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LAW AS A TOOL OF OPPRESSION AND LIBERATION:  
INSTITUTIONAL HISTORIES AND PERSPECTIVES ON POLITICAL  
INDEPENDENCE  
IN HAWAI'I, TAHITI NUI / FRENCH POLYNESIA AND RAPA NUI

A THESIS SUBMITTED TO THE GRADUATE DIVISION OF THE  
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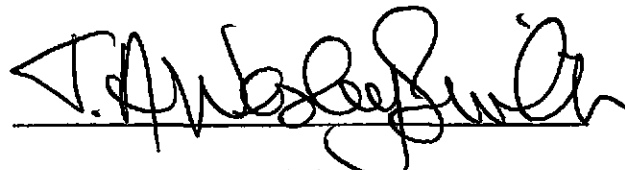
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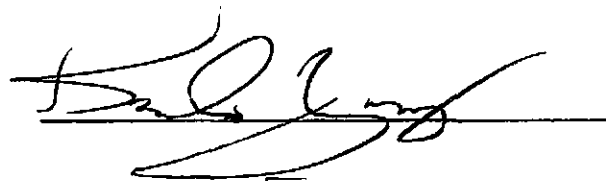
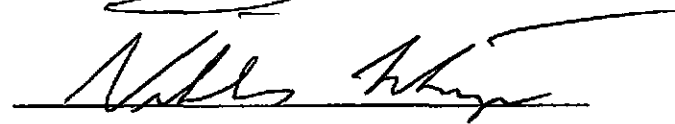
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## DEDICATION

*To all the national heroes of Hawai'i, Tahiti and archipelagos, and Rapa Nui*

*To all those of the past who have struggled for the recognition and preservation of their independence and to all those who in spite of colonial or occupational oppression and indoctrination have upheld their national identity as Hawaiian nationals, Mā'ohi and Rapanui*

*To all those of the present who are continuing the struggle and persevere in holding on to their national identity*

*To all those of the future who will bring about the eventual restoration of governments or decolonisation and thereby become new national heroes to their country*

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I take full responsibility for my work. All errors, stylistic choices and interpretations are entirely my own. To all the named individuals and various others whose contribution I might have forgotten to remember, my most sincere *mahalo*, *mauruuru* and *maurūru*.

## ABSTRACT

*In English*

This thesis compares the political histories and perspectives on independence in Hawai‘i, French Polynesia and Rapa Nui. The main focus is on the role of international law, as well as the constitutional and organic law of States. It analyses how these legal systems have been employed as tools of oppression by the imperialist powers, but can also be used by independence advocates for their own purposes. The objective is to determine the appropriate political paradigms from which to develop strategies for liberation from foreign rule in each case. All three cases represent anomalies in the current international system, Hawai‘i as an occupied State, French Polynesia and Rapa Nui as Non-Self-Governing Territories that were wrongfully deprived of their right to self-determination. Rectifying these anomalies by initiating a de-occupation process for Hawai‘i and a decolonisation process for French Polynesia and Rapa Nui would reinforce the principles of international law and thereby contribute to world peace and security.

*Ma ka 'ōlelo Hawai'i*

He 'ōlelo ho'ohālikelike kēia palapala no nā mō'aukala o ke kālai'āina a me nā kuana'ike no ke kū'oko'a polikika ma nā 'āina 'o Hawai'i, 'o Polenekia Palani (nā mokupuni o Tahiti Nui) a me Rapa Nui nō ho'i. 'O ka mea nui i kēia hana ke kōnāwai mawaena o nā aupuni a me nā kumukōnāwai o nā aupuni. E wehewehe ho'i au, ua hana 'ia ua mau kōnāwai nei e nā aupuni nui no ka ho'oluhi 'ana i nā kānaka maoli, akā, hana 'ia nō ho'i ia e ka po'e maoli aloha 'āina i ko lākou ho'ā'o ho'okū'oko'a. Ma ka panina mana'o, hō'ike 'ia ke 'ano polikika e kūpono no ke ho'okū'oko'a 'ia 'ana o nā 'āina 'ekolu kaka'ikahi. He hewa nō ke kōlana polikika o nā 'āina 'ekolu a pau maloko o ke kahua polikika o ka honua i kēia kau. He aupuni kū'oko'a 'o Hawai'i, i ho'omaopopo 'ia e nā aupuni a pau o ka honua, ua ho'onohohewa 'ia na'e e Amelika Huipū'ia, a ke noho nei ia nohohewa 'ana kō'ole i ke kōnāwai i kēia kau. 'O Polenekia Palani a me Rapa Nui ho'i, he mau panalā'au lāua, i ho'okolonaio 'ia e Palani a me Kile, a'ole na'e lāua i ho'okolonaio'ole 'ia mamuli o nā kōnāwai o nā Aupuni Huipū'ia. Inā ho'oponopono 'ia ua mau hewa nei, 'o ia ho'i inā ho'omaka 'ia ka ho'onohohewa'ole 'ia 'ana o Hawai'i, a me ka ho'okolonaio'ole 'ia 'ana o Polenekia Palani a me Rapa Nui, e ho'omana ia i ke kōnāwai mawaena o nā aupuni, a nō laila, he kōkua ia no ka maluhia a me ka ho'opa'a 'ana o ka honua.



*En Français*

Ce mémoire compare les histoires politiques et des perspectives sur l'indépendance de Hawaï'i, de la Polynésie française, et de Rapa Nui. La priorité en est le rôle du droit international ainsi que le droit constitutionnel et organique des Etats. Il est analysé comment ces systèmes juridiques ont été utilisés comme outils d'oppression par les pouvoirs impérialistes, mais peuvent également être utilisés par des partisans de l'indépendance comme leur propres outils. L'objectif est de déterminer les paradigmes politiques appropriés à chaque cas pour développer des stratégies visant la libération de la domination étrangère. Tous les trois cas représentent des anomalies dans le système international actuel, Hawaï'i comme un Etat sous occupation, la Polynésie française et Rapa Nui comme Territoires non-autonomes qui furent privés de leur droit à l'autodétermination. La rectification de ces anomalies, en initiant un processus de dé-occupation en faveur de Hawaï'i, et des processus de décolonisation en faveur de la Polynésie française et de Rapa Nui, renforcerait les principes du droit international, et contribuait donc à la paix et la sécurité internationale.

*I te reo Tahiti*

E fa'afāitora'a teie parau pāpa'i nō te mau tuatāpapara'a poritita 'e te mau hi'ora'a i te ti'amāra'a o te mau fenua 'o Vaihī, Porinetia Farāni (Tahiti Nui) 'e Rapa Nui. Te mea faufa'a i teie fa'afāitora'a, 'o ia ho'i te ture i rōpū i te mau hau, 'e te mau papa ture o te mau pātireia. E tātara ho'i au ē, ua ravehia teie mau ture e te mau hau rarahi nō te fa'ahēpo i te ta'ata mā'ohi, āre'a rā, e ravehia ato'a pa'i taua mau ture ra e te ta'ata mā'ohi here 'āi'a mai te hō'ē tauiha'a i to rātou 'arora'a fa'ati'amā. I te hope'a, e fa'a'itehia te huru poritita e au nō te fa'ati'amāra'ahia o nā fenua e toru tata'itahi. Inaha ho'i, e mea hape te ti'ara'a poritita o nā fenua e toru ato'a i roto i te huru poritita o te ao i teieni. 'O Vaihī, e pātireia ti'amā ia, i ifa'ati'ahia e te mau hau ato'a o te ao, āre'a rā pa'i, ua haruhia e te hau Marite, 'e te vai noa nei teie harura'a tano 'ore i te ture. 'O Porinetia Farāni 'e Rapa Nui ho'i, e mau fenua 'aihuarā'au rāua, i fa'a'aihuarā'auhia e te hau Farāni 'e te hau Tire, aita rā i fa'a-'aihuarā'au-'ore-hia rāua ma te tano i te ture o te mau Hau 'Āmui. 'Iā fa'atanohia teie mau hape, 'o ia ho'i 'iā ha'amatahia te fa'aharu-'ore-ra'ahia o te fenua Vaihī, 'e te fa'a'aihuarā'au-'ore-ra'ahia o nā fenua Porinetia Farāni 'e Rapa Nui, e ha'apūai ia i te ture i rōpū i te mau hau, a nō reira, e mea tauturu ia nō te hau e te 'ino 'ore i te ao.

## *En Español*

Esta tesis compara las historias políticas y las perspectivas sobre la independencia política en Hawai‘i, la Polinesia Francesa, y Rapa Nui. La prioridad con eso es la función del derecho internacional y del derecho constitucional y orgánico de los Estados. Es analizado como estas sistemas de derecho fueron empleados como instrumentos de opresión por los potencias imperialistas, pero pueden empleados también por los abogados de la independencia como sus propios instrumentos. El objetivo es la determinación de las paradigmas políticas apropiadas para cada caso a fin de desarrollar estrategias para la liberación de la dominación extranjera. Los tres casos representan anomalías en el sistema internacional actual, Hawai‘i como un Estado soberano sometido a ocupación, la Polinesia Francesa y Rapa Nui como Territorios no autónomos que fueron privadas de su derecho de autodeterminación. La rectificación de estas anomalías, en iniciando un proceso de des-ocupación para Hawai‘i y un proceso de descolonización para la Polinesia Francesa y Rapa Nui, reforzaría los principios del derecho internacional y así contribuiría a la paz y la seguridad internacional.

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*All maps by the author*

### COVER ILLUSTRATIONS

*Above left:* Monument of Riro Kāinga, the last king of Rapa Nui, in front of the governor’s office building in Hanga Roa, Rapa Nui

*Above right:* Monument of Pouvāna‘a a ‘Ō‘opa, the founding father of Tahitian nationalism, in front of the Assembly of French Polynesia building, Pape‘ete, Tahiti

*Centre left:* Flag of Rapa Nui

*Centre of the page:* Flag of Hawai‘i

*Centre right:* Flag of Tahiti Nui / French Polynesia

*Below:* Statue of King Kamehameha, the founding father of the Hawaiian Kingdom, in front of Ali‘iōlani Hale, the kingdom’s government building, Honolulu, Hawai‘i

*All photographs by the author*



## INTRODUCTION

The thesis consists of a comparative analysis of the political histories and perspectives on independence in Hawai‘i, Tahiti Nui/French Polynesia<sup>1</sup> and Rapa Nui.<sup>2</sup> The main focus in this analysis is on the role of international law, as well as the constitutional and organic laws of States. I will analyse how these legal systems can be used by independence movements and advocates as their own tools against colonialism or occupation, even though they have been employed as tools of oppression by the imperialist powers. As concluding findings of this historical documentation and legal analysis, I will indicate the appropriate political paradigms to formulate demands for liberation from foreign rule in each case.

Through this analysis I have discovered that the three cases represent anomalies in the current international system. Hawai‘i, the first non-Western nation to be internationally recognised in the nineteenth century, has been under effective US rule since 1898, but the United States never acquired sovereignty over it in a legally permissible way. As an independent State under prolonged occupation, Hawai‘i thus constitutes a currently unique case, although not unparalleled in history. French Polynesia and the Chilean-ruled island of Rapa Nui, on the other hand, are Non-Self-Governing Territories eligible for

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<sup>1</sup> The name French Polynesia is, of course, a name imposed by the French coloniser and as such is being refused and protested by many of the country’s inhabitants. However, as the territory is an artificial, colonially created entity, there is no original native name corresponding to the entire territory. Several nationalist leaders and movements have made name proposals, the two most common being Tahiti Nui (“Greater Tahiti”) and Te Ao Mā‘ohi (“The Mā‘ohi World”). While originally, “Tahiti Nui” was championed by pro-French leader Gaston Flosse, and “Te Ao Mā‘ohi” by pro-independence leader Oscar Temaru, the latter has recently endorsed the more internationally compatible “Tahiti Nui” as well, so that it might now become the name championed by the majority.

<sup>2</sup> In accordance with the pattern established by Stephen Fischer (2005), I will use the spelling “Rapa Nui” in two words if the term is used as the name for the island (corresponding to “Hawai‘i” or “Tahiti”), and “Rapanui” in one word if used as an adjective (corresponding to “Hawaiian” or “Tahitian”).

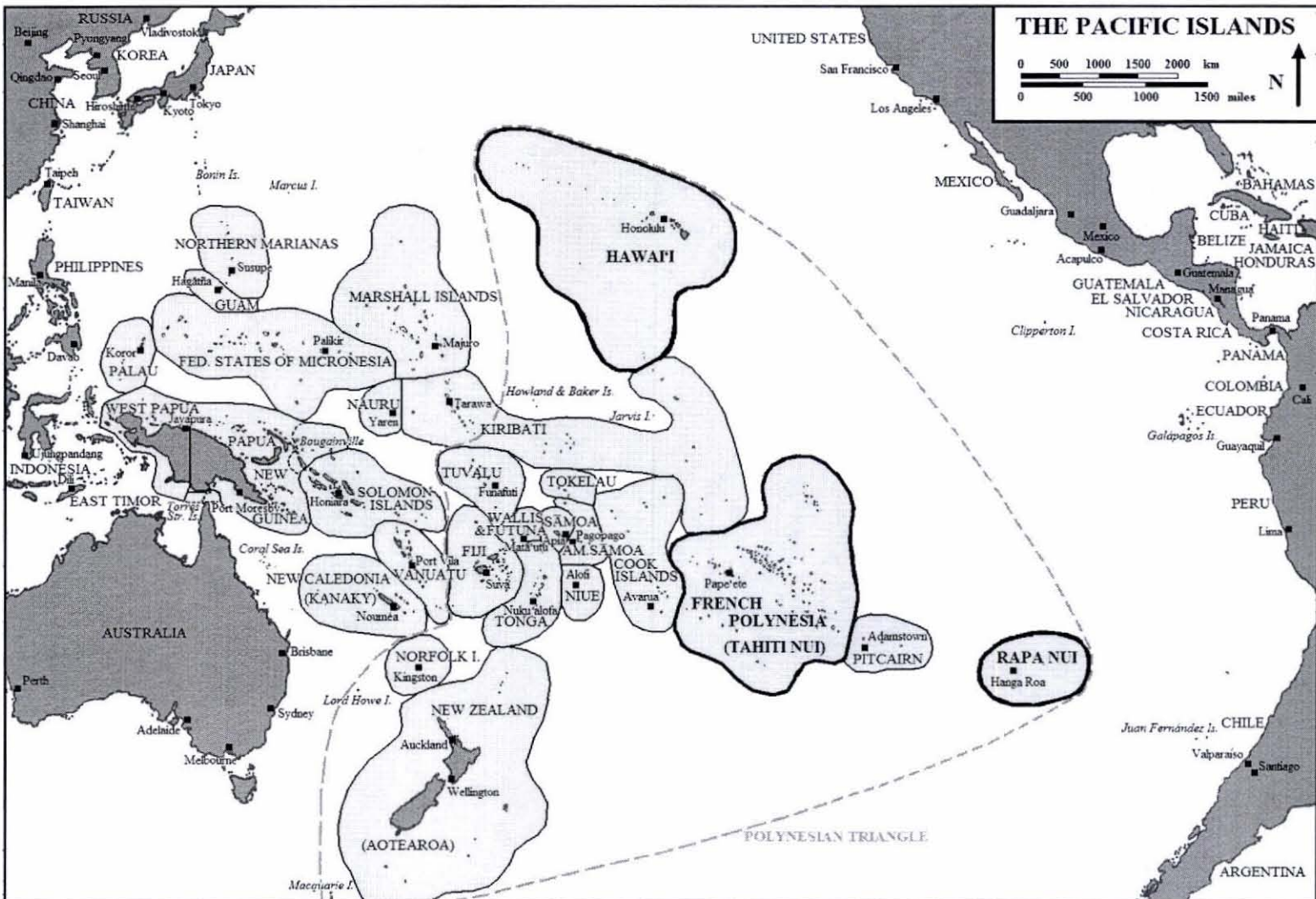
self-determination, as defined by the United Nations. However, they were both wrongfully deprived of their right to decolonisation. This makes them unusual as well, even though there have been a few other similar cases. I have furthermore discovered that some of the outer islands of today's French Polynesia have a different status in international law from the rest of the territory, and might in reality be occupied States like Hawai'i. In conclusion, I will argue that rectifying these anomalies by initiating a de-occupation process for Hawai'i and a decolonisation process for French Polynesia and Rapa Nui would reinforce the principles of international law and thereby contribute to world peace and security.

In each of the three territories there is a significant section of the population that is not happy with this situation of continuing colonial rule or occupation and supports independence. These people have organised themselves into various groups and movements, with often very different and contradictory platforms and agendas. One of their main points of concern is how their particular country was taken over by the coloniser or occupier, and usually these findings are used to build political arguments for independence. Situated against that background, my analysis evaluates these arguments in a larger context of international law.

While there are other cases of ongoing colonialism or occupation in the Pacific, this study is limited to the three Eastern Polynesian entities of Hawai'i, French Polynesia and Rapa Nui, because they are interrelated in terms of culture and language<sup>3</sup>, and I have strong personal connections to all three of them.

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<sup>3</sup> Within Eastern Polynesia, I also exclude the Cook Islands, even though it is culturally closely related to and historically intertwined with French Polynesia (Touillelan 1987: 54-55). However, this territory was successfully decolonised by achieving the status of a State in free association with New Zealand in 1965, so there is no longer a need to debate or challenge its international legal status.



Map 1: Political map of the Pacific Islands, showing the situation of Hawai'i, French Polynesia and Rapa Nui. The boundaries shown are based on a simplified approximation of the Exclusive Economic Zones of each political entity.

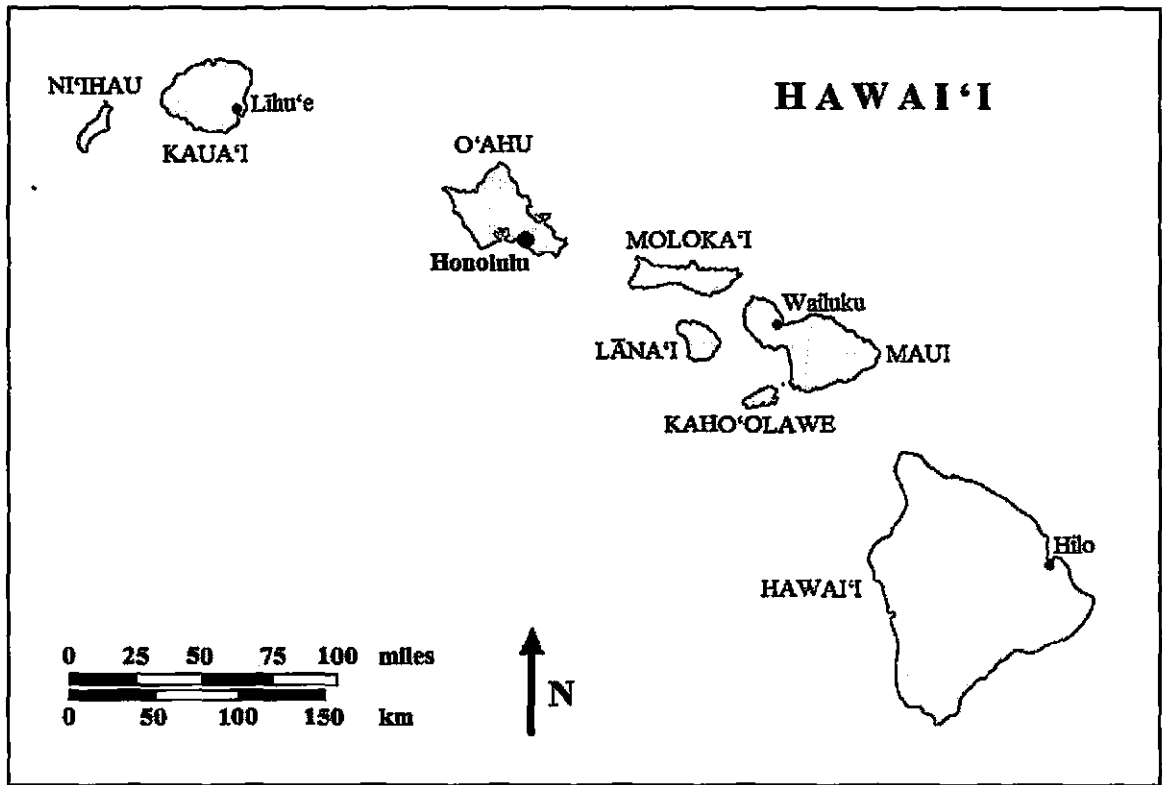
## ***Geographical overview<sup>4</sup>***

### ***Hawai'i***

The Hawaiian Islands are situated at the northern tip of the Polynesian triangle, about four thousand kilometres (2,500 miles) north of Tahiti, and approximately midway between the coasts of southern China and Mexico. The archipelago consists of eight major and about fifteen minor islands, with an overall surface of 16,634 square kilometres (6,423 square miles). The population was estimated at 1,311,465 in 2007, consisting of about one fifth aboriginal Hawaiians, slightly more than one half Asians (mainly Japanese, Chinese and Filipinos), one quarter Whites (mainly American immigrants) and many other small immigrant groups from all over the world. More than three quarters of the population live on the island of O'ahu, on which the capital Honolulu is situated.

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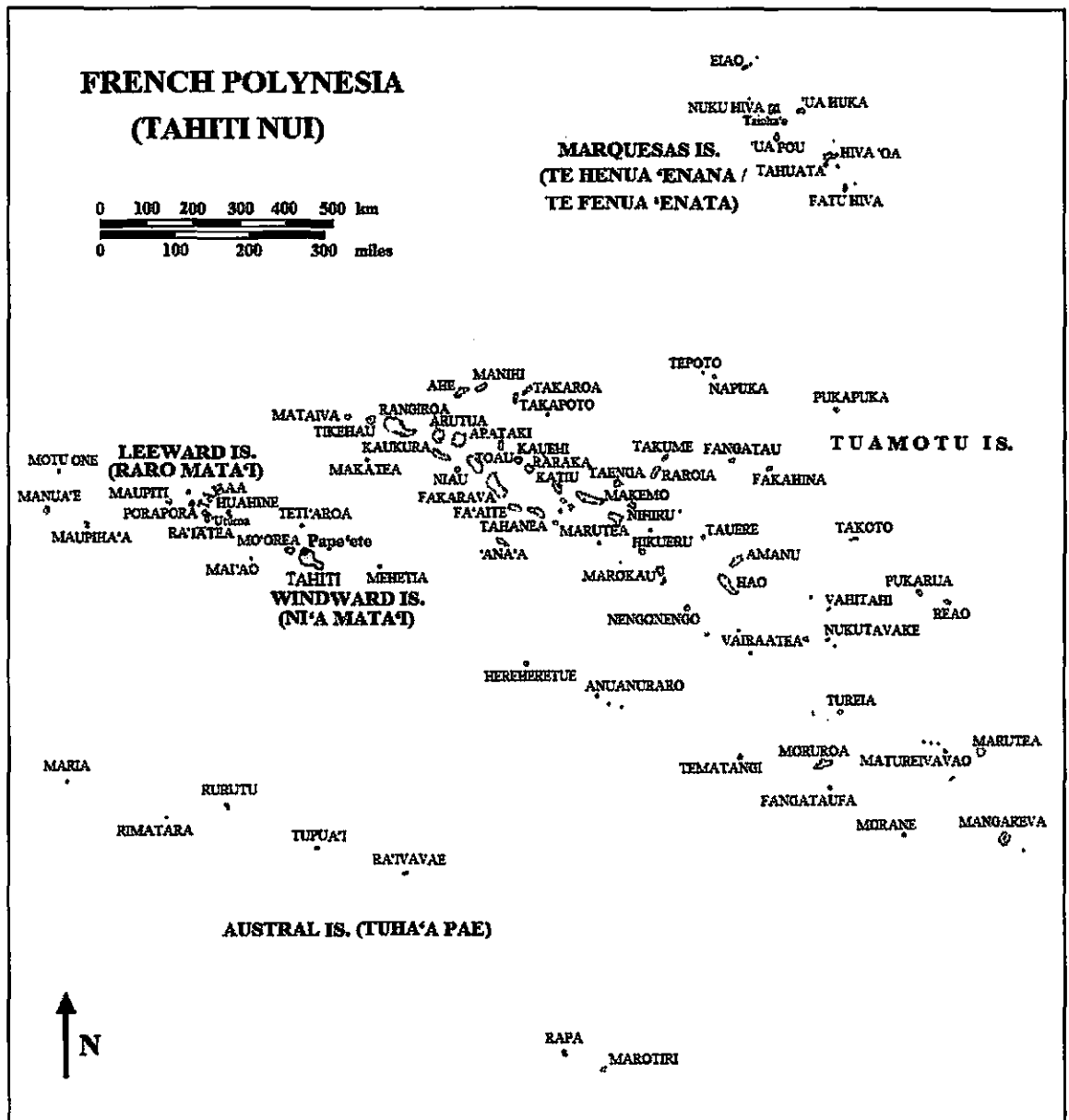
<sup>4</sup> Statistical figures and information taken from Wikipedia <<http://www.wikipedia.org>> and World Statesmen <<http://www.worldstatesmen.org>> web sites.



Map 2: Hawai'i

### *French Polynesia / Tahiti Nui*

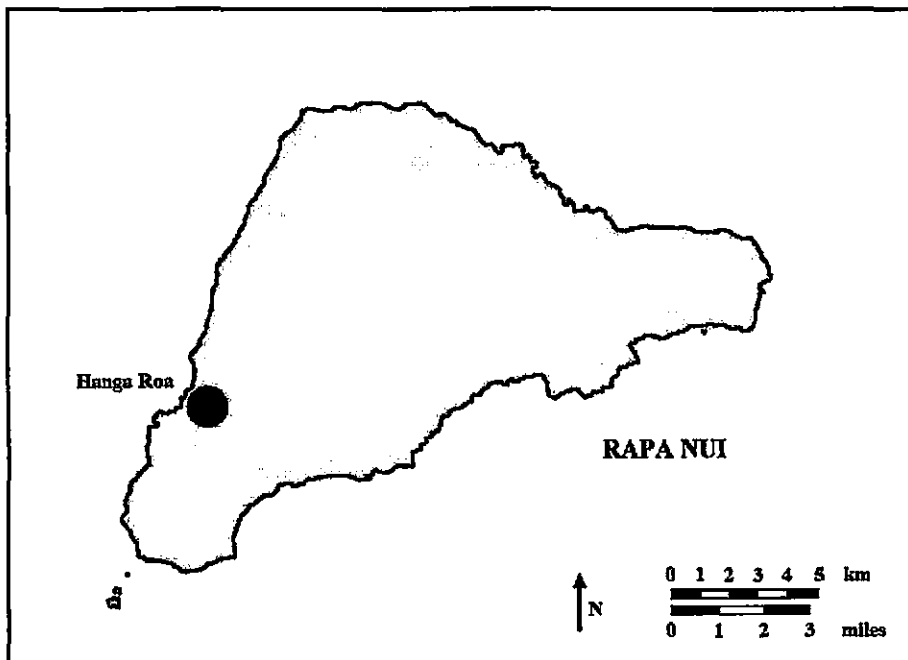
French Polynesia consists of about 120 islands in the central eastern Pacific, spread over a vast maritime area comparable in size to central Europe or to the United States excluding Alaska. The territory is made up of six archipelagoes, the Windward Islands (Ni'a Mata'i), Leeward Islands (Raro Mata'i), Austral Islands (Tuha'a Pae), Tuamotu Islands, Mangareva (Gambier Islands) and Marquesas Islands (Henua 'Enana or Fenua 'Enata). The main island of Tahiti in the Windward Islands, with the capital Pape'ete, lies near the centre of the Polynesian triangle. Overall, the territory has a surface of 4,167 square kilometres (1,609 square miles) and had 259,596 inhabitants in 2007. Approximately three quarters or more of the population are native Polynesians, while Chinese, and French or other European immigrants, each make up about half of the rest.



Map 3: French Polynesia

## *Rapa Nui*

The island of Rapa Nui, often called Easter Island by Westerners, forms the eastern tip of the Polynesian triangle, situated midway between Tahiti and South America, about three thousand kilometres (1,900 miles) from both. The territory includes a tiny uninhabited satellite island, Motu Motiro Hiva (Sala y Gómez Island) about four hundred kilometres (250 miles) to the east. Rapa Nui has a surface of 164 square kilometres (63 square miles) and had a population of 3,791 in 2005, of which roughly half are native Rapanui and the other half immigrants from Chile.



Map 3: Rapa Nui



### *Personal motivations*

This thesis is the culmination of a long personal journey that took me from my home country Germany, where I was born and raised, to Hawai‘i nei, where I have been living and attending the University of Hawai‘i (UH) for the last five years. Besides that relocation to my area of interest, I have travelled widely in the region, frequently to Tahiti, several times to Rapa Nui, and occasionally to other Pacific places.

My unusual interest in Polynesia, at the antipodes of Germany in both geography and public awareness, started more than a decade ago. In 1995, when I was sixteen years old and took a strong general interest in world politics, history and geography, the French government conducted its last series of nuclear tests on the atolls of Moruroa and Fangataufa in French Polynesia. This was one of the few times the Pacific Islands were mentioned in the German media, and it created a short-lived public awareness of their existence. Some time before, I had read several books by Norwegian scholar and adventurer Thor Heyerdahl about Polynesian anthropology and prehistory, and had become fascinated with the exotic world he described. Hearing media reports about the same area being used for nuclear testing made me deeply upset and increased my interest in contemporary Tahitian politics. A few months later, in May 1996, I met Tahitian pro-independence and anti-nuclear activist Gabriel Tetiarahi at a talk he gave in my home town of Tübingen. We quickly became friends, and he subsequently invited me to Tahiti in 1999. On this trip, my first alone, and another that followed two years later, I stayed with Tahitian families and thus got to know Polynesia from the point of view of its people. I also met many other cultural and political activists, including the leader of the largest pro-independence party and until recently president of French Polynesia, Oscar

Temaru. Having become close to many activists who recognised my idealism and passion for their cause, I was invited to become a member of Temaru's party in 2001.

I first visited Hawai'i on my way back from my 1999 trip. Upon Gabriel Tetiarahi's recommendation, I met with senior pro-independence leader Dr. Kekuni Blaisdell, and have become a collaborator in his pro-independence group and a close friend since I moved here in 2003. I subsequently befriended many other independence activists, including Hawaiian Kingdom agent and scholar Keanu Sai, who has become another trusted friend in more recent times and who invited me in 2006 to join the *Hawaiian Society of Law and Politics*, an association of UH scholars dedicated to research on the Hawaiian Kingdom.

Through Kekuni Blaisdell I also entered into contact with the independence movement of Rapa Nui, which I first visited in 2004. I befriended the island's late independence leader Juan Teave (1924-2006) and his family, and also joined his movement as a supporting member.

While travelling back and forth between these places, I have already served as a liaison between the three movements in many ways. I have noticed how little these movements know of one another, with a few individual exceptions. My thesis is intended to contribute to the networking between the three movements, and to lead to better communication and better mutual understanding of their respective histories. I hope that in my future life as a scholar, I will be able to make further such contributions and dedicate my scholarship to the cause of the complete decolonisation/de-occupation of the Pacific.

During my research, I have come across many inaccurate statements about this history and the ensuing political status of the three territories today, some of them politically motivated in order to conceal and perpetuate embarrassing frauds, others from well-intended but uninformed political activists. Three brief examples will illustrate this:

During a debate in the US congress in June 2006, a senator from Tennessee claimed that “In 1959, 94 percent of Hawaiians reaffirmed [...] to become Americans by voting to become a State”.<sup>5</sup>

In an editorial in February 2008, a news magazine in Tahiti called efforts to relist French Polynesia as a Non-Self-Governing Territory as a “paranoid attack against the [French] State” and claimed in an article in the same magazine that the 1956 French *Loi-cadre* (framework law for the internal autonomy of French Overseas Territories) was “abolished in Tahiti through the referendum of 1958”.<sup>6</sup>

At a public speech witnessed by the author in 2006, a Hawaiian activist denounced the alleged fact that “Hawaiians are the only Native Americans that lack [US] federal recognition”.

In the following accounts of the political history of Hawai‘i and Tahiti, we will see that each of these statements represents a distortion of history. It is neither correct to say that in the statehood referendum of 1959, Hawaiians “reaffirmed to become Americans”, since they were never asked whether they wanted to become Americans in the first place. Nor would it be accurate to claim that the French constitutional

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<sup>5</sup> Senator Lamar Alexander, quoted in Williams 2007: 1

<sup>6</sup> Editor Alex Du Prel of Tahiti Pacifique magazine. Literally in French, Du Prel decried President Oscar Temaru’s insistence on “[...] inscription à l’ONU et autres incessantes attaques paranoïaques contre l’Etat” and declared the *Loi-cadre* to be a “loi vite abolie à Tahiti par le référendum de 1958”. *Tahiti Pacifique*, February 2008: 5;7. Translation by the author.

referendum in 1958 caused or justified the abolition of internal autonomy in Tahiti. We will also see that claims of Hawaiians to be Native Americans are legally and historically absurd. One of the purposes of this thesis is thus to contribute to the clarification of political history, hoping that misstatements like these can be avoided or, if intentionally made, be properly denounced.

This thesis is also intended to be a contribution to overcome the language barriers between the three territories, which besides their closely related indigenous languages are dealing with three different Western languages of administration (English for Hawai'i, French for French Polynesia and Spanish for Rapa Nui). With my fluency in French (besides English and German) and my working knowledge of Tahitian and Hawaiian, I was able to use a variety of sources that would not be available to a single-language speaker. I noticed that many if not most of the authors who published on one of the three territories are fluent in only one of the three Western languages. Even though I lack the ability to speak Spanish, I have a limited but workable ability to read source material on Rapa Nui in that language as well (due to the close proximity between written Spanish and French, and my knowledge of Latin).

Over the years of my research and interaction with Polynesian scholars, I have also become strongly influenced by the vision of a greater pan-Polynesian political identity, which has become another primary motivation for my interest in doing a comparative analysis of the three territories. Modern activists are increasingly becoming aware of the fact that "*Kānaka Maoli* [Hawaiians], *Ta'ata Mā'ohi* [Tahitians] and *Tangata Māori* [of Aotearoa, and of many other Eastern Polynesian islands] speak the same language, share the same culture and are the same people, forming the

[geographically] largest nation in the world”, to quote Kekuni Blaisdell.<sup>7</sup> This vision is by no means a new idea of contemporary activists. It can be found as a constant reference in the history of Polynesia, going back through the vision of King Kalākaua, Charles St. Julian and Walter Murray Gibson of a Polynesian confederation in the 1860s to 1880s,<sup>8</sup> all the way to the original Eastern Polynesian confederation centered around the *marae* (temple) of Taputapuātea on the island of Ra‘iātea in the 1300s.<sup>9</sup>

### *Theoretical framework*

Besides reflecting my personal interests and passions, I consider this work a significant contribution to Pacific scholarship. By applying the approach of comparative analysis to areas not compared to one another before, and focusing on native agency and legal positivism as the main theoretical influences, this thesis uses new approaches and departs into hitherto uncharted waters.

### *The approach of comparative analysis*

Comparative analysis is a common approach in historiographic and anthropological works on the Pacific Islands. Recent examples include analyses of pre-Western indigenous empires in Tonga and Yap,<sup>10</sup> and early Western contact period human sacrifice in Tonga and Tahiti.<sup>11</sup> Other examples closer to the topic of this thesis

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<sup>7</sup> Kekuni Blaisdell, approximation of a phrase frequently used in various personal communications.

<sup>8</sup> Kuykendall 1967: 305-339; Osorio 2002: 229-35; Young 2006: 9 n.3; Horne 2007: 92-109

<sup>9</sup> Henry 2000: 126-135

<sup>10</sup> Petersen 2000

<sup>11</sup> Filihia 1999

are a comparison of colonialism and anti-colonial resistance in the two Sāmoas,<sup>12</sup> a comparison of society and politics of the two formerly sugar plantation-dominated archipelagos of Fiji and Hawai‘i,<sup>13</sup> and a comparison of United States and New Zealand models of freely associated Pacific Island nations.<sup>14</sup> For the three territories under consideration here, no comparative work on the political evolution and future political perspectives has been done so far. By the choice of the subject alone, the thesis therefore fills a gap in scholarship and makes a contribution to understanding politics in contemporary Polynesia.

A comparative approach has many advantages over single case studies. On the first and most obvious level, the use of comparison facilitates the identification of similarities and differences between each case. Even more importantly, however, comparative analysis also helps to define and clarify the basic concepts and paradigms of the study itself. Only by comparing cases can abstract concepts be clearly identified and delimited against one another. The above-mentioned study on Tonga and Yap, for instance, uses the two examples to explore the concept of an indigenous island empire. The study of colonialism and resistance during German, New Zealand and American rule in Sāmoa helps the author understand the nature of colonialism and anti-colonialism themselves.<sup>15</sup> And only the comparison of the New Zealand and American models in the Pacific enables the author to critically evaluate the concept of free association<sup>16</sup>. In a similar way, I have used the cases of Hawai‘i, French Polynesia and Rapa Nui to explore,

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<sup>12</sup> Campbell 2005

<sup>13</sup> Merry and Brenneis 2003

<sup>14</sup> Henderson 2002

<sup>15</sup> Campbell 2005: 67-68

<sup>16</sup> Henderson 2002

identify and define the political and legal concepts of prolonged occupation (in Hawai'i's case) and colonisation (in French Polynesia's and Rapa Nui's case). Furthermore, this has allowed me to identify the appropriate remedies for each case, which are de-occupation and decolonisation, two distinct processes under international law.

*Theoretical background: Native agency and legal positivism*

Over the years I have been influenced by various native Polynesian scholars and intellectuals in both Tahiti and Hawai'i. From the beginning I have been very critical of Western scholars who have tended to minimise or ignore native points of view and ascribe the main historical agency to Western immigrants, colonisers and occupiers.<sup>17</sup> Taking a perspective that is focused on the indigenous Polynesians and is supportive of their struggle is therefore my primary concern. In that sense, Linda Tuhiwai-Smith's *Decolonization Methodologies*<sup>18</sup> provides some good approaches. A related theoretical context on decolonisation is also provided by Frantz Fanon.<sup>19</sup>

However, I also see many problems in what has been called indigenous and postcolonial theory. Many authors working within those frameworks have a so-called "fatal-impact" approach<sup>20</sup> that sees the indigenous population primarily as victims of foreign interests. This tendency prevails among many contemporary scholars, especially left-wing neo-Marxist Americans<sup>21</sup> and even many indigenous Polynesian scholars.

Although they are usually very sympathetic to the movement's cause, their approach is,

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<sup>17</sup> See for example Daws 1968. For a critique of such authors, and Daws in particular, see also Trask 1999: 113-122 and Young 2006: 24-25.

<sup>18</sup> Tuhiwai-Smith 1999

<sup>19</sup> Fanon 1963

<sup>20</sup> For the terms "fatal-impact" and "islander-oriented" to classify Pacific historiography, see Chappell 1995: 305. See the entire article for a broader and more critical discussion of the two approaches.

<sup>21</sup> e.g. Merry 2000

in my opinion, counterproductive because it belittles the native people's own agency. It implies that colonisation has been more or less the natural course of history and basically cannot be fixed unless the entire political framework of the world is turned on its head. Instead of a fatal-impact approach that blames everything on the foreigners and offers little solutions, I prefer another approach in Pacific historiography that is islander-oriented.<sup>22</sup> It sees islanders as the main actors and focuses on their creativity and independent agency in interaction with foreign influences. This approach is employed for example by Noel Rutherford and Peter Hempenstall in their comparative work on anti-colonial resistance in the Pacific<sup>23</sup> and by Malama Meleiseā in his various works on the history of Sāmoa.<sup>24</sup>

Meleiseā as well as some other Pacific scholars have also provided a general critique of Western ideologies, especially Marxism, and demonstrated how these are not appropriate for understanding Pacific societies.<sup>25</sup> My main criticism of Marxism is that it focuses exclusively on economic power and sees all organisational structures of society merely as tools of economic interests. From such a point of view, Pacific islands with their tiny and fragile economies would indeed be hopeless cases. Instead of going with that ideology and merely lamenting a deplorable situation, it makes more sense to me to take a different approach, focusing on the legal framework of international law and

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<sup>22</sup> See *supra* note 20

<sup>23</sup> Hempenstall and Rutherford 1984

<sup>24</sup> Meleiseā 1987a; 1987b

<sup>25</sup> Meleiseā 1987b



government structures as such<sup>26</sup> to see how in that framework Pacific peoples can achieve progress towards independence from occupation or colonialism.

In that sense I am very much influenced by the approach taken by Hawaiian activist and scholar Keanu Sai,<sup>27</sup> as well as some other recent scholars who have been influenced by his work.<sup>28</sup> Sai uses a theoretical approach of legal positivism, and focuses on native agency. In his works he shows how the legal framework of the Nation-State, a Western concept, has been used from the beginning by native leaders, like the kings of Hawai'i and their advisors, in order to resist Western attempts of takeover and achieve recognition as co-equals. The main theoretical source for this approach is Lassa Oppenheim's work on nineteenth century international law.<sup>29</sup> As demonstrated by Sai, this framework clearly applies to Hawai'i, which was recognised as an independent State in the nineteenth century, a fact that will be explained in more detail in chapters one and two. Ignoring these facts and analysing the Hawaiian case only through a neo-Marxist lens as a case of indigenous people suffering from Western colonialism, would be an act of negligence and disrespect towards the achievements of Hawai'i's leaders in the 1800s<sup>30</sup>.

This overwhelming historical evidence of the successful use of statecraft in Hawai'i, and hence the inapplicability of a classical colonial model, has necessitated the building of a new theoretical framework by Hawaiian scholars that is still in the making. According to Kanalu Young, one of the proponents of this approach, there is a need for

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<sup>26</sup> For this outline of theoretical framework, see also Young (2006: 30), who speaks of "responsible positivism" and the "skeletal structure of the rule of law"

<sup>27</sup> Sai 2004, 2007

<sup>28</sup> e.g. Beamer and Duarte 2006; Perkins 2006, Young 2006

<sup>29</sup> Oppenheim 1920

<sup>30</sup> On the mischaracterisation of Hawai'i's situation as colonial, see also Young 2006: 4

the “development of a body of publishable research that gives life and structure to a Hawaiian national consciousness and connects thereby to the theory of State continuity.”<sup>31</sup> As I will apply this theoretical framework to Hawai‘i, and furthermore compare it with other Pacific islands that had a different political history, this thesis will contribute to the formation of this new theory.

For the other territories that were not recognised as independent States (most of French Polynesia and Rapa Nui), a colonial framework has to be applied, as they are indeed colonies to be decolonised. However, that does not mean that I have treated these cases from another theoretical background, but rather that I have taken into account their different status under international law. Again using a positivist rather than post-modern approach, I have researched and identified the legal framework applying to them, which is the UN decolonisation regime, as it has been developed after World War II.

It should be clearly understood that this thesis deals exclusively with legal and political questions of sovereignty and independence, and not, or only very marginally, with socio-economic or cultural considerations. While acknowledging that economic, social and cultural questions are crucial for the development of functional and vital independent nations, these questions are deliberately left aside in this study, which focuses exclusively on the political framework.

### ***Methodology***

The present work is based mainly on literary and archival research as well as informal interviews and personal communications with political activists and leaders.

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<sup>31</sup> Young 2006: 1

Archival research on unpublished original documents was conducted in Honolulu, Pape'ete, Aix-en-Provence (France) and Berlin (Germany). Besides that, relevant unpublished documents have been acquired from various individuals and institutions. Numerous field trips to Tahiti and Rapa Nui were undertaken for discussions with political leaders, as well as local research in public and private archives and libraries.

### ***Structural overview***

The thesis is organised into seven chapters, grouped into four parts including a detailed conclusion. In the first part, "Occupation, 'Protection' and Colonisation", I analyse the legal mechanisms by which the colonisers or occupiers took control of the territories. The first chapter, "Processes of Imperialist Takeover", provides a historical narrative regarding the process of acquisition for each case, focusing on the legal documents that ostensibly form the basis for acquisition. Following these case studies, the second chapter, "Legal Evaluations of Imperialist Takeover", critically examines each of these legal acts in order to destabilise the claims made by the coloniser/occupier. Each of the processes will be evaluated in terms of international law, as well as the national law of the acquiring nation, in an attempt to determine their legal validity and character. I will then, in the conclusion of the chapter, also attempt to evaluate the acquisitions in more moralistic terms by asking whether or not the processes reflected the will of the population of the territory.

The second part, "Assimilation, Integration and Refused Decolonisation," deals with the further evolution of the territories after their foreign takeover. In chapter three, "Assimilation and Integration", I continue the political history of each territory by

describing and analysing the various legal instruments and mechanisms through which the occupiers or colonisers attempted to assimilate and integrate the three territories into their domains during the twentieth century. In the following chapter four, “Refused Decolonisation”, I explore the UN decolonisation regime and examine how it was applied to the three territories, which was done in each case in a wrongful way, if at all.

The third part, “Resistance and Accommodation” examines the reactions and remedies that have occurred during the twentieth and early twenty-first century to the previously described processes of takeover and assimilation. Chapter five, “Resistance to Assimilation: Independence Movements and Initiatives” analyses the various strategies that have been used by independence activists in the three territories in order to destabilise the rule by the foreign governments and advance the cause of independence. This includes a historical overview of independence initiatives in each territory, as well as a description, classification and analysis of the strategies advocated by each of these initiatives. The sixth chapter “Innovative Concepts: Indigenous and Territorial Autonomy” examines two innovative remedial mechanisms that may exist within the imposed political system and offer interesting alternatives to, or maybe also first steps towards, independence. These two concepts are: a) indigenous autonomy, giving people of native ancestry special rights without modifying the foreign-imposed political system as a whole, and b) territorial autonomy, giving a territory in its entirety, not just inhabitants of aboriginal ancestry, a special status distinct from that of other political subdivisions of the ruling State, with specific powers for the local government. Existing or proposed initiatives of those two kinds for each territory will be described and analysed.

In the conclusion, I evaluate the different strategies from chapter five as well as the institutional models from chapter six, and propose recommendations for the most efficient strategy to follow for each territory in order to achieve political independence. The thesis ends in a summary of my argument and a brief assessment of the significance of three cases in a larger geopolitical context.

### *Note on spelling and orthography*

Written and defended on Hawaiian Kingdom territory, this thesis is composed in one of the Hawaiian Kingdom's two official languages, English, using the style of orthography as it was used in the English version of the Hawaiian Kingdom's last legal constitution of 1864 (i.e. British rather than American spelling). Words of Polynesian languages, including place and personal names, are written according to the modern linguistic spelling system first developed by the late King of Tonga, Tāufa'āhau Tupou IV for Tongan and Samuel Elbert for Hawaiian, and now universally applied in Polynesian linguistics, using the inverted apostrophe (*'okina* in Hawaiian, *'eta* in Tahitian) to mark the glottal stop, and the macron (*kahakō* in Hawaiian, *tāraa* in Tahitian) to mark long vowels. For a few place and personal names where the correct phonetics are unclear, diacritical markers have been omitted. The use of italics for all words from languages other than English is not intended to devalue those languages. It is simply marking these words as originating from a language other than the language of this thesis. Consistent with publications in the field of international law, the word "state" is capitalised if it identifies a subject of international law, and not capitalised if it identifies an administrative subdivision of a State such as a state of the US.

**PART I**  
**OCCUPATION, “PROTECTION” AND COLONISATION**

## Chapter 1

### Processes of Imperialist Takeover

In this chapter, I will describe, analyse and evaluate how the three territories were acquired by their respective present administrative powers. I will first provide a historical narrative of the process of acquisition for each case, focused on the legal documents that ostensibly formed the basis for acquisition. In most cases, the process is quite complex and actually involves several consecutive steps.

While Hawai‘i and Rapa Nui have been historically continuous entities, the territory now known as French Polynesia is an artificial colonial creation.<sup>32</sup> Each of its constituting entities had a separate legal and political history prior to this unification, and needs therefore to be considered separately in this chapter.

#### Hawai‘i

##### *The formation of the Hawaiian Kingdom 1795-1843*

Among the islands and territories examined in this thesis, the case of Hawai‘i is unique and outstanding in many ways. During many centuries before Western contact, its political system had developed from tribal proto-Polynesian roots to a high level of complexity and stratification.<sup>33</sup> In most other Polynesian societies, chiefs and commoners shared genealogies and land tenure was based on kinship. However Hawai‘i,

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<sup>32</sup> Toullelan 1991: 2

<sup>33</sup> Goldman 1970: 200

similar to Tonga, had a system that was more feudal in character.<sup>34</sup> The commoners were not genealogically related to the chiefs, and land tenure was regulated by the paramount chiefs. These granted rights of use and authority over the *maka ʻāinana* (commoners) to subordinate chiefs in a periodic process called *kalai ʻāina*.<sup>35</sup> Despite the huge size of the islands in comparison to other Polynesian archipelagos, there were only four polities,<sup>36</sup> each under a *mō ʻī* or paramount chief, a title that can be safely translated with the Western word king, unlike high chiefs in many other parts of Polynesia whose political positions were much more ambiguous.

From this situation at Western contact, only a few more steps needed to be taken to unite the archipelago into a single Nation-State,<sup>37</sup> which was achieved by Kamehameha the Great, by 1795 for Hawaiʻi island, Maui and dependencies, and Oʻahu,<sup>38</sup> and by 1810 for the entire chain of islands.<sup>39</sup> The form of government of this Nation-State was an absolute monarchy under Kamehameha, and initially remained so under his successors. Under the impact of an increase in foreign visitors, the 1819 abolition of important elements of the traditional politico-religious *kapu* system and the adoption of Christianity in the 1820s,<sup>40</sup> the absolute monarchy decreed its first written laws. Regulations concerning sailors and other foreigners were enacted in 1822, 1824 and

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<sup>34</sup> Kirch 1984: 257; Cordy 2000: 48, 53. The term feudal is only an approximate English description of the Hawaiian land tenure system at the time of Western contact. Substantial differences existed between this system and the feudal system of medieval Europe. The term feudal is, however, more appropriate a description than the alternatively used term communal, which assimilates to the kin-based land tenure systems of traditional Polynesia and thereby tends to ignore the high degree of social stratification in Hawaiʻi.

<sup>35</sup> For a summary description of this system see also Kameʻeleihiwa 1992: 51-64; McGregor 2007: 26-27.

<sup>36</sup> Kirch 1984: 253.

<sup>37</sup> Goldman 1970: 200

<sup>38</sup> Kuykendall 1938:47

<sup>39</sup> Kuykendall 1938: 50-51; Young 2006: 14-15

<sup>40</sup> Kuykendall 1938: 65-70; Kameʻeleihiwa 1992: 74-79



1825,<sup>41</sup> and Christian-influenced penal codes proclaimed in 1827<sup>42</sup> and 1834.<sup>43</sup> Relations with Western powers were also established during that time, exemplified in the appointment of a British consul in 1824,<sup>44</sup> and conventions were signed with the United States in 1826,<sup>45</sup> Great Britain in 1836<sup>46</sup> and with France in 1837<sup>47</sup> and 1839.<sup>48</sup> Then in 1839, a Declaration of Rights proclaimed equal rights for all Hawaiian subjects, and thereby changed the shape of the country into a modern state, while confirming and rendering more precise many of the traditional resource management rules.<sup>49</sup> Through the granting of a constitution in 1840,<sup>50</sup> Kamehameha III voluntarily gave up his absolute powers, and the kingdom became a constitutional monarchy. By guaranteeing religious freedom,<sup>51</sup> the constitution also made Hawai'i a secular State.<sup>52</sup>

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<sup>41</sup> Kuykendall 1938: 120-121; Achiu and Akana-Gooch 2005: 15-23

<sup>42</sup> *He olelo no ke kanawai*. Honolulu 1827. Reprint in Hamilton library. Call number KFH561 .A335

<sup>43</sup> *He olelo no na kanawai, o ko Hawai'i nei Pae Aina, na Kauikeaculi ke Alii*. Oahu: Mea pai palapala a na Misionari 1834. Copy in UH Hamilton library. Call number KFH30 1834 .A23

<sup>44</sup> Kuykendall 1938: 80

<sup>45</sup> *He olelo kuikahi*. Honolulu 1826. Reprinted and transcribed in *Ka Ho'oilina/The Legacy: Puke Pa'i 'Ōlelo Hawai'i/Journal of Hawaiian Language Sources*, Vol 4 (2005): 34-43.

<sup>46</sup> Kuykendall 1938: 147-148

<sup>47</sup> Kuykendall 1938: 151

<sup>48</sup> *Traité conclue entre le Roi des Sandwich et le capitaine Laplace, commandant le frigate l'Artemise, agissant au nom du Roi des Français*, 12 July 1839, Centre for Overseas Archives, Aix-en-Provence, France, box 40 file B3

<sup>49</sup> *He kumu kanawai, a me ke kanawai hooponopono waiwai, no ko Hawaii nei Pae Aina. Na Kamehameha III. i kau*. Honolulu 1839. Photocopy in UH Hamilton library. Call number KFH30.5 .K86 .1839a; Kuykendall 1938: 159-161

<sup>50</sup> *Ke kumu kanawai a me na kanawai o ko Hawai'i Pae Aina. Ua kaula i ke kau ia Kamehameha III*. Honolulu 1841. Partly reprinted, transcribed and translated in *Ka Ho'oilina/The Legacy: Puke Pa'i 'Ōlelo Hawai'i/Journal of Hawaiian Language Sources*, Vol. 1, No.1 (2002): 35-49. [Hereafter *1840 Hawaiian Constitution*]

<sup>51</sup> *1840 Hawaiian Constitution*, Art. 10. This was however worded in a way to be limited to Christian (and theoretically Jewish) denominations, granting every religion the right to worship *Iehova* (Jehovah). If a broader definition of religious freedom had been intended, the more general term *Akua* (God) could have been used.

<sup>52</sup> These provisions in the 1840 constitution might be seen as a result of French military intervention in 1839 in favour of French Catholic missionaries, see Kuykendall 1938: 163-169

### *The Hawaiian Kingdom as an internationally recognised State 1843-1893*

However, Hawai‘i was still not secure as a sovereign State, because it lacked international recognition. In order to pursue that recognition, in 1842, the king sent three envoys, the *ali‘i* Timoteo Ha‘alilio, former missionary and government advisor William Richards, and British official Sir George Simpson, to the United States and Europe.<sup>53</sup> Meanwhile, the kingdom was temporarily taken over by British navy captain Lord Paulet, but its independence was restored on 31 July 1843.<sup>54</sup> Finally, on 28 November 1843, Britain and France, in a joint declaration, recognised the Hawaiian Kingdom as an independent State.<sup>55</sup> That day subsequently became one of the national holidays under the name of Lā Kū‘oko‘a or Independence Day.<sup>56</sup> Hawai‘i thereby became the first non-Western State to be recognised as co-equal member of family of nations, and was acknowledged as such throughout the second half of 19<sup>th</sup> century,<sup>57</sup> thus making it a unique case among the islands of Polynesia.<sup>58</sup> Once recognition had been achieved, internal efforts of political and economic modernisation continued. Organic acts between 1845 and 1847 organised and structured government departments,<sup>59</sup> and through the establishment of the Land Commission in 1845, the 1848 Great Māhele, and the 1850

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<sup>53</sup> Kuykendall 1938: 191-192

<sup>54</sup> Silva 2004a: 36

<sup>55</sup> Anglo-Franco Declaration. 28. November 1843. Reprinted in: *Hawaiian Journal of Law and Politics*, Vol. 1 (Summer 2004): 114. Copy of the French version in Centre for Overseas Archives, Aix-en-Provence, France, box 40, file B3. Reproduced in its entirety at the end of this thesis as Appendix A [hereafter *1843 Anglo-Franco Declaration*]; Kuykendall 1938: 202-205. See also Toullelan 1987: 35

<sup>56</sup> Silva 2004a: 37

<sup>57</sup> Westlake 1894: 81

<sup>58</sup> King Kalākaua’s foreign minister William N. Armstrong pointed that fact out in his 1903 account of Kalākaua’s voyage around the world in 1881. While personally in sympathy with the insurgents of 1893, and seeing the kingdom as having become extinct through the overthrow, he acknowledges that the Hawaiian Kingdom will “nevertheless stand out in history as the solitary community, of that boundless region of Oceania, that presented all the functions of a complete government, and was in good and regular standing with the family of nations” (Armstrong 1977: 289).

<sup>59</sup> Osorio 2002: 26

Kuleana Act, the land tenure system was reformed and modernised, in order to make it compatible with Western customs while conserving local specificities.<sup>60</sup> Once these foundations for a modern state were set, the Hawaiian Kingdom successfully existed for many years as an independent constitutional monarchy, under the subsequent constitutions of 1852<sup>61</sup> and 1864.<sup>62</sup> The kingdom also established international treaties with all major States of the world during that period,<sup>63</sup> for example with Great Britain and France in 1846,<sup>64</sup> with the United States of America in 1849,<sup>65</sup> and with the German Empire in 1879,<sup>66</sup> and maintained diplomatic relationships with most of them. In addition, Hawai'i became a member of the Universal Postal Union, the first international

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<sup>60</sup> Perkins 2006: 99-103. While this evaluation reflects Perkins and other more recent scholars, the land reform process of the late 1840s and early 1850s has been severely criticised as a Western-inspired scheme in previous scholarship during the latter part of the 20<sup>th</sup> century; see for example Kame'eleihewa 1992.

<sup>61</sup> *He kumu kanawai a me na kanawai o ka Moi Kamehameha III, ke alii o ko Hawai'i Pae Aina, i kaula e na alii ahaolelo, a me ka poeikohola, iloko o ka ahaolelo o ka makahiki 1852.* Honolulu 1852. Partly reprinted, transcribed and translated in *Ka Ho'oilina/The Legacy: Puke Pa'i 'Ōlelo Hawai'i/Journal of Hawaiian Language Sources*, Vol. 1, No. 2 (2002):180-225.

<sup>62</sup> *Kumukanawai i haawiia e ka Moi Kamehameha V., ma ka lokomaikai o ke Akua, ke alii o ko Hawai'i Pae Aina, ma ka la 20 o Augate, M.H. 1864.* In: *Na Kanawai o ka Moi Kamehameha V.* Honolulu 1865. Reprinted and transcribed in *Ka Ho'oilina/The Legacy: Puke Pa'i 'Ōlelo Hawai'i/Journal of Hawaiian Language Sources*, Vol. 2 (2003): 16-51.

<sup>63</sup> The complete list of international treaties and conventions is as follows: Austria-Hungary (1875) Belgium (1862/63), Bremen (1854), Denmark (1846), France (1846; 1857/58), Germany (1879/80), Great Britain (1846; 1851/52), Hamburg (1848), Italy (1863/64), Japan (1871; 1886), Netherlands (1862/64), Portugal (1882), Russia (1869), Sāmoa (1887), Spain (1863), Sweden and Norway (1852), Switzerland (1864), United States (1849/50; 1870; 1875; 1883; 1884/87). For a list and full English text of most of the treaties, see <<http://www.Hawaiiankingdom.org/treaties.shtml>>. For a full English text of most treaties see also *Treaties and Conventions Concluded between the Hawaiian Kingdom and other Powers since 1825.* Honolulu: "Elele" Book, Card and Job Print 1887. Reprinted by Pae 'Āina Productions, Honolulu 2005. Photocopies of most original treaty texts are also available at the Hawai'i State Archives, folders REF JX 1182.A6 1997, Vol.1-3.

<sup>64</sup> Kuykendall 1938: 368-373.

<sup>65</sup> *Hawaiian-American Treaty of Friendship, Commerce and Navigation, 1849.* Reprinted in *Hawaiian Journal of Law and Politics*, Vol. 1 (Summer 2004). p. 115-122.

<sup>66</sup> *Freundschafts-, Handels-, Schifffahrts und Konsularvertrag zwischen dem Deutschen Reich und dem Königreich der Hawaiischen Inseln / Treaty of Friendship, Commerce and Navigation and Consular Convention between the German Empire and the Kingdom of the Hawaiian Islands, 25 March and 19 September 1879;* Treaty Archives in the Political Archives of the Foreign Office of the Federal Republic of Germany, Berlin.

organisation, in 1885.<sup>67</sup> Through the naturalisation of European, American and Asian immigrants, the kingdom became a multi-ethnic society over the years, although the vast majority of its subjects remained *kānaka ʻōiwi* (aboriginal Hawaiians).<sup>68</sup>

In 1887 however, an internal coup d'état took place, through which a new constitution,<sup>69</sup> fittingly called the “Bayonet Constitution”, was illegally imposed on the kingdom, and a small elite of White local lawyers and businessmen, primarily descendants of American missionaries, effectively took control of the country.<sup>70</sup> Hawai‘i subsequently fell into a decade of political instability and civilian unrest, with frequent changes in the composition of government and various attempted revolutionary acts taking place.<sup>71</sup>

#### *US intervention and the overthrow of the kingdom's government 1893-1897*

In 1893, Minister-Resident John L. Stevens, the diplomatic representative of the United States of America, conspired with the same group of white citizens and residents who had carried out the 1887 coup and now felt their position threatened by Queen Lili‘uokalani’s intention to replace the “Bayonet Constitution” with one somewhat similar to that of 1864.<sup>72</sup> While the queen’s opponents prepared for another coup d'état, Stevens landed troops from a US warship on 16 January 1893, against the will and

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<sup>67</sup> *Universal Postal Union. Additional Act of Lisbon to the Convention of the 1<sup>st</sup> of June 1887*[sic, correct date should be 1878]. In: *Treaties and Conventions Concluded between the Hawaiian Kingdom and other Powers since 1825*. Honolulu: “Elele” Book, Card and Job Print 1887. Reprinted by Pae ‘Āina Productions, Honolulu 2005: 151-159.

<sup>68</sup> Sai 2004: 63

<sup>69</sup> *Kumukanawai o ko Hawai‘i Pae Aina, i kakau inoa ia e ka Moi Kalakaua, Iulai 7, a i kukalaia Iulai 7, 1887*. Honolulu 1887: Hawaiian Gazette Publishing Company. Reprinted and transcribed in *Ka Ho‘oilina/The Legacy: Puke Pa‘i ‘Ōlelo Hawai‘i/Journal of Hawaiian Language Sources*, Vol. 3 (2004): 22-63.

<sup>70</sup> *Report of U.S. Special Commissioner James H. Blount to U.S. Secretary of State Walter Gresham*. Reprinted in: *Hawaiian Journal of Law and Politics*, Vol. 1 (Summer 2004): 136-192 [hereafter *Blount report*]: 147-156; Kuykendall 1967: 356-372; Liliuokalani 1990: 177-184; Osorio 2002: 238-249

<sup>71</sup> Young 2006: 18

<sup>72</sup> Liliuokalani 1990: 229-242; *Blount report*: 158-164; Kuykendall 1967: 582ff.

despite the protests of the Hawaiian government,<sup>73</sup> thus intimidating the queen's security forces and dissuading them from taking action against the insurrectionists.<sup>74</sup> When the latter took possession of the main government building the next day, and declared themselves to be the "Provisional Government" and the queen to be deposed, Minister Stevens promptly recognised them as the "*de-facto* government"<sup>75</sup> of Hawai'i, even though all they had done was take over one building, while both the palace and the police station were still in the hands of the Queen's government.<sup>76</sup> Through the premature recognition of a self-proclaimed insurgent government, Stevens created an *ipso-facto*, though illegitimate situation, and thus coerced the diplomatic representatives of other powers to recognize the insurgent government as well. Using the precedent of the temporary British takeover of 1843, Queen Lili'uokalani yielded her authority under protest to the United States, awaiting an investigation and her reinstatement to the throne by the US authorities.<sup>77</sup> This overthrow through US diplomatic and military intervention was the first instance of US intervention in a foreign country, setting a precedent for similar imperialist schemes of "regime change" throughout the following century.<sup>78</sup>

The newly created puppet government under the leadership of Sanford B. Dole and Lorrin A. Thurston immediately attempted to get Hawai'i annexed by the United States,<sup>79</sup> but these efforts failed.<sup>80</sup> Instead, newly elected (for his second non-consecutive term) US President S. Grover Cleveland sent James H. Blount as a special commissioner

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<sup>73</sup> *Blount report*: 164; Kuykendall 1967: 595-596

<sup>74</sup> *Blount report*: 164-65

<sup>75</sup> Kuykendall 1967: 601

<sup>76</sup> Kuykendall 1967: 601

<sup>77</sup> Liliuokalani 1990: 387-88; *Blount report*: 166; Kuykendall 1967: 603

<sup>78</sup> Kinzer 2006: 9-10

<sup>79</sup> *Blount report*: 167

<sup>80</sup> Kuykendall 1967: 609-621

to Hawai‘i to investigate the situation.<sup>81</sup> Upon receiving Blount’s report, which clearly laid out the facts of an illegitimate US intervention,<sup>82</sup> the Cleveland administration attempted to restore the Hawaiian government through negotiations with the queen and the insurgents.<sup>83</sup> In a message to Congress on 18 December 1893, Cleveland denounced the actions of Stevens as an “act of war” against a friendly nation and called for the restoration of the queen’s lawful government.<sup>84</sup> However, his administration failed to implement that restoration by force when the Dole government refused to step down.<sup>85</sup> The US Congress, meanwhile, took the matter in its own hands, and, after annexationist senator John T. Morgan had presented another report, entirely based on testimonies of the insurgents and their sympathisers,<sup>86</sup> Congress decided not to take any action. However in early 1894, Congress warned foreign countries not to interfere in Hawai‘i, otherwise this would be considered “an act unfriendly to the United States”.<sup>87</sup> This meant that no country would act on its treaties with the Hawaiian Kingdom and help it to get rid of the insurgents. The latter subsequently proclaimed themselves to be the “Republic of Hawai‘i” on 4 July 1894, and enacted a constitution,<sup>88</sup> which disenfranchised the vast majority of the population and created an oligarchic system of government controlled by the wealthy white minority,<sup>89</sup> comparable to the Apartheid system of South Africa or the white supremacist regime of Rhodesia in the 20<sup>th</sup> century. In January 1895, after all hope

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<sup>81</sup> Kuykendall 1967: 622-23, *Blount report*: 136

<sup>82</sup> *Blount report*, entire document

<sup>83</sup> Kuykendall 1967: 639

<sup>84</sup> Cleveland 2004: 211-212

<sup>85</sup> Kuykendall 1967: 645-646

<sup>86</sup> Lilioukalani 1990: 255-256; Kuykendall 1967: 647-648

<sup>87</sup> Kuykendall 1967: 650

<sup>88</sup> *Constitution of the Republic of Hawaii. Adopted by Constitutional Convention, July 3<sup>rd</sup>, 1894*. Reprinted in Thurston 1904: 201-242.

<sup>89</sup> Lilioukalani 1990: 258; Kuykendall 1967: 649; Coffman n.d [1998]:155-163

for an American intervention on their behalf had faded, a group of loyal Hawaiian subjects under the leadership of Robert W. K. Wilcox attempted a counter-insurgency to restore the legitimate Hawaiian government, but their efforts failed due to insufficient arms and military training, while the sophisticated weaponry of the Hawaiian Kingdom's military (including Krupp cannons purchased by Kalākaua in Austria) had fallen into the hand of the insurgents. This led to a wave of repression by the "Republic" against Hawaiian loyalists, including the imprisonment of the Queen.<sup>90</sup>

#### *The alleged annexation of Hawai'i to the United States 1897-1898*

After Cleveland's successor as US president, convinced imperialist William McKinley, was inaugurated in 1897, a treaty of annexation was negotiated and signed between the United States and the puppet "Republic of Hawai'i" government in June of the same year,<sup>91</sup> despite the fact that the latter lacked legal authority. While the treaty was being submitted to the US Senate for ratification, overwhelming numbers of the Hawaiian national population signed protest petitions that were submitted to the US Senate.<sup>92</sup> Partly as a consequence of these protests, the US Senate failed to ratify the treaty, and by February 1898, it was effectively dead.<sup>93</sup> However, after the Spanish-American War broke out in April of the same year, the United States navy began to use Hawai'i as a refuelling base and military recreation facility.<sup>94</sup> In order to cover up that

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<sup>90</sup> Liliuokalani 1990: 262-294; Spencer 2000, Loomis 1976

<sup>91</sup> *American-Republic of Hawai'i Treaty of Annexation, June 16, 1897* [not ratified]. Reprinted in: *Hawaiian Journal of Law and Politics*, Volume 1 (Summer 2004): 224-226; Liliuokalani 1990: 354-365; Coffman 1998: 245-261

<sup>92</sup> Minton and Silva 1998; Silva 2004a: 145-159.

<sup>93</sup> Silva 2004a: 159; Sai 2004: 58.

<sup>94</sup> Sai 2004: 59

violation of Hawaiian neutrality,<sup>95</sup> the US Congress, out of military necessity, passed a joint resolution of annexation on July 6 1898.<sup>96</sup> However, as a piece of domestic US legislation, a joint resolution cannot have effect outside the US, and can therefore not be used to annex another country.<sup>97</sup> Thus, an annexation in the legal sense never took place. Nevertheless, the United States effectively took possession of Hawai'i on August 12, 1898, and has been administrating the islands ever since. This situation has been characterised by recent scholarship as one of prolonged occupation,<sup>98</sup> as will be explored in more detail in the second chapter.

## **Tahiti**

### *The Pomare kingdom 1815-1842*

At the time of European contact, the political structure of the Society Islands was clearly less centralised than that of Hawai'i.<sup>99</sup> There were several chiefdoms on Tahiti island, as well as on Mo'orea and the Leeward Islands. The degree of stratification was considerably higher than in other Polynesian islands, with a powerful class of *ari'i rahi* (high chief) families dominating the archipelago, but it never reached the level of feudal centralisation of Hawai'i or Tonga. Vestiges of a proto-Polynesian tribal system, such as kin-group based land titles, in some areas even among commoner classes, were still in

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<sup>95</sup> Sai 2004: 59-60.

<sup>96</sup> [No.55.] *Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States*. Reprinted in: *Hawaiian Journal of Law and Politics*, Volume 1 (Summer 2004): 285-286.

<sup>97</sup> Sai 2004: 60-61

<sup>98</sup> Sai 2004, entire article; Young 2006: 7

<sup>99</sup> Goldman 1970: 170-171



existence.<sup>100</sup> Unlike in Hawai‘i, archipelago-wide political unification was never achieved.

Under the impact of Western contact, attempts to unify Tahiti island by the *ari‘i rahi* Pōmare I in the late 1700s were temporarily successful but not permanent.<sup>101</sup> There was no formation of a stable State like in Hawai‘i under Kamehameha. Only when Pōmare’s son Pōmare II allied himself with the British Protestant missionaries of the London Missionary Society, who had come to the island in 1797, was his quest unification successful.<sup>102</sup> In 1815, at the battle of Fē‘i Pi, an army of Christian converts under Pōmare II vanquished an alliance of traditionalist *ari‘i* under Opuhara, who was slain in battle.<sup>103</sup> Subsequently, Pōmare II was able to create a centralised Christian State, comprising Tahiti and Mo‘orea. Its system of government was an absolute monarchy.<sup>104</sup> The *ari‘i* title became reserved for Pōmare alone and was henceforth equated with “king”. The former *ari‘i* of the districts lost their titles and were instead appointed by the king as *tāvana* (governors).<sup>105</sup> A written code of law (a fundamentalist Christian penal code) was published under missionary influence in 1819.<sup>106</sup> After the death of Pōmare II and during the rule of his infant son Pōmare III, a new law code was enacted in 1825,<sup>107</sup> which, besides criminal and civil regulations, contained a section on political institutions. A legislative assembly was created, comprising the district governors and elected

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<sup>100</sup> Saura 2006: 76-81; Bodin. 2006: 127; Gabriel Tetiarahi, personal communication, January 1 2007.

<sup>101</sup> Newbury 1980: 14-33

<sup>102</sup> Toullelan and Gille 1994: 20-23

<sup>103</sup> Peltzer 2002: 34; Gille 2006: 18; Newbury 1980: 40-42

<sup>104</sup> Robineau 1987: 29-31

<sup>105</sup> Robineau 1987: 29, 31; Toullelan and Gille 1994: 25

<sup>106</sup> Richaud 2001: 12-20

<sup>107</sup> *E ture na Tahiti, e Moorea, e na Meitia, Ana, Auura, Matea, e Tetiaroa hoi*. Tahiti: Nenei raa a te mau Misionari ra 1825. On microfilm in UH Hamilton library, call number MICROFILM 5007 no.2 [hereafter 1825 Tahitian law code]

landowners as representatives.<sup>108</sup> Even though the 1825 code can hardly be considered a proper constitution, it created a de-facto constitutional monarchy.<sup>109</sup> In contrast to later developments in Hawai‘i, however, there was no declaration of rights, and the Christian theocratic laws of 1819 remained in place.<sup>110</sup> The law code was revised several times and completely reedited in early 1842,<sup>111</sup> with even more elaborate constitutional provisions.<sup>112</sup> In the 1840s, Tahiti was thus clearly a functioning State.<sup>113</sup> Under the given circumstances, the criteria for statehood were fulfilled, similar to Hawai‘i. However, unlike the latter, the Tahitian kingdom was a semi-theocracy, lacking rights such as freedom of religion. More importantly, it never achieved international recognition. The only conventions that it had with a Western power were forced on the kingdom by France in 1838<sup>114</sup> and 1839,<sup>115</sup> in order to grant rights to Catholic missionaries, but these conventions were subverted by the theocratic provisions in the Tahitian law code of 1842. Frequent requests by the Tahitian government for a British protectorate,<sup>116</sup> made for instance in 1825<sup>117</sup> and 1838,<sup>118</sup> were unsuccessful.

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<sup>108</sup> 1825 Tahitian law code, Art. XLII; Richaud 2001: 41; Toullelan and Gille 1994: 37

<sup>109</sup> Gille 2006: 19

<sup>110</sup> Gille 2006: 24-26

<sup>111</sup> *E buka ture no te haapao raa o te hau o Pomare Vahine e tahi i Tahiti, e i Moorea, e te mau femua toa i roto i tona ra basileia*. Tahiti: Nenei raa. Copy in UH Hamilton library, call number KH400 .T34 [hereafter 1842 Tahitian law code]

<sup>112</sup> 1842 Tahitian law code, Art. XXXI, XXXII.

<sup>113</sup> Gille 2006: 23-24; Young 2006: 7-8

<sup>114</sup> Peltzer 2002: 138

<sup>115</sup> *Convention de paix et d'amitié conclue, le 14 septembre 1838, entre le Capitaine de Vaisseau Abel Dupetit Thouars, officier de la Légion d'Honneur, Commandant de la Frégate La Vénus, au nom de S.M. le Roi des Français, et S.M. Pomare, Reine d'O'Taiti*. ["Convention of Peace and Friendship, concluded on 14 September 1838 between the ship captain Abel Dupetit Thouars, officer of the Legion of Honour, in the Name of H.M. the King of the French, and H.M. Pōmare, Queen of O'Taiti[sic]"]. Reprinted in Lechat 1990: 31-32

<sup>116</sup> Toullelan 1991: 3

<sup>117</sup> Letter by King Pōmare III of Tahiti to King George IV of Great Britain and Ireland, 5 Oct 1825. French translation reprinted in Lechat 1990: 23

<sup>118</sup> Letter by Queen Pōmare IV to Queen Victoria of Great Britain and Ireland, 8 Nov 1838. French translation reprinted in Lechat 1990: 32-33

*French intervention and the French protectorate 1842-1880*

In September of 1842, French Admiral Abel Aubert Dupetit-Thouars, who had already forced the convention of 1838 on Queen Pōmare IV, intervened again in Tahiti and demanded a large amount of money as a compensation for alleged mistreatment of French citizens and violations of the 1838 and 1839 conventions.<sup>119</sup> As a result, several leading Tahitian chiefs were coerced into signing a request for a French protectorate<sup>120</sup> and Dupetit-Thouars immediately granted that request.<sup>121</sup> A treaty and a convention were signed between Dupetit-Thouars and the queen on 9 September, 1842, which established a provisional council of government, composed of the queen and French officials. It also guaranteed the queen's sovereignty, regulated questions of property, and established freedom of religion.<sup>122</sup> In March 1843, the protectorate was ratified by the French king in Paris.<sup>123</sup> However, once Dupetit-Thouars had left the territory, the planned collaboration between Queen Pōmare and the French resident officers did not work out, partly due to the advice given to her by the British consul George Pritchard, who made her hope for

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<sup>119</sup> *Déclaration adressé le 8 septembre 1842, par le Contre-Amiral A. Dupetit-Thouars, commandeur de la Légion d'Honneur, commandant en chef de la station navale de France dans l'Océan Pacifique, à S.M. la Reine et aux chefs principaux de l'île de Tahiti* ["Declaration addressed on 8 September 1842 by Counter-Admiral A. Dupetit Thouars, Commander of the Legion of Honour, Commander-in-chief of the Naval Station of France in the Pacific Ocean, to H.M. the Queen and the principal chiefs of the island of Tahiti"]. Reprinted in Lechat 1990: 41-43

<sup>120</sup> Letter signed by Queen Pōmare and four chiefs to Counter-Admiral Dupetit-Thouars, 9. Sept 1842. Reprinted in Lechat 1990: 43-44

<sup>121</sup> Letter by Counter-Admiral Dupetit-Thouars to Queen Pōmare and her co-signing chiefs, 9. Sept 1842. Reprinted in Lechat 1990: 44-45

<sup>122</sup> Proclamation by Queen Pōmare and Counter-Admiral Dupetit-Thouars, 9 September 1842. Reprinted in Lechat 1990: 46-49; *Traité conclu le 9 Novembre 1842, entre la Reine Pomare et le commandant en chef de la Station de l'Océan Pacifique Du Petit-Thouars* ["Treaty concluded between Queen Pōmare and the commander-in-chief of the Station of the Pacific Ocean Du Petit-Thouars"]. Title cited in Lechat 1990 :58, but no text provided.

<sup>123</sup> *Ratification donné par le Roi des Français, le 25 mars 1843, de l'acceptation de protectorat d'O'Taiti* ["Ratification given by the King of the French, on 25 March 1843, of the acceptance of the protectorate of O'Taiti[sic]"]. Reprinted in Lechat 1990: 58

British intervention in her favour.<sup>124</sup> For instance, the queen refused to fly the protectorate flag and continued using the Tahitian flag in front of her residence.<sup>125</sup> When Dupetit-Thouars returned in November 1843, he deposed Pōmare, seized her lands, declared the Kingdom to be annexed and appointed Armand Joseph Bruat as governor.<sup>126</sup> In January 1844, the queen fled aboard a British ship, finally joining her relatives in Ra‘iātea,<sup>127</sup> while on Tahiti the population revolted, leading to the Franco-Tahitian war of resistance from March 1844 to December 1846.<sup>128</sup> Meanwhile, in June 1843, the French government refused to ratify Dupetit-Thouars’ unilateral annexation,<sup>129</sup> and confirmed the protectorate, which was officially restored in January 1845.<sup>130</sup> After severe battles and great loss of life on both sides, France finally won the war and the last Tahitian resistance forces surrendered in December 1846.<sup>131</sup> In February 1847, the queen returned to Tahiti and was reinstated into her position as sovereign under French protection.<sup>132</sup> In August 1847, she signed a new convention that clarified the political structure of the protectorate.<sup>133</sup> According to that document, the constitutional structure of the monarchy remained intact, with its executive (queen), legislative (assembly) and judicial (supreme

<sup>124</sup> Toullelan and Gille 1994: 42-43; Peltzer 2002: 51

<sup>125</sup> Toullelan and Gille 1994: 42-43; Peltzer 2002: 51; Gille 2006: 33

<sup>126</sup> Toullelan et Gille 1994: 43; Lechat 1990: 87

<sup>127</sup> Peltzer 2002: 52; Gille 2006: 33

<sup>128</sup> Peltzer 2002: 52-55; Toullelan 1991: 11-15; Toullelan and Gille 1994: 43-45; Newbury 1973

<sup>129</sup> Peltzer 2002: 53

<sup>130</sup> Gille 2006: 33

<sup>131</sup> Toullelan and Gille 1994: 45; Peltzer 2002: 55

<sup>132</sup> Peltzer 2002: 55-56; Gille 2006: 33

<sup>133</sup> *E parau faaau, faaau hia o tona hanahana, te Arii Vahine o te mau fenua Totaiete i te hoe pae e o Charles Lavaud Tavava o te mau fenua Farani i te Moana te Auvaha o te Arii i pihaiho i te Arii vahine mai te ioa o tona hanahana te Arii o te Farani i te tahi pae/ Convention entre S.M. la Reine des Iles de la Société d’une part; et le Capitaine de Vaisseau Charles Lavaud, Gouverneur des Possessions Françaises de l’Océanie, Commissaire du Roi auprès de la Reine, agissant au nom de S.M le Roi des Français d’autre part* [“Convention between H.M. the Queen of the Society Islands on one part, and Charles Lavaud, Governor of the French Possessions in Oceania, Commissioner of the King next to the Queen, acting on behalf of H.M. the King of the French, on the other part”], 5 June 1847. Centre for Overseas Archives, Aix-en-Provence, France, box 9, file A52.

court and district courts) branches. France was responsible for defence, foreign affairs, justice over French and other European residents, and Tahitian laws needed to be countersigned by the French commissioner. This convention was never ratified by France nor officially published. Its legal value is therefore questionable.<sup>134</sup> However, in fact it became the legal basis for the political organisation of Tahiti for many years following, together with a 1848 revised edition of the 1842 Tahitian law code.<sup>135</sup>

During the following decades, two opposing tendencies could be observed: Under the French protectorate, the Tahitian State attempted to further modernise and stabilise itself. With French funding, impressive buildings symbolizing that state were built, such as a Royal Palace (next to, and larger than, the residence of the French commissioner),<sup>136</sup> and a picturesque legislative assembly building with a huge dome.<sup>137</sup> However, at the same time, France constantly undertook efforts to undermine and erode the power of the Tahitian kingdom government.<sup>138</sup> In 1866, these efforts culminated when the legislative assembly was made to vote itself virtually out of existence by replacing Tahitian law with French law in all fields except for land matters,<sup>139</sup> and in 1868, a French judiciary system was installed.<sup>140</sup> In 1875, the French government attempted to abolish the budget for local affairs and merge it with the French commissioner's budget. In this case, Queen Pōmare

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<sup>134</sup> Leriche 1978: 309

<sup>135</sup> *Code Tahitien de 1848*. Reprinted in *Bulletin Officiel des Etablissements Français de l'Océanie*, June 1864: 47-84. Photocopy in Archives of French Polynesia. See also O'Reilly and Reitman 1967: 714-715; Gille 2006: 35

<sup>136</sup> O'Reilly 1975a : 25-31

<sup>137</sup> *Ibid.*: 54-56.

<sup>138</sup> Toullelan 1987: 59-60; Gille 2006: 52

<sup>139</sup> Saura 1996: 50-51; Peltzer 2002: 63;

<sup>140</sup> Gille 2006: 48

protested to the French president, and was able to keep a separate budget for her government.<sup>141</sup>

### *The annexation to France 1880-1887*

However, three years after the Queen's death, on 29 June 1880, her son King Pōmare V signed a declaration in which he ceded his kingdom to France. While giving up all rights of governance to France, the document reserved the maintenance of a native judiciary on the district level for small cases, as well as a continued local jurisdiction over all land issues.<sup>142</sup> The document was supposedly countersigned by all district chiefs, but the qualifications of some of the twenty-two co-signers are doubtful.<sup>143</sup> According to one contemporary observer, only nine of the signatories were actually district chiefs, casting doubt on the validity and sincerity of the document.<sup>144</sup> French commissioner Isidore Chessé accepted the declaration on the same day,<sup>145</sup> and on 30 December, the cession of the Tahitian kingdom to France was ratified by the French parliament.<sup>146</sup> However, the text in the ratification law is quite different from the wording of Pōmare's declaration. Pōmare's subjects were made French citizens, but there is no reference to the

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<sup>141</sup> Gille 2006: 51

<sup>142</sup> *Déclaration du Roi Pomare V, consacrant la réunion à la France des Iles de la Société et dépendances* ["Declaration by King Pomare V in order to dedicate the union with France of the Society Islands and Dependencies"], 29 June 1880. Certified handwritten copy of unlocated original. Centre for Overseas Archives, Aix-en-Provence, France, box 139, file A 116. Reprinted in Lechat 1990: 143-144. A reproduction of the Tahitian and French versions and an English translation are attached at the end of this thesis as Appendix C.

<sup>143</sup> Montluc 2004: 6-7.

<sup>144</sup> Marau Ta'aroa Salmon, King Pōmare V's ex-wife, quoted in Salmon 1982: 178-179

<sup>145</sup> Declaration by Commissioner of the French Republic Isidore Chessé, 29 June 1880. Reprinted in Lechat 1990: 144-145

<sup>146</sup> *Loi du 30 Décembre 1880, portant ratification de la cession faite à la France, par Sa Majesté Pomare V, de la souveraineté pleine et entière des archipels de la Société, dépendant de la couronne de Taiti* ["Law of 30 December 1880 ratifying the cession done to France by His Majesty Pomare, of the full and entire sovereignty over the Society archipelagos, depending from the crown of Taiti [sic]"]. Reprinted in Lechat 1990: 146-151

continuation of the native judiciary on land or other matters.<sup>147</sup> After some of the chiefs complained that France did not respect the reservations of the 1880 convention,<sup>148</sup> and a French court had upheld their claim,<sup>149</sup> a new convention was signed by Pōmare and the chiefs on December 29, 1887<sup>150</sup> and ratified by France in March 1891,<sup>151</sup> formally abrogating the native judiciary once and for all, as soon as the land registration process initiated by the French government could be completed.<sup>152</sup> When that process ended in the early 1900s, the colonisation process was fulfilled and Tahiti came under complete French jurisdiction.

### *Dependencies of the Tahitian Kingdom*

The Tuamotu archipelago as well as the islands of Tupua'i (Tubuai) and Ra'ivavae in the Tuha'a Pae (Austral) archipelago were considered by France to be dependencies of the Pōmare kingdom and thus to have become parts of the protectorate in

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<sup>147</sup> Montluc 2004

<sup>148</sup> Montluc 2004: 7; see also letter from King Pomare and several chiefs and representatives to the French President, 11 November 1881 and 14 March 1882. Handwritten copy of unlocated original in Centre for Overseas Archives, box 139, file A 116.

<sup>149</sup> Gille 2006: 48

<sup>150</sup> *Convention signé le 29 décembre 1887 par le roi Pomare et le Gouverneur des Etablissements Français de l'Océanie en vue de la suppression des juridictions indigènes à Taiti* ["Convention signed on 29 December 1887 by King Pomare and the Governor of the French Establishments in Oceania referring to the abrogation of the native jurisdictions in Taiti[sic]"]. Reprinted in Lechat 1990: 210-211

<sup>151</sup> *Loi du 10 mars 1891, 1<sup>e</sup> ratifiant les déclarations signées le 29 décembre 1887 par le Roi Pomare V. et le Gouverneur des Etablissements Français de l'Océanie ; 2<sup>e</sup> portant ouverture, au Ministère des Finances, d'un crédit extraordinaire de 6.000 Fr. pour l'acquittement d'une dotation viagère consentie en faveur du prince Terihinoiatua, membre de la famille royale de Tahiti* ["Law of 10 March 1891, 1st ratifying the declarations of 29 December 1887 by King Pomare V and the Governor of the French establishments in Oceania ; 2<sup>nd</sup> opening in the Ministry of Finance a special credit of 6,000 Francs for the payment of a pension in favour of Prince Terihinoiatua, member of the royal family of Tahiti"]. Reprinted in Lechat 1990: 220-222; Peltzer 2002: 74

<sup>152</sup> Gille 2006: 48-49; Saura 1996: 54-55

1842, and annexed with Tahiti in 1880.<sup>153</sup> However, some questions as to the status of these islands in relation to Tahiti remain.

### *Tuamotu Islands*

It is doubtful whether the central and eastern parts of the Tuamotu Archipelago were ever under effective control of Pōmare kingdom. While most of the archipelago was allegedly acquired by Pōmare I in the late 1700s,<sup>154</sup> this was apparently not permanent, as in the 1810s, the atolls fought devastating wars against one another until Pōmare II intervened in these conflicts in 1817 and finally negotiated a permanent peace between them in 1821.<sup>155</sup> The western and central islands were thereby formally incorporated into Pōmare's kingdom<sup>156</sup> and governors were appointed to rule over the major islands, while the easternmost part of the archipelago remained unaffected.<sup>157</sup> However, it is doubtful whether Tahitian rule was truly effective during the following decades.<sup>158</sup> The 1825 and 1842 law codes of the Tahitian kingdom explicitly mention only Matea (Makatea), Auura (Kaukura) and Ana ('Ana'a or Anā) as the Tuamotuan islands under its jurisdiction and give the names of judges for these.<sup>159</sup> On some other islands such as on Raroia in the centre of the archipelago, Queen Pōmare IV appointed judges as well.<sup>160</sup> She apparently claimed sovereignty over the entire archipelago, but there is no evidence that her government ever exercised any authority over the easternmost islands. The Tahitian

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<sup>153</sup> Peltzer 2002: 67

<sup>154</sup> Henry 2000: 16, 117-119

<sup>155</sup> Danielsson 1955: 77-78; Ottino n.d :30

<sup>156</sup> Robineau 1987: 34

<sup>157</sup> Danielsson 1955: 79; Sodter 1993

<sup>158</sup> Danielsson 1955: 80

<sup>159</sup> *1825 Tahitian Law Code*, Art. XLVI; *1842 Tahitian law code*, Art. XXXII.

<sup>160</sup> Danielsson 1955: 86



sovereignty claim was therefore substantial over the Western and central part only, but not over the East. In spite of this fact, France regarded the entire archipelago as part of the protectorate estates.<sup>161</sup> The French administration subsequently sent some military expeditions to the islands in the 1840s,<sup>162</sup> and established posts on most of the atolls during the 1850s, 1860s and 1870s, usually following the installations of Catholic missions.<sup>163</sup> Probably from the 1850s onwards, some of the Tuamotu islands sent delegates to the Tahitian legislative assembly,<sup>164</sup> thus taking part actively in the political life of the protectorate. At the same time, however, acts of resistance against French Protectorate government as well as the Catholic mission took place on Anā in 1852 and were severely repressed.<sup>165</sup> Another violent incident took place when a Franco-Tahitian delegation visited some of the hitherto unpenetrated eastern islands and some of them were killed by the inhabitants for desecrating a traditional site of worship, provoking another French punitive expedition.<sup>166</sup> Only immediately before the annexation of the Tahitian kingdom in 1880 had all the islands apparently come under actual Franco-Tahitian authority, to be then reorganised into French colonial authority.<sup>167</sup>

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<sup>161</sup> Danielsson 1955: 86

<sup>162</sup> Danielsson 1955: 89-91

<sup>163</sup> Danielsson 1995: 87; 91

<sup>164</sup> O'Reilly 1975a: 52; 56-57

<sup>165</sup> Danielsson 1955: 88; Toullelan 1991: 15-16, 19; Peltzer 2002: 58

<sup>166</sup> Danielsson 1955: 92

<sup>167</sup> Danielsson 1955: 95; 98-99

## *Tupua'i and Ra'ivavae*

The island of Tupua'i still had its own *ari'i* in the 1840s, who had come under the suzerainty of the Pōmare kingdom in 1819,<sup>168</sup> while Ra'ivavae was ceded to Pōmare II in the same year.<sup>169</sup> However, the islands' subsequent position in the kingdom remained unclear. Judges were not named for either of the two islands in the 1825 Tahitian law code, and the 1842 law code did not name the two islands explicitly either. The formal establishment of the French protectorate institutions took place on Tupua'i in 1847,<sup>170</sup> but only in 1861 for Ra'ivavae.<sup>171</sup> After that, the two islands were fully and without contestation incorporated into the Tahitian realm, even though no evidence of them ever sending delegates to the Tahitian legislative assembly has been found.

## **Leeward Islands**

### *State formation c1815-1847*

The Leeward Islands, i.e. Ra'iātea, Taha'a, Porapora (Bora-Bora), Maupiti, Huahine and Mai'ao, culturally and geographically form the western half of the Society Islands. Ra'iātea was of particular importance, as it was the ancient centre of Eastern Polynesian aristocracy,<sup>172</sup> and *ari'i rahi* families throughout the archipelago traced their

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<sup>168</sup> letter from French commissioner Bruat to French Minister of Colonies, 30 Jan 1847. Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A 60; Candelot 1997: 33

<sup>169</sup> letter from Commissioner de la Richerie to French Minister of Colonies, 24 Oct 1861. Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A 60; Candelot 1997: 33

<sup>170</sup> Letter by Tamatoa and Tahuhu, the two *ari'i* of Tupua'i, to the French king dated 26 Oct 1846. Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A 60; letter from French commissioner Bruat to French Minister of Colonies, 30 Jan 1847. Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A 60

<sup>171</sup> letter by Commissioner de la Richerie to French Minister of Colonies, 24 Oct 1861. Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A 60

<sup>172</sup> Goldman 1970: 171, 173-175

genealogies back to the Tamatoa lineage of Ra‘iātea.<sup>173</sup> In spite of this aristocratic tradition, the centralisation of power and stratification of society seems not to have been equally strong on all the islands. Huahine, though in some ways politically centralised, conserved a traditionally Polynesian tribal system of administration, based on kin groups rather than territorial divisions, until the end of the 19<sup>th</sup> century.<sup>174</sup>

At the time of contact, the *ari‘i rahi* Puni of Porapora dominated most of the Leeward Islands militarily, but similar to Pōmare I in Tahiti, he was unable to create a permanent state.<sup>175</sup> After the establishment of the Protestant mission in the early 1800s, the leading *ari‘i* of the Leeward Islands, Mahine of Huahine, Tamatoa III of Ra‘iātea and Tāpoa of Porapora, who were all relatives of Pomare II, became the latter’s allies in the battle of Fē‘i Pī of 1815.<sup>176</sup> Some sources have assumed the subsequent rule of the Pōmare Kingdom over their islands.<sup>177</sup> In fact, they were never incorporated into the Tahitian Kingdom,<sup>178</sup> and had their own separate law codes,<sup>179</sup> but the Pōmares nevertheless seemed to have temporarily exercised a strong influence over them.<sup>180</sup> Politically, the Leeward Islands became organised into three kingdoms, which were structurally modelled after Pōmare’s Tahitian kingdom, but their political institutions were nevertheless different in many details.<sup>181</sup> For example, there were no elected legislative assemblies in the Leeward Islands kingdoms; and in the Kingdom of Huahine there existed the influential office of *fa‘aterehau* (prime minister), which was absent in

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<sup>173</sup> Henry 2000: 255-267

<sup>174</sup> Saura 2006:85-90

<sup>175</sup> Saura 2006: 102-103

<sup>176</sup> Saura 2006:118

<sup>177</sup> Gille 2006: 19

<sup>178</sup> Robineau 1987: 34

<sup>179</sup> Saura 2006: 126

<sup>180</sup> Saura 2006: 126-127

<sup>181</sup> Saura 1997a: 29-34

the Tahitian kingdom.<sup>182</sup> The Kingdom of Ra‘iātea apparently comprised initially not only Taha‘a but also Porapora and Maupiti, as the first Christian law code of Tamatoa III in 1820 stated that it was applicable on all four islands.<sup>183</sup> Huahine under *ari‘i* Teri‘itaria and *fa‘aterehau* Mahine enacted a similar law code in 1822,<sup>184</sup> later updated in 1835,<sup>185</sup> 1853<sup>186</sup> and 1883.<sup>187</sup> Internally, it continued its more tribal social structure, with *tāvana* administrating kin groups rather than territorial districts.<sup>188</sup> The small island of Mai‘ao was considered a dependency of Huahine, listed in the 1853 and 1883 law codes as a separate kingdom under Huahine’s suzerainty.<sup>189</sup> For the rest of the Leeward Islands, a new law code was enacted in 1836, now listing Porapora and Maupiti under Teari‘imaevavua as an entity separated from Tamatoa’s realm of Ra‘iātea and Taha‘a.<sup>190</sup> Apparently, the two realms had been separated by an agreement in 1832.<sup>191</sup> Finally in 1847 and 1849, Ra‘iātea-Taha‘a enacted a separate law code, while Porapora and dependencies did so in 1858.<sup>192</sup> The nature of government in the three kingdoms was much more aristocratic than that of Tahiti, for example there was a separate judiciary for

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<sup>182</sup> *E ture no te basileia o Teururai i Huahine; e no te basileia o Namua i te rai, i Maiaoiti ra.* Huahine: Nenei raa a te mau Orometua 1853. Photocopy in UH Hamilton Library, call number JQ6431 .A55 1853 [hereafter *1853 Huahine law code*]: 50; Saura 2006: 118, 137, 140

<sup>183</sup> Richaud 2001: 21-28

<sup>184</sup> Richaud 2001: 29-39

<sup>185</sup> Richaud 2001: 62-68

<sup>186</sup> *1853 Huahine law code*

<sup>187</sup> *E ture no te basileia o Tehaapapa i Huahine; e no te basileia o Namua i te rai, i Maiaoiti ra.* Raiatea: Neneiraa Totaieti 1883. Copy in Archival Service of French Polynesia. [hereafter *1853 Huahine law code*].

<sup>188</sup> *1853 Huahine law code*: 51-53; Saura 2006: 145, 148-152

<sup>189</sup> *1853 Huahine law code*; *1883 Huahine law code*.

<sup>190</sup> *O Tamatoa, raa o Teariimaevavua. E ture no Raiatea, no Taha'a, no Borabora, e no Maupiti. I faatia faahouhia i te hau o Tamatoa, raa o Teariimaevavua. Mate 23. 1836. Ua faaauhia teienei firia farau ia ore te hau ia faainohia.* Huahine: Nenei raa a te mau Misionari 1838. Incomplete microfilm in UH Hamilton library, call number MICROFILM 5007, no. 6; Richaud 2001: 69-84

<sup>191</sup> Peltzer 2002: 41-42

<sup>192</sup> O'Reilly and Reitman 1967, 716-717

members of the nobility.<sup>193</sup> With no separate legislative entities, the kingdoms could not be considered constitutional monarchies like Tahiti.

### *International recognition 1847-1880*

When France intervened in Tahiti in the 1840s, the unclear degree of suzerainty of the Pōmare kingdom over the Leeward Islands kingdoms was interpreted by France as actual full-fledged jurisdiction. Based on that claim, France began to invade the Leeward Islands during the Franco-Tahitian war, and to implement the Tahitian protectorate administration in collaboration with some local pro-French chiefs.<sup>194</sup> In April 1846, French troops attempted to land on Huahine, but were defeated by the island's determined defence forces.<sup>195</sup> Both Pōmare and the chiefs of the Leeward Islands subsequently stressed the legal separation between the three kingdoms and Tahiti in order to keep them outside the French protectorate.<sup>196</sup> In February 1847, the Queen of Huahine, Teri'itaria, wrote a letter to Queen Victoria, asking the British government to protect the independence of the Leeward Islands against the French.<sup>197</sup> Consequently, on 19 June 1847, the United Kingdom and France, in a joint declaration, commonly known as the Jarnac Convention after the French diplomat who co-signed it, agreed to "formally recognize the independence of the islands of Huahine, Raiatea and Borabora [...]".<sup>198</sup>

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<sup>193</sup> Saura 1997a: 30, 35

<sup>194</sup> Newbury 1980: 120; Saura 2006: 137

<sup>195</sup> Toullelan and Gille 1994: 44. Peltzer 2002: 54

<sup>196</sup> Saura 2006: 137

<sup>197</sup> Peltzer 2002: 55

<sup>198</sup> *Déclaration échangé à Londres le 19 juin 1847 entre la France et la Grande-Bretagne, relativement à l'indépendance des îles Huahine, Raiatea et Borabora* [Declaration exchanged in London on 19 June 1847 between France and Great Britain concerning the independence of the islands of Huahine, Raiatea and Borabora]. Reproduced in Lechat 1990: 105-106 and Peltzer 2002: 182. The full text and an English

Through that declaration, the three kingdoms were now theoretically entitled to the status of sovereign States, similar to the Hawaiian kingdom. However, they did not clearly act upon that right and engage in international diplomacy like Hawai‘i did. One reason for that absence of diplomatic action could be the internal political instability of the three States. Especially in Ra‘iātea and Huahine, power struggles between chiefly families led to several changes of monarchs by means other than hereditary succession.<sup>199</sup> While these internal troubles went on, none of the three kingdoms established full diplomatic relationships with any other independent state. In 1853, ex-queen Teri‘itaria of Huahine, who had been deposed one year before by Teurura‘i Ari‘imate,<sup>200</sup> attempted to restore her power by requesting a French protectorate over her island.<sup>201</sup> In 1858, during an internal power struggle in Ra‘iātea, an American consul unsuccessfully attempted to annex that kingdom to the United States.<sup>202</sup> In 1868, Huahine entered into a convention about military assistance and mutual extradition of criminals with the French protectorate government of Tahiti,<sup>203</sup> but this convention was not signed with France, but with “the Protectorate government”, a legal oddity, given the fact that the foreign affairs of Tahiti at that time were entirely the responsibility of France.<sup>204</sup> The signing of that convention led to the overthrow of King Teurura‘i by a nationalist faction that accused

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translation of these reproductions is attached at the end of this thesis as Appendix B. [hereafter *1847 Jarnac Convention*]

<sup>199</sup> Newbury 1980:197-199

<sup>200</sup> Saura 2006: 137-138

<sup>201</sup> Letter from Teri‘itaria to the French commander in Tahiti, 3 Aug 1853. Centre for Overseas Archives, Aix-en-Provence, France, box 8, file A 34

<sup>202</sup> Boston Semi-Weekly Advertiser 1858; Newbury 1980: 198.

<sup>203</sup> *Convention entre le gouvernement du Protectorat et le gouvernement de Huahine. 3 July 1868.* Centre for Overseas Archives, Aix-en-Provence, France, box 20, file A101.

<sup>204</sup> According to the 1847 protectorate agreement between Queen Pōmare and France, see above

him of selling out to France.<sup>205</sup> In 1876, a civil war broke out in the kingdom of Porapora, when the island of Maupiti attempted to secede from Porapora, following a dispute about land leases to European traders.<sup>206</sup> Huahine finally signed an international treaty with Germany in 1879, an offer that the two other kingdoms refused,<sup>207</sup> but that treaty was never ratified on the German side.<sup>208</sup>

### *The French takeover 1880-1898*

When the Tahitian protectorate came to its end and the Pōmare kingdom was to be annexed, France's designs on the Leeward Islands re-emerged. In clear violation of the 1847 Franco-British convention, France established a protectorate over Ra'iātea in April 1880,<sup>209</sup> after French commissioner Chessé had fabricated rumours about German plans for colonisation, and some chiefs who believed these rumours signed a request for French protection. This action led to protests by Britain, and France did not ratify the protectorate agreement.<sup>210</sup> In November 1887, France and Great Britain signed an agreement that declared the 1847 convention to be abrogated, after France had made concessions to Britain in other parts of the Pacific.<sup>211</sup> Following that "green light" given

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<sup>205</sup> Saura 2006: 139

<sup>206</sup> Newbury 1980: 199

<sup>207</sup> Newbury 1980: 200

<sup>208</sup> *Vertrag zwischen dem Deutschen Reich und der Regierung von Huahine / Parau au – i rotopu e te Hau Eremanea e te Hau Huahine*. ["Treaty between the German Empire and the Government of Huahine"]. 28 April 1879. Federal Archives of Germany, Berlin. File R 1001/8988

<sup>209</sup> *E faatiaraa i te aniraa o Raiatea e Taha'a i te tauturu a Farani no te mau ohipa i rapae au i na femua nei*. ["A Verification of the request of Ra'iātea and Taha'a for the help of France for foreign affairs of those two islands"] Centre for Overseas Archives, Aix-en-Provence, France, box 90, file A115.

<sup>210</sup> Newbury 1980: 201

<sup>211</sup> *Convention relative aux Nouvelles Hébrides et aux Iles Sous Le Vent de Tahiti, signé le 16 Novembre 1887 entre la France et la Grande Bretagne* ["Convention relating to the New Hebrides and the Leeward islands of Tahiti, signed on 16 November 1887 between France and Great Britain"]. Reprinted in Lechat 1990: 208-210; Declaration signed by France and Great Britain, 30 May 1888. Reprinted in Lechat 1990: 217-18

from London, French governor Théodore Lacascade went to the Leeward Islands in March 1888, and unilaterally declared all three kingdoms to be annexed, without any documents of cession.<sup>212</sup> During the following decade, the political status of the three islands was contested and remained legally unclear.

On Huahine, hostilities between French soldiers and local resistance forces broke out a few days after the French proclamation of annexation.<sup>213</sup> A hard-line nationalist faction rebelled against the government of Queen Teha'apapa I and *fa'aterehau* Marama, who had apparently accepted the French takeover, and established a parallel rebel government, which they maintained for two years, until they were defeated and captured by Queen Teha'apapa's forces in July 1890. Later in the same month, Teha'apapa and her chiefs signed a document accepting a French protectorate.<sup>214</sup> The kingdom government continued to exist for five more years, until in 1895 French commander Chessé convinced Queen Teha'apapa II (who had succeeded to the throne in 1893) and *fa'aterehau* Marama to abdicate, apparently with the promise of a French government pension.<sup>215</sup> Earlier that year, the queen's government had once more been threatened with

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<sup>212</sup> *Proclamation du Gouverneur aux habitants des Iles sous le Vent à l'occasion de l'annexion de ces îles à la France* ["Proclamation by the Governor to the inhabitants of the Leeward Islands in the occasion of the annexation of those islands"]. 16. March 1888. Reprinted in Lechat 1990: 213-214 and in Peltzer 2002: 183-184; *Proclamation plaçant les îles Raiatea-Tahaa, Huahine, Borabora et Dépendances sous la souveraineté pleine et entière de la France* ["Proclamation placing the islands of Raiatea-Tahaa, Huahine and Borabora under the full and entire sovereignty of France"]. 16 March 1888. Reprinted in Lechat 1990: 214-215 and in Peltzer 2002: 184-185

<sup>213</sup> Toullelan 1987: 75; Saura 2006: 143-144

<sup>214</sup> *Lettre adressée par le gouvernement de Huahine à Monsieur le Gouverneur du Gouvernement Français à Tahiti / Te Rata i papai hia e te Hau Huahine i te Tavana Rahi no te Hau Farani i Tahiti* ["Letter written by the government of Huahine to Mr. Governor of the French government in Tahiti"]. 30 July 1890. Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A139.

<sup>215</sup> Saura 2006: 144-145



a rebellion of hard-line nationalists and had asked France for military assistance.<sup>216</sup> On 11 September 1895, the queen and her prime minister, together with all the government officials and clan chiefs, signed a document, in which they ceded, forever and without reserve, the government of their country to France.<sup>217</sup>

On Porapora, there was apparently no active military resistance, but no French administration was initially implemented there either. The government of Queen Teri'imaevaua II remained in power for more than seven years, until she and her administration signed a similar document of cession and abdication a few days after that of Huahine, but unlike the latter, the Queen of Porapora insisted on maintaining her rank and honours as a queen.<sup>218</sup> Following the abdications of the queens of Huahine and Porapora, and their acceptance by the French governor Papinaud,<sup>219</sup> a permanent French administration was set up on the two islands.<sup>220</sup>

On Ra'iaatea, King Tamatoa VI accepted the 1888 French takeover, and resigned his kingship to become a *tāvana* on Huahine.<sup>221</sup> Most of the Ra'iaatea government officials and district chiefs followed their king, but one of the latter, Teraupo'o, refused,

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<sup>216</sup> Letter from Queen Teha'apapa and her government officials to the French governor in Tahiti, 14 Jan 1895 (certified handwritten copy of unlocated original). Centre for Overseas Archives, Aix-en-Provence, France, Box 92, file A 142.

<sup>217</sup> *Procès-Verbal / Parau Haamanaraa* ["Proceedings / Document of Empowerment"], 11 Sept 1895. Centre for Overseas Archives, Aix-en-Provence, France, box 92, file A142

<sup>218</sup> *Procès-Verbal / Parau Haamanaraa* ["Proceedings / Document of Empowerment"], 21 Sept 1895. Centre for Overseas Archives, Aix-en-Provence, France, Box 92, file A 142.

<sup>219</sup> *Réunion définitive à la France de la Royauté de Huahine* ["Definitive union of the Huahine royalty with France"], 27 Sept 1895 (certified handwritten copy of unlocated original); *Réunion définitive à la France de la Royauté de Bora- Bora* ["Definitive union of the Porapora royalty with France"], 30 Sept 1895 (handwritten copy of unlocated original); both in Centre for Overseas Archives, Aix-en-Provence, France, Box 92, file A 142.

<sup>220</sup> *Décision réglémentant l'administration des îles Huahine et Borabora* ["Decision regulating the administration of the islands of Huahine and BoraBora"]. 30 Sept 1895. Reprinted in Peltzer 2002: 189-190

<sup>221</sup> Saura 2006: 141

as did most of the common population.<sup>222</sup> While the French established their administration in the capital 'Uturoa, the Teraupo'o faction installed Tūari'i, a member of the royal family, as queen in the village of Avera,<sup>223</sup> and refused to let French government officials penetrate into the rural areas of the island.<sup>224</sup> This situation continued for almost a decade, with the French administration controlling only the area around 'Uturoa, while most of the rural parts of Ra'iātea as well as the dependent neighbour island of Taha'a were under the control of Teraupo'o's resistance government. In 1895, Queen Tūari'i travelled to Rarotonga (then a British protectorate) and pleaded for support with the British resident there, but her request was denied.<sup>225</sup> After the submission of Huahine and Porapora, French commissioner Chessé issued an ultimatum to the resistance forces of Ra'iātea in October 1895 to surrender,<sup>226</sup> to no avail. A new ultimatum by Governor Gallet<sup>227</sup> in December 1896<sup>228</sup> did not discourage the rebels either. Finally in January 1897, a military expedition landed in Ra'iātea, starting a war with the resistance forces that lasted for more than a month, with severe battles being fought all over the island, until on 16 February 1897, Teahupo'o was captured.<sup>229</sup>

Following the French imperialist pattern of overseas banishment, he and the principal

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<sup>222</sup> Newbury 1980: 220

<sup>223</sup> Newbury 1980: 220; Saura 2006: 144

<sup>224</sup> Lescure 1939: 188, 193-94; Toullelan 1987: 76-78

<sup>225</sup> Article from Rarotongan Newspaper Te Torea, 20 Feb 1895. Handwritten French translation. Centre for Overseas Archives, Aix-en-Provence, France, Box 92, file A 142.

<sup>226</sup> *Aux habitants de Tevaitoa, Avera et Tahaa / E to Tevaitoa e* ["To the inhabitants of Tevaitoa, Avera and Tahaa"] (certified handwritten copy of unlocated original. Centre for Overseas Archives, Aix-en-Provence, France, Box 92, file A 142.

<sup>227</sup> Gallet had previously served in the colonial administration of New Caledonia and played an active role in the suppression of the large 1878 Kanak revolt. He was apparently appointed to deal with the Ra'iātea case because of his reputation of being „tough“ on native rebels (Toullelan 1987: 78)

<sup>228</sup> Ultimatum by Governor Gallet to the rebels of Raiatea-Tahaa. 27 Dec 1896. Reprinted in Deman n.d. (1897): 295-297 and in Lechat 1990: 224

<sup>229</sup> Deman n.d. (1897). Newbury 1980: 220-221; Peltzer 2002: 76-77

officials of his government were sent to exile in New Caledonia, while altogether more than 400 people were arrested and punished with forced labour or exile.<sup>230</sup>

After having thus brought all of the islands under its effective control, France enacted a law on 19 March 1898 declaring the Leeward Islands to be an “integral part of the colonial domain of France”.<sup>231</sup> Subsequently however, the former queen of Porapora, Teri’imaevaua II attempted to lead a new protest movement throughout the archipelago, until in October 1898, she was interned in Tahaa by a decree of Governor Gallet.<sup>232</sup>

## Rapa

### *The kingdom and the abortive French protectorate c1825-1881*

The island of Rapa, situated to the far south of Tahiti, and today considered part of the Tuha’a Pae (Austral Islands) chain, had become a Christian kingdom, modelled after that of Tahiti, during the 1820s.<sup>233</sup>

After the island had been visited by Peruvian slavers in the 1860s,<sup>234</sup> and the population had severely declined due to introduced diseases,<sup>235</sup> the island community felt its very existence threatened, and subsequently King Parima and six chiefs signed a request for a French protectorate on 27 April 1867.<sup>236</sup> This request was accepted on the

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<sup>230</sup> Deman n.d. (1897): 312-313

<sup>231</sup> *Loi du 19 mars 1898 déclarant les Îles-sous-le-vent de Tahiti partie intégrale du domaine colonial de la France* [“Law of 19 March 1898 declaring the Leeward islands an integral part of the colonial domain of France”]. Reprinted in Lechat 1990: 230-231 and in Peltzer 2002: 190-192

<sup>232</sup> Decree by Governor Gallet, dated 27 October 1898. Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A 153.

<sup>233</sup> Caillot 1932: 72-74

<sup>234</sup> Caillot 1932: 76-77; Fischer 2005: 91

<sup>235</sup> Caillot 1932: 77

<sup>236</sup> Proclamation by King Parima and six chiefs of Rapa, 27 April 1867 (certified handwritten copy of unlocated original, in French language only). Centre for Overseas Archives, Aix-en-Provence, France, Box 19, file A 91.

same day by French navy captain Mery,<sup>237</sup> but apparently never ratified by the French government. In December 1867, French officer Caillet was appointed resident.<sup>238</sup> However, he left the island after two years without replacement.<sup>239</sup> After a while, the Rapan authorities felt abandoned, took the protectorate flag down, and considered themselves no longer under French protection.

### *The French takeover 1881-1887*

In 1881 Commissioner Chessé visited the island, in order to implement a French annexation. King Parima handed him the protectorate flag, told him that France broke its promise, and that the Rapan government desired neither a protectorate nor annexation, but instead wished to be left alone.<sup>240</sup> When Chessé then threatened the use of violence, King Parima and four Rapan government officials signed a statement in which they accepted the French flag and promise to take care of it, but at the same time requested that their laws and government be kept intact.<sup>241</sup> There was no language of annexation. One striking feature of the document, itself a copy of an unknown original, are “+” marks after the names of the signatories, seeming to imply they were not literate, which is very unlikely, given the fact that missionaries had been on the island for decades since

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<sup>237</sup> *Acte d'acceptation du Protectorat français délivré aux habitants de l'île de Rapa sur leur demande* [“Act of acception of French Protectorate delivered to the inhabitants of Rapa on their demand”], 27 April 1867 (certified handwritten copy of unlocated original). Centre for Overseas Archives, Aix-en-Provence, France, Box 19, file A 91.

<sup>238</sup> Letter from French Commissioner de la Roncière to Captain Caillet, 15 Dec 1867. Centre for Overseas Archives, Aix-en-Provence, France, Box 19, file A 89.

<sup>239</sup> Caillot 1932: 79

<sup>240</sup> Letter from Commissioner Chessé to the French Minister of the Navy and the Colonies, 10 March 1881. Centre for Overseas Archives, Aix-en-Provence, box 91, file A 122. Quoted in Bambridge and Ghasarian 2002: 6-9

<sup>241</sup> Proclamation by King Parima and four Rapan government officials, 7 March 1881 (certified handwritten copy of unlocated original, in French and Tahitian), Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A122

1825.<sup>242</sup> This casts some doubt on the authenticity of the document, and even the existence of an original. France appointed another resident for the island in 1882, and he was advised to leave the local government and its laws in place.<sup>243</sup> Apparently there existed a local law code at that time, of which no copies have survived.<sup>244</sup>

In June 1887 however, Governor Lacascade landed on the island, and in contradiction to the 1881 statement, deposed the daughter of Parima who had succeeded him as queen, and through the threat of violence abrogated the local laws and government and imposed a French-appointed administration.<sup>245</sup> By a proclamation that was countersigned by five inhabitants of Rapa, the island was put under full French rule, administratively attached to Tupua'i and Ra'ivavae,<sup>246</sup> thus to the former protectorate estates, including complete submission under French law.<sup>247</sup>

## **Rurutu and Rimatara**

### *Two kingdoms c1820-1889*

The two islands of Rurutu and Rimatara, part of the Tuha'a Pae (Austral Islands) chain, had a traditional political system similar to that of the Society Islands. Rurutu had achieved political unification under one paramount chief at the time of Western

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<sup>242</sup> Caillot 1932: 72

<sup>243</sup> Instructions *pour le Chef de poste de Rapa*, 12 Dec 1882. Centre for Overseas Archives, Aix-en-Provence, France, Box 140, file A 124.

<sup>244</sup> O'Reilly and Reitman 1967: 717-718

<sup>245</sup> Letter from Governor Lacascade to French minister of the Navy and the Colonies, 12 July 1887. Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A122. Quoted in Bambridge and Ghasarian 2002: 12-15

<sup>246</sup> *Ordre du 16 Juin 1887 du Gouverneur Lacascade confirmant l'annexion de Rapa* ["Order of 16 June 1887 by Governor Lacascade confirming the annexation of Rapa"]. Reprinted in Lechat 1990: 514bis-515

<sup>247</sup> Bambridge and Ghasarian 2002: 11-12. While these authors contend that this political integration included also the granting of French citizenship to Rapa's inhabitants (*ibid*: 12), the latter were subsequently treated by the colonial authorities as French subjects, not citizens, like Mangarevans and Marquesans. See, for instance, a 1885 report from the minister of colonies to the French president, reprinted in Lechat 1990: 164-165.

Contact.<sup>248</sup> In the early 1820s, both islands were converted to Christianity by Tahitian and Leeward Islander converts,<sup>249</sup> and subsequently became Christian kingdoms modelled after Tahiti.<sup>250</sup> For most of the 19<sup>th</sup> century they remained outside of France's sphere of interest. Only in the 1870s and 1880s France began to become interested in the two islands, justifying its claims with an alleged former suzerainty of the Pōmare kingdom over the two islands, even though the French government had categorized them before as foreign territory.<sup>251</sup> However, in December 1872, King Teururari'i of Rurutu sent a letter in which he politely but explicitly declined an offer of a French protectorate.<sup>252</sup> The islands continued to exist as independent entities for more than a decade, and Rimatara issued its first printed law code in 1877,<sup>253</sup> followed by that of Rurutu in 1888.<sup>254</sup>

#### *French takeover 1889-1901*

In early 1889, the king of Rurutu travelled to Rarotonga in order to negotiate with the British resident there about a possible British protectorate, an action that was perceived by French governor of Tahiti Lacascade as a justification for France to intervene.<sup>255</sup> He was subsequently instructed by the French Colonial Ministry to take

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<sup>248</sup> Verin 1987: 45

<sup>249</sup> Candelot 1997: 19

<sup>250</sup> Verin 1987: 46

<sup>251</sup> Letter from French Minister of Foreign affairs to French Minister of the Navy and Colonies, 18 Jan 1889, quoted in Candelot 1977: 22-25

<sup>252</sup> Letter from King Teururari'i of Rurutu to French commissioner in Tahiti, 14 Dec 1872 (handwritten copy of unlocated original). Centre for Overseas Archives, Aix-en-Provence, carton 20 file A101

<sup>253</sup> Candelot 1997: 20; O'Reilly and Reitman 1967: 717

<sup>254</sup> Richaud 2001: 155-180

<sup>255</sup> Letter from Governor Lacascade to French Minister of the Navy and the Colonies, 15 March 1889. Quoted in Candelot 1997: 28-30

possession of the two islands unilaterally.<sup>256</sup> Instead, however, Lacascade negotiated protectorate agreements with the two kingdoms,<sup>257</sup> which were signed on Rurutu<sup>258</sup> and Rimatara<sup>259</sup> in late March 1889, in which the internal administration of the two kingdoms was kept intact. The agreements were apparently never ratified in Paris. In May 1900, however, King Teuruari'i IV of Rurutu signed a declaration of cession of his kingdom to France;<sup>260</sup> this was apparently followed by a decree by the French Governor in Papeete declaring both Rurutu and Rimatara to be part of the colonial domain of France.<sup>261</sup> In June 1901 Queen Temaeva V of Rimatara made a similar declaration,<sup>262</sup> which was followed by a formal taking of possession by French Governor Petit in September of the same year.<sup>263</sup> Neither act was apparently ratified by the French government. In both declarations of cession, the maintenance of the local laws and government structure was

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<sup>256</sup> Letter from French Minister of the Navy and the Colonies to Governor Lacascade, 21 March 1889.

Quoted in Candelot 1997: 31

<sup>257</sup> Verin 1987: 47

<sup>258</sup> Untitled document reporting the establishment of a protectorate, in Tahitian and French, signed by King Teuruari'i and six or seven Rurutu government officials, and Governor Lacascade and three French government officials, 27 March 1889. Centre for Overseas Archives, Aix-en-Provence, France, box 22, file A 137

<sup>259</sup> Untitled document reporting the establishment of a protectorate, in Tahitian and French, signed by Queen Temaeva IV and eight Rimataran government officials, and Governor Lacascade and five French government officials, 29 March 1889. Centre for Overseas Archives, Aix-en-Provence, France, box 22, file A 137

<sup>260</sup> *Déclaration du roi Teuruarii IV consacrant la réunion à la France de l'île Rurutui et dépendances /Parau faaiteraa a te arii ra o Teuruarii IV tei haamana i te amui raa mai ia Farani i te fenua ra ia Rurutu e te au mai* ["Declaration by king Teuruari'i IV empowering the union with France of Rurutu and dependencies"], 11 May 1900. Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A 154

<sup>261</sup> *Arrête du 25 août 1900 du Gouverneur des Etablissements Français de l'Océanie pour rattacher les îles Rurutu et Rimatara au domaine colonial de la France* ["Decree of 25 August 1900 by the Governor of the French Establishments in Oceania in order to attach the islands of Rurutu and Rimatara to the colonial domain of France"]. Title cited in Lechat 1990: 234, but no text provided.

<sup>262</sup> *Déclaration de la Reine Temaeva V, consacrant la réunion à la France de l'île Rimatara et dépendances /Parau faaiteraa na te arii vahine ra na Temaeva V, o te parau no te amuiraa mai ia Farani i te fenua ra i Rimatara e te au mai* ["Declaration by Queen Temaeva V empowering / speaking about the union with France of Rimatara and dependencies"], 6 June 1901. Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A 154

<sup>263</sup> *Procès-Verbal du 2 septembre 1901 de prise de possession de l'île Rimatara et dépendances (îlots Maria) par la France* ["Proceedings of 2 September 1901 of taking of possession of the island of Rimatara and dependencies (Maria islets) by France"]. Centre for Overseas Archives, Aix-en-Provence, France, box 91, file A 154

reserved, and indeed, an amended version of the local law codes and an aristocratic form of administration remained in force under French rule.<sup>264</sup>

## **Mangareva**

While all the entities treated so far had been converted to Protestantism, which made them rather anglophile, and fundamentally hostile to French colonisation attempts, the archipelago of Mangareva (also known as the Gambier Islands), situated to the extreme southeast of today's French Polynesia, has a quite distinct history. Having been converted by French Catholics, one would at first glance anticipate a more coherent and harmonious process of French colonisation, but as we will see, that was not exactly the case.

### *The Mangarevan Kingdom c1830-1871*

In pre-contact times, Mangareva had been one of the relatively stratified Polynesian societies,<sup>265</sup> comparable in its complexity with that of the Society Islands, in spite of the archipelago's small size.<sup>266</sup> In the early 1800s, the islands were unified by 'akariki (king) Te Māteoa, and thus formed into a unitary kingdom.<sup>267</sup> After the conversion of the population to Catholicism by French missionaries in the mid-1830s, the kingdom was reorganised into a Christian theocratic state, probably more heavily dominated by its missionaries than any other Eastern Polynesian entity.<sup>268</sup>

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<sup>264</sup> Verin 1987: 48-50; Saura 1997a: 44-47

<sup>265</sup> Goldman 1970: 150

<sup>266</sup> Goldman 1970: 170-171

<sup>267</sup> Goldman 1970:153; Laux 2000: 82

<sup>268</sup> Laux 2000: 204



In February 1844, King Gregorio Māpuetea signed a request for a French protectorate,<sup>269</sup> which was accepted on the same day by French navy captain Charles Penaud<sup>270</sup> but never ratified by the French government.<sup>271</sup> Following that agreement, the head of the Catholic mission, Father Cyprien Liausu was appointed French resident by French Governor Bruat in Tahiti, but the latter's successor, Commissioner Charles Lavaud, abolished that post in 1849.<sup>272</sup> The subsequent political status of the island remained unclear, with no actual French government presence until the 1860s, only periodic communication between the Mangarevan government and the French authorities in Tahiti.<sup>273</sup> A first set of written laws that was enacted by the regent Maria Eutokia in June 1864 (handwritten, not printed), reinforced the theocratic style of government by declaring that "the commandments of God and of the Catholic Church are the fundamental laws of our country".<sup>274</sup> In December 1869, a constitution was adopted (also handwritten and not printed), which limited the powers of the king and reinforced the influence of the Catholic Church by declaring three priests to be ex-officio members of the eleven-member executive council and the parish priests to be ex-officio presidents of the district councils, and by declaring once more divine commandments and Catholic law

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<sup>269</sup> Declaration signed by King Māpuetea and another Mangarevan government official, 16 Feb 1844. Archives of the Congregation of the Sacred Hearts, Rome, 64,12, depicted in Laval 1969, plate XXI; Reprinted in Lechat 1990: 88. Certified handwritten copy of Mangarevan version in Centre for Overseas Archives, Aix-en-Provence, France, box 3, file A 28.

<sup>270</sup> Declaration by French navy captain Charles Penaud, countersigned by Catholic missionary Liausu, 16 Feb 1844 (certified handwritten copy of unlocated original). Centre for Overseas Archives, Aix-en-Provence, France, box 3, file A28

<sup>271</sup> Newbury and O'Reilly in Laval 1969: xciv-xcvi. According to Toullelan (1987: 36; 1991: 6), this non-ratification was deliberately done as part of a settlement between France and Great Britain, which in exchange did not protest the French protectorate in Tahiti.

<sup>272</sup> Richaud 2001: 94

<sup>273</sup> Newbury and O'Reilly in Laval 1969: xcvi-xcvii

<sup>274</sup> Decree by Maria Eutokia, regent of Mangareva, 16 June 1864. Archives of the Congregation of the Sacred Hearts, Rome, 64,14, depicted in Laval 1968, plate XXVI; Laux 2000: 153-154; 156-157

to be the basis of all legislation. A few weeks later, a complete code of laws was enacted, largely reflecting these principles.<sup>275</sup>

### *French takeover 1871-1887*

During the 1860s, the French commissioner in Tahiti intervened several times in favour of French merchants who refused to comply with the strictly Christian Mangarevan laws, and the French government ordered the implementation of French protectorate authorities.<sup>276</sup> Remembering the non-ratification of the 1844 protectorate agreement, the Mangarevan government formally withdrew the protectorate request in February 1870,<sup>277</sup> and repeatedly declared the protectorate to be ended and asked the French authorities to leave the kingdom alone.<sup>278</sup> After the head of the Catholic mission, Father Honoré Laval, who exercised a strong influence over the Mangarevan government, was removed to Tahiti by orders of the French government, the Mangarevan authorities changed their mind,<sup>279</sup> and in November 1871, a formal agreement confirming the French protectorate was signed between Regent Arone Teikato'ara and French commissioner Girard.<sup>280</sup> Again this was not ratified by France. The sudden switch in

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<sup>275</sup> *Constitution Mangaréviennne du 13-12-1869. Codes Mangaréviennes du 18-1-1870.* Unpublished Manuscript. Microfilmed copy in UH Hamilton Library, call number MICROFICHE D 30053.

<sup>276</sup> Newbury and O'Reilly in Laval 1969: xcix-civ

<sup>277</sup> Letter from Mangarevan regent Arone Teikato'ara to French Minister of the Navy and the Colonies, 4 Feb 1870. Archives of the Congregation of the Sacred Hearts, Rome, 64.14, depicted in Laval 1969, plate XXVIII.

<sup>278</sup> Declaration by Regent Arone Teikato'ara, various royal family members and Mangarevan government officials, 15 June 1870.; Letter from Regent Arone Teikato'ara and nine government officials to the French commissioner in Pape'ete, 18 Feb 1871 (certified handwritten copy of unlocated original); Letter from Regent Arone Teikato'ara and various government officials to the commander of the French warship Flore, 22 Feb 1871. All in Centre for Overseas Archives, Aix-en-Provence, France, box 89, file A 92.

<sup>279</sup> Newbury and O'Reilly in Laval 1969: cvii-cviii

<sup>280</sup> *Déclaration du Régent et des Grands Chefs des îles Mangareva*, signed by Regent Arone Teikato'ara and nine Mangarevan government officials, and Commissioner Girard and two French government officials, 30 November 1871. Centre for Overseas Archives, Aix-en-Provence, France, box 89, file A 92

opinion of the Mangarevan government within a few months leads to the assumption that some kind of heavy pressure was put on it by France.

After living for ten years under the French protectorate, the Mangarevan government ceded its authority to France, with the promise of protecting the Catholic religion and maintaining local laws, in February 1881, which was accepted by Commissioner Chessé.<sup>281</sup> A few days later, a revised version of the Mangarevan law code was promulgated and for the first time printed.<sup>282</sup> The agreement was ratified through a decree by the French president in January 1882, including the nomination of a resident administrator.<sup>283</sup> In June 1887, however, French governor Lacascade enacted a decree abolishing the Mangarevan law code,<sup>284</sup> and the archipelago was subsequently fully assimilated into the French Oceania colony.

## **Marquesas Islands**

### *Ancient society and attempts at State formation to 1842*

Traditionally a tribal society with a low level of stratification compared to other Eastern Polynesian societies, the Marquesas Islands (including Nuku Hiva, 'Ua Huka and 'Ua Pou, in the Northwest, Hiva 'Oa, Tahuata and Fatuiva in the Southeast) remained fragmented into numerous warring chiefdoms throughout the first half of the 19<sup>th</sup>

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<sup>281</sup> Declaration signed by the king of Mangareva and 18 government officials, and declaration by Commissioner Chessé accepting this declaration, 21 February 1881 (handwritten copy of unlocated original). Centre for Overseas Archives, Aix-en-Provence, France, box 155, file A 124bis

<sup>282</sup> Richaud 2001: 96-154

<sup>283</sup> *Decret du 30 Janvier 1882 approuvant la convention d'annexion des îles Gambier à la France* ["Decree of 30 January 1882 approving the convention of annexation of the Gambier Islands to France"]. Reprinted in Lechat 1990: 514-515

<sup>284</sup> *Arrêté rapportant l'ordre du 23 février 1881 qui promulgue dans l'archipel des Gambier le Code mangarévien*, 28 June 1887. Journal officiel des Etablissements Français de l'Océanie, 30 June 1887, 1-2.

century,<sup>285</sup> and no attempts at the formation of a state were made until the late 1830s. At that time, Iotete, chief of Vaitahu valley on the island of Tahuata, extended his power to the entire island and intended to give his chiefdom the appearance of a State by calling himself “king”, wearing a Western uniform and adopting a flag.<sup>286</sup> On Nuku Hiva, chief Temoana of Taioha‘e valley, who had travelled around the Pacific and even to London, developed similar ambitions.<sup>287</sup>

### *The French takeover 1842-1880*

In 1842, the Marquesas Islands became the first archipelago of Polynesia to be colonised.<sup>288</sup> French Admiral Dupetit Thouars, who would later force the protectorate on Tahiti, had been sent to the Marquesas with instruction to take possession of all the islands “be it by concessions and presents, or by force”.<sup>289</sup> On 1 May 1842, he signed a document, in which he took possession of the Southeastern group, and let the document be countersigned by Iotete, his nephew Maheono and Catholic missionary Baudichon, claiming that the other islands were “dependencies” of Tahuata.<sup>290</sup> On 5 May, the admiral let another document be signed by three chiefs of the island of Hiva ‘Oa, in which they recognised the sovereignty of France.<sup>291</sup> On 31 May, a similar document was signed by Temoana on Nukuhiva (who also claimed to be “king” of the whole island when probably

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<sup>285</sup> Newbury 1980: 70-71

<sup>286</sup> O’Reilly 1975: 272-273

<sup>287</sup> O’Reilly 1975: 551

<sup>288</sup> disregarding Aotearoa (New Zealand), which was colonised two years earlier.

<sup>289</sup> Instructions given to Admiral Dupetit-Thouars by Admiral Duperre, Minister for the Navy and the Colonies concerning the taking of possession of the Marquesas Islands, 15 October 1841. Partly quoted in Lechat 1990: 32-34.

<sup>290</sup> *Déclaration de prise de possession du groupe S.E. des Iles Marquises*, 1 May 1842. Centre for Overseas Archives, Aix-en-Provence, France, box 28, file A13

<sup>291</sup> Declaration signed by Admiral Dupetit-Thouars, two French officials, and three chiefs of Hiva ‘Oa, 5 May 1842. Centre for Overseas Archives, Aix-en-Provence, France, box 28, file A13

ruling over not more than one single valley), together with four other chiefs.<sup>292</sup> The next day, Temoana and another chief ceded the property of a hill and an entire bay to France in order to build a fort and a naval base,<sup>293</sup> and the admiral took possession of the entire Northwestern group, claiming the other islands to be “dependencies” of Nuku Hiva, in a document that was also countersigned by Temoana.<sup>294</sup> On June 12, another document recognizing French sovereignty was signed by chief Heato of ‘Ua Pou, claiming to be “king” of the island, countersigned by Dupetit-Thouars and Father Baudichon.<sup>295</sup> On 3 August, a similar document was signed by “king” Teoaitoua of “Roa Huga” (‘Ua Huka) and four other chiefs.<sup>296</sup> The signatures on this document have been regarded as being possibly forged, as they all seem to be of the same handwriting.<sup>297</sup> On 24 August, two more “kings” each signed the same type of document in the bays of Anavave (Hanavave)<sup>298</sup> and Homoa (Omoa)<sup>299</sup> on Fatuiva (Fatu Hiva). When Dupetit-Thouars realized that his “king” Temoana did not control anything beyond the bay of Taioha‘e, he obtained signatures from chiefs of other valleys on Nuku Hiva as well, such as Opiainai

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<sup>292</sup> Declaration signed by Admiral Dupetit-Thouars, three French officers, Temoana and four other Chiefs of Nuku Hiva, 31 May 1842.

<sup>293</sup> Document of cession signed by Temoana and another chief, and document accepting that cession signed by Dupetit-Thouars, 1 June 1842. Centre for Overseas Archives, Aix-en-Provence, France, box 28, file A13

<sup>294</sup> *Déclaration de prise de possession du groupe N.O. des Iles Marquises*, 1 May 1842. Centre for Overseas Archives, Aix-en-Provence, France, box 28, file A13

<sup>295</sup> Declaration signed by chief Heato, two French officers and Father Baudichon, approved and signed by Admiral Dupetit-Thouars, 12 June 1842. Centre for Overseas Archives, Aix-en-Provence, France, box 28, file A13

<sup>296</sup> Declaration signed by chief Teoaitoua, four other chiefs and four other French officers, approved and signed by Dupetit-Thouars, 3 Aug 1842. Centre for Overseas Archives, Aix-en-Provence, France, box 28, file A13

<sup>297</sup> Bailleul 2001: 90

<sup>298</sup> Declaration signed by two chiefs of Anavave (Hanavave), Fatuiva (Fatu Hiva) and three French officers, approved and signed by Dupetit-Thouars 24 Aug 1842. Centre for Overseas Archives, Aix-en-Provence, France, box 28, file A13

<sup>299</sup> Declaration signed by three chiefs of Homoa (Omoa), Fatuiva (Fatu Hiva) and several French officers, approved and signed by Dupetit-Thouars, 24 Aug 1842. Centre for Overseas Archives, Aix-en-Provence, France, box 28, file A13

of “Atiheu” (Hatiheu) on 30 August 1842,<sup>300</sup> and, after coming back from Tahiti, from Akunao of Pua in March 1843,<sup>301</sup> and Pohue Pekao of Atuatua in May 1843.<sup>302</sup> The striking feature of all these documents is that they were written in French only, with no Marquesan translation attached, even though the undersigning chiefs were presumably literate to a degree, as they all wrote their names in legible letters. Through these acts of taking possession, French sovereignty was presumed over the entire archipelago, and military garrisons were left on the two principal islands in order to implement that sovereignty. On Nuku Hiva, a fort was built immediately after the taking of possession.<sup>303</sup>

However, effective control over the entire archipelago was not permanently exercised before the 1880s. In the four decades before, frequent rebellions and intertribal warfare had led to periodical abandonment of the islands.<sup>304</sup> As soon as Dupetit-Thouars had brought Tahiti under French control as well, French interest in the Marquesas Islands decreased and they became a marginal outpost.<sup>305</sup> Just a few months after the agreement with Iotete, war broke out between the latter and the French garrison, leading to many deaths on both sides and the appointment of Maheono as new chief of the island.<sup>306</sup> In 1845, a rebellion broke out on Nuku Hiva, under chief Pakoko, who was executed after

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<sup>300</sup> Declaration signed by chief Opiaainai of Hatiheu, Nuku Hiva, and four French officers, approved and signed by Dupetit-Thouars, 30 Aug 1842. Centre for Overseas Archives, Aix-en-Provence, France, box 28, file A13

<sup>301</sup> Declaration signed by chief Akunao of Pua, Nuku Hiva, and four French officers, approved and signed by Dupetit-Thouars, 25 March 1843. Centre for Overseas Archives, Aix-en-Provence, France, box 28, file A13

<sup>302</sup> Declaration signed by chief Pohue Pekao of Atuatua, Nuku Hiva, and four French officers, approved and signed by Dupetit-Thouars, 12 Mai 1842. Centre for Overseas Archives, Aix-en-Provence, France, box 28, file A13

<sup>303</sup> Peltzer 2002: 47

<sup>304</sup> Toullelan 1987: 64-66

<sup>305</sup> Bailleul 2001: 91-92

<sup>306</sup> O'Reilly 1975b: 273-274; Newbury 1980: 106; Bailleul 2001: 91

his warriors had killed several French soldiers.<sup>307</sup> France attempted to consolidate its power by paying Maheono and Temoana high salaries,<sup>308</sup> and giving the latter military assistance in a war against the neighbouring valley of Taipi in 1847, but soon realized that the policy of intervention in intertribal warfare did not serve French long-term interests. In the same year, French governor Lavaud decided to evacuate the garrison on Tahuata,<sup>309</sup> and in 1848, the French ministry of the navy and the colonies subsequently decided to abandon all military garrisons on the archipelago, which was carried into effect in December 1849, and the administration of the French-controlled areas was handed over to the Catholic Mission.<sup>310</sup>

After a few more military interventions in 1850, 1852 and 1859<sup>311</sup> on Nuku Hiva and 'Ua Pou, and attempts to re-establish the garrison on Nuku Hiva, together with a French penal colony from 1850 to 1851, and from 1852 to 1854,<sup>312</sup> the archipelago was definitely abandoned by the French military in 1859,<sup>313</sup> and all that was left of a colonial administration for the two following decades was a single French official with a handful of policemen in Taioha'e.<sup>314</sup> After several years of unofficial support of the Catholic Mission by France,<sup>315</sup> the French commissioner in Tahiti, Gaultier de la Richerie, set up a formal quasi-theocratic government on Nuku Hiva in 1863, run by Temoana and the Missionaries, and let the latter enact a Christian fundamentalist law code.<sup>316</sup> This

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<sup>307</sup> Newbury 1980: 124; Toullelan 1991: 10; Peltzer 2002: 54; Bailleul 2001: 92

<sup>308</sup> Bailleul 2001: 100

<sup>309</sup> Bailleul 2001: 92

<sup>310</sup> Newbury 1980: 124; Bailleul 2001: 92-93

<sup>311</sup> O'Reilly 1975b: 551; Bailleul 2001: 93-94

<sup>312</sup> Bailleul 2001: 93-94. In 1854, the penal colony was transferred to New Caledonia.

<sup>313</sup> Bailleul 2001: 94

<sup>314</sup> Bailleul 2001: 103

<sup>315</sup> Bailleul 2001: 94-96

<sup>316</sup> Richaud 2001: 85-92; Bailleul 2001: 104-106

arrangement, contrary to the French tradition of a secular state, was heavily criticized by subsequent colonial administrators and abrogated in 1865.<sup>317</sup> After several more brief military interventions on Nuku Hiva in 1867,<sup>318</sup> and on Hiva 'Oa in 1873, 1874, 1875, 1877 and 1879,<sup>319</sup> a large-scale naval operation under Admiral Georges Nicolas Bergasse Dupetit-Thouars (nephew of Abel Dupetit-Thouars) subjugated the islands of the southeastern group in June and July 1880.<sup>320</sup> The islands were “pacified” by confiscating all firearms in the possession of natives and deporting some of the chiefs to Tahiti and New Caledonia, thereby finally establishing French military rule over the entire archipelago.<sup>321</sup> Since then, French colonial rule has been permanent.

## **Rapa Nui**

### *Ancient society and beginning State formation to 1888*

At the time of European contact, the island of Rapa Nui had a decentralized social structure,<sup>322</sup> with several autonomous tribal groups, formally under the leadership of a 'ariki mau (paramount chief),<sup>323</sup> but actually quite independent from, and frequently engaged in warfare with, one another.<sup>324</sup> During the first half of the 19<sup>th</sup> century, the most powerful person on the island was the *tangata manu* (birdman), elected yearly in a sports competition among the war leaders of the different tribal groups, while the role of the

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<sup>317</sup> Bailleul 2001: 108

<sup>318</sup> Bailleul 2001: 111

<sup>319</sup> Bailleul 2001: 115-118 ; Candelot 2007 : 15-16

<sup>320</sup> Toullelan 1991: 11

<sup>321</sup> Bailleul 2001: 118-119; Peltzer 2002: 67 ; Candelot 2007 : 16-18

<sup>322</sup> Goldman 1970: 94

<sup>323</sup> Fischer 2005: 22-23

<sup>324</sup> Fischer 2005: 53-56



'*ariki* had become rather ceremonial.<sup>325</sup> In the 1850s, Nga'ara was the last traditional '*ariki* to exercise any significant influence.<sup>326</sup> No attempts of State formation comparable to any of the above mentioned islands were undertaken at that time. However, in 1862 and 1863, in systematic raids, Peruvian slavers murdered or kidnapped large parts of the population, and annihilated almost the entire leading class, including most members of the '*ariki* family, leading to a social, political and cultural collapse.<sup>327</sup>

In the following two decades, the political system of the island was reconstructed under French and Tahitian influences.<sup>328</sup> French Catholic Missionaries landed on the island in 1864, and under their influence some sort of government was established.<sup>329</sup> After the death of the last surviving member of the traditional '*ariki* family in 1867,<sup>330</sup> the island was headed by a "Council of State" under the chairmanship of French trader Jean-Baptiste Dutrou-Bornier, who had come to the island with the missionaries.<sup>331</sup> However, after a short time, he began to clash with the latter when he allied himself with a faction of traditional warriors and began to acquire land by means of deception and violence.<sup>332</sup> He expelled the mission and a large part of the population, who emigrated to Tahiti, and became the effective ruler over the island in 1871.<sup>333</sup> His Rapanui wife, Kerota or Koreto, was installed by him as "queen",<sup>334</sup> and in this capacity demanded a French protectorate

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<sup>325</sup> Kirch 1984: 277-278; Fischer 2005: 58-60; Delsing 2004: 14

<sup>326</sup> Fischer 2005: 80-85

<sup>327</sup> Delsing 2004: 24; Fischer 2005: 87-92

<sup>328</sup> Castri 1999

<sup>329</sup> Fischer 2005: 96-106

<sup>330</sup> Fischer 2005: 101

<sup>331</sup> Hotus et al. 1988: 285; Delsing 2004: 24; Fischer 2005: 103-104

<sup>332</sup> Hotus et al. 1988: 286-290; Fischer 2005: 106-113

<sup>333</sup> Fischer 2005: 113-117

<sup>334</sup> McCall 1997: 113; Fischer 2005: 119

in 1872.<sup>335</sup> This request, though supported by the French commissioner in Tahiti, was, after consideration,<sup>336</sup> rejected by the French government in 1874.<sup>337</sup> Several other such requests were also denied by Paris during the following years.<sup>338</sup>

After Dutrou-Bornier was assassinated due to his oppressive rule in 1876,<sup>339</sup> the missionaries returned, and Dutrou-Bornier's commercial interests were taken over by Anglo-Tahitian businessman Alexander Ari'ipa'ea Salmon.<sup>340</sup> Under the leadership of the mission, a kingdom was established in 1882, modelled along the lines of a district council in Tahiti, with Atamu Tekena as 'ariki, two to 'opae (councillors) and two judges<sup>341</sup>. At the same time, Salmon established a census registry.<sup>342</sup>

#### *The Chilean takeover 1888-1896*

The island continued to live under this joint rule of the missionary-sponsored kingdom and the Anglo-Tahitian business firm for several years. In the late 1880s, however, as it had become apparent that France did not want Rapa Nui, Chile, recently having become South America's leading naval power,<sup>343</sup> began to show interest in acquiring the island.<sup>344</sup> In 1887, the Chilean government commissioned Captain

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<sup>335</sup> Letter by Rapanui queen Kerota Puakurenga to the French commissioner in Tahiti, 3 March 1872. Centre for Overseas Archives, Aix-en-Provence, France, box 41, file B 23

<sup>336</sup> Letter from French Minister of the Navy and the Colonies to French Commissioner in Tahiti, April 1874; Letter from French Minister of Foreign Affairs to French Minister of the Navy and the Colonies, 2 April 1874. Centre for Overseas Archives, Aix-en-Provence, France, box 41, file B 23.

<sup>337</sup> Peltzer 2002: 65

<sup>338</sup> McCall 1997: 114; Castri 1999: 101; Fischer 2005: 125

<sup>339</sup> Delsing 2004: 25; Fischer 2005: 120

<sup>340</sup> Fischer 2005: 123-124

<sup>341</sup> *Informe de la Comisión Verdad Histórica y Nuevo Trato*. 3 Volumes. Government of Chile 2003. <<http://www.serindigena.org/territorios/recursos/biblioteca/monografias/historia/>>. [Accessed 10 March 2007] [hereafter *Informe de la Comisión Verdad Histórica*]: 288; Delsing 2004: 25; Fischer 2005: 128

<sup>342</sup> McCall 1997: 114; Fischer 2005: 130-131

<sup>343</sup> Delsing 2004: 25; Fischer 2005: 136-137

<sup>344</sup> Fischer 2005: 132, 136-137

Policarpo Toro to go to Tahiti to purchase the property administered by Salmon and negotiate with the Catholic mission,<sup>345</sup> and in 1888 to go to Rapa Nui to take possession of the island.<sup>346</sup> While negotiating with Toro about the Chilean takeover, which he fully endorsed,<sup>347</sup> Bishop Verdier of Tahiti also consulted with Rapanui exiles, advising them how to react to the Chilean colonisers. A Rapanui national flag was designed, brought by one of the returning exiles aboard Toro's ship to Rapa Nui, and hoisted there on the day before Toro's official landing, in order to demonstrate to him that the island was "socially organised".<sup>348</sup>

On the next day, 9 September 1888, a document of cession was signed by Atamu Tekena and eleven chiefs,<sup>349</sup> accepted by Toro in a proclamation of taking possession.<sup>350</sup> The content of the first document was markedly different in the Spanish and Rapanui versions. The Spanish version stated a cession "forever and without reserve" of the "full and entire sovereignty" and guaranteed the chief's titles, whereas the Rapanui version was much more ambiguous.<sup>351</sup> Even though Toro's proclamation clearly stated the need for ratification by the Chilean government, that ratification never happened.<sup>352</sup> Another striking feature of the document of cession is the absence of individual signatures. The names of the Rapanui leaders are all written in the same handwriting, marked with a "+".

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<sup>345</sup> Fischer 2005: 139

<sup>346</sup> Fischer 2005: 140

<sup>347</sup> Fischer 2005: 132-133, 139-141; Castri 1999: 102

<sup>348</sup> Hotus et al. 1988: 3; Castri 1999: 102

<sup>349</sup> *Vaai Honga Kaina / Cesion* ["Cession"], 9 Sept 1888. Archives of Grant McCall, University of New South Wales, Australia. Reprinted in *Informe de la Comisión Verdad Histórica*: 327. Reproduced in its entirety at the end of this thesis as part of Appendix D.

<sup>350</sup> *Proclamacion / Vananga Haaki* ["Proclamation"], 9 Sept 1888. Archives of Grant McCall, University of New South Wales, Australia. Reprinted in *Informe de la Comisión Verdad Histórica* : 333. Reproduced in its entirety at the end of this thesis as part of Appendix D.

<sup>351</sup> *Informe de la Comisión Verdad Histórica*: 329; Delsing 2004: 25; Fischer 2005: 142

<sup>352</sup> Fischer 2005: 142

As it can be assumed that at least some of the chiefs were literate, after more than twenty years of missionary influence (cf. the signatures of various Marquesan chiefs in 1842, only three years after the first Catholic missionaries had landed there in 1838,<sup>353</sup> as described above), the absence of genuine signatures cast some doubt on the authenticity of the document.<sup>354</sup> During the annexation ceremony, King Atamu Tekena gave Toro a bunch of grass while he put a handful of soil in his pocket, underlining his understanding of giving to Chile only the right to use the land, but not the land itself.<sup>355</sup> It is also said that the Chilean flag was hoisted beneath the Rapanui flag on the same flagpole, thus acknowledging the sovereign status of the island's native government.<sup>356</sup>

Following the taking of possession, a group of Chilean settlers was brought to the island under the leadership of Policarpo Toro's brother Pedro Pablo Toro. However, the latter was not officially appointed governor, only "agent of colonisation", and his Chilean settlement coexisted with, rather than supplanted, 'Ariki Atamu Tekena's native government.<sup>357</sup> However, the settlement did not go well, and in late 1892, it had to be abandoned, due to political troubles in Chile.<sup>358</sup> During the following four years, no Chilean ship called, and no one took care of the colony.<sup>359</sup> In consequence, Rapan Nui declared itself independent,<sup>360</sup> and the kingdom was reorganised under the leadership of 'Ariki Riro Kāinga, who had been elected to replace Atamu Tekena who passed away

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<sup>353</sup> Peltzer 2002: 44

<sup>354</sup> Fischer 1999: 82-83

<sup>355</sup> McCall 1997: 114; *Informe de la Comisión Verdad Histórica*: 293; Fischer 2005: 142; Hito 2004: 27

<sup>356</sup> Fischer 1999: 84-85; *Informe de la Comisión Verdad Histórica*: 293; Tuki et al. 2003: 452

<sup>357</sup> McCall 1997: 114-115; Fischer 1995: 142-143

<sup>358</sup> McCall 1997: 115; Fischer 2005: 144-146

<sup>359</sup> McCall 1995: 2; 1997: 115

<sup>360</sup> Fischer 2005: 146

shortly before in the same year.<sup>361</sup> The island was now once more a quasi-autonomous kingdom, while Chile had seemingly abandoned its new colony.<sup>362</sup>

In 1896, however, Chilean colonial presence was restored. A Chilean company, which claimed to have acquired the island, sent Alberto Sanchez Manterola as its manager,<sup>363</sup> who was also appointed by the Chilean government to be the *subdelegado marítimo* (“Maritime Sub-Delegate”), i.e. the governor.<sup>364</sup> Chilean sovereignty was now enforced. The Rapanui flag was taken down and its display prohibited in 1897.<sup>365</sup> As the company claimed the entire island as a sheep ranch and wanted to prevent thefts of livestock, a wall was built around the capital village Hanga Roa, and the population prohibited from leaving it.<sup>366</sup> When King Riro protested against these abuses and travelled to Valparaiso in late 1898 or early 1899 to complain to the Chilean government, he suddenly died there, probably from poisoning.<sup>367</sup> Sanchez subsequently declared the kingship abrogated.<sup>368</sup> Several acts of resistance followed and were severely repressed, through deportations and disappearances of native leaders by Sanchez and his successor Horace Cooper, and the native population was reduced to conditions close to slavery.<sup>369</sup> While a relative of Riro attempted to continue the institution of *‘ariki* in opposition,<sup>370</sup> the Chilean government officially ended the native kingship in 1902 by appointing a *cacique*

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<sup>361</sup> McCall 1997: 115; Fischer 2005: 147

<sup>362</sup> *Informe de la Comisión Verdad Histórica*: 297; Fischer 2005: 147

<sup>363</sup> Sanchez Manterola 1921: 1-3; Fischer 2005: 150

<sup>364</sup> Sanchez Manterola 1921: 12; McCall 1997: 116; Fischer 2005: 150

<sup>365</sup> Sanchez-Manterola 1921: 16; McCall 1997: 116. However, it might still have been hoisted thereafter. According to Hotus et. al (1988: 3) as well as Fischer (2005: 171), the definitive ban did only take place in 1913, under a different Chilean administrator.

<sup>366</sup> Sanchez Manterola 1921: 17; McCall 1997: 116; Fischer 2005: 153

<sup>367</sup> Sanchez Manterola 1921: 17; Hotus et al 1988: 302-303; McCall 1997: 116; Tuki et al. 2003: 456; Fischer 2005: 153

<sup>368</sup> Sanchez Manterola 1921: 17

<sup>369</sup> McCall 1997: 116-117. Tuki et al. 2003: 456 Fischer 2005: 154-156

<sup>370</sup> Fischer 2005: 154

(headman of the native village) instead.<sup>371</sup> The process of colonisation was thereby completed.

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<sup>371</sup> Fischer 2005: 155

## Chapter 2

### Legal Evaluations of Imperialist Takeover

#### Evaluation in terms of international law

In order to evaluate the acts or processes of acquiring the territories described in the first chapter, each of these acts needs to be analyzed in terms of international law, as it operated during the time these acquisitions took place.

Before going into the details of international law, it is worth to take a brief look at the global context. Throughout the 19<sup>th</sup> century, European powers increased their colonial empires and took over most of the rest of the world. In the mid-1800s, Eastern Polynesia became increasingly a target of this imperialism, until in the late 1800s, the scramble for colonies was fully going on there as well.<sup>372</sup> As the world system was dominated by the European powers, concepts of international law of that time were exclusively shaped from the point of view of these powers.

The evolution of this concept of international law started with the Treaty of Westphalia in 1648, which originated the idea of state sovereignty.<sup>373</sup> After this treaty, the European States viewed themselves as a “Family of Nations” and established increasingly elaborate rules regarding how to deal with one another. Some scholars had envisioned a system of mutual respect between all peoples as a concept derived from “natural law”, like for example postulated by Hugo Grotius in the early 1600s,<sup>374</sup> and early post-Westphalian international law scholar Emmerich de Vattel in the mid-1700s

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<sup>372</sup> For a summary of imperialism in Oceania in the nineteenth century, see Toullelan 1987: 31-52

<sup>373</sup> Anaya 2004: 19

<sup>374</sup> Anaya 2004: 19; Schweizer 2005: 19-23

employed the concept of the Nation-State as broadly as possible to non-European societies as well.<sup>375</sup> By the nineteenth century however, i.e. at the time relevant to this study, a more restricted interpretation of international law had become prevalent in a framework of so-called positivism.<sup>376</sup> International law was then seen strictly applying to members of the Family of Nations, which was defined as the original European States and a few non-European States recognised by them.<sup>377</sup>

The two most prominent international law scholars of that period were John Westlake and Lassa Oppenheim, and their works will be used as sources in the following analyses. Westlake published his *Chapters on the Principles of International Law* in 1894, contemporary to many of the examples under review in this chapter.<sup>378</sup> Oppenheim published *International Law: A Treatise* in 1920, after international law had changed substantially following the treaty of Versailles at the end of World War I.<sup>379</sup> However, he refers mostly to pre-Versailles international law, and most of the examples used in his book are from the late 19<sup>th</sup> century, thus at the same period of time as the acquisitions of the islands in question.

As we have seen, international law refers to the legal concepts regulating the relations between sovereign states. According to Oppenheim, a State is defined by the existence of four conditions, which are: first, a people, i.e. a permanent population; secondly, a country, i.e. a defined territory; thirdly, a government, i.e. a group of persons who represent the people and rule over it; and fourth, this government must be sovereign,

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<sup>375</sup> Anaya 2004: 20-23

<sup>376</sup> Term after Anaya 2004: 26

<sup>377</sup> Anaya 2004: 26-29

<sup>378</sup> Westlake 1894

<sup>379</sup> Oppenheim 1920



i.e. exercising supreme authority and not be subject to any other authority.<sup>380</sup> However, in order to be subject of international law as an “International Person”, such a State needs to be recognised. Only then is it regarded as a member of the Family of Nations.<sup>381</sup> This recognition is given either explicitly, i.e. when the State in question formally asks for and receives a formal recognition, or implicitly, i.e. through an act of international relations in which the State in question is treated as an International Person.<sup>382</sup>

### *The case of Hawai‘i*

In the case of Hawai‘i, the four conditions were clearly present after the unification of the archipelago by Kamehameha. Without any question, Hawai‘i had been a State since 1795 or 1810. Its recognition as an independent State occurred in 1843, clearly following the first example, with the three envoys being sent to pursue recognition, and explicitly receiving it in a joint declaration by Britain and France, then the two leading world powers. In the declaration, the two powers unambiguously agreed “to consider the Sandwich Islands [i.e. the Hawaiian Islands] as an independent State”.<sup>383</sup> There can therefore be no doubt about Hawai‘i being at the time of the overthrow of 1893 a fully co-equal member in the Family of Nations, unlike any other Polynesian or even Asian State. John Westlake thus wrote in 1894:

The International Society to which we belong, and of which what we know as international law is the body of rules, comprises-*First*, all European states. [...] *Secondly*, all American states. [...] *Thirdly*, a few Christian states in other parts of the world, as **the Hawaiian Islands**, Liberia and the Orange Free State [i.e. one of the Boer republics in

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<sup>380</sup> Oppenheim 1920: 127

<sup>381</sup> Oppenheim 1920: 134-135

<sup>382</sup> Oppenheim 1920: 135-136

<sup>383</sup> 1843 *Anglo-Franco Declaration*

today's South Africa]. The same cannot be said of all Christian states, not for instance of Abyssinia [i.e. Ethiopia].<sup>384</sup>

As Liberia and the Boer republics were founded by settlers, not natives,<sup>385</sup> and could therefore be compared to the American States, Hawai'i was the first, and for most of the nineteenth century the only, non-Western country to be recognised, whereas the same recognition was denied to other non-Western States even if they were Christian, as the example of Ethiopia shows. In consequence of this recognition, Hawai'i's monarchs and royalty were treated as equals by their European counterparts, as was experienced by King Kalākaua during his tour of the world in 1881,<sup>386</sup> and by Queen Kapi'olani and Princess Lili'uokalani when they attended Queen Victoria's golden jubilee in 1887.<sup>387</sup>

As a recognised independent State, the Hawaiian Kingdom was thus subject to all the rules of international law of that time. Given that fact, its alleged extinction and the acquisition of its territory by the United States needs to be examined under these rules. According to Oppenheim, there are four ways in which a State can be extinguished: merger into another State, annexation after conquest in war, breaking up into several States, or being broken up into several parts that are each annexed by other States.<sup>388</sup> The latter two situations are not relevant to this case, so they do not need to be considered. The two ways in which the United States could have legally acquired Hawai'i would thus be either by cession or belligerent subjugation.

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<sup>384</sup> Westlake 1894: 81-82. Italicised words in the original. Emphasis in bold letters added.

<sup>385</sup> Craven 2004a: 12

<sup>386</sup> Armstrong 1977

<sup>387</sup> Lili'uokalani 1990: 135-176; McGuire 1995

<sup>388</sup> Oppenheim 1920: 143

Cession of territory is defined as the transfer of sovereignty over territory from one State to another,<sup>389</sup> in a treaty that is the outcome of either peaceful negotiations or of war.<sup>390</sup> In the case of Hawai‘i however, the alleged treaty of cession of 1897 was neither the outcome of negotiations between the United States and the Hawaiian Kingdom, nor was there ever a state of war between the two nations. Instead, the alleged treaty was the result of negotiations between the United States and a puppet government of insurgents who were put in power through an intervention of the United States itself and therefore had no legal authority to transfer title of sovereignty. Furthermore, the treaty was not ratified by the United States Senate as is required for an international treaty in the U.S. constitution,<sup>391</sup> making the treaty null and void in any case, as a treaty of cession is not binding if it not in accordance with the municipal laws of either party.<sup>392</sup>

Annexation after conquest, referred to as subjugation<sup>393</sup> by Oppenheim, means the annexation of a state after its territory has been completely conquered in war (also called *debellatio*<sup>394</sup>), thereby extinguishing its existence.<sup>395</sup> One could be tempted to interpret the armed invasion of 1893, the subsequent installation of a puppet regime and the later unilateral act of annexation as a multi-step process of subjugation.<sup>396</sup> However, the fact that the insurgents’ government was not at all times a simple tool of US government (it refused, for instance, to follow US president Cleveland’s order to dissolve itself in late

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<sup>389</sup> Oppenheim 1920: 376

<sup>390</sup> Oppenheim 1920: 378

<sup>391</sup> *Constitution of the United States of America*. Reproduced on the US National Archives website <[http://www.archives.gov/national-archives-experience/charters/constitution\\_transcript.html](http://www.archives.gov/national-archives-experience/charters/constitution_transcript.html)>. Accessed 8 June 2007. [hereafter *US Constitution*]. Art. II, Sec.2

<sup>392</sup> Oppenheim 1920: 376

<sup>393</sup> Oppenheim 1920: 394

<sup>394</sup> Rivier, quoted in Craven 2004b: 521

<sup>395</sup> Oppenheim 1920: 394-396

<sup>396</sup> Craven 2004b: 528

1893) discredits the thesis of a constant process of subjugation, and as there were never any armed hostilities between the United States and the Hawaiian Kingdom, the condition of conquest by defeat in war is clearly not applicable. According to international law professor Matthew Craven, “most authors at that time were fairly clear that conquest and subjugation were events associated with the pursuit of war and not merely with the threat of violence”.<sup>397</sup> Furthermore, in contrast to the then still dominant position of the European powers, it was United States policy during the latter part of the 19<sup>th</sup> century to oppose acquisition of territory by conquest.<sup>398</sup> In 1890 the United States had convened a peace conference of American States in which Hawai‘i was invited to participate,<sup>399</sup> at which a resolution was adopted prohibiting conquest as a means of acquiring territory.<sup>400</sup> Already a decade before, the United States had officially denounced Chile’s waging of war to acquire territory from Peru and Bolivia.<sup>401</sup> It would thus have been contrary to principles of US policy to pursue a conquest of the Hawaiian Kingdom, and the negative reaction of the Cleveland administration to the actions of Minister Stevens clearly show that such a policy was not pursued.

In summary, it can be clearly established that the United States did not acquire sovereignty over the Hawaiian Islands in either of the ways permissible under international law. According to Craven,

It [i.e. the alleged annexation of the Hawaiian islands in 1898] neither possessed the hallmarks of a genuine ‘cession’ of territory, nor that of forcible annexation (conquest).

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<sup>397</sup> Craven 2004b: 529

<sup>398</sup> Craven 2004b: 521

<sup>399</sup> The reason for Hawai‘i being invited to a conference of American States despite its location in Oceania, not America, probably lay in its close trade relations with the United States, and, in the absence of any other recognised States in Oceania, the American States of Mexico and the United States being its geographically closest fellow members of the Family of Nations.

<sup>400</sup> Chock 1995: 476-478

<sup>401</sup> Chock 1995: 479

If, however, the US neither came to acquire the Islands by way of treaty of cession, nor by way of conquest, the question then remains as to whether the sovereignty of the Hawaiian Kingdom was maintained intact.<sup>402</sup>

Craven goes on to say that the closest parallel to this situation “is to be found in the law governing belligerent occupation”.<sup>403</sup> Belligerent occupation is the situation of a State controlling territory of another State during war. Until the territory in question is ceded to or annexed by the occupying State, its authority is *de-facto* only, whereas the sovereignty remains with the occupied State.<sup>404</sup> By the turn of the 20<sup>th</sup> century, besides belligerent occupation, a notion of peacetime occupation came to be recognised, subject to the same rules.<sup>405</sup> In the absence of an armed conflict between the United States and the Hawaiian Kingdom, peacetime occupation is probably the legal classification that comes closest to the relationship that was established between the United States and Hawai‘i in 1898. As Hawai‘i’s sovereignty was never extinguished in any legally recognised way, it can thus be presumed to have remained intact to this day.<sup>406</sup>

#### *The case of the Leeward Islands*

Whereas Hawai‘i has been referred to as the only State in the Pacific during the 19<sup>th</sup> century to have been fully recognised, and all contemporary sources seem to maintain that position, some questions have to be raised concerning the status of the three Leeward Islands kingdoms of Ra‘iātea, Huahine and Porapora. The fact that the international recognition of the Hawaiian Kingdom as an independent State in 1843 is based on a joint declaration by the governments of the United Kingdom and France

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<sup>402</sup> Craven 2004b: 530

<sup>403</sup> Craven 2004b: 530

<sup>404</sup> Craven 2004b: 530-531

<sup>405</sup> Craven 2004b: 532-533

<sup>406</sup> Crawford quoted in Sai 2004: 52

necessitates a close comparison of this document to that of 1847 referring to the Leeward Islands. Essentially, Britain and France made the same commitments to the three kingdoms as they had made to Hawai‘i before, namely to recognise their independence and “never to take possession, neither directly, or under the title of Protectorate, or under any other form” of their territory.<sup>407</sup> If such a declaration made Hawai‘i an internationally recognised State, of which there is overwhelming evidence that it did, it must be assumed that a declaration in almost the same wording would grant the same status to Ra‘iātea, Huahine and Porapora as well. Indeed there is contemporary evidence that the two declarations were regarded as very similar in effect.<sup>408</sup>

However, upon closer examination there are two marked differences between the two documents. First, unlike the 1843 declaration on Hawai‘i, the 1847 Jarnac Declaration does not mention the word “independent State”, but merely talks about recognising “the independence of the islands [...]”.<sup>409</sup> This difference seems to be a minor issue, however, as the formation of a State is a matter of fact, not of law;<sup>410</sup> and there is evidence that the three Leeward Islands kingdoms were fulfilling the four criteria of statehood as referred to above, as they had a defined territory and population, and a system of government, including written law codes. What is a matter of law is recognition,<sup>411</sup> and this was explicitly given to the three kingdoms. The second, and probably more important difference is the stated motivation for the recognition. The 1847 Jarnac declaration seems to be much less the result of native diplomacy (even though

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<sup>407</sup> *1843 Anglo-Franco Declaration; 1847 Jarnac Declaration*

<sup>408</sup> Letter by French commander Isidore Chessé to the French minister of the Navy and the Colonies, 23 December 1880. Centre for Overseas Archives, Aix-en-Provence, France, box 90, file A115.

<sup>409</sup> *1847 Jarnac declaration*

<sup>410</sup> Oppenheim 1920: 373

<sup>411</sup> Oppenheim 1920: 373

Queen Teriitaria's letter to Queen Victoria must be taken into consideration) than of the rivalry between France and Great Britain over the islands. Even though the same rivalry certainly existed in Hawai'i's case as well, the direct cause for the 1843 declaration was the mission of the diplomatic envoys sent by the Hawaiian government. In the 1843 declaration on Hawai'i, the stated motivation for the recognition is thus "the existence in the Sandwich Islands (Hawaiian Islands) of a government capable of providing for the regularity of its relations with foreign nations",<sup>412</sup> whereas in the 1847 declaration on the Leeward Islands, the primary intent of the two powers is to "dispel a cause of discussion between their respective Governments concerning the islands [...]".<sup>413</sup>

Despite this much weaker language in the 1847 declaration as compared to that of 1843, Ra'iātea, Huahine and Porapora nevertheless seem to have been recognised as independent States, otherwise the words "recognise" and "independent" would have been left out of the declaration. Indeed, the declaration was later used at least once as an international guarantee for the islands' independence, and not merely as a bilateral agreement between France and the UK not to colonise them: When the American consul in Pape'ete unsuccessfully attempted to annex the Kingdom of Ra'iātea to the United States in 1858, the 1847 convention was cited to prevent that from happening.<sup>414</sup> Unlike the Hawaiian Kingdom, however, the Leeward Islands kingdoms did not engage in active international diplomacy, except for Huahine's 1868 convention with the French protectorate government in Tahiti and its unratified treaty with Germany in 1879. As a consequence, those kingdoms received little notice from the rest of the international

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<sup>412</sup> *1843 Anglo-Franco declaration*

<sup>413</sup> *1847 Jarnac declaration*

<sup>414</sup> *Boston Semi-Weekly Advertiser 1858*

community. It might thus be questionable if they could be truly considered members of the Family of Nations.

As for France's actions to acquire the three kingdoms in the 1880s and 1890s, the 1880 protectorate over Ra'iātea was clearly a violation of the 1847 convention and therefore illegal under international law. However, after their decision to abrogate the Jarnac convention in 1887, France and the United Kingdom no longer considered the islands as recognised independent States, and France subsequently took them over without any international protests. This assertion needs to be further evaluated. According to Lassa Oppenheim, the recognition of a State, once given, cannot be withdrawn, even if a State does not comply with conditions that were set for its recognition.<sup>415</sup> The 1887 abrogation of the 1847 recognition of the three Leeward Islands Kingdoms would thus be an illegal act under international law and thereby null and void. If anything, the 1887 convention might have abrogated the mutual engagement of France and Great Britain not to take possession of the islands, but it could not have taken away their status as recognised independent states.

The acquisition of the three kingdoms' territory by France thus needs to be examined in the same terms as that of Hawai'i. The 1888 unilateral declaration of annexation by France would then be in total contradiction to international law, as it was neither a cession by the Leeward islands governments of their territory to France, nor an act of belligerent annexation since at that time France had not yet waged war against any of the kingdoms.

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<sup>415</sup> Oppenheim 1920: 137



In the case of Huahine, the local government apparently accepted the French annexation,<sup>416</sup> but no treaty of cession is known to have been signed, so that there was no legal cession of territory. With the subsequent establishment of a nationalist rebel government in opposition to the existing one, the situation became enormously complex. Occasional armed hostilities between the two factions and occasional interventions by France took place for the following seven years, so that no clear established authority existed. Rather, there was a state of civil unrest. When in 1890 the government of Queen Teha'apapa vanquished the rebels and signed a protectorate agreement with France, this was neither countersigned by the French authorities nor ratified by France, and therefore cannot be regarded as an international treaty of protection as it could have been established between two sovereign states.<sup>417</sup> In contrast, the 1895 declaration by the queen and government of Huahine to abdicate and cede their sovereignty to France, countersigned by the French authorities of Tahiti, might be considered a treaty of cession. However, the fact that it was never properly ratified by France, only implicitly through the 1898 law declaring the Leeward Islands to be "an integral part of the colonial domain of France",<sup>418</sup> casts some doubt on the validity of that act as well. As the process of taking possession of Huahine between 1888 and 1895 involved periodic acts of violence, it might alternatively be seen as a form of military conquest. However, as there was never a systematic effort on the part of France to invade and subjugate the island, but rather a confusing series of diplomatic initiatives and military interventions, belligerent

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<sup>416</sup> Saura 2006: 143

<sup>417</sup> Oppenheim 1920: 165-168. A cited example would be Italy's protectorate over San Marino.

<sup>418</sup> *Loi du 19 mars 1898 déclarant les Îles-sous-le-vent de Tahiti partie intégrale du domaine colonial de la France* ["Law of 19 March 1898 declaring the Leeward islands to be an integral part of the colonial domain of France"]. Reprinted in Lechat 1990: 230-231 and in Peltzer 2002: 190-192

subjugation would also be questionable as a classification for the case of Huahine. If neither cession nor subjugation are applicable, Huahine would still be a sovereign state under French occupation, this occupation being first belligerent, then peaceful. With fewer facts available than in the case of Hawai‘i, however, I am hesitant to establish definitely any legal classification, and would rather leave this question open for further research.

In contrast, the situation on Rai‘ātea seems a little clearer. The unilateral annexation of 1888 was accepted by the local government which dissolved itself in consequence, and allowed France to occupy the capital ‘Uturoa and its immediate surroundings. However, as no treaty of cession is known to have been signed, Rai‘ātea’s sovereignty remained intact, but its government was no longer in existence, and parts of the national territory came under French occupation. A new government was subsequently formed to fill the gap left by the dissolved one, and it exercised control over the entire national territory of Rai‘ātea, except for the French occupied territory around ‘Uturoa, during the following nine years. In 1897 finally, France waged a war against that government and in that war conquered the entire national territory, thereby annihilating its government. This could be regarded as a case of *debellatio* or subjugation.<sup>419</sup> If that classification is accepted, one could argue that the subsequent annexation through a French law in 1898 was a legal procedure, as the annexation of a State conquered in war was an acceptable form of acquiring territory.<sup>420</sup> However, there was apparently no legal documentation of Rai‘ātea’s surrender, since France regarded the island as already annexed in 1888, and the Teraupo‘o government as mere rebels against French rule. It

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<sup>419</sup> Rivier, quoted in Craven 2004b: 521; Oppenheim 1920: 394-500

<sup>420</sup> Oppenheim 1920: 394

seems to be questionable whether the extinction of a country's sovereignty can happen without any document signed by its government. If that is so, Ra'iātea would also be an occupied State like Hawai'i. Like in the case before, much more research needs to be done for a final evaluation.

The case of Porapora is more similar to Huahine, but much less complex. The unilateral annexation of 1888 is clearly null and void, and it does not seem to have had much effect on the island anyway, since the Porapora kingdom government continued to exist for seven more years. When the latter finally ceded its territory to France in 1895 through a document that was countersigned by the French authorities of Tahiti, this could be regarded as a treaty of cession. However, like in the case of Huahine, that document was never properly ratified by France, only implicitly through the 1898 annexation law, so that there remain doubts on the validity of that cession. Belligerent subjugation can probably be excluded, as there were apparently no armed hostilities between France and Porapora. Like Huahine, Porapora's sovereignty might not have been properly extinguished and the island therefore find itself under mere French occupation, but in order to clearly establish such a qualification, much more research needs to be done.

#### *The case of Tahiti and other non-recognised States*

In contrast to Hawai'i and probably the Leeward Islands, all the other island entities in question were not recognised as members of the Family of Nations. In consequence, under nineteenth century international law, they would be qualified either as non-fully sovereign states or as "uncivilised tribes", depending on whether they

fulfilled the criteria for a state after Oppenheim as cited above,<sup>421</sup> or, according to John Westlake, the “international test of civilisation”, which means that a government existed under which the life of both native inhabitants and Western immigrants could be regulated and protected.<sup>422</sup> The absence of recognition alone did not deny the existence of a State, and there were States in existence that were not, or not fully, members of the Family of Nations.<sup>423</sup> According to Westlake,

Our international society [i.e.the Family of Nations] exercises the right of admitting outside states to parts of its international law without necessarily admitting them to the whole of it.<sup>424</sup>

Westlake goes on to cite the Asian empires of China and Japan, as well as Siam [Thailand] and Persia [Iran] as examples, with which Western states had diplomatic relationships, but these relationships were unequal because of consular jurisdiction over Western nationals living in those countries.<sup>425</sup> According to Oppenheim, these countries were clearly civilised States, but their state of civilisation was not yet entirely compatible with that of the States of the Family of Nations.<sup>426</sup> The States in that category were either non-Christian<sup>427</sup> like China and Persia or, if Christian, of a non-Western cultural background, such as Ethiopia and Madagascar.

In Polynesia, Hawai‘i before 1843 would clearly fit into the category of a not recognised, yet fully functioning State, at least since it started diplomatic relations with Western powers in 1824. The Kingdom of Tahiti before the establishment of the French Protectorate in 1842 would also fall into that category. Kanalu Young describes both

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<sup>421</sup> Oppenheim 1920: 126-127

<sup>422</sup> Westlake 1894: 141-143

<sup>423</sup> Oppenheim 1920: 134-135, 373

<sup>424</sup> Westlake 1894: 82

<sup>425</sup> Westlake 1894: 82, 102

<sup>426</sup> Oppenheim 1920: 35, 180-181

<sup>427</sup> Oppenheim 1920: 179-180

cases as non-sovereign States, which he defines as political entities internally functioning as States but not internationally recognised, thus not protected from colonisation.<sup>428</sup> From the political unification under Pōmare II in 1815 onwards, Tahiti clearly fulfilled the criteria of a State, and its functioning became even more apparent after the enactment of written laws in 1819 and the establishment of a de-facto constitutional form of government in 1825. Both Tahiti and Hawai‘i in the early 1840s fulfilled both Oppenheim’s criteria of a State and passed Westlake’s “test of civilisation”. If Dupetit-Thouars had not intervened in 1842, and if Queen Pōmare had had a more politically moderate and diplomatically skilled advisor like William Richards instead of the fanatically anti-Catholic and anti-French Pritchard,<sup>429</sup> Tahiti could quite possibly have achieved recognition at the same time as Hawai‘i.

Instead, the Tahitian Kingdom came under a French protectorate. Protectorates are defined as arrangements between two States, in which one more powerful State dominates the other and manages its foreign affairs.<sup>430</sup> The protected State thereby loses parts of its sovereignty and becomes a half-sovereign State.<sup>431</sup> Protectorates were a common phenomenon during the nineteenth and early twentieth century, both between recognised Western States, such as Britain over the Ionian Islands off the coast of Greece, or Italy over San Marino,<sup>432</sup> and between recognised Western States and non-recognised non-Western States, such as Britain over Zanzibar and Egypt, or France over Tunisia,

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<sup>428</sup> Young 2006: 7-8

<sup>429</sup> Toullelan (1991: 19) blames much of the troubles of the 1840s on Pritchard’s fanaticism.

<sup>430</sup> Westlake 1894: 177-178; Oppenheim 1920: 165-169

<sup>431</sup> Westlake 1894: 178; Oppenheim 1920: 142, 165-166

<sup>432</sup> Westlake 1894: 178; Oppenheim 1920: 166

Morocco and Madagascar.<sup>433</sup> Apparently, the Tahitian protectorate was modelled after the British protectorate over the Ionian Islands, which was the only other protectorate then in existence.<sup>434</sup> Tahiti might thus be the first case of a protectorate of a Western power over a non-recognised non-Western State, several decades before the examples cited by Westlake and Oppenheim (Zanzibar, Egypt, Morocco, Tunisia, Madagascar) were established. Given this circumstance, the status in international law of the Tahitian protectorate was at first rather vague and unclear, as French officials themselves admitted.<sup>435</sup> However, the 1842 Protectorate agreement between France and Tahiti was acknowledged as an international convention, ratified like a treaty, and initially regarded as binding by France. Throughout the protectorate period, the queen of Tahiti was treated as a head of State in diplomatic protocol.<sup>436</sup> Dupetit-Thouars' unilateral action of annexation of 1843 was hence disapproved by the French government. The second protectorate convention of 1847 could therefore be regarded as equally legally questionable, since it was not ratified by France.<sup>437</sup> The constant interference by France into the constitutional structure of the Tahitian Kingdom during the 1860s and 70s was even more questionable as it violated both the 1842 and 1847 agreements. However, one might argue that despite France's initial treatment of Tahiti as a more equal partner, this status was probably not enforceable under international law because the protected State lacked international recognition before the establishment of the protectorate. According to Oppenheim, it might be questionable "whether they [non-Western States under

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<sup>433</sup> Westlake 1894: 178; Oppenheim 1920: 168-169

<sup>434</sup> O'Reilly and Newbury in Laval: XCVI-XCVII; Touillelan 1987: 58

<sup>435</sup> O'Reilly and Newbury in Laval: XCVI; Newbury 1980: 111-112

<sup>436</sup> Gille 2006: 37

<sup>437</sup> Leriche 1978: 309

protectorate of European States] have any real position within the Family of Nations at all”.<sup>438</sup>

In this light, the 1880 annexation of the Tahitian Kingdom by France might be legally valuable despite its lack of proper ratification on both the Tahitian and French sides. Citing the example of Madagascar, which, as a French protectorate, was annexed by France in 1896, Oppenheim argues that protectorates over non-Western States are in many cases but the first step towards annexation<sup>439</sup> and have virtually always led to the latter unless the protected country succeeds “in shaking off the protectorate by force”,<sup>440</sup> which Tahiti unsuccessfully attempted in the 1844-1846 Franco-Tahitian War. On the other hand, however, the same author states that “”territory of any State, even though it is entirely outside the Family of Nations [...] can only be acquired through cession or subjugation”,<sup>441</sup> and that “cession of territory made to a member of the Family of Nations by a State as yet outside that Family is real cession and a concern of the Law of Nations, since such State becomes through the treaty of cession in some respects a member of that family.”<sup>442</sup> According to that opinion, the 1880 declaration could be treated as a treaty of cession under international law and, not being properly ratified, would indeed be legally questionable, as argued by some recent Tahitian scholars.<sup>443</sup>

Many of the other islands of today’s French Polynesia fall into a similar category as Tahiti. Most Polynesian islands in the nineteenth century could be classified as not fully sovereign States, meeting both Oppenheim’s four qualifications for a State and

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<sup>438</sup> Oppenheim 1920: 168

<sup>439</sup> Oppenheim 1920: 168

<sup>440</sup> Oppenheim 1920: 169

<sup>441</sup> Oppenheim 1920: 384

<sup>442</sup> Oppenheim 1920: 377

<sup>443</sup> Montluc 2004

passing Westlake's "test of civilisation", but lacking international recognition. The three Leeward Islands kingdoms had that status from about 1815-1822 until their recognition in 1847. Rimatara, Rurutu and Rapa similarly were non-recognised States since the 1820s. Since the mid-1830s, Mangareva was a non-recognised State as well. All these four island kingdoms subsequently went through a similar political evolution as Tahiti, becoming first French protectorates, then being annexed as colonies. In Mangareva and Rapa, the political relationship with France remained unclear during the protectorate phases, and they both attempted to shake off the French overlordship until it was enforced by more or less subtle military interventions. Whereas Rapa's annexation is based on questionable documents, Mangareva's annexation seems to be more genuine as it was ratified by France. Rurutu and Rimatara, on the other hand, entered protectorate agreements only in 1889, and remained independent for most of the nineteenth century. During the second half of the century, they came very close to the status of independent States despite their extreme smallness (less than 1000 inhabitants each), even though they did not achieve explicit recognition. As internally sovereign States, they were nevertheless to some degree acknowledged as proper countries.<sup>444</sup> For instance, their flags are listed in a nineteenth century German lexicon of world flags next to those of Hawai'i and the Leeward Islands kingdoms.<sup>445</sup> However, the protectorate and annexation documents with Rurutu and Rimatara were not clearly treated as international treaties and never ratified by the French government, even though their content was entirely respected by France until the mid of the twentieth century. As in the case of Tahiti, the non-ratification might make the agreements legally questionable, if one accepts Oppenheim's

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<sup>444</sup> Candelot 1997: 20

<sup>445</sup> Siebmacher 1978: 24, plates 86-87



above-mentioned argument that a non-recognised State becomes implicitly recognised through its act of cession of territory to a recognised State.

*The case of the Marquesas Islands and other non-State territories*

Territories that were not under the sovereignty of any State, whether it be recognised or not, were regarded under nineteenth century international as not belonging to any state until becoming occupied by one. Their inhabitants would be considered as “natives”<sup>446</sup> or “uncivilised tribes”,<sup>447</sup> of whom, according to Westlake, “international law takes no account”.<sup>448</sup> Within Eastern Polynesia, both the Marquesas and the eastern Tuamotu Islands would fall into that category. Even though by today’s standards it would be considered an insult to call Marquesans with their sophisticated traditional culture “uncivilised”, what it meant in the nineteenth century was that their social and political organisation was too different from that of Western countries to be considered a State. The islands in question did not have any stable centralised authority that would have been capable of entering into diplomatic relations with Western countries. In addition, it would have been impossible for Western immigrants to receive protection of life and property or any other kind of Western-style government services from a local authority, thus failing Westlake’s “international test of civilisation”.<sup>449</sup> On Tahuata island in the Marquesas, attempts at the formation of a State were made by Iotete in the late 1830s, but these efforts represented just the first steps in State formation, were apparently not permanent, and the resulting “kingdom” encompassed at the most the rather small and marginal

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<sup>446</sup> Oppenheim 1920: 383

<sup>447</sup> Westlake 1894: 137-140

<sup>448</sup> Westlake 1894: 136

<sup>449</sup> Westlake 1894: 141-143

island of Tahuata. In the rest of Marquesas as well as on the Eastern Tuamotus there was never anything resembling a State before the French takeover, only traditional tribal structures.

According to Oppenheim, the acquiring of sovereignty over hitherto non-state territory by a state, which he terms “occupation”, and which I will henceforth call *colonial occupation* to distinguish it from belligerent occupation of one state by another, “is effected through taking possession of, and establishing an administration over, the territory in the name of, and for, the acquiring state”.<sup>450</sup> The act of claiming a territory through a ceremony of taking possession alone, if it is not followed by the establishment of a permanent colonial administration, does not grant an effective title to sovereignty.<sup>451</sup> However, initial discovery or occupation of a territory may grant an inchoate title that may prevent other powers from acquiring the claimed territory until the inchoate title becomes perfected into a real title through effective permanent occupation.<sup>452</sup> As for documents of cession signed by native authorities in such areas, these are not to be understood as internationally binding treaties, and as such grant neither inchoate nor real titles to sovereignty, but they are rather seen as a testimony of the goodwill of the coloniser towards the native population and thus as evidence towards other powers of the intent to colonise.<sup>453</sup> The value of such agreements is moral only, not legal.<sup>454</sup>

The documents that Dupetit-Thouars had the Marquesan chiefs sign in 1842 and 1843 are thus to be regarded not as contracts between equal partners, but rather as pieces

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<sup>450</sup> Oppenheim 1920: 383-384

<sup>451</sup> Oppenheim 1920: 385

<sup>452</sup> Westlake 1894: 160-166; Oppenheim 1920: 386

<sup>453</sup> Westlake 1894: 144

<sup>454</sup> Oppenheim 1920: 385

of evidence towards other Western Powers that France acquired sovereignty. That is probably the reason why the documents were written in French only and not translated into Marquesan. In fact, none of the triplicate copies of the documents went to the chiefs themselves, only to different French government departments.<sup>455</sup> By taking possession of all the islands in 1842, France thus acquired an inchoate title of sovereignty over the entire archipelago, but subsequently held a real title only over Tahuata and Nuku Hiva, where permanent colonial administrations were installed. As these were eventually both abandoned, I would argue that France lost its title to sovereignty again, and any other power could have taken the islands into their possession. Only on Nuku Hiva did France exercise anything like an effective colonial occupation, one could argue, since the periods of temporary abandonment of this island were relatively short. For most of the archipelago, on the other hand, France exercised permanent and therefore effective colonial occupation only since 1880. Continuous French sovereignty over the archipelago would therefore rather begin in that year, and not in 1842, as claimed by France.

Concerning the Eastern Tuamotu islands, their acquisition by France is legally quite complex, as it involves both France and the Tahitian kingdom under French protection. Tahiti as a State, albeit not a recognised one, acquired some of the Tuamotu islands, and subsequently claimed the whole archipelago without actually controlling it. This might be considered as some kind of an inchoate title to sovereignty by the Tahitian Kingdom. All of this was of course not really enforceable under international law, as the Tahitian State was not a recognised member of the Family of Nations. Later, France implemented Tahiti's claim by establishing effective sovereignty over the eastern

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<sup>455</sup> Bailleul 2001: 89

Tuamotu islands on behalf of Tahiti as its protector. This might thus be considered a complex form of colonial occupation, not unlike the case of the Sudan being co-colonised by Britain and its own protectorate, Egypt.<sup>456</sup>

### *The case of Rapa Nui*

The question whether or not Rapa Nui achieved the status of a State before the Chilean annexation is not easy to answer. It is very clear that no political development towards a state took place until the 1860s, probably due to the island's remoteness and infrequent Western contacts, causing only a minimum of Western influence. The slaving raids then virtually annihilated the traditional society and left only a remnant of its former inhabitants, in a state of anarchy in both Western and traditional terms.

In the late 1860s however, under the influence of the missionaries and the French trader Jean-Baptiste Dutrou-Bornier, a "government" was apparently set up.<sup>457</sup> These efforts were probably much more due to the French missionaries and traders than to any native initiative, but they should be regarded as an attempt at State formation. The resulting government, however, was very unstable, especially after Dutrou-Bornier began pursuing his own agenda and created his own "kingdom", while at the same time unsuccessfully attempting to represent the interests of the French government. It is unclear whether the "government" through an unstable alliance between native chiefs, Dutrou-Bornier and the French missionaries would qualify as a State. It might have for a short moment, when the alliance between the three forces worked out and was well-coordinated, but when it broke up, there was rather anarchy on the island. Under Dutrou-

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<sup>456</sup> Oppenheim 1920: 190

<sup>457</sup> Fischer 2005: 96-106

Bornier's tyranny, there might have been some sort of a State again, but it would probably not pass Westlake's test of civilisation, as it did not provide any protection to either the natives or other foreigners like the missionaries, but rather arbitrary terror against them.

When the missionaries came back and Alexander Salmon became the manager in the late 1870s, Rapa Nui evolved more constantly towards a State, and some sort of a government apparatus was established in the 1880s under King Atamu Tekena. Whether it was really a State might still have been questionable, and many contemporary Westerners clearly treated the Rapanui authorities rather as "native chiefs" than like the government of a non-recognised State.<sup>458</sup> Whether the island could be considered a State by the time of the Chilean annexation is therefore unclear, even though the local authorities tried hard to give Chile that impression, exemplified in the creation of a Rapanui national flag immediately preceding the annexation.<sup>459</sup>

If we accept Rapa Nui as a State, and one could argue that it possessed the necessary qualifications, the 1888 document of cession would be a real treaty of cession and its non-ratification by Chile (especially since the ratification is explicitly mentioned in it as a requirement) make it legally questionable, as it is argued by recent Rapanui scholars.<sup>460</sup> Chile, on the other hand, tended to see the island as a non-State territory,<sup>461</sup> and to this day does not regard the 1888 annexation document as an international

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<sup>458</sup> Castri 1999: 101-102

<sup>459</sup> Hotus et al. 1988: 3; Castri 1999: 102

<sup>460</sup> Tuki et al. 2003: 481

<sup>461</sup> Vergara 1939: 33-38; Castri 1999: 101-102

treaty.<sup>462</sup> The 1888 document, as an agreement with “native tribes”, would thus have no value under international law.<sup>463</sup> However, if this would be accepted, the 1888 taking of possession would become null and void with the abandonment of the colony in 1892, as colonial occupation needs to be permanent in order to be considered effective.<sup>464</sup> During the three years of Chilean abandonment, the Rapanui under Riro Kāinga restored their government in even clearer forms than before the annexation, to the point where it might indeed have qualified as a State, so that its arbitrary second takeover by Chile in 1896 could be considered legally questionable as well. However, since at no point the Rapanui State was a permanent and stable institution, like it was on Tahiti, Rurutu, Rimatara and Mangareva for instance, but merely a State in formation, the issue remains unclear and can probably not be definitely resolved.

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<sup>462</sup> There is no entry for the 1888 agreement with Rapa Nui on the comprehensive list of the international treaties of Chile on the Chilean National Library of Congress website <<http://www.bcn.cl/lc/tinterna/define>>. Accessed 10 December 2007.

<sup>463</sup> Fischer 2005: 142

<sup>464</sup> Oppenheim 1920: 384-386

## **Evaluation in terms of constitutional law of the acquiring countries**

After having looked at each of the cases from the point of view of international law, I will now briefly check each of them for conformity with the national constitutional laws of the respective acquiring power as well.

### *United States of America*

We have already seen that the alleged annexation of Hawai‘i in 1898 happened in violation of the US constitution, which stipulates in Article II, section 2, that the US 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 [...]”.<sup>465</sup> As the 1897 treaty of annexation, in itself questionable because of the illegitimacy of the US puppet “Republic of Hawai‘i”, was never voted upon by a two thirds majority of the US Senate, it never entered in force and is therefore null and void. A joint resolution of Congress, on the other hand, has nothing to do with the ratification of a treaty, and can have effect in domestic matters of the US only. The acquisition of Hawai‘i was thus clearly an illegal act under US constitutional law.<sup>466</sup>

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<sup>465</sup> *US Constitution*, Art. II, Sec.2

<sup>466</sup> It should be mentioned that the alleged annexation of Texas in 1845 by a joint resolution has often been cited as a precedent for Hawai‘i. However, in fact the two cases are fundamentally different. What the joint resolution on Texas of 1845 did was transforming the Republic of Texas, a rebel government controlling parts of Mexican territory, into a new US state. The admission of a new state by Congress is a constitutional act, according to Article IV section 3 of the US constitution. While the US state of Texas was thus legally created by a joint resolution of Congress, sovereignty over the territory was only transferred to the United States from Mexico through the treaty of Guadalupe Hidalgo in 1848, which in Article V redefined the border between the two nations and did at no point presume Texas to be already under US sovereignty. Texas represents thus an anomaly of a US state admitted before sovereignty over its territory was acquired, but it cannot serve as a precedent for an acquisition of foreign territory by a joint resolution of Congress. See *Joint Resolution for Annexing [sic] Texas to the United States, March 1, 1845*, reproduced on Texas State Library website <<http://www.tsl.state.tx.us/ref/abouttx/annexation/march1845.html>>. [Accessed 20 October 2007]; and *Transcript of Treaty of Guadalupe Hidalgo* on US National Archives

## *France*

The 1830 constitution (“charter”) of the Kingdom of France, as it was in force during the establishment of the French Protectorate over Tahiti and the taking of possession of the Marquesas Islands in 1842, gives the king alone the right to make treaties.<sup>467</sup> The 1842 protectorate agreement with Tahiti, being ratified by the King of France in 1843, was therefore a perfectly constitutional act under French law. The subsequent 1847 agreement, on the other hand, did not have any clear legal standing, as it was never ratified by the king. The same goes for the 1844 protectorate agreement with Mangareva, which was never ratified by the French king either. However, the question again is whether any of the agreements can be considered treaties in the sense of the above quoted constitutional passage, as neither Tahiti nor Mangareva were internationally recognised States. The “treaties” of 1842-43 with the chiefs of the Marquesas Islands that did not have any sort of a State, were clearly not regarded as treaties in the sense of the charter at all. The constitutionality of these acquisitions is therefore difficult to assess, as the 1830 charter does not have any provision about the acquisition of colonies. It only says that the latter are ruled by particular laws.<sup>468</sup> However, there was never a properly enacted French law organising the Marquesas islands colony, only a 1843 decree of unknown origin about the judicial and executive

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Website <<http://www.ourdocuments.gov/doc.php?flash=true&doc=26&page=transcript>>. [Accessed 10 December 2007].

<sup>467</sup> *Charte Constitutionnelle de 1830* [“Constitutional Charter of 1830”]. Reproduced on the University of Perpignan website <<http://mjp.univ-perp.fr/france/co1830.htm>>. [Accessed 20 October 2007] [hereafter *1830 French Charter*]: Article 13.

<sup>468</sup> *1830 French charter*, Art.64.



administration of the archipelago.<sup>469</sup> The legal position of the Marquesas Islands within the French colonial empire was therefore unclear before 1880.

The 1875 constitutional law of the Third Republic, which was valid during the various acquisitions of Polynesian islands of the 1880s, 1890s and 1900s, gives a more elaborate provision about the acquisition of territory. It stipulates that treaties of peace and commerce, among others, are ratified by the President but are only valid after being voted upon by both chambers of the French parliament, and it is furthermore underlined that “[n]o cession, no exchange, no addition of territory can take place except by virtue of a law.”<sup>470</sup> Taking into account this constitutional clause, there were only two legal acquisitions of territory: That of the Tahitian kingdom in 1880 and that of the Leeward Islands in 1898. Only in these two cases did the French parliament pass laws to ratify the annexation of the respective territories. The ratification of the annexation of Mangareva, on the other hand, was done by a presidential decree, which is not a law, thus in contradiction to the constitutional provision cited above. The other acquisitions, namely of Rapa, Rurutu and Rimatara, happened without any ratification, thus are totally unconstitutional. As we have seen before that the annexation of the Leeward Islands happened most probably in violation of international law, only the annexation of the Tahitian kingdom seems to have been done in a legally permissible way.

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<sup>469</sup> *Ordonnance du 28 Avril 1843 qui contient les dispositions sur l'administration de la justice aux Iles Marquises, et investit le gouverneur de certains pouvoirs spéciaux* [“Ordinance of 28 April 1843 which contains the dispositions about the administration of justice in the Marquesas Islands and invests the governor with certain special powers”]. Reprinted in Lechat 1990: 61-62.

<sup>470</sup> “Nulle cession, nul échange, nulle adjonction de territoire ne peut avoir lieu qu'en vertu d'une loi”. *Loi constitutionnelle du 18 juillet 1875 sur les rapports des pouvoirs publics* [“Constitutional Law of 28 April 1875 about the relations between the public powers”], Art 8. In *Constitution de la III<sup>e</sup> République. Lois constitutionnelles de 1875*. Reproduced on the University of Perpignan website <<http://mjp.univ-perp.fr/france/co1875.htm>>. [Accessed 20 October 2007]. [Translation from French by the author].

## Chile

The Chilean constitution of 1833, which was valid during the annexation of Rapa Nui, does not give much detail about the acquisition of new territory. It confers upon the president the responsibility to make treaties and conventions, which have to be approved by the congress before ratification.<sup>471</sup> Territorial acquisition is not explicitly mentioned. While the Rapa Nui annexation document of 1888 was apparently never regarded as an international treaty by the Chilean government,<sup>472</sup> it was seen as such by Captain Toro when he drafted it, as the document itself explicitly mentions the need for its ratification by the Chilean government to make it valid.<sup>473</sup> However, no ratification ever happened. While the Chilean constitution neither prohibits nor endorses the acquisition of territory without ratification, the explicit requirement of such ratification in the document makes it legally questionable as well.

## Conclusion

By comparing the history of Hawai‘i, the islands that make up today’s French Polynesia, and Rapa Nui during the 19<sup>th</sup> century, it becomes clear that none of the island peoples in question were simply passive victims of Western penetration. Rather, their behaviour was one of active agency. Virtually all of them engaged with the West and

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<sup>471</sup> *Constitución Política de la Republica de Chile* [1833]. Reproduced on the Chilean National Library of Congress website <<http://www.bcn.cl/lc/cpolitica/1833.pdf>>. [Accessed 20 October 2007] [hereafter *1833 Chilean Constitution*]. Art. 82, par. 19

<sup>472</sup> See *supra* note 414.

<sup>473</sup> The original in Spanish reads “[...] declaramos aceptar *salvo ratificación de nuestro gobierno* la cesión plena, entera y sin reserva de la soberanía de la Isla de Pascua[...]” ([...]we declare to accept, *reserving the ratification by our government*, the full, eternal and unreserved cession of the sovereignty of Easter Island[...]). In *Proclamacion / Vananga Haaki* [“Proclamation”], 9 Sept 1888. Archives of Grant McCall, University of New South Wales, Australia. Reprinted in *Informe de la Comisión Verdad Histórica* : 333 [Translation from Spanish by the Autor, emphasis added]

attempted to develop a status in which they could be regarded by the Westerners as equals, an approach that Hawaiian scholar and artist Herb Kawainui Kāne has called “parity”.<sup>474</sup> According to Niklaus Schweizer, “[p]arity signifies an effort to be taken seriously by the Western powers, to be accepted as an equal and to be accorded the civilities and privileges established by international law. [...] [T]he preferred option in Polynesia was to achieve at least a degree of parity with the West.”<sup>475</sup>

Whereas Hawai‘i was the only island nation to achieve a full degree of parity by becoming a recognised and diplomatically active member of the Family of Nations, the three Leeward islands probably achieved almost the same status, and most of the others were aiming there as well, and at the time of their colonial takeover were somewhere on their way to achieve it.

While in the pursuit of parity, the leaders of the different islands were well aware of their successes or failures. Kamehameha III, through postal communication, knew about Pōmare IV’s fatal involvement with the French, stated his support for her and, for the worst case, offered her political asylum in Hawai‘i.<sup>476</sup> It has been argued that the French action in Tahiti in 1842, together with the British takeover of Aotearoa two years before in 1840, made Kamehameha III aware of the urgent need to pursue international recognition for Hawai‘i.<sup>477</sup> Pōmare IV in turn inspired high chief Temoana of Nuku Hiva, who met her while deposed by the French and exiled to Tahiti for a short period in 1852,

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<sup>474</sup> Kāne, quoted in Schweizer 2005: 177

<sup>475</sup> Schweizer 2005: 177

<sup>476</sup> Letter from King Kamehameha III to Queen Pomare IV, 4 Feb 1845. Quoted in Kame‘eleihiwa 1992:189-190

<sup>477</sup> Laudig 2004:1.

and he subsequently demanded France to be treated in the same way as her.<sup>478</sup> Even when confronted with the overwhelming force of Western gunboat diplomacy, Polynesian leaders did not easily submit to the invaders' demands but used their skills in diplomacy for negotiations. For example, the king and chiefs of Rapa, even under extreme duress in 1881, still attempted to keep as much of their authority as possible under the forced agreement they signed with France.<sup>479</sup>

In Hawai'i, the leadership of the Kingdom was so universally educated and skilled in international diplomacy that they could not be tricked into giving consent to what US officials and local rogue elements had planned to do with their country. As the forces interested in US annexation knew they would never obtain the archipelago through a treaty with its government, they plotted an unprecedented scheme instead, which would involve hijacking the Hawaiian government apparatus and letting it then be taken over by the US in an orchestrated cession. This plan was not so much the result of a coherent US government policy, but rather of the collusion of two small but influential interest groups within the Hawaiian Kingdom and the United States.<sup>480</sup> The Hawaiian population was also educated enough about international politics, so that it could not be tricked into consenting to a US takeover either. The overall majority of the population was clearly opposed to annexation, as shown in the 1897 petitions, and in consequence, contrary to American traditions of democracy, no referendum was held about the annexation, since the negative result was known in advance to both the local insurgents and the US

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<sup>478</sup> Bailleul 2001: 100

<sup>479</sup> Bambridge and Ghasarian 2002: 9-10

<sup>480</sup> Coffman n.d.[1998]: 69

government.<sup>481</sup> In the end, only the arbitrary act of military occupation, covered up by a piece of domestic American legislation in violation of both the US constitution and international law, could bring Hawai‘i under US rule.

Most of the other cases were more classical examples of imperialism. France and Chile both tried to obtain first the consent of the local governments or tribal authorities for the acquisition of their territory, but ultimately enforced their intentions with the threat or use of violence. As Pierre-Yves Toullelan wrote in 1991, “[French] Polynesia did not give itself to France but had to be conquered by the force of arms”,<sup>482</sup> and Bruno Saura comments on a book title referring to the French takeover as the “Franco-Tahitian Marriage” that “the whole affair resembled a rape more than a marriage”.<sup>483</sup> In the case of relatively strong States in existence, France’s strategy was at first to establish a protectorate, then subvert and undermine the local government within that protectorate, and finally get it annexed, if possible by consent, if not by force. International rules that would have prevented this kind of acquisition were deliberately ignored, even though the Leeward Islands were recognised States that could not be colonised. Even the annexation of the non-recognised States under protectorate was questionable in the form that France chose to do it in most cases, especially when it was done without proper ratification, which violated the French constitution.

Leaving aside all legal considerations, there is another important difference between Hawai‘i on one hand, and most of the French and Chilean acquisitions on the other. While in Hawai‘i no legitimate government nor the population of the country ever

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<sup>481</sup> Silva 2004: 159

<sup>482</sup> „La Polynésie ne se donna pas à la France, elle dût être conquise par les armes“. Toullelan 1991: 18 [Translated from French by the author].

<sup>483</sup> Saura in Deckker and Faberon 2001: 93

consented to the US takeover, the native governments or chiefly authorities of Tahiti and most of the outer islands of today's French Polynesia as well as Rapa Nui were all in some way persuaded to give their written consent to at least some degree of colonial takeover, as did most of the other parts of Polynesia that were colonised. This situation, in turn, is in clear contrast to Melanesia and Australia, which were generally colonised by unilaterally taking possession, without any formal agreements with local authorities whatsoever. Similar to Hawai'i, however, in Rai'iātea, there also seems to have been no consent given, at least not in writing.

While in Hawai'i there can thus be no claim of US possession either on legal grounds nor on the basis of consent, Rapa Nui and most of French Polynesia were colonised after consent was given by their native authorities to at least some degree of political dependence, and in some of the cases also in accordance with then valid international law. US rule over Hawai'i is therefore without any legitimacy whatsoever, whereas French and Chilean colonial rule over French Polynesia and Rapa Nui will probably have to be acknowledged as a legitimate historical fact, at least to a certain extent (though most probably not for the Leeward Islands). This does not mean, however, that this colonial fact for most of French Polynesia and Rapa Nui needs to be accepted as unchangeable today, as international law has, since the end of World War II evolved to provide redress for that problem in the form of mechanisms of decolonisation, as will be described in the following chapter.

**PART II**  
**ASSIMILATION, INTEGRATION AND**  
**REFUSED DECOLONISATION**

## Chapter 3

### Assimilation and Integration

After the imperialist powers had taken control over the territories, in accordance with international law or not, all three underwent a long process of legal and political assimilation, at the end of which they were regarded as more or less integral parts of the ruling country. Starting in the late 1800s, the process was achieved, for the time being, in all three territories by the 1960s. While in Hawai‘i the process was relatively linear and happened in two legal steps over long periods of time, for French Polynesia the process was complex, and the legal steps were frequent and at times erratic and contradictory. Between 1880 and the early 1960s, there were no less than fifteen organic laws and decrees, one often replacing the other within a few years.<sup>484</sup> The process was not as complex for Rapa Nui, but it lacked legal clarity for the first five decades of the twentieth century, when colonial rule was rather arbitrary. Clear legal assimilation took place only in the 1960s.

In this chapter I will describe and analyse the various legal instruments and mechanisms used by the occupiers or colonisers for this assimilation and integration. This will continue the historiographic narrative from chapter one until the mid-twentieth century.

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<sup>484</sup> For a complete reproduction of all relevant laws and decrees, see Lechat 1990.



## French Establishments in Oceania/French Polynesia

### *Tahiti and politically assimilated archipelagos as a colony 1880-1945*

Following the annexation of the Tahitian Kingdom and the establishment of permanent colonial rule in the Marquesas in 1880, the political structure of the new colony, officially called *Etablissements Français de l'Océanie* (EFO, “French Establishments in Oceania”),<sup>485</sup> was laid out in a decree of 5 June 1881.<sup>486</sup> As stated in the previous chapter, all former subjects of the Pōmare kingdom (i.e. the native inhabitants of Tahiti, Mo‘orea, and, according to the French understanding, all of the Tuamotu Archipelago) were granted French citizenship in December 1880, following the annexation agreement of 29 June of the same year. This created a unique situation in France’s colonial empire, where native populations were usually classified as French subjects, not citizens.<sup>487</sup> With the 1881 decree a civil administration was put in place, the structure of which was further elaborated in another more detailed decree in 1885.<sup>488</sup> The colony was headed by an appointed civil officer as governor, replacing the navy commander who had represented the French government during the protectorate period.<sup>489</sup> As the head of the civil services as well as the commander of all military and security forces, the governor dominated the territory.<sup>490</sup>

However, the new political system also provided for an elected local assembly, initially called *Conseil colonial* (Colonial Council). From 1880-1884, it was elected by

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<sup>485</sup> The name had been in use since 1842 to refer to the different French-affiliated territories in the Pacific, including the Tahiti protectorate and other island possessions (Regnault 2006: 195).

<sup>486</sup> Peltzer 2002: 71

<sup>487</sup> Gille 2006: 55

<sup>488</sup> *Décret du 28 Décembre 1885 concernant le gouvernement des Etablissements français de l'Océanie* (“Decree of 28 December 1885 concerning the government of the French Establishments in Oceania”). Reprinted in Lechat 1990: 165-192.

<sup>489</sup> Gille 2006: 55

<sup>490</sup> Gille 2006: 61-63; Regnault 1996: 35

the French citizens of Tahiti and Mo‘orea, but in two separate electorates (native and white), which gave strong overrepresentation to the French settlers.<sup>491</sup> Tahitian leaders protested this situation, stating that they would prefer to be ruled directly from France than by local French settlers.<sup>492</sup> The main responsibility of the council lay in the vote of the colony’s budget, but these powers were advisory only.<sup>493</sup> Another decree of 1883, authorised French citizens in the colony to elect a delegate to the Superior Council of Colonies,<sup>494</sup> an advisory body to the French government on colonial issues with no real powers.<sup>495</sup> The elected delegates were usually colonial officers, or politicians from other parts of the French empire who did not even campaign in the colony.<sup>496</sup> No Polynesian was ever elected to that position.

In 1885, a new decree replaced the *Conseil colonial* with a *Conseil général*, a council with a democratised election mode and increased powers to counterbalance the governor.<sup>497</sup> The ethnic segregation of voters into a native and a white electorate was abolished, and the right to vote extended to all the inhabitants of the Tuamotus, Tupua‘i, Ra‘ivavae, Rapa, Mangareva and the Marquesas, even though the natives of the three latter archipelagos, annexed separately from the Pōmare kingdom, were not French citizens.<sup>498</sup> In existence from 1886 to 1903, the *Conseil général* was the most democratic institution in the colony before World War II, a very unusual feature in the French

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<sup>491</sup> Toullelan and Gille 1994: 80-81

<sup>492</sup> Toullelan 1987: 321

<sup>493</sup> Gille 2006: 55-58

<sup>494</sup> Toullelan 1987: 334

<sup>495</sup> Yacono 1971: 10

<sup>496</sup> Toullelan 1987: 334-335; Saura 1997b: 101-107

<sup>497</sup> *Decret du 28 Decembre 1885 instituant un Conseil général dans les Etablissements français de l’Océanie* (“Decree of 28 December 1885 installing a General Council in the French Establishments in Oceania”). Reprinted in Lechat 1990 : 193-208.

<sup>498</sup> Toullelan and Gille 1994: 88

colonial system. Its main prerogatives were the vote of the budget and other financial matters, so that it could play a significant role in the political system.<sup>499</sup> However, even though the electorate was largely Polynesian, most elected councillors were French settlers, because they were able to campaign more efficiently, and, as an effect of decades of undermining the status of the *ari'i* class under the protectorate, and their final removal from power due to colonisation, there were few strong Tahitian community leaders available to become politicians.<sup>500</sup> Even when the French language requirement for councillors was dropped from 1893-1902, settlers remained the majority in the council.<sup>501</sup> A few Tahitian leaders did indeed emerge as politicians, the most prominent being Tati Salmon, the *tāvana* of Pāpara district,<sup>502</sup> but in the end they were not an efficient counterbalance to the settlers. The *Conseil général* thus became mainly a stage for different groups of French settlers to criticize and attack both the administration and one another.<sup>503</sup> It never developed into an efficient tool of native empowerment. The French Government subsequently abolished the representation of the outer islands and placed the latter under the exclusive power of the governor in 1899.<sup>504</sup> Protests by the Tuamotuans, who felt their rights as French citizens were violated,<sup>505</sup> were to no avail. Finally, in 1903 the *Conseil général* was abolished altogether.

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<sup>499</sup> Gille 2006: 66-67

<sup>500</sup> Toullelan 1987: Gille 2006: 64-65

<sup>501</sup> Toullelan 1987: 308-309

<sup>502</sup> Toullelan 1987: 303-304, 321; 324-326

<sup>503</sup> Toullelan 1987: 315-338; Gille 2006: 67-71

<sup>504</sup> *Décret du 10 août 1899 modifiant l'article 2 du décret du 22 décembre 1885 instituant un Conseil général* ("Decree of 10 August 1899 modifying article 2 of the decree of 22 December 1885 instituting a General Council"); *Décret du 10 août 1899 relatif à l'organisation administrative des îles Marquises, Tuamotu, Gambier, Tubuai and Rapa*. ("Decree of 10 August 1899 relating to the administrative organisation of the Marquesas, Tuamotu, Gambier, Tubuai and Rapa islands"). Reprinted in Lechat 1990: 232-233.

<sup>505</sup> Centre for Overseas Archives, Aix-en-Provence, France, box 23, file A 155.

On the local village level, the power of the traditional chiefs was more and more undermined and subjected to the French governor.<sup>506</sup> In 1887, a decree by the governor made the formerly hereditary offices of district *tāvana* elected by the population after the death of the current officeholders,<sup>507</sup> but another decree in 1897 gave the governor the power to appoint them from within the elected district council,<sup>508</sup> and finally another decree in 1900 gave the governor the power to appoint anyone to the position of *tāvana*.<sup>509</sup>

The decree of 1903 that abolished the *Conseil général* restructured and centralised the colonial administration. In terms of administration, the archipelagoes were unified into one single colony, even though the different status of their inhabitants was maintained. The governor now became virtually all-powerful. No elected representation existed anymore, only a group of appointed bureaucrats who served as advisors to the governor in an administrative council.<sup>510</sup> The seventeen-year long experiment with limited local democracy thus ended, replaced with a more classical colonial system. French citizenship for Tahitians was stripped of any significance. A few structural

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<sup>506</sup> Toullelan and Gille 1994: 115

<sup>507</sup> *Déclaration donnée le 29 décembre 1887 par le Gouverneur des Etablissements français de l'Océanie relativement à l'exécution de la convention du même jour pour la suppression des juridictions indigènes à Tahiti* ("Declaration given on 29 December 1887 by the Governor or the French Establishments in Oceania relating to the execution of the convention of the same day for the abolition of the native jurisdictions in Tahiti"). Reprinted in Lechat 1990: 211-212.

<sup>508</sup> *Arrêté du 22 décembre 1897 portant réorganisation des conseils de districts* ("Order of 22 December 1897 containing the reorganisation of the district councils") Reprinted in Lechat 1990: 227-230.

<sup>509</sup> Toullelan 1987: 304

<sup>510</sup> *Décret du 19 mai 1903 portant suppression du Conseil général de Tahiti et Moorea et création d'un Conseil d'administration des EFO* ("Decree of 19 Mai 1903 concerning the abolition of the General Council of Tahiti and the creation of an Administrative Council of the EFO"). Reprinted in Lechat 1990: 234-236. See also Gille 2006: 72-73.

changes were made in 1912 and 1930,<sup>511</sup> but no democratic participation in government was restored.

In 1932, another decree, enacted probably in reaction to a local political protest movement led by Jewish-Tahitian businessman Loulou Spitz during the late 1920s and early 1930s,<sup>512</sup> restored some sort of representative entity by creating the *Délégations Economiques et Financières* (Economic and Financial Delegations), a body composed of both appointed bureaucrats and socio-professional representatives, as well as indirectly elected representatives of district councils of Tahiti, Mo‘orea and the Tuamotus.<sup>513</sup> This assembly, which remained in place until 1945, had advisory powers over budgetary matters, but it was clearly less powerful and less democratic than the *Conseil général*.<sup>514</sup>

During all these frequent organisational changes during the late nineteenth and early twentieth century, France pursued an assimilation policy towards the native population. It was argued that all inhabitants should be equal as French citizens,<sup>515</sup> and there were attempts to undermine and eradicate Polynesian identity. In all the government schools, French was the only authorised language.<sup>516</sup> A decree in 1932, to be rescinded only in 1977, declared Tahitian to be a foreign language, which implied that publications in that language would only be authorised if a translation in French was provided.<sup>517</sup> However, the Protestant church supported Tahitian language and identity,<sup>518</sup> and its

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<sup>511</sup> Gille 2006: 73-75

<sup>512</sup> Saura 1997b: 101-107. See Chapter three for a more detailed description of that movement.

<sup>513</sup> *Décret du 1<sup>er</sup> octobre 1932 instituant des Délégations économiques et financières dans les Etablissements français de l’Océanie* (“Decree of 1 October 1932 installing the Economic and Financial Delegations in the French Establishments in Oceania”). Reprinted in Lechat 1990 : 252-257.

<sup>514</sup> Gille 2006: 81-82

<sup>515</sup> Toullelan and Gille 1994: 83-84; Gille 2006: 58-61

<sup>516</sup> Peltzer 1999: 57

<sup>517</sup> Peltzer 1999: 57-58; 2002: 88

<sup>518</sup> Toullelan and Gille 1994: 111

district level Sunday schools continued teaching in Tahitian. While the mixed population of Pape'ete became increasingly French in its language and cultural behaviour, Polynesian identity in terms of language and culture thus remained relatively intact in rural areas of Tahiti and the outer islands until late into the twentieth century.<sup>519</sup> Politically, on the other hand, the Tahitian population remained disempowered, and a small elite composed of the Governor, the bureaucrats under him and the leading settlers tightly controlled the colony.<sup>520</sup>

#### *Outer islands with separate status 1898-1945*

While the inhabitants of the Marquesas, Mangareva and Rapa were not French citizens, these islands were part of the same administrative system as the former Tahiti protectorate estates. That was not so for both the Leeward Islands and Rurutu-Rimatara, however, which had a legal status completely distinct from the rest of the colony. Until 1945, French law did not apply to these areas, which were governed under separate law codes.

In the Leeward Islands, France promulgated a law code after consultations with local district chiefs in 1898, which was partly compiled out of the former law codes of the three independent kingdoms.<sup>521</sup> It was further modified in 1917.<sup>522</sup> While native courts retained jurisdiction over civil cases, and many provisions of the former kingdom law codes remained in force, all forms of local self-government above the district level

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<sup>519</sup> Toullelan and Gille 1994: 116

<sup>520</sup> Toullelan and Gille 1994: 105-110

<sup>521</sup> *Putā Ture no te mau Fenua i raro*. Pape'ete: Imprimerie du Gouvernement 1898. Copy in Centre for Overseas Archives, Aix-en-Provence, France, Box 91, file A154; Saura 1996: 38-39

<sup>522</sup> *Lois codifiées de l'archipel des Îles Sous-le-Vent*. Pape'ete: Imprimerie du Gouvernement 1917. Copy in Archives of French Polynesia, Pape'ete [hereafter *1917 Leeward Islands Law Code*]; Saura 1996: 40-41

were abolished,<sup>523</sup> and all essential powers put in the hands of an administrator, subordinate to the governor in Pape‘ete.<sup>524</sup> The royal families of Ra‘iātea, Huahine and Porapora were removed from all vestiges of power, and were not even mentioned as ceremonial figures in the code.<sup>525</sup>

In contrast, Rurutu and Rimatara maintained a true sense of autonomy during the first half century of French rule. The law code promulgated by the French administration for the two islands in 1900<sup>526</sup> was an only slightly revised version of the previous law codes of the two small nations.<sup>527</sup> Not only did the native courts and most of the pre-colonial legal system remain intact, but the Rurutu-Rimatara law code of 1900 also retained a political role for the local royalty.<sup>528</sup> With some amendments in 1916,<sup>529</sup> this code remained in force until 1945, keeping the two remote islands the last strongholds of Polynesian aristocracy.

### *The Overseas Territory after World War II*

However, at the end of World War II, complete legal assimilation of all parts of the colony finally occurred. After the leaders of the colony had taken sides with General De Gaulle’s Free France movement during the war, and calls for more democracy and

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<sup>523</sup> In the 1917 revision, even the latter were severely restricted, as the district chiefs lost the traditional power of resource management referred to as *rāhui* (1917 *Leeward Islands Law Code*: Art. 40)

<sup>524</sup> *Decret du 28 Juillet 1897 sur l’organisation administrative des Iles Sous le Vent (Océanie)* (“Decree of 88 July 1897 about the administrative organization of the Leeward Islands (Oceania)”. Reprinted in Lechat 1990: 225.

<sup>525</sup> Saura 1997a: 44

<sup>526</sup> *E ture Rurutu-Rimatara. / Lois codifiées Rimatara-Rurutu*. 1900. Copy in Archives of French Polynesia, Pape‘ete. [hereafter *1900 Rurutu-Rimatara Law Code*]

<sup>527</sup> Saura 1997a: 44–45

<sup>528</sup> *1900 Rurutu-Rimatara law code*, Art. III, IV, LXXIV

<sup>529</sup> Peltzer 2002:83

civil rights in 1944,<sup>530</sup> a decree of 24 March 1945 conferred French citizenship on all native inhabitants of the EFO,<sup>531</sup> which was confirmed by a law in May 1946.<sup>532</sup> French law now became universally applicable. The separate legal status and law codes for the Leeward Islands and Rurutu-Rimatara were abolished.<sup>533</sup> This was imposed against the will of the people of Rurutu who wished to keep their separate status.<sup>534</sup> The status of all colonies in the French empire was changed to that of *Territoires d'Outre-Mer* (Overseas Territories, TOM) in the *Union française* (French Union).<sup>535</sup> According to the new French constitution (Fourth Republic) of 1946, each Overseas Territory was to be ruled by specific organic laws taking into account its specificities.<sup>536</sup> In reality, this meant little change for the local executive, as the governor remained very powerful and kept the prerogatives outlined in the 1885 decree cited above.<sup>537</sup> However, the *Délégations Economiques et Financières* were replaced by a fully elected *Assemblée Représentative* (Representative Assembly).<sup>538</sup> The powers of this new assembly were similar to those of

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<sup>530</sup> Toullelan and Gille 1994: 104; Gille 2006: 83

<sup>531</sup> *Décret du 24 Mars 1945 portant accession à la plénitude du droit de cité dans les Etablissements français de l'Océanie* ("Decree of 24 March 1945 containing the accession to plenary citizen's rights in the French Establishments in Oceania"). Reprinted in Lechat 1990: 280. The inhabitants of the other French colonies were made into citizens only more than a year later through another decree of 7 May 1946. See Yacono 1971: 66.

<sup>532</sup> *Loi No 46-940 du 7 mai 1946 tendant à proclamer citoyens tous les ressortissants des territoires d'outre-mer* ("Law No.46-940 of 7 May 1946 proclaiming all inhabitants of overseas territories to be citizens"). Reprinted in Lechat 1990 : 295. The inhabitants of the other French colonies were made citizens only through this law, more than a year later than those of the EFO. See also Yacono 1971: 66.

<sup>533</sup> *Décret du 5 avril 1945 abrogeant les lois indigènes et supprimant les juridictions indigènes dans les îles Sous-le-Vent et les îles Rurutu et Rimatara* ("Decree of 5 April 1945 abrogating the native laws and abolishing the native jurisdictions in the Leeward Islands and the islands of Rurutu and Rimatara"). Reprinted in Lechat 1990: 281.

<sup>534</sup> Verin 1987: 52; Sodter 1993; Saura 1997a: 50 n. 76

<sup>535</sup> Gille 2006: 85

<sup>536</sup> *La Constitution du 27 octobre 1946*. Reproduced on the French Constitutional Council website <<http://www.conseil-constitutionnel.fr/textes/constitution/c1946.htm>>. [accessed 7 January 2008] [hereafter *1946 French constitution*]: Art. 74

<sup>537</sup> Gille 2006: 87

<sup>538</sup> *Décret No 45-1963 du 31 août 1945 instituant une assemblée représentative dans les Etablissements français de l'Océanie* ("Decree No 43-1963 of 31 August 1945 installing a representative assembly in the



the *Conseil général* between 1885 and 1903, so what happened in 1945 represented a restoration of an earlier situation.<sup>539</sup> What was new, however, was that the territory received representation in the French parliament: the population elected one deputy in the French National Assembly, and the assembly designated one senator in the French Senate and one councillor in the High Council of the French Union.<sup>540</sup> Unlike in most other French Overseas Territories,<sup>541</sup> the right to vote in the territory was universal, and not segregated into a native and a white electorate.<sup>542</sup>

In spite of these advances towards democracy, the position of the Governor remained supreme and the Representative Assembly virtually powerless. During the later 1940s, the population became more and more politically assertive, and, frustrated with the political status of the territory,<sup>543</sup> a Tahitian nationalist movement emerged under the leadership of Pouvāna'a a 'Ō'opa, a charismatic politician from Huahine who had constantly been harassed and persecuted by the administration for his political opposition.<sup>544</sup> In 1949, he was elected deputy to the French National Assembly,<sup>545</sup> and in 1953, his party won a landslide victory in the elections to the territorial Assembly.<sup>546</sup>

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French Establishments in Oceania"). Reprinted in Lechat 1990: 282-294. The election mode of the assembly was revised in a law of 1952: *Loi No 52-1175 du 21 octobre 1952 relative à la composition et la formation de l'assemblée territoriale des Etablissements français de l'Océanie* ("Law No. 52-1175 of 21 October 1952 relating to the composition and formation of the territorial Assembly of the French Establishments in Oceania"). Reprinted in Lechat 1990: 327-330.

<sup>539</sup> Gille 2006: 85-86

<sup>540</sup> Regnault 1996: 43; Peltzer 2002: 93; Gille 2006: 86. The latter institution was a parliamentary assembly for the entire French Union, including metropolitan France, the TOM, as well as associated states and territories that were not represented in the two chambers of the French parliament (Yacono 1971: 67-71). The council ceased to exist with the dissolution of the French Union in 1958.

<sup>541</sup> Yacono 1971: 66; See for example Madagascar in Brown 2006: 263

<sup>542</sup> Regnault 1996: 36; Gille 2006: 86

<sup>543</sup> Gille 2006: 87

<sup>544</sup> Regnault 1996: 51-62. For a biography of this key political leader, see Buka aamu no Pouvanaa a Oopa te aito roonui no te mau fenua motu no Tahiti 1977; Saura 1997b

<sup>545</sup> Regnault 1996: 63-68

<sup>546</sup> Regnault 1996: 116-118

Initially, Pouvāna‘a’s party favoured *départementalisation*, i.e. political integration into metropolitan France as a *département* (administrative subdivision),<sup>547</sup> seen as the only way to guarantee full equality of the local population in terms of civil liberties and social security.<sup>548</sup> Soon, however, their position changed, and from the mid-1950s onward, the movement’s political goals focused on more autonomy for the territory, with increasing discussion of eventual independence.<sup>549</sup>

With similar movements dominating the assemblies of most overseas territories, France eventually gave in to some of their demands and in 1956 enacted the so-called *Loi-cadre* (Framework law) that provided a framework for limited self-government in all Overseas Territories.<sup>550</sup> After a long delay, it was finally implemented in the French Establishments in Oceania more than a year later.<sup>551</sup> At the same time, the territory was renamed French Polynesia, against the will of its assembly, which preferred “Tahiti”.<sup>552</sup> Under the new statute, the assembly elected a government council, composed of six to eight ministers, presided over by the governor, but having an elected vice-president as some sort of chief minister of the local government. For the first time executive power

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<sup>547</sup> This *départementalisation* was granted to the former colonies of Martinique, Guadeloupe, French Guyana and Réunion in 1946.

<sup>548</sup> Regnault 1996: 123-125

<sup>549</sup> Regnault 1996: 103-111

<sup>550</sup> *Loi No 56-619 du 23 Juin 1956 autorisant le gouvernement à mettre en œuvre les réformes et à prendre les mesures propres à assurer l'évolution des territoires relevant du ministère de la France d'outre-mer* (“Law No. 65-619 of 23 June 1956 authorising the government to implement the reforms and take the measures that are proper to assure the evolution of the territories depending on the ministry for Overseas France”). Reprinted in Lechat 1990 : 338-342. See also Yacono 1971: 79 ; Regnault 133-137 ; Gille 2006: 89.

<sup>551</sup> *Decret No 57-812 du 22 Juillet 1957 portant institution d'un conseil de gouvernement et extension des attributions de l'Assemblée territoriale dans les Etablissements français de l'Océanie* (“Decree No 57-812 of 22 July 1957 containing the installation of a government council and the extension of the attributions of the territorial Assembly of the French Establishments in Oceania”). Reprinted in Lechat 1990: 354-372. See also Regnault 1996: 137-143.

<sup>552</sup> *Loi No 57-836 du 26 juillet 1957 relative à la composition et à la formation de l'Assemblée Territoriale de la Polynésie française* (“Law No. 57-836 of 26 July 1967 relating to the composition and formation of the Territorial Assembly of French Polynesia”). Reprinted in Lechat 1990: 518-521. For the debate on the name of the territory see Regnault 2006: 200-204.

was partially exercised by an elected body. Key powers of sovereignty such as foreign affairs, internal security and justice, remained the exclusive responsibility of the governor, but most local service agencies were placed under the territorial government, each headed by one of the ministers. The assembly received quasi-legislative powers in these areas.<sup>553</sup> Unsurprisingly, Pouvāna‘a was elected to the post of vice-President in December 1957.<sup>554</sup> While leading the territorial government, members of his party contemplated the formation of a “Tahitian Republic” within the French Union, as the next step in the process of decolonisation.<sup>555</sup> However, local business interests vigorously opposed the new government’s policy for more social equality, which led to increasing political and social tensions during 1958,<sup>556</sup> and eventually to a split of the governing party between Pouvāna‘a and his lieutenant, Jean-Baptiste Heitarauri Céran-Jérusalémy.<sup>557</sup>

#### *Forceful restoration of tight French control 1958-1963*

In mid-1958 however, there were drastic changes in France, as General Charles de Gaulle rose to power and a new constitution was drafted for the Fifth Republic. The French Union was replaced by the *Communauté Française* (French Community), consisting of metropolitan France, the Overseas Territories, and autonomous member states associated with France.<sup>558</sup> A national referendum on the constitution was held on 28 September 1958, including in all Overseas Territories. Pouvāna‘a campaigned for a

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<sup>553</sup> Gille 2006: 88-92

<sup>554</sup> Regnault 1996: 155

<sup>555</sup> Regnault 1996: 167-168

<sup>556</sup> Regnault 1996: 162-166

<sup>557</sup> Regnault 1996: 168, 170, 174. For an autobiography of the latter, see Céran-Jérusalémy 2001.

<sup>558</sup> *Constitution du 4 octobre 1958* <<http://mjp.univ-perp.fr/france/co1958-0.htm>> [hereafter *1958 French Constitution*]: Section XII, Art. 77-87

“no” vote, which was understood to lead to immediate independence, whereas Cérant-Jérusalémy joined the business establishment in their campaign for “yes”.<sup>559</sup> The French administration aided the proponents of “yes”<sup>560</sup> and hindered the campaign of Pouvāna‘a, who was denied access to radio and transportation to outer islands. Some of his campaign activists were detained without charges.<sup>561</sup> Under these conditions, the “yes” campaign was unsurprisingly successful, but nevertheless the proportion of “yes” votes at 64.42 per cent was rather moderate. In most other French territories over ninety per cent voted “yes”.<sup>562</sup> Shortly after the referendum, tensions between pro- and anti-French Tahitians rose, and some acts of violence took place. On 8 October, the governor suspended the government council,<sup>563</sup> and on 11 October, Pouvāna‘a was arrested, in spite of his parliamentary immunity as a National Assembly deputy.<sup>564</sup> He was later convicted to eight years imprisonment and fifteen years of banishment in France for complicity in attempted arson.<sup>565</sup> In a speech he had quoted the Bible about the destruction and reconstruction of the temple of Jerusalem, which was construed as a call to burn down Pape‘ete.<sup>566</sup> It was generally assumed that the trial was a farce.<sup>567</sup> At the same time, a

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<sup>559</sup> Regnault 1996: 174-177

<sup>560</sup> Toullelan and Gille 1994: 142; Regnault 1996: 177

<sup>561</sup> Dorrance 1966: 46-48

<sup>562</sup> Dorrance 1966: 48; Regnault 1996: 178, 183

<sup>563</sup> Regnault 1996: 179

<sup>564</sup> Regnault 1996: 180-181

<sup>565</sup> Dorrance 1966: 53; Regnault 1996: 183; Peltzer 2002: 104

<sup>566</sup> Saura 1997b: 351-352

<sup>567</sup> Dorrance 1966: 52-53; Saura 1997b: 373-375. When Pouvāna‘a was finally allowed to return to the territory in 1968, he was a broken old man, and no longer able to lead a strong political movement, even though he was highly revered and elected senator in 1977, a position he held until his death in 1977. See Regnault 1996: 205.

pro-French politician who had distributed a pamphlet calling for the assassination of Pouvānaa was not even charged.<sup>568</sup>

After Pouvāna'a's arrest, under pressure and fear,<sup>569</sup> the assembly voted to dismiss the government council, which was implemented by decree in October 1958.<sup>570</sup> According to the 1958 constitution,<sup>571</sup> the assembly of each Overseas Territory that had voted "yes" in the referendum had to choose between three options: retain the status quo, *départementalisation*, or become a member State in the *Communauté*.<sup>572</sup> While most French territories chose the third status,<sup>573</sup> the assembly of French Polynesia voted on 14 November 1958 to remain an Overseas Territory,<sup>574</sup> apparently under heavy pressure from the governor's administration. It also voted to strip the local government council of most of its powers.<sup>575</sup> In an executive order of 23 December 1958,<sup>576</sup> the institutions of the *Loi-cadre* were virtually abolished. Under the new statute, the government council was presided over by the governor or his secretary, and its members, proportionally elected by the assembly, did not have ministerial responsibilities any more.<sup>577</sup> In fact, the governor became once more the all-powerful head of the territorial administration, so that

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<sup>568</sup> The pamphlet stated that "The police is too nice to them [Pouvāna'a and his followers]... They need to be chased out or eliminated" ("La police est trop complaisante à leur égard... Il faut les chasser ou les abattre"). Quoted in Regnault 1996: 103, 179 and Saura 1997b: 359. Translated from French by the author.

<sup>569</sup> Regnault 2003b

<sup>570</sup> Regnault 1996: 181

<sup>571</sup> 1958 French Constitution, Art. 76

<sup>572</sup> Regnault 1996 : 186

<sup>573</sup> Yacono 1971: 91-92

<sup>574</sup> Dorrance 1966: 55; Regnault 1996: 186

<sup>575</sup> Regnault 1996: 186-187

<sup>576</sup> *Ordonnance No 58-1337 du 23 décembre 1958 relative au conseil de gouvernement et à l'assemblée territoriale de la Polynésie française* ("Order No. 58-1337 of 23 December 1958 relating to the government council and the territorial assembly of French Polynesia"). Reprinted in Lechat 1990 : 379-387.

<sup>577</sup> Gille 2006: 93-95

the reform was effectively a return to the situation before 1957.<sup>578</sup> When leading members of Pouvāna‘a’s party later attempted to revise the decision of the assembly of November 1958 and obtain a status of associated state in the *Communauté* for the territory in 1963, this was refused and the party banned for advocating the dismemberment of the “territorial integrity” of France.<sup>579</sup> Apparently the territory was now seen as an integral part of France, even though the constitution did not clearly and unambiguously define Overseas Territories as such.<sup>580</sup>

The reason for this anachronistic restoration of colonial authority during an era of global decolonisation became clear a few years later when the French government under President De Gaulle decided in 1961-62 to establish a nuclear testing centre in the territory, which was officially announced in early 1963.<sup>581</sup> Despite the resistance of some leading local politicians,<sup>582</sup> the programme was implemented and the first test conducted in 1966.<sup>583</sup> For the following decades the political and economic life of French Polynesia was dominated by the French military, and any moves towards local self government were suppressed. The Polynesian population became not only irradiated by the tests but also increasingly westernised and alienated from their culture through the massive economic upheaval caused by this militarisation.<sup>584</sup>

Tahiti-based French historian Jean-Marc Regnault has found ample evidence that the conviction and banishment of Pouvāna‘a was indeed a scheme of the French

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<sup>578</sup> Regnault 1996: 187-188

<sup>579</sup> Dorrance 1966: 71; Regnault 1996: 192-194

<sup>580</sup> *1958 French Constitution*: Art. 74-76

<sup>581</sup> Dorrance 1966: 69, Regnault 1996: 190-192 ; 197-198

<sup>582</sup> Dorrance 1966: 69-71

<sup>583</sup> Peltzer 2002: 109

<sup>584</sup> For a detailed analysis of the nuclear testing issue and its political ramifications, see Danielsson and Danielsson 1986 and 1993.

Government, because of the territory's strategic importance.<sup>585</sup> For the same reason, pressure was put on the territorial assembly to vote to maintain TOM status and get rid of the *loi-cadre* institutions.<sup>586</sup> In a telegram of 15 September 1959, a few days before the referendum, the French minister of Overseas Territories advised the governor of French Polynesia that “[i]t should be well understood that French Polynesia must ask for the status of overseas territory and not for that of member of the Community.”<sup>587</sup> From the point of view of the French government, it was thus never contemplated that the territory should freely determine its own status, not even within the framework of the French *Communauté*, but merely that its voters and its assembly give a façade of democracy to the decision France had already made for its future.

## Hawai‘i

### *The US territory 1900-1959*

After taking over the Hawaiian islands in 1898, the United States left the so-called “Republic of Hawai‘i”, the local oligarchic regime of the leaders of the 1893 overthrow, in place for two more years as a sort of caretaker government. In April 1900 the US Congress passed an organic act to provide for the government of the archipelago.<sup>588</sup> In this legal document, Hawai‘i is identified as an “incorporated territory” of the US, a status similar to territories on the US continent that had not become states yet, such as Oklahoma, Arizona, New Mexico and Alaska, but different from the other overseas

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<sup>585</sup> Regnault 2003a: 77-136; 2003b

<sup>586</sup> Regnault 1996 : 201-204

<sup>587</sup> “Il doit être bien entendu que la Polynésie française doit demander le statut de territoire d’outre-mer et non celui de membre de la Communauté”. Quoted in Regnault 2003b : 21 (Translation from French by the Author ). See also Regnault 2006: 217

<sup>588</sup> *An Act to Provide a Government of the Territory of Hawaii (56<sup>th</sup> US Congress, S.222, approved April 30, 1900)* Honolulu: Gazette Co. Print [hereafter *1900 Organic Act*].

territories acquired during the Spanish-American war, namely the Philippines, Guam and Puerto Rico. These entities were considered “unincorporated territories”, in which the US constitution was not applicable.<sup>589</sup> All Hawaiian nationals were proclaimed to be US citizens, while the Asian immigrants remained aliens without political rights.<sup>590</sup> While the governor of the territory as well as the judiciary were appointed by the US president, the territorial legislature was elected by the local population. Even though President Dole and the leadership of the “Republic” wanted to continue their white supremacist oligarchic type of government and restrict voting to their small group of supporters, the US Congress finally enacted unrestricted universal suffrage.<sup>591</sup> Besides the legislature, voters also elected a non-voting delegate to the US Congress.<sup>592</sup>

With an assembly freely elected and unrestricted suffrage for the native population, the political organisation of Hawai‘i under US rule, similar to French Oceania under the *Conseil Général* between 1885 and 1903, and under TOM status after 1946, was relatively liberal in comparison to the structure of government of other colonies of that time. Most colonies were ruled by appointed governors through decrees, with little to no popular participation at all. Initially, this led to a restoration of a local political scene dominated by Hawaiian nationalists.<sup>593</sup> While US President William McKinley unsurprisingly appointed the notorious overthrow leader Dole to be the territory’s first Governor, Robert W.K Wilcox, popular leader of the attempted 1895 uprising against the

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<sup>589</sup> Bell 1984: 40-41. However, this classification of the territory as „incorporated“ was not unambiguous, as in the Jones-Costigan Act of 1934, which defined sugar import quotas into the US, sugar from Hawai‘i was treated like imported sugar from unincorporated US territories or foreign countries, and not as domestic sugar (Fuchs 1961: 408; Bell 1984: 60-62; Coffman 2003: 42).

<sup>590</sup> *1900 Organic Act*, Sect.4; Bell 1984: 39

<sup>591</sup> Daws 1968:293-294; Andrade 1996: 181-182; Silva 2004b: 19

<sup>592</sup> Bell 1984: 42

<sup>593</sup> For a detailed discussion of this period, see Andrade 181-233 and Silva 2004b



oligarchy, was elected first delegate to the US Congress.<sup>594</sup> This hopeful period of political recovery was short-lived however, as the local oligarchy (now affiliated with the US Republican Party) was able to co-opt some of the native Hawaiian leaders, like Prince Kūhiō Kalaniana'ole who became Wilcox' successor as Delegate to congress in 1902,<sup>595</sup> and build up a patronage system. In the end the oligarchy kept effective control even over most of the elective positions in the government.<sup>596</sup> The patronage system was extended to the local level with the creation of county governments for each of the four major islands in 1905, even though on O'ahu, the county government remained somewhat more independent of the oligarchy, with its mayors mainly coming from the Democratic, not Republican party.<sup>597</sup>

In the end however, the democratic elements in the territorial system remained a façade. Behind the scenes of an apparently semi-autonomous local government, the territory was dominated by the sugar plantation-based business oligarchy on one side and the US military on the other. The business elite, commonly referred to as the "Big five" after the five largest, mutually connected sugar plantation corporations, monopolised virtually all areas of the local economy and thus effectively exercised tight control over most inhabitants.<sup>598</sup> Any attempts to break up that economic power, such as movements for worker's rights, were suppressed, sometimes even with physical violence.<sup>599</sup> During the first three decades of the twentieth century, military installations were built up

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<sup>594</sup> Wisniewski 1989: 10-11; Coffman 2003: 9,12

<sup>595</sup> Andrade 1996: 234-250

<sup>596</sup> Daws 1968 295-296; Wisniewski 1989: 12-14

<sup>597</sup> Wisniewski 1989: 14 Coffman 2003: 14

<sup>598</sup> Kent 1983: 69-91

<sup>599</sup> Kent 1983: 85-88; Coffman 2003: 37-42

everywhere, so that by the 1930s, O‘ahu had the largest US military bases in the world.<sup>600</sup> The power of the military vis-à-vis civilian society became evident in a culture of impunity for its members, epitomised in the so-called Massie/Kahahawai Case in 1932, when a group of military personnel and dependents who had murdered a Hawaiian man wrongfully suspected of assaulting a navy wife, were virtually pardoned by the territorial governor and could leave the islands without serving any sentence.<sup>601</sup> Only a few years before a local Asian man was executed for murdering a white businessman’s son.<sup>602</sup> During World War II, the situation became even worse, as the territory was placed under martial law from 1941 to 1944, its civilian government structure virtually suspended, and actual rule exercised by the US military.<sup>603</sup> Besides the suspension of civil rights and the arbitrary internment of some of the local inhabitants of Japanese ancestry,<sup>604</sup> this included the confiscation of lands for further expansion of military bases.<sup>605</sup> After the war, military expansion continued.<sup>606</sup>

Meanwhile, the Hawaiian national population became more and more diluted through the massive immigration of American settlers as well as labourers from other parts of America’s colonial empire (essentially the Philippines and Puerto Rico).<sup>607</sup> At the same time, the local population was systematically encouraged to believe that they were Americans, with the goal of eradicating both Hawaiian and non-American immigrant

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<sup>600</sup> Wisniewski 1989: 23-26; 50-54

<sup>601</sup> Stannard 2005

<sup>602</sup> Daws 1968: 319; Bell 1984: 57-58

<sup>603</sup> Bell 1984:76-77, 84-97; Judicial History Center 1991

<sup>604</sup> Bell 1984: 77-80; Coffman 2003: 61-63

<sup>605</sup> Kajihiro 1999: 3; Sai 2004: 62-63

<sup>606</sup> Bell 1984: 204

<sup>607</sup> Sai 2004: 63-65; 2007: 16-17

identities<sup>608</sup>. The Hawaiian language had already been banned from the schools by the “Republic” insurgent government in 1896,<sup>609</sup> a policy that continued under the territory,<sup>610</sup> and Chinese and Japanese language schools later suffered a similar fate during the 1940s, at least temporarily.<sup>611</sup> Only some isolated areas on the outer islands were able to partly avoid the assimilation process and hold on to some of their cultural identity.<sup>612</sup> American indoctrination was not only promoted by the business and military oligarchy, but also, and even more effectively, by critics of the system, like liberal schoolteachers from the US,<sup>613</sup> so that by the mid-twentieth century, despite continuing elements of local cultures, a large majority of the local population identified themselves as Americans.<sup>614</sup> The local Japanese for instance, harassed and threatened with internment during World War II, attempted to avoid the discrimination and hatred perpetrated against them by demonstrating their successful Americanisation, which led to equal status after the war.<sup>615</sup>

### *The push for US statehood*

The logical consequence of this successful assimilation process was a movement to achieve equality within the American system by becoming a US state instead of remaining a territory. In fact, statehood was advocated from the very beginning of the

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<sup>608</sup> Young (2006: 11) refers to that process as indoctrination, if not brainwashing.

<sup>609</sup> Silva 2004a: 144

<sup>610</sup> Silva 2004b: 27/; Van Dyke 2008: 225-226

<sup>611</sup> Kam 2006

<sup>612</sup> For a detailed analysis of some of these areas see McGregor 2007.

<sup>613</sup> Bell 1984: 104

<sup>614</sup> Bell 1984: 90, 92-106

<sup>615</sup> Bell 1984: 80

territorial period,<sup>616</sup> initially not as a proof of Americanisation, but as a way of getting the executive and judicative branches of government under popular control. For loyal Hawaiian nationals this was a meaningful alternative to the restoration of independence, which had proven practically impossible to achieve. With increasing Americanisation however, the movement for statehood shifted more and more towards a struggle for equal rights within what was increasingly perceived as a part of America, and eventually even most representatives of the oligarchy jumped on the bandwagon and supported it.<sup>617</sup> While in Washington conservative members of the US Congress prejudiced against non-white people opposed statehood and tried to block it,<sup>618</sup> in Hawai‘i some conservative members of the local oligarchy, as well as some Hawaiians who had held on to their national identity, opposed it as well.<sup>619</sup> The alternative options of independence (as it was granted in 1946 to the Philippines) and Commonwealth status (a sort of internal autonomy within the US system, but without being incorporated into it, like it was given to Puerto Rico in 1952) were occasionally raised by those opponents.<sup>620</sup> But these were never systematically pursued, even though a significant minority within the territory supported Commonwealth status.<sup>621</sup> Eventually in March 1959, the US Congress passed a law enabling Hawai‘i to become a state.<sup>622</sup> After a referendum on 27 June of the same

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<sup>616</sup> Bell 1984: 44-45; Van Dyke 2008: 254

<sup>617</sup> Fuchs 408; Bell 1984: 62; Coffman 2003: 42. This was mainly due to the Jones Costigan Act of 1934, which limited sugar exports to the US and thus impeded the growth of the sugar industry, see *supra* note 457.

<sup>618</sup> Bell 1984: 133-139

<sup>619</sup> Fuchs 1961: 412-13; Bell 1984: 116; 147, 294

<sup>620</sup> The restoration of independence was advocated in a testimony by John Ho‘opale at a congressional hearing in 1950 (Van Dyke 2008: 256) as well as by a conservative Southern US Newspaper in 1947 (Bell 1984: 135) and by the American Parents Association in 1953 (*ibid*: 288). For a discussion of Commonwealth status see Bell 1984: 197-200, 263-264.

<sup>621</sup> Bell 1984: 198-200

<sup>622</sup> *An Act to Provide for the admission of the State of Hawaii into the Union (Public Law 86-3, 86<sup>th</sup> Congress, S. 50)* [hereafter *1959 Hawaii Admission Act*]. See also Bell 1984: 273-274.

year, in which 94 per cent of the participating voters (but not a majority of the territory's population<sup>623</sup>) voted in favour, statehood was finally implemented.<sup>624</sup>

With admission as a US state, all residents of Hawai'i defined as US citizens now elected their own governor, and had equal representation in both houses of the US Congress, under a state constitution (drafted in 1950<sup>625</sup> and further revised in 1968<sup>626</sup> and 1978<sup>627</sup>), that was generally similar to other US state constitutions.<sup>628</sup> The state government became dominated by the Democratic Party, made up primarily of local Japanese.<sup>629</sup> While the process brought equality with the other states of the US, and the end of the dominance of the white minority over the rest of the population, it also meant the final loss of local specificities. American statehood, happening without any visible protests, not even by those who had campaigned for independence or Commonwealth status before,<sup>630</sup> can thus be regarded as the culmination and, for the time being, conclusion, of the process of US occupational assimilation and indoctrination.<sup>631</sup>

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<sup>623</sup> According to Bell (1984: 285), the population of the territory was about 620,000 in 1959. The number of voters in the statehood referendum however, was merely 140,792 (ibid: 258, 277). To suggest that only one fifth of the population were above voting age would be quite astonishing. For a discussion of these numbers see also Williams 2007.

<sup>624</sup> Bell 1984: 276-278

<sup>625</sup> *The Constitution of the State of Hawaii. Agreed upon by the Delegates of the People of Hawaii in Convention at Iolani Palace, Honolulu Hawaii, on July 22, 1950.* Honolulu: The 1959 Joint Legislative Interim Committee and The Thirteenth Legislature of the Territory of Hawaii.

<sup>626</sup> *The Constitution of the State of Hawaii as Amended by the Constitutional Convention, 1968, and Adopted by the Electorate on November 5, 1968.* Honolulu: Archives Division, Department of Accounting and General Services.

<sup>627</sup> *The Constitution of the State of Hawaii as Amended by the Constitutional Convention, 1978, and Adopted by the Electorate on November 7, 1978.* Honolulu: Constitutional Convention 1978. [hereafter 1978 State of Hawai'i Constitution]

<sup>628</sup> Bell 1984: 180-191

<sup>629</sup> Coffman 2003: 166-167

<sup>630</sup> Coffman 2003: 290; Van Dyke 2008: 257

<sup>631</sup> Coffman 2003: 290-91

## Rapa Nui

### *The military/company colony 1896-1966*

After Chile definitely took control of the island in 1896, a decree of June in the same year created the office of *subdelegado marítimo*, subject to the naval authorities of Valparaíso,<sup>632</sup> but the specific organisation of the island was apparently left unclear. As late as 1902 a Chilean officer wondered whether the island was legally part of Chile at all.<sup>633</sup> As we have seen in the preceding chapter, the first *subdelegado* was in fact acting in a double capacity as the manager of a ranching company that claimed land on the island and had leased use of it from the Chilean government in 1895.<sup>634</sup> Virtually all-powerful in both his political and economic power, the Rapanui were subjected to his arbitrary will, which included forced labour and the forced relocation and imprisonment of the entire population in the village of Hanga Roa.<sup>635</sup> In 1902, a visiting navy commander issued an edict outlining the organisational structure of the island.<sup>636</sup> The manager of the company was confirmed to exercise *ex officio* the function of *subdelegado marítimo*, while the appointed office of *cazique* (native village headman), subordinate to the *subdelegado*, was created to replace the *'ariki* (traditional leader).<sup>637</sup> For the next decades, the *cazique* would be the only acknowledged native leader, but he lacked a clear legal status. Later this position would be referred to as *alcalde* (mayor).<sup>638</sup> However, the island not being a constitutionally organised municipality until 1966, that

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<sup>632</sup> Cited in *Informe de la Comisión Verdad Histórica* : 317, but no identification number of the decree given.

<sup>633</sup> *Informe de la Comisión Verdad Histórica*: 295

<sup>634</sup> *Contrato de Arriendo* ("Lease contract"), 3 September 1895. Reprinted in Vergara 1938: 157-158

<sup>635</sup> *Informe de la Comisión Verdad Histórica*: 296-297, 298

<sup>636</sup> Fischer 2005: 155-156

<sup>637</sup> Vergara 1939: 80; *Informe de la Comisión Verdad Histórica* : 301; Delsing 2004: 26

<sup>638</sup> Vergara 1939: 245; Fischer 2005: 205, 211

“mayor” did not have any clear legal status either, as the legal responsibilities conferred to municipalities under Chilean law were exercised by the *subdelegado marítimo*.<sup>639</sup>

In 1914, Angata Hereveri and Daniel Teave led an unsuccessful revolt against the arbitrary rule of the company that had become unbearable.<sup>640</sup> In reaction, another visiting navy commander issued an edict that the office of *subdelegado marítimo* was henceforth to be separated from that of company manager, and appointed a Chilean civil servant to that position. He otherwise reconfirmed the edict of 1902, so that the island was still not clearly a lawful part of Chile.<sup>641</sup> However, a 1916 presidential decree proclaimed the island to be a *subdelegación* of the *departamento* of Valparaíso,<sup>642</sup> which according to the 1833 Chilean constitution means a third-degree territorial subdivision of the national government,<sup>643</sup> thus making the island implicitly an integral part of Chile.<sup>644</sup> In further reaction to the 1914 uprising, a commission of inquiry was sent to the island and denounced the deplorable conditions,<sup>645</sup> but no significant improvements were made in consequence. The lease with the company was renewed in a ministerial decree in the same year,<sup>646</sup> and an organic law enacted in 1917, which, in contradiction to the 1916 decree cited above, subjected the island to the naval authorities of Valparaíso, without further specifying its administrative organisation,<sup>647</sup> thus confirming the earlier military

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<sup>639</sup> Vergara 1939: 78

<sup>640</sup> Fischer 1999: 121-133; Delsing 2004: 26-28

<sup>641</sup> Fischer 2005: 171

<sup>642</sup> *Decreto No. 444*, 26 April 1916. Reprinted in Vergara 1939: 223; cited in *Informe de la Comisión Verdad Histórica*: 317

<sup>643</sup> *1833 Chilean Constitution*, Art. 115, 120.

<sup>644</sup> Makihara 199: 77; Fischer 2005: 176

<sup>645</sup> *Informe de la Comisión Verdad Histórica*: 298-300

<sup>646</sup> *Decreto 1291*, 7 November 1916. Reprinted in Vergara 1939: 181-182. Quoted in *Informe de la Comisión Verdad Histórica*: 300; Fischer 1999: 136-138.

<sup>647</sup> *Ley No. 3220. Fondos para establecer un Lazareto y una Escuela en la Isla de Pascua. Se dispone que esta Isla quedará sometida a las Autoridades, Leyes y Reglamentos Navales* (“Law No. 3220. Funds to establish a Hospital and a School on Ester Island. Provides that this Island is subject to the Authorities,

edicts and giving it a status distinct from the rest of Chilean territory. This implied that the constitution was not fully applicable.<sup>648</sup> This organic law remained in force until 1966. Effectively, Chile's rule remained arbitrary, and the deprivation of human rights continued.<sup>649</sup> In Stephen Fischer's words, Rapa Nui was "infamous as Pacific Islands' worst administered colony".<sup>650</sup> After yet another inquiry, a new set of regulations was issued in the 1930s. However, these did nothing to bring substantial change, as all of them confirmed the dual authority of the company and the military.<sup>651</sup> All the land was declared Chilean State property in 1933,<sup>652</sup> and the lease of that land to the company was once more renewed in 1936.<sup>653</sup> A navy decree in 1936 detailed regulations of the administration and created some obligations for it towards the population, but it maintained the prohibition to leave the village.<sup>654</sup> The forced seclusion of the population became even worse when the island was used as a penal colony for Chilean political prisoners during the 1930s, and to prevent their escape, contact with Tahiti that had sporadically continued until then was prohibited in 1934. The islanders were thus completely cut off from their Polynesian relatives.<sup>655</sup> The situation became so unbearable that during the 1940s and 50s eight crews of islanders attempted a 3,000

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Laws and Regulations of the Navy"). 29 January 1917. Reprinted in Vergara 1939: 224. Cited in Fischer 1999: 142-143; *Informe de la Comisión Verdad Histórica*: 318; Fischer 2005: 179

<sup>648</sup> Vergara 1939: 77; *Informe de la Comisión Verdad Histórica*: 300

<sup>649</sup> *Informe de la Comisión Verdad Histórica*: 301

<sup>650</sup> Fischer 2005: 178

<sup>651</sup> Makihara 1999: 85-87, *Informe de la Comisión Verdad Histórica*: 202-203

<sup>652</sup> *Fojas 2400. No. 2424. Copia de inscripción de posesión*, 11 November 1933. Reprinted in Vergara 1939: 191. Cited in *Informe de la Comisión Verdad Histórica*: 303; Tuki et al. 2003: 455

<sup>653</sup> *Decreto No. 196*, 13 February 1936, cited in Vergara 1939: 66; *Arrendamiento y cesión del fisco a la Compañía Explotadora de la Isla de Pascua* ("Lease and cession by the public treasury to the Exploitation Company of Easter Island") Reprinted in Vergara 1939: 203-210.

<sup>654</sup> *Reglamento de régimen interno de vida y trabajo en la isla de Pascua de la República de Chile* ("Regulation of the internal regime of life and work on Easter Island of the Republic of Chile"), 11 November 1938. Reprinted in Vergara 1939: 226-239. See also *Informe de la Comisión Verdad Histórica*: 304; Fischer 2005: 191

<sup>655</sup> Peteuil 2004: 88; Fischer 2005: 185



kilometre voyage in open boats to escape to Tahiti, only three of them successfully.<sup>656</sup> On the other hand, in contrast to the oppressive control exercised on the island, the Chilean government was still not fully committed to its colony. In 1937, Chile seriously considered selling Rapa Nui to Japan, even though the project was later abandoned.<sup>657</sup>

After new complaints were made about the abusive situation on the island, the company lease was not renewed and the island fell under full military rule in 1953,<sup>658</sup> with a navy commandeer as governor, replacing the *subdelegado marítimo*.<sup>659</sup> Once again, this did nothing to improve the lot of the islanders. Rapa Nui was now no longer an ambiguous joint colony of the company and the navy, but it was run by the navy alone, as if the island was “a battleship under martial law”.<sup>660</sup> This tight military control turned out to be even worse than the joint company and military rule before, as the prohibition of free movement as well as forced labour and arbitrary judgements were maintained.<sup>661</sup> Even torture and cruel punishment such as flogging were common occurrences.<sup>662</sup> Full military rule also marked the beginning of a more systematic assimilation policy, and the use of the Rapanui language became prohibited in official contexts.<sup>663</sup>

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<sup>656</sup> For a detailed description and analysis of these escapes, see Peteuil 2004

<sup>657</sup> McCall 1995; Fischer 2005: 192-193

<sup>658</sup> *Decreto Supremo No. 1731*, September 1953, cited in *Informe de la Comisión Verdad Histórica*: 305; Fischer 2005: 196-197

<sup>659</sup> Fischer 2005: 201

<sup>660</sup> “...wie ein Schlachtschiff unter Kriegsrecht...”. Fischer 1999: 211 [translated by the author]

<sup>661</sup> Peteuil 2004: 48; *Informe de la Comisión Verdad Histórica* : 305-313; Fischer 2005: 201

<sup>662</sup> Fischer 1999: 211-213; *Informe de la Comisión Verdad Histórica*: 308-310, 313; Fischer 2005: 202

<sup>663</sup> Fischer 2005: 210

### *Political Integration into Chile 1964-1966*

With increasing contact with Chile, and resuming sporadic contact with Tahiti, the political awareness of the Rapanui about the oppressive nature of the navy rule grew in the 1960s, until it became once more unbearable.<sup>664</sup> Under the leadership of Alfonso Rapu, a new popular uprising took place in the end of 1964,<sup>665</sup> its chief demands being full civil rights as Chilean citizens.<sup>666</sup> A possible Polynesian confederation was also evoked as an alternative.<sup>667</sup> In an act of defiance, the population elected Rapu mayor, replacing the navy-appointed incumbent.<sup>668</sup> Due to the presence of visiting foreign witnesses, the navy was unable to repress the uprising forcefully.<sup>669</sup> In reaction, Chile finally ended naval rule and established a civil administration in 1965, at first informally as a civil municipality.<sup>670</sup> In March 1966 the Chilean congress passed the so-called *Ley Pascua* (Easter Island Law), a detailed organic law to replace that of 1917.<sup>671</sup> Through this law, the navy no longer held any political authority, and the island was fully incorporated into the Chilean State, becoming a *departamento* (second-degree territorial subdivision of Chile, from 1974 called province<sup>672</sup>) within the province (first-degree territorial subdivision, from 1974 called region) of Valparaíso. The Rapanui people became Chilean citizens with voting rights in national elections. Locally, a municipal

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<sup>664</sup> Fischer 2005: 209-211

<sup>665</sup> McCall 1997: 117-118; Tuki et al. 2003: 463-465; Delsing 2004: 28-29; Peteuil 2004: 153-169

<sup>666</sup> Fischer 2005: 211

<sup>667</sup> Makihara 1999: 101; *Informe de la Comisión Verdad Histórica*: 313; Fischer 2005: 213

<sup>668</sup> Fischer 2005: 211-212

<sup>669</sup> Fischer 2005: 213

<sup>670</sup> Fischer 2005: 214-215

<sup>671</sup> *Ley 16.441. Crea el departamento de Isla de Pascua* ("Law 16,441. Creates the *departamento* of Easter Island"). 1 March 1966. Printed document, copy obtained from the Provincial government's office in Hanga Roa in author's possession [hereafter *Ley Pascua*].

<sup>672</sup> For a brief historical overview of Chilean territorial subdivisions see the Wikipedia entry *Historia de la organización territorial de Chile*

<[http://es.wikipedia.org/wiki/Historia\\_de\\_la\\_organizaci%C3%B3n\\_territorial\\_de\\_Chile](http://es.wikipedia.org/wiki/Historia_de_la_organizaci%C3%B3n_territorial_de_Chile)> [accessed 11 January 2008].

government with an elected mayor and municipal councillors was set up, while the governor of the *departamento* (later province) remained an office appointed by the Chilean president. A local court, as a branch of the regular Chilean judiciary, was also established. Besides assimilating Rapa Nui into the Chilean administrative system, the law also created some special provisions: The islanders remained tax-exempt, land alienation to non-Rapanui individuals was prohibited, and criminal sentences were to be one degree lower than the requirements of Chilean law.<sup>673</sup> The wall around Hanga Roa was torn down and the islanders could move freely, both on the island and to Chile.<sup>674</sup> Fundamental human rights were thus at last secured. On the other hand, however, the new civil status also meant that the presence of the Chilean State increased, bringing along an influx of Chilean bureaucrats and settlers, increasing cultural Chileanisation, and a language shift to Spanish.<sup>675</sup> Westernisation was further increased through the establishment of a United States military installation from 1967 to 1970.<sup>676</sup>

The 1973 military coup in Chile, led by General Augusto Pinochet, once more removed all aspects of democracy. During the military dictatorship that lasted until 1990, all civil servants were appointed by the junta in Santiago,<sup>677</sup> and a fully democratic municipality was restored only in 1992.<sup>678</sup> Even though this military rule was effectively similar to the naval period of 1953-1965,<sup>679</sup> the island remained part of the regular

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<sup>673</sup> *Ley Pascua*, Arts. 13, 41, 47; Cited in *Informe de la Comisión Verdad Histórica*: 314; Fischer 2005: 215

<sup>674</sup> Fischer 2005: 217

<sup>675</sup> Makihara 1999: 102-105; Fischer 2005: 218

<sup>676</sup> Fischer 2005: 219-220, 223

<sup>677</sup> Fischer 2005: 225, 232

<sup>678</sup> Fischer 2005: 238

<sup>679</sup> Fischer 2005: 225

Chilean administrative system, and was not treated differently from any continental part of the country.

## **Conclusion**

In the first six decades of the twentieth century, all three entities under consideration in this thesis underwent a process of assimilation into the political system of the ruling power, with various social, cultural and economic ramifications. Although the processes were vastly different in their details for each case, as a general pattern one could say that the political system imposed by the coloniser or occupier was first used to oppress the native population and create economic opportunities for the ruling state and its settlers at the detriment of the locals. Once the local population had been sufficiently assimilated so that they posed no eminent danger to the ruling State's power, political institutions created by the coloniser or occupier became a tool of the native population to regain certain rights. Both Hawai'i and Rapa Nui clearly followed that pattern. During the first half of the twentieth century, both were in a situation of inequality with, and oppression by, their respective ruling powers. The oppression was not only political, but also, and even more so, economic: Hawai'i, behind the façade of territorial government, was dominated by the Big Five, while in Rapa Nui it was effectively the ranching company, not so much the military *subdelegados*, who wielded power. In reaction, both were eventually set on a movement towards integration into the ruling State in order to end this system of oppression and achieve equal civil rights. This worked most smoothly in Hawai'i, where there were very few dissenting voices. In Rapa Nui, there was at first some ambiguity about the goals of the 1965 uprising, but eventually the *Ley Pascua* was

gratefully accepted, and no one protested against its assimilative and integrative implications. In French Oceania/Polynesia, on the other hand, things were more complicated. While the movement in reaction to the colonial oppression was initially ambiguous in its political orientation as well when it briefly considered *départementalisation*, it became then clearly nationalist and anti-assimilative during the later 1950s. In contrast to Hawai'i and Rapa Nui, the dynamics of local politics in the 1950s and 1960s did not evolve towards more assimilation, but towards emancipation from France altogether. In order to further its assimilation of the territory, France had to first crush the local political movement and restore colonial authority, and then buy the consent of the population with the enormous influx of money associated with the nuclear testing centre.

## Chapter 4

### Refused Decolonisation

American statehood for Hawai‘i, the abolition of *Loi-cadre* self-government and the imposition of the CEP in French Polynesia, and the enactment of the *Ley Pascua* on Rapa Nui all happened during a time that Western colonies in Africa and Asia were achieving independence. Even in the neighbouring Pacific territories, the process of decolonisation was beginning to unfold at that time, with Western Sāmoa becoming the first to gain independence in 1962.<sup>680</sup> That the three territories under consideration here were not decolonised, but to the contrary, bound more closely to the ruling power, sets them in opposition to the prevailing worldwide trend.<sup>681</sup> In order to better understand this anomaly, we have to explore the nature and ramifications of the decolonisation process in more detail and then evaluate the three cases accordingly.

#### The UN decolonisation regime

##### *The beginnings 1945-1959*

International law in the nineteenth and early twentieth century, as we have seen in the preceding chapter, was strongly centred on Western countries, even though in some few cases it already extended to non-Western countries as well. During the twentieth century however, and especially after World War II with the foundation of the United Nations, international law evolved significantly to embrace more and more non-Western

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<sup>680</sup> Maleiseā 1987a

<sup>681</sup> For this comparative analysis, see also Fischer (2005: 199), who adds the forced integration of West Papua into Indonesia, happening at this time as well, to the discussion.

interests.<sup>682</sup> A group of Asian countries that had gained independence immediately after World War II accelerated this process and gave anti-colonial opinions a voice in the newly formed United Nations.<sup>683</sup> The concept of decolonisation originated in this context. It was seen as a remedy for the abuses committed against peoples once considered under international law as “uncivilised tribes” or States not recognised and therefore taken over as protectorates or colonies.

While earlier international agreements, like the acts of the 1884-85 Berlin Congress on Africa or the 1919 Covenant of the League of Nations had merely contained declarations of intent to treat the inhabitants of the colonies well, the Charter of the United Nations, enacted in June 1945, created for the first time binding international obligations for the member states in relation to their respective overseas possessions.<sup>684</sup> In Chapter XI, Art 73-74, the Charter contains a “Declaration regarding non-self-governing territories”, which stipulates that members in possession of “territories whose people have not yet attained a full measure of self-government” should recognise the interests of their people as paramount. The administering powers were furthermore instructed to develop self-government and promote economic, social and educational advancement in these territories, and, in article 73e, to transmit regularly information on the progress of these developments to the Secretary-General of the United Nations.<sup>685</sup> Sovereignty of colonial powers over their colonial territories was thus for the first time

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<sup>682</sup> Anaya 2004: 49-51

<sup>683</sup> Ahmad 1974: 378-382; El-Ayouty 1971

<sup>684</sup> Ahmad 1974: 9-10

<sup>685</sup> *Charter of the United Nations*. June 1945. Posted on the UN web site <<http://www.un.org/aboutun/charter/>>. [accessed 18 January 2008]. Chapter XI, Article 73.

limited.<sup>686</sup> However, the wording was still weak and ambiguous, mentioning only “self-government”, not necessarily independence, as the goal of the political evolution of the territories. One year later, the United Nations General Assembly (UNGA) passed resolution 66 (I) of December 1946, laying a foundation for dealings with the territories referred to in Chapter XI of the Charter. The resolution established a list of 74 territories on which information had been transmitted by the administrative powers according to article 73e, as well as a committee to collect that information.<sup>687</sup>

However, the defining characteristics of Non-Self-Governing Territories (NSGT) remained ambiguous and became an issue of contention among UN member States.<sup>688</sup> Several powers unilaterally ceased to transmit information on some of their territories in 1947.<sup>689</sup> In reaction to these acts, the UNGA passed resolution 222 (III) in November 1948,<sup>690</sup> requiring the administering powers to inform the UNGA of the legal changes in status that justified non-transfer of information.<sup>691</sup> After long debates over several years, and several intermediate resolutions giving partial and provisional definitions,<sup>692</sup> the UNGA finally passed resolution 742 (VIII) in November 1953, defining “factors which should be taken into account in deciding whether a Territory is or is not a Territory whose

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<sup>686</sup> For an evaluation of Chapter XI, see Ahmad 1974: 372-374.

<sup>687</sup> *United Nations General Assembly resolution 66 (I). Transmission of information under Article 73e of the Charter*. 14 December 1946. Posted on the UN web site <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/033/17/IMG/NR003317.pdf?OpenElement>>. [Accessed 22 January 2008]. [hereafter *1946 UNGA resolution 66*]

<sup>688</sup> Ahmad 1974: 171-178 220-264, 362-371

<sup>689</sup> Ahmad 1974: 170, 183, 390

<sup>690</sup> *United Nations General Assembly resolution 222 (III). Cessation of the transmission of information under Article 73 e of the Charter*. 3 November 1948. Posted on UN web site <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/043/93/IMG/NR004393.pdf?OpenElement>>. [Accessed 22 January 2008].

<sup>691</sup> Ahmad 1974: 188-189

<sup>692</sup> Ahmad 1974: 190-263



people have not yet attained a full measure of self-government”.<sup>693</sup> Self-government was to be achieved primarily through independence, even though association with another State could be considered as a form of self-government as well, if it is the result of the free will of the population concerned.<sup>694</sup> According to the list of factors, the will of the population should be expressed in an act of free choice between several possibilities, including independence.<sup>695</sup> A third possibility could be association with another country as an integral part thereof. In this case there has to be total equality with other parts of the metropolitan country, and the future possibility to modify the status of the territory in respect to the metropolitan country has to be given.<sup>696</sup> These factors were recommended for use by the administering powers, the UNGA, and the committee on information to determine the status of a territory.<sup>697</sup> The General Assembly was thus now competent to make the decision, after facts presented under resolution 222 (III) by the administering power intending to cease transmission of information, if the territory in question would indeed be removed from the list.<sup>698</sup> However, in spite of some clarity about the factors to consider, there was still uncertainty about whether it was the competence of the respective administering power or of the UNGA to decide whether a territory is a NSGT or not, and when the transformation of information might legally cease.<sup>699</sup> In the following year, UNGA resolution 850 (IX) explicitly gave the General Assembly the

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<sup>693</sup> *United Nations General Assembly Resolution 742 (VIII). Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government.* 27 November 1953. Posted on the UN web site

<<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/086/07/IMG/NR008607.pdf?OpenElement>>. [Accessed 18 January 2008]. [hereafter *1953 UNGA resolution 742*]

<sup>694</sup> *1953 UNGA resolution 742*, articles 5-6

<sup>695</sup> *1953 UNGA resolution 742*, annex, second part, article A2

<sup>696</sup> *1953 UNGA resolution 742*, annex, third part

<sup>697</sup> *1953 UNGA resolution 742*, articles 3, 9

<sup>698</sup> Ahmad 1974: 283-284

<sup>699</sup> Ahmad 1974: 218

right to examine communications of cessation of transfer of information for compatibility with the criteria of Resolution 742, and send evaluating missions to territories in question.<sup>700</sup> In spite of all these gradual clarifications however, there was still no clear primary definition of a NSGT.<sup>701</sup> In summary, one could say that the UN decolonisation process was well intended but had limited efficiency during the 1940s and 1950s.<sup>702</sup>

### *Systematisation of the decolonisation regime in the 1960s*

After a large number of former dependent territories in Africa had become independent countries and joined the United Nations, the General Assembly became predominantly anti-colonial<sup>703</sup> and subsequently passed the “Declaration on the granting of independence to colonial countries and peoples”, as resolution 1514 (XV) in December of 1960.<sup>704</sup> This declaration clearly and unambiguously called for the decolonisation of the remaining Non-self-governing territories, stating that

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.

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<sup>700</sup> *United Nations General Assembly resolution 850 (IX). Consideration of communications relating to the cessation of the transmission of information under Article 73e of the Charter.* 22 November 1954. Posted on UN web site

<<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/095/85/IMG/NR009585.pdf?OpenElement>>. [Accessed 22 January 2008]; Ahmad 1974: 286

<sup>701</sup> While the overwhelming majority considered only overseas colonies as NSGTs, Belgium and France insisted that indigenous territories within metropolitan countries would fall into that category as well. Article 73 did not make that sufficiently clear and both interpretations were possible. See Ahmad 1974: 273-282. For a further discussion of this issue, see Chapter four.

<sup>702</sup> Barbier 1974: 14-15

<sup>703</sup> Barbier 1974: 15

<sup>704</sup> *United Nations General Assembly Resolution 1514 (XV). Declaration on the granting of independence to colonial countries and peoples.* 14 December 1960. Posted on the UN web site

<<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/152/88/IMG/NR015288.pdf?OpenElement>>.

[Accessed 18 January 2008]. Reproduced in its entirety at the end of this thesis as Appendix E. [Hereafter 1960 UNGA resolution 1514]

2. All peoples have the right to self-determination; by virtue of that right, they freely determine their political status and freely pursue their economic social and political development.
3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.<sup>705</sup>

The declaration furthermore prohibited “any attempts aimed at the partial or total disruption of the national unity and the territorial integrity of a country [...]”,<sup>706</sup> thus at once denying the applicability of Chapter XI to metropolitan territories, and protecting the territorial integrity of each NSGT against possible manipulative efforts by the administering power.

To complement these powerful words with practical definitions, the UNGA passed resolution 1541(XV), which defined more clearly than ever before the criteria for a territory to be listed as non-self-governing, as well as the conditions for such a territory to be regarded as decolonised.<sup>707</sup> In Principle I, the applicability of Chapter XI is clearly limited to territories of the colonial type, once more excluding metropolitan territories. In Principles IV and V, these are clearly defined:

*Principle IV*

*Prima facie*, there is an obligation to transmit information in respect to a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.

*Principle V*

Once it has been established that such a *prima facie* case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. Those additional elements may be, *inter alia*, of an administrative, political, juridical, economic or historical nature. If they affect the relationship between

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<sup>705</sup> 1960 UNGA resolution 1514, Article 1-3.

<sup>706</sup> 1960 UNGS resolution 1514, Article 6.

<sup>707</sup> *United Nations General Assembly Resolution 1541 (XV). Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under article 73e of the Charter.* 15 December 1960. Posted on the UN web site <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/153/15/IMG/NR015315.pdf?OpenElement>>. [Accessed 18 January 2008]. Reproduced in its entirety at the end of this thesis as Appendix F [hereafter 1960 UNGA resolution 1541]

the metropolitan State and the territory concerned in a matter which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73e of the Charter.<sup>708</sup>

A full measure of self-government can be reached in three ways, after which there is no longer an obligation to transmit information: “(a) Emergence as a sovereign independent State; (b) Free association with an independent State; (c) Integration with an independent State”.<sup>709</sup> As for the latter option, the resolution stipulates:

The integration should be the result of the freely expressed wishes of the territory’s peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage.<sup>710</sup>

The UNGA went on to implement the new resolutions immediately. On the same day in resolution 1542 (XV) it determined the Spanish and Portuguese colonial possessions to be Non-Self-Governing Territories under the terms of resolution 1541, in open confrontation with Portugal which claimed that its territories were integral parts of its metropolitan country.<sup>711</sup> This clearly established that it was the UNGA’s prerogative to list a territory as non-self-governing, and no longer that of the administering powers. One year later, Resolution 1654 (XVI) of November 1961<sup>712</sup> established the

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<sup>708</sup> 1960 UNGA resolution 1541, Annex, Principles IV-V.

<sup>709</sup> 1960 UNGA resolution 1541, Annex, Principle VI.

<sup>710</sup> 1960 UNGA resolution 1541, Annex, Principle IX, section (b).

<sup>711</sup> *United Nations General Assembly Resolution 1542 (XV). Transmission of information under Article 73e of the Charter*. 15 December 1960. Posted on UN web site <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/153/16/IMG/NR015316.pdf?OpenElement>>. [Accessed 18 January 2008].

<sup>712</sup> *United Nations General Assembly Resolution 1654 (XVI). The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples*. 27 November 1961. Posted on UN web site <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/167/07/IMG/NR016707.pdf?OpenElement>>. [Accessed 18 January 2008].

Decolonisation Committee charged with the implementation of the aforementioned resolutions.<sup>713</sup>

With the resolutions of 1960 and 1961, the United Nations finally had a precise mechanism for its dealings with colonial territories and their development towards independence or other forms of self-determination. In 1970, these principles were once more codified as essential principles of international law through their inclusion into the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation*.<sup>714</sup> As more NSGT became independent during the 1960s, 1970s and 1980s, the list of NSG was reduced substantially, until at the turn of the millennium, there were only a handful left, for the most part tiny islands in the Caribbean and Atlantic Ocean under British rule with no indigenous population and few ambitions to become independent.<sup>715</sup>

The granting of independence to most of the territories originally listed in 1946, as well as those administered by Spain and Portugal added in 1960, makes the decolonisation work of the United Nations largely successful. More controversial, however, were the few cases of NSGTs that were removed from the list without becoming independent States, with the justification given by their respective administering powers that they had either become fully integrated into, or otherwise

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<sup>713</sup> For a detailed analysis of that committee and its achievements during the 1960s and early 1970s, see Barbier 1974.

<sup>714</sup> *United Nations General Assembly Resolution 2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*. 24 October 1970. Posted on UN web site <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>>. [Accessed 22 January 2008] [hereafter 1970 UNGA resolution 2625].

<sup>715</sup> *Non-Self-Governing Territories Listed by General Assembly in 2002*. Page of UN web site <<http://www.un.org/Depts/dpi/decolonization/trust3.htm>>. [Accessed 22 January 2008].

associated with the metropolitan country.<sup>716</sup> According to Matthew Craven, “[a] higher level of scrutiny was generally exercised in case of integration than in respect to other forms of self-determination”.<sup>717</sup> But as we will see, that scrutiny was not always properly applied. Two such cases were Hawai‘i and French Oceania.

### **The case of Hawai‘i**

#### *Evaluation of the application of the UN decolonisation regime*

Hawai‘i appeared on the original 1946 list as a Non-Self-Governing Territory administered by the United States, along with Alaska, Puerto Rico, the US Virgin Islands, Guam, American Sāmoa and the Panama Canal Zone.<sup>718</sup> The United States continued to transmit information on the territory until in 1959, following the admission act in March, the vote in favour of US statehood in June, and the admission as a US state in August, it reported to the UN General Assembly on 17 September, that the people of Hawai‘i, as well as those of Alaska, which became a US state earlier in the same year, had attained a full measure of self-government and therefore both entities no longer qualified as Non-Self-Governing Territories. Subsequently on 12 December 1959, the UNGA passed resolution 1469 (XIV) in which it acknowledged that, based on the reports communicated by the United States, Alaska and Hawai‘i had exercised their right of self-determination by freely choosing to become integral parts of the US. Transmission of information under Article 73e was therefore no longer appropriate, as the territories ceased to qualify as

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<sup>716</sup> See for example, Ahmad 1974 : 231-234, 269-273; 293-333.

<sup>717</sup> Craven 2004b: 535-536

<sup>718</sup> 1946 UNGA resolution 66 (I), list reprinted in Ahmad 1974: 424; Bell 1984: 89

NSGTs.<sup>719</sup> Some scholars<sup>720</sup> have maintained that the 1959 statehood vote was an act of self-determination,<sup>721</sup> and that Hawai‘i was properly decolonised by becoming an integral part of its administrative power according to UNGS resolution 742 (VIII).<sup>722</sup> However, several irregularities and inconsistencies can be observed in this process.

First of all, Hawai‘i was treated inconsistently by the United States. As noted above, the Territory of Hawai‘i was classified as an incorporated territory, i.e. an inchoate state like the continental territories before they became states, and thereby distinguished from unincorporated overseas territories.<sup>723</sup> It seems therefore not very logical that the US would in 1946 list Hawai‘i together with its unincorporated territories as a NSGT. However, despite the stipulations of the Organic Act, the status of the territory remained ambiguous. For example, the 1934 Jones-Costigan act and other US economic regulations classified the Territory of Hawai‘i as unincorporated.<sup>724</sup> Furthermore, and more importantly, it was not consistent to treat Hawai‘i as a NSGT and transmit information about it to the pertinent UN committee from 1946 to 1959 and then declare the 1959 statehood vote to be an act of self-determination, while at the same time not informing the people of Hawai‘i about these international proceedings. The achievement of US statehood was presented as a purely domestic legal process of the United States. In that sense, the voters of Hawai‘i could not make a free and informed

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<sup>719</sup> *United Nations General Assembly resolution 1469 (XIV). Cessation of the transmission of information under Article 73 e of the Charter in respect of Alaska and Hawaii.* 12 December 1959. Posted on the UN web site

<<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/142/92/IMG/NR014292.pdf?OpenElement>>. [Accessed 22 January 2008].

<sup>720</sup> E.g. Bell 1984; Van Dyke et al. 1996

<sup>721</sup> Van Dyke et al. 1996: 624

<sup>722</sup> 1953 UNGA resolution 742, annex, third part.

<sup>723</sup> Bell 1984: 40-41

<sup>724</sup> Bell 1984: 60, 265

decision about their future, as UNGA resolution 742 (VIII) stipulated.<sup>725</sup> Another problematic issue was the absence of any UN involvement in the statehood process,<sup>726</sup> so that only unverified information provided by the administering power was available to the UNGA when it made its decision to remove Hawai‘i from the list.

As for the performance of the 1959 vote itself, several points were inappropriate, as they were not in accordance with the relevant provisions of UN international law. First, there was no option on the ballot for independence. The only question that was asked was “Shall Hawaii immediately be admitted to the Union as a State?”,<sup>727</sup> while a negative answer implied the continuity of the territorial system. Having no option of independence in a process to determine the future political status of a NSGT could be seen as a violation of provisions in UNGA resolution 742, as cited above.<sup>728</sup> However, this inclusion was explicitly required only in cases of association, not necessarily in cases of integration. However, another problem arising out of US statehood for a NSGT is the absence of a provision for secession of states under the US constitution, and its effective prohibition in practice since the US Civil War of the 1860s. This is incompatible with another provision in resolution 742, which clearly requires that in the case of a NSGT becoming an integral part of another State, this integration should not be legally irreversible. There must be a possibility to modify the political status of the territory in question at a later date.<sup>729</sup> Under international law, the decision to become a US state

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<sup>725</sup> 1953 UNGA resolution 742, Annex, Third part, Art. A 1. See also Lopez-Reyes 1999: 124; 2000: 313

<sup>726</sup> Ahmad 1974: 332-333

<sup>727</sup> 1959 Hawaii Admission Act, Sect. 7 (b).

<sup>728</sup> 1953 UNGA resolution 742, Annex, Second part, Art. A 2. See also Lopez-Reyes 1999: 124; Craven 2004b: 539

<sup>729</sup> 1953 UNGA resolution 742, Annex, Third part, Art. 2.



could thus not be seen as final, but should be able to be modified at any time by the people of Hawai‘i who maintain the right to chose independence.<sup>730</sup>

Another issue of contention in the 1959 statehood vote was the definition of the electorate.<sup>731</sup> All US citizens resident for more than a year were allowed to participate, including US military personnel stationed in Hawai‘i.<sup>732</sup> Participation was thus extended to groups of people that were clearly not part of the “population of the territory” as defined in resolution 742 (VIII). These are generally understood to be those under “colonial and alien domination”.<sup>733</sup> It also sharply contrasted with UN practice in other decolonisation cases.<sup>734</sup> Settlers from the ruling country were usually excluded from the right of self determination, as they were already enjoying that right as citizens of their country of origin.<sup>735</sup> As it could be assumed that they would largely vote in favour of continued US rule, “participation of United States expatriates [...] cast doubt on the validity of the 1959 vote as an exercise of self-determination [...]”, to quote Ramon Lopez-Reyes.<sup>736</sup> Having immigrants from the US participate in the vote was thus clearly a violation of basic UN principles of decolonisation. More complex, on the other hand is the question of who else, out of the multiethnic population of Hawai‘i in 1959, should have voted. While Lopez-Reyes argues this should have been only people of ethnic Hawaiian ancestry,<sup>737</sup> this would both discriminate against the descendants of non-

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<sup>730</sup> Lopez-Reyes 1999: 125. Lopez-Reyes also cites the precedent of Surinam which was incorporated into its colonising power, the Netherlands, in 1954 but later chose to become independent in 1975 (Lopez-Reyes 1996: 85-86).

<sup>731</sup> Craven 2004b: 538-539

<sup>732</sup> Anaya 1994: 334-335; Van Dyke et al. 1996: 624; Lopez-Reyes 1999: 122; 2000: 313

<sup>733</sup> Pomerance, quoted in Lopez-Reyes 1999: 123-124.

<sup>734</sup> Lopez-Reyes 1999: 122-124

<sup>735</sup> Lopez-Reyes 1999: 124, 135

<sup>736</sup> Lopez-Reyes 1999: 125

<sup>737</sup> Lopez-Reyes 2000: 314-316

aboriginal subjects of the Hawaiian Kingdom who were equally victimised by the US occupation of their country,<sup>738</sup> and also contradict the precedence of other decolonisation cases in which descendants of imported labourers from third territories were recognised as having the right to exercise self-determination alongside the native population.<sup>739</sup>

In summary, one can say that the 1959 removal of Hawai‘i from the list of non-self-governing territories “failed to comply, without good reasons, with the earlier Assembly resolution 742(VIII)”,<sup>740</sup> and should therefore be regarded as inappropriate.

### *Questionability of the application of the UN decolonisation regime*

Further analysis, however, reveals an even deeper reaching problem. It turns out that the entire application of the UN decolonisation process to Hawai‘i is highly questionable. As we have seen in the preceding chapter, Hawai‘i was unique among the Pacific Islands in being a fully recognised independent State at the time the United States took possession of it, and, in the absence of a proper act of merger of sovereignty, continuing US rule over it constitutes a situation of prolonged occupation. Classification of a political entity as a non-self governing territory, on the other hand, implies a non-recognised status of that territory before it became colonised, as this was the case for all the other 73 territories included in the 1946 list of NSGTs. Other recognised independent States that found themselves under foreign occupation in 1946, like Germany under the four allies, or Japan under the United States, were not listed as NSGTs.<sup>741</sup> According to

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<sup>738</sup> Apple and Apple 1979: 127, 135; Craven (2004b: 539) suggests descendants of Hawaiian Nationals as the legitimate electorate.

<sup>739</sup> See for instance the example of Fiji’s Indian population, cited in Lopez-Reyes 1999: 122.

<sup>740</sup> Ahmad 1974: 332

<sup>741</sup> Sai 2007: 20

political scientist Keanu Sai, “it can be argued that Hawai‘i was deliberately treated as a non-self-governing territory or colonial possession in order to conceal the United States’ prolonged occupation [...]”.<sup>742</sup> In that sense, not only the process of US Statehood in 1959, but even the classification of Hawai‘i as a Non-Self-Governing Territory in 1946 could be seen as fraudulent. Classifying the entire process as illegal under international law does not make the 1959 statehood vote any more legal, of course. Not only under the UN decolonisation regime, but even more so under the laws of occupation, would the mass immigration of American nationals prior to the US statehood process be considered a violation. The Fourth Geneva convention stipulates that the “[o]ccupying Power shall not deport or transfer parts of its own population into the territory it occupies”.<sup>743</sup> In consequence, no matter from which point of view it is seen, it is very hard to argue that the 1959 plebiscite fairly represented the will of Hawai‘i’s people and would thereby justify the archipelago’s incorporation into the United States.<sup>744</sup>

Even though Matthew Craven argues that “to regard Hawai‘i as being a territory entitled to self-determination was not entirely inconsistent with its claim to be the continuing State”,<sup>745</sup> Hawai‘i is clearly a unique case and did not qualify to be a NSGT in the conventional sense. Only its unusual geographic setting, not territorially adjacent to the occupying State, and its US-imposed territorial political system gave it the appearance of having a colonial-style relationship with its occupier and facilitated the erroneous 1946 listing. Regardless of whether or not some kind of inclusion on the list as a special case might have been appropriate, the United States was wrong in the way it

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<sup>742</sup> Sai 2007: 20

<sup>743</sup> Fourth Geneva Convention, Art. 49, quoted in Sai 2004: 65

<sup>744</sup> For this analysis see also Craven 2004a: 9-10; 2004b: 539-540

<sup>745</sup> Craven 2004b: 536

treated the territory. The proper way to administer Hawai‘i according to the laws of occupation, would have been the continued administration of Hawaiian law by the occupation authorities, instead of establishing US surrogate local political institutions, and assimilating the population into American culture and values.<sup>746</sup> The entire process of American assimilation described above, from 1898 to 1959 and beyond, should therefore be regarded as a violation of international law.

### **The case of the French Establishments in Oceania/French Polynesia**

#### *Reflections on the Leeward Islands*

As we have seen in Chapter I, the three Leeward Islands of Ra‘iātea, Huahine and Porapora, including their dependencies, were recognised as independent in a way similar to the Hawaiian Kingdom. Their questionable acquisition between 1888 and 1898 might be considered as a mere occupation by France, similar to that of Hawai‘i by the United States. If this interpretation turned is correct, the Leeward Islands need to be legally classified as separate entities, and not included in French Oceania/Polynesia. They would then not properly qualify for the questions of decolonisation appropriate in the rest of the territory treated below. It is interesting to note that the Leeward Islands were administered separately, and with a distinct jurisdictional system until 1945, as we have seen in a preceding paragraph. Even if their legal code was decreed by France and only partly compiled of the laws of the three occupied kingdoms, this system still came closer to the required administration of local law in occupied territories than the immediate imposition of US law in Hawai‘i.

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<sup>746</sup> Sai 2007: 28

*The rest of the territory in terms of the UN decolonisation regime*

While Hawai'i is obviously an unusual case that does not properly fit into the UN decolonisation process as I have determined above, and the Leeward islands probably fall into a similar category, the rest of French Oceania represents a classical case of a colony. There is no doubt about the unrestricted applicability of the UN decolonisation regime in its case. The existence of States in most of the territory before the French takeover does not alter this fact. Precedence from other listed territories clearly shows that political entities which qualified as States but were not recognized before their colonisation, such as Madagascar, were seen as Non-Self-Governing Territories. Even if those States were never fully annexed and remained protectorates, they were included in the 1946 list, for instance Tunisia, Morocco, Brunei and Zanzibar.<sup>747</sup> As we have clearly established the applicability of the UN decolonisation regime to French Oceania, I will now analyse the process of its implementation, or more accurately its virtual non-implementation.

Following the Second World War, France promised in the preamble to its 1946 constitution to grant its colonies self-government. In wording that clearly reflected Art. 73 of the UN Charter, it stated:

Faithful to its traditional mission, France intends to conduct the peoples of which she has taken care to the liberty of governing themselves and managing democratically their own affairs; ruling out any system of colonisation founded on arbitrariness, she guarantees to all equal access to public functions and individual or collective exercise of rights and liberties hereafter proclaimed or confirmed.<sup>748</sup>

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<sup>747</sup> Ahmad 1974: 424. This was not entirely consistent, however, as in contrast to the three named and other protectorates, the British protectorates of Kuwait, Maldives and Tonga never appeared on the list before they became independent.

<sup>748</sup> "Fidèle à sa mission traditionnelle, la France entend conduire les peuples dont elle a pris la charge à la liberté de s'administrer eux-mêmes et de gérer démocratiquement leurs propres affaires ; écartant tout système de colonisation fondé sur l'arbitraire, elle garantit à tous l'égal accès aux fonctions publiques et

Following these ideals in its constitution, France listed almost all of its overseas possessions as Non-Self-Governing Territories. The French Establishments in Oceania thus figured on the 1946 list among those territories about which France transmitted information to the United Nations.<sup>749</sup> However, only one year later in 1947, France stopped transmitting information on the territory, effectively removing it from the list, together with New Caledonia, St. Pierre and Miquelon, the French Establishments in India.<sup>750</sup> It also removed the four former colonies that had become *départements*, while information continued to be transmitted on the other French territories. Initially, no official explanation was given for this selective removal.<sup>751</sup> In a 1949 statement, France declared the definition of NSGTs to be a matter of exclusive national competence, despite the passage of Resolution 222(III).<sup>752</sup> One year before, in 1948, but still a year after the unilateral removal, the granting of “extensive political rights” and a regime “‘closely resembling’ [...] that of Metropolitan France” had been given as a justification for the removal of the EFO.<sup>753</sup> The first explanation might refer to the granting of French citizenship to all inhabitants of the EFO in 1945, whereas the second is not very convincing at all, as the political organisation in the EFO after 1945, as described above,

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l'exercice individuel ou collectif des droits et libertés proclamés ou confirmés ci-dessus.” *1946 French constitution*, preamble. [translation by the author]

<sup>749</sup> 1946 UNGA resolution 66

<sup>750</sup> St. Pierre and Miquelon does not have any aboriginal population, its inhabitants being entirely of French metropolitan origin. The argument of a non-applicability of article 73e makes thus sense in regard to this territory. As for the French Establishments in India, this latter territory was subsequently annexed by the Republic of India in the 1950s, thereafter ceasing to be a matter of French decolonisation. Among the four French Overseas Territories removed in 1947, it is thus mainly the cases of the EFO and New Caledonia that should be of concern here.

<sup>751</sup> Ahmad 1974: 183

<sup>752</sup> El-Ayouty 1971: 152; Ahmad 1974: 179, 187, 190

<sup>753</sup> UNGA report, third session, quoted in Ahmad 1974: 190-191.

remained vastly different from, and certainly less democratic than that of metropolitan France.<sup>754</sup> However, even the argument about civil rights is inconsistent. The inhabitants of all French Overseas Territories became French citizens in 1946, but only the EFO and three other territories were removed. Another argument might be that the other Overseas Territories maintained segregated electorates for white and native inhabitants despite their common French citizenship until the *Loi-cadre* of 1956,<sup>755</sup> whereas in French Oceania there were no distinctions in voting rights since 1945. Upon closer examination however, even this argument makes no sense, as in the simultaneously removed territory of New Caledonia, the legal segregation of the Kanak population remained in force until 1956 like in the other territories.<sup>756</sup>

The removal of both the French Establishments in Oceania and New Caledonia from list in 1947 was thus clearly arbitrary. For New Caledonia, this unjust situation was eventually corrected through a re-inscription process in 1986,<sup>757</sup> but the case of French Polynesia remains outstanding.<sup>758</sup> All subsequent legal evolution in the territory, including the 1958 referendum, took place entirely within the French national framework without any international involvement.

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<sup>754</sup> Regnault 2006: 55

<sup>755</sup> Yacono 1971: 66; See for example Madagascar in Brown 2006: 263, 279; French Somaliland (Djibouti) in Thompson and Adloff 1967: 38-39; Comoros in Ibrahime 2000: 33.

<sup>756</sup> Lenormand 1991: 141; Henningham 1992: 49; Regnault 2003: 135; 2006: 55-56

<sup>757</sup> *United Nations General Assembly Resolution 41/41. Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*. 2 December 1986. Posted on UN web site

<<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/495/49/IMG/NR049549.pdf?OpenElement>>.

[Accessed 22 January 2008].

<sup>758</sup> Initiatives to initiate a re-inscription process for French Polynesia were taken by the government of the Solomon Islands in 1990 (Henningham 1992: 200) and by that of Papua New Guinea in 1996 (MacLellan and Chesnaux 1998: 247-248), both apparently with no follow-up. More recently, there have been efforts by the territorial government of French Polynesia since 2004 to pursue re-inscription of their territory. These efforts have so far (2008) been fruitless.

After removal from the list, France attempted to minimise the international engagement of the territory. This was shown very bluntly at the first South Pacific Conference in Fiji in 1950, a meeting organised by the colonial powers to promote the development of Pacific island territories, in which most of the leading native politicians of the Pacific participated. At this conference, French Oceania was the only territory not represented by an islander but by a European.<sup>759</sup> This seems totally illogical; especially as the territory was then one of the most politically developed in the Pacific, and Pouvāna‘a a ‘Ō‘opa would have been its obvious representative. One is therefore lead to assume that France deliberately tried to keep local politicians unaware of political developments in the region.

*Evaluation in terms of the French domestic decolonisation process*

Even though United Nations involvement with the EFO ended with the withdrawal from the list in 1947, decolonisation efforts continued both within the territory and in the larger French system. It is therefore worthwhile to evaluate the further evolution of the territory, especially the events of 1958, in terms of the continuing legal evolution of the status of French Overseas Territories. As we will see, even within that domestic framework, French Oceania/Polynesia represents an anomaly, and unusually undemocratic and arbitrary measures taken by the French government are evident.

We have already examined the 1956 *Loi-cadre* and its belated implementation in the territory in 1957. The institutions were identical to those created in the other French Overseas Territories, including New Caledonia in the Pacific, various territories in sub-

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<sup>759</sup> Fry 1997: 186



Saharan Africa, and Madagascar. With the implementation of that law, France ceased transmission of information on all of its territories in 1957, later arguing that the *Loi-cadre* gave them a sufficient amount of self-government to make them no longer qualify as NSGTs.<sup>760</sup>

Further, as we have seen there was a referendum on the new French constitution in September 1958. In all Overseas Territories, a large majority voted “yes”, except for Guinea, which voted “no”, resulting in immediate independence.<sup>761</sup> Most other territories then voted to become member States of the French Community, a kind of freely associated status.<sup>762</sup> Two years later the Community was dissolved and all its member States became fully independent by mutual consent in 1960.<sup>763</sup> Looking back at the 1958 events in Tahiti, the position of Cérans-Jérusalémy, advocating a Tahitian Republic but voting “yes” in the referendum was probably a more reasonable strategy for the eventual achievement of independence than Pouvāna’a’s campaign for a “no” vote, i.e. advocating an immediate break-off independence like Guinea.<sup>764</sup> That the 1958 “yes” vote was a vote against independence and to remain a French territory forever, as has been repeatedly claimed by the French government<sup>765</sup> is thus fundamentally wrong. In fact voting “yes” meant only the rejection of immediate independence and the willingness to cooperate with France in a continuing decolonisation process. Had France not arbitrarily intervened in the aftermath of the referendum, French Polynesia would most probably have followed

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<sup>760</sup> El-Ayouty 1971: 191; Ahmad 1974: 330-331, 333, 402.

<sup>761</sup> Yacono 1971: 88. The subsequent transfer of sovereignty to Guinea happened in a bitter break-up of all relations with France, whose officials committed acts of sabotage as a sort of revenge when they were leaving (Betts 1991: 125)

<sup>762</sup> Yacono 1971: 91-93. See for example Madagascar in Brown 2006: 284-285

<sup>763</sup> Yacono 1971: 98-101

<sup>764</sup> Henningham (1992: 124) comes to the same conclusion.

<sup>765</sup> Tagupa 1976: 19 Danielsson and Danielsson 1986: 119

the model of the African territories in becoming a member State of the French Community and achieving independence in 1960.

But the list of chances of decolonisation goes on. Besides French Polynesia, there were only three other French territories with native populations whose assemblies voted to retain Overseas Territory status after the 1958 referendum, namely New Caledonia, the Comoro Islands and French Somaliland (now known as Djibouti).<sup>766</sup> Strangely enough, of these four, three retained the *Loi-cadre* institutions of an elected council of ministers and a vice president, whereas only in French Polynesia these institutions were removed and an authoritarian governor-centred administrative system of pre-*Loi-cadre* times restored. Eventually the same happened in New Caledonia in 1963,<sup>767</sup> but the other two territories, the Comoros and French Somaliland, retained their vice-presidents and local governments. As independence movements were on the rise in these latter two territories, both eventually received a status of internal autonomy in 1961 and 1967, respectively, with a territorial government led by an elected president, and the office of governor being replaced with a High Commissioner.<sup>768</sup> Under pressure from the neighbouring newly independent African States, both territories were later also re-inscribed on the UN list of non-self-governing territories,<sup>769</sup> and eventually both the Comoros and Djibouti gained

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<sup>766</sup> Yacono 1971: 91

<sup>767</sup> Lenormand 1991: 143; Regnault 2003: 135

<sup>768</sup> See entries for both countries on the World Statesmen website:

<<http://www.worldstatesmen.org/Comoros.html>>; <<http://www.worldstatesmen.org/Djibouti.html>>.

[Accessed 29 January 2008]. For Djibouti see also Thompson and Adloff 1967: 92-101; for the Comoros see Ibrahime 2000: 81. For a more detailed discussion of internal autonomy in those territories as a model for French Polynesia, see Chapter four.

<sup>769</sup> *United Nations General Assembly Resolution 2228 (XXI). Question of French Somaliland*. 20 December 1966. Posted on UN web site

<<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/005/31/IMG/NR000531.pdf?OpenElement>>; *United Nations General Assembly Resolution 3161 (XXVIII). Question of the Comoro Archipelago*. 14 December 1973. Posted on UN web site

independence in 1975 and 1977 respectively.<sup>770</sup> During the same time, French Polynesia and New Caledonia remained under an authoritarian, colonial-style system of government without any locally elected chief executive.

With this calculated denial of self-determination, both French Pacific territories thus clearly represent anomalies, not only under international law, but also within the larger picture of French domestic decolonisation. In French Polynesia's case that denial from 1958 onwards seems to be easily explainable as motivated by military considerations concerning the planned nuclear testing centre.<sup>771</sup> However, it is not entirely clear why this systematic denial of decolonisation and arbitrary distinction from other territories dates back to 1947, at a time when France had no major military installations there.

### **The case of Rapa Nui**

While the two previous cases exemplify inconsistent applications of the UN decolonisation regime, Rapa Nui was excluded from any international process from the very beginning. The island did not figure on the 1946 list of non-self-governing territories, and it has to this date remained absent. While initially there were various other

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<<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/282/33/IMG/NR028233.pdf?OpenElement>>. [Both Accessed 22 January 2008].

<sup>770</sup> In the case of the Comoros, however, France has retained control over one of the islands, Mayotte, to this day, arguing that unlike the three other islands of the archipelago, the majority of the electorate on Mayotte voted against independence in 1975. This interpretation is contested by the Republic of the Comoros, which upholds its claim to sovereignty over Mayotte. The position of the Comorian government is supported by the African Union as well as the majority of the UN General Assembly members, who view France's continued control of the island as a violation of UNGA Resolution 1514, Article 6, disproving dismemberment of the territorial integrity of a territory. In consequence, the UNGA has repeatedly approved resolutions denouncing France's illegal occupation of the island. See Caminade 2003 and <<http://www.worldstatesmen.org/Comoros.html>>.

<sup>771</sup> See Regnault 1996: 197-204; 2003: 119-135; 2006: 217.

colonial territories not properly listed, the continuing omission of Rapa Nui after resolution 1541 (XV) of 1960 is astonishing. The island clearly fulfilled all the requirements, primary and secondary, that were given in that resolution for a territory to qualify as a NSGT. Rapa Nui was clearly both geographically separate, and ethnically and culturally distinct from its administrative power Chile.<sup>772</sup> Before 1966, the island also had a different legal and citizenship status from the colonising country, being under a military administration and lacking Chilean citizenship rights, thus fulfilling the criteria of being “arbitrarily place[d...] in a position or status of subordination”.<sup>773</sup> The subsequent change of status from a military colony to an integral part of Chile in 1966 took place entirely within the Chilean national framework, without any international involvement or even notice. Not listed by the UN, the island community had no idea it was entitled to an act of self-determination, and that the imposed incorporation into Chile was only one of several possibilities to decolonise.

Ironically, Chile has been a member of the UN Decolonisation Committee from the 1960s onwards,<sup>774</sup> but it never acknowledged having a colony itself. From Chile’s own point of view, this is hardly surprising. In fact, denial of colonialism seemed to be the common pattern among Latin countries, as Spain and Portugal refused to admit having non-self governing territories as well.<sup>775</sup> Unlike the cases of Spain and Portugal, however, whose colonies were forcibly listed in 1960 by majority vote of the UN general

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<sup>772</sup> 1960 UNGA resolution 1541, Annex, Principle IV, see full quotation above.

<sup>773</sup> 1960 UNGA resolution 1541, Annex, Principle V, see full quotation above.

<sup>774</sup> Barbier 1974: 259; List of current members of the Decolonisation committee on UN web site <[http://www.un.org/Depts/dpi/decolonization/special\\_committee\\_members.htm](http://www.un.org/Depts/dpi/decolonization/special_committee_members.htm)>. [Accessed 23 January 2008].

<sup>775</sup> El-Ayouty 1971: 199

assembly,<sup>776</sup> none of the anti-colonial UN member countries ever raised the issue of Rapa Nui. The absence of any international action is even more astonishing given the fact that there have been at least two initiatives by the people of Rapa Nui to get the United Nations involved in their island's further political evolution: In 1988, 1,200 Rapanui signed a petition to the UN Decolonisation committee and asked for a referendum on independence, with apparently no reaction.<sup>777</sup> Secondly, a delegation under Rapanui community leader Juan Teave intended to participate at a seminar of the Decolonisation Committee in Suva (Fiji) in 1998, but this was blocked by the Chilean representatives in the committee.<sup>778</sup> However, there seems to be no evidence that the political status of the island was ever mentioned at any type of UN meeting concerning decolonisation. If more detailed research confirms this absolute lack of international awareness, Chile would be unique in its position as the only colonial power that has never been officially designated as such.<sup>779</sup>

## Conclusion

As we have seen, all three territories were held onto by, and even further incorporated into, their respective ruling powers at a time when all over the world

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<sup>776</sup> *United Nations General Assembly Resolution 1542 (XV). Transmission of information under Article 73e of the Charter.* 15 December 1960. Posted on UN web site <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/153/16/IMG/NR015316.pdf?OpenElement>>. [Accessed 18 January 2008]. As the resolution states, Spain eventually complied with the UN and agreed to transmit information on its territories, but Portugal continued its policy of denial until 1975, when its metropolitan authoritarian regime was overthrown, and all its colonial territories were immediately granted independence. For a detailed discussion of Portuguese colonialism and action taken by the UN in its regard, see Barbier 1974: 343-388.

<sup>777</sup> Makihara 1999: 139

<sup>778</sup> Open Letter by Juan Chavez (Teave) to the acting Chairman of the UN Special Committee of 24, Bruno Rodrigues, dated 13 June 1998. Copy in private archives of Kekuni Blaisdell, Honolulu.

<sup>779</sup> Aldrich and Connell, for instance, briefly mention Rapa Nui in the introduction to their comprehensive monograph on contemporary dependent territories (1998: 2) but then omit the island from any further consideration.

colonial empires broke apart and overseas possessions gained independence. This alone represents a historical anachronism and makes the three territories jurisdictional anomalies today. Further analysis makes it clear, however, that these manipulations of the territories' political status could be orchestrated by the ruling powers only through the complicity of a silent majority of UN members that concentrated their efforts solely on the hot spots of Asia and Africa, and left the Pacific Islands for the most part out of their discussions. Numerous similar attempts by imperialist powers to conceal colonialism or manipulate the decolonisation process in Asian and African territories all failed eventually due to the scrutiny exercised by an ever more watchful UN, as we have seen in the cases of the Spanish and Portuguese colonies as well as Djibouti and the Comoros. I would thus argue that it was the geographical isolation of the three territories in the Pacific, remote from the world's major centres of attention, and the absence of major violent conflicts in any of them, that worked to their disadvantage.

The other question that needs to be asked, of course, is why the three ruling powers were so keen on keeping the three Pacific Islands territories in the first place, while many other overseas possessions were given up by the same metropolitan countries relatively easily. The Philippines for example, the largest territory in the United States overseas empire, was granted independence in 1946,<sup>780</sup> at a time when a more repressive attitude would not have brought the US into much international trouble, given the attitudes of the other colonial powers. Later, after 1958, France did not take strong efforts to keep her African territories either, finally letting them go in 1960 without much

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<sup>780</sup> Wei and Kamel 1998: 163

resistance. Why then the insistence of the US, France and Chile to keep Hawai'i, the islands of Tahiti, and Rapa Nui under tight control and deny them their legitimate rights?

The clearest answer can certainly be given in Chile's case. As Rapa Nui was Chile's only overseas colony, and Chile was the only Latin American country to have such a possession, it was Chile's interest to keep the island at any price for reasons of national prestige. Equally important were strategic reasons, as Rapa Nui became the base for Chile's claim to the airspace over the entire south-eastern quarter of the Pacific Ocean in which there is no other spot of land.<sup>781</sup>

Concerning the United States, it is interesting to note that it has kept all its overseas possessions except the Philippines.<sup>782</sup> Interestingly, the Philippines was the only large landmass among the US territories, with tens of millions of inhabitants, while all the others were medium to small-sized islands with low populations. While political opinion in the latter could be easily manipulated through either indoctrination or low-key repression,<sup>783</sup> the United States would have had to fight a costly war against a large-scale anti-colonial guerrilla movement if they had wanted to keep the Philippines. Granting independence, while making arrangements with the Filipino elite to keep both the military bases and economic advantages, was thus a much more profitable solution for

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<sup>781</sup> This was brought to my attention by looking at a map showing the airspace claimed by Chile, which was displayed at a prominent place in the provincial governor's office on Rapa Nui during my visits in 2004 and 2006.

<sup>782</sup> Disregarding the US Trust Territory of the Pacific Islands in Micronesia, parts of which became independent in free association with the US in the 1980s and 1990s. This territory however was never technically a US overseas possession like the territories acquired in the Spanish-American War, but rather a UN trust territory under US administration. Trust territories fell under a different chapter of the UN Charter, and much stronger UN scrutiny was exercised over the latter than over NSGTs of UN member states.

<sup>783</sup> See Lopez-Reyes 1996: 87 for a comparison of that strategy in Hawai'i and Puerto Rico.

the US.<sup>784</sup> Among the other US possessions, Hawai'i, in spite of being the only one over which the US lacked any legal title to sovereignty, was certainly the most strategically valuable, as even before World War II it had the largest overseas US military bases. The combination of mass immigration of US nationals and indoctrination of the local population had worked so well in this territory that the US did not need to suppress any independence movement, but could easily manipulate the population into accepting statehood.<sup>785</sup>

France, on the other hand, had many overseas possessions in all sizes and shapes all over the world, so it is not too clear at first glance why it chose to keep tiny and remote Tahiti but eventually grant independence to the resource-rich African colonies. As I argued above, there remain few doubts that the repressive attitude towards French Polynesia since 1958 was based on the choice of that territory as a nuclear testing base, so that it became one of France's most important military assets. It remains less clear however, why the negative manipulation of the decolonisation process in Tahiti's regard started already in 1947.

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<sup>784</sup> For a discussion of the continuing US economic and military dominance over the post-independence Philippines, see Wei and Kamel 1998: 163-167.

<sup>785</sup> It seems still puzzling, however, why Hawai'i was so unilaterally oriented towards the US, in a time of worldwide decolonisation. The absence of international outrage towards the overthrow and faked annexation in the 1890s seems comparably far less anachronistic, as imperialism was the typical way of things back then, and any other Western power, being as imperialist as the US, would probably have invaded and occupied Hawai'i in the same illegal way if they had had the intention and the opportunity to do so. But the virtual silence of both the international community and Hawai'i's population about the statehood scheme is indeed astonishing. Even more so, as in the other US imperial possessions a nationalist spirit was well present during that time, exemplified not only by the independence of the Philippines but also the violent clashes involving the Puerto Rican independence movement (see Wei and Kamel 1998: 68). Why Hawai'i was virtually universally trapped in US indoctrination during the same time remains indeed an unresolved question. It has been argued that it was the experience during World War that tied Hawai'i so close to the US, and if there had been no involvement in the war, Hawai'i would have followed the example of the Philippines and become independent (Bell 1984: 89-90). In a somewhat different way, Richard Ziegler and Patrick Patterson speculate in their fictional history "Red Sun" that if Japan had occupied the islands during the war and exposed its people to the experience of extreme and violent oppression, Hawai'i would also have achieved independence in the 1950s, with a form of government combining constitutional monarchy and socialism (2001: 202-227).



It is interesting to note, however, that all the French Overseas Territories removed from the list together with Tahiti in that year were similar small insular possessions, not large continental territories. In that context, it might be useful to look at the demands of the anti-colonial movements in the various French territories. Almost everywhere, *départementalisation* or other forms of political assimilation on equal terms were initially evoked as an option, and only after this was refused, the movements turned towards independence.<sup>786</sup> The reason incorporation was initially considered was the social legislation, including legal minimum wages, social security, public health care etc. that was in existence in metropolitan France, but absent or only rudimentary existent in the colonies.<sup>787</sup> It must have soon become clear to Paris that it could only satisfy the people of the Overseas Territories in two ways: Either incorporate the territories and extend all metropolitan social programmes to them, or grant them independence. If the first option came up to the French republican ideals of “Liberty, Equality and Fraternity”, it was out of touch with reality, as the very basis of the colonial empire was economic inequality and exploitation. Extending French social welfare standards to the vast African territories would have lead to the immediate bankruptcy of the entire country. Otherwise, the available resources would have had to be equally distributed among all inhabitants of the empire, which would have lead to a massive reduction of the standard of living in metropolitan France and probably incited an armed revolt of French citizens against their government.

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<sup>786</sup> Betts 1991: 120-121. See also the example of the anti-colonial nationalist movement in Madagascar, which was initially favourable of *départementalisation* before turning towards independence (Brown 2006: 250-251).

<sup>787</sup> Regnault (2004: 44) identifies the intention to evade French social legislation as the main reason why local elites in Tahiti (French settlers and bourgeois Tahitians) initially advocated local autonomy and resisted legal assimilation to metropolitan France. Later they switched positions, when native nationalists began advocating autonomy while the elites became staunchly pro-French.

Granting its larger Overseas Territories independence was thus the only economically viable option for France in the long run. Through post independence-arrangements with their governments, France continued to dominate many of them economically and militarily.<sup>788</sup> But with their status as foreign countries and no longer parts of France, the French government could save a lot of money by paying mere financial aid instead of being fully responsible for their social services.

On the other hand, incorporating a few small island territories and subsidizing them in order to bring their per-capita income closer to that of France was an affordable price to pay for the keeping of some spots of the former empire, which despite their negligible size allowed the maintaining of a worldwide chain of military bases, and thus enabled France to remain a global power.<sup>789</sup> In that sense, France's decision to release its large African and Asian colonies but hang on to various islands in multiple parts of the world was very similar to the US' attitude towards the Philippines in contrast to its smaller insular possessions.

In summary, I would argue that it was a combination of UN neglect and strategic interests of the ruling powers that led to the denial of the rights the inhabitants of the three territories were entitled to under international law. However, the deplorable processes of assimilation and refused or fraudulent decolonisation did not remain the last chapters in their political evolution. In the second half of the twentieth century, each of

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<sup>788</sup> In Madagascar, for instance, France maintained naval and air force bases and French companies played dominant roles for more than a decade following independence (Brown 2006: 307-309). To this day, France maintains military bases in several of its former African territories; see Wikipedia entry *Forces françaises hors de la métropole*

<[http://fr.wikipedia.org/wiki/Forces\\_fran%C3%A7aises\\_hors\\_de\\_la\\_m%C3%A9tropole](http://fr.wikipedia.org/wiki/Forces_fran%C3%A7aises_hors_de_la_m%C3%A9tropole)> . On French economic and military domination in post-colonial Africa see also Betts 1991: 128-129; Aldrich and Connell 1992; and Maclellan and Chesnaux 1998: 83-84.

<sup>789</sup> For a discussion of the role of the Pacific territories in French geostrategic interests, see Aldrich and Connell 1992: 251-255, 279-280; Aldrich 1993: 336, 352; Maclellan and Chesnaux 1998: 82-88.

them saw the emergence of political movements for independence, leading to various partial revisions of the imposed political status in reaction, as we shall see in the next two chapters.

**PART III**  
**RESISTANCE AND ACCOMMODATION**

## Chapter 5

### Resistance to Assimilation: Independence Movements and Initiatives

In all three territories, the policy of oppression and assimilation has been opposed by various movements of resistance, which are becoming more and more vocal in their demands. In this chapter I will first provide an overview of these independence movements, and then analyze and compare the various strategies that have been used by them in order to destabilize the rule by the foreigners and advance the cause of independence.

#### An overview of independence movements

##### *Hawai'i*

##### *The Home Rule Party and early US territorial politics 1900-1912*

Movements of resistance to American assimilation emerged in four phases. The first of these covered the early territorial period in the first decade of the twentieth century and centres around the *Home Rule Party*, as we have seen before. Strictly speaking, the *Home Rule Party* was not an independence movement, as it did not openly advocate the restoration of an independent Hawaiian government. However, it represented a force of resistance to assimilation and attempted to sustain a distinct Hawaiian identity.<sup>790</sup> The origins of the party date back to two nationalist political associations that were active during the last two decades of the nineteenth century, namely the *Hui Kālai'āina (Hawaiian Political Association)*, founded in 1889 to fight

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<sup>790</sup> For a detailed analysis of this aspect of the Home Rule party, see Silva 2004b.

against the injustices of the coup-imposed 1887 “bayonet constitution”,<sup>791</sup> and the *Hui Aloha ‘Āina (Hawaiian Patriotic League)*, formed in 1893 to oppose the Dole regime and fight against the planned US annexation.<sup>792</sup> Both were responsible for the mass petitions of 1897 that prevented the annexation treaty from being ratified in the US Senate.<sup>793</sup> After the enactment of the 1900 Organic Act and the restoration of voting rights for Hawaiians in the Territory, both *hui* merged to form the *Home Rule Party* under the leadership of Robert W.K. Wilcox.<sup>794</sup> The party successfully dominated the political scene in the territory during the first few years,<sup>795</sup> but pressure from the US business establishment, as well as internal disputes led to a split in 1902 and the defection of Prince Kūhiō Kalaniana‘ole, one of the most influential leaders, to the US Republican Party.<sup>796</sup> In consequence, the combined vote of oligarchy supporters and the pro-Kūhiō faction of Hawaiian nationalists in the Republican Party made the latter politically dominant,<sup>797</sup> while the US Democratic party took away votes and leaders on the other side.<sup>798</sup> The remnant of the Home Rule party subsequently became marginalised, especially after the premature death of Wilcox in 1903,<sup>799</sup> and the party ceased to exist in 1912.<sup>800</sup>

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<sup>791</sup> Andrade 1996: 69

<sup>792</sup> Andrade 1996: 126; Silva 2004b: 9-10

<sup>793</sup> Silva 2004a: 145-159; 2004b: 10

<sup>794</sup> Andrade 1996: 193-194; Coffman 2003: 9; Silva 2004b: 19-21

<sup>795</sup> Andrade 1996: 194-217; Bell 1984: 45-46

<sup>796</sup> Andrade 1996: 234-244

<sup>797</sup> Andrade 1996: 246-249; Bell 1984: 46; Coffman 2003: 9-13

<sup>798</sup> Coffman 2003: 13-14

<sup>799</sup> Andrade 1996: 252-253

<sup>800</sup> Bell 1984: 46

*Resistance to US statehood in the 1940s and 1950s*

For the next five decades, there was hardly any significant political resistance movement. Overwhelmed by the ever increasing American presence, large parts of the population shifted their efforts to the achievement of equal rights as Americans rather than continuing to resist assimilation. However, there was some resistance against the campaign for US statehood during the 1940s and 1950s. In spite of its rather marginal impact, this could be seen as the second phase of resistance to US assimilation. The key leader in this phase was territorial senator Kamokila Campbell, who vehemently campaigned against statehood,<sup>801</sup> while advocating Commonwealth status instead, modelled on that granted to Puerto Rico in 1952.<sup>802</sup> A few other Hawaiians advocated the restoration of independence, like John Ho'opale who testified against statehood in that sense at a 1950 congressional hearing.<sup>803</sup> However, neither was successful in forming a permanent political movement. A political party in favour of Commonwealth status existed for a short time, apparently rallying Hawaiian nationalists together with Big Five oligarchic interests in their common opposition to statehood,<sup>804</sup> but the party was severely beaten in the 1958 territorial elections.<sup>805</sup> The overall impact of the anti-statehood movement was thus marginal, and in the end pro-American statehood indoctrination, perpetuated by most inhabitants themselves as a means to achieve equal rights, overwhelmed any dissent.<sup>806</sup> Even if isolated expressions of Hawaiian nationalist opinions continued to exist, exemplified in bumper stickers reading "restore the

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<sup>801</sup> Bell 1984: 116, 147, 150

<sup>802</sup> Bell 1984: 197-200, 263

<sup>803</sup> Van Dyke 2008: 256

<sup>804</sup> Bell 1984: 198-200, 259

<sup>805</sup> Fuchs 1961: 412

<sup>806</sup> According to Bell (1984: 145), many opponents of statehood felt pressured not to state their opinion publicly.

monarchy” seen in the early 1960s”,<sup>807</sup> it would take yet another two decades for a new, and stronger movement to emerge.

### *The modern Hawaiian Sovereignty Movement since 1970*

This third and much more important phase, referred to as the modern Hawaiian Sovereignty Movement, began in the 1970s. It drew its inspiration partly from the civil rights and anti-Vietnam war movements in the United States of the 1960s, and especially the American Indian movement that emerged at the same time.<sup>808</sup> In parallel, a cultural renaissance took place in Hawai‘i, as Hawaiians began speaking out about their cultural identity once more, a movement that was initiated by John Dominis Holt’s 1964 essay *On Being Hawaiian*.<sup>809</sup> The beginning of the sovereignty struggle is generally associated with the protests against the eviction of pig farmers from Kalama Valley in 1970-71, and during the following decades, similar land struggles were central to the actions of Hawaiian activists.<sup>810</sup> Two years later, in 1972, influenced by the 1971 native land claims settlement in Alaska, Louisa Rice founded the *Aboriginal Lands of Hawaiian Ancestry* (ALOHA) association to seek reparations from the US government for its involvement in the 1893 overthrow.<sup>811</sup> Frustrated with the lack of success in this effort, ALOHA joined another organisation, *Hui Ala Loa* (“Long Road Organisation”) to form *Protect*

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<sup>807</sup> *Ka Hāpai Mana‘o*, Vol 1, 1 (August 1993): 3

<sup>808</sup> Trask 1987: 169-171; Young 2006: 11; Sai 2007: 21-22

<sup>809</sup> Holt 1995; about Holt’s key role see also Coffman 2003: 291-294; Sai 2007: 21.

<sup>810</sup> Blaisdell, Kekuni: *Historical Background for 1993 US apology Resolution PL 103-150. December 10, 1995 Draft for UN Human right day*. Unpublished typewritten document in the private archives of Kekuni Blaisdell; Wong-Wilson 2007: 14-15. For a detailed analysis of the Kalama Valley land struggle and its ramifications, see Milner 2006.

<sup>811</sup> Blaisdell, *supra* note 810; Wong-Wilson 2007: 15



*Kaho 'olawe 'Ohana* (PKO), founded in 1975.<sup>812</sup> Its struggle against the US bombing of the sacred island of Kaho'olawe, with spectacular landings and occupations, further catalysed the political movement for sovereignty.<sup>813</sup> In 1977, Mitsuo Uyehara and Black Ho'ohuli founded *Hō'ala Kānāwai* ("Awaken the law"), proposing to set up a trust corporation to manage the Crown and Government lands.

In most of these initiatives, however, "sovereignty" was not too clearly defined. Objectives included social justice, the protection of sacred sites, native rights for Hawaiians comparable to Native American rights, and reparations for the negative effects of the US invasion on the Native Hawaiian population. Only a small group of activists like Soli Nīheu, Kawaiipuna Prejean and Pōkā Laenui, developed a clear vision of political independence, the latter two convening the first modern commemoration of the 1893 overthrow on 17 January 1975.<sup>814</sup> The movement as a whole had no clear structure, consisting instead of various ad-hoc organisations with particular objectives.<sup>815</sup> In 1987 however, under the leadership of Mililani Trask and Mitsuo Uyehara, *Ka Lāhui Hawai'i* ("The Hawaiian People/Nation") was founded, becoming the first permanent and well structured sovereignty organisation.<sup>816</sup> Over the following years, more than 20,000 people signed up to become members of that organisation.<sup>817</sup> Structurally more stable than any other sovereignty organisation, *Ka Lāhui* enacted a constitution and later developed a "master plan" for the achievement of sovereignty.<sup>818</sup> It also became involved

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<sup>812</sup> Dudley and Agard 1993: 113-114; Sai 2007: 23

<sup>813</sup> Wong-Wilson 2007: 14

<sup>814</sup> Blaisdell, *supra* note 810

<sup>815</sup> Sai 2007: 23

<sup>816</sup> Dudley and Agard 1993: 116; Blaisdell, *supra* note 810; Wong-Wilson 2007: 16

<sup>817</sup> Osorio 2003 : 218

<sup>818</sup> Trask 1999: 211-236

in the international movement for indigenous rights.<sup>819</sup> Even though clear in structure and parameters, the organisation was less clear on its final objectives. “Sovereignty” was conceived as a situation similar to that of Native American groups, as a “nation within a nation”, thus stopping short of independence.<sup>820</sup> More radical activists advocating full independence grouped around the *Pro-Kanaka Maoli Independence Working Group*, and *Ka Pākaukau* (“The Table”) both formed in 1989 and led by Kekuni Blaisdell,<sup>821</sup> as well as the *Institute for the Advancement of Hawaiian Affairs* led by Pōkā Laenui.<sup>822</sup>

The sovereignty movement reached a climax in 1993, at the one-hundredth anniversary of the overthrow, with mass demonstrations in Honolulu.<sup>823</sup> Subsequently, in a collaboration between *Ka Lāhui* and the independence groups associated with *Ka Pākaukau*, a tribunal of international scholars met in August 1993 to try the US for crimes committed against the Hawaiian Nation.<sup>824</sup> In reaction to the 1993 commemorative events and protests, the United States Congress passed a resolution of apology, signed into law by President William Clinton in November 1993, which acknowledged the illegality of the 1893 US intervention, and called for reconciliation efforts between the US government and Native Hawaiians.<sup>825</sup>

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<sup>819</sup> Osorio 2003 : 218

<sup>820</sup> Wang 1998 : 106-107

<sup>821</sup> Dudley and Agard 1993: 125-126; Blaisdell *supra* note 810; Wang 1998: 106; Wong-Wilson 2007: 16

<sup>822</sup> See that group’s website under <<http://www.opihi.com/sovereignty>> [Accessed 16 February 2008].

<sup>823</sup> Wong- 2007: 19

<sup>824</sup> Blaisdell *supra* note 810; Printed brochure entitled *Ka Ho’okolokolonui Kānaka Maoli. 1993 The Peoples’ International Tribunal Hawai’i Mana’o*. Edited by Kānaka Maoli Tribunal Kōmike. Copy obtained from Kekuni Blaisdell; Churchill and Venne 2004.

<sup>825</sup> Cummings 2004: 80-81; Wong-Wilson 2007: 19-20

*Government reinstatement initiatives since 1992*

While movements advocating either indigenous autonomy or political independence have continued, more concrete political initiatives to reinstate a Hawaiian national government were taken during the early 1990s. These can be considered the fourth phase. One precursor of this strategy had already occurred, with the *'Ohana o Hawai'i* ("Family of Hawai'i"), founded by Peggy Ha'o Ross in 1974. The group declared the constitutional Hawaiian Kingdom restored, with Ross as queen, proclaimed an "empty declaration of war" against the United States,<sup>826</sup> and unsuccessfully attempted to file a lawsuit against the US at the International Court of Justice in The Hague.<sup>827</sup> However, even though the group was at times relatively large,<sup>828</sup> the impact of this political initiative on the sovereignty movement as a whole remained rather marginal for a long time. In June 1992, a different group of independence activists, led by Windyceslau Lorenzo and Herbert "Kabule" Holt Kauahi, formed another restored government of the Hawaiian Kingdom, with Lorenzo as "King Kamehameha VI" and Holt as premier.<sup>829</sup> Their organisation had a strongly pan-Polynesian orientation, and its monthly journal *'Iolani*, featured articles on spiritual mysticism, a vision of reconstructing a pan-Polynesian "Kingdom of Hawa'iti"[sic], as well as concrete initiatives of economic cooperation with New Zealand Māori, Cook Islanders and Tahitians. Within about a year, however, the restored government ceased to operate and publication of the *'Iolani* ceased.

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<sup>826</sup> Sai 2007: 23

<sup>827</sup> Blaisdell, *supra* note; Wong-Wilson 2007: 15

<sup>828</sup> Dudley and Agard 1993: 113

<sup>829</sup> Brochure entitled *The Kingdom of Hawai'i Restored June 7, 1992*. Copy in UH Hamilton library; *'Iolani*, Vol 1, No.5 (August 1993); Boyle 1995: 750; Wang 1998: 106

The 1993 US Apology resolution, in which the US admitted its participation in, and the illegality of, the 1893 overthrow of the Hawaiian Kingdom, gave a new boost to advocates of reinstating a Hawaiian government. Subsequently, following the advice given by American International Law professor Francis Boyle, the '*Ohana Council*, a pro-independence group led by Dennis "Bumpy" Kanahale that had been active in land occupations since its foundation in 1986,<sup>830</sup> declared the Independence of the *Nation of Hawai'i* in January 1994.<sup>831</sup> It drafted and adopted a constitution in January 1995, following the steps of restoration recommended by Boyle.<sup>832</sup> Unlike the kingdom reinstatement initiatives before and after, Kanahale's group created a new political system, with institutions markedly different from those of the Hawaiian Kingdom.<sup>833</sup>

Almost at the same time, another group of Hawaiian activists, led by Dennis Ragsdale and advised by American paralegal John B. Nelson, declared an "Interim Provisional Government Council" of the Kingdom of Hawai'i in April 1994.<sup>834</sup> One member of the group, Lindsay "Kaleo" Lindsey, was subsequently excluded by the others and formed his own government.<sup>835</sup> Using De Vattel's 1758 *The Law of Nations* as their theoretical base, Ragsdale's group formed an education branch named *Kaona* ("hidden meaning") in June 1996 to spread their plan in the community.<sup>836</sup> A few years later, Henry Noa, a member of *Kaona* who had written and published a book about the legal

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<sup>830</sup> Wang 1998 : 106; Kanahale quoted in Wong-Wilson 2007: 80-83

<sup>831</sup> *Proclamation of the Independence of the Sovereign Nation State of Hawai'i*, January 16, 1994, reprinted in Boyle 1995: 751-756; Wong-Wilson 2007: 16. See also the group's website under <<http://hawaii-nation.org>> [Accessed 16 February 2008].

<sup>832</sup> Boyle 1995; Kanahale quoted in Wong-Wilson 2007

<sup>833</sup> *Hawai'i Constitution. January 16, 1995*. Printed document. Copy acquired from Dennis Kanahale.

<sup>834</sup> *Writ of Proclamation. Authority of Appointment*. In *De Jure "Lawful" Kingdom of Hawai'i Packet*, undated (c 1996-1997), copy in private archives of Kekuni Blaisdell. See also the group's website under <<http://www.pixi.com/~kingdom/>> [Accessed 16 February 2008].

<sup>835</sup> See Lindsey's website under <<http://www.sovereignhawaii.com>> [Accessed 16 February 2008].

<sup>836</sup> Noa 1998: 2

basis for the restoration of the Hawaiian kingdom in 1998,<sup>837</sup> left Ragsdale's group to form the "Reinstated Hawaiian Government" in March 1999.<sup>838</sup> Subsequently, Noa's group recreated a complete government apparatus and amended the 1887 bayonet constitution to delete its discriminatory provisions and make it compatible with the modern world.<sup>839</sup> The organisation claims membership of at least four thousand citizen applicants,<sup>840</sup> making it the second largest of all Hawaiian sovereignty groups to date, after *Ka Lāhui*. As the prime minister, Noa has had informal contacts with the governments of Fiji, Tonga, and especially French Polynesia.<sup>841</sup> In mid-2006, members of the organisation were arrested during a spectacular occupation of Kaho'olawe Island, which they reclaimed as national lands.<sup>842</sup>

During the late 1990s and early 2000s, several other similar reinstated Hawaiian governments have been proclaimed, usually more marginal in both numbers of adherents and public activities, and less clearly structured. Examples include the *Ke Aupuni o Hawai'i Nei* ("The Kingdom of Our Hawai'i") government proclaimed in October 1996 by Leon Siu,<sup>843</sup> which uses a similar rationale to Denis Ragsdale's group; another entity claiming to be a restored Hawaiian Kingdom government based in Wailuku, Maui under Akahi Nui, who proclaimed himself "king" in December 1996 and held a "coronation" at

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<sup>837</sup> Noa 1998

<sup>838</sup> See this organisation's website under <<http://www.hawaii-gov.net>> [Accessed 16 February 2008].

<sup>839</sup> *The Amended Constitution of Hawaii of 2000*. In printed folder entitled *The Kingdom of Hawai'i. Conceived on October 8, 1840. Reinstated on March 13, 1999*. Copy acquired from Henry Noa.

<sup>840</sup> Osorio 2003: 234

<sup>841</sup> *The Solution, Newsletter for the Reinstated Hawaiian Government*, December 2003, January/February 2005

<sup>842</sup> *The Honolulu Advertiser*, 1 August 2006: *Honolulu Weekly*, 11 July 2007

<sup>843</sup> For a characterisation of that group see the article *The Kingdom has Come* in *Midweek*, 1 December 2004.

‘Iolani Palace in February 1998;<sup>844</sup> and more recently the Kingdom of Hawai‘i government proclaimed by “King” Edmund Keli‘i Silva and “Prime Minister” Samuel K. Kaluna of Kā‘ū, Hawai‘i island in November 2002,<sup>845</sup> as well as that proclaimed in December 2004 by “Queen” Mahealani Kahau-Asing of Papakōlea, Honolulu.<sup>846</sup> The latter rose to prominence mainly through its recent, highly mediated, occupation of ‘Iolani palace since late April 2008.<sup>847</sup> Various other activists support similar approaches without necessarily joining one of these government restoration initiatives.

While these initiatives are being undertaken by dedicated Hawaiian loyalists, the Kawānanakoa family, arguably the most genealogically qualified to succeed to the Hawaiian throne as they represent the only surviving line descending from those appointed by Lili‘uokalani as heirs, have not been active in any political movement for the restoration of the monarchy. While they have made important contributions to the preservation of ‘Iolani Palace and continue to play an important role in all official ceremonies held there, many independence supporters consider them too close to the US-supported local establishment, minimising their potential role in any of the current reinstatement initiatives.

A related but somewhat different course of action has been undertaken by Keanu Sai and a group of supporters. Formerly one of the editors of *‘Iolani* associated with the Lorenzo/Kaua‘i kingdom restoration initiative during the early 1990s, Sai has subsequently employed the most legalistic approach of all Hawaiian activists, basing his

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<sup>844</sup> See this group’s website under <<http://www.freehawaii.org>>.

<sup>845</sup> See the 2006 booklet *Kingdom of Hawai‘i*, copy acquired from Edmund Keli‘i Silva. See also the group’s website under <<http://www.kingdomofhawaii.org>>. [Accessed 16 February 2008]

<sup>846</sup> See this group’s website under <<http://www.higovt.org>>. [Accessed 16 February 2008]

<sup>847</sup> *The Honolulu Advertiser*, 1 May 2008, 17 May 2008; *Honolulu Star-Bulletin*, 1 May 2008

initiatives strictly on Hawaiian Kingdom law. In 1995, he founded the *Perfect Title Company*, in order to examine land titles and expose the fraudulent nature of land ownership in contemporary Hawaii, based on the illegalities of the 1890s.<sup>848</sup> For this challenge to the economic status quo of Hawai‘i, Sai was eventually arrested and sentenced to five years on probation in 1997.<sup>849</sup> In parallel to the *Perfect Title Company*, Sai also formed the *Hawaiian Kingdom Trust Company* in order to create an acting council of regency for the kingdom.<sup>850</sup> In that latter capacity, Sai and the three other members of the acting kingdom government participated in the *Larsen v. Hawaiian Kingdom* case at the World Court’s Permanent Court of Arbitration in the Hague from 1999-2001. The court verified the existence of the Hawaiian Kingdom as a sovereign state, but concluded that no further action could be taken without the participation of the US.<sup>851</sup> Sai subsequently filed a complaint against the US at the UN Security Council in July 2001.<sup>852</sup>

### *Recent developments*

While Sai continues his efforts by spreading information about these proceedings as an educator, the various Hawaiian sovereignty groups cited above have continued to protest regularly against the continuing US occupation of their islands. Most recently, the

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<sup>848</sup> Osorio 2003: 220-221

<sup>849</sup> Sai in Wong-Wilson 2007: 114-117

<sup>850</sup> For a detailed explanation of the process of formation of that acting government, see its website under <<http://www.hawaiiankingdom.org/govt-reestablished.shtml>>. [Accessed 18 February 2008]

<sup>851</sup> Osorio 2003: 219-221; Cummings 2004: 131-132; see also Permanent Court of Arbitration website under <[http://www.pca-cpa.org/showpage.asp?pag\\_id=1159](http://www.pca-cpa.org/showpage.asp?pag_id=1159)>, accessed 16 February 2008; and the DVD *Larsen Case: Lance Larsen vs. Hawaiian Kingdom: World Court Proceedings*, including a booklet descriptive of the case and its background (Sai 2003).

<sup>852</sup> Cummings 2004: 132. For a discussion of the arbitration case and the Security Council complaint, see also Dumberry 2002.

target has been the Akaka Bill, the controversial proposed US legislation to grant Native Hawaiians a status similar to American Indians (see next chapter). Attempts to unify the various pro-independence groups were undertaken at a rally at a Honolulu church in 1999,<sup>853</sup> and again in 2005-2006 at the initiative of *Hui Pū*, (“United”) an umbrella organisation in opposition to the Akaka Bill.<sup>854</sup>

### ***French Oceania/Polynesia***

#### ***Early anti-colonial movements in the 1920s and 1930s***

After the submission of the armed resistance movement in the Leeward Islands in the late 1890s, there was no visible political movement in French Oceania for several decades. The first instance of political resistance occurred in the late 1920s and early 1930s, when Jewish-Tahitian businessman Georges “Loulou” Spitz, organised *Tomite Pāto`i* (resistance committees) in the Tuamotu islands to protest against the abusive policy of the French colonial administration.<sup>855</sup> The long-term political goals of the movement were not entirely clear, but apparently independence from France and association with Britain or the United States instead (the latter probably due to the collaboration of Mormon missionaries in the group) was evoked, which made the French

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<sup>853</sup> *Ka Pae`aina o Hawai`i Loa. United Independence Statement. December 9, 1999, Kaunakapili Church.* <<http://www.hawaii-nation.org/united-independence.html>>

<sup>854</sup> *Spasifik* magazine September/October 2005, posted on the Hawaiian Independence blog under <<http://www.hawaiiankingdom.info/C1126750129/E20050922123842/index.html>>. [Accessed 16 February] 2008. Following the temporary defeat of the Akaka Bill in the 2006 session of the US Congress, Hui Pū focused its efforts at the more permanent unification of the independence movement and sponsored a meeting of nearly all pro-independence groups, including most of the kingdom reinstatement initiatives, in November 2006, at which the author participated as an observer.

<sup>855</sup> Saura 1997b: 101-107



administration very concerned.<sup>856</sup> In the end, however, a few modifications of the colonial system appeased the movement, and it subsequently dispersed. The motivations of Spitz in this affair were not entirely clear, and private business interests were possibly the more important aspect of his action. Nevertheless it influenced Tahitians who a decade later became active in the first durable and efficient anti-colonial movement in the territory.<sup>857</sup>

### *Pouvāna 'a a 'Ō'opa and the RDPT party 1940-1963*

As we have seen before, the leader of that movement was Pouvāna 'a a 'Ō'opa. In 1940, he was a part, alongside Spitz, of a group of local leaders that sided with the pro-allied French exile government under De Gaulle and overthrew the pro-Vichy (i.e. pro-Nazi Germany) governor.<sup>858</sup> Two years later, however, Pouvāna 'a lead a petition against the injustices of the colonial system that was continuing unchanged under the De Gaulle-appointed governor, an action for which he was jailed and exiled.<sup>859</sup> In that sense already a martyr of colonialism, he emerged after the War as the charismatic leader of the rural and working class Tahitian population.<sup>860</sup> In February 1947, with an increasing group of supporters, particularly Tahitian World War II veterans, he formed the *Comité Pouvāna 'a*.<sup>861</sup> Later that year, the group engaged in a further protest against the landing of French expatriate officials who were about to take jobs in the administration that

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<sup>856</sup> Report by official Capela to the Governor of the French Establishments in Oceania, 31 October 1932; Letters from the governor of the EFO to the French minister of colonies, 7 November 1932 and 2 January 1933. Centre for Overseas Archives, Aix-en-Provence, France, box 130.

<sup>857</sup> Saura 1997b: 107

<sup>858</sup> Dorrance 1966: 11; Regnault 1996 : 29-30 ; Saura 1997b: 113-129

<sup>859</sup> Regnault 1996: 30-33; Saura 1997b: 133-195

<sup>860</sup> Regnault 1996 : 51-53 ; 2003 : 15-28

<sup>861</sup> Regnault 1996: 53-60; 2003: 29-36

Tahitians aspired to obtain. Once more, their protest was met with repression.<sup>862</sup> In October 1949, Pouvāna‘a was elected deputy to the French National Assembly,<sup>863</sup> and soon after, the *Comité Pouvāna‘a* was transformed into the *Rassemblement Démocratique des Populations Tahitiennes* (RDPT, “Democratic Rally of the Tahitian Populations”), the first popular political party of the territory.<sup>864</sup> The ideology of the party was clearly anti-colonial, with strong socialist and nationalist elements, whereas its institutional objectives were rather ambiguous.<sup>865</sup> As mentioned above, the party at one point advocated *départementalisation*,<sup>866</sup> but then internal autonomy of the territory, and eventually the formation of a Tahitian Republic in association with France.<sup>867</sup> The RDPT dominated the political scene in the territory throughout the 1950s, constantly winning large majorities at all elections.<sup>868</sup> After the implementation of the *Loi-cadre* in late 1957, the RDPT, holding the majority in the Territorial Assembly, formed the local government, with Pouvāna‘a as its vice-president.<sup>869</sup>

During his time in executive power, however, Pouvāna‘a radicalised his political position.<sup>870</sup> Ensuing disagreements with his lieutenant Céran-Jérusalémy, chiefly over the creation of an income tax that was protested by the local business community,<sup>871</sup> led to a split into two factions in mid-1958, as we have seen. After Pouvāna‘a advocated a “no” vote in the 1958 referendum, which, due to interference by the French government was

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<sup>862</sup> Regnault 1996: 60-62; 2003: 37-46

<sup>863</sup> Dorrance 1966: 20; Regnault 1996: 63-68

<sup>864</sup> Dorrance 1966: 21; Regnault 1996: 75-82

<sup>865</sup> Regnault 1996 : 83-111

<sup>866</sup> Regnault 1996: 123-125

<sup>867</sup> Regnault 1996: 106-111 ; 2003 : 61-75

<sup>868</sup> Dorrance 1966: 82-83; Tagupa 1976: 5-8

<sup>869</sup> Regnault 1996: 151-156

<sup>870</sup> Regnault 1996: 2003: 73-75

<sup>871</sup> Regnault 1996: 162-166

not followed by a majority of the population,<sup>872</sup> the RDPT-led territorial government was dismissed, Pouvāna'a arbitrarily arrested, convicted in a sham trial, and eventually jailed and exiled for a decade. After the forceful removal of its leader, the party remained split, a situation that weakened its position in the face of France's aggressive colonialism of that time. When the RDPT protested against the planned nuclear testing centre and once more considered independence, both factions were "dissolved", i.e. banned, by executive decree in 1963.<sup>873</sup> Under the leadership of John Teariki, the party was reorganised two years later under the name of *Pupu Here 'Āi'a* ("Patriotic Party"), now limiting its objectives to the restoration of internal autonomy.<sup>874</sup>

#### *The autonomist movement 1965-1977*

The 1960s and 1970s were characterised by the continuing struggle against nuclear tests and for internal autonomy.<sup>875</sup> Two politicians lead this struggle, the above mentioned Teariki, and the political newcomer Francis Ari'ioehau Sanford<sup>876</sup> with his party *Te 'Ē'a 'Āpī no Polynesia* ("The New Way of Polynesia"), founded in 1967.<sup>877</sup> Until the early 1980s, these two parties dominated the political scene in the territory. Both were not independence movements in the strict sense, because they did not advocate political independence. But they can certainly be called anti-colonial and anti-assimilationist, as they fought for the preservation of local identity against the onslaught of French militarisation and cultural assimilation. They were also not explicitly opposed

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<sup>872</sup> Dorrance 1966: 45-49; Tagupa 1976:10-11; Regnault 1996: 173-178

<sup>873</sup> Dorrance 1966 : 70-72 ; Tagupa 1976: 16; Regnault 1996 : 192-194

<sup>874</sup> Tagupa 1976: 16; Regnault 1995: 14-43

<sup>875</sup> Tagupa 1976: 12-24

<sup>876</sup> For a biography of this leader see Hauptert 1998.

<sup>877</sup> Tagupa 1976: 16 ; Regnault 1995 : 105-109

to independence, and on several occasions Sanford did not hesitate to threaten a radicalisation of the movement if their demands in the nuclear and autonomy questions were not met.<sup>878</sup> After long and exhaustive efforts, including acts of civil disobedience when they occupied the Territorial Assembly building from 1976-1977,<sup>879</sup> their struggle was partially successful in the end, as they obtained a statute of limited autonomy in 1977 (see next chapter for details).

### *The modern independence movement since 1975*

During most of the 1960s and 1970s, Sanford and Teariki represented the most anti-colonial political current. However, more radical nationalist movements that advocated outright independence once more emerged in the later 1970s, out of frustration with the only limited achievements of the two autonomist leaders.<sup>880</sup> Contributing to this radicalisation of society were the increasing socio-economic inequalities caused by the massive influx of French capital that came with the nuclear testing centre. An ever increasing poor suburban working class population emerged that became the principal electorate for radical parties. The first of these new pro-independence movements was *Te Ta'ata Tahiti Ti'amā* (TTTT, "The Free Tahitians"), founded by Pouvāna'a's part-Chinese nephew Charlie Ching in 1975. In 1972, Ching had formed with a few sympathisers a protest group called *Commando Teraupo'o*, named for the famous resistance leader of Ra'iaātea in the 1890s. While achieving only marginal successes as a political party, Ching's followers became known and feared for controversial violent

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<sup>878</sup> Tagupa 1976: 31, 39; Regnault 1995: 106

<sup>879</sup> Hauptert 1998: 66-67; Morillon 2005 : 49-59

<sup>880</sup> Regnault 1995: 129-133

actions, like the bombing of a public building and prison riots during the late 1970s.<sup>881</sup> Another group, consisting of Polynesian intellectuals who had come back from their studies in France where they had become influenced by the leftist ideas of the May 1968 protests in Paris, formed the socialist party *'Ia Mana Te Nūna 'a* (“Let the People be Empowered”) in November 1975 under the leadership of Jacqui Ti‘amātahi Drollet. Initially concerned with economic and class-struggle issues only, it started unambiguously advocating independence for the territory in 1979.<sup>882</sup> The third of the new pro-independence parties, the *Front de Libération de Polynésie* (FLP, “Polynesian Liberation Front”), later called *Tāvini Huirā 'atira nō Te Ao Mā'ohi* (“Serving the People of the Mā'ohi World”), was formed by Oscar Temaru in 1977.<sup>883</sup> About half a dozen other pro-independence parties were founded in the late 1970s and early 1980s, most of them remaining ephemeral occurrences.<sup>884</sup> Only two of them were more permanent and need to be mentioned here: *Te Ti'amāra 'a o te Nūna 'a Mā'ohi* (“The Independence of the Mā'ohi People”), founded by Tetua Ma'i in 1982, who formed a provisional government, for which he enacted a detailed constitution, and undertook diplomatic efforts throughout the Pacific in the 1980s and early 1990s, temporarily gaining the support of the government of Vanuatu,<sup>885</sup> and the monarchist *Pōmare Parti*, formed by Tahitian royalty descendant Joinville Pōmare as a split from Temaru's FLP in 1983, which made the occupation of claimed lands their priority.<sup>886</sup>

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<sup>881</sup> Saura 1993: 78-79; Regnault 1995: 129-130

<sup>882</sup> Saura 1993: 79-80; Regnault 1995: 57-103

<sup>883</sup> Saura 1993; Regnault 1995: 133-134

<sup>884</sup> Regnault 1995: 129-133; 2004: 47

<sup>885</sup> Robie 1982: 40; Saura 1993: 79; Regnault 1995: 131-123

<sup>886</sup> Saura 1993: 79; Regnault 1995: 132-133

During the 1980s and 1990s, under ever increasing monetary subsidies and political pressure from France, the local pro-French right wing party under the leadership of Gaston Utatō Flosse became politically dominant,<sup>887</sup> while the old autonomist parties slowly disappeared after the death of Teariki and the retirement of Sanford in the early 1980s.<sup>888</sup> Their electorate was partly swallowed by Flosse and his associates, while the remnants of the two autonomist parties became progressively marginalised.<sup>889</sup> The resulting gap was increasingly filled by the newly emerging pro-independence parties. Initially, this was mainly Drollet's *'Ia Mana Te Nūna 'a* during the 1980s,<sup>890</sup> but when the party decided to participate in a short-lived multi-party coalition government under dissidents of Flosse from 1987 to 1991, Drollet's electorate became disappointed<sup>891</sup> and migrated over to Temaru's *Tāvini Huira 'atira*, making the latter party the leading pro-independence force in the 1990s.<sup>892</sup> By 1983, Temaru had already gained the mayoralty of Fa'a'ā, a dominantly poor suburb of Pape'ete and the largest municipality of the territory,<sup>893</sup> giving him a solid power base from which he would extend his electorate. The resumption of nuclear testing by newly elected French President Jacques Chirac in 1995, before the definitive closure of the test base in the following year, led to worldwide protests, and gave the Tahitian independence movement, and especially Temaru's party a new boost, almost tripling its number of councillors in the territorial assembly in the 1996 elections.<sup>894</sup> Subsequently it became the leading opposition party to

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<sup>887</sup> Saura 1993: 76; Regnault 2004: 77-119

<sup>888</sup> Saura 1993: 83-86

<sup>889</sup> Regnault 1995: 44-56, 109-127

<sup>890</sup> Saura 1993: 80

<sup>891</sup> Regnault 1995: 95-96

<sup>892</sup> Saura 1993 : 80-81

<sup>893</sup> Saura 1993: 81; Regnault 1995: 135-136

<sup>894</sup> Regnault 2004: 67-72

Flosse's territorial government in the assembly during the later 1990s and early 2000s, even though its growth temporarily stagnated at about one quarter of the electorate in the early 2000s, at a time when Flosse had reached the climax of his power.<sup>895</sup> The smaller independence parties and leaders chose different paths. Ching's TTTT and Ma'i's *Te Ti'amāra'a* maintained their individual ideological position and became marginalized, while the *Pōmare Parti* joined forces with the politically opportunist 'Āi'a 'Āpī ("New Motherland") party of Emile Vernaudon, a former lieutenant of Francis Sanford who frequently switched his support between Flosse and Temaru.<sup>896</sup> Drollet's *Ia Mana Te Nūna'a*, on the other hand, joined Temaru to become his political ally,<sup>897</sup> as did Jean-Marius Ra'apoto, the leader of the remnant of Sanford's 'Ē'a 'Āpī party.<sup>898</sup>

#### *Recent developments*

In 2004, Temaru finally formed a coalition with Vernaudon's *Ai'a 'Āpī*, and several other marginal parties, called *Union pour la Démocratie* (UPLD, "Union for Democracy"), and won the territorial elections against Flosse at a low margin.<sup>899</sup> The trend was confirmed in a by-election in 2005.<sup>900</sup> French Polynesia thus had a pro-independence leader for the first time, even though Temaru's government has subsequently been much impeded in its efficiency because of chronic political instability due to the absence of a clear majority, lack of administrative competence among some of its members, and a policy of obstruction and non-cooperation by the French national

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<sup>895</sup> Regnault 2004: 72-76

<sup>896</sup> Regnault 2004: 48

<sup>897</sup> Regnault 2004: 69

<sup>898</sup> Regnault 2004: 74

<sup>899</sup> Regnault 2004: 140-143

<sup>900</sup> *Tahiti Pacifique*, March 2005: 7

government.<sup>901</sup> While the new government's position on independence has been ambiguous, due to the presence of anti-independence politicians in the coalition, Temaru has made proposals to further the cause of decolonisation. He has networked with independent Pacific Islands governments and independence movements of other Pacific territories,<sup>902</sup> and made repeated international calls for the re-inscription of his country as a NSGT.<sup>903</sup> He has also proposed to negotiate with France about a transitional process leading to eventual independence, referred to as "Accords of Tahiti Nui", reflecting the 1998 Nouméa Accords of New Caledonia.<sup>904</sup> However, the Temaru government has not been able to implement any of these proposals so far, as it has been mainly concerned with self-preservation, having been ousted and reinstated two times between 2004 and 2007 due to opportunistic assembly members crossing the floor.<sup>905</sup> The first of these sabotage actions in October 2004 sparked public outrage and gave Temaru unprecedented popular support. More than 20,000 people marched in solidarity with the ousted government in the largest protest march in Tahiti's history,<sup>906</sup> and a subsequent by-election in February 2005 brought the government back to power.<sup>907</sup> By the time of its second ouster however, the population remained rather lethargic, as many people had become disappointed by the lack of drastic and immediate changes in governance.<sup>908</sup>

It should also be pointed out that not all pro-independence forces are supporters of Temaru. Some independence supporters shun party politics altogether and prefer working

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<sup>901</sup> Regnault 2004: 155-174

<sup>902</sup> *Haleakalā Times*, 8 June 2005

<sup>903</sup> Speech delivered by President of French Polynesia at the 35th Pacific Islands Forum, Apia, Sāmoa, 4 August 2004. Copy of transcript in the author's possession; *Tahitipresse*, 1 November 2006.

<sup>904</sup> *Tahitipresse*, 24 June 2005; *Tahiti Pacifique*, April 2006 : 8, 10-11

<sup>905</sup> *Tahiti Pacifique*, November 2004: 7; January 2007: 7-8

<sup>906</sup> *Tahiti Pacifique*, November 2004: 10-11

<sup>907</sup> *Tahiti Pacifique*, March 2005: 7

<sup>908</sup> Regnault 2007: 77-88



with civil society in non-government organisations. One example is Tahitian scholar and activist Gabriel Tetiarahi, who founded the human rights organisation *Hui Ti'amā* (“Generation of Freedom”) in 1985, and the network of civil society organisations *Hiti Tau* (“The time has risen”) in 1991. These organisations have been active in protecting land rights, protesting nuclear testing, and promoting human rights and economic sustainability. To this date, Tetiarahi and other members of this group continue activities advocating self-determination, economic sustainability and indigenous rights throughout the Pacific.<sup>909</sup> Joinville Pōmare, on the other hand, is now politically allied with Temaru’s pro-French opponents, while he has launched a new movement named *Nā Huiari ‘i Mata Ara e Pae* (“The Five Watchful Groups of Royalty”) to promote traditional chiefly leadership and land rights, an initiative that has gained considerable attention and support from political and traditional leaders of other Pacific islands.<sup>910</sup>

### ***Rapa Nui***

#### ***Resistance against company/military rule: 1914 and 1964***

The first instance of organised nationalist movement on Rapa Nui occurred when Chile temporarily abandoned the island in 1892, and the Rapanui subsequently issued a “declaration of independence” under King Riro.<sup>911</sup> However, this was not durable as Chile re-colonised the island a few years later, and Riro was eventually killed. During the following seven decades of arbitrary company and navy rule, sporadic protest actions such as strikes and other forms of civil disobedience took place. The uprising in 1914

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<sup>909</sup> Barillot in Chesnaux 1995: 135-142; Gabriel Tetiarahi, personal communication, 14 February 2008

<sup>910</sup> *Tahitipresse*, 29 October 2005; *Les Nouvelles de Tahiti*, 31 October 2005; *La Dépêche de Tahiti*, 13 and 15 September 2007.

<sup>911</sup> Fischer 2005: 146

under Angata Hereveri and Daniel Teave clearly aimed at getting rid of the Chilean administration and restoring the island's independence. However, the protest did not achieve its objectives and its chief strategist Teave was deported by the Chilean navy and disappeared,<sup>912</sup> effectively crushing the movement and discouraging any repetition. The next significant protest movement in 1964 under Alfonso Rapu had more ambiguous goals. The main objective, which was eventually achieved, were civil rights as Chilean citizens, but at the same time, Rapu and his collaborator Germán Hotu evoked a "Polynesian Union" with Tahiti during the revolt, implicitly challenging Chile's claim of sovereignty.<sup>913</sup> However, the ensuing incorporation of the island into Chile through the *Ley Pascua* apparently satisfied the people for the time being, not leading to any protests at the time. No organised movement for independence developed in the following years, either under the liberal regime of the late 1960s and early 1970s or under the earlier period of the Pinochet dictatorship.

#### *The Council of Elders c1980-1994*

The roots of the present Rapanui independence movement lay in the foundation, or probably rather re-organisation, of the Rapanui Council of Elders by Alberto Hotus and Juan Teave (Daniel Teave's grandson) in the early 1980s.<sup>914</sup> That institution (called in Rapanui *Te Mau Hatu 'o Rapa Nui*, "The Lords of Rapa Nui") was conceptualised as a body consisting of the eldest male representative of each of the thirty-six Rapanui family

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<sup>912</sup> Fischer 1999: 132-133; Makihara 1999: 76-77; Tuki et al. 2003:459.

<sup>913</sup> Makihara 1999:101

<sup>914</sup> Fischer 2005: 231

names.<sup>915</sup> Initially an organisation to preserve cultural identity, thus opposing Chilean assimilation, the council quickly developed into a political protest movement. In 1983, the Council of Elders sent an open letter to the United Nations, complaining about the injustices of the Chilean administration,<sup>916</sup> and 1,200 Rapanui petitioned the UN decolonisation committee to hold a referendum on independence on the island.<sup>917</sup> No international action followed this petition, but in reaction Pinochet appointed Sergio Rapu as the first ethnic Rapanui governor in 1984.<sup>918</sup> This set an irreversible precedent, as all succeeding governors have been Rapanui as well. The following protest actions of the Council of Elders, at least during the first decade of its existence, were not aimed at independence, however, but only at cultural and civil rights within the existing political structure. Over several years the council thoroughly researched genealogies and traditional land titles linked to them, which it published in a 1988 book.<sup>919</sup> Later, the council openly opposed the Pinochet regime, when it filed a lawsuit against the usurpation of lands by the Chilean State,<sup>920</sup> boycotted the centenary celebrations of annexation in September 1988,<sup>921</sup> and campaigned for voting “no” in the Chilean referendum on Pinochet’s presidency in October of the same year.<sup>922</sup>

During the post-Pinochet transition to democracy, the council became even more vocal, when it proposed a special statute of autonomy for the island in 1989.<sup>923</sup> Even

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<sup>915</sup> Hotus et al. 1988: 351; Petero Edmunds, personal communication, 18 June 2004.

<sup>916</sup> Fischer 2005: 231

<sup>917</sup> Makihara 1999: 139

<sup>918</sup> Fischer 2005: 231

<sup>919</sup> Hotus et al. 1988

<sup>920</sup> Makihara 1999: 139

<sup>921</sup> *Informe de la Comisión Verdad Histórica*: 317; Amorós 2006: 218

<sup>922</sup> *L'écho de Rapa Nui*, No. 8 (1988): 12-14

<sup>923</sup> *Rapa Nui Journal*, Fall 1989: 10; *L'écho de Rapa Nui* No. 11 (1990): 29; No. 12 (1990): 3-4, 9; Fischer 2005: 236

though these demands were not met, Alberto Hotus subsequently worked together with the new centre-left political establishment in Santiago and became the first elected mayor of the post-Pinochet era in 1992,<sup>924</sup> followed in 1994 by current mayor Petero Edmunds.<sup>925</sup> Hotus subsequently worked with the Chilean government and leaders of various native peoples from Chile to create a legal framework for the protection of indigenous peoples.<sup>926</sup> As a counter-balance, local leaders affiliated with the now opposition Chilean right-wing parties created an ephemeral *Asamblea Territorial* (“Territorial Assembly”, a term possibly inspired from that institution in neighbouring French Polynesia) in the early 1990s.<sup>927</sup>

#### *The split in the council and the radicalisation of activism since 1994*

Hotus’ collaboration with the new centre-left Chilean authorities led to criticism from other members of the community. With the enactment of the 1993 *Ley indígena* (“Indigenous Law”, see next chapter for details), friction developed within the Council of Elders between Alberto Hotus who continued advocating full collaboration with the authorities, and Juan Teave who mistrusted the Chilean government and favoured a more radical approach of continuing protest, finally provoking a split in the council in early 1994. While Hotus claimed continuing leadership of the Council (his faction being subsequently called Council of Elders #1),<sup>928</sup> and continued collaborating with the Chilean state in implementing the Indigenous Law, Teave claimed to have succeeded

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<sup>924</sup> Fischer 2005: 238

<sup>925</sup> *Rapa Nui Journal*, Vol 8 No.4 (December 1994): 116

<sup>926</sup> Makihara 1999: 142, 147

<sup>927</sup> *L’echo de Rapa Nui*, No. 16 (1991): 7; No. 26 (1994): 12

<sup>928</sup> *El Mercurio de Valparaíso*, 6 March 1994

Hotus into the council's presidency and maintained another council (referred to as Council of Elders #2) with another faction of the original council as well as leading members of the former *Asamblea Territorial*.<sup>929</sup> They also codified statutes for the council, requiring elections of its leadership every two years, while there had been no clearly structured election process before.<sup>930</sup> Contrary to Council #1, Council #2 insisted on being unaffiliated with Chilean political parties and radicalised its demands.<sup>931</sup> From June 1994 to 1998, members of Council #2 occupied the public park in front of the church in Hanga Roa, hoisting the Rapanui flag (which had been outlawed for decades) and demanding the immediate return of all lands held by the Chilean state to their customary owners, as well as political autonomy.<sup>932</sup> Interestingly, many of the Council #2 members were native entrepreneurs active in the hotel business who hoped to obtain access to lands for hotel development,<sup>933</sup> whereas others were radical cultural nationalists advocating a return to the ancestral ways. After confrontations with the Chilean authorities in early 1998,<sup>934</sup> the leading members of Council #2 under Mario Tuki (who had taken over the presidency in the later 1990s) agreed on a compromise in late 1998,<sup>935</sup> and in an attempt to unify the two councils, elections for the presidency were held in

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<sup>929</sup> *L'écho de Rapa Nui*, No. 26 (1994): 12

<sup>930</sup> *Reducción a escritura pública. Acta sesión extraordinaria. Consejo de Ancianos o Jefes de Rapa Nui*. Typewritten document filed with the public notary's office, Hanga Roa, dated 14 January 1994. Private archives of the Teave Hey family.

<sup>931</sup> Fischer 2005: 240, 242

<sup>932</sup> *L'écho de Rapa Nui*, No. 27 (1994): 4-5; No. 28 (1994): 6, 8; *Rapa Nui Journal*, Vol 8 No.3 (September 1994): 81; Vol. 12 No.1 (March 1998): 23; Makihara 1999: 148

<sup>933</sup> Makihara 1999: 147-148

<sup>934</sup> *Rapa Nui Journal* Vol. 12, No.1 (March 1998): 23-25; Fischer 2005: 247

<sup>935</sup> *Rapa Nui Journal* Vol. 13 No.2 (June 1999): 59

April 1999, which Alberto Hotus won.<sup>936</sup> This temporarily weakened the position of Council #2 activists, but did not permanently silence their voices.

Whereas many of the Council #2's members were still ambiguous about their political goals towards the Chilean state and initially advocated internal autonomy rather than independence,<sup>937</sup> a faction within Council #2 consisting of Juan Teave and his close friends and relatives began promoting complete independence from Chile in the late 1990s. Under the name of *Te Koro Hu'a* ("Elders") they travelled widely in the Pacific, thereby establishing close links to the Nuclear Free and Independent Pacific (NFIP) movement. Eventually they attempted to contact the UN decolonisation committee in 1998, requesting the inscription of Rapanui on the list of Non Self-Governing Territories.<sup>938</sup>

In July 2001, Chilean security forces destroyed houses that members of the Teave family had built on land claimed to be their traditional property. This stirred up the resentment of Teave's group against the Chilean state more than ever before. Some weeks later, the *Rapanui Parliament* was formed out of *Te Koro Hu'a* and other activists of Council #2.<sup>939</sup> According to its official statutes, the purpose of the parliament is to create social norms and legislation to deal with land tenure and cultural identity, to reclaim all lands occupied by Chilean state agencies and to create a proper government system on the island.<sup>940</sup> Juan Teave was elected president and nominated a cabinet of

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<sup>936</sup> *Rapa Nui Journal* Vol. 13 No.2 (June 1999): 58; *Te Rapa Nui*, No. 8 (Summer/Fall 1999): 3. Posted on the web under <<http://www.rapanui.co.cl/FOTOS/terapanui-8-PDF.pdf>> [Accessed 20 March 2008]

<sup>937</sup> *La Dépêche de Tahiti*, 7 June 1995

<sup>938</sup> Open Letter by Juan Chavez (Teave) to the acting Chairman of the UN Special Committee of 24, Bruno Rodrigues, dated 13 June 1998. Copy in private archives of Kekuni Blaisdell, Honolulu.

<sup>939</sup> Trachtman 2002: 7; Hito 2004: 31

<sup>940</sup> *Reducción a escritura pública. Juan Chavez Haa.* Typewritten document filed at the public notary's office in Hanga Roa, dated 17 August 2001. Private archives of the Teave Hey family.

several ministers, in an effort to create some sort of a shadow state. Even though independence is not explicitly mentioned in its statutes, the parliament subsequently became the first organisation to openly advocate independence, and it has been continuing the efforts of networking with other anti-colonial movements in the Pacific through NFIP, and also addressed organs of the United Nations.<sup>941</sup>

Between 2002 and 2003, leading members of the Council of Elders #2, now loosely associated with the *Parliament*, were engaged to write a report on the injustices done to the Rapanui people, as part of the efforts of the *Comisión Verdad Histórica y Nuevo Trato* (“Commission for Historical Truth and a New Deal”) to document and assess the grievances of Chile’s indigenous peoples.<sup>942</sup> The local study group concentrated their effort, among other things, on an analysis of the irregularities of the 1888 annexation, and came to the conclusion that the island has always been independent and hence, “based on the non-ratification” of the annexation agreement, “Rapa Nui will continue to be administered by its king and council of chiefs of the territory, under a proper administrative system as an independent country”.<sup>943</sup> The report did not become part of the main body of the Historical Truth Commission report of October 2003, probably for political reasons, but it was nevertheless included as an attachment.<sup>944</sup>

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<sup>941</sup> See for instance the presentations by Erity Teave and Santi Hitorangi, members of the *Rapanui Parliament*, at then United Nations Permanent Forum on Indigenous Issues, May 2004. Transcripts in the private archives of the Teave Hey family.

<sup>942</sup> *Decreto 119. Ministerio de Planificación y Cooperación. Crea Comisión Verdad Histórica y Nuevo Trato.* (“Decree 119. Ministry of Planning and Cooperation. Creating the Commission for Historical Truth and a New Deal”), 18 January 2002. Posted on Chilean National Congress Library website <<http://www.bcn.cl/leyes/pdf/actualizado/182027.pdf>> [Accessed 20 March 2008]; *Rapa Nui Journal* Vol.16, No. 1 (May 2002): 58

<sup>943</sup> “Basados en la No Ratificación [...] de los Documentos del Convenio [...], Rapa Nui será administrada por su Rey y el Consejo de Jefes del Territorio, bajo un sistema administrativo propio como País Independiente.”, Tuki et al. 2003: 481 (translation by the author).

<sup>944</sup> *Informe de la Comisión Verdad Histórica*, Vol III: 445-482

### *Recent developments*

In the last few years, the movement for independence, led by the *Parliament* and Council #2 leaders has gained more and more momentum,<sup>945</sup> to the point where even Mayor Edmunds has moved very far in his political demands from Chile, occasionally raising full independence as an option.<sup>946</sup> While the latter, together with Council #1 leader Hotus and other representatives of the local establishment have been negotiating with the Chilean government for a *status* of internal autonomy (see next chapter for details), one of the authors of the 2003 report, Agterama Puhī 'Uira a Huki, subsequently proclaimed himself "king" of Rapa Nui in 2005 and started setting up a "national civil registry" in order to issue "Rapanui passports".<sup>947</sup> In June 2007, two other chief authors of the 2003 report, Mario Tuki and Raúl Teao, received the highest number of votes in the election for members of the Easter Island Development Commission.<sup>948</sup> Furthermore, the different pro-independence factions attempted to overcome their differences and reunite under the umbrella of the Rapanui Parliament. In August of the same year, another attempt was made to clarify the issue of the leadership of the Council of Elders, when in a controversial vote, Mario Tuki was elected the new president of the council by a faction of voters. Alberto Hotus, however, has refused to step down and acknowledge the results.<sup>949</sup> While the internal political struggles are thus going on, a special statute for

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<sup>945</sup> *Qué Pasa*, 17 September 2003.

<sup>946</sup> *El Ojo Digital*, 26 January 2007

<sup>947</sup> *El Mostrador*, 23 August 2005; *Las Últimas Noticias*, 24 Aug 2005

<sup>948</sup> *Informativo Provincial*, June 2007; The function and origin of this institution will be explained in the following chapter.

<sup>949</sup> *Te Rapa Nui*, undated article "El difícil 'Up-date' del Consejo de Ancianos: Tradición de vitalicios versus democracia moderna", c August 2007, <<http://www.rapanui.co.cl/CONSEJO%20ANCIANOS-ELECCION%202007.htm>> [Accessed 20 March 2008]



the island is now under preparation (see next chapter for details), which might lead to a new configuration of the political scene in the near future.

### **Strategies used in the pursuit of independence**

In analysing the various movements described above, one can distinguish four main political strategies and two principal forms of resistance that have been used in their pursuit of independence. Not all of them are necessarily mutually exclusive, and many of the movements have been using two or more of them concurrently.

#### *Reinstatement*

The most profound and consequent political strategy is that of reinstatement or restoration. Proponents of this strategy attempt to restore the system of government that was in place before the foreign takeover of their territory. The local governmental institutions established by the present colonial or occupational State are therefore regarded as illegal and fraudulent, and the ruling power is denied any legitimacy. The only way to create legality is therefore the restoration of the situation before the illegalities begun. Consequently, the political movement attempts to recreate, as authentically as possible, the local government institutions that existed at the time of the foreign takeover. Actual political independence will then be restored in negotiations with the occupying force on the international level, supported if possible by third countries that will recognise and establish diplomatic relations with the restored government.

This strategy has been most systematically applied by pro-independence activists in Hawai'i. As described above, since the early 1990s, and with a precursor in the 1970s, there have been many initiatives to restore the Hawaiian Kingdom through the establishment of various self-proclaimed kingdom governments with varying degrees of self-maintenance, seriousness, and efficiency as political movements. These initiatives can be further classified into those that base their claim to legitimacy chiefly on the genealogical status of an individual claiming to be the king, such as Windyceslau Lorenzo, Akahi Nui and Edmund Keli'i Silva; and those whose claim to legitimacy resides on a purely legal argument, dissociated from individual genealogical claims. Examples of this second group of reinstatement initiatives, which usually leave the office of monarch vacant, include those of Dennis Ragsdale, Leon Siu and Henry Noa.

The initiative started by Keanu Sai in 1995 falls into a similar category, although Sai underlines that his approach is distinct from other kingdom reinstatement initiatives and he does not consider himself a sovereignty activist.<sup>950</sup> While most of the other initiatives have changed elements of the Hawaiian Kingdom's structure of government and created new institutions for themselves,<sup>951</sup> Sai insists that those kinds of changes could be made only after the de-occupation. Until the latter takes place, existing Hawaiian kingdom law needs to be strictly followed, and all Hawaiian government positions filled by himself and his supporters are "acting", i.e. of a provisional nature and

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<sup>950</sup> Wong-Wilson 2007: 119

<sup>951</sup> For instance, Ragsdale acts in the capacity of "Advocate General" and Noa in that of a popularly elected "Prime Minister", while Silva's government is advised by a "Celestial Council", Siu's government contained a "Kupuna Council", and Kahau-Asing's government has a "Chief of Staff" and a "Minister of Kingdom Security". None of these institutions or positions ever existed in the Hawaiian Kingdom.

limited to a specific purpose, only.<sup>952</sup> This strictly legalistic approach gained credibility when the “Acting Council of Regency” under his leadership was admitted to represent the Hawaiian Kingdom at the international Permanent Court of Arbitration in 1999-2001; a status unachieved by any of the other Kingdom reinstatement initiatives.

In French Polynesia, reinstatement initiatives have remained politically marginal so far and have not really gone beyond the state of envisioning. The restoration of the Tahitian Kingdom has been a project of royal descendant Joinville Pōmare, and one of the main points in the political platform of his *Pōmare Parti* during the 1980s and 1990s, but it never reached the state of an actual reinstatement initiative. After the party had become more or less dormant, Pōmare’s association *Nā Huiari ‘i Mata Ara e Pae*, also known as the Royal Customary Council, has undertaken efforts to recreate “customary” institutions since 2005, the meaning of which remains rather ambiguous. It is not entirely clear whether this refers to the institutions of the nineteenth century kingdom or to the institutions of pre-contact Tahiti. Besides, Joinville Pōmare acknowledges the 1880 treaty of cession signed by his great-granduncle King Pōmare V, despite its irregularities. Joinville Pōmare’s criticism of France is thus focused on the non-respect of the treaty, not necessarily at the treaty itself. The initiative by Pōmare and other activist should hence not necessarily be seen as aiming at a full reinstatement, but it certainly represents a revisionist approach. The existence of a document of cession signed by the king himself, and the absence of any contemporary protests against the French annexation as such is in clear contrast to the situation of Hawai‘i. It would make the case for an illegitimate

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<sup>952</sup> For a detailed explanation of the formation of Sai’s “acting” government, see <<http://hawaiiankingdom.org/govt-reestablished.shtml>> [Accessed 18 February 2008]

occupation very difficult to argue, besides the fact that the Tahitian Kingdom was not an internationally recognised independent State before the French intervened.

Besides Joinville Pōmare, a few other claimants to the Tahitian throne exist, and some of them have made more concrete attempts to reinstate themselves, even though these initiatives seem to lack much seriousness and sophistication.<sup>953</sup> One of them, Tuatomo Mairau, a descendant of Queen Pōmare IV's brother-in-law and styling himself "Prince Royal", has recently made vast land claims in the name of the "Crown of Tahiti" and has issued his own "visas" to foreign visitors, provoking conflicts with the French immigration officers.<sup>954</sup> One of Mairau's best known supporters is René Hoffer, a taxi driver from Alsace, who in October 2004 amid the political stalemate between Temaru and Flosse proclaimed himself President of French Polynesia with the restoration of the Tahitian monarchy as his governing platform.<sup>955</sup>

While the latter initiative remains extremely marginal and limited to a handful of supporters, Joinville Pōmare's Customary Council movement has gained widespread influence on the outer islands of the territory and incited the formation of similar initiatives on some of the latter as well. The Teuruari'i family of Rurutu, arguably the only royal family in French Polynesia that has conserved some sort of social and political status until quite recently<sup>956</sup> thus constituted itself as the local chapter of the Customary

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<sup>953</sup> One of those claimants, Bruno Tapunui Fuller, hitherto unknown to the author in name and genealogy, set up a tent in central Pape'ete in July 2007, on a piece of land he claimed in the name of "King Temauri of the Polynesian triangle". See a short article in *La Dépêche de Tahiti*, 20 July 2008.

<sup>954</sup> *La Dépêche de Tahiti*, 16 November 2006; *Les Nouvelles de Tahiti*, 18 March 2006

<sup>955</sup> *Les Nouvelles de Tahiti*, 18 March 2006

<sup>956</sup> The heads of the Teuruari'i family have continuously been district chiefs and mayors of Rurutu until the 1970s, and members the royal family continue to have special seats in the Protestant church in the island capital Moera'i. See Saura 1997a: 49 n. 75.

Council on its island in 2005.<sup>957</sup> As another example, veteran pro-independence leader Tetua Ma'i, of royal Huahine ancestry, has recently entertained the idea of restoring the Kingdom of Huahine as an independent nation and also participated in Joinville Pōmare's Customary Council.<sup>958</sup>

On Rapa Nui, ideas similar to those of Joinville Pōmare have been entertained by the Rapanui Council of Elders since the 1980s. The latter claimed to be the successor to the council of chiefs who signed the 1888 treaty with Chile, and as such demanded that Chile respect the terms of the treaty, concerning land titles and local self-governance.<sup>959</sup> After the council split in 1994, the more radical council #2 increased its militancy in demanding these goals. Eventually, the local section of the Chilean government-sponsored *Comisión Verdad Historica y Nuevo Trato*, essentially made up of members of the Council of Elders #2, found in its report that the 1888 treaty was entirely illegal due to its non-ratification, with the logical conclusion that the island is legally still an independent kingdom, as we have seen above. If most of the commissioners have so far only envisioned and demanded the restoration of the Rapanui kingdom, one of them, Agterama Puhi 'Uira a Huki, has gone further ahead and proclaimed himself "king" in 2005, without gathering any significant support for this initiative, however. In any case, the absence of any clear constitutional structure of the Rapanui kingdom at the time of its takeover by Chile would make any such projects a case of new nation-building rather than one of reinstatement in the strict sense of the word.

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<sup>957</sup> Undated newspaper article, reprinted in a pamphlet on the genealogy of the Teuruari'i family, dated 29 October 2005, copy in the author's possession.

<sup>958</sup> Tetua Ma'i, personal communication, 8 January 2007.

<sup>959</sup> Hotus et al. 1988: 351ff

### *Unilateral proclamation of a government*

Another strategy widely used by independence advocates in all three territories is the unilateral proclamation of a government, in defiance of the existing administrative structure of the ruling power, and with the aim of gaining international recognition. The argument towards the occupier/coloniser is similar to that of the strategy of reinstatement, only that in this case, the self-proclaimed entity does not claim to have restored the pre-occupational government structure.

A good example of this strategy is Dennis “Bumpy” Kanahale and his *Nation of Hawai‘i*. As described previously, Kanahale proclaimed an independent national government of Hawai‘i in 1994, under legal advice from International Law professor Francis Boyle following the 1993 US apology resolution. Boyle, who had previously advised the Palestinian and Bosnian governments, argued that once the US had admitted the illegality of its actions in 1893, it was up to the Hawaiian people to form their government and seek international recognition, similar to the Palestinian people under Israeli occupation.<sup>960</sup> Even though the *Nation of Hawai‘i* logically links itself to the kingdom existing before the US occupation, the constitution enacted by Kanahale in 1995 is an entirely new creation. This follows Boyle’s argument that it is up to the people alone to decide about their government structure.<sup>961</sup>

While in Hawai‘i, this strategy is limited to Kanahale’s group, there are two other examples of provisional governments being proclaimed in Tahiti. The best known is the *Hau Repupirita Mā‘ohi* (Mā‘ohi Republic Government), proclaimed in the early 1980s by Tetua Ma‘i, as we have seen before. Ma‘i based his argument on the international

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<sup>960</sup> Boyle 1995: 724

<sup>961</sup> Boyle 1995: 725, 741, 744-45

declaration of human rights, specifically the provision that says that everyone has the right to a nationality. As Ma'i and his supporters reject the French nationality imposed on their ancestors, he concludes that it is their right to proclaim their own Mā'ohi nationality, and provide for a government to administer these nationals.<sup>962</sup> Hence he created a register of Mā'ohi nationals, to whom he issued Mā'ohi ID cards and who participated in elections to elect their legislature, as well as their executive government. According to Ma'i, 20,000 people signed up to participate in that process.<sup>963</sup> Ma'i has subsequently entered into contacts with the governments of most independent Pacific Island countries, especially with that of Vanuatu, which at one point during the early 1980s actively supported his efforts.<sup>964</sup> The occasional participation of Ma'i's party in the French Polynesia territorial elections was never intended as an endorsement of that political system, but uniquely a strategy to to measure his strength, gain access to the media and raise awareness about his provisional government.<sup>965</sup> Charlie Ching's *Te Ta'ata Tahiti Ti'amā* party, on the other hand, has systematically participated in all territorial elections from the early 1980s until 2005, but never gained a seat in the territorial assembly. In parallel, Ching has set up another provisional government styled *Hau Tahiti nō te hō'ē taimē* (Tahitian Interim Government) under the presidency of Rita Poara.<sup>966</sup> Similar to Tetua Ma'i, the Ching/Poara government also issued ID cards, but as

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<sup>962</sup> Tetua Ma'i, personal communications, 7 June 2004 and 8 January 2007.

<sup>963</sup> Tetua Ma'i, personal communication, 7 June 2004

<sup>964</sup> Robie 1989: 40; Tetua Ma'i, personal communication, 7 June 2004.

<sup>965</sup> Tetua Ma'i, personal communication, 8 August 2003. See also campaign leaflets of Ma'i's *Te Ti'amāra'a o te Nūna'a Mā'ohi* party for the 1986 and 1998 Teritorial Assembly elections. Copies in the author's possession, obtained from Tetua Ma'i.

<sup>966</sup> Letter from the French President's office to Rita Poara, 7 August 1995, Private archives of Charlie Ching, copy in the author's possession; CD entitled *Hau Tahiti nō te hō'ē taimē. Gouvernement provisoire Tahitien. Tahitian interim government* [sic], edited by Charlie Ching in the early 2000s. Copy in the author's possession, obtained from Charlie Ching. See also *Les Nouvelles de Tahiti*, 18 March 2006.

indicated in the name, the government was conceived as “interim” or “provisonal” only, which explains the pursuit of an electoral strategy in parallel.

Elements of a self-proclaimed government can be found by other pro-independence organisations as well. Although Oscar Temaru’s *Tāvini Huira ‘atira* is first and foremost a political party within the French-imposed political system of French Polynesia (as described below), it nevertheless shares some of the characteristics of the more radical self-proclaimed government entities named above. This concerns mainly the symbols of the party. Its well-known blue-white-blue flag has been conceived not only as a party flag (like every political party in French Polynesia has) but as the future national flag of an independent Te Ao Mā‘ohi State. The membership cards of Tavini Huiraatira are not simply membership cards of a political party but bear an inscription designating them as “Mā‘ohi ID cards”.<sup>967</sup>

On Rapa Nui, the strategy of proclaiming a government has been employed by the *Rapanui Parliament* since its foundation in 2001 by Juan Teave. With the forming of a cabinet of ministers, Teave and his supporters created a shadow state on the island and issued Rapanui ID cards. At an international conference on the island in 2004 some of Teave’s followers participated and figured in the list of participants with their titles as government ministers.<sup>968</sup> While thus taking the shape of a government for a projected post- colonial State, the *Rapanui Parliament* also uses elements of reinstatement of the Rapanui kingdom, as it has used the denomination *Reinado de Rapa Nui* (“Kingdom of

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<sup>967</sup> The party membership card held by the author bears the inscription *Tiaraa Maohi* (“Mā‘ohi identity”). See also Regnault 1995: 149, 151.

<sup>968</sup> *Third Meeting of APEC Integrated Oceans Management Forum*. Hanga Roa, October 2004. List of participants. Copy in the author’s possession. See also *Te Rapa Nui*, October/November 2004.



Rapa Nui”) as its letterhead.<sup>969</sup> Besides this reference to the pre-colonial kingdom, in line with the Council of Elders #2 as well as Agterama Huki who have both been loosely associated with Teave’s group, members of the *Parliament* have also occasionally related to the earlier tribal society, by referring to themselves as *ngangata manu* (“birdmen”).<sup>970</sup>

#### *Advocating UN-sponsored decolonisation*

The first two strategies described above focus on the proactive creativity of the independence advocates themselves, who are taking important political steps by forming a government. The actual liberation of the respective country would happen later through international recognition of that government and a negotiated withdrawal of the occupying forces.

Another strategy uses a different approach, in which the movement limits its role to that of an advocate, educator and lobbyist, while the United Nations would sponsor and supervise a process of decolonisation, in concert with the administrative power and representatives of the concerned population. For such a process to be initiated, the territory needs to be listed by the UN as a Non-Self-Governing Territory. As none of the three territories is currently listed, for reasons discussed in the previous chapter, advocates of this strategy call for the (re-) inscription of their respective territory as a first step towards decolonisation.

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<sup>969</sup> Letter written by officials of the *Rapanui Parliament*, copy seen in the private archives of the Teave Hey family in January 2006.

<sup>970</sup> Document by the Rapanui parliament, dated 11 June 2002, copy in the author’s possession.

Modeled on the successful campaign for UN reinscription of New Caledonia in the 1980s,<sup>971</sup> the strategy of (re-) inscription has been pursued by various organisations in each of the three entities, including many organisations using other strategies concurrently. Its main proponents are *Ka Pākaukau* in Hawai‘i, *Tāvini Huira ‘atira* in Tahiti and the *Rapanui Parliament*. In the latter two territories this strategy is unanimously approved by all pro-independence organizations, as they all principally agree on the fact of colonisation of their country, the remedy for which is decolonisation. In Hawai‘i, on the other hand, reinscription as a non-self-governing territory is very controversial, as there is no general agreement among the independence movement on how to classify the US presence in Hawai‘i. As outlined previously, activists of the traditional Hawaiian Sovereignty movement have tended to see Hawai‘i as a colonised territory similar to the two others treated here, and subsequently interpreted the 1959 statehood process as a fraudulent anomaly of decolonisation, an injustice to be corrected through a re-inscription on the list of NSGTs and an ensuing genuine act of self-determination.<sup>972</sup> However, a more recent and growing tendency among Hawaiian independence activists is to see Hawai‘i as an occupied nation that needs to be de-occupied, rather than a US colony that needs to be decolonised. According to this interpretation, the inscription of Hawai‘i as a Non-Self-Governing Territory in 1946 was already fraudulent, and a reinscription would only perpetuate that fraud.<sup>973</sup>

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<sup>971</sup> Robie 1989: 134, 260-261

<sup>972</sup> For such an interpretation see for instance Lopez-Reyes 1996; 1999; 2000.

<sup>973</sup> Sai 2007: 19-20

*Working within the imposed political system as political parties*

All the strategies that have been discussed so far deal with the coloniser or occupier at an international level, giving little relevance in the process to the internal political system imposed on the territory by the latter. Some nationalist movements, however, have used that very system to advance their cause, and constituted themselves as political parties. Classical examples for this strategy were Robert Wilcox' *Home Rule Party* in Hawai'i during the early 1900s, and Pouvāna'a a 'Ō'opa's RDPT party in Tahiti during the 1940s and 1950s.

In the case of French Polynesia, the formation of political parties has subsequently become the chief strategy used by political activists who followed in Pouvāna'a's footsteps, first John Teariki and Francis Sanford, then Oscar Temaru, whose *Tāvini Huira'atira* party decided at a convention in 1982 to renounce the use of armed struggle (which some party members considered before) and adopt the same political strategy of participating in the territorial elections.<sup>974</sup> In the long term, this strategy has proven successful, as through a political alliance, Temaru's party in 2004 won the local elections, and has since been using the territorial government apparatus to further the cause for independence. They have thus come much closer to the goal of achieving the support of at least 50% of the population necessary to win an eventual referendum on independence.<sup>975</sup>

In Hawai'i, on the other hand, the experiment of the Home Rule party failed, as its electorate was taken over by the US Republican and later Democratic Party.

Subsequently the pool of voters became both diluted through mass immigration and

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<sup>974</sup> Regnault 1995: 134

<sup>975</sup> Al Wardi 2006: 30

politically disoriented through US propaganda. A few new attempts have been made recently by Hawaiian activists to participate in the US-imposed elections, including the *Aloha 'Āina Party* founded in 2000 by Vicky Holt-Takamine and Wayne Kaho'onei Panoke as a resurrection of the *Home Rule Party*,<sup>976</sup> and the running for state governor by comedian and independence supporter Kau'i "Bu La'ia" Hill in 1994 and 2002.<sup>977</sup> Both attempts have been unsuccessful, producing only marginal results.<sup>978</sup> Given the composition of the electorate, of which Hawaiian nationals now form a minority, and having undergone a century of US indoctrination, these results are not very surprising.

In comparing the relative success of this strategy in French Polynesia and its failure in Hawai'i, one must also take into account the political system: In the territorial government system of French Polynesia, the existence of small-scale local government units (municipalities) facilitates the ascent of politicians from the local to the territorial level. Poor municipalities with dissatisfied voters have thus become the breeding ground for pro-independence politicians (e.g. Temaru in Fa'a'a). Secondly, the French Polynesia electoral system with proportional representation in multi-seat constituencies enables small local parties to participate, and evolve over time into larger political players, as we have seen with *Tāvini Huira'atira*, which rose from 2 seats out of 41 in 1986, to a slight majority of 29 (including allied parties) out of 57 in 2005.<sup>979</sup>

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<sup>976</sup> *Honolulu Star-Bulletin*, 7 March 2000; 4 April 2000;

<sup>977</sup> *The Honolulu Advertiser*, 21 July 2002

<sup>978</sup> It should be pointed out, however, that Hill in both 1994 and 2002 won the third place after the Republican and Democratic candidates, clearly ahead of several candidates of US splinter parties. See *Honolulu Star-Bulletin*, 24 July 1998 and US state of Hawai'i election results website <<http://hawaii.gov/elections/results/2002/general/02swgen4.pdf>> [Accessed 29 March 2008].

<sup>979</sup> For the electoral system of French Polynesia, basically in place since 1957, see Gille 2006: 89ff. For the growth of *Tāvini Huira'atira*, see Regnault 2004: 54-76

In the US state of Hawai'i, on the other hand, the political system is made-to-measure for the two mainstream US parties, with few to no prospects for grassroots political movements ever to win any significant political office. First, there are no small scale local government units, only four large sized counties for each major island, encompassing between 50,000 (Kaua'i County) and 1 million (City and County of Honolulu, i.e. O'ahu island) inhabitants. If poor, native Hawaiian dominated neighbourhoods such as Wai'anae or Waimānalo on O'ahu, had municipal governments, local pro-independence leaders might have a chance to be elected mayors there first, and then rise to become politicians at the State of Hawai'i level. The absence of local government units, however, makes such a career impossible, and in consequence, both the state and the county administrations are dominated by professional politicians of the US Democratic and Republican parties. Secondly, all members of the State House of Representatives and the State Senate are elected in a majority vote system in single-seat constituencies, which again strongly favours the two US mainstream parties and does not provide any representation to minority parties.<sup>980</sup>

Rapa Nui is too small a community to have a political scene comparable to the other two territories, but nationalist leaders have played important roles within the Chilean-imposed local political institutions there as well. When the municipal government was established in 1966, the leader of the 1964 uprising, Alfonso Rapu, successfully ran for the position of mayor, becoming the founding father of local politics, not unlike Pouvāna'a in Tahiti. When democracy was restored in 1992, the leader of the local civil resistance against the Pinochet regime, Alberto Hotus, was elected mayor.

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<sup>980</sup> For a description of the elections and political parties in the US state of Hawai'i, see Wang 1998: 29-52. For the functioning of its legislature, see Pratt and Smith 2000: 186-210.

However, he soon became a pro-Chilean leader. Later, in the 1990s, activists of the anti-colonial Council of Elders #2 have been running for office in the municipal council, but none of them won enough votes to be a councillor.<sup>981</sup> Instead of forming their own local political parties, however, the Council of Elders #2 activists ran as candidates of a Chilean right-wing party (in the logic of their opposition to the Hotus-supported centre-left Chilean government, not because of any shared ideology). In fact, all candidates in municipal elections have so far been affiliated with a Chilean political party. Members of the other locally elected political body, the Easter Island Development Commission, on the other hand, are elected as individuals on a non-partisan basis. Pro-independence candidates have also run for these offices, and two of them received the highest numbers of votes in the most recent elections of June 2007, as described above.

When comparing nationalist activists participating in the imposed political system in the three territories, it is also of interest to note that even though their core ideology is clearly one of resistance to the occupier or coloniser, most of them have at times experimented with an ultra-assimilationist platform as well. This has reflected a reaction to the ruling powers' hypocritical policy of cultural assimilation but political discrimination. As we have seen, the Hawaiian *Home Rule Party* advocated US statehood from its beginning.<sup>982</sup> Similarly, the Tahitian RDPT initially advocated *departmentalisation*. Both cases should not be interpreted as evidence of identification with the ruling State, but as a strategy to obtain full benefits of civil rights in the latter, in order to be able to run the local government democratically. With the evolution of the

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<sup>981</sup> *Rapa Nui Journal*, Vol. 14 No 4 (December 2000): 121; Chilean government elections results website, <<http://www.elecciones.gov.cl>> [Accessed 11 October 2004]

<sup>982</sup> Andrade 1996: 194; 214-216; Van Dyke 2008: 254

French empire towards decolonisation, the RDPT later changed its attitude to advocate more autonomy and eventual independence. As we have seen, this pattern generally followed other nationalist movements in French colonies.<sup>983</sup> A similar pattern could be observed in Rapa Nui as well, where Alfonso Rapu's objectives were initially ambiguous between civil rights as Chileans and considerations of independence in a Polynesian confederation. After their successful revolt, Rapu and his followers settled down for Chilean citizen's rights for the time being, but notions of a separate political identity later resurfaced in the 1990s.<sup>984</sup>

### *Civil resistance*

Besides the political strategies mentioned above, political activists have used various means of action to accompany the pursuit of one or several of the above mentioned strategies. Most common have been actions of civil resistance such as strikes, protest marches and property occupations and other forms of peaceful non-cooperation with the ruling authorities. The use of means of peaceful resistance started with the Hawaiian loyalists during the Dole regime who refused to sign the oath of loyalty to the regime, and then collected tens of thousands of signatures for the famous 1897 petitions that prevented the ratification of the annexation treaty.<sup>985</sup> The modern Hawaiian sovereignty movement since the 1970s continued this tradition. Beginning with the land struggle in Kalama valley and the PKO's landings on Kaho'olawe, various activists have organised land occupations and protest marches. This culminated in the mass

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<sup>983</sup> See for instance the initial support for *départementalisation* by the anti-colonial, future nationalist movement in Madagascar (Brown 2006: 250-251)

<sup>984</sup> Delsig 2004: 29-30

<sup>985</sup> Silva 2004: 129-137, 140-161

demonstrations of 1993 for the centenary of the overthrow, and more recently the *Kū i ka pono* (“stand up for justice”) marches of the early 2000s against US threats to Hawaiian institutions.<sup>986</sup> In more drastic cases, some Hawaiian activists have also refused to pay taxes to the US government or driven vehicles without US driver’s licences and licence plates, becoming political prisoners once they were arrested and convicted by US courts.<sup>987</sup> One such incident, of a Hilo resident driving without a US licence, became the starting point for the crucial *Larsen v. Hawaiian Kingdom* case at the international court in The Hague in 1999-2001 cited above.

In French Polynesia, the history of civil resistance started with Georges Spitz’ *Tomite Pāto ‘i* of the late 1920s. It became the main course of action taken by Pouvāna’a and his followers in in the 1940s, when they protested against colonial injustices and were arrested many times. As we have seen, Pouvāna’a’s successors Teariki and Sanford continued to use peaceful protests and civil resistance in their struggles against the nuclear tests and for internal autonomy during the 1960s and 1970s, culminating in their occupation of the Territorial Assembly building in 1976-1977. During the 1980s and 1990s, similar actions of civil disobedience were undertaken by members of Oscar Temaru’s party and civil society organisations to protest against nuclear testing, social inequalities and land development projects by foreign investors. Some of these protests, in 1987 and 1995, turned into violent riots, which was not the intention of the planners.<sup>988</sup>

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<sup>986</sup> See, for instance, a march of an estimated 20,000 participants against a lawsuit by right-wing American immigrants threatening the Kamehameha Schools, a prestigious educational institution giving preference to children of Hawaiian ancestry, funded by princess Bernice Pauahi in the 1880s. *The Honolulu Advertiser*, 7 August 2005.

<sup>987</sup> For an example of such a case, the trial for tax evasion of Pilipo Souza, affiliated with the Kingdom reinstatement initiative led by Leon Siu, see *Mid Week*, 1 December 2004.

<sup>988</sup> For the 1987 riots, see Robie 1989: 270-271. For those of 1995, see Firth 2000: 328-329; *To ‘ere*, 24 July 2003; Regnault 2004: 67-68.



The most recent series of civil resistance activities occurred in late 2004, when Temaru was temporarily ousted from the presidency of French Polynesia by his opponent Gaston Flosse through a scheme supported by the French government. As recounted above, Temaru's ouster led to the largest protest march in Tahiti's history, a petition signed by over 40,000 people, and the subsequent occupation of all crucial government buildings by Temaru-affiliated activists in order to paralyse Flosse's contested new government.<sup>989</sup>

In Rapa Nui, civil resistance started with the 1914 revolt led by Angata Hereveri and Daniel Teave. Five decades later, Alfonso Rapu led a similar campaign of civil resistance, achieving the end of arbitrary military rule. In the 1980s, activists of the Council of Elders used forms of civil resistance to protest against abuses of the Pinochet regime. After the democratisation of Chile in 1990 brought increased freedom of expression, actions of civil resistance intensified, especially land occupations by activists of the Council of Elders #2. Most recently, these actions have been continued by members of the Rapanui Parliament.

### *Armed resistance*

While we have seen that civil resistance is a common form of political protest used by independence activists, armed resistance has rarely been advocated and even less been used in any of the three territories under consideration. The few cases of historical precedence happened rather during the takeover process or shortly thereafter, like the Franco-Tahitian war in the 1840s, the war of resistance in Ra'iātea under Teraupo'o during the 1890s and the attempted counter-insurgency under Robert Wilcox in 1895

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<sup>989</sup> Regnault 2004: 165-174, *Tahiti-Pacifique*, November and December 2004.

against the Dole regime in Hawai'i. In recent times, the only instance of violent resistance were the actions by Charlie Ching's followers in Tahiti in the 1970s, which could be seen as attempts, but not more than that, to initiate a campaign of armed struggle. It is clear that a violent struggle of national liberation is generally not promising in small island territories facing the overwhelming military force of the occupier. Actions of armed resistance would therefore not serve the purpose of liberation itself, but only be effective as a means of attracting attention to the movement's goals. This strategy worked in New Caledonia during the 1980s, when violent confrontations between Kanak nationalists and French security forces increased the international awareness about the issue, eventually leading to that territory's reinscription as a NSGT in 1986. Non-violent resistance movements generally tend to be taken less seriously by the international community, as they cannot be perceived as a threat to peace.<sup>990</sup> On the other hand, starting a campaign of armed struggle is also very dangerous, as it might lead to fatal repressions and crackdowns on the movement, like they have occurred in Puerto Rico under US rule,<sup>991</sup> or even genocidal strikes against the entire population, as carried out by Indonesia in East Timor and West Papua.<sup>992</sup>

## **Conclusion**

As we have seen, the policies of assimilation, indoctrination, and denial of decolonisation and self-determination by the ruling powers have been countered by

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<sup>990</sup> Lopez-Reyes 1996: 88

<sup>991</sup> Wei and Kamel 1998: 68. See also the recent killing of Puerto Rican guerilla leader Filiberto Ojeda Ríos by agents of the US Federal Bureau of Investigation in 2005, <[http://en.wikipedia.org/wiki/Filiberto\\_Ojeda\\_R%C3%ADos](http://en.wikipedia.org/wiki/Filiberto_Ojeda_R%C3%ADos)> [Accessed 2 April 2008].

<sup>992</sup> Robie 1989: 41-65

movements of resistance in all three island entities. These movements have used a wide range of political strategies to further their causes and in each of the territories they now represent a political force that can no longer be ignored by the respective ruling powers. While none of the territories has been set on a clear timetable of decolonisation or de-occupation yet, the issue of independence has become a topic of political discussions, especially in French Polynesia, but increasingly also in Rapa Nui and Hawai'i. In reaction to this increasing threat to the *status quo*, political reforms have been implemented, or at least initiated, in all three territories during the last few decades, taking the shape of either indigenous or territorial autonomy, as we shall see in the next chapter.

## Chapter 6

### Innovative Concepts: Indigenous and Territorial Autonomy

As a reaction to growing independence movements and resistance to the policy of assimilation, the administering powers in all three territories have over time been persuaded to enact certain political reforms. These ostensibly emphasise local specificities, even though in most cases the general pattern of assimilationist policies remains in place. This chapter examines these reforms, generally referred to as autonomy. As international law scholar Maivân Lãm defines it, autonomy is a “political term to designate domestic devolutions of power to substate groups”.<sup>993</sup> Set in a middle ground between the opposed policies of assimilation and decolonisation, autonomy is an innovative political concept, conceived to exist within the imposed political system, and offers interesting alternatives to, or maybe also first steps towards, independence. Practically, in the case studies under consideration here, autonomy can take two shapes, based on different concepts. The first of these concepts is that of indigenous autonomy, meaning a special status for the indigenous population of the territory, giving people of native ancestry special rights without modifying the foreign-imposed political system as a whole. The second concept is that of territorial autonomy, giving a territory in its entirety a special status distinct from that of other political subdivisions of the ruling state, with increased powers being devolved to a local government.<sup>994</sup>

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<sup>993</sup> Lãm 2000: 140

<sup>994</sup> For a detailed analysis of both concepts of autonomy, see Welhengama 2000: 102-117. Welhengama uses the more general terms of personal and cultural autonomy for what I am calling indigenous autonomy in the Polynesian context.

## **Indigenous autonomy**

The worldwide movement for indigenous rights has been underway for at least three decades. Intensive lobbying by indigenous activists achieved its first international success with the creation of the Working Group on Indigenous Populations within the UN Human Rights commission in 1982,<sup>995</sup> and later the foundation of the Permanent Forum on Indigenous Issues within the UN Economic and Social Council in 2002.<sup>996</sup> Most recently, the UN General Assembly adopted the United Nations Declaration of the Rights of Indigenous Peoples,<sup>997</sup> so that indigenous rights have now become part of international law. This process, which is far from complete, and has only begun to unfold on the international level, represents the second wave of perfection of international law, after that of decolonisation. As a process of legal remedy, it concerns all those groups of people that are neither recognised as independent States under international law nor defined as the inhabitants of Non-Self-Governing territories according to UN resolutions 1514 (XV) and 1541 (XV). Rather these are aboriginal minorities within independent States and therefore excluded from both classical international law and the decolonisation regime.<sup>998</sup>

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<sup>995</sup> Anaya 2004: 63

<sup>996</sup> Anaya 2004: 58, 219-220

<sup>997</sup> *United Nations General Assembly Resolution 61/295. United Nations Declaration on the Rights of Indigenous Peoples*. 13 September 2007. Posted on UN web site <<http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>>. [Accessed 3 April 2008] [hereafter *2007 UNGA resolution 61/295*].

<sup>998</sup> Anaya 2004: 54

### *Definitions of indigenous peoples*

While the term “indigenous peoples” has never been officially defined, the following description by UN official José R. Martínez Cobo has been generally accepted as a working definition:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the society now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations, their ancestral territories, and their ethnic identity, as a basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.<sup>999</sup>

This description can clearly be interpreted to mean the aboriginal peoples in countries founded by European settlers like the US or Australia. However, it is much less clear which, if any, groups of people qualify as indigenous in countries without a Western settler majority, since many of the aforementioned qualifications remain ambiguous in a non-settler-State context.<sup>1000</sup> It is therefore a challenge to determine whether the above cited qualification can be applied to the three Polynesian entities under review. There is of course no question that Hawaiians, Rapanui and the various Polynesian peoples of French Polynesia are descendants of the “pre-invasion” or “pre-colonial” societies of their islands. But when it comes to their contemporary socio-economic position, things become more complex. In contemporary Hawai‘i, aboriginal Hawaiians certainly are socially, politically and culturally marginalised. But how distinct are they from other sectors of society, especially those inhabitants of Asian or Portuguese ancestry with whom they share a common spoken language (Pidgin) and socio-cultural values, and with

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<sup>999</sup> Martínez Cobo, cited in Lãm 2000: 7

<sup>1000</sup> Lãm 2000: 2-3

whom they identify together as “locals”?<sup>1001</sup> Could *Mā'ohi* (Tahitians and other Polynesians) be considered a “non-dominant sector of society” in contemporary French Polynesia, when they form the vast majority of the population and fill virtually all elected political offices? On the other hand, most major economic corporations in the territory are owned by French settlers or decedents of Chinese immigrants.<sup>1002</sup> The same question needs to be asked for Rapanui, who, in an inverse pattern, currently find themselves in the process of being outnumbered by Chilean settlers, but at the same time retain control over the constantly growing, economically vital tourism industry on the island.<sup>1003</sup> While it is therefore controversial whether the aboriginal peoples of the three territories fulfil all of the criteria given in Martínez' statement, I would argue that their aboriginal origin and their well-documented history of oppression under colonial or occupational rule could be used as an argument that they indeed genererally qualify.

#### *Development of the UN regime of indigenous rights*

The idea of granting indigenous peoples within independent States the same rights as peoples of overseas colonies had first been proposed during the 1950s by Belgium and France, when they attempted to extend the definition of a Non-Self-Governing Territory of chapter XI of the UN charter to indigenous areas within the continental boundaries of States. However, this idea was refuted by the quasi-totality of the UN member States, who saw it as a self-serving attempt to weaken the momentum of the decolonisation

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<sup>1001</sup> For a discussion of the identification of long term, pidgin speaking, and usually non-white, residents of Hawai'i as “locals”, see Merry 2003: 139-140 and Stannard 2005: 412-415.

<sup>1002</sup> See, for instance, the annual and bi-annual economic reviews *Dixit* and *Fenua Économie*, which feature mainly French and Chinese, and relatively few *Mā'ohi*-owned businesses.

<sup>1003</sup> Fischer 2005: 257, 260

process, which it probably was.<sup>1004</sup> In reaction, the so called ‘blue water thesis’ became the generally accepted norm. This meant that the right of all peoples to self-determination outlined in UN resolution 1514 (XV) applied only to people in colonial territories separated from the colonising country by open ocean, reflecting the qualification of being “geographically separate” in principle IV of resolution 1541(XV).<sup>1005</sup> In parallel, the prohibition against the “partial or total disruption of the national unity and the territorial integrity of a country” in section 6 of resolution 1514 (XV) reflects the principle of *uti possidetis*, meaning that the colonially created boundaries need to be left intact in the decolonisation process, thus frustrating the ambitions of indigenous peoples to revise arbitrary boundaries to their advantage.<sup>1006</sup>

The UN Declaration of 2007 provides remedies for these inequalities not properly addressed through the decolonisation regime by granting indigenous peoples various rights to protect their economic, social and cultural self-determination and outlawing actions of oppression exercised by State governments against them. However, the political rights granted through the declaration are notably limited in comparison to the decolonisation regime. While article three of the 2007 declaration reflects the wording of resolution 1514 (XV) by declaring that “[i]ndigenous peoples have the right to self-determination”, and that “by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”,<sup>1007</sup> the following article strictly limits that right in the political arena by stating that “[i]ndigenous peoples, in exercising their right of self-determination, have the right to autonomy or self-

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<sup>1004</sup> Ahmad 1974: 273-282; Lâm 2000: 117-118; Anaya 2004: 75-76 n. 30

<sup>1005</sup> Lâm 2000: 116; Anaya 2004: 54, 75-76 n. 30

<sup>1006</sup> Lâm 2000: 122; 147-148

<sup>1007</sup> 2007 UNGA resolution 61/295, Art. 3



government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.”<sup>1008</sup> In contrast to peoples of Non-Self-Governing Territories, indigenous peoples thus clearly have no right to political independence from the State that currently rules them. This is once more clarified in article 46 at the end of the declaration, which emphasises that “[n]othing in this Declaration may be [...] construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.”<sup>1009</sup> In order to achieve and secure political independence, the new UN indigenous rights regime is thus a very weak, if not entirely inefficient tool, compared to both the classical principle of State sovereignty and the UN decolonisation regime.

As we have previously determined in Chapters one and two, all the three island entities under review clearly qualify either as recognised sovereign States or as Non-Self-Governing Territories. Consequently, they are supposed to have access to either of the two previously mentioned tools of international law, unlike indigenous peoples living within independent States for whom the indigenous rights regime is being created. In spite of this fact, however, the principle of indigenous rights has been applied to the aboriginal inhabitants of Hawai‘i and Rapa Nui.

### *The case of Hawai‘i*

Starting in the 1920s, there has been a long history of treatment of aboriginal Hawaiians as indigenous people of the US, similar to American Indians. In July 1921,

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<sup>1008</sup> 2007 UNGA resolution 61/295, Art. 4

<sup>1009</sup> 2007 UNGA resolution 61/295, Art. 46. 1

the US congress passed the Hawaiian Homes Commission Act,<sup>1010</sup> a bill introduced by Delegate Prince Kūhiō Kalanianaʻole, which set aside about 200,000 acres of Hawaiian Kingdom Crown and Government lands as Hawaiian Home lands, to be parcelled out and distributed to “native Hawaiians” as ninety-nine year leases at the price of one dollar per year for residential and agricultural purposes.<sup>1011</sup> However, at the request of US legislators and against the intention of the bill’s authors, “native Hawaiians” were defined as persons of at least 50% Hawaiian blood, thus creating an arbitrary division of *Kānaka ʻŌiwi* into those who qualified for homesteads and those who did not.<sup>1012</sup> It also needs to be said that the programme never worked in the way it was intended to, as the designated lands have been mismanaged and used for other purposes, while many qualifying applicants have been on the waiting list for decades. Some have even died without receiving any land.<sup>1013</sup> Partially transferred from the US federal to the US state of Hawaiʻi government through the statehood process of 1959,<sup>1014</sup> the programme is still in existence today.<sup>1015</sup>

Many other programmes have been enacted by the US government to benefit aboriginal Hawaiians, either specifically through laws like the Native Hawaiian Health Care Act of 1988,<sup>1016</sup> or through laws benefiting Native Americans that were extended to be applicable to Hawaiians as well, like the American Indian Religious Freedom Act

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<sup>1010</sup> *Hawaiian Homes Commission Act*. 9 July 1921. Posted on the Hawaiian Kingdom Government web site <<http://www.hawaiiankingdom.org/us-hawn-homes-act-1920.shtml>>. Revised current version on State of Hawaiʻi Department of Hawaiian Home lands web site <<http://hawaii.gov/dhhl/laws/Hawaiian%20Homes%20Commission%20Act%201920.pdf>> [Both accessed 5 April 2008].

<sup>1011</sup> Cummings 2004: 52-53, 59-65; Van Dyke 2008: 237.

<sup>1012</sup> Cummings 2004: 53, 61-62

<sup>1013</sup> MacKenzie 1991: 51-61; Coffmann 2003: 294-295; Cummings 2004: 63-64; Van Dyke 2008: 250-251

<sup>1014</sup> MacKinzie 1991: 49

<sup>1015</sup> Van Dyke 2008: 252-253

<sup>1016</sup> MacKinzie 1991: 299

(AIRFA) of 1978<sup>1017</sup> or the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990,<sup>1018</sup> altogether a set of more than 150 such laws.<sup>1019</sup>

In 1978, the US state of Hawai‘i constitution was amended in a constitutional convention, and a so-called “Hawaiian affairs package” adopted,<sup>1020</sup> including the protection of customary rights,<sup>1021</sup> and the creation of the Office of Hawaiian Affairs (OHA).<sup>1022</sup> Run by a board of trustees elected by aboriginal Hawaiians (without blood quantum requirement), OHA was intended to serve the needs of aboriginal Hawaiians as a semi-autonomous agency, funded by the the state of Hawai‘i government with parts of the revenue from the public lands. The exact relationship between the state government and OHA, especially concerning the amount of monetary resources due to the latter have been an issue of contention ever since.<sup>1023</sup>

While one could argue that the formation of OHA created some degree of indigenous autonomy within the US state of Hawai‘i, many Hawaiians have criticised this institution from the very beginning as merely a part of the state government bureaucracy, not a form of self-government for the Hawaiian people. As a reaction to this criticism and calls for more comprehensive reparations, a study on the historical grievances and the present socio-economic situation of Native Hawaiians was commissioned by the US federal government in 1980, but its report, published in 1983, found the US not liable for the 1893 overthrow and recommended social, but not political

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<sup>1017</sup> MacKinzie 1991: 261

<sup>1018</sup> Tsosie 2006: 7

<sup>1019</sup> Cummings 2004: 107

<sup>1020</sup> Brown 1982; Coffman 2003: 311-316; Van Dyke 2008: 559

<sup>1021</sup> 1978 *State of Hawai‘i Constitution*, Art. XII, Sect. 7

<sup>1022</sup> 1978 *State of Hawai‘i Constitution*, Art. XII, Sect. 5-6.

<sup>1023</sup> Van Dyke 2008: 259-261

measures as a remedy, while a minority report disagreed.<sup>1024</sup> Disappointed with both OHA and the study commission, a group of Hawaiian activists subsequently formed *Ka Lāhui*, as a self-government initiative seeking a direct government-to-government relationship with the US federal government modelled after that of the autonomous Native American Indian tribes.<sup>1025</sup> As described above, *Ka Lāhui* enacted a constitution with different branches of government,<sup>1026</sup> and later adopted a master plan to achieve “sovereignty”, primarily conceived as autonomy as an indigenous people within the United States, even though further decolonisation options were not excluded.<sup>1027</sup> Furthermore, *Ka Lāhui* maintained the arbitrary US-imposed division of aboriginal Hawaiians into two classes through blood quantum in its constitution.<sup>1028</sup>

As accounted earlier, in 1993, the US government apologised to Native Hawaiians, defined as all descendents of pre-1778 inhabitants, for the overthrow of the government of the Hawaiian Kingdom a hundred years before.<sup>1029</sup> Besides boosting various currents within the Hawaiian sovereignty movement, the Apology Resolution reinforced the claims of *Kānaka ʻŌiwi* to rights as indigenous people.

Started shortly before but unfolding mainly after the enactment of the Apology Resolution, the state of Hawaiʻi government set up a process that was supposed to

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<sup>1024</sup> *Native Hawaiians Study Commission Report on the Culture, Needs and Concerns of Native Hawaiians, Pursuant to Public Law 96-565, Title III*. 23 June 1983. Volumes 1 and 2.

<sup>1025</sup> Coffman 2003: 315

<sup>1026</sup> *The Constitution of Ka Lāhui Hawaiʻi*. In booklet entitled *Ka lāhui Hawaiʻi. The Sovereign Nation of Hawaiʻi. A Compilation of Materials for Educational Workshops on Ka Lāhui Hawaiʻi*, Honolulu 1993: 9-20; see also MacKenzie 1991: 92-94.

<sup>1027</sup> Trask 1999: 211-243

<sup>1028</sup> Osorio 2003: 223

<sup>1029</sup> *Apology Bill. Public Law 103-150. Joint resolution to acknowledge the 100<sup>th</sup> anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaiʻi, and to offer an apology to Native Hawaiians on behalf of the United States for the Overthrow of the Kingdom of Hawaiʻi*. 23 November 1993. Brochure published by the Office of Hawaiian Affairs.

determine the political aspirations of aboriginal Hawaiians. A Hawaiian Sovereignty Advisory Commission, later renamed Hawaiian Sovereignty Elections Council (HSEC) was appointed by the state of Hawai‘i governor, in order to conduct a plebiscite among all *Kānaka ‘Ōiwi* whether they approved a process of “restoring a sovereign Hawaiian Nation”.<sup>1030</sup> As the process was initiated by the state of Hawai‘i government and not by an independent organisation, the vote was strongly criticised by many Hawaiian activists, including those in *Ka Lāhui*. In consequence, many Hawaiians boycotted the 1996 plebiscite, which brought an affirmative result but only meager participation.<sup>1031</sup> Subsequently, a non-governmental organisation, *Hā Hawai‘i* (“The breath of Hawai‘i”) was formed to replace HSEC, and run elections for a *‘Aha Hawai‘i ‘Ōiwi* (Native Hawaiian Convention) to debate on the next steps to take.<sup>1032</sup> The election was held in January 1999,<sup>1033</sup> and the convention subsequently began discussing the sovereignty issue. Due to lack of funding, it lost momentum and virtually disappeared in the early 2000s.

Meanwhile, the movement for indigenous rights in Hawai‘i received a severe setback, when in February 2000, the US Supreme Court ruled in the *Rice v. Cayetano* case that the election of OHA trustees by *Kānaka ‘Ōiwi* alone violated the US constitution, which in its fifteenth amendment forbids the limitation of suffrage based on “race”.<sup>1034</sup> The ruling followed a lawsuit filed in 1996 by Harold Rice, a non-aboriginal descendant of Hawaiian nationals, who argued that he was being racially discriminated

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<sup>1030</sup> Pratt and Smith 2000: 234

<sup>1031</sup> Del Castillo 1996: 43-52; Wang 1998: 102-105; Cummings 2004: 81-90

<sup>1032</sup> Pratt and Smith 2000: 235; Cummings 2004: 89

<sup>1033</sup> *Honolulu Star-Bulletin*, 18 January 1999, 27 January 1999

<sup>1034</sup> Cummings 2004 : 100-110; Van Dyke 2008: 274-283

against by being denied the right to participate in the election of OHA trustees.<sup>1035</sup> OHA trustees have subsequently been elected by the same pool of voters who vote in other state of Hawai‘i elections. The ruling also sparked several other lawsuits, orchestrated by right-wing American settlers and their supporters in the US, which aim at the total disbanding of all programmes, both public and private, that exclusively benefit aboriginal Hawaiians.<sup>1036</sup>

While discrimination on the basis of ancestry contradicts the US constitution,<sup>1037</sup> legal precedent has established that Native Americans are exempt from that rule, and granting special rights to them on the basis of ancestry is considered legal.<sup>1038</sup> In reaction to the *Rice* ruling and subsequent legal challenges, a bill was introduced in the US congress in July 2000, named the “Akaka Bill” after its sponsor Daniel Akaka, one of Hawai‘i’s two senators, which would formally recognise Hawaiians as indigenous people of the United States, akin to Native American Indians. Formally referred to as the Hawaiian Government Reorganisation Act, the bill would create a process leading to the election of a Native Hawaiian Governing Entity, recognised by the US federal government as the legitimate representative of the Hawaiian people, and placed under the authority of the US Department of Interior. The governing entity could then negotiate with the US federal and state governments about the handover of lands and resources.<sup>1039</sup> Due to strong opposition by US right wing senators, the bill has not been passed so far

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<sup>1035</sup> Cummings 2004: 100-101

<sup>1036</sup> Van Dyke 2008: 285-290; 317-323

<sup>1037</sup> *US constitution*, amendment 14, art.1, amendment 15

<sup>1038</sup> Brown 1982: 138-139

<sup>1039</sup> Cummings 2004: 110-115, 173-176; Van Dyke 2008: 270-272, 284-285

but re-introduced every year. An amended version is currently being debated in the US Congress.<sup>1040</sup>

As stated above, the alleged precedence used for the Akaka Bill and other proposals of US federal recognition of aboriginal Hawaiians as an indigenous people is the legal status of various Native American tribes.<sup>1041</sup> There are altogether about 500 Native American nations with federally recognised governments, in different types of jurisdictional arrangements, as well as others who are not recognised on the federal level but have other forms of legal recognition. They have the right to govern themselves according to their own constitutions and exercise control over their territory.<sup>1042</sup> However, this self-government is clearly limited, as they are all subject to the US Department of Interior, and furthermore the US Congress exercises “plenary powers” of legislation over them.<sup>1043</sup>

Proponents of US federal recognition of *Kānaka ʻŌiwi* have justified the applicability of the Native American model to Hawaiians with the argument that the alleged incorporation of Hawai‘i into the American Union in 1959 turned Hawaiians from people of a Non-Self-Governing Territory into an indigenous people within the boundaries of an independent State.<sup>1044</sup> However, as pointed out in a reply to this allegation by Ramon Lopez-Reyes, the irregularities of the 1959 vote, analysed in detail above, make the US statehood process questionable.<sup>1045</sup> Furthermore, as we have seen, the applicability of both US domestic indigenous and NSGT status is questionable,

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<sup>1040</sup> *Native Hawaiian Government Reorganization Act of 2007. 110<sup>th</sup> Congress 1<sup>st</sup> session, S.310.*

<<http://www.nativehawaiians.com/pdf/s310/S310.pdf>> [Accessed 7 April 2008]

<sup>1041</sup> Cummings 2004: 110; Van Dyke 2008: 271

<sup>1042</sup> MacKenzie 1991: 83-88; Kahanu and Van Dyke 1995: 428-444; Cummings 2004: 167-170

<sup>1043</sup> MacKenzie 1991-85-86; Cummings 2004: 178; Tsosie 2006: 3-4

<sup>1044</sup> Van Dyke et al 1996: 631; 641

<sup>1045</sup> Lopez-Reyes 1999

because of Hawai‘i’s unique status as an occupied independent State, different from a colonised territory.

While the Akaka Bill is being criticised for its limitations by most Hawaiian activists, it should be underlined that all indigenous autonomy models, even that of *Ka Lāhui* which goes much further, are limited, since they do not extend their claims to the entire US occupied territory, and do not address the illegitimacy of the imposition of US citizenship on the descendants of non-aboriginal Hawaiian nationals or non-US foreigners who lived in Hawai‘i at the time of the overthrow.

In that sense, there is a certain merit in the arguments brought forward by Rice and other pro-American right wingers. Given the historical facts of the illegal US occupation and imposition of US citizenship, their allegation that all residents of Hawai‘i are equal as American citizens can be easily dismissed as propaganda. But their argument is more subtle than that. Since the Hawaiian Kingdom itself had a multi-ethnic citizenry, it is indeed difficult to construct a legal precedence for a system of political rights based on aboriginal Hawaiian ancestry alone.<sup>1046</sup> If intended as a remedy for the consequences of the 1893 overthrow and the alleged 1898 annexation, any measure of indigenous rights limited to aboriginal Hawaiians is thus clearly inappropriate. Calling the Akaka Bill “Native Hawaiian Government *Re-organisation Act*” is absurd, since there was never a “Native Hawaiian Government” in the sense of the bill in the first place. If anything, the bill would create something entirely new, with no historical precedent.

With regard to the entire complex of Native Hawaiian entitlements created by the US government, from the Hawaiian Homes Commission Act to the Apology Resolution

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<sup>1046</sup> For an analysis of this issue from a pro-Rice point of view see Hainifin 2002.



and the Akaka Bill, one cannot help but wonder whether this process of indigenisation or ethnification of the Hawaiian question is not a form of damage control by the occupier. By pushing aboriginal Hawaiians into the Native American box, some concessions have to be made to them, but overall political control could still be maintained by the US. Looking at the Apology Resolution, used as a basis for claims by many sovereignty initiatives today, one can see that despite its seemingly generous and genuine wording, its ramifications are indeed limiting. In analysing the apology, Tracie Ku'uipo Cummings emphasises that

[...] the apology is directed at Native Hawaiians only and not at the political body of the Hawaiian Kingdom. The subject of the apology is adjusted to verify violations of the rights of the indigenous people and ignore the rights of the Nation-State. It is this inconsistency that weakens the promise of the apology and sustains the argument that the U.S. has deliberately attempted to hide the status of the Hawaiian Kingdom.<sup>1047</sup>

In a similar way, Keanu Sai has argued that the shift of perspective in the question of Hawaiian sovereignty from nationality to indigeneity under the impact of US occupation has trapped Hawaiians in a domestic situation within the US. In reality, Sai states,

[a]boriginal Hawaiians are not an indigenous people within the United States with a right to internal self-determination similar to Native American tribes, but rather are the indigenous people within the Hawaiian Kingdom who comprise the majority of the citizenry of an occupied State with a right to end the prolonged occupation of their country.<sup>1048</sup>

### *The case of Rapa Nui*

While debating the Akaka Bill and the applicability of the Native American concept to Hawaiians, few people in Hawai'i are aware that there exists a similar situation of Polynesian people categorised as indigenous Native Americans. This is the

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<sup>1047</sup> Cummings 2004: 135

<sup>1048</sup> Sai 2007: 29

case in Rapa Nui, whose aboriginal people have been officially classified as an indigenous people of Chile since 1993.

While the *Ley Pascua* of 1966 already contained passages giving the Rapanui people certain rights apart from other Chilean citizens, as we have seen above, the general policy of the Chilean government of that time aimed at assimilation rather than local specificity. This was not only the case towards the Rapanui, but even more so towards American Indians in metropolitan Chile. Especially under the right-wing military dictatorship of General Pinochet from 1973 to 1990, any move countering the concept of Chile as one nation was strongly discredited, an attitude continued by the right-wing opposition after 1990.<sup>1049</sup> During the 1980s, however, an indigenous rights movement developed among Chile's native people, sparked by similar movements all over Latin America and elsewhere. This paralleled the development of the Rapanui Council of Elders under Alberto Hotus, and the latter soon began to cooperate with the Native American movements, to challenge the Chilean government and advocate indigenous rights for both of them.<sup>1050</sup> After the restoration of democracy in Chile in 1990, the indigenous movement gained momentum, as it was now getting sympathetic reactions from the new centre-left government.<sup>1051</sup>

After several years of consultation with native leaders throughout the country, law No. 19.253, "establishing norms about the protection, promotion and development of the indigenous people", commonly called *Ley Indígena* ("Indigenous Law") was enacted in

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<sup>1049</sup> Makihara 1999: 142-143

<sup>1050</sup> Amorós 2006: 242-243

<sup>1051</sup> Makihara 1999: 142

September 1993.<sup>1052</sup> For the first time this granted comprehensive recognition of the rights of Chile's native peoples. The law recognises eight ethnic groups, including the Rapanui, as the indigenous peoples of Chile,<sup>1053</sup> and contains provisions to secure the survival of their languages and cultures, and protect their lands from alienation to non-natives.<sup>1054</sup> The law also created a *Corporación Nacional de Desarrollo Indígena* ("National Corporation for Indigenous Development") with an elected council of representatives from each people, including one Rapanui, as a governmental agency to coordinate and support cultural, social and economic policies concerning indigenous peoples.<sup>1055</sup> Furthermore, several particular measures are taken for each of the peoples concerned. For Rapa Nui, the law created the 15-member *Comisión de Desarrollo de la Isla de Pascua* (CODEIPA, "Easter Island Development Commission"), composed of seven representatives of Chilean government agencies, the governor, the mayor, the president of the Council of Elders and five elected representatives of the Rapanui community. The main responsibilities of this commission are in the promotion of cultural and economic development of the indigenous population of the island, the protection of its archaeological heritage, and, most importantly, the distribution of land parcels to landless Rapanui families.<sup>1056</sup>

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<sup>1052</sup> *Ley 19.253. Establece normas sobre protección, fomento y desarrollo de los indígenas, y crea la corporación nacional de desarrollo indígena* ("Law 19.253. Establishes norms about the protection, promotion and development of the indigenous people and creates the National Corporation for Indigenous Development"). 28 September 1993. Posted on Chilean National Congress Library website, <<http://www.bcn.cl/leyes/pdf/actualizado/30620.pdf>> [Accessed 12 August 2007] [hereafter *Ley Indígena*].

<sup>1053</sup> *Ley Indígena*, Art. 1

<sup>1054</sup> *Ley Indígena*, Art. 7-22, 28-33

<sup>1055</sup> *Ley Indígena*, Art. 38-53

<sup>1056</sup> *Ley Indígena*, Art. 67-70

While Rapanui Council of Elders leader Alberto Hotus had been one of the lobbyists for the law, in cooperation with various Chilean Native American leaders,<sup>1057</sup> the law was heavily criticised on the island, and its implementation subsequently delayed for five years.<sup>1058</sup>

One of the controversies the law caused in the island community concerned its definition of who is supposed to be Rapanui and who not. Indigeneity in Chile is defined in a way very different from Polynesia or even North America, as a large majority of Chileans has some Indian blood, but most are culturally Western and do not identify as indigenous. Indigeneity is thus defined by cultural identification rather than by blood.<sup>1059</sup> One can be Indian in Chile without Indian blood, if one lives on Indian land and identifies as Indian or is married to one, and this definition was confirmed in the *Ley Indígena*, deemed applicable to Rapanui as well.<sup>1060</sup> Most Rapanui were deeply concerned by this definition, worrying that Chilean settlers could pretend self-identification as Rapanui or marry Rapanui in order to gain access to land.<sup>1061</sup> Furthermore, many Rapanui also protested against the intended land distribution process, which would continue the presumption of Chilean State property over most of the island, instead of returning all lands to the Rapanui community.<sup>1062</sup> It was the latter conflict that sparked the 1994 split of the Council of Elders, and the 1994-1998 protest actions of the Council #2 that have been described above. While the latter strongly opposed any application of the *Ley Indígena*, Hotus' Council #1 lobbied for a modification of its

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<sup>1057</sup> Amorós 2006: 256

<sup>1058</sup> For a detailed description of the debate on the *Ley Indígena*, see Makihara 199: 142-153 and Pereyra-Uhrle 2005: 138-142.

<sup>1059</sup> McCall 1994: 167-168

<sup>1060</sup> *Ley Indígena*, Art. 2, 66

<sup>1061</sup> Makihara 1999: 144-145

<sup>1062</sup> Makihara 1999: 147-148

definition of the Rapanui people, which was finally enacted through law 19.587 in October 1998.<sup>1063</sup> With that modification, Rapanui were now clearly defined as lineal descendants, so that only they are now allowed to hold individual land title on the island.<sup>1064</sup>

After the modification of 1998, the *Ley Indígena* could still not be implemented on Rapa Nui, because the composition of the CODEIPA remained unclear as long as there were two Councils of Elders. Only after the confirmation of Alberto Hotus as president of that council in April 1999 the five native councillors were finally elected later in the same month,<sup>1065</sup> and their mandates have since been renewed twice through elections in 2003 and 2007.

After the *Ley Indígena* was finally implemented and its institutions set in place, Rapa Nui was included in other measures benefiting Chile's indigenous peoples. One of them was the *Comisión Verdad Histórica y Nuevo Trato* (Comision for Historical Truth and a New Deal), formed in 2001 in order to examine the past situation of the indigenous peoples of Chile.<sup>1066</sup> After two years of work, the commission produced both a main report with less critical and more generalised findings and a pro-independence "opposition" report,<sup>1067</sup> somewhat similar to the Native Hawaiians Study Commission report of 1983. Most recently, the planned change of political status of the island into a special territory (see below) includes most of the provisions concerning Rapa Nui of the

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<sup>1063</sup> *Ley 19.587. Modifica la ley N° 19.253, respecto de la constitución del dominio en Isla de Pascua para los miembros de la comunidad Rapa Nui* ("Law 19.587. Modifies the law no. 19.253, respective the constitution of the domain on Easter Island for the members if the Rapanui community"). 23 October 1998. Posted on Chilean senate web site. <<http://sil.senado.cl/docsil/ley313.txt>> [Accessed 10 January 2008].

<sup>1064</sup> *Rapa Nui Journal* 12,4 (December 1998): 123

<sup>1065</sup> *Te Rapa Nui* No. 8; *Rapa Nui Journal* 13, 2 (June 1999): 58-59

<sup>1066</sup> Pereyra-Uhrle 2005: 135 n. 9.

<sup>1067</sup> *Informe de la Comisión Verdad Histórica y Nuevo Trato*, Vol I: 275-341, 630-631, 637-640; Vol. III: 445-482.

*Ley Indígena*, and might furthermore reserve important government positions to ethnic Rapanui.

Overall, I would say that the classification of Rapanui as indigenous and the ensuing application of the *Ley Indígena* has been beneficial to some extent, as it provides protection against land alienation to non-Rapanui. On the other hand it is inefficient in protecting the identity of the island as it does not provide for a limitation of immigration from Chile. Even if the settlers cannot buy land, they take away jobs from Rapanui, and their ever increasing numbers threaten the identity of the community.

In the political sense, the application of the *Ley Indígena* is highly problematic if not counter-productive. Classifying Rapanui as indigenous people of Chile, like Chilean Indians, hides the Rapanui's status as inhabitants of a distinct territory which, as we have determined earlier, without doubt falls under the 'blue water thesis' and thus clearly needs to be classified as a Non-Self-Governing Territory. Not unlike the Akaka Bill and other indigenous autonomy proposals in Hawai'i, the application of the *Ley Indígena* to Rapa Nui distracts attention from an international political problem (occupation in Hawai'i, colonisation in Rapa Nui) by twisting it into a domestic ethnic one.

#### *Indigeneity in the French legal system*

Unlike the United States and Chile, France has never formally recognised indigenous peoples with special legal rights within its territory. What the plaintiffs in *Rice v. Cayetano* and similar cases have attempted to achieve in Hawai'i – suppression of all ancestry-based distinction between what they consider citizens of the administering country – is already a reality in the French Pacific territories. Since the late 1980s,

statistics identifying inhabitants by ethnicity have been suppressed in French Polynesia, so that only estimates exist about the percentages of *Mā'ohi*, French settlers and local Chinese among Tahiti's current population.<sup>1068</sup> In the other large French Pacific territory, New Caledonia, attempts to conduct a census by ethnicity in July 2003 were prevented by visiting French President Jacques Chirac.<sup>1069</sup> It is also interesting to note that in the United States, each person is identified by ethnicity on his or her birth certificate, while there is no such reference to ethnicity at all on French birth certificates, even though both countries equally emphasise the equality of all citizens in their constitutions.<sup>1070</sup>

With this extremely strict interpretation of constitutional equality clauses, it is only logical that the French government refuses to recognise the existence of any indigenous or minority people within its jurisdiction, arguing that all French citizens are equal before the law.<sup>1071</sup>

However, in apparent contradiction to the statements made above, the French system does provide for a special legal status for native inhabitants in most of its overseas territories, French Polynesia being a notable exception. According to article 75 of the French constitution, "the citizens of the Republic who do not have the common law civil status [...], retain their personal status as long as they have not renounced it".<sup>1072</sup>

"Personal status" in this context means that the individual does not fall under French civil

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<sup>1068</sup> *To'ere*, 21 November 2002; Trémon 2006: 273, 286 n. 272. The last census results of 1988 show 82.79% Polynesians, 11.91% Europeans and 4.69% Asians, for details see Chesnaux 1995: 158. Observers estimate a substantial increase of the European and Asian percentages since then, due to continued immigration of these ethnicities and a decrease in birth rates among the Polynesian population.

<sup>1069</sup> *Tahiti-Pacifique*, August 2003: 52

<sup>1070</sup> *US constitution*, amendment 14, art. 1, amendment 15; *1958 French constitution*, art. 1

<sup>1071</sup> Rouland in Deckker and Faberon 2001: 1

<sup>1072</sup> "Les citoyens de la République qui n'ont pas le statut civil de droit commun, [...] conservent leur statut personnel tant qu'ils n'y ont pas renoncé". *1958 French Constitution*, Art. 75 (translation by the author). Article 82 of the preceding 1946 constitution is almost identical.

law, but under a different, usually customary, legal system. Until World War II, those individuals were classified as French subjects and not citizens, while citizenship was identical with civil law status. When French citizenship was granted to all French subjects in 1946, the separation of civil law status was maintained, and most former subjects thus became “citizens of personal status”.<sup>1073</sup> The vast majority of the inhabitants of the French TOM had that personal status, including the large territories in Africa and Madagascar, but also those of Djibouti and the Comoros until their independence in the 1970s.<sup>1074</sup> The native people of the Comoro island of Mayotte have retained it under the ongoing French occupation of their island.<sup>1075</sup> In the Pacific, the quasi-totality of the inhabitants of the small territory of Wallis and Futuna, which became an Overseas Territory only in 1961, having been a French protectorate before, have personal instead of civil status.<sup>1076</sup> The same applies to the majority of the native Kanak people of New Caledonia.<sup>1077</sup> Wallis and Futuna islanders and Kanaks are thus subjected to customary regulations despite their French citizenship. This includes customary land tenure and jurisdiction of customary authorities over private contract law such as marriages. A Customary Council, later called Customary Senate, of Kanak chiefs was created for that purpose in New Caledonia.<sup>1078</sup> Until 1998, the change in status of an individual was only possible from personal to civil status, not the other way, following a pattern of progressive assimilation.<sup>1079</sup> However, since the Nouméa accord of 1998 (see below)

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<sup>1073</sup> Agniel in Dekker and Faberon 2001: 36-37

<sup>1074</sup> Thompson and Adloff 1967: 39; Ibrahime 2002: 33.

<sup>1075</sup> Caminade 2003: 31-32

<sup>1076</sup> Tamole and Simete in Deckker and Faberon 2001: 118-125

<sup>1077</sup> Customary Council of New Caledonia in Deckker and Faberon 2001: 63-79

<sup>1078</sup> Agniel in Deckker and Faberon 2001: 50-51; Faberon and Postic 2004: 159-160

<sup>1079</sup> Agniel in Deckker and Faberon 2001: 37-38



change between customary and civil status is possible in both directions in New Caledonia.<sup>1080</sup>

In the French Establishments in Oceania, on the other hand, all inhabitants that were granted French citizenship in 1945 were declared to be under French civil law status, so that there have never been citizens of personal status under the 1946 or 1958 constitutions in the territory. However, under the influence of developments in New Caledonia, proposals have been made recently by a group associated with Tahitian royalist leader Joinville Pōmare to form a customary council and customary land courts, as we have seen above. This move, if conceived within the current French system, would amount to the recreation of a system of “personal status”. This was, one could argue, intended by King Pōmare and his chiefs when they signed the 1880 annexation agreement with France and requested that the king’s subjects become French citizens but retain customary jurisdiction over civil matters.

In that sense it is interesting to note that contrary to the French policy of assimilation regardless of ancestry, and in spite of the rigorous implementation of that policy since 1945, there had been a long tradition of legally defining Tahitians by ethnicity and segregating them from people of foreign origin, exemplified in both the law against mixed marriages in the Tahitian Kingdom and the exclusive applicability of Tahitian laws to natives during the French Protectorate. While French citizenship was later imposed regardless of ancestry, there has never been a definition of multi-ethnic local citizenship as opposed to French citizenship, until independence movements made such proposals recently.

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<sup>1080</sup> *Accord de Nouméa*, 5 May 1998, art. 1.1. Reprinted in Faberon and Postic 2004: 16

## *Conclusion*

In all three territories, certain groups of activists have attempted to link the struggle of the local population against assimilation to similar struggles of indigenous peoples within independent continental States. In both Hawai‘i and Rapa Nui, but not in French Polynesia, this has found resonance with the respective administering powers, which subsequently enacted laws (or plans to do so) to create a special legal status for the aboriginal population of the territory. While the Rapanui were fully recognised as an indigenous people of Chile through the *Ley Indigena* in 1993, Hawaiians have been partly recognised as an indigenous people of the United States by various US federal laws, and a full recognition in that sense is pending with the currently debated Akaka Bill. The implications of both these measures are highly problematic, however, because by identifying the two island peoples as indigenous to the country administering them, the wrongful integration of their territories into the metropolitan country is being perpetuated. In fact, since we have clearly determined that all three territories under consideration are either occupied independent nations or overseas colonies, none of them should be regarded as an integral part of the State that currently administers them.<sup>1081</sup> The indigenous rights regime, on the other hand, is intended to be a remedy for those peoples that had previously been excluded from any international consideration because of both their lack of international recognition and their exclusion from the decolonisation regime

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<sup>1081</sup> As for dependent overseas territories, the 1970 UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation explicitly states that “The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles” (1970 UNGS resolution 2625, annex, section entitled *The principle of equal rights and self-determination of peoples*).

through the application of the “blue water” thesis and the principle of *uti possidetis*. For our three cases, this is superfluous because they are either recognised independent States under occupation or, as outlying overseas possessions, included in the decolonisation regime under the “blue water” thesis.

By making this statement, I do not intend to say that the concept of indigenous autonomy and the UN indigenous rights regime are entirely useless for the three territories. Their merits lie in the protection of cultural, economic and social rights for aboriginal people, at least for as long as foreign rule over them continues. Applying the indigenous rights regime is thus a meaningful temporary measure to protect the identity of the occupied or colonised peoples against further assimilation, as long as a political process of de-occupation or decolonisation has not begun. However, the indigenous rights regime is clearly not appropriate as political vehicle for such a process, as it is by definition not intended to lead to political independence.

## **Territorial autonomy**

A second concept that has been applied to various territories, both those inhabited by domestic minorities and overseas colonies, is that of territorial autonomy. In contrast to indigenous autonomy, territorial autonomy means that the ruling state devolves power to a governing entity ruling over a territorial unit. This includes all its inhabitants, and not a group of people defined by native ancestry, as in the case of indigenous autonomy.<sup>1082</sup>

### *The case of French Polynesia*

Among the three territories under review, French Polynesia is the only one to have experience with the concept of territorial autonomy, which has evolved in four statutes, and several modifications of each of them, since 1977.

The concept of autonomy was first applied in the French Overseas Territories with the enactment of a statute of internal autonomy for the Comoro Islands in 1961, later followed by a similar statute for the Djibouti territory (then called French Afar and Issa Territory) in 1967. Both territories were governed under this system until their independence in 1975 and 1977 respectively.<sup>1083</sup> Both the Comoros and Djibouti were TOM that had voted “yes” in the 1958 referendum and their assemblies chose to retain their TOM status. Unlike the two French Pacific territories that did likewise, the Comoros and Djibouti kept their *Loi-cadre* institutions with a council of government led by a locally elected vice-president. With their subsequent statutes of internal autonomy of 1961 and 1967, the governor was replaced by a high-commissioner, whose place at the head of the government council was taken by an elected president. Besides this

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<sup>1082</sup> Welhengama 2000: 105-106

<sup>1083</sup> Tagupa 1976:19

institutional democratisation, the status of autonomy brought an increase of responsibilities devolved from the French State to the territorial government.<sup>1084</sup>

While the Comoros and Djibouti enjoyed these autonomy statutes, and eventually achieved independence, the French Pacific territories were run by an authoritarian governor and had no autonomy at all. Even the *Loi-cadre* institutions had been abolished in 1958 for French Polynesia, and in 1963 for New Caledonia.<sup>1085</sup> This incoherent and unjust situation was strongly denounced by the leading politicians of the two Pacific territories throughout the late 1960s and early 1970s, but to no avail in Paris.<sup>1086</sup> French Polynesia's parliamentary representatives in Paris, Deputy Francis Sanford and Senator Pouvāna'a a 'Ōopa, subsequently drafted a bill for a statute of autonomy, modelled on those of the Comoros and Djibouti, which was adopted by the Territorial Assembly in 1969.<sup>1087</sup> It was later introduced by Pouvāna'a and some allied senators in the French Senate in 1973,<sup>1088</sup> but received no significant support from other French parliamentarians. In reaction, the French government drafted another status bill in 1975, which would have made only minor adjustments to the existing regime, and was vigorously opposed by Sanford and subsequently rejected by the Territorial Assembly.<sup>1089</sup>

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<sup>1084</sup> For the statute of autonomy in the Comoros, see Ibrahime 2000: 81-82; for the Djibouti territory, see Thompson and Adloff 1968: 99-101

<sup>1085</sup> Regnault 2003a: 135

<sup>1086</sup> Tagupa 1976: 18-19

<sup>1087</sup> Tagupa 1976: 20-21; Peltzer 2002: 111

<sup>1088</sup> *Proposition de Loi No. 266 (Déposée le 10 mai 1973 sur le bureau du Sénat) tendant à doter le territoire de la Polynésie française d'un nouveau statut, présentée par MM. Pouvanaa Oopa Tetuaapua, Jean Sauvage, Pierre Schiele, Jean Cauchon, Sénateurs.* ("Law proposal No, 266 (deposed 10 May 1973 in the Senate office) intending to grant the territory of French Polynesia a new statute, presented by Senators Pouvanaa Oopa Tetuaapua, Jean Sauvage, Pierre Schiele and Jean Cauchon"). Excerpts reprinted in Lechat 1990: 399-413. See also Morillon 2005: 24

<sup>1089</sup> Morillon 2005: 39-48

For the next two years, the autonomist movement under Deputy Sanford continued its efforts. Sanford advocated internal autonomy as a way of “decolonising without ceasing to be French”,<sup>1090</sup> but as we have seen, threatened to turn towards independence if no autonomy was given.<sup>1091</sup> This campaign was underlined by acts of civil disobedience, most notably the blocking of the territorial assembly building.

Under enormous popular pressure, the French government eventually gave in, and as a compromise between the original Sanford-Pouvāna‘a and the French government drafts, a law was enacted in July 1977 that reorganised the political institutions of the territory and declared that the latter would dispose of “administrative and financial autonomy”.<sup>1092</sup> Essentially, it created a system similar to the to *Loi-cadre* institutions of 1957-58, with a territorial government council led by an elected vice-president, a position first taken by Francis Sanford, then from 1982 by his pro-French opponent Gaston Flosse. The territorial government became responsible for all fields of governance not specifically attributed to the French State, which however, were still many, including not only defence and foreign affairs but also internal affairs such as, justice, finances, civil registry, secondary education and audiovisual communications.<sup>1093</sup> As the territory became a proper “jurisdictional person”, agreements on technical and financial aid from the French State were now concluded as contracts between two parties. The Governor was renamed High Commissioner and the decree of 1885 defining his nearly absolute powers finally abolished, although he remained the formal head of the territorial

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<sup>1090</sup> Hauptert 1998: 18

<sup>1091</sup> Morillon 2005: 29-34

<sup>1092</sup> *Loi No. 77-772 du 12 juillet 1977 relative à l'organisation de la Polynésie française*. (“Law No. 77-772 of 12 July 1977 concerning the organisation of French Polynesia”). Reprinted in Lechat 1990: 414-432, and in Morillon 2005: 83-96 [hereafter *1977 French Polynesia autonomy statute*].

<sup>1093</sup> *1977 French Polynesia autonomy statute*, Art. 62

administration. Furthermore, unlike under the *Loi-cadre*, the members of the government council did not have individual ministerial portfolios. In summary, the 1977 law created some sort of limited autonomy, commonly referred to as *autonomie de gestion* (autonomy of management), but it was still far from the desired *autonomie interne* (internal autonomy).<sup>1094</sup>

Under the impact of the administrative reforms undertaken by Socialist French President Mitterrand in metropolitan France in the early 1980s, the territorial government under Gaston Flosse lobbied for the widening of the 1977 statute into one of genuine *autonomie interne*, and these efforts became fruitful with the enactment of a new statutory law in September 1984.<sup>1095</sup> Finally, this law, explicitly mentioning the term “internal autonomy”, was similar to the former statutes of the Comoros and Djibouti, and to Senator Pouvāna‘a’s 1973 bill. The French State and the territorial administrations became fully separated, the former being headed by the high commissioner, the latter by a president elected by the assembly. Members of the territorial government were once more called ministers and had individual portfolios. Additionally, the territory was allowed to adopt its own State-like symbols (flag, coat of arms and anthem), and its prerogatives were further extended, including participation in foreign affairs if they concerned neighbouring Pacific Island countries.<sup>1096</sup>

Unlike its predecessor, the 1984 statute was conceived as “evolving”, leading to a process of further revisions. In its first major revision in July 1990, the position of the

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<sup>1094</sup> Morillon 2005: 99-104; Gille 2006: 96-101

<sup>1095</sup> *Loi No. 84-820 du 6 septembre 1984 portant statut du territoire de la Polynésie française*. (“Law No. 84-820 of 6 September 1984 about the statute of the territory of French Polynesia”). Reprinted in Lechat 1990: 443-471.

<sup>1096</sup> Gille 2006: 102-114

president within the territorial government was strengthened, as ministers no longer had to be confirmed by the assembly but were appointed and dismissed by the president alone. Furthermore, the powers of the president in terms of participation in international affairs were increased. Another important element of the 1990 revision, however, the intended devolution within the territory through the creation of Archipelago Councils, has never been implemented.

In April 1996, a new statute was passed, this time through an organic law,<sup>1097</sup> which means a much more complex and less easily reversible process than that of an ordinary law like those of 1977, 1984 and 1990. Enacted after the definitive closure of the nuclear testing centre, the new statute once more increased the responsibilities of the territorial government, particularly concerning maritime resources, foreign investment and audiovisual communication. The institutions, on the other hand, remained virtually the same as in 1990.<sup>1098</sup> While President Flosse soon became disappointed and demanded another revision to achieve even more power for the territory, the local opposition began criticising the concept of increased autonomy as a cover for authoritarian rule by Flosse.<sup>1099</sup>

In March 2003, France undertook a major revision of its constitution with regard to overseas possessions. The category of *Territoire d'outre-mer* (Overseas Territory) was abolished, replaced by that of *Colectivité d'outre-mer* (Overseas Collectivity, COM),

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<sup>1097</sup> *Loi Organique No. 96-312 du 12 avril 1996 portant statut d'autonomie de la Polynésie française* ("Organic Law No. 96-312 of 12 April 1996 about the statute of autonomy of French Polynesia"), edited as *Statut d'autonomie de la Polynesie française*. 12 April 1996. Pape'ete : Imprimerie Officielle de la Polynesie française.

<sup>1098</sup> Gille 2006: 121-124

<sup>1099</sup> For a critical analysis of Gaston Flosse's governance during the late 1990s and early 2000s, see Regnault 2004: 97-119



each of which would be governed by a proper organic law reflecting its local specificities, with a considerably extended range of possible powers to be devolved to them.<sup>1100</sup>

Following that enlarged constitutional framework, a new organic law for French Polynesia was elaborated and passed in February 2004.<sup>1101</sup> The former overseas territory was now defined as a *Pays d'outre-mer* (Overseas Country, POM), and its prerogatives became once more substantially extended. Besides an increase of responsibilities in administrative matters, French Polynesia now can, if permitted by the French government, enter into its own relations with foreign governments and establish representations there. The territory can also become a member or observer of international organisations, which it subsequently did when it became first an observer, then an associate member of the Pacific Islands Forum, in 2004 and 2006 respectively.<sup>1102</sup> Locally, the powers of the assembly were significantly increased, as it can now enact so-called *lois du pays* (laws of the country) in certain domains, which have standing almost equal to French national laws. Previously the assembly could only enact *délibérations* (resolutions) without formal legal standing. Underlining this upgrade of the assembly into a legislative entity, its members are now called “representatives” instead of “councillors”. In addition, the new statute further increases the powers of the local president, who is no longer called “president of the government” but “president of French Polynesia”, and treated as a political institution of his own. Besides being responsible for

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<sup>1100</sup> *Loi constitutionnelle n° 2003-276 du 28 mars 2003 relative à l'organisation décentralisée de la République* (“Constitutional Law No. 2003-276 of 28 March 2003 concerning the decentralised organisation of the Republic”). Posted on University of Perpignan web site <<http://mjp.univ-perp.fr/france/co1958-17.htm>> [Accessed 11 January 2008].

<sup>1101</sup> *Loi Organique No. 2004-192 du 27 février 2004 portant statut d'autonomie de la Polynésie française* (“Organic Law No. 2004-192 of 27 February 2004 about the statute of autonomy of French Polynesia”), edited as *Statut d'autonomie de la Polynésie française*. Pape'ete : Secrétariat Général du Gouvernement/Imprimerie Officielle de la Polynésie française.

<sup>1102</sup> *Tahiti-Pacifique*, September 2004: 7, 52; November 2005:7, 53; November 2006: 52-53

the international relations described above, he promulgates and executes the *lois du pays*.<sup>1103</sup> Furthermore, the electoral system was modified to include a majority bonus system, so that the leading political party would receive an overwhelming majority.

While the 2004 statute was lauded by its proponents as the ultimate extension of local self-government within French sovereignty, the local opposition saw it as further empowerment for an authoritarian regime under Flosse blessed by his supporters in Paris.<sup>1104</sup> This view was supported by a large part of the population, and quite surprisingly, Flosse's party lost power in the first election under the new statute. The first elected president of French Polynesia was not Flosse, but pro-independence opposition leader Oscar Temaru. Due to fragile majorities and opportunist patterns of behaviour of many representatives in the assembly, majorities have changed frequently since, with Temaru, Flosse, and more recently Gaston Tong Sang, a former ally of Flosse now opposed to both of them, repeatedly acquiring and losing the presidency through no-confidence motions.

Having proven unable to create political stability, the POM statute has also not guaranteed real local self-government. Despite all the powers granted to the local government, France remains able to make arbitrary modifications to the territory's political system, even against the explicit will of the local assembly. This was exemplified in the autumn of 2007, when a revision of the 2004 statute, including another reform of the election system and a tightening of French government controls over the

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<sup>1103</sup> Gille 2006: 125-134

<sup>1104</sup> See for instance, the headline *Un statut pour réussir* ("A statute for success") of the pro-Flosse weekly *Ti'ama*, 27 February 2004, compared to the headline *Menaces sur la démocratie* ("Threats to Democracy") of the opposition weekly *To'ere*, 18 December 2003. For a critical analysis of the 2004 statute, see also Regnault 2007: 90-97.

exercise of power by the local institutions,<sup>1105</sup> prepared by the French secretary for overseas territories with the support of a handful of local minority politicians, was rushed through the French parliament and passed. A two-thirds majority of the assembly of French Polynesia had previously voted against that modification.

In this context it is worthwhile to take a brief look at the political organisation of the other major French Pacific territory, New Caledonia. After violence and instability had shaken the territory during the 1980s, and the conflict had been frozen but not resolved in a peace agreement of 1988, an agreement known as the Nouméa Accord was made between the Kanak Independence movement, the pro-French settlers and the French government in May 1998. After recognising the ramifications of colonialism in its preamble, the accord provides for a period of increased autonomy for twenty years, during which all responsibilities except defence, foreign affairs, internal security, justice and currency will be gradually transferred to the territorial government. This will be followed by a referendum in which the people will decide whether the remaining prerogatives of the French government will also be transferred, which would mean an accession to sovereignty.<sup>1106</sup> In order to implement the accord, the French constitution was amended with a specific article on New Caledonia in July of the same year, and an organic law reflecting the accord was enacted by the French parliament in March 1999. The autonomy thereby granted to New Caledonia, from then on no longer a TOM but an overseas community *sui generis*, is far more secure than even the 2004 version of

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<sup>1105</sup> *Loi organique No. 2007-1719 du 7 décembre 2007 tendant à renforcer la stabilité des institutions et la transparence de la vie politique en Polynésie française.* ("Organic Law No. 2007-1719 of 7 December 2007 intending to reinforce the stability of the institutions and the transparency of political life in French Polynesia"). Posted on Legifrance web site <[http://legifrance.gouv.fr/jopdf/common/jo\\_pdf.jsp?numJO=0&dateJO=20071208&numTexte=1&pageDebut=19890&pageFin=19902](http://legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=20071208&numTexte=1&pageDebut=19890&pageFin=19902)> [Accessed 20 April 2007].

<sup>1106</sup> *L'accord de Nouméa*, 5 May 1998, reprinted in Faberon and Postic, 14-24.

autonomy for French Polynesia. Whereas the latter represents a simple organic law enacted through parliamentary vote by metropolitan authorities, the former was enacted in reflection of an accord signed after tri-lateral negotiations. Furthermore, the constitutional amendment allows New Caledonia to have its own citizenship, restricted to inhabitants of a certain length of residence, so that a further dilution of the local population through French immigration is blocked. In addition, the New Caledonia statute provides for an executive government composed proportionally of all major parties represented in the legislative body, thus avoiding political instability due to unclear majorities, as is currently experienced in French Polynesia. Finally, the irreversibility of the transfer of responsibilities makes arbitrary modifications, such as that of December 2007 for French Polynesia, impossible.<sup>1107</sup>

With that alternative concept of autonomy within the French system in view, Oscar Temaru and other pro-independence leaders of French Polynesia have recently proposed to use the idea of the Nouméa Accord as a model and requested that a similar “Tahiti Nui Accord” be enacted for French Polynesia.<sup>1108</sup> These suggestions, however, have so far not found any resonance with the French government.

### *The case of Rapa Nui*

While French Polynesia has had some kind of territorial autonomy for thirty years, preceded by a decade-long struggle to gain it, Rapa Nui has also been demanding

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<sup>1107</sup> For the relevant legal texts and a brief comment on the New Caledonia case, see Faberon and Postic 2004. For a more extensive discussion of the Nouméa Accord and its ramifications see Chappell 1999

<sup>1108</sup> *Tahitipresse*, 24 June 2005; *Tahiti Pacifique*, April 2006 : 8, 10-11

territorial autonomy for more than a decade. Some sort of autonomy status is currently in the making.

The end of the Pinochet dictatorship and the restoration of democracy in Chile during the late 1980s provided a boost for the aspirations of Rapanui leaders who desired more local self-government than simply an elected mayor. Subsequently, the Rapanui Council of Elders formulated the first proposal for autonomy of the island in 1989-1990.<sup>1109</sup> One of the inspirations for that proposal came from the statutes of autonomy of the Spanish regions of Catalonia and the Basque Country, enacted in the late 1970s and constantly increased since. These initiatives were known in Rapa Nui through the influence of Antoni Pujador, a Catalanian businessman and nationalist who had become a supporter and honorary member of the Council of Elders and their international spokesman.<sup>1110</sup> The 1984 statute of autonomy in neighbouring French Polynesia certainly served also as an important inspiration. In spite of lobbying by Alberto Hotus and other leaders of the Council of Elders, no initiative was taken by Chilean legislators to create that desired statute of autonomy. The only piece of legislation introduced was a proposal to change the name of the province from Isla de Pascua to Rapa Nui, but even this bill eventually failed in Congress.<sup>1111</sup> This frustration might explain why Hotus subsequently gave up his campaign for territorial autonomy and pursued indigenous autonomy in cooperation with Chilean Indians instead. These efforts were comparatively more

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<sup>1109</sup> *Rapa Nui Journal*, Fall 1989: 10; *L'écho de Rapa Nui* No. 11 (1990): 29; No. 12 (1990): 3-4, 9; Fischer 2005: 236.

<sup>1110</sup> Amorós 2006: 240. For a discussion of autonomous regions in Spain see also Welhengama 2000: 166.

<sup>1111</sup> The bill was introduced in December 1990, not voted upon for many years, and finally rejected by the Chamber of Deputies in July 1999. See Chilean congress web site < <http://sil.congreso.cl/pags/index.html>>.

successful, with the 1993 enactment of the *Ley Indígena*, as we have seen in the preceding subchapter.

The campaign for territorial autonomy, however, never stopped. The current mayor, Petero Edmunds, has been advocating an autonomous status for the island within Chile ever since his first election in late 1994. Shortly thereafter, in February 1995, he proposed to make the island a separate region, independent from the region of Valparaíso, with a special status, including the capacity to have international relations with other Pacific islands.<sup>1112</sup> A similar proposal was formulated by the Council of Elders #2 and former governor Sergio Rapu in July 1998,<sup>1113</sup> and once more by Edmunds in October 2000 and July 2001.<sup>1114</sup> Once again, these proposals were met with stubbornness from Santiago and there was no legislative follow-up.

In the early 2000s, more radical voices began demanding independence as we have seen, prompting more established politicians like Mayor Petero Edmunds to renew their demands for autonomy. This time their plea received more attention from Chile. Between October 2002 and April 2003, a study group about that matter was formed by Chilean politicians, and a preliminary proposal envisioned a statute similar to that of the frequently cited model of French Polynesia, with an elected assembly and an elected chief executive, to replace the existing provincial and municipal institutions.<sup>1115</sup> Shortly thereafter, the official report of the Historical Truth Commission of October 2003 concluded that the terms of the 1888 annexation agreement were never implemented, and

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<sup>1112</sup> *Rapa Nui Journal* 9, 1 (March 1995): 26-27; Fischer 2005: 242

<sup>1113</sup> *Rapa Nui Journal* 12, 3 (September 1998): 92; Fischer 2005: 247-248

<sup>1114</sup> Fischer 2005: 250-251; *Rapa Nui Journal* 15, 2 (October 2001): 126-128

<sup>1115</sup> *Rapa Nui Journal* 17, 2 (October 2003): 150; Di Castri 2003: 128-129. One draft of this early statute proposal, entitled *Hacia un Estatuto de Autonomía para Isla de Pascua* (Toward a Statute of Autonomy of Easter Island), was obtained by the author in 2005.

that according to that agreement, lands claimed by the Chilean government must be returned, and a special status of autonomy be implemented to restore the local self-government promised in the agreement. This added one more justification for the planned statute.<sup>1116</sup>

After about three years of consultations, the Chilean government finally initiated a process of legislation in August 2005. The study group presented its statute proposal,<sup>1117</sup> and a constitutional amendment bill was introduced in Congress by President Ricardo Lagos, declaring Rapa Nui as well as the Juan Fernández archipelago off the Chilean coast to be *territorios especiales* (special territories) outside of the normal Chilean administrative system. Both the Spanish overseas settlements on the Moroccan coast (Ceuta and Melilla) and the French overseas communities were cited as models.<sup>1118</sup> The bill eventually passed the Chamber of Deputies in May 2006 and the Senate in June 2007 and was subsequently signed into law by Lagos' successor Michelle Bachelet.<sup>1119</sup>

With the constitution amended, the next step in the creation of the autonomy statute is the enactment of an organic law, but a new controversy developed over the drafting of that law. The study group's draft proposal of August 2005, originally intended to be the basis for the organic law bill, was strongly criticised on the island, since it was a

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<sup>1116</sup> *Informe de la Comisión Verdad Histórica*, Vol. I: 639

<sup>1117</sup> *Propuesta Estatuto Especial de Administración para la Isla de Pascua* (Proposal for a Special Administrative Statute for Easter Island). August 2005. Printed government document, copy in the author's possession.

<sup>1118</sup> *Mensaje No. 170-353. Mensaje de S.E. el Presidente de la República con el que se inicia un proyecto de ley de reforma constitucional que establece los territorios especiales de Isla de Pascua y Archipiélago Juan Fernández*. ("Message No. 170-353. Message of H.E. the President of the Republic through which is initiated a law project for constitutional reform that establishes the special territories of Easter Island and Juan Fernández Archipelago"). 16 August 2005. See Chilean Congress web site <<http://sil.congreso.cl/pags/index.html>>.

<sup>1119</sup> *Ley 20.193. Reforma Constitucional que establece los territorios especiales de Isla de Pascua y Archipiélago Juan Fernández*. ("Law 20.193. Constitutional Reform that establishes the Special Territories of Easter Island and Juan Fernández Archipelago"). 27 June 2007. Posted on Chilean National Congress Library website, <<http://www.bcn.cl/leyes/pdf/original/263040.pdf>> [Accessed 20 August 2007].

heavily watered down version of the initial 2002-2003 proposal. It did not even mention the term “autonomy”, only speaking about a “special statute”, and no local community input was included.<sup>1120</sup> In May 2006, Chilean president Bachelet therefore discarded the 2005 proposal and started a new process with community participation, elaborating a draft bill that was completed by the end of the year and presented in February 2007.<sup>1121</sup> The proposal was once more criticised, this time by Mayor Edmunds, who found it to be anathema to the national unity of Chile,<sup>1122</sup> even though he had called for decolonisation and independence from Chile only a few months earlier.<sup>1123</sup> In late 2007, the Chilean Ministry of Interior drafted yet another organic law bill, proposing stricter Chilean control over the local government than the community draft.<sup>1124</sup> As of June 2008, the bill is still in the making and no version of it has been introduced in Congress.<sup>1125</sup>

Analysing the most current version of the draft, it becomes apparent that the latter does not go very far in terms of autonomous institutions, and represents an extremely watered-down version of the 2002-2003 autonomy proposal. In the recent draft, the island would be separated from Valparaíso region, and an island administration created with

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<sup>1120</sup> See for instance a letter of protest written by Juan Teave and other local leaders to President Lagos, 30 August 2005. Private archives of the Teave Hey family. Copy in the author’s possession.

<sup>1121</sup> *Borrador-Proyecto de Ley* (Draft Bill [for the administrative status of Easter Island]). Computer typed document given to the author by the Provincial Governor’s office in July 2007. See also *Te Rapa Nui* web site <<http://www.rapanui.co.cl/ESTATUTO%20UNIFICADO.htm>> [Accessed 23 April 2008]. For a more detailed discussion of the proposal by the author, see Gonschor 2008.

<sup>1122</sup> See article *Alcalde pide rechazar propuesta de comunidad*, 28 February 2007, on Te Rapa Nui web site <<http://www.rapanui.co.cl/CARTA%20ALCALDE.htm>> [Accessed 23 April 2008].

<sup>1123</sup> See article *El Alcalde Secesionista de Isla de Pascua*, November 2007, on Te Rapa Nui web site <<http://www.rapanui.co.cl/COLABORACION-moncada.htm>> [Accessed 23 April 2008].

<sup>1124</sup> *Borrador discusión interna Ministerio del Interior-SUBDERE (versión 14-09). Ley Orgánica Constitucional que establece el estatuto especial del territorio de Isla de Pascua.* („Draft internal discussion Ministry of the Interior-SUBDERRE [Subsecretariate for Regional Development] (version 14-09). Constitutional Organic Law which establishes the special statute for the territory of Easter Island“). Posted on Te Rapa Nui web site <<http://www.rapanui.co.cl/ESTATUTO%20DEL%20GOBIERNO-1.htm>> [Accessed 23 April 2008].

<sup>1125</sup> The bill was introduced in Congress on 2 July 2008, too late to be reviewed and analysed by the author, given the deadline for the submission of this thesis.



powers equal to a Chilean regional administration. However, this island administration would still be headed by a Santiago-appointed governor and Santiago-appointed directors. The local population would elect only a council with advisory and budgetary appropriation powers, but none of the executive officers. Furthermore, the currently existing municipality would be left intact, thus continuing the absurdity of having two parallel administrations (island administration and municipality) for a community consisting of only one village with a few thousand inhabitants. Under these conditions, it is questionable if the present draft statute should be considered territorial autonomy at all. So far it represents merely a decentralisation of the Chilean administration system. As long as there is no locally elected executive, there can be no true autonomy. Compared to French Polynesia, the new statute of Rapa Nui would rather resemble that of the former territory before the granting of autonomy in 1977, when there was a territorial assembly but no elected chief executive.

#### *Territorial autonomy in the US system*

The current political spectrum in Hawai'i comprises proponents of the status quo, advocates of indigenous autonomy for aboriginal Hawaiians, and various initiatives to restore an independent State, either as a deoccupied State with a reinstated kingdom government or a postcolonial Nation-State. There are currently, however, no publically known proposals for territorial autonomy of Hawai'i within the US comparable to the statute of French Polynesia or the project for Rapa Nui.

In making this comparison, it should be taken into account that the US has a federal political system, as opposed to the unitary States of France and Chile. In the latter

two, the concept of territorial autonomy runs contrary to basic constitutional principles, and therefore necessitates extraordinary legal measures. In federal systems, on the other hand, devolution of powers to regional or local governments represents the constitutional norm.<sup>1126</sup> One could thus argue that states in federal systems are somewhat similar to autonomous territorial governments in unitary systems, and as such the US state of Hawai'i would be comparable to the statute of autonomy of French Polynesia or the one planned for Rapa Nui. However, on closer examination, this turns out to be not really true. Unlike the Tahiti autonomy statutes that were enacted in reaction to local demands for self-government and for protection of the local identity against French assimilation, the overall function of US statehood for Hawai'i was and is assimilation into the US system, similar to a process of *départementalisation* in the French system, and not a measure to emphasise local specificities.

While US statehood in Hawai'i was thus a step towards assimilation, not autonomy, examples of territorial autonomy do exist within the US system. While originally all overseas US possessions were ruled through an authoritarian system headed by Washington-appointed governors, some of these territories were later granted so-called Commonwealth status, which essentially means a status of territorial autonomy. Unlike territories that are governed by organic acts of the US Congress, Commonwealths have their own constitutions and elect their own governor and legislature.<sup>1127</sup> In 1952, this status was granted to Puerto Rico, which thereby became the first autonomous US

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<sup>1126</sup> For a discussion of federal State systems and autonomy, see also Welhengama 2000: 112-114.

<sup>1127</sup> For a short summarising description of US Commonwealth status see the wikipedia entry <[http://en.wikipedia.org/wiki/Commonwealth\\_%28United\\_States\\_insular\\_area%29](http://en.wikipedia.org/wiki/Commonwealth_%28United_States_insular_area%29)> [Accessed 23 April 2008].

territory.<sup>1128</sup> With a locally elected executive and a situation where US law only partially applies, Puerto Rico's status in relation to the US is quite similar to that of French Polynesia in relation to France. However, unlike the latter, Puerto Rico does not have equal representation in the metropolitan parliamentary institutions (only one non-voting member in the US House of Representatives, and none in the Senate) and does not participate in the national presidential elections.<sup>1129</sup> Similarly to French Polynesia and New Caledonia, Puerto Rico was also removed from the UN list of Non-Self-Governing Territories, but due to the continuing colonial character of its relationship with the US, international efforts have been undertaken to reinscribe it. These efforts have progressed further than those for French Polynesia, but not as far as those for New Caledonia.<sup>1130</sup>

The second example of an autonomous US territory is the Commonwealth of the Northern Mariana Islands (CNMI). Formerly a part of the US Trust Territory of the Pacific Islands, the Northern Marianas broke away from the rest of that territory, and its leaders negotiated an accord with the United States to become a US Commonwealth in 1975. This was implemented in a long process between 1978 and 1986, and after a long period of international scepticism finally approved by the United Nations in 1990. While essentially similar to the Puerto Rico model, the degree of autonomy given to the CNMI government is considerably larger, as the applicability of US legislation was further

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<sup>1128</sup> The Philippines had already had Commonwealth status from 1935 to 1946, but as a transition to independence, this was markedly different from Puerto Rico's.

<sup>1129</sup> For a detailed discussion of Puerto Rico's status see Erhard 2006. For perspectives of independence see Rodríguez-Orellana 1984.

<sup>1130</sup> Unlike New Caledonia, Puerto Rico has not been reinscribed on the list yet, but its status has been reviewed several times by the UN decolonisation committee. See Rodríguez-Orellana 1984: 8-9,13-16; Laney in Erhard 2006: 60.

limited in the 1975 accord. For instance, the CNMI government controls foreign immigration, and land is inalienable to non-CNMI citizens.<sup>1131</sup>

While Puerto Rico and the CNMI are currently the only US territories with commonwealth status, the remaining unincorporated territories (Guam and the US Virgin Islands) received some degree of autonomy as well when the US Congress amended their organic acts in the late 1960s to provide for locally elected governors. However their autonomy in relation to Washington remains far more limited.<sup>1132</sup> Another special case of territorial autonomy is American Sāmoa. In this case, Congress did not create an organic act, so that it is technically called an “unorganised territory”. However it has its own constitution, making it in practice somewhat similar to a Commonwealth, though with no legal guarantee for its status from the US Congress. Furthermore the American Sāmoa constitution incorporates elements of the customary Sāmoan *matai* system of family chiefs, making the territorial government a hybrid of Western and traditional elements, a unique feature within the political system of the United States.<sup>1133</sup>

Even though no such proposals have been made lately for Hawai‘i, there are thus numerous examples of territorial autonomy within the US system. As we have seen in previous chapters, Commonwealth status was considered as an alternative to statehood for Hawai‘i in the 1950s, and this was initially supported by a significant minority of the local population, including Hawaiian nationalists who saw it as a lesser evil compared to

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<sup>1131</sup> For a discussion of the political status of the CNMI and the negotiations leading to the 1975 accord, see Leary 1980, and Willens and Siemer 2002.

<sup>1132</sup> For an analysis of the political status of Guam, including a comparison to the CNMI, see Van Dyke et al. 1996: 625-629

<sup>1133</sup> For a discussion of American Sāmoa’s political status, see Aga 2001.

statehood.<sup>1134</sup> In retrospect, seeing how US statehood accelerated and intensified the process of assimilation and alienation of economic assets, this position was certainly correct.

### *Conclusion*

Territorial autonomy, as it has been granted to French Polynesia and is projected for Rapa Nui, or as it was proposed for Hawai'i in the 1950s, represents a meaningful way of empowerment of the local population in its relation with the ruling power, and furthers the development of political leadership. Creating territorial autonomy in a colonised territory is therefore a good first step in the process of decolonisation. Looking at the recent history of the region, one notes that all Pacific Islands territories that later became independent (for example the British colonies of Fiji, Solomon Islands, Kiribati and Tuvalu, the New Zealand trust territory of Western Sāmoa, or the Franco-British condominium of the New Hebrides later renamed Vanuatu), went through a preparatory period of territorial autonomy for several years before achieving independence.<sup>1135</sup> During this transitional phase, local leaders who had been disenfranchised before, could familiarise themselves with the business of government, and became thereby enabled to take over the apparatus of government from the coloniser. The territorial autonomy period before independence thus became crucial in the formation of the political leadership for post-colonial nations and their political systems.

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<sup>1134</sup> Bell 1984: 197-200, 259, 263

<sup>1135</sup> See entries for the named territories on the World Statesmen website <<http://worldstatesmen.org>> [accessed 27 April 2008], showing a period with elected local chief executives before independence for each of them. For an overview of the successful decolonisation processes of Pacific Island territories, including transitional periods of territorial autonomy, see also Naidu 1993.

While being an excellent transitional step towards self-government in a decolonisation process, territorial autonomy cannot be considered self-government by itself, as some of its proponents claim. International precedence clearly establishes that the granting of territorial autonomy does not make a territory self-governing, as virtually all NSGTs that are still on the UN list today enjoy at least some degree of territorial autonomy, some of them as high as that of French Polynesia.<sup>1136</sup> In no case since the 1960 UN declarations on decolonisation has the granting of territorial autonomy been accepted as a justification to remove a NSGT from the list. Territorial autonomy can thus only be a transition, not an alternative, to independence. Despite the existence of even the most far-reaching statute of autonomy, the coloniser keeps sovereignty over the territory and can still act arbitrarily, as exemplified in the recent case of French Polynesia above. In that respect, the example of New Caledonia is a much better model, as its process of empowerment is irrevocable and intended to gradually lead to independence, corresponding to the historical function of territorial autonomy in the other Pacific Islands nations described above.

In the case of an occupied independent State, as in Hawai'i, territorial autonomy would have had no more standing in international law than any other change of status imposed by the occupying power. Had Hawai'i been made a US Commonwealth instead of a US state, this would have had less dramatic consequences for its people and thus been preferable as a lesser evil. But it would be just as illegal, and not alter the essential nature of occupation in any way.

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<sup>1136</sup> The British possessions of Bermuda and Gibraltar, for instance, both on the NSGT list, have autonomous territorial governments, responsible for almost all matters in Bermuda, and all matters except foreign affairs, internal security and defence in Gibraltar. See Wikipedia entry *British overseas Territories* <[http://en.wikipedia.org/wiki/British\\_overseas\\_territory](http://en.wikipedia.org/wiki/British_overseas_territory)> [Accessed 27 April 2008].

**PART IV**  
**CONCLUSION**

## Conclusion

In the preceding chapters, I presented a historical account of the relations that Hawai'i, French Polynesia and Rapa Nui have had with their respective ruling powers, and analysed the political institutions that were created through these relationships, as well as the political movements aiming at their modification. In this final chapter I will review the political evolution of international law as it applies to the territories in question, and evaluate the different strategies presented in chapter three as well as the institutional models of autonomy from chapter four. I will attempt to identify the most efficient legal framework and political strategy to be used in each territory in order to achieve political independence. In conclusion, I will summarise the findings and arguments of this thesis.

### *International law: From a tool of oppression to one of liberation*

Over the time period of time covered in this thesis, international law evolved substantially. While it offered only limited protection for most of the Pacific islands in the nineteenth and early twentieth centuries, more recently it has become a potential tool to secure and extend their international standing. As James Anaya wrote, “[h]istorically, international law developed to facilitate empire building and colonization, but today it promotes a very different model of human encounter and provides grounds for remedying the contemporary manifestations of the oppressive past”.<sup>1137</sup>

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<sup>1137</sup> Anaya 2004: 289



As we have seen, this transformation happened in two steps, first with the development of the decolonisation regime between the 1940s and 1960s, and secondly with the indigenous rights regime, which is still being developed.

Each new step, however, did not change the basics of the situation before but rather added a new dimension to it. The basics of State sovereignty from the classical period of international law remain intact today, along with the basics of decolonisation as they were defined in the 1960 resolutions before consideration of indigenous rights. Logically, the principle of State sovereignty remains the strongest of the three, and the creation of the decolonisation regime did not replace that principle but only limits it in the special case of overseas possessions of a sovereign State. Similarly, the declaration of indigenous rights neither replaces the principle of sovereignty nor the regime of decolonisation, but only limits both principles in the case of indigenous peoples in the territory under consideration by guaranteeing that the latter's rights of internal autonomy are not violated.

When applying international law to Hawai'i, French Polynesia and Rapa Nui, the question that needs to be asked concerns the stage of development of international law necessary to end foreign rule in each case. The strongest case can be made for a territory that qualifies as a sovereign State, in which case any later developments of international law are irrelevant. If the territory does not qualify as a sovereign State, it should be established whether it might qualify as a Non-Self-Governing Territory under article 73 of the UN charter. In this case the UN decolonisation regime needs to be applied. If neither of the two applies, there is no guarantee for the territory's independence under international law. However the people of the territory might qualify as indigenous, in

which case their internal autonomy and cultural integrity can be secured under the UN indigenous rights regime.

### ***Strategies and Perspectives for independence in each territory***

#### ***De-occupation of Hawai'i***

It has been clearly proven that Hawai'i was an internationally recognised independent State since 1843. This has been explicitly confirmed by the Permanent Court of Arbitration, which in its 2001 arbitral award in the *Larsen v. Hawaiian Kingdom* case wrote:

A perusal of the material discloses that in the nineteenth century the Hawaiian Kingdom existed as an independent State recognised as such by the United States of America, the United Kingdom and various other States, including by exchanges of diplomatic or consular representatives and the conclusion of treaties.<sup>1138</sup>

As we have seen in chapter one, no legal steps have been taken to extinguish this State and merge its sovereignty with that of the United States. Consequently, the situation existing in the nineteenth century must be presumed to continue to this day and Hawai'i must therefore still be regarded as an independent State. Its relationship with the United States, which has physically ruled the islands for over a hundred years, can thus only be one of prolonged occupation. Other recent works that have interpreted this relationship as colonial<sup>1139</sup> are based on an incorrect legal analysis, as a recognised independent State cannot by definition be subject to colonisation<sup>1140</sup>.

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<sup>1138</sup> *Larsen v. Hawaiian Kingdom* arbitral award, p. 19. Posted on the Permanent Court of Arbitration web site <<http://www.pca-cpa.org/upload/files/LHKAward.PDF>>. [Accessed 28 April 2008]

<sup>1139</sup> Merry 2000 and 2003, for example, widely uses the term colonisation or colonialism.

<sup>1140</sup> Oppenheim 1920: 383

Therefore, ending US rule over Hawai‘i is clearly a question of de-occupation of an independent State, a situation that can be remedied within the classic realm of international relations and does not necessitate any of the more recent international regimes.

There are not too many cases of prolonged occupation and successful de-occupation in history, but a few such precedent cases do exist. The three Baltic States of Estonia, Latvia and Lithuania were occupied by the Soviet Union in 1940, and remained under prolonged occupation until 1991, when their governments were restored and the USSR withdrew its occupation forces. This restoration was not considered as secession from the Soviet Union, of which they were never legally part under international law, even though they had been declared to be Union republics (the USSR equivalent of US states).<sup>1141</sup> This process of de-occupation has recently been cited as a precedent case for Hawai‘i by various activists and scholars.<sup>1142</sup> Another interesting case that might be cited as a precedent is Ethiopia. Similar to Hawai‘i, Ethiopia was a non-Western monarchical State that escaped colonisation. Much later than Hawai‘i, Ethiopia eventually became recognised in 1923, but was then occupied by Italy from 1936 to 1941. This relatively short occupation could not be considered prolonged, but there are nevertheless some interesting parallels to Hawai‘i, as Ethiopia was treated by Italy as if it was a colony and renamed “Italian East Africa”, similar to the US treatment of Hawai‘i as a US territory and later as a NSGT. In Ethiopia’s case, however, that claim was never recognised by the international community. When the United Kingdom liberated Ethiopia in 1941, it was

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<sup>1141</sup> Lam 20 00: 132-133

<sup>1142</sup> This is currently being studied in detail by S. Kūhio Vogeler in his Ph.D. dissertation in political science.

thus not treated as a League of Nations mandate under British administration awaiting decolonisation, but restored to its pre-occupation government.<sup>1143</sup>

In terms of activism in the framework of de-occupation, the most important contribution to be made at this point is the exposure of the nature of Hawai‘i’s occupation and education about it.<sup>1144</sup> As long as a large number, if not the majority, of Hawaiian nationals are still in a state of confusion about the situation of their country under international law, it seems unlikely that a process of de-occupation could be initiated. Likewise, the ignorance of the international community about Hawai‘i’s status has contributed to the consolidation of the US’ illegal rule over the islands. The *Larsen* case at the Permanent Court of Arbitration was an important step into the area of international exposure, as have been initiatives of many individual activists who have had contacts with government representatives of third countries.

On the other hand, the proclamation of Hawaiian kingdom governments, well-intended as a form of activism, can also be problematic, especially as there are several such governments, and most of them modified the political institutions of the kingdom even before it has been de-occupied. As much as each of them deserves credit for challenging US rule over Hawai‘i, the current multiplicity of rival Hawaiian kingdom government reinstatement initiatives, some of them quite critical or even hostile towards one another,<sup>1145</sup> is also contributing to domestic and international confusion. Since most of them have sought recognition by third countries, any of the latter willing to do so will

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<sup>1143</sup> Marcus 2002: 121-154

<sup>1144</sup> Young 2006: 5. A strategy focused on campaigns of exposure and education is proposed by Keanu Sai in the *Strategic Plan of the Acting Council of Regency*, posted on the Hawaiian Kingdom web site <[http://www.hawaiiankingdom.org/pdf/HK\\_Strategic\\_Plan.pdf](http://www.hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf)> [accessed 28 April 2008].

<sup>1145</sup> One of them is denouncing several other such initiatives as illegitimate and calls on them to “cease and desist” in proclamations posted on its website under <<http://www.pixi.com/~kingdom/notice.html>> [accessed 30 April 2008].

be uncertain about which of the claimants to recognise as Hawai'i's legitimate government. The existence of only one government reinstatement initiative would therefore strengthen Hawai'i's position and facilitate the de-occupation process. Consolidating the various initiatives into one body capable of concerted international action would thus be a helpful step.

As I already concluded in chapter three, proposals to use the UN decolonisation regime in Hawai'i's case are based on an erroneous analysis of the nature of US rule, and the designation of Hawai'i as a Non-Self-Governing Territory in 1946 should be considered as either erroneous or deliberately misleading.

Even less appropriate as a political tool for Hawai'i is the indigenous rights regime, especially since the 2007 indigenous rights declaration explicitly states that it cannot be used to achieve political independence. Unfortunately, many activists have based their political claims on the indigeneity of aboriginal Hawaiians, and this has been reinforced by the 1993 Apology Resolution that addressed only Native Hawaiians and not other Hawaiian nationals.

As I have explained in detail in chapter four, the government overthrown in 1893 was a political body based on nationality and not on indigeneity. According to the last census report of the Hawaiian Kingdom of 1890, eighty-four per cent of the national population were aboriginal Hawaiians, while the remaining sixteen per cent were either native-born or naturalised nationals of foreign origin.<sup>1146</sup> If we project these percentages to the present to produce a rough estimate, there would be about 310,000 Hawaiian nationals living in Hawai'i today, including both the estimated 260,000 aboriginal

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<sup>1146</sup> 1890 Hawaiian Kingdom census figures, quoted in Sai 2004: 63.

Hawaiians and an estimated 50,000 non-aboriginal nationals. In addition, one needs to acknowledge the fact that many former Hawai‘i residents live abroad now, primarily in the United States. According to the 2000 US census report, the overall number of Native Hawaiians within the reach of the census was about 400,000.<sup>1147</sup> Using the same percentage projection, there would be more than 476,000 descendants of Hawaiian nationals today; all of them part of the body politic that was harmed in 1893-1898<sup>1148</sup>.

Whereas this fact had already been pointed out by Russ and Peg Apple during the debate on reparations for the overthrow in the late 1970s,<sup>1149</sup> it apparently did not find much resonance in the movement as a whole. Even though the 1993 apology is useful as acknowledgement by the US of its illegal intervention in the Hawaiian Kingdom, it also sets a precedent that limits the Hawaiian sovereignty debate to ethnically defined Hawaiians. As Keanu Sai argues in his appropriately titled essay “A Slippery Path towards Hawaiian Indigeneity”, the Apology Resolution and its ramifications represent an American scheme, in which many Hawaiians are complicit, to convert the issue of Hawaiian sovereignty from a political question into an ethnic one, thereby significantly reducing its standing in international law.<sup>1150</sup>

The Akaka Bill, born out of that distortion of history, is thus entirely inappropriate as a remedy, since it would only supplement the illegal US state of Hawai‘i with another US-created entity governing aboriginal Hawaiians. Any meaningful restoration of a Hawaiian government, on the other hand, needs to include the complete

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<sup>1147</sup> *The Native Hawaiian and Other Pacific Islander Population: 2000. Census 2000 Brief.* US census bureau, December 2001: 9

<sup>1148</sup> For a discussion of the future of Hawai‘i’s national population, see also Young 2006: 5-7, 8

<sup>1149</sup> Apple and Apple 1979: 121, 127, 135

<sup>1150</sup> Sai 2007

dismantling of the state of Hawai‘i and the transfer of all assets currently held by the latter, as well as those held by the US federal government on Hawaiian soil, to the restored Hawaiian government. Anything less than that does not mean de-occupation, but merely the creation of yet another US puppet entity.

Looking at the ramifications of the occupation in contemporary Hawai‘i, the basic problem is that the US state of Hawai‘i wrongfully claims legal succession to the Hawaiian Kingdom, hence it controls most of its assets. This wrongful succession began with the 1893 overthrow, and went through several subsequent US puppet regimes.<sup>1151</sup> A process of Hawaiian government restoration would correct this wrongful succession, and establish a lawful successor government to the one overthrown in 1893, to which all the assets could then be transferred.

The assertion by Akaka Bill supporters that a Native American-like entity under the US Department of Interior should be this successor to the Hawaiian Kingdom government, as it is implied in the bill’s name “Native Hawaiian Government Re-organization Act”, is as absurd as the claim made by the state of Hawai‘i in that respect. The co-existence of those two US puppet entities both claiming legal succession to the kingdom would be an even larger absurdity.

In summary, both a re-application of the decolonisation regime, which was erroneous from the beginning, and the creation of a new US puppet entity based on indigeneity are inappropriate as tools for Hawai‘i to regain its freedom from US

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<sup>1151</sup> Contrary to the allegations made by pro-American detractors cited in the introduction, no claims can be made that this illegality of succession was posthumely legitimised by the population in the 1959 statehood plebiscite. As we have seen in chapter two, the 1959 referendum did not ask for an approval of the illegal succession in 1893, but rather for the approval of the succession of an existing US puppet entity (Territory of Hawai‘i) by another (State of Hawai‘i). With the alternative between a puppet entity with less popular participation and one with more, most participants in the vote logically chose the latter.

occupation. The only logical path to follow in its case is the pursuit of de-occupation and the restoration of a legal successor to the Hawaiian Kingdom government overthrown in 1893.

*Perspectives of de-occupation for the Leeward Islands*

Unlike Hawai‘i, French Polynesia and Rapa Nui were not recognised States before they were taken over by their current administering powers. They can therefore not qualify for de-occupation under international law and need to pursue the decolonisation process instead. However, as we have seen in previous chapters, the Leeward Islands represent an exception to the rest of French Polynesia, as their independence was recognised in a similar way to that of Hawai‘i. In order to clarify their current position under international law, a deeper and more detailed analysis of their political evolution is necessary, which cannot be done in the limited framework of this thesis. However, as I have elaborated in chapter one, there is evidence of irregularities in the way these islands were acquired by France, and their case could indeed be similar to that of Hawai‘i. If that assumption is confirmed by further analysis, the correct way in international law to free them from French rule would be through a similar process of de-occupation and restoration of their governments.

However, while Hawai‘i is clearly conceivable as a Nation-State today, the restoration of three small independent kingdom governments in Ra‘iātea, Huahine and Pora Pora next to a post-colonial Nation-State encompassing the rest of current French Polynesia would seem odd. There are so many cultural and social interconnections between the Leeward Islands and Tahiti, including the sharing of the same language and



links of parentage between most families, that the existence of three separate micro-nations in the Leeward Islands would be seen by most people as an absurdity, even on the islands themselves. It should also be recalled that the recognition of the three kingdoms as independent in 1847 had more to do with the political circumstances involving the French in Tahiti, and the interest of Great Britain to contain French influence, than with the efforts of the governments of the Leeward Islands themselves. In order to keep within the stipulations of international law, one might develop a strategy to pursue the de-occupation of the Leeward Islands as a transitional phase only, and then merge them with the decolonised rest of French Polynesia into one State.

#### *Decolonisation of French Polynesia and Rapa Nui*

As Tahiti, its outlying archipelagoes except for the Leeward Islands, and Rapa Nui were not recognised as independent States before their colonisation, they cannot claim restoration of their pre-colonial governments under international law. Instead, they qualify as Non-Self-Governing Territories under Article 73 of the UN charter<sup>1152</sup>. In French Polynesia's case, this was officially admitted by France by inscribing the territory on the list of NSGTs for an initial moment, before unilaterally withdrawing it from the list barely one year later, as we have seen in chapter four. In spite of this removal, and the fact that Rapa Nui was never inscribed in the first place, we have also determined that both territories clearly qualify as a NSGTs under resolution 1541 (XV) of 1960.

As qualifying NSGTs, though currently not internationally recognised as such due to deception or neglect, the UN decolonisation regime needs to be applied to these two

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<sup>1152</sup> Young 2006: 7-8

territories. Their (re-)inscription should therefore be the first priority to be taken in their regard on the international level.

As I have examined in chapter two, there are several examples of precedents for both cases. For French Polynesia, the precedent is set by the Comoro Islands, Djibouti and New Caledonia, all three examples for the reinscription of French territories that had been unilaterally removed before. The first two of them have achieved independence already,<sup>1153</sup> while New Caledonia is currently engaged in a long-term decolonisation process and will remain on the list until this process is completed. For Rapa Nui, the precedent cases are the Spanish and Portuguese colonial territories, which were added on the NSGTs list by a UN General Assembly vote in 1960 against the will of their administering powers who refused to acknowledge them as colonies, just as Chile has been doing for Rapa Nui.

The current non-inscription of French Polynesia and Rapa Nui not only runs counter to these precedent examples, but it also represents an anomaly in the region. Virtually all other dependent territories in the Pacific are currently on the list, including both those that have relatively strong ambitions to achieve decolonisation like New Caledonia, Tokelau and Guam, and those with few or no such ambitions like American Sāmoa and Pitcairn.<sup>1154</sup> Especially since both French Polynesia and Rapa Nui have much stronger ambitions towards decolonisation than the two latter territories, there is an

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<sup>1153</sup> As mentioned before, this independence is incomplete for the Comoro islands as one of them remains under illegal French occupation.

<sup>1154</sup> This enumeration leaves out West Papua, another territory under alien rule absent from the list, which represents the worst case in the entire region in terms of human suffering as a result of an unresolved political status. However, this case is more complex in international law and cannot be discussed here in detail. The territory of Tokelau recently underwent a process of self-determination, but remains on the list of NSGTs because its population failed to vote in sufficient numbers for the proposed self-governing status. See Huntsman and Kalolo 2007.

urgent need to correct that anomaly and inscribe the two territories, in the same way as it has been done with New Caledonia in 1986.

This need is even more urgent as the Second International Decade for the Eradication of Colonialism, proclaimed by the United Nations in 2000 through resolution 55/146,<sup>1155</sup> is drawing to its end. Urgent action in this respect has recently also been urged by West Papuan scholar and activist Rex Rumakiek of the Fiji-based Pacific Concerns Resource Centre.<sup>1156</sup>

In terms of local activism and political strategy, campaigns of exposure and education are as important in the two colonised territories as they are in Hawai'i's case. Although a broad political consciousness of the masses is generally more developed in Tahiti than in Hawai'i, much confusion prevails in Tahiti about the territory's institutional history and its rights to decolonisation under international law.

This is even truer for Rapa Nui. The political status debate in the Historical Truth commission of 2001-2003 for example, was only concerned with the 1888 annexation document and its non-ratification by Chile. As Rapa Nui was not recognised as an independent State, it is rather questionable whether this document has much standing under international law. Surprisingly however, the report does not denounce, or even mention, the non-inscription of the island as a NSGT after World War II. A denunciation and subsequent correction of this erroneous, negligent or even fraudulent evasion of applicable international law, supported by precedent cases like that of the Portuguese

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<sup>1155</sup> *United Nations General Assembly Resolution 55/146. Second International Decade for the Eradication of Colonialism*. 8 December 2000. Posted on UN web site <<http://daccessdds.un.org/doc/UNDOC/GEN/N00/568/15/PDF/N0056815.pdf?OpenElement> > [Accessed 18 January 2008].

<sup>1156</sup> Rumakiek 2007

colonies, would have a much stronger standing as a strategy to achieve independence than the reference to the irregularities of the colonial acquisition in the nineteenth century.

Parallel to an international campaign for the (re-)inscription of the two territories on the UN list, territorial autonomy is a meaningful tool of internal decolonisation in transition to eventual independence. By operating the autonomous territorial government, a political elite can be trained to run the country after independence. In order to achieve that goal, it is therefore worthwhile for political movements to work within the framework of internal autonomy as a first step towards independence, as has recently been done in Tahiti under President Temaru. If Chile created a meaningful statute of territorial autonomy for Rapa Nui (which seems doubtful with the current organic law proposal, as we have seen in the preceding chapter), this could be used in the same way as a transitional step of preparatory political training.

The best model of transitional autonomy leading to independence is, as we have seen, the Nouméa Accord of New Caledonia, which can be summarised as a process of gradual irreversible devolution, reinforced by international scrutiny through the application of the UN decolonisation regime. The strategy proposed by Temaru's *Tāvini Huira'atira* party is strongly inspired by that model. According to a summary on the party's web site, after installing a pro-independence territorial government through successful participation in the local elections, that government would lobby for the reinscription of the territory on the NSGT list. As the third step, an accord similar to that of Nouméa, intended to be called the Tahiti Nui accord, would be negotiated in tri-lateral negotiations with France and the UN to initiate a process of gradual transfer of

prerogatives from France to the local government, leading to a referendum on independence under UN oversight. In contrast to the Nouméa model, *Tāvini Huirā'atira* wants to reinforce the international dimension of the accord, intending the UN to be a party, not simply an observer, to this process.<sup>1157</sup>

For Rapa Nui, a similar process would be conceivable as well, including a truly autonomous local government, a gradual increase of responsibilities transferred to this government from Chile leading to a final referendum, and a strong UN oversight over each of these steps. Whether full independence would be conceivable at the end of the process is another question that will be dealt with below.

One important factor that needs to be taken into account in the decolonisation and State-building process in French Polynesia is the arbitrary nature of that territory's boundaries, which do not correspond to any pre-colonial political, linguistic or cultural unit.<sup>1158</sup> This is quite unusual for Polynesia and in some sense more similar to Melanesia or Africa, and might lead to secessionist threats to the national unity of the country. There is already talk about the secession, or worse, "*mayottisation*",<sup>1159</sup> i.e. formation of a separate French territory, of the Marquesas Islands, and possibly also Mangareva and the Tuamotus.<sup>1160</sup> The best solution to avoid this problem is the transformation of French Polynesia into a federal State consisting of five or six archipelagic union states, as

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<sup>1157</sup> *Tāvini Huirā'atira* party web site <<http://www.tiamaraa.com>> [accessed 3 February 2006]

<sup>1158</sup> Toullelan 1991: 2. For a summary of the problem of postcolonial State-building within arbitrary colonial boundaries in the Pacific, see Firth 2000: 316-318.

<sup>1159</sup> Named after the Comoro island of Mayotte, which remained under French rule when the Comoro Islands became independent in 1975, a move that has been internationally denounced as a neo-colonial occupation in violation of the Comoro Islands' territorial integrity. See Caminade 2003.

<sup>1160</sup> The idea of Marquesan separatism, already existent in the local political debate for decades as a low-key issue, sparked a new and more intense debate in December 2007, when Marquesan mayors publicly reiterated that idea, provoking strong reactions by Tahitian leaders Temaru and Flosse denouncing secessionism and a protest march in Papeete against the "dismantling of the unity of the country". See *Tahiti-Pacifique*, January 2008: 8-10; 49.

suggested by several local political parties, including *Tāvini Huirā 'atira*.<sup>1161</sup> According to Sri Lankan international law scholar Gnanapala Welhangama, “[f]ederalism can be used to diffuse ethnic tensions and accommodate the genuine concerns and grievances of ethnic groups”.<sup>1162</sup> Fortunately there have not been any serious ethnic tensions between inhabitants of different archipelagos in French Polynesia so far, but a preemptive creation of federalism is better than waiting for tensions to develop as a result of ongoing Tahitian centralism over the outer islands.

### *Limitations and merits of the indigenous rights regime*

As I have stated above, pro-independence activists in all three territories have often framed their political aspirations in terms of indigenous rights, and many of them have repeatedly testified in that sense at international venues like the UN Permanent Forum on Indigenous Issues.<sup>1163</sup> While this approach is not without merits, it is rather limited as a means to achieve political independence. As we have seen above, the current indigenous rights regime of the UN, as outlined in the 2007 declaration, limits the right to self-determination of indigenous peoples to internal autonomy, and explicitly prohibits its use to dismantle the States these people are living in. Claims to political independence under the current indigenous rights regime are thus clearly illusionary. A revision of the declaration to include an unlimited right of self-determination is very unlikely to occur, as this might lead to the break-up of the currently less than 200 States of the world

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<sup>1161</sup> *Tāvini Huirā 'atira* party web site <<http://www.tiamaraa.com>> [accessed 3 February 2006]

<sup>1162</sup> Welhangama 2000: 329

<sup>1163</sup> See for example the most recent session of that forum in April 2008, in which representatives of all three island territories participated. See a transcript of a part of the proceedings under <<http://www.un.org/News/fr-press/docs/2008/DH4947.doc.htm>> [accessed 7 May 2008].

into several thousand independent entities. This scenario would be vehemently opposed by all States of the world in the interest of self-preservation, not merely by those commonly perceived as imperialist. As Welgenhama wrote in 2000, “[t]he attainment of independent statehood by any minority group by virtue of the right of self-determination is not permitted by contemporary international law, nor will it have a great chance of getting any sense of approval even in the foreseeable future.”<sup>1164</sup>

The achievement of political independence for the three Polynesian territories under consideration, however, does not necessitate such a scenario at all. Already within the current framework of international law, all three of them are entitled to much more than mere rights to domestic autonomy as indigenous peoples. As we have seen, this includes the restoration of the already recognised and legally still existing sovereign independence for Hawai‘i, and decolonisation as Non-Self-Governing Territories for French Polynesia and Rapa Nui.

However, this is not to say that the indigenous rights regime is useless for the three countries. While it is inappropriate as a tool to achieve the end of the US occupation and the restoration of an independent government in Hawai‘i, and equally inadequate to achieve the decolonisation of French Polynesia and Rapa Nui, the indigenous rights regime is very useful to secure cultural and economic rights for the people of native ancestry.

This is especially the case in Hawai‘i, in which *Kānaka ‘Ōiwi* will most probably not form a clear majority of the population even after the de-occupation and any subsequent repatriation of the US settler population. To secure the cultural and economic

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<sup>1164</sup> Welhengama 2000: 256

rights of aboriginal Hawaiians, who are often economically disadvantaged, compared to non-aboriginal Hawaiian nationals, the application of the indigenous rights regime is indeed an appropriate tool. As Keanu Sai has said in the above quote, aboriginal Hawaiians are not indigenous to the US, but they are the indigenous people of the Hawaiian Kingdom. In a similar way, Hawai‘i-based American Law scholar Jon Van Dyke has argued that in a restored independent Hawai‘i, some kind of indigenous rights regime might still be necessary for the protection of aboriginal Hawaiians.<sup>1165</sup> Some sort of indigenous rights regime already existed in the Hawaiian kingdom in terms of economy and land tenure, as certain economic activities and forms of land acquisition were reserved to “native tenants”, and not all subjects, under Hawaiian law.<sup>1166</sup> It would be helpful to extend these laws further in the cultural arena and enact legislation similar to currently applicable US laws like NAGPRA or AIRFA by the Hawaiian government after de-occupation, as these laws have proven to be beneficial for the preservation of Hawaiian culture and identity during the occupation.

There is nothing wrong with seeing aboriginal Hawaiians as indigenous people<sup>1167</sup>. However it should be clarified that the State in which they live and which has to protect their rights under the 2007 declaration is the Hawaiian kingdom, not the United States of America. In that sense, one interesting model to look to for inspiration could be Fiji, as it is the only other independent tropical Pacific Island country in which the aboriginal population does not form a clear majority. Native Fijian indigenous rights to

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<sup>1165</sup> Van Dyke 2008: 272

<sup>1166</sup> This included *kuleana* land titles, water rights, fishing rights, access rights and gathering rights. See MacKinzie 1991: 149-228; Perkins 2006: 99-103.

<sup>1167</sup> Young 2006: 5



lands and resources are secured by Fijian laws,<sup>1168</sup> and as one of the few countries with a government dominated by a barely majority native population that could otherwise be considered as typically indigenous, Fiji under its previous government of prime minister Laisenia Qarase was one of the chief supporters of the Declaration of the Rights of Indigenous peoples in the UN.<sup>1169</sup>

For Rapa Nui and French Polynesia, on the other hand, an indigenous rights regime might be less necessary after decolonisation, as the aboriginal populations would form large majorities in both countries, assuming the exclusion from citizenship and eventual repatriation of most recent Chilean immigrants in Rapa Nui and most recent French immigrants in Tahiti. Their situation would then be similar to that of most other Polynesian countries like Sāmoa or Tonga, in which indigenous rights are not an issue as State power is almost exclusively in the hands of the indigenous people. However, applying the indigenous rights regime even in their cases might still be worthwhile considering, as it could be helpful in protecting local communities against possible infringements by the central government.

Finally, one interesting aspect of the new UN indigenous rights regime is article 37 of the 2007 declaration, which stipulates that States need to “honour and respect [...] treaties, agreements and other constructive arrangements” concluded with indigenous peoples.<sup>1170</sup> In the cases of French Polynesia and Rapa Nui, this could be interpreted to mean that, independent of the application of the decolonisation regime on both territories, the administering powers are now bound under international law to implement all

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<sup>1168</sup> Robie 1989: 207-210; Firth 2000: 327

<sup>1169</sup> See, for instance, a speech by Qarase before the UN General Assembly, 16 Sept 2005, <[http://www.fiji.gov.fj/publish/printer\\_5420.shtml](http://www.fiji.gov.fj/publish/printer_5420.shtml)> [accessed 16 June 2008].

<sup>1170</sup> 2007 UNGA resolution 61/295, article 37, section 1

concessions given in the nineteenth century annexation documents to the island peoples in question. In Rapa Nui for example, this includes the right of the island chiefs to their titles and implies the return of all Chilean controlled land to the local population.

***The only genuine permanent alternative to complete independence: Free association***

While the decolonisation regime is thus the only meaningful tool to free French Polynesia and Rapa Nui from their presently administering States, and the indigenous rights regime can only serve as an additional mechanism to safeguard economic and cultural rights, it is worthwhile to explore legitimate alternatives to independence within that decolonisation regime. As we have seen, UN resolution 1541 (XV) designates independence, free association and integration as the three genuine forms of self-government. Since some variant of integration is what was unilaterally imposed in all three cases, with unsatisfactory results, it should be entirely discarded as a meaningful option. However, free association with an independent State is an alternative worth examining more closely.

Resolution 1541 (XV) of 1960 defines free association as a “result of a free and voluntary choice of the peoples of the territory” and underlines that it should respect “the individuality and the cultural characteristics of the territory and its peoples”.<sup>1171</sup> Most importantly, free association must provide for the people of the territory the “freedom to modify the status of that territory through the expression of their will [...]”, which implies the right of the territory to unilaterally end the relationship of free association with the

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<sup>1171</sup> 1960 UNGA resolution 1541, Annex, principle VII (a)

metropolitan country and become fully independent.<sup>1172</sup> Free association thus implies the right to sovereignty, and thereby excludes any forms of territorial autonomy in which the ruling State retains sovereignty. Before this became defined in the 1960 resolution and the status given to the Cook Islands in 1965 set a clear precedent, territorial autonomy was in a few cases accepted as fulfilling the free association criteria, but this has been strongly criticised afterwards, as in the case of Puerto Rico discussed above.<sup>1173</sup> Under the 1960 formula, only five permanent examples of free association have been created, all of them Pacific Island countries of medium to small size, namely the Cook Islands and Niue as States in free association with New Zealand, and the Federated States of Micronesia, the Marshall Islands and Palau as States in free association with the United States.<sup>1174</sup>

While Hawai'i is the third or fourth largest Pacific Island country, and French Polynesia is still in the upper medium range in terms of size, Rapa Nui has less than half the population of even the two smallest fully independent countries of the Pacific (Tuvalu and Nauru). Adding its position as the most isolated inhabited island in the world, it might be questionable whether Rapa Nui could meaningfully function as a completely independent State and sustain a fully developed government apparatus. In that sense, free association might be a meaningful alternative to independence in Rapa Nui's case.

Niue, the Polynesian country most comparable to Rapa Nui in population size (a few thousand) and geography (one single island), would be an interesting model to consider. If Rapa Nui could achieve the same relationship to Chile as Niue has to New

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<sup>1172</sup> Igarashi 2002: 242-246

<sup>1173</sup> Igarashi 2002: 7-67

<sup>1174</sup> For a discussion of these five Pacific cases, their similarities and differences see Firth 1989: 77-83 and Henderson 2002.

Zealand, this would include continued unlimited access of Rapanui islanders to Chile, guarantees of financial aid as well as an obligation for Chile to assist Rapa Nui in foreign affairs and defence, but only at the Rapanui government's request. Furthermore, the right of unlimited immigration would not be reciprocal for Chileans on the island, in the same way that New Zealanders cannot freely migrate to Niue unlike Niueans to New Zealand. As a quasi-sovereign state, Rapa Nui would be protected against any Chilean interference in its domestic affairs, and have its own diplomatic relations with third countries, including the possibility of concluding treaties and contracts for monetary and technical assistance. As in the case of Niue, free association would thus combine the advantages of state sovereignty with those of association with a larger country, but exclude most of the inconveniences full independence would have for a small island.<sup>1175</sup> Historically, the status of Niue and the Cook Islands was first brought to the attention of the Rapanui community by Antoni Pujador in 1989,<sup>1176</sup> but this apparently provoked no serious follow-up. More recently, Niue's status has been advocated by New Zealand linguist and historian Stephen Fischer as a model for the future political development of the island.<sup>1177</sup>

### *Concluding summary*

In summary, we can conclude that Hawai'i as a recognised independent State under prolonged occupation, and French Polynesia and Rapa Nui as non-self-governing territories wrongfully deprived of their status represent anomalies in the international

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<sup>1175</sup> For a detailed description of Niue's acquisition of free association status, see Igarashi 2002: 154-168

<sup>1176</sup> Amoros 2006: 240

<sup>1177</sup> Fischer 2005: 263-264

political system.<sup>1178</sup> Only a few other such anomalies of either illegitimate occupation or fraudulent non-decolonisation, or even more complex situations, exist in the world today. Other examples include Palestine, Western Sahara, West Papua, Tibet, Mayotte, Puerto Rico and possibly a few other cases, but probably not more than a dozen altogether.<sup>1179</sup> What makes these cases so unique is that their liberation from foreign rule can be achieved through the correct application of valid international law and does not necessitate either unilateral secession or a reform of the entire world system like in all the other cases of peoples struggling for freedom from the States ruling them. While the indigenous rights regime is being created to provide a remedy for the countless cases of the latter nature that exist in almost every country, the international community should not forget to rectify the few jurisdictional anomalies, including our three cases, which will otherwise haunt the international system forever by demonstrating its susceptibility to manipulation. Unlike successful cases of secession, a rectification of these cases would not represent any threat to the current world order under international law, as it could not ever be used as a precedent for secession. To the contrary, a rectification of the three cases of jurisdictional anomaly discussed here, including the initiation of a de-occupation process for Hawai‘i and the (re-) inscription of French Polynesia and Rapa Nui as NSGTs would reinforce the validity and strength of the principles of international law and thereby contribute to the promotion of world peace, security, stability and international cooperation.

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<sup>1178</sup> I am thankful to Sabine Deiringer who coined that expression in a discussion with me about the political status of the three territories.

<sup>1179</sup> Another long-standing and legally complex case of this category was resolved recently, when East Timor gained independence in 2002, after its original process of decolonisation from Portugal had been interrupted through a twenty-four -year long occupation by neighbouring Indonesia.

## APPENDICES

## APPENDIX A

### **Anglo-Franco-Declaration concerning the Hawaiian Islands, 1843<sup>1180</sup>**

#### Declaration

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the French, taking into consideration the existence in the Sandwich Islands (Hawaiian Islands) of a Government capable of providing for the regularity of its relations with foreign nations, have thought it right to engage, reciprocally, to consider the Sandwich Islands as an independent State, and never to take possession, neither directly or under the title of Protectorate, or under any other form, of any part of the territory of which they are composed.

The undersigned, Her Britannick Majesty's Principal Secretary of State of Foreign Affairs, and the Ambassador Extraordinary of His Majesty the King of the French at the Court of London, being furnished with the necessary powers, hereby declare, in consequence, that Their said Majesties take reciprocally that engagement.

In Witness whereof The Undersigned have signed the present Declaration, and have affixed thereto the Seal of their Arms.

Done in duplicate at London, the Twenty eighth day of November, in the Year of Our Lord One Thousand Eight Hundred and Forty Three.

[L.S.] Aberdeen

#### Déclaration

Sa Majesté La Reine du Royaume Uni de la Grande Bretagne et d'Irlande, et Sa Majesté Le Roi des Français, prenant en considération l'existence dans les Iles Sandwich d'un Gouvernement capable de pourvoir à la régularité de leurs rapports avec les Nations étrangères, ont cru devoir s'engager réciproquement à considérer les Iles Sandwich comme un Etat indépendant, et à ne jamais prendre possession, ni directement, ni à titre de Protectorat, ni sous aucune autre forme, d'aucune partie des territoires dont il se compose.

Les Soussignés, Principal Secrétaire d'Etat pour les Affaires Etrangères de Sa Majesté Britannique et Ambassadeur Extraordinaire de Sa Majesté Le Roi des Français près de la Cour de Londres, munis des pouvoirs nécessaires, déclarent en conséquence, par les présentes, que Leurs dites Majestés prennent réciproquement cet engagement.

En Foi de quoi les Soussignés ont signé la présente Déclaration, et y ont fait apposer le Sceau de leurs Armes.

Fait double à Londres, le Vingt-huit Novembre, l'An de Grace mil huit cent quarante trois.

[L.S.] St. Aulaire

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<sup>1180</sup> English version reprinted in *Hawaiian Journal of Law and Politics*, Vol. 1 (Summer 2004): 114. English and French original provided by Kamana Beamer following his research done in the United Kingdom.

## APPENDIX B

### **Jarnac Declaration concerning the Leeward Islands, 1847<sup>1181</sup>**

S. M. le Roi des Français, et S. M. la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, désirant écarter une cause de discussion entre leurs Gouvernements respectifs, au sujet des îles de l'Océan Pacifique désignées ci-après, ont cru devoir s'engager réciproquement :

1. A reconnaître formellement l'indépendance des îles de Huahine, Raiatea et Borabora (sous le vent de Tahiti) et des petits îles adjacentes qui dépendent de celles-ci ;
2. A ne jamais prendre possession des dites îles ou d'une ou plusieurs d'entre elles, soit absolument, soit à titre de Protectorat ou sous aucune autre forme quelconque ;
3. A ne jamais reconnaître qu'un Chef ou Prince régnant à Tahiti puisse en même temps régner sur une ou plusieurs des autres îles susdites ; et réciproquement, qu'un Chef ou Prince régnant dans une ou plusieurs de ces dernières puisse régner en même temps à Tahiti ; l'indépendance réciproque des îles désignées ci-dessus et de l'île de Tahiti et dépendances étant posée en principe.

Les Soussignés, Ministre Plenipotentiaire de S. M. Le Roi des Français près de la Cour de Londres et le Principal Secrétaire d'Etat pour les Affaires Etrangères de S. M. Britannique, munis des pouvoirs nécessaires, déclarent en conséquence, par les présentes, que leurs dites Majestés prennent réciproquement cet engagement.

H. M. the King of the French, and H. M. the Queen of the United Kingdom of Great Britain and Ireland, desiring to dispel a cause of discussion between their respective Governments concerning the islands of the Pacific Ocean named below, have thought it right to engage, reciprocally, to:

1. Formally recognise the independence of the islands of Huahine, Raiatea and Borabora (leewards of Tahiti) and the small adjacent islands which depend on these;
2. Never to take possession of the named islands, or of one or several of them, neither absolutely or under the title of Protectorate, or under any other form;
3. Never to recognise that a Chief or Prince reigning in Tahiti could at the same time reign over one or several of the aforementioned islands; and reciprocally, that a Chief or Prince reigning in one or several of them could at the same time reign in Tahiti; the reciprocal independence of the above designated islands and the island of Tahiti and dependencies being established as a principle.

The undersigned, the Minister Plenipotentiary of His Majesty the King of the French at the Court of London, and the Principal Secretary of State of Foreign Affairs of Her Britannic Majesty, being furnished with the necessary powers, hereby declare, in consequence, that their said Majesties take reciprocally that engagement.

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<sup>1181</sup> French version reprinted in Lechat 1990: 105-106 and Peltzer 2002: 182. Original English version existent but currently unlocated. English translation of the French version by the author.



**En foi de quoi, les Soussignés ont  
signé la présente Déclaration, et y ont fait  
apposer le sceau de leurs armes.**

**Fait double à Londres, le 19 Juin de  
l'an de grâce 1847.**

**Jarnac**

**In witness thereof the Undersigned  
have signed he present declaration, and  
have fixed thereto the seal of their arms.**

**Done in duplicate at London, the 19<sup>th</sup>  
day of June, in the year of our Lord 1847**

**Palmerston**

APPENDIX C

**Tahiti-France annexation agreement, 1880<sup>1182</sup>**

Déclaration du Roi Pomare V,

consecrant la réunion à la France des Iles Société et dépendances.

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O vau o Pomare V, te Arii i te mau fenua Totaiete e te au mai,

Nous, Pomare V, Roi des Iles de la Société et dépendances,

No te mea te ite nei matou i te maitai i te huru o te faatere raa o Farani i teie nei i nia i to matou nei mau fenua, e no te mea te hio atoa nei au i te mau opua raa maitatai a te Hau rahi Repupirita farani i nia i to matou nei hui taata e i to matou nei fenua o ta'na i titau e ia rahi noa'tu a to ratou maitai e te ruperupe,

Parce que nous apprécions le bon gouvernement que la France a donné aujourd'hui à nos Etats, et parce que nous connaissons les bonnes intentions de la République française à l'égard de notre peuple et de notre pays dont elle veut augmenter le bonheur et la prospérité,

No te hinaaro raa matou e ia horoa'tu i te hoe tapao faahiahia no to matou nei tiaturi e to matou au i te Hau Rahi o te Repupirita farani,

Voulant donner au gouvernement de la République française une preuve éclatante de notre confiance et de notre amitié,

Te faaite nei ia matou na roto i teie nei parau; na roto i to matou nei ioa, i to'u nei mau huaai e o te mono ia'u,

Déclarons par les présentes, en notre nom personnel, et au nom des descendants et successeurs,

Te tuu roa nei e amuri noa'tu i roto i te rima o Farani, te hau e te faatere raa i te mau ohipa no to matou nei mau fenua, oia'toa hoi te taa'toa raa o to'u nei mana i nia iho i te mau fenua Totaiete e te au mai;

Remettre complètement et pour toujours entre les mains de la France, le gouvernement et l'administration de nos Etats, comme aussi tous nos droits et pouvoirs sur les Iles de la Société et dépendances ;

E apiti atu to'u nei mau fenua i Farani, te ani nei nei [sic] matou i teie nei fenua rahi, ia faatere noa oia i to matou hui taata, mai te haapao â i te mau ture, e te mau haapao raa o tei mataro hia e Tahiti;

Nos Etats sont ainsi réunis à la France, mais, nous demandons à ce grand pays de continuer à gouverner notre peuple en tenant compte des lois et coutumes tahitiennes ;

Nous demandons aussi de faire juger

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<sup>1182</sup> Certified handwritten copy of unlocated original in Tahitian and French in Centre for Overseas Archives, Aix-en-Provence, France, box 139, file A 116. French version reprinted in Lechat 1990: 143-144. English translation by the author, based on the Tahitian version.

Te ani atoa nei â hoi matou ia tia noa i te apoo raa mataeinaa ia haava i ta matou mau ohipa rii ei faaore i te mau huru haamaua raa, oia hoi o te titau hia mai e te mau haava raa i teie nei tau; e ia vai noa mai â i roto i te rima o te taata Tahiti te mau ohipa 'toa e au atu i nia i te mau ohipa fenua, na te mau Tiripuna tahiti anae ia e rave.

Te tapea nei râ vau no'u iho te toroa Arii, te mau maitai atoa e te mau faahanahana raa 'toa i haapao hia no taua toroa ra; te reva tahiti, mai te tuu hia te tapao Farani i roto, e maitai noa ia, mai te mea e i hinaaro matou, ia huti hia i nia i to'u nei Aorai.

Te hinaaro atoa nei matou e tapea mai i te mana no te faaore raa i te mau utua a te feia faautua hia, e o ta te Ture Tahiti no te 28 no mati 1866 i horoa mai i roto i to matou rima.

Te faaite nei matou i teie nei parau i te Hui arii, i te mau Tavana e i to'u nei hui taata, ia faaroo hia e ia faatura hia.

toutes les petites affaires par nos Conseils de district, afin d'éviter pour les habitants des déplacements et des frais très onéreux ;

Nous demandons enfin que le l'on continue à laisser toutes les affaires relatives aux terres entre les mains des tribunaux indigènes.

Quant à nous, nous conserverons pour nous-même, le titre de Roi, et toutes les honneurs et préseances attachés à ce titre ; le pavillon tahitien, avec le yacht français, pourra, quand nous le voulons, continuer à flotter sur notre palais.

Nous désirons aussi conserver personnellement le droit de grâce qui nous a été accordé par la loi Tahitienne du 28 mars 1866.

Nous faisons cette déclaration à la Famille royale, aux chefs et au peuple, pour qu'elle soit écoutée et respectée.

Papeete, le 29 Juin 1880

Le Roi Pomare V.

Les Chefs

Maheanuu ; Aitoa ; Hitoti Manua ; Tere a Patia ; Marurai a Tauhiro ; Teriinohorai ; Roometua ; Maihau Tavana ; Terai a Faarooau ; Tariiri Vehiatua ; Teritapunui ; Maraiauria ; Ariipeu ; Tuahu a Rehia ; Toni a Puohutoe ; Matamao Teihoarii ; Opuhara ; Matahiapo ; Raihauti ; Tiihiva

Les interprètes

J. Cadousteau ; A. M. Poroi

L'Inspecteur des Affaires indigenes

X. Caillet

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Nous, Commandant, Commissaire de la République, aux Etablissements français de l'Océanie,

Agissant en vertu des pouvoirs qui nous ont été donnés,

Déclarons accepter au nom du gouvernement de la République française, les droits et pouvoirs qui nous sont conférés par S.M. Pomare V, auquel se sont joints tous les chefs de Tahiti et de Moorea,

Déclarons en conséquence, sauf la réserve de la ratification du gouvernement français,

Que les Iles de la Société et dépendances sont réunis à la France.

I. Chessé

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*Translation*

Declaration of King Pomare V establishing the union with France of the Society Islands and dependencies

I, Pomare V, King of the Sandwich Islands and dependencies,

Because we see the good in the manner of governance of France in this time over our islands, and because I am also looking at the good projects of the great Government of the French Republic upon our people and our land, of which it desires to further increase their benefit and prosperity,

Due to our wish to give a significant sign of our trust and our agreement with the Great Government of the French Republic,

We are declaring through this document, through our name, my descendants and those who will succeed me,

To be placing forever into the hands of France the government and the administration of the affairs of our islands, this is to say, all of my powers over the Society Islands and dependencies;

My land being joined with France, we request from this great country, that it will govern our people while continuing to observe the laws and the conventions which were accustomed to by Tahiti;

We are furthermore requesting that the district councils can still judge our minor matters, in order to avoid expenditures, specifically those that are requested by the judgements in this time; and further, that will remain in the hands of the Tahitian people all the matters that relate to land issues, it is exclusively for the Tahitian tribunals to deal with.

However, I am holding for myself onto the title of King, and all the benefits and honours that are observed for that aforementioned title; the Tahitian flag, with the French ensign put within, will be appropriate, if we wish so, to be hoisted over our palace.

We also wish to hold onto the power to abrogate sentences of people who have been sentenced, which the Tahitian Law of 28 March 1866 has placed in our hands.

We are presenting this document to the Royal families, the District Chiefs, and my people, to be heard and respected.

Papeete, 29 June 1880

The King Pomare V.

The Chiefs

Maheanuu ; Aitua ; Hitoti Manua ; Tere a Patia ; Marurai a Tauhiro ; Teriinohorai ; Roometua ; Maihau Tavara ; Terai a Faaroau ; Tariiri Vehiatua ; Teriitapunui ; Maraiauria ; Aripeu ; Tuahu a Rehia ; Toni a Puohutoe ; Matamao Teihoarii ; Opuhara ; Matahiapo ; Raihauti ; Tihiva

The interpreters

J. Cadousteau ; A. M. Poro

The inspector of native affairs

X. Caillet

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We, Commander, Commissioner of the French Republic in the French Establishments of Oceania,

Acting in virtue of the powers that have been given to us,

Declare to accept, in the name of the French Government, the rights and powers that are conferred upon us by H.M. Pomare V, who has been joined by all the chiefs of Tahiti and Moorea,

Declare in consequence, except reserving the ratification by the French government,

That the Society Islands and dependencies are united with France.

I. Chessé

APPENDIX D

**Rapa Nui-Chile annexation agreement, 1888<sup>1183</sup>**

**Vaai hongā Kaina**

Dinonake o na Honui tavana o te kaina o Te pito henua koia na tika i tā i te rugoa i raro ina kainga tanei ua haaki e Ratou matou ananake ite vananga e na tuu mau te Kainga nei a te Te pito te henua o te rima o te hau tire (Chile) Tire Chile mau te hoa kona E ta hira mau i te rima o na Honui ote kaina te rivariva te riku arunga i na toroa i ha katuu hia te Kohou Rapanui

Tangaroauri te marama Te tau Hiva /  
1888 -

Atamu Ari +  
Peteriko Tabana +  
Paoa Toopae + Utino +  
Kerimuti + Rupa Orometua +  
Vaehere + Ruperto Huiatira +  
Ika +  
Joane +  
Jotepa +  
Hito +

**Cesion**

Los abajo firmados Jefes de la Isla de Pascua, declaramos ceder para siempre i sin reserba al Gobierno de la Republica de Chile la soberanía plena i entera de la citada Isla, reservandonos al mismo tiempo nuestro títulos de Jefes de que estamos investido i que usamos actualmente

Rapanui Septiembre 9 de / 88

Acullonen  
Elias S Contes  
John Brander  
Jorje E Frederik.

**Proclamacion**

Polcarpo Toro H Capitan de Corbeta de la Marina de Chile i comandante del crucero Angamos actualmente en esta declaramos aceptar salvo ratificacion de nuestro Gobierno la cesion plena, entera i sin reserva de la soberania de la Isla de Pascua cesion que nos ha sido hecha por los jefes de esta Isla para el Gobierno de la Republica de Chile.

**Vananga Haaki**

Kovau ko Polcarpo Toro Iova horo pahī no te hau tire (Chile) e Kape ha hi a runga i te miro tiru hai Angamos E mau koau i te ki a na Honui o mana i te Kaina o Te pito a te henua i tou rima ta na nui ta na Kira Ua vaai mai na Honui te kaina ra o Te Pito o te henua o te hau tire (Chile) i te vananga iroto i te parapara i ta hia i te raa nei E tiaki ra i te vananga a te hau tire Chile Chile) a ha kariva riva are a

<sup>1183</sup> Original in Archives of Grant McCall, University of New South Wales, Australia. Reprinted in *Informe de la Comisión Verdad Histórica: 327-335*, including translations from Rapanui to Spanish by Antonio Tepano, Tera'i Huke, Mario Tuki and Raúl Teao, following sessions of discussion and analysis on Rapa Nui in 2002. The Rapanui versions are written in a mixture of old Rapanui and Tahitian. Translations from Spanish to English, with cross-reference to the Rapanui texts, by the author.

Rapa - nui Septiembre 9 del / 88

Policarpo Toro H.

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hakariku ai i te vananga i ta hia nei.

Rapanui te Kokore a te marama

Tangaroauri Te tau hiva 1888

A A Salmon Traslator interprete

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*Translation*

*[Rapanui/Tahitian text]*

Cession

Together we, the Council of Chiefs of our territory of te Pito o te Henua, have agreed upon writing that above the surface. That of below the territory is not being written here. They report in conversation with us that our territory of Te Pito o te Henua will be in the hand of the Chilean government as a friend of the place. It is written in the hand of the Council of the territory, the welfare and prosperity in accordance with our authorities vested by Rapanui mandate.

Month of Tangaroauri, foreign time 1888

King Atamu +  
Chief Peteriko +  
Councilman Paoa + Utino +  
Kerimuti + Teacher Rupa +  
Vaehere + Lower Chief Ruperto +  
Ika +  
Joane +  
Jotepa +  
Hito +

*[Spanish text]*

Cession

The undersigned, chiefs of of Easter Island, declare to cede, forever and without reserve, to the Government of the Republic of Chile, the full and entire sovereignty of the aforementioned island, reserving at the same time our titles of chiefs in which we are invested and which we are currently using.

Rapanui, 9 September '88

[unclear word]  
Elias S Contes  
John Brander  
Jorje E Frederik.

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*[Spanish text]*

Proclamation

We, Policarpo Toro H., Lieutenant  
Commander in the Chilean Navy and

*[Rapanui/Tahitian text]*

Proclamation

I, Policarpo Toro, seafaring friend of the  
Chilean government, and captain of the

commander of the cruiser "Angamos", hereby officially declare to accept, reserving the ratification of our Government, the full, eternal and unreserved cession of the sovereignty of Easter Island, a cession that was made to us by the chiefs of this Island for the Government of the Republic of Chile.

Rapa-nui, 9 September '88

Policarpo Toro H.

masted ship "Angamos", take the message from the Council with power in the territory of Te Pito o te Henua in my hand, it is this important writing where it states: that what the Chiefs of the territory of Te Pito o te Henua have given us is the agreement written in the document today. They will wait for the confirmation of the Chilean government in order to implement and develop the agreement written here.

Rapanui, night of Kokore of the month of Tangaroauri, foreign time 1888

A.A. Salmon, translator interpreter



## APPENDIX E

### UNGA resolution 1514 (XV), 1960<sup>1184</sup>

#### **1514 (XV). Declaration on the granting of independence to colonial countries and peoples**

*The General Assembly,*

*Mindful* of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

*Conscious* of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

*Recognizing* the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

*Aware* of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

*Considering* the important role of the United Nations in assisting the movement for independence in trust and non-self-governing territories,

*Recognizing* that the peoples of the world ardently desire the end of colonialism in all its manifestations,

*Convinced* that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

*Affirming* that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law,

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<sup>1184</sup> Posted on the UN web site  
<<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/152/88/IMG/NR015288.pdf?OpenElement>>  
[Accessed 18 January 2008].

*Believing* that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

*Welcoming* the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

*Convinced* that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory,

*Solemnly proclaims* the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end

*Declares* that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

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

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in trust and non-self-governing territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present

**Declaration on the basis of equality, non-interference in the internal affairs of all States and respect for the sovereign rights of all peoples and their territorial integrity.**

*14 December 1960.*

*947th Plenary Meeting,*

## APPENDIX F

### UNGA resolution 1541 (XV), 1960<sup>1185</sup>

**1541 (XV). Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter**

*The General Assembly,*

*Considering* the objectives set forth in Chapter XI of the Charter of the United Nations,

*Bearing in mind* the list of factors annexed to General Assembly resolution 742 (VIII) of 27 November 1953,

*Having examined* the report of the Special Committee of Six on the Transmission of Information under Article 73 e of the Charter,<sup>12</sup> appointed under General Assembly resolution 1467 (XIV) of 12 December 1959 to study the principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73 e of the Charter and to report on the results of its study to the Assembly at its fifteenth session,

1. *Expresses its appreciation* of the work of the Special Committee of Six on the Transmission of Information under Article 73 e of the Charter;
2. *Approves* the principles set out in section V, part B, of the report of the Committee, as amended and as they appear in the annex to the present resolution;
3. *Decides* that these principles should be applied in the light of the facts and the circumstances of each case to determine whether or not an obligation exists to transmit information under Article 73 e of the Charter.

*948th plenary meeting,  
15 December 1960.*

## ANNEX

**PRINCIPLES WHICH SHOULD GUIDE MEMBERS IN DETERMINING WHETHER OR NOT AN OBLIGATION EXISTS TO TRANSMIT THE INFORMATION CALLED FOR IN ARTICLE 73 E OF THE CHARTER OF THE UNITED NATIONS**

### *Principle I*

The authors of the Charter of the United Nations had in mind that Chapter XI should

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<sup>1185</sup> Posted on the UN web site  
<<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/153/15/IMG/NR015315.pdf?OpenElement>>  
[Accessed 18 January 2008].

be applicable to territories which were then known to be of the colonial type. An obligation exists to transmit information under Article 73 e of the Charter in respect of such territories whose peoples have not yet attained a full measure of self-government.

*Principle II*

Chapter XI of the Charter embodies the concept of Non-Self-Governing Territories in a dynamic state of evolution and progress towards a "full measure of self-government". As soon as a territory and its peoples attain a full measure of self-government, the obligation ceases. Until this comes about, the obligation to transmit information under Article 73 e continues.

*Principle III*

The obligation to transmit information under Article 73 e of the Charter constitutes an international obligation and should be carried out with due regard to the fulfilment of international law.

*Principle IV*

*Prima facie* there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.

*Principle V*

Once it has been established that such a *prima facie* case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. These additional elements may be, *inter alia*, of an administrative, political, juridical, economic or historical nature. If they affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73 e of the Charter.

*Principle VI*

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State.

*Principle VII*

(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude con-

sultations as appropriate or necessary under the terms of the free association agreed upon.

*Principle VIII*

Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.

*Principle IX*

Integration should have come about in the following circumstances:

(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;

(b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.

*Principle X*

The transmission of information in respect of Non-Self-Governing Territories under Article 73 e of the Charter is subject to such limitation as security and constitutional considerations may require. This means that the extent of the information may be limited in certain circumstances, but the limitation in Article 73 e cannot relieve a Member State of the obligations of Chapter XI. The "limitation" can relate only to the quantum of information of economic, social and educational nature to be transmitted.

*Principle XI*

The only constitutional considerations to which Article 73 e of the Charter refers are those arising from constitutional relations of the territory with the Administering Member. They refer to a situation in which the constitution of the territory gives it self-government in economic, social and educational matters through freely elected institutions. Nevertheless, the responsibility for transmitting information under Article 73 e continues, unless these constitutional relations preclude the Government or parliament of the Administering Member from receiving statistical and other information of a technical nature relating to economic, social and educational conditions in the territory.

*Principle XII*

Security considerations have not been invoked in the past. Only in very exceptional circumstances can information on economic, social and educational conditions have any security aspect. In other circumstances, therefore, there should be no necessity to limit the transmission of Information on security grounds.

<sup>12</sup> *Ibid.*, agenda item 38, document A/4S26.

## GLOSSARY AND ACRONYMS

AIRFA	<i>American Indian Religious Freedom Act</i> , a US federal law of 1978
<i>ali'i</i>	(Hawaiian) chief
<i>ari'i</i>	(Tahitian) chief, later king of an island or archipelago
<i>'ariki</i>	(Rapanui) chief or king
<i>cazique</i>	(Spanish) native village headman appointed by the governmental authorities
COM	(French) <i>Collectivité d'outre mer</i> [Overseas Collectivity], a term designating the former TOM since the constitutional reform of 2003
<i>departamento</i>	(Spanish) second-degree administrative unit of Chile, replaced by the term <i>provincia</i> [province] since 1974
<i>département</i>	(French) administrative unit of metropolitan France
<i>départementalisation</i>	(French) transformation of an Overseas Territory into a <i>département</i>
EFO	(French) <i>Etablissements français de l'Océanie</i> [French Establishments in Oceania], the former name of current French Polynesia until 1957
<i>fa'aterehau</i>	(Tahitian) government minister; prime minister in 19 <sup>th</sup> century Leeward Islands kingdoms
<i>hui</i>	(Hawaiian) group of people, association, political party
<i>kanaka 'ōiwi</i>	(Hawaiian) aboriginal Hawaiian, a person with Hawaiian blood
<i>Ley Indígena</i>	(Spanish) <i>Indigenous Law</i> of 1993, recognising the rights of Chilean indigenous peoples to internal autonomy
<i>Ley Pascua</i>	(Spanish) <i>Easter Island Law</i> of 1966, incorporating Rapa Nui into the Chilean province (later region) of Valparaíso as a municipality
<i>Loi-cadre</i>	(French) <i>Framework Law</i> of 1956 that gave limited autonomy to all French Overseas Territories
<i>mā'ohi</i>	(Tahitian) aboriginal Polynesian

<i>mō 'ī</i>	(Hawaiian) paramount chief of an island, later king of the Hawaiian archipelago
NAGPRA	<i>Native American Graves Protection and Repatriation Act</i> , a US federal law of 1990.
NSGT	<i>Non-Self-Governing Territory</i> , under article 73 of the UN Charter
POM	(French) <i>Pays d'Outre-Mer</i> [Overseas Country], a term designating the status of French Polynesia since 2004
RDPT	<i>Rassemblement Démocratique des Populations Tahitiennes</i> [Democratic Rally of the Tahitian Populations], a nationalist political party in French Polynesia lead by Pouvāna'a a 'Ō'opa from the 1940s to the 1960s
<i>subdelegación</i>	(Spanish) third-degree administrative unit of Chile, later replaced by <i>municipalidad</i> [municipality]
<i>subdelegado</i>	(Spanish) administrator of a <i>subdelegación</i>
<i>subdelegado marítimo</i>	(Spanish) naval administrator (of Rapa Nui)
<i>tāvana</i>	(Tahitian, from English <i>governor</i> ) district chief, subordinate to an <i>ari 'i</i> , later to the French colonial administration, today mayor of a municipality.
TOM	(French) <i>Territoire d'outre-mer</i> [Overseas Territory], designating the former French colonies since 1946
UH	<i>University of Hawai'i</i>
UK	<i>United Kingdom</i> [of Great Britain and Ireland, later Northern Ireland]
UN	<i>United Nations</i>
UNGA	<i>United Nations General Assembly</i>
UPLD	(French) <i>Union Pour La Démocratie</i> (Union for Democracy), a current coalition of political parties in French Polynesia under the leadership of Oscar Temaru
US	<i>United States</i> [of America]
USSR	<i>Union of Soviet Socialist Republics</i>



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