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21 February 2024

Lieutenant General William M. Journey, Commander
U.S. Marine Corps Forces, Pacific
Box 64010
Camp H.M. Smith, HI 96861-4010

USPS certified mail no. 7021 0950 0000 1598 0111

Re: Withdrawal of Title 10 Troops according to the Termination of the Pearl Harbor Convention and to Cease and Desist the War Crime of Destruction of Property

Dear Lieutenant General Journey:

My name is Dr. David Keanu Sai, Ph.D., and I have been serving as Head of the Royal Commission of Inquiry ("RCI") since 17 April 2019. Professor Federico Lenzerini, from the University of Siena, Italy, Department of Political and International Sciences, serves as the Deputy Head of the RCI. I also have been serving as the Hawaiian Kingdom's Minister of Foreign Affairs *ad interim* since 11 November 2019 after His Excellency Peter Umialiloa Sai, Minister of Foreign Affairs, died.¹ From 1999 to 2001, I also served as lead Agent for the Hawaiian Kingdom in arbitral proceedings—*Larsen v. Hawaiian Kingdom* at the Permanent Court of Arbitration, PCA case no. 1999-01.²

The purpose of this letter is to provide you with actual notice that the 1884 Supplemental Convention ("Pearl Harbor Convention") will be terminated on 26 October 2024 at 05:47 hours. This is when the notice of termination was received by the U.S. State Department the previous year. According to Article I of the Pearl Harbor Convention:

The High Contracting Parties agree, that the time fixed for the duration of the said Convention, shall be definitely extended for a term of seven years from the date of the exchange of ratifications hereof, and further, until the expiration of twelve months after either of the High Contracting Parties shall give notice to the other of its wish to terminate

¹ Proclamation announcing Minister of Foreign Affairs at interim (11 Nov. 2019) (online at https://hawaiiankingdom.org/pdf/Proc_Minister_Foreign_Affairs_Ad_interim.pdf).

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

the same, each of the High Contracting Parties being at liberty to give such notice to the other at the end of the said term of seven years or at any time thereafter.³

The circumstances and steps taken by the Council of Regency in terminating the Pearl Harbor Convention can be found in the Royal Commission of Inquiry's *Preliminary Report—Termination of the 1875 Commercial Reciprocity Treaty and its 1884 Supplemental Convention*.⁴ In a letter dated 29 October 2023, from me as Minister of Foreign Affairs *ad interim*, Brigadier General Lance Okamura of the Indo-Pacific Command was notified of the circumstances for terminating the Pearl Harbor Convention.⁵ We met, along with First Sergeant Justin Ka‘ahanui, on 1 November 2023, to go over the contents of this letter.⁶ I am unaware if BG Okamura provided this information to senior leadership of Indo-Pacific Command.

The Hawaiian Kingdom as a Sovereign and Independent State

On 28 November 1843, both Great Britain and France jointly recognized the Hawaiian Kingdom as an independent State making it the first country in Oceania to join the international community of States. As a progressive constitutional monarchy, the Hawaiian Kingdom had compulsory education, universal health care, land reform, and a representative democracy.⁷ The Hawaiian Kingdom treaty partners include Austria and Hungary, Belgium, Bremen, Denmark, France, Germany, Hamburg, Italy, Japan, Luxembourg, Netherlands, Portugal, Russia, Spain, Switzerland, Sweden and Norway, the United Kingdom and the United States.⁸ By 1893, the Hawaiian Kingdom maintained over ninety Legations and Consulates throughout the world.

To preserve its political independence, should war break out in the Pacific Ocean, the Hawaiian Kingdom sought to ensure that its neutrality would be recognized beforehand. Provisions recognizing Hawaiian neutrality were incorporated in its treaties with Sweden-Norway (1852),⁹

³ 25 Stat. 1399 (1884).

⁴ Royal Commission of Inquiry, *Preliminary Report—Termination of the 1875 Commercial Reciprocity Treaty and its 1884 Supplemental Convention* (26 October 2023) (online at https://hawaiiankingdom.org/pdf/RCI_Preliminary_Report_Pear_Harbor_Conv.pdf).

⁵ Minister of Foreign Affairs *ad interim* to Brigadier General Lance Okamura (29 Oct. 2023) (online at [https://hawaiiankingdom.org/pdf/Ltr_to_BG_Okamura_\(10.29.23\).pdf](https://hawaiiankingdom.org/pdf/Ltr_to_BG_Okamura_(10.29.23).pdf)).

⁶ Minister of Foreign Affairs *ad interim* to Brigadier General Lance Okamura (3 Nov. 2023) (online at [https://hawaiiankingdom.org/pdf/Ltr_to_BG_Okamura_\(11.3.23\).pdf](https://hawaiiankingdom.org/pdf/Ltr_to_BG_Okamura_(11.3.23).pdf)).

⁷ David Keanu Sai, “Hawaiian Constitutional Governance,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 58-94 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

⁸ “Treaties with Foreign States,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 237-310 (2020).

⁹ Article XV states, “All vessels bearing the flag of Sweden and Norway in time of war shall receive every possible protection, short of actual hostility, within the ports and waters of His Majesty the King of the Hawaiian Islands; and His Majesty the King of Sweden and Norway engages to respect in time of war the neutral rights of the Hawaiian Kingdom, and to use his good offices with all other powers, having treaties with His Majesty the King of the Hawaiian Islands, to induce them to adopt the same policy towards the Hawaiian Kingdom,” (online at http://hawaiiankingdom.org/pdf/Sweden_Norway_Treaty.pdf).

Spain (1863)¹⁰ and Germany (1879).¹¹ “A nation that wishes to secure her own peace,” says de Vattel, “cannot more successfully attain that object than by concluding treaties” of neutrality.¹² Unlike other non-European States, the Hawaiian Kingdom, as a recognized neutral State, enjoyed equal treaties with European powers, including the United States, and full independence of its laws over its territory.

Driven by the desire to attain naval superiority in the Pacific, U.S. troops, without cause, invaded the Hawaiian Kingdom on 16 January 1893, and unlawfully overthrew its Hawaiian government and replaced it with their puppet the following day with the prospect of militarizing the islands. The State of Hawai‘i today is the successor to this puppet government. However, despite the unlawful overthrow of its government, the Hawaiian Kingdom as a State would continue to exist as a subject of international law and come under the regime of international humanitarian law and the law of occupation. The military occupation is now at 131 years.

Like the German invasion of Belgium, a neutral State, during the First World War, the United States movement of U.S. troops in the Hawaiian Islands, during the Spanish-American War, violated its neutrality. After it unilaterally annexed the Hawaiian Islands, the United States continued to violate Hawaiian neutrality with the establishment of military installations throughout the Hawaiian Islands. This occurred during the Spanish-American War on 7 July 1898 by a congressional legislation. The 1907 Hague Convention (V), which was declaratory of customary international law on the rights and duties of Neutral States in case of war, contained these provisions: “Article 1. The territory of neutral Powers is inviolable; Article 2. Belligerents are forbidden to move troops or convoys, whether of munitions of war or of supplies, across the territory of a neutral Power.”¹³

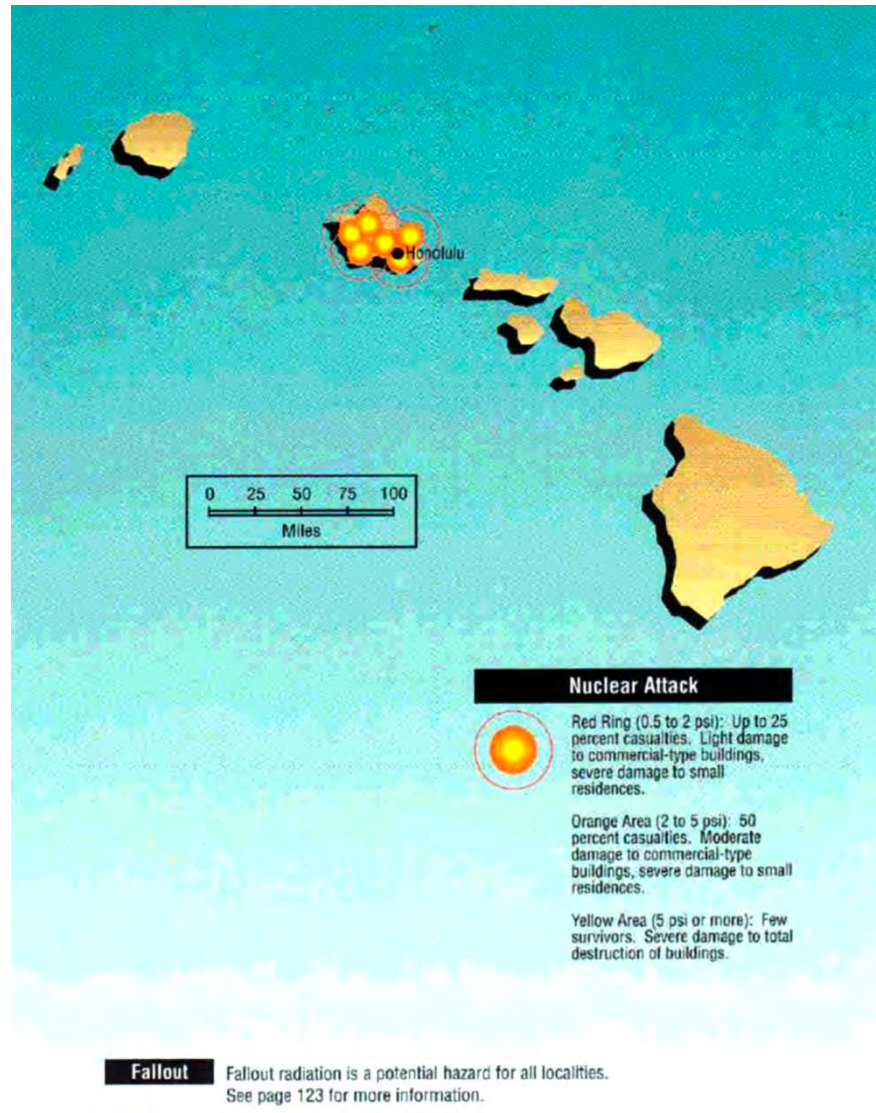
The unlawful presence of the United States military has transformed the Hawaiian Kingdom from a neutral State into a military target by its adversaries, which first occurred on 7 December 1941 when Japan’s military forces attacked U.S. military targets. The high probability of military attacks by other countries, such as North Korea, China, and Russia continue due to the rising tensions in the Indo-Pacific region. In 1990, the Federal Emergency Management Agency’s *Risks and Hazards—A State by State Guide* listed 6 targets for nuclear attack that would effectively annihilate the entire Island of O‘ahu. The presence of the United States military places the civilian population of the Hawaiian Kingdom into perilous danger.

¹⁰ Article XXVI states, “All vessels bearing the flag of Spain shall, in time of war, receive every possible protection, short of active hostility, within the ports and waters of the Hawaiian Islands, and Her Majesty the Queen of Spain engages to respect, in time of war the neutrality of the Hawaiian Islands, and to use her good offices with all the other powers having treaties with the same, to induce them to adopt the same policy toward the said Islands,” (online at http://hawaiiankingdom.org/pdf/Spanish_Treaty.pdf).

¹¹ Article VIII states, “All vessels bearing the flag of Germany or Hawaii shall in times of war receive every possible protection, short of actual hostility, within the ports and waters of the two countries, and each of the High Contracting Parties engages to respect under all circumstances the neutral rights of the flag and the dominions of the other,” (online at http://hawaiiankingdom.org/pdf/German_Treaty.pdf).

¹² Emerich De Vattel, *The Law of Nations* 333 (6th ed. 1844).

¹³ 36 Stat. 2310, 2322.



Continued existence of the Hawaiian Kingdom despite the unlawful overthrow of its government by the United States

According to Professor Oppenheim, once recognition of a State is granted, it “is incapable of withdrawal”¹⁴ by the recognizing State, and that “recognition estops the State which has recognized the title from contesting its validity at any future time.”¹⁵ And the “duty to treat a qualified entity as a state also implies that so long as the entity continues to meet those qualifications its statehood may not be ‘derecognized.’”¹⁶

¹⁴ Lassa Oppenheim, *International Law* 137 (3rd ed. 1920).

¹⁵ Georg Schwarzenberger, “Title to Territory: Response to a Challenge,” 51(2) *American Journal of International Law* 308, 316 (1957).

¹⁶ Restatement (Third) of the Foreign Relations Law of the United States, §202, comment g.

Since international law provides for the presumption of the continuity of the State, despite the overthrow of its government by another State, it shifts the burden of proof as to what is to be proven. According to Judge Crawford, there “is a presumption that the State continues to exist, with its rights and obligations [...] despite a period in which there is no, or no effective, government,”¹⁷ and belligerent occupation “does not affect the continuity of the State, even where there exists no government claiming to represent the occupied State.”¹⁸ Addressing the presumption of the German State’s continued existence, despite the military overthrow of the Nazi government during the Second World War, Professor Brownlie explains:

Thus, after the defeat of Nazi Germany in the Second World War the four major Allied powers assumed supreme power in Germany. The legal competence of the German state [its independence and sovereignty] did not, however, disappear. What occurred is akin to legal representation or agency of necessity. The German state continued to exist, and, indeed, the legal basis of the occupation depended on its continued existence.¹⁹

“If one were to speak about a presumption of continuity,” explains Professor Craven, “one would suppose that an obligation would lie upon the party opposing that continuity to establish the facts substantiating its rebuttal. The continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States, absent of which the presumption remains.”²⁰ Evidence of “a valid demonstration of legal title, or sovereignty, on the part of the United States” would be an international treaty, particularly a peace treaty, whereby the Hawaiian Kingdom would have ceded its territory and sovereignty to the United States. Examples of foreign States ceding sovereign territory to the United States by a peace treaty include the 1848 *Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico*²¹ and the 1898 *Treaty of Peace between the United States of America and the Kingdom of Spain*.²²

There was no Annexation of the Hawaiian Islands by the United States

The United States purportedly annexed the Hawaiian Islands in 1898 by a municipal law called the *joint resolution to provide for annexing the Hawaiian Islands to the United States*.²³ As a municipal law of the United States, it is without extraterritorial effect, and, foremost, it is not an international treaty. Under international law, to annex territory of another State is a unilateral act, as opposed to cession, which is a bilateral act between States. Under international law, annexation of an occupied State is unlawful. According to *The Handbook of Humanitarian Law in Armed Conflicts*:

The international law of belligerent occupation must therefore be understood as meaning that the occupying power is not sovereign, but exercises provisional and temporary control

¹⁷ James Crawford, *The Creation of States in International Law* 34 (2nd ed. 2006).

¹⁸ *Id.*

¹⁹ Ian Brownlie, *Principles of Public International Law* 109 (4th ed. 1990).

²⁰ Matthew Craven, “Continuity of the Hawaiian Kingdom as a State under International Law,” in David Keanu Sai, ed., *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 128 (2020).

²¹ 9 Stat. 922 (1848).

²² 30 Stat. 1754 (1898).

²³ 30 Stat. 750 (1898).

over foreign territory. The legal situation of the territory can be altered only through a peace treaty or *debellatio*.²⁴ International law does not permit annexation of territory of another state.²⁵

Furthermore, in 1988, the United States Department of Justice's Office of Legal Counsel ("OLC") published a legal opinion that addressed, *inter alia*, the annexation of Hawai'i. The OLC's memorandum opinion was written for the Legal Advisor for the Department of State regarding legal issues raised by the proposed Presidential proclamation to extend the territorial sea from a three-mile limit to twelve.²⁶ The OLC concluded that only the President and not the Congress possesses "the constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States."²⁷ As Justice Marshall stated, "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign nations,"²⁸ and not the Congress.

The OLC further opined, "we doubt that Congress has constitutional authority to assert either sovereignty over an extended territorial sea or jurisdiction over it under international law on behalf of the United States."²⁹ Therefore, the OLC concluded it is "unclear which constitutional power Congress exercised when it acquired Hawaii by joint resolution. Accordingly, it is doubtful that the acquisition of Hawaii can serve as an appropriate precedent for a congressional assertion of sovereignty over an extended territorial sea."³⁰ That territorial sea was to be extended from three to twelve miles under the United Nations Law of the Sea Convention and since the United States is not a Contracting State, the OLC looked into it being accomplished by the President's proclamation. In other words, the Congress could not extend the territorial sea an additional nine miles by statute because its authority was limited up to the three-mile limit. This is not rebuttable evidence as to the presumption of the continuity of the Hawaiian State. Furthermore, the United States Supreme Court, in *The Apollon*, concluded that the "laws of no nation can justly extend beyond its own territories."³¹

Arriving at this conclusion, the OLC cited constitutional scholar Professor Willoughby who stated the "constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. [...] Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force—confined in its operation to the territory of the State by whose legislature enacted it."³² Professor Willoughby also stated, the "incorporation of one sovereign State, such as was Hawaii prior to annexation, in the territory of another, is...essentially

²⁴ There was no extinction of the Hawaiian State by *debellatio* because the Permanent Court of Arbitration acknowledged the continued existence of the Hawaiian Kingdom as a State in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01.

²⁵ Dieter Fleck (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Section 525, 242 (1995).

²⁶ Douglas Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation to Extend the Territorial Sea," 12 *Opinions of the Office of Legal Counsel* 238 (1988).

²⁷ *Id.*, 242.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*, 262.

³¹ *The Apollon*, 22 U.S. 362, 370 (1824).

³² Kmiec, 252.

a matter falling within the domain of international relations, and, therefore, beyond the reach of legislative acts.”³³

The significance of the OLC’s legal opinion is that it serves as evidence of United States’ acceptance as law (*opinio juris*) that the transfer of a State’s sovereignty and territory can only come about by a treaty and not by a State’s municipal law. According to the International Law Commission, “[p]ublished opinions of government legal advisers may likewise shed light on a State’s legal position.”³⁴ According to Professor Oppenheim, “[c]ession of State territory is the transfer of sovereignty over State territory by the owner-State to another State,”³⁵ and the “only form in which a cession can be effected is an agreement embodied in a treaty between the ceding and the acquiring State. Such treaty may be the outcome of peaceable negotiations or of war.”³⁶ There is no treaty whereby the Hawaiian Kingdom ceded its sovereignty and territory to the United States.

Restoration of the Government of the Hawaiian Kingdom

In 1906, the United States implemented a policy of denationalization through Americanization in the schools throughout the Hawaiian Islands and within three generations the national consciousness of the Hawaiian Kingdom was obliterated.³⁷ Notwithstanding the devastating effects that erased the national consciousness of the Hawaiian Kingdom in the minds of its national population, the Hawaiian government was restored *in situ* by a Council of Regency under Hawaiian constitutional law and the doctrine of necessity in 1997.³⁸ Under Hawaiian law, the Council of Regency serves in the absence of the Executive Monarch. The last Executive Monarch was Queen Lili‘uokalani who died on 11 November 1917.

There was no legal requirement for the Council of Regency, being the successor in office to Queen Lili‘uokalani under Hawaiian constitutional law, to get recognition from the United States as the government of the Hawaiian Kingdom. The United States’ recognition of the Hawaiian Kingdom as an independent State on 6 July 1844,³⁹ was also the recognition of its government—a constitutional monarchy. Successors in office to King Kamehameha III, who at the time of international recognition was King of the Hawaiian Kingdom, did not require diplomatic recognition. These successors included King Kamehameha IV in 1854, King Kamehameha V in 1863, King Lunalilo in 1873, King Kalākaua in 1874, Queen Lili‘uokalani in 1891, and the Council of Regency in 1997.

³³ Westel Woodbury Willoughby, *The Constitutional Law of the United States*, vol. 1, 345 (1910).

³⁴ “Report of the International Law Commission on the Work of Its Seventieth Session (30 Apr. – 1 June and 2 July – 10 Aug. 2018),” *United Nations Yearbook of the International Law Commission* 1-230, 104 (2018).

³⁵ L. Oppenheim, *International Law*, vol. 1, 499 (7th ed. 1948).

³⁶ *Id.*, 500.

³⁷ David Keanu Sai, “United States Belligerent Occupation of the Hawaiian Kingdom,” in David Keanu Sai’s (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 114 (2020).

³⁸ David Keanu Sai, “The Royal Commission of Inquiry,” in David Keanu Sai’s (ed.), *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 18-23 (2020); see also Federico Lenzerini, “Legal Opinion on the Authority of the Council of Regency of the Hawaiian Kingdom,” 3 *Hawaiian Journal of Law and Politics* 317-333 (2021).

³⁹ U.S. Secretary of State Calhoun to Hawaiian Commissioners (6 July 1844) (online at: https://hawaiiankingdom.org/pdf/US_Recognition.pdf).

The legal doctrines of recognition of new governments only arise “with extra-legal changes in government” of an existing State.⁴⁰ Successors to King Kamehameha III were not established through “extra-legal changes,” but rather under the constitution and laws of the Hawaiian Kingdom. “Where a new administration succeeds to power in accordance with a state’s constitutional processes, no issue of recognition or acceptance arises; continued recognition is assumed.”⁴¹

Arbitral Proceedings at the Permanent Court of Arbitration in The Hague

On 8 November 1999, arbitral proceedings were instituted at the Permanent Court of Arbitration (“PCA”) in *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01, where Larsen, a Hawaiian subject, claimed that the government of the Hawaiian Kingdom, by its Council of Regency, should be liable for allowing the unlawful imposition of American laws that denied him a fair trial and led to his incarceration.⁴² Prior to the establishment of an *ad hoc* tribunal, the PCA acknowledged the Hawaiian Kingdom as a non-Contracting State under Article 47 of the 1907 Hague Convention on the Pacific Settlement of International Disputes (“1907 PCA Convention”). This brought the dispute under the auspices of the PCA. Since I served as lead agent for the Hawaiian Kingdom in this arbitration, I am very familiar with this case and the role of the PCA in verifying the Hawaiian Kingdom as a State before the arbitral tribunal was formed.

In determining the continued existence of the Hawaiian Kingdom as a non-Contracting State, the relevant rules of international law that apply to established States, must be considered, and not those rules of international law, that would apply to new States. Professor Lenzerini concluded that “according to a plain and correct interpretation of the relevant rules, the Hawaiian Kingdom cannot be considered, by virtue of the prolonged US occupation, as extinguished as an independent State and subject of international law. In fact, in the event of illegal annexation, ‘the legal existence of [...] States [is] preserved from extinction,’ since ‘illegal occupation cannot of itself terminate statehood.’”⁴³

Because the State is a juristic person, it requires a government to speak on its behalf, without which the State is silent, and, therefore, there could be no arbitral tribunal to be established by the PCA. On the contrary, the PCA did form a tribunal after confirming the existence of the Hawaiian State and its government, the Council of Regency, pursuant to Article 47. In international intercourse, which includes arbitration at the PCA, the Permanent Court of International Justice, in *German Settlers in Poland*, explained that “States can act only by and through their agents and representatives.”⁴⁴ As Professor Talmon states, the “government, consequently, possesses the *jus repraesentationis omnimodae*, i.e. plenary and exclusive competence in international law to represent its State in the international sphere. [Professor Talmon submits] that this is the case irrespective of whether the government is *in situ* or in exile.”⁴⁵

⁴⁰ M.J. Peterson, Recognition of Governments: Legal Doctrines and State Practice, 1815-1995 26 (1997).

⁴¹ *Restatement (Third)*, §203, comment c.

⁴² *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

⁴³ Lenzerini, 322.

⁴⁴ *German Settlers in Poland*, 1923, PCIJ, Series B, No. 6, 22.

⁴⁵ Stefan Talmon, Recognition of Governments in International Law: With Particular Reference to Governments in Exile 115 (1998).

After the PCA verified the continued existence of the Hawaiian State, as a juristic person, it also simultaneously ascertained that the Hawaiian State was represented by its government—the Council of Regency. In its case repository, the PCA identified the international dispute in *Larsen* as between a “State” and a “private entity.”⁴⁶ Furthermore, the PCA described the dispute between the Council of Regency and Larsen as between a government and a resident of Hawai‘i.

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.⁴⁷

The United States, as a Contracting State to the 1907 PCA Convention, recognized the continuity of the Hawaiian Kingdom as a State and the Council of Regency by its acceptance of the practice by the PCA’s Secretary General as an expression of the rules of international law—*opinio juris*.⁴⁸ “As a general rule,” the International Law Commission states, “the more directly a practice of an international organization is carried out on behalf of its member States or endorsed by them, and the larger the number of such member States, the greater weight it may have in relation to the formation, or expression, of rules of customary international law.”⁴⁹

Furthermore, the United States, by its embassy in The Hague, explicitly recognized the Council of Regency as the Government of the Hawaiian Kingdom when it entered into an agreement with the same to have access to the arbitration pleadings and records. This agreement was brokered by Deputy Secretary General Phyllis Hamilton of the Permanent Court of Arbitration prior to the formation of the arbitral tribunal on 9 June 2000.⁵⁰

Strategic Plan of the Council of Regency

The Council of Regency’s strategic plan entails three phases.⁵¹ Phase I—verification of the Hawaiian Kingdom as an independent State and a subject of international law. Phase II—exposure of Hawaiian Statehood within the framework of international law and the laws of occupation as it affects the realm of politics and economics at both the international and domestic levels. Phase III—restoration of the Hawaiian Kingdom as an independent State and a subject of international law. Phase III is when the American occupation comes to an end. After the PCA verified the continued existence of Hawaiian Statehood, prior to forming the arbitral tribunal in *Larsen v.*

⁴⁶ Permanent Court of Arbitration Case Repository, *Larsen v. Hawaiian Kingdom*, PCA Case no. 1999-01 (online at <https://pca-cpa.org/en/cases/35/>).

⁴⁷ *Id.*

⁴⁸ Royal Commission of Inquiry, Memorandum on why all 193 Member States of the United Nations recognize the Continuity of the Hawaiian Kingdom and the Council of Regency as its Government (22 Dec. 2023) (online at [https://hawaiiankingdom.org/pdf/RCI_Memo_re_Opinio_Juris_\(12.22.23\).pdf](https://hawaiiankingdom.org/pdf/RCI_Memo_re_Opinio_Juris_(12.22.23).pdf)).

⁴⁹ Report of the International Law Commission, 97.

⁵⁰ Sai, The Royal Commission of Inquiry, 25-26.

⁵¹ Council of Regency’s Strategic Plain (online at https://hawaiiankingdom.org/pdf/HK_Strategic_Plan.pdf).

Hawaiian Kingdom,⁵² Phase II was initiated. This would contribute to ascertaining the *mens rea* and satisfying the element of awareness of factual circumstances that established the existence of the military occupation.

Implementation of phase II was initiated during oral hearings at the Permanent Court of Arbitration on 7, 8, 11 December 2000.⁵³ The exposure phase continued at the University of Hawai‘i at Mānoa when the I entered the political science graduate program and received a master’s degree specializing in international relations and public law in 2004 and a Ph.D. degree in 2008 on the subject of the continuity of Hawaiian Statehood while under an American prolonged belligerent occupation since 17 January 1893.⁵⁴ This prompted other master’s theses, doctoral dissertations, peer and law review articles, and publications about the American occupation. The exposure through academic research also motivated historian Tom Coffman to change the title of his 1998 book from *Nation Within: The Story of America’s Annexation of the Nation of Hawai‘i*,⁵⁵ to *Nation Within—The History of the American Occupation of Hawai‘i*.⁵⁶ Coffman explained the change in his note on the second edition:

I am compelled to add that the continued relevance of this book reflects a far- reaching political, moral and intellectual failure of the United States to recognize and deal with the takeover of Hawai‘i. In the book’s subtitle, the word Annexation has been replaced by the word Occupation, referring to America’s occupation of Hawai‘i. Where annexation connotes legality by mutual agreement, the act was not mutual and therefore not legal. Since by definition of international law there was no annexation, we are left then with the word occupation.

In making this change, I have embraced the logical conclusion of my research into the events of 1893 to 1898 in Honolulu and Washington, D.C. I am prompted to take this step by a growing body of historical work by a new generation of Native Hawaiian scholars. Dr. Keanu Sai writes, “The challenge for ... the fields of political science, history, and law is to distinguish between the rule of law and the politics of power.” In the history of the Hawai‘i, the might of the United States does not make it right.⁵⁷

As a result of the exposure, United Nations Independent Expert, Dr. Alfred deZayas sent a communication from Geneva, Switzerland, to Judge Gary W.B. Chang, Judge Jeannette H. Castagnetti, and Members of the Judiciary of the State of Hawai‘i dated 25 February 2018.⁵⁸ Dr. deZayas stated:

⁵² David Keanu Sai, “Backstory—Larsen v. Hawaiian Kingdom at the Permanent Court of Arbitration (1999-2001,” 4 *Hawaiian Journal of Law and Politics* 133-161 (2022).

⁵³ See video of the oral hearings at the Permanent Court of Arbitration on 7, 8, 11 December 2000 (online at <https://www.youtube.com/watch?v=tmpXy2okJIg&t=786s>).

⁵⁴ See curriculum vitae (online at <https://www2.hawaii.edu/~anu/pdf/CV.pdf>).

⁵⁵ Tom Coffman, *Nation Within: The Story of America’s Annexation of the Nation of Hawai‘i* (1998).

⁵⁶ Tom Coffman, *Nation Within: The History of the American Occupation of Hawai‘i* (2nd ed. 2009). Duke University Press published the second edition in 2016.

⁵⁷ *Id.*, xvi.

⁵⁸ Letter of Dr. Alfred deZayas to Judge Gary W.B. Chang, Judge Jeannette H. Castagnetti, and Members of the Judiciary of the State of Hawai‘i (25 Feb. 2018) (online at https://hawaiiankingdom.org/pdf/Dr_deZayas_Memo_2_25_2018.pdf).

I have come to understand that the lawful political status of the Hawaiian Islands is that of a sovereign nation-state in continuity; but a nation-state that is under a strange form of occupation by the United States resulting from an illegal military occupation and a fraudulent annexation. As such, international laws (the Hague and Geneva Conventions) require that governance and legal matters within the occupied territory of the Hawaiian Islands must be administered by the application of the laws of the occupied state (in this case, the Hawaiian Kingdom), not the domestic laws of the occupier (the United States).

This exposure also prompted the U.S. National Lawyers Guild (“NLG”) to adopt a resolution in 2019 calling upon the United States of America to begin to comply immediately with international humanitarian law in its long and illegal occupation of the Hawaiian Islands.⁵⁹ Among its position statement, the “NLG supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”⁶⁰

In a letter to Governor David Ige, Governor of the State of Hawai‘i, dated November 10, 2020, the NLG called upon the governor to begin to comply with international humanitarian by administering the laws of the occupied State. The NLG letter concluded:

As an organization committed to the mission that human rights and the rights of ecosystems are more sacred than property interests, the NLG is deeply concerned that international humanitarian law continues to be flagrantly violated with apparent impunity by the State of Hawai‘i and its County governments. This has led to the commission of war crimes and human rights violations of a colossal scale throughout the Hawaiian Islands. International criminal law recognizes that the civilian inhabitants of the Hawaiian Islands are “protected persons” who are afforded protection under international humanitarian law and their rights are vested in international treaties. There are no statutes of limitation for war crimes, as you must be aware.

We urge you, Governor Ige, to proclaim the transformation of the State of Hawai‘i and its Counties into an occupying government pursuant to the Council of Regency’s proclamation of June 3, 2019, in order to administer the laws of the Hawaiian Kingdom. This would include carrying into effect the Council of Regency’s proclamation of October 10, 2014 that bring the laws of the Hawaiian Kingdom in the nineteenth century up to date. We further urge you and other officials of the State of Hawai‘i and its Counties to familiarize yourselves with the contents of the recent eBook published by the RCI and its reports that comprehensively explains the current situation of the Hawaiian Islands and the impact that international humanitarian law and human rights law have on the State of Hawai‘i and its inhabitants.

On 7 February 2021, the International Association of Democratic Lawyers (“IADL”), a non-governmental organization (NGO) of human rights lawyers that has special consultative status with the United Nations Economic and Social Council (“ECOSOC”) and accredited to participate

⁵⁹ Resolution of the National Lawyers Guild Against the Illegal Occupation of the Hawaiian Islands (2019) (online at <https://www.nlg.org/wp-content/uploads/2019/08/Hawaiian-Subcommittee-Resolution-Final.pdf>).

⁶⁰ National Lawyers Guild, *NLG Calls Upon US to Immediately Comply with International Humanitarian Law in its Illegal Occupation of the Hawaiian Islands* (13 Jan. 2020) (online at <https://www.nlg.org/nlg-calls-upon-us-to-immediately-comply-with-international-humanitarian-law-in-its-illegal-occupation-of-the-hawaiian-islands/>).

in the Human Rights Council's sessions as Observers, passed a resolution calling upon the United States to immediately comply with international humanitarian law in its prolonged occupation of the Hawaiian Islands—the Hawaiian Kingdom.⁶¹ In its resolution, the IADL also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”⁶²

Together with the IADL, the American Association of Jurists—Asociación Americana de Juristas (“AAJ”), who is also an NGO with consultative status with the United Nations ECOSOC and accredited as an observer in the Human Rights Council's sessions, sent a joint letter, dated 3 March 2022 to member States of the United Nations on the status of the Hawaiian Kingdom and its prolonged occupation by the United States.⁶³ In its joint letter, the IADL and the AAJ also “supports the Hawaiian Council of Regency, who represented the Hawaiian Kingdom at the Permanent Court of Arbitration, in its efforts to seek resolution in accordance with international law as well as its strategy to have the State of Hawai‘i and its Counties comply with international humanitarian law as the administration of the Occupying State.”⁶⁴

On 22 March 2022, at its 49th session in Geneva, I delivered an oral statement, on behalf of the IADL and AAJ, to the United Nations Human Rights Council (“HRC”). The oral statement read:

The International Association of Democratic Lawyers and the American Association of Jurists call the attention of the Council to human rights violations in the Hawaiian Islands. My name is Dr. David Keanu Sai, and I am the Minister of Foreign Affairs *ad interim* for the Hawaiian Kingdom. I also served as lead agent for the Hawaiian Kingdom at the Permanent Court of Arbitration from 1999- 2001 where the Court acknowledged the continued existence of my country as a sovereign and independent State.

The Hawaiian Kingdom was invaded by the United States on 16 January 1893, which began its century long occupation to serve its military interests. Currently, there are 118 military sites throughout the islands and the city of Honolulu serves as the headquarters for the Indo-Pacific Combatant Command.

For the past century, the United States has and continues to commit the war crime of usurpation of sovereignty, under customary international law, by imposing its municipal laws over Hawaiian territory, which has denied Hawaiian subjects their right of internal self-determination by prohibiting them to freely access their own laws and administrative policies, which has led to the violations of their human rights, starting with the right to health, education and to choose their political leadership.

⁶¹ International Association of Democratic Lawyers, *IADL Resolution on the US Occupation of the Hawaiian Kingdom* (7 Feb. 2021) (online at <https://iadllaw.org/2021/03/iadl-resolution-on-the-us-occupation-of-the-hawaiian-kingdom/>).

⁶² *Id.*

⁶³ International Association of Democratic Lawyers, *IADL and AAJ deliver joint letter on Hawaiian Kingdom to UN ambassadors* (3 Mar. 2022) (online at <https://iadllaw.org/2022/03/iadl-and-aaj-deliver-joint-letter-on-hawaiian-kingdom-to-un-ambassadors/>).

⁶⁴ *Id.*

None of the 47 member States of the HRC, including the United States, protested, or objected to the oral statement of war crimes being committed in the Hawaiian Kingdom by the United States. Under international law, acquiescence “concerns a consent tacitly conveyed by a State, unilaterally, through silence or inaction, in circumstances such that a response expressing disagreement or objection in relation to the conduct of another State would be called for.”⁶⁵ Silence conveys consent. Since they “did not do so [they] thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset*.”⁶⁶

Duty and Responsibility to Protect the Population from War Crimes

At the United Nations World Summit in 2005, the *Responsibility to Protect* was unanimously adopted.⁶⁷ The principle of the *Responsibility to Protect* has three pillars: (1) every State has the Responsibility to Protect its populations from four mass atrocity crimes—genocide, war crimes, crimes against humanity and ethnic cleansing; (2) the wider international community has the responsibility to encourage and assist individual States in meeting that responsibility; and (3) if a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter. In 2009, the General Assembly reaffirmed these three pillars of State’s Responsibility to Protect their populations from war crimes and crimes against humanity.⁶⁸ And in 2021, the General Assembly passed a resolution on “The responsibility to protect and the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity.”⁶⁹ The third pillar, which may call into action State intervention, can become controversial.⁷⁰ The Council of Regency acknowledges its duty and responsibility under the first pillar.

Rule 158 of the International Committee of the Red Cross Study on Customary International Humanitarian Law specifies that “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.”⁷¹ This “rule that States must investigate war crimes and prosecute the suspects is set forth in numerous military manuals, with respect to grave breaches, but also more broadly with respect to war crimes in general.”⁷²

Determined to hold individuals accountable, who have committed war crimes and human rights violations throughout the Hawaiian Islands, being the territory of the Hawaiian Kingdom, the

⁶⁵ Nuno Sérgio Marques Antunes, “Acquiescence,” in Rüdiger Wolfrum (ed.) *Max Planck Encyclopedia of Public International Law* para. 2 (2006).

⁶⁶ See International Court of Justice, *Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment of 15 June 1962, *I.C.J. Reports* 1962, p. 6, at 23.

⁶⁷ G.A. Resolution, A/60/L.1

⁶⁸ G.A. Resolution 63/308 The responsibility to protect, A/63/308.

⁶⁹ G.A. Resolution 75/277 The responsibility to protect and the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity, A/RES/75/277.

⁷⁰ Marjorie Cohn, “The Responsibility to Protect – the Cases of Libya and Ivory Coast,” *Truthout* (16 May 2011) (online at <https://truthout.org/articles/the-responsibility-to-protect-the-cases-of-libya-and-ivory-coast/>).

⁷¹ Jean-Marie Henckaerts and Louise Doswald-Beck (eds.), *Customary International Humanitarian Law*, vol. I: Rules, 607 (2009).

⁷² *Id.*, 608.

Council of Regency, by *Proclamation* on 17 April 1919,⁷³ established the RCI. This was done in similar fashion to the United States proposal of establishing a Commission of Inquiry after the First World War “to consider generally the relative culpability of the authors of the war and also the question of their culpability as to the violations of the laws and customs of war committed during its course.”⁷⁴ The RCI was established to “ensure a full and thorough investigation into the violations of international humanitarian law and human rights within the territorial jurisdiction of the Hawaiian Kingdom.”⁷⁵

Speaking to the veracity as well as the voracity of the content of the Royal Commission of Inquiry’s book *Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom*,⁷⁶ the *Polish Journal of Political Science* published a book review in 2022 by Dr. Anita Budziszewska from the University of Warsaw’s Department of Political Science and International Studies, both of which I am enclosing. Here follows some of its parts:

The above main assumption of the book is emphasised from the very beginning of Part 1, which is preceded by the text of the Proclamation Establishing the Royal Commission of Inquiry, recalling that that Commission was established to “ensure a full and thorough investigation into the violations of international humanitarian law and human rights within the territorial jurisdiction of the Hawaiian Kingdom.”

In fact, the main aim of the above institution as called into being has been to pursue any and all offences and violations in the spheres of humanitarian law, human rights and war crimes committed by the Americans in the course of their occupation of Hawaii—which is given to have begun on 17 January 1893.

Presented next is the genesis and history of the Commission’s activity described by its aforementioned Head—Dr. David Keanu Sai. He presents the Commission’s activity in detail, by reference to concrete examples; with this part going on to recreate the entire history of the Hawaiian-US relations, beginning with the first attempt at territorial annexation. This thread of the story is supplemented with examples and source texts relating to the recognition of the Hawaiian Kingdom by certain countries (e.g. the UK and France, and taken as evidence of international regard for the integrity of statehood). Particularly noteworthy here is the author’s exceptionally scrupulous analysis of the history of Hawaii and its state sovereignty. No obvious flaws are to be found in the analysis presented.

[...]

I regard this publication as an exceptionally valuable one that systematises matters of the legal status of the Hawaiian Kingdom, taking up the key issues surrounding the often ignored topic of a difficult historical context occurring between Hawaii and the United States. The issue at stake here has been regenerated synthetically, on multiple levels, with

⁷³ Proclamation: Establishment of the Royal Commission of Inquiry (17 Apr. 2019) (online at https://hawaiiankingdom.org/pdf/Proc_Royal_Commission_of_Inquiry.pdf).

⁷⁴ Violation of the Laws and Customs of War, 69 (1919).

⁷⁵ Proclamation establishing the Royal Commission of Inquiry.

⁷⁶ David Keanu Sai (ed.), *Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

a penetrating analysis of the regulations and norms in international law applying to Hawaii – starting from potential occupied-territory status, and moving through to multi-dimensional issues relating to both war crimes and human rights. This is one of the few books – if not the only one – to describe its subject matter so comprehensively and completely. I therefore see this work as being of exceptional value and considerable scientific importance. It may serve not only as an academic source, but also a professional source of knowledge for both practicing lawyers and historians dealing with the matter on hand. The ambition of those who sought to take up this difficult topic can only be commended.⁷⁷

I am not only an official of the government of the Hawaiian Kingdom, the occupied State, but I am also the resident expert on the legal and political history of the Hawaiian Kingdom, international humanitarian law, and the law of occupation. I am also the author of a chapter titled “Hawai‘i’s Sovereignty and Survival in the Age of Empire” in a forthcoming book to be published by Oxford University Press titled *Unconquered States: Non-European Powers in the Age of Imperialism* that is scheduled to be released this summer.⁷⁸ To assist you with a better understanding of the Council of Regency and the formation of the Royal Commission of Inquiry, I recommend viewing an award winning documentary *The Acting Hawaiian Council of Regency: Exposing the American Occupation of the Hawaiian Kingdom* produced by Ben Cohn that premiered in 2019 at the California Film Festival.⁷⁹

In mid-November of 2022, the RCI published thirteen war criminal reports finding that the senior leadership of the United States and the State of Hawai‘i, which includes President Joseph Biden Jr. and Admiral John Aquilino—War Criminal Report no. 22-0007,⁸⁰ Governor David Ige—War Criminal Report no. 22-0005,⁸¹ Hawai‘i Mayor Mitchell Roth—War Criminal Report no. 22-0003,⁸² Maui Mayor Michael Victorino—War Criminal Report no. 22-0004,⁸³ and Kaua‘i Mayor Derek Kawakami—War Criminal Report no. 22-0002,⁸⁴ are guilty of the war crime of *usurpation of sovereignty during military occupation*, and subject to prosecution. All of the named perpetrators have met the requisite element of *mens rea*.⁸⁵ In these reports, the RCI has concluded that these perpetrators have met the requisite elements of the war crime and are guilty *dolus*

⁷⁷ Anita Budziszewska, “Book Review of The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom (2020),” 8(2) *Polish Journal of Political Science* 68-73 (2022) (online at [https://hawaiiankingdom.org/pdf/Book_Review_RCI_book_\(Budziszewska\).pdf](https://hawaiiankingdom.org/pdf/Book_Review_RCI_book_(Budziszewska).pdf)).

⁷⁸ David Keanu Sai, “Hawai‘i’s Sovereignty and Survival in the Age of Empire,” in David Motadel and Houchang Chehabi (ed.s), in *Unconquered States: Non-European Powers in the Imperial Age* (forthcoming) (online at [https://www2.hawaii.edu/~anu/pdf/Hawaii_Sovereignty_and_Survival_\(Sai\).pdf](https://www2.hawaii.edu/~anu/pdf/Hawaii_Sovereignty_and_Survival_(Sai).pdf)).

⁷⁹ Documentary, *The Acting Hawaiian Council of Regency: Exposing the American Occupation of the Hawaiian Kingdom* (13 Aug. 2019) (online at <https://www.youtube.com/watch?v=CF6CaLAMh98>).

⁸⁰ Royal Commission of Inquiry War Criminal Report no. 22-0007 (18 Nov. 2022) (online at https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._22-0007.pdf).

⁸¹ Royal Commission of Inquiry War Criminal Report no. 22-0005 (18 Nov. 2022) (online at https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._22-0005.pdf).

⁸² Royal Commission of Inquiry War Criminal Report no. 22-0003 (17 Nov. 2022) (online at https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._22-0003.pdf).

⁸³ Royal Commission of Inquiry War Criminal Report no. 22-0004 (17 Nov. 2022) (online at https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._22-0004.pdf).

⁸⁴ Royal Commission of Inquiry War Criminal Report no. 22-0002 (17 Nov. 2022) (online at https://hawaiiankingdom.org/pdf/RCI_War_Criminal_Report_no._22-0002.pdf).

⁸⁵ Website of the Royal Commission of Inquiry at <https://hawaiiankingdom.org/royal-commission.shtml>.

directus of the first degree. “It is generally assumed that an offender acts with *dolus directus* of the first degree if he desires to bring about the result. In this type of intent, the actor’s ‘will’ is directed finally towards the accomplishment of that result.”⁸⁶

Cease and Desist all Military Exercises and Begin Withdrawal of Title 10 Military Forces

In light of the termination of the Pearl Harbor Convention, all Title 10 military forces of the four component commands of the Indo-Pacific Command—Army, Navy, Air Force and Marines, shall forthwith cease and desist any and all military exercises, to include utilizing live fire ranges across the islands, and anywhere within 200 nautical miles from the low water mark of the shoreline of the islands that constitute the Hawaiian Kingdom’s territorial sea and its exclusive economic zone, and to complete the withdrawal from the Hawaiian Islands by 26 October 2024.

I am unaware if the Department of State has notified you, Lieutenant General Journey, of the termination of the Pearl Harbor Convention. Notwithstanding, the Proclamation by the Council of Regency (20 October 2023) states:

And, We do require that when the United States has received this notice of termination, it shall, prior to the expiration of twelve months in accordance with Article I of the 1884 Supplemental Convention, remove all movable property at its military facilities throughout the Hawaiian Islands, including unexploded munitions, and fuel, with the exception of real property attached to the land or erected on it, including manmade objects, such as buildings, homes, structures, roads, sewers, and fences, to include on other properties that have been or are currently under its supervision and command.⁸⁷

Military installations and target ranges beyond Pearl Harbor were unlawfully confiscated by the United States from the Hawaiian Kingdom public lands and the estates of private persons in violation of international humanitarian law and the law of occupation. Live fire at these target ranges constitute destruction of property. According to Professor William Schabas, renowned expert on international criminal law, war crimes and human rights, in his legal opinion on war crimes being committed in the Hawaiian Kingdom,⁸⁸ there are five 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.

⁸⁶ Mohamed Elewa Badar, *The Concept of Mens Rea in International Criminal Law: The Case for a Unified Approach* 535 (2013).

⁸⁷ Council of Regency, *Proclamation Terminating the 1875 Commercial Reciprocity Treaty and the 1884 Supplemental Convention* (20 Oct. 2023) (online at https://hawaiiankingdom.org/pdf/Proc_Terminating_1875_Treaty_and_1884_Supp_Conven.pdf).

⁸⁸ William Schabas, “War Crimes Related to the United States Belligerent Occupation of the Hawaiian Kingdom,” in David Keanu Sai (ed.) *The Royal Commission of Inquiry: Investigating War Crimes and Human Rights Violations Committed in the Hawaiian Kingdom* 167 (2020) (online at [https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_\(2020\).pdf](https://hawaiiankingdom.org/pdf/Hawaiian_Royal_Commission_of_Inquiry_(2020).pdf)).

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.⁸⁹

Regarding the last two elements of the *war crime of usurpation of sovereignty during military occupation*:

1. There is no requirement for a legal evaluation by the perpetrator as to the existence of an armed conflict or its character of the conflict 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;
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.”⁹⁰

In February of 2001, the 25th Infantry Division’s officer corps and senior non-commissioned officers had actual knowledge of the factual circumstances of the American military occupation of the Hawaiian Kingdom since 1893. I was invited by Major General James Dubik, Commander of the 25th Infantry Division, to do a presentation on the occupation of the Hawaiian Kingdom and the case that came before the PCA, at the Officer’s Club at Schofield Barracks. My presentation was titled “Hawai‘i’s Road to International Recovery.” On stage, after after my presentation, MG Dubik asked me, “How do you foresee the transition back to the kingdom?” I responded, “That is why I am in the political science graduate program at the University of Hawai‘i to research a plan of transition.”

In 2008, I received my Ph.D. specializing in international relations and law. The title of my dissertation was “The American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied State to Restored State.” On 25 February 2009, I briefed Colonel James Herring, Army Staff Judge Advocate, 8th Theater Sustainment Command, and his staff officers at Wheeler AAF Courthouse about my doctoral dissertation. The title of my brief was the “American Occupation of the Hawaiian Kingdom: Beginning the Transition from Occupied to Restored State.” The United States Army Pacific had actual knowledge of the American occupation and the violations of international humanitarian law and the law of occupation since 2001, but it has failed to comply with the law of occupation, which contributed to the continued commission of war crimes with impunity.

Following the end of hostilities during the Second World War, the war crimes tribunals in Nuremburg and Tokyo, “marked a clear recognition by the international community that all members of the chain of command who participate or acquiesce in war crimes must bear individual

⁸⁹ *Id.*

⁹⁰ *Id.*, 167-168.

criminal responsibility.”⁹¹ Command responsibility arises when the military superior during an occupation of a foreign State fails to exercise sufficient control and accountability for his/her subordinates’ in the commission of war crimes. And a “non-military commander is [also] responsible for omissions which lead to the commission of crimes.”⁹² The doctrine of command responsibility arises when a superior, by omission, fails to control or punish those under his/her command.

Dereliction of the performance of a duty arises when a commander took no action to prevent, stop, or punish. Confiscation and destruction of property are war crimes and commanders of the four component commands have a duty to stop the further commission of these and other war crimes. Dereliction of the performance of a duty is also a war crime of omission. According to the Manual for Courts-Martial:

(3) *Dereliction in the performance of duties.*

- a) *Duty.* A duty may be imposed by treaty, statute, regulation, lawful order, standard operating procedure, or custom of the Service.
- b) *Knowledge.* Actual knowledge of duties may be proved by circumstantial evidence. Actual knowledge need not be shown if the individual reasonably should have known of the duties. This may be demonstrated by regulations, training or operating manuals, customs of the Service, academic literature or testimony, testimony of persons who have held similar or superior positions, or similar evidence.
- c) *Derelict.* A person is derelict in the performance of duties when that person willfully or negligently fails to perform that person’s duties or when that person performs them in a culpably inefficient manner. “Willfully” means intentionally. It refers to the doing of an act knowingly and purposely, specifically intending the natural and probable consequences of the act. “Negligently” means an act or omission of a person who is under a duty to use due care which exhibits a lack of that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances. Culpable inefficiency is inefficiency for which there is no reasonable or just excuse.⁹³

Transforming State of Hawai‘i into a Military Government

Department of Defense Directive no. 5100.01 establishes the duty of the Army in “[occupied] territories abroad [to] provide for the establishment of a military government pending transfer of this responsibility to other authority.”⁹⁴ U.S. Army field manuals (“FM”) regulating military government are FM 27-5—*Civil Affairs Military Government*, FM 27-10—*The Law of Land Warfare*, FM 3-57—*Civil Affairs Operations*, and FM 6-37—*The Commander’s Handbook on the Law of Land Warfare*.

⁹¹ Andrew D. Mitchell, “Failure to Halt, Prevent or Punish: The Doctrine of Command Responsibility for War Crimes, 22 *Sydney Law Review* 381 (2000).

⁹² M. Cherif Bassiouni and Peter Manikas, *The Law of the International Criminal Tribunal for the Former Yugoslavia* 345, 348-350 (1996).

⁹³ Manual for Courts-Martial United States, para. 18(a)(3)(c)(3) (2023).

⁹⁴ Department of Defense Directive no. 5100.01, para. 4(b)(6) (21 Dec. 2010).

Article 43 of the 1907 Hague Regulations obliges the occupant in foreign territory, after securing effective control of the territory, to establish a military government. This entity is the State of Hawai‘i Department of Defense because they are in effective control of 10,931 square miles of Hawaiian territory. The military government has centralized control over the territory of an occupied State under the effective control of the occupant. According to FM 27-5:

The theater commander bears full responsibility for [Military Government]; therefore, he is usually designated as military governor or civil affairs administrator, but is authority to delegate authority and title, in whole or in part, to a subordinate commander. In occupied territory the commander, by virtue of his position, has supreme legislative, executive, and judicial authority, limited only the laws and customs of war and by directives from higher authority.⁹⁵

“Since the military occupation of enemy territory suspends the operation of the government of the occupied territory, the obligation arises under international law for the occupying force to exercise the functions of civil government looking toward the restoration and maintenance of public order.”⁹⁶ The operations of the Hawaiian Kingdom government were suspended by virtue of the Hawaiian Kingdom’s conditional surrender to the United States President on January 17, 1893. Instead of establishing a military government, the United States made it possible for their proxy comprised of insurgents to maintain unlawful control over Hawaiian territory until the United States took control of their proxy after it unlawfully annexed the Hawaiian Islands on July 7, 1898.

Since 17 April 2023, I have been in communication with Major General Kenneth Hara of the State of Hawai‘i Department of Defense, regarding his duty under international law and Army regulations, to transition the State of Hawai‘i into a military government.⁹⁷ Of note in my meeting with BG Okamura on November 1, 2023, he stated to me that the withdrawal of U.S. troops because of the termination of the Pearl Harbor Convention will create chaos. I acknowledged that it would indeed be chaotic, and then answered that is precisely why MG Hara must establish a military government to facilitate the withdrawal of U.S. troops and begin to comply with the law of occupation. BG Okamura responded to me with that’s a good plan.

Unlike American politicians, members of the military have a duty and responsibility to comport with international law and regulations. To begin to withdraw Title 10 troops under your command is a duty imposed by the terms of a treaty and that you have command responsibility. Your presence in this country was by virtue of a treaty that would last from 1887 to 1894, and further, unless either country gives notice to the other of its intention to terminate. That notice to terminate was received by the United States on 26 October 2023 at 05:47 hours, which triggered the tolling of 12 months for termination. Therefore, your withdrawal is a duty imposed by the termination of that treaty that is not affected by any presidential or congressional action.

There would be no duty imposed upon you if the Hawaiian Kingdom had ceased to exist as a State under international law, but this is not the case because the United States recognized the continued existence of the Hawaiian Kingdom as a State and the Council of Regency as its government by

⁹⁵ Department of the Army, Field Manual 27-5, *Civil Affairs Military Government* 4 (1947).

⁹⁶ *Id.*, para. 4(b).

⁹⁷ Hawaiian Kingdom letters of communication I had with MG Hara can be accessed online at https://hawaiiankingdom.org/pdf/HK_Comm_with_MG_Hara.pdf.

opinio juris. Additionally, the United States explicitly recognized the Council of Regency by agreement so it could be granted permission to access all records and pleadings of the *Larsen v. Hawaiian Kingdom* case at the Permanent Court of Arbitration.



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