

"Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power."--Article 2, 1907 Hague Convention, V, Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land.

## Hawaiian Neutrality and the Iraqi Conflict

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In this essay I examine the discourse of *states rights* as applied to a conflict between states as well as the implication upon states not part of the conflict. By *states rights*, I mean those rights invoked by states under the international laws of war and occupation and the role of neutrality by other states not involved in the conflict as envisaged in the 1907 Hague Conventions IV and V, respectively. The recent war in Iraq, which was initiated by a Coalition force of United States, British and Australian troops when they invaded Iraqi territory without United Nations Security Council approval, has sparked a discursive formation of rights talk on a grand scale.

As states are assumed equal amongst each other and have rights under international law, there is also a corresponding obligation upon states to maintain those rights. Article 2 of the United Nations Charter,<sup>1</sup> which the United States, Great Britain, Australia and Iraq are members, provides, *inter alia*:

1. The Organization is based upon the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.

A rapidly expanding rhetorical battle has since followed the Iraqi regime's defeat on the battlefield, which many have said will definitely have legal consequences not upon Iraq, but upon the United States, Great Britain and Australia.

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<sup>1</sup> Retrieved on May 8, 2003 from the United Nations website at: <http://www.un.org/aboutun/charter/>

Al Jazeera reported “[t]he majority of international law experts say that the U.S., Britain and Australia are acting in breach of global legal instruments in attacking Iraq without a United Nations resolution, and risk facing serious criminal charges.”<sup>2</sup> In its report, Al Jazeera cited noted international scholars, and, in particular, an organization of international jurists. The report stated,

The Geneva-based International Commission of Jurists (ICJ) has said that any U.S.-led attack on Iraq was illegal without U.N. Security Council backing. “In the absence of such Security Council authorization, no country may use force against another country, except in self-defense against armed attack...This rule was enshrined in the United Nations Charter in 1946 for a good reason: to prevent states from using force as they felt so inclined,” said ICJ Secretary-General Louise Doswald-Beck.<sup>3</sup>

Also the American of Society of International Law (ASIL) is having a theoretical legal debate over the same issue on the *ASIL* forum Discussion Group,<sup>4</sup> where subscribers discuss current issues in international law. On the topic of the Iraqi conflict, the subscribers who are submitting responses tend to be law professors in the United States and abroad. In particular, Professor Anthony D’Amato, a Leighton Professor of Law at Northwestern University, sparked a flurry of rebuttals when he wrote, in part:

I have been consistently in the small group of 20% of ASIL members who believe the war in Iraq was legal under international law. Here is my core argument:

Suppose your next door neighbor hates you and has openly vowed to destroy you and your family. You see him building a catapult in his back yard, one designed to lob a bomb across to your house and incinerate you, your house and your family, probably in the middle of the night when you are all asleep. You also see him fitting it with a round metal sphere. You have no evidence that he has obtained gunpowder with which to pack the sphere, but he is a rich man and can buy explosives at any time. He is also, to all appearances, a certifiable lunatic. He beats his wife and his children on a daily basis for no reason other than the pleasure he derives in hurting.

The police tell you that there is nothing they can do about it. Your neighbor does not currently possess the weapon of house destruction (WHD) that he would need to blow you up. If you don’t like the way he treats his wife and children, you can call up social worker; however, since his wife and children are not complaining (even if they are terrified of doing so), there is probably no “jurisdiction” in the matter. What do you do?...

One such response entertained D’Amato’s assertion of self-help, but fell short of complete backing. Leila Nadya Sadat, professor of law at Washington University in St. Louis and an expert on international war crimes tribunals, responded:

[O]ne thing that seems clear from his [D’Amato’s] hypothetical, as well as the real situation in Iraq, is that Saddam Hussein, and the barbaric neighbor, have already committed several crimes. It is generally a principle

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<sup>2</sup> Retrieved May 8, 2003 from the English version of Al Jazeera’s website at: [http://english.aljazeera.net/topics/article.asp?cu\\_no=1&item\\_no=510&version=1&template\\_id=273&parent\\_id=258](http://english.aljazeera.net/topics/article.asp?cu_no=1&item_no=510&version=1&template_id=273&parent_id=258)

<sup>3</sup> Ibid.

<sup>4</sup> Subscribers can log onto the Discussion Group on the ASIL’s website at: <http://www.asil.org/insights.htm>

of criminal law that one is indicted, arrested and ultimately tried, for crimes one has already committed, not for crimes one might commit in the...There certainly would be jurisdiction at least with respect to crimes committed against children in the case of the barbaric neighbor.

Thus, in the neighbor hypothetical, the prosecutor can already bring many charges against the neighbor for his existent criminal activity; and Saddam Hussein could have been indicted years ago based on documentary and witness testimony about existing crimes.

The difficulty at the international level, is then developing a use of force doctrine that is in aid of execution; international arrest warrants need to be enforced, and I think that there is an emerging evidence that the international community will accept, especially if authorized or acquiesced in by the Security Council, the use of force to do so. The genius of Resolution 1373<sup>5</sup> et seq, was exactly this implication; the development over the last ten years of international criminal law doctrines of prescriptive and adjudicative jurisdiction needs to be accompanied by development of effective enforcement measures.

Perhaps self help can be tolerated where there is no possibility of "legal" action; but why not use the United States extraordinary leadership to build effective, multilateral enforcement regimes working through existing institutions? I do not believe the preemption doctrine can be as easily constrained with a two-part formula as Professor D'Amato suggests, although it is certainly worth trying under the circumstances; the difficulty is that each state is the judge in its own cause and subject in fact to no checks on the legality or not of its action.

Jason Beckett, from the University of Glasgow Law School, responds:

While I think that I genuinely understand Professor D'Amato's fears and his legal position, I cannot disagree strongly enough with them. The key point his ingenious legal defense overlooks is that the vast majority of states opposed the factual assertion that Iraq posed a real threat to the world, even to the middle east, let alone to the US or Europe, this simple truth is it did not.

...Finally, I fear Professor D'Amato's arguments can only be offered from within the relative arrogance of a position of strength. They are hegemonic

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<sup>5</sup> U.N. Security Council Resolution 1373, 28 September 2001, established a Security Council Counter-Terrorism Committee. The purpose of the resolution stated, *inter alia*, to: "(a) Prevent and suppress the financing of terrorist acts; (b) Criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts; (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities; (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons..."

arguments, reminiscent of Morgenthau's claim that only amongst equals (within a balance of power, or what Schmitt might have termed a normal situation) can law and justice apply, between the powerful and the weak there is only what is dictated by the strong, and any moral limitations their conscience may place upon their abilities. However, in the absence of justice as formal fairness, of impartiality and universality then the distinctive feature of law is lost. So, which other countries (a) possess WMDs (or the ability to acquire them) and (b) insane or irrational leaders? Personally, I think Sharon, and quite probably Rumsfeld fit the criteria...but do either threaten a powerful enough "we" for this rule to take effect?

Jorg Kammerhofer of Austria responds by distinguishing between common sense and legal sense. He states:

Ah, yes, the common-sense approach! I am sorry I did not take into account when formulating my earlier letter. I will be the first to say that the answer to a legal problem is not to be found in any number of monographs or commentaries by distinguished professors...Law professors do not create norms, I hope we all can agree on that. But neither is a common-sense discussion likely to get more precise results as regards the validity or proposed norms.

Perchance I am working on the topic of self-defense at this present time and one of the things that strikes me is how many of the arguments--both in publications and on this list, both for and against the use of force, simply are not legal. A legal argument for the purpose of this statement is an argument which does allow us to determine the validity *vel non* [or not] of proposed positive legal norms. It would, for example, be an interpretation of a Charter provision...What is not acceptable are arguments regarding other factors, including 'a widening of the exceptions to the general prohibition is going to lead to the misuse of those rights' or 'a state simply has to have certain rights of self-defense because it has to adequately protect itself'.

...What we need, therefore, and that makes me cautiously agree with Tony, is rational argument--not common sense, but 'lawerly sense': directed at the validity *vel non* of proposed positive norms.

The exchange of legal viewpoints on the ASIL forum Discussion Group is an attempt to tackle a situation that has far reaching effects on a global and international level. This dialogue, which centers on the Iraqi conflict because of its multinational and cross-cultural dimensions, also resembles Stychin's focus on multiple identities.<sup>6</sup> Milner states that "Stychin's focus is on multiple identities and on situations where community is likely to be defined with transnational or global frames of reference."<sup>7</sup>

Milner's mentioning of "global frames of reference," in this case regarding states rights, are international legal conventions, which have been asserted on many instances by state government officials and international institutions. Marc Grossman, Under Secretary for Political Affairs for the Bush Administration, stated in an interview on March 14, 2003 with Al-Arabiyya TV that "we [United States military] would enter Iraq not as occupiers but as liberators." The Bush

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<sup>6</sup> Stychin, Carl F., A Nation by Rights: National Cultures, Sexual Identity Politics, and the Discourse of Rights, Philadelphia (Temple), 1998.

<sup>7</sup> Milner, Neal. Rights Discourse and Imagined Communities,

Administration's use of the term "liberators" instead of "occupiers" was more for self-indulged moral posturing than legal obligations, and it created a backlash of responses from the international community. Cobban, a writer for the Christian Science Monitor, wrote

President Bush and his advisers claim that those forces are there as 'liberator'. But as a matter of international law, their status is that of 'military occupiers.' (This latter term is not a moral judgment. It's a technical term that describes the status of armed forces who, in the course of any war, end controlling territory that's not their own.)<sup>8</sup>

Confirming the U.S. status as an occupier, Jordan Paust, a Professor of Law from the University of Houston, wrote an essay for the *American Society of International Law* entitled "The U.S. as Occupying Power over Portions of Iraq and Relevant Responsibilities under the Laws of War."<sup>9</sup> In his essay Paust attests to the significance of two international conventions in the Iraqi case, which are the 1907 Hague Regulations and the 1949 Geneva Convention. Paust states

Article 42 of the Annex to the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land affirms: "Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends...where such authority has been established and can be exercised." As recognized in a U.S. Army text addressing this provision, "Article 42...emphasizes the primacy of FACT as the test of whether or not occupation exists." The Army text adds: "Article 43 of the Hague Regulations continues the theme of the traditional law with its provision for a clearer transfer of authority: 'The authority of the legitimate power having in fact passed into the hands of the occupant...'"

Paragraph 2 of Article 2 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War reads: "The Convention shall...apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."...<sup>10</sup>

These international conventions are the predominant instruments used in the management and regulation of *states rights* during and after a conflict, and were also cited by U.N. Secretary General Kofi Annan in his speech before the U.N. Commission on Human Rights on April 24, 2003. Annan stated that he

hope[s] the Coalition [U.S., Great Britain and Australia] will set an example by making clear that they intend to act strictly within the rules set down by the Geneva Conventions and the Hague Regulations...and by demonstrating through their actions that they accept the responsibilities of the Occupying Power.

An important element that seems to be rising to the forefront in the discourse of *legal rights consciousness* is the global frame of reference being international law. It includes certain multilateral treaties that regulate war and occupation, in particular, being the 1907 Hague Regulations and the 1949 Geneva

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<sup>8</sup> Retrieved from the March 27, 2003 edition of the Christian Science Monitor on the internet at: <http://www.csmonitor.com/2003/0327/p11s02-coop.htm>

<sup>9</sup> Retrieved from the *American Society of International Law* website at: <http://www.asil.org/insights.htm>

<sup>10</sup> Ibid, p. 1.

Conventions. It is interesting to note that in the aftermath of the 1990 Gulf war, the United States spearheaded a campaign at the U.N. Security Council to hold Iraq monetarily liable for violating these and other conventions during the occupation of Kuwait. On April 3, 1991 the U.N. Security Council passed resolution 687 establishing Iraq's legal obligation for the invasion and occupation of Kuwait. The resolution stated, *inter alia*:

Iraq...is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait.

The following month on May 20<sup>th</sup>, the Security Council adopted resolution 692 establishing the United Nations Compensation Commission (UNCC). There were six categories in which claims were submitted to the commission.

- Category "A" claims were claims submitted by individuals who had to depart from Kuwait or Iraq between the date of Iraq's invasion of Kuwait on 2 August 1990 and the date of the cease-fire, 2 March 1991. Compensation for successful claims in this category was set at the fixed sum of US \$2,500 for individual claimants and US \$5,000 for families.
- Category "B" claims are claims submitted by individuals who suffered serious personal injury or whose spouse, child or parent died as a result of Iraq's invasion and occupation of Kuwait. Compensation for successful claims in this category was set at US \$2,500 for individuals and up to US \$10,000 for families.
- Category "C" claims are individual claims for damages up to US \$100,000 each. These claims can be made for twenty-one different types of losses, including those relating to departure from Kuwait or Iraq; personal injury; mental pain and anguish; loss of personal property; loss of bank accounts, stocks and other securities; loss of income; loss of real property; and individual business losses.
- Category "D" claims are individual claims for damages above US \$100,000 each. The types of losses that can be claimed under category "D" are similar to those under category "C", with the most frequent being the loss of personal property; the loss of real property; the loss of income and business-related losses.
- Category "E" claims are claims of corporations, other private legal entities and public sector enterprises. They include claims for: construction or other contract losses; losses from the non-payment for goods or services; losses relating to the destruction or seizure of business assets; loss of profits; and oil sector losses.
- Category "F" claims are claims filed by Governments and international organizations for losses incurred in evacuating citizens; providing relief to citizens; damage to diplomatic premises and loss of, and damage to, other government property; and damage to the environment.

The UNCC set the deadline for the filing of category "A", "B", "C" and "D" claims as January 1<sup>st</sup>, 1995 and for the filing of category "E" and "F" claims as January 1<sup>st</sup>, 1996. The deadline for environmental claims in category "F" was February 1<sup>st</sup>, 1997. According to the UNCC's website, "Since 1991, the Commission has received approximately 2.6 million claims seeking compensation in excess of US

\$300 billion. Nearly one hundred Governments have submitted claims for their nationals, corporations and/or themselves.”<sup>11</sup>

With the world’s attention being squarely placed upon the Coalition Forces as occupiers, could the Coalition Forces indeed find themselves in a similar predicament as Iraq did in the aftermath of the 1990 Gulf War. To shed some light on to this question, I will now introduce the impact that the 1907 Hague Regulations have on States not a part of the conflict and the role of neutrality. It is within this rubric of international law and *states rights* that Hawai’i enters the picture.

### **Hawai’i as an Independent State**

The Hawaiian Islands were recognized in the mid-19<sup>th</sup> century as an independent state and was the first non-European nation to be admitted into the so-called Family of Nations. Hawai’i had a monarchical form of government, based upon a constitution, and was commonly referred to in the international arena as the Hawaiian Kingdom. On January 16, 1893, United States diplomatic and military personnel conspired with a small group of individuals to overthrow the constitutional government of the Hawaiian Kingdom and prepared to provide for annexation of the Hawaiian Islands to the United States of America, under a treaty of annexation submitted to the United States Senate, on February 15, 1893. Newly elected U.S. President Grover Cleveland, having received notice that the cause of the so-called revolution derived from *illegal intervention* by U.S. diplomatic and military personnel, withdrew the treaty of annexation and appointed James H. Blount, as Special Commissioner, to investigate the terms of the so-called revolution and to report his findings.

The report concluded that the United States legation assigned to the Hawaiian Kingdom, together with United States Marines and Naval personnel, were directly responsible for the illegal overthrow of the Hawaiian Kingdom government. The report details the culpability of the United States government in violating international laws and the sovereignty of the Hawaiian Kingdom, but the United States Government fails to follow through in its commitment to assist in reinstating the constitutional government of the Hawaiian Kingdom. Instead, the United States allows five years to lapse and a new United States President, William McKinley, enters into a second treaty of annexation with the same individuals who participated in the illegal overthrow with the U.S. legation in 1893 on June 16, 1897, but the treaty was unable to be ratified by the United States Senate due to protests that were submitted by the Hawaiian Head of State, Her Majesty Queen Lili’uokalani, and signature petitions against annexation by 21,169 Hawaiian nationals.

In April 1898, war breaks out between the United States and Spain and battles were fought in the Spanish colonies of Puerto Rico and Cuba in the Atlantic, as well as the Spanish colonies of the Philippines and Guam in the Pacific. After Admiral Dewey defeated the Spanish Fleet in the Philippines on May 1, 1898, the *U.S.S. Charleston*, a protected cruiser, was re-commissioned on May 5, 1898, and

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<sup>11</sup> Retrieved from *United Nations Compensation Commission* website at:  
<http://www.unog.ch/uncc/theclaims.htm>

ordered to convoy 2,500 troops to reinforce Admiral Dewey in the Philippines and Guam. These troops were boarded on the transport ships of the *City of Peking*, the *City of Sidney* and the *Australia*. On May 21<sup>st</sup> the convoy set a course to the Hawaiian Islands for re-coaling purposes and some rest and relaxation for the troops. The convoy arrived in Honolulu, Island of O'ahu, on June 1<sup>st</sup> and took on 1,943 tons of coal before it left the islands on the 4<sup>th</sup> of June.<sup>12</sup> A second convoy of troops, bound for the Philippines, on the transport ships of the *China*, *Zelandia*, *Colon*, and the *Senator*, arrived in Honolulu on June 23<sup>rd</sup> and took on 1,667 tons of coal.<sup>13</sup>

Due to U.S. intervention in 1893 and the creation of puppet regimes, the United States took complete advantage of its own fabricated government in the islands during the Spanish-American war and violated Hawaiian neutrality. In an article published by the *American Historical Review* in 1931, regarding Hawai'i's role in the war, the author stated

...that although the United States had given formal notice of the existence of war to the other powers, in order that they might proclaim neutrality, and was jealously watching their behavior, she was flagrantly violating the neutrality of Hawaii. The position of the United States was all the more reprehensible in that she was compelling a weak nation to violate the international law that had to a large degree been formulated by her own stand on the *Alabama claims*.

On July 6, 1898, the United States Congress passed the joint resolution purporting to annex the Hawaiian Islands. President McKinley signed the 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."<sup>14</sup> United States constitutional scholar, Westel Willoughby, wrote:

The constitutionality of the annexation of Hawai'i, 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."<sup>15</sup>

While Hawai'i was clearly not a participant in the hostilities of the Spanish-American War, the United States occupied the Hawaiian Islands for the purpose of waging the war against Spain in the Philippines and Guam, as well as fortifying the islands as a military outpost for the defense of the United States in future conflicts. Even more disturbing is that the United States Senate, in *secret session* on May 31, 1898, admitted to violating Hawaiian neutrality. The admittance, by the Senate, of violating international law was made more than a month before it voted to pass the so-called annexation resolution on July 6<sup>th</sup>. In this secret session, the topic of the

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<sup>12</sup> U.S. Minister to Hawai'i Harold Sewall to Assistant U.S. Secretary of State William R. Day, No. 167, June 4, 1898, Dispatches.

<sup>13</sup> Same to same, No. 175, June 27, 1898, Dispatches.

<sup>14</sup> United States Congressional Record, 55<sup>th</sup> Congress, 2<sup>nd</sup> Session, vol. XXXI, p. 5975.

<sup>15</sup> Willoughby, W. The Constitutional Law of the United States, 2<sup>nd</sup> Ed., Baker, Voorhis, 1929, vol. 1, §239, p. 427.



debate was the admitted violation of Hawaiian neutrality by the McKinley Administration and the liability it incurred under international law. Senator Henry Cabot Lodge stated that

...the [McKinley] Administration was compelled to violate the neutrality of those islands, that protests from foreign representatives had already been received and complications with other powers were threatened, that the annexation or some action in regard to those islands had become a military necessity.<sup>16</sup>

Clearly these actions show intent, *in fraudem legis*, to mask the violation of international law by a disguised annexation. Under international law, the Hawaiian Islands' status as an independent and neutral state, before the occupation, remained protected, despite the effectiveness of the U.S. occupation itself and its militarization of the country.

The violation of Hawaiian neutrality during the Spanish-American War is consistent with the *Alabama claims*, which concerned Great Britain's violation of its neutrality during the American Civil War. It is also serendipitous that information of the *Alabama claims* is provided on the U.S. Department of State's website.<sup>17</sup>

The controversy began when Confederate agents contracted for warships from British boatyards. Disguised as merchant vessels during their construction in order to circumvent British neutrality laws, the craft were actually intended as commerce raiders. The most successful of these cruisers was the *Alabama*, which was launched on July 29, 1862. It captured 58 Northern merchant ships before it was sunk in June 1864 by a U.S. warship off the coast of France. In addition to the *Alabama*, other British-built ships in the Confederacy Navy included the *Florida*, *Georgia*, *Rappahannock*, and *Shenandoah*. Together, they sank more than 150 Northern ships and impelled much of the U.S. merchant marine to adopt foreign registry.

...After years of unsuccessful U.S. diplomatic initiatives, a Joint High Commission meeting in Washington, D.C. during the early part of 1871 arrived at the basis for a settlement. The British Government expressed regret for its contribution to the success of Confederate commerce raiders. This agreement, dated May 8, 1871, and known as the Treaty of Washington, also established an arbitration commission to evaluate the merit of U.S. financial claims on Britain. ...The arbitration commission, which issued its decision in September 1872, rejected American claims for indirect damages, but did order Britain to pay the United States \$15.5 million as compensation for the *Alabama claims*.

According to international law, State neutrality, during a conflict, is intended to isolate a war and prevent it from spreading to other areas of the world. According to the 1871 Treaty of Washington,<sup>18</sup> which has become recognized as customary international law, States, not a party to a particular conflict, have a duty

*First*, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry war against a power

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<sup>16</sup> *Secret Session* of the U.S. Senate, May 31, 1898, 55<sup>th</sup> Congress, 2<sup>nd</sup> Session, p. 156.

<sup>17</sup> Retrieved from the U.S. Department of State's website:  
<http://www.state.gov/r/pa/ho/time/cw/17610pf.htm>

<sup>18</sup> See 1871 Anglo-American Treaty, U.S. Statutes at Large, vol. 17, pp. 863-877.

which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

*Second*, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purposes of the renewal or augmentation of military supplies or arms, or the recruitment of men.

*Thirdly*, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction to prevent any violation of the foregoing obligations and duties.

These principles are envisaged in the 1907 Hague Convention, V, *Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land*, which the United States signed and ratified along with the 1907 Hague Convention, IV, *The Laws and Customs of War on Land*. The neutrality Convention provides that “[t]he territory of neutral Powers is inviolable,” and “[b]elligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.”

Since 1900, Hawai‘i has played a role in every U.S. armed conflict, and because of this, it now reluctantly serves as the headquarters, since 1947, of the single largest combined U.S. military presence in the world, U.S. Pacific Command (USPACOM).<sup>19</sup> Located at Camp Smith, which overlooks Pearl Harbor on the island of O‘ahu, the U.S. Pacific Command is headed by a four star Admiral who reports directly to the President concerning operations and the Joint Chiefs of Staff for administrative purposes. That Admiral is the Commander-in-Chief, United States Pacific Command (CINCPAC). CINCPAC’s responsibility stretches from North America’s west coast to Africa’s east coast and both the North and South Poles. It encompasses 43 countries, 20 territories and possessions, and 10 U.S. territories. USPACOM is the oldest and largest of the United States’ 9 unified military commands,<sup>20</sup> and is comprised of Army, Navy, Marine Corps, and Air Force service components, all headquartered in Hawai‘i. Additional commands that report to CINCPAC include U.S. Forces Japan, U.S. Forces Korea, Special Operations Command Pacific, U.S. Alaska Command, Joint Task Force Full-Accounting, Joint Interagency Task Force West, the Asia-Pacific Center for Security Studies, and the Joint Intelligence Center Pacific in Pearl Harbor.

According to the German-Greek Mixed Arbitral Tribunal, *Coenca Brothers vs. Germany*, (1927), the buildup of military installations on a Neutral State’s territory is an illicit act that authorized belligerent States to undertake, even on neutral territory, any operation of war necessary for its defense.<sup>21</sup> The United States military installations on the island of O‘ahu, to include its naval facilities at Pearl

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<sup>19</sup> U.S. Pacific Command was established in the Hawaiian Islands as a unified command on January 1, 1947, as an outgrowth of the command structure used during World War II. Information retrieved on December 5, 2002 from <http://www.pacom.mil/>

<sup>20</sup> Information retrieved on December 5, 2002 at <http://www.defenselink.mil/specials/unifiedcommand/>

<sup>21</sup> *Coenca Brothers vs. Germany*, (1927) 7 *M.A.T.*, (1928), pp. 686-687.

Harbor, was the sole reason for the Japanese attack on Hawaiian soil on December 7, 1941.

### International Awareness of Hawaiian Statehood

This history of Hawaiian statehood and the violation of its neutrality by the United States is gaining international attention, which is directly attributable to the recent *Larsen case* held at the Permanent Court of Arbitration (PCA) in The Hague, Netherlands, from 1999 to 2001. The *Larsen case* was a consequence of the prolonged occupation of the Hawaiian Kingdom by the United States and its failure to abide by the international laws of occupation. In particular, the failure on the part of the United States, as an occupant State, to administer the laws of the occupied State in accordance with Article 43 of the 1907 Hague Convention, IV.

After receiving a formal invitation by the Hawaiian Kingdom to join in the arbitration proceedings, the United States refused to enter the arbitration. Notwithstanding the non-participation of the United States, the Tribunal proceeded to a jurisdictional phase to determine whether the United States would be regarded as a necessary and indispensable third party. After written pleadings were submitted on this question, oral hearings were held at the PCA on December 7, 8 and 11, 2000. All the while the United States embassy in The Hague had been monitoring the case by requesting from the PCA copies of the written pleadings and transcripts of the oral hearings. The Tribunal determined that the “dispute submitted to the Tribunal was a dispute not between the parties to the arbitration agreement but a *dispute* between each of them and a third party [United States of America];”<sup>22</sup> and concluded, in its Arbitration Award, that without the U.S. as a party it could not proceed beyond the jurisdictional phase of the arbitration.

Since the Arbitral Award, two articles were written in the American Journal of International Law (AJIL) and the Chinese Journal of International Law (CJIL), and a legal opinion authored by a law professor from the University of London, SOAS, attesting to the legal continuity of the Hawaiian Kingdom. In the AJIL, Bederman & Hilbert assert

[a]t the center of the PCA proceeding was...that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect Larsen from the United States’ “unlawful imposition [over him] of [its] municipal laws” through its political subdivision, the State of Hawai‘i. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States committed against him.<sup>23</sup>

The authors also concede to the legitimacy of the *Larsen case*, and emphasize

Because international tribunals lack the power of joinder that national courts enjoy, it is possible—as a result of procedural maneuvering alone—

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<sup>22</sup> *Larsen Case* Arbitral Award (PCA), Feb. 5, 2001, paragraph 12.7.

<sup>23</sup> Bederman & Hilbert, “*Arbitration—UNCITRAL Rules—justiciability and indispensable third parties—legal status of Hawaii*” 95 AJIL (2001) 927, p. 928.

for legitimate international legal disputes to escape just adjudication. For example, in *Larsen*, the United States commanded an enviable litigation posture: even though the United States admitted its illegal overthrow of the Hawaiian Kingdom, it repeatedly refused to consent to international arbitration. *Larsen* was thus forced to engage in the artful pleading of a claim against his own, ostensible government.<sup>24</sup>

Also in the CJIL, Dumberry discusses the implication of the 1907 Hague Regulations to the continuity of the Hawaiian State, while under an effective occupation. He states

The law of occupation as defined in the 1907 Hague Conventions protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.<sup>25</sup>

Dr. Matthew Craven, a reader in international law from the University of London, SOAS, authored a legal brief in July 2002 concerning the continuity of the Hawaiian Kingdom.<sup>26</sup> Regarding Hawaiian *statehood*, Craven states there “is no doubt that, according to any relevant criteria (whether current or historical), the Hawaiian Kingdom was regarded as an independent *State* under the terms of international law for some significant period of time prior to 1893, the moment of the first occupation of the Island(s) by American troops. Indeed, this point was explicitly accepted in the *Larsen v. Hawaiian Kingdom* Arbitral Award.”<sup>27</sup> He also states “if one is to speak about a presumption of continuity, one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States.”<sup>28</sup>

Craven provides a thorough and comprehensive analysis of Hawaiian *statehood* and investigates U.S. claims to sovereignty over the islands since 1893 within the framework of international law, both current and historical. His investigation found serious flaws and he states it “may certainly be maintained that there are serious doubts as to the United States’ claim to have acquired sovereignty over the Hawaiian Islands in 1898 and that the emerging law at the time would suggest that, as an occupant, such possibility was largely excluded. To the extent, furthermore, that U.S. claims to sovereignty were essentially defective, one might conclude that the sovereignty of the Hawaiian Kingdom as an independent state was

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<sup>24</sup> Ibid, p. 933.

<sup>25</sup> Dumberry, Patrick, “*The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom’s Claim to Continuity as an Independent State under International Law*,” vol. 1, issue 2 CJIL (2002) 655, p. 682.

<sup>26</sup> Craven, Matthew. (Portion) Legal Brief: Continuity of the Hawaiian Kingdom for the acting Hawaiian government, July 12, 2001, University of London, SOAS. Retrieved December 5, 2002, from <http://hawaiiankingdom.org/>

<sup>27</sup> Ibid, para. 3.4

<sup>28</sup> Ibid, para. 2.6.

maintained intact.”<sup>29</sup> In accordance with the laws of occupation in time of war “ it is apparent that the U.S. could not, as an occupying power, take steps to acquire sovereignty over the Hawaiian Islands. Nor could it be justified in attempting to avoid the strictures of the occupation regime by way of installing a sympathetic government bent on ceding Hawaiian sovereignty to it.”<sup>30</sup>

## **The Iraqi Conflict**

The war against Iraq, called Operation Iraqi Freedom, commenced under the command and control of U.S. Army General Tommy Franks of the U.S. Central Command on March 19, 2003. At 10:16 p.m. (EST), U.S. President Bush addressed the United States from Washington. His opening statement began,

My fellow citizens, at this hour, American and coalition forces are in the early stages of military operations to disarm Iraq, to free its people and to defend the world from grave danger. On my orders, coalition forces have begun striking selected targets of military importance to undermine Saddam Hussein’s ability to wage war. These are opening stages of what will be a broad and concerted campaign. More than 35 countries are giving crucial support—from the use of naval and air bases, to help with intelligence and logistics, to the deployment of combat unit.

The Coalition Forces exhibited an awesome display of firepower and their victory over Iraq was methodical and swift. Clearly the United States, in particular, displayed its assumed role as a superpower. For the purposes of this essay I will pay special attention to the troops that were organized for battle under the U.S. Central Command (CENTCOM) and the implication of the law of neutrality. One of the nine unified military commands under the U.S. Department of Defense,<sup>31</sup> CENTCOM is organized as a headquarters unit and, unlike PACOM, has no war-fighting units permanently assigned to it. Instead, each service of the Army, Navy, Air Force, Marines and Special Operations provides component commands to CENTCOM in order to organize troops for battle. In particular, the Commander, Marine Forces Central Command (MARCENT) is located at Camp Smith, Hawai’i, and provides Marine expeditionary forces to CENTCOM. Also, the vast majority of CENTCOM’s Navy component’s (NAVCENT) “operating forces are rotationally deployed to the region from either the Pacific Fleet or the Atlantic Fleet. These forces normally consist of an Aircraft Carrier Battle Group (CVBG), an Amphibious Ready Group (ARG), surface combatants, submarines, maritime patrol and reconnaissance aircraft, and logistics ships.”<sup>32</sup> The Commander for the Pacific Fleet (CINCPAC) is located at Pearl Harbor, Hawai’i.

According to GlobalSecurity.org, a Washington-based research group on military and space topics, the order of battle for Iraqi Freedom consisted of the

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<sup>29</sup> Ibid, para. 5.2.10.5

<sup>30</sup> Ibid, para. 5.2.10.4

<sup>31</sup> Retrieved May 8, 2003 from the U.S. Department of Defense website at: <http://www.defenselink.mil/specials/unifiedcommand/>

<sup>32</sup> Retrieved from U.S. Central Command’s website at: <http://www.centcom.mil/aboutus/navcent.htm>

following troops and warships that came out of Marine and Navy command headquarters in Hawai'i.<sup>33</sup>

GROUND TROOPS:

I Marine Expeditionary Force (I MEF)

15<sup>th</sup> Marine Expeditionary Unit

1<sup>st</sup> Marine Division

2<sup>nd</sup> BN, 11<sup>th</sup> Marines

1<sup>st</sup> Marine Regiment

3<sup>rd</sup> BN, 1<sup>st</sup> Marines

1<sup>st</sup> BN, 4<sup>th</sup> Marines

1<sup>st</sup> Light Armored Recon BN

3<sup>rd</sup> Light Armored Recon BN

7<sup>th</sup> Marine Regiment

1<sup>st</sup> BN, 7<sup>th</sup> Marines

3<sup>rd</sup> BN, 7<sup>th</sup> Marines

3<sup>rd</sup> BN, 4<sup>th</sup> Marines

3<sup>rd</sup> BN, 11<sup>th</sup> Marines

1<sup>st</sup> Tank BN

5<sup>th</sup> Marine Regiment

1<sup>st</sup> BN, 5<sup>th</sup> Marines

2<sup>nd</sup> BN, 5<sup>th</sup> Marines

3<sup>rd</sup> BN, 5<sup>th</sup> Marines

1st Force Service Support Group

1<sup>st</sup> Supply BN

1<sup>st</sup> Maintenance BN

1<sup>st</sup> Dental BN

1<sup>st</sup> Medical BN

1<sup>st</sup> Transportation Support BN

NAVAL FORCES ASHORE:

Combined Task Force 57 CTF-57

Amphibious Group 3 [Maritime Pre-positioning Force]

Naval Beach Group 1

Amphibious Construction Battalion 1

Beachmaster Unit 1

Explosive Ordnance Disposal Group 1

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<sup>33</sup> Retrieved April 7, 2003 from Global Security website at:  
[http://www.globalsecurity.org/military/ops/iraq\\_orbat\\_toe.htm](http://www.globalsecurity.org/military/ops/iraq_orbat_toe.htm)

Naval Coastal Group 1  
Inshore Boat Unit 14  
Amphibious Construction Battalion 2

Amphibious Task Force - West  
Assault Craft Unit 5

NAVAL AVIATION ASHORE:

VP-1 Screaming Eagles (P-3 Aircraft)  
Det. VQ-1 World Watchers (EP-3E Aries II Aircraft)

NAVAL AVIATION AFLOAT:

CV 64 Constellation (Aircraft Carrier)  
Carrier Air Wing 2  
VF-2 Bounty Hunters (F-14D Aircraft)  
VFA-137 Kestrels (F/A-18 Aircraft)  
VFA-151 Vigilantes (F/A-18C Aircraft)  
VMFA-323 Death Rattlers (F/A-18 Aircraft)  
VAW-116 Sun Kings (E-2C Aircraft)  
VAQ-131 Lancers (EA-6B Aircraft)  
VS-38 Red Griffins (S-3B Aircraft)  
VRC-30 Providers Det 2 (C-2A Aircraft)  
HS-2 Golden Falcons (SH-60F Helicopters)

CV 72 Abraham Lincoln (Aircraft Carrier)  
Carrier Air Wing 14  
VF-31 Tomcatters (F-14D Aircraft)  
VFA-25 Fist of the Fleet (F/A-18 Aircraft)  
VFA-113 Stingers (F/A-18C Aircraft)  
VFA-115 Rampagers (F/A-18E/F Aircraft)  
VAW-113 Black Eagles (E-2C Aircraft)  
VAQ-139 Cougars (EA-6B Aircraft)  
VS-35 Blue Wolves (S-3B Aircraft)  
VRC-30 Providers Det (C-2A Aircraft)  
HS-4 Black Knight (SH-60F Helicopters)

CV 63 Kitty Hawk (Aircraft Carrier)  
Carrier Air Wing 5  
VF-154 Black Knights (F-14B Aircraft)  
VFA-27 Royal Maces (F/A-18 Aircraft)  
VFA-192 Golden Dragons (F/A-18 Aircraft)  
VFA-195 Dambusters (F/A-18 Aircraft)  
VAW-115 Liberty Bells (E-2C Aircraft)  
VAQ-136 Gauntlets (EA-6B Aircraft)  
VS-21 Fighting Redtails (S-3B Aircraft)  
VRC-30 Providers Det (C-2A Aircraft)  
HS-14 Chargers (SH-60F, HH-60H Helicopters)

CV 68 Nimitz (Aircraft Carrier)

Carrier Air Wing 11

VFA-14 Tophatters (F/A-18 Aircraft)

VFA-41 Black Aces (F/A-18 Aircraft)

VFA-94 Mighty Shrikes (F/A-18 Aircraft)

VFA-97 Warhawks (F/A-18 Aircraft)

VAW-117 Wallbangers (E-2C Aircraft)

VAQ-135 Black Ravens (EA-6B Aircraft)

VS-29 Dragonfires (S-3B Aircraft)

VRC-30 Providers Det (C-2A Aircraft)

HS-6 Indians (SH-60F, HH-60H Helicopters)

LHA 4 Nassau (Carrier)

HMM-263 Thunder Chickens (CH-46, CH-53E, UH-1N, AH-1W Helicopters, and AV-8 Aircraft)

LHA 1 Tarawa (Carrier)

HMM-161 Greyhawks (CH-46, CH-53E, UH-1N, AH-1W Helicopters, and AV-8 Aircraft)

Amphibious Task Force-West

3<sup>rd</sup> Marine Aircraft Wing

Marine Aircraft Group 13

HMM-268 (CH-43E Helicopter)

VMA-268 (AV-8B II Aircraft)

VMA-311 (AV-8B II Aircraft)

Marine Aircraft Group 39

HMLA-169 (U-H1 Helicopter)

NAVAL SHIPS AFLOAT:

SSN 751 San Juan (Nuclear Submarine)

**SSN 773 Cheyenne (Nuclear Submarine)**

Constellation Battle Group

CV 64 Constellation (Aircraft Carrier)

CG 50 Valley Forge (Cruiser Guided Missiles)

CG 52 Bunker Hill (Cruiser Guided Missiles)

DDG 69 Milius (Destroyer Guided Missiles)

DDG 76 Higgins (Destroyer Guided Missiles)

**DD 992 Fletcher (Destroyer)**

FFG 43 Thach (Frigate Guided Missiles)

AOE 7 Ranier (Supply Ship)

**SSN 771 Columbia (Nuclear Submarine)**

Abraham Lincoln Battle Group

CV 72 Abraham Lincoln (Aircraft Carrier)

CG 53 Mobile Bay (Cruiser Guided Missiles)

CG 67 Shiloh (Cruiser Guided Missiles)



**DDG 60 Paul Hamilton (Destroyer Guided Missiles)**  
**FFG 37 Crommelin (Frigate Guided Missiles)**  
**FFG 57 Reuben James (Frigate Guided Missiles)**  
AOE 2 Camden (Supply Ship)  
**SSN 718 Honolulu (Nuclear Submarine)**

Kitty Hawk Battle Group

CV 63 Kitty Hawk (Aircraft Carrier)  
CG 62 Chancellorsville (Cruiser Guided Missiles)  
CG 63 Cowpens (Cruiser Guided Missiles)  
DDG 56 John S. McCain (Destroyer Guided Missiles)  
DD 975 O'Brien (Destroyer)  
DD 985 Cushing (Destroyer)  
FFG 48 Vandergrift (Frigate Guided Missiles)  
FFG 51 Gary (Frigate Guided Missiles)  
SSN 698 Bremerton (Nuclear Submarine)

Nimitz Battle Group

CV 68 Nimitz (Aircraft Carrier)  
CG 59 Normandy (Cruiser Guided Missiles)  
**CG 65 Chosin (Cruiser Guided Missiles)**  
DDG 62 Fitzgerald (Destroyer Guided Missiles)  
DDG 65 Benfold (Destroyer Guided Missiles)  
DD 972 Oldendorf (Destroyer)  
FFG 60 Rodney M. Davis (Frigate Guided Missiles)  
AOE 10 Bridge (Supply Ship)  
**SSN 752 Pasadena (Nuclear Submarine)**

Tarawa Amphibious Ready Group

LHA 1 Tarawa (Carrier)  
LPD 6 Duluth (Amphibious Transport Ship)  
LSD 47 Rushmore (Amphibious Landing Ship)

Amphibious Task Force-West

LHD 4 Boxer (Carrier)  
LHD 6 Bonhomme Richard (Carrier)  
LPD 7 Cleveland (Amphibious Transport Ship)  
LPD 8 Dubuque (Amphibious Transport Ship)  
LSD 36 Anchorage (Amphibious Landing Ship)  
LSD 45 Comstock (Amphibious Landing Ship)  
LSD 52 Pearl Harbor (Amphibious Landing Ship)

Nine of the aforementioned warships (in bold type and underlined) have their homeport at Pearl Harbor. Given the backdrop of Hawaiian statehood on the international plane and the failure of the United States to take positive steps to legally extinguish the Hawaiian Kingdom under international law, the Iraqi conflict could serve as the fulcrum that exposes the prolonged occupation of the Hawaiian Kingdom. It can also serve as the means to marginalize the United States as a superpower, and draw the U.S. back into the United Nations as a cooperating State.

As an occupied State, the Hawaiian Kingdom remains neutral in international conflicts, and the utilization of its ports and territories, without its consent, is in direct violation of the 1907 Hague Convention, V.

As Great Britain, in the *Alabama claims*, was liable for all damages inflicted by the Confederate ships that were built in its territory in violation of the law of neutrality, we can assume that the United States is also liable for the damages inflicted by the Hawai'i headquartered Marine troops and Naval warships and aviation. According to Cushing, the recognized fault of Great Britain in the *Alabama claims*

...was mainly the augmentation of [the Confederate Ship Shenandoah's] crew at Melbourne, and the addition of equipments, without which she could not have operated as a cruiser in the North Pacific. In the case of the Alabama, and especially that of the Florida, the fault was in allowing them to come and go unmolested, and even favored, in the Colonial ports, when the British Government could no longer pretend to be ignorant of their originally illegal character...<sup>34</sup>

Cook states that the Tribunal determined that Great Britain would be liable to all "direct claims" of damages inflicted by the Confederate ships and not by any indirect claims submitted by the United States, such as "...expenses arising from the prolongation of the war."<sup>35</sup> Therefore, if we take this approach today of direct damages set by the Tribunal, we could arrive at a rough estimation of monetary damages incurred by U.S. bombings in Iraq, if we use the 1999 accidental bombing of the Chinese Embassy in Yugoslavia. During the U.S.-led NATO (North Atlantic Treaty Organization) bombing runs in Yugoslavia, the U.S. accidentally dropped five bombs on the Chinese Embassy on May 8, 1999. On December 16, 1999, the Chinese Ministry of Foreign Affairs reported that an agreement of compensation was agreed to whereby the "U.S. Government will pay a sum of U.S. \$28 million to the Chinese Government for the property loss and damage suffered by China..."<sup>36</sup>

Using the Chinese example, we can assume that each of the five bombs dropped on the embassy can be assessed at \$5.6 million each in the overall damages. This very general formula can only be used to estimate the damage inflicted by U.S. bombing raids in Iraq, and cannot take into account the damages incurred by the 60,000 ground troops of the 1<sup>st</sup> Marine Expeditionary Force. If we apply this dollar amount to the amount of bombs used in the Iraqi conflict, which the BBC reported as 27,000,<sup>37</sup> we arrive at a conservative estimate of \$151.2 billion dollars. But, at present, I am unable to determine just how much is attributable to the Pacific Fleet due to the lack of information. Nevertheless, the amount is staggering, and does not include the damages incurred by the troops out of Hawai'i's territories and ports in

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<sup>34</sup> Cushing, Caleb, *The Treaty of Washington: its Negotiation, Execution, and the Discussions relating thereto*, Harper & Brothers (New York), 1873, p. 184.

<sup>35</sup> Cook, Adrian, *The Alabama Claims*, Cornell University Press (Ithaca and London), 1975, p. 210.

<sup>36</sup> Retrieved May 8, 2003 from the People's Republic of China Ministry of Foreign Affairs website at: <http://www.fmprc.gov.cn/eng/5751.html>

<sup>37</sup> Retrieved May 8, 2003 from the BBC website at: <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/2950837.stm>

all the conflicts since 1898 (World War I, World War II, Korean War, Vietnam War, Cold War, Gulf War, etc.)

## Conclusion

Although Hawaiian state rights under international law was not a part of Milner's and Goldberg-Hiller's vocabulary at the time they wrote *Post-Civil Rights Context and Special Rights Claims: Native Hawaiian Autonomy, U.S. Law, and International Politics*, the legal mobilization of Hawaiian state rights can be nourished by world events. "The temptations to use law increase as international organizations offer rights forums and rights language. Simultaneously, there is more awareness of the political, economic and cultural costs of legal mobilization."<sup>38</sup> Zemans also states "the law is...mobilized when a desire or want is translated into a demand as an assertion of rights."<sup>39</sup>

Could it be that the Hawaiian Kingdom be catapulted to the forefront of international politics? And does Hawai'i have a role in mending the United Nations? As the *Larsen case* is garnering much attention amongst the legal community on the international plane, the ramifications of prolonged occupation become even more apparent. By juxtaposing the U.S. military with the 1907 Hague Conventions, IV and V, and the 1949 Geneva Conventions, a superpower's strength has now become its greatest liability. As an existing State under international law, the Hawaiian Kingdom and its nationals are only now realizing the sheer magnitude and weight of *state rights* within the multi-lateral setting of international politics. And I do believe this information, when used properly, will not only serve as leverage in the *Larsen case* and lead to the ultimate end of the American occupation, but also it can serve the United Nations the leverage it so desperately needs to marginalize the United States as the sole superpower, and begin to mend the United Nations and be the international organization it was intended as provided by its Charter.

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<sup>38</sup> Milner, Neal & Goldberg-Hiller, Jon, "Post-Civil Rights Context and Special Rights Claims: Native Hawaiian Autonomy, U.S. Law, and International Politics" Prepared for the *Law and Society Annual Meeting*, May-June 2002, Vancouver, British Columbia, p. 2.

<sup>39</sup> Zemans, Francis Kahn. 1982. "Legal Mobilization: The Neglected role of the Law in the Political System." *American Political Science Review* 77: 690-703, p. 700.