

Hearing Docket

From: Isaac Harp [imua-hawaii@hawaii.rr.com]
Sent: Thursday, March 04, 2010 6:01 PM
To: Docket, Hearing; Amelia Gora; Angela Rosa; Baratta, Anthony; Barbara Moore; Klukan, Brett; Scott, Catherine; Cory Harden; Hawkens, Roy; Jim Albertini; Tucker, Katie; Kent Herring, LTC, JA; Sexton, Kimberly; Luwella K. Leonardi; Kennedy, Michael; OCAAMAIL Resource; OGCMailCenter Resource
Cc: Julian, Emile
Subject: Re: LB Memorandum and Order (Denying Requests for Hearing) (LBP-10-04) US Army Installation Command
Attachments: HARP Appeal Supporting Brief.doc; Appendix DOJ.doc; Appendix U.S. P.L. 103-150.pdf

By this e-mail I am filing a Notice of Appeal in the matter of the Atomic Energy Safety and Licensing Board Memorandum and Order (Denying Requests for Hearing) (LBP-10-04), US Army Installation Command (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), Docket No. 40-9083, served February 24, 2010.

Please find attached:

- 1) HARP Appeal Supporting Brief,
- 2) Appendix U.S. P.L/ 103-150, and
- 3) Appendix DOJ.

Thank you,

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DOCKETED
USNRC

March 4, 2010 (6:01pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

----- Original Message -----

From: Docket, Hearing
To: Amelia Gora ; Angela Rosa ; Baratta, Anthony ; Barbara Moore ; Klukan, Brett ; Scott, Catherine ; Cory Harden ; Hawkens, Roy ; Docket, Hearing ; Isaac D. Harp ; Jim Albertini ; Tucker, Katie ; Kent Herring, LTC, JA ; Sexton, Kimberly ; Luwella K. Leonardi ; Kennedy, Michael ; OCAAMAIL Resource ; OGCMailCenter Resource
Cc: Julian, Emile
Sent: Wednesday, February 24, 2010 9:17 AM
Subject: LB Memorandum and Order (Denying Requests for Hearing) (LBP-10-04) US Army Installation Command

Attached is a Licensing Board Memorandum and Order (Denying Requests for Hearing) (LBP-10-04), US Army Installation Command (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), Docket No. 40-9083, served February 24, 2010.

Nancy Greathead
Rulemakings and Adjudications Staff
Office of the Secretary

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X-fn: HARP Appeal Supporting Brief.doc, Appendix DOJ.doc,
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Return-Path: <imua-hawaii@hawaii.rr.com>

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Message-ID: <F8651A7575FD42339BE216F7A8E7F125@Paka>

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CC: "Julian, Emile" <Emile.Julian@nrc.gov>

References:

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Subject: Re: LB Memorandum and Order (Denying Requests for Hearing) (LBP-10-04) US
Army Installation Command

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Supporting Briefing of Petitioner Isaac Harp

Appealing the decision by the Atomic Energy Safety and Licensing Board Memorandum and Order (Denying Requests for Hearing) (LBP-10-04), US Army Installation Command (Schofield Barracks, Oahu, Hawaii, and Pohakuloa Training Area, Island of Hawaii, Hawaii), Docket No. 40-9083, served February 24, 2010.

Submitted - March 4, 2010

NRC staff statements in Board ORDER Denying Standing are in *bold italics*:

Harp contentions referred to by NRC staff statements in Board ORDER Denying Standing are in **bold**

Harp Responses to NRC staff statements preceded by "RESPONSE:"

Mr. Harp Fails to Establish Standing

Applying relaxed pleading standards, and construing Mr. Harp's hearing request in his favor, we find that he seeks to establish standing based on the following alleged facts:

RESPONSE: The NRC staff did not appear to apply relaxed pleading standards to myself, a pro se petitioner, or to any of the other pro se petitioners in this case. In fact, Judges Hawkins and Barrada raised this as an issue with NRC staff during oral arguments. In addition, it appeared that the NRC and the Army were working as partners in their effort to deny the petitioners standing which may explain why the NRC has never denied such a request before – as reflected in public statements by NRC representatives during the public hearing held in Kailua-Kona, Hawaii that was video-recorded by several others and myself.

(1) he is a resident of the island of Hawaii who lives about 19 miles from Pohakuloa (Tr. at 77);

RESPONSE: Actually, this is not alleged but factual. I provided my physical address as confirmation.

(2) "[DU] has been pointed to as the probable cause of various cancers and other mysterious illnesses that many military veterans suffer from" (Harp Hearing Request at 2);

RESPONSE: In reference to my contention listed under number 2) NRC staff concludes that ***"...he provides no factual support for his assertion, he makes no plausible showing that the DU could exit the firing ranges and migrate from Pohakuloa to affect him,"***

It was not possible to share documentation on what I presented orally during the oral argument process due to strict time constraints placed on the Hawaii petitioners by the ALS Board, the poor document sharing equipment made available to petitioners located in Hawaii, and continuous disconnections of the videoconference line. I provided the information copied below during my oral arguments, which NRC staff may have conveniently missed or selectively

ignored. This information serves as my evidence that DU could in fact exit the firing ranges and migrate from Pohakuloa to affect me and other residents and visitors of Hawaii island.

- a) *"Airborne Transport of Uranium Particles,"* Dietz a technician at the Knolls Atomic Power Laboratory in Schenectady, New York wrote, and I quote, *"A total of 16 air filters at three different locations covering 25 weeks of exposure from May through October 1979 were analyzed; all contained trace amounts of DU. Three of these air filters were exposed for four weeks each at a site 26 miles (42 km) northwest of the National Lead Industries plant. This is by no means the maximum fallout distance for DU aerosol particles."* end quote (At the time the filters were exposed, the National Lead Industries plant was fabricating DU penetrators and airplane counterweights.)
- b) In Preventive Psychiatry E-Newsletter No. 169, Arthur N. Bernklau, Executive Director of Veterans for Constitutional Law in New York, stated, and I quote, *"This malady (from uranium munitions), that thousands of our military have suffered and died from, has finally been identified as the cause of this sickness, eliminating the guessing. Out of the 580,400 soldiers who served in the first Gulf War, of them, 11,000 are now dead! By the year 2000, there were 325,000 on Permanent Medical Disability."* end quote
- c) A scientific paper titled "Leaching of depleted uranium in soil as determined by column Experiments"¹ clearly shows that leaching of depleted uranium in soil can occur. (Hawaii volcanic soils and geology provide easier pathways for leaching of DU than the soils used during column experiments – a photo document on Hawaii soils and geology was presented via document viewer during oral argument)
- d) In April 1985, the Hawaii Department of Health informed the Army that high levels of trichloroethylene had been detected in wells supplying drinking water to 25,000 people at Schofield Barracks. Moreover, an additional 55,000 people in Wahiawa and Milliani obtain drinking water from public wells within 3 miles of the base. (DU leaching at Schofield could be contaminating the water supply of tens of thousands of Hawaii residents and military personnel on Oahu)
- e) Citing the Safe Drinking Water Act, the Environmental Protection Agency ordered the Army to begin shutting down their cesspools at Pohakuloa and to complete the process by 2006. The EPA order was to prevent the Army from endangering drinking water sources. (DU leaching could be contaminating the same drinking water sources at Pohakuloa that the EPA is concerned about)
- f) In a document located on the NRC website² reporting on the decommissioning of the Jefferson Proving Grounds complex in Rock Island, Indiana, it states under 2.0 Site Status Summary, I quote, *"Contamination on site consists of DU in the soil. However, there is a concern for future groundwater contamination. The site has been closed for the testing of all ordnance including DU rounds since 1995. The monitoring of DU in soil, groundwater, surface water, and sediment continues on a bi-annual basis."* end quote (Here it shows that there is already recognized and

¹ Radiat Environ Biophys (2005) 44: 183–191, DOI 10.1007/s00411-005-0013-4; Leaching of depleted uranium in soil as determined by column experiments by W. Schimmack, U. Gerstmann, U. Oeh, W. Schultz, P. Schramel

² <http://www.nrc.gov/info-finder/decommissioning/complex/jefferson-proving-ground-facility.html>

documented concern on the NRC's website of DU leaching into and contaminating groundwater)

I believe this is more than sufficient evidence that the DU could exit the firing ranges and migrate from Pohakuloa to threaten injury to residents and visitors of Hawaii island as well as myself. The petitioners have withheld our urge to go national and international with this issue for fear that should this news become widely known Hawaii's main economic engine, the multi-billion dollar tourism industry will suffer great losses and cause further injury (economic) to all of Hawaii.

(3) "[d]isturbing the [DU] with on-going [high-explosive munitions] is placing the residents of Hawaii in jeopardy" (id.);

RESPONSE: In reference to my contention listed under number 3) NRC staff concludes that ***"Mr. Harp's unsupported claim that the Army is "[d]isturbing the [DU] with on-going [highexplosive munitions]" (id.) is negated by the Army's representation that, consistent with DoD Directive 4715.11, high-explosive munitions are not, and will not be, used in the DU areas or buffer areas at Pohakuloa."***

In my oral argument opening statement, I believe that I clearly removed any credibility that the Army may have in response to their past activities in Hawaii, especially during the 1960's. During the 1960's not only was DU used in Hawaii they also used Hawaii as a site for secret biological and chemical munitions experiments and as a dumpsite for tons of chemical, biological, and conventional weapons.

The Army's oral argument was based on limited and incomplete records. Where records were not available the Army applied assumptions. One such assumption is that military activity over the last 40 plus years in areas that the Army assumes are depleted uranium impact areas has adhered to DoD Directive 4715.11. There was no evidence to support the Army's claim. My research has determined that DoD Directive 4715.1 was issued August 17, 1999, some 30 plus years after depleted uranium was used in Hawaii. It is impossible for the Army to have adhered to DoD Directive 4715.1 prior to August 17, 1999, or after August 17, 1999 as the Army claims they were not aware that DU was used in Hawaii.

³*DoD Directive 4715.11, "Environmental and Explosives Safety Management on Operational Ranges Within the United States," 05/10/2004 - SUMMARY: This Directive reissues DoD Directive 4715.11, dated August 17, 1999, to establish policy and assign responsibilities under DoD Directives 4715.1 and 6055.9 for: 1. Sustainable use and management of operational ranges located within the United States. 2. The protection of DoD personnel and the public from explosive hazards on operational ranges located within the United States."*

The Army or NRC have not definitively proven that what the Army assumes to be the DU impact areas at either location (Schofield or Pohakuloa) is in fact an accurate reality. After denying for years that DU was ever used in Hawaii it seems like a miracle that the Army is suddenly able to discover records on their depleted uranium use in Hawaii, this only after the public became aware of the truth.

³ <http://biotech.law.lsu.edu/blaw/dodd/corres/html/471511.htm>

It is astounding that NRC staff would side with the Army's position here considering very little, if any, evidence was provided to support the Army's claim. At a minimum, I would assume that NRC staff would research the Army's claims themselves to determine if the statements made are credible. As previously stated, the Army used limited and incomplete records as the basis of much of their arguments against the petitioner's effort to establish standing, and it appears that NRC staff has taken the Army's words as fact in a team-like effort to undermine the petitioners' efforts to establish standing.

(4) the highest rates of cancer in the State of Hawaii occur on the island of Hawaii (id.);

RESPONSE: In reference to my contention listed under number 4) NRC staff concludes that ***"...the statistics offered by Mr. Harp that indicate a high incidence of cancer on the island of Hawaii (Harp Hearing Request at 2) are inadequate to confer standing, because those statistics, standing alone, fail to provide a plausible chain of causation between such cancers and the DU at Pohakuloa."***

In my closing statement during oral arguments I made the following statements that NRC staff may have again conveniently missed or selectively ignored:

"I did a quick check on cancer rates in Hawaii and found that out of eighteen (18) categories of cancer, the residents of this island have the highest rate for ten (10) categories. What surprised me most was that this island's per-capita cancer rate was not only the highest in Hawaii it was higher than all of the contiguous 49 states!"

And

"Seven (7) of the nine (9) sites that the Army wants to place under the license rank either 1st or 2nd in highest cancer rates in those states. Well actually six (6) out of nine (9) because Hawaii is not lawfully a state."

Considering the fact that depleted uranium from Davy Crockett spotting rounds is the one commonality amongst these seven sites it is extremely unlikely that these statistics are coincidental. Neither the NRC staff nor the Army provided evidence that depleted uranium at Pohakuloa does not threaten injury to me and other residents of the island of Hawaii. Although the NRC staff and the Army prefer to place the burden of proof on the petitioners, I believe that it is the NRC's responsibility to insure that no harm or threat of harm occurs to the public, including the petitioners. The petitioners are not responsible for regulating uranium contamination by the Army. That responsibility is with the NRC and ASL Board.

(5) the DU at Pohakuloa constitutes a "never-ending threat to the health and well-being of Hawaii's lands and Hawaii's residents."

RESPONSE: In reference to my contention listed under number 5) NRC staff concludes that, ***"Similarly inadequate to confer standing is Mr. Harp's claim that DU constitutes a "never-ending threat to the health and wellbeing of Hawaii's lands and Hawaii's residents" (id.), because Mr. Harp fails either to specify a concrete and particularized harm or to articulate a plausible chain of causation as to how the DU at Pohakuloa would cause such harm."***

Considering:

- 1) The oral statements and quotes I presented during oral arguments,
 - 2) The fact that radioactivity of depleted uranium increases over time, and
 - 3) The fact that the half-life of depleted uranium radioactivity is measured in billions of years, it is obvious that this contention has a sound and valid basis in fact.
-

Additional Statements:

NRC staff failed to adequately address question 10 from the ASL Board during the oral argument process. The question was direct to the Army being in Hawaii illegally. I include below Question 10 to the NRC staff contained in the Atomic Energy Safety and Licensing Board ORDER Identifying Issues for Oral Argument dated 12-17-09:

“(10) It is claimed that (i) the Army’s presence at the relevant military installations is illegal, and (ii) state or local laws may prohibit the Army from storing/possessing depleted uranium in the open at these installations. Please address whether the NRC Staff’s review of the Army’s possession-only license application extends to such claims, and provide statutory and/or regulatory support for your position.”

There was no denial by the NRC staff that the Army’s presence at the relevant military installations is illegal. Rather than responding to the question directly, NRC staff instead skirted the question by referring to responsibilities of other agencies. Prior to the NRC issuing a permit to possess radiological material the NRC should insure that they do in fact have legal jurisdiction under which to do so. Documented history of relations between Hawaii and the United States clearly shows that acts by the United States to annex Hawaii as a territory of the United States and the process applied in an attempt to establish Hawaii as the 50th state of the United States violated the United States Constitution and International laws.

I presented the following statements during oral arguments there were not rebutted:

- The United States never lawfully annexed Hawaii. There was never a treaty of cession;
- Hawaii is not the 50th state. The statehood ballot and process were both fatally flawed; and
- Through its occupation of Hawaii, the United State has violated every one of its treaties with Hawaii, treaties that are the supreme law of the land.

I also referred to United States Public Law 103-150 of 1993 that apologizes to native Hawaiians for the illegal overthrow of Hawaii’s lawful government, as well as United States Department of Justice, *Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea*, Opinions of the Office of Legal Counsel, vol. 12, p. 238-263, October 4, 1988. I will include these references as appendixes.

Additionally, evidence that Hawaiians opposed attempts by the United States to annex Hawaii can be found in the 556-page Hui Aloha 'Aina Anti-Annexation Petitions of 1897-1898. The anti-annexation petitions contain 38,269 signatures, or nearly all of the 40,000 Hawaiians who lived in Hawaii at that time.

After reviewing the MEMORANDUM AND ORDER (Denying Requests for Hearing) dated February 24, 2010, the decision to deny petitioner's request for a hearing appears to be based on:

- 1) The NRC's faith that the Army's statements are true and factual despite limited and incomplete records;
- 2) Information provided by Mr. Peter Strauss, energy and environmental consultant with PM Strauss & Associates;
- 3) Technicalities raised by NRC staff in regards to pro se petitioners' inability to meet strict NRC guidelines on establishing standing;
- 4) NRC failure to confirm the accuracy of the Army's statements; and
- 5) NRC failure to confirm the accuracy of petitioners' statements.

In regards to NRC staff's statements and references to information provided by Mr. Peter Strauss, energy and environmental consultant with PM Strauss & Associates. Mr. Strauss' formal education does not qualify him as an expert in radiological or chemical effects of depleted uranium. Mr. Strauss received a Bachelor of Arts Degree from the University of Wisconsin in 1970 and a Master of Science Degree in Managerial Science and Policy from the College of Environmental Science and Forestry, State University of New York in 1977. Although Mr. Strauss served in various monitoring roles related to various environmental cleanup efforts, has acted in various advisory capacities, in addition to receiving a request to "peer review" a colleagues' paper he is not a qualified expert on radiological or chemical effects of depleted uranium.

In regards to petitioner's inability to meet strict NRC guidelines, it is abundantly clear that in this case the NRC staff did not intend to apply relaxed pleading standards to the pro se petitioners, as is reflected in video tapes of the oral argument captured by the petitioners.

A new concern came to the forefront during the oral arguments to which the petitioners were unaware. During the oral argument process, Judge Hawkins questioned the Army's representative on what portion of the Army's application was going to be updated. If the Army's application is going to be, or has been amended the NRC must publish a notice in the federal register and solicit public comments on the amendments.

If the Army's application is to be or has been modified I hereby request that the Board stay their ORDER of Denial and follow the proper chain of procedure to insure that the public, including the petitioners have an opportunity review and comment on any and all amendments that may have or will be made to the Army's application.

In conclusion, I am surprised that there were no NRC comments to a statement that I made during oral arguments regarding the expiration of License SUB-459 on October 31, 1964, the license under which the Army fabricated, distributed, and exported Depleted uranium spotting rounds for military purposes.

As I stated during oral arguments, if any Depleted Uranium was possessed or released into the environment after the license expiration date, in my opinion it was an unlawful act and subject to Nuclear Regulatory Commission enforcement policies. In fact, the Depleted Uranium now contaminating Hawaii may also fall under this distinction as I mentioned.

Considering the fact that this issue was brought to the attention of the NRC by the petitioners, the petitioners should not be forced to jump through additional procedural hoops in order to stimulate the NRC into taking enforcement action or at a minimum opening an investigation into this matter.

I hereby request that the NRC take enforcement action by initiating an investigation into this potential violation of License SUB-459 and if it is determined that a violation has occurred to apply the full penalty permissible by law. Any monetary fines should go toward environmental remediation of depleted uranium contamination at Schofield and Pohakuloa, if the law provides for such action.

Sincerely,

A handwritten signature in black ink that reads "Isaac D. Harp". The signature is written in a cursive style and is positioned above a horizontal line.

Isaac Harp

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United States Department of Justice,
*Legal Issues Raised by Proposed
Presidential Proclamation to Extend the Territorial Sea,*
Opinions of the Office of Legal Counsel,
vol. 12, p. 238-263, October 4, 1988

Excerpts commenting on the annexation of Hawai'i
taken from pp. 250 – 252

C. Congress' Power to Assert Sovereignty over the Territorial Sea

We next consider whether H.R. 5069, which provides for the establishment of a territorial sea twelve miles wide, is within the constitutional power of Congress. H.R. 5069 states, "The sovereignty of the United States exists in accordance with international law over all areas that are part of the territorial sea of the United States." H.R. 5069, 100th Cong., 2nd Sess., §101(b) (1988). Congress, however, has never asserted jurisdiction or sovereignty over the territorial sea on behalf of the United States.²⁸ Because the President—not the Congress—has the constitutional authority to act as the representative of the United States in foreign affairs, Congress may proclaim jurisdiction or sovereignty over the territorial sea for international law purposes only if it possesses a specific constitutional power therefor.²⁹

We have identified two instances in which the United States acquired territory by legislative action. In 1845, the United States annexed Texas by joint resolution. Joint Res. 8, 5 Stat. 797 (1845). Several earlier proposals to acquire Texas after it 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.

²⁸ Congress has occasionally considered legislation to extend the territorial sea of the United States. E.g. H.J. Res. 308, 91st Cong., 1st Sess. (1969); S.J. Res. 136, 90th Cong., 2nd Sess. (1968); H.R. 10492, 88th Cong., 2nd Sess. (1964). None of these bills had been enacted.

²⁹ Congress has certain constitutional powers that can affect the claims of the United States over the seas. For example, Congress has the power to regulate foreign commerce, art. I, §8, cl. 3, the power to define and punish crimes committed on the high seas and offenses against international law, art. I, §8, cl. 10, and the power to declare war, art. I, §8, cl. 11. Congress also exercises considerable authority over the territory of the United States. The Constitution authorizes Congress to admit new states, art. IV, §3, cl. 1, and to dispose of and regulate the property of the United States, art. IV, §3, cl. 2.

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., 2nd Sess. 247 (1845) (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 affect 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 announced, "[t]he 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., 2nd 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." Andrew C. McLaughlin, *A Constitutional History of the United States* 504 (1936). Opponents of the joint resolution stressed this distinction. *See, e.g.* 31 Cong. Rec. 5975 (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,

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 Credit 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. 5975 (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.*

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 Westel Woodbury Willoughby, *The Constitutional Law of the United States* §239, at 427 (2nd 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 serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea.³¹

³¹ Additionally, Congress has authorized the extension of United States' control to guano island discovered and occupied by citizens of the United States. The Guano Islands Act provided: "Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States." 48 U.S.C. §1411. In *Jones v. United States*, 137 U.S. 202 (1890), the Supreme Court held that the statute was valid and that Navassa, a guano island claimed under that statute, "must be considered as appertaining to the United States." *Id.* at 224. The Guano Islands Act does not appear to be an explicit claim of territory by Congress.

Calendar No. 185

103^D CONGRESS
1ST SESSION

S. J. RES. 19

[Report No. 103-126]

JOINT RESOLUTION

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

AUGUST 6 (legislative day, JUNE 30), 1993

Reported without amendment

Calendar No. 185103^D CONGRESS
1ST SESSION**S. J. RES. 19****[Report No. 103-126]**

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. AKAKA (for himself and Mr. INOUE) introduced the following joint resolution; which was read twice and referred to the Select Committee on Indian Affairs

AUGUST 6 (legislative day, JUNE 30), 1993

Reported by Mr. INOUE, without amendment

JOINT RESOLUTION

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on com-

munal land tenure with a sophisticated language, culture, and religion;

Whereas a unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

Whereas the Congregational Church (now known as the United Church of Christ), through its American Board of Commissioners for Foreign Missions, sponsored and sent more than 100 missionaries to the Kingdom of Hawaii between 1820 and 1850;

Whereas, on January 14, 1893, John L. Stevens (hereafter referred to in this Resolution as the "United States Minister"), the United States Minister assigned to the sovereign and independent Kingdom of Hawaii conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaii;

Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government build-

ings and the Iolani Palace to intimidate Queen Liliuokalani and her Government;

Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendents of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government;

Whereas the United States Minister thereupon extended diplomatic recognition to the Provisional Government that was formed by the conspirators without the consent of the Native Hawaiian people or the lawful Government of Hawaii and in violation of treaties between the two nations and of international law;

Whereas, soon thereafter, when informed of the risk of bloodshed with resistance, Queen Liliuokalani issued the following statement yielding her authority to the United States Government rather than to the Provisional Government:

“I Liliuokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.

“That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

“Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands.”.

Done at Honolulu this 17th day of January, A.D. 1893.;
Whereas, without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms;

Whereas, on February 1, 1893, the United States Minister raised the American flag and proclaimed Hawaii to be a protectorate of the United States;

Whereas the report of a Presidentially established investigation conducted by former Congressman James Blount into the events surrounding the insurrection and overthrow of January 17, 1893, concluded that the United States diplomatic and military representatives had abused their authority and were responsible for the change in government;

Whereas, as a result of this investigation, the United States Minister to Hawaii was recalled from his diplomatic post and the military commander of the United States armed forces stationed in Hawaii was disciplined and forced to resign his commission;

Whereas, in a message to Congress on December 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”, and acknowledged that by such acts the government of a peaceful and friendly people was overthrown;

Whereas President Cleveland further concluded that a “substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair” and called for the restoration of the Hawaiian monarchy;

Whereas the Provisional Government protested President Cleveland’s call for the restoration of the monarchy and continued to hold state power and pursue annexation to the United States;

Whereas the Provisional Government successfully lobbied the Committee on Foreign Relations of the Senate (hereafter referred to in this Resolution as the “Committee”) to conduct a new investigation into the events surrounding the overthrow of the monarchy;

Whereas the Committee and its chairman, Senator John Morgan, conducted hearings in Washington, D.C., from December 27, 1893, through February 26, 1894, in which members of the Provisional Government justified and condoned the actions of the United States Minister and recommended annexation of Hawaii;

Whereas, although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation;

Whereas, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawaii;

Whereas, on January 24, 1895, while imprisoned in Iolani Palace, Queen Liliuokalani was forced by representatives of the Republic of Hawaii to officially abdicate her throne;

Whereas, in the 1896 United States Presidential election, William McKinley replaced Grover Cleveland;

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;

Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States;

Whereas the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;

Whereas the Congress, through the Newlands Resolution, ratified the cession, annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;

Whereas the Newlands Resolution also specified that treaties existing between Hawaii and foreign nations were to immediately cease and be replaced by United States treaties with such nations;

Whereas the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government;

Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;

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 States;

Whereas, on August 21, 1959, Hawaii became the 50th State of the United States;

Whereas the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;

Whereas the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people;

Whereas the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions;

Whereas, in order to promote racial harmony and cultural understanding, the Legislature of the State of Hawaii has determined that the year 1993 should serve Hawaii as a year of special reflection on the rights and dignities of the Native Hawaiians in the Hawaiian and the American societies;

Whereas the Eighteenth General Synod of the United Church of Christ in recognition of the denomination's historical complicity in the illegal overthrow of the Kingdom of Hawaii in 1893 directed the Office of the President of the United Church of Christ to offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and the Native Hawaiians; and

Whereas it is proper and timely for the Congress on the occasion of the impending one hundredth anniversary of the event, to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express its deep regret to the Native Hawaiian people, and to support the reconciliation efforts of the State of Hawaii and the United Church of Christ with Native Hawaiians: Now, therefore, be it

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*

3 **SECTION 1. ACKNOWLEDGMENT AND APOLOGY.**

4 The Congress—

5 (1) on the occasion of the 100th anniversary of
6 the illegal overthrow of the Kingdom of Hawaii on
7 January 17, 1893, acknowledges the historical sig-
8 nificance of this event which resulted in the suppres-
9 sion of the inherent sovereignty of the Native Ha-
10 waiian people;

11 (2) recognizes and commends efforts of rec-
12 onciliation initiated by the State of Hawaii and the
13 United Church of Christ with Native Hawaiians;

1 (3) apologizes to Native Hawaiians on behalf of
2 the people of the United States for the overthrow of
3 the Kingdom of Hawaii on January 17, 1893 with
4 the participation of agents and citizens of the United
5 States, and the deprivation of the rights of Native
6 Hawaiians to self-determination;

7 (4) expresses its commitment to acknowledge
8 the ramifications of the overthrow of the Kingdom
9 of Hawaii, in order to provide a proper foundation
10 for reconciliation between the United States and the
11 Native Hawaiian people; and

12 (5) urges the President of the United States to
13 also acknowledge the ramifications of the overthrow
14 of the Kingdom of Hawaii and to support reconcili-
15 ation efforts between the United States and the Na-
16 tive Hawaiian people.

17 **SEC. 2. DEFINITIONS.**

18 As used in this Joint Resolution, the term "Native
19 Hawaiian" means any individual who is a descendent of
20 the aboriginal people who, prior to 1778, occupied and ex-
21 ercised sovereignty in the area that now constitutes the
22 State of Hawaii.

23 **SEC. 3. DISCLAIMER.**

24 Nothing in this Joint Resolution is intended to serve
25 as a settlement of any claims against the United States.