

# PRELIMINARY REPORT

*Termination of the 1875 Commercial Reciprocity Treaty and its  
1884 Supplemental Convention*

THE ROYAL COMMISSION OF INQUIRY:

Investigating War Crimes  
*and*  
Human Rights Violations  
Committed  
*in the*  
Hawaiian Kingdom

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HAWAIIAN KINGDOM



## PRELIMINARY REPORT:

### *Termination of the 1875 Commercial Reciprocity Treaty and its 1884 Supplemental Convention*

This preliminary report of the Royal Commission of Inquiry is on the termination of the 1875 Commercial Reciprocity Treaty,<sup>1</sup> and its 1884 Supplemental Convention,<sup>2</sup> between the Hawaiian Kingdom and the United States that established the U.S. military presence in the Hawaiian Islands since 1898. The Supplemental Convention extended the duration of the 1875 Commercial Reciprocity Treaty an additional seven years until 1894, unless either the United States or the Hawaiian Kingdom gives notice to the other of its intention to terminate the treaty and convention according to Article I of the Supplemental Convention.<sup>3</sup> As a condition for the extension of the commercial treaty, the United States sought exclusive access to Pearl Harbor. Article II of the Supplemental Convention provides:

His Majesty the King of the Hawaiian Islands grants to the Government of the United States the exclusive right to enter the harbor of Pearl River, in the Island of Oahu, and to establish and maintain there a coaling and repair station for the use of vessels of the United States, and to that end the United States may improve the entrance to said harbor and do all other things needful to the purpose aforesaid.

The Supplemental Convention came into effect in 1887 after ratifications were exchanged and would last for seven years and further until “either of the High Contracting Parties shall give notice to the other of its wish to terminate the same,”<sup>4</sup> where termination would commence twelve months after the notification is received by the other High Contracting Party. Although the Hawaiian government was unlawfully overthrown by the United States on 17 January 1893, the Hawaiian Kingdom as a State under international law continued to exist.

### *Restoration of the Government of the Hawaiian Kingdom in 1997*

According to Professor Rim, the State continues “to exist even in the factual absence of government so long as the people entitled to reconstruct the government remain.”<sup>5</sup> In 1997, the Hawaiian government was restored *in situ* by a Regency under Hawaiian constitutional law and the doctrine of necessity in similar fashion to governments established in exile during the Second

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<sup>1</sup> 19 Stat. 625 (1875), Appendix 1.

<sup>2</sup> 25 Stat. 1399 (1884), Appendix 2.

<sup>3</sup> Article I. The High Contracting Parties agree, that the time fixed for the duration of the said Convention, shall be definitely extended for a term of seven years from the date of the exchange of ratifications hereof, and further, until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of its wish to terminate the same, each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter.

<sup>4</sup> Appendix 2.

<sup>5</sup> Yejoon Rim, “State Continuity in the Absence of Government: The Underlying Rationale in International Law,” 20(20) *European Journal of International Law* 1, 4 (2021).

World War.<sup>6</sup> By virtue of this process, the Hawaiian government is comprised of officers *de facto*. According to U.S. constitutional scholar Thomas Cooley:

A provisional government is supposed to be a government *de facto* for the time being; a government that in some emergency is set up to preserve order; to continue the relations of the people it acts for with foreign nations until there shall be time and opportunity for the creation of a permanent government. It is not in general supposed to have authority beyond that of a mere temporary nature resulting from some great necessity, and its authority is limited to the necessity.<sup>7</sup>

Under Hawaiian law, the Council of Regency serves in the absence of the Executive Monarch. While the last Executive Monarch was Queen Lili‘uokalani who died on 11 November 1917, the office of the Monarch remained vacant under Hawaiian constitutional law. There was no legal requirement for the Council of Regency, being the successor in office to Queen Lili‘uokalani under Hawaiian constitutional law, to get recognition from the United States as the government of the Hawaiian Kingdom. The United States’ recognition of the Hawaiian Kingdom as an independent State on 6 July 1844,<sup>8</sup> was also the recognition of its government—a constitutional monarchy. Successors in office to King Kamehameha III, who at the time of international recognition was King of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen Lili‘uokalani in 1891, and the Council of Regency in 1997.

The legal doctrines of recognition of new governments only arise “with extra-legal changes in government” of an existing State.<sup>9</sup> Successors to King Kamehameha III were not established through “extra-legal changes,” but rather under the constitution and laws of the Hawaiian Kingdom. According to United States foreign relations law, “[w]here a new administration succeeds to power in accordance with a state’s constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed.”<sup>10</sup>

The Regency was established in similar fashion to the Belgian Council of Regency after King Leopold was captured by the Germans during the Second World War. As the Belgian Council of Regency was established under Article 82 of its 1831 Constitution, as amended, *in exile*, the

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<sup>6</sup> David Keanu Sai, “The Royal Commission of Inquiry,” in David Keanu Sai’s (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 18-23 (2020); see also Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Hawaiian Journal of Law and Politics* 317-333 (2021).

<sup>7</sup> Thomas M. Cooley, “Grave Obstacles to Hawaiian Annexation,” *The Forum*, 389, 390 (1893).

<sup>8</sup> U.S. Secretary of State Calhoun to Hawaiian Commissioners (6 July 1844) (online at: [https://hawaiiankingdom.org/pdf/US\\_Recognition.pdf](https://hawaiiankingdom.org/pdf/US_Recognition.pdf)).

<sup>9</sup> M.J. Peterson, *Recognition of Governments: Legal Doctrines and State Practice, 1815-1995* 26 (1997).

<sup>10</sup> *Restatement (Third)*, §203, comment c.

Hawaiian Council was established under Article 33 of its 1864 Constitution, as amended, not *in exile* but *in situ*. Oppenheimer explained:

As far as Belgium is concerned, the capture of the king did not create any serious constitutional problems. According to Article 82 of the Constitution of February 7, 1821, as amended, the cabinet of ministers have to assume supreme executive power if the King is unable to govern. True, the ministers are bound to convene the House of Representatives and the Senate and to leave it to their decision of the united legislative chambers to provide for a regency; but in view of the belligerent occupation it is impossible for the two houses to function. While this emergency obtains, the powers of the King are vested in the Belgian Prime Minister and the other members of the cabinet.<sup>11</sup>

Article 33 provides that the Cabinet Council—comprised of the Minister of the Interior, the Minister of Finance, the Minister of Foreign Affairs, and the Attorney General, “shall be a Council of Regency, until the Legislative Assembly, which shall be called immediately 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.” Like the Belgian Council, the Hawaiian Council was bound to call into session the Legislative Assembly to provide for a regency but because of the prolonged belligerent occupation and the effects of denationalization it was impossible for the Legislative Assembly to function. Until the Legislative Assembly can be called into session, Article 33 provides that the Cabinet Council, comprised of the Ministers of the Interior, Foreign Affairs, Finance and the Attorney General, “shall be a Council of Regency, until the Legislative Assembly” can be called into session.

The Regency is a government restored in accordance with the constitutional laws of the Hawaiian Kingdom as they existed prior to the unlawful overthrow of the previous administration of Queen Lili‘uokalani. It was not established through “extra-legal changes,” and, therefore, did not require diplomatic recognition to give itself validity as a government. It was a successor in office to Queen Lili‘uokalani as the Executive Monarch. According to Professor Lenzerini, based on the *doctrine of necessity*, “the Council of Regency possesses the constitutional authority to temporarily exercise the Royal powers of the Hawaiian Kingdom.”<sup>12</sup> He also concluded that the Regency “has the authority to represent the Hawaiian Kingdom as a State, which has been under a belligerent occupation by the United States of America since 17 January 1893, both at the domestic and international level.”<sup>13</sup>

On 8 November 1999, arbitral proceedings were instituted at the Permanent Court of Arbitration (“PCA”) in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, where Larsen, a Hawaiian

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<sup>11</sup> F.E. Oppenheimer, “Governments and Authorities in Exile,” 36 *American Journal of International Law* 568-595, 569 (1942).

<sup>12</sup> Lenzerini, 324.

<sup>13</sup> *Id.*, 325.

subject, claimed that the government of the Hawaiian Kingdom, by its Council of Regency, should be liable for allowing the unlawful imposition of American laws that denied him a fair trial and led to his incarceration.<sup>14</sup> Prior to the establishment of an *ad hoc* tribunal, the PCA acknowledged the Hawaiian Kingdom as a non-Contracting State under Article 47 of the 1907 Hague Convention on the Pacific Settlement of International Disputes.<sup>15</sup> Article 47 states, “[t]he jurisdiction of the Permanent Court, may within the conditions laid down in the regulations, be extended to disputes between non-Contracting [States] or between Contracting [States] and non-Contracting [States], if the parties are agreed on recourse to this Tribunal.”<sup>16</sup> This brought the dispute under the auspices of the PCA.

In determining the continued existence of the Hawaiian Kingdom as a non-Contracting State, the relevant rules of international law that apply to established States must be considered, and not those rules of international law that would apply to new States such as the case with Palestine. Professor Lenzerini concluded that “according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of international law. In fact, in the event of illegal annexation, ‘the legal existence of [...] States [is] preserved from extinction,’ since ‘illegal occupation cannot of itself terminate statehood.’”<sup>17</sup>

Because the State is a juristic person, it requires a government to speak on its behalf, without which the State is silent, and, therefore, there could be no arbitral tribunal to be established by the PCA. On the contrary, the PCA did form a tribunal on 9 June 2000 after confirming the existence of the Hawaiian State and its government, the Council of Regency, pursuant to Article 47. In international intercourse, which includes arbitration at the PCA, the Permanent Court of International Justice, in *German Settlers in Poland*, explained that “States can act only by and through their agents and representatives.”<sup>18</sup> As Professor Talmon states, the “government, consequently, possesses the *jus repraesentationis omnimodae*, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. [Professor Talmon submits] that this is the case irrespective of whether the government is *in situ* or in exile.”<sup>19</sup>

After the PCA verified the continued existence of the Hawaiian State, as a juristic person, it also simultaneously ascertained that the Hawaiian State was represented by its government—the Council of Regency. The PCA identified the international dispute in *Larsen* as between a “State”

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<sup>14</sup> *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

<sup>15</sup> Permanent Court of Arbitration, *101st Annual Report*, Annex 2, p. 44, fn. 1 (2001) (online at <https://docs.pca-cpa.org/2015/12/PCA-annual-report-2001.pdf>).

<sup>16</sup> 36 Stat. 2199, 2224 (1907).

<sup>17</sup> Lenzerini, 322.

<sup>18</sup> *German Settlers in Poland*, 1923, PCIJ, Series B, No. 6, 22.

<sup>19</sup> Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* 115 (1998).

and a “Private entity” in its case repository. Furthermore, the PCA described the dispute between the Council of Regency and Larsen as between a government and a resident of Hawai‘i.

Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency (“Hawaiian Kingdom”) on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant’s person within the territorial jurisdiction of the Hawaiian Kingdom (emphasis added).<sup>20</sup>

It should also be noted that the United States, by its embassy in The Hague, entered into an agreement with the Council of Regency to have access to the pleadings of the arbitration. This agreement was brokered by Deputy Secretary General Phyllis Hamilton of the Permanent Court of Arbitration prior to the formation of the arbitral tribunal.<sup>21</sup>

*Notice of Terminating the 1875 Commercial Reciprocity Treaty  
and its 1884 Supplemental Convention*

On 20 October 2023, the Hawaiian Kingdom, by its Council of Regency, proclaimed the termination of the 1875 Commercial Reciprocity Treaty and its 1884 Supplemental Convention in accordance with Article I of the said Supplemental Convention.<sup>22</sup> The following day, a notice of termination was sent, by courier United States Postal Service, to Secretary of State Antony J. Blinken. The notice of termination was received by the United States Department of State at 5:47am ET on 26 October 2023, which consequently triggered the tolling of twelve months after which the said Treaty and its Supplemental Convention would terminate, which is by 5:47am ET 26 October 2024.<sup>23</sup>

The reasoning behind the notice of termination was that the United States exploited and expanded its use of Pearl Harbor by establishing military bases and facilities throughout the Hawaiian Islands under the Indo-Pacific Command of the U.S. Department of Defense, thereby violating the Hawaiian Kingdom’s note to the Pearl Harbor Convention “that the privilege to be granted should be coterminous with the Treaty.” The expansion of military bases and facilities also constitute violations of Article 1 of the 1907 Hague Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land. Although the Hawaiian Kingdom is not a Contracting State to the 1907 Hague Convention (V), it is mere codification of nineteenth century

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<sup>20</sup> *Id.*

<sup>21</sup> Sai, The Royal Commission of Inquiry, 25-26.

<sup>22</sup> Proclamation Terminating the 1875 Commercial Reciprocity Treaty and its 1884 Supplemental Convention, Appendix 3.

<sup>23</sup> Sai to Blinken (21 Oct. 2023), with signed receipt (24 Oct. 2023), Appendix 4.

customary international law. On 7 April 1855, King Kamehameha IV proclaimed the foreign policy of the Kingdom:

My policy, as regards all foreign nations, being that of peace, impartiality and neutrality, in the spirit of the Proclamation by the late King, of the 16th May last, and of the Resolutions of the Privy Council of the 15th June and 17th July, I have given to the President of the United States, at his request, my solemn adherence to the rule, and to the principles establishing the rights of neutrals during war, contained in the Convention between his Majesty the Emperor of all the Russias and the United States, concluded in Washington on the 22nd July last.<sup>24</sup>

This policy of neutrality remained unchanged throughout the nineteenth century and continues today by the Council of Regency. Furthermore, the policy of neutrality by the Hawaiian Kingdom as a Neutral Power were inserted as treaty provisions in the Hawaiian-Swedish/Norwegian Treaty of 1852, the Hawaiian-Spanish Treaty of 1863, and the Hawaiian-German Treaty of 1879. In its treaty with Sweden/Norway, Article XV states, “His Majesty the King of Sweden and Norway engages to respect in time of war the neutral rights of the Hawaiian Kingdom, and to use his good offices with all other powers, having treaties with His Majesty the King of the Hawaiian Islands, to induce them to adopt the same policy towards the Hawaiian Kingdom.”

As a result of the termination of the treaty and its convention, all United States military forces in the Hawaiian Islands will be withdrawn in twelve months from 26 October 2023. On the withdrawal, the Council of Regency proclaimed:

And, We do require that when the United States has received this notice of termination, it shall, prior to the expiration of twelve months in accordance with Article I of the 1884 Supplemental Convention, remove all movable property at its military facilities throughout the Hawaiian Islands, including unexploded munitions, and fuel, with the exception of real property attached to the land or erected on it, including man-made objects, such as buildings, homes, structures, roads, sewers, and fences, to include on other properties that have been or are currently under its supervision and command.

Not all military forces in the Hawaiian Islands are affected by the notice of termination. There are two military forces present within the Hawaiian Kingdom today. That of the United States Federal government called Title 10 United States Code (“USC”) armed forces,<sup>25</sup> and that of the State of Hawai‘i National Guard called Title 32 USC armed forces.<sup>26</sup> Title 10 troops are purely American in origin while the Title 32 troops are Hawaiian in origin, and, therefore, remain in the Hawaiian Islands to be called by its original designation—the Royal Guard.

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<sup>24</sup> Robert C. Lydecker, *Roster Legislatures of Hawaii—1841-1918* 57 (1918).

<sup>25</sup> Title 10 of the United States Code outlines the role of the armed forces of the United States federal government.

<sup>26</sup> Title 32 of the United States Code outlines the role of the Army and Air National Guard of the States and Territories of the United States.



## *Military Forces of the Hawaiian Kingdom*

In 1845, the Hawaiian Kingdom organized its military under the command of the Governors of the several islands of Hawai‘i, Maui, O‘ahu and Kaua‘i but subordinate to the Monarch. According to the statute, “male subjects of His Majesty, between the ages of eighteen and forty years, shall be liable to do military duty in the respective islands where they have their most usual domicile, whenever so required by proclamation of the governor thereof.”<sup>27</sup> Those exempt from military duty included ministers of religion of every denomination, teachers, members of the Privy Council of State, executive department heads, members of the House of Nobles and Representatives when in session, judges, sheriffs, notaries public, registers of wills and conveyances, collectors of customs, poundmasters and constables.<sup>28</sup>

In 1847, the *Polynesian* newspaper, a government newspaper, reported the standing army comprised of 682 of all ranks: the “corps which musters at the fort, including officers, 286; corps of King’s Guards, including officers, 363; stationed at the battery, on Punch Bowl Hill, 33.”<sup>29</sup> On 17 December 1852, King Kamehameha III, in Privy Council, established the First Hawaiian Cavalry, commanded by Captain Henry Sea.<sup>30</sup>

In 1886, the Legislature enacted *An Act to Organize the Military Forces of the Kingdom*, “for the purpose of more complete military organization in any case requiring recourse to arms and to maintain and provide a sufficient force for the internal security and good order of the Kingdom, and being also in pursuance of Article 26th of the Constitution.”<sup>31</sup> The Act of 1886 established “a regular Military and Naval force, not to exceed two hundred and fifty men, rank and file,” and the “term of enlistment shall be for five years, which term may be extended from time to time by re-enlistment.”<sup>32</sup> This military force was headed by a Lieutenant General as Commander-in-Chief and the supreme command under the Executive Monarch as Generalissimo.<sup>33</sup> This military force was renamed the King’s Royal Guard in 1890,<sup>34</sup> and the Executive Monarch was thereafter called the “Commander-in-Chief of all the Military Forces”<sup>35</sup> and not Generalissimo. While the King’s Royal Guard was the only active military component of the kingdom,<sup>36</sup> there was a reserve force capable of being called to active duty. As previously stated, the statute provides that “[a]ll male subjects of His Majesty, between the ages of eighteen and forty years, shall be liable to do military

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<sup>27</sup> “Statute Laws of His Majesty Kamehameha III,” *Hawaiian Kingdom*, Vol. I 69 (1846).

<sup>28</sup> *Id.*, 70.

<sup>29</sup> “Military,” *Polynesian* 138 (9 Jan. 1847).

<sup>30</sup> “First Hawaiian Cavalry,” *Polynesian* 130 (25 Dec. 1852).

<sup>31</sup> *An Act to Organize the Military Forces of the Kingdom*, Laws of His Majesty Kalakaua I 37 (1886).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*, 38.

<sup>34</sup> *An Act to Provide for a Military Force to be Designated as the “King’s Royal Guard,”* Laws of His Majesty Kalakaua I 107 (1890).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*, 108.

duty in the respective islands where they have their most usual domicil, whenever so required by proclamation from the governor thereof.”<sup>37</sup>

Upon ascending to the Throne on 29 January 1891, Queen Lili‘uokalani, as the Executive Monarch, succeeded her predecessor King David Kalākaua as Commander-in-Chief of the Royal Guard. The command structure of the Royal Guard consisted of a Captain and two Lieutenants. These officers were authorized “to make, alter and revoke all regulations not repugnant to the provisions of [the Act of 1890], concerning enlistment, discipline, exercises, accoutrements, arms and clothing and to make such other rules and orders as may be necessary to carry into effect the provisions of [the Act of 1890], and to provide and prescribe penalties for any violations of such regulations not extending to deprivation of life or limb, or the infliction of corporeal punishment.”<sup>38</sup> All rules, regulations or orders required the approval of the Executive Monarch and was to be countersigned by the Minister of Foreign Affairs.<sup>39</sup>

On 17 January 1893, a small group of insurgents, with the protection of United States troops, declared the establishment of a provisional government whereby all “officers under the existing Government are hereby requested to continue to exercise their functions and perform the duties of their respective offices, with the exception of the following named persons: Queen Liliuokalani, Charles B. Wilson, Marshal, Samuel Parker, Minister of Foreign Affairs, W.H. Cornwell, Minister of Finance, John F. Colburn, Minister of the Interior, [and] Arthur P. Peterson, Attorney General, who are hereby removed from office.”<sup>40</sup> The insurgency further stated that all “Hawaiian Laws and Constitutional principles not inconsistent herewith shall continue in force until further order of the Executive and Advisory Councils.”<sup>41</sup> The insurgency unlawfully seized control of the Hawaiian Kingdom civilian government.

The military force of the provisional government was not an organized unit or militia but rather armed insurgents under the command of John Harris Soper. Soper attended a meeting of the leadership of the insurgents calling themselves the Committee of Safety in the evening of 16 January 1893, where he was asked to command the armed wing of the insurgency. Although Soper served as Marshal of the Hawaiian Kingdom under King Kalākaua, on 17 June 1893 he admitted in an interview with U.S. Special Commissioner James Blount, who was investigating the overthrow of the Hawaiian Kingdom government by direction of U.S. President Grover Cleveland, that he “was not a trained military man, and was rather adverse to accepting the position [he] was not especially trained for, under the circumstances, and that [he] would give them an answer on the following day; that is, in the morning.”<sup>42</sup> Soper told Special Commissioner Blount that he

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<sup>37</sup> Section 3, *Appendix to the Civil Code*, Compiled Laws 493 (1884).

<sup>38</sup> *Id.*, 107.

<sup>39</sup> *Id.*

<sup>40</sup> *Proclamation*, Laws of the Provisional Government of the Hawaiian Islands vii (1893).

<sup>41</sup> *Id.*, viii.

<sup>42</sup> Executive Documents, 972.

accepted the offer after learning that “Judge Sanford Dole [agreed] to accept the position as the head of the [provisional] Government.”<sup>43</sup> The insurgency renamed the Hawaiian Kingdom’s Royal Guard to the National Guard by *An Act to Authorize the Formation of a National Guard* on 27 January 1893.<sup>44</sup> Soper was thereafter commissioned as Colonel to command the National Guard and was called the Adjutant General.

On 17 January 1893, Queen Lili‘uokalani conditionally surrendered to the United States and not the insurgency, thereby transferring effective control of Hawaiian territory to the United States.<sup>45</sup> Under customary international law, a State’s effective control of another State’s territory by an act of war triggers the Occupying State’s military to establish a military government to provisionally administer the laws of the Occupied State. This rule was later codified under Articles 42 and 43 of the 1899 Hague Regulations, which was superseded by Articles 42 and 43 of the 1907 Hague Regulations. When Special Commissioner Blount ordered U.S. troops to return to the *U.S.S. Boston* on 1 April 1893,<sup>46</sup> effective control of Hawaiian territory was left with the insurgency calling itself the provisional government.

Special Commissioner Blount submitted his final report on 17 July 1893 to U.S. Secretary of State Walter Gresham.<sup>47</sup> Secretary of State Gresham submitted his report to President Cleveland on 18 October 1893,<sup>48</sup> and President Cleveland notified the Congress of his findings and conclusions on 18 December 1893.<sup>49</sup> In his message to the Congress, he stated:

When our Minister recognized the provisional government the only basis upon which it rested was the fact that the Committee of Safety had in the manner above stated declared it to exist. It was neither a government *de facto* nor *de jure*. That it was not in such possession of the Government property and agencies as entitled it to recognition is conclusively proved by a note found in the files of the Legation at Honolulu, addressed by the declared head of the provisional government to Minister Stevens, dated January 17, 1893, in which he acknowledges with expressions of appreciation the Minister’s recognition of the provisional government, and states that it is not yet in the possession of the station house (the place where a large number of the Queen’s troops were quartered), though the same had been demanded of the Queen’s officer’s in charge. Nevertheless, this wrongful recognition by our Minister placed the Government of the Queen in a position of most perilous perplexity. On the one hand she had possession of the palace, of the barracks, and of the police station, and had at her command at least five hundred fully armed men and several pieces of artillery. Indeed, the whole military force of her kingdom was on her

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<sup>43</sup> *Id.*

<sup>44</sup> *An Act to Authorize the Formation of a National Guard*, Laws of the Provisional Government of the Hawaiian Islands 8 (1893).

<sup>45</sup> Executive Documents, 586.

<sup>46</sup> *Id.*, 597.

<sup>47</sup> *Id.*, 567.

<sup>48</sup> *Id.*, 459.

<sup>49</sup> *Id.*, 445.

side and at her disposal, while the Committee of Safety, by actual search, had discovered that there but very few arms in Honolulu that were not in the service of the Government. In this state of things if the Queen could have dealt with the insurgents alone her course would have been plain and the result unmistakable. But the United States had allied itself with her enemies, had recognized them as the true Government of Hawaii, and had put her and her adherents in the position of opposition against lawful authority. She knew that she could not withstand the power of the United States, but she believed that she might safely trust to its justice. Accordingly, some hours after the recognition of the provisional government by the United States Minister, the palace, the barracks, and the police station, with all the military resources of the country, were delivered up by the Queen upon the representation made to her that her cause would thereafter be reviewed at Washington, and while protesting that she surrendered to the superior force of the United States, whose Minister had caused United States troops to be landed at Honolulu and declared that he would support the provisional government, and that she yielded her authority to prevent collision of armed forces and loss of life and only until such time as the United States, upon the facts being presented to it, should undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands.

This protest was delivered to the chief of the provisional government, who endorsed thereon his acknowledgment of its receipt. The terms of the protest were read without dissent by those assuming to constitute the provisional government, who were certainly charged with the knowledge that the Queen instead of finally abandoning her power had appealed to the justice of the United States for reinstatement in her authority; and yet the provisional government with this unanswered protest in its hand hastened to negotiate with the United States for the permanent banishment of the Queen from power and for sale of her kingdom.

Our country was in danger of occupying the position of having actually set up a temporary government on foreign soil for the purpose of acquiring through that agency territory which we had wrongfully put in its possession. The control of both sides of a bargain acquired in such a manner is called by a familiar and unpleasant name when found in private transactions. We are not without a precedent showing how scrupulously we avoided such accusation in former days. After the people of Texas had declared their independence of Mexico they resolved that on the acknowledgment of their independence by the United States they would seek admission into the Union. Several months after the battle of San Jacinto, by which Texan independence was practically assured and established, President Jackson declined to recognize it, alleging as one of his reasons that in the circumstances it became us "to beware of a too early movement, as it might subject us, however unjustly, to the imputation of seeking to establish the claim of our neighbors to a territory with a view to its subsequent acquisition by ourselves." This is in marked contrast with the hasty recognition of a government openly and concededly set up for the purpose of tendering to us territorial annexation.

I believe that a candid and thorough examination of the facts will force the conviction that the provisional government owes its existence to an armed invasion by the United States.<sup>50</sup>

Under international law, the provisional government was an armed force of the United States in effective control of Hawaiian territory since 1 April 1893, after the departure of U.S. troops. As an armed proxy of the United States, they were actually obliged to provisionally administer the laws of the Hawaiian Kingdom until a peace treaty was negotiated and agreed upon between the United States and the Hawaiian Kingdom. As a matter of fact and law, it would have been Soper's duty to head the military government as its military governor after President Cleveland completed his investigation of the overthrow of the Hawaiian Kingdom government and notified the Congress on 18 December 1893. A Military Government was not established under international law but rather the insurgency maintained the facade that they were a *de jure* government.

The insurgency changed its name to the Republic of Hawai'i on 4 July 1894. Under *An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard* of 13 August 1895, the National Guard was reorganized and commanded by the Adjutant General that headed a regiment comprised of battalions with companies.<sup>51</sup>

Under *An Act To provide a government for the Territory of Hawaii* enacted by the U.S. Congress on 30 April 1900,<sup>52</sup> the Act of 1895 continued to be in force. Under section 6 of the Act of 1900, "the laws not inconsistent with the Constitution or laws of the United States or the provisions of this Act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States." Soper continued to command the National Guard as Adjutant General until 2 April 1907, when he retired. The Hawai'i National Guard continued to stay in force under *An Act To provide for the admission of the State of Hawaii into the Union* enacted by the U.S. Congress on 18 March 1959.<sup>53</sup> While the State of Hawai'i National Guard is referred to today as Title 32 USC troops, they are in fact and by law the Royal Guard by Hawaiian statute.

### *Military Forces of the United States*

The military force of the United States has a direct link to the 1875 Treaty of Reciprocity between the Hawaiian Kingdom and the United States. Under the commercial treaty, certain products of the Hawaiian Kingdom could enter the American market duty free and certain products of the United States can enter the Hawaiian market duty free. Out of this trade agreement, Hawaiian

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<sup>50</sup> *Id.*, 453.

<sup>51</sup> *An Act to Establish and Regulate the National Guard of Hawaii and Sharpshooters, and to Repeal Act No. 46 of the Laws of the Provisional Government of the Hawaiian Islands Relating to the National Guard*, Laws of the Republic of Hawaii 29 (1895).

<sup>52</sup> *An Act To provide a government for the Territory of Hawaii*, 31 Stat. 141 (1900).

<sup>53</sup> *An Act To provide for the admission of the State of Hawaii into the Union*, 73 Stat. 4 (1959).

sugar became a lucrative product, which became a threat to American sugar especially due to the high cost of producing sugar in the aftermath of the Civil War. The treaty was to last for seven years, and further until one of the High Contracting Parties shall give notice to the other of its intention to terminate.

Both the Hawaiian Kingdom and the United States wanted to extend the commercial treaty, but on 19 July 1884, the U.S. Senate Committee on Foreign Relations reported two resolutions: (1) that the Senate advise and consent to the extension of the reciprocity convention for a further definite period of seven years; and (2) “That in the opinion of the Senate it is advisable that the President secure, by negotiation with the Government of Hawaii, the privilege of establishing permanently a proper naval station for the United States in the vicinity of Honolulu, and also a revision and further extension of the schedule of articles to be admitted free of duty from the United States into the Hawaiian Kingdom.”<sup>54</sup>

On 6 December 1884, the Supplemental Convention was signed by Henry A.P. Carter for the Hawaiian Kingdom and Frederick T. Frelinghuysen for the United States at the city of Washington. There was no provision for a permanent naval station, but rather to maintain a “coaling and repair station for the use of vessels of the United States,” and it was specified that the term of the Supplemental Convention was seven years from the date when ratifications were exchanged. The United States Senate advised ratification on 20 January 1887, but the Hawaiian Kingdom was unable to ratify because of opposition in the Legislative Assembly.

While the U.S. Senate advised ratification, the Hawaiian Legislative had not. In the 1886 legislative session, Representative J.L. Kaulukou “said it was the duty of the Nobles and Representatives to jealously guard the independence of the kingdom, as recognized by Great Britain, France and the United States. If they could not retain a treaty without the cession of Pearl Harbor, they had better do without a treaty.”<sup>55</sup> The legislature’s opposition to the United States’ exclusive access to Pearl Harbor triggered a chain of events in the Hawaiian Kingdom that led to the revolution of 1887. Driven by fear that Hawaiian sugar interests would no longer reap the benefit of duty-free sugar entering the American market, a takeover of the Executive Monarch and the Legislature was initiated to ratify the Supplemental Convention.

During the summer of 1887, while the Legislature remained out of session, a minority of Hawaiian subjects of the Hawaiian Kingdom and foreign nationals met to organize a takeover of the political rights of the native population who held the majority of the Legislature Assembly. The driving motivation for these revolutionaries was their perverted and unfounded belief that the “native [was] unfit for government and his power must be curtailed.”<sup>56</sup> A local volunteer militia, whose members

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<sup>54</sup> Ralph S. Kuykendall, *The Hawaiian Kingdom: 1874-1893—The Kalakaua Dynasty*, vol. III, 383 (1967).

<sup>55</sup> *Id.*, 392.

<sup>56</sup> Executive Documents, 574.

were predominantly United States citizens, called themselves the Hawaiian League, and held a meeting on 30 June 1887 in Honolulu at the Armory building of the Honolulu Rifles. Before this meeting, large caches of arms were brought in by the League from San Francisco and dispersed amongst its members.<sup>57</sup>

The group made certain demands on King Kalākaua and called for an immediate change of the King's cabinet ministers. Under threat of violence, the King reluctantly agreed on 1 July 1887 to have this group form a new cabinet ministry made up of League members. The purpose of the League was to seize control of the government for their economic gain, and to neutralize the power of the native vote. On that same day the new cabinet comprised of William L. Green as Minister of Finance, Godfrey Brown as Minister of Foreign Affairs, Lorrin A. Thurston as Minister of the Interior, and Clarence W. Ashford as Attorney General, took "an oath to support the Constitution and Laws, and faithfully and impartially to discharge the duties of [their] office."<sup>58</sup> Under strict secrecy and unbeknownst to Kalākaua, the new ministry also invited two members of the Supreme Court, Chief Justice Albert F. Judd and Associate Justice Edward Preston, "to assist in the preparation of a new constitution,"<sup>59</sup> which now implicated the two highest ranking judicial officers in the revolution.

Hawaiian constitutional law provided that any proposed change to the constitution must be submitted to the "Legislative Assembly, and if the same shall be agreed to by a majority of the members thereof"<sup>60</sup> it would be deferred to the next Legislative session for action. Once the next legislature convened, and the proposed amendment or amendments have been "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."<sup>61</sup> As a minority, these individuals had no intent of submitting their draft constitution to the legislature, which was not scheduled to reconvene until 1888. Instead, they embarked on a criminal path of treason.

The draft constitution was completed in just five days. The King was forced to sign on 6 July and, thereafter, what came to be known as the Bayonet Constitution illegally replaced the former constitution and was declared to be the new law of the land. The King's sister and heir-apparent, Lili'uokalani, discovered later that her brother had signed the constitution "because he had every assurance, short of actual demonstration, that the conspirators were ripe for revolution, and had taken measures to have him assassinated if he refused."<sup>62</sup> Gulick, who served as Minister of the Interior from 1883 to 1886, also concluded:

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<sup>57</sup> *Id.*, 579.

<sup>58</sup> Hawaiian Civil Code, Compiled Laws §31 (1884).

<sup>59</sup> Merze Tate, *The United States and the Hawaiian Kingdom: A Political History* 91 (1980).

<sup>60</sup> 1864 Constitution, as amended, Article 80.

<sup>61</sup> *Id.*

<sup>62</sup> Liliuokalani, *Hawaii's Story by Hawaii's Queen* 181 (1964).

The ready acquiescence of the King to their demands seriously disconcerted the conspirators, as they had hoped that his refusal would have given them an excuse for deposing him, and a show of resistance a justification for assassinating him. Then everything would have been plain sailing for their little oligarchy, with a sham republican constitution.<sup>63</sup>

This so-called constitution has since been known as the *bayonet* constitution and was never submitted to the Legislative Assembly or to a popular vote of the people. It was drafted by a select group of twenty-one individuals<sup>64</sup> that effectively placed control of the Legislature and Cabinet in the hands of individuals who held foreign allegiances. Special Commissioner Blount reported:

For the first time in the history of the country the number of nobles is made equal to the number of representatives. This furnished a veto power over the representatives of the popular vote to the nobles, who were selected by persons mostly holding foreign allegiance, and not subjects of the Kingdom. The election of a single representative by the foreign element gave to it the legislature.<sup>65</sup>

On 22 September 1887, the Cabinet Council that was forced upon King Kalākaua under the Bayonet Constitution began consideration of the Supplementary Convention and four days later decided to “advise the Minister of Resident at Washington that His Majesty gave his consent to the amendment on the condition that the Secretary of State should accept a note explaining that the Hawaiian Government’s understanding of the amendment was that Hawaiian Sovereignty and jurisdiction were not impaired that the Hawaiian Government was not bound to furnish land for any purpose and that the privilege to be granted should be coterminous with the Treaty.”<sup>66</sup> The King, however, told British Commissioner James Wodehouse “that He most unwillingly agreed to sanction the ‘Pearl Harbour’ policy at the urgent desire of His Ministers on the evening of the 26th of September.”<sup>67</sup>

On 20 October 1887, the Cabinet Council coerced King Kalākaua to sign the ratification of the Supplemental Convention. President Cleveland signed the ratification on 7 November 1887, and the ratifications were exchanged at the city of Washington on 9 November 1887, that began the term of seven years to 1894, and further unless one of the Contracting Parties gives notice to the

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<sup>63</sup> Executive Documents, 760.

<sup>64</sup> In the William O. Smith Collection at the Hawaiian Archives there is a near finished version of the 1887 draft with the following endorsement on the back that read: “Persons chiefly engaged in drawing up the constitution were—L.A. Thurston, Jonathan Austin, S.B. Dole, W.A. Kinney, W.O. Smith, Cecil Brown, Rev. [W.B.] Oleson, N.B. Emerson, J.A. Kennedy, [John A.] McCandless, Geo. N. Wilcox, A.S. Wilcox, H. Waterhouse, F. Wundenberg, E.G. Hitchcock, W.E. Rowell, Dr. [S.G.] Tucker, C.W. Ashford.” Added to this group of individuals were Chief Justice A.F. Judd and Associate Justice Edward Preston.

<sup>65</sup> Executive Documents, 579.

<sup>66</sup> Hawaiian Kingdom, *Cabinet Council Minutes* 384, 26 Sep. 1887 (1874-1891); Brown to Carter, 27 Sep. 1887, Hawai‘i Archives.

<sup>67</sup> Wodehouse to FO, no. 34, 18 Nov. 1887, BPRO, FO 58/220, Hawai‘i Archives.



other of its intention to terminate. Prior to the American invasion of Honolulu on 16 January 1893, the United States did not take any steps to establish a coaling station at Pearl Harbor. After the unlawful overthrow of the government of the Hawaiian Kingdom on 17 January 1893, U.S. Special Commissioner James Blount ordered United States forces to return back onto the USS Boston that was docked in Honolulu Harbor on 1 April 1893. For the next five years effective control of Hawaiian territory was in the hands of the insurgents calling themselves the so-called Republic of Hawai‘i.

When the United States unilaterally annexed the Hawaiian Islands in violation of international law on 7 July 1898, it initiated the establishment of the United States Army Pacific, United States Marine Forces Pacific, United States Pacific Fleet, and the United States Pacific Air Forces. The United States Army Pacific was established in the Hawaiian Islands in 1898 during the Spanish-American War, headquartered at its first military base called Camp McKinley on the Island of O‘ahu, and later headquartered at Fort Shafter on the Island of O‘ahu in 1921. In 1908, the Congress allocated funds to establish a Naval Station at Pearl Harbor.<sup>68</sup>

In April 1942, the United States military forces in the Hawaiian Islands were organized into two commands for the Army under United States Army Forces Pacific and for the Navy as Commander-in-Chief, Pacific Fleet, and Pacific Oceans Areas Commander-in-Chief. This command structure of the Army and Navy in the Hawaiian Islands during the Second World War was transformed into the United States Pacific Command on 1 January 1947, which is presently called the Indo-Pacific Command, whose headquarters is at Camp H.M. Smith on the Island of O‘ahu. In September 1947, the United States Air Force separated from the United States Army as a separate branch of the armed forces with its base headquartered at Hickam Air Force Base on the Island of O‘ahu, and later, in 2010, merged to become an element of Joint Base Pearl Harbor-Hickam with the Navy.

The Indo-Pacific Command has four component commands stationed in the territory of the Hawaiian Kingdom—United States Army Pacific, whose headquarters is at Fort Shafter on the Island of O‘ahu, United States Marine Forces Pacific, whose headquarters is at Camp H.M. Smith on the Island of O‘ahu, United States Pacific Fleet, whose headquarters is at Naval Station Pearl Harbor on the Island of O‘ahu, and United States Pacific Air Forces, whose headquarters is at Hickam Air Force Base/Joint Base Pearl Harbor-Hickam on the Island of O‘ahu.

There is no legal basis for the presence of Title 10 USC military forces in the Hawaiian Islands by virtue of Congressional legislation because municipal laws have no extraterritorial effect. Since Congressional legislation is limited in operation to the territory of the United States, it cannot unilaterally establish military installations in the territory of a foreign State without the State’s

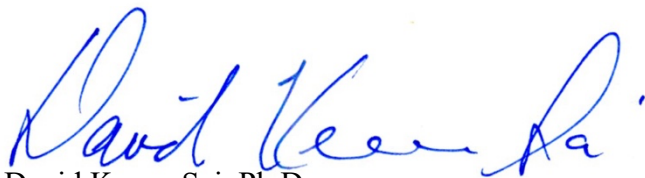
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<sup>68</sup> 35 Stat. 127, 141 (1908).

consent through a treaty or convention.<sup>69</sup> According to traditional international law, the concept of jurisdiction is linked to the State territory. As the Permanent Court of International Justice in the *Lotus* case stated:

[T]he first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissive rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention [...] all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.<sup>70</sup>

The presence of all Title 10 USC military forces throughout the Hawaiian Islands has a direct nexus to the 1884 Supplemental Convention that granted the United States exclusive access to Pearl Harbor. Notwithstanding the nefarious nature of the Hawaiian Kingdom’s ratification of the 1884 Supplemental Convention, as previously stated, it was a valid treaty under international law up until the Hawaiian Kingdom’s notice of intention to terminate was received by the U.S. Department of State at 5:47am ET on 26 October 2023. As a consequence of the termination of the 1875 Commercial Reciprocity Treaty and its 1884 Supplemental Convention between the Hawaiian Kingdom and the United States, all Title 10 USC military forces shall have to be withdrawn from the Hawaiian Islands no later than twelve months from 26 October 2023. The military forces that remain is the Hawaiian Kingdom’s Royal Guard that is referred to today as the Hawai‘i Army and Air National Guard.



David Keanu Sai, Ph.D.

Head, *Royal Commission of Inquiry*

26 October 2023

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<sup>69</sup> See *The Apollon*, 22 U.S. 362, 370 (1824); and *United States v. Curtiss Wright Export Corp.*, 299 U.S. 304, 318 (1936).

<sup>70</sup> S.S. “*Lotus*”, Judgment, Series A, No. 70, 18 (7 Sep. 1927). Generally, on this issue see Arthur Lenhoff, “International Law and Rules on International Jurisdiction,” 50 *Cornell Law Quarterly* 5 (1964).

# Appendix 1

*Convention between the United States of America and His Majesty the King of the Hawaiian Islands. Commercial Reciprocity. Concluded January 30, 1875; Ratification advised by Senate March 18, 1875; Ratified by President May 31, 1875; Ratified by King of Hawaiian Islands April 17, 1875; Ratifications exchanged at Washington June 3, 1875; Proclaimed June 3, 1875*

Jan. 30, 1875.

Post, p. 666.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a Convention between the United States of America and His Majesty the King of the Hawaiian Islands, on the subject of Commercial Reciprocity, was concluded and signed by their respective Plenipotentiaries, at the city of Washington, on the thirtieth day of January, one thousand eight hundred and seventy-five, which convention, as amended by the contracting parties, is word for word as follows:

Preamble.

The United States of America and His Majesty the King of the Hawaiian Islands, equally animated by the desire to strengthen and perpetuate the friendly relations which have heretofore uniformly existed between them, and to consolidate their commercial intercourse, have resolved to enter into a Convention for Commercial Reciprocity. For this purpose, the President of the United States has conferred full powers on Hamilton Fish, Secretary of State, and His Majesty the King of the Hawaiian Islands has conferred like powers on Honorable Elisha H. Allen, Chief Justice of the Supreme Court, Chancellor of the Kingdom, Member of the Privy Council of State, His Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America, and Honorable Henry A. P. Carter, Member of the Privy Council of State, His Majesty's Special Commissioner to the United States of America.

Contracting parties.

And the said Plenipotentiaries, after having exchanged their full powers, which were found to be in due form, have agreed to the following articles.

ARTICLE I.

For and in consideration of the rights and privileges granted by His Majesty the King of the Hawaiian Islands in the next succeeding article of this convention and as an equivalent therefor, the United States of America hereby agree to admit all the articles named in the following schedule, the same being the growth and manufacture or produce of the Hawaiian Islands, into all the ports of the United States free of duty.

Hawaiian products to be admitted free of duty

SCHEDULE.

Arrow-root; castor oil; bananas; nuts, vegetables, dried and undried, preserved and unpreserved; hides and skins undressed; rice; pulu; seeds, plants, shrubs or trees; muscovado, brown, and all other unrefined sugar, meaning hereby the grades of sugar heretofore commonly imported from the Hawaiian Islands and now known in the markets of San Francisco and Portland as "Sandwich Island sugar;" syrups of sugar-cane, melado, and molasses; tallow.

Schedule.

## ARTICLE II.

American products to be admitted free of duty.

For and in consideration of the rights and privileges granted by the United States of America in the preceding article of this convention, and as an equivalent therefor, His Majesty, the King of the Hawaiian Islands hereby agrees to admit all the articles named in the following schedule, the same being the growth, manufacture or produce of the United States of America, into all the ports of the Hawaiian Islands, free of duty.

## SCHEDULE.

Schedule.

Agricultural implements; animals; beef, bacon, pork, ham and all fresh, smoked or preserved meats; boots and shoes; grain, flour, meal and bran, bread and breadstuffs, of all kinds; bricks, lime and cement; butter, cheese, lard, tallow, bullion; coal; cordage, naval stores including tar, pitch, resin, turpentine raw and rectified; copper and composition sheathing; nails and bolts; cotton and manufactures of cotton bleached, and unbleached, and whether or not colored, stained, painted or printed; eggs; fish and oysters, and all other creatures living in the water, and the products thereof; fruits, nuts, and vegetables, green, dried or undried, preserved or unpreserved; hardware; hides, furs, skins and pelts, dressed or undressed; hoop iron, and rivets, nails, spikes and bolts, tacks, brads or sprigs; ice; iron and steel and manufactures thereof; leather; lumber and timber of all kinds, round, hewed, sawed, and unmanufactured in whole or in part; doors, sashes and blinds; machinery of all kinds, engines and parts thereof; oats and hay; paper, stationery and books, and all manufactures of paper or of paper and wood; petroleum and all oils for lubricating or illuminating purposes; plants, shrubs, trees and seeds; rice; sugar, refined or unrefined; salt; soap; shooks, staves and headings; wool and manufactures of wool, other than ready made clothing; wagons and carts for the purposes of agriculture or of drayage; wood and manufactures of wood, or of wood and metal except furniture either upholstered or carved and carriages; textile manufactures, made of a combination of wool, cotton, silk or linen, or of any two or more of them other than when ready made clothing; harness and all manufactures of leather; starch; and tobacco, whether in leaf or manufactured.

## ARTICLE III.

Evidence as to growth, manufacture, &c., how established.

The evidence that articles proposed to be admitted into the ports of the United States of America, or the ports of the Hawaiian Islands, free of duty, under the first and second articles of this convention, are the growth, manufacture or produce of the United States of America or of the Hawaiian Islands respectively shall be established under such rules and regulations and conditions for the protection of the revenue as the two Governments may from time to time respectively prescribe.

## ARTICLE IV.

No export duty to be imposed on free articles.

No export duty or charges shall be imposed in the Hawaiian Islands or in the United States, upon any of the articles proposed to be admitted into the ports of the United States or the ports of the Hawaiian Islands free of duty, under the first and second articles of this convention. It is agreed, on the part of His Hawaiian Majesty, that, so long as this treaty shall remain in force, he will not lease or otherwise dispose of or create any lien upon any port, harbor, or other territory in his dominions, or grant any special privilege or rights of use therein, to any other power, state or government, nor make any treaty by which any other nation shall obtain the same privileges, relative to the admission of any articles free of duty, hereby secured to the United States.

No lease, &c., of Hawaiian ports, and no other nation to have same privileges as United States.

ARTICLE V.

The present convention shall take effect as soon as it shall have been approved and proclaimed by His Majesty the King of the Hawaiian Islands, and shall have been ratified and duly proclaimed on the part of the Government of the United States, but not until a law to carry it into operation shall have been passed by the Congress of the United States of America. Such assent having been given and the ratifications of the convention having been exchanged as provided in article VI, the convention shall remain in force for seven years, from the date at which it may come into operation; and further, until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its wish to terminate the same; each of the high contracting parties being at liberty to give such notice to the other at the end of the said term of seven years, or at any time thereafter.

When to take effect.  
Post, p. 668.

How long to remain in force.

ARTICLE VI.

The present convention shall be duly ratified, and the ratifications exchanged at Washington city, within eighteen months from the date hereof, or earlier if possible.

Exchange of ratifications.

In faith whereof the respective Plenipotentiaries of the high contracting parties have signed this present convention, and have affixed thereto their respective seals.

Signature.

Done in duplicate, at Washington, the thirtieth day of January, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL]  
[SEAL]  
[SEAL]

HAMILTON FISH.  
ELISHA H. ALLEN.  
HENRY A. P. CARTER.

And whereas the said convention, as amended, has been duly ratified on both parts, and the respective ratifications were exchanged in this city on this day:

Ratification.

Now, therefore, be it known that I, ULYSSES S. GRANT, President of the United States of America, have caused the said convention to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

Proclamation.

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this third day of June, in the year of our Lord one thousand eight hundred and seventy-five,  
[SEAL.] and of the Independence of the United States the ninety-ninth.

U. S. GRANT.

By the President:

HAMILTON FISH,  
*Secretary of State.*

## Appendix 2

*Supplementary Convention between the United States of America and his Majesty the King of the Hawaiian Islands to limit the duration of the Convention respecting commercial reciprocity concluded January 30, 1875. Concluded December 6, 1884; ratification advised by the Senate, with amendments, January 20, 1887; ratified by the President November 7, 1887; ratified by the King of Hawaii, October 20, 1887; ratifications exchanged at Washington November 9, 1887; proclaimed November 9, 1887.*

December 6, 1884.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

## A PROCLAMATION.

Whereas a Convention between the United States of America and the Kingdom of the Hawaiian Islands, for the purpose of definitely limiting the duration of the Convention concerning Commercial Reciprocity concluded between the same High Contracting Parties on the thirtieth day of January 1875, was concluded and signed by their respective plenipotentiaries at the city of Washington, on the sixth day of December, in the year of our Lord, 1884, which Convention, as amended by the Senate of the United States and being in the English language, is word for word as follows:

Preamble.

Supplementary Convention to limit the duration of the Convention respecting commercial reciprocity between the United States of America and the Hawaiian Kingdom, concluded January 30, 1875.

Whereas a Convention was concluded between the United States of America, and His Majesty the King of the Hawaiian Islands, on the thirtieth day of January 1875, concerning commercial reciprocity, which by the fifth article thereof, was to continue in force for seven years from the date after it was to come into operation, and further, until the expiration of twelve months after either of the High Contracting Parties should give notice to the other of its wish to terminate the same; and

Whereas, the High Contracting Parties consider that the increase and consolidation of their mutual commercial interests would be better promoted by the definite limitation of the duration of the said Convention;

Therefore, the President of the United States of America, and His Majesty the King of the Hawaiian Islands, have appointed: The President of the United States of America, Frederick T. Frelinghuysen, Secretary of State; and His Majesty the King of the Hawaiian Islands, Henry A. P. Carter, accredited to the Government of the United States as His Majesty's Envoy Extraordinary and Minister Plenipotentiary; who, having exchanged their respective powers, which were found sufficient and in due form, have agreed upon the following articles:

Plenipotentiaries.

## ARTICLE I.

The High Contracting Parties agree, that the time fixed for the duration of the said Convention, shall be definitely extended for a term of seven years from the date of the exchange of ratifications

Duration of reciprocity convention extended.



hereof, and further, until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of its wish to terminate the same, each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter.

## ARTICLE II.

Coaling and repair station at Pearl River.

His Majesty the King of the Hawaiian Islands grants to the Government of the United States the exclusive right to enter the harbor of Pearl River, in the Island of Oahu, and to establish and maintain there a coaling and repair station for the use of vessels of the United States, and to that end the United States may improve the entrance to said harbor and do all other things needful to the purpose aforesaid.

## ARTICLE III.

Ratification.

The present Convention shall be ratified and the ratifications exchanged at Washington, as soon as possible.

In witness whereof, the respective Plenipotentiaries have signed the present Convention in duplicate, and have hereunto affixed their respective seals.

Done at the city of Washington the 6th day of December in the year of our Lord 1884.

Signatures.

FREDK. T. FRELINGHUYSEN. [SEAL.]  
HENRY A. P. CARTER. [SEAL.]

And whereas the said Convention, as amended, has been duly ratified on both parts, and the respective ratifications of the same have been exchanged.

Proclamation.

Now, therefore, be it known that I, Grover Cleveland, President of the United States of America, have caused the said Convention to be made public to the end that the same and every article and clause thereof, as amended, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this ninth day of November in the year of our Lord one thousand eight hundred and [SEAL.] eighty-seven and of the Independence of the United States the one hundred and twelfth.

GROVER CLEVELAND.

By the President:

T. F. BAYARD,  
*Secretary of State.*



## Appendix 3

# Proclamation

**Whereas**, by the advice and approval of the Legislature of Our Kingdom, We did enter into a Convention with the United States of America on the subject of Commercial Reciprocity, which said Convention was concluded and signed by duly authorized Plenipotentiaries representing the Hawaiian Kingdom and the United States of America, at the City of Washington, on the 30th day of January, 1875; and

**Whereas**, a Supplementary Convention to limit the duration of the Convention respecting commercial reciprocity and to grant to the Government of the United States the exclusive right to enter the harbor of Pearl River, in the Island of O'ahu, and to establish and maintain there a coaling and repair station for the use of vessels of the United States, and to that end the United States may improve the entrance to said harbor and do all other things needful to the purpose aforesaid, was concluded and signed by duly authorized Plenipotentiaries representing the Hawaiian Kingdom and the United States of America, at the City of Washington, on the 6th day of December, 1884; and

**Whereas**, the Supplementary Convention was ratified by both High Contracting Parties, and the respective ratifications of the same have been exchanged at the City of Washington, on the 9th day of November, 1887; and

**Whereas**, the Supplemental Convention to the 1875 Treaty of Commercial Reciprocity extended the duration of both instruments for a term of seven years from the date of the exchange of ratifications in 1887, and further, until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of its wish to terminate the same, each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter; and

**Whereas**, the United States in its unlawful and prolonged military occupation of the Hawaiian Kingdom since the 17th day of January, 1893, has exploited its use of Pearl Harbor by establishing military facilities throughout the Hawaiian Islands in violation of Article 1 of the 1907 Hague Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land; and

**Whereas**, the Hawaiian Kingdom is a Neutral Power by treaty provisions in the Hawaiian-Swedish/Norwegian Treaty of 1852, the Hawaiian-Spanish Treaty of 1863, and the Hawaiian-German Treaty of 1879; and

**Whereas**, the United States Army Pacific was established in the Hawaiian Islands in 1898 during the Spanish-American War headquartered at its first military base called Camp McKinley on the Island of O'ahu, and later headquartered at Fort Shafter on the Island of O'ahu in 1921; and

**Whereas**, in April 1942, the United States military forces in the Hawaiian Islands were organized into two commands for the Army under United States Army Forces Pacific and for the Navy as Commander-in-Chief, Pacific Fleet, and Pacific Oceans Areas Commander-in-Chief; and

**Whereas**, the United States command structure of the Army and Navy in the Hawaiian Islands during the Second World War since 1942 was transformed into the United States Pacific Command on the 1st day of January, 1947, which is presently called the Indo-Pacific Command whose headquarters is at Camp H.M. Smith on the Island of O'ahu; and

**Whereas**, the United States Air Force separated from the United States Army as a separate branch of the armed forces in September 1947 with its base headquartered at Hickam Air Force Base, Island of O‘ahu, and later merged in 2010 to become an element of Joint Base Pearl Harbor-Hickam with the Navy; and

**Whereas**, the Indo-Pacific Command has four component commands stationed in the territory of the Hawaiian Kingdom—United States Army Pacific whose headquarters is at Fort Shafter on the Island of O‘ahu, United States Marine Forces Pacific whose headquarters is at Camp H.M Smith on the Island of O‘ahu, United States Pacific Fleet whose headquarters is at Naval Station Pearl Harbor on the Island of O‘ahu, and United States Pacific Air Forces whose headquarters is at Hickam Air Force Base/Joint Base Pearl Harbor-Hickam on the Island of O‘ahu; and

**Whereas**, the presence of all United States military forces throughout the Hawaiian Islands have a direct nexus to the 1884 Supplemental Convention granting the United States exclusive access to Pearl Harbor:

**Now, therefore, We,** the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, do hereby give notice terminating the 1875 Reciprocity Treaty and its 1884 Supplemental Convention as provided for under Article I of the said Supplemental Convention, which will take effect twelve months from the date the United States has received this notice of termination;

**And, We** do require that when the United States has received this notice of termination, it shall, prior to the expiration of twelve months in accordance with Article I of the 1884 Supplemental Convention, remove all movable property at its military facilities throughout the Hawaiian Islands, including unexploded munitions, and fuel, with the exception of real property attached to the land or erected on it, including man-made objects, such as buildings, homes, structures, roads, sewers, and fences, to include on other properties that have been or are currently under its supervision and command.





In Witness Whereof, We have hereunto  
set our hand, and caused the Great Seal of  
the Kingdom to be affixed this 20<sup>th</sup> day of  
October A.D. 2023.

David Keanu Sai, Ph.D.  
Chairman of the *acting* Council of Regency  
*Acting* Minister of the Interior

*Acting* Minister of Foreign Affairs ad interim

Kau'i P. Sai-Dudoit,  
*Acting* Minister of Finance

Dexter Ke'eaumoku Ka'iama, *Esq.*,  
*Acting* Attorney General

**And Whereas** the said Notice of Termination of the 1875 Reciprocity Treaty and its 1884 Supplemental Convention as provided for under Article I of the said Supplemental Convention, has been received by the U.S. Department of State, by courier, U.S. Postal Service, on the 26th day of October, 2023, at 5:47am in Washington, DC.

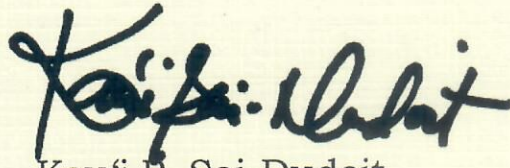
**Now, therefore, We,** the acting Council of Regency of the Hawaiian Kingdom, serving in the absence of the Monarch and temporarily exercising the Royal Power of the Kingdom, have caused the said Notice of Termination to be made public to the end that the same may be observed and fulfilled in good faith by the United States and its military forces in the Hawaiian Kingdom.



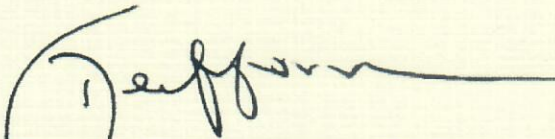
**In Witness Whereof, We** have hereunto set our hand, and caused the Great Seal of the Kingdom to be affixed this 26<sup>th</sup> day of October A.D. 2023.

A handwritten signature in blue ink that reads "David Keanu Sai". The signature is fluid and cursive.

David Keanu Sai, Ph.D.  
Chairman of the *acting* Council of Regency  
*Acting* Minister of the Interior  
*Acting* Minister of Foreign Affairs ad interim



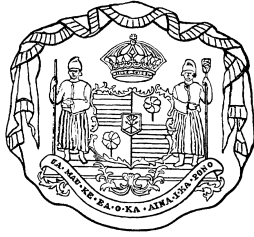
Kau'i P. Sai-Dudoit,  
*Acting* Minister of Finance



Dexter Ke'eaumoku Ka'iama, *Esq.*,  
*Acting* Attorney General



## Appendix 4



**H.E. DAVID KEANU SAI, PH.D.**

Minister of Foreign Affairs *ad interim*  
P.O. Box 4146  
Hilo, HI 96720  
Tel: +1 (808) 383-6100  
E-mail: [interior@hawaiiankingdom.org](mailto:interior@hawaiiankingdom.org)  
Website: <http://hawaiiankingdom.org/>

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21 October 2023

The Honorable Antony J. Blinken  
Secretary of State  
U.S. Department of State  
2201 C Street NW  
Washington, DC 20520

U.S. Postal Service Priority Mail Express tracking no. EE 402 827 679 US

Re: Notice of Termination of the 1875 Reciprocity Treaty and its 1884 Supplemental Convention granting exclusive right for the United States to enter Pearl Harbor

Dear Secretary Blinken:

I have the honor to refer to Article I of the 1884 Supplemental Convention (25 Stat. 1399) that extended the duration of the 1875 Commercial Reciprocity Treaty (19 Stat. 625) between our two countries for an additional term of seven years from the date when ratifications were exchanged by our Plenipotentiaries at Washington, D.C., on 9 November 1887, and further, “until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of its wish to terminate the same, each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter.”

Please find enclosed a Proclamation by the *acting* Council of Regency dated 20 October 2023 terminating the 1875 Commercial Reciprocity Treaty and its 1884 Supplemental Convention that granted “to the Government of the United States the exclusive right to enter the harbor of Pearl River, in the Island of O‘ahu.” Upon receipt of this notice of termination, the United States shall, prior to the expiration of twelve months in accordance with Article I of the 1884 Supplemental Convention, remove all movable property at its military facilities throughout the Hawaiian Islands, including unexploded munitions, and

fuel, with the exception of real property attached to the land or erected on it, including man-made objects, such as buildings, homes, structures, roads, sewers, and fences, to include on other properties that have been or are currently under its supervision and command.

I have taken the liberty of also enclosing the *Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom* by Professor Federico Lenzerini, and a copy of the *Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020).

With sentiments of the highest regard,

A handwritten signature in blue ink that reads "David Keanu Sai". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping underline.

H.E. David Keanu Sai, Ph.D.

Minister of Foreign Affairs *ad interim*

enclosures

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2023 ⓘ

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