

COMPLAINT AGAINST THE UNITED STATES OF AMERICA

To the President of the Security Council.

On behalf of the *Acting* Government of the Hawaiian Kingdom I have the honor

- (a) to refer to Article 35 (2) of the Charter of the United Nations;
- (b) the Declaration of the Hawaiian Kingdom accepting the obligations of Pacific Settlement under the United Nations Charter for the purposes of these proceedings, attached hereto as Attachment no. 1; and
- (c) to state that the *Acting* Government of the Hawaiian Kingdom hereby appoints as its Agent H.E. *Acting* Minister of Interior David Keanu Sai and that his address is P.O. Box 2194, Honolulu, H.I. 96805-2194, telephone no: (808) 239-5347, fax no: (808) 239-6212, e-mail: interiorhk@hawaii.rr.com

Under the authority conferred upon the Security Council by the Charter of the United Nations, I hereby submit on behalf of the *Acting* Government of the Hawaiian Kingdom a Complaint, with Attachments, against the Government of the United States of America in the following case.

I. PRELIMINARY STATEMENTS

To assist the Security Council in its evaluation of the merits of this submission, the *Acting* Government of the Hawaiian Kingdom would like to preface this Complaint with the following preliminary statements and then a statement of the facts:

- 1.1 This case arises out of the prolonged and illegal occupation of the entire territory of the Hawaiian Kingdom by the United States of America since the Spanish-American War of 1898, and the failure on the part of the United States of America to establish a direct system of administering the laws of the Hawaiian Kingdom. As will be described below, this action constitutes a fundamental breach of Hawaiian State sovereignty and the treaties entered between the Hawaiian Kingdom and the United States, as well as the 1907 Hague Regulations and international law.
- 1.2 The Hawaiian Kingdom acquired the recognition of its independence on December 19, 1842, by the United States of America; April 1, 1843, by the United Kingdom; and by joint proclamation between the United Kingdom and France on November 28, 1843. On May 16, 1854, the Hawaiian Kingdom declared itself a neutral State, and whose neutrality became a provision in divers treaties with other independent States. At the time of the recognition of Hawaiian independence, the Hawaiian Kingdom's government was a constitutional monarchy, and for the next fifty years, it would develop a complete system of laws, both civil and criminal, and have treaty relations of a *most favored nation*

status with the major powers of the world, including the United States of America. The *Dominion of the Hawaiian Kingdom*, with supporting Annexes, is a report attached hereto as Attachment no. 2. This report provides the Security Council with an overview of the Hawaiian Kingdom's political history to the present, including the following statement of facts.

II. STATEMENT OF FACTS

- 2.1 On January 14, 1893, Her Hawaiian Majesty Queen Lili'uokalani summoned into the throne room of the Palace, the diplomatic corps, members of the Supreme Court and the Legislative Assembly, as well as a committee of the Hawaiian Political Association, which comprised of aboriginal Hawaiian subjects vehemently opposed to the illegal 1887 constitution as evidenced by a multitude of signature petitions the organization had collected. Her Majesty's intention on this day was to reaffirm the 1864 Constitution as a counter to the illegal 1887 constitution.
- 2.2 This action, on the part of the Queen, generated excitement amongst a minority of the non-aboriginal Hawaiian subjects and alien community, who were co-conspirators in the so-called 1887 constitution that illegally allowed aliens to vote in the Kingdom elections. This faction would convince the Queen's ministers to delay her announcement in order to formulate a counter. Thereafter, the Queen regrettably informed her guests that she yielded under the advice of her ministers, and promised that on some future day a new constitution would be sought.
- 2.3 In response to the Queen's delay, a meeting of approximately fifty to one hundred people, primarily resident aliens, met at a private office in Honolulu and selected a so-called Committee of Safety, which comprised of thirteen individuals. The national breakdown of this so-called committee was: (6) Hawaiian subjects, not of the aboriginal race, (5) American citizens, (1) British subject, and (1) German subject. Between the 14th and 16th of January, 1893, the committee had been meeting with the resident United States Minister assigned to the Hawaiian Kingdom, His Excellency John Stevens, to formulate a plan of annexing the Hawaiian Islands to the United States.
- 2.4 On January 16, 1893, a meeting was organized by the so-called Committee of Safety to protest the Queen's efforts to nullify the illegal constitution of 1887. Continuing to mask their true intentions, the committee sought to procure a resolution to be passed by those people in attendance that would denounce the Queen and empower the committee.
- 2.5 On that same day the so-called committee, which was comprised of only five (5) Americans out of thirteen (13), had sent a note to the United States Minister purporting that American lives and property were in danger and concluded that,

"We are unable to protect ourselves without the aid, and therefore pray for the protection of the United States forces."

- 2.6 After delivery of the note, the committee had re-evaluated their treasonous actions, and sent a small contingent to persuade the American Minister not to land the troops until the next day. The request was denied. The American Minister, in violation of the international law of non-intervention, said that the orders have been issued and whether the Committee of Safety was ready or not, the troops will land. Captain Wiltse, U.S. Naval Commander of the U.S.S. Boston, was ordered to land a force,

"...for the protection of the United States legation, United States consulate, and to secure the safety of American life and property."

- 2.7 Thereafter, between the hours of 4 and 5 p.m., an invasion force of over 160 well-armed U.S. troops, with two (2) pieces of artillery, were landed and marched through the streets of Honolulu to a position previously selected by Minister Stevens on January 16, 1893. The location of the detachment was directly across the Government building and in plain view of the Palace.
- 2.8 Immediately following the unprovoked landing of the American troops, the Governor of the island of O'ahu, His Excellency Archibald Cleghorn, sent a communication to the U.S. Minister protesting the landing of the troops and called it an unwarranted invasion of Hawaiian soil. At the same time the Hawaiian Minister of Foreign Affairs, His Excellency Samuel Parker, sent a communication to the U.S. Minister and demanded an explanation for the landing of American troops. The U.S. Minister evaded both communications. The American troops were located a few hundred yards from the Government building at a place between Music Hall and Arian Hall. Members of the so-called Committee of Safety predetermined this location and the U.S. Minister before American troops disembarked the U.S.S. Boston.
- 2.9 On January 17, 1893, at about 2:30 p.m., members of this treasonous group proceeded in squads to the Government building, where the American troops were already situated, in order to read their so-called proclamation abrogating the monarchical form of government and seeking annexation to the United States. But in order for these traitors not to be noticed and arrested by Hawaiian officials, they separated in their march. The Committee of Safety had sent Mr. A.S. Wilcox to see if there were any Hawaiian Government troops present at the Government building, and when informed there was none, they proceeded to the Government building and read the proclamation only a few hundred yards from the fortified position of American troops. Only at the end of the reading of the proclamation did the insurrectionary troops, numbering a mere thirty (30) to forty (40), begin to assemble.
- 2.10 U.S. Special Investigator James Blount who was investigating the circumstances of the so-called revolution later requested Rear Admiral Skerrett, ranking officer

of the U.S. Naval Force in the Pacific, to comment on the location of American troops. Rear Admiral Skerrett stated,

"In my opinion it was unadvisable to locate the troops there, if they were landed for the protection of the United States citizens, being distantly removed from the business portion of the town, and generally far away from the United States legation and consulate-general, as well as being distant from the houses and residences of United States citizens...Had Music Hall been seized by the Queen's troops, they would have been under their fire, had such been their desire. It is for these reasons that I consider the position occupied as illy selected. Naturally, if they were landed with a view to support the Provisional Government troops, then occupying the Government building, it was a wise choice, as they could enfilade any troops attacking them from the palace grounds in front."

2.11 In his investigation, U.S. Special Investigator James Blount also commented on the location of the American troops by stating that,

"A part of the Queen's forces, numbering 224, were located at the station house, about one-third of a mile from the Government building. The Queen, with a body of 50 troops, was located at the palace, north of the Government building about 400 yards. A little northeast of the palace and some 200 yards from it, at the barracks, was another body of 272 troops. These forces had 14 pieces of artillery, 386 rifles, and 16 revolvers. West of the Government building and across a narrow street were posted Capt. Wiltse and his troops, these likewise having artillery and small arms. The Government building is in a quadrangular-shaped piece of ground surrounded by streets. The American troops were so posted as to be in front of any movement of troops, which should approach the Government building on three sides, the fourth being occupied by themselves. Any attack on the Government building from the east side would expose the American troops to the direct fire of the attacking force. Any movement of troops from the palace toward the Government building in the event of a conflict between the military forces would have exposed them to the fire of the Queen's troops. In fact, it would have been impossible for a struggle between the Queen's forces and the forces of the committee of safety to have taken place without exposing them to the shots of the Queen's forces."

2.12 He concluded by stating that,

"A building was chosen where there were no troops stationed, where there was no struggle to be made to obtain access, with an American force immediately contiguous with the mass of the population impressed with its unfriendly attitude. Aye, more than this -- before any demand for surrender had even been made on the Queen or on the commander of any officer of any of her military forces at any of the points where her troops

were located, the American minister had recognized the Provisional Government and was ready to give it the support of the United States troops!"

- 2.13 Former United States Congressman James Blount conducted the official report of this Presidential established investigation. 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."

- 2.14 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."

- 2.15 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."

- 2.16 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. 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."

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

"I, Lili'uokalani, 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."

- 2.18 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. 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..."

- 2.19 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.
- 2.20 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."

- 2.21 Acknowledging the actions taken by the U.S. Minister in January of 1893 as illegal, both under international and municipal laws, U.S. President Grover Cleveland called for the restoration of the Hawaiian Kingdom Government on December 18, 1893. In his message to the U.S. Congress, he rescinded the U.S. Minister's *de facto* recognition of January 17, 1893, by stating that the Provisional Government was neither *de facto* nor *de jure*, and admits to intervention by concluding that

"The lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may safely be asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives."

- 2.22 Attached to the findings of fact, the President expressed

"...desire to aid in the restoration of the status existing before the lawless landing of the United States forces at Honolulu on the 16th of January last, if such restoration could be effected upon terms providing for clemency as well as justice to all parties concerned...In short, they require that the past should be buried, and that the restored Government should reassume its authority as if its continuity had not been interrupted."

- 2.23 What was not known by the President when he delivered the message to the United States Congress on December 18, 1893, was that Her Hawaiian Majesty Queen Lili'uokalani had agreed with the proposed condition of amnesty in a communication with U.S. Minister Albert Willis, successor to U.S. Minister John

- Stevens, on the very same day President Cleveland addressed the U.S. Congress. With all the conditions having been met, the United States failed to assist in the restoration of the lawful government of the Hawaiian Islands for more political reasons than that of a legal duty and obligation.
- 2.24 In view of what has been said regarding the historical background of the fake revolution and the creation of the puppet government called the provisional government, the continuity of the Hawaiian Kingdom as a subject of international law remained intact. Thus the problem of the continuity of the Hawaiian Kingdom as independent State involves no doctrinal difficulty.
- 2.25 Although the standing of the puppet “provisional” government has been negated under international law, the individuals who embarked on this most treacherous course would not recognize the findings of the U.S. President nor to the lawful right of the Hawaiian Kingdom Government. Instead, they maintained their opposition to the law by taking advantage of the time that had elapsed during the U.S. investigation. In the absence of lawfulness, this self-proclaimed entity that arose out of illegal actions taken by the U.S. diplomatic and military personnel, were allowed to grow and recruit individuals seeking power and wealth, while the United States Congress addressed the Hawaiian issue as requested by U.S. President Cleveland in his speech on December 18, 1893. Since its illegal birth, the Provisional Government's intent was never to be an independent nation and a subject of international law, but rather sought annexation to the United States as a territory. Under the Cleveland administration the dream of annexation (which was brokered under the Harrison administration), soon became a nightmare of American liability and criminal acts, which to this day has not been resolved. Notwithstanding international law, this traitorous group, who called themselves the provisional government, maintained itself until a more sympathetic administration could replace President Cleveland's.
- 2.26 Unable to succeed at this first attempt of annexation, the self-proclaimed provisional government declared itself to be the Republic of Hawai‘i on July 4, 1894. 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. 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.
- 2.27 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 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."

- 2.28 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*.
- 2.29 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. This so-called treaty remained subject to ratification or approval by two-thirds of the United States Senate.
- 2.30 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. A certified copy of the entire protest from the United States National Archives is attached hereto as Attachment no. 3. In particular, Her Majesty stated:

"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."

- 2.31 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 Kālai'āina). A great majority of the Hawaiian people was associated with these organizations. These petitions were signed on February 4, 1897, and addressed newly elected United States President William McKinley. The Honorable Joseph Heleluhe filed these petitions in the United States Department

of State 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),

- 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.

- 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 was 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.

- 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.

- That the 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 Lili'uokalani 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."

- 2.32 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 Kālai'āina), which numbered nearly 17,000 signatures would be withheld because it might receive a negative response by the U.S. Senators because of the petition's pro-Monarchy wording of the

petition. The Men and Women's Hawaiian Patriotic League petitions numbered over 21, 000 signatures. 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."

- 2.33 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. The dominion of the Hawaiian Kingdom remained intact.
- 2.34 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.
- 2.35 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. The Philippine Islands were a territorial colony of Spain, together with Guam. The International Laws of War regulated the U.S. Navy's hostile incursion into the territory of the Kingdom of Spain, and consequently the warring parties were termed "belligerent States." The Hawaiian Kingdom and its territorial dominion was a neutral State, whose territory was considered under international law inviolable by any belligerent State.
- 2.36 On May 10, 1898, hearings were held in the U.S. House Committee on Foreign Affairs concerning Democratic Representative Francis Griffith Newlands' resolution to provide for annexing the Hawaiian Islands to the United States of America. In testimony given before this committee, United States Naval Captain Alfred T. Mahan and U.S. Army General John Schofield explained the military importance as to why the resolution should be submitted to a vote by the U.S. Congress.
- 2.37 Captain Alfred T. Mahan stated:

"It is obvious that if we do not hold the islands ourselves we can not expect the neutrals in the war to prevent the other belligerent from occupying them; nor can the inhabitants themselves prevent such

occupation. The commercial value is not great enough to provoke neutral interposition. In short, in war we should need a larger Navy to defend the Pacific coast, because we should have not only to defend our coast, but also to prevent, by naval force, an enemy from occupying the islands; whereas, if we pre-occupied them, fortifications could preserve them to us. In my opinion it is not practicable for any trans-Pacific country to invade our Pacific coast without occupying Hawaii as a base.” (emphasis added)

2.38 General John Schofield added:

“We got a preemption title to those islands through the volunteer action of our American missionaries who went there and civilized and Christianized those people and established a Government that has no parallel in the history of the world, considering its age, and we made a preemption which nobody in the world thinks of disputing, provided we perfect our title. If we do not perfect it in due time, we have lost those islands. Anybody else can come in and undertake to take them. So it seems to me the time is now ripe when this Government should do that which has been in contemplation from the beginning...” (emphasis added)

2.39 On July 6, 1898, during the height of armed conflicts with the Kingdom of Spain, in both the Pacific Ocean and the Caribbean, the United States Congress passed the joint resolution purporting to annex the Hawaiian Islands. President McKinley then signed this resolution on the following day. U.S. Representative Ball characterized the effort to annex Hawai‘i by joint resolution as:

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

2.40 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."

2.41 Thus, the purported sovereignty of the self-proclaimed Republic of Hawai‘i, and not the sovereignty of the Hawaiian Kingdom were transferred to the United States of America. On a platform at the base of ‘Iolani Palace in Honolulu, Harold Sewall, from the McKinley administration 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."

- 2.42 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."

- 2.43 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 continuity 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.

- 2.44 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. 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.

- 2.45 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."

- 2.46 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."

2.47 Under the international laws of occupation, more particularly Article 43 of the 1907 Hague Convention IV, the occupying government must establish a system of direct administration of the laws of the country that it's occupying. In other words, the United States government, as an illegally occupying government in the Hawaiian Islands since its unprovoked incursion by its troops on August 13, 1898, was mandated to administer Hawaiian Kingdom law over the territory and not its own, until they withdraw. This is not a mere descriptive assumption by the occupying government, but rather it is the law of occupation.

2.48 Instead of establishing a system to administer Hawaiian Kingdom law in 1898, the United States, by its Congress in 1900, created a puppet government. This government, called the Territorial Government of the Hawaiian Islands, would enforce American law throughout the Hawaiian Kingdom. United States President William McKinley appointed the most heinous criminal in the Kingdom, Sanford B. Dole its first governor. Sanford B. Dole, a traitor to the Kingdom, was given authority by a United States President to punish and even put to death any Hawaiian subject or loyalist to the Kingdom who would threaten his so-called authority. United States military bases sprang up throughout the islands and together with the Territorial Government they imposed their rule over Hawaiian nationals. Having lost control over its ports of entry, American citizens unknowingly flocked to the Hawaiian Islands under the false impression that it was lawfully annexed, and soon overwhelmed the population of Hawaiian nationals.

2.49 In 1945, the United Nations was created with the United States as one of its charter members. According to its Charter, the United Nations would promote the protection of human rights and establish a process of de-colonization for those people who have *not yet attained* independence as a nation. United Nations General Assembly Resolution 1514 provides that

"...all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

2.50 In accordance with Article 73 (e) of the United Nations Charter, member States who had colonial possessions were required to report yearly to the Secretary General the status of their colonies in relation to self-determination. It was at this point that the United States committed fraud before this international organization by fraudulently reporting the Hawaiian Islands as a U.S. colony along with Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico and the Virgin

Islands. The underlying problem here was that the Hawaiian Kingdom had already achieved independence for the Hawaiian Islands since 1842, and the United States and other members of the Community of States also recognized this independence. Independence though, could not be claimed for the territories of Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico nor the Virgin Islands.

- 2.51 This attempt to mask the American occupation of the Hawaiian Kingdom is what forged the creation of the Puppet State of Hawai'i in 1959. In 1959, the American Ambassador to the United Nations reported to the Secretary General that

"...since 1946, the United States has transmitted annually to the Secretary General information on the Territory of Hawai'i pursuant to Article 73 (e) of the Charter. However, on August 21, 1959 Hawai'i became one of the United States under a new constitution taking effect on that date. In the light of this change in the constitutional position and status of Hawai'i, the United States Government considers it no longer necessary or appropriate to continue to transmit information on Hawai'i under Article 73 (e)."

- 2.52 In regard to the continuity of Statehood during occupation Professor Marek, author of *Identity and Continuity of States in Public International Law*, (1968) states,

"Since the law relating to the continuity of the occupied State is clear and unequivocal, any acts of the occupying power which are not in accordance therewith are clear violations of international law," and "...a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State."

III. STATE INTERESTS SUBJECT TO INTERNATIONAL REMEDIES

- 3.1 The *International Law Commission*, in its draft articles concerning State responsibility, defines an international crime as:

"[a]n internationally wrongful act, which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole..."

- 3.2 The failure of the United States Government to execute both the civil and penal laws of the Hawaiian Kingdom while illegally occupying the islands, not only affected the property rights of subjects of the Hawaiian Kingdom resident in the Hawaiian Islands, but the property rights of all other residents, foreign nationals or otherwise, residing or doing business in the islands.

3.3 Since the illegal occupation, and continuing through today, both domestic taxation and the collection of duties upon foreign imports are administered and collected under the auspices of United States law and not in accordance with Hawaiian Kingdom law. And the transference of property, both real and personal, by subjects of the Hawaiian Kingdom or citizens or subjects of foreign States while resident within the territorial jurisdiction of the Hawaiian Kingdom, are subject to Hawaiian Kingdom law and not the domestic laws of an occupying government.

3.4 In addition, commercial treaties concluded between the Hawaiian Kingdom and other independent States, engage that the nationals of these States, while resident within the Hawaiian Kingdom are to be afforded the equal protection of Hawaiian Kingdom law. As these treaties remain intact they are still binding upon the high contracting States and their nationals, which includes the United States of America.

3.5 Furthermore, Article 19, section 3(a) of the Draft Articles of State Responsibility, provisionally adopted by the Draft Committee of the *International Law Commission* had determined that an international crime may result from:

"...a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression."

3.6 Commencing from the date of the illegal occupation of the Hawaiian Kingdom by the United States of America in 1898, military installations were erected throughout the islands in violation of its Neutrality. The United States military installations on the island of O'ahu, to include its naval facilities at Pearl Harbor, was the sole reason for Japan's attack on Hawaiian Kingdom soil on December 7, 1941.

3.7 Hawaiian subjects, who were indoctrinated in the belief that they were American nationals, served in many American conflicts throughout the world to date, and many of whom ultimately gave their lives for a country not their own. Presently, the military installations throughout the Hawaiian Islands continue to place the Hawaiian Kingdom and its nationals in perilous danger. These actions by the United States of America constitute an international crime as defined by the *International Law Commission*.

3.8 §901(c) of *The Foreign Relations Law of the United States* (1986), in regards to the discontinuance of an international violation, states:

"The obligation of a state to terminate a violation of international law may include discontinuance, revocation, or cancellation of the act (whether legislative, administrative, or judicial) that caused the violation; abstention from further violation; or performance of an act that the state was obligated but failed to perform. For instance, there is an obligation to repeal a law illegally annexing a foreign territory..." (emphasis added)

3.9 In regard to the obligations for all States, the *International Law Commission on State Responsibility* has determined that:

"An international crime committed by a State entails an obligation for every other State:

- (a) Not to recognize as lawful the situation created by the crime;
- (b) Not to render aid or assistance to the State which has committed the crime in maintaining the situation so created;
- (c) To cooperate with other States in carrying out the obligations under subparagraphs (a) and (b); and
- (d) To cooperate with other States in the application of measures designed to eliminate the consequences of the crime."

3.10 The international obligation of the United States is two fold: first, to comply with the 1907 Hague Conventions IV and V, as they relate to the occupation of a neutral and independent State; and, second, to the treaty obligations entered into with the Hawaiian Kingdom, as well as all treaties made by the Hawaiian Kingdom with other independent States.

IV. THE NATURE OF THE HAWAIIAN KINGDOM'S CLAIM

4.1 Article 35(2) of the Charter provides that

"a State which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter."

4.2 The United States of America is a Member of the United Nations, and thus party to the Charter. The Hawaiian Kingdom is a non-Member State of the United Nations, and has accepted in advance the obligations of pacific settlement provided in the present Charter (Attachment no. 1).

V. ACTION REQUESTED

5.1 For the reasons set forth above, the *Acting* Government of the Hawaiian Kingdom respectfully requests and expects the Security Council, in accordance with Article 36 (1) of the United Nations Charter, to investigate the Hawaiian Kingdom question, in particular, the merits of this complaint, and to recommend appropriate procedures or methods of adjustment.

5.2 The *Acting* Government of the Hawaiian Kingdom reserves the right to present supplementary arguments and observations as and when the procedure of the

Security Council offers the occasion to do so. For this purpose, the Hawaiian Kingdom is willing to abide by whatever time limits fixed by the Security Council to ensure the just and speedy disposition of the case to which this Complaint refers.

Date: 05 July 2001

Respectfully submitted,

David Keanu Sai,
Agent.