

Kingdom of Hawai'i



Interim Provisional Government Council Privy Council



Re; Memorandum for Ka Pouhana, CEO of the Office of Hawaiian Affairs regarding Hawai'i as an Independent State and the Impact it has on the Office of Hawaiian Affairs, D. Keanu Sai, Ph.D, May, 27, 2014

Professor Sai's claims based on "war crimes" and "occupation" do not consider certain relevant facts and fundamental principles. There is no reasonable dispute that the wrongful overthrow of the constitutional government of the Kingdom of Hawai'i was a violation of Law of Nations and peremptory norms. There is no reasonable dispute that the annexation and later colonization of the Nation of Hawai'i was incurably void under the same principles of law of nations and peremptory norms.

"Foreign nations are not to interfere in the internal government of an independent state (Book II, §54, &c.). It belongs not to them to judge between the citizens whom discord has roused to arms, nor between the prince and his subjects: both parties are equally foreigners to them, and equally independent of their authority.

See: The Law of Nations, Vattel, Book III, Chapter XVIII, Of Civil War, §296.

There was no "declaration of war" issued by the U.S. Congress against the Kingdom of Hawai'i as was required by the Constitution of the United States of America, Article I, Section 8, Clause 11. Nevertheless, armed military troops were deployed in aid of the discordant factions seeking dissolution of the de jure constitutional Monarchy and the institution of a de facto republic. Today that type of intervention activity is sometimes referred to as "transformative military occupation", however, James Blount ordered the United States flags to be lowered on public buildings and he ordered the U.S. troops to embark back to their respective ships.

At that time there had been a long and reasonably well documented desire by political factions in Hawai'i and inside the United States to "annex" the Hawaiian territory and colonize the body politic and people.

The act of aggression was unquestionably “rogue” and unjust not only because there was no formal “declaration of war” issued by the Congress of United States of America against the peaceful Kingdom of Hawai`i, but because there was no “just cause” for war against that peaceful Nation.

“The immediate consequence of the premises is, that if a nation takes up arms when she has received no injury, nor is threatened with any, she undertakes an unjust war. Those alone, to whom an injury is done or intended, have a right to make war.”

See: The Law of Nations, Vattel, Book III, Chapter III, Of The Just Cause Of War, §29.

As well settled and understood by and under Law of Nations:

He who is engaged in war derives all his right from the justice of his cause. The unjust adversary who attacks or threatens him,—who with-holds what belongs to him,—in a word, who does him an injury,—lays him under the necessity of defending himself, or of doing himself justice, by force of arms: he authorizes him in all the acts of hostility necessary for obtaining complete satisfaction. **Whoever therefore takes up arms without a lawful cause, can absolutely have no right whatever: every act of hostility that he commits is an act of injustice.**

He is chargeable with all the evils, all the horrors of the war: all the effusion of blood, the desolation of families, the rapine, the acts of violence, the ravages, the conflagrations, are his works and his crimes. He is guilty of a crime against the enemy, whom he attacks, oppresses, and massacres, without cause: he is guilty of a crime against his people, whom he forces into acts of injustice, and exposes to danger, without reason or necessity,—against those of his subjects who are ruined or distressed by the war,—who lose their lives, their property, or their health, in consequence of it: finally, he is guilty of a crime against mankind in general, whose peace he disturbs, and to whom he sets a pernicious example. Shocking catalogue of miseries and crimes! dreadful account to be given to the king of kings, to the common father of men! May this slight sketch strike the eyes of the rulers of nations,—of princes, and their ministers! Why may not we expect some benefit from it? Are we to suppose that the great are wholly lost to all sentiments of honour, of humanity, of duty, and of religion? And should our weak voice, throughout the whole succession of ages, prevent even one single war, how gloriously would our studies and our labour be rewarded!

He who does an injury is bound to repair the damage, or to make adequate satisfaction if the evil be irreparable, and even to submit to punishment, if the punishment be necessary, either as an example, or for the safety of the party offended, and for that of human society. In this predicament stands a prince who is the author of an unjust war. He is under an obligation to restore whatever he has taken,—to send back the prisoners at his own expense,—to make compensation to the enemy for the calamities and losses he has brought on him,—to reinstate ruined families,—to repair, if it were possible, the loss of a father, a son, a husband.

See: The Law Of Nations, Vattel, Book III, Chapter XI, Of The Sovereign Who Wages An Unjust War, §§§ 183, 184, 185.

The policy of the United States at the time of the admitted wrongful overthrow of the Kingdom of Hawai'i followed Law of Nations. At that time Congress knew and recognized that the acquisition of new territories to the United State could only be accomplished by discovery of unoccupied land, by just conquest or by treaty. The well recognized limits of war and peremptory norms regarding rogue acts of conquest were specifically an integral part of the policy of the United States.

“The mere capacity to wage war for such a purpose with these or any other people the United States unquestionably possess, but until all distinction between power and right shall have been forgotten; until the limits of one shall be supposed to be found only in the measure of the other, the constitutional power of the United States to wage any war can never be admitted to bestow upon the Government the constitutional right to acquire new territory by means of an unjustifiable war...”

See: Diplomatic Relations With Foreign Nations – Hawaiian Islands, Compilation Reports of the Committee On Foreign Relations, 1789 – 1901, Volume VI, pg. 36 (Morgan Report).

Law of Nations is the compelling law (jus cogens) with regards to the admitted wrongful overthrow of the Kingdom of Hawai'i. The Nation of Hawai'i must be justly reinstated and made whole by and under Law of Nations.

Any notion of “occupation” ceases when the belligerent occupant withdraws from the occupied territory or when “annexation” by a foreign state occurs. The territory of the Hawaiian Islands was “annexed” by the United States in 1898 under the New Lands Resolution. “Annexation” of the Hawaiian Islands did not occur by virtue of discovery, conquest by a declaration of war, or by a valid treaty of cessation or amalgamation. Annexation occurred because of the Spanish-American War. As specifically stated in the Apology Bill, Public Law 103-150:

“Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii...”

The Hawaiian Islands were “annexed” by the United States under the pretext of “national security.” *See:* Limits Of National Security, Georgetown Public Law And Legal Theory Research Paper No. 12-118 (2011), 48 Am. Crim. L. Rev. 1573-1756, at pg. 1619. Annexation of the Hawaiian Islands territory was in effect, a unilateral action that was directly opposed to the several protests of Her Majesty, Queen Lilioukalani, and as against the petitions of right of other Hawaiian citizens. “Annexation”, however, does not require consent in matters regarding discovery of unoccupied lands, or in war conquests and subjugation. Annexation also differs from cessation or amalgamation that require the party's consent.

See: <http://en.wikipedia.org/wiki/Annexation> In this regard, the “annexation” of the Hawaiian Islands are distinctive and unique and are not wholly dissimilar to the current annexation of the Crimea Peninsula in Ukraine by Russia that resulted in widespread protests and sanctions against Russia's violation of peremptory norms.

It wasn't until the Hawaiian Islands were made into a territory of the United States that all remnants of any de jure and de facto Hawaiian sovereignty was removed and abolished. As stated in the Apology Bill, Public Law 103-150:

“Whereas, on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaii and defined the political structure and powers of the newly established Territorial Government and its relationship to the United State..”

Under the Organic Act, all offices of the Nation of Hawaii were abolished along with all of its treaties and international agreements. The Hawaiian Islands were colonized and were recognized as such by the United Nations up until Statehood in 1959.

Mr. Sai asserts that the Hague Convention of 1907 and the Geneva Convention of 12, August 1949, along with 18 U.S.C. 2441, as amended, apply against OHA and others. The two Conventions cited *are not retroactive* in their provisions and in their scope and perview. The principle is clearly stated in the Vienna Convention on the Law of Treaties, Article 28, “non-retroactivity of treaties”:

“Unless a different intention appears from the treaty or is otherwise established, its provisions **do not bind** a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.”

Under Statutes of the International Criminal Court, Article 29, the ICC only has jurisdiction in relation to acts committed after the Statue enters into force for the State concerned.

Mr. Sai and others submitted a Protest and Demand (complaint) to the ICC, and tried to accede to the courts jurisdiction. *See:* Press Release: <http://www.hawaiiakingdom.info/?p=1171> see Protest here: http://hawaiiakingdom.org/pdf/UN_Protest.pdf

As I recall, the Clerk of ICC sent back a letter acknowledging the receipt of the Protest and Demand and then stated that no further action was required. Because the complaining party lacked standing to accede to the Statues of the Court and to commence the action, and failed to state a claim upon which the ICC could grant relief, no further Orders of the ICC issued. The ICC lacked jurisdiction and went no further.

Likewise, 18 U.S.C. 2441 does not have ex post facto application. *See:* Constitution for the United States of America, Article I, Section 9, Clause 3 (“No Bill of Attainder or ex post facto law shall be passed.”) One must intentionally ignore an express constitutional prohibition in order to support the application of the wrongful overthrow of the Kingdom of Hawai`i in 1893 to 18 U.S.C. 2441 and to related Conventions.

Inducing OHA or others to perform to demands under notions of possible war crimes and inducing OHA to impose the laws of the Kingdom of Hawai`i under pretext of a continued military “occupation” is contrary to existing law and the principles of law upon which they rest. OHA was never vested with such powers and authority.

The errors of Mr. Sai's efforts have been found to be substantively defective in both the ICJ and in the ICC. It would be hard to believe that the descendants of the Kingdom of Hawai'i would want admiralty and marshal law imposed upon them along with a wide array of acts that can legally occur in transformative occupations. Self-determination and self-governance would both be at serious risk.

See: Transformative Military Occupation: Applying The Laws Of War And Human Rights, 100 Am. J. Int'l L. 580 (2006)

http://www.iihl.org/iihl/Documents/roberts_militaryoccupation1.pdf

In addition to the several foregoing errors, Mr. Sai asserts that the U.S. Pacific Command should use military powers to intervene into and exercise domestic civilian powers in and over the Hawaiian Islands. U.S. Military forces are prohibited from doing such an act in the United States. Such an intervention and exercise of power might be regarded as a deliberate disregard of the Posse Comitatus Act. See: The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law, Congressional Research Service, August 16, 2012.

<http://fas.org/sgp/crs/natsec/R42659.pdf>

DONE this 3rd day of March 2015 Anno Domini.

Signature

Sterling D. Ing, Acting Minister of Finance,
Sui Juris, Jure Soli,
Jure Sanguinis, Jure Coronea

Signature

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