KSK

Sept 3,2000

Fm: James Kaukini Jr.
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To: Assistant Secretary John Berry
c/o Document Management Unit
Department if the Interior
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Ref: Draft Report

There is no river of justice--no torch of justice, only adherence to the laws,whether national or international can we expect to have justice. P.L.103-150 sets the stage for the return of what was taken illegally and that is the state of the Kingdom of Hawaii. It is clear that United States violated the treaties with the Kingdom of Hawaii which by it own Constitution violated national and international law (art.VI) and this act is not without Disgrace or Dishonor.

Bibliography list.

Ralph S Kuykendall was recruited by then governor Dole,of the territory, president of the Republic of Hawaii and the provisional government and a traitor of the Kingdom (Cleveland's Message to Congress 1893)

Lorrin Thurston, traitor to the Kingdom. government.

Jon M Van Dyke Law professor at University of Hawaii and legal advisor for the Office of Hawaiian Affairs. These individuals would skew in their writings to justify there goals.

Before we can have reconciliation,we must know when there was conciliation with the Kanaka Maoli and Kingdom subjects.I speak of subjects because they were also victims of injustice.

Public Law 103-150 admits to wrong doings by the United States and there is one section I am most interested in, and that is Joint Resolution 55, 30 Stat 750 (1898) This resolution is said to have made Hawaii a part of the Unites States. However the United States Constitution says that can't happen.(Opinions of the Office of Legal council vol. 12 Oct.,1988.International Law is also implicated.Now we all need to follow the law,interesting point is, can Kanaka Maolis and Kingdom subjects become Americans citizens against their wills. I make this point is because bill S 2899 and HR

4904 speaks of Incorporating Kanaka Maolis under the Department of Indian Affairs. Because Kanaka Maolis and others we brain washed in believing they we American citzens,now knowing their history claim not to be Americans and others just say " I give up my citizenship to be subjects of the Kingdom. There are others who would like to have America prove there sovereignty in Hawaii.

In your (The River of Justice) in your first recommendation there is a sentence that says " To safeguard and enhance Native Hawaiian self-determination OVER THEIR LANDS culture resources and internal affairs " we Kanaka Maolis would like to do just that without your recommendations.

I submit to you other documents to support this letter.

James Kaukini Jr.

August 1,2000

Fm: James Kaukini Jr.
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To: Senator D Akaka
Senate D Inouye

Ref: Bill S2899

Dear Senator D Akaka and Senator D Inouye. I speak for myself, my family and other Hawaiians who are in agreement with me, I say stop this bill. Its time to face the truth. Level with the native and non-native people who are descendants of those who were Kingdom subjects.

Americans claim to have a nation of laws have yet to prove their claims. Both national and international laws were violated. Article VI U.S. Constitution, law of the land.

Hawaii has been plagued with deception and cover-ups for many years. Customary thinking has set in and what is illegal is viewed as legal by many people. Nationality of many people living in Hawaii is questionable. The myth that Hawaii is part of the United States is just that ,a myth.

Let me elaborate on P.L. 103-150. To some people, its known as the (Apology Law , and to others, it is just a (Gesture),but to me its a (Confession or Admission .) In its contents, Congress had acknowledge that on Dec. 18,1893,President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators 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,-- substantial wrong was done and called for restoration.

Unless you have read the message to that Congress, you wouldn't know fully what the message had covered. The president declared that the conspirators,(self declared) provisional government was " neither de facto nor de jure,that means the de jure government was that of the Kingdom. So, Was there an overthrow? The president also said," I shall not again submit the treaty of annexation to the Senate for its consideration."P.L. 103-150 only assumed that the treaty was voted on.

Why was the year 1897 not taken into consideration? I do not know the reason but I will say this, It was an eventful year for Her Majesty Queen Liliuokalani and her loyalist. Her protest letter along with the memorial and the petitions against annexation,prevented the ratification of the second attempt to annex Hawai'i by treaty. It was voted but did not make the two thirds required votes by the senate. That was the reason for the joint resolution in 1898 and it was not because of the war with Spain.

Desperate people do desperate things. As a means of deception, President McKinley and Congress destroys the CONSTITUTION by annexing Hawai'i with an act from congress,which is not legal,than blame the war for what they did. The only other means to aquire Hawai'i was to do it ILLEGALLY. P.L. 103-150 states that the Republic of Hawai'i was self declared. If United States does not recognize that so called government as legal,than how can Hawai'i be part of the United States. There was nothing ceded.

To get to the bottom of this unsettled claims by the United States,Native Hawaiians and Kingdom nationalist, I suggest that it should be settled in an International Court.

I do see many unanswered questions that should take precedence,so I object to any further action to this bill,S2899 and others that may fallow.

As was stated in the Advertiser ,Aug.20,2000 " As United States Senators,we have the duty to uphold the CONSTITUTION of the United States and to represent the people of Hawai'i. Please do just that,uphold the constitution,by looking at ARTICLE VI in particular and other articles and the 14th amendment where it says,"and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside."The constitution was violated and people are looking for justice. Up hold the LAW OF THE LAND.

James Kaukini Jr.

James Kaukini Jr.

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NOT ENTIRE DOCUMENT

VALIDITY OF CONGRESSIONAL-EXECUTIVE AGREEMENTS THAT SUBSTANTIALLY MODIFY THE UNITED STATES' OBLIGATIONS UNDER AN EXISTING TREATY

It lies within Congress' power to authorize the President substantially to modify the United States' domestic and international legal obligations under a prior treaty, including an arms control treaty, by making an executive agreement with our treaty partners, without Senate advice and consent.

November 25, 1996

MEMORANDUM FOR ALAN J. KRECZKO SPECIAL ASSISTANT TO THE PRESIDENT AND LEGAL ADVISER TO THE NATIONAL SECURITY COUNCIL

You have sought our views on the question whether Congress can authorize the President to enter into an international agreement that substantially modifies the obligations which the United States would otherwise have under a pre-existing treaty, or whether only the Senate can do so, pursuant to the treaty-making power, U.S. Const. art. II, § 2, cl. 2.[1] We conclude that it lies within the power of Congress to authorize the President substantially to modify the United States' obligations under a prior treaty, including an arms control treaty.

A "treaty" in the constitutional sense[2] has two aspects: it may state a judicially enforceable rule of domestic law; and it creates binding obligations between or among the

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[1] The context in which you had originally raised this question was Congress' consideration of a proposed provision of the Department of Defense Authorization Act for Fiscal Year 1997, purporting to prohibit the United States from being bound by any international agreement that would substantively modify the Treaty on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, United States-U.S.S.R., T.I.A.S. 7503, 23 U.S.T. 3435, unless that agreement was made pursuant to the President's treaty-making power specified in article II, section 2, clause 2 of the Constitution. We had previously addressed another aspect of that legislation. See Memorandum for John M. Quinn, Counsel to the President, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: Section 233(a) of S. 1745 (June 26, 1996).

Our use of the term authorize necessarily contemplates the grant of authority prior to taking legally effective action. We thus perceive no distinction between "pre"-authorization and authorization in the present context.

[2] It is important to distinguish the constitutional sense of the term "treaty", which is relevant here, from other uses of the term in international or domestic law. "The word 'treaty' has more than one meaning. Under principles of international law, the word ordinarily refers to an international agreement concluded between two sovereigns, regardless of the manner in which the agreement is brought into force. Under the United States Constitution, of course, the word 'treaty' has a far more restrictive meaning. Article II, § 2, cl. 2, of that instrument provides that the President 'shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.'" Weinberger v. Rossi, 456 U.S. 25, 29-30 (1982) (citation and footnotes omitted).

Head Money Cases, 112 U.S. 580, 598 (1884).[3]

A "treaty," therefore, has two aspects: insofar as it is self-executing, it prescribes a rule of domestic or municipal law[4] and, as a compact or contract between nations, it gives rise to binding obligations in international law.[5]

II.

Under the Supremacy Clause of the Constitution, treaties, like Acts of Congress, are made "supreme Law." U.S. Const. art. VI, cl. 2; Maiorano v. Baltimore & Ohio R.R. Co., 213 U.S. 268, 272-73 (1909). Accordingly, "treaty provisions, which are self-executing in the sense that they require no additional legislation to make them effective, are equivalent to and of like

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See also Foster v. Neilson, 27 U.S. (2 Pet.) 253, 314 (1829) (Marshall, C.J.) ("A treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument. In the United States a different principle is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision."); Taylor v. Morton, 23 F. Cas. 784, 785 (C.C.D. Mass. 1855) (No. 13,799) (Curtis, Circuit Justice), aff'd, 67 U.S. (2 Bl.) 481 (1862) (treaties are "contracts, by which [sovereigns] agree to regulate their own conduct" and, under the Constitution, "part of our municipal law"); Goldwater v. Carter, 617 F.2d 697, 705 (D.C. Cir.), vacated, 444 U.S. 996 (1979) ("a treaty is sui generis. It is not just another law. It is an international compact, a solemn obligation of the United States and a 'supreme Law' that supersedes state policies and prior federal laws. For clarity of analysis, it is thus well to distinguish between treaty-making as an international act and the consequences which flow domestically from such act. In one realm the Constitution has conferred the primary role upon the President; in the other, Congress retains its primary role as lawmaker."); 1 Westel Woodbury Willoughby, The Constitutional Law of the United States § 317a at 577 (2d ed. 1929) ("Treaties entered into by the United States may be viewed in two lights: (1) as constituting parts of the supreme law of the land, and (2) as compacts between the United States and foreign Powers.").

As Chief Justice Marshall pointed out in Foster v. Neilson, 27 U.S. at 314, not all treaty provisions are self-executing; they may require implementing legislation to be given their full effect. Many treaties are, however, self-executing. For example, in United States v. The Schooner Peggy, 5 U.S. (1 Cranch) 103, 110 (1801) (Marshall, C.J.), the Court considered a treaty between the United States and France, ratified during the pendency of the appeal of the condemnation of a seized French vessel, that required that vessels seized by either nation should be restored if not yet definitively condemned. The Court held that the treaty controlled the disposition of the prize: the treaty was effective of its own force, without need of any further legislative action, and thus provided the rule of decision on appeal, rather than a prior statute that would have authorized the vessel's condemnation. The Supreme Court has given "self-executing" effect to numerous treaties. See Disposition by Treaty of Territory or Property Belonging to the United States, 43 Op. Att'y Gen. No. 18, at 4, 8-9 & n.6 (1977) (Bell, A.G.) (citing cases); see also Samuel B. Crandall, Treaties: Their Making and Enforcement § 73, at 162-63 & n.16 (2d ed. 1916) (discussing distinction between self-executing and non-self-executing treaties, and illustrating former category).

See The Vienna Convention on the Law of Treaties, art. 26 ("Every treaty in force is binding upon the parties to it and must be performed by them in good faith."), reprinted in Ian Brownlie (ed.), Basic Documents in International Law 388, 400 (4th ed. 1995). Although not ratified by the United States, this convention "is frequently cited as a statement of customary international law." Review of Domestic and International Legal Implications of Implementing the Agreement with Iran, 4A Op. O.L.C. 314, 321 (1981).

obligation with an act of Congress."[6] Further, insofar as a treaty incorporates a rule of domestic law, the Supreme Court has long held that it may be modified or repealed by a later Act of Congress.[7] See Head Money Cases, 112 U.S. at 599 ("so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in the courts of this country, it is subject to such acts as congress may pass for its enforcement, modification, or repeal"); La Abra Silver Mining Co. v. United States, 175 U.S. 423, 460 (1899) ("Congress by legislation, and so far as the people and authorities of the United States are concerned, could abrogate a treaty made between this country and another country which had been negotiated by the President and approved by the Senate."); Alvarez y Sanchez v. United States, 216 U.S. 167, 175-76 (1910) ("an act of Congress, passed after a Treaty takes effect, must be respected and enforced, despite any previous or existing Treaty provision on the same subject"); United States v. Stuart, 489 U.S. 353, 375 (1989) (Scalia, J., concurring in judgment) (Congress "may abrogate or amend [a treaty] as a matter of internal law by simply enacting inconsistent legislation."); Congressional Authority to Modify an Executive Agreement Settling Claims Against Iran, 4A Op. O.L.C. 289 (1980).[8]

The rationale for this rule was set forth in 1855 by Justice Curtis, sitting as Circuit Justice. Justice Curtis wrote:

> The first and most obvious distinction between a treaty and an act of congress is, that the former is made by the president and ratified by two thirds of the senators present; the latter by majorities of both houses of congress and the president, or by the houses only, by constitutional majorities, if the president refuses his assent. Ordinarily, it is certainly true, that the powers of enacting and repealing laws reside in the same persons. But there is no reason, in the nature of things, why it may not be otherwise. . . . I think it is impossible to maintain that, under our constitution, the president and senate exclusively, possess the power to modify or repeal a law found in a treaty. If this were so, inasmuch as they can change or abrogate one treaty, only by

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Canadian Boundary Waters, 30 Op. Att'y Gen. 351, 352 (1915) (citing Foster v. Neilson, 27 U.S. at 314; The Cherokee Tobacco, 78 U.S. (11 Wall.) 616, 621 (1870); Chew Heong v. United States, 112 U.S. 536, 539 (1884); Head Money Cases, 112 U.S. at 599; and Whitney v. Robertson, 124 U.S. 190, 194 (1888)). See also, Cook v. United States, 288 U.S. 102, 118-19 (1933); Exemption of Resident Aliens from Military Service Pursuant to Treaties -- Bar to Eligibility for Citizenship, 42 Op. Att'y Gen. 373, 379 (1968).

There was some earlier authority to the contrary. See Thompson's Case, 9 Op. Att'y Gen. 1, 6 (1857) (Black, A.G.) ("Congress has no authority to abrogate a treaty made by the Executive, any more than the Executive has to abrogate a law passed by Congress.").

Similarly, a treaty can supersede a prior Act of Congress to the extent that the two are incompatible. See Charlton v. Kelly, 229 U.S. 447, 463 (1913); United States v. Lee Yen Tai, 185 U.S. 213, 220 (1902); Canadian Boundary Waters, 30 Op. Att'y Gen. at 352-53; Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, S. Doc. No. 16, 99th Cong., 1st Sess. 505 (1982); Samuel B. Crandall, Treaties: Their Making and Enforcement, § 72, at 161-62.

making another inconsistent with the first, the government of the United States could not act at all, to that effect, without the consent of some foreign government: for no new treaty, affecting, in any manner, one already in existence, can be made without the concurrence of two parties, one of whom must be a foreign sovereign. That the constitution was designed to place our country in this helpless condition, is a supposition wholly inadmissible.

Taylor v. Morton, 23 F. Cas. at 785-86.

Accordingly, it lies within the power of Congress to modify the substantive obligations that a treaty imposes upon the United States, or to authorize the President to modify those obligations, insofar as those treaty obligations are binding as a matter of domestic or municipal law. The advice and consent of the Senate are not necessary to achieve that outcome.

III.

A.

The unilateral modification or repeal of a provision of a treaty by Act of Congress, although effective as a matter of domestic law, will not generally relieve the United States of the international legal obligations that it may have under that provision. See Pigeon River Improvement, Slide & Boom Co. v. Charles W. Cox, Ltd., 291 U.S. 138, 160 (1934) (while an Act of Congress that conflicted with a treaty provision "would control in our courts as the later expression of our municipal law . . . the international obligation [would] remain[] unaffected"). Secretary of State Charles Evans Hughes (later the author, as Chief Justice, of the Pigeon River opinion)) explained the position well:

> a judicial determination that an act of Congress is to prevail over a treaty does not relieve the Government of the United States of the obligations established by a treaty. The distinction is often ignored between a rule of domestic law which is established by our legislative and judicial decisions and may be inconsistent with an existing Treaty, and the international obligation which a Treaty establishes. When this obligation is not performed a claim will inevitably be made to which the existence of merely domestic legislation does not constitute a defense and, if the claim seems to be well founded and other methods of settlement have not been availed of, the usual recourse is arbitration in which international rules of action and obligations would be the subject of consideration.[9]

"We are bound to observe [a treaty] with the most scrupulous [illegible] . . . [O]ur Government could not violate it], without disgrace." The Amiable Isabella, 19 U.S. 1, 68 (1821). "The foreign sovereign between whom and the

Letter from the Secretary of State to the Secretary of the Treasury, Feb. 19, 1923, quoted in 5 Green Haywood Hackworth, Digest of International Law § 489, at 194-95 (1943).

only pages that concern Hawaii

OPINIONS

OF THE

OFFICE OF LEGAL COUNSEL

OF THE

UNITED STATES DEPARTMENT OF JUSTICE

CONSISTING OF SELECTED MEMORANDUM OPINIONS
ADVISING THE

PRESIDENT OF THE UNITED STATES,
THE ATTORNEY GENERAL
AND OTHER EXECUTIVE OFFICERS OF THE FEDERAL GOVERNMENT

IN RELATION TO

THEIR OFFICIAL DUTIES

VOLUME 12

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gained its independence from Mexico in 1836 had failed. In particular, in 1844 the Senate rejected an annexation treaty negotiated with Texas by President Tyler. 13 Cong. Globe, 28th Cong., 1st Sess. 652 (1844). Congress then considered a proposal to annex Texas by joint resolution of Congress. Opponents of the measure contended that the United States could only annex territory by treaty. See, e.g., 14 Cong. Globe, 28th Cong., 2d Sess. 247 (1845) (statement of Sen. Rives); id. at 278-81 (statement of Sen. Morehead); id. at 358-59 (statement of Sen. Crittenden). Supporters of the measure relied on Congress' power under Article IV, section 3 of the Constitution to admit new states into the nation. See, e.g., id. at 246 (statement of Sen. Walker); id. at 297-98 (statement of Sen. Woodbury); id. at 334-36 (statement of Sen. McDuffie). These legislators emphasized that Texas was to enter the nation as a state, and that this situation was therefore distinguishable from prior instances in which the United States acquired land by treaty and subsequently governed it as territories. Congress' power to admit new states, it was argued, was the basis of constitutional power to effect the annexation. Congress approved the joint resolution, President Polk signed the measure, and Texas consented to the annexation in 1845.

The United States also annexed Hawaii by joint resolution in 1898. Joint Res. 55, 30 Stat. 750 (1898). Again, the Senate had already rejected an annexation treaty, this one negotiated by President McKinley with Hawaii. And again, Congress then considered a measure to annex the land by joint resolution. Indeed, Congress acted in explicit reliance on the procedure followed for the acquisition of Texas. As the Senate Foreign Relations Committee report pronounced, "The joint resolution for the annexation of Hawaii to the United States . . . brings that subject within reach of the legislative power of Congress under the precedent that was established in the annexation of Texas." S. Rep. No. 681, 55th Cong., 2d Sess. 1 (1898). This argument, however, neglected one significant nuance: Hawaii was not being acquired as a state. Because the joint resolution annexing Texas relied on Congress' power to admit new states, "the method of annexing Texas did not constitute a proper precedent for the annexation of a land and people to be retained as a possession or in a territorial condition." A. McLaughlin, A Constitutional History of the United States 504 (1936). Opponents of the joint resolution stressed this distinction. See, e.g., 31 Cong. Rec.

5,975 (1898) (statement of Rep. Ball).[30] Moreover, as one constitutional scholar 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.

1 W. Willoughby, The Constitutional Law of the United States sec. 239, at 427 (2d ed. 1929).

Notwithstanding these constitutional objections, Congress approved the joint resolution and President McKinley signed the measure in 1898. Nevertheless, whether this action demonstrates the constitutional power of Congress to acquire territory is certainly questionable. The stated justification for the joint resolution -- the previous acquisition of Texas -- simply ignores the reliance the 1845 Congress placed on its power to admit new states. It is therefore unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can

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[30] Representative Ball argued:

> Advocates of the annexation of Texas rested their case upon the express power conferred upon Congress in the Constitution to admit new States. Opponents of the annexation of Texas contended that even that express power did not confer the right to admit States not carved from territory already belonging to the United States or some one of the States forming the Federal Union. Whether, therefore, we subscribe to the one or the other school of thought in that matter, we can find no precedent to sustain the method here proposed for admitting foreign territory.

31 Cong. Rec. 5,975 (1898). He thus characterized the effort to annex Hawaii by joint resolution after the defeat of the treaty as "a deliberate attempt to do unlawfully that which can not be lawfully done." Id.