an opportunity to join in the arbitral proceedings. ¹⁹ To date, the United States has made no effort to enter the arbitral proceedings.

24. On April 19, 2000, the Parties mutually agreed to extend the submission of memorials an additional thirty (30) days, with the stipulation that the submission of counter-memorials is limited to not more than twenty (20) days so that the July 2000 oral hearing remains unaffected. ²⁰

C. Summary of Argument.

25. In the agreement submitting this case for arbitration, the parties have asked the Arbitral Tribunal "to determine, on the basis of the Hague Conventions IV and V of 18 October 1907, and the rules and principles of international law, whether the rights of the Claimant under international law, as a Hawaiian subject, are being violated, and if so, does Claimant have any redress against the Respondent Government of the Hawaiian Kingdom?" The Hawaiian Kingdom's submission states as follows: that the Claimant's rights under international law are being violated, but to what extent, is left to the Arbitral Tribunal to decide. That this decision must be made within fixed and established principles and laws pertaining to the matter, and that the Hawaiian Kingdom Government is not liable for redress of these violations under its present conditions as an occupied State.

26. The Government of the Hawaiian Kingdom rests its case for the above propositions on seven separate grounds:

a. The revolutionists of January 17, 1893, (to include the Republic of Hawai'i declared on July 4, 1894) failed to achieve *de facto* recognition by the international community as a successor government. The revolutionist were thus unsuccessful in replacing the Hawaiian Kingdom body politic which existed previous to the failed revolution of 1893.

b. There was no annexation of the Hawaiian Kingdom, nor any of its territories, by the United States of America as provided by international law under the principles of acquisition of territories by means of discovery, accretion, cession, conquest, or prescription.

c. The sovereignty of the Hawaiian Kingdom, as an Independent nation State, has remained intact since its recognition by the Anglo-Franco Proclamation of November 28, 1843. This sovereignty remains intact to the present, notwithstanding the Hawaiian government (body politic) lapsing into abeyance for over 100 years. This lapse was due to circumstances associated with the unlawful incursion of the Hawaiian territory by the United States of America.

d. The unlawful incursion into the Hawaiian territory, by the United States on August 13, 1898, absent a treaty of cession, occurred over the protests of the nationals of the Hawaiian Kingdom and its Head of State, Her Majesty Queen Lili'uokalani. This incursion occurred within the territory of a neutral State, the Hawaiian Kingdom. The United States of America, as a belligerent State, was already at war with Spain, and utilized Hawaiian territory as a staging ground for conflicts in the Spanish territories of the Philippines and Guam.

e. The Hague Convention IV, Respecting the Laws and Customs of War on Land on 18 October 1907, properly interpreted, attributes responsibility to the occupying power to administer the existing territorial laws of the territory it is occupying, unless military exigencies imperatively demand otherwise. The occupying force must not interfere with the existing rights and obligations of the inhabitants of the territory it is occupying. These inhabitants also do not owe allegiance to the occupying power.

f. The basic rule of wartime occupations stipulates that sovereignty of the territory does not pass to the occupying power, and therefore, the rights of occupancy cannot be co-extensive with those of sovereignty. Thus, it would then be within the rights of the nationals of the occupied nation (i.e. the Hawaiian Kingdom) to re-establish their government within the confines of Hawaiian Kingdom domestic law, and to begin exercising those rights, those corresponding obligations, and those duties that exist between the government and its nationals under the laws of occupation, and to maintain its obligations due to other States; and

g. Although, under the Hague Regulations, the responsibility of protecting the inhabitants of an occupied State is *provisionally* upon the occupying nation, that being the United States of America, the Hawaiian Kingdom has acted upon the Petitions of the Claimant to intercede, on his behalf, but has not been successful in the protection of his national rights.

Part One

The Hawaiian Kingdom

INTRODUCTION

CHAPTER I. Dominion of the Hawaiian Kingdom (circa. 1810).

27. Prior to the first arrival of Europeans in 1778, the inhabitants of the Hawaiian Islands lived in a highly organized, self-sufficient, social system, with a sophisticated language, culture, religion and a land tenure that bore a remarkable resemblance to the feudal system of ancient Europe. ²¹

28. The monarchical government of the Hawaiian Islands was established in 1810 by His Majesty King Kamehameha I. ²² He ruled the Hawaiian Islands from April 1810 until his death in May 1819. Upon the death of King Kamehameha I, his son King Kamehameha II was successor to the throne and ruled the Hawaiian Islands from May 8, 1819 to July 1824 when he died of measles in London. ²³ His Majesty King Kamehameha III, the second son of His Majesty King Kamehameha I, was successor to the throne upon the death of Kamehameha II in July 1824. ²⁴

29. The Hawaiian Kingdom was governed until 1838, without legal enactments, and was based upon a system of common law, which consisted partly of the ancient kapu (taboo) and the practices of the celebrated Chiefs, that had been passed down by tradition since time immemorial. ²⁵ The Declaration of Rights, proposed and signed by His Majesty King Kamehameha III on June 7, 1839, was the first essential departure from the ancient ways. ²⁶

A. Establishing a Constitutional form of Government for the Hawaiian Kingdom (circa. 1839).

30. The Declaration of Rights of 1839 recognized three classes of persons having vested rights in the lands; 1st, the Government; 2nd, the Chiefs; and 3rd, the native Tenants. It declared protection of these rights to both the Chiefly and native Tenant classes. ²⁷ These rights were not limited to the land, but included the right to

"...life, limb, liberty, freedom from oppression; the earnings of his hands and the productions of his mind, not however to those who act in violation of the laws." ²⁸

31. One year later on October 8, 1840, His Majesty King Kamehameha III voluntarily relinquished his absolute powers and attributes, by promulgating a constitution that recognized three grand divisions of a civilized monarchy; the King as the Chief Executive, the Legislature, and the Judiciary. ²⁹ The Legislative Department of the Kingdom was composed of the King, the

House of Nobles, and the House of Representatives, each had a negative on the other. The King represented the vested right of the Government class, the House of Nobles represented the vested right of the Chiefly class, and the House of Representatives represented the vested rights of the Tenant class. The Government was established to protect and acknowledge the rights already declared by the 1839 Declaration of Rights. The Arbitral Tribunal is requested to take judicial notice of the 1840 Constitution.

32. The Constitution generally defined the duties of each branch of government. Civilly, the laws embraced the usual rights and duties of the social relations between the three classes of people, and initiated the internal development of the country with the promotion of industry and commerce. In these laws, the fundamental basis of landed tenure was declared, and cultivation of the soil, under a feudal tenancy not much differing that of ancient Europe, was encouraged by relaxing the vassal service of the Chiefly and Tenant classes.

B. The Organic and Statutory Laws of the State (circa. 1845-1886).

33. On June 24, 1845, a Joint Resolution was enacted by the Legislature and signed into law.³⁰ The Attorney General was called upon to draw up a complete set of the existing laws embracing the organic forms of the different departments, namely, the Executive and Judicial branches. These laws were to outline their duties and modes of procedure. This brought forth the *First Act of Kamehameha III to Organize the Executive Ministries*, the *Second Act of Kamehameha III to Organize the Executive Departments*, and the *Third Act of Kamehameha III to Organize the Judiciary Department*. These Acts came to be known as the Organic Acts of 1845-46.³¹ The Arbitral Tribunal is requested to take judicial notice of these three Acts of Kamehameha III.

34. On September 27, 1847, the Legislature passed a law calling upon Chief Justice William L. Lee to establish a Penal Code.³² In 1850, a Penal Code was submitted to the Legislature by Chief Justice Lee and signed into law by His Majesty King Kamehameha III. The Penal Code had adopted the principles of the English common law.³³ On June 22, 1865, the Judges of the Supreme Court were directed, by an act of the Legislature, to compile and ready to publish the Penal Laws of the Kingdom.³⁴ The matter required a compilation of the amendments and additions made to the Penal Code since 1850. In 1869 a revised Penal Code was published.³⁵ The Arbitral Tribunal is requested to take judicial notice of the 1850 and 1869 Penal Codes.

35. In 1851, the Hawaiian Kingdom Legislature passed a resolution calling for the appointment of three commissioners, one to be chosen by the King, one by the House of Nobles, and one by the House of Representatives.³⁶ The duty of these commissioners was to revise the Constitution of 1840. The draft of the revised Constitution was submitted to the Legislature and approved by both the House of Nobles and the House of Representatives and signed into law by the King on June 14, 1852.³⁷ By its terms, the Constitution would not take effect until December 6, 1852. The Arbitral Tribunal is requested to take judicial notice of the 1852 Constitution.

36. On April 6, 1853, Alexander Liholiho was named successor to the office of the

Constitutional Monarch by His Majesty King Kamehameha III in accordance with Article 25 of the Constitution of 1852.³⁸ Article 25 provides that the:

"...successor (of the Throne) shall be the person whom the King and the House of Nobles shall appoint and publicly proclaim as such, during the King's life..."

37. One year later on December 15th, His Majesty King Kamehameha III passed away and Alexander Liholiho ascended to the office of Constitutional Monarch.³⁹ He was thereafter called King Kamehameha IV.

38. Since the passage of the Organic Acts of 1845-46, a Joint Resolution was passed by the Legislature and signed into law in 1856, calling upon Prince Lot Kamehameha, Chief Justice William L. Lee, and Associate Justice George M. Robertson to form a committee and prepare a complete Civil Code and to report the same for the sanction of the Legislature in 1858.⁴⁰ Pursuant to the resolution, on May 2, 1859, a Civil Code was finally passed by the Legislative Assembly and signed into law on May 17, 1859.⁴¹ Session laws subsequently enacted by the Legislature amended or added to the Civil and Penal Codes. The Arbitral Tribunal is requested to take judicial notice of 1859 Civil Code.

39. The nationality or political status of persons ancillary to the Hawaiian Kingdom are termed Hawaiian subjects. The native inhabitants of the Hawaiian Islands became subjects of the Kingdom as a consequence of the unification of the islands by His Majesty King Kamehameha I at the turn of the 19th century. Since Hawai'i became constitutional, foreigners were capable of becoming Hawaiian nationals either through naturalization or denization. Under the naturalization laws of the Kingdom, foreigners who resided in the Hawaiian Islands for at least five years could apply to the Minister of Interior for naturalization,⁴² whereby:

"Every foreigner so naturalized, shall be deemed to all intents and purposes a native of the Hawaiian Islands, be amenable only to the laws of this Kingdom, and to the authority and control thereof, be entitled to the protection of said laws, and be no longer amenable to his native sovereign while residing in this Kingdom, nor entitled to resort to his native country for protection or intervention. He shall be amenable, for every such resort, to the pains and penalties annexed to rebellion by the Criminal Code. And every foreigner so naturalized, shall be entitled to all the rights, privileges and immunities of an Hawaiian subject."

40. Denization was a constitutional prerogative of the Office of the Monarch, whereby, a foreigner may have all the rights and privileges of a Hawaiian subject, but is not required to relinquish his allegiance to his native country as is required under naturalization.⁴³ Denization was "dual citizenship," which was accompanied by an oath of allegiance to the Hawaiian Kingdom. It was reserved to those foreigners who may not have resided in the Kingdom for five years or

more, but their services were necessary in the affairs of government both local and abroad. The children of Hawaiian denizens born on Hawaiian territory were considered Hawaiian subjects. Examples of Hawaiian denizens were special envoys who negotiated international treaties and officers serving in the Hawaiian government.

41. On November 30, 1863, His Majesty King Kamehameha IV passed away unexpectedly, and consequently, left the Kingdom without a publicly proclaimed successor.⁴⁴ On the very same day, the Kuhina Nui (Premier) in Privy Council publicly proclaimed Lot Kapuaiwa the successor to the Throne, in accordance with Article 25 of the Constitution of 1852.⁴⁵ He was thereafter called King Kamehameha V. Article 47, of the Constitution of 1852, provides that:

"whenever the throne shall become vacant by reason of the King's death the Kuhina Nui (Premier) shall perform all the duties incumbent on the King, and shall have and exercise all the powers, which by this Constitution are vested in the King."

42. When His Majesty King Kamehameha V ascended to the throne, he had refused to take the oath of office until the Constitution was altered.⁴⁶ This refusal was constitutionally authorized by Article 94 of the 1852 Constitution which provided that:

"[t]he King, after approving this Constitution, shall take the following oath..."

43. This provision implied a choice to take or not take the oath, which His Majesty King Kamehameha V felt should be constitutionally altered. Another provision of the 1852 Constitution needing alteration was the sovereign prerogative provided in article 45 which stated that:

"[a]ll important business of the Kingdom which the King chooses to transact in person, he may do, but not without the approbation of the Kuhina Nui (Premier). The King and Kuhina Nui (Premier) shall have a negative on each other's public acts."

44. This sovereign prerogative allowed the Monarch the constitutional authority to alter or amend laws without Legislative approval. These anomalous provisions needed to be altered along with the instituting of voter qualifications for the House of Representatives. His Majesty King Kamehameha V, in Privy Council, resolved to look into the legal means of convening the first Constitutional Convention.

45. On July 7, 1864, a Convention was called for by His Majesty King Kamehameha V in order to draft a new constitution.⁴⁷ The Convention was not comprised of delegates elected by the people with the specific task of altering the constitution, but rather their elected officials serving in the House of Representatives, together with the House of Nobles and the King in Privy Council who would convene in special session.⁴⁸ Between July 7 and August 8, 1864, each

article in the proposed Constitution was read and discussed until they arrived at Article 62. Article 62 defined the qualification of voters for the House of Representatives. After days of debate over this article, the Convention arrived at an absolute deadlock. The House of Representatives was not able to agree on this article. As a result, His Majesty King Kamehameha V, in exercising his sovereign prerogative by virtue of Article 45 of the constitution, dissolved the convention and proclaimed a new constitution on August 20, 1864.⁴⁹ The Arbitral Tribunal is requested to take judicial notice of the 1864 Constitution.

46. In His Majesty King Kamehameha V's speech at the opening of the Legislative Assembly of 1864, he explained his abovementioned action of dissolving the Convention and proclaiming a new constitution.⁵⁰ He stated that the:

"...forty-fifth article (of the Constitution of 1852) reserved to the Sovereign the right to conduct personally, in cooperation with the Kuhina Nui (Premier), but without the intervention of a Ministry or the approval of the Legislature, such portions of the public business as he might choose to undertake..."

47. This public speech before the Legislative Assembly occurred without contest, and therefore must be construed as a positive statement of the approbation of the Kuhina Nui (Premier) as required by Article 45 of the said Constitution of 1852. However, this sovereign prerogative was removed from the 1864 Constitution, thereby preventing any future Monarch of the right to alter the constitution without the approval of two-thirds of all members of the Legislative Assembly.⁵¹ All articles of the constitution previously agreed upon in convention remained, except for the voter requirements for the House of Representatives. The property qualifications instituted in Articles 61 and 62 were repealed by the Legislature in 1874.⁵²

48. Contrary to recent historical scholars, the 1864 Constitution did not increase the authority of the Monarch, but rather limited the power of the Monarch formally held under the 1852 Constitution. Under what has been termed the Kamehameha Constitution (1864), the Monarch was now required to take the oath of office and the sovereign prerogative was removed.⁵³ Also removed was the office of the Kuhina Nui (Premier), which was found to be overlapping with the duties of the Minister of Interior. The bi-cameral nature of the legislative body was also removed. Where once the legislature would formally sit in two distinct Houses (House of Nobles and the House of Representatives), it now was changed to a uni-cameral House where the:

"[l]egislative power of the Three Estates of this Kingdom is vested in the King, and the Legislative Assembly; which Assembly shall consist of the Nobles appointed by the King, and of the Representatives of the People, sitting together."

49. On December 11, 1872, His Majesty King Kamehameha V passed away without naming a successor to the office of Constitutional Monarch.⁵⁴ As a consequence to the passing of the late

King, the Legislative Assembly readied itself to exercise the constitutional authority it possessed to elect, by ballot, a native Chief to be the Constitutional Monarch. Article 22 of the Constitution of 1864 of the Hawaiian Kingdom provides such authority and states:

"..should the Throne become vacant, then the Cabinet Council, immediately after the occurring of such vacancy, shall cause a meeting of the Legislative Assembly, who shall elect by ballot some native Ali'i (Chief) of the Kingdom as Successor to the Throne..."

50. On January 8, 1873, William Charles Lunalilo was elected as successor to the office of Constitutional Monarch in accordance with Article 22 of the Constitution of 1864.⁵⁵ One year later on February 3rd, 1874, His Majesty King Lunalilo died without naming a successor.⁵⁶ The Hawaiian Legislature once again met in special session and elected David Kalakaua to the office of Constitutional Monarch on February 12th, 1874.⁵⁷ In accordance with the Constitution, His Majesty's first royal act was to nominate and confirm his younger brother, William P. Leleiohoku, as successor.⁵⁸

51. On April 10, 1877, following the death of heir-apparent William P. Leleiohoku, King David Kalakaua publicly proclaimed Lydia Kamaka'eha Dominis to be his successor to the office of Constitutional Monarch in accordance with Article 22 of the Constitution of 1864.⁵⁹

52. In 1880, the Legislative Assembly passed an Act to Provide for the Codification and revision of the Laws of the Kingdom.⁶⁰ His Majesty's Ministers requested an opinion of the Justices of the Supreme Court, in regard to the 1880 Act, to determine what needed to be done. The Justices stated there was no need to establish another code, but rather a compilation be made of the laws, then in force, and as they stood amended, but without any changes in the words and phrases of statutes. Pursuant to the opinion of the Justices and in accordance with the 1880 Act, a book was published in 1884 entitled the "Compiled Laws of the Hawaiian Kingdom."⁶¹ The Arbitral Tribunal is requested to take judicial notice of 1884 Compiled Laws.

53. On October 16, 1886, the Hawaiian Legislature was adjourned by King David Kalakaua after it met in Legislative session for 129 days.⁶² This Legislature was not scheduled to reconvene in Legislative Session until April of 1888.⁶³ Article 46 of the Constitution of 1864 provides that the:

"...Legislative Body shall assemble biennially, in the month of April, and at such other time as the King may judge necessary, for the purpose of seeking the welfare of the nation."

54. In 1887, while the Legislature remained out of session, a minority of subjects of the Hawaiian Kingdom and foreign nationals, which included citizens of the United States, met in a mass meeting to organize a takeover of the political rights of the native population in the

Kingdom.⁶⁴ These individuals were organized under the name "Honolulu Rifles." On July 1, 1887, these individuals threatened His Majesty King David Kalakaua with bodily harm if he did not accept a new Cabinet Council.⁶⁵ On July 7, 1887, a new constitution was forced upon the King by the members of this new cabinet.⁶⁶ This new constitution did not obtain the consent nor ratification of the Legislative Assembly who had remained adjourned since October 16, 1886.

55. Under this so-called constitution deriving itself from the Executive branch and not the Legislative branch, a new Legislature was elected while the lawful Legislature remained out of session. The voters, which for the first time included *aliens*, had to swear an oath to support the so-called constitution before they could vote. The insurgents used the *alien* vote to offset the majority vote of the aboriginal Hawaiian population, in order to gain control of the Legislative Assembly,⁶⁷ while the so-called 1887 constitution provided the self imposed Cabinet Council to control the Monarch. This new Legislature was not properly constituted under the Constitution of 1864, nor the lawfully executed Session Laws of the Legislative Assembly of the Hawaiian Kingdom.⁶⁸

56. In spite of the illegal efforts to promulgate this so-called constitution, the 1886 Legislative Assembly did not ratify this so-called constitution pursuant to Article 80 of the 1864 Constitution. Article 80 states:

"Any amendment or amendments to this Constitution may be proposed in the Legislative Assembly, and if the same shall be agreed to by a majority of the members thereof, such proposed amendment or amendments shall be entered on its journal, with the yeas and nays taken thereon, and referred to the next Legislature; which proposed amendment or the next election of Representatives; and if in the next Legislature such proposed amendment or amendments shall be agreed to by two-thirds of all members of the Legislative Assembly, and be approved by the King, such amendment or amendments shall become part of the Constitution of this country."

57. Organized resistance by the native subjects of the country resulted in the creation of the Hawaiian Political Party, also known as the Hui Kalai'aina, who protested against the so-called constitution of 1887.⁶⁹ Hui Kalai'aina consistently petitioned His Majesty King David Kalakaua to resort back to the 1864 constitution because it was the legal constitution of the Country.⁷⁰

58. Notwithstanding the extortion of the so-called constitution of 1887, commonly known as the "bayonet constitution," the Constitution of 1864 and the Session laws of the Legislative Assembly enacted since October 16, 1886, still remain in full force and have legal effect in the Hawaiian Kingdom until today. Article 78, of the Constitution of 1864, provides that all:

"...laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws heretofore enacted, or that may hereafter be enacted, which are contrary to this Constitution, shall be null and void."

59. On January 20, 1891, His Majesty King David Kalakaua passed away in San Francisco, while visiting the United States. ⁷¹ His named successor, Lydia Kamaka'eha Dominis, ascended to the office of Constitutional Monarch and was thereafter called Queen Lili'uokalani. On January 14, 1893, in an attempt to counter the effects of the so-called constitution of 1887, Her Majesty Queen Lili'uokalani, drafted a new constitution that embodied the principles and wording of the Constitution of 1864. ⁷² This draft constitution was not Kingdom law, but remained subject to ratification by two-thirds of all members of the legitimate Legislative Assembly, that had been out of session since October 16, 1886. ⁷³

60. The revolutionaries who actively participated in the extortion of the so-called 1887 constitution were also the same perpetrators affiliated with the unsuccessful revolution of January 17, 1893, which is discussed in Chapter IV of this Memorial. Between 1887 and 1893, the self imposed government officials who were installed under the so-called 1887 constitution became an oligarchy, as they tried to combat the organized resistance within the Kingdom.

C. The Hawaiian Domain.

61. On March 16, 1854, in Honolulu, His Excellency Robert C. Wyllie, Minister of Foreign Affairs of the Hawaiian Kingdom, informed: William Miller, Esq., Her British Majesty's Commissioner; M. Louis Emile Perrin, Consul Commissioner and Plenipotentiary of His Imperial Majesty the Emperor of the French; and Honorable David L. Gregg, United States Commissioner, of the islands constituting the Hawaiian domain:

"I have the honor to make known to you that that the following islands, &c., are within the domain of the Hawaiian Crown, viz:

Hawaii, containing about	4,000 square miles;
Maui " "	600 " "
Oahu " "	520 " "
Kauai " "	520 " "
Molokai " "	170 " "
Lanai " "	100 " "
Niihau " "	80 " "
Kahoolawe " "	60 " "
Nihoa, known as Bird Island.	

Molokini)
Lehua) Islets, little more than barren rocks:
Kaula)
and all Reefs, Banks and Rocks contiguous to either of the
above, or within the compass of the whole." ⁷⁴

62. On May 16, 1854, State Neutrality of the Hawaiian Kingdom was proclaimed by His Majesty King Kamehameha III. The Arbitral Tribunal is requested to take judicial notice of the 1854 Proclamation of Hawaiian neutrality, which stated:

"...that Our neutrality is to be respected by all Belligerents, to the full extent of Our Jurisdiction, which by Our fundamental laws is to the distance of one marine league (three miles), surrounding each of Our Islands of Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu, Kauai and Niihau, commencing at low water mark on each of the respective coasts, of said Islands, and includes all the channels passing between and dividing said Islands, from Island to Island..." ⁷⁵

63. Four additional Islands were annexed to the Hawaiian Kingdom domain under the doctrine of discovery subsequent to the reign of His Majesty King Kamehameha III. These islands are as follows:

a. Laysan Island, 800 miles northwest of Honolulu, was annexed to the Hawaiian Kingdom by discovery of Captain John Paty on May 1, 1857, during the reign of His Majesty King Kamehameha IV. ⁷⁶

b. Lisiansky Island, 920 miles northwest of Honolulu, also was annexed by discovery of Captain John Paty on May 10, 1857. ⁷⁷

c. Palmyra Island, a cluster of low islets, 1,100 miles southwest of Honolulu, was taken possession of by Captain Zenas Bent on April 15, 1862, and proclaimed as Hawaiian Territory in the reign of His Majesty King Kamehameha IV, as per "By Authority" notice in the "Polynesian" newspaper of June 21, 1862. ⁷⁸

d. Ocean Island, also called Kure atoll, 1,800 miles northwest of Honolulu, was acquired September 20, 1886, as per proclamation of Colonel J.H. Boyd, empowered for such service during the reign of His Majesty King Kalakaua. ⁷⁹

64. A revised survey of the Hawaiian Islands are as follows: ⁸⁰

<u>Island</u>	<u>Location</u>	<u>Square Miles</u>
Hawaii	19° 30' N 155° 30' W	4,028.2
Maui	20° 45' N 156° 20' W	727.3
Oahu	21° 30' N 158° 00' W	597.1
Kauai	22° 03' N 159° 30' W	552.3
Molokai	21° 08' N 157° 00' W	260.0
Lanai	20° 50' N 156° 55' W	140.6
Niihau	21° 55' N 160° 10' W	69.5
Kahoolawe	20° 33' N 156° 35' W	44.6
Nihoa	23° 06' N 161° 58' W	0.3
Molokini	20° 38' N 156° 30' W	0.04
Lehua	22° 01' N 160° 06' W	0.4
Ka'ula	21° 40' N 160° 32' W	0.2
Laysan	25° 50' N 171° 50' W	1.6
Lisiansky	26° 02' N 174° 00' W	0.6
Palmyra	05° 52' N 162° 05' W	4.6
Ocean (a.k.a. Kure atoll)	28° 25' N 178° 25' W	<u>0.4</u>

TOTAL: 6,427.74 square miles

65. The Islands comprising the domain of the Hawaiian Kingdom, together with its three mile territorial seas surrounding each island, are located in the Pacific Ocean between 5° and 23° north latitude and 154° and 178° west longitude.⁸¹ The Arbitral Tribunal is requested to take judicial notice of the islands constituting the Hawaiian domain.

CHAPTER II. Hawaiian Land Tenure.

66. To aid the Tribunal in better understanding Hawaiian real property and its relationship to the private interests of individuals and the corporate rights of the State, this chapter will provide a general overview of the evolution of Hawaiian land tenure.

67. In Bouvier's Law Dictionary, an estate is defined as "the degree, quantity, nature and extent of interest which a person has in real property."⁸² Therefore, an estate in lands signifies the interest of the person in the property claimed. This is referred to as the status upon which an owner stands in regard to their tenement. To measure this interest, Sir William Blackstone states that:

"estates may be considered in a three-fold view: *first*, with regard to the quantity of interest which the tenant has in the tenement: *secondly* with regard to the time at which that quantity of interest is to be enjoyed: and *thirdly* with regard to the number and connexions of the tenants."⁸³

68. These interests are divided into two types of Estates, *Freehold* and *less than Freehold*.⁸⁴ Estates of *Freehold* are further divided into estates of inheritance, (namely fee-tail and fee-simple), and estates not of inheritance, (namely life estates).⁸⁵ Estates *less than freehold* are leasehold or rent.⁸⁶

69. In all cases, Kamehameha I was the original and sole possessor of the freehold estate of inheritance, namely fee-tail.⁸⁷ As the constitution of 1840 states, in part, that:

"Kamehameha I, was the founder of the kingdom, and to him belonged all the land from one end of the Islands to the other, though it was not his own private property. It belonged to the chiefs and people in common, of whom Kamehameha I was the head, and had the management of the landed property. Wherefore, there was not formerly, and is not now any person who could convey away the smallest portion of land without the consent of the one who had, or has the direction of the kingdom. These are the persons who have had the direction of it from that time down, Kamehameha II, Ka'ahumanu I, and at the present time Kamehameha III."

70. The ancient system of land titles in the Hawaiian Islands, was entirely different from that of tribal ownership prevailing in New Zealand, and from the village or communal system of Samoa, but bore a remarkable resemblance to the feudal system that prevailed in Europe during the Middle Ages.⁸⁸

"The tenures were in one sense feudal, but they were not military, for the claims of the superior on the inferior were mainly either for produce of the land or for labor, military service being rarely or never required of the lower orders. All persons possessing landed property, whether superior landlords, tenants or subtenants, owed and paid to the King not only a land tax, which he assessed at pleasure, but also, service which was called for at discretion, on all the grades, from the highest down. They also owed and paid some portion of the productions of the land, in addition to the yearly taxes. They owed obedience at all times. All these were rendered not only by natives, but also by foreigners who received lands from Kamehameha I and Kamehameha II, and...a failure to render any of these has always been considered a just cause for which to forfeit the lands. It is therefore certain that the tenure was far from being allodial (inheritable), either in principle or practice...The same rights which the King possessed over the superior landlords and all under them, the several grades of landlords possessed over their inferiors, so that there was a joint ownership of the land; the King really owning the allodium (inheri-

tance), and the person in whose hands he placed the land, holding it in trust." 89

A. Establishing a Board of Commissioners to Quiet Land Titles

71. On December 10th, 1845, the Hawaiian Kingdom, by its Legislative Assembly, initiated the necessary steps toward offering all subjects inheritable estates. Such steps would provide security in land holdings and help develop and foster the economic growth of the country. The first step was to establish a Board of Commissioners to Quiet Land Titles (also known as the Land Commission) under the Second Act of Kamehameha III to organize the Executive Departments of the Hawaiian Islands. 90 Section 1 of the Act establishing the Land Commission stated:

"His Majesty shall appoint, through the Minister of Interior, and upon consultation with the Privy Council, five commissioners, one of whom shall be the Attorney-General of this Kingdom, to a board for the investigation and final ascertainment or rejection of all claims of private individuals, whether natives or foreigners, to any landed property acquired anterior (prior) to the passage of this Act."

72. Before inheritable estates could be offered by the Hawaiian Government after the 10th day of December, 1845, without affecting any prior existing rights in the land, an inventory of all claims to land titles throughout the islands, acquired *before* the 10th day of December, 1845, had to be made. All fee-simple titles, life estates or leases, needed to be validated or invalidated by an authorized and competent party (i.e. the Land Commission). 91 Section 10 of the same Act states that the:

"...Minister of Interior shall have power in concurrence with the Privy Council, and under the sanction of His Majesty, to issue to any lessee or tenant for life of lands so confirmed, being a Hawaiian subject, a patent in fee-simple for the same, upon payment of a commutation to be agreed upon by His Majesty in Privy Council."

73. Under §7, article II, chapter VII, part I of the Second Act of Kamehameha III to organize the Executive Departments of the Hawaiian Islands, conditions and restrictions were placed upon title to land in the Hawaiian Islands as follows:

"Land so patented shall never revert to the king of these islands, nor escheat to this government, for any other cause than attainder of high treason, as defined in the criminal code, nor be diverted from the patentee or his assigns, except by operation of law under sale in virtue of a judicial decree, or for the non-payment of taxes

as prescribed in the third part of this act, or the utter default of heirs of the testate or intestate owners, being Hawaiian subjects, as in the fifth part of this act prescribed; but the patented lands shall descend to the lineal or collateral heirs, being Hawaiians, of the patentee and his assigns, as tenants in common, unless otherwise prescribed by the will of a testate patentee." ⁹²

74. Foreign nationals were not allowed to acquire fee-simple titles to land at this time. Subsequently, this restriction was removed by an "Act to Abolish the disabilities of Aliens to acquire and convey lands in fee-simple," passed by the Hawaiian Legislature on the 10th day of July, 1850. ⁹³

75. On August 20th, 1846, the Land Commission drew up certain principles that would guide them in the adjudication of each claim submitted before them. ⁹⁴ The Land Commission arrived at these principles by careful examination of numerous witnesses; among whom were some of the oldest chiefs. These chiefs possessed large tracts of land, which equally with other lands, came under the adjudication of the Land Commission, and the principles that were about to be laid down. The principles continue to state, in part, that the:

"King (Government), in disposing of the allodium, should offer it first to the superior lord, that is, to the person who originally received the land in trust from the King; since by doing so, no injury is inflicted on any of the inferior lords or tenants, they being protected by law in their rights as before; and most obviously the King could not dispose of the allodium to any other person without infringing on the rights of the superior lord. But even when such lord shall have received an allodial title from the King by purchase or otherwise, the rights of the tenants and sub-tenants must still remain unaffected, for no purchase, even from the Sovereign himself, can vitiate the rights of third parties...It being therefore fully established, that there are but three classes of persons having vested rights in the land -- 1st, the Government, 2nd, the landlord, and 3rd, the (native) tenant, it next becomes necessary to ascertain the proportional rights of each."

B. The Great Land Division of the Konohiki (Landlords) of the Realm (circa. 1848).

76. In addition to the investigation by the Land Commission, the subject of formulating an instrument to divide out the undivided rights in the land, was discussed at length in the King's Privy Council on December 11th, 1847. ⁹⁵ Before the formal discussion ensued, it was noted that the legislature resolved that there are the following classes of rights inherent in all lands, 1st, the Government, 2nd, the Konohiki (Landlord), and 3rd, People or Tenants. ⁹⁶ It also became obvious that the King held a dual role. At one end, he was the chief executive or head of state of

the Government, and on the other, he was the Great Feudal Chief of all the landlords.

77. On December 18th, 1847, seven rules, were introduced by William L. Lee, Chief Justice of the Hawaiian Kingdom Supreme Court, and unanimously voted upon and passed by the King and his Privy Council. ⁹⁷ With these rules the King in Privy Council resolved to effect, through the assistance of a Committee, a division of lands between the Konohikis (Landlords) of the Kingdom. On March 7th, 1848, this division was completed. ⁹⁸ This process came to be known as the Great Mahele of 1848. His Majesty King Kamehameha III resumed possession of the larger part of the lands as a Konohiki (Landlord) life estate. The balance of lands were granted to the other Konohikis (Landlords) as freehold life estates certified to the Land Commission for its formal award. Both Kamehameha III's life estate and the other Konohikis' life estates were capable of being converted into inheritable estates, by payment to the Government of a commutation. Such commutation was fixed in the Privy Council. ⁹⁹ All interests were subject to the rights of native tenants to divide their vested interest in fee-simple. ¹⁰⁰

78. As a result of the Great Mahele of 1848, the ancient rights in the land held by the Konohiki (Landlord), and the common people, as native tenants, were incorporated and protected under Kingdom law. Under the laws and the conditions of the Great Mahele, native tenants were capable of acquiring fee-simple titles from the Government or Konohiki (Landlord) whenever they desired. Subsequent laws enacted by the Hawaiian Legislative Assembly further evolved the Hawaiian land tenure system and consequently defined the corporate rights of the State over real property. By 1886, the Hawaiian Kingdom had enacted specific laws on transference and conditions of title, probate proceedings, and heirship rights.

79. Under Chapter II, Article I of the Second Act of Kamehameha III to organize the Executive Departments, a Registry of Conveyances was established to record the subsequent conveyances of confirmed claims by the Land Commission. ¹⁰¹ This Registry also recorded the subsequent grants of titles, mortgages, bills of sale of chattel property, contracts and agreements, articles of marriage settlement, certificates of co-partnership, powers of attorney, and all other instruments affecting the transactions of persons in the kingdom.

CHAPTER III. 1843 Provisional Cession to Great Britain and the Ultimate Recognition of Hawaiian Independence.

80. To counter the strong possibility of foreign encroachment on Hawaiian territory, His Majesty King Kamehameha III dispatched a Hawaiian delegation to the United States and Europe with the power to settle difficulties with other nations, and negotiate treaties. This delegation's ultimate duty was to secure the recognition of Hawaiian Independence from the major powers of the world. In accordance with this goal, Timoteo Ha'alilio, William Richards and Sir George Simpson were commissioned as joint Ministers Plenipotentiary on April 8, 1842. ¹⁰² Sir George Simpson, shortly thereafter, left for England, via Alaska and Siberia, while Mr. Ha'alilio and Mr. Richards departed for the United States, via Mexico, on July 8, 1842. ¹⁰³

81. On December 19, 1842, the Hawaiian delegation, while in the United States of America,

secured the assurance of United States President Tyler that the United States would recognize Hawaiian independence.¹⁰⁴ The delegation then proceeded to meet their colleague, Sir George Simpson, in Europe and together they secured formal recognition from Great Britain and France. On April 1, 1843, Lord Aberdeen on behalf of Her Britannic Majesty Queen Victoria, assured the Hawaiian delegation that:

"Her Majesty's Government was willing and had determined to recognize the independence of the Sandwich Islands under their present sovereign."

82. On November 28, 1843, at the Court of London, the British and French Governments entered into a formal agreement for the recognition of Hawaiian independence.¹⁰⁶ The Arbitral Tribunal is requested to take judicial notice of 1843 Anglo-Franco Proclamation. The Proclamation read as follows:

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the French, taking into consideration the existence in the Sandwich Islands of a government capable of providing for the regularity of its relations with foreign nations, have thought it right to engage, reciprocally, to consider the Sandwich Islands as an Independent State, and never to take possession, neither directly or under the title of Protectorate, or under any other form, of any part of the territory of which they are composed.

The undersigned, Her Majesty's Principal Secretary of State of Foreign Affairs, and the Ambassador Extraordinary of His Majesty the King of the French, at the Court of London, being furnished with the necessary powers, hereby declare, in consequence, that their said Majesties take reciprocally that engagement."

83. While the Hawaiian delegation was securing the recognition of Hawaiian Independence by these three major world powers, His Majesty King Kamehameha III was forced to provisionally cede Hawaiian sovereignty to the British Government under threat of an over zealous commanding officer of Her Britannic Majesty's Royal Navy. The Arbitral Tribunal is requested to take judicial notice of the events surrounding Lord Paulet and the provisional cession of the Hawaiian Kingdom to the Her Majesty the Queen of England. Here follows those turbulent events that coincided with the recognition of Hawaiian Independence.

84. On February 11, 1843, H.B.M.S. Carysfort, commanded by Lord George Paulet, entered Honolulu harbor on the island of O'ahu.¹⁰⁷ Lord Paulet had previously received a complaint by Richard Charlton, British Consul to the Hawaiian Kingdom. This complaint alleged that British subjects were being abused by the Hawaiian Government in the islands. Without investigating the circumstances nor the validity of the complaint by Consul Charlton, Lord Paulet proceeded into the harbor without firing the customary salute with the Honolulu Fort. Consul Charlton was

absent from the Kingdom, but his temporary replacement, Alex Simpson, was not afforded diplomatic recognition by the Hawaiian Government. ¹⁰⁸

85. Upon arrival, Lord Paulet, demanded a personal interview with His Majesty King Kamehameha III, but it was denied. ¹⁰⁹ Lord Paulet was then referred to Dr. Gerrit P. Judd because in case of business of a private nature, protocol dictated that as:

"...our confidential agent to confer with you, who, being a person of integrity and fidelity to our Government, and perfectly acquainted with all our affairs, will receive your communication, give you all the information you require (in confidence), and report the same to us." ¹¹⁰

86. The above actions brought about the following response from Lord Paulet of February 17, 1843 to His Majesty King Kamehameha III, with an attached letter of demands:

"Sir: - In answer to your letter of this day's date (which I have too good an opinion of your Majesty to allow me to believe ever emanated from yourself, but from your ill advisers), I have to state that I shall hold no communication whatever with Dr. G.P. Judd, who, it has been satisfactorily proved to me, has been the punic mover in the unlawful proceedings of your Government against British subjects.

As you have refused me a personal interview, I inclose you the demands which I consider it my duty to make upon your Government, with which I demand a compliance at or before 4 o'clock p.m., to-morrow (Saturday); otherwise I shall be obliged to take immediate coercive steps to obtain these measures for my countrymen.

Demand made by the Right Honorable Lord George Paulet, captain, R.N., commanding Her Britanic M. Ship Carysfort, upon the King of the Hawaiian Islands.

First. The immediate removal by public advertisement, written in the native and English languages, and signed by the governor of this island and F.W. Thompson, of the attachment placed upon Mr. Charlton's property, the restoration of the land taken by the Government for its own use and really appertaining to Mr. Charlton, and reparation for the heavy loss to which Mr. Charlton's representatives have been exposed by the oppressive and unjust proceedings of the Sandwich Island Government.

Second. The immediate acknowledgment of the right of Mr. Simpson to perform the functions delegated to him by Mr. Charlton, namely, those of Her Britannic Majesty's acting consul

until Her Majesty's pleasure be known upon the reasonableness of your objections to him, the acknowledgment of that right and the reparation for the insult offered to Her Majesty through her acting representative, to be made by a public reception of his commission and the saluting the British flag with twenty-one guns, which number will be returned by Her Britannic Majesty's ship under my command.

Third. A guarantee that no British subject shall in future be subjected to imprisonment in fetters, unless he is accused of a crime which by the laws of England would be considered a felony.

Fourth. The compliance with a written promise given by King Kamehameha to Capt. Jones, of Her Britannic Majesty's Ship *Curacoa*, that a new and a fair trial would be granted in a case brought by Henry Skinner, which promise has been evaded.

Fifth. The immediate adoption of firm steps to arrange the matters in dispute between British subjects and natives of the country or others residing here, by referring these cases to juries, one half of whom shall be British subjects, approved of by the consul, and all of whom shall declare an oath their freedom from prejudgment upon or interest in the case brought before them.

Sixth. A direct communication between His Majesty Kamehameha and Her Britannic Majesty's acting consul for the immediate settlement of all cases of grievance and complaint on the part of British subjects against the Sandwich Island government." ¹¹¹

87. In order to give strength to the foregoing demands, the following note was sent to Capt. Long, of the U.S.S. Boston.

"SIR: I have the honor to notify you that Her Britannic Majesty's ship *Carysfort*, under my command, will be prepared to make an immediate attack upon this town at 4 p.m. to-morrow (Saturday) in the event of the demands now forwarded by me to the King of these islands not being complied with by this time." ¹¹²

88. On the following day, His Majesty King Kamehameha III and the Premier sent the following response to Lord Paulet's demands.

"We have received your letter and the demands which accompanied, and in reply would inform your lordship that we have commissioned Sir George Simpson and William Richards as our ministers plenipotentiary and envoys extraordinary to the court of Great Britain, with full powers to settle the difficulties which you have presented before us; to assure Her Majesty the Queen of

our uninterrupted affection and confer with her ministers as to the best means of cementing the harmony between us.

Some of the demands which you have laid before us are of a nature calculated seriously to embarrass our feeble Government, by contravening the laws established for the benefit of all. But we shall comply with your demands as it has never been our intention to insult Her Majesty the Queen or injure any of her estimable subjects; but we must do so under protest, and shall embrace the earliest opportunity of representing our case more fully to Her Britannic Majesty's Government through our Ministry.

Trusting in the magnanimity of the sovereign of a great nation, which we have been taught to respect and love, that we shall there be justified." ¹¹³

89. The concession to Lord Paulet's demands, under protest, was to avoid injury to life and property. The first impulse of His Majesty King Kamehameha III and his principle Chiefs was to resist. Attached to this concession was the following protest:

"We, Kamehameha 3d, King of all the Sandwich Islands, and Kekauluohi, Premier, thereof, in accordance with the laws of all nations and the rights of all aggrieved sovereigns and individuals, do hereby enter our solemn act of Protest before God, the world, and before the government of Her Most Gracious Majesty Victoria the First, Queen of the United Kingdoms of Great Britain and Ireland, --

Against the Rt. Honorable Lord George Paulet, Captain of H.B.M. Ship Carysfort, now lying in the Harbor of Honolulu, for all losses and damages which may accrue to us, and to the citizens of other countries residing under our dominions and sovereignty, in consequence of the unjust demands made upon us this day by the said Rt. Hon. Lord George Paulet, enforced by a threat of coercive measures and an attack upon our town of Honolulu in case of non-compliance with the same within a period of nineteen hours; thereby interfering with our laws, endangering the good order of society, and requiring of us what no Power has a right to exact of another with whom they are on terms of peace and amity.

And We do solemnly Protest and declare that We, the sovereign authority of these Our Islands, are injured, abused and damaged by this act of the said Rt. Hon. Lord George Paulet, and we hereby enter our solemn appeal unto the Government of Her Most Gracious Majesty, represented by him, for redress, for justification, and for repayment of all said losses, damages, and payments which may in consequence accrue unto us, or unto the citizens of other countries living under our jurisdiction." ¹¹⁴

90. During this time, three of the major world powers were Great Britain, France and the United States. It was contemplated that the King should provisionally cede the islands to France, or to France and the United States, jointly; but, upon the advice of Dr. Judd, it was provisionally ceded to Great Britain, subject to the decision of Her Majesty's government upon receipt of full information from both the Hawaiian Kingdom and Lord Paulet. Arrangements were made to have the "fact finding" to take effect on February 25, 1843. ¹¹⁵

91. On the 25th of February, at three o'clock p.m., His Majesty King Kamehameha III delivered the following speech from the ramparts of the Honolulu Fort.

"Where are you, chiefs, people and commons from my ancestor, and people from foreign lands!

Hear ye! I make known to you that I am in great perplexity by reason of difficulties into which I have been brought without cause; therefore, I have given away the life of our land, hear ye! But my rule over you, my people, and your privileges will continue, for I have hope that the life of the land will be restored when my conduct is justified." ¹¹⁶

92. The Act of Provisional Cession was then read.

"In consequence of the difficulties in which we find ourselves involved, and our opinion of the impossibility of complying with the demands in the manner in which they are made by Her Britannic Majesty's representative upon us, in reference to the claims of British subjects, we do hereby cede the group of islands known as the Hawaiian (or Sandwich) Islands, unto the Right Honorable Lord George Paulet, captain of Her Majesty's Ship of war Carysfort, representing Her Majesty, Victoria, Queen of Great Britain and Ireland, from this date, and for the time being: the said cession being made with the reservation that it is subject to any arrangements that may have been entered into by the Representatives appointed by us to treat with the Government of her Britannic Majesty; and in the event that no agreement has been executed previous the date hereof; subject to the decision of Her Britannic Majesty's Government on conference with the said representatives appointed by us; or in the event of our representatives not being accessible, or not having been acknowledged, subject to the decision which Her Britannic Majesty may pronounce on the receipt of full information from us, and from the Right Honorable Lord George Paulet." ¹¹⁷

93. Following was read the Proclamation of Lord Paulet.

"A provisional cession of the Hawaiian or Sandwich Islands having been made this day by Kamehameha III., King, and Kekauluohi, Premier thereof, unto me, the Right Honorable Lord George Paulet, commanding Her Britannic Majesty's ship Carysfort on the part of Her Britannic Majesty, Victoria, Queen of Great Britain and Ireland; subject to arrangements which may have been made or shall be made in Great Britain, with the Government of Her Britannic Majesty, I do hereby proclaim,

First. That the British Flag shall be hoisted on all the Islands of the group, and the natives thereof shall enjoy the protection and privileges of British subjects.

Second. That the government thereof shall be executed, until the receipt of communications from Great Britain, in the following manner, namely: By the native King and chiefs and the officers employed by them, so far as regards the native population, and by a commission, consisting of King Kamehameha III, or a Deputy appointed by him, the Right Honorable Lord George Paulet, Duncan Forbes Mackay, esquire, and Lieut. Frere, R.N., in all that concerns relations with other powers (save and except the negotiations with the British Government), and the arrangements among foreigners (others than natives of the Archipelago) resident on these Islands.

Third. That the laws at present existing or which may be made at the ensuing council of the king and the chiefs (after being communicated to the commission), shall be in full force so far as natives are concerned; and shall form the basis of the administration of justice by the commission in matters between foreigners resident on these islands.

Fourth. In all that relates to the collection of the revenue, the present officers shall be continued at the pleasure of the native King and chiefs, their salaries for the current year being also determined by them, and the archives of Government remaining in their hands; the accounts are, however, subject to inspection by the commission heretofore named. The Government vessels shall be in like manner subject, however, to their employment if required for Her Britannic Majesty's service.

Fifth. That no sales, leases, or transfers of land shall take place by the action of the Commission appointed as aforesaid, nor from natives to foreigners during the period intervening between the 24th of this month and the receipt of notification from Great Britain of the arrangements made there; they shall not be valid, nor shall they receive the signatures of the King or premier.

Sixth. All the existing bona fide engagements of the native King and premier, shall be executed and performed as if this ces-

sion had never been made." ¹¹⁸

94. With the formal provisional cession complete, the Hawaiian flag was lowered from its staff by the hands of Hawaiian soldiers. The British flag then took its place, hoisted by a Lieutenant from the *Carysfort*, and His Majesty King Kamehameha III returned to Lahaina, Island of Maui, seat of the Hawaiian capital city. ¹¹⁹ With the establishment of the aforesaid Commission, Mr. Simpson's function, as Acting Consul, ceased. Mr. Simpson was selected by Lord Paulet to deliver the dispatches to the British government in order to apprise them of the situation. Mr. Simpson was scheduled to leave on the schooner *Ho'oikaika*, renamed the *Albert*, enroute to San Blas Mexico, seat of the British Vice Consulate, and meet with Vice Consul Barron. ¹²⁰

95. Unbeknownst to Lord Paulet and Mr. Simpson, Dr. Judd had secured the commitment of General J.F.B. Marshall to serve as His Majesty King Kamehameha's Special Envoy to bear dispatches to the United States Government and Commissioner to the Courts of England and France. ¹²¹ General Marshall was to travel on the same vessel as Mr. Simpson under the cover of being supercargo for a Hawaiian trading firm known as *Ladd & Company*. In order to commission the special envoy at Honolulu, His Majesty King Kamehameha III made a secret voyage from Maui. His Majesty landed at night at Waikiki on the island of O'ahu, commissioned the special envoy and departed back to Maui before dawn. ¹²²

96. On March 11, 1843, the *Albert* left Honolulu harbor under the command of a British officer from the *Carysfort* and arrived at San Blas, Mexico on April 10th. ¹²³ From San Blas, both Mr. Simpson and General Marshall traveled a day's journey to Tepec where they were received by the British Vice Consul, Mr. Barron. Mr. Simpson was first to meet the Vice Consul. Mr. Simpson relayed his version of the cession of the Hawaiian Islands as being voluntary. General Marshall, meanwhile, requested a private session with the Vice Consul under the guise of business for *Ladd & Company*. During this session, General Marshall laid out the dispatches, together with his credentials, and a copy of the conditional protest. ¹²⁴ Together the evidence showed a very different version of what had happened in the Hawaiian Islands. The dispatches of both Mr. Simpson and General Marshall were forwarded to Rear Admiral Thomas, Commander in Chief of Her Britannic Majesty's Ships and Vessels in the Pacific. ¹²⁵

97. Back in the Hawaiian Islands, the Commission ran into many difficulties amongst the Hawaiian delegation. The delegation's head, Dr. Judd, and the French Consul refused to recognize the new Government. ¹²⁶ Dr. Judd, appointed by His Majesty King Kamehameha III as his deputy, found that he could not work on the Commission. Dr. Judd later received authorization by His Majesty to resign as follows:

"We therefore publicly make known that we, Kamehameha III., the King, fully approve and acknowledge the Protest and withdrawal of our deputy as our own, and declare that we will no more sit with the British commissioners, or be responsible for any acts of theirs which may encroach upon the rights of foreigners.

The Rt. Hon. Lord George Paulet and his Lieutenant John Frere, having enlisted soldiers under the title of "the Queen's Regiment," maintaining them as a standing army out of funds appropriated by us for the payment of our just debts, which expense we consider quite uncalled for and useless; they having enforced their demand for the payment of the money by a threat of deposing from his trust an officer of the treasury, although contrary to the orders of the King and premier to him, made known to the British Commissioners;

By these oppressions, by the trial of natives for alleged offenses against the native Government, cases which come not properly under their cognizance, and by their violating the laws which, by the treaty, were to have been held sacred until we hear from England; we are oppressed and injured, and feel confident that all good men will sympathize with us in our present state of distress; and now we protest in the face of all men against all such proceedings both towards ourselves and foreigner, subjects of other governments, on the part of the Rt. Hon. Lord George Paulet, captain of H.B. Ship *Carysfort*, and his lieutenant, John Frere, R.N., and take the world to witness that they have broken faith with us." ¹²⁷

98. So grave were the decisions of the two man Commission, that a protest was lodged also by the Commander-in-Chief of the United States Naval Force in the E. Indies, Lawrence Kearney. The protest read:

"In the name and on behalf of the people of the United States of America and their Government, which the undersigned has the honor to represent, and in order to explain clearly for the information of all concerned is issued, a Protest.

Whereas, a provisional cession of the Hawaiian or Sandwich Islands was made by His Majesty Kamehameha III and Kekauluohi, premier thereof, unto the Hon. George Paulet, commanding Her Britannic Majesty's Ship *Carysfort* (to wit) on the 25th day of February, 1843; and whereas, the United States' interests and those of their citizens resident on the aforesaid Hawaiian Islands are deeply involved in a seizure of His Majesty's Government under the circumstances; as well as in the act of the aforesaid King and premier, acceding thereto under protest or otherwise, to affect the interests before cited: Now, therefore, be it known, that I solemnly protest against every act and measure in the premises; and do declare that from and after the day of said cession until the termination of the pending negotiations between His Majesty's envoys and the Government of Her Britannic

Majesty, I hold His Majesty Kamehameha III and Capt. Lord George Paulet answerable for any and every act, by which a citizen of the United States resident as aforesaid shall be restrained in his just and undisputed rights and privileges, or who may suffer inconvenience or losses, or be forced to submit to any additional charges on imports or other revenue matters, or exactions in regard to the administration of any municipal laws whatever enacted by the 'Commission' consisting of His Majesty King Kamehameha III, or his deputy of the aforesaid islands, and the Right Hon. Lord George Paulet, Duncan Forbes Mackay, esq., and Lieut. John Frere, R.N." ¹²⁸

99. Lord Paulet's Commanding Officer, Rear Admiral Thomas, arrived at Honolulu harbor on July 26, 1843 on H.B.M.S. *Dublin* from Valparaiso, Chile. ¹²⁹ Not pleased with the actions of one of his officers, Admiral Thomas immediately sought an interview with His Majesty King Kamehameha III., which resulted in an apology from Admiral Thomas, and the restoration of Hawaiian sovereignty on the 31st of July, 1843. ¹³⁰ Admiral Thomas' actions met with the approval of the British Government as stated in the following letter, dated June 13, 1844, from Lord Canning to Lord Herbert. In relation to Admiral Thomas' course of action, the letter stated as follows:

"I am directed by the Earl of Aberdeen to acknowledge the receipt of your letter of the 7th inst. enclosing copies of Rear Admiral Thomas' correspondence with the Admiralty, dated the 17th of February, from the Sandwich Islands; and I am to request that you will state to the Lords Commissioners of the Admiralty, that Her Majesty's Government have received with the highest satisfaction the whole of Admiral Thomas' proceedings at the Sandwich Islands, as marked by great propriety and admirable judgment throughout, and as calculated to raise the character of the British authorities for justice, moderation, and courtesy of demeanor, in the estimation of the natives of those remote countries, and of the world." ¹³¹

100. As a result of the recognition of the Hawaiian Kingdom as an Independent State, by the United States in 1842 and by the 1843 Anglo-Franco Proclamation, the first United States Commissioner to the Hawaiian Islands, Mr. Brown, arrived in the Hawaiian Kingdom. ¹³² Thereafter on February 3, 1844, General William Miller arrived in the islands as the British Consul-General on board H.B.M.S. *Hazard* from Mazatlan, Mexico. ¹³³ Mr. Robert Crichton Wyllie, Esq., also arrived as Consul-General Miller's secretary. Mr. Wyllie would later become a Hawaiian denizen and serve on His Majesty King Kamehameha III's Cabinet as Minister of Foreign Affairs. ¹³⁴

**A. Commercial Treaties and Conventions concluded
between the Hawaiian Kingdom and other World Powers.**

101. As an expression of the Hawaiian Kingdom's independent statehood, divers treaties and conventions were concluded that engaged in (a) commercial trade, under the *most favored nation status*, (b) established consular affairs and the protection of the rights of citizens or subjects of foreign states while within the territory of the Hawaiian Kingdom, and (c) afforded the protection of the rights of Hawaiian subjects in territories of foreign states. Existing commercial treaties and conventions with the Hawaiian Kingdom are as follows:

1. Belgium

102. On October 4, 1862, a Treaty was signed between Belgium and the Hawaiian Kingdom in Brussels and thereafter ratified by both governments.¹³⁵ The Arbitral Tribunal is requested to take judicial notice of 1862 Hawaiian-Belgian Treaty. Article IV of this treaty provides:

"[t]he respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently they shall have free and easy access to the court of justice in the pursuit and defense of their rights in every instance and degree of jurisdiction established by the laws."

103. Neither Belgium nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1862 Treaty. Therefore this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

104. According to international law, former Belgian territories, who acquired their independence from Belgium are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Belgian Treaty as of 1893.¹³⁶ A former Belgian territory is:

1. Zaire. Independence: June 30, 1960.¹³⁷

2. Bremen

105. On August 7, 1851, a Treaty was signed between the Free Hanseatic City of Bremen and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.¹³⁸ The Arbitral Tribunal is requested to take judicial notice of 1851 Hawaiian-Bremen Treaty. Article II of this treaty provides:

"[t]he citizens of Bremen residing within the dominions of the King of the Hawaiian Islands, shall enjoy the same protection in regard to their civil rights, as well as to their persons and properties, as native subjects; and the King of the Hawaiian Islands

engages to grant to the citizens of Bremen, the same rights and privileges which now are, or may hereafter be granted to, or enjoyed by any other foreigners, subjects of the most favored nation."

106. Neither Bremen nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings. The succeeding State to the Hawaiian-Bremen Treaty of 1851 is Germany. ¹³⁹

3. Denmark

107. On October 19, 1846, a Treaty was signed between Denmark and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments. ¹⁴⁰ The Arbitral Tribunal is requested to take judicial notice of 1846 Hawaiian-Danish Treaty. Article II of this treaty provides:

"[t]he subjects of His Majesty the King of Denmark, residing within the dominions of the King of the Hawaiian Islands, shall enjoy the same protection in regard to their civil rights as well as to their persons and properties, as native subjects; and the King of the Hawaiian Islands engages to grant to Danish subjects the same rights and privileges which now are, or may hereafter be, granted to or enjoyed by any other foreigners, subjects of the most favored nation."

108. Neither Denmark nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

109. According to international law, former Danish territories, who acquired their independence from Denmark are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Danish Treaty as of 1893. ¹⁴¹ A former Danish territory is:

1. Iceland. Independence: June 7, 1944. ¹⁴²

4. France and its former Territories

110. On March 26, 1846, a Treaty was signed between France and the Hawaiian Kingdom in Honolulu, and thereafter ratified by both governments. ¹⁴³ The Arbitral Tribunal is requested to take judicial notice of 1846 Hawaiian-French Treaty.

111. On November 24, 1853, a Postal Convention was signed between France's Protectorate

Government of Tahiti and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.¹⁴⁴ The Arbitral Tribunal is requested to take judicial notice of 1853 Hawaiian-French Postal Convention.

112. On October 29, 1857, a third Treaty was signed between France and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.¹⁴⁵ The Arbitral Tribunal is requested to take judicial notice of 1857 Hawaiian-French Treaty. Article IV of this treaty provides:

"[t]heir respective subjects shall enjoy, in both States, a constant and complete protection for their persons and properties. They shall, consequently, have free and easy access to the tribunals of justice, in prosecution and defense of their rights, in every instance, and in all the degrees of jurisdiction established by the laws."

113. The French Treaty of 1857 effectively replaced the former French Treaty of 1846. Neither France nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVI of the 1857 Treaty. Therefore this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

114. According to international law, former French territories, who acquired their independence from France are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-French Treaties as of 1893.¹⁴⁶ These former French territories include:

1. Algeria. Independence: July 5, 1962.¹⁴⁷
2. Benin. Independence: August 1, 1960.¹⁴⁸
3. Burkina Faso. Independence: August 5, 1960.¹⁴⁹
4. Central African Republic. Independence: August 13, 1960.¹⁵⁰
5. Chad. Independence: August 11, 1960.¹⁵¹
6. Comoros. Independence: July 6, 1975.¹⁵²
7. Congo. Independence: August 15, 1960.¹⁵³
8. Djibouti. Independence: June 27, 1977.¹⁵⁴
9. Gabon. Independence: August 17, 1960.¹⁵⁵
10. Guinea. Independence: October 2, 1958.¹⁵⁶
11. Ivory Coast. Independence: August 7, 1960.¹⁵⁷
12. Laos. Independence: July 19, 1949.¹⁵⁸
13. Madagascar. Independence: June 26, 1960.¹⁵⁹
14. Mali. Independence: September 22, 1960.¹⁶⁰
15. Mauritania. Independence: November 28, 1960.¹⁶¹
16. Morocco. Independence: March 2, 1956.¹⁶²
17. Niger. Independence: August 3, 1960.¹⁶³

18. Senegal. Independence: April 4, 1960. ¹⁶⁴
19. Tunisia. Independence: March 20, 1956. ¹⁶⁵
20. Vanuatu. Independence from both France and Great Britain on July 30, 1980. ¹⁶⁶
21. Vietnam. Independence: September 2, 1945. ¹⁶⁷

5. Germany

115. On March 25, 1879, a Treaty was signed between Germany and the Hawaiian Kingdom in Berlin and thereafter ratified by both governments and exchanged. ¹⁶⁸ The Arbitral Tribunal is requested to take judicial notice of the 1879 Hawaiian-German Treaty. Article II of this treaty provides:

"[t]he subjects and citizens of the two High Contracting Parties may remain and reside in any part of said territories respectively and shall receive and enjoy full and perfect protection for their persons and property. They shall have free and easy access to the courts of justice, provided by law, in pursuit and defense of their rights, and they shall be at liberty to choose and employ lawyers, advocates or agents to pursue or defend their rights before such courts of justice; and they shall enjoy in this respect all the rights and privileges as native subjects or citizens."

116. Neither Germany nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVI of the 1879 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

6. Great Britain and its former Territories

117. On November 16, 1836, a Treaty was signed between Lord Edward Russel, on behalf of the United Kingdom, and His Majesty King Kamehameha III in Honolulu. ¹⁶⁹ The Arbitral Tribunal is requested to take judicial notice of 1836 Hawaiian-Anglo Treaty.

118. On February 12, 1844, a second Convention of Commerce, Navigation, etc., was signed between the United Kingdom and the Hawaiian Kingdom in Lahaina, island of Maui, and thereafter ratified by both governments. ¹⁷⁰ The Arbitral Tribunal is requested to take judicial notice of 1844 Hawaiian-Anglo Treaty. This British Treaty of 1844 effectively replaced the former Hawaiian-Anglo Treaty of 1836.

119. On March 26, 1846, a third Treaty was signed between the United Kingdom and the Hawaiian Kingdom in Honolulu, and thereafter ratified by both governments. ¹⁷¹ The Arbitral Tribunal is requested to take judicial notice of the 1846 Hawaiian-Anglo Treaty. This British

Treaty of 1846 effectively replaced the former Hawaiian-Anglo Treaty of 1844. Article II of this treaty provides:

"[t]he subjects of Her Britannic Majesty residing within the dominions of the King of the Sandwich Islands, shall enjoy the same protection in regard to their civil rights as well as to their persons and properties, as native subjects; and the King of the Sandwich Islands engages to grant to British subjects the same rights and privileges which now are, or hereafter may be, granted to or enjoyed by any other foreigners, subjects of the most favored nation."

120. On July 10, 1851, a fourth Treaty was signed between the United Kingdom and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.¹⁷² The Arbitral Tribunal is requested to take judicial notice of 1851 Hawaiian-Anglo Treaty. The Treaty of 1851 effectively replaced the former Treaty of 1846. Article VIII of this treaty provides:

"the subjects of either of the contracting parties, in the territories of the other, shall receive and enjoy full and perfect protection for their persons and property, and shall have free and open access to the courts of justice in the said countries, respectively, for the prosecution and defense of their just rights..."

121. Neither Great Britain nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

122. On March 10, 1874, a Postal Convention was signed between the United Kingdom's Colonial Government of New South Wales and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.¹⁷³ The Arbitral Tribunal is requested to take judicial notice of the 1874 Hawaiian-Anglo Postal Convention. Neither country gave notice to the other of its intention to terminate this Postal Convention in accordance with the terms of Article IX. Therefore this New South Wales Postal Convention is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

123. According to international law, former British territories, who acquired their independence from the United Kingdom are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-British Treaties as of 1893.¹⁷⁴ These former British territories include:

1. Afghanistan. Independence: August 1919.¹⁷⁵
2. Antigua and Barbuda. Independence: November 1, 1981.¹⁷⁶
3. Australia. Independence: January 1, 1901.¹⁷⁷

4. Bahamas. Independence: July 10, 1973. ¹⁷⁸
5. Bahrain. Independence: August 15, 1971. ¹⁷⁹
6. Bangladesh. Independence from Pakistan on December 16, 1971. ¹⁸⁰
Pakistan acquired Independence from Great Britain on August 14, 1947. ¹⁸¹
7. Barbados. Independence: November 30, 1966. ¹⁸²
8. Belize. Independence: September 21, 1981. ¹⁸³
9. Bhutan. Independence from India on August 8, 1949. ¹⁸⁴ India
acquired Independence from Great Britain on August 15, 1947. ¹⁸⁵
10. Botswana. Independence: September 30, 1966. ¹⁸⁶
11. Cyprus. Independence: August 16, 1960. ¹⁸⁷
12. Dominica. Independence: November 3, 1978. ¹⁸⁸
13. Egypt. Independence: February 28, 1922. ¹⁸⁹
14. Fiji. Independence: October 10, 1970. ¹⁹⁰
15. The Gambia. Independence: February 18, 1965. ¹⁹¹
16. Ghana. Independence: March 6, 1957. ¹⁹²
17. Grenada. Independence: February 7, 1974. ¹⁹³
18. Guyana. Independence: May 26, 1966. ¹⁹⁴
19. India. Independence: August 15, 1947. ¹⁹⁵
20. Ireland. Independence: December 6, 1921. ¹⁹⁶
21. Jamaica. Independence: August 6, 1962. ¹⁹⁷
22. Kenya. Independence: December 12, 1963. ¹⁹⁸
23. Kiribati. Independence: July 12, 1979. ¹⁹⁹
24. Kuwait. Independence: June 19, 1961. ²⁰⁰
25. Lesotho. Independence: October 4, 1966. ²⁰¹
26. Malawi. Independence: July 6, 1964. ²⁰²
27. Malaysia. Independence: August 31, 1957. ²⁰³
28. Maldives. Independence: July 26, 1965. ²⁰⁴
29. Malta. Independence: September 21, 1964. ²⁰⁵
30. Mauritius. Independence: March 12, 1968. ²⁰⁶
31. Myanmar. Independence: January 4, 1948. ²⁰⁷
32. Namibia. Independence from South Africa on March 21, 1990. ²⁰⁸
South Africa acquired Independence from Great Britain on May 31, 1910. ²⁰⁹
33. New Zealand. Independence: September 26, 1907. ²¹⁰
34. Nigeria. Independence: October 1, 1960. ²¹¹
35. Pakistan. Independence: August 14, 1947. ²¹²
36. Qatar. Independence: September 3, 1971. ²¹³
37. Saint Kitts and Nevis. Independence: September 19, 1983. ²¹⁴
38. Saint Lucia. Independence: February 22, 1979. ²¹⁵
39. Saint Vincent and the Grenadines. Independence: October 27, 1979. ²¹⁶
40. Seychelles. Independence: June 29, 1976. ²¹⁷

41. Sierra Leone. Independence: April 27, 1961. ²¹⁸
42. Singapore. Independence from Malaysia on August 9, 1965. ²¹⁹
Malaysia acquired Independence from Great Britain on August 31, 1957. ²²⁰
43. Solomon Islands. Independence: July 7, 1978. ²²¹
44. Somalia. Independence: June 26, 1960. ²²²
45. South Africa. Independence: May 31, 1910. ²²³
46. Sri Lanka. Independence: February 4, 1948. ²²⁴
47. Sudan. Independence: January 1, 1956. ²²⁵
48. Swaziland. Independence: September 6, 1968. ²²⁶
49. Tonga. Independence: June 4, 1970. ²²⁷
50. Trinidad and Tobago. Independence: August 31, 1962. ²²⁸
51. Tuvalu. Independence: October 1, 1978. ²²⁹
52. Uganda. Independence: October 9, 1962. ²³⁰
53. United Arab Emirates. Independence: December 2, 1971. ²³¹
54. Vanuatu. Independence from both France and Great Britain on July 30, 1980. ²³²
55. Zambia. Independence: October 24, 1964. ²³³
56. Zimbabwe. Independence: April 18, 1980. ²³⁴

7. Hamburg

124. On January 8, 1848, a Treaty was signed between the Republic and free Hanseatic City of Hamburg and the Hawaiian Kingdom in Honolulu, and thereafter ratified by both governments. ²³⁵ The Arbitral Tribunal is requested to take judicial notice of the Hawaiian-Hamburg Treaty. Article II of this treaty provides:

"[t]he citizens of the Republic of Hamburg, residing within the dominions of the King of the Hawaiian Islands, shall enjoy the same protection in regard to their civil rights, as well as to their persons and properties, as native subjects; and the King of the Hawaiian Islands engages to grant to citizens of the Republic of Hamburg the same rights and privileges which now are, or may hereafter be, granted to or enjoyed by any other foreigners, subjects of the most favored nation."

125. Neither Hamburg or its successor state (i.e. Germany) nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force, continues to have legal effect until today and is at all times relevant to these proceedings. The succeeding State to the Hamburg Treaty of 1848 is presently Germany. ²³⁶

8. Italy and its former Territories

126. On July 22, 1863, a Treaty was signed between Italy and the Hawaiian Kingdom in Paris and thereafter ratified by both governments.²³⁷ The Arbitral Tribunal is requested to take judicial notice of the 1863 Hawaiian-Italian Treaty. Article IV of this treaty provides:

"[t]he respective citizens of the two countries shall enjoy the most constant and complete protection for their persons and property. Consequently, they shall have free and easy access to the courts of justice in the pursuit and defense of their rights, in every instance and degree of jurisdiction established by the laws."

127. Neither Italy nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1863 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

128. According to international law, former Italian territories, who acquired their independence from Italy are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Italian Treaty as of 1893.²³⁸ These former Italian territories include:

1. Holy See. Independence: February 11, 1929.²³⁹
2. Libya. Independence: December 24, 1951.²⁴⁰

9. Japan

129. On August 19, 1871, a Treaty was signed between Japan and the Hawaiian Kingdom in the city of Yedo and thereafter ratified by both governments.²⁴¹ The Arbitral Tribunal is requested to take judicial notice of the 1871 Hawaiian-Japanese Treaty. Article II of this treaty provides:

"[t]he subjects of each of the two high contracting parties, respectively, shall have the liberty freely and securely to come with their ships and cargoes to all places, ports and rivers in the territories of the other, where trade with other nations is permitted; they may remain and reside in any such ports, and places respectively, and hire and occupy houses and warehouses, and may trade in all kinds of produce, manufactures and merchandise of lawful commerce, enjoying at all times the same privileges as may have been, or may hereafter be granted to the citizens or subjects of any other nation, paying at all times such duties and taxes as may be exacted from the citizens or subjects of other nations doing business or residing within the territories of each of the high contracting parties."

130. Neither Japan nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article VI of the 1871 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

131. On January 28, 1886, a Convention between Japan and the Hawaiian Kingdom was concluded and signed in Tokyo and thereafter ratified by both governments and exchanged.²⁴² The Arbitral Tribunal is requested to take judicial notice of the 1886 Hawaiian-Japanese Convention. Neither Japan nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this Convention in accordance with the principles of customary international law. Therefore, this Japanese Convention is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

10. Netherlands and its former Territories

132. On October 16, 1862, a Treaty was signed between the Netherlands and the Hawaiian Kingdom in the Hague and thereafter ratified by both governments.²⁴³ The Arbitral Tribunal is requested to take judicial notice of the 1862 Hawaiian-Dutch Treaty. Article II of this treaty provides:

"[t]he respective subjects of the two high contracting parties shall be perfectly and in all respects assimilated on their establishment and settlement, whether for a longer or shorter time in the States and Colonies of the other party on the terms granted to the subjects of the most favored nation in all which concerns the permission of sojourning, the exercise of legal professions, imposts, taxes, in a word, all the conditions relative to sojourn and establishment."

133. Neither the Netherlands nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article VI of the 1862 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

134. According to international law, former Dutch territories, who acquired their independence from the Netherlands are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Dutch Treaty as of 1893.²⁴⁴ These former Dutch territories include:

1. Indonesia. Independence: August 17, 1945.²⁴⁵
2. Suriname. Independence: November 25, 1975.²⁴⁶

11. Portugal and its former Territories

135. On May 5, 1882, a Provisional Convention was signed between Portugal and the Hawaiian Kingdom in Lisbon and thereafter ratified by both governments.²⁴⁷ The Arbitral Tribunal is

requested to take judicial notice of the 1882 Hawaiian-Portuguese Convention. Article I of this convention provides:

"[t]he Consular Agents, the subjects, the ships and products of the soil, or of the industry of one of the two countries, will enjoy on the territory of the other the same exemptions, privileges, and immunities which other Consular Agents, subjects, ships and products of the soil, or of the industry of the most favored nation, enjoy."

136. Neither Portugal nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this Provisional Convention in accordance with the principles of customary international law. Therefore, this Portuguese Provisional Convention is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

137. According to international law, former Portuguese territories, who acquired their independence from Portugal are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Portuguese Treaty as of 1893.²⁴⁸ These former Portuguese territories include:

1. Angola. Independence: November 11, 1975.²⁴⁹
2. Cape Verde. Independence: July 5, 1975.²⁵⁰
3. Guinea-Bissau. Independence: September 24, 1973.²⁵¹
4. Mozambique. Independence: June 25, 1975.²⁵²
5. Sao Tome and Principe. Independence: July 12, 1975.²⁵³

12. Russia and its former Territories

138. On June 19, 1869, a Treaty was signed between Russia and the Hawaiian Kingdom in Paris and thereafter ratified by both governments.²⁵⁴ The Arbitral Tribunal is requested to take judicial notice of the 1869 Hawaiian-Russo Treaty. Article II of this treaty provides:

"[t]he subjects of His Majesty the Emperor of all the Russias, and the subjects of His Majesty the King of the Hawaiian Islands, shall be treated reciprocally on the footing of the most favored nation."

139. Neither Russia nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the principles of customary international law. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

140. According to international law, former Russian territories, who acquired their independence from Russia or its successor, the Union of Soviet Socialist Republics, are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Russo Treaty as

of 1893.²⁵⁵ These former territories include:

1. Armenia. Independence: September 23, 1991.²⁵⁶
2. Azerbaijan. Independence: August 30, 1991.²⁵⁷
3. Belarus. Independence: August 25, 1991.²⁵⁸
4. Finland. Independence: December 6, 1917.²⁵⁹
5. Georgia. Independence: April 9, 1991.²⁶⁰
6. Kazakhstan. Independence: December 6, 1991.²⁶¹
7. Kyrgyzstan. Independence: August 31, 1991.²⁶²
8. Latvia. Independence: August 21, 1991.²⁶³
9. Lithuania. Independence: March 11, 1990.²⁶⁴
10. Moldova. Independence: August 27, 1991.²⁶⁵
11. Tajikistan. Independence: September 9, 1991.²⁶⁶
12. Turkmenistan. Independence: October 27, 1991.²⁶⁷
13. Ukraine. Independence: August 24, 1991.²⁶⁸
14. Uzbekistan. Independence: August 31, 1991.²⁶⁹

13. Samoa

141. On February 17, 1887, in Samoa, and on March 20, 1887, in Honolulu, a Treaty of Political Confederation between Samoa and the Hawaiian Kingdom, was concluded and signed, and thereafter ratified by both governments and exchanged.²⁷⁰ The Arbitral Tribunal is requested to take judicial notice of the Hawaiian-Samoan Treaty. The treaty provides that Malietoa, King of Samoa, agrees to bind himself as follows:

"to enter into a Political Confederation with His Majesty Kalakaua, King of the Hawaiian Islands," and gives his solemn pledge that he "will conform to whatever measures may hereafter be adopted by His Majesty Kalakaua and be mutually agreed upon to promote and carry into effect this Political Confederation, and to maintain it now and forever."

142. Neither Samoa nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this Treaty of Political Confederation in accordance with the principles of customary international law. Therefore, this Treaty of Political Confederation is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

14. Spain and its former Territories

143. On October 29, 1863, a Treaty was signed between Spain and the Hawaiian Kingdom in London and thereafter ratified by both governments.²⁷¹ The Arbitral Tribunal is requested to take judicial notice of the 1863 Hawaiian-Spanish Treaty. Article IV of this treaty provides:

"[t]he respective citizens of the two countries shall enjoy the most

constant and complete protection for their persons and property. Consequently, they shall have free and easy access to the courts of justice in the pursuit and defense of their rights, in every instance and degree of jurisdiction established by the laws."

144. Neither Spain nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XXVII of the 1863 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

145. According to international law, former Spanish territories, who acquired their independence from Spain are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Spanish Treaty as of 1893.²⁷² These former Spanish territories include:

1. Cuba. Independence: May 20, 1902.²⁷³
2. Equatorial Guinea. Independence: October 12, 1968.²⁷⁴

15. Swiss Confederation

146. On July 20, 1864, a Treaty was signed between the Swiss Confederation and the Hawaiian Kingdom in Berne and thereafter ratified by both governments.²⁷⁵ The Arbitral Tribunal is requested to take judicial notice of the Hawaiian-Swiss Treaty. Article III of the treaty provides:

"[t]he citizens of each of the contracting parties shall enjoy on the territory of the other the most perfect and complete protection for their persons and their property. They shall in consequence have free and easy access to the tribunals of justice for their claims and the defense of their rights, in all cases and in every degree of jurisdiction established by the law."

147. Neither the Swiss Confederation nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XIII of the 1864 Treaty. Therefore, this treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

16. Sweden and Norway

148. On July 1, 1852, a Treaty was signed between Sweden and Norway and the Hawaiian Kingdom in Honolulu and thereafter ratified by both governments.²⁷⁶ The Arbitral Tribunal is requested to take judicial notice of the Hawaiian-Swedish/Norwegian Treaty. Article II of the treaty provides:

"[t]here shall be between all the dominions of His Swedish and

Norwegian Majesty, and the Hawaiian Islands, a reciprocal freedom of commerce. The subjects of each of the two contracting parties, respectively, shall have liberty freely and securely to come with their ships and cargoes to all places, ports and rivers in the territories of the other, where trade with other nations is permitted. They may remain and reside in any part of the said territories, respectively, and hire and occupy houses and warehouses and my trade, by wholesale or retail, in all kinds of produce, manufactures or merchandise of lawful commerce, enjoying the same exemptions and privileges as native subjects, and subject always to the same laws and established customs as native subjects."

149. Neither Norway nor Sweden nor the Hawaiian Kingdom gave notice to the other of their intentions to terminate this treaty in accordance with the terms of Article XVII of the 1852 Treaty. Therefore, the treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

150. According to international law, former Swedish/Norwegian territories, who acquired their independence from this union are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-Swedish/Norwegian Treaty as of 1893.²⁷⁷ The former Swedish/Norwegian territory is:

1. Norway. Independence: October 26, 1905.²⁷⁸

17. United States of America and its former Territories

151. On December 20, 1849, the Treaty between the United States of America and the Hawaiian Kingdom was concluded and signed in Washington, D.C.²⁷⁹ Ratifications by both countries were exchanged in Honolulu on the Island of O`ahu, on August 24, 1850.²⁸⁰ The Arbitral Tribunal is requested to take judicial notice of the 1849 Hawaiian-American Treaty. Article VIII of the treaty provides:

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

152. In addition, Article XVI of the said treaty provides that any:

"...citizen or subject of either party infringing the articles of this treaty shall be held responsible for the same, and the harmony and

good correspondence between the two governments shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.”

153. Neither the United States nor the Hawaiian Kingdom gave notice to the other of its intention to terminate this treaty in accordance with the terms of Article XVI of the 1849 Treaty. Therefore, the treaty is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

154. On May 4, 1870, a Postal Convention was signed between the United States of America and the Hawaiian Kingdom in Washington, D.C., and thereafter ratified by both governments.²⁸¹ The Arbitral Tribunal is requested to take judicial notice of the 1870 Hawaiian-American Postal Convention. Neither country gave notice to the other of its intention to terminate this Postal Convention in accordance with the terms of Article VIII of the 1870 Convention. Therefore, this Postal Convention is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

155. On January 30, 1875, a Convention of Commercial Reciprocity between the United States of America and the Hawaiian Kingdom was concluded and signed in Washington, D.C., and thereafter ratified by both governments and exchanged.²⁸² The Arbitral Tribunal is requested to take judicial notice of the 1875 Hawaiian-American Convention.

156. On September 11, 1883, a Convention between the United States of America's Post Office Department and the Hawaiian Kingdom's Post Office Department, concerning the Exchange of Money Orders, was concluded and signed in Washington, D.C. Thereafter this convention was ratified by both governments and exchanged.²⁸³ The Arbitral Tribunal is requested to take judicial notice of the 1883 Hawaiian-American Convention. Neither country gave notice to the other of its intention to terminate this Postal Convention concerning Money Orders in accordance with the terms of Article XVI of the 1883 Convention. Therefore the United States Postal Convention concerning Money Orders is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

157. On December 6, 1884, a Supplementary Convention to the 1875 Convention of Commercial Reciprocity, between the United States of America and the Hawaiian Kingdom was concluded and signed in Washington, D.C., and thereafter ratified by both governments and exchanged.²⁸⁴ The ratification by the Hawaiian Kingdom is certainly questionable, because the ratification took place after a new Cabinet was forced upon His Majesty David Kalakaua and the subsequent imposition of the so-called 1887 constitution.²⁸⁵

158. According to international law, former American territories, who acquired their independence from the United States of America are bound, or at least, entitled to accede to the rights and obligations arising from the Hawaiian-American Treaties as of 1893.²⁸⁶ The former American territory is:

1. Philippines. Independence: July 4, 1946. ²⁸⁷

18. Universal Postal Union

159. On March 21, 1885, an Additional Act to the Universal Postal Union Convention of June 1, 1878, between the Hawaiian Kingdom, and the governments of the United Kingdom, Germany, United States of America, Argentine Republic, Austria, Hungary, Belgium, Bolivia, Brazil, Bulgaria, Chile, United States of Columbia, Republic of Costa Rica, Denmark, Dominican Republic, Egypt, Ecuador, Spain, France, Canada, British India, Greece, Guatamala, Republic of Hayti, Republic of Honduras, Italy, Japan, Republic of Liberia, Luxembourg, Mexico, Montenegro, Nicaragua, Paraguay, Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Servia, Kingdom of Siam, Sweden, Norway, Switzerland, Turkey, Uruguay and Venezuela, was concluded and signed at Lisbon and thereafter ratified and exchanged by the governments. ²⁸⁸ The Arbitral Tribunal is requested to take judicial notice of the 1885 Universal Postal Convention.

160. None of the countries gave notice to the Hawaiian Kingdom of their intentions to terminate this Additional Act to the Universal Postal Union Convention in accordance with the principles of customary international law. Therefore, the Additional Act to the Universal Postal Union Convention is still in full force, continues to have legal effect until today, and is at all times relevant to these proceedings.

B. Consular Relations between the Hawaiian Kingdom and other States.

161. Since the 1843 Anglo-Franco Proclamation, Hawaiian independence was fully recognized and acknowledged throughout the world. Diplomatic Agents of countries were accredited to the Hawaiian court and divers Consulates were established within the Hawaiian domain. Here follows a list of Diplomatic Agents and Consuls in the Hawaiian Kingdom in 1893, the 50th anniversary of Hawaiian independence. ²⁸⁹

1. Diplomatic Representatives Accredited to the Court of Hawai'i

United States of America - His Ex. John L. Stevens, Envoy Extraordinary and Minister Plenipotentiary.

Portugal - Senhor A de Souza Canavarro, Charge d'Affaires and Consul-General.

Great Britain - His Ex. J.H. Wodehouse, Minister Resident

France - Mons G.M.G. Bosseront d'Anglade, Consul Commissioner

Japan - Mons S. Fugii, Diplomatic Agent and Consul General

2. Foreign Consulates in Hawai'i

United States of America - Consul-General H.W. Severence; Vice and Deputy

Consul-General, W. Porter Boyd

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

Chile - 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

Autro-Hungary - H.F. Glade

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

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

Mexico - H. Renjes

China, Commercial Agent - Goo Kim; Assistant Commercial Agent, Wong Kwai

United States Consular Agent, Hilo - C. Furneaux

United States Consular Agent, Kahului - A.F. Hopke

United State Consular Agent, Mahukona - C.L. Wight

C. Hawaiian Diplomatic Agents Abroad.

162. Diplomatic Agents and Consulates of the Hawaiian Kingdom were stationed abroad in divers ports and cities throughout the world. Here follows the listing of these consulates and embassies as of January 1893.²⁹⁰

1. Austria

Vienna - V. von Schonberger

2. Belgium

Antwerp - Victor Forge, Consul General

Ghent - E. Coppieters, Consul

Liege - Jules Blanpain, Consul

Bruges - Emile Van den Brande, Consul

3. 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

Rimouki, Quebec - J.N. Pouliot, Q.C., Vice-Consul

St. Johns, N.B. - Allan Crookshank, Consul
Varmouth, 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 - Capt. Hon. Audley Coote, Consul
Launceston - Geo. Collins, Vice-Consul
New Castle, N.S.W. - W.H. Moulton, Consul
Aukland, N.Z. - D.B. Cruikshank, Consul
Dunedin, N.Z. - Henry Driver, Consul
Hong Kong, China - Consul General (vacant)
Shanghai, China - Hon. J. Johnstone Keswick

4. Denmark

Copenhagen - Consul General (vacant)

5. France and Colonies

Paris - Alfred Houle, Charge d'Affaires and Consul General
A.N.H. Teyssier, Vice-Consul
Marseilles - G. du Cayla, Consul
Bordeaux - Ernest de Boissac, Consul
Dijon H - Vielhhounne, Consul
Libourne - Charles Schoessier, Consul
Tahiti, Papeete - A.F. Bonet, Consul

6. Germany

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

7. Great Britain

London - A. Hoffnung, Charge d'Affaires
S.B. Francis Hoffnung, Secretary of Legation
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

8. Italy

Rome - James Clinton Hooker, Consul General
Geaoo - Raphael de Luchi, Consul
Palermo - Angelo Tagliavia, Consul

9. Japan

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

10. Mexico, Central and South America

United States of Mexico - Col. W.J. DeGress, 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 - George Shelmerdine, Consul
Manila - Jasper M. Wood, Consul

11. Netherlands

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

12. Portugal and Colonies

Lisbon - A Ferreira de Serpa, Consul General

Oporto - Narciso Ferro, Consul
Madeira - F. Rodrigues, Consul
St. Michaels - A de S Moreira, Consul
St. Vincent, Cape de Verde Islands - C. Martins, Vice Consul

13. Spain and Colonies

Barcelona - Enrique Minguez, Consul General
Cadiz - James Shaw, Consul
Valencia - Vincente Chust, Consul
Malaga - F.T. de Navarra, Consul
 F. Gimenez y Navarra, Vice-Consul
Cartegena - J. Paris, Consul
Las Palmas, Gran Canada - Luis F. Quevedo, Consul
 J. Bravo de Laguna, Vice-Consul
Santa Cruz - B.M. y Battaller, Vice-Consul
Arecife de Lanzarotte - E. Morales y Rodriquez, Vice-Consul

14. Sweden and Norway

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

15. United States of America

Washington D.C. - J. Mott Smith, Envoy Extraordinary and Minister
 Plenipotentiary
New York - E.H. Allen, Consul General
San Francisco - F.S. Pratt, Consul General for the Pacific States: California,
 Oregon, Nevada and Washington.
 J.B. Maholm, Vice Consul General
Philadelphia - Robert H. Davis, Consul
San Diego, California - Jas. W. Girvin, Consul
Boston - Lawrence Bond, Consul
Portland, Oregon - J. McCracken, Consul
Port Townsend, Washington - James G. Swan, Consul
Seattle - G.R. Carter, Consul

**D. The Conduct and Practice by the International Community
Subsequent to the 1843 Anglo-Franco Proclamation Further
Establishes that the Hawaiian Kingdom is an Independent State.**

163. The conduct of the international community to the divers treaties and conventions, subsequent of the 1843 Anglo-Franco Proclamation, attest to the existence of the Hawaiian Kingdom as an Independent State anterior to January 17, 1893 in two distinct ways. First, it corroborates the interpretation of the 1843 Anglo-Franco Proclamation recognizing Hawaiian Independence. Second, it gives rise to the complete usage of the principles of international law afforded to other members of the community of nations in the measurement of the Hawaiian Kingdom's sovereign rights.

164. Fenwick estimates the status of the "community of States" as follows:

"Statesmen of the nineteenth century were little concerned to define the legal character of the "community" to which their sovereign states belonged. Clearly it had no corporate personality of its own, no legal identity apart from that of its member states. But for all that it was more than a mere juridical fiction. Rather it was the the expression in terms of law of the existence of a body of states which accepted the rules of international law and maintained diplomatic relations with one another. As the century progressed the juridical conception became more and more concrete in character, although always falling short of an organized body. Rights and duties were said to belong to states by reason of their membership in the international community. When recognition was accorded to a new state, it was regarded as *ipso facto* assuming the obligations of membership in the community, and the new state did not for a moment think of picking and choosing which of the generally observed rules of international law it was willing to abide by." ²⁹¹

165. The Hawaiian Kingdom has exercised sovereignty and jurisdiction over the islets constituting the Hawaiian Islands since the 1843 Anglo-Franco Proclamation. These actions confirm the conclusion that the Hawaiian Kingdom is an Independent State. Thus, the record of the parties' conduct is to be construed as affording the Hawaiian Kingdom equal usage and protection of international law. Moreover, the unbroken pattern of conduct, up to January 17, 1893, is evidence of the understanding, by the international community, to the 1843 Anglo-Franco Proclamation that Hawaiian independence was intended.

1. The Vienna Convention on the Law of Treaties.

166. Article 31 of the Vienna Convention on the Law of Treaties, in pertinent part, provides:

(3) There shall be taken into account together with the

context...(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation. ²⁹²

167. In light of the above, consistent conduct between parties to a treaty, that extends over a long period constitutes subsequent conduct within the meaning of Article 31.

168. Sir Humphrey Waldock, as Special Rapporteur for the International Law Commission on the Law of Treaties, stated that:

"...subsequent conduct and practice of the parties in relation to the treaty is permissible, and may be desirable, as affording the best and most reliable evidence derived from how the treaty has been interpreted in practice, as to what its correct interpretation is. (emphasis in original) ²⁹³

169. Sir Gerald Fitzmaurice also regarded subsequent conduct as an aid to treaty interpretation:

"[C]onduct usually forms a more reliable guide to intention and purpose than anything to be found for instance in the preparatory work of the treaty, simply because it has taken concrete and active, and not merely verbal or paper, form. The uncertainties that so frequently attend on the latter case are more likely to be absent in the former, for in the course of preparatory work the parties merely state what their intentions are: in their practice subsequent to the conclusion of the treaty they act upon them. In any event they act, and a consistent practice must come very near to being conclusive as to how the treaty should be interpreted." (emphasis in original) ²⁹⁴

2. Conclusion as to the relevance of subsequent actions in Treaty Interpretation.

170. As matter of international law, the practices and conduct of the parties, subsequent to the 1843 Anglo-Franco Proclamation that recognized Hawaiian Independence, is of prime importance in determining the meaning of independence. The 1933 Montevideo Convention on Rights and Duties of States expresses the concept of State independence as the State's capacity to enter into relations with other states. ²⁹⁵ Many international jurists stress that statehood is the ultimate criteria in determining independence.

171. According to Guggenheim, a state's organs must possess a degree of centralization not found in the world community. ²⁹⁶ The state must also be the sole executive and legislative authority. In other words, there cannot be other legal orders in competition within the same ter-

ritory. The Hawaiian Kingdom's continued sole exercise of the sovereignty and jurisdiction over the Hawaiian Islands, as its territorial dominion, confirms the proper interpretation of the 1843 Anglo-Franco Proclamation and divers treaties and conventions. The interpretation, therefore, is that statehood should be attributed to the Hawaiian Kingdom.

CHAPTER IV. The Unsuccessful Revolution of 1893.

172. On January 17, 1893, a self-proclaimed body calling themselves the "committee of safety" committed the crime of high treason, as defined under §1, Chapter VI of the Hawaiian Penal Code.²⁹⁷ This body unlawfully deposed Her Majesty Queen Lili'uokalani and her Cabinet and proclaimed the establishment of a *self-proclaimed* provisional government. A government to exist that would negotiate terms of annexation with the United States of America.²⁹⁸

A. United States Troops Invade Hawaiian Territory to Aide a Small Band of Insurgents.

173. In violation of treaties and principles of customary international law, Minister Stevens, the United States diplomat assigned to the Hawaiian Kingdom conspired with traitors by authorizing American troops to land on Hawaiian soil despite the protest of Queen Lili'uokalani and her cabinet.²⁹⁹ This landing further aided the treasonous actions of the *self-proclaimed* provisional government.

174. On that same day, when informed that bloodshed could result from resistance toward the American troops, Her Majesty Queen Lili'uokalani issued a statement "temporarily" yielding her executive authority, as the constitutional Monarch, to the United States government. The Arbitral Tribunal is requested to take judicial notice of Her Majesty's 1893 Protest. And to its President, as a fact finder, rather than yielding authority to the *self-proclaimed* provisional government. Her letter of protest stated:

"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 provisional government. Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon 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."³⁰⁰

175. In violation of treaties entered into between the Hawaiian Kingdom and the United States of America and in violation of basic principles of international law, the United States Minister Stevens extended *de facto* recognition to the *self-proclaimed* provisional government on January 17, 1893. These violations are evidenced by the following proclamation:

"A Provisional Government having been duly constituted in the place of the recent Government of Queen Liliuokalani, and said Provisional Government being in full possession of the Government buildings, the archives, and the treasury, and in control of the capital of the Hawaiian Islands, I hereby recognize said Provisional Government as the *de facto* Government of the Hawaiian Islands." ³⁰¹

176. Thereafter, all Government employees of the Kingdom were forced to sign oaths of allegiance to the provisional government. ³⁰² American troops continued to fortify their positions.

1. Insurgents Seek Annexation by Voluntary Cession to the United States but Fail.

177. On January 19, 1893, individuals representing the self-proclaimed provisional government sailed for the United States on a steamer especially chartered for the occasion. ³⁰³ They arrived in San Francisco on January 28th, and later arrived in Washington, D.C., on February 3rd. ³⁰⁴ On February 14, 1893, a treaty of annexation was signed between the *self-proclaimed* provisional government and the United States' Secretary of State, under the Harrison administration. ³⁰⁵ The United States assumed that it was a popular revolt in the islands and that no troops or officers of the United States were present or took part in the uprising. ³⁰⁶ On February 15, 1893, this treaty of annexation was submitted to the United States Senate for ratification. Thereafter, the United States Presidency changed with President Grover Cleveland succeeding President Benjamin Harrison.

178. Upon receipt of Her Majesty's protest, newly elected President Grover Cleveland, on March 9, 1893, withdrew the treaty of annexation from the United States Senate. ³⁰⁷ President Cleveland then dispatched a representative to Hawai'i to impartially investigate the causes of the so-called revolution. ³⁰⁸ The representative was to report back to President Cleveland with his findings. President Cleveland would then review the report before deciding whether or not to re-submit the treaty of annexation.

2. U.S. Presidential Fact Finding Investigation concludes United States in the Wrong and Calls for Restoration of the Hawaiian Kingdom.

179. The official report of this Presidentially established investigation was conducted by former United States Congressman James Blount. ³⁰⁹ The Arbitral Tribunal is requested to take judicial notice of the report by James Blount. Based on this report the Secretary State, W.Q. Gresham, advised the President that:

"A careful consideration of the facts will, I think, convince you that the treaty which was withdrawn from the Senate for further consideration should not be resubmitted for its action thereon.

Should not the great wrong done to a feeble but independent State by an abuse of the authority of the United States be undone by restoring the legitimate government? Anything short of that will not, I respectfully submit, satisfy the demands of justice. Can the United States consistently insist that other nations shall respect the independence of Hawai'i while not respecting it themselves? Our Government was the first to recognize the independence of the Islands and it should be the last to acquire sovereignty over them by force and fraud." ³¹⁰

180. In a dispatch to United States Minister Albert Willis, assigned to the Hawaiian Islands, and successor to Minister Stevens, Secretary of State, Gresham, states that:

"On your arrival at Honolulu you will take advantage of an early opportunity to inform the Queen of this determination, making known to her the President's sincere regret that the reprehensible conduct of the American minister and the unauthorized presence on land of a military force of the United States obliged her to surrender her sovereignty, for the time being, and rely on the justice of this Government to undo the flagrant wrong. You will, however, at the same time inform the Queen that, when reinstated, the President expects that she will pursue a magnanimous course of granting full amnesty to all who participated in the movement against her, including persons who are, or have been, officially or otherwise, connected with the Provisional Government, depriving them of no right or privilege which they enjoyed before the so-called revolution. All obligations created by the Provisional Government in due course of administration should be assumed." ³¹¹

181. Her Majesty Queen Lili'uokalani, faced with a very serious decision of granting amnesty to the traitors, requested additional clarity and reasoning from the President of the United States. This inquiry made by Her Majesty was conveyed by Minister Willis to Secretary of State Gresham. On December 3, 1893, Her Majesty's inquiry received the following response:

"Should the Queen refuse assent to the written conditions, you will at once inform her that the President will cease interposition in her behalf, and that while he deems it his duty to endeavor to restore to the sovereign the constitutional government of the islands, his further efforts in that direction will depend upon the Queen's unqualified agreement that all obligations created by the Provisional Government in a proper course of administration shall be assumed and upon such pledges by her as will prevent the adoption of any measures of proscription or punishment for what

has been done in the past by those setting up or supporting the Provisional Government. The President feels that by our original interference and what followed we have incurred responsibilities to the whole Hawaiian community, and it would not be just to put one party at the mercy of the other.

Should the Queen ask whether if she accedes to conditions active steps will be taken by the United States to effect her restoration or to maintain her authority thereafter, you will say that the President can not use force without the authority of Congress.

Should the Queen accept conditions and the Provisional Government refuse to surrender, you will be governed by previous instructions. If the Provisional Government asks whether the United States will hold the Queen to fulfillment of stipulated conditions, you will say, the President, acting under dictates of honor and duty as he has done in endeavoring to effect restoration, will do all in his constitutional power to cause observance of the conditions he has imposed." ³¹²

182. On December 18, 1893, in an interview with U.S. Minister Willis at the legation of the United States, Her Majesty the Queen consented only to a conditional amnesty for those individuals involved in the establishment and support of the Provisional Government. ³¹³ Her conditional consent fell short of President Cleveland's request. Later that day, Her Majesty, after pondering over the interview, had determined that in the best interest of the nation she would accede to President Cleveland's request. That same day, she sent the following letter to Minister Willis:

"Since I had the interview with you this morning I have given the most careful and conscientious thought as to my duty, and I now of my own free will give my conclusions. I must not feel vengeful to any of my people. If I am restored by the United States I must forget myself and remember only my dear people and my country. I must forgive and forget the past, permitting no proscription or punishment of any one, but trusting that all will hereafter work together in peace and friendship for the good and for the glory of our beautiful and once happy land. Asking you to bear to the President and to the Government he represents a message of gratitude from me and from my people, and promising, with God's grace, to prove worthy of the confidence and friendship of your people." ³¹⁴

183. Attached to the letter was the following declaration by Her Majesty and witnessed by J.O. Carter, in part:

"I, Liliuokalani, in recognition of the high sense of justice

which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government." ³¹⁵

184. Her Majesty's agreement to the conditions of restoration occurred on the same day President Cleveland addressed the United States Congress on the findings of James Blount. Her Majesty's agreement was not made a part of his message. On December 18, 1893, President Grover Cleveland reported fully and accurately on the basis in part of the Blount report on the illegal acts of the traitors. ³¹⁶ The Arbitral Tribunal is requested to take judicial notice of the 1893 Presidential Message to the United State Congress. President Cleveland described such acts as an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress," and acknowledged that, by such acts, the government of a peaceful and friendly people was overthrown. He further stated that:

"[w]hen our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition..." ³¹⁷

185. In accordance with the principles of international law, the revolutionaries were not successful in obtaining *de facto* recognition. Since the revolutionaries failed to obtain *de facto* recognition, the legal standing of the Hawaiian Kingdom, the legitimate sovereign over the Hawaiian Islands, remained intact.

186. President Cleveland reminded the United States Congress of the special conditions of Her Majesty Queen Lili'uokalani's surrender of her executive authority, where she:

"...surrendered not to the provisional government, but to the United States. She surrendered not absolutely and permanently, but temporarily and conditionally until such time as the facts could

be considered by the United States." President Cleveland further stated that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair" and called for the restoration of the Government of the Hawaiian Kingdom. He also stated "...that the United States could not, under the circumstances disclosed, annex the islands without justly incurring the imputation of acquiring them by unjustifiable methods, I shall not again submit the treaty of annexation to the Senate for its consideration," and "...considering the further fact that in any event the provisional government by its own declared limitation was only *'to exist until terms of union with the United States of America have been negotiated and agreed upon,'* I hoped that after the assurance to the members of that government that such union could not be consummated I might compass a peaceful adjustment of the difficulty." ³¹⁸

187. On December 23, 1893, Minister Willis received a lengthy letter from Sanford Dole regarding the *self-proclaimed* provisional government's non-compliance to President Cleveland's findings and conclusions. ³¹⁹ This letter concluded, in part:

"I am instructed to inform you, Mr. Minister, that the Provisional Government of the Hawaiian Islands respectfully and unhesitatingly declines to entertain the proposition of the President of the United States that it should surrender its authority to the ex-Queen."

188. Without Congressional approval, President Cleveland was limited as to enforcing his conclusions, and limited as to his active participation in the restoration of the Hawaiian Government. Since the treaty of annexation was not re-submitted by President Cleveland, the Hawaiian Kingdom's sovereignty remained intact. However, the question of what assistance the United States would provide to restore the legitimate government remained unanswered.

B. Failed Revolutionists declare themselves the Republic of Hawai'i.

189. Unable to succeed at this first attempt of annexation, the *self-proclaimed* provisional government declared itself by constitutional convention to be the Republic of Hawai'i on July 4, 1894. ³²⁰ This *self-proclaimed* Republic of Hawai'i maintained its opposition to the restoration of the Hawaiian Kingdom Government as called for by United States President Grover Cleveland. On the day of the Republic's proclamation, its so-called Minister of Foreign Affairs, Francis M. Hatch, sent a dispatch to U.S. Minister, Albert S. Willis, who was assigned to the Hawaiian Islands. ³²¹ Mr. Hatch apprised the U.S. Minister of the re-formation of the provisional government into the Republic of Hawai'i and the naming of its President and cabinet. Mr. Hatch also requested that the U.S. Minister Willis bestow recognition to the *self-proclaimed*

Republic of Hawai'i.

190. The next day, U.S. Minister Willis responded by acknowledging the receipt of Hatch's dispatch and concluded that it could not offer any more recognition to the *self-proclaimed* Republic of Hawai'i than the U.S. President gave to the provisional government. The Arbitral Tribunal is requested to take judicial notice of this July 5, 1894 letter of correspondence to the *self-proclaimed* Republic of Hawai'i. The letter read that in:

"...reply to your note reciting the foregoing facts, I have the honor to inform you that I hereby, as far as I have the right so to do, extend to the Republic of Hawai'i the recognition accorded its predecessor, the Provisional Government of the Hawaiian Islands. I do this in the belief that I represent the President of the United States, to whom, as the Executive Chief of the Government, my action in the premises will be promptly submitted for his necessary approval." ³²²

191. Since President Cleveland made no subsequent approval of U.S. Minister Willis' conditional response to Mr. Hatch, the July 5th letter could not be construed to be diplomatically sanctioned. Furthermore, U.S. Minister Willis, in his letter, afforded the Republic of Hawai'i no more recognition than the provisional government held, which was neither *de facto* nor *de jure*. ³²³

192. On January 7, 1895, the Republic of Hawai'i declared martial law. ³²⁴ This declaration was the *self-proclaimed* Republic's attempt to gain international recognition as the legitimate government of Hawai'i. On January 16, 1895, the *self-proclaimed* Republic of Hawai'i then arrested Her Majesty Queen Lili'uokalani and charged her with treason. ³²⁵ These charges were later changed to "misprision of treason." On January 17, 1895, the *self-proclaimed* Republic convened a military commission to carry out the court martial of Her Majesty and her supporters. ³²⁶ On January 24, 1895, while in prison, Her Majesty was forced to sign a document "abdicating the throne." ³²⁷ She signed this document because the *self-proclaimed* Republic had threatened to execute the supporters if the Her Majesty did not sign. Sadly, on February 5, 1895, Her Majesty was arraigned before this so-called military tribunal. ³²⁸ Her so-called trial began thereafter.

193. The above actions of the self-proclaimed Republic of Hawai'i clearly showed that it was not internationally recognized as the *de facto* government of the Hawaiian Islands. *First* and foremost, it was evident that the United States recognized that the Constitutional Government headed by Queen Lili'uokalani remained the *de jure* government after the unsuccessful revolution of January 17, 1893. ³²⁹ *Secondly*, in accordance with Chapter III of the Hawaiian Penal Code, it was the Hawaiian Kingdom that possessed the "prosecutorial" authority to criminally try persons within the Kingdom, and not the self-proclaimed Republic of Hawai'i. ³³⁰ *Thirdly*, only the Queen, as head of state, by and with the advise of her Privy Council, could suspend the writ of habeas corpus and declare martial law. ³³¹ And, *finally*, because there was no Minister of

Her Majesty's Cabinet Council to counter-sign the Queen's so-called "abdication," which is mandated by Article 42 of the 1864 Constitution, it had no effect of law. ³³²

CHAPTER V. Unsuccessful Annexation Attempt of 1898.

A. Second Attempt to Annex the Hawaiian Islands to the United States Fails.

194. On June 16, 1897, a second attempt of a treaty of annexation was signed in Washington, D.C., between representatives of the *self-proclaimed* Republic of Hawai'i and the newly elected President of the United States of America, William McKinley. ³³³ This so-called treaty remained subject to ratification or approval by two-thirds of the United States Senate. ³³⁴

195. On June 18, 1897, in Washington, D.C., the Honorable Joseph Heleluhe, for and on behalf of Her Majesty Queen Lili'uokalani filed in the U.S State Department, a formal protest to this second attempt of a treaty of annexation. ³³⁵ The Arbitral Tribunal is requested to take judicial notice of Her Majesty's 1897 Protest. This so-called treaty attempted to transfer the territory and sovereignty of the Hawaiian Kingdom to the United States of America. In her protest, Her Majesty stated:

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

Because the official protests made by me on the seventeenth day of January, 1893, to the so-called Provisional Government was signed by me, and received by said government with the assurance that the case was referred to the United States of America for arbitration.

Because that protest and my communications to the United States Government immediately thereafter expressly declare that I yielded my authority to the forces of the United States in order to avoid bloodshed, and because I recognized the futility of a conflict with so formidable a power.

Because the President of the United States, the Secretary of

State, and an envoy commissioned by them reported in official documents that my government was unlawfully coerced by the forces, diplomatic and naval, of the United States; that I was at the date of their investigations the constitutional ruler of my people.

Because neither the above-named commission nor the government which sends it has ever received any such authority from the registered voters of Hawaii, but derives its assumed powers from the so-called committee of public safety, organized on or about the seventeenth day of January, 1893, said committee being composed largely of persons claiming American citizenship, and not one single Hawaiian was a member thereof, or in any way participated in the demonstration leading to its existence.

Because my people, about forty thousand in number, have in no way been consulted by those, three thousand in number, who claim the right to destroy the independence of Hawaii. My people constitute four-fifths of the legally qualified voters of Hawaii, and excluding those imported for the demands of labor, about the same proportion of the inhabitants.

Because said treaty ignores, not only the civic rights of my people, but, further, the hereditary property of their chiefs. Of the 4,000,000 acres composing the territory said treaty offers to annex, 1,000,000 or 915,000 acres has in no way been heretofore recognized as other than the private property of the constitutional monarch, subject to a control in now way differing from other items of a private estate.

Because it is proposed by said treaty to confiscate said property, technically called the crown lands, those legally entitled thereto, either now or in succession, receiving no consideration whatever for estates, their title to which has been always undisputed, and which is legitimately in my name at this date.

Because said treaty ignores, not only all professions of perpetual amity and good faith made by the United States in former treaties with the sovereigns representing the Hawaiian people, but all treaties made by those sovereigns with other and friendly powers, and it is thereby in violation of international law.

Because, by treating with the parties claiming at this time the right to cede said territory of Hawaii, the Government of the United States receives such territory from the hands of those whom its own magistrates (legally elected by the people of the United States, and in office in 1893) pronounced fraudulently in power and unconstitutionally ruling Hawaii.

Therefore I, Liliuokalani of Hawaii, do hereby call upon the President of that nation, to whom alone I yielded my property and my authority, to withdraw said treaty (ceding said Islands)

from further consideration. I ask the honorable Senate of the United States to decline to ratify said treaty, and I implore the people of this great and good nation, from whom my ancestors learned the Christian religion, to sustain their representatives in such acts of justice and equity as may be in accord with the principles of their fathers, and to the Almighty Ruler of the universe, to him who judgeth righteously, I commit my cause.

Done at Washington, District of Columbia, United States of America, this seventeenth day of June, in the year eighteen hundred and ninety-seven."

196. Fortifying Her Majesty Queen Lili'uokalani's second letter of protest were petitions, in both the Hawaiian and English versions, from the Presidents of the Hawaiian organizations of the Men and Women's Hawaiian Patriotic League (also known as the Hui Aloha 'Aina), and the Hawaiian Political Party (also known as the Hui Kalai'aina).³³⁶ The Arbitral Tribunal is requested to take judicial notice of these Petitions by the Presidents of the three Hawaiian organizations. A great majority of the Hawaiian people were associated with these organizations. These petitions were signed on February 4, 1897, and addressed newly elected United States President William McKinley. These petitions were filed in the United States Department of State by the Honorable Joseph Heleluhe in July of that same year. In order to show solidarity, all three organizations' Presidents drafted identical petitions, in part:

"Your Petitioner therefore respectfully submits to Your Excellency (William McKinley),

1. That the one hope and trust of the Hawaiian people is the same today and has been expressed in several petitions heretofore presented to the Government of the United States they entertain the firm belief that Your Excellency will do justice to this Nation during Your term of Office.

2. That this trust of the Hawaiian people is strengthened by the recollection of the friendly action of the Government of the United States in 1843, when an assurance of the Independence of the Islands given by the President to Delegates from Hawaii through which assurance the recognition of their independence by the Governments of England and France was readily obtained.

3. That no cause whatever can arise that will alter or change the mind of the Hawaiian people and their desire to see the Monarchy restored, and the Throne occupied by the Queen, who would never have been deposed by a handful of foreigners but for the support rendered them by the U.S. Ship Boston.

4. That Queen and her people are of one mind that in the event of restoration amnesty should be granted to those who were concerned in the overthrow of the Monarchy on January 17, 1893.

Your Petitioner therefore prays that the Monarchical form of Government to which the Nation is attached may be restored to the Hawaiian Islands and Queen Liliuokalani reinstated in the Throne, which for the avoidance of a conflict between her soldiers and a detachment from the U.S. Ship Boston, which had invaded her realm in support of the insurgents by order of the U.S. Minister, Her Majesty resigned under solemn protest and appeal to the President of the United States relying on the Justice of the President and people of that great country and confident that a Nation so great and powerful would never allow so great a wrong to remain unredressed."

197. Without adhering to the diplomatic protests from the Queen and these Hawaiian organizations, President McKinley proceeded to submit the so-called treaty of annexation to the United States Senate for approval. The Senate was scheduled to convene in December of 1897. Appraised of President McKinley's intentions, the three organizations quickly mobilized and instituted two new signature petitions which vehemently protested annexation. Of the three signature petitions, it was decided by the Hawaiian organizations to submit the petition from the Men and Women's Hawaiian Patriotic League to the United States Senate when it convenes in December of 1897. It was determined that the signature petition from the Hawaiian Political Association, (or Hui Kalai'aina), which numbered nearly 17,000 signatures would be withheld because it might receive a negative response by the U.S. Senators because of the petitions pro-Monarchy wording of the petition.³³⁷ The Men and Women's Hawaiian Patriotic League petitions numbered over 21, 000 signatures.³³⁸ The Arbitral Tribunal is requested to take judicial notice of the 1897 signature petition of the Men and Women's Hawaiian Patriotic League. Here follows the preface to the signatures:

"Whereas, there has been submitted to the Senate of the United States of America a Treaty for the Annexation of the Hawaiian Islands to the said United States of America, for consideration at its regular session in December, A.D. 1897; therefore,

We, the undersigned, native Hawaiian citizens and residents of the District of _____, island of _____, who are members of the (Women's) Hawaiian Patriotic League of the Hawaiian Islands, and others who are in sympathy with said League, earnestly protest against the annexation of the said Hawaiian Islands to the said United States of America in any form or shape."

198. As a result of these protests and other legal questions surrounding the *self-proclaimed* Republic of Hawai'i, the United States Senate failed to obtain the required two-thirds vote, as mandated by the United States Constitution, to ratify the so-called treaty of annexation.³³⁹ The dominion of the Hawaiian Kingdom remained intact.

B. Laws of War Activated between the United States and the Kingdom of Spain.

199. On April 25, 1898, after the failed annexation of the Hawaiian Islands, the United States Congress established an *Act Declaring that war exists between the United States of America and the Kingdom of Spain*. The Declaration of War was retroactive to April 21, 1898. The International Laws of War were activated between the two countries.

200. On May 1, 1898, the United States' Navy's Asiatic Squadron under Commodore Dewey defeated the Spanish Pacific Squadron at the Battle of Manila bay in the Philippines.³⁴⁰ The Philippine Islands were a territorial colony of Spain, together with Guam. The U.S. Navy's hostile incursion into the territory of the Kingdom of Spain were regulated by the International Laws of War, and consequently the warring parties were termed "belligerent States." All other non-warring parties were termed "neutral States."³⁴¹ The Hawaiian Kingdom and its territorial dominion was a neutral State, whose territory was considered under international law inviolable by any belligerent State.³⁴²

C. United States Municipal Law Erroneously Purports to Annex the Hawaiian Islands.

201. On July 6, 1898, during the height of armed conflicts with the Kingdom of Spain, in both the Pacific Ocean and the Carribean, the United States Congress passed a joint resolution purporting to annex the Hawaiian Islands.³⁴³ President McKinley then signed this resolution into law on the following day. As U.S. Representative Ball so eloquently stated during debates over the joint resolution in 1898, when he charaterized the effort to annex Hawai'i by joint resolution after, the defeat of the treaty, as:

"...a deliberate attempt to do unlawfully that which can not be lawfully done."³⁴⁴

202. United States constitutional scholar, Westel Willoughby, wrote,

"The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act...Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force -- confined in its operation to the territory of the State by whose legislature it is enacted."³⁴⁵

203. Thus, the purported sovereignty of the *self-proclaimed* Republic of Hawai'i, and not the sovereignty of the Hawaiian Kingdom was transferred to the United States of America. On a platform at the base of 'Iolani Palace in Honolulu, Harold Sewall, from the McKinley adminis-

tration and successor to United States Minister Willis of the Cleveland administration, stated:

"Mr. President, I present you a certified copy of a joint resolution of the Congress of the United States, approved by the President on July 7th, 1898, entitled 'Joint Resolution to provide for annexing the Hawaiian Islands to the United States.'

"This joint resolution accepts, ratifies and confirms, on the part of the United States, the cession formally consented to and approved by the Republic of Hawai'i." ³⁴⁶

204. Sanford B. Dole, the so-called President of the *self-proclaimed* Republic of Hawai'i, addressing Harold M. Sewall's Congressional joint resolution, attempted to maintain the facade of a *bi-lateral* treaty of cession by replying:

"A treaty of political union having been made, and the cession formally consented to and approved by the Republic of Hawaii, having been accepted by the United States of America, I now, in the interest of the Hawaiian body politic, and with full confidence in the honor, justice and friendship of the American people, yield up to you as the representative of the Government of the United States, the sovereignty and public property of the Hawaiian Islands" ³⁴⁷

205. Even though the self-proclaimed Republic of Hawai'i was absorbed into the United States of America, and the United States' presence in the Hawaiian Islands increased as a consequence of occupation, this did not terminate the sovereignty of the Hawaiian Kingdom as a member of the *Community of States*. These events did constitute a violation of the treaties entered into between the Hawaiian Kingdom and the United States of America and constituted a violation of international law. Her Majesty's protest, having been filed in the United States Department of State on June 18, 1897, was *actual notice* of international violations. ³⁴⁸ The Tribunal may refer to Her Majesty's 1897 Protest in paragraph 195 above.

206. On August 13, 1898, the Klondike steamer entered Honolulu Harbor with American troops of the 1st New York Volunteer Infantry and U.S. Volunteer Engineers on board. ³⁴⁹ They were stationed at the first U.S. military post to be established in the Hawaiian Islands called Camp McKinley which was located below Diamond Head in Waikiki on the Island of O'ahu.

207. This unprovoked incursion by a belligerent State into the territory of a neutral State was a violation of the Laws of War, as well as a breach of the treaties and conventions entered into between the Hawaiian Kingdom and the United States and the obligations thereunder. The specific engagement of peace and amity between the countries is stated in Article I of the 1849 Hawaiian-American Treaty which provides:

"There shall be perpetual peace and amity between the

United States and the King of the Hawaiian Islands, his heirs and his successors." ³⁵⁰

208. Also violated were the obligations agreed to between the two States in regard to American citizenry residing in the Hawaiian Kingdom and the subjugation of that citizenry to Hawaiian laws and statutes and to no other. Article VIII of the said 1849 Treaty provides, in part:

"...and each of the two contracting parties engage that the citizens or subjects of the other residing in their respective States shall enjoy their property and personal security, in as full and ample manner of their own citizens or subjects, of the subjects or citizens of the most favored nation, but subject always to the laws and statutes of the two countries respectively." ³⁵¹

209. On November 11, 1917, Her Majesty Queen Lili'uokalani died. ³⁵² Notwithstanding the death of Her Majesty, the Hawaiian governmental body or body politic remained intact through its offices created by the Constitution and laws of the Kingdom and as a continued member of the *Community of States*.

CHAPTER VI. Under International Law, Treaties Between States Must be Strictly Observed.

A. *Pacta Sunt Servanda*, Observance of Treaties.

210. International law requires strict observance of Treaties between States. Article 26 of the Vienna Convention on the Law of Treaties provides that:

"Every treaty in force is binding upon the parties to it and must be performed by them in good faith." ³⁵³

211. The Protocol of London of June 17, 1871 declared that:

"The Plenipotentiaries of North Germany, Austria, Hungary, Great Britain, Italy, Russia, and Turkey, met today in conference, recognize that it is an essential principle of the laws of nations that no power can liberate itself from the engagement of a treaty, nor modify the stipulations thereof, unless with the consent of the contracting powers by means of an amicable arrangement." ³⁵⁴

212. In addition, Article 10 of the Habana Convention on Treaties, adopted in 1928 by the 6th International Conference of American States provided:

"No State can relieve itself of the obligations of a treaty or

modify its stipulations except by the agreement, secured through peaceful means, of the other contracting parties." ³⁵⁵

213. In 1937, United States Secretary of State Cordell Hull stated American foreign policy as follows:

"We advocate faithful observance of international agreements. Upholding the principle of the sanctity of treaties, we believe in modification of provisions of treaties, when needs thereof arise, by orderly processes carried out in spirit of mutual helpfulness and accommodation. We believe in respect by all nations for the rights of others and performance by all nations of established obligations." ³⁵⁶

214. Furthermore paragraph 1 of Article 27 of the Vienna Convention on the Law of Treaties provides:

"A State party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform the treaty." ³⁵⁷

B. Case Law.

215. In the *North Atlantic Coast Fisheries* arbitration between the United States of America and Great Britain the Arbitral Tribunal, in 1910, stated that:

"...every state has to execute the obligations incurred by treaty bona fide, and is urged thereto by the ordinary sanctions of International Law in regard to observance of treaty obligations." ³⁵⁸

216. In the *Nomination of the Netherlands Workers' Delegate* case, the Permanent Court of International Justice, in 1922, stated that a treaty engagement:

"...is not a mere moral obligation. It is a part of the Treaty and constitutes an obligation by which the Parties to the Treaty are bound to one another." ³⁵⁹

217. Sovereignty is contradistinguished from occupation. De Lupis states that a:

"...basic rule of wartime occupation stipulates that title or sovereignty of the territory does not pass to the occupying power...Nowadays arguments cannot be put forward that a territory has been 'annexed' by force as conquest and annexation no longer afford legitimate title in international law." ³⁶⁰

218. Therefore, treaties between States must be strictly observed in accordance with the 1969 Vienna Convention and treaty case law. In the case of the Hawaiian Kingdom, divers treaties and conventions still exist and retain international rights and obligations between the parties.

**CHAPTER VII. Adherence to Hawaiian Kingdom Law
under Pro-longed Occupation.**

219. Occupation does not legally change the national character of the occupied territory. As Keith states:

"The rights of occupancy, then cannot be co-extensive with those of sovereignty. They are due to the military exigencies of the invader, and consequently are only provisional. The local inhabitants do not owe the occupant even temporary allegiance." ³⁶¹

220. As such, the laws of the Hawaiian Kingdom, as they existed previous to the failed revolution of 1893, continue to remain the *Law of the Land*, and Chapter II, section 6 of the Hawaiian Civil Code, provides:

"The laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while 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." ³⁶²

**A. The Establishment of the First Co-partnership
Firm under Kingdom Law since 1893.**

221. On December 10, 1995, a Hawaiian general partnership was formed in compliance with an Act to Provide for the Registration of Co-partnership Firms, 1880 (hereinafter referred to as the "Co-partnership Act). The partnership was named the Perfect Title Company and was a land title abstracting company. ³⁶³ The Arbitral Tribunal is requested to take judicial notice of the deed of general partnership of the Perfect Title Company. The Co-partnership Act states, in part:

"Whenever any two or more persons shall carry on business in this Kingdom in co-partnership, it shall be incumbent for such persons to file in the office of the Minister of the Interior a statement of

1. The names and residences of each of the members of such co-partnership.

2. The nature of the business of such co-partnership.
3. The firm name of co-partnership, and
4. The place or places of business of the co-partnership." ³⁶⁴

222. Since the enactment of the 1880 Co-partnership Act, members of co-partnership firms had filed their articles of agreements in the Bureau of Conveyances. ³⁶⁵ Chapter XXVI, section 1249 of the Hawaiian Kingdom Civil Code provides:

"There shall be a bureau in the department of the Interior to be called the Bureau of Conveyances; and His Majesty shall appoint, upon the nomination of the Minister of the Interior, some suitable person to superintend said Bureau, under the direction of said minister, who shall be styled the 'Registrar of Conveyances,' and hold his office at the pleasure of the King." ³⁶⁶

223. The Bureau of Conveyances is presently administered by the occupational force of the United States, through the State of Hawai'i, pursuant to United States municipal legislation. ³⁶⁷ Such legislation required that all documents prior to filing with the Bureau be acknowledged by a United States/State of Hawai'i notary public. In order for the partners of the Perfect Title Company to get their articles of agreement filed in the Bureau of Conveyances, pursuant to the said 1880 Co-partnership Act, the following protest was incorporated and made a part of the said articles of agreement, which provided:

"Each partner also agrees that the business is to be operated in strict compliance to the business laws of the Hawaiian Kingdom as noted in the 'Compiled Laws of 1884' and the 'session laws of 1884 and 1886.' Both partners are native Hawaiian subjects by birth and therefore are bound and subject to the laws above mentioned. And it is further agreed by both partners that due to the filing requirements of the Bureau of Conveyances to go before a foreign notary public within the Hawaiian Kingdom, they do this involuntarily and against their will." ³⁶⁸

224. The Perfect Title Company was to have commenced on the 10th day of December, 1995, but there was no representation of the Hawaiian Government to ensure compliance with the co-partnership statute from that date. In accordance with the 1880 Co-partnership Act, a duty and an obligation was established between the Interior Department and co-partnership firms in the Kingdom. At one end of the statute, the registration of co-partnerships was a requirement, while at the other end of the statute, the Interior Department was to ensure that co-partnerships maintained their compliance with the statute. Thus, the partners of the Perfect Title Company had to abide by the duty and corresponding obligation in order to satisfy the statute under Kingdom law. The Oxford Companion to Law, 1980, defines *obligation* as:

"A legal concept signifying a bond or tie linking two legal

persons, conferring on each mutual legally enforceable rights and duties. Thus, where one person sells to another they are deemed to create an obligation which links them and gives rise to the rights to delivery or to payment, and to the correlative duties to pay or to deliver respectively." ³⁶⁹

225. And defining the term *duty*, The Oxford Companion to Law, 1980, states:

"The existence or recognition of a duty frequently implies the recognition of a right in some other person to have the duty performed in relation to him or to recover damages for non-performance, i.e. it creates a beneficiary of the duty." ³⁷⁰

226. Section 7 of the Co-partnership Act of 1880 clearly outlines the duty of the Interior department and the corresponding obligation of the members of co-partnerships in the Kingdom, which states:

"The members of every co-partnership who shall neglect or fail to comply with the provisions of this law, shall severally and individually be liable for all the debts and liabilities of such co-partnership and may be severally sued therefor, without the necessity of joining the other members of the co-partnership in any action or suit, and shall also be severally be liable upon conviction, to a penalty not exceeding five dollars for each and every day while such default shall continue; which penalties may be recovered in any Police or District Court." ³⁷¹

B. Re-establishing the Hawaiian Kingdom Government, by and through the Hawaiian Co-partnership Statute.

227. The partners of Perfect Title Company desired to establish a legitimate co-partnership pursuant to Hawaiian Kingdom law. Such a co-partnership had not been created in the Hawaiian Kingdom for over one hundred years, because the Hawaiian Kingdom has experienced an illegal and prolonged occupation by the United States. As a result, the Hawaiian Kingdom Government has ceased to operate. In light of the above, the partners of the Perfect Title Company reasoned that the Hawaiian corporate body of government had to be re-established pursuant to Hawaiian Kingdom law, in order for the Perfect Title Company to exist as a legal co-partnership firm.

228. Therefore, in order for the Government of the Hawaiian Kingdom to be re-activated, an *Acting* Executive Head of State had to be established in conformity with the laws of the Hawaiian Kingdom. According to Black's Law Dictionary, 6th Ed., the term *acting officer* is:

"...used to designate, not an appointed incumbent, but merely a

locum tenens, who is performing the duties of an office to which he himself does not claim title." ³⁷²

229. This Memorial has already shown how the last legitimate Hawaiian Legislative Assembly of 1886 was prevented from reconvening (see paragraphs 53 to 58). The subsequent Legislative Assembly of 1887 was based on an illegal constitution which altered existing voting rights which lead to the illegal election of the 1887 Legislature. As a result of this, there existed no legitimate Nobles of the Legislative Assembly, and thus, Her Majesty Queen Lili'uokalani was unable to obtain confirmation for her named successors from those Nobles as required by the 1864 Constitution. ³⁷³ Her Majesty had first intended that Princess Ka'iulani be the named successor to the Office of Monarch, and subsequently considered Prince David Kawanakoa and Prince Jonah Kuhio Kalaniana'ole as her successors. ³⁷⁴ Tragically, when Her Majesty died on November 11, 1917, there were no legitimate Noblemen of the Legislative Assembly to confirm her above nominations. Article 22 of the 1864 Constitution eloquently illustrates the requirements, and states, in part:

"...the successor shall be the person whom the Sovereign shall appoint with the consent of the Nobles, and publicly proclaim as such during the King's life." ³⁷⁵

230. In the absence of a confirmed successor to the Throne by the Nobles of the Legislative Assembly, Article 33 of the Constitution of 1864 provides that:

"...should a Sovereign decease, leaving a Minor Heir, and having made no last Will and Testament, the Cabinet Council at the time of such decease shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately, may be assembled, and the Legislative Assembly immediately that it is assembled shall proceed to choose by ballot, a Regent or Council of Regency, who shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King..." ³⁷⁶

231. The law did not assume that the whole of the Hawaiian Kingdom Government would be made vacant. Consequently, the law did not formalize provisions that described every step of the reactivation of the Government. Thus, the following course of action was taken to re-activate the Hawaiian Kingdom Government by and through its Executive branch.

232. Properly interpreted, Article 33 of the 1864 Constitution, provides that the Cabinet shall be a "temporary" Council of Regency until a proper Legislative Assembly can be convened to choose, by ballot, a "permanent" Regent or Council of Regency. Article 33 further states that this Regent or Council of Regency shall administer the Government in the name of the Monarch, and exercise all the Powers which are constitutionally vested in the Monarch.

233. Article 42 of the 1864 Constitution, provides that the Cabinet Council consists of the Minister of Foreign Affairs, the Minister of Interior, the Minister of Finance and the Attorney General of the Kingdom. Proper interpretation of this law allows the Minister of Interior to assume the powers vested in the Cabinet Council in absentia of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General, and consequently serve as the Council of Regency. Article 42 of the 1864 Constitution provides, in part:

"The King's Cabinet shall consist of the Minister of Foreign Affairs, the Minister of the Interior, the Minister of Finance, and the Attorney General of the Kingdom, and these shall be His Majesty's Special Advisers in the Executive affairs of the Kingdom; and they shall be *ex officio* Members of His Majesty's Privy Council of State. They shall be appointed and commissioned by the King, and hold office during His Majesty's pleasure, subject to impeachment." ³⁷⁷

234. Chapter XXVI, section 1249 of the Hawaiian Civil Code, provides that a bureau is established in the department of the Interior called the Bureau of Conveyances and that a Registrar shall superintend said bureau. ³⁷⁸ Proper interpretation of this Law allows the Registrar of Conveyances to assume the powers vested in the Minister of Interior in absentia of the same; then assume the powers vested in the Cabinet Council in absentia of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and finally the Registrar has assumed the position of the Council of Regency.

235. The 1880 Co-partnership Act requires members of co-partnerships to register their articles of agreement in the Bureau of Conveyances, being within the Department of the Interior. ³⁷⁹ This statute places an obligation on members of co-partnerships to register, and at the same time, this statute places a corresponding duty on the Department of the Minister of Interior to assure compliance with the statute. Logic and necessity dictated that in the absence of an executor of this department that a registered co-partnership could assume the department's duty. In order to accomplish this, it was logical that this registered co-partnership could assume the powers vested in the Registrar of the Bureau of Conveyances in absentia of the same; then assume the powers vested in the Minister of Interior in absentia of the same; then assume the powers vested in the Cabinet Council in absentia of the Minister of Foreign Affairs, the Minister of Finance and the Attorney General; and, finally assume the power of the Council of Regency.

236. This abovementioned process of ascension can be analogized to a Private in an Army that rises up the ranks during battle, in the absence of all ranking soldiers above him. In this type of extraordinary scenario, a Private could ultimately assume the rank of General of the Army in an "acting" role, until relieved by a properly commissioned General. The critical point to be made about this process in relation to the Hawaiian Kingdom's corporate body, is that each position assumed by a registered co-partnership under the 1880 Co-partnership Act is an "acting" position until relieved by a "permanent" Regent or Council of Regency elected by a legally constituted Legislative Assembly.

**1. The Hawaiian Kingdom Trust Company, a general partnership,
established to Assume Role of Absentee Government.**

237. In light of the explanation set forth in paragraphs 219 and 220, on December 15, 1995, the partners of Perfect Title Company formed a second partnership called the Hawaiian Kingdom Trust Company.³⁸⁰ The Arbitral Tribunal is requested to take judicial notice of the deed of general partnership of the Hawaiian Kingdom Trust Company. The partners intended that this registered partnership would exist as a company acting for and on behalf of the Hawaiian Kingdom "absentee" Government. As of December 15, 1995, there were no other co-partnerships registered in accordance with the said 1880 Co-partnership Act, except for the Perfect Title Company. Therefore, and in light of the ascension process explained in the previous paragraphs, the Hawaiian Kingdom Trust Company could then "act" as the Registrar of the Bureau of Conveyances, the Minister of Interior, the Cabinet Council, and ultimately as the Council of Regency.

238. Article 1 of the Hawaiian Kingdom Trust Company's deed of general partnership provided, in part, that:

"...the company will serve in the capacity of acting for and on behalf of the Hawaiian Kingdom government. The company has adopted the Hawaiian Constitution of 1864 and the laws lawfully established in the administration of the same. The company is to commence on the 15th day of December, A.D. 1995, and shall remain in existence until the absentee government is re-established and fully operational, upon which all records and monies of the same will be transferred and conveyed over to the office of the Minister of Interior, to have and to hold under the authority and jurisdiction of the Hawaiian Kingdom."³⁸¹

239. Deeds of Trusts authorizing the Hawaiian Kingdom Trust Company to serve as a company acting for and on behalf of the Hawaiian Government further outlined the role of the trust company and the fiduciary duty between the trustees and the beneficiaries.³⁸² The Arbitral Tribunal is requested to take judicial notice of the Deeds of Trust to the Hawaiian Kingdom Trust Company. The Deeds of Trust provided, in part, that:

"...the grantors, in consideration aforesaid and in order to more effectually carry out the intention of this deed doth hereby grant unto the said trustee, its successors and assigns full power to serve in the place of the absentee government, for the benefit of the same; and in the name of the trust to institute and prosecute to final judgment and execution all suits and actions at law, in equity and in admiralty for any breach or violation of Hawaiian law, at the expense of the grantors; and the same to defend if brought against the said grantors by any pretended proprietor or foreign

government; and to refer any matter in dispute to arbitration and the same to settle and compromise; and to do all acts in the management of the affairs of said parties as if it were the absentee government in the capacity aforementioned."

240. Grantors of the Deeds of Trust to the Hawaiian Kingdom Trust Company, a general partnership, also paid the trust back taxes, which are explained as follows:

"And the grantors, to show their good faith as native Hawaiian subjects, agree to pay into the trust the sum of one-hundred and three dollars (\$103.00), which shall serve as payment of all back taxes owed to the Hawaiian Kingdom government, to be computed at a rate of a dollar and love for each and every year the grantors and their families have been absent from the kingdom since the year of 1893; and the same agrees to adhere to all of the internal tax laws of the kingdom, which include an assessment of taxes to be determined on the 1st day of July of each and every year and the collection of the same on the 15th day of December, in accordance to the Act of 1882 relating to internal taxes, Compiled Laws of the Hawaiian Kingdom, p. 117, to be paid into the trust account." ³⁸³

241. The Trustees of the Hawaiian Kingdom Trust Company were not only competent to serve as the *Acting* Cabinet Council, but also possessed a fiduciary duty toward its beneficiaries to serve in the capacity of the Hawaiian Kingdom Government, until the Government is re-established in accordance with the terms of the 1864 Constitution. The Deeds of Trust also provided the following proviso:

"It is also agreed that as soon as the absentee government is lawfully re-established and is fully operational, the company will transfer by deed all rights, titles, interests and appurtenances hereinbefore conveyed by the grantors, over to the office of the Minister of Interior, to have and to hold under the authority and jurisdiction of the Hawaiian Kingdom, and that upon this conveyance the trust shall then be terminated." ³⁸⁴

**2. Trustees of the Hawaiian Kingdom Trust Company,
a general partnership, Appoint Acting Regent.**

242. In order to avoid the appearance of impropriety and/or conflict of interest under the 1880 Co-partnership Act, the partners of the Perfect Title Company, reasoned that an *Acting* Regent, having no interests in either company, must be appointed to serve as representative of the Hawaiian Kingdom Government. This appointment would have to be made by the Trustees of

the Hawaiian Kingdom Trust Company since it represented the interests of the Kingdom Government. Therefore, the Trust Company looked to Article XXXI, Chapter XI, Title 3 of the Hawaiian Civil Code, whereby the *Acting* Regency would be constitutionally authorized to direct the Executive Branch of the Kingdom Government in the formation and execution of the election of the House of Representatives.³⁸⁵ Subsequently, a "permanent" Regent or Council of Regency could be elected by the Legislative Assembly in accordance with Article 33 of the 1864 Constitution.

243. In light of paragraph 237 above, the Trustees of the Hawaiian Kingdom Trust Company decided to appoint Mr. David Keanu Sai as Acting Regent to represent the Hawaiian Government in place of the Trust Company, because of his expertise in Hawaiian Kingdom law. It was also agreed upon by the Trustees that Ms. Nai'a-Ulumaimalu will replace Mr. Sai as Trustee of the Trust Company and partner of the Perfect Title Company. Since Mr. Sai was also a Trustee and partner of the two companies, it was decided that Mr. Sai would relinquish his entire interest in both companies to the other Trustee and partner before accepting the Regency appointment. After the other Trustee and partner of the two companies had acquired a complete interest, a redistribution of interest would be conveyed to Ms. Nai'a-Ulumaimalu. Both deeds transferring interests will be signed one day before the date of the actual redistribution, and be duly registered in the Bureau of Conveyances in conformity with section 3 of the 1880 Co-partnership Act. This simultaneous transaction was agreed to in order to maintain the standing of the two partnerships and not have them lapse into sole-proprietorships.

244. On February 27, 1996, Mr. Sai conveyed by deed all of his one-half (1/2) undivided interest in both companies to Mr. Donald A. Lewis, the other sole partner of the Perfect Title Company and the other sole Trustee of the Hawaiian Kingdom Trust Company, but the deed of transfer was not to take effect until February 28, 1996.³⁸⁶ The Arbitral Tribunal is requested to take judicial notice of the 1996 deed of conveyance from David Keanu Sai to Donald A. Lewis. The deed, in part, read as follows:

"That the said party of the first part (David Keanu Sai), for and in consideration of the sum of one dollar to him paid by the party of the second part (Donald A. Lewis)...doth grant, bargain, sell, release, convey and confirm unto the party of the second part...all the undivided one-half interest of the party of the first part...in and to the business of Perfect Title Company...and to the business of the Hawaiian Kingdom Trust Company..."

245. Concurrent and in a simultaneous transaction, on February 27, 1996, Mr. Donald A. Lewis conveyed by deed a one percent (1%) undivided interest in the Hawaiian Kingdom Trust Company and the Perfect Title Company to Ms. Nai'a-Ulumaimalu, but the transfer would not take effect until February 28, 1996.³⁸⁷ The Arbitral Tribunal is requested to take judicial notice of the 1996 deed of conveyance from Donald A. Lewis to Nai'a-Ulumaimalu. Ms. Nai'a-Ulumaimalu, in effect, became a one percent (1%) Trustee of the Hawaiian Kingdom Trust Company and a one percent (1%) partner of the Perfect Title Company with Mr. Lewis, who

retained a ninety-nine percent (99%) interest in both companies. The deed, in part, read as follows:

"That the said party of the first part (Donald A. Lewis), for and in consideration of the sum of one dollar to him paid by the party of the second part (Nai'a-Ulumaimalu)...doth grant, bargain, sell, release, convey and confirm unto the party of the second part...an undivided one percent interest...in and to the business of Perfect Title Company...and to the business of the Hawaiian Kingdom Trust Company..."

246. On March 1, 1996, the Trustees of the Hawaiian Kingdom Trust Company appointed Mr. David Keanu Sai to the Office of Regent, and filed a notice of this appointment with the Bureau of Conveyances.³⁸⁸ The Arbitral Tribunal is requested to take judicial notice of the 1996 notice of appointment of the Regent by the Trustees of the Hawaiian Kingdom Trust Company. Thereafter, the Hawaiian Kingdom Trust Company resumed its role as a general partnership within the meaning of the 1880 Co-partnership Act, and no longer served as a company acting for and on behalf of the Hawaiian Government. The notice of appointment reads as follows:

"Know all men by these presents that the Hawaiian Kingdom Trust Company, a general partnership established and existing under and by virtue of the laws of the Hawaiian Kingdom and registered by 'Deed of General Partnership' as doc. #96-000263, and doing business at 850 Richards St., Suite 507, Honolulu, Island of O'ahu, deriving its authority by certain 'Deeds of Trust,' namely documents #96-019923, #96-006277, #96-024845, #96-000664, #96-026388, #96-014116, #96-014115, #96-026387, #96-004246, #96-028714 has appointed David Keanu Sai to the Office of Regent, intrusted with the vicarious administration of the Hawaiian government during the absence of a monarch, as of the 1st day of March, A.D. 1996, and shall hold the office until such time as the Legislative body shall convene to confirm or amend this appointment. That he be sworn to fidelity in the discharge of his duties, and after said appointment shall furnish with the trust a signed 'letter of resignation' with an open date. Execution of this instrument, by the Trustees, shall take place upon any breach of service or law that stands in contravention to the lawful rights, titles and interests of the beneficiaries of the abovementioned trust being protected under Hawaiian Kingdom law."

247. On April 25, 1996, the principles of the Hawaiian Kingdom Trust Company and the Perfect Title Company drafted a notice stipulating a change of address of both partnerships, and thereafter filed the same in the Bureau of Conveyances in compliance with section 3 of the 1880

Co-partnership Act.³⁸⁹ Section 3 of the 1880 Co-partnership Act provides that:

"Whenever any change shall take place in the constitution of any such firm by the death or withdrawal of any member, or by the addition of any member thereto, or by the dissolution thereof, a statement of such change or dissolution shall also be filed in the said office of the Minister of the Interior, within one month from such change, death or dissolution, as the case may be."³⁹⁰

248. On May 15, 1996, the Trustees of the Hawaiian Kingdom Trust Company conveyed by deed all of its right, title and interest acquired by thirty-eight (38) Deeds of Trust to His Excellency David Keanu Sai, as Acting Regent, and stipulated that the Trust Company would be dissolved in accordance with the provisions of its deed of general partnership on June 30, 1996.³⁹¹ The Arbitral Tribunal is requested to take judicial notice of the 1996 deed from the Hawaiian Kingdom Trust Company to the Regent. The transfer and subsequent dissolution, was made in accordance with section 3 of the 1880 Co-partnership Act and is evidenced in the following deed of conveyance:

"Know all men by these presents that the Hawaiian Kingdom Trust Company, a general partnership established and existing under and by virtue of the laws of the Hawaiian Kingdom and registered by 'Deed of General Partnership' as doc. #96-000263, and doing business at 850 Richards St., Suite 600, Honolulu, Island of O'ahu, hereinafter referred to as the grantor, and David Keanu Sai, appointed Regent of the Hawaiian Kingdom, hereinafter referred to as the grantee and in accordance with the provisions of the trust, in consideration of one dollar to it paid by said grantee, the receipt whereof is hereby acknowledged, does hereby remise, release and forever quitclaim unto the same, its successors and assigns all of its right, title and interest acquired by certain deeds of trust, namely, document no. (listing of 38 Deeds of Trust); To have and to hold with the appurtenances to said grantee, its heirs, successors and assigns forever, under the exclusive authority and jurisdiction of the Hawaiian Kingdom government. It is upon this conveyance that the Hawaiian Kingdom Trust Company shall be dissolved on the 30th day of June, A.D. 1996, in accordance with the provisions of said trust."

C. Quiet Title Action instituted by the Hawaiian Kingdom Trust Company and the Perfect Title Company for the Purpose of Fulfilling the Duties and Obligations of the Hawaiian Kingdom Government.

249. This Memorial and its supporting documentation will show the following: (1) that an unsuccessful revolution took place in 1893; (2) that all attempts, to annex the Hawaiian Islands

to the United States, by treaty, failed; (3) that the United States has unlawfully occupied the territory of the Hawaiian Kingdom since August 13, 1898; (4) that all land transactions after the failed revolution of 1893 were not in accordance with Hawaiian Kingdom law due to the illegal, improper, and unenforceable actions and events, mentioned above, by the revolutionary parties and the United States of America.

250. In light of paragraph 243 above, the Trustees of the Hawaiian Kingdom Trust Company, as a company acting for and on behalf of the absentee Hawaiian Kingdom Government, began the process to repair land titles. On February 3, 1996, the Trustees of the Trust Company passed a resolution that describes this process. The Arbitral Tribunal is requested to take judicial notice of the 1996 resolution of the Hawaiian Kingdom Trust Company. The resolution is as follows:

"Whereas...it has become necessary to the prosperity of our Kingdom and proper physical, mental and moral improvement of our beneficiaries, who retain a vested undivided right in all the lands of the Hawaiian Islands, as native Hawaiian subjects, that the necessary steps be taken for the quieting of all land titles in the Hawaiian Islands. Due to the fact that all patents in fee-simple, having originated from the Hawaiian Kingdom government, were subject to the corporate rights of this body politic, it is by the authority vested in us...that we are authorized to initiate these necessary steps in accordance with Hawaiian law, as if we are the absentee government.

The Trustees having convened, it was

Resolved, 1st. That Perfect Title Company, a general partnership established and existing under and by virtue of the laws of the Hawaiian Kingdom and duly registered in the Bureau of Conveyances as document #95-153346, be chosen to investigate and confirm or reject all claims to land arising after the 10th day of December, A.D. 1845.

2nd. That the same be employed at a compensation to be hereafter determined, derivable solely from the fees and perquisites resulting from the labors of Perfect Title Company.

3rd. That said company be duly sworn to fidelity in the discharge of its duties as such. That it be, and is, hereby authorized to receive claims and evidences for our after consideration, from and after the first publication hereof. That its office is at 850 Richards Street, suite 507, in Honolulu, phone #808-524-4477 and fax #808-524-0771, for the transaction of its duties, and for the facility of claimants. And that it be discharged with keeping all records and proceedings upon claims.

4th. That claims submitted for settlement be taken up and acted upon according to the order of their presentation, and be settled according to order taken in each case by majority in number

of Perfect Title Company. Only property where Native Tenants are claiming under their vested right, will be advanced.

5th. That the stated hours of Perfect Title Company be held Monday through Friday, commencing at 8 a.m. until 4:30 p.m.

6th. That these resolutions be published in the Pacific Business News, the Ka Wai Ola newspapers and any other newspaper that circulates throughout the Hawaiian Islands, concurrently with the notice to claimants required by law, to the end that they may be apprised of these by-laws established by the Hawaiian Kingdom Trust Company." ³⁹²

251. In furtherance of the process to repair land titles, the Trustees of the Hawaiian Kingdom Trust Company adopted the following six principles that were made part of the said resolution:

"1st. The field of Perfect Title Company is 'the investigation and final ascertainment or rejection of all claimants of fee-simple titles, whether Hawaiian subjects or foreigners, to any land-
ed property acquired after December 10th, A.D. 1845.

2nd. The more minutes powers of Perfect Title Company for organization, and to carry out these objects, are specified and conferred; as the power to summon parties and enforce mandates, and to administer oaths. These are auxiliary to the power and objects of the company respecting land titles, which it is chosen to confirm or reject definitely.

3rd. The principles by which the Company are to be governed in deciding certain questions (i.e.) 'testate and intestate interests, tenant in common, lineal and collateral heirship, conditions and services of holding good title, commutation, and native tenant rights,' are to be those laws established by the civil code of the Hawaiian Kingdom.

4th. From the fact that certain unlawful acts were committed since the 16th day of January, A.D. 1893, by Hawaiian subjects and foreigners, which ultimately placed the Hawaiian Kingdom government into 'abeyance,' and also from the fact that the native Hawaiian subjects still retain a vested undivided right in all the lands of the Hawaiian Islands; a few of these native Hawaiian subjects have come forward and granted to the Hawaiian Kingdom Trust Company, by certain 'deeds of trusts,' full power to serve in the place of the Hawaiian Kingdom government for their benefit. It is by the authority that the Hawaiian Kingdom Trust Company designates Perfect Title Company, such power of confirming or rejecting land titles. The Trust Company must infer

that these native Hawaiian subjects intended the utmost liberality to prevail towards the claimants, rather against the pecuniary interests of themselves or the Hawaiian Kingdom government.

5th. Perfect Title Company is only authorized to ascertain a claimant's kind and amount of title, and to award for or against that title, 'wholly or in part.' They are not authorized to grant leases or patents.

6th. Connected with each claim of a fee-simple title, is its abstract of title, without the ascertainment and demarcation of which, it were impossible to make an award, or to quiet the title. The Trust Company is therefore under the necessity of causing each claimant to pay for their own investigation and determination of title at an expense of \$10.00 per year, from the year of their claim back to the 10th day of December, A.D. 1845, payable to Perfect Title Company, before the Trust Company can issue a formal award in confirmation of the claim." ³⁹³

1. Hawaiian Kingdom Trust Company and the Perfect Title Company bind themselves by entering into Covenant of Agreement.

252. On February 6, 1996, in order to consummate the appointment of Perfect Title Company for the investigation of land claims, both the Hawaiian Kingdom Trust Company and the Perfect Title Company entered into a "covenant of agreement." The Arbitral Tribunal is requested to take judicial notice of the 1996 agreement between the Hawaiian Kingdom Trust Company and the Perfect Title Company, which read, in part:

"That the said party of the first part (Hawaiian Kingdom Trust Company) has chosen the party of the second part (Perfect Title Company), to investigate and confirm or reject all claims of fee-simple titles to land in accordance to the resolution passed by the party of the first part on the 3rd day of February, A.D. 1996...That said party of the second part for the considerations hereinafter mentioned do for themselves their executors and administrators covenant and agree to and with the said party of the first part its heirs and assigns that they will investigate all claims to fee-simple titles in accordance with the abovementioned resolution, at a cost of ten dollars (\$10.00) per year to be computed from the date of the claim back to the 10th day of December, A.D. 1845, which shall also include any and all miscellaneous costs incurred by the investigation (i.e.) 'probate records, photocopying, and plane fare,' to be paid by the claimant. That upon these investigations, the party of the first part shall issue awards in confirmation of the investigated claims.

In consideration whereof the said party of the first part doth for itself and its heirs and assigns covenant and agree to and with the said party of the second part and their executors and administrators to allow them the abovementioned consideration. And the said parties hereto bind themselves and their heirs, executors and administrators and assigns to the true and faithful performance of the agreement herein contained. And these presents are upon this condition that in case of breach of the agreement herein, by the party of the second part, the party of the first part may without any notice or demand or process of law terminate this agreement." 394

253. In the February 19th, 1996 issue of the Pacific Business newspaper, the March issue of the Ka Wai Ola o Oha newspaper, and in the March 9th, 1997 issue of the Honolulu Advertiser, the Trustees of the Hawaiian Kingdom Trust Company published the following notice.

"TO ALL CLAIMANTS OF FEE-SIMPLE TITLES
IN THE HAWAIIAN ISLANDS.

Perfect Title Company has been appointed by the Hawaiian Kingdom Trust Company to investigate and confirm or reject all claims of fee-simple titles arising after the 10th day of December, A.D. 1845, in accordance to Hawaiian law. The 'articles of agreement' and the 'principles' adopted in adjudicating each claim is registered as document #96-016046 in the Bureau of Conveyances for public viewing.

The company is prepared to hear the parties or their counsel in defense of their titles to lands, and is prepared to receive in writing the claims and evidences (i.e. TMK#, etc.) of fee-simple title which parties may have to offer at the office of Perfect Title Company. The claimant shall be responsible for the total cost of the investigation.

All persons are required to file with the company by depositing specifications of their fee-simple title(s) to land and to adduce the evidence upon which they claim title to any land in the Hawaiian Islands, before the expiration of two years from this date; or in default of so-doing, they will after that time be forever barred of all right to recover the same in the courts of justice.

Dated this 14th day of February, 1996." 395

2. Hawaiian Kingdom Trust Company provides Remedy for Invalid Claims to Fee-simple Titles.

254. The Trustees of the Hawaiian Kingdom Trust Company offered to claimants of estates in fee-simple the opportunity to submit evidence of their presumed title (i.e. deed of conveyance or heirship rights). Claimants could submit evidence of their fee-simple title at the office of Perfect Title Company between February 14, 1996 and February 14, 1998. If the evidence did not support the claim to fee-simple title, the Trustees of the Hawaiian Kingdom Trust Company also offered rejected claimants the opportunity to remedy their claims in accordance with Hawaiian Kingdom law. The Trustees of the Trust Company provided the following explanation of the benefits that would result from the above process:

"1st. They will quiet the title, hitherto 'clouded,' and leave the owner, whether in fee or for years, to the free agency and independent proprietorship of his lands confirmed, subject to rights of native tenants. So long as a cloud on title continues to remain on all lands of the Hawaiian Islands, an encumbrance is thus placed upon the title which prevents real sales, or transfers from party to party, and, by parity of reasoning, to real mortgages also. To quiet the title, and disembarass the owner or temporary possessor from this clog upon his free agency, is beneficial to that proprietor in the highest degree, and also to the nation; for it not only sets apart definitely what belongs to the claimant, but, untying his hands enables him to use his property more freely, by mortgaging it for commercial objects, and by building upon it, with the definite prospect that it will descend to his heirs. This will tend more rapidly in the establishment of the Hawaiian Kingdom 'government' to maintain this permanency, without which chaos and uncertainty will no doubt re-occur.

2nd. The patent or leases issued by the Hawaiian Kingdom Trust Company, are for certain fixed and ascertained extents or dimensions of land. These titles will be offered to those whose claims were rejected. This will allow a remedy to be offered to those entitled to the same." ³⁹⁶

255. The trustees of the Hawaiian Kingdom Trust Company continued to elaborate on the trust company's intent to remedy rejected claims by stating that the:

"...foregoing prefatory remarks and explanations necessary to a clear understanding of the awards upon which they are about to enter, and indispensable to which awards, it is necessary to lay down the following general principles, to which they have arrived by critical study of the civil code, and careful examination of numerous deeds and abstracts of title.

The native Hawaiian subjects who retain their undivided 'vested' right in the lands, need not be required to present their native tenant claims for investigation, but are required to present the same if they are in current possession of a fee-simple title. These inherent vested rights are protected by the constitution and laws of the Hawaiian Kingdom, and can never be divested by third parties. Native proprietors and foreign residents are thus put upon the same footing in regard to their titles, in consistency with Article VIII of the Treaty concluded with the United States...Article II of the treaty concluded with Great Britain...Article VIII of the treaty concluded with Sweden and Norway...Article IV of the treaty concluded with France...Article IV of the treaty concluded with Belgium...Article II of the treaty concluded with the Netherlands...Article III of the treaty concluded with the Swiss Confederation...Article IV of the treaty concluded with Italy...Article II of the treaty concluded with Russia...Article IV of the treaty concluded with Spain...Article II of the treaty concluded with Japan...and Article II of the treaty concluded with Germany...

1st. In all cases where the land obtained from any grantor, Perfect Title Company will strictly inquire into the right of the grantor to make such disposition of the land; and will confirm or reject, according to the right of the such grantor, regardless of consideration, occupancy or after improvements.

2nd. In all cases where the land has been legally and validly obtained from the lawful proprietor, by written grant or deed, and that the current claimant is in conformity with all lawful conditions attached to said grantor deed, Perfect Title Company will construe the claimant's rights by the wording of the instrument.

3rd. In all cases where a claimant's title has been rejected, the Hawaiian Kingdom Trust Company will offer, as a remedy, the opportunity to purchase the previously claimed property by agreement of lease or a fee-simple grant at market value. The Hawaiian Kingdom Trust Company, in asserting this principle, does not mean to assume that the Hawaiian government be the only landlord, but will strictly adhere to the landlord whose name and estate is named in the Great Mahele of 1848, otherwise known as the 'division of lands' among the landlords, and who obtained lawful fee-simple titles by Royal Patents. Where the land so claimed be situated in the estate of the Government, Hawaiian Kingdom Trust Company shall issue a title in this name, and where it be situated in the estate of a Konohiki (landlord), title shall be issued by the appropriate name, whether it be under the name of the 'crown land

commissioners' or a specifically named landlord.

4th. The title of all lands, whether rightfully or wrongfully claimed, either by natives or foreigners, in the entire kingdom, which shall not have been presented to Perfect Title Company for adjudication, confirmation or rejection, on or before the 14th day of February, 1998, are declared to belong to the Hawaiian Kingdom government. Parties who thus neglect to present their titles, do so in defiance of the law, and cannot complain of the effect of their own disobedience." ³⁹⁷

3. Acting Regent Assumes Role of the Hawaiian Kingdom Trust Company under the Covenant of Agreement.

256. As mentioned in paragraphs 237 to 241 above, on February 27, 1996, the Trustees of the Hawaiian Kingdom Trust Company instituted the process of appointing an *Acting* Regent to serve in their place. As *Acting* Regent, His Excellency David Keanu Sai, is capable of repairing land titles that originally derived from the Hawaiian Kingdom Government since 1845, and also became the successor to the Hawaiian Kingdom Trust Company in the "covenant of agreement" with the Perfect Title Company. Thus, the *Acting* Regent is empowered to remedy rejected claims that have been properly investigated by the Perfect Title Company in accordance with the said "covenant of agreement."

257. As *Acting* Regent, His Excellency David Keanu Sai issued a Proclamation confirming the quieting of all land titles in the Hawaiian Islands. The Arbitral Tribunal is requested to take judicial notice of the March 1, 1996 Proclamation by the Regent, that states, in part:

"Whereas the aforementioned companies (Hawaiian Kingdom Trust Company and Perfect Title Company) have mutually entered into 'Articles of Agreement,' duly registered as document no. 96-016046 in the Bureau of Conveyances, in the adjudication of each claim to fee-simple title,

Now, therefore, I David Keanu Sai, Regent of the Hawaiian Kingdom, by virtue of the authority in me vested, do hereby confirm this great act, with the following exception, to wit;

1st. Where the Hawaiian Kingdom Trust Company would issue patents in fee-simple or enter into lease agreements for individuals who qualify for the same, this shall now be done by the Office of the Regent, or in such person as will be lawfully delegated by the same.

2nd. Upon the completion of all investigative reports, the Hawaiian Kingdom Trust Company shall enter into the Bureau of Conveyances a notice of determination, for public record." ³⁹⁸

4. Perfect Title Company's Land Title Investigations Cause Firestorm in the Real Estate Industry.

258. Perfect Title Company maintained a staff of thirteen (13) employees, which comprised of title abstractors and secretarial services. On February 23, 1996 at 10:59 a.m., Mr. Colin Malani filed the first claim to a fee-simple title. This first title investigation was assigned claim no. 1.³⁹⁹ The final claim for investigation was submitted by Ms. Jan Lei Pa'alua on February 14, 1998 at 9:20 p.m., and assigned claim no. 611.⁴⁰⁰

259. Perfect Title Company's investigations and findings created a firestorm throughout the real estate industry, that included Hawai'i escrow companies and title insurance firms in the United States. As a result of Perfect Title Company's investigations on certain parcels of landed property, the following occurred: (1) promissory notes formerly secured by mortgage agreements were rendered unsecured because the land title under the mortgage agreement was invalid; (2) borrowers, who had purchased title insurance policies for the protection of the lenders should there be anything wrong with the title, initiated insurance claims against the title insurance firms to pay to the lenders the balance owed on the promissory notes; (3) Hawai'i land title companies were not able to refute the abstracts of title done by the Perfect Title Company, which were from the public records; and (4) these title companies were exposed and liable for doing incomplete title searches, which were grounds to initiate the title insurance policies issued by underwriters from title insurance firms in the United States. As a result of the above, Title Guaranty of Hawai'i, the largest Hawai'i title company, instituted a propaganda campaign against the Perfect Title Company aimed at slandering the work and reputations of those connected with the Perfect Title Company. Ultimately, this campaign resulted in the unlawful arrest and subsequent criminal indictments against the principles of the Perfect Title Company. This Memorial has attached newspaper accounts that evidences these events.⁴⁰¹

5. Occupational Government Illegally Raided the Offices of the Acting Regent and the Perfect Title Company.

260. On September 5, 1997, the Perfect Title Company offices were unlawfully raided by the occupying government, through the Honolulu Police Department, Criminal Investigation Division. Mr. Donald A. Lewis, Perfect Title Company's President, was arrested along with his secretary, Mrs. Christine Chew.⁴⁰² Hawaiian Kingdom *Acting* Regent, His Excellency was also arrested during this unlawful raid. All three were subsequently released with an investigation pending. During the subsequent investigation, the occupational government's State of Hawai'i Attorney General's officer secured a so-called grand jury indictments of burglary and attempted theft of real property against against His Excellency David Keanu Sai, Mr. Lewis and Mr. and Mrs. Michael Simafranca, clients of Perfect Title Company.⁴⁰³ His Excellency David Keanu Sai and Mr. Lewis posted a \$5000.00 bail each.⁴⁰⁴ Mr. and Mrs. Simafranca were arrested as well and posted bail.

261. The occupational government alleged that the fee-simple title held by Mr. and Mrs. Simafranca was foreclosed and sold at auction to a realtor who subsequently sold the property to

Mr. and Mrs. Craig Uyehara. Mr. Uyehara at the time was employed as an attorney for the occupational government in the Department of Commerce and Consumer Affairs. Prior to the transference of the property at auction, Mr. and Mrs. Simafranca had filed a claim with the Perfect Title Company to investigate the validity of their fee-simple title. Mr. and Mrs. Simafranca were assigned claim no. 64. ⁴⁰⁵ Perfect Title Company had concluded, by investigation, that the Simafranca's had no claim to a fee-simple title, because the fee-simple interest remained vested in Mr. James Austin, who died testate in 1894, and whose estate remained subject to probate proceedings of a competent tribunal under laws of the Hawaiian Kingdom. ⁴⁰⁶ Mr. Austin's estate was unlawfully probated by the *self-proclaimed* Republic of Hawai'i. As a result of the investigation, the Simafranca's proceeded to remedy their claim to a fee-simple title by securing a *warranty deed* and a *warranty of seisin* from the *Acting* Regent, ⁴⁰⁷ and subsequently notified their title insurance company, by and through Title Guaranty of Hawai'i, to initiate the title insurance policy they had purchased to protect the lender. The Simafranca's letters went unanswered by Title Guaranty of Hawai'i, and the so-called foreclosure and auction continued.

262. Mr. and Mrs. Simafranca did not live on the property that was investigated by the Perfect Title Company and subsequently remedied, but had been renting the property to a tenant. Their tenant continued to reside at the property throughout the so-called foreclosure process and subsequent sale. After the tenant moved out of the home, Mr. and Mrs. Simafranca traveled to their home to change the lock on the door and were confronted by Mr. and Mrs. Uyehara. A police officer was called to the scene and advised the Simafrancas and the Uyeharas to consult legal advise because this is a land title dispute. ⁴⁰⁸ Nothing arose out of this situation until the occupational government's State of Hawai'i Attorney General's office moved for indictments a year later.

263. During arraignment, His Excellency David Keanu Sai and Mr. Donald Lewis refused to enter a plea in a court that possessed no sovereign authority in the Hawaiian Kingdom. A plea of "not guilty" was entered for them by the presiding Justice. His Excellency entered a protest to the court. The Arbitral Tribunal is requested to take judicial notice of His Excellency's protest, which stated, in part:

"As a native subject of the Hawaiian Kingdom, I do hereby solemnly protest against any and all acts done against myself by certain citizens of the United States claiming to have authority under the guise of a United States Government "State", within the dominion and sovereignty of the Hawaiian Islands; a claim which stands in violation of treaties entered between our two nations, international law and my civil rights.

The court which issued the warrant for my arrest, no. 97-3082, has no legal basis and is not a competent tribunal within the meaning of Article VIII, Treaty of 1850...Now to avoid any harm coming to my family, friends and fellow countrymen of the Hawaiian Kingdom by the unlawful serving of the abovementioned

tioned warrant, I do this under protest and impelled by said threat of harm, yield my person to the Government of the purported State of Hawai'i..." 409

264. During the pre-trial hearings, occupational Judge Sandra Simms continually denied defense counsels' motions to dismiss for lack of jurisdiction. Trial began on February 17, 1999. After the occupying government, through the State of Hawai'i Attorney General's Office, presented its so-called case, all parties moved for immediate dismissal. Mr. Lewis was acquitted, but His Excellency David Keanu Sai and Mr. and Mrs. Simafranca were denied acquittal. As the trial continued, the defense argued that the events surrounding the unsuccessful revolution of 1893, the self-proclaimed Republic of Hawai'i, the unsuccessful treaty of annexation attempts, and the subsequent occupation of the Hawaiian Kingdom by the United States all contributed to affect the fee-simple title claimed by Mr. and Mrs. Uyehara. A twelve person jury made up of American citizens found the Hawaiian subject defendants guilty on all counts. All three Hawaiian subjects then faced a maximum of ten (10) years imprisonment when sentenced on March 7, 2000. 410

265. On February 15, 2000, before the sentencing, His Excellency did file a protest against Judge Sandra Simms and Deputy Attorney General Dwight Nadamoto, both officers of the occupational government for violation of the rights of Hawaiian subjects within the territorial jurisdiction of the Hawaiian Kingdom. 411 The Arbitral Tribunal is requested to take judicial notice of the His Excellency's second protest. A copy of the protest was made a part of the trial docket and also registered with the International Bureau of the Permanent Court of Arbitration and with John Crook, legal adviser to the United States State Department in Washington, D.C. 412 Here follows the protest:

"In the name of the Hawaiian Kingdom and its Government, which the undersigned has the honor to represent, and in order to explain clearly for the information of all concerned; is issued, a Protest.

Whereas, there was no annexation of our country, the Hawaiian Kingdom, or any of its territory by the United States of America as provided by international law and the acquisition of territories by means of discovery, accretion, cession, conquest, or prescription; and

Whereas, our sovereignty as an Independent nation State has remained intact since its recognition by the Queen of England and the King of France on November 28, 1843, to the present, notwithstanding the fact that the Hawaiian government (body politic), being separate and distinct from the Nation State, lapsed into abeyance for over 100 years due to circumstances associated with the unlawful incursion of our territory by the United States of America; and

Whereas, the unlawful incursion into Hawaiian territory by the United States in 1898, absent a treaty of cession, occurred without the consent of the nationals of the Hawaiian Kingdom nor its Government; and

Whereas, this incursion occurred in the territory of a Neutral State when the United States of America, as a Belligerent State, was already at war with Spain, and used our territory as a staging ground for conflicts in the Spanish territories of the Philippines and Guam, and divers world conflicts to date;

Whereas, during the occupation of the Hawaiian Islands Article 43 of the Hague Regulations imposes the duty on the occupant to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country," and implies to the extent to which the law of the land, and particularly its private law, is not abrogated, but remains in force; and

Whereas, the basic rule of wartime occupations stipulates that sovereignty of the territory does not pass to the occupying power, therefore the rights of occupancy cannot be co-extensive with those of sovereignty; and

Whereas, according to international law it is immaterial whether the government established over an occupied territory be called a military or civil government, because its character is the same and the source of its authority is the same, which is a government imposed by force, and the legality of its acts is determined by the laws of war; and

Whereas, it would then be within the rights of the nationals of the occupied nation to re-establish their government (in a temporary manner subject to the approval of the aggregate) within the confines of Hawaiian Kingdom domestic law and begin the exercising of those rights and the corresponding obligations and duties existing between the government and its nationals under the laws of occupation; and

Whereas, the criminal proceedings of attempted theft of real property that were instituted against the undersigned, Mr. Donald A. Lewis, Mr. Michael Simafranca, and Mrs. Carol Simafranca under the laws of the United States of America, via the State of Hawai'i, have no basis in fact or law, but rather is a political act by members of the government of the State of Hawai'i, and said proceedings stand in gross violation of Article 43 of the Hague Convention IV of 1907, as well as Article VIII of the Hawaiian-American Treaty of 1849; and

Whereas, on November 8, 1999, arbitral proceedings were instituted by a Hawaiian national, Mr. Lance Paul Larsen, against

the Government of the Hawaiian Kingdom at the Permanent Court of Arbitration at The Hague, Netherlands; and

Whereas, the Arbitral Tribunal is asked to determine, on the basis of the Hague Conventions IV and V of 18 October 1907, and the rules and principles of international law, whether the rights of the Claimant under international law as a Hawaiian subject are being violated, and if so, does he have any redress against the Respondent Government of the Hawaiian Kingdom; and

Whereas, the undersigned is presently serving as Agent for the Hawaiian Kingdom during arbitral proceedings and is registered with the Permanent Court of Arbitration together with 1st Deputy Agent Peter Umialiloa Sai, 2nd Deputy Agent Gary Victor Dubin, Esquire, and 3rd Deputy Agent Kau'i P. Goodhue; and

Whereas, if the decision of the said Arbitral Tribunal shall determine that the Hawaiian Islands are presently being occupied by the United States of America, and the laws of occupation are instituted pursuant to the Hague Conventions IV and V of 1907, it will profoundly affect the present criminal proceedings and the persons responsible for the same.

Now, therefore, be it known, that I solemnly Protest against every act and measure in the premises; and do Declare that from and after the date of said instituting of criminal proceedings until the decision of said Arbitral Tribunal, I hold Judge Sandra Simms and Deputy Attorney General Dwight Nadamoto, both being American nationals, answerable for any and every act, by which the undersigned, Mr. Donald A. Lewis, Mr. Michael Simafranca, and Mrs. Carol Simafranca, as Hawaiian subjects and residents of the Hawaiian Islands, shall be incarcerated in violation of their just rights and privileges secured under both Hawaiian Kingdom law and international law, or who may suffer inconvenience or losses, or be forced to exact monies to a government not their own.

And I do hereby most solemnly Protest against the said Judge Sandra Simms and Deputy Attorney General Dwight Nadamoto, American nationals aforesaid, and all others whom it may concern, holding them responsible for their violation of the Hague Conventions IV and V, that was signed by their government, the United States of America, at The Hague October, 18, 1907, and duly ratified and deposited with the Netherlands Government November 27, 1909, should the said International Tribunal decide that under international law the Hawaiian Islands are presently being occupied by the United States of America pursuant to the said Hague Conventions IV and V, 1907.

Done at Honolulu, O'ahu, Hawaiian Islands, at the office

of the Minister of Interior for the Government of the Hawaiian Kingdom, this 15th day of February, 2000."

266. At the sentencing hearing His Excellency David Keanu Sai was sentenced to five (5) years probation on one count of attempted theft of real property, and Mr. and Mrs. Simafranca were sentenced to five (5) years probation each for burglary and an additional five (5) years each for attempted theft of real property. Judge Sandra Simms was very apologetic during the sentencing and made the following remark:

"Sometimes when there's change, (when) there's revolution, it's painful." ⁴¹³

D. Further Actions Taken by the Acting Regency to re-assert State Responsibility and Obligations.

267. On February 28, 1997, a Proclamation of the *Acting* Regent of the Hawaiian Kingdom ⁴¹⁴ was printed in the March 9, 1997 issue of the Honolulu Sunday Advertiser. The Arbitral Tribunal is requested to take judicial notice of the 1997 Proclamation, which stated, in part, that the:

"...Hawaiian Monarchical system of Government is hereby re-established," and the "...Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code are in full force. All Hawaiian Laws and Constitutional principles not consistent herewith are void and without effect."

268. On February 13, 1998, the *Acting* Regent, His Excellency David Keanu Sai, had made the following Proclamation of National Voter Registration, ⁴¹⁵ which was printed in March 1998 issue of the Hawaiian News. The Arbitral Tribunal is requested to take judicial notice of the 1998 Proclamation, which stated, in part, that:

"...before the elections shall take place to reconvene the House of Representatives, a registration of voters within the Realm must first take place beginning on the 14th day of February, A.D. 1998, and extending to a time to be hereafter determined, so that subjects of the Kingdom may be apprised of their constitutional rights and voter qualifications; and that all back taxes to be paid by qualified voters, in accordance with law, shall be computed at a rate of one dollar (\$1.00) for each and every year the qualified voter and his predecessors have been absent from the Constitutional Government of the Hawaiian Kingdom since the 17th day of January, A.D. 1893, to the date of the qualified voter's registration." ⁴¹⁶

269. On March 12, 1997, at a public meeting held at the Queen Lili'uokalani Children Center at Halona, on the island of O'ahu, it was brought to the attention of Regent's office, by a private female subject of the Kingdom, that there is no provision in the law that bars female subjects from voting in the election for Representatives of the Kingdom. She asserted that although the "voter qualification" statute specifically relates to the male gender, §15, chapter III, title I, provides, in part, that "...every word importing the masculine gender only, may extend to and include females as well as males." 417

270. Based upon the dubious nature of the election statute, in its relation toward both genders, the Hawaiian Kingdom, by its *Acting* Regency, issued a legal opinion. The Arbitral Tribunal is requested to take judicial notice of the 1997 legal opinion, which concluded that:

"The issue here is not a question of whether Hawaiian women can or cannot participate in the election of Representatives or serving as a candidate for the House of Representatives, but whether there is any provision in the election laws that preclude Hawaiian women from participating. If no such provision exists, as the case be, then Hawaiian women do have a right to participate in the electoral process under their *political right*, and that the male gender referred to in the "qualifications of electors" does not preclude the female gender, *provided* the female is a subject of the Kingdom, of the age of 20 and is neither an idiot, an insane person, or a convicted felon." 418

1. Petition for Writ of Mandamus to the United States Supreme Court.

271. In order to provide the United States government an opportunity to address the occupation of the Hawaiian Kingdom and come to a resolution, His Excellency David Keanu Sai filed a Petition for Writ of Mandamus in the United States Supreme Court, on November 17, 1997, pursuant to the Supreme Court's "original jurisdiction" and not its "appellate jurisdiction." 419 The Arbitral Tribunal is requested to take judicial notice of the 1997 Petition for Writ of Mandamus. Francis Anthony Boyle, Professor of International Law at the University of Illinois, was specifically retained as legal adviser to the Hawaiian Kingdom for the U.S. Supreme Court proceedings.

272. On December 1, 1997, the Clerk of the Supreme Court, William K. Suter, through Francis J. Lorson, notified His Excellency David Keanu Sai that his:

"...purported petition for a writ of mandamus was received November 24, 1997, and must be returned since there is no showing how this Writ would be in aid of the Court's appellate jurisdiction as required by Rule 20.1 of the Rules of the Court." He also went on to state that if "...you are seeking to invoke the original

jurisdiction on this Court under Article III of the Constitution, this Court has no such jurisdiction since Hawaii is a state of the United States." 420

273. In response to the first part of the Supreme Court Clerk's letter relating to the Court's appellate jurisdiction, His Excellency David Keanu Sai, on December 8, 1997, cited that a:

"Mandamus is an original action, as distinguished from an appeal...Its purpose is to enforce rights already established, rather than to establish or declare the rights of the parties." See §4, 52 Am Jur 2d, p. 333. "The Supreme Court has no authority to issue mandamus in cases over which it has neither original nor appellate jurisdiction...And as original jurisdiction of the court can be only that conferred by the Constitution..." See §28, Id., p. 353. "...the Constitution vests original jurisdiction in the United States Supreme Court of all cases affecting ambassadors and other public ministers, and consuls...So it may assume original jurisdiction to issue mandamus in cases...where one or more of the parties is a diplomatic representative of some country." See §29, Id., p. 354. 421

274. His Excellency David Keanu Sai also cited that paragraph III of the Petition for Writ Mandamus, stated that the Court has original jurisdiction of all suits brought by ambassadors, and makes no reference to an appeal from a lower court that would "aid" this Court in its appellate or supervisory jurisdiction as required by rule 20.1.

275. His Excellency David Keanu Sai responded to the second part of the Clerk's letter relating to the Court's Original jurisdiction by stating that:

"...it is not within the scope of authority of a clerk to arbitrarily rule on the face of any petition, nor upon the competency of any petitioner...the duty and function of a clerk is limited to the review and filing of court documents in accordance with the rules set forth by this Honorable Court, and not to judge the content of an action or question the integrity of a party or parties to an action. This being reserved to the Justice and/or Respondent." 422

276. It is the contention of the Hawaiian Government tht the Clerk's Office had decided the case against His Excellency David Keanu Sai, who represented the Hawaiian Kingdom and its subjects, before the facts could be adjudicated. Even if Hawai'i was a State of the United States, that still does not resolve Petitioner's claims on behalf of the Hawaiian Kingdom and its subjects. His Excellency re-sent the Petition for Writ of Mandamus attached to his response to the Clerk of the Supreme Court.

277. On December 12, 1997, His Excellency David Keanu Sai did receive a correspondence from the Clerk, William K. Suter, through Ruth Jones, that stated,

"The petition for a writ of mandamus in the above entitled case was filed November 24, 1997 and placed on the docket December 11, 1997 as no. 97-969." ⁴²³

278. No explanation for the change was given. Forms were enclosed for notifying opposing counsel that the case was docketed, and the forms were in compliance with Rule 20.3(b) for Writs of Prohibition and Mandamus under the appeals process, and not under Rule 17.2 for Extraordinary Writs under an original action. These forms included a "Notice" of the case being docketed and setting the due date for a brief in opposition as January 10, 1998, in accordance with Rule 20.1(b) of the Rules of the Supreme Court, and a blank waiver form for the Respondent or his counsel. Rule 20.3(a) provides that a:

"...copy of the judgment with respect to which the writ is sought, including any related opinion, shall be appended to the petition together with any other document essential to understanding the petition."

279. His Excellency David Keanu Sai could not come under this rule because there was no judgment by a lower court with respect to which the writ was sought. Again, despite the best efforts of His Excellency, the Clerk's Office repeatedly, erroneously and obstinately misconstrued and misrepresented his request for Writ of Mandamus. These actions have caused grave injury and damage to the claims of the Hawaiian Kingdom and its subjects. When the filed copies of the Petition for Writ of Mandamus were sent to His Excellency, the Summons was not signed nor dated by the Clerk or Deputy Clerk of the Supreme Court. Such signatures and dates are needed in order to serve the Respondent United States of America of the action in accordance with the Federal Rules of Civil Procedure. Obviously, the Clerk's Office was not following the Federal Rules of Civil Procedure. The Clerk's Office failed and refused to apply the Federal Rules of Civil Procedure.

280. On January 9, 1998, the President of the United States, through the Solicitor General, Seth P. Waxman, filed in the U.S. Supreme Court, a Waiver, whereby the Government:

"...waives its right to file a response to the petition in this case, unless requested to do so by the court." ⁴²⁴

281. On January 20, 1998, an Amendment to the Petition for Writ of Mandamus and Appendix (to further explain the authority His Excellency David Keanu Sai asserts as appointed Regent, *pro tempore*, and as Ambassador), was filed in accordance with Federal Rules of Civil Procedure and amended the relief. The Arbitral Tribunal is requested to take judicial notice of the 1998 amendment of the Petition for Writ of Mandamus, which read as follows:

"That pursuant to the rules set forth in the United States Supreme Court for Extraordinary Writs under Title 28, section 1651, United States Code, and in compliance with the Treaty of Friendship, Commerce and Navigation, 1850, and the Convention of 1887, between the Hawaiian Kingdom and the United States of America, the PETITIONER requests the Court to mandate the President of the United States, namely, the Honorable William Jefferson Clinton, to;

1. Acknowledge the treaty obligations of the United States of America as mandated under Article VI, §2 of the United States Constitution.

2. Immediately execute the laws of the Hawaiian Kingdom, being the Civil Code of the Hawaiian Islands as noted in the Compiled Laws of 1884, together with the session laws of 1884 and 1886 and the Hawaiian Penal Code, for the control and management of public affairs and the protection of the public peace until terms of transition and complete withdrawal have been negotiated and agreed upon.

3. Require all officers under the government of the State of Hawai'i and its municipal corporations to sign oaths of allegiance to the Government of the Hawaiian Kingdom in accordance with §430 and §431 of the Civil Code of the Hawaiian Kingdom, Compiled Laws, 1884, p. 105, and thereafter continue to exercise their functions and perform the duties of their respective offices in compliance with the Civil and Penal Codes of the Hawaiian Kingdom.

4. That this Court order the RESPONDENT to guarantee that all Hawaiian laws and Constitutional principles of the Hawaiian Kingdom shall be in force until amended by the Legislative Council to be hereafter convened under and by virtue of the laws of the Hawaiian Kingdom, and in particular, the Constitution of 1864.

5. That this Court order the RESPONDENT to dispatch an Envoy Plenipotentiary to Honolulu, Island of O'ahu, to establish negotiations with the PETITIONER and to assist in the ongoing transition and reinstatement of the constitutional Government in accordance with "established" laws of the Hawaiian Kingdom and in compliance with the treaties that exist between the two nations.

6. That this Court issue a Writ of Prohibition to all legislative, executive and judicial officers of the United States of America within the territorial jurisdiction of the Hawaiian Kingdom, including all legislative, executive and judicial Officers of the State of Hawai'i and all of its municipal corporations, ordering them all to cease and desist from any of their activities, until

the terms of transition and reinstatement of the constitutional Government of the Hawaiian Kingdom, aforementioned, have been negotiated and agreed upon.

7. That this Court award monetary reparations to the PETITIONER for all the harm that has been inflicted upon the Hawaiian Kingdom and its subjects by the United States government, aforesaid, to be held in trust by the PETITIONER for the Hawaiian Kingdom and its subjects, until such time as the Government of the Hawaiian Kingdom is completely re-established.

8. That this Court grant such other and further relief as is just and equitable." ⁴²⁵

282. The January 20, 1998 amended Petition for Writ of Mandamus was returned by the Clerk. In a letter sent to the His Excellency David Keanu Sai, the Clerk, through Francis Lorson, stated that the:

"...amendment to the above-entitled petition for a writ of mandamus and appendix thereto...must be returned since there is no provision within the Rules of the Court to amend a petition for a writ of mandamus." ⁴²⁶

283. Once again, the Clerk erroneously followed the rules exercising appellate jurisdiction. The Clerk's errors constituted a grave detriment to the claims for the Hawaiian Kingdom and its subjects. Rule 15(a) of the Federal Rules of Civil Procedure, via Rule 17.2 of the Rules of the Supreme Court, states that a

"...party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of Court or by written consent of the adverse party; and leave shall be given when justice so requires." ⁴²⁷

284. In light of Rule 17.2, the United States government's waiver did not constitute a responsive pleading.

285. On February 17, 1998, His Excellency David Keanu Sai filed a Motion for Leave to file First Amended Petition for Writ of Mandamus, and attached the Amended Petition as an exhibit, in accordance with Rule 17.2 of the Rules of the Supreme Court and was based upon Rule 15(a), Federal Rules of Civil Procedure. He then resubmitted the first Amended Petition for the second

time. ⁴²⁸

286. On March 12, 1998, the Clerk of the Supreme Court, through Francis Lorson, notified the Petitioner that the

"...motion for leave to amend the petition for a writ of mandamus...has been brought to the attention of the Court and will be treated as a supplement to the mandamus petition." ⁴²⁹

287. The Clerk should have treated the motion as an Amendment consistent with the Federal Rules of Civil Procedure and not as a Supplement. The fact that the Clerk refused to do so violated the Supreme Court Rules and inflicted grave, irreparable and manifest injury upon the claims of the Hawaiian Kingdom and its subjects within the courts of the United States.

288. His Excellency David Keanu Sai was notified by the Clerk of the Supreme Court that the Petition had gone before the U.S. Supreme Court on the weekends of February 20, 1998, and February 27, 1998, but that no decision was rendered.

289. On March 20, 1998, His Excellency David Keanu Sai was notified by the Clerk that the Petition would go before the U.S. Supreme Court for a third time. After this third conference, on March 23, 1998, a "one line" Order was issued by this Honorable Court denying His Excellency's request for a Writ of Mandamus, without explanation. ⁴³⁰

290. On March 26, 1998, Christine B. Chew, His Excellency David Keanu Sai's secretary, spoke with Francis Lorson, Deputy Clerk, who confirmed that the Petition for Writ of Mandamus was docketed as an extraordinary writ in aid of the Court's appellate jurisdiction under Rule 20.1. ⁴³¹ This was done even though His Excellency entered his Petition for Writ of Mandamus under Rule 17 of the Rules of the Supreme Court for procedures in an original action.

291. On April 2, 1998, His Excellency David Keanu Sai filed a Petition for Rehearing. The Arbitral Tribunal is requested to take judicial notice of the 1998 Petition for Rehearing, that stated the Hawaiian Kingdom:

"...is entitled to a reconsideration due to the numerous, repeated, obstinate and willful errors of the Clerk of the Supreme Court, and not due to any error of the Petitioner, on behalf of the Hawaiian Kingdom and its Subjects, in presenting these claims in accordance with the rules set forth by this Honorable Court for original actions. The Clerk's Office has attempted to usurp the role of this Honorable Court by illegally and summarily deciding our claims against us from the very outset of these original jurisdiction proceedings. The only manner in which this illegal usurpation can be remedied is for the Honorable Court to grant Petitioner a full

Hearing by the Court so that he might present the claims of the Hawaiian Kingdom and its Subjects arising under the law of nations including treaties to which the United States government is still a party." 432

292. The Petition for Rehearing was denied, by the United States Supreme Court, without explanation on May 18, 1998. 433

2. Complaint for Treaty Violations by the United States filed in the United States Supreme Court.

293. On August 6, 1998, a Motion for Leave to file a Bill of Complaint, Complaint, Memorandum in Support and Appendix thereto were hand delivered to the Clerk of the United States Supreme Court. 434 The Arbitral Tribunal is requested to take judicial notice of this 1998 Complaint. His Excellency David Keanu Sai gave instructions that these documents were to be filed under the Court's original jurisdiction on the basis of Article III, §2 of the United States Constitution, and 28 U.S.C. §1251(b)(1). These documents identified the United States of America and William Jefferson Clinton, President of the United States, as Defendants, in a *second* attempt to enforce the rights of the Hawaiian Kingdom and its subjects under the treaties entered between the Hawaiian Kingdom and the United States, the law of nations, and customary international law.

294. On August 12, 1998, the Clerk of the Supreme Court, William K. Suter, through Francis J. Lorson, notified His Excellency David Keanu Sai by correspondence that the:

"...motion for leave to file a bill of complaint and appendix were received August 6, 1998, and must be returned." 435

295. The Clerk cited that His Excellency David Keanu Sai was not an attorney admitted to the Bar of the United States Supreme Court, and therefore he could not represent anyone other than himself. The Clerk further stated that the Supreme Court does not have original jurisdiction over a complaint filed by the Hawaiian Kingdom and that His Excellency is not an Ambassador. Pursuant to the rules set forth by Supreme Court, a Clerk does not have the authority to question the face of the complaint nor the moving party. This authority is reserved to the Defendants and/or the Justices of the U.S. Supreme Court. Furthermore, in International courts and proceedings it is common for the Ambassador to represent the State. Therefore, as its Ambassador, His Excellency did have the right to represent the Hawaiian Kingdom.

296. On August 27, 1998, His Excellency David Keanu Sai spoke on the telephone to Francis J. Lorson, Deputy Clerk, in an attempt to understand why the Complaint was returned. In response to the Clerk's letter of correspondence dated August 12, 1998, His Excellency asserted that the statements alleged are not for the Clerk of the Court to decide, but rather for the Solicitor General to address in a brief in opposition. The Clerk answered that he did have the authority to

deny the Complaint. His Excellency then stated:

"...tell me which rule of the Supreme Court gives the authority for the Clerk to determine the content of the case aside from its specifications of size and dimensions." ⁴³⁶

297. The Clerk responded citing that Rule 1.1 provides such authority to which His Excellency David Keanu Sai responded that:

"...Rule 1.1 mentions nothing about content. The content is reserved for the Defendant to answer and not the Clerk." ⁴³⁷

298. In conclusion, Francis J. Lorson stated that:

"...if you are questioning my authority you can file a Motion to Direct the Clerk of the Court to file the Motion for leave to File a Bill of Complaint. The Justices will look at the Motion and they'll make a decision." ⁴³⁸

299. Francis J. Lorson also told His Excellency David Keanu Sai that if he were to place the Complaint on the docket it would open the floodgate for all types of complaints, that Mr. Larsen implied would come from the Native American nations. The legal rights of Native Hawaiians and the Hawaiian Kingdom have never been adjudicated by the Court. Under the U.S. Constitution and federal law Native Hawaiians are not treated in the same respect as Native Americans. Therefore, United States court decisions over Native Americans cannot be construed to be applicable to Native Hawaiians and the Hawaiian Kingdom. This was a case of first impression.

300. Thereafter, His Excellency David Keanu Sai requested Professor Francis A. Boyle, as the Hawaiian Kingdom's legal adviser to these proceedings, to speak with Francis J. Lorson, Deputy Clerk. Professor Boyle assured Mr. Larson that the complaint and that His Excellency's capacity as Regent of the Hawaiian Kingdom and Ambassador were filed in good faith. Therefore, Professor Boyle asserted that the case should be placed on the docket under the Court's original jurisdiction. Professor Boyle is an Attorney-at-Law in good standing before the Bar of the United States Supreme Court and has practiced law before the International Court of Justice in The Hague. When Professor Boyle expressed his opinion that both the Rules and the precedents were sufficiently flexible to permit the docketing of Plaintiffs' original Pleadings, Mr. Lorson conceded that he was acting pursuant to verbal instructions issued to him by the Justices of the Court. ⁴³⁹

301. By direction from the Clerk of the Court, on October 8, 1998, His Excellency David Keanu Sai filed a Motion to Direct the Clerk of the Court to file Complaint. The Arbitral Tribunal is requested to take judicial notice of this motion to direct the clerk of the court to file the Complaint. His Excellency requested:

"...that this Court (1) grant Plaintiffs' Motion to Direct the Clerk of the Court to file Motion for Leave to File a Bill of Complaint, Complaint, Memorandum in Support and Appendix thereto, (2) grant leave requested in Plaintiff's Motion for Leave to file a Bill of Complaint, and (3) grant relief requested in Plaintiffs' Bill of Complaint." ⁴⁴⁰

302. The Motion to Direct the Clerk of the Court to file the Complaint was assigned docket no. M-26, and was denied on May 18, 1998 without explanation. In light of the judicial actions set forth in paragraphs 270 to 300 above concerning the American judicial system, the Hawaiian Kingdom has exhausted all remedies allowable under United States municipal legislation as they pertain to the law of nations and principles of international law.

3. Granting of Limited Powers of Attorney to Hawaiian Kingdom Treaty Partners.

303. The Honorable Niklaus Schweizer, serving in Hawai'i as Honorary Consul for the Swiss Confederation under the pretense of the Swiss Treaty with the United States, did admit on several occasions to the *Acting* Regent, His Excellency David Keanu Sai, that the 1864 Treaty between the Swiss Confederation and the Hawaiian Kingdom was never officially terminated and is therefore, still in effect. Article XIII of the 1864 Hawaiian-Swiss Treaty, in regards to the effect and termination of said Treaty, states as follows:

"The stipulations of the present treaty shall take effect in the two countries from the hundredth day after the exchange of the ratifications. The treaty shall remain in vigor for ten years, dating from the day of the said exchange. In case neither of the contracting parties shall have notified twelve months before the end of the said period its intention to terminate the same, this treaty will continue obligatory till the expiry of a year, reckoning from the day on which either of the contracting parties shall give notice of its termination." ⁴⁴¹

304. Presently, there is no official record of notification by either the Swiss Confederation Government nor the Hawaiian Kingdom Government expressing any desire to initiate the termination clause of the said Hawaiian-Swiss Treaty.

305. Regarding corresponding duties and obligations between the Swiss Confederation and the Hawaiian Kingdom, in relation to consular affairs, Article VII provides as follows:

"It shall be free for each of the two contracting parties to nominate Consuls, Vice-Consuls or Consular Agents, in the territories of the other. But before any of these officers can act as

such, he must be acknowledged and admitted by the government to which he is sent, according to the ordinary usage, and either of the contracting parties may except from the residence of consular officers such particular places as it may deem fit." 442

306. Article X, section 459 of the Hawaiian Civil Code acknowledges diplomatic and consular agents of foreign nations and states in part:

"No foreign consul, or consular or commercial agent shall be authorized to act as such, or entitled to recover his fees and perquisites in the courts of this Kingdom, until he shall have received his exequatur." 443

307. On April 29, 1999, His Excellency David Keanu Sai, as *Acting* Regent, did grant under the Hawaiian Kingdom Seal, to the Honorable Niklaus Schweizer an Exequatur as Consul of Switzerland at Honolulu. 444 The Arbitral Tribunal is requested to take judicial notice of this Swiss Exequatur. His Excellency's action were in accordance with Article VII of the 1864 Hawaiian-Swiss Treaty and Article X, section 459 of the Hawaiian Civil Code. The Exequatur reads as follows:

"Be it known to all whom it may concern that Niklaus R. Schweizer is hereby acknowledged by the Hawaiian Kingdom, by its Regent, pro tempore, as Consul for Switzerland at 4231 Papu Circle in Honolulu, in accordance with Article VII of the Treaty with the Swiss Confederation, July 20, 1864, and all his official acts, as such, are ordered to receive full faith and credit by the authorities of this Government."

308. Article III of the 1864 Hawaiian-Swiss Treaty also provides, in part, that:

"The citizens of each of the contracting parties shall enjoy on the territory of the other the most perfect and complete protection for their persons and their properties. They shall in consequence have free and easy access to the tribunals of justice for their claims and the defence of their rights, in all cases and in every degree of jurisdiction established by the law." 445

309. On April 29, 1999, in light of Article II of the 1864 Hawaiian-Swiss Treaty, His Excellency David Keanu Sai, in Privy Council assembled, resolved to grant, to the Swiss Confederation, a Limited Power of Attorney. 446 The Arbitral Tribunal is requested to take judicial notice of this Swiss Limited Power of Attorney. This Limited Power of Attorney authorized the Swiss Government to "step-in" and protect Swiss nationals while they are within the territory of the Hawaiian Kingdom. The Hawaiian Kingdom Government is not a fully functioning body

and is unable to afford the "most perfect and complete protection" for Swiss nationals at this time. More specifically, it is the unlawful imposition of United States' municipal laws, within the territorial jurisdiction of the Hawaiian Kingdom, that is preventing the Hawaiian Kingdom Government from fulfilling its obligation under Article III of the Hawaiian-Swiss Treaty.

310. On May 4, 1999, a letter of correspondence was sent to Her Excellency Ruth Dreifuss, President of the Swiss Confederation, notifying Her Excellency's government of the Hawaiian Kingdom Government's action of granting the said Limited Power of Attorney.⁴⁴⁷ The diplomatic correspondence stated, in part:

"...in consequence of the difficulties in which we now find ourselves involved, and our opinion of the impossibility of complying with the stipulations articulated in the Treaty made between our two nations, in particular, Article III, which provides protection of Swiss citizens and their properties, We do hereby vest in the Government of the Swiss Confederation, by its President, and through the agency of its officers created by its laws, a Limited Power of Attorney to act in cooperation with the Hawaiian Kingdom pursuant to Title II of the Administration of the Government, Civil Code of the Hawaiian Islands, Compiled Laws 1884, pp. 6 thru 215 for the benefit of the subjects of the same and the citizens and subjects of foreign States, while within the limits of this kingdom, which includes Swiss citizens, except so far as exception is made by the laws of nations in respect to Ambassadors or others."

311. On April 29, 1999, Exequaturs were also granted to the Consulates of Belgium,⁴⁴⁸ France,⁴⁴⁹ Germany,⁴⁵⁰ Italy,⁴⁵¹ Japan,⁴⁵² Norway⁴⁵³ and Portugal⁴⁵⁴ under the Seal of the Hawaiian Kingdom. The Arbitral Tribunal is requested to take judicial notice of these exequaturs issued to the abovementioned States.

312. On July 16, 1999, His Excellency David Keanu Sai, as Acting Regent, in Privy Council assembled, did resolve to grant Limited Powers of Attorney to the States of Belgium,⁴⁵⁵ Denmark,⁴⁵⁶ England,⁴⁵⁷ France,⁴⁵⁸ Germany,⁴⁵⁹ Italy,⁴⁶⁰ Japan,⁴⁶¹ Netherlands,⁴⁶² Norway,⁴⁶³ Portugal,⁴⁶⁴ Russia,⁴⁶⁵ Spain,⁴⁶⁶ Sweden,⁴⁶⁷ and the United States of America.⁴⁶⁸ The Arbitral Tribunal is requested to take judicial notice of these Limited Powers of Attorney conveyed to the abovementioned States. His Excellency also sent Letters of Correspondence to the Governments of these aforementioned States apprising them of the Sovereign, Governmental, and Diplomatic situations that exist within the Hawaiian Kingdom.⁴⁶⁹ The above actions are all in line with the purpose and intent of fulfilling the Hawaiian Kingdom's treaty obligations and international responsibilities to protect foreign nationals within the territorial jurisdiction of the Hawaiian Kingdom.

**4. Hawaiian Kingdom's Ratification of the 1907 Hague Convention
establishing the Permanent Court of Arbitration and the 1969
Vienna Convention on the Law of Treaties.**

313. On July 5, 1999, the Hawaiian Kingdom, by its *Acting* Regent, His Excellency David Keanu Sai, in Privy Council assembled, resolved to ratify the 1907 Hague Convention for the Pacific Settlement of International Disputes.⁴⁷⁰ The Arbitral Tribunal is requested to take judicial notice of the Hawaiian Kingdom's ratification of the 1907 Hague Convention establishing the Permanent Court of Arbitration. A duly certified ratification of the said convention was sent to the Netherlands Government, through the International Bureau of the Permanent Court of Arbitration.

314. On July 13, 1999, the Hawaiian Kingdom, by its *Acting* Regent, His Excellency David Keanu Sai, in Privy Council assembled, resolved to ratify the 1969 Vienna Convention on the Law of Treaties.⁴⁷¹ The Arbitral Tribunal is requested to take judicial notice of the Hawaiian Kingdom's ratification of the 1969 Vienna Convention. A duly certified ratification of the said convention was sent to His Excellency Kofi Anan, Secretary General of the United Nations.

5. Commissions of Government Officials.

315. Since the appointment of the *Acting* Regent, there have been eleven (11) commissions in order to fill the vacancies of the Executive Department of the Hawaiian Kingdom.⁴⁷² The Arbitral Tribunal is requested to take judicial notice of the commissions of governmental officials. All commissioned officers of the Hawaiian Government possess their authority in an *acting* role, subject to confirmation by the Legislative Assembly.

316. In September of 1999 the *Acting* Regent had commissioned, by statute, Peter Umialiloa Sai as *Acting* Minister of Foreign Affairs, Kau'i P. Goodhue as *Acting* Minister of Finance, and Gary V. Dubin, Esquire, as *Acting* Attorney General. On September 10, 1999, it was determined by resolution of the Privy Council:

"...that the office of the Minister of Interior shall be resumed by David Keanu Sai, thereby absolving the office of the Regent, *pro tempore*, and the same to be replaced by the Cabinet Council as a Council of Regency, *pro tempore*, within the meaning of Article 33 of the Constitution of the Country."⁴⁷³

CONCLUSION TO PART ONE

317. This Part addressed the standing of the Hawaiian Kingdom as an Independent State from the era of non State recognition on through the recognition of its independence by the major powers of the world during the 19th century, and to the maintenance of its independence to the present. The actions by the Hawaiian Kingdom and other independent States, under Article 31 of the Vienna Convention on the Law of Treaties, are to be interpreted in accordance with their

ordinary meaning in their context and in light of the object and purpose of the 1843 Anglo-Franco Proclamation recognizing Hawaiian Independence, and the subsequent Treaties and Conventions with other world powers.

318. All the elements of interpretation converge on a single result: the Hawaiian Kingdom is an independent State. The 1843 Anglo-Franco Proclamation and the Treaties and Conventions therefore attributes the Hawaiian Kingdom the sovereign right of utilizing the complete usage of the principles of international law afforded to other members of the Community of States.

PART TWO

The Interpretation of the Regulations on the Laws and Customs of War on Land

INTRODUCTION

A. The Issue before the Tribunal.

319. The primary issue before the Tribunal is whether the Hawaiian Kingdom Government is liable to the Claimant, Mr. Lance Paul Larsen, a Hawaiian Kingdom subject, for redress for violations of his national rights.

B. The Hawaiian Kingdom Government is Not Liable to the Claimant.

320. The Hawaiian Kingdom Government is not liable to the Claimant because it has not violated its public trust in accordance with Hawaiian Kingdom law and the law of nations. Rather, it is the United States who has committed international violations against the Hawaiian Kingdom, and thereby violating the rights of its subjects, in particular, the Claimant.

321. The 1907 Hague Convention IV, the Regulations on the Laws and Customs of War on Land, under Article 43 provides:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all 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." ⁴⁷⁴

322. The 1907 Hague Convention V, Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, under Article 1 provides:

"The territory of neutral Powers is inviolable." ⁴⁷⁵

323. Moreover, pursuant to the 1999 revised report for the Centennial of the First International Peace Conference for the United Nations and the Dutch Government, advising them as to the applicability of the laws of war and occupation under the 1907 Hague Convention IV, Professor Greenwood states that:

"a. the occupant acquired only temporary control over the territory, not sovereignty, and was entitled, and required, to exercise the powers of government while respecting, unless absolutely prevented, the laws already in force (Articles 42-3);

- b. the population of the occupied territory did not owe allegiance to the occupying power and could not be required to swear an oath (Articles 44-5), their lives, honour and property were to be respected (Articles 46-7); and
- c. the power of the occupant to take or use public and private property in the occupied territory were restricted by (Articles 48-56)." ⁴⁷⁶

324. Thus, in accordance with the foregoing:

- (a) an occupying State must respect the laws of the occupied territory unless absolutely prevented from doing so,
- (b) the domain of the neutral State does not pass to the occupying State, and
- (c) a belligerent State while occupying a neutral State acquires only temporary control, and not sovereignty.

325. Here, the Hawaiian Kingdom has been recognized as an independent State since November 28, 1843. ⁴⁷⁷ On August 13, 1898, the Hawaiian Kingdom was occupied by the military forces of the United States during the Spanish-American War. ⁴⁷⁸ The Hawaiian Kingdom, as a neutral State, was used by the United States, a belligerent state, as a staging ground to conduct fighting in the Spanish territories of Guam and the Philippines. As a result, when the United States occupied the Hawaiian Kingdom, this constituted violations of the international laws of war, which were later codified in the 1899 and 1907 Hague Conventions. This occurred because the United States imposed its own laws and sovereignty in the Hawaiian territory, rather than that of the Hawaiian Kingdom and, the United States confiscated, as its own, Hawaiian public lands and property.

326. Further, on December 10, 1898, in Paris, the United States and Spain entered into, ratified, and exchanged a Treaty of Surrender ending the Spanish-American War. ⁴⁷⁹ Accordingly, as no military necessity remained, the United States was required, pursuant to international law, to leave the Hawaiian Kingdom. The United States did not exit. In fact, to date, the United States still unlawfully occupies the Hawaiian Kingdom and has permanently established its military presence throughout the territory. ⁴⁸⁰ Hence, other international law violations are committed by the United States as per Article 2 of the 1907 Hague Convention IV, which provides that belligerent States:

"...are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power." ⁴⁸¹

327. In addition to international law violations pursuant to Part IV and V of the 1907 Hague

Conventions, United States occupation of the Hawaiian Islands must also be examined under Treaty interpretation. International Tribunals have repeatedly accepted the 1969 Vienna Convention on the Law of Treaties as an expression of customary international law on treaty interpretation. Applicable sections read as follows:

328. Article 31(1) provides:

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." ⁴⁸²

329. Article 31(3) provides:

"There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties." ⁴⁸³

330. Article 31(4) adds that:

"A special meaning shall be given to a term if it is established that the parties so intended." ⁴⁸⁴

331. Thus, in accordance with the foregoing, treaties must be interpreted:

(a) in good faith,

(b) within the ordinary meaning of their terms in light of the context, object and purpose,

(c) based on applicable subsequent agreements and practice of the parties, as well as relevant international law, and

(d) with any special meaning of terms assigned by the parties.

332. The United States is a party to the 1907 Hague Conventions IV and V, as well as to the 1969 Vienna Convention on the Law of Treaties, and as of 1849, the United States has entered

into a number of treaties and conventions with the Hawaiian Kingdom for commercial purposes.

333. In light of the:

- (a) United States being a Party to the aforementioned conventions and treaties,
- (b) proper interpretation of these conventions and treaties, and
- (c) object and purposes of these agreements.

334. Therefore, the rights of occupancy regarding the occupation of the Hawaiian Kingdom by the United States cannot be co-extensive with those of sovereignty. They are due to military exigencies of the invader and therefore are only provisional.⁴⁸⁵ In other words, the United States as an occupying power cannot impose sovereignty over the territory of the Hawaiian Kingdom.

335. The Hawaiian Kingdom Government was established by its sovereign to acknowledge and protect the rights of its citizenry. This protection covers the acts of States at war within the territory of the Kingdom. Regarding the extraordinary circumstances to which the Hawaiian Kingdom Government now finds itself involved, it has, albeit impeded, maintained itself in strict conformity with the international laws of war and occupation, as well as its domestic laws.

336. Therefore, with respect to the redress sought by the Claimant for violations of his national rights, liability does not rest with the Hawaiian Kingdom Government, rather it is the United States that bears responsibility for the violations of Claimant's rights.

337. The following Chapters under Part Two cover:

- I. An overview of the object and purpose of the Regulations on Laws and Customs of War on Land (Chapter I);
- II. The actions of the United States imposing its own laws within the territorial dominion of the Hawaiian Kingdom constitutes violations of the Regulations on the Laws and Customs of War on Land (Chapter II); and
- III. The Hawaiian Kingdom Government Responds to Claimant's Petition.

CHAPTER I. An Overview of the Object and Purpose of the Regulations on the Laws and Customs of War on Land.

338. In August of 1898, His Majesty Czar Nicholas II called for all of the world powers to con-

vene in conference to limit armaments and establish a permanent institution for the settlement of disputes between Nations.⁴⁸⁶ Pursuant to the urging of Czar Nicholas II and as a result of the labors of His Excellency Count Mouravieff, the Russian foreign minister, twenty six States met in the summer of 1899 at the Hague in the Netherlands.⁴⁸⁷ This constituted the first Peace Conference.

339. Prior to this Peace Conference, specific matters of war had already been reduced to treaties. For example, as a result of the Crimean War, the Declaration of Paris was established in 1856 that prohibited privateering and created a number of provisions regulating the seizure of goods on ships during war.⁴⁸⁸ Due to the 1859 Franco-Austrian War, the 1864 Geneva Convention established the Red Cross and protected medical personnel in land warfare.⁴⁸⁹ In 1863, another meeting of world powers met at St. Petersburg to discuss the problem of explosive bullets, and by 1868, the St. Petersburg Declaration was signed that banned the use of the bullet.⁴⁹⁰

340. Moreover, in 1863, Professor Francis Lieber of Columbia College, drafted a comprehensive book on the law and usages of war.⁴⁹¹ This book would be used by military commanders of the United States Federal Army during the American Civil War. The book became known as the Lieber Code. The Code served as a guide in the treatment of prisoners of war, irregular guerrilla forces, captured enemy property, and other problems arising from war on land.⁴⁹²

341. The Lieber Code prompted Feodor de Martens, a Russian scholar, to suggest the idea that the European powers should develop a similar code.⁴⁹³ Thus, in 1874, the Russian government convened fifteen States in Brussels to draft a declaration concerning the laws and customs of war.⁴⁹⁴ Although this 1874 Brussels draft Declaration never became binding, the *Institut de droit international* published a manual of the Laws of War on Land, in 1880, based on this Draft Declaration.⁴⁹⁵

342. In light of the above history, representatives of the States attending the 1899 Peace Conference relied heavily on the Lieber Code of 1863, the 1874 Brussels Declaration, and the 1880 *Institut's* Manual of the Laws of War on Land when they drafted the comprehensive code on the laws of war.⁴⁹⁶

343. The 1899 Convention and Regulations were superseded by the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land. In addition, the 1907 Hague Convention V was adopted Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. The United States, a party to both Conventions: a) signed them at The Hague on October 18, 1907, b) was advised by the Senate on March 10, 1908 to authorize ratification of said Conventions, and c) thereafter, by the President on February 23, 1909 ratified them.⁴⁹⁷ Next, the ratified Conventions were deposited with the Netherlands Government on November 27, 1909 and their proclamations were made on February 28, 1910.⁴⁹⁸

344. The 1907 Hague Conventions IV and V are significant because they address the specific conduct of warfare on occupied territories and adherence to the rights and duties of neutral

States and persons. Specifically, the Regulations on the Laws and Customs of War on Land are instituted to regulate belligerent States already at war, and instituted to protect neutral States and persons caught up in the conflict.

345. For example, Article 43 of the 1907 Hague Convention IV provides that once:

"[t]he authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." ⁴⁹⁹

346. Moreover, Article 48 of the 1907 Hague Convention IV provides that:

"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." ⁵⁰⁰

347. In this case, the applicability of these conventions are clear as it provides the standards upon which the conduct of States are judged. The United States has occupied the Hawaiian Kingdom since 1898, the time of the Spanish-American war. Contrary to international law as provided for under these Conventions, the United States has attempted to subsume the Hawaiian Kingdom by imposing its own laws and exercising sovereignty within the territory, as well as confiscating Hawaiian land and property.

A. Case Law.

348. In addition to the plain language of the 1907 Hague Conventions IV and V, relevant case law interpreting said conventions are applicable to this case. In the *Milair v. Germany* (1923), the Belgian-German Mixed Arbitral Tribunal held that Article 43, of the 1907 Hague Convention IV, emphasizes the duties imposed on the occupying belligerent and not the exceptional rights granted to the occupant entitling him, if necessary, to suspend existing laws and to promulgate new ones. The significance of Article 43 lies in its implication that the law of an occupied country, particularly its private law, is not abrogated by an occupying force. The law of the occupied country remains in force. ⁵⁰¹

349. In *Kotra and Others v. Czechoslovakia* (1934) a Mixed Arbitral Tribunal from Czechoslovakia and Hungary held that the purpose of Article 48, of the 1907 Hague Convention IV, was to direct that the occupying force must retain in service the officials of the occupied country. ⁵⁰²

350. In the *Chevreau* case (1931) between France and Great Britain, the sole Arbitrator held that the British forces in Persia had the status of a military occupant of enemy territory and fell under the Hague Regulations.⁵⁰³ Persia was a neutral State during this time.

351. Therefore, international case law interpreting the conventions, are applicable to this case, again because it provides the standards for judging the conduct of States.

B. The Authorities.

352. Moreover, other authorities in addition to the plain language of the 1907 Hague Conventions IV and V, and precedential international case law, are applicable to this case. Ingrid Detter De Lupis states in regard to neutral States that:

"The rights of neutrals to avoid the immediate effects of war are balanced by their duties to remain passive in a conflict. Disrespect for the duties of neutrals will suspend their rights. Thus, only 'effective' neutrality must be respected by third States, i.e. the type of neutrality which actually abides by the rule of passivity."⁵⁰⁴

353. In regard to the administration of existing territorial law within an occupied territory under Article 43 of the 1907 Hague Convention IV, A. Berriedale Keith states that:

"...the authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all measures in his power to re-establish and assure as far as possible public order and safety, while respecting, unless absolutely prevented, the laws in force in the country...As the population does not owe the occupying commander allegiance, and as his authority is based merely on military necessity and so is provisional, it follows that, unless military exigencies imperatively demand otherwise, he must administer the existing territorial law, and must not interfere with existing rights and obligations of the inhabitants..."⁵⁰⁵

354. Brownlie asserts:

"...that a state remains 'independent', in the sense of retaining separate personality, if a foreign legal order impinges on it, provided that the impingement occurs under a title of international law. It follows that illegal occupation cannot of itself terminate statehood. Elsewhere the general question of balancing effectiveness and the principle *ex injuria non oritur jus* is considered. Here it must suffice to point out that, when elements of certain strong norms (the *jus cogens*) are involved, it is less likely that recognition and

acquiescence will offset the original illegality." ⁵⁰⁶

**CHAPTER II. The Actions of the United States Imposing Its Own Laws
Within the Territorial Dominion of the Hawaiian Kingdom Constitute
Violations of the Regulations on the Laws and Customs of War on Land.**

355. As discussed in Part One, Chapters IV and V of this Memorial, there exists no Treaty of Annexation between the United States and the Hawaiian Kingdom Government. The 1898 Joint Resolution, purporting to annex the Hawaiian Islands to the United States was a unilateral act done pursuant to United States domestic law. It is a well established principle of international law that municipal legislation does not possess extra-territorial force. Accordingly, the 1898 Joint Resolution and all subsequent United States laws applied to Hawaii is without effect. What follows are the aforementioned United States domestic laws and other historical events that illustrate the extensive violations of international law.

A. 1900 - The Territorial Act.

356. On April 30, 1900, the United States, by municipal legislation, signed into law an "Act to provide a government for the Territory of Hawai'i." ⁵⁰⁷ In accordance with this law U.S. President William McKinley appointed Sanford B. Dole, of the self-proclaimed Republic of Hawai'i, as Governor for the Territory of Hawai'i. ⁵⁰⁸ This violated both International and Hawaiian Kingdom law. Under Hawaiian Kingdom law, as one of the principle conspirators behind the unsuccessful 1893 revolution, Sanford Dole was a traitor. Under International Law, this is a violation by the United States because it is imposing its laws within the Hawaiian Kingdom. The language of the Act appointing Sanford Dole, Section 66, provides:

"That the executive power of the government of the Territory of Hawaii shall be vested in a governor, who shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and shall hold office for four years and until his successor shall be appointed and qualified, unless sooner removed by the President." ⁵⁰⁹

357. Moreover, with respect to other language under the foregoing Act, members of the *self-proclaimed* Republic of Hawai'i were purportedly granted American citizenship. This is a direct violation of The Hague Regulations which mandate an occupying nation cannot impose its own laws over the inhabitants of the occupied territory, as well as the principle under international law that provides municipal legislation does not extend beyond its territorial borders. Thus, the Territorial Act that granted the members of the *self-proclaimed* Republic of Hawai'i United States citizenship effectively provided *pseudo* protection for their violations of Kingdom Law. Section 4 covering citizenship states:

"That all persons who were citizens of the Republic of Hawaii on

August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii." ⁵¹⁰

B. 1921 - The Hawaiian Homes Commission Act.

358. On July 9, 1921, the U.S. Congress, by municipal legislation, established a Hawaiian Homes Commission. ⁵¹¹ This commission was authorized to grant, ninety-nine (99) year leases on certain Government or Crown lands, to aboriginal Hawaiians who possessed one-half native Hawaiian blood. For the first time, native Hawaiians were classified according to a blood quantum. Nevertheless, native Hawaiians continue to possess vested tenant rights in these lands under Hawaiian Kingdom law. Section 201(7) of this 1921 Act provides:

"(7) The term 'native Hawaiian' means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778. ⁵¹²

Thus, providing yet another example of direct imposition by the United States imposing of its laws within the Hawaiian Kingdom.

C. 1941 - World War II.

359. On December 7, 1941, the United States military installations at Pearl Harbor and Wheeler Air Base were attacked by the naval forces of Japan. Thereafter, the United States declared war on Japan and entered into World War II. Accordingly, the United States' military presence in the Hawaiian Kingdom escalated and continued to place Kingdom inhabitants in eminent danger of hostilities from States who are at odds with the United States.

360. After World War II, fifty (50) countries met in San Francisco for the United Nations Conference on International Organization from April 25 to June 26, 1945. ⁵¹³ As a result of this conference, a United Nations Charter was signed on June 26, 1945 by all fifty (50) countries' representatives which established the United Nations. ⁵¹⁴ It formally took effect on October 24, 1945. ⁵¹⁵ In pertinent part, the preamble to the United Nations Charter provides that the peoples of the United Nations determines:

"...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and...to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained..."

D. 1945 - The United Nations' Decolonization Process.

361. Further, in 1945, the United Nations initiated the process for decolonization of territories of States. This process was initiated so that the indigenous inhabitants of these territories had the opportunity to determine their own national identity and/or a manner for governing their lives. In the past, many territories were not consulted in these regards. These colonies were identified as nonself-governing territories and the process for choosing their own political identity was termed "the right to self-determination". Article 73 of the United Nations Charter provides that:

"Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply." ⁵¹⁶

362. Since 1946, under sec. 73(e) of the U.N. Charter and in accordance with the 1946 General Assembly Resolution 66(I), the United States Government had to transmit to the Secretary-General information on several United States colonies. ⁵¹⁷ In these transmittals, the Hawaiian

Islands was *erroneously* identified as a United States colony.⁵¹⁸ It is clear from Part One of this Memorial that the Hawaiian Kingdom was never legally annexed and its territory continues to be occupied by the United States. The Kingdom remains a Sovereign and independent state, and therefore, was never a United States colony. Accordingly, the Actions of the United States over the occupied Hawaiian Kingdom territory is determined by the Hague Regulations and **not** the United Nations Charter providing for self-determination.

E. 1950 - Adoption of a "Constitution" by the Residents of the so-called Territory of Hawai'i.

363. On November 7, 1950, residents of the so-called Territory of Hawai'i, adopted a Constitution for the proposed incorporation of the State of Hawai'i into the United States.⁵¹⁹ These residents were made up of United States citizens and those who thought they were United States citizens. Those so-called United States citizens, who were descendants of Hawaiian subjects, were in fact Kingdom subjects. These Kingdom subjects were under the *false* impression and belief that Hawai'i was lawfully annexed by the United States in 1898, which supposedly changed their political status from Hawaiian subjects to American citizens. This constituted further indoctrination by the United States.

F. 1959 - The Purported Hawai'i Statehood Act.

364. On March 18, 1959, the United States Congress accepted the 1950 Constitution of American citizens resident in the Hawaiian Islands and established an *Act to provide for the admission of the State of Hawai'i into the Union*.⁵²⁰ Section 7(b) of this 1959 Act, provides that:

"At an election designated by proclamation of the Governor of Hawaii, which may be either the primary or the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, the following propositions:

(1) Shall Hawaii immediately be admitted into the Union as a State?

(2) The boundaries of the State of Hawaii shall be as prescribed in the Act of Congress approved (date of approval of this Act) and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

(3) All provisions of the Act of Congress approved (date of approval of this Act) reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Hawaii are consented to fully by said State and its people."⁵²¹

365. On June 27, 1959, an election was held in accordance with section 7(b) of the 1959 Act whereby a majority of the residents of the Territory of Hawai'i voted for admission into the United States as a State.⁵²² This election and subsequent municipal legislation constitutes more United States violations.

366. On August 21, 1959, more violations occurred as this election resulted in a United States Presidential Proclamation, by Dwight D. Eisenhower, admitting the so-called State of Hawai'i into the United States. It states, in part, that the U.S. President declares and proclaims that:

"...the procedural requirements imposed by the Congress on the State of Hawai'i to entitle that State to admission into the Union have been complied with in all respects and that admission of the State of Hawaii into the Union on an equal footing with the other States of the Union is now accomplished."⁵²³

367. On September 17, 1959, the Permanent Representative of the United States of America transmitted to the Secretary-General of the United Nations what had transpired concerning the so-called State of Hawai'i.⁵²⁴ This transmittal requested that the United States Government no longer be required to transmit information on the Territory of the Hawaiian Islands, to the Secretary General, as required by Article 73 (e) of the United Nations Charter. This request cited that Hawai'i had achieved so-called self-governance on December 12, 1959.⁵²⁵ By Resolution no. 1469(XIV) of the General Assembly, the United States was no longer required to report on Hawai'i.⁵²⁶

G. 1959 - The United States Government incorrectly reported to the United Nations that Hawai'i Achieved Self-governance.

368. The United States Government submitted a memorandum to the United Nations Secretary-General concerning the cessation of transmitting information under Article 73 of the United Nations Charter. This memorandum stated, in part, that:

"Hawaii has been administered by the United States since 1898. As early as 1900, Congress passed an Organic Act, establishing Hawaii as an incorporated territory in which the Constitution and laws of the United States, which were not locally inapplicable, would have full force and effect. Its inhabitants became citizens of the United States and were given an elected territorial legislature and a non-voting delegate to the Congress of the United States."⁵²⁷

369. This memorandum evidences more violations by the United States as it openly admitted to the United Nations General Assembly that American laws have been imposed in the Hawaiian Kingdom since 1900. Again without annexation of the Hawaiian Kingdom in accordance with the Law of Nations, the United States cannot claim sovereignty over an independent State with-

out its consent.

H. 1988 - U.S. Attorney General's Opinion Questions the Annexation of Hawai'i by a Simple Legislative Act.

370. On October 4, 1988, Douglas W. Kmiec, *Acting Assistant U.S. Attorney General*, drafted a legal opinion for the Legal Adviser to the U.S. State Department, on the *Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea*.⁵²⁸ The opinion concluded, in pertinent part, that:

- The President has the authority to issue a proclamation extending the jurisdiction of the United States over the territorial sea from three to twelve miles out.
- The President also has the authority to assert the United States's sovereignty over the extended territorial sea, although most such claims in the nation's history have been executed by treaty.
- There is a serious question whether Congress has the authority either to assert jurisdiction over an expanded territorial sea for purposes of international law or to assert the United States's sovereignty over it."

371. This opinion constitutes a United States Government produced document that evidences United States violations. The opinion also states, in regards to the purported 1898 annexation of the Hawaiian Islands, that:

"It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution."⁵²⁹

I. 1993 - The Apology Resolution.

372. On November 3, 1993, the United States Congress enacted a resolution that acknowledged the 100th anniversary of the January 17, 1893 illegal overthrow of the Hawaiian Kingdom Government, and offered an apology to native Hawaiians as a distinct ethnic group.⁵³⁰ This "apology resolution" is flawed. This Resolution correlates the reconciliation efforts of the United States Government to the indigenous peoples right to self-determination. The native Hawaiians do not fall under the international term of indigenous peoples, otherwise known as dependent peoples, because they are nationals of an independent State, the Hawaiian Kingdom.

373. The political status and protection of Hawaiian subjects fall under Hawaiian Kingdom law and the Law of Nations. The relationship between the Hawaiian Kingdom and the United States is a State to State relationship. It is not State to the Nationals of the State (i.e. who are separate and distinct by ethnicity) relationship.

374. This "apology resolution" acknowledged the continued existence of the Hawaiian Kingdom, as an independent State. The 1993 Apology Resolution reads, in pertinent part:

"Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887...

Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum..."⁵³¹

J. 1999 - U.S. Solicitor-General Implicates the United States Government under the Laws of War.

375. In July of 1999, Seth Waxman, Solicitor General for the United States Government, further implicated his government's actions toward the Hawaiian Kingdom under the international laws and customs of war on land by stating that:

"Between 1826 and 1893, the United States recognized the Kingdom as a sovereign nation and signed several treaties with it.

The United States has concluded that it...bears a responsibility for the destruction of their [Hawaiian] government and the unconsented and uncompensated taking of their lands." (emphasis added)⁵³²

376. Therefore, based on the foregoing, the actions by the United States of America violate Articles 42-56 of the Regulations on the Laws and Customs of War on Land. The United States cannot claim sovereignty over the Hawaiian Islands for the following reasons:

(1) there exists no Treaty of Annexation between the United States and the Hawaiian Kingdom;

(2) the actions by the Hawaiian Kingdom Government and its nationals which included, but are not limited to:

(a) the *actual notice* of treaty violations filed by Her Majesty Queen Lili'uokalani in the United States Department of State on June 18, 1897;

(b) the 1897 Hawaiian organizations Petitions for redress submitted to United States President William McKinley by the

Presidents of three Hawaiian organizations; and
(c) the signature petitions against the so-called 1897 Treaty of Annexation submitted by the Hawaiian Patriotic League to the United States Senate in December of 1897; and

(3) the ultimate occupation of the Hawaiian Islands on August 13, 1898, by U.S. troops during the Spanish-American War.

Moreover, by these established facts, the United States is barred from claiming any sovereignty over the territorial dominion of the Hawaiian Kingdom by the *doctrine of estoppel*.

CHAPTER III. The Hawaiian Kingdom **Government Responds to Claimant's Petition.**

377. On April 20, 1998 in a letter seeking support from the Office of the *Acting* Regent, Claimant outlined illegal conduct by the United States against himself as follows: On March 13, 1998, Claimant was arrested in a restaurant by three Hilo County, State of Hawaii, Police officers and taken to jail. ⁵³³ Thereafter, the Claimant appeared in the Hawai'i district Court, at Hilo, on April 17, 1998. The letter further stated:

"After some thought, I decided that it would be better for me both personally and monetarily to appear because I do not want to be harrassed again for not appearing the second time and losing more money to this illegal State of Hawai'i." ⁵³⁴

378. On June 18, 1999, in response to Claimant's letter of April 20 1998, heretofore mentioned, His Excellency David Keanu Sai, in his official capacity as *Acting* Regent, testified at trial as an expert witness on Hawaiian Kingdom Law and Treaties on behalf of the Claimant. ⁵³⁵ During His Excellency's testimony, he explained how, pursuant to international and treaties regarding the Hawaiian Kingdom and treaties, Claimant's rights are protected under the laws of the Hawaiian Kingdom. He further explained, that, in accordance with fixed and established principles of customary international law, the laws of the Hawaiian Kingdom, and not the the laws of the United States, possess the *prosecutorial* authority to institute criminal proceedings against the Claimant Lance Paul Larsen within the territorial dominion of the Hawaiian Kingdom.

379. Having considered the testimony of His Excellency David Keanu Sai, presiding Judge Sandra Schutte authorized the removal of the State of Hawai'i's case against the Claimant to the United District Court for the District of Hawai'i, citing a Federal question regarding "treaty interpretation" between the Hawaiian Kingdom and the United States of America. ⁵³⁶ Judge Schutte stated that under the laws of the United States and the State of Hawai'i, the interpretation of international treaties reside within the jurisdiction of the Federal Courts of the United States.

380. Claimant, by his attorney, instead of filing for removal, filed a Complaint for Injunctive

Relief in the United States District Court, District of Hawaii, on August 4, 1999, and was assigned civil no. 99-00546.⁵³⁷ In this Complaint, the Hawaiian Kingdom was listed as a co-Defendant along with the United States of America, and other nominal defendants, which included the United Nations and Treaty partners of the Hawaiian Kingdom.

381. On August 31, 1999, Claimant filed a *Petition for Redress of Grievances* with the *Acting Council of Regency*.⁵³⁸ In response to this Petition, the Hawaiian Kingdom Government waived its sovereign immunity in order to allow Claimant's allegations against his government to be submitted for final and binding arbitration at the Permanent Court of Arbitration. The Hawaiian Kingdom's action was upon the condition that all Defendants be dismissed from the case by the Claimant.

382. On October 13, 1999, Defendants under the 1999 Complaint for Injunctive Relief, were voluntarily dismissed, without prejudice, by the Claimant, excepting the Hawaiian Kingdom.⁵³⁹

383. On October 30, 1999, Claimant entered into an Arbitration Agreement with the Hawaiian Kingdom, by its *Acting Council of Regency*.⁵⁴⁰ The parties agreed to submit the dispute alleged in the said 1999 Complaint for Injunctive Relief to final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes Between Two Parties of Which Only one is a State.

384. On November 5, 1999, United States District Court Judge Samuel King, for the District of Hawai'i, signed an Order to a "Stipulated Settlement Agreement dismissing entire case without prejudice as to all parties and all issues and submitting all issues to binding arbitration" between the Hawaiian Kingdom and the Claimant at the Permanent Court of Arbitration.⁵⁴¹

385. On November 8, 1999, these arbitral proceedings were instituted by the Claimant in accordance with the Arbitration Agreement of October 30, 1999.⁵⁴²

CONCLUSION TO PART TWO

Part Two has set forth the actions of the relevant parties -- The Hawaiian Kingdom and Mr. Lance Paul Larsen -- and their manner of conduct while under the burdens of foreign occupation. It shows:

- The Hawaiian Government, albeit impeded for the most part, has been in strict conformity with the international laws of occupation.
- From August 13, 1998 to August 21, 1959, the United States has unlawfully asserted sovereign control of the territorial dominion of the Hawaiian Kingdom resulting in a prolonged and illegal occupation of a nation state.
- August 21, 1959, commenced the deliberate attempt to transfer the 61 year long illegal occupation of the Hawaiian Kingdom to that of a civilian occupation, resulting to intensify the

indoctrination of Hawaiian subjects into the American system.

- All attempts by the Hawaiian Kingdom Government--since the date of proclaiming its re-establishment--intending to arrest the United States' continued violations against Hawaiian subjects, in particular, Lance Paul Larsen, both through judicial as well as diplomatic modes, have, unfortunately concluded without result.

- This record of occupation, and subsequent violation with respect to the Laws and Customs of War on Land, confirms the attribution of sovereignty of the Hawaiian Islands to the Hawaiian Kingdom, as set forth in detail in Part One. It also constitutes a clear basis upon which the Hawaiian Kingdom Government asserts that it does not bear the responsibility for the violations of Claimant's rights as a Hawaiian national.

SUBMISSION

In view of the facts and arguments set forth in this Memorial, May it please the Tribunal, rejecting all claims and submissions to the contrary, to adjudge and declare that:

1. The Claimant's rights, as a Hawaiian subject, are being violated under international law;
2. The Claimant does not have a right to redress against the Hawaiian Kingdom Government for these violations; and
3. The Party responsible for the violations of the Claimant's rights, as a Hawaiian subject, is the United States Government.

Date: Honolulu, Island of O'ahu, Hawaiian Kingdom, May 25, 2000.

Respectfully submitted,

David Keanu Sai, *Acting* Minister of Interior
AGENT

Peter Umialiloa Sai, *Acting* Minister of
Foreign Affairs,
1st DEPUTY AGENT

Gary Victor Dubin, *Acting* Attorney General
2nd DEPUTY AGENT

Kau'i P. Goodhue, *Acting* Minister of Finance
3rd DEPUTY AGENT

ENDNOTES

1. See *Notice of Arbitration* of November 8, 1999 (Lance Paul Larsen v. the Hawaiian Kingdom), paragraphs 3-6.
2. *Ibid.*, paragraph 4.
3. See Annex 81.
4. *Supra.* note 2, Exhibit 1.
5. See Annex 10, p. 39.
6. *Ibid.* p. 64.
7. See Annex 11.
8. *Supra.* note 4, Exhibit 26.
9. *Ibid.*, Exhibit 27.
10. *Ibid.*, Exhibit 28.
11. *Ibid.*, paragraph 34.
12. *Ibid.*, Exhibit 1.
13. *Ibid.*, Exhibit 29.
14. See *Notice of Arbitration* of November 8, 1999 (Lance Paul Larsen v. the Hawaiian Kingdom).
15. See *Transmittal Letter* of December 3, 1999, by the Parties to the International Bureau of the Permanent Court of Arbitration. Archive Record.
16. See Annex 81.
17. See Annex 82.
18. See Annex 83.
19. See Annex 84.
20. See Annex 85.

21. See Annex 14, p. 105.
22. See *Ka Mo'olelo Hawai'i*, translation in *Hawaiian Spectator*, II, p. 226. Archives of Hawai'i, Honolulu.
23. See *Certificate* of His Majesty Kamehameha II's death by the attending physicians. Archives of Hawai'i, Honolulu.
24. See Gulick, *Pilgrims of Hawai'i*, p. 101; see also *Voyage of H.M.S. Blonde to the Hawaiian Islands* (1825), 154. Archives of Hawai'i, Honolulu.
25. See Annex 1, *Compiler's Preface*, p. 3.
26. Ibid.
27. See Annex 2, *Principles Adopted by the Board of Commissioners to Quiet Land Titles in Their Adjudication of Claims Presented to Them*, Joint Resolution of the Legislative Assembly (Oct. 26, 1846), p. 81.
28. See Annex 9, *1839 Declaration of Rights*, as the preamble to the 1840 Constitution, p. 8.
29. See 2 Hawaiian Reports 720, *In the Matter of the Estate of His Majesty Kamehameha IV., late deceased*; the court stated: "In 1840 he (His Majesty Kamehameha III) granted the first Constitution by which he declared and established the equality before the law of all his subjects, chiefs and people alike. By that Constitution, he voluntarily divested himself of some of his powers and attributes as an absolute Ruler, and conferred certain political rights upon his subjects, admitting them to a share with himself in legislation and government. This was the beginning of a government as contradistinguished from the person of the King, who was thenceforth to be regarded rather as the executive chief and political head of the nation than its absolute governor." See also Annex 1, *Compiler's Preface*, p. 3.
30. *Supra.* note 25, *Compiler's Preface*, p. 5
31. See Annexes 1 and 2.
32. See Annex 3, *Report to the Honorable the House of Nobles and Representatives of the Hawaiian Islands in Legislative Council Assembled*, p. iii.
33. Ibid., p. iv.
34. See *Session Law of June 22, 1868*. By that Act the Judges of the Supreme Court were "...directed to cause to be compiled, ready for publication, both in the Hawaiian and English languages, the Penal Laws of the Kingdom, which may be in force at the termination of the present (1868) Legislative Assembly."

35. See Annex 5.

36. See *Session Law of June 20, 1851*. Archives of Hawai'i, Honolulu. The resolution stated: "That three commissioners be appointed, one to be chosen by the king, one by the house of nobles, and one by the house of representatives, whose duty it shall be to revise the constitution of the kingdom, and on or before December next to issue public notice of the change which they recommend, and submit the same to the consideration of the next legislature that it may pass upon the changes proposed, agreeably with the constitution as it now exists."

37. See Annex 9, *1852 Constitution*, p. 36.

38. *Ibid.*, *King's Speech at the Opening of the Legislature, 1853*, p. 49.

39. *Ibid.*, *His Majesty's Speech at the Opening of the Legislature, April 7, 1855*, p. 56.

40. See Annex 4, *Preface*, p. iii.

41. See Annex 4.

42. See Annex 6, *Naturalization of Foreigners*, § 432, p. 104.

43. *Ibid.*, § 433, p. 105.

44. See *Minutes of the Privy Council of State*, November 30, 1863. Archives of Hawai'i, Honolulu.

45. *Ibid.*

46. *Supra.* note 28, *His Majesty's Speech at the Opening of the Legislature of 1864*, p. 99.

47. *Ibid.*

48. *Ibid.*

49. *Ibid.*

50. *Ibid.*

51. *Supra.* note 46, *1864 Constitution, Article 80*, p. 97.

52. See Annex 6, *Of the House of Representatives, section 2*, 222. The Act of 1874 repealed the voter qualifications under Article 62 of the 1864 which provided that a subject of the Kingdom: "...shall be possessed of Real Property in this Kingdom, to the value over and above all incumbrances of One Hundred and Fifty Dollars - or of a Lease-hold property on which the rent is

Twenty-five Dollars per year - or of an income of not less than Seventy-Five Dollars per year, derived from any property or some lawful employment."

53. *Supra.* note 51, *His Majesty's Speech at the Opening of the Legislature of 1864*, p. 99.

54. *Ibid.*, *Address of the Cabinet to the Legislature in Extra Session Assembled, January 8th, 1873*, p. 123.

55. *Ibid.*, *Address of the Cabinet to the Legislature in Extra Session Assembled, February 12, 1874*, p. 126.

56. *Ibid.*

57. *Ibid.*, *His Majesty's Speech at the Opening of the Legislative Assembly of 1874*, p. 129.

58. *Ibid.*, *His Majesty's Speech at the Opening of the Legislative Assembly*, April 30th, 1878, p. 138.

59. *Ibid.*

60. *Supra.* note 52, *Compiler's Preface*, p. iii.

61. See Annex 6.

62. *Supra.* note 59, *His Majesty's Speech at the Prorogation of the Legislative Assembly of 1886*, p. 157.

63. *Ibid.*, *1864 Constitution, Article 46*, p. 93. See also Annex 6, *Article 46*, p. 214.

64. *Supra.* note 6, *Interview with Chief Justice A.F. Judd, Honolulu, May 16, 1893*, pp. 828-844.

65. *Ibid.*

66. *Ibid.*

67. *Ibid.* See also Annex 17.

68. *Supra.* note 63, *1864 Constitution, Article 80*, p. 97; Article 78 also provides that: "All laws now in force in this Kingdom, shall continue and remain in full effect, until altered or repealed by the Legislature; such parts only excepted as are repugnant to this Constitution. All laws heretofore enacted, or that may hereafter be enacted, which are contrary to this Constitution, shall be null and void."

69. *Supra.* note 66, *Statement of Facts made by the Hui Kalai'aina (Hawaiian Political Association)*, p. 483
70. *Ibid.*
71. See Report of Dr. G.W. Woods, entitled *Medical Report to Hon. John A. Cummins, Minister of Foreign Affairs, on the Last Illness and Death of Kalakaua I, King of Hawai'i*, Archives of Hawai'i, Honolulu.
72. *Supra.* note 64, *Draft of constitution of January 14, 1893*, p. 1047.
73. *Supra.* note 68, *1864 Constitution, Article 80*, p. 97.
74. See Annex 12, p. 5.
75. See Annex 11.
76. *Supra.* note 74, p. 7.
77. *Ibid.*
78. *Ibid.*
79. *Ibid.*, p. 8.
80. See *Gazetteer no. 24, Hawaiian Islands*, Office of Geography, U.S. Department of Interior, Washington, D.C., September 1956. University of Hawai'i Hamilton Library.
81. See Annex 13.
82. See *Bouvier's Law Dictionary and Concise Encyclopedia*, 3rd Revision, (1914), definition of estate, p. 1075.
83. See *Blackstone's Commentaries on the Laws of England*, vol. 2, p. 104.
84. *Ibid.*
85. *Ibid.*
86. *Ibid.*
87. See Annex 2, *Principles Adopted by the Board of Commissioners to Quiet Land Titles in Their Adjudication of Claims Presented to Them*, Joint Resolution of the Legislative Assembly (Oct. 26, 1846), p. 81. Fee-tail is defined by the Oxford Companion to Law (1980), p. 464, as

"...an estate in land held heritably (fee) but descending to heir according to a defined line, different from those who would inherit by law..." The lands possessed by King Kamehameha I directly descended to Kamehameha II, and then to Kamehameha III.

88. See Annex 14, p. 105.

89. *Supra.* note 87, *Principles Adopted by the Board of Commissioners to Quiet Land Titles in Their Adjudication of Claims Presented to Them*, Joint Resolution of the Legislative Assembly (Oct. 26, 1846), p. 81.

90. *Supra.* note 30, *Article IV. Of the Board of Commissioners to Quiet Land Titles*, p. 107

91. *Supra.* note 89, *"To All Claimant of Land in the Hawaiian Islands,"* p. 89

92. *Supra.* note 90, *Article II. Of the Disposition of Government Lands*, §7, p. 101.

93. *Supra.* note 32, *An Act to Abolish the Disabilities of Aliens to Acquire and Convey Lands in Fee-simple*, p. 146.

94. *Supra.* note 91, *Principles Adopted by the Board of Commissioners to Quiet Land Titles in Their Adjudication of Claims Presented to Them*, Joint Resolution of the Legislative Assembly (Oct. 26, 1846), p. 81.

95. See *Minutes of the Privy Council of State, December 11, 1847*, Archives of Hawai'i, Honolulu; see also Annex 14, and 2 Hawaiian Reports 720, *In the Matter of the Estate of His Majesty Kamehameha IV., late deceased*.

96. *Ibid.*

97. *Ibid.*

98. *Ibid.*

99. *Ibid.*

100. *Ibid.* See also Annex 15, and Annex 4, *An Act Relating to the Lands of His Majesty the King and of the Government*, pp. 374-402; on pages 379 and 400 there is a condition to the lands managed by the King and the lands managed by the Government, which is "...subject always to the rights of tenants."

101. *Supra.* note 92, *Chapter II. Of the Executive Extra Judicial Officers*, p. 246.

102. See *Hawaiian Almanac and Annual for 1893, History of the Provisional Cession of the Hawaiian Islands and their Restoration*, p. 45. Archives of Hawai'i, Honolulu.

103. Ibid.
104. See Annex 10, *Message from the President of the United States, respecting the trade and commerce of the United States with the Sandwich Islands and with diplomatic intercourse with their Government*, p. 39.
105. See *Hawaiian Almanac and Annual for 1893, History of the Provisional Cession of the Hawaiian Islands and their Restoration*, p. 45. Archives of Hawai'i, Honolulu.
106. See Annex 10, *Declaration of Great Britain and France relative to the independence of the Sandwich Islands, London, November 28, 1843*, p. 64.
107. Ibid., *Letter from Lord Paulet to Governor of O'ahu of February 11, 1843*, p. 47.
108. See *Hawaiian Almanac and Annual for 1893, History of the Provisional Cession of the Hawaiian Islands and their Restoration*, p. 45. Archives of Hawai'i, Honolulu.
109. *Supra.* note 69, *Letter from King Kamehameha III and the Premier to Lord Paulet of February 17, 1893*, p. 48.
110. Ibid.
111. Ibid., *Letter and Demands from Lord Paulet to King Kamehameha III and the Premier of February 17, 1893*, pp. 48-49.
112. Ibid., *Letter from Lord Paulet to Captain Long of the U.S.S. Boston in Honolulu Harbor of February 17, 1893*, p. 50.
113. Ibid., *Letter from King Kamehameha III and the Premier to Lord Paulet*, pp. 49-50.
114. Ibid.,
115. See *Hawaiian Almanac and Annual for 1893, History of the Provisional Cession of the Hawaiian Islands and their Restoration*, p. 49. Archives of Hawai'i, Honolulu.
116. *Supra.* note 10, *Speech of King Kamehameha III during provisional cession of February 25, 1843*, p. 51.
117. Ibid., *Provisional Cession of the Hawaiian Islands by King Kamehameha III and the Premier*, p. 51.
118. Ibid., *Proclamation of Provisional Cession by Lord Paulet of February 25, 1843*, p. 52.
119. *Supra.* note 115, p. 49.

120. Ibid., p. 53.
121. Ibid.
122. Ibid.
123. Ibid.
124. Ibid.
125. Ibid., p. 54.
126. Ibid.
127. *Supra.* note 116, *Protest letter from King Kamehameha III and the Premier to the British Commission in the Hawaiian Islands of June 24, 1843*, pp. 56-57.
128. Ibid., *Protest letter by Lawrence Kearney, Commander of the U.S.S. Boston in Honolulu Harbor, to King Kamehameha III, the Premier and Lord Paulet of July 11, 1843*, pp. 57-58.
129. Ibid., *Letter by Rear Admiral Thomas, Commander-in-Chief of H.B.M. Ships in the Pacific, to King Kamehameha III of July 26, 1843*, p. 58.
130. Ibid., *Declaration of Restoration by Rear Admiral Thomas of July 31, 1843*, pp. 58-60.
131. *Supra.* note 126, pp. 69-70.
132. Ibid., p. 67.
133. Ibid.
134. See *Notice by King Kamehameha III appointing R.C. Wyllie to Minister of Foreign Affairs and G.P. Judd to Minister of Interior*, Polynesian newspaper of March 29, 1845. Archives of Hawai'i, Honolulu.
135. See Annex 16, *1862 Belgian Treaty*, p. 71.
136. See Oppenheim, *International Law (1955)*, vol. 1, p. 167. He states: "...there is room for the view that in case of separation resulting in the emergence of a new State the latter is bound by-or at least entitled to accede to - general treaties of a 'law-making' nature, especially those of a humanitarian character. See also Fenwick, *International Law*, p. 153.
137. See John W. Wright, *The Universal Almanac 1997*, Kansas City, p. 530.

138. See Annex 4, *1851 Bremen Treaty*, pp. 476-479; see also Annex 16, *1851 Bremen Treaty*, pp. 43-46.

139. *Supra.* note 137, p. 433.

140. See Annex 4, *1846 Danish Treaty*, pp. 447-452; see also Annex 16, *1846 Danish Treaty*, pp. 11-13.

141. *Supra.* note 136.

142. *Supra.* note 139, p. 441.

143. See Annex 4, *1846 French Treaty*, pp. 443-445; see also Annex 16, *1846 French Treaty*, pp. 7-10.

144. See Annex 16, *1853 Tahitian Postal Convention*, pp. 41-42.

145. See Annex 4, *1857 French Treaty*, pp. 489-514; see also Annex 16, *1857 French Treaty*, p. 57-69.

146. *Supra.* note 141.

147. *Supra.* note 142, p. 389.

148. *Ibid.*, p. 400.

149. *Ibid.*, p. 405.

150. *Ibid.*, p. 411.

151. *Ibid.*

152. *Ibid.*, p. 416.

153. *Ibid.*, p. 417.

154. *Ibid.*, p. 421.

155. *Ibid.*, p. 431.

156. *Ibid.*, p. 437.

157. *Ibid.*, p. 451.

158. *Ibid.*, p. 460.
159. *Ibid.*, p. 466.
160. *Ibid.*, p. 469.
161. *Ibid.*, p. 470.
162. *Ibid.*, p. 475.
163. *Ibid.*, p. 481.
164. *Ibid.*, p. 499.
165. *Ibid.*, p. 517.
166. *Ibid.*, p. 525.
167. *Ibid.*, p. 527.
168. *Supra.* note 144, *1879 German Treaty*, pp. 129-142.
169. *Ibid.*, *1836 British Treaty*, p. 3.
170. *Supra.* note 127, *1844 British Treaty*, p. 65.
171. See Annex 4, *1846 British Treaty*, pp. 445-446; see also Annex 16, *1846 British Treaty*, pp. 9-10.
172. See Annex 4, *1851 British Treaty*, pp. 467-476; see also Annex 16, *1851 British Treaty*, pp. 31-39.
173. *Supra.* note 168, *1874 British Postal Convention*, pp. 119-121.
174. *Supra.* note 146.
175. *Supra.* note 167, p. 388.
176. *Ibid.*, p. 391.
177. *Ibid.*, p. 393.
178. *Ibid.*, p. 396.

179. Ibid., p. 397.
180. Ibid., p. 397.
181. Ibid., p. 484.
182. Ibid., p. 398.
183. Ibid., p. 399.
184. Ibid., p. 400.
185. Ibid., p. 441.
186. Ibid., p. 402.
187. Ibid., p. 419.
188. Ibid., p. 422.
189. Ibid., p. 423.
190. Ibid., p. 427.
191. Ibid., p. 431.
192. Ibid., p. 434.
193. Ibid., p. 436.
194. Ibid., p. 438.
195. Ibid., p. 441.
196. Ibid., p. 446.
197. Ibid., p. 451.
198. Ibid., p. 455.
199. Ibid., p. 456.
200. Ibid., p. 458.

201. Ibid., p. 462.
202. Ibid., p. 467.
203. Ibid., p. 467.
204. Ibid., p. 468.
205. Ibid., p. 469.
206. Ibid., p. 471.
207. Ibid., p. 476.
208. Ibid., p. 477.
209. Ibid., p. 504.
210. Ibid., p. 479.
211. Ibid., p. 481.
212. Ibid., p. 484.
213. Ibid., p. 492.
214. Ibid., p. 496.
215. Ibid., p. 497.
216. Ibid.
217. Ibid., p. 500.
218. Ibid.
219. Ibid., p. 501.
220. Ibid., p. 467.
221. Ibid., p. 503.
222. Ibid.

223. Ibid., p. 504.
223. Ibid., p. 507.
224. Ibid.
225. Ibid., p. 507.
226. Ibid., p. 508.
227. Ibid., p. 516.
228. Ibid., p. 516.
229. Ibid., p. 519.
230. Ibid.
231. Ibid., p. 521.
232. Ibid., p. 525.
233. Ibid., p. 531.
234. Ibid., p. 532.
235. See Annex 4, *1848 Hamburg Treaty*, pp. 453-455; see also Annex 16, *1848 Hamburg Treaty*, pp. 15-17.
236. *Supra.* note 234, p. 433.
237. *Supra.* note 173, *1863 Italian Treaty*, pp. 89-97.
238. *Supra.* notes 136, 141, 146 and 174.
239. See John W. Wright, *The Universal Almanac 1997*, Kansas City, p. 439.
240. Ibid., p. 463.
241. *Supra.* note 237, *1871 Japanese Treaty*, pp. 115-117.
242. Ibid., *1886 Japanese Convention*, pp. 147-150.
243. Ibid., *1862 Dutch Treaty*, pp. 79-81.

244. *Supra.* note 238.
245. *Supra.* note 239, p. 444.
246. *Ibid.*, p. 508.
247. *Supra.* note 243, *1882 Portuguese Convention*, pp. 143-145.
248. *Supra.* note 244.
249. *Supra.* note 245, p. 390.
250. *Ibid.*, p. 411.
251. *Ibid.*, p. 437.
252. *Ibid.*, p. 476.
253. *Ibid.*, p. 498.
254. *Supra.* note 247, *1869 Russian Treaty*, pp. 99-100.
255. *Supra.* note 248.
256. *Supra.* note 249, p. 392.
257. *Ibid.*, p. 395.
258. *Ibid.*, p. 398.
259. *Ibid.*, p. 428.
260. *Ibid.*, p. 432.
261. *Ibid.*, p. 454.
262. *Ibid.*, p. 459.
263. *Ibid.*, p. 460.
264. *Ibid.*, p. 464.
265. *Ibid.*, p. 473.

266. *Ibid.*, p. 513.
267. *Ibid.*, p. 518.
268. *Ibid.*, p. 520.
269. *Ibid.*, p. 525.
270. *Supra.* note 254, *1887 Hawaiian-Samoan Political Confederation Treaty*, pp. 171-173.
271. *Ibid.*, *1863 Spanish Treaty*, pp. 101-109.
272. *Supra.* note 255.
273. *Supra.* note 256, p. 419.
274. *Ibid.*, p. 425.
275. *Supra.* note 270, *1864 Swiss Treaty*, pp. 83-87.
276. See Annex 4, *1852 Swedish/Norwegian Treaty*, pp. 480-489; see also Annex 16, *1852 Swedish/Norwegian Treaty*, pp. 47-55.
277. *Supra.* note 272.
278. *Supra.* note 273, p. 482.
279. See Annex 4, *1849 American Treaty*, pp. 457-467; see also Annex 16, *1849 American Treaty*, pp. 21-29; see also Annex 10, *1849 American Treaty*, pp. 79-85.
280. See Annex 4, *Exchange of Ratifications*, p. 466.
281. *Supra.* note 275, *1870 American Postal Convention*, pp. 111-113.
282. See Annex 16, *1875 American Commercial Reciprocity Convention*, pp. 123-127; see also Annex 10, *1875 American Commercial Reciprocity Convention*, pp. 164-167.
283. *Supra.* note 281, *1883 American Postal Convention*, pp. 161-169.
284. *Supra.* note 170, *1884 American Supplementary Convention*, pp. 170-172.
285. See *1969 Vienna Convention on the Law of Treaties, Article 46*, which provides that: "1. A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invali-

dating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance," 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969); also refer to paragraphs 54-58 of this Memorial that outlines the circumstances of the revolution of 1887 that brought about an illegal Cabinet Council and subsequently the so-called 1887 constitution. These events took place before the ratification of the 1884 Supplementary Convention granting the exclusive use of Pearl harbor to the United States of America.

286. *Supra.* notes 136, 141, 146, 174, 238, 244, 248, 255, 272 and 277.

287. *Supra.* note 278, p. 488.

288. *Supra.* note 281, *1885 Additional Act to Universal Postal Union Convention*, pp. 151-159.

289. See *Hawaiian Almanac and Annual for 1893, Hawaiian Register and Directory*, p. 140. Archives of Hawai'i, Honolulu.

290. *Ibid.*, pp. 140-141.

291. See Fenwick, 1948, p. 102.

292. See *1969 Vienna Convention on the Law of Treaties, Article 31*, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969).

293. See H. Waldock, 'Doc. A/CN.4/167/Add.3: Third Report on the Law of Treaties' 2 Y. Int'l L. Com. 55 (1964) (quoting G. Fitzmaurice, *The Law and Procedure of the International Court of Justice 1951-4: Treaty Interpretation and Other Treaty Points* 33 Brit. Y.B. Int'l L. 211-212 (1957)). See also *id.*, p. 59 (subsequent practice has its greatest probative value 'as evidence to be used for confirming the natural and ordinary meaning or for ascertaining the meaning in cases of doubt').

294. See G. Fitzmaurice, *The Law and Procedure of the International Court of Justice 1951-4: Treaty Interpretation and Other Treaty Points* 33 Brit. Y.B. Int'l L. 223 (1957). See also D.W. Bowett, *Estoppel before International Tribunals and Its Relation to Acquiescence* 33 Brit. Y.B. Int'l L. 177 (1957) ('...in cases of doubt as to the meaning of an agreement, the subsequent conduct of the parties in carrying out the agreement affords evidence of its meaning')

295. See Ian Brownlie, *Principles of Public International Law*, 1979, p. 76.

296. *Ibid.*

297. *Supra.* note 35, *Treason Statute*, pp. 8-9.

298. See Annex 9, *Proclamation of the Provisional Government of January 17, 1893*, pp. 185-189. See also Annex 10, *Proclamation of the Provisional Government of January 17, 1893*, pp.

209-212.

299. *Supra.* note 284, *Protest from Queen Lili'uokalani to U.S. President Harrison of January 18, 1893*, pp. 219-220.

300. *Ibid.*, *Protest of Queen Lili'uokalani of January 17, 1893*, pp. 232-233.

301. *Ibid.*, *U.S. Recognition of Provisional Government as De Facto of January 17, 1893*, p. 228.

302. *Ibid.*, *Oath of Allegiance to the Provisional Government*, p. 1076.

303. *Ibid.*, *U.S. President Cleveland's Message to Congress of December 18, 1893*, p. 446.

304. *Ibid.*

305. *Ibid.*

306. *Ibid.*

307. *Ibid.*, *Secretary of State Gresham to Minister Willis of October 18, 1893*, pp. 1189-1190.

308. *Ibid.*

309. *Ibid.*, *Reports from Mr. Blount to Secretary of State Gresham*, April 6, 1893, p. 470; April 8, 1893, p. 476; April 26, 1893, p. 479; May 4, 1893, p. 501; May 6, 1893, p. 525; May 9, 1893, p. 530; May 24, 1893, p. 532; May 24, 1893, p. 421; May 24, 1893, pp. 422-426; May 29, 1893, pp. 427-429; June 1, 1893, p. 429; June 1, 1893, p. 429; June 1, 1893, p. 539; June 6, 1893, p. 549; June 17, 1893, p. 564; June 28, 1893, p. 565; July 7, 1893, p. 566; July 17, 1893, p. 567; July 19, 1893, p. 605; July 31, 1893, p. 630.

310. *Ibid.*, *Letter from Secretary State Gresham to President Cleveland*, pp. 459-463.

311. *Ibid.*, *Secretary of State Gresham to Minister Willis of October 18, 1893*, pp. 1189-1190.

312. *Ibid.*, *Secretary of State Gresham to Minister Willis of December 3, 1893*, p. 437.

313. *Ibid.*, *Minister Willis' Interview with Queen Lili'uokalani of December 18, 1893*, pp. 1266-1268.

314. *Ibid.*, *Queen Lili'uokalani to Minister Willis of December 18, 1893*, pp. 1269-1270.

315. *Ibid.*

316. Ibid., *U.S. President Cleveland's Message to Congress of December 18, 1893*, pp. 445-458.
317. Ibid., p. 453.
318. Ibid., p. 457.
319. Ibid., *Sanford Dole to U.S. Minister Willis of December 23, 1893*, pp. 1276-1282.
320. Ibid., *Francis Hatch to U.S. Minister Willis of July 4, 1894*, p. 1374.
321. Ibid.
322. Ibid., *U.S. Minister Willis to Francis Hatch of July 5, 1894*, p. 1374.
323. Ibid., *U.S. President Cleveland's Message to Congress of December 18, 1893*, p. 453; see also Hackworth, *Digest*, vol. 1, pp. 175-176. The objective test is sometimes divided into two parts: (1) control over the machinery of government and (2) the acquiescence of public opinion or the absence of organized resistance. In a memorandum of March 28, 1913, prepared by the Assistant Secretary of State, Adee, with reference to the recognition of the Government of the Republic of China, it was said: "...ever since the American Revolution entrance upon diplomatic intercourse with foreign states has been *de facto*, dependent upon the existence of three conditions of fact: the control of the administrative machinery of the state; the general acquiescence of its people; and the ability and willingness of their government to discharge international and conventional obligations. The form of government has not been a conditional factor in such recognition; in other words, the *de jure* element of legitimacy of title has been left aside, probably because liable to involve dynastic or constitutional questions hardly within our competency to adjudicate, especially so when the organic form of government has been changed, as by revolution, from a monarchy to a commonwealth or vice versa. The general practice in such cases has been to satisfy ourselves that the change was effective and to enter into relation with the authority in de facto possession."
324. *Supra.* note 322, *Minister Willis to Secretary of State Gresham of January 11, 1895*, pp. 1393-1394.
325. Ibid., *Minister Willis to Secretary of State Gresham of January 30, 1895*, pp. 1396-1397.
326. Ibid.
327. Ibid.
328. See Helena Allen, *The Betrayal of Lili'uokalani* (1982), Honolulu, p. 331.
329. Ibid., *U.S. President Cleveland's Message to Congress of December 18, 1893*, p. 451 and

453. Cleveland stated that Queen Lili'uokalani on January 16, 1893 was "...both the *de facto* and the *de jure* government;" and stated that the competing government (self-proclaimed) within the state was "...neither *de facto* nor *de jure*." By Cleveland's investigation, he had determined that there was no overthrow of the Queen's government as it was "...both the *de facto* and the *de jure* government" both before and after January 17, 1893. See also Annex 19. In her Protest to U.S. President McKinley of June 17, 1897 she confirms President Cleveland's conclusion to the 1893 fact finding investigation by stating that "...the President of the United States, the Secretary of State, and an envoy commissioned by them reported in official documents that my government was unlawfully coerced by the forces, diplomatic and naval, of the United States; that I was at the date of their investigations the constitutional ruler of my people." The investigation, she refers to, took place after the so-called revolution of January 17, 1893.

330. *Supra.* note 297, *Local Jurisdiction of Offenses*, p. 5. Section 2 reads: "Where an act is done or a fact or effect takes place within this kingdom, affecting the welfare of the kingdom, or the personal safety, the property or rights of any of its inhabitants, being within this kingdom, any person causing, procuring, machinating or promoting the same, or instigating another there-to, or aiding or assisting therein, is amenable to the laws of this kingdom, whether he be at the same time within or without its limits"

331. *Supra.* note 73, *1864 Constitution, Article 5*, p. 88. Article 5 provides that the: "...privilege of the writ of Habeas Corpus belong to all men, and shall not be suspended, unless by the King, when in cases of rebellion or invasion, the public safety shall require its suspension."

332. *Ibid.*, *Article 42*, p. 92. Article 42 provides, in pertinent part: "No act of the King shall have any effect unless it be countersigned by a Minister, who by that signature makes himself responsible."

333. See Annex 18.

334. See United States Constitution, Article II, section 2, which gives to the President the power "...by and with the consent of the Senate, to make treaties, provided two thirds of the Senators present concur."

335. See Annex 19.

336. See Annex 20.

337. See Tom Coffman, *Nation Within: The Story of America's Annexation of the Nation Hawai'i*, (1998), Library of Congress catalogue card no. 98-71420, p. 279.

338. See Annex 22.

339. *Supra.* note 14, *Exhibit 23*: Memorandum for Abraham D. Sofaer, Legal Advisor, United States Department of State, Legal Issues Raised by the Proposed Presidential Proclamation to

Extend the Territorial Sea, 12 Op. O.L.C. 238, 321 (October 4, 1988). "The United States also annexed Hawai'i by joint resolution in 1898. Again, the Senate had already rejected an annexation treaty, this one negotiated by President McKinley with Hawai'i."

340. *Supra.* note 337, p. 303.

341. See De Lupis, *The Law of War* (1989), p. 142. He states: "Until States have taken a position in a dispute they will be assumed to be neutral with ensuing rights and duties."

342. See *1907 Hague Convention V, Article I*, U.S. Statutes at Large (1909-1911), vol. 36, p. 2310.

343. *Supra.* note 339, *Exhibit 18: Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States*, U.S. Statutes at Large, 30 (July 7, 1898): 750-751.

344. See *United States Congressional Records*, vol. 31, p. 5975 (1898).

345. See Westel Willoughby, *The Constitutional Law of the United States*, vol. 1, §239, p. 427 (2nd ed. 1929).

346. See Annex 21.

347. *Ibid.*

348. *Supra.* note 335.

349. See William Addleman, *History of the U.S. Army in Hawai'i, 1849-1939*. Typescript only available at Archives of Hawai'i, Honolulu (a chronology of military history in Hawai'i based on General Orders of the War Department and other documents).

350. See Annex 4, *1849 American Treaty, Article I*, p. 457; see also Annex 16, *1849 American Treaty, Article I*, p. 21; see also Annex 10, *1849 American Treaty, Article I*, p. 79.

351. See Annex 4, *1849 American Treaty, Article VIII*, p. 457; see also Annex 16, *1849 American Treaty, Article VIII*, p. 21; see also Annex 10, *1849 American Treaty, Article VIII*, p. 79.

352. *Supra.* note 340, p. 323; see also *supra.* note. 328, p. 396.

353. *Supra.* note 292.

354. See *British and Foreign State Papers* (1877), vol. 61, p. 1198.

355. See Hackworth, *International Law* (1943), vol. 5, p. 165.

356. *Ibid.*, p. 164.
357. *Supra.* note 353.
358. See Scott, *Hague Court Reports (1916)*, p. 169.
359. See *P.C.I.J., Reports Ser. B. No. 1 (1922)*, p. 19.
360. See Ingrid De Lupis, *The Law of War (1989)*, p. 150.
361. See A. Berriedale Keith, *Wheaton's International Law (1944)*, p. 234.
362. *Supra.* note 60, *Of the Effects of Laws*, §6, p. 2.
363. See Annex 24.
364. *Supra.* note 362, *An Act to Provide for the Registration of Co-partnership Firms*, pp. 648-650.
365. See Annex 23.
366. *Supra.* note 364, *Of the Executive Extra-Judicial Officers*, §1249, p. 405.
367. See *Hawai'i Revised Statutes, Chapter 502, Bureau of Conveyances*, comprising the statutes of the State of Hawai'i. §502-1 provides: "There shall be a bureau in the department of the land and natural resources to be called the bureau of conveyances. A registrar of conveyances shall be appointed by the board of land and natural resources, under chapters 76 and 77, and shall be superintendent of the bureau. The registrar shall receive such salary as shall be provided by law." As a note to this statute it refers to CC 1859, §1249, which stands for Civil Code of the Hawaiian Kingdom, 1859, §1249 which established the Bureau of Conveyances.
368. See Annex 24, paragraph 6; see also Annexes 7 and 8.
369. See *Oxford Companion to Law (1980)*, p. 897.
370. *Ibid.*, p. 385.
371. *Supra.* note 366, *An Act to Provide for the Registration of Co-partnership Firms*, §7, pp. 649-650.
372. See *Black's Law Dictionary, 6th Ed. (1990)*, p. 26.
373. *Supra.* note, *1864 Constitution, Article 22*, p. 90. Article 22 provides, in pertinent part, that: "...the successor shall be the person whom the Sovereign shall appoint with the consent of

the Nobles, and publicly proclaim as such during the King's life..."

374. *Supra.* note 324, *Draft Constitution of January 14, 1893, Article 22*, p. 1049.

375. *Supra.* note 373, *1864 Constitution, Article 22*, p. 90.

376. *Ibid.*, *Article 33*, pp. 91-92.

377. *Ibid.*, *Article 42*, p. 92.

378. *Supra.* note 371, *Of the Executive Extra-Judicial Officers, §1249*, p. 405.

379. See Annex 6, *An Act to Provide for the Registration of Co-partnership Firms, §7*, pp. 649-650; and Annex 23 for examples of partnership agreements filed in the Bureau of Conveyances in accordance with the 1880 Co-partnership Act.

380. See Annex 25.

381. *Ibid.*, paragraph 1.

382. See Annex 26.

383. *Ibid.*, paragraph 3.

384. *Ibid.*, paragraph 4.

385. *Supra.* note 378, *Of the House of Representatives*, pp. 218-227; see also Annex 9, *1864 Constitution, Article 28*, which states, in pertinent part: "The King, by and with the advice of His Privy Council, convenes the Legislative Assembly at the seat of Government;" and *Article 33* provides that a Regency "...shall administer the Government in the name of the King, and exercise all the Powers which are Constitutionally vested in the King..."

386. See Annex 32.

387. See Annex 33.

388. See Annex 34.

389. See Annexes 30 and 31.

390. *Supra.* note 385, *An Act to Provide for the Registration of Co-partnership Firms, §3*, p. 649.

391. See Annex 35.

392. See Annex 27.
393. Ibid.
394. See Annex 28.
395. See Annex 29.
396. Supra. note 392.
397. Ibid.
398. Ibid.
399. See *Records of Perfect Title Company, Claim no. 1*. The Honolulu Police Department had seized the records of the company in 1997 and has not returned the files nor the equipment to date.
400. Ibid., *Claim no. 611*.
401. See Annex 36.
402. Ibid., *Perfect Title workers jailed, records taken* (Honolulu Star-Bulletin, September 6, 1997).
403. See Annex 44.
404. Supra. note 402, *Co-founders of Perfect Title are indicted on theft charges* (Honolulu Star-Bulletin, December 18, 1997).
405. See Annex 41.
406. Ibid.
407. See Annexes 42 and Annex 43.
408. See *Transcript of criminal case no. 97-3082*, Circuit Court of the First Circuit, State of Hawai'i. Testimony was given by the police officer who was called to the Simafranca home and noted in his police report that submitted as evidence.
409. See Annex 45.
410. Supra. note 404, *Perfect Title Co. co-founder guilty of theft* (Honolulu Star-Bulletin, December 2, 1999).

411. See Annex 46.
412. *Ibid.*; see also Annex 84.
413. *Supra.* note 410, *Perfect Title owner, clients get probation*, (Honolulu Star-Bulletin, March 7, 2000).
414. See Annex 38.
415. See Annex 39.
416. *Ibid.*
417. See Annex 40.
418. *Ibid.*
419. See Annex 47.
420. See Annex 49, *Exhibit "A."*
421. *Ibid.*, *Exhibit "B."*
422. *Ibid.*
423. *Ibid.*, *Exhibit "C."*
424. *Ibid.*, paragraph 15.
425. See Annex 48, p. 23.
426. *Supra.* note 420, *Exhibit "D."*
427. See Rule 17.2 of the Rules of the Supreme Court of the United States, adopted January 16, 1997, effective May 1, 1997, p. 16.
428. See Annex 48.
429. *Supra.* note 426, *Exhibit "E."*
430. See U.S. Supreme Court docket case no. 97-969. *Order of March 23, 1998.*
431. *Supra.* note 429, *Exhibit "F."*

432. See Annex 49.
433. See U.S. Supreme Court docket case no. 97-969.
434. See Annex 50.
435. See Annex 52, paragraph 7.
436. *Ibid.*, paragraph 8.
437. *Ibid.*
438. *Ibid.*
439. *Ibid.*, paragraph 10.
440. *Ibid.*, paragraph 18.
441. *Supra.* note 288, *1864 Swiss Treaty, Article XIII*, p. 87.
442. *Ibid.*, *Article VII*, p. 86.
443. *Supra.* note 390, *The Diplomatic and Consular Agents of Foreign Nations*, §459, p. 112.
444. See Annex 53
445. *Supra.* note 441, *1864 Swiss Treaty, Article III*, p. 84.
446. See Annex 73.
447. *Ibid.*
448. See Annex 54.
449. See Annex 55.
450. See Annex 56.
451. See Annex 57.
452. See Annex 58.
453. See Annex 59.

454. See Annex 60.
455. See Annex 61.
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464. See Annex 70.
465. See Annex 71.
466. See Annex 72.
467. See Annex 74.
468. See Annex 75
469. See Annexes 61-75.
470. See Annex 78.
471. See Annex 77.
472. See Annex 76.
473. See Annex 86.
474. See *U.S. Statutes at Large (1909-1911)*, vol. 36, p. 2277.
475. *Ibid.*, p. 2310.

476. See Greenwood, *Report on International Humanitarian Law, Laws of War (1999)*, United Nations Decade of International Law Centennial of the First International Peace Conference, 1899-1999, p. 44.

477. *Supra.* note 6.

478. See United States Public Law 103-150, 103d Congress, *Apology Resolution for the illegal overthrow of the Hawaiian Kingdom in 1893*, stated, in pertinent part: "Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii..."

479. See U.S. Statutes at Large (1897-1899), vol. 30, p. 1754.

480. See Cragg, *Guide to Military Installations (1997)*. "U.S. Air Force's Hickam Air Force Base (1938)," Honolulu, Island of O'ahu, p. 101; "U.S. Army's Fort Shafter (1907)," Honolulu, Island of O'ahu, p. 103; "U.S. Army's Schofield Barracks (1941)," Wahiawa, Island of O'ahu, p. 104; "U.S. Army's Wheeler Army Airfield, formally Wheeler Air Force Base, (1922)," Wahiawa, Island of O'ahu, p. 105; "U.S. Army's Tripler Medical Center (1907)," Honolulu, Island of O'ahu, p. 105; "U.S. Marine Corps' Camp H.M. Smith (1942)," Honolulu, Island of O'ahu, p. 107; "U.S. Marine Corps' Base Hawai'i (1939)," Kane'ohe, Island of O'ahu, p. 107; U.S. Navy's Pearl Harbor Naval Complex (1902), p. 108.

481. *Supra.* note 475.

482. *Supra.* note 357, Article 31.

483. *Ibid.*

484. *Ibid.*

485. See Keith, *Wheaton's International Law, 7th Ed.*, (1944), p. 233.

486. See Friedman, *The Law of War: A Documentary History (1972)*, vol. 1, p. 152.

487. *Ibid.*, p. 153.

488. *Ibid.*, p. 151.

489. *Ibid.*

490. *Ibid.*

491. *Ibid.*, p. 152.

492. Ibid.
493. Ibid.
494. Ibid.
495. *Supra.* note 476, p. 7.
496. Ibid., p. 8.
497. *Supra.* note 474 and 475.
498. Ibid.
499. Ibid.
500. Ibid.
501. See Schwarzenberger, *International Law (1949)*, p. 289.
502. Ibid., p. 290.
503. Ibid., p. 332.
504. *Supra.* note 341, p. 141.
505. *Supra.* note 485, p. 236.
506. See Brownlie, *Principles of Public International Law (1979)*, p. 82.
507. *Supra.* note 1, Exhibit 19.
508. *Supra.* note 337, p. 321.
509. *Supra.* note 507, section 66.
510. Ibid., section 4.
511. *Supra.* note 339, Exhibit 20.
512. Ibid., section 201.
513. See *Basic Facts about the United Nations*, Sales no. E.95.I31.

514. Ibid.
515. Ibid.
516. See *United Nations Charter*, Article 73.
517. Ibid.
518. See *Document A/4226*, U.N. Gen. Ass. Off. Records, 14th Session.
519. Ibid.
520. Ibid.
521. Ibid.
522. Ibid.
523. Ibid.
524. Ibid.
525. See *Resolution 1469 (XIV)*, U.N. Gen. Ass. Off. Records, 14th Session.
526. Ibid.
527. *Supra.* note 518.
528. See *Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea (October 4, 1988)*, Opinions of the Office of Legal Counsel, U.S. Department of Justice, vol. 12, p. 238.
529. Ibid., p. 252.
530. *Supra.* note 511, Exhibit 22.
531. Ibid.
532. See *Brief for the United States as Amicus Curiae Supporting Respondent, Rice v. Cayetano*, no. 98-818, U.S. Supreme Court.
533. See Annex 79.
534. Ibid.

535. *Supra.* note 530, Exhibit 25.

536. *Ibid.*

537. *Supra.* note 535, Exhibit 26.

538. *Ibid.*, Exhibit 27.

539. *Ibid.*, paragraph 34.

540. *Ibid.*, Exhibit 1.

541. *Ibid.*, Exhibit 29.

542. *Ibid.*