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August 6, 2024

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Via electronic mail

Re: Circumstances for the Army National Guard to establish a military government of
Hawai'i

Commanders:

The purpose of this letter is to inform you of the circumstances that has led up to performing the military duty of establishing a military government in accordance with the Law of

Armed Conflict—international humanitarian law, U.S. Department of Defense Directive 5100.01, and Army Regulations—FM 27-5 and FM 27-10. According to Article 42, 1907 Hague Regulations, territory is considered occupied when it comes under the effective control of the occupant. Effective control of the occupied territory triggers Article 43 to establish a military government to provisionally administer the laws of the occupied State. For Iraq during the Second Gulf War, this was the basis for establishing the *Coalition Provisional Authority*, as a military government, on May 16, 2003. Between the Federal government and the State of Hawai‘i, it is the latter that has this duty because it is in effective control of 10,931 square miles, while the former is in effective control of less than 500 square miles.

In 1999, the Permanent Court of Arbitration (“PCA”), in *Larsen v. Hawaiian Kingdom*, recognized the continuity of the Hawaiian Kingdom, as a State, under international law, and the Council of Regency as its temporary government. The Council of Regency is not a part of the Native Hawaiian sovereignty movement. It is a government established under Hawaiian constitutional law and the doctrine of necessity. I am enclosing a copy of the PCA’s case repository of the *Larsen* case.

At the center of the dispute was the unlawful imposition of American laws over Hawaiian territory, which led to Larsen’s unfair trial and subsequent incarceration. This is the same Permanent Court of Arbitration that oversaw the dispute between the Philippines and China—the *South China Sea* case.¹ On its website, the PCA describes the *Larsen* case as:

Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency (“Hawaiian Kingdom”) on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant’s person within the territorial jurisdiction of the Hawaiian Kingdom.²

Since January 17, 1893, the United States, by an act of war, began its prolonged occupation of the Hawaiian Kingdom despite the overthrow of its government. Furthermore, the unlawful overthrow of the Hawaiian government did not affect Hawaiian sovereignty, which prevents any annexation of its territory without its consent by a treaty of cession. There is no such treaty of cession between the Hawaiian Kingdom and the United States,

¹ Permanent Court of Arbitration, Case Repository, *The South China Sea Arbitration (The Republic of Philippines v. The People’s Republic of China)*, PCA Case no. 2013-19 (online at <https://pca-cpa.org/en/cases/7/>).

² Permanent Court of Arbitration, Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

except for an American municipal law, enacted on July 7, 1898, called a joint resolution of annexation purporting to have acquired the Hawaiian Islands. As section 358, FM 27-10—*Occupation Does Not Transfer Sovereignty* states:

Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress.

Under customary international law, during military occupation, the imposition of the occupier's laws over the territory of an occupied State is the war crime of usurpation of sovereignty. In his legal opinion for the *Royal Commission of Inquiry* ("RCI"), for prosecutions to take place, renowned expert in international criminal law and war crimes, Professor William Schabas, provides requisite elements of certain war crimes, including usurpation of sovereignty during military occupation, which I am enclosing a copy of. It should be noted that if this were a frivolous matter, Professor Schabas surely would not have done his legal opinion for the RCI. He is a professor of international law at Middlesex University, London, Department of Law,³ and recognized as an expert in the field by the United Nations and the International Criminal Court.⁴

I am aware of the military duty to establish a military government in occupied territories, because I served 10 years in the Hawai'i Army National Guard from 1984 to 1994. I received my commission as a Second Lieutenant from New Mexico Military Institute in 1984, and, after returning home, joined the 1/487 Field Artillery. In 1994, I decided to resign my command of Charlie Battery in order to pursue the work I do now, and I was honorably discharged. I am enclosing my DD 214 separation papers. Former Commander of the Army National Guard, Brigadier General Keith Tamashiro, and I are not only colleagues, but friends, because, while I was the Charlie Battery Commander, he was the Bravo Battery Commander. I also served as Battalion Fire Support Officer for 2/299 Infantry, where Major General Kenneth Hara was a Lieutenant. Hence, I am thoroughly familiar with the Army National Guard.

On April 13, 2023, I had a meeting with MG Hara at the Grand Naniloa Hotel in Hilo. I started the meeting by telling MG Hara that circumstances, beyond our control, have placed

³ Middlesex University London, Professor William Schabas (online at <https://www.mdx.ac.uk/about-us/our-people/staff-directory/prof-william-schabas/>).

⁴ United Nations, Professor William Schabas (online at https://legal.un.org/avl/ls/Schabas_CLP.html).

us here today with duties to perform. He, as the senior officer of the Hawai‘i National Guard, and me, as head of the RCI, with the duty to protect the population from war crimes. This past June, the law journal, *International Review of Contemporary Law*, published my article titled “All States have a Responsibility to Protect their Population from War Crimes—Usurpation of Sovereignty During Military Occupation of the Hawaiian Islands.”⁵

I explained to MG Hara the circumstances of the current situation, and his corresponding duty, as the theater commander of occupied territory, to transform the State of Hawai‘i into a military government. I provided him the necessary documentation as well.⁶ At the end of the meeting, I recommended that he task his JAG, Lieutenant Colonel Lloyd Phelps, to review the information I provided him and to see if LTC Phelps could refute it. If he could not, it would trigger MG Hara’s duty to perform. LTC Phelps could not refute the Hawaiian Kingdom’s existence, which prompted MG Hara to acknowledge, on July 27, 2023, that Hawai‘i is an occupied State. On August 21, 2023, I provided MG Hara an *Operational Plan for Transitioning the State of Hawai‘i into a Military Government* with essential and implied tasks,⁷ which was published by the law journal, *Hawaiian Journal of Law and Politics*.

On May 25, 2024, I had a Zoom meeting with former Adjutant General, Major General Darryl Wong, and his Chief Master Sergeant, Robert Lee. Prior to this meeting, they both watched my March 6, 2024, presentation to the Maui County Council, updating them of the status of Hawai‘i under international law and the duty of MG Hara to establish a military government (https://www.youtube.com/watch?v=X-VIA_3GD2A&t=1s). MG Wong and CMSAF Lee acknowledged that they understood why MG Hara, as the Adjutant General, had this military duty to perform. MG Wong also acknowledged that he had this duty when he was the Adjutant General, but I told him that the difference between them was that MG Wong was not aware of the factual circumstances of the occupation, but MG Hara was aware.

After numerous attempts to work with MG Hara and his refusals to meet, I was informed that he was instructed by State of Hawai‘i Attorney General, Anne E. Lopez, to ignore me and anyone else that called for the establishment of the military government. MG Hara’s conduct here, as the Adjutant General, was unbecoming of an officer. To not be

⁵ David Keanu Sai, “All States have a Responsibility to Protect their Population from War Crimes—Usurpation of Sovereignty During Military Occupation of the Hawaiian Islands,” 6(2) *International Review of Contemporary Law* 72-81 (June 2024) (online at [https://hawaiiankingdom.org/pdf/IRCL_Article_\(Sai\).pdf](https://hawaiiankingdom.org/pdf/IRCL_Article_(Sai).pdf)).

⁶ Royal Commission of Inquiry letter to MG Hara (May 11, 2023) (online at [https://hawaiiankingdom.org/pdf/RCI_Ltr_to_SOH_TAG_\(5.11.23\).pdf](https://hawaiiankingdom.org/pdf/RCI_Ltr_to_SOH_TAG_(5.11.23).pdf)).

⁷ Council of Regency, *Operational Plan for Transitioning the State of Hawai‘i into a Military Government* (August 14, 2023) (online at https://hawaiiankingdom.org/pdf/HK_Operational_Plan_of_Transition.pdf).

unbecoming of an officer, he needed to ask for a legal opinion from the Attorney General that concludes, which provides conclusive evidence and law, that the Hawaiian Kingdom does not exist as an occupied State under international law. His failure to perform his duty of establishing a military government has made him the subject of War Criminal Report no. 24-0001 for the war crime by omission that was published on the RCI's website yesterday (https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._24-0001.pdf). His failure to perform his duty has led to everyone in the Army National Guard chain of command to be implicated in the performance of this duty.

As a war criminal, subject to prosecution by a competent tribunal, and where there is no statute of limitations, MG Hara is unfit to serve as Commander of the Hawai'i National Guard. As such, Brigadier General Stephen Logan, as the Deputy Adjutant General and Commander of the Army National Guard, must assume the chain of command, and he has until 1200 hours on August 12, 2024, to transform the State of Hawai'i into a military government. To escape criminal culpability, BG Logan must demand a legal opinion from the Attorney General or from LTC Phelps that shows, with irrefutable evidence and law, that the Hawaiian Kingdom ceases to exist a State under international law.

If BG Logan does not obtain a legal opinion, and fails to perform his military duty, he will then be the subject of a war criminal report by the RCI for the war crime by omission. After the publication of this war criminal report, Colonel Wesley K. Kawakami, Commander, 29th Infantry Brigade, will assume the chain of command and demand a similar legal opinion. If Colonel Kawakami receives no such legal opinion, he will have one week to perform his duty as the theater commander.

To speak to the severity of the situation, I am enclosing a letter to MG Hara, dated May 29, 2024, from police officers, both active and retired, from across the islands, that called upon him to perform his duties because "This failure of transition places current police officers on duty that they may be held accountable for unlawfully enforcing American laws." These police officers also stated:

We also acknowledge that the Council of Regency is our government that was lawfully established under extraordinary circumstance, and we support its effort to bring compliance with the law of occupation by the State of Hawai'i, on behalf of the United States, which will eventually bring the American occupation to a close. When this happens, our Legislative Assembly will be brought into session so that Hawaiian subjects can elect a Regency of our choosing. The Council of Regency is currently operating in an acting capacity that is allowed under Hawaiian law.

As senior Commanders in the chain of command of the Army National Guard, I implore you all to take this matter seriously and to demand, from the Attorney General or the JAG,

a legal opinion that concludes there is no duty on you to establish a military government because the Hawaiian Kingdom does not continue to exist, and that this is the territory of the United States and the State of Hawai'i under international law. With the legal opinion in hand, there is no duty to perform. Without it, there is the military duty to perform, and failure to perform would constitute the war crime by omission.



David Keanu Sai, Ph.D.

Head, *Royal Commission of Inquiry*

enclosures

cc: Brigadier General Stephen F. Logan
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Lieutenant Colonel Lloyd Phelps, Staff Judge Advocate
(lloyd.c.phelps4.mil@army.mil)

Professor Federico Lenzerini, Deputy Head, Royal Commission of Inquiry
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Enclosure “1”



Larsen v. Hawaiian Kingdom

Case name	Larsen v. Hawaiian Kingdom
Case description	<p>Lance Paul Larsen, a resident of Hawaii, brought a claim against the Hawaiian Kingdom by its Council of Regency (“Hawaiian Kingdom”) on the grounds that the Government of the Hawaiian Kingdom is in continual violation of: (a) its 1849 Treaty of Friendship, Commerce and Navigation with the United States of America, as well as the principles of international law laid down in the Vienna Convention on the Law of Treaties, 1969 and (b) the principles of international comity, for allowing the unlawful imposition of American municipal laws over the claimant’s person within the territorial jurisdiction of the Hawaiian Kingdom.</p> <p>In determining whether to accept or decline to exercise jurisdiction, the Tribunal considered the questions of whether there was a legal dispute between the parties to the proceeding, and whether the tribunal could make a decision regarding that dispute, if the very subject matter of the decision would be the rights or obligations of a State not party to the proceedings.</p> <p>The Tribunal underlined the many points of agreement between the parties, particularly with respect to the propositions that Hawaii was never lawfully incorporated into the United States, and that it continued to exist as a matter of international law. The Tribunal noted that if there existed a dispute, it concerned whether the respondent has fulfilled what both parties maintain is its duty to protect the Claimant, not in the abstract but against the acts of the United States of America as the occupant of the Hawaiian islands. Moreover, the United States’ actions would not give rise to a duty of protection in international law unless they were themselves unlawful in international law. The Tribunal concluded that it could not determine whether the Respondent has failed to discharge its obligations towards the Claimant without ruling on the legality of the acts of the United States of America – something the Tribunal was precluded from doing as the United States was not party to the case.</p>
Name(s) of claimant(s)	Lance Paul Larsen (Private entity)
Name(s) of respondent(s)	The Hawaiian Kingdom (State)
Names of parties	
Case number	1999-01
Administering institution	Permanent Court of Arbitration (PCA)
Case status	Concluded
Type of case	Other proceedings
Subject matter or economic sector	Treaty interpretation
Rules used in arbitral proceedings	UNCITRAL Arbitration Rules 1976
Treaty or contract under which proceedings were commenced	Other The 1849 Treaty of Friendship, Commerce and Navigation with the United States of America
Language of proceeding	English
Seat of arbitration (by country)	Netherlands
Arbitrator(s)	Dr. Gavan Griffith QC Professor Christopher J. Greenwood QC Professor James Crawford SC (President of the Tribunal)
Representatives of the claimant(s)	Ms. Ninia Parks, Counsel and Agent
Representatives of the respondent(s)	Mr. David Keanu Sai, Agent

Mr. Peter Umialiloa Sai, First deputy agent
Mr. Gary Victor Dubin, Second deputy agent and counsel

Representatives of the parties

Number of arbitrators in case 3

Date of commencement of proceeding [dd-mm-yyyy] 08-11-1999

Date of issue of final award [dd-mm-yyyy] 05-02-2001

Length of proceedings 1-2 years

Additional notes

Attachments **Award or other decision**

> [Arbitral Award](#) 15-05-2014 English

Other

> [Annex 1 - President Cleveland's Message to the Senate and the House of Representatives](#) 18-12-1893 English

> [Joint Resolution - To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to the native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.](#) 23-11-1993 English



Enclosure “2”



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Citations:

Bluebook 21st ed.

William Schabas, Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893, 3 HAW. J.L. & POL. 334 (2021).

ALWD 6th ed.

Schabas, W. ., Legal Opinion on War Crimes Related to the United States Occupation of the Hawaiian Kingdom since 17 January 1893, 3 Haw. J.L. & Pol. 334 (2021).

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MLA 8th ed.

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**LEGAL OPINION ON WAR CRIMES RELATED TO THE UNITED STATES
OCCUPATION OF THE HAWAIIAN KINGDOM SINCE 17 JANUARY 1893[†]**

Professor William Schabas*

- I. INTRODUCTION
- II. APPLICABLE LAW
- III. TEMPORAL ISSUES
- IV. SPECIFIC CRIMES
 - A. *Usurpation of sovereignty during occupation*
 - B. *Compulsory enlistment of soldiers*
 - C. *Denationalization*
 - D. *Pillage*
 - E. *Confiscation and Destruction of Property*
 - F. *Exaction of illegitimate or exorbitant contributions*
 - G. *Deprivation of Fair and Regular Trial*
 - H. *Unlawful deportation or transfer of civilians of the occupied territory*
 - I. *Unlawful transfer of populations to the occupied territory*
- VI. CONCLUSION

Editor's Note: In light of the severity of the mandate of the Royal Commission, established by the Hawaiian Council of Regency on 17 April 2019, to investigate war crimes and human rights violations committed within the territorial jurisdiction of the Hawaiian Kingdom, the

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* The author is professor of international law at Middlesex University in London. He is also professor of international criminal law and human rights at Leiden University, emeritus professor of human rights law at the National University of Ireland Galway and honorary chairman of the Irish Centre for Human Rights, invited visiting scholar at the Paris School of International Affairs (Sciences Politiques), honorary professor at the Chinese Academy of Social Sciences in Beijing, visiting fellow of Kellogg College of the University of Oxford, visiting fellow of Northumbria University, and *professeur associé* at the Université du Québec à Montréal. He is also a 'door tenant' at the chambers of 9 Bedford Row, in London. Professor Schabas received his L.L.D. and L.L.M degrees in human rights and international criminal law from the University of Montréal.

“authority” of the Council of Regency to appoint the Royal Commission is fundamental and, therefore, necessary to address within the rules of international humanitarian law, which is a component of international law. As explained by the United States Supreme Court in 1900 regarding international law and the works of jurists and commentators:

International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators who by years of labor, research, and experience have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.¹

According to the Statute of the International Court of Justice, “the teachings of the most highly qualified publicists of the various nations, [are] subsidiary means for the determination of rules of law.”² Furthermore, Restatement Third—Foreign Relations Law of the United States, recognizes that “writings of scholars”³ are a source of international law in determining, in this case, whether the Council of Regency has been established in conformity with the rules of international humanitarian law. The writing of scholars, “whether a rule has become international law,” are not prescriptive but rather descriptive “of what the law really is.”

I. INTRODUCTION

This legal opinion is made at the request of the head of the Hawaiian Royal Commission of Inquiry, Dr. David Keanu Sai, in his letter of 28 May 2019, requesting of me “a legal opinion addressing the applicable international law, main facts and their related assessment, allegations of war crimes, and defining the material elements of the war crimes in order to identify mens rea and actus reus”. It is premised on the assumption that the Hawaiian Kingdom was occupied by the United States in 1893 and that it remained so since that time. Reference has been made to the expert report produced by Prof. Matthew Craven dealing with the legal status of Hawai‘i and the view that it has been and remains in a situation of belligerent occupation resulting in application of the relevant rules of international law,

¹ *The Paquete Habana*, 175 U.S. 677, 700 (1900).

² Article 38(1), Statute of the International Court of Justice.

³ §103(2)(c), *Restatement of the Law (Third)—The Foreign Relations Law of the United States* (1987).

particularly those set out in the Hague Conventions of 1899 and 1907 and the fourth Geneva Convention of 1949. This legal opinion is confined to the definitions and application of international criminal law to a situation of occupation. The terms “Hawaiian Kingdom” and “Hawai‘i” are synonymous in this legal opinion.

II. APPLICABLE LAW

For the purposes of this opinion, the relevant treaties appear to be the following: Hague Convention II on the Laws and Customs of War, 1899; Hague Convention IV on the Laws and Customs of War, 1907; Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 1949 (‘fourth Geneva Convention’). All of these treaties have been ratified by the United States. They codify obligations that are imposed upon an occupying power. Only the fourth Geneva Convention contains provisions that can be described as penal or criminal, by which liability is imposed upon individuals. Article 147 of the fourth Geneva Convention provides a list of ‘grave breaches’, that is, violations of the Convention that incur individual criminal responsibility and that are known colloquially as ‘war crimes’: ‘wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly’.

There are other treaties that codify war crimes relevant to the conduct of an occupying power but these have not been ratified by the United States. Article 85 of the first Additional Protocol to the Geneva Conventions of 1977 defines as ‘grave breaches’ subject to individual criminal liability when perpetrated against ‘persons in the power of an adverse Party’, including situations of occupation:

- a) the transfer by the occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;
- b) unjustifiable delay in the repatriation of prisoners of war or civilians;
- c) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;
- d) making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for

- example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;
- e) depriving a person protected by the Conventions or referred to in paragraph 2 or this Article of the rights of fair and regular trial.

Some of these war crimes are listed in the Rome Statute of the International Criminal Court but it, too, has not been ratified by the United States.

In addition to crimes listed in applicable treaties, war crimes are also recognized under customary international law. Customary international law applies generally to States regardless of whether they have ratified relevant treaties. The customary law of war crimes is thus applicable to the situation in Hawai‘i. Many of the war crimes set out in the first Additional Protocol and in the Rome Statute codify customary international law and are therefore applicable to the United States despite its failure to ratify the treaties.

Crimes under customary international law have been recognized in judicial decisions of both national and international criminal courts. Such recognition may take place in the context of a prosecution for such crimes, although it is relatively unusual for criminal courts, be they national or international, to exercise jurisdiction over crimes under customary law that have not been codified.⁴ Frequently, crimes under customary international law are also recognized in litigation concerning the principle of legality, that is, the rule against retroactive prosecution. Article 11(2) of the Universal Declaration of Human Rights states that ‘[n]o one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed’. Applying this provision or texts derived from it, tribunals have recognized ‘a penal offence, under national or international law’ where the crime was not codified but rather was recognized under international law.

The International Military Tribunal (‘the Nuremberg Tribunal’) was empowered to exercise jurisdiction over ‘violations of the laws or customs of war’. Article VI(b) of the Charter of the Tribunal provided a list of war crimes but specified that ‘[s]uch violations shall include, but not be limited to’, confirming that the Tribunal had authority to convict persons for crimes under customary international law. The United States is a party to

⁴ See the examples provided in Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Law, Vol. I: Rules*, Cambridge: Cambridge University Press, 2005, ‘Rule 156. Definition of War Crimes’, pp. 568-603.

the London Agreement, to which the Charter of the International Military Tribunal is annexed. The corresponding provision in the Charter of the International Military Tribunal for the Far East ('the Tokyo Tribunal') does not even provide a list of war crimes, confining itself to authorizing the prosecution of 'violations of the laws or customs of war'.

More recently, the International Criminal Tribunal for the former Yugoslavia was empowered to exercise jurisdiction over 'violations of the laws or customs of war'. Like the Charter of the International Military Tribunal, the Statute of the Tribunal, which was contained in a Security Council Resolution, listed several such violations but specified that the enumeration was not limited. Two of the listed crimes are of relevance to the situation of occupation: seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science; plunder of public or private property. The Appeals Chamber of the International Criminal Tribunal explained that not all violations of the laws or customs of war could amount to war crimes. In order for a violation of the laws or customs of war to incur individual criminal responsibility, the Tribunal said that the 'violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim'. As an example of a violation that would not be serious enough, it provided the example of the appropriation of a loaf of bread belonging to a private individual by a combatant in occupied territory. It said that to meet the threshold of seriousness, it was not necessary for violations to result in death or physical injury, or even the risk thereof, although breaches of rules protecting important values often result in distress and anxiety for the victims.⁵ Although the Hague Conventions prohibit compelling inhabitants of an occupied territory to swear allegiance to the occupying power,⁶ there is no authority to support this rule being considered a war crime for which individuals are punishable. Moreover, the incidents of coerced swearing of allegiance in Hawai'i appear to date to the late nineteenth century, making criminal prosecution today entirely theoretical, as explained further below.

Evidence of recognition of crimes under customary international law may also be derived from documents of international conferences, national military manuals, and similar sources. The first authoritative list of 'violations of the laws and customs of war' was developed by the Commission on Responsibilities of the Paris Peace Conference, in 1919. It was largely derived from provisions of the two Hague Conventions, of 1899 and 1907, although the preparatory work does not provide any

⁵ *Prosecutor v. Tadić* (IT-94-1-AR72), Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 94.

⁶ Convention Concerning the Laws and Customs of War on Land (Hague IV), 3 *Martens Nouveau Recueil* (3d) 461, Art. 45. For the 1899 treaty, see Convention (II) with Respect to the Laws and Customs of War on Land, 32 Stat. 1803, 1 Bevans 247, 91 British Foreign and State Treaties 988.

precise references for each of the thirty-two crimes in the list. The Commission noted that the list of offences was ‘not regarded as complete and exhaustive’. The Commission was especially concerned with acts perpetrated in occupied territories against non-combatants. The war crimes on the list that are of particular relevance to situations of occupation include:

- Murders and massacres; systematic terrorism.
- Torture of civilians.
- Deliberate starvation of civilians.
- Rape.
- Abduction of girls and women for the purpose of enforced prostitution.
- Deportation of civilians.
- Internment of civilians under inhuman conditions.
- Forced labour of civilians in connection with the military operations of the enemy.
- Usurpation of sovereignty during military occupation.
- Compulsory enlistment of soldiers among the inhabitants of occupied territory.
- Attempts to denationalize the inhabitants of occupied territory.
- Pillage.
- Confiscation of property.
- Exaction of illegitimate or of exorbitant contributions and regulations.
- Debasement of the currency, and issue of spurious currency.
- Imposition of collective penalties.
- Wanton destruction of religious, charitable, educational, and historic buildings and monuments.⁷

III. TEMPORAL ISSUES

As a preliminary matter, two temporal issues require attention. First, international criminal law, like criminal law in general, is a dynamic phenomenon. Conduct that may not have been criminal at a certain time can become so, reflecting changing values and social development, just as certain acts may be decriminalized. It is today widely recognized that the recruitment and active use of child soldiers is an international crime. A century ago, the practice was not necessarily viewed in the same way. There is no indication of prosecution of child soldier offences relating to the Second World War, for example. Similarly, some acts that were once prohibited and that might even be viewed as criminal are now accepted as features of modern warfare.

Second, it is important to bear in mind that, as the judgment of the International Military Tribunal famously stated, ‘crimes against

⁷ *Violations of the Laws and Customs of War, Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, 1919*, Oxford: Clarendon Press, 1919.

international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced'.⁸ Consequently, human longevity means that the inquiry into the perpetration of war crimes becomes quite abstract after about 80 years, bearing in mind the age of criminal responsibility. Writing in 2019, it serves little purpose to consider the international criminality of acts that may have taken place at the end of the nineteenth century or the early years of the twentieth century, given that there is nobody alive who could be subject to punishment.

Statutory limitation of war crimes is prohibited by customary law.⁹ The prohibition of statutory limitation for war crimes has been proclaimed in several resolutions of the United Nations General Assembly.¹⁰ In a diplomatic note to the Government of Iraq in 1991, the Government of the United States declared that 'under International Law, violations of the Geneva Conventions, the Geneva Protocol of 1925, or related International Laws of armed conflict are war crimes, and individuals guilty of such violations may be subject to prosecution at any time, without any statute of limitations. This includes members of the Iraqi armed forces and civilian government officials.'¹¹

IV. SPECIFIC CRIMES

A thorough review of all war crimes is beyond the scope of this chapter, which is focused on those for which allegations have been made that they appear to arise in the case of occupation of Hawai'i. As explained above, war crimes that may have been perpetrated at the time the occupation began cannot today be prosecuted and for this reason these do not receive any detailed attention.

A. Usurpation of sovereignty during occupation

The war crime of 'usurpation of sovereignty during occupation' appears on the list issued by the Commission on Responsibilities. The Commission

⁸ France et al. v. Göring et al., (1948) 22 IMT 411, p. 466.

⁹ Fédération nationale des déportés et internés résistants et patriotes et al. v. Barbie, (1984) 78 ILR 125, at p. 135. Also: France, Assemblée nationale, Rapport d'information déposé en application de l'article 145 du Règlement par la Mission d'information de la Commission de la défense nationale et des forces armées et de la Commission des affaires étrangères, sur les opérations militaires menées par la France, d'autres pays et l'ONU au Rwanda entre 1990 et 1994, 1999, at p. 286.

¹⁰ GA Res. 3 (I); GA Res. 170 (II); GA Res. 2583 (XXIV); GA Res. 2712 (XXV); GA Res. 2840 (XXVI); GA Res. 3020 (XXVII); GA Res. 3074 (XXVIII).

¹¹ Department of State, Diplomatic Note to Iraq, Washington, 19 January 1991, annexed to Letter dated 21 January 1991 to the President of the UN Security Council, UN Doc. S/22122, 21 January 1991, Annex I, p. 2.

did not indicate the source of this crime in treaty law. It would appear to be Article 43 of the Hague Regulations: ‘The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.’

The Annex to the report of the Commission on Responsibilities provides examples of acts deemed to constitute the crime of ‘usurpation of sovereignty during occupation’. The Commission charged that in Poland the German and Austrian forces had ‘prevented the populations from organising themselves to maintain order and public security’ and that they had ‘[a]ided the Bolshevik hordes that invaded the territories’. It said that in Romania the German authorities had instituted German civil courts to try disputes between subjects of the Central Powers or between a subject of these powers and a Romanian, a neutral, or subjects of Germany’s enemies’. In Serbia, the Bulgarian authorities had ‘[p]roclaimed that the Serbian State no longer existed, and that Serbian territory had become Bulgarian’. It listed several other war crimes of Bulgaria committed in occupied Serbia: ‘Serbian law, courts and administration ousted’; ‘Taxes collected under Bulgarian fiscal regime’; ‘Serbian currency suppressed’; ‘Public property removed or destroyed, including books, archives and MSS (e.g., from the National Library, the University Library, Serbian Legation at Sofia, French Consulate at Uskub)’; ‘Prohibited sending Serbian Red Cross to occupied Serbia’. It also charged that in Serbia the German and Austrian authorities had committed several war crimes: ‘The Austrians suspended many Serbian laws and substituted their own, especially in penal matters, in procedure, judicial organisation, etc.’; ‘Museums belonging to the State (e.g., Belgrade, Detchani) were emptied and the contents taken to Vienna’.¹²

The crime of ‘usurpation of sovereignty’ was referred to by Judge Blair of the American Military Commission in a separate opinion in the ‘Justice Case’: ‘This rule is incident to military occupation and was clearly intended to protect the inhabitants of any occupied territory against the unnecessary exercise of sovereignty by a military occupant.’¹³

Article 64 of the fourth Geneva Convention imposes a similar norm:

Art. 64. The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they

¹² Violations of the Laws and Customs of War, Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, 1919, Annex, TNA FO 608/245/4.

¹³ *United States v. Alstötter et al.*, Opinion of Mallory B. Blair, Judge of Military Tribunal III, (1951) III TWC 1178, at p. 1181.

constitute a threat to its security or an obstacle to the application of the present Convention.

Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.

The Commentary to the fourth Geneva Convention describes Article 64 as giving ‘a more precise and detailed form’ to Article 43 of the Hague Regulations.¹⁴

The war crime of ‘usurpation of sovereignty’ has not been included in more recent codifications of war crimes, casting some doubt on its status as a crime under customary international law. Moreover, there do not appear to have been any prosecutions for the crime by international criminal tribunals.

In the situation of Hawai‘i, the usurpation of sovereignty would appear to have been total since the beginning of the twentieth century. It might be argued that usurpation of sovereignty is a continuous offence, committed as long as the usurpation of sovereignty persists. Alternatively, a plausible understanding of the crime is that it consists of discrete acts. Once these acts occur, the crime has been completed. In other words, the actus reus of the crime is the conduct that usurps sovereignty rather than the ongoing situation involving the status of a lack of sovereignty. In this respect, an analogy might be made to the crime against humanity of enforced disappearance, where the temporal dimension has been a matter of some controversy. The Grand Chamber of the European Court of Human Rights has said that disappearance is ‘characterized by an on-going situation of uncertainty and unaccountability in which there is a lack of information or even a deliberate concealment and obfuscation of what has occurred’. Therefore, it is not ‘an “instantaneous” act or event; the additional distinctive element of subsequent failure to account for the whereabouts and fate of the missing person gives rise to a continuing situation.’¹⁵ In

¹⁴ Oscar M. Uhler, Henri Coursier, Frédéric Siordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean-Pierre Schoenholzer, *Commentary IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 1958.

¹⁵ *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 148, ECHR 2009.

order to counteract such an interpretation, the Elements of Crimes of the Rome Statute specify that the widespread or systematic attack associated with the enforced disappearance must have taken place after entry into force of the Statute.¹⁶ Given that there have been no prosecutions for ‘usurpation of sovereignty’ and essentially no clarification at the legislative level or in the academic literature, whether or not the crime is ‘continuing’ remains open to debate.

On the assumption that it is an ongoing crime, the actus reus of the offence of ‘usurpation of sovereignty’ would consist of the imposition of legislation or administrative measures by the occupying power that go beyond those required by what is necessary for military purposes of the occupation. The occupying power may therefore cancel or suspend legislative provisions that concern recruiting or urging the population to resist the occupation, for example.¹⁷ The occupying power may also cancel or suspend legislative provisions that involve discrimination and that are impermissible under current standards of international human rights.

Given that this is essentially a crime involving State action or policy or the action or policies of an occupying State’s proxies, a perpetrator who participated in the act would be required to do so intentionally and with knowledge that the act went beyond what was required for military purposes or the protection of fundamental human rights.

B. Compulsory enlistment of soldiers

The ‘compulsory enlistment of soldiers among the inhabitants of occupied territory’ was listed as a war crime by the Commission on Responsibilities in its 1919 report.¹⁸ In treaty law, authority for the crime is found in Article 23 of the 1907 Hague Regulations: ‘A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent’s service before the commencement of the war.’ The prohibition is repeated, in a somewhat broader manner, in Article 51 of the fourth Geneva Convention of 1949: ‘The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.’ Article 147 of the fourth Convention declares that ‘compelling a protected person to serve in the forces of a hostile Power’ is a grave

¹⁶ Elements of Crimes, Crimes Against Humanity, art. 7(1)(i).

¹⁷ Oscar M. Uhler, Henri Coursier, Frédéric Siordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean-Pierre Schoenholzer, *Commentary IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 1958, p. 336.

¹⁸ *Violations of the Laws and Customs of War, Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, 1919*, Oxford: Clarendon Press, 1919, pp. 17-18.

breach (and therefore a war crime). More recently, the United Nations Security Council listed ‘compelling a ... a civilian to serve in the forces of a hostile power’ among the grave breaches of the fourth Geneva Convention punishable by the International Criminal Tribunal for the former Yugoslavia.¹⁹ There is a similar provision in the Rome Statute of the International Criminal Court: ‘Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power’.²⁰

The Commentary on the fourth Geneva Convention explains that the prohibition on ‘forcing enemy subjects to take up arms against their own country’ is ‘universally recognized in the law of war’.²¹ It says that the object of Article 51 is ‘to protect the inhabitants of the occupied territory from actions offensive to their patriotic feelings or from attempts to undermine their allegiance to their own country’.²² Nevertheless, Article 147 of the Convention does not require that civilians in the occupied territory be forced ‘to take up arms against their own country’. The same can be said of the modern formulations in the statutes of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court. The Elements of Crimes of the Rome Statute, which are intended to assist in the interpretation of its provisions, describe the material element of the war crime of compulsory enlistment as follows: ‘The perpetrator coerced one or more persons, by act or threat, to take part in military operations against that person’s own country or forces or otherwise serve in the forces of a hostile power.’²³ When the Elements of Crimes were being negotiated, some States wanted it to be clearly indicated that the provision did not require the civilian to act against his or her own country. It was felt that an explicit mention was unnecessary and that the issue was addressed adequately with the words ‘or otherwise serve’.²⁴

There do not appear to have been any prosecutions for this crime by international criminal tribunals. The Commission on Responsibilities provided examples of the crime of compulsory enlistment committed by

¹⁹ Statute of the International Criminal Tribunal for the former Yugoslavia, UN Doc. S/RES/827, Annex, Art. 2(e).

²⁰ Rome Statute of the International Criminal Court, (2002) 2187 UNTS 90, Art. 8(2)(a)(v).

²¹ Oscar M. Uhler, Henri Coursier, Frédéric Sordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean-Pierre Schoenholzer, *Commentary IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 1958, p. 293.

²² *Ibid.*, p. 294.

²³ Elements of Crimes, Art. 8(2)(a)(v).

²⁴ Knut Dörmann, ‘Paragraph 2(a)(v): Compelling a protected person to serve in the hostile forces’, in Otto Triffterer and Kai Ambos, eds., *Commentary on the Rome Statute of the International Criminal Court, Observers’ Notes, Article by Article*, 3rd edn., Munich: C.H. Beck, Baden-Baden: Nomos, Oxford: Hart, 2015, pp. 329-331, at p. 330.

Bulgarian authorities in Greece, where ‘[m]any thousands of Greeks [were] forcibly enlisted by Bulgarians’ in Eastern Macedonia’, by Bulgarian authorities in Serbia who ‘[f]orced Serbian subjects to fight in the ranks of Bulgarians against their own country’ and where ‘[f]amilies and villages were held responsible for refusal to enlist (in Eastern Serbia)’, and by Austrian and German authorities in Serbia where ‘Serbian subjects were recruited for the Austrian armies, or were sent to the Bulgarians to be incorporated in their forces’.²⁵

In the author’s opinion, the material elements (*actus reus*) of the crime of ‘compulsory enlistment’ are: coercion, including by means of pressure or propaganda, of nationals of an occupied territory to serve in the forces of the occupying State. The enlistment must be undertaken during armed conflict and the service must have a connection or nexus with the armed conflict. The mental element (*mens rea*) consists of knowledge of the existence of an armed conflict, knowledge that the person recruited is a national of an occupied State, and the intent to enlist or recruit the person for the purposes of serving in an armed conflict.

C. Denationalization

The list of war crimes of the Commission on Responsibilities included ‘[a]ttempts to denationalize the inhabitants of occupied territory’. The crime does not appear to be derived from any specific provision of the Hague Conventions where the notion of denationalization is not apparent. Decades later, discussing the war crime of denationalization, the United Nations War Crimes Commission suggested it was related to Article 43 of the Hague Conventions because it was ‘clearly the duty of belligerent occupants to respect, unless absolutely prevented, the laws in force in the territory’. The Commission also referred to the protection of educational institutions enshrined in Article 56 of the Hague Conventions.²⁶

Under the heading ‘attempts to denationalise the inhabitants of occupied territory’, the Commission on Responsibilities charged several crimes committed in Serbia by the Bulgarian authorities: ‘Efforts to impose their national characteristics on the population’; ‘Serbian language forbidden in private as well as in official relations. People beaten for saying “Good morning” in Serbian’; ‘Inhabitants forced to give their names a Bulgarian form’; ‘Serbian books banned – were systematically destroyed’; ‘Archives of churches and law-courts destroyed’; ‘Schools and churches closed,

²⁵ Violations of the Laws and Customs of War, Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, 1919, Annex, TNA FO 608/245/4.

²⁶ United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War*, London: His Majesty’s Stationery Office, 1948, p. 488. See also Egon Schwelb, ‘Note on the Originality of “Attempts to Denationalize the Inhabitants of Occupied Territory”’ (appendix to Doc. C.I. No. XII) – Question Referred to Committee III by Committee I, UNWCC Doc. III/15.

sometimes destroyed'; 'Bulgarian schools and churches substituted – attendance at school made compulsory'; 'Population forced to be present at Bulgarian national solemnities'. It also said that in Serbia the Austrian and German authorities 'interfered with religious worship, by deportation of priests and requisition of churches for military purposes. Interfered with use of Serbian language'.²⁷

The war crime of denationalization received some attention during the post-Second World War period. The United Nations War Crimes Commission used the list of war crimes adopted by the 1919 Commission on Responsibilities as a basis for its consideration of war crimes. However, it also discussed the relevance of the list and considered specifically the nature of the war crime of 'denationalization'. Unlike many other war crimes that constituted in and of themselves criminal acts under ordinary criminal law, 'denationalization' might involve underlying conduct that was not normally or inherently criminal, such as administrative measures governing language of education. In an expert opinion for the Commission, Egon Schwelb wrote:

It is submitted that each case will have to be judged on its own merits. The 'denationalization' may be either effected or accompanied by acts on the part of the occupying authorities, which are criminal *per se*. There may, on the other hand, exist circumstances which do not let the activities appear criminal, though they, no doubt, are illegal. An example of the latter type of 'attempts at denationalization' may exist where the occupation authorities do not close the existing schools and do not prevent parents from sending their children to them either by actual violence, or by threat, but where they try to bribe parents into sending children to schools instituted by the occupant by offering various advantages, like better school meals, clothing, etc.

In his report to the United Nations War Crimes Commission dated 28 September 1945, Bohuslav Ečer argued that 'denationalisation' was not only a war crime but also 'a genuine international crime – a crime against the very foundations of the Community of Nations'.²⁸

This discussion must be understood in the context of legal debates about the time about the creation of new categories of international crime, specifically crimes against humanity and genocide, neither of which had been contemplated by the 1919 Commission on Responsibilities. The scholar who devised the term 'genocide', Raphael Lemkin, writing in late 1944 referred to the inadequacies of the Hague Conventions in dealing with the scope of Nazi atrocity directed at minority groups. Lemkin

²⁷ Violations of the Laws and Customs of War, Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, 1919, Annex, TNA FO 608/245/4.

²⁸ Preliminary Report by the Chairman of Committee III, UNWCC Doc. C/148, p. 3.

considered that the Hague Regulations dealt with technical rules concerning occupation but he said ‘they are silent regarding the preservation of the integrity of a people’.²⁹ Lemkin specifically acknowledged the war crime of denationalization in the list of the Commission on Responsibilities, saying it was ‘used in the past to describe the destruction of a national pattern’. He said it was inadequate in three respects: it did not ‘connote the destruction of the biological structure’, ‘in connoting the destruction of one national pattern it does not connote the imposition of the national pattern of the oppressor’ and ‘denationalization is used by some authors to mean only deprivation of citizenship’.³⁰

The United Nations War Crimes Commission discussed the war crime of denationalization in the note accompanying the judgment in the *Greifelt et al.* case. The Commission referred to the list of war crimes in the report of the 1919 Commission on Responsibility, observing that

[a]ttempts of this nature were recognized as a war crime in view of the German policy in territories annexed by Germany in 1914, such as in Alsace and Lorraine. At that time, as during the war of 1939-1945, inhabitants of an occupied territory were subjected to measures intended to deprive them of their national characteristics and to make the land and population affected a German province. The methods applied by the Nazis in Poland and other occupied territories, including once more Alsace and Lorraine, were of a similar nature with the sole difference that they were more ruthless and wider in scope than in 1914-1918. In this connection the policy of ‘Germanizing’ the populations concerned, as shown by the evidence in the trial under review, consisted partly in forcibly denationalizing given classes or groups of the local population, such as Poles, Alsace-Lorrainers, Slovenes and others eligible for Germanization under the German People's List. As a result in these cases the programme of genocide was being achieved through acts which, in themselves, constitute war crimes.³¹

Evidence in the *Greifelt et al.* case dealt with Nazi policies in occupied Poland aimed at ‘Germanization’. These included measures to prevent births and measures of population displacement that might today be described as ‘ethnic cleansing’. The *History of the United Nations War Crimes Commission* also refers to attempts at denationalization conducted by both Italian and German occupation authorities in Greece, Poland and Yugoslavia. These were directed at ‘uproot[ing] and destroy[ing] national cultural institutions and national feeling. The effort took various forms

²⁹ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, Washington DC: Carnegie Endowment for World Peace, 1944, p. 90.

³⁰ *Ibid.*, p. 80.

³¹ *United States v. Greifelt et al.*, (1948) 13 LRTWC 1, 42 (United States Military Tribunal).

including a ban on the use of native language, supervision of the schools, forbidding the publication of native language newspapers, and various other devices and regulations.³²

Denationalization does not appear in any of the modern codifications of war crimes. This is explained by the development of robust bodies of international criminal law and international human rights law dealing with the protection of groups and minorities, applicable in time of peace and in time of war. Acts of ‘denationalization’ as the concept was understood by the 1919 Commission on Responsibilities and the post-Second World War United Nations War Crimes Commission would today be prosecuted as the crime against humanity of persecution and, in the most extreme cases, where physical ‘denationalization’ is involved, genocide.

There are similar concerns about the continuing nature of the crime as those expressed above with respect to the war crime of usurping sovereignty.

On the assumption that it is an ongoing crime, the actus reus of the offence of ‘denationalization’ consists of the imposition of legislation or administrative measures by the occupying power directed at the destruction of the national identity and national consciousness of the population.³³

Given that this is essentially a crime involving State action or policy or the action or policies of an occupying State’s proxies, a perpetrator who participated in the act would be required to do so intentionally and with knowledge that the act was directed at the destruction of the national identity and national consciousness of the population.

D. Pillage

‘Pillage’ is a war crime included in the list of the 1919 Commission on Responsibilities.³⁴ It is derived from Articles 28 and 47 of the Hague Regulations. Prohibition of pillaging is also set out in Article 33 of the fourth Geneva Convention (‘Pillage is prohibited’). In the modern era,

³² United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War*, London: His Majesty’s Stationery Office, 1948, p. 488.

³³ Oscar M. Uhler, Henri Coursier, Frédéric Siordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean-Pierre Schoenholzer, *Commentary IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 1958, p. 336.

³⁴ *Violations of the Laws and Customs of War, Reports of Majority and Dissenting Reports of American and Japanese Members of the Commission of Responsibilities, Conference of Paris, 1919*, Oxford: Clarendon Press, 1919, pp. 17-18.

pillage is a war crime punishable by the International Criminal Court.³⁵ Acts of ‘pillage’ have been held to be comprised within ‘plunder’,³⁶ and the two terms have often been treated as if they are synonyms.³⁷ The Charter of the International Military Tribunal referred to ‘plunder of public or private property’ rather than to ‘pillage’. This provision was repeated in article 3(e) of the Statute of the International Criminal Tribunal for the former Yugoslavia.³⁸ The Commentary to the fourth Geneva Convention explains that international law is concerned not only with ‘pillage through individual acts without the consent of the military authorities, but also organized pillage, the effects of which are recounted in the histories of former wars, when the booty allocated to each soldier was considered as part of his pay’.³⁹

‘Pillage’ is also subject to prosecution by the International Criminal Tribunal for Rwanda.⁴⁰ The Elements of Crimes of the Rome Statute of the International Criminal Court provide important additional criteria: the perpetrator appropriated certain property; the perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use; the appropriation was without the consent of the owner.⁴¹ A footnote in the Elements of Crime specifies that ‘appropriations justified by military necessity cannot constitute the crime of pillaging’.

The war crime of pillage has been interpreted recently by various international criminal tribunals, notably the International Criminal Court. One of its Pre-Trial Chambers wrote that the war crime of pillage ‘entails a somewhat large-scale appropriation of all types of property, such as public or private, movable or immovable property, which goes beyond

³⁵ Rome Statute of the International Criminal Court, (2002) 2187 UNTS 90, Art. 8(2)(b)(xvi).

³⁶ *Prosecutor v. Blaškić* (IT-95-14-A) Judgment, 29 July 2004, para. 147; *Prosecutor v. Delalić* (IT-96-21-A), Judgment, 20 February 2001, para. 591; *Prosecutor v. Kordić et al.* (IT-95-14/2-A), Judgment, 17 December 2004, para. 77.

³⁷ *Prosecutor v. Brima et al.* (SCSL-04-16-T), Judgment, 20 June 2007, para. 751.

³⁸ UN Doc. S/RES/827 (1993).

³⁹ Oscar M. Uhler, Henri Coursier, Frédéric Siordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean-Pierre Schoenholzer, *Commentary IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 1958, p. 226.

⁴⁰ Statute of the International Criminal Tribunal for Rwanda, UN Doc. S/RES/955 (1994), annex, art. 4(f).

⁴¹ Elements of Crimes, War Crimes, Article 8(2)(b)(xvi), War crime of pillaging, paras. 1–3; Elements of Crimes, War Crimes, Article 8(2)(e)(v), War crime of pillaging, paras. 1–3.

mere sporadic acts of violation of property rights'.⁴² With specific reference to the Rome Statute, which limits its jurisdiction to war crimes that are 'serious', the Pre-Trial Chamber said that 'cases of petty property expropriation' might not be within the scope of the provision. 'A determination on the seriousness of the violation is made by the Chamber in light of the particular circumstances of the case', it said.⁴³ Subsequently, however, a Trial Chamber of the Court discouraged the notion that there is any particular gravity threshold for the crime of pillaging.⁴⁴ The Chamber said it would determine a violation to be serious 'where, for example, pillaging had significant consequences for the victims, even where such consequences are not of the same gravity for all the victims, or where a large number of persons were deprived of their property'.⁴⁵ Judgments of the International Criminal Tribunal for the former Yugoslavia hold that 'all forms of seizure of public or private property constitute acts of appropriation, including isolated acts committed by individual soldiers for their private gain and acts committed as part of a systematic campaign to economically exploit a targeted area'.⁴⁶

Because it must belong to an 'enemy' or 'hostile' party, 'pillaged property—whether moveable or immoveable, private or public—must belong to individuals or entities who are aligned with or whose allegiance is to a party to the conflict who is adverse or hostile to the perpetrator'.⁴⁷ The same requirement is not explicitly imposed with respect to the war crime of destruction of property but the view that this is implicit finds support.⁴⁸ It is not excluded that the property that is pillaged belongs to combatants.⁴⁹ The crime of pillage occurs when the property has come under the control of the perpetrator, because it is only then that he or she can 'appropriate' the property.⁵⁰

⁴² *Prosecutor v. Bemba* (ICC-01/05-01/08), Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para. 317.

⁴³ *Ibid.*

⁴⁴ *Prosecutor v. Katanga* (ICC-01/04-01/07), Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 908.

⁴⁵ *Ibid.*

⁴⁶ *Prosecutor v. Gotovina* (IT-06-90-T), Judgment, 15 April 2011, para. 1778.

⁴⁷ *Prosecutor v. Katanga et al.* (ICC-01/04-01/07), Decision on the Confirmation of the Charges, 30 September 2008, para. 329.

⁴⁸ *Ibid.*, fn. 430.

⁴⁹ *Prosecutor v. Katanga* (ICC-01/04-01/07), Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 907.

⁵⁰ *Prosecutor v. Katanga et al.* (ICC-01/04-01/07), Decision on the Confirmation of the Charges, 30 September 2008, para. 330.

In *Prosecutor v. Katanga*, a Trial Chamber of the International Criminal Court said ‘the pillaging of a town or place comprises all forms of appropriation, public or private, including not only organised and systematic appropriation, but also acts of appropriation committed by combatants in their own interest’.⁵¹ There is some old authority for the view that pillage entails an element of force or violence,⁵² but this is not confirmed by recent case law. The Elements of Crimes of the Rome Statute specify that the perpetrator ‘intended to deprive the owner of the property and to appropriate it for private or personal use’.⁵³ An accompanying footnote specifies that ‘[a]s indicated by the use of the term “private or personal use”, appropriations justified by military necessity cannot constitute the crime of pillaging’.⁵⁴ The Rome Statute provision on pillage was copied into the Statute of the Special Court for Sierra Leone, and has been interpreted by one of its Trial Chambers, which explained: ‘The inclusion of the words “private or personal use” excludes the possibility that appropriations justified by military necessity might fall within the definition. Nevertheless, the definition is framed to apply to a broad range of situations.’⁵⁵ The Special Court was of the view that the requirement of ‘private or personal use’, imposed by the Elements of Crimes applicable to the Rome Statute, was ‘unduly restrictive and ought not to be an element of the crime of pillage’.⁵⁶

The *actus reus* of pillage consists of the appropriation of property belonging to members of the civilian population without the consent of the owner. Whether the appropriation must also be for personal use of the perpetrator is a matter of debate. The *mens rea* requires that the perpetrator act with the specific intent of depriving the owner of the property without consent.

⁵¹ *Prosecutor v. Katanga* (ICC-01/04-01/07), Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 905.

⁵² See Andreas Zimmermann, ‘Pillage’, in Otto Triffterer, ed., *Commentary on the Rome Statute of the International Criminal Court, Observers’ Notes, Article by Article*, Baden-Baden: Nomos, 1999, p. 237, at 238.

⁵³ Elements of Crimes, War Crimes, Article 8(2)(b)(xvi), War crime of pillaging, para. 2; Elements of Crimes, War Crimes, Article 8(2)(e)(v), War crime of pillaging, para. 2.

⁵⁴ Elements of Crimes, War Crimes, Article 8(2)(b)(xvi), War crime of pillaging, para. 2, fn. 47; Elements of Crimes, War Crimes, Article 8(2)(e)(v), War crime of pillaging, para. 2, fn. 61. See *Prosecutor v. Katanga* (ICC-01/04-01/07), Judgment pursuant to article 74 of the Statute, 7 March 2014, para. 906.

⁵⁵ *Prosecutor v. Brima et al.* (SCSL-04-16-T), Judgment, 20 June 2007, para. 753.

⁵⁶ *Ibid.*, para. 754. Also: *Prosecutor v. Brima et al.* (SCSL-2004-16-T), Decision on Defence Motions for Judgment of Acquittal Pursuant to Rule 98, 31 March 2006, paras. 241–243.

E. Confiscation and Destruction of Property

Confiscation of property is included in the list of war crimes adopted by the 1919 Commission on Responsibilities. It appears to be derived from Article 55 of the Hague Regulations: ‘Exaction of illegitimate or of exorbitant contributions and regulations: ‘The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied territory. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.’

The fourth Geneva Convention lists as a grave breach the ‘extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly’. It is derived from a number of provisions of the Convention that mainly concern attacks in the course of armed conflict and the conduct of hostilities, a matter that is not of concern in this legal opinion. With respect to occupied territory, the relevant provision is Article 53: ‘Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.’ The Commentary to the fourth Convention observes:

In the very wide sense in which the Article must be understood, the prohibition covers the destruction of all property (real or personal), whether it is the private property of protected persons (owned individually or collectively), State property, that of the public authorities (districts, municipalities, provinces, etc.) or of co-operative organizations. The extension of protection to public property and to goods owned collectively, reinforces the rule already laid down in the Hague Regulations, Articles 46 and 56 according to which private property and the property of municipalities and of institutions dedicated to religion, charity and education, the arts and sciences must be respected.⁵⁷

The grave breach of ‘extensive destruction and appropriation of property’ is included in the Statute of the International Criminal Tribunal for the former Yugoslavia and the Rome Statute of the International Criminal Court.⁵⁸

The Prosecutor considered charging this offence in the *Gaza flotilla situation*, based on confiscation by Israeli military personnel of the

⁵⁷ Oscar M. Uhler, Henri Coursier, Frédéric Siordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean-Pierre Schoenholzer, *Commentary IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 1958, p. 301.

⁵⁸ Rome Statute of the International Criminal Court, (2002) 2187 UNTS 90, Art. 8(2)(a)(iv).

belongings of passengers on the humanitarian relief ship *Mavi Marmara*, such as cameras, mobile phones, laptop computers, MP3 players, recording devices, cash, credit cards, identity cards, watches, jewellery and clothing. Only a portion of the property was returned, some of it in a damaged or incomplete state. The Prosecutor said that some of the Israeli soldiers ‘may have unlawfully and wantonly appropriated the personal property and belongings’, noting that it was not possible to justify the taking of some of this property on grounds of military necessity. Some of this property, such as cash, jewellery and personal electronic devices, did not fall within the scope of article 8(2)(a)(iv), according to the Prosecutor. She explained that although Article 53 of the fourth Geneva Convention refers to real or personal property belonging individually to private persons, the reference only applies in the context of destruction and not appropriation, noting that ‘it is not evident that this grave breach was intended to encompass appropriation of personal property belonging to private individuals’. The Prosecutor also noted that appropriation within the meaning of article 8(2)(a)(iv) must be ‘extensive’ and therefore did not generally apply to an isolated act or incident although each assessment would have to be made on a case by case basis.⁵⁹

The actus reus consists of an act of confiscation or destruction of property in an occupied territory, be it that belonging to the State or individuals. The mens rea requires that the perpetrator act with intent to confiscate or destroy the property and with knowledge that the owner of the property was the State or an individual.

F. Exaction of illegitimate or exorbitant contributions

The war crime of ‘exaction of illegitimate or of exorbitant contributions and regulations’ is included in the list of war crimes of the 1919 Commission on Responsibilities. It is derived from Article 48 of the Hague Regulations: ‘If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.’ The fourth Geneva Convention does not address this issue. It does not appear to have been considered a war crime since its inclusion in the list of the Committee on Responsibilities in 1919 making its status as a war crime under international law rather questionable.

⁵⁹ *Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia* (ICC-01/13), Decision on the request of the Union of the Comoros to review the Prosecutor’s decision not to initiate an investigation, 16 July 2015, paras. 83-89.

G. Deprivation of Fair and Regular Trial

Wilful deprivation of the right of fair and regular trial for a non-combatant civilian is a grave breach under the fourth Geneva Convention. It is not comprised in the list of the 1919 Commission of Responsibilities. It is a war crime listed in the Statute of the International Criminal Tribunal for the former Yugoslavia and the Rome Statute of the International Criminal Court. There are a number of examples of post-Second World War prosecutions based upon the holding of unfair trials,⁶⁰ including the well-known *Justice case* of Nazi jurists by a United States Military Tribunal.⁶¹ There do not appear to have been any prosecutions under this provision by international criminal tribunals in the modern period.

It would appear that the provision applies principally to the fairness of the proceedings. In this context, detailed standards are set out in a number of international instruments, most notably in Article 14 of the International Covenant on Civil and Political Rights. It is also required that the tribunal in question be independent, impartial and regularly constituted. According to the Customary Law Study of the International Committee of the Red Cross, '[a] court is regularly constituted if it has been established and organised in accordance with the laws and procedures already in force in a country'.⁶² However, it seems clear that if the courts of the occupying power were regularly constituted under international law, the trials held before them are not inherently defective. This can be seen in Article 66 of the fourth Geneva Convention which acknowledges the right of the occupying power to subject accused persons 'to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied country'.

The *actus reus* of the war crime of deprivation of the right of fair and regular trial consists of depriving one or more persons of fair and regular trial by denying judicial guarantees recognized under international law, including those of the fourth Geneva Convention and the International Covenant on Civil and Political Rights.

The *mens rea* requires that the accused person acted intentionally and with knowledge that the person allegedly deprived of the right to fair trial was a civilian of the occupied territory.

⁶⁰ See the authorities cited in Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Law, Vol. I: Rules, Cambridge: Cambridge University Press, 2005, p. 352, fn. 327.

⁶¹ United States of America v. Alstötter et al. ('The Justice case'), (1948) 3 TWC 954.

⁶² Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Law, Vol. I: Rules, Cambridge: Cambridge University Press, 2005, p. 355.

H. Unlawful deportation or transfer of civilians of the occupied territory

‘Deportation of civilians’ is a war crime listed in the Report of the 1919 Commission on Responsibilities. It reflects a prohibition under customary law, set out in writing as early as the Lieber Code, which was adopted by President Lincoln during the Civil War: ‘private citizens are no longer . . . carried off to distant parts’.⁶³ Curiously, the prohibition was not explicit in the Hague Regulations. Widespread outrage at German deportations of Belgians who were forced to work in slave-like conditions probably prompted the addition to the list by the Commission on Responsibilities. The Charter of the International Military Tribunal criminalizes ‘deportation to slave labour or for any other purpose of civilian population of or in occupied territory’.⁶⁴ The grave breach of ‘unlawful deportation or transfer or unlawful confinement’ of a non-combatant civilian is set out in Article 147 of the fourth Geneva Convention. The prohibition on such deportation or transfer is found in Article 49 of the Convention: ‘Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.’

No exception is allowed, for example, in the case of prisoners who are convicted of crimes perpetrated in the occupied territory that would allow them to be sent to serve their sentence on the territory of the occupying power. Nevertheless, the Israeli authorities have deported or transferred many Palestinian nationals from the Occupied Palestinian Territory to serve custodial sentences within Israel proper. The Supreme Court of Israel has held that the prohibition of deportation or transfer in Article 49 of the Convention does not apply to the deportation of selected individuals for reasons of public order and security,⁶⁵ but this is an isolated view.

The grave breach of deporting civilians is included in the Statute of the International Criminal Tribunal for the former Yugoslavia and the Rome Statute of the International Criminal Court. The Elements of Crimes of the Rome Statute specify that the crime is committed by the deportation or transfer of one or more persons ‘to another State or to another location’.

The *actus reus* of the offence involves the transfer of a non-combatant civilian to another State, including the occupying State, or to another

⁶³ Instructions for the Government of Armies of the United States in the Field (‘Lieber Code’), Art. 23.

⁶⁴ Charter of the International Military Tribunal (IMT), (1951) 82 UNTS 279, annex, Art. VI(b).

⁶⁵ See Ruth Lapidoth, ‘The Expulsion of Civilians from Areas which came under Israeli Control in 1967: Some Legal Issues’, (1990) 2 *European Journal of International Law* 97, at pp. 106-108; Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law*, Oxford: Oxford University Press, 1989, p. 46.

location within the occupied territory. The *mens rea* requires that the perpetrator act intentionally and that the perpetrator have knowledge of the fact that the person being deported or transferred is a non-combatant civilian.

I. *Unlawful transfer of populations to the occupied territory*

Article 49(6) of the fourth Geneva Convention reads: ‘The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.’ Violation of article 49(6) of the fourth Geneva Convention, ‘when committed wilfully and in violation of the Conventions or the Protocol’, is deemed a ‘grave breach’ by Additional Protocol I to the Geneva Conventions, adopted in 1977. The grave breach is incorporated into the Rome Statute, where the words ‘directly or indirectly’ have been added to the text of Additional Protocol I: ‘The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.’⁶⁶ The word ‘indirectly’ is aimed at a situation where the occupying power does not actually organize the transfer of populations, but does not take effective measures to prevent this.⁶⁷

According to the Commentary to the fourth Geneva Convention, the prohibition ‘is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race.’⁶⁸ In recent decades, there have been occurrences of such population transfers, widely condemned, in the Occupied Palestinian Territory and in Northern Cyprus. In 1980, the United Nations Security Council adopted a resolution declaring that ‘Israel’s policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and also constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East’.⁶⁹

⁶⁶ Rome Statute of the International Criminal Court, (2002) 2187 UNTS 90, Art. 8(2)(b)(viii).

⁶⁷ Herman von Hebel and Darryl Robinson, ‘Crimes Within the Jurisdiction of the Court’, in Roy S. Lee, ed., *The International Criminal Court, The Making of the Rome Statute, Issues, Negotiations, Results*, The Hague/London/Boston: Kluwer Law International, 1999, pp. 79–126, at p. 113.

⁶⁸ Oscar M. Uhler, Henri Coursier, Frédéric Sordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean-Pierre Schoenholzer, *Commentary IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 1958, p. 283.

⁶⁹ UN Doc. S/RES/465 (1980), OP 5.

The Commentary to the Geneva Conventions notes that the words ‘transfer’ and ‘deport’ have a different meaning than they do elsewhere in article 49, in that they do not contemplate the movement of protected persons but rather nationals of the occupying Power.⁷⁰ Belligerent occupation is a temporary situation and not the prelude to annexation. For this reason, the Occupying Power must not change the demographic, social and political situation in the territory it has occupied to the social and economic detriment of the population living in the occupied territory. Discussing article 49(6) of the fourth Geneva Convention, the International Court of Justice stated that the provision ‘prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory’.⁷¹

V. CONCLUSIONS

This opinion has examined the application of the international law of war crimes to the United States occupation of the Hawaiian Kingdom since 17 January 1893. It has identified the sources of this body of law in both treaty and custom, and described the two elements – *actus reus* and *mens rea* – with respect to the relevant crimes.

The Elements of Crimes is one of the legal instruments applicable to the International Criminal Court. The initial draft of the Elements was prepared by the United States, which participated actively in negotiation of the final text and joined the consensus when the text was finalized. It provides a useful template for summarizing the *actus reus* and *mens rea* of international crimes. It has been relied upon in producing the following summary of the crimes discussed in this report:

General

With respect to the last two elements listed for each crime:

1. There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character as international or non-international;
2. In that context there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non-international law;

⁷⁰ Oscar M. Uhler, Henri Coursier, Frédéric Siordet, Claude Pilloud, Roger Boppe, René-Jean Wilhelm and Jean-Pierre Schoenholzer, *Commentary IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva: International Committee of the Red Cross, 1958, p. 283.

⁷¹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 120.

3. There is only a requirement for the awareness of the factual circumstances that established the existence of an armed conflict that is implicit in the terms “took place in the context of and was associated with.”

Elements of the war crime of usurpation of sovereignty during occupation

1. The perpetrator imposed or applied legislative or administrative measures of the occupying power going beyond those required by what is necessary for military purposes of the occupation.
2. The perpetrator was aware that the measures went beyond what was required for military purposes or the protection of fundamental human rights.
3. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

Elements of the war crime of compulsory enlistment

1. The perpetrator recruited through coercion, including by means of pressure or propaganda, of nationals of an occupied territory to serve in the forces of the occupying State.
2. The perpetrator was aware the person recruited was a national of an occupied State, and the purpose of recruitment was service in an armed conflict.
3. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

Elements of the war crime of denationalization

1. The perpetrator participated in the imposition or application of legislative or administrative measures of the occupying power directed at the destruction of the national identity and national consciousness of the population.
2. The perpetrator was aware that the measures were directed at the destruction of the national identity and national consciousness of the population.
3. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
4. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

Elements of the war crime of pillage

1. The perpetrator appropriated certain property.

2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.
3. The appropriation was without the consent of the owner.
4. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

Elements of the war crime of confiscation or destruction of property

1. The perpetrator confiscated or destroyed property in an occupied territory, be it that belonging to the State or individuals.
2. The confiscation or destruction was not justified by military purposes of the occupation or by the public interest.
3. The perpetrator was aware that the owner of the property was the State or an individual and that the act of confiscation or destruction was not justified by military purposes of the occupation or by the public interest.
4. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

Elements of the war crime of deprivation of fair and regular trial

1. The perpetrator deprived one or more persons in an occupied territory of fair and regular trial by denying judicial guarantees recognized under international law, including those of the fourth Geneva Convention and the International Covenant on Civil and Political Rights.
2. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
3. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

Elements of the war crime of deporting civilians of the occupied territory

1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons in the occupied State to another State or location, including the occupying State, or to another location within the occupied territory, by expulsion or coercive acts.
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

Elements of the war crime of transferring populations into an occupied territory

1. The perpetrator transferred, directly or indirectly, parts of the population of the occupying State into the occupied territory.
2. The conduct took place in the context of and was associated with an occupation resulting from international armed conflict.
3. The perpetrator was aware of factual circumstances that established the existence of the armed conflict and subsequent occupation.

25 July 2019

William A. Schabas
Professor of international law

Enclosure “3”

DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
REPORT OF SEPARATION AND RECORD OF SERVICE

REPORT OF SEPARATION AND RECORD OF SERVICE IN THE 1 ARMY NATIONAL GUARD OF HAWAII ~~AND AS A~~ RESERVE OF THE 2

1. Insert either Army or Air 2. Enlisted personnel only - Insert only Army or Air Force

1. LAST NAME - FIRST NAME - MIDDLE NAME SAI DAVID KEANU	2. DEPARTMENT, COMPONENT AND BRANCH ARNGUS/HIARNG	3. SOCIAL SECURITY NUMBER [REDACTED]
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4. DATE OF ENL	YR	MO	DA	5a. RANK CPT	5b. PAY GRADE 03	6. DATE OF RANK	YR	MO	DA	7. DATE OF BIRTH	YR	MO	DA
		NA					90	01	08		64	07	13

8a. STATION OR INSTALLATION AT WHICH EFFECTED BTRY C, 1st Bn, 487th FA, Wahiawa, HI 96786-4053	8b. EFFECTIVE DATE 94 08 01
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9. COMMAND TO WHICH TRANSFERRED USAR Control Group (Reinforcement) ARPERCEN 9700 Page Boulevard St Louis, MO 63132-5200	10. RECORD OF SERVICE	YRS	MOS	DAYS
	(a) NET SERVICE THIS PERIOD	09	10	27
	(b) PRIOR RESERVE COMPONENT SERVICE	00	03	25
	(c) PRIOR ACTIVE FEDERAL SERVICE	00	00	00

11. TERMINAL DATE OF RESERVE / MILITARY SERVICE OBLIGATION	YR	MO	DA	(d) TOTAL SERVICE FOR PAY
		NA		10 07 22

12. MILITARY EDUCATION (Course Title, number of weeks, month and year completed) FA OBC, 22wks, 8709; Air Opns Off, 2wks, 9010; FA OAC, 15wks, 9012.	13. PRIMARY SPECIALITY NUMBER, TITLE AND DATE AWARDED (Additional speciality numbers and titles) 13E, Cannon Field Artillery, 870910. 5U, Air Opns Off, 901001.
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14. HIGHEST EDUCATION LEVEL SUCCESSFULLY COMPLETED SECONDARY / HIGH SCHOOL <u>12</u> YRS (Gr 1-12) COLLEGE <u>2</u> YRS	15. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED THIS PERIOD (State Awards may be Included) ARMY-SVC-RBN/ARCOTR/AR-COMP-ACHVMT-MDL-2(920904)/NTL-DEF-SVC-MDL//
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16. SERVICEMAN'S GROUP LIFE INSURANCE COV <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO AMT \$ <u>200,000</u>	17. PERSONNEL SECURITY INVESTIGATION a. TYPE NAC b. DATE COMPLETED 821122	15. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED THIS PERIOD (State Awards may be Included) ARMY-SVC-RBN/ARCOTR/AR-COMP-ACHVMT-MDL-2(920904)/NTL-DEF-SVC-MDL//
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18. REMARKS
Date of Apointment: 840905 ADT: 870424-870911; 900909-901219

NGB Form 22 and orders were mailed by certified mail to the individual's last known address as shown in item 19.

19. MAILING ADDRESS AFTER SEPARATION (Street, RFD, City, County, State and Zip Code) [REDACTED]	20. SIGNATURE OF PERSON BEING SEPARATED SOLDIER NOT AVAILABLE TO SIGN
--	--

21. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER DONNIE L. SANDERS, CW2 Personnel Records Chief	22. SIGNATURE OF OFFICER AUTHORIZED TO SIGN 
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23. AUTHORITY AND REASON Para 5a(3), NGR 635-100; Resignation from ARNG
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24. CHARACTER OF SERVICE HONORABLE	25. TYPE OF CERTIFICATE USED NA	26. REENLISTMENT ELIGIBILITY
---------------------------------------	------------------------------------	------------------------------

27. REQUEST DECLINE COPIES OF MY NGB FORM 22 INITIALS _____

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) SAI DAVID KEANU	2. DEPARTMENT, COMPONENT AND BRANCH ARMY/ARNG/FA	3. SOCIAL SECURITY NO. [REDACTED]
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4.a. GRADE, RATE OR RANK CPT	4.b. PAY GRADE O-3	5. DATE OF BIRTH (YYMMDD) 640713	6. RESERVE OBLIG. TERM. DATE Year 00 Month 00 Day 00
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7.a. PLACE OF ENTRY INTO ACTIVE DUTY [REDACTED]	7.b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete) [REDACTED]
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8.a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND HHE 3D BN 30TH FA TRADOC TC	8.b. STATION WHERE SEPARATED FORT SILL, OK
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9. COMMAND TO WHICH TRANSFERRED HHS BTRY 1ST BN 487TH FA, 3949 DIAMOND HEAD ROAD, HONOLULU, HI 96816-4495	10. SGLI COVERAGE None Amount: \$ 50000
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11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 13E, CANNON FIELD ARTILLERY OFFICER// NOTHING FOLLOWS	12. RECORD OF SERVICE
	Year(s) Month(s) Day(s)
	a. Date Entered AD This Period 90 09 08
	b. Separation Date This Period 90 12 19
	c. Net Active Service This Period 00 03 12
	d. Total Prior Active Service 00 04 18
	e. Total Prior Inactive Service 05 11 10
	f. Foreign Service 00 00 00
	g. Sea Service 00 00 00
	h. Effective Date of Pay Grade 90 01 08

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service)
ARMY SERVICE RIBBON//ARMY RESERVE COMPONENTS OVERSEAS TRAINING RIBBON//ARMY RESERVE COMPONENTS ACHIEVEMENT MEDAL//SHARPSHOOTER (RIFLE M-16)//NOTHING FOLLOWS

14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed)
NONE//NOTHING FOLLOWS

15.a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM	Yes	No	15.b. HIGH SCHOOL GRADUATE OR EQUIVALENT	Yes	No	16. DAYS ACCRUED LEAVE PAID 9.0
	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input type="checkbox"/>	

17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION Yes No

18. REMARKS **NONE//NOTHING FOLLOWS**

19.a. MAILING ADDRESS AFTER SEPARATION (Include Zip Code) [REDACTED]	19.b. NEAREST RELATIVE (Name and address - include Zip Code) SAME AS 19A.
---	---

20. MEMBER REQUESTS COPY 6 BE SENT TO HI DIR. OF VET AFFAIRS <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature) R. A. HOLYBEE, GS9, C; TRANSITION MG
21. SIGNATURE OF MEMBER BEING SEPARATED <i>David Keanu SAI</i>	

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION RELIEF FROM ADT	24. CHARACTER OF SERVICE (Include upgrades) HONORABLE
25. SEPARATION AUTHORITY SELF TERM ORDER 057-039 29 MAR 90 FAOAC-RC 3-90	26. SEPARATION CODE NA
27. REENTRY CODE NA	28. NARRATIVE REASON FOR SEPARATION COMPLETION OF PERIOD OF ADT
29. DATES OF TIME LOST DURING THIS PERIOD NONE	30. MEMBER REQUESTS COPY 4 Initials

DD FORM 1 JUL 79 214		PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.		CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY	
1. NAME (Last, first, middle) SAL. DAVID KEANU		2. DEPARTMENT, COMPONENT AND BRANCH ARMY/ ARNG/FA		3. SOCIAL SECURITY NO. [REDACTED]	
4a. GRADE, RATE OR RANK 2LT	4b. PAY GRADE 01	5. DATE OF BIRTH 640713	6. PLACE OF ENTRY INTO ACTIVE DUTY HONOLULU, HI		
7. LAST DUTY ASSIGNMENT AND MAJOR COMMAND D BTRY OFF STU BN TRADOC TC			8. STATION WHERE SEPARATED FORT SILL, OK		
9. COMMAND TO WHICH TRANSFERRED THE ADJUTANT GENERAL STATE OF HAWAII 3949 DIAMOND HEAD ROAD, FT RUGERM HONOLULU, HI 96816			10. SGLI COVERAGE AMOUNT \$ 50 000 <input type="checkbox"/> NONE		
11. PRIMARY SPECIALTY NUMBER, TITLE AND YEARS AND MONTHS IN SPECIALTY (Additional specialty numbers and titles involving periods of one or more years) 13E, CANNON FIELD ARTILLERY OFFICER// NOTHING FOLLOWS		12. RECORD OF SERVICE			
		a. Date Entered AD This Period	87	04	24
		b. Separation Date This Period	87	09	11
		c. Net Active Service This Period	00	04	18
		d. Total Prior Active Service	00	00	00
		e. Total Prior Inactive Service	02	11	14
		f. Foreign Service	00	00	00
		g. Sea Service	00	00	00
		h. Effective Date of Pay Grade	84	05	19
		i. Reserve Oblig. Term. Date	90	05	09
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) ARMY SERVICE RIBBON// NOTHING FOLLOWS					
14. MILITARY EDUCATION (Course Title, number weeks, and month and year completed) NONE//NOTHING FOLLOWS					
15. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		16. HIGH SCHOOL GRADUATE OR EQUIVALENT <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		17. DAYS ACCRUED LEAVE PAID 11 1/2	
18. REMARKS NONE//NOTHING FOLLOWS					
19. MAILING ADDRESS AFTER SEPARATION [REDACTED]			20. MEMBER REQUESTS COPY 6 BE SENT TO HI DIR. OF VET AFFAIRS <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
21. SIGNATURE OF MEMBER BEING SEPARATED <i>David Keanu</i>		22. TYPED NAME, GRADE, TITLE AND SIGNATURE OF OFFICIAL AUTHORIZED TO SIGN W.L. NYLAND, MSG, USA, NTCIC, DEPS, ENOC BRANCH <i>[Signature]</i>			

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION RELIEF FROM ADT		24. CHARACTER OF SERVICE (Includes upgrades) HONORABLE	
25. SEPARATION AUTHORITY SELF TERMINATING ORDERS T-02-708659 dtd 26 FEB 87 FAOBC 7-87		26. SEPARATION CODE NA	27. REENLISTMENT CODE NA
28. NARRATIVE REASON FOR SEPARATION COMPLETION OF PERIOD OF ADT			
29. DATES OF TIME LOST DURING THIS PERIOD NONE		30. MEMBER REQUESTS COPY 4 DKS INITIALS	

Enclosure “4”

Major General Kenneth Hara
State Adjutant General
Hawaii Department of Defense
3949 Diamond Head Road
Honolulu, HI 96816

May 29, 2024

Dear Major General Hara,

We hope this letter finds you in good health and high spirits. We are writing to you on behalf of a deeply concerned group of Active and Retired law enforcement officers throughout the Hawaiian Islands, about the current governance of Hawaii and its impact on the vested rights of Hawaiian subjects under Hawaiian Law.

As you are well aware, the historical transition of Hawai'i from a sovereign kingdom to a U.S. state is fraught with significant legal and ethical issues. The overthrow of the government of the Hawaiian Kingdom in 1893 and its subsequent annexation by the United States in 1898 continue to be an illegal act. The Hawaiian Kingdom was recognized as a Sovereign State by the Permanent Court of Arbitration in The Hague, Netherlands, in *Larsen vs. Hawaiian Kingdom* (<https://pca-cpa.org/en/cases/35/>).

At the center of the dispute, as stated on the PCA's website on the Larsen case, was the unlawful imposition of American laws over Lance Larsen, a Hawaiian subject, that led to an unfair trial and incarceration. It was a police officer, who believed that Hawai'i was a part of the United States and that he was carrying out his lawful duties, that cited Mr. Larsen, which led to his incarceration. That police officer now knows otherwise and so do we. This is not the United States but rather the Hawaiian Kingdom as an occupied State under international law.

It is deeply troubling that the State of Hawaii has not been transitioned into a military government as mandated by international law. This failure of transition places current police officers on duty that they may be held accountable for unlawfully enforcing American laws. This very issue was brought to the attention of the Maui County Corporation Counsel by Maui Police Chief John Pelletier in 2022. In their request to Chief Pelletier, which is attached, Detective Kamuela Mawae and Patrol Officer Scott McCalister, stated:

We are humbly requesting that either Chief John Pelletier or Deputy Chief Charles Hank III formally request legal services from Corporation Counsel to conduct a legal analysis of Hawai'i's current political status considering International Law and to assure us, and the rest of the Police Officers throughout the State of Hawai'i, that we are not violating International Law by enforcing U.S. domestic laws within what the federal lawsuit calls the Hawaiian Kingdom that continues to exist as a nation state under international law despite its government being overthrown by the United States on 01/17/1893.

Police Chief Pelletier did make a formal request to Corporation Counsel, but they did not act upon the request, which did not settle the issue and the possible liability that Police Officers face.

Your failure to initiate such a transition may be construed as a violation of the 1907 Hague Regulations and the 1949 Geneva Convention, which outlines the obligations of occupying powers. Also, your

actions, or lack thereof, deprive Hawaiian subjects of the protections and rights they are entitled to under Hawaiian Kingdom laws and international humanitarian law. According to the Geneva Convention, occupying powers are obligated to respect the laws in force in the occupied territory and protect the rights of its inhabitants. Failure to comply with these obligations constitutes a serious violation and can result in accountability for war crimes for individuals in positions of authority.

The absence of a military government perpetuates an unlawful governance structure that has deprived the rights of Hawaiian subjects which is now at 131 years. The unique status of these rights is explained at this blog article on the Council of Regency's weblog titled "It's About Law—Native Hawaiian Rights are at a Critical Point for the State of Hawai'i to Comply with the Law of Occupation"

(<https://hawaiiankingdom.org/blog/native-hawaiians-are-at-a-critical-point-for-the-state-of-hawaii-to-comply-with-the-law-of-occupation/>). It is imperative that steps be taken to rectify these historical injustices and ensure the protection of the vested rights of Hawaiian subjects.

We also acknowledge that the Council of Regency is our government that was lawfully established under extraordinary circumstances, and we support its effort to bring compliance with the law of occupation by the State of Hawai'i, on behalf of the United States, which will eventually bring the American occupation to a close. When this happens, our Legislative Assembly will be brought into session so that Hawaiian subjects can elect a Regency of our choosing. The Council of Regency is currently operating in an **acting capacity** that is allowed under Hawaiian law.

We urge you to work with the Council of Regency in making sure this transition is not only lawful but is done for the benefit of all Hawaiian subjects. Please consider the gravity of this situation and take immediate action to establish a military government in Hawaii. Such a measure would align with international law and demonstrate a commitment to justice, fairness, and the recognition of the rights of Native Hawaiians.

Thank you for your attention to this critical issue. We look forward to your prompt response and to any actions you will take to address these concerns.

Sincerely,



Alika Desha
Retired Officer
Honolulu Police Department

On Behalf of:

Vic Vierra
Retired Chief of Police
Hawaii Police Dept.

David Heaukulani
Retired Assistant Chief
Honolulu Police Dept.

Karl Godsey
Retired Deputy Chief
Honolulu Police Dept.

Robert Imoto
Retired Captain
Honolulu Police Dept.

George Kaho'ohanohano
Retired Captain
Maui Police Dept.

Leslie Anderson
Retired Lieutenant
Honolulu Police Dept.

Lambert Ohia
Retired Lieutenant
Honolulu Police Dept.

Nicholas Krau (Active)
Lieutenant
Maui Police Dept.

George Gersaba
Retired Lieutenant
Honolulu Police Dept.

Rosalie Lenchanko
Retired Lieutenant
Honolulu Police

Kamuela Mawae (Active)
Detective
Maui Police Dept.

Mike Lupenui
Retired Sergeant
Honolulu Police Dept.

Auggie Roback Jr.
Retired Detective
Honolulu Police Dept.

Jill Kauai
Retired Detective
Honolulu Police Dept.

Vernon Santos
Retired Detective
Honolulu Police Dept.

Joseph Lane
Retired Detective
Honolulu Police Dept.

Rollins Rabara
Retired Sergeant
Hawaii Police Dept.

Russell Paio
Retired Sergeant
Hawaii Police Dept.

Fay Tamura
Retired Sergeant
Honolulu Police Dept.

John Ayat
Retired Sergeant
Honolulu Police Dept.

Robert Miranda
Retired Sergeant
Honolulu Police Dept.

Mike Wong
Retired Sergeant
Honolulu Police Dept.

George Smith
Retired Sergeant
Honolulu Police Dept.

Peter Tampon
Retired Sergeant
Honolulu Police Dept.

Kaena Brown (Active)
Sergeant
Maui Police Dept.

Kalani Miles (Active)
Police Officer
Maui Police Dept.

Duwayne Waipa
Retired Officer
Hawaii Police Dept.

Leland Pa
Retired Officer
Hawaii Police Dept.

Gary Keawe-Aiko
Retired Officer
Honolulu Police Dept.

Billy Roback III
Retired Officer
Maui Police Dept.

David Brown
Retired Officer
Honolulu Police Dept.

Adrian Hussey
Retired Officer
Honolulu Police Dept.

John M Veneri
Retired Officer
Honolulu Police Dept.

Scott McCallister (Active)
Police Officer
Maui Police Dept.

Bruce Heidenfeldt
Retired Reserve Officer
Hawaii Police Dept.

Larry Rutkowski
Retired Officer
Honolulu Police Dept.

CC: Brigadier General Stephen F. Logan
Hawaii Department of Defense
3949 Diamond Head Road
Honolulu, HI. 96816

Lieutenant Colonel Lloyd C. Phelps
Hawaii Department of Defense
3949 Diamond Head Road
Honolulu HI. 96816

TO : JOHN PELLETIER, CHIEF OF POLICE, MAUI POLICE DEPARTMENT *AS 7/12/22*

THRU : CHARLES HANK III, DEPUTY CHIEF, MAUI POLICE DEPARTMENT *07/09/22*
: RANDY ESPERANZA, ASSISTANT CHIEF, INVESTIGATIVE SERVICES BUREAU *RE 07/06/22*
: JOHN FOSTER, CAPTAIN, CRIMINAL INVESTIGATION DIVISION *JF 6/23*
: GARRET TIHADA, LIEUTENANT, CRIMINAL INVESTIGATION DIVISION *GT 6/22*

FROM : KAMUELA MAWAE, DETECTIVE, CRIMINAL INVESTIGATIONS DIVISION

: SCOTT MCCALISTER, OFFICER, WAILUKU PATROL

SUBJECT : REQUEST FOR LEGAL SERVICES REGARDING U.S. FEDERAL COURT CASE 1:21-cv-00243; HAWAIIAN KINGDOM VS U.S. AND THE STATE OF HAWAI'I

Sir, this to/thru is being sent to request legal services from Corporation Counsel regarding U.S. Federal court case 1:21-cv-00243. Said court case was initially filed on 05/20/2021 and lists the Hawaiian Kingdom as the Plaintiff and multiple U.S. officials to include President Joseph Robinette Biden Jr., as well as multiple foreign consulates operating in Hawaii as Defendants.¹

On 04/24/2022, the Hawaiian Kingdom filed a notice of appeal regarding two orders issued by District Court Judge Leslie Kobayashi that made its way to the Ninth Circuit Court of Appeals. The *Hawaiian Kingdom v. Biden et al.* case was not terminated but is still pending. On 05/20/2022, the Hawaiian Kingdom filed a motion to dismiss for forum non conveniens with the Ninth Circuit.² The United States filed a response to the motion on 05/25/2022.³ On 06/02/2022, the Hawaiian Kingdom filed its reply to the United States' response.⁴

In these filings, the Hawaiian Kingdom draws the court's attention to a State of Hawai'i case, *State of Hawai'i v. Lorenzo*, that came before the Intermediate Court of Appeals in 1994. The Hawaiian Kingdom argues that this case has been used by the federal courts and is known as

¹ Amended Complaint, Hawaiian Kingdom v. Biden et al.

([https://hawaiiankingdom.org/pdf/Amended Complaint and Exhibits 1 & 2%20 \(Filed 2021-08-11\).pdf](https://hawaiiankingdom.org/pdf/Amended%20Complaint%20and%20Exhibits%201%20&%202%20(Filed%202021-08-11).pdf)).

² Motion to Dismiss for Forum Non Conveniens ([https://hawaiiankingdom.org/pdf/Dkt 10-1 HK Motion to Dismiss \(Filed 2022-05-20\) with Exhibits.pdf](https://hawaiiankingdom.org/pdf/Dkt%2010-1%20HK%20Motion%20to%20Dismiss%20(Filed%202022-05-20)%20with%20Exhibits.pdf)).

³ United States Response

([https://hawaiiankingdom.org/pdf/%5bDkt 11%5d Federal Appellees Response to Appellants Response \(Filed 2022-05-25\).pdf](https://hawaiiankingdom.org/pdf/%5bDkt%2011%5d%20Federal%20Appellees%20Response%20to%20Appellants%20Response%20(Filed%202022-05-25).pdf)).

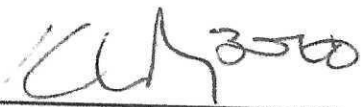
⁴ Hawaiian Kingdom Reply to the United States Response ([https://hawaiiankingdom.org/pdf/22-15637 DktEntry 12-1 to 12-9 HK Reply%20\(Filed%202022-06-02\).pdf](https://hawaiiankingdom.org/pdf/22-15637%20DktEntry%2012-1%20to%2012-9%20HK%20Reply%20(Filed%202022-06-02).pdf)).

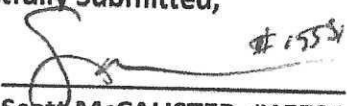
the *Lorenzo* principle that acknowledges the continued existence of the Hawaiian Kingdom and that it also renders the State of Hawai'i and the County governments as unlawful.

On 02/07/2022, while not acting under official capacity as a law enforcement officer, I emailed State Representative Troy Hashimoto informing him of my concerns regarding any possible ramifications that the lawsuit may bring. Said email was subsequently forwarded to Corporation Council Attorney Moana Lutey who responded by informing me that if Corporation Council is to look into this matter, a request for legal services would have to be submitted by "A1 or A2."

International Law Expert and Acting Minister of Interior of the Hawaiian Kingdom, Dr. David Keanu Sai, has conducted presentations providing information regarding the Federal complaint and the continued existence of the Hawaiian Kingdom as an independent nation state, however one under prolonged belligerent occupation by the United States of America at the international level to include the Maui County Council and the Maui SHOPO chapter board. Dr. Sai further stated that we as police officers could be committing war crimes by enforcing U.S. domestic law on Hawaiian soil. Dr. Sai is also the Head of the Royal Commission of Inquiry along with Professor Federico Lenzerini from the University of Siena as Deputy Head.⁵ The Commission's first preliminary report was on the material elements of war crimes and ascertaining the *mens rea*.⁶ The Commission's latest preliminary report is on the *Lorenzo* doctrine⁷ that is being used in the federal lawsuit that acknowledges the Hawaiian Kingdom's continued existence as a State and why the State of Hawai'i is unlawful. The *Lorenzo* doctrine stems from a 1994 appellate case of *State of Hawai'i v. Lorenzo*.

We are humbly requesting that either Chief John Pelletier or Deputy Chief Charles Hank III formally request legal services from Corporation Counsel to conduct a legal analysis of Hawai'i's current political status considering International Law and to assure us, and the rest of the Police Officers throughout the State of Hawaii, that we are not violating International Law by enforcing U.S. domestic laws within what the federal lawsuit calls the Hawaiian Kingdom that continues to exist as a nation state under international law despite its government being overthrown by the United States on 01/17/1893.


Kamuela MAWAE, #13010
06/15/2022 @ 1630 hours

Respectfully Submitted,

Scott McCALISTER, #15531

⁵ Hawaiian Kingdom Royal Commission of Inquiry (<https://hawaiiankingdom.org/royal-commission.shtml>).

⁶ Royal Commission of Inquiry, *Preliminary Report—The Material Elements of War Crimes and Ascertaining the Mens Rea* (May 24, 2020) (https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Mens_Rea.pdf).

⁷ Royal Commission of Inquiry, *Preliminary Report—The Lorenzo doctrine on the Continuity of the Hawaiian Kingdom as a State* (June 7, 2022) (https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Lorenzo_Doctrine.pdf).

REQUEST FOR LEGAL SERVICES

DATE: 7/13/2022

From: Chief John Pelletier

Department/Division: MPD


Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Keola Whittaker

Subject: Hawaiian Kingdom v. U.S. and the State of Hawaii, Case No.: 1:21-cv-00243

Background Data:

MPD requests research and a legal analysis on whether MPD is in violation of any federal and/or international by enforcing laws against the "Hawaiian Kingdom" as stated in the lawsuit.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER: Legal Research

Requestor's signature 	Contact Person: Angela Andrade (Telephone Extensions: 6304 Email: angela.andrade@mpd.net
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ROUTINE (WITHIN 15 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS)
 RUSH (WITHIN 5 WORKING DAYS)
 URGENT (WITHIN 3 WORKING DAYS)
SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____

REASON:

↓ FOR CORPORATION COUNSEL'S RESPONSE ↓

ASSIGNED TO: KRW	ASSIGNMENT NO. 2022-1092	BY: GMR
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TO REQUESTOR: [] APPROVED [] DISAPPROVED [X] OTHER (SEE COMMENTS BELOW)
[] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS

AS NOTED: _____

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): Thank you for forwarding this letter. We will keep it on file. There is no need for any MPD personell to respond to the request.

DEPARTMENT OF THE CORPORATION COUNSEL

Date July 15, 2022

By 